A BILL FOR AN ACT

To authorize the FSM to borrow approximately $19,000,000 from the Asian Development Bank and relend approximately $19,000,000 to the States and their utilities for the purpose of funding the Omnibus Infrastructure Development Project: to further amend title 55 of the Code of the FSM, as amended, by enacting a new subchapter XVI to chapter 6 thereof to establish an External Debt Management Fund; and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Authorization. The President (the "President") of the Federated States of Micronesia (the "FSM") is hereby authorized to borrow money from the Asian Development Bank (the "Bank") and relend a portion thereof to the States as provided hereinafter. The borrowing shall be by way of two project (Loans).

2 Section 2. Amounts.

(1) The amount to be borrowed from the Bank for a total of approximately $19,000,000, is in two separate loans. Loan A is denominated in US Dollars for $4,800,000 and Loan B, for a total up to $14,200,000 is denominated in SDRs (Special Drawing Rights) of the Bank or SDR $ 9,686,000.

(2) From the proceeds of both Loans, the National Government will relend to the State Governments, which shall relend to their respective utilities, the following approximate amounts:

(a) Chuuk $ 2,800,000

SDR 1,773,000
Section 3. Financial Terms. The Loans from the Bank and each of the Tripartite Financing Agreement with the States and the utilities:

LOAN A
(1) has a 5 year grace period for the repayment of principal;
(2) bears interest at the rate of LIBOR plus point six of a percent (.6%) per annum; and
(3) provides for the repayment of principal over a 25-year period commencing at the end of the grace period.

LOAN B
(1) has an 8 year grace period for the repayment of principal;
(2) bears interest at the rate of 1% per annum during the grace period and 1.5% thereafter.
(3) provides for the repayment of principal over a 24 year period commencing at the end of the grace period.

Section 4. Use of Proceeds. The Loans will be for the purpose of funding infrastructure development projects in all four
states in the FSM as set forth in the Bank’s Project Implementation Agreements already signed by all four Utilities (and States where appropriate). Loan proceeds may be used only as set forth in the Loan agreements between the FSM and the Bank.

Section 5. Relending Conditions.

(1) Relending of proceeds to a State and their utility shall be by way of Tripartite Financing Agreements between the National Government, the State and the respective utility which taken together:

(a) place the foreign exchange risk on the utility with respect to disbursement of funds lent to the State and the utility.

(b) provide for a separate State Trust Account created in the name of each State pursuant to the terms of the Tripartite Financing Agreements between the National Government, the State and the utility for the ADB Omnibus Infrastructure Development Project. The Trust Accounts shall be used, for said loan(s) from the National Government to the State and the utility and possibly other loans to the State.

(c) provide for disbursement to the State and/or the utility of funds remaining in the Trust Account under the terms and conditions set forth in the Tripartite Financing Agreements.

(d) contain such other provisions as the President or the Bank may require; and

(e) are specifically and properly authorized by the
Legislature of each State and ratified and/or authorized by the respective utility.

(2) Except as provided herein or in the Loans with the Bank, the form of the Tripartite Financing Agreement with respect to a particular Loan from the Bank shall be the same (except for the loan amounts) for all States so as to assure that no State is preferred over any other State.

Section 6. Delegations.

(1) While the President shall remain involved and informed, he may delegate:

(a) to the Secretary of the Department of Finance and Administration the authority to negotiate the Loan agreements with the Bank, the Tripartite Financing Agreement, with the States and their utilities, and other relevant documents;

(b) to the Secretary of the Department of Finance and Administration the authority to sign any such documents on behalf of the National Government;

(c) to the FSM’s representative on the Board of the Bank in Manila the authority to sign agreements between the Bank and the National Government on behalf of the FSM; and

(d) to such officials as the President deems appropriate the authority to administer various portions of the programs and projects funded by the loan from the Bank.

(2) The right to delegate the performance of an act to a person includes the right to ratify the performance of that act by
that person after the fact.

Section 7. External Debt Management Fund. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new subchapter XVI of chapter 6 entitled “External Debt Management Fund”.

Section 8. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1601 of subchapter XVI of chapter 6 to read as follows:

"Section 1601. Establishment. There is hereby created and established an External Debt Management Fund, separate from the General Fund of the FSM and all other funds."

Section 9. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1602 of subchapter XVI of chapter 6 to read as follows:

"Section 1602. Purpose. The purpose of the Fund is to provide an ongoing fund for the receipt and disbursement of funds associated with the loans from the Asian Development Bank (referred to as the 'Bank' in this subchapter) with respect to the Omnibus Infrastructure Development Project (Project), and any other loan from an external lender if the National Government authorizing legislation for that loan provides that the
loan is to be repaid out of the Fund, all said loans
hereinafter referred to collectively as the 'subject
loans' and individually as a 'subject loan'."

Section 10. Title 55 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by enacting a
new section 1603 of subchapter XVI of chapter 6 to read as
follows:

"Section 1603. Accounts within the Fund. The Fund
shall contain the following accounts:

(1) a disbursing account for each of the subject loans
to receive and lend the portion of the proceeds of that
loan intended for the use by the Four State Governments;

(2) a master repayment account for use by the National
Government in consolidating repayments from the State
repayment accounts;

(3) a repayment account for each State for use by the
National Government on behalf of the State reserving
funds for repayment of the State’s share of the subject
loans; and

(4) such other accounts as may be deemed appropriate."

Section 11. Title 55 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by enacting a
new section 1604 of subchapter XVI of chapter 6 to read as
follows:

"Section 1604. Deposits.
(1) Funds received pursuant to the loan agreements between the Federated States of Micronesia and the external lender with respect to a subject loan shall be deposited in the appropriate disbursing account.

(2) Funds appropriated by the National Government if any, for execution of the project of the subject loans shall be deposited in the appropriate disbursing account.

(3) Funds received from a State or from a trust account administered by the National Government on behalf of a State for repayment of the State’s portion of the subject loans shall be deposited in the State’s repayment account.

(4) Funds appropriated by the National Government, if any, for repayment of the subject loans shall be deposited in the master repayment account.

(5) Funds received from any other source associated with the subject loans shall be deposited in the appropriate account.

(6) Investment returns or losses and associated fees, costs and changes shall remain with the account earning or suffering them."

Section 12. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1605 of subchapter XVI of chapter 6 to read as
"Section 1605. Disbursements

(1) The Secretary of the Department of Finance and Administration is hereby authorized to make the following disbursements of moneys available in the Fund, without further authorization or appropriation by the Congress of the Federated States of Micronesia, for the following and no other purposes:

(a) execution of the programs and projects of the subject loans to the extent and in the manner called for in the applicable loan agreements or appropriating legislation applicable to the subject loans associated with that disbursement account;

(b) from a disbursing account to the master repayment account with respect to any surplus funds remaining after the programs and projects associated with that disbursement account have been executed;

(c) from the master repayment account for repayment of the subject loans in accordance with their terms;

(d) from a State repayment account for repayment of the subject loans in accordance its terms;

(e) from a State repayment account to the State as called for by written agreement between the State and the National Government; or
(f) as otherwise required by law.

(2) Unexpended moneys in the Fund shall not revert to the General Fund nor lapse at the end of the fiscal year."

Section 13. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1606 of subchapter XVI of chapter 6 to read as follows:

"Section 1606. Administration. The Fund shall be administered by the Secretary of the Department of Finance and Administration, who shall administer the fund in accordance with the applicable loan agreements, financing or relending agreements, law, generally accepted accounting standards, and sound financial practices for the effectuation and implementation of the provisions of this subchapter."

Section 14. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1607 of subchapter XVI of chapter 6 to read as follows:

"Section 1607. Annual Report. The President of the Federated States of Micronesia, or his designee, shall report to the Congress of the Federated States of Micronesia and to the Governor of each participating State on the status of the Fund at the close of each
fiscal year."

Section 15. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: _____  Introduced by: ______________________________

Simiram Sipenuk
(by request)