A BILL FOR AN ACT

To create a National Commercial Bank of the Federated States of Micronesia, to appropriate the sum of $100,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1985, therefor, 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 cited as the "National Commercial Bank Act of 1985."

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

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

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

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

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

7 (1) To do, conduct, and transact generally the business of a commercial bank and to do all things and exercise all powers and perform all functions which a commercial bank is authorized or empowered to do, exercise, or perform under and by virtue of the laws of the
1 Federated States of Micronesia, or which it may by law hereafter be
2 authorized to do, exercise, or perform; to receive deposits of money, deal
3 in commercial paper, make loans thereon, lend money on real or personal
4 property, discount bills, notes, or other commercial paper, and to buy and
5 sell securities, gold and silver bullion, foreign coins or bills of
6 exchange; and to do all the things in this subsection as the functions of
7 such commercial bank and insofar as is consistent with the laws of the
8 Federated States of Micronesia;
9
10 (2) To do, conduct, and transact generally the business of a
11 savings bank, and to do all things, exercise all powers, and perform all
12 functions which a savings bank is authorized or empowered to do, exercise,
13 or perform under and by virtue of the laws of the Federated States of
14 Micronesia, or which it may by law hereafter be authorized to do, exercise,
15 or perform; to accumulate, loan, and invest the funds of its depositors;
16 to receive deposits of money; to loan, invest, and collect the same with
17 interest; to repay depositors with or without interest; to invest such
18 funds in such property, securities, and obligations; to declare and pay
19 dividends on its general deposits; to pay a stipulated rate of interest
20 on deposits made for a stated period, or upon special terms; and to do all
21 of the things in this subsection as the functions of such savings bank and
22 insofar as is consistent with the laws of the Federated States of Micronesia;
23
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
26 functions which a trust company is authorized or empowered to do, exercise,
27 or perform under and by virtue of the laws of the Federated States of
Micronesia, or which it may, by law, hereafter be authorized to do,
exercise, or perform; to take, receive, and hold in trust, property both
real and personal, for individuals, firms, companies, associations, or
corporations, and to accept and execute trusts of every description which
may be committed to it by any person, executor, administrator, administrator
with the will annexed, guardian, trustee, assignee, receiver, or by any
corporation, or by any State, or by the National Government of the Federated
States of Micronesia; to accept the employment of and act as executor of
any last will and testament and as administrator, or administrator with the
will annexed, of the estates of deceased persons, and as assignee, receiver,
trustee, and depository in all such matters, and in a legal manner to
attend to the management and settlement of estates, guardianships, assignee-
ships, and receiverships, and to act as trustee, agent, or attorney for
individuals, firms, companies, associations, or corporations, and to attend
to any and all manner of trusts; to act as agent for the purpose of register-
ing or countersigning the certificates of stocks, bonds, or other indebted-
ness of any corporation, company, association, municipality, State, or
public authority on such terms as may be agreed upon; to act as transfer
agent and registrar of certificates, stocks, or bonds; to purchase, hold,
sell, and take such property, real and personal, as may be mortgaged,
pledged, and hypothecated or conveyed to it in trust, or for its benefit
for money loaned in pursuance of its regular business, and as may be purchased
by it as sales under mortgages, pledges, hypothecations, or deeds of trust
made for its benefit for money so loaned or as may be conveyed to it by
borrowers of money in satisfaction of or in discharge of loans made thereon;
to purchase, hold, own, and sell personal property; and to do all of the
things in this subsection as the functions of such trust company, and
insofar as is consistent with the laws of the Federated States of Micro-
nesia;

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

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

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

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

(2) Adopt, amend, and repeal bylaws;

(3) Qualify to do business in any other State, territory,
dependency, or foreign country;
(4) Issue, purchase, redeem, receive, take, or otherwise acquire; own, hold, sell, lend, exchange, transfer, or otherwise dispose of; pledge, use, and otherwise deal in and with its own shares, bonds, debentures, and other securities;

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

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

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

(8) Sue and be sued in its own name; and

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

Section 8. Shares of the National Bank.

(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 1½ 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 
Bank shall be managed and all corporate powers shall be exercised by or 
under the direction of the Board. The Board may delegate the management 
of the day-to-day operation of the business of the National Bank to the
general manager thereof, who shall be hired by the Board; PROVIDED that the
business and affairs of the corporation shall be managed and all corporate
powers shall be exercised under the ultimate direction of the Board.

Section 11. Board of Directors.

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

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

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

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

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

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

and

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

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

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

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

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

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

Section 16. Duties of the provisional Board of Directors. The
provisional Board of Directors shall plan, organize, and implement measures
necessary and proper to effect the provisions of this act until such time
as the permanent Board is organized. The provisional Board of Directors
shall be in existence for a period of not more than 2 years from the date
of the confirmation of the last nominee.

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

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

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

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

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

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

Section 23. Debts of National Bank not public debts. The debts or obligations of the National Bank shall not be debts or obligations of the National Government of the Federated States of Micronesia, nor shall the National Government of the Federated States of Micronesia be responsible for the same.

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

Section 25. Appropriation of funds. The sum of $100,000, or so much
thereof as may be necessary, is hereby appropriated from the General Fund
of the Federated States of Micronesia for the fiscal year ending September
30, 1985, for the purpose of carrying out the provisions of this act.

The Board shall be the allottee of the funds.

Section 26. Allotment of funds. All funds appropriated by this act
shall be allotted, managed, administered, and accounted for in accordance
with applicable law, including, but not limited to, the Financial
Management Act of 1979. The allottee shall be responsible for ensuring
that these funds, or so much thereof as may be necessary, are used solely
for the purpose specified in this act, and that no obligations are
incurred in excess of the sum appropriated. The authority of the allottee
to obligate funds appropriated by this act shall lapse as of September
Section 27. Effective date. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 5/13/85

Introduced by: Elia H. Thomas