

THIRD CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST REGULAR SESSION, 1983

C.B. No. 3-93

*R & D / W & M*

A BILL FOR AN ACT

To create a National Commercial Bank of the Federated States of Micronesia, and for other purposes.

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

1       Section 1. Short title. This act shall be known and may be  
2 cited as the "National Commercial Bank Act of 1983."

3       Section 2. Statement of intent. It is the intent of the  
4 Congress of the Federated States of Micronesia to create a financial  
5 institution that will be capable of attracting and maintaining both  
6 domestic and foreign capital and of providing the people of the  
7 Federated States of Micronesia with adequate banking facilities and  
8 of promoting the general welfare of the people of the Federated States  
9 of Micronesia.

10       Section 3. Creation of a National Commercial Bank. There is  
11 hereby created a body corporate to be known as the National Commercial  
12 Bank of the Federated States of Micronesia, hereinafter referred to as  
13 the "National Bank."

14       Section 4. Duration. The National Bank shall exist until such  
15 time as it is dissolved by the Congress of the Federated States of  
16 Micronesia, or otherwise dissolved pursuant to law.

17       Section 5. Place of business. The principal office of the  
18 National Bank shall be in the State of Ponape. The National  
19 Bank may establish such branch office or offices as the Board of  
20 Directors may deem necessary and appropriate.

21       Section 6. Duties of the National Bank. The duties of the  
22 National Bank include, inter alia, the following:

23           (1) To do, conduct, and transact generally the business of  
24 a commercial bank and to do all things and exercise all powers and  
25 perform all functions which a commercial bank is authorized or empowered

R40/Wtm

1 to do, exercise, or perform under and by virtue of the laws of  
2 the Federated States of Micronesia, or which it may by law hereafter  
3 be authorized to do, exercise, or perform; to receive deposits of  
4 money, deal in commercial paper, make loans thereon, lend money on  
5 real or personal property, discount bills, notes, or other commercial  
6 paper, and to buy and sell securities, gold and silver bullion, foreign  
7 coins or bills of exchange; and to do all the things in this subsection  
8 as the functions of such commercial bank and insofar as is consistent  
9 with the laws of the Federated States of Micronesia;

10 (2) To do, conduct, and transact generally the business of  
11 a savings bank, and to do all things, exercise all powers, and perform  
12 all functions which a savings bank is authorized or empowered to do,  
13 exercise, or perform under and by virtue of the laws of the Federated  
14 States of Micronesia, or which it may by law hereafter be authorized  
15 to do, exercise, or perform; to accumulate, loan, and invest the funds  
16 of its depositors; to receive deposits of money; to loan, invest, and  
17 collect the same with interest; to repay depositors with or without  
18 interest; to invest such funds in such property, securities, and  
19 obligations; to declare and pay dividends on its general deposits; to  
20 pay a stipulated rate of interest on deposits made for a stated period,  
21 or upon special terms; and to do all of the things in this subsection  
22 as the functions of such savings bank and insofar as is consistent with  
23 the laws of the Federated States of Micronesia;

24 (3) To do, conduct, and transact generally the business of a  
25 trust company and do all things, exercise all powers, and perform all

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1 functions which a trust company is authorized or empowered to do,  
2 exercise, or perform under and by virtue of the laws of the Federated  
3 States of Micronesia, or which it may, by law, hereafter be authorized  
4 to do, exercise, or perform; to take, receive, and hold in trust,  
5 property both real and personal, for individuals, firms, companies,  
6 associations, or corporations, and to accept and execute trusts of  
7 every description which may be committed to it by any person, executor,  
8 administrator, administrator with the will annexed, guardian, trustee,  
9 assignee, receiver, or by any corporation, or by any State, or by the  
10 National Government of the Federated States of Micronesia; to accept the  
11 employment of and act as executor of any last will and testament and as  
12 administrator, or administrator with the will annexed, of the estates of  
13 deceased persons, and as assignee, receiver, trustee, and depository in  
14 all such matters, and in a legal manner to attend to the management and  
15 settlement of estates, guardianships, assigneeships, and receiverships, and to act as  
16 trustee, agent, or attorney for individuals, firms, companies, associations,  
17 or corporations, and to attend to any and all manner of trusts; to act as  
18 agent for the purpose of registering or countersigning the certificates  
19 of stocks, bonds, or other indebtedness of any corporation, company,  
20 association, municipality, State, or public authority on such terms as  
21 may be agreed upon; to act as transfer agent and registrar of certificates,  
22 stocks, or bonds; to purchase, hold, sell, and take such property, real  
23 and personal, as may be mortgaged, pledged, and hypothecated or conveyed  
24 to it in trust, or for its benefit for money loaned in pursuance of its  
25 regular business, and as may be purchased by it at sales under mortgages,

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1 pledges, hypothecations, or deeds of trust made for its benefit for  
2 money so loaned or as may be conveyed to it by borrowers of money in  
3 satisfaction of or in discharge of loans made thereon; to purchase,  
4 hold, own, and sell personal property; and to do all of the things in  
5 this subsection as the functions of such trust company, and insofar as  
6 is consistent with the laws of the Federated States of Micronesia;

7 (4) To conduct a safe deposit business, and in the conduct  
8 of said safe deposit business to store and hold for others personal  
9 property and securities with or without compensation, and to maintain  
10 vaults and safes and receptacles therein for the storage, safe-depositing,  
11 and safe-keeping of personal property and securities, and to rent and  
12 hire such safes and receptacles to others upon such terms and conditions  
13 as the corporation may deem advisable; and

14 (5) To conduct the business of a commercial bank, savings bank,  
15 and trust company, as hereinbefore set forth, in and as separate or dif-  
16 ferent departments of said National Bank, in a manner consistent with the  
17 laws of the Federated States of Micronesia.

18 Section 7. Corporate powers. Subject to any limitations contained  
19 in the Articles of Incorporation and in compliance with other provisions  
20 of this act and other applicable laws of the Federated States of Micronesia,  
21 the National Bank shall have all the powers of a natural person in carrying  
22 out its business activities, including, but not limited to, the power to:

23 (1) Adopt, use, and at will alter a corporate seal, but failure  
24 to affix a seal does not affect the validity of any instrument;

25 (2) Adopt, amend, and repeal bylaws;

R-10/WTM

1 (3) Qualify to do business in any other State, territory,  
2 dependency, or foreign country;

3 (4) Issue, purchase, redeem, receive, take, or otherwise  
4 acquire; own, hold, sell, lend, exchange, transfer, or otherwise  
5 dispose of; pledge, use, and otherwise deal in and with its own shares,  
6 bonds, debentures, and other securities;

7 (5) Make donations, regardless of specific corporate benefit,  
8 for the public welfare or for community funds, or hospitals, or for  
9 educational, scientific, civic, or similar purposes;

10 (6) Assume obligations; enter into contracts, including  
11 contracts of guaranty or suretyship; incur liabilities; borrow and lend  
12 money; and otherwise use its credit, and secure any of its obligations,  
13 contracts, or liabilities by mortgage, pledge, or other encumbrance of  
14 all or any part of its property, franchises, or income;

15 (7) Participate with others in any partnership, joint venture,  
16 or other association, transaction, or arrangement of any kind, whether or  
17 not such participation involves sharing or delegating control with or  
18 to others;

19 (8) Sue and be sued on its own name; and

20 (9) Exercise such powers, consistent with its Articles of  
21 Incorporation and bylaws and with the provisions of this act and other  
22 applicable laws of the Federated States of Micronesia, as the Board may  
23 deem necessary and proper to perform the duties provided under section  
24 6 of this act.

25 Section 8. Shares of the National Bank.

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(1) The National Bank is hereby authorized to issue share accounts as provided in this section. All share accounts shall be represented by share account books containing a certificate of membership and evidencing the participation value of the share account.

(2) Share accounts may be purchased by any person who is a citizen of the Federated States of Micronesia or by any domestic corporation. Share accounts may be purchased by a foreign participator; PROVIDED that such foreign participation shall not exceed 40 percent of the outstanding share accounts. Share accounts shall not be transferable or assignable.

(3) Share accounts shall be sold for \_\_\_\_\_ or multiples thereof.

Section 9. Dividend. The Board may not declare a dividend nor make any distribution thereof unless:

(1) The amount of the retained earnings of the National Bank immediately prior thereto equals or exceeds the amount of the proposed distribution;

(2) Immediately after giving effect thereto:

(a) The sums of the assets of the National Bank would be at least equal to  $1\frac{1}{4}$  times its liabilities; and

(b) The current assets of the corporation would at least be equal to its current liabilities; PROVIDED that 10 percent of the assets of the National Bank shall be set aside as reserve; PROVIDED ~~further~~ that such reserve shall not be available as a dividend.

Section 10. Management. The business and affairs of the National

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1 Bank shall be managed and all corporate powers shall be exercised  
2 by or under the direction of the Board. The Board may delegate the  
3 management of the day-to-day operation of the business of the National  
4 Bank to the general manager thereof, who shall be hired by the Board;  
5 PROVIDED that the business and affairs of the corporation shall be  
6 managed and all corporate powers shall be exercised under the ultimate  
7 direction of the Board.

8 Section 11. Board of Directors.

9 (1) There is hereby created a Board of Directors of the  
10 National Bank, hereinafter referred to as the "Board."

11 (2) The Board shall consist of five members to be appointed  
12 or elected as follows:

13 (a) One member shall be appointed by the President  
14 of the Federated States of Micronesia with the advice and consent of  
15 the Congress of the Federated States of Micronesia; and

16 (b) Four members shall be selected by majority vote  
17 of the shareholders.

18 (3) Members of the Board shall serve their terms as follows:

19 (a) The President's appointee shall serve a 4-year term;  
20 and

21 (b) The four members elected by the shareholders shall  
22 separately determine by lot which member among them shall serve an  
23 initial term of 1 year, which member shall serve an initial term of 2  
24 years, which member shall serve an initial term of 3 years, and which  
25 member shall serve an initial term of 4 years.

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1           (4) The initial terms of the Board members shall expire  
2 at noon on the day of the first meeting of the Board in the first,  
3 second, third, or fourth year, respectively, following the first  
4 meeting.

5           Section 12. Vacancy on the Board. A vacancy on the Board of  
6 the one member appointed by the President shall be filled by appointment  
7 by the President of the Federated States of Micronesia, subject to the  
8 advice and consent of the Congress of the Federated States of Micronesia.  
9 The appointee shall serve for the unexpired term of the member he replaces.  
10 Any vacancy on the Board of one of those elected members shall be filled  
11 by majority vote of the stockholders.

12          Section 13. Officers of the Board. At the first meeting of the  
13 Board the members shall proceed to elect a Chairman by majority vote of  
14 the members present; PROVIDED that a quorum is present. Any officer of  
15 the Board may be removed from office by the affirmative vote of two-thirds  
16 of the members of the Board.

17          Section 14. Employees of the Bank. The Board shall hire a general  
18 manager who shall be responsible for the day-to-day affairs of the Bank.  
19 The Board may hire other employees as it deems fit and proper.

20          Section 15. Provisional Board of Directors. The President is hereby  
21 authorized to appoint four members to the provisional Board of Directors,  
22 subject to the advice and consent of the Congress of the Federated States  
23 of Micronesia.

24          Section 16. Duties of the provisional Board of Directors. The pro-  
25 visional Board of Directors shall plan, organize, and implement measures



1 necessary and proper to effect the provisions of this act until  
2 such time as the permanent Board is organized. The provisional  
3 Board of Directors shall be in existence for a period of not more  
4 than 2 years from the date of the confirmation of the last nominee.

5 Section 17. Bylaws. The shareholders may by majority vote  
6 of the entire membership adopt, amend, alter, or repeal such bylaws  
7 for the Bank in a manner consistent with this act. The bylaws may  
8 provide for the management of the business of the Bank; the regulation  
9 of its affairs; the organization, conduct, and meetings of the Board;  
10 the duties of the officers of the Bank; the officers for whom bonds  
11 could be furnished and the amounts thereof; and for any other matters  
12 consistent with the purposes of this act.

13 Section 18. Disqualifications. No member of the Board or officer  
14 of the National Bank during the term for which he was appointed or  
15 reappointed and for 2 years following the expiration of the term for  
16 which he was appointed or reappointed shall be eligible either to  
17 borrow money from or through the National Bank or to assume responsibility  
18 in whole or in part under a guarantee of indemnity or by the deposit of  
19 a security to the National Bank with respect to a debt or obligation of a  
20 third party.

21 Section 19. Audit. The books and records of the Bank shall be  
22 examined and audited annually by the Public Auditor of the Federated  
23 States of Micronesia. The audit report shall be made available to all  
24 interested persons. A copy of the audit report shall be transmitted to  
25 the President of the Federated States of Micronesia and to the Speaker

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1 of the Congress of the Federated States of Micronesia.

2       Section 20. Costs of administration. There is hereby authorized  
3 to be appropriated from the General Fund of the Federated States of  
4 Micronesia such amount of funds as is necessary to carry out the cost  
5 of administration of this act. The Board of Directors of the National  
6 Bank shall, to the extent feasible, forecast the needed appropriations  
7 for the fiscal year and request the funds from the Congress of the  
8 Federated States of Micronesia. Nothing herein contained shall pro-  
9 hibit the Board from seeking or soliciting funds for its operation  
10 and capitalization from additional sources within or outside the  
11 Federated States of Micronesia.

12       Section 21. Expenses. All members of the Board shall be entitled  
13 to necessary travel expenses and per diem at standard rates of the  
14 National Government of the Federated States of Micronesia while on the  
15 business of the National Bank. Board members who are neither employees  
16 nor officials of a State government or of the National Government of the  
17 Federated States of Micronesia shall be paid \$35 per day plus per diem,  
18 where applicable, while on the business of the National Bank.

19       Section 22. Tax exemption. It is hereby found and declared that the  
20 purpose for which the National Bank is created is a public purpose for the  
21 benefit of the people of the Federated States of Micronesia, and that,  
22 therefore, the National Bank shall not be required to pay any taxes or  
23 assessments on any of its property acquired or to be acquired by it or  
24 on its operations or activities.

25       Section 23. Debts of National Bank not public debts. The debts or

1 obligations of the National Bank shall not be debts or obligations  
2 of the National Government of the Federated States of Micronesia,  
3 nor shall the National Government of the Federated States of Micro-  
4 nesia be responsible for the same.

5 Section 24. Willfully defrauding the National Bank. Any Board  
6 member, director, officer, employee, or agent of the National Bank  
7 who embezzles, abstracts, or willfully misapplies any monies, funds,  
8 credits, or securities of the National Bank, or who willfully makes any  
9 false entry in any book, report, or statement of the National Bank, or  
10 who does any other act, with intent to injure or defraud the National  
11 Bank; or any individual who, with like intent, aids or abets any direc-  
12 tor, officer, employee, or agent in any violation of this section; or  
13 any individual who makes a false statement with the intent of defrauding  
14 the National Bank of monies, funds, credits, or securities, shall be fined  
15 not more than \$20,000, or imprisoned for not more than 10 years, or both.

16 Section 25. Appropriation of funds. The sum of \$100,000, or so  
17 much thereof as may be necessary, is hereby appropriated from the General  
18 Fund of the Federated States of Micronesia for the fiscal year ending  
19 September 30, 1983, for the purpose of carrying out the provisions of this  
20 act. The Board shall be the allottee of the funds.

21 Section 26. Allotment of funds. All funds appropriated by this act  
22 shall be allotted, managed, administered, and accounted for in accordance  
23 with applicable law, including, but not limited to, the Financial Manage-  
24 ment Act of 1979. The allottee shall be responsible for ensuring that  
25 these funds, or so much thereof as may be necessary, are used solely for

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1 the purpose specified in this act, and that no obligations are  
2 incurred in excess of the sum appropriated. The authority of the  
3 allottee to obligate funds appropriated by this act shall lapse as  
4 of September 30, 1984.

5 Section 27. Effective date. This act shall become law upon  
6 approval by the President of the Federated States of Micronesia or  
7 upon its becoming law without such approval.

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Date:

6/3/83

Introduced by:

Elias H. Thomas

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