

CHAPTER 5

Compact Funds Financing

Editor's note: Chapter 5, with subchapters I through VI, of this title were enacted by PL 5-121. Chapters 1 through 4 were reserved. Title 58 itself was not given a title by PL 5-121, but the chapter title designated reflects the name of the Act.

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SUBCHAPTER I

General Provisions

§ 511. Short title.

This chapter shall be known as the “Compact Funds Financing Act.”

Source: PL 5-121 § 2.

Editor’s note: Section 1 of PL 5-121 created subchapter I entitled “General”. This has been revised to “General Provisions” for consistency and clarity, and is not meant to effect any substantive change to this subchapter.

§ 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;
- (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)(q) 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.

Source: PL 5-121 § 3; amended by PL 5-136 § 1.

§ 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 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 or the FSM, if participating, shall provide assurance satisfactory to the Secretary that the non-participating States or the FSM, if not participating, will be protected from any loss arising in connection with such Bonds before such Bonds may be issued.

Source: PL 5-121 § 4; amended by PL 5-136 § 2; PL 6-32 § 1.

§ 514. Accounts and records.

The Secretary and the committee shall keep full and particular accounts and records of all their proceedings under this chapter and they shall transmit to the President an abstract of all such proceedings in any calendar year, with a report, to be transmitted by the President to the Speaker of the Congress, the Governor of each State, and the Speaker of the legislature of each State annually on or before the 30th day of April of each year. All books and papers pertaining to the matters provided for in this chapter shall at all times be open to the inspection of authorized representatives of the National or any State government, any citizen of the FSM, or any other interested party.

Source: PL 5-121 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

SUBCHAPTER II

Authorization

§ 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. Except as required pursuant to section 522 of this subchapter, 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 the pledge of such amounts as are pledged by a participating State pursuant to the requirements of section 522 of this subchapter, and for the 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.”

Source: PL 5-121 § 6; amended by PL 5-136 § 3.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 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. The Pledged Funds so pledged shall be made available pursuant to the relevant provisions of title 55 of this code, except that all Pledged Compact Funds included in the pledge 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 this code. The Pledged Compact Funds so pledged and thereafter received by the Trustee, or any other Pledged Funds so pledged and thereafter deposited into the Bond Repayment Fund established pursuant to subchapter V of chapter 6 of title 55 of this code, 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;
 - (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;
 - (iv) Consents to and authorizes, if appropriate, a reduction in the amount of Compact funds received or to be received through the Compact Financial Assistance Fund on behalf of the State, with such reduction being commensurate with the amount of Pledged Compact Funds pledged by the State, and waives all rights to the receipt of such Pledged Compact Funds; and
 - (v) Authorizes the State to indemnify, hold harmless, and defend any officer or employee of the State who is subjected to any personal liability or accountability by reason of the issuance of the Bonds.
- (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) of this section, 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, as required pursuant to subsection (1) of this section, directly through the Trustee or through the Bond Repayment Fund established pursuant to subchapter V of chapter 6 of title 55 of this code for the purposes contemplated under this chapter. Such opinion shall be exclusively relied upon only by the President or the committee and no statement or any conclusion therein may be relied upon for any purpose by any other person, corporation or entity.
- (3) 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.

Source: PL 5-121 § 7; amended by PL 5-136 § 4.

Editor's note: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

Subchapter V of chapter 6 (Funds) of Title 55 (Government Finance and Contracts) is on Bond Repayment Fund.

§ 523. Bond fund.

As set forth in the resolution, the proceeds of sale of the Bonds, net of any issuance costs, shall be paid into one or more trust funds with an FSM Fiscal Agent, as determined by the committee, and shall be managed and made available for the distributions and uses as set forth in an agreement regarding Pledged Funds and investment and distribution of Bond proceeds among the National and State governments of the Federated States of Micronesia.

Source: PL 5-121 § 8.

§ 524. Committee.

(1) The committee shall consist of five members, who shall have one vote each, including the Secretary or his designee, 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; PROVIDED, however, that, with respect to the representatives of the States on the committee, the Governor of each State may elect to designate an alternative individual to serve in the place of the relevant State director specified above. 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 Compact Financing 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 Compact Financing 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 three 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 other provisions of this section, 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 Compact Financing 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 Compact Financing 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.

Source: PL 5-121 § 9; amended by PL 5-136 § 5, modified.

§ 525. Tax free nature of the Bonds.

Bonds and the repayment of the principal of, and interest and premium, if any, thereon, and original issue discount and market discount, if any, with respect thereto, shall not be subject to any tax, assessment or levy, now or hereafter imposed, of the FSM or any of its political subdivisions, nor shall the FSM or any of its political subdivisions impose any tax, assessment or levy upon the sale or disposition of such Bonds. The Bonds shall be deemed obligations not located within the jurisdiction or legal boundaries of the FSM or any of its political subdivisions for purposes of any national, state or local taxation, assessment or levy.

Source: PL 5-121 § 10; amended by PL 5-136 § 6.

Cross-reference: The statutory provisions on Taxation and Customs are found in title 54 of this code.

SUBCHAPTER III

Issuance of Bonds

§ 531. Resolution.

(1) Whenever the committee determines that the sale of any bonds, notes or other evidence of indebtedness is necessary or desirable, it shall adopt a resolution 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 entry 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;
- (l) 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) If applicable, 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 section 522(1) and subchapter V of chapter 6 of title 55 of this code;
- (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 counterparties, 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 authorize the Secretary to determine certain terms as specified in the resolution or Indenture, including but not limited to, the interest rate or rates, maturity or redemption date or dates, and purchase price of the Bonds, provided, however, that the committee shall determine in the resolution or the Indenture shall specify the maximum rate of interest, latest maturity date and lowest purchase price permitted for the Bonds.

Source: PL 5-121 § 11; amended by PL 5-136 § 7.

Cross-reference: Subchapter V of chapter 6 (Funds) of Title 55 (Government Finance and Contracts) is on the Bond Repayment Fund.

§ 532. Medium of payment; Place of payment.

Principal of, and interest and premium, if any, on the Bonds shall be payable in the currency designated by the committee in the resolution at the office of any FSM Fiscal Agent or at the office of the Secretary.

Source: PL 5-121 § 12.

§ 533. Reference to Act.

Each Bond shall contain a reference to this Compact Funds Financing Act, and if subject to call or redemption prior to maturity, a recital to that effect.

Source: PL 5-121 § 13.

§ 534. Duties of Secretary.

Immediately after the adoption by the committee of any resolution in conformity with section 531 of this chapter, the Secretary shall make any determinations required at or immediately prior to the sale of the Bonds and shall arrange for the preparation of the requisite number of suitable Bonds, in accordance with the resolution.

Source: PL 5-121 § 14.

§ 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.

Source: PL 5-121 § 15; amended by PL 5-136 § 8.

§ 536. Temporary Bonds.

If the right so to do has been reserved in the resolution adopted in conformity with section 531 of this chapter, temporary or interim Bonds, certificates, or receipts may be issued and delivered in lieu of definitive Bonds, and shall be exchangeable for such definitive Bonds when they are executed and available.

Source: PL 5-121 § 16.

§ 537. Public or negotiated sale.

The Bonds shall be sold by the Secretary at such time as may be fixed by the Secretary and upon such notice as the Secretary may deem advisable, or at such later time to which the sale shall have been continued, either at public sale, upon sealed bids, to the bidder whose bid will result in the lowest cost, based upon net/true/or other method generally accepted in the financial community for calculation of interest cost on account of those Bonds, or at negotiated sale as set forth in the resolution. If the Bonds are to be sold at public sale, the method of determining the lowest interest cost bid shall be prescribed in the resolution. The Secretary may sell the Bonds at a price below the par

value thereof. The interest, if any, accrued to the date of delivery of and payment for the Bonds shall be added to the sale price of the Bonds in any case. The sale shall be for cash, payable upon delivery of Bonds in definitive form, or if the right to deliver temporary securities has been reserved, then upon delivery of the temporary securities.

Source: PL 5-121 § 17.

SUBCHAPTER IV

Payment, Cancellation and Redemption of Bonds

§ 541. Method and time of payment.

The Secretary, directly or through FSM Fiscal Agents, or other duly authorized agents, shall, on the respective dates of maturity of all Bonds, or on the date fixed for the prior redemption of any thereof, or as soon thereafter as said Bonds are surrendered to him, or to any such FSM Fiscal Agent, or other duly authorized agent, pay the same or cause the same to be paid.

Source: PL 5-121 § 18.

§ 542. Perforation of Bonds to indicate payment.

Upon the payment of any Bond, the Secretary or FSM Fiscal Agent, or other duly authorized agent shall perforate the same with a suitable device in a manner to indicate such payment.

Source: PL 5-121 § 19.

§ 543. Destruction of Bonds after payment or cancellation.

The Secretary, or FSM Fiscal Agents, or other duly authorized agent, may destroy any or all Bonds which have been previously paid or canceled as provided herein.

Source: PL 5-121 § 20.

§ 544. Redemption.

Whenever the committee shall determine that any Bonds then outstanding, and which by their terms are subject

to redemption prior to maturity, should be redeemed, and that money sufficient for such redemption will be available at the time proposed for such redemption, it may, by resolution, direct the Trustee to call and redeem any such Bonds, at a time specified in such resolution, and the Trustee shall thereupon give notice of such redemption and redeem the Bonds in accordance with the provisions for redemption provided for therein or in the Indenture.

Source: PL 5-121 § 21.

§ 545. Refunding bonds.

The committee may provide for the issuance, sale, or exchange of refunding bonds to redeem or retire any Bonds upon the terms, at the times and in the manner that it determines necessary and appropriate. Refunding bonds may be issued in a principal amount sufficient to pay all, or any part, of the principal amount of outstanding Bonds, the interest and premium, if any, thereon due upon call and redemption thereof prior to maturity and all expenses of the refunding. Issuance of refunding bonds may be authorized in a resolution.

Source: PL 5-121 § 22.

SUBCHAPTER V

FSM Fiscal Agents

§ 551. Designation of banking firms or associations.

Upon the recommendation of the committee, the Secretary may designate responsible banking firms, associations, or incorporated banking institutions, having a paid-up capital and surplus of not less than U.S. \$100 million, as an FSM Fiscal Agent for the payment of the Bonds. The FSM Fiscal Agent selected as Trustee shall have a paid-up capital and surplus of not less than U.S. \$500 million. An FSM Fiscal Agent may be organized under the laws of the United States of America, any of its constituent states (including the District of Columbia), or any member state of the Organization for Economic Cooperation and Development.

Source: PL 5-121 § 23.

§ 552. Fidelity bonds.

With the approval of the committee, the Secretary may fix the amount of and require bonds from any FSM Fiscal Agent, conditioned on the faithful performance of its duties as an FSM Fiscal Agent.

Source: PL 5-121 § 24.

§ 553. Authority of Secretary.

Subject to the approval of the committee, the Secretary may do all things necessary or proper to effectuate the purposes of this subchapter, including, among others, the making of such arrangements with any FSM Fiscal Agent as may be necessary including the compensation, if any, of any FSM Fiscal Agent for services under this subchapter, and the time when funds for the redemption of Bonds shall be remitted to it.

Source: PL 5-121 § 25.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 554. Unclaimed funds.

Whenever any moneys held by an FSM Fiscal Agent in trust for the payment of the principal of, interest or premium, if any, on or discharge of, any Bonds shall have remained unclaimed for seven years after the date when such became due and payable, either on interest payment dates, at their stated maturity dates or by call for earlier redemption, the Secretary may after adequate public notice and at such time as he may determine, instruct FSM Fiscal Agents to return any such money originally transferred to meet the payments of the Bonds and deposit it with such FSM Fiscal Agent as the committee shall determine, and such money shall thereafter be treated in all respects as part of the Bond Fund, and the owner of the Bond or Bonds affected thereby shall no longer have any claim on such money.

Source: PL 5-121 § 26.

§ 555. Lost or destroyed Bonds; Security; Face statements.

(1) Whenever it appears to the Secretary upon competent proof that any Bond has been lost or destroyed and the required security has been deposited with the Trustee, he may issue or cause to be issued Bonds similar as to form and content. If the indebtedness evidenced by the instrument has matured and is due and payable, he may cause it to be paid if the records of the Trustee show the Bond is outstanding and unpaid.

(2) Before the Secretary may cause to be issued a new Bond or cause to be paid the indebtedness represented by a lost or destroyed Bond, the holder of the Bond shall give security in the form of a bond or indemnity (as the Trustee reasonably determines) to indemnify the FSM against loss or damage that may be incurred on account of the lost or destroyed Bond. The security may be specified by, is subject to the approval of, and, after approval is endorsed thereon, shall be filed with the Trustee.

(3) Every replacement Bond shall state upon its face the number and denomination of the Bond for which it is issued; that it is issued in the place of the Bond claimed to have been lost or destroyed; that it is issued as a duplicate; and that if both the original and duplicate instruments are presented to and paid by the Secretary or an FSM Fiscal Agent, the Secretary shall not be held responsible for the duplicate payment but may rely on the security given.

Source: PL 5-121 § 27.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

SUBCHAPTER VI

Legal Matters

§ 561. Choice of law.

The committee may choose to have all or a portion of the provisions of the Indenture and the Bonds governed by the law of a jurisdiction other than that of the FSM; PROVIDED that the power and authority of the FSM to issue the Bonds shall be construed under the laws of the FSM.

Source: PL 5-121 § 28.

§ 562. Liability of committee members, officers and employees.

(1) No member of the committee, officer or employee of the committee, or any officer or employee of the FSM or any political subdivision thereof, including, without limitation, the FSM Attorney General or any person executing any Bonds shall be subject to any personal liability or accountability by reason of the issuance thereof. If, despite the foregoing, any action is brought against any member of the committee, any officer or employee of the committee, or any officer or employee of the FSM, then the FSM shall indemnify, hold harmless and defend such individual against any personal liability or accountability by reason of the issuance of any Bonds.

(2) Subsection (1) of this section shall not apply to any person covered by subsection (1) of this section who has engaged in fraud or other wanton misconduct relating to the issuance of any Bonds. However, where any person covered in subsection (1) of this section is alleged to have engaged in fraud or other wanton misconduct relating to the issuance of any Bonds, the FSM, upon written request by the person covered in subsection (1) of this section and directed to the FSM Office of the Attorney General, shall provide legal counsel and legal defense for such person at the expense of the FSM. If, upon final judgment, it is established that the person covered by subsection (1) of this section did engage in fraud or other wanton misconduct relating to the issuance of any Bonds, then such person shall reimburse the FSM for costs incurred by the FSM in providing legal counsel and legal defense. If the FSM fails, upon written request, to provide such person with legal counsel and legal defense at FSM expense then the FSM shall be liable to such person for any liability incurred by such person, the cost to such person of legal counsel and legal defense, and subsection (1) of this section shall apply fully to such person.

(3) Notwithstanding subsection (2) of this section, subsection (1) of this section shall not apply to any person covered by subsection (1) of this section in the case of a claim for judicial relief in a civil action against such person brought in the name of the Federated States of Micronesia.

Source: PL 5-121 § 29; amended by PL 5-136 § 9; PL 6-32 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 563. Pledge.

The FSM does hereby pledge to and agree with the holders of the Bonds and the provider of any Credit Enhancement that the FSM will not limit or alter the rights hereby vested in the holders of the Bonds, on and after the date of issuance of the Bonds, until the Bonds, together with interest and premium, if any, thereon, are fully met and discharged; PROVIDED that nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of the Bonds.

Source: PL 5-121 § 30.

§ 564. Waiver of sovereign immunity.

Only with respect to Pledged Funds, 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 of this subchapter, 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. Nothing in this chapter shall be construed as a waiver, implicit or explicit, of the FSM's sovereign immunity, or to permit any judgment or execution against the FSM with respect to any property other than Pledged Funds. In the event of conflict between this section and any provision of chapter 7 of title 6 of this code, this section shall prevail.

Source: PL 5-121 § 31; amended by PL 5-136 § 10, modified.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Chapter 7 of title 6 of this code is on Actions Against the Federated States of Micronesia.