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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 \$10,500,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1997, to establish set-off rights for the National Government, to 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 \$5,000,000 to the State of Chuuk, \$2,500,000 to the State of Pohnpei, \$1,500,000 to the State of Kosrae, \$1,500,000 to the State of Yap, and assuring repayment of those loans, 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 (the "State") in
6 order to assist that State in making a financial recovery. The first such loans
7 or series of loans are to the States of Chuuk ("Chuuk State"), Pohnpei
8 ("Pohnpei State"), Kosrae ("Kosrae State"), and Yap ("Yap State"), but the
9 National Government hereby states its policy and intention to provide additional
10 loan assistance to any State of the Federated States of Micronesia ("FSM")
11 when, if, and in the manner deemed appropriate in the future.

12 Section 3. Appropriation for initial loans. The sum of \$10,500,000, or
13 so much thereof as may be necessary, is hereby appropriated from the General
14 Fund of the Federated States of Micronesia for the fiscal year ending
15 September 30, 1997, for the purpose of funding loans from the National
16 Government to Chuuk State, Pohnpei State, Kosrae State and Yap State on
17 terms hereinafter specified.

18 Section 4. Terms of loans. The loans shall be on the terms specified in
19 the Loan Agreements between the National Government as Lender and each of
20 Chuuk State, Pohnpei State, Kosrae State and Yap State as Borrowers, a copy
21 of each of which is appended hereto, as those terms may be varied by the
22 allottees; provided, however, that further approval of Congress shall be
23 required for any variation which increases the loan principal, decreases the
24 interest rate, extends the repayment terms, or which might alter or change the
25 Borrowers' assignment of Compact funds or the conditions the Borrowers

1 must meet to qualify to receive the funds as set forth in section 6 of this act.

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

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

24 Section 7. Technical assistance. The executive branch of the National
25 Government is authorized to provide to each State such technical assistance

1 as the National Government deems appropriate during the term of any loan
2 provided pursuant to this act. The Congress shall promptly review reasonable
3 requests for funds with which to accomplish such technical assistance.

4 Section 8. Set-off rights of the National Government.

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

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

20 (b) The National Government may withhold and apply to
21 any delinquency any funds which it owes and would otherwise be required to
22 pay to the State to the extent authorized in advance to do so by the FSM
23 Supreme Court.

24 (2) Funds subject to set-off under this section are limited to the
25 State's share of National Government tax receipts and the State's share of

1 any funds received from the United States under section 211 or section 217 of
2 the Compact of Free Association. Funds are "required to be paid to a State"
3 for purposes of this section whenever they must be disbursed, remitted,
4 credited, or otherwise transferred to the account and for the benefit of the
5 State, whether through cash, check, wire transfer, book entry, or other means.

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

14 Section 9. Section 921 of title 33 of the Code of the Federated States
15 of Micronesia is hereby amended to read as follows:

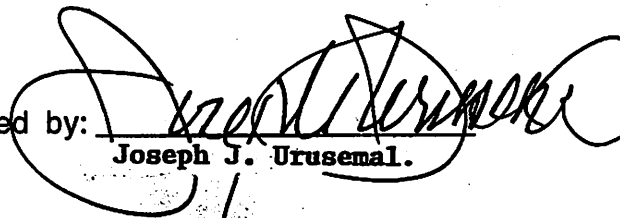
16 "Section 921. Application of subchapter. This subchapter shall
17 apply to any agreement, regardless of its form, which is intended
18 to give rights in personal property, including houses on land not
19 owned individually or entirely by the party or parties purporting to
20 give an interest in the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

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

4 Section 10. All funds appropriated by this act shall be allotted,
 5 managed, administered, and accounted for in accordance with applicable law,
 6 including, but not limited to, the Financial Management Act of 1979. The
 7 allottee shall be the President of the Federated States of Micronesia or his
 8 designee. The allottee shall be responsible for ensuring that these funds, or so
 9 much thereof as may be necessary, are used solely for the purpose specified in
 10 this act, and that no obligations are incurred in excess of the sum
 11 appropriated. The authority of the allottee to obligate funds appropriated by
 12 this act shall lapse as of September 30, 1998.

13 Section 11. This act shall become law upon approval by the President of
 14 the Federated States of Micronesia or upon its becoming law without such
 15 approval.

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 17 Date: 10/23/96

Introduced by: 
 Joseph J. Urusemal.

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