A BILL FOR AN ACT

Establishing the FSM Public Debt Management Act by further amending title 55 of the Code of the Federated States of Micronesia (Annotated), by inserting a new chapter 15 thereof, providing for the procedures, terms and conditions of government borrowing, including the terms of on-lending of funds, issuance of sovereign guarantee, creating the Public Debt Management Advisory Group, and for other purposes.

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

Section 1. Title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended by inserting new chapter 15, entitled, “Public Debt Management”.

Section 2. Title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended by inserting a new section 1501 to chapter 15 to read as follows:

“Section 1501. Title. This Act shall be known and cited as the Public Debt Management Act of 2016.”

Section 3. Title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended by inserting a new section 1502 to chapter 15 to read as follows:

“Section 1502. Definition of terms.
The following terms used in this Act shall have their corresponding definition unless the context expressly indicates otherwise:

(a) Advisory Committee means the Debt Management Advisory Committee.
(b) Borrower means any recipient of an on-lent loan or a sovereign guarantee or other borrowing from the National Government.

(c) Congress means the Congress of the Federated States of Micronesia.

(d) Government guarantee means a commitment by the Government to repay the financial liabilities of another entity should that entity default;

(e) Government on-lending means a loan issued by or on behalf of the Government to an entity in the private or public sector, using public money or funded by Government borrowing.

(f) Loan Reserve Account means an account where surplus loan repayments are placed to protect against future shocks which may impact the short-term capacity to make repayments;

(g) Public borrowing means borrowing by the National Government, its agency, or a legal entity owned by the National Government that include the contracting or guaranteeing of domestic or foreign debt through loans, financial leasing, on-lending or any other type of borrowing, including concessional and non-concessional borrowing, whatever the source;

(h) Project means a group of related activities that have a common aim which are financed, or part
financed by a loan and which constitute a material
portion of the loan (25% or greater).

(i) Secretary means the Secretary of the
Department of Finance and Administration of the National
Government of the Federated States of Micronesia.”

Section 4. Title 55 of the Code of the Federated States of
Micronesia (Annotated), is hereby amended by inserting a new
section 1503 to chapter 15 to read as follows:

“Section 1503. Purpose of the Public Debt Management
Act.

(a) The purpose of this Act is to promote sound debt
management to ensure that the Government’s financing
needs and its payment obligations are met at the lowest
possible cost with the lowest possible risk over the
medium to long term in accordance with the culture and
practices of The Federated States of Micronesia.

(b) In achieving the purpose stated in this section,
the Government must adhere to the following principles:

(1) projects and activities financed by loans are
able to demonstrate quantifiable positive returns and
shall not be for the purposes of supplementing recurrent
budget expenditure or for reasons of speculation;

(2) Loans shall only be considered once all other
avenues of financing have been considered and found
inadequate;
(3) Total debt shall be maintained at prudent levels so as to provide a buffer against factors that may impact adversely on total net worth in the future; and

(4) Loans shall, where possible, be denominated in USD.

(c) The Government may depart from the principles if:

(1) The departure from those principles is temporary; and

(2) The nature of the exceptional circumstances are approved by Congress.”

Section 5. Title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended by inserting a new section 1504 to chapter 15 to read as follows:

“Section 1504. Authority of Congress over sovereign debt.

In accordance with article IX section 3 of the Constitution of the Federated States of Micronesia, the Congress of the Federated States of Micronesia has the authority to borrow money on the public credit. By this Act, the Secretary of the Department of Finance is delegated the authority to execute debt instruments on behalf of the Federated States of Micronesia subject to the parameters set forth herein. The debt instrument contemplated in this section includes a direct loan, a
sovereign guarantee, or other forms of transaction that
legally constitute a financial obligation on the part of
the National Government, either direct or indirect,
primary or secondary, absolute or contingent.”

Section 6. Title 55 of the Code of the Federated States of
Micronesia (Annotated), is hereby amended by inserting a new
section 1505 to chapter 15 to read as follows:

“Section 1505. On-lending of funds.

(a) On application by the State, the Secretary, after
consultation with the Advisory Group, may approve any
Government on-lending that meets the prescribed terms
and conditions the purposes of which have been approved
by the President and ratified by Congress.

(b) The terms and conditions for on-lending shall be
specified in the on-lending agreement to be signed by
the parties, including any additional fees or charges
that may be imposed as part of the cost and risk of
administering and processing the on-lending.”

Section 7. Title 55 of the Code of the Federated States of
Micronesia (Annotated), is hereby amended by inserting a new
section 1506 to chapter 15 thereof to read as follows:

“Section 1506. Sovereign Guarantee.
The National Government may issue a sovereign guarantee
to secure borrowing by the State. The Secretary shall
provide for the procedures governing the issuance of a
sovereign guarantee. The following rules apply to a sovereign guarantee:

(a) The Secretary may issue a sovereign guarantee only if

(1) Congress approves the guarantee; and

(2) provision has been made—

(A) for a loan reserve account to secure the loan repayment or an indemnity to the National Government;

(B) to assess and monitor the risks involved;

(C) to ensure that any part of the loan which cannot be applied for such purpose shall either not be drawn or shall be applied to such other purposes as the Secretary approves and is within the provisions of the loan agreement;

(D) for charging on the income, revenue, and assets of the borrower, or any other income which may be made available for the purpose of loan repayment; and

(E) for the raising or securing the raising of sufficient money to meet all the charges referred to in this subsection.

(d) The Secretary may impose such fees and charges on a sovereign guarantee as deemed necessary to cover the cost of administering it.
(c) Any sum required for fulfilling a sovereign guarantee under this section shall be charged on the asset or revenue of the borrower.”

Section 8. Title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended by inserting a new section 1507 chapter 15 to read as follows:

“Section 1507. Restrictions and conditions of borrowing.

(a) The Secretary shall not borrow money except in accordance with the provisions of this Act.

(b) The Secretary shall not borrow for budget deficits in the current fiscal year where there is no express authorization by Congress. Borrowing may be considered only for projects and activities that are able to provide a demonstrable return through either increasing the net revenue to the government or in decreasing net costs.

(c) A cap on total borrowing shall be determined using a debt servicing to domestic revenue ratio, the level of which shall be set in the Debt Management Policy of the National Government. Borrowing may not exceed this cap except for the exceptional circumstances provisions in subsection (d).

(d) Subsection (c) does not apply where short-term borrowing is necessary in order to deal with exceptional
circumstances, as determined by the President. This subsection shall be governed by the following principles:

(1) The Secretary shall exhaust all efforts to remedy the financial situation using the available domestic financial resources, including the use of reprogramming authority where applicable.

(2) The President may also tap on all available resources consisting of bilateral and multilateral assistance made pursuant to treaties with other nations.

(e) If short-term borrowing due to exceptional circumstances is required, the President shall present to Congress:

(1) the level of borrowing required;

(2) the approach the Government will take to return to the principles outlined in this Act; and

(3) the period of time the Government expects to take to return to said principles.

(f) The Secretary shall establish a loan reserve account for all new lending, the target for which is identified in the medium term debt management strategy.

(g) Approval of a borrowing through a resolution by Congress legally binds the National Government.”

Section 9. Title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended by inserting a new
section 1508 to chapter 15 to read as follows:

“Section 1508. Responsibilities of the Secretary.

The Secretary shall

(a) Develop and implement a debt management policy that implements the principles established in subsection (b) of section 1503;

(b) Provide to the President and the Congress the debt management policy referred to in subsection 0;

(c) Supervise and monitor Government finances and coordinate inter-governmental financial and fiscal resources through the combined application of this Act and the Financial Management Act;

(d) Ensure appropriate financial management review of every borrowing proposal and determine the fiscal and economic implications prior to its transmittal to Congress for approval;

(e) Initiate or review a borrowing proposal as directed by the President;

(f) Recommend to the President suitable terms and conditions of borrowing taking into consideration the relevant financial and operational risks involved;

(g) Establish standards of good governance on public debt management and integrate the respective roles of the government departments or agencies comprising the debt management Advisory Committee;
(h) Establish internal control mechanisms; and

(i) Provide to the President the information required for the presentation of reports to Congress as outlined in this Act.”

Section 10. Title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended by inserting a new section 1509 to chapter 15 to read as follows:

“Section 1509. Regulation.
The Secretary shall exercise the powers and responsibilities under this Act through the issuance of regulation in accordance with Title 17 of the Code of the Federated States of Micronesia.”

Section 11. Title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended by inserting a new section 1510 to chapter 15 to read as follows:

“Section 1510. Debt Management Advisory Committee.
The following shall comprise the Debt Management Advisory Committee, with the Department of Finance as its chair:

(a) Secretary of the Department of Finance and Administration, or designee;

(b) Secretary of the Department of Justice, or designee;

(c) Secretary of the Department of Foreign Affairs, or designee; and
A rotating member being the Secretary, or designee, of a line department that has functional oversight over an item that is proposed for consideration."

Section 12. Title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended by inserting a new section 1511 to chapter 15 to read as follows:

"Section 1511. Responsibilities of the Advisory Committee.

The following are the responsibilities of the Advisory Committee:

(a) Provide the role of coordination among its members and implement a sharing of information mechanism relevant to public debt management;

(b) Provide technical discussion on every proposed borrowing, in particular, assessment of the various risks involved, terms and conditions of borrowing, and debt-servicing strategy;

(c) Develop and maintain a medium term debt management strategy for consideration by the President;

(d) Develop and utilize a project appraisal and approval framework for the assessment of loan financed project and activity proposals and to provide subsequent advice to the Secretary;

(e) Undertake a periodic Debt Sustainability Analysis to support the medium term debt strategy and render its
opinion or advice thereon to the Secretary; and

(f) Undertake an annual risk assessment on the loan portfolio in its entirety and render its opinion or advice thereon to the Secretary.”

Section 13, Title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended by inserting a new section 1512 to Chapter 15 to read as follows:

“Section 1512. Reporting

The following constitute the reporting requirements in addition to reporting requirements already required under the Act:

(a) Borrowers will provide the Secretary of Finance and Administration with progress reports on loan funded activities within 14 days of the completion of each quarter;

(b) Borrowers will submit a completion report, which shall include a report on outcome effectiveness, to the Secretary of Finance and Administration at the either the completion of the loan funded activity or at the completion of the loan repayment, whichever is first;

(c) The Secretary of Finance shall include a debt summary in the unaudited financial statement of the National Government that is provided to the President and Congress no later than January 31 of each year.

(e) The Secretary of the Department of Finance &
Administration will report to the President every 6 months as to the balance and sufficiency of trust accounts linked to loans and guarantees;
The Secretary of the Department of Finance & Administration shall include a statement as to the sufficiency on trust accounts linked to loans as a part of the annual audited financial statement.”

Section 14. Title 55 of the Code of the Federated States of Micronesia (Annotated), is hereby amended by inserting a new section 1513 to chapter 15 to read as follows:

"Section 1513. Audits.

The FSM Public Auditor shall have authority to audit any borrowing or sovereign guarantee under this Act.”

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: 5/22/19

Introduced by: /s/ Florencio S. Harper
Florencio S. Harper
(by request)