A BILL FOR AN ACT

To amend title 32 of the Code of the Federated States of Micronesia by repealing chapter 2 in its entirety; to provide for the regulation of foreign investment; and for other purposes.

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

Section 1. Short title. This act is known and may be cited as the "Foreign Investment Act of 1985."

Section 2. Exemptions. The following activities shall be exempt from the provisions of this act:

1. Business organizations engaged in the business of bulk distribution of petroleum products;
2. International and interstate airline operations;
3. International and interstate shipping;
4. Banks and banking activities regulated pursuant to title 29 of the Code of the Federated States of Micronesia, or to any law intended to replace the provisions of said title; and
5. Cooperative associations and credit unions duly organized and incorporated under the laws of the Federated States of Micronesia, any State, or the Trust Territory of the Pacific Islands.

Section 3. Definitions. As used in this act, unless otherwise provided, or unless the context requires a different construction, application, or meaning:

1. "Engaging in business" means engaging in any form of commerce, including, but not limited to, industrial, commercial, fishery, agricultural, trading, construction, service or other type of business activity, or providing professional services within the Federated States of Micronesia, regardless of whether or not such activity or activities are for commercial gain, profit, or benefit;
2. "Issuing authority" means the government of a State;
3. "Noncitizen" means:
(a) Until termination of the Trusteeship for the Trust Territory of the Pacific Islands, any person who is not a Trust Territory citizen and any business in which any interest is owned by a person who is not a Trust Territory citizen; and

(b) Upon termination of the Trusteeship for the Trust Territory of the Pacific Islands, any person who is not a citizen of the Federated States of Micronesia, and any business in which any interest is owned by a person who is not a citizen of the Federated States of Micronesia; and

(4) "Office" means the Office of Foreign Investment established pursuant to this act.

Section 4. Regulation of noncitizens engaging in business. The regulation of any noncitizen engaging in business shall be the responsibility of the government of each State in which the noncitizen engages in business, except for those matters set forth in section 9 of this act.

Section 5. Prohibitions.

(1) A noncitizen may not engage in business in the Federated States of Micronesia without first obtaining permission from the issuing authority.

(2) A noncitizen engaged in business in the Federated States of Micronesia on the effective date of this act under a valid foreign investment permit or under an agreement with the Government of the Trust Territory of the Pacific Islands shall not continue to engage in business in the Federated States of Micronesia after the expiration of such permit or agreement without first obtaining permission from the issuing authority.
Section 6. Office of Foreign Investment. The Office of Foreign Investment of the Federated States of Micronesia is hereby established within the executive branch of the Government of the Federated States of Micronesia. The President shall nominate and, with the advice and consent of the Congress, as provided in article X, section 2(d) of the Constitution, shall appoint the Foreign Investment Officer. The Department of Resources and Development shall provide the necessary administrative and technical staff support for the Office of Foreign Investment.

Section 7. Application.

(1) Any noncitizen intending to engage in business in the Federated States of Micronesia shall submit an application to the issuing authority, in the form prescribed by the issuing authority. Within 1 week of receipt of an application, the issuing authority shall forward one copy of the application to the Office.

(2) The issuing authority shall take no final action on an application until the review by the Office has been completed, as provided for by section 8 of this act.

(3) If the Office fails to report its findings, pursuant to the review procedures set forth in sections 8 and 9 of this act, to the issuing authority within 60 days of receipt of the application, the issuing authority may appeal directly to the President of the Federated States of Micronesia to determine if the National interest, as set forth in section 9 of this act, will be adversely affected.

(4) If an appeal is filed pursuant to subsection 3 of this
section and the President fails to provide the requisite determination
within 30 days of the filing of an appeal, the Office shall be deemed to
have waived all right to deny an application and the issuing authority may
proceed with the review of the application.

Section 8. Office of Foreign Investment - Powers and functions.
The Office shall have the following powers and perform the following
functions:

(1) To advise the issuing authority if a proposed enterprise
which is the subject of an application for a noncitizen to engage in
business is the same as, or substantially similar to, an enterprise which
is already in existence or which is the subject of a pending application;

(2) To coordinate with the States on promotion of foreign
investment in the Federated States of Micronesia;

(3) To advise the issuing authority of the financial viability
of the noncitizen applicant; and

(4) To review all applications to determine if the application
must be denied in accordance with section 9 of this act. If the Foreign
Investment Officer determines that an application shall not be denied, he
shall immediately inform both the applicant and the issuing authority.
The issuing authority shall then make the determination if, and under what
conditions, the applicant may engage in business.

Section 9. Foreign investment issues affecting the National interest.

(1) The following issues are matters affecting the National
interest. The Office shall deny an application for any of the following
reasons:
(a) Approval of the application would constitute a treaty 
or international trade agreement with a foreign country or controvert an 
existing treaty or international trade agreement;

(b) Approval of the application would create a financial 
liability for the National Government of the Federated States of 
Micronesia; or

(c) Approval of the application would be contrary to the 
immigration policy or resident worker preference policy of the Federated 
States of Micronesia.

(2) If an application is denied pursuant to subsection 1 of 
this section, the issuing authority may appeal the denial to the trial 
division of the Supreme Court.

Section 10. Enforcement.

(1) The Office shall have the primary responsibility for the 
enforcement of this act, except that the Attorney General shall have the 
responsibility for enforcing the criminal provisions set forth in section 
12 of this act.

(2) In carrying out the duties conferred upon it by this act, 
the Office may require the attendance of any citizen or noncitizen at a 
meeting or hearing conducted by the Office, and may require such person or 
persons to testify or to produce at, before, or after such meeting or 
hearing documents, information, and other things relevant to the 
enforcement of the provisions of this act.

Section 11. Regulations. The Office may promulgate regulations 
necessary to implement this act, which regulations shall have the force
and effect of law.

Section 12. Criminal penalties. Any noncitizen who:

(1) Intentionally engages in business in the Federated States
of Micronesia without first obtaining permission from the issuing
authority in violation of section 5 of this act;

(2) After obtaining permission to engage in business from the
Office of Foreign Investment, intentionally fails to comply with the
limitations, if any, imposed on the conduct of his business; or

(3) Furnishes fraudulent information or intentionally omits
material information pertaining to the determination to be made by the
Office of Foreign Investment pursuant to section 8 of this act,
shall be deemed guilty of a criminal offense, and, upon conviction
thereof, shall be imprisoned for a period of not more than 1 year or fined
not more than $2,000, or both.

Section 13. Repealer. Chapter 2 of title 32 of the Code of the
Federated States of Micronesia is hereby repealed in its entirety.

Section 14. 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: Nov. 6, 1985

Introduced by John R. Haggelgan (by request)