

WM

A BILL FOR AN ACT

To appropriate the sum of \$7,000,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1995, authorize future appropriations of up to an additional \$12,000,000, establish loan terms and conditions, create certain set-off rights in the National Government, amend section 921 of title 33 of the Code of the Federated States of Micronesia, and make certain other provisions, all for the purpose of lending money to the State of Chuuk and assuring repayment of that loan, and for other purposes.

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

1 Section 1. Short title. This act is known and may be cited
2 as the "State Financial Recovery Loan Act."

3 Section 2. Purpose. The purpose of this act is to
4 establish a mechanism whereby the National Government of the
5 Federated States of Micronesia (the "National Government") may
6 loan money to an insolvent state in order to assist that state
7 in making a financial recovery. The first such loan or series
8 of loans is to the State of Chuuk (the "State") but the National
9 Government hereby states its policy and intention to provide
10 such loan assistance to other states of the Federated States of
11 Micronesia ("FSM") when, if, and in the manner deemed
12 appropriate in the future.

13 Section 3. Appropriation for initial loan. The sum of
14 \$7,000,000, or so much thereof as may be necessary, is hereby
15 appropriated from the General Fund of the Federated States of
16 Micronesia for the fiscal year ending September 30, 1995, for
17 the purpose of funding a loan from the National Government to
18 the State on terms hereinafter specified.

19 Section 4. Authorization for subsequent loans. The
20 additional sum of \$12,000,000 is hereby authorized to be
21 appropriated from the General Fund of the Federated States of
22 Micronesia in two or more future fiscal years for the purpose of
23 funding two or more additional loans to the State on terms to be
24 specified at the time such further funds may be appropriated.

25 Section 5. Terms of initial loan. The initial loan shall

N

Wjm

C. B. NO. 7-84

1 be on the terms specified in the draft Loan Agreement between
2 the National Government as Lender and the State as Borrower, a
3 copy of which is appended hereto, as those terms may be varied
4 by the allottee; provided, however, that further approval of
5 Congress shall be required for any variation which increases the
6 loan principal, decreases the interest rate, or extends the
7 repayment terms.

8 Section 6. Conditions to funding of the initial loan.

9 Notwithstanding any other provision of this act, no funds shall
10 be advanced to the State until the allottee shall have
11 determined to his or her satisfaction that the State has
12 substantially implemented numbers 1, 2, 4, and 5, and reasonably
13 begun to implement number 3, of the five recommended actions of
14 the Joint Task Force on Restructuring and Reform set forth in a
15 Memorandum of Understanding signed on June 30, 1995, by the
16 President of the FSM, Speaker of the Congress of the FSM,
17 Governor of Chuuk, President of Chuuk Senate, and Speaker of the
18 Chuuk House (the "MOU"), which recommendations are as follows:
19 "first, an immediate, across-the-board 20% payroll cut; second,
20 sales tax reforms, including an increase of the sales tax rate
21 from 3% to 5%, application to a broader range of goods including
22 raw materials, and a luxury tax rate of 10%; third, termination
23 of government financing of CUC employees; fourth, imposition of
24 a strict travel freeze for the remainder of FY95; and fifth,
25 imposition of a strict hiring freeze by State government and

WJM

C. B. NO. 9-84

1 Authorities."

2 Section 7. Payments. Funds received from or applied for
3 the benefit of the State in payment of principal, interest, or
4 any other obligation of the State under the initial loan shall
5 be deposited in the General Fund of the Federated States of
6 Micronesia. Such funds shall not be available for further
7 lending to the State except pursuant to a new appropriation.

8 Section 8. Technical Assistance. The executive branch of
9 the National Government is authorized and encouraged to provide
10 to the State such technical assistance as is called for under
11 the MOU referred to in section 6 of this act. The Congress
12 shall look favorably and promptly upon reasonable requests for
13 funds with which to accomplish such technical assistance.

14 Section 9. Set-off rights of the National Government.

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

20 (a) The National Government may withhold and apply
21 to the payment of said delinquency any funds which it owes and
22 would otherwise be required to pay to the state without
23 previously or subsequently seeking or obtaining any judicial
24 approval of such action;

25 (b) The National Government, without previously

W + M

C. B. NO. 9-84

1 seeking or obtaining any judicial approval of such action, may
2 withhold for possible future application to the payment of said
3 delinquency any funds which it owes and would otherwise be
4 required to pay to the state, provided that such withholding
5 shall cease and the funds so withheld shall be promptly paid to
6 the state if, within sixty days after the date the withheld
7 funds were required to be paid to the state, legal action has
8 not been commenced in the FSM Supreme Court to seek judicial
9 determination of the rights of the state and National Government
10 to the funds. If such legal action is timely commenced, the
11 funds withheld shall be disposed of as directed by the Court;
12 and

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

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

Wjm

C. B. NO. 7-84

1 (3) Funds withheld pursuant to this section shall be
2 invested by the Secretary of Finance in good faith in the same
3 manner as other National Government funds and any net investment
4 gains or losses shall accrue to or be borne by the party
5 ultimately entitled to receive such funds. Unless a withholding
6 or application was both wrongful and in bad faith, the state
7 shall not be entitled to any recovery of damages or interest,
8 whether for the period before or after judgment, beyond return
9 of the amount wrongfully withheld as adjusted by such net
10 investment gains or losses.

11 Section 10. Section 921 of title 33 of the Code of the
12 Federated States of Micronesia is hereby amended to read as
13 follows:

14 "Section 921. Application of subchapter. This
15 subchapter shall apply to any agreement, regardless of
16 its form, which is intended to give rights in personal
17 property, including houses on land not owned
18 individually or entirely by the party or parties
19 purporting to give an interest in the house, as security
20 for the performance of any obligation. Such agreements
21 include, among others, pledges, conditional sales
22 agreements, chattel mortgages, and leases under which
23 ownership of personal property is to pass upon
24 completion of the terms of the lease. Notwithstanding
25 the foregoing, this subchapter shall not apply to any

Wt m

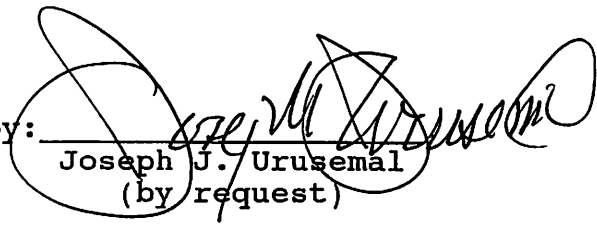
C. B. NO. 9-84

1 agreement creating rights in intangible personal
2 property as security for the performance of any
3 obligation under any loan from the National Government
4 to a State of the Federated States of Micronesia."

5 Section 11. All funds appropriated by this act shall be
6 allotted, managed, administered, and accounted for in accordance
7 with applicable law, including, but not litmited to, the
8 Financial Management Act of 1979. The allottee shall be the
9 President or his designee. The allottee shall be responsible
10 for ensuring that these funds, or so much thereof as may be
11 necessary, are used solely for the purpose specified in this
12 act, and that no obligations are incurred in excess of the sum
13 appropriated. The authority of the allottee to obligate funds
14 appropriated by this act shall lapse as of September 30, 1996.

15 Section 12. This act shall become law upon approval by the
16 President of the Federated States of Micronesia or upon its
17 becoming law without such approval.

18
19 Date: 8/21/95

Introduced by: 
Joseph J. Urusemal
(by request)

20
21
22
23
24
25

A BILL FOR AN ACT

To appropriate the sum of \$7,000,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1995, authorize future appropriations of up to an additional \$12,000,000, establish loan terms and conditions, create certain set-off rights in the National Government, amend section 921 of title 33 of the Code of the Federated States of Micronesia, and make certain other provisions, all for the purpose of lending money to the State of Chuuk and assuring repayment of that loan, and for other purposes.

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

1 Section 1. Short title. This act is known and may be cited as the "State
2 Financial Recovery Loan Act."

3 Section 2. Purpose. The purpose of this act is to establish a mechanism
4 whereby the National Government of the Federated States of Micronesia (the
5 "National Government") may loan money to an insolvent state in order to
6 assist that state in making a financial recovery. The first such loan or series of
7 loans is to the State of Chuuk (the "State") but the National Government
8 hereby states its policy and intention to provide such loan assistance to other
9 states of the Federated States of Micronesia ("FSM") when, if, and in the
10 manner deemed appropriate in the future.

11 Section 3. Appropriation for initial loan. The sum of \$7,000,000, or so
12 much thereof as may be necessary, is hereby appropriated from the General
13 Fund of the Federated States of Micronesia for the fiscal year ending
14 September 30, 1995, for the purpose of funding a loan from the National
15 Government to the State on terms hereinafter specified.

16 Section 4. Authorization for subsequent loans. The additional sum of
17 \$12,000,000 is hereby authorized to be appropriated from the General Fund of
18 the Federated States of Micronesia in two or more future fiscal years for the
19 purpose of funding two or more additional loans to the State on terms to be
20 specified at the time such further funds may be appropriated.

21 Section 5. Terms of initial loan. The initial loan shall be on the terms
22 specified in the draft Loan Agreement between the National Government as
23 Lender and the State as Borrower, a copy of which is appended hereto, as
24 those terms may be varied by the allottee; provided, however, that further
25 approval of Congress shall be required for any variation which increases the

1 loan principal, decreases the interest rate, or extends the repayment terms.

2 Section 6. Conditions to funding of the initial loan. Notwithstanding any
3 other provision of this act, no funds shall be advanced to the State until the
4 ~~allottee shall have determined to his or her satisfaction that the State has~~
5 ~~substantially implemented numbers 1, 2, 4, and 5,~~ "Office of the Public Auditor
6 for the Federated States of Micronesia has certified to the allottee that the
7 State has implemented numbers 1, 4, and 5, substantially implemented number
8 2," and reasonably begun to implement number 3, of the five recommended
9 actions of the Joint Task Force on Restructuring and Reform set forth in a
10 Memorandum of Understanding signed on June 30, 1995, by the President of
11 the FSM, Speaker of the Congress of the FSM, Governor of Chuuk, President of
12 Chuuk Senate, and Speaker of the Chuuk House (the "MOU"), which
13 recommendations are as follows: "first, an immediate, across-the-board 20%
14 payroll cut; second, sales tax reforms, including an increase of the sales tax
15 rate from 3% to 5%, application to a broader range of goods including raw
16 materials, and a luxury tax rate of 10%; third, termination of government
17 financing of CUC employees; fourth, imposition of a strict travel freeze for the
18 remainder of FY95; and fifth, imposition of a strict hiring freeze by State
19 government and Authorities."

20 Section 7. Payments. Funds received from or applied for the benefit of
21 the State in payment of principal, interest, or any other obligation of the State
22 under the initial loan shall be deposited in the General Fund of the Federated
23 States of Micronesia. Such funds shall not be available for further lending to
24 the State except pursuant to a new appropriation.

25 Section 8. Technical Assistance. The executive branch of the National

1 Government is authorized and encouraged to provide to the State such
2 technical assistance as is called for under the MOU referred to in section 6 of
3 this act. The Congress shall look favorably and promptly upon reasonable
4 requests for funds with which to accomplish such technical assistance.

5 Section 9. Set-off rights of the National Government.

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

10 (a) The National Government may withhold and apply to
11 the payment of said delinquency any funds which it owes and would otherwise
12 be required to pay to the state without previously or subsequently seeking or
13 obtaining any judicial approval of such action;

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

25 (c) The National Government may withhold and apply to

1 said delinquency any funds which it owes and would otherwise be required to
2 pay to the state to the extent authorized in advance to do so by the FSM
3 Supreme Court.

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

11 (3) Funds withheld pursuant to this section shall be invested by
12 the Secretary of Finance in good faith in the same manner as other National
13 Government funds and any net investment gains or losses shall accrue to or be
14 borne by the party ultimately entitled to receive such funds. Unless a
15 withholding or application was both wrongful and in bad faith, the state shall
16 not be entitled to any recovery of damages or interest, whether for the period
17 before or after judgment, beyond return of the amount wrongfully withheld as
18 adjusted by such net investment gains or losses.

19 Section 10. Section 921 of title 33 of the Code of the Federated States
20 of Micronesia is hereby amended to read as follows:

21 "Section 921. Application of subchapter. This subchapter shall
22 apply to any agreement, regardless of its form, which is intended to give rights
23 in personal property, including houses on land not owned individually or entirely
24 by the party or parties purporting to give an interest in the house, as security
25 for the performance of any obligation. Such agreements include, among

1 others, pledges, conditional sales agreements, chattel mortgages, and leases
2 under which ownership of personal property is to pass upon completion of the
3 terms of the lease. Notwithstanding the foregoing, this subchapter shall not
4 apply to any agreement creating rights in intangible personal property as
5 security for the performance of any obligation under any loan from the National
6 Government to a State of the Federated States of Micronesia."

7 Section 11. All funds appropriated by this act shall be allotted,
8 managed, administered, and accounted for in accordance with applicable law,
9 including, but not limited to, the Financial Management Act of 1979. The
10 allottee shall be the President ~~or his designee~~. The allottee shall be responsible
11 for ensuring that these funds, or so much thereof as may be necessary, are
12 used solely for the purpose specified in this act, and that no obligations are
13 incurred in excess of the sum appropriated. The authority of the allottee to
14 obligate funds appropriated by this act shall lapse as of September 30, 1996.

15 Section 12. This act shall become law upon approval by the President of
16 the Federated States of Micronesia or upon its becoming law without such
17 approval.

18
19 Date: _____

Introduced by: _____
Joseph J. Urusemal
(by request)

20
21
22
23
24
25