A BILL FOR AN ACT

To amend title 58 of the Code of the Federated States of Micronesia by amending sections 512, 513, 521, 522, 524, 525, 531, 535, and 564, as established by Public Law No. 5-121, and to further amend title 55 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-16, 5-88, 5-119 and 5-121, by amending sections 625 and 627, for the purpose of authorizing bank borrowings, establishing procedures for pledges of funds, altering committee voting requirements, expanding the waiver of sovereign immunity, and for other purposes.

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

Section 1. Section 512 of title 58 of the Code of the Federated States of Micronesia, as established by Public Law No. 5-121, is hereby amended to read as follows:

"Section 512. Definitions. As used in this chapter, these terms shall have the following meanings, unless otherwise required by context:

(1) 'Bond' or 'Bonds' means any bond, note or other evidence of indebtedness issued under this chapter including any indebtedness for borrowed money to any commercial bank or similar financial institution and any reimbursement obligation to a provider of Credit Enhancement;

(2) 'Bond Fund' means the fund created pursuant to section 523 of this chapter;

(3) 'Committee' means the committee referred to in section 524 of this chapter;

(4) 'Compact of Free Association' means the Compact of Free Association between the Federated States of Micronesia and the United States of America;

(5) 'Credit Enhancement' means bond insurance, letters of credit, or similar credit enhancement instruments;

(6) 'Federated Development Authority' means the FSM instrumentality of that name;

(7) 'FSM' means the Federated States of Micronesia;
(8) 'FSM Fiscal Agent' means any fiscal agent selected and acting pursuant to subchapter V of this chapter;

(9) 'Indenture' means any indenture, agreement or other instrument pursuant to which the Bonds shall be issued, as approved by the resolution;

(10) 'Pledged Compact Funds' means the amounts payable under the Compact of Free Association which the President of the Federated States of Micronesia is authorized to pledge to the payment of the Bonds following legislative action by the FSM and its constituent States and made available for expenditure through the Bond Repayment Fund;

(11) 'Pledged Funds' means the Pledged Compact Funds and/or other pledged moneys, and investment earnings thereon;

(12) 'Resolution' means the resolution or resolutions of the committee authorizing the issuance and sale of the Bonds in one or more series, on the terms and conditions, and substantially in the form, approved therein or pursuant to procedures provided therein;

(13) 'Secretary' means the Secretary of Finance of the Federated States of Micronesia;

(14) 'State' means any constituent State of the Federated States of Micronesia;
(15) 'Swap instruments' has the meaning set forth in section 531(1)(p) of this chapter; and

(16) 'Trustee' means the FSM Fiscal Agent appointed as such in the Indenture and any successors or assigns, who will act as such for the benefit of the holders of the Bonds."

Section 2. Section 513 of title 58 of the Code of the Federated States of Micronesia, as established by Public Law No. 5-121, is hereby amended to read as follows:

"Section 513. Purpose; Bonds; Costs of Issuance.

(1) The purpose of this chapter is to authorize borrowing by the FSM for the benefit of itself and/or any one or more of its constituent States in anticipation of receipt from the United States of America of grant funds under the Compact of Free Association. Any such borrowing may be from any commercially reasonable source whatsoever, and may be accomplished through the issuance of Bonds in any commercially reasonable manner, including, without limitation, Bonds publicly offered in the United States of America or elsewhere, Bonds or other evidences of indebtedness issued in private placements, bank borrowings, and other types of financings, so long as the procedures set forth herein are followed. It is necessary and appropriate that the FSM, in cooperation with the State governments of the FSM, use all practical means to enhance
the benefits derived from moneys payable to the FSM and the State governments pursuant to the Compact of Free Association by participating in a financing secured by all or a portion of such payments due from the United States of America. This method of financing is in the public interest and serves a public purpose.

(2) The securities evidencing this indebtedness may be general or limited obligations of the FSM, entitled 'Federated States of Micronesia Compact Financing Bonds,' may bear additional designations indicating the purpose of the financing as the committee may determine, may be issued in one or more series (including refundings), and may be secured by the full faith and credit of the FSM, a pledge of grant funds under the Compact of Free Association, Credit Enhancement, or other moneys, all as specified in the resolution.

(3) The costs of issuance of such Bonds, including printing, filing fees with regulatory agencies, such as the United States Securities and Exchange Commission, legal, rating agency, financing advisors', placement agent's, underwriters', Trustee's and similar fees and expenses, and fees or premiums for Credit Enhancement, may also be paid from the proceeds of sales of the Bonds. The costs of issuance may also include prior expenditures incurred in connection with such issuance.
(4) In the event Bonds that are general obligations of the FSM are issued in a financing in which the FSM and/or any State does not participate in the proceeds therefrom, the participating State or States shall provide assurance satisfactory to the Secretary that the FSM and/or the non-participating States will be protected from any loss arising in connection with such Bonds before such Bonds may be issued."

Section 3. Section 521 of title 58 of the Code of the Federated States of Micronesia, as established by Public Law No. 5-121, is hereby amended to read as follows:

"Section 521. Authorization; Validity.

(1) The FSM is authorized to issue Bonds for the benefit of itself and/or any one or more of its constituent States in one or more series (including refundings), each series to be authorized by the Secretary acting for the committee, following the adoption of the resolution fixing the terms and conditions of the issue and the form of the Bonds or setting forth procedures for such determination.

(2) As specified in the resolution, the Bonds shall be valid general or limited obligations of the FSM, payable from one or more of the following: general funds of the FSM, general funds of any State, Pledged Funds, proceeds of any Credit Enhancement or swap instruments, and proceeds of refunding bonds or other indebtedness. The validity of the
Bonds shall not be affected by the validity or regularity of the projects thereby funded. No subsequent appropriation will be necessary by the Congress of the Federated States of Micronesia for moneys for payment of the principal of, or interest or premium, if any, on the Bonds. This chapter and the resolution shall constitute the sole and complete authorization for payment of the principal of, and interest and premium, if any, on the Bonds.

(3)(a) If the Bonds constitute general obligations of the FSM, all Bonds issued in certificate form shall contain on the face thereof a statement to the following effect: 'This Bond constitutes a general obligation of the Federated States of Micronesia and the full faith and credit of the Federated States of Micronesia is pledged to the payment of principal of, and interest and premium, if any, on this Bond.'

(b) If the Bonds constitute limited obligations of the FSM, all Bonds issued in certificate form shall contain on the face thereof a statement to the following effect: 'This Bond constitutes a limited obligation of the Federated States of Micronesia, payable solely [state sources of repayment]. Neither the taxing power nor the full faith and credit of the Federated States of Micronesia is pledged to the payment of the principal of, or interest
or premium, if any, on this Bond.""

Section 4. Section 522 of title 58 of the Code of the Federated States of Micronesia, as established by Public Law No. 5-121, is hereby amended to read as follows:

"Section 522. The Pledge of Funds.

(1) Upon the recommendation of the committee as set forth in the resolution or pursuant to procedures established thereby, the President may pledge all or any part of the Pledged Funds to secure payment of the Bonds and any payment to the provider of any Credit Enhancement. Notwithstanding any provisions of title 55 of the Code of the Federated States of Micronesia or any other provision of law, the Pledged Compact Funds so pledged shall be paid directly by the United States of America to the Trustee for the benefit of the holders of the Bonds. Any pledge pursuant to the provisions hereof shall be irrevocable and valid and binding from the time such pledge is made and shall be deemed a valid obligation of the Pledged Funds, notwithstanding the provisions of section 220 of title 55 of the Code of the Federated States of Micronesia. The Pledged Funds so pledged and thereafter received by the Trustee shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in
tort, contract, or otherwise against the FSM or any of its political subdivisions, irrespective of whether such parties have notice thereof. Neither the resolution nor the Indenture by which a pledge is created need be filed or recorded in the records of the FSM in order to perfect the lien or give notice of the pledge; PROVIDED that the FSM shall give due written notice of the pledge to the United States of America.

(2) The committee shall determine the extent of the pledge, provisions for release of moneys or other assets from the pledge, and other matters relevant thereto, all as evidenced in the resolution or the Indenture; PROVIDED, however, that the committee may not make such a determination nor any recommendation to the President regarding the pledge until it receives from each participating State and, if participating, from the FSM:

(a) A copy of a statute or statutes that:

(i) Identifies the source and amount of funds to be used to secure the borrowing;

(ii) Authorizes, if appropriate, the President to pledge the specified security offered by the participating State, or, if participating, the FSM as security for all financial obligations related to or resulting from the borrowing; and

(iii) Authorizes the payment from the
specified security offered by the participating State or, if participating, the FSM for the purpose of, and to the extent required, to satisfy all financial obligations attributable to the participating State or, if participating, the FSM related to or resulting from the borrowing;

(b) An opinion, addressed to the President, of the Attorney General or the highest legal officer of the participating State or, if participating, the FSM that the statute or statutes provided is or are legally sufficient to meet the requirements set forth in subsection (a), above, and that all other necessary legal steps, administrative or otherwise, have been completed by the participating State or, if participating, the FSM in order to make the specified security available pursuant to section 522(1) or, if applicable, through the Bond Repayment Fund established pursuant to subchapter V of chapter 6 of title 55 of the Code of the Federated States of Micronesia for the purposes contemplated under this chapter; and PROVIDED FURTHER, however, that the pledge to be determined by the committee shall not exceed the sum of the pledges authorized by the participating States or, if participating, the FSM."

Section 5. Section 524 of title 58 of the Code of the Federated States of Micronesia, as established by Public Law No. 5-121, is
hereby amended to read as follows:

"Section 524. Committee.

(1) The committee shall consist of five members, who shall have one vote each, including the Secretary, the Director of Administrative Services of Yap, the Director of Finance of Truk, the Director of the Department of Treasury of Pohnpei, and the Director of Finance and Treasury of Kosrae, or their designees. Members of the committee shall serve without compensation. The Secretary or his designee shall be the secretary of the committee and may certify its action. The committee, through the Secretary or his designee, shall render reports from time to time to the Federated Development Authority for informational purposes.

(2) Subject to the express provisions of this subchapter II, the committee is authorized to determine, and by resolution shall determine, all matters set forth in this chapter to be determined by the committee; PROVIDED that any payments on the Bonds in any year shall not exceed the Pledged Funds held or to be received by the Trustee in such year; and PROVIDED FURTHER that the Secretary may take any action authorized in this act, by the resolution, or by the Indenture to be taken by him without any further authorization of, or other action by, the committee, unless this act, the resolution or the Indenture expressly indicates that the committee is required to so authorize or
otherwise act.

(3) The committee may adopt the resolution or any other resolution it may be required to adopt (a) by unanimous written consent, or (b) at a meeting of the committee, by an affirmative vote of the Secretary and not less than four of its other members. Presence at any meeting of the committee may be either in person or by conference telephone call during which each member can hear each other member present during such proceedings."

(4) Notwithstanding the provisions of section 524(1), the actions which are required by this Compact Funds Financing Act to be taken by the committee may be taken by the Secretary and the member or members of the committee from one or more States if such State or States determine to borrow funds directly from a financial institution pursuant to this act, as opposed to a public offering or private placement of Bonds. The actions taken by the Secretary and the member or members representing such State or States shall be deemed to be actions by the committee for all purposes of this act with respect to such borrowing. All resolutions required to be adopted hereunder and all actions required to be taken hereunder shall be deemed to have been taken by the committee if taken by such member or members and the Secretary."
1 States of Micronesia, as established by Public Law No. 5-121, is
2 hereby amended to read as follows:
3 "Section 525. Tax free nature of the Bonds. The including
4 any Bonds issued pursuant to a resolution adopted pursuant
5 to subsection (4) of section 524 of this subchapter, all
6 Bonds and the repayment of the principal of, and interest
7 and premium, if any, thereon, and original issue discount
8 and market discount, if any, with respect thereto, shall
9 not be subject to any tax, assessment or levy, now or
10 hereafter imposed, of the FSM or any of its political
11 subdivisions, nor shall the FSM or any of its political
12 subdivisions impose any tax, assessment or levy upon the
13 sale or disposition of such Bonds. The Bonds shall be
14 deemed obligations not located within the jurisdiction or
15 legal boundaries of the FSM or any of its political
16 subdivisions for purposes of any national, state or local
17 taxation, assessment or levy."
18
19 Section 7. Section 531 of title 58 of the Code of the Federated
20 States of Micronesia, as established by Public Law No. 5-121, is
21 hereby amended to read as follows:
22 "Section 531. Resolution.
23 (1) Whenever the committee determines that the sale
24 of any bonds, notes or other evidence of indebtedness is
25 necessary or desirable, it shall adopt a resolution
26 authorizing the issuance and sale of Bonds. The resolution
shall authorize and direct the Secretary to arrange for the preparation of the requisite number of suitable Bonds, in registered form (unless the resolution directs the Bonds to be issued in book entry form), and either shall specify as to such Bonds then to be sold, or shall authorize the execution of the Indenture or certificates or orders pursuant to an existing Indenture, which together shall contain, the following information:

(a) Whether the Bonds shall be general or limited obligations of the FSM;

(b) The currency in which any or all of the Bonds are to be repaid, aggregate number, denominations and the date of the Bonds to be sold;

(c) The dates of maturity, the amount of the Bonds maturing at each date of maturity, which amounts need not be equal, and the establishment of any sinking fund schedule or schedules;

(d) Whether the Bonds are to be subject to optional and/or mandatory redemption prior to maturity, and, if so, the provisions for such redemption, the manner of the call thereof, and the price or prices at which the Bonds shall be subject to redemption;

(e) The annual rate, or rates, of interest which the Bonds to be issued shall bear, which rate or rates may be determined at the time of the sale of the Bonds and
which rate or rates may be fixed or variable in accordance
with a formula provided for in the resolution or the
Indenture;

(f) The interest payment dates;

(g) Whether the Bonds shall be issued in
certificate form and/or in book entry form; if the Bonds
are to be issued in certificate form, the form and language
of the Bonds, and, if the Bonds are to be issued in book
title form, whether the book entry system and register
shall be maintained by the Secretary, the Trustee, or
another agent;

(h) Whether the right is reserved to make
delivery in the form of temporary or interim bonds,
certificates, or receipts, exchangeable for definitive
Bonds when executed and available for delivery, and, if
such right is reserved, the denominations and form of such
temporary securities;

(i) Whether the Bonds are to be sold at public
sale or negotiated sale and, if a public sale, the method
of determining the lowest interest cost bid, and, if a
negotiated sale, the lowest purchase price to be received
by the FSM in any public offering or private placement of
the Bonds;

(j) Whether the Bonds shall be in the nature of
commercial paper (i.e., issued in large denominations and
scheduled to mature in 270 days or less);

(k) Whether all or any portion of the Bonds

shall be additionally secured by Credit Enhancement and, if

so, an authorization of the terms and conditions thereof;

(1) The restrictive and financial covenants
governing the Bonds, if any;

(m) The appointment of the Trustee, and

additional fiscal agents, registrars or paying agents, if

any;

(n) The place of issuance of the Bonds, which

may be inside or outside the territorial limits of the FSM;

(o) The law governing the Indenture and the

Bonds;

(p) The designated sub-fund within the Bond

Repayment Fund into which all moneys pledged to the payment

of the Bonds shall be placed in accordance with subchapter

V of chapter 6 of title 55 of the Code of the Federated

States of Micronesia;

(q) Whether in conjunction with issuance and

sale of the Bonds, the FSM shall enter into one or more

agreements relating to transfer or mitigation of currency

or interest rate risks, minimization of borrowing costs or

similar fiscal purposes between the FSM and any counter-

parties, commercial or investment banks, dealers or similar

parties ('swap instruments'), which may include
indemnities; and

(r) Any and all other terms and conditions of the Bonds and of the execution, issuance and sale thereof, which shall be consistent with all of the provisions of this chapter or any other applicable law of the FSM or a participating State.

(2) The resolution or the Indenture may also specify that the Secretary may determine certain terms as specified in the resolution or the Indenture, including but not limited to the interest rate or rates, maturity or redemption date or dates, and purchase price of the Bonds if the committee determines in the resolution or the Indenture specifies the maximum rate of interest, latest maturity date and lowest purchase price for the Bonds."

Section 8. Section 535 of title 58 of the Code of the Federated States of Micronesia, as established by Public Law No. 5-121, is hereby amended to read as follows:

"Section 535. Signatures; Seal. Each Bond issued in certificate form shall bear the manual or facsimile signature of the Secretary and an impress or a facsimile of the seal of the FSM. Each such signature shall be that of the person who shall be in office at the date of authorizing the affixing thereof. Bonds so executed, when sold and authenticated by an FSM Fiscal Agent, shall be valid and binding notwithstanding any of such persons
having ceased to hold their respective offices before the issuance and delivery of the Bonds."

Section 9. Section 564 of title 58 of the Code of the Federated States of Micronesia, as established by Public Law No. 5-121, is hereby amended to read as follows:

"Section 564. Waiver of sovereign immunity. The FSM waives, for the benefit of the holders of the Bonds, the Trustee acting on their behalf, any agent or underwriter acting with respect to the Bonds, or the provider of any Credit Enhancement, its sovereign immunity from suit before the Federal court of the United States in the district in which the principal office of the Trustee is located in any action brought by the holders of the Bonds, the Trustee acting on their behalf, or such provider of Credit Enhancement arising out of the issuance and sale of the Bonds or performance under the Bonds or the Indenture. Except as expressly so waived, nothing in this chapter, including, but not limited to, sections 561 and 564 hereof, is intended to be, nor shall be construed as a waiver, implicit or explicit, of the FSM's sovereign immunity from suit in the courts of the United States of America."

Section 10. Section 625 of title 55 of the Code of the Federated States of Micronesia, as established by Public Law No. 5-121, is hereby amended to read as follows:

"Section 625. Purpose. The purpose of the Bond Repayment
Fund is to provide for the deposit and disbursement of funds pledged by a State government and/or the National Government which participates in a Borrowing if such funds are not otherwise deposited pursuant to section 522(1) of chapter 5 of title 58 of the Code of the Federated States of Micronesia."

Section 11. Section 627 of title 55 of the Code of the Federated States of Micronesia, as established by Public Law No. 5-121, is hereby amended to read as follows:

"Section 627. Deposits. All funds pledged by and received, other than those funds deposited with a Trustee pursuant to section 522(1) of chapter 5 of title 58 of the Code of the Federated States of Micronesia, from a State government or from the National Government for the purpose of securing its financial obligations related to or resulting from a Borrowing shall be deposited into the sub-fund of the Bond Repayment Fund established in connection with that Borrowing. Any unexpended moneys in a sub-fund of the Bond Repayment Fund shall not revert to the General Fund at the end of the fiscal year."
Section 12. 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: 3/28/89

Introduced by: Claude H. Phillip
(by request)