

WJM

A BILL FOR AN ACT

To establish a mechanism whereby the National Government of the Federated States of Micronesia may loan money to a state facing financial crisis or insolvency in order to assist that state in making a financial recovery; 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, 1996, 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, 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, 1996, 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 Loan Agreement between the National Government as Lender
23 and the State as Borrower, a copy of which is appended hereto, as those
24 terms may be varied by the allottee; provided, however, that further approval
25 of Congress shall be required for any variation which increases the

1 loan principal, decreases the interest rate, or extends the repayment terms or
2 which might alter or change the borrower's assignment of Compact funds or
3 the conditions borrower must meet to qualify to receive the funds as set forth
4 in section 6 of this act.

5 Section 6. Conditions to funding of the initial loan. Notwithstanding any
6 other provision of this act, no funds shall be advanced to the State until the
7 Office of the Public Auditor for the Federated States of Micronesia has certified
8 to the allottee that the State has implemented numbers 1, 4, and 5,
9 substantially implemented number 2, and reasonably begun to implement
10 number 3, of the five recommended actions of the Joint Task Force on
11 Restructuring and Reform set forth in a Memorandum of Understanding signed
12 on June 30, 1995, by the President of the FSM, Speaker of the Congress of the
13 FSM, Governor of Chuuk, President of Chuuk Senate, and Speaker of the Chuuk
14 House (the "MOU"), which recommendations are as follows: "first, an
15 immediate, across-the-board 20% payroll cut; second, sales tax reforms,
16 including an increase of the sales tax rate from 3% to 5%, application to a
17 broader range of goods including raw materials, and a luxury tax rate of 10%;
18 third, termination of government financing of CUC employees; fourth, imposition
19 of a strict travel freeze for the remainder of FY95; and fifth, imposition of a
20 strict hiring freeze by State government and Authorities, and provided further,
21 that no portion of the proceeds of the loan shall be used to pay any debts
22 incurred by the State in a manner, or for a purpose, not authorized by or
23 under the laws of Chuuk State or the Federated States of Micronesia, and also
24 provided further, that because the fourth condition of the MOU has become
25 meaningless with the advent of fiscal year 1996, a new fourth condition shall be

1 imposed to provide for a reduction of not less than 50% of the funds budgeted
2 for travel-related expenditures in fiscal year 1996.

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

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

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

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

18 (a) The National Government may withhold any funds
19 which it owes and would otherwise be required to pay to the state without
20 previously seeking or obtaining any judicial approval of such action;

21 (b) If, within sixty days after the date the withheld funds
22 were required to be paid to the state, legal action has not been commenced in
23 the FSM Supreme Court to seek judicial determination of the rights of the state
24 and National Government to the funds, the National Government shall apply the
25 funds so withheld to the delinquency. If such legal action is timely commenced,

1 the funds withheld shall be disposed of as directed by the Court; and

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

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

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

21 Section 10. All funds appropriated by this act shall be allotted,
22 managed, administered, and accounted for in accordance with applicable law,
23 including, but not limited to, the Financial Management Act of 1979. The
24 allottee shall be the President of the Federated States of Micronesia. The
25 allottee shall be responsible for ensuring that these funds, or so much thereof

1 as may be necessary, are used solely for the purpose specified in this act, and
2 that no obligations are incurred in excess of the sum appropriated. The
3 authority of the allottee to obligate funds appropriated by this act shall lapse
4 as of September 30, 1996.

5 Section 11. This act shall become law upon approval by the President of
6 the Federated States of Micronesia or upon its becoming law without such
7 approval.

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9 Date: 11/27/95

Introduced by: Jack Fritz
Jack Fritz

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