

AN ACT

To amend title 33 of the Code of the Federated States of Micronesia, by amending section 921 and by further amending title 55 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 14, section 1401, for the purpose of enhancing the ability of the National Government to enforce repayment of any loan it may make to a State, and for other purposes.

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

Section 1. Section 921 of title 33 of the Code of the Federated States of Micronesia is hereby amended to read as follows:

"Section 921. Application of subchapter. This subchapter shall apply to any agreement, regardless of its form, which is intended to give rights in personal property, including houses on land not owned individually or entirely by the party or parties purporting to give an interest in the house, as security of the performance of any obligation. Such agreements include, among others, pledges, conditional sales agreements, chattel mortgages, and leases under which ownership of personal property is to pass upon completion of the terms of the lease. Notwithstanding the foregoing, this subchapter shall not apply to any agreement creating rights in intangible personal property as security for the performance of any obligation under any loan from the National Government to a State of the Federated States of Micronesia."

Section 2. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new chapter 14 entitled "Loans to States".

Section 3. Title 55 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1401 to read as follows:

"Section 1401. Set-off rights of the National Government.

(1) Notwithstanding any law to the contrary, if any payment required to be made by a state of the Federated States of Micronesia pursuant to the terms of a loan from the National Government is not made when due, the National Government shall be entitled to exercise any or all of the following rights of set-off:

(a) The National Government may withhold and

apply to the payment of said delinquency any funds which it owes and would otherwise be required to pay to the state without previously or subsequently seeking or obtaining any judicial approval of such action;

(b) The National Government, without previously seeking or obtaining any judicial approval of such action, may withhold for possible future application to the payment of said delinquency any funds which it owes and would otherwise be required to pay to the state, provided that such withholding shall cease and the funds so withheld shall be promptly paid to the state if, within sixty days after the date the withheld funds were required to be paid to the state, legal action has not been commenced in the FSM Supreme Court to seek judicial determination of the rights of the state and National Government to the funds. If such legal action is timely commenced, the funds withheld shall be disposed of as directed by the Court; and

(c) The National Government may withhold and apply to said delinquency any funds which it owes and would otherwise be required to pay to the state to the extent authorized in advance to do so by the FSM Supreme Court.

(2) Funds subject to set-off under this section are limited to the state's share of National Government tax receipts and the state's share of any funds received from the United States under section 211 or section 217 of the Compact of Free Association. Funds are 'required to be paid to a state' for purposes of this section whenever they must be disbursed, remitted, credited, or otherwise transferred to the account and for the benefit of the state, whether through cash, check, wire transfer, book entry, or other means.

(3) Funds withheld pursuant to this section shall be invested by the Secretary of Finance in good faith in the same manner as other National Government funds and any net investment gains or losses

shall accrue to or be borne by the party ultimately entitled to receive such funds. Unless a withholding or application was both wrongful and in bad faith, the state shall not be entitled to any recovery of damages or interest, whether for the period before or after judgment, beyond return of the amount wrongfully withheld as adjusted by such net investment gains or losses.

(4) No funds shall be released from the General Fund or any Special Fund of the Treasury of the Federated States of Micronesia pursuant to any existing or future agreement by the National Government to lend money to a State, or on behalf of a State under circumstances wherein the State will or may be under an obligation to make repayments, without the Secretary of Finance first certifying that the State has, by appropriate legislative and executive action, bound itself to be subject to the set-of provisions of this section."

Section 4. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

January 22, 1997

for /s/ Jacob Nena
Bailey Olter
President
Federated States of Micronesia