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EIGHTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST REGULAR SESSION, 1993

C. B. NO. 8-26

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A BILL FOR AN ACT

To further amend title 30 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-122, 6-80, 6-109 and 7-25, by repealing all sections of chapter 1 of title 30 except section 122 thereof, renumbering and relocating said section 122 to a new chapter 2 of title 30 entitled "Investment Development Fund," and enacting new sections of chapter 1 of title 30 for the purpose of reorganizing the Federated States of Micronesia Development Bank, and for other purposes.

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

1       Section 1. All sections of chapter 1 of title 30 of the  
2 Code of the Federated States of Micronesia, except section 122  
3 thereof, are hereby repealed in their entirety.

4       Section 2. Title 30 of the Code of the Federated States of  
5 Micronesia is hereby further amended by the creation of a new  
6 chapter 2, entitled "Investment Development Fund."

7       Section 3. Section 122 of title 30 of the Code of the  
8 Federated States of Micronesia, entitled "Investment Development  
9 Fund," as established by section 2 of Public Law No. 5-122 and  
10 amended by Public Law No. 6-109, is hereby relocated from  
11 chapter 1 to chapter 2 of title 30 and renumbered as section  
12 201.

13       Section 4. Title 30 of the Code of the Federated States of  
14 Micronesia is hereby further amended by adding a new section 101  
15 of chapter 1 to read as follows:

16       "Section 101. Establishment of the Federated States of  
17       Micronesia Development Bank. There is hereby  
18       established a body corporate to be known as the  
19       Federated States of Micronesia Development Bank,  
20       hereinafter referred to as the 'Bank.' The Bank shall  
21       not be deemed to be a legal successor of either the  
22       Micronesia Development Bank or the Bank of Micronesia."

23       Section 5. Title 30 of the Code of the Federated States of  
24 Micronesia is hereby further amended by adding a new section 102  
25 of chapter 1 to read as follows:

1        "Section 102. Purpose. It is the intent of the  
 2        Government of the Federated States of Micronesia to  
 3        establish an independent financial institution operating  
 4        under its own Board of Directors but conducting its  
 5        activities within the framework of the National  
 6        Government's general economic plans, policies and  
 7        priorities."

8        Section 6. Title 30 of the Code of the Federated States of  
 9        Micronesia is hereby further amended by adding a new section 103  
 10       of chapter 1 to read as follows:

11       "Section 103. Principal place of business and branch  
 12       offices. The principal place of business of the Bank  
 13       shall be located within the Federated States of  
 14       Micronesia at a place to be designated by the Board of  
 15       Directors of said Bank. The Board may designate other  
 16       branch offices in the States of the Federated States of  
 17       Micronesia, or abroad, based on the needs of the Bank."

18       Section 7. Title 30 of the Code of the Federated States of  
 19       Micronesia is hereby further amended by adding a new section 104  
 20       of chapter 1 to read as follows:

21       "Section 104. Functions of the Bank.

22       (1) Subject to any existing limitation or  
 23       limitations hereafter created, the Bank is authorized to  
 24       engage in all banking functions that will assist in the  
 25       economic advancement of the Federated States of

1           Micronesia.

2                   (2) Such functions shall include but are not  
3           limited to the following:

4                   (a) To mobilize, from both within and outside  
5           of the Federated States of Micronesia, additional  
6           financial resources for development;

7                   (b) To provide short, medium and long-term  
8           loans for high-priority projects, with special emphasis  
9           on and attention to the needs of the Federated States of  
10          Micronesia;

11                   (c) To provide technical assistance and  
12          services for project identification and project  
13          formulation, and to perform investment studies;

14                   (d) To administer trust funds and special  
15          funds available to the Federated States of Micronesia on  
16          a grant or loan basis; and

17                   (e) To foster economic activities and  
18          cooperate with other lending institutions within and  
19          outside of the Federated States of Micronesia in  
20          supporting activities for its development."

21          Section 8. Title 30 of the Code of the Federated States of  
22          Micronesia is hereby further amended by adding a new section 105  
23          of chapter 1 to read as follows:

24                   "Section 105. Powers of the Bank. In performing the  
25          functions authorized pursuant to section 104 of this

1 chapter, the Bank shall have and exercise all powers  
2 normally exercised by a banking corporation, including  
3 but not limited to the following:

4 (1) To adopt, alter and use a corporate seal;

5 (2) To adopt and amend bylaws governing the  
6 conduct of its business and the exercise of its powers;

7 (3) To sue and be sued in its corporate name;

8 (4) To acquire in any lawful manner, real,  
9 personal, or mixed property, either tangible or  
10 intangible; to hold, maintain, use, and operate such  
11 property; and to sell, lease, or otherwise dispose of  
12 such property;

13 (5) To acquire in any mode and take over the whole  
14 or any part of the business, property, good will and  
15 liabilities of any other bank or banks;

16 (6) To act as agent of and as correspondent for  
17 other banks;

18 (7) To make, issue, and circulate notes upon such  
19 terms and subject to such provisions and conditions as  
20 may be prescribed by the Board;

21 (8) To guarantee or become liable for the payment  
22 of money or for the performance of any obligations, and  
23 generally to carry on guarantee and indemnity business  
24 of all kinds and to effect counter guarantees;

25 (9) To take and otherwise acquire and hold shares,



1 stocks, mortgages, bonds, obligations, securities, and  
2 investments of all kinds;

3 (10) To lend money either with or without security,  
4 and if with security upon such terms as may from time to  
5 time seem expedient;

6 (11) To borrow or raise any sum or sums of money on  
7 such security and, upon such terms as to interest or  
8 otherwise, as may from time to time seem expedient;

9 (12) To buy, sell and deal in bullion, specie,  
10 precious metals, currencies, and exchange of and with  
11 all countries;

12 (13) To lend and advance money to or negotiate  
13 loans or discount promissory notes or other negotiable  
14 instruments for, or on behalf of, or otherwise  
15 financially assist, persons, firms or companies  
16 concerned in any way whatever in the sale or purchase of  
17 any property, real or personal, for cash or on credit or  
18 on hire purchase, hire agreement, time payment,  
19 installment system, or otherwise, and generally to  
20 transact or engage in any class of business commonly  
21 undertaken by financiers;

22 (14) To establish agencies or connections in  
23 relation to the business of the Bank in any part of the  
24 world;

25 (15) To give letters of credit on agents and

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C. B. NO. 8-26

1 banking connections in any part of the world;

2 (16) To buy, sell, discount, rediscount, and hedge  
3 bills of exchange, promissory notes and treasury  
4 securities;

5 (17) To buy and sell securities issued by any  
6 government agency, international organization, company,  
7 institution, or otherwise;

8 (18) To form or assist in forming any company for  
9 the purpose of carrying on any business which the Bank  
10 is authorized to carry on, or any other business which  
11 may seem conducive to any of the interests of the Bank,  
12 or to acquire by purchase or otherwise the whole or any  
13 part of the business, property, and liabilities, or the  
14 whole or any part of the shares or stock of any company  
15 carrying on or proposing to carry on any such business  
16 as aforesaid; to hold shares, stock, debentures,  
17 debenture stock, or any interest in any such company and  
18 to dispose of such shares, stock, debenture, debenture  
19 stock, or interest and to make or carry out arrangements  
20 for giving the Bank the entire or partial control and  
21 management or benefit of the business of any such  
22 company and to guarantee dividends and interest on  
23 shares, stock, debentures, debenture stock, mortgages,  
24 bonds, or securities of any such company;

25 (19) To issue corporate bonds for various periods

1 number, if any, appearing on the books.

2 (2) Nominations for election to the Board may be  
3 made by the Board or by any stockholder of any issued  
4 share of the Bank entitled to vote for election of  
5 directors. Nominations by a shareholder shall be made  
6 in writing and delivered, faxed, or mailed to the  
7 President of the Bank not less than 14 days (30 days in  
8 the case of mailing) nor more than 50 days prior to any  
9 annual stockholders meeting. Such notification shall  
10 contain the following information to the extent known to  
11 the nominating shareholder:

12 (a) The name and address of each nominee;

13 (b) The principal occupation of each nominee;

14 (c) The name and address of the nominating  
15 shareholder; and

16 (d) The number of shares of capital stock of  
17 the Bank owned by the nominating shareholder."

18 Section 12. Title 30 of the Code of the Federated States of  
19 Micronesia is hereby further amended by adding a new section 109  
20 of chapter 1 to read as follows:

21 "Section 109. Special shareholders meeting. Special  
22 meetings of the shareholders may be called for any  
23 purpose at any time by the Board or by any three or more  
24 shareholders owning, in the aggregate, not less than 25  
25 percent of the issued stock of the Bank. Every such

1        special meeting, unless otherwise provided by law to the  
2        contrary, shall be called by mailing a notice, postage  
3        prepaid, stating the purpose of the meeting, not less  
4        than 30 days prior to the date fixed for such meeting,  
5        to each shareholder at his or her address appearing on  
6        the books of the Bank. Alternatively, such notice may  
7        be sent by fax, receipt confirmed by telephone at least  
8        10 days prior to the date of the meeting, to a  
9        shareholder at his or her fax number, if any, appearing  
10       on the books of the Bank."

11       Section 13. Title 30 of the Code of the Federated States of  
12       Micronesia is hereby further amended by adding a new section 110  
13       of chapter 1 to read as follows:

14       "Section 110. Proxies. Shareholders may vote at any  
15       meeting of the shareholders personally or by proxies  
16       duly authorized in writing, but no officer or employee  
17       of the Bank shall act as proxy. Proxies shall be valid  
18       only for one meeting, to be specified therein, and any  
19       adjournments of such meeting. Proxies shall be dated  
20       and shall be filed with the record of the meeting."

21       Section 14. Title 30 of the Code of the Federated States of  
22       Micronesia is hereby further amended by adding a new section 111  
23       of chapter 1 to read as follows:

24       "Section 111. Quorum. A majority of the issued stock  
25       of the Bank represented in person or by proxy shall



1 constitute a quorum at any meeting of shareholders,  
2 unless otherwise provided by law; but less than a quorum  
3 may adjourn any meeting, from time to time, and the  
4 meeting may be held, as adjourned, without further  
5 notice. A majority of the votes cast shall decide every  
6 question or matter submitted to the shareholders at any  
7 meeting, unless otherwise provided by law to the  
8 contrary."

9 Section 15. Title 30 of the Code of the Federated States of  
10 Micronesia is hereby further amended by adding a new section 112  
11 of chapter 1 to read as follows:

12 "Section 112. Voting rights; Cumulative voting.

13 (1) Only shareholders in whose names shares  
14 entitled to vote stand on the stock record of the Bank  
15 on the day of any meeting of shareholders, unless some  
16 other record date be fixed by the Board for the  
17 determination of shareholders of record and then on such  
18 other day, shall be entitled to vote at such meeting.

19 (2) Any shareholder entitled to vote at any  
20 election for directors may vote cumulatively and give  
21 one candidate a number of votes equal to the number of  
22 directors to be elected multiplied by the number of  
23 votes to which the shares are entitled, or distribute  
24 that shareholder's vote on the same principal among as  
25 many candidates as that shareholder thinks fit. The

1 candidates receiving the highest number of votes up to  
2 the number of directors to be elected are elected."

3 Section 16. Title 30 of the Code of the Federated States of  
4 Micronesia is hereby further amended by adding a new section 113  
5 of chapter 1 to read as follows:

6 "Section 113. Record date. The Board may fix a time in  
7 the future not exceeding 40 days preceding the date of  
8 any meeting of shareholders or the date fixed for the  
9 allotment of rights, or when any change or conversion or  
10 exchange of shares shall go into effect, as a record  
11 date for the determination of shareholders entitled to  
12 receive notice of and to vote at such meeting, or to  
13 receive any allotment of rights, or to exercise the  
14 rights with respect to any such change, conversion or  
15 exchange of shares. In such case only shareholders of  
16 record on the date so fixed shall be entitled to notice  
17 of and to vote at such meeting, or to receive such  
18 allotment of rights, or to exercise such rights, as the  
19 case may be, notwithstanding any transfer of any share  
20 on the books of the Bank after any record date fixed as  
21 aforesaid. The Board may close the books of the Bank  
22 against transfer of shares during the whole or any part  
23 of such period."

24 Section 17. Title 30 of the Code of the Federated States of  
25 Micronesia is hereby further amended by adding a new section 114

1 of chapter 1 to read as follows:

2 "Section 114. Board of Directors.

3 (1) There shall be a Board of Directors of the Bank  
4 consisting of seven members (one of whom shall be the  
5 President of the Bank ex officio) elected at the annual  
6 shareholders meeting by the shareholders by the  
7 plurality of votes thereof. A director shall serve  
8 until his term is expired or his successor is elected  
9 and qualified, whichever is later, and shall be eligible  
10 for reelection. Membership on the Board shall not be  
11 restricted to shareholders or to citizens of the  
12 Federated States of Micronesia. Any vacancy in the  
13 Board may be filled by action of the Board.

14 (2) Directors shall serve staggered terms of 3  
15 years. At the first organizational meeting of the  
16 Board, the six elected directors shall, by lot,  
17 determine among themselves which two directors shall  
18 have initial terms of 1 year, which two directors shall  
19 have initial terms of 2 years, and which two directors  
20 shall have initial terms of 3 years. Thereafter all  
21 terms shall be 3 years.

22 (3) Until a new Board shall have been elected and  
23 qualified as provided in this chapter the Board in  
24 existence immediately prior to the time that the act  
25 establishing this chapter becomes law shall continue to

1        serve as the Board of Directors of the Bank, subject to  
2        the same quorum standard as was in existence immediately  
3        prior to said time."

4        Section 18. Title 30 of the Code of the Federated States of  
5        Micronesia is hereby further amended by adding a new section 115  
6        of chapter 1 to read as follows:

7        "Section 115. Professional qualifications of directors  
8        and officers of the Bank.

9        (1) Board members of the Bank shall be persons  
10       experienced in the conduct of business, commerce,  
11       finance, banking, accounting, or development economics.

12       (2) The President and senior Vice President of the  
13       Bank shall each have had not less than 5 years  
14       experience in the banking profession, or the equivalent  
15       experience in a related profession."

16       Section 19. Title 30 of the Code of the Federated States of  
17       Micronesia is hereby further amended by adding a new section 116  
18       of chapter 1 to read as follows:

19       "Section 116. Organizational meeting. Upon receipt of  
20       the result of the election at the shareholders meeting,  
21       the President of the Bank shall forthwith notify the  
22       directors-elect of their election and of the time at  
23       which they are required to meet at the office of the  
24       Bank for the purpose of organizing the new Board. Such  
25       meeting shall be held on the date of the election or as

1           soon thereafter as practicable, and, in any event,  
2           within 30 days thereof."

3           Section 20. Title 30 of the Code of the Federated States of  
4   Micronesia is hereby further amended by adding a new section 117  
5   of chapter 1 to read as follows:

6           "Section 117. Regular meetings. Regular meetings of  
7           the Board shall be held without notice, on the second  
8           Monday of January, April, July and October of each year  
9           at the principal office of the Bank or at such place as  
10          the Board may designate. When any regular meeting of  
11          the Board falls on a legal holiday, the meeting shall be  
12          held on the next banking business day unless the Board  
13          designates a different day."

14          Section 21. Title 30 of the Code of the Federated States of  
15   Micronesia is hereby further amended by adding a new section 118  
16   of chapter 1 to read as follows:

17          "Section 118. Special meetings. Special meetings of  
18          the Board may be called by the Chairman of the Board and  
19          shall be called at the request of two or more directors.  
20          The President shall give 10 days' written notice of any  
21          special meeting. Each member of the Board shall be  
22          given notice stating the time and place, by telegram,  
23          facsimile, letter, or personal delivery, of each such  
24          special meeting. Only matters set forth in the notice  
25          of special meeting shall be considered at such meeting."

1       Section 22. Title 30 of the Code of the Federated States of  
2       Micronesia is hereby further amended by adding a new section 119  
3       of chapter 1 to read as follows:

4               "Section 119. Quorum. Four directors shall constitute  
5               a quorum at any meeting of the Board."

6       Section 23. Title 30 of the Code of the Federated States of  
7       Micronesia is hereby further amended by adding a new section 120  
8       of chapter 1 to read as follows:

9               "Section 120. Removal of Directors. Any director may  
10              be removed by the affirmative vote of the majority vote  
11              of the shareholders present in person or by proxy at any  
12              meeting duly called for such purpose."

13       Section 24. Title 30 of the Code of the Federated States of  
14       Micronesia is hereby further amended by adding a new section 121  
15       of chapter 1 to read as follows:

16              "Section 121. Officers of the Board. The officers of  
17              the Board shall consist of a Chairman and a Vice  
18              Chairman, each of whom must be a member of the Board.  
19              Officers of the Board shall be elected by the directors  
20              and shall serve for 1 year or until their successors are  
21              elected and qualified, and they shall be eligible for  
22              reelection. The duties and responsibilities of the  
23              officers of the Board include but are not limited to the  
24              following:

25              (1) Chairman. The Chairman of the Board shall, if



1        present, preside at all meetings of the Board, and  
2        exercise and perform such other powers and duties as may  
3        from time to time be assigned by the Board.

4            (2) Vice Chairman. In the absence of the Chairman,  
5        the Vice Chairman shall perform all the duties of the  
6        Chairman, and when so acting shall have all the powers  
7        of, and be subject to all the restrictions imposed upon,  
8        the Chairman. The Vice Chairman shall have such other  
9        powers and perform such other duties as from time to  
10       time may be prescribed by the Board."

11       Section 25. Title 30 of the Code of the Federated States of  
12       Micronesia is hereby further amended by adding a new section 122  
13       of chapter 1 to read as follows:

14            "Section 122. Officers of the Bank. The officers of  
15        the Bank shall consist of a President, a senior Vice  
16        President, a Secretary/Treasurer (or a Secretary and a  
17        Treasurer), and such other officers, including one or  
18        more junior Vice Presidents, as may be specified in the  
19        bylaws of the Bank. The President and senior Vice  
20        President shall be appointed by and serve at the  
21        pleasure of the Board. All other officers shall be  
22        appointed and serve for such terms as may be specified  
23        in the bylaws. The duties and responsibilities of the  
24        President and Vice President(s) include but are not  
25        limited to the following:

1           (1) President. Subject to the control of the  
2           Board, and to the extent delegated by the Board, the  
3           Chairman, the President shall be the chief executive  
4           officer of the Bank and shall have the general  
5           supervision, direction and control of the business and  
6           officers of the Bank. The President shall be delegated  
7           the duties and responsibilities of the day-to-day  
8           management and operation of the Bank. The President  
9           shall be an ex officio member of the Board, with full  
10          voting and other rights, except that the President may  
11          not hold the office of Chairman or Vice Chairman. The  
12          President shall have the general powers and duties of  
13          management usually vested in the office of the President  
14          of a corporation engaged in the banking business.

15          (2) Vice President(s). In the absence of the  
16          President, the senior Vice President, or any other Vice  
17          President in the order specified in the bylaws, shall  
18          perform all the duties of the President except that of  
19          ex officio director, and when so acting shall have all  
20          the powers of, and be subject to all the restrictions  
21          imposed upon, the President."

22          Section 26. Title 30 of the Code of the Federated States of  
23          Micronesia is hereby further amended by adding a new section 123  
24          of chapter 1 to read as follows:

25          "Section 123. Action by unanimous consent. Any action

1        required or permitted to be taken by the shareholders or  
2        the Board may be taken without a meeting thereof if all  
3        the shareholders or directors, as appropriate, shall  
4        individually and collectively consent in signed writing  
5        to such action. Such written consent or consents shall  
6        be filed with the minutes of the proceedings of the  
7        shareholders or the Board, as appropriate, and such  
8        action by written consent shall have the same force and  
9        effect as a unanimous vote of such shareholders or  
10       directors."

11       Section 27. Title 30 of the Code of the Federated States of  
12       Micronesia is hereby further amended by adding a new section 124  
13       of chapter 1 to read as follows:

14       "Section 124. Committees. The Board may designate one  
15       or more committees, each consisting of two or more  
16       directors and with such powers as the Board may  
17       designate to perform the functions for which said  
18       committee is established. Nondirectors may also serve  
19       on such a committee. Such a committee shall continue to  
20       exist at the pleasure of the Board."

21       Section 28. Title 30 of the Code of the Federated States of  
22       Micronesia is hereby further amended by adding a new section 125  
23       of chapter 1 to read as follows:

24       "Section 125. Acts affecting personal financial  
25       interest. No director or officer of the Bank shall

1 participate personally and substantially in the making  
2 of any decision relating to any application for a loan  
3 or other commitment from or through the Bank in which,  
4 to his knowledge, he, his spouse, child, close  
5 relatives, partner, organization in which he or she is  
6 serving as officer, director, trustee, partner, or  
7 employee, or any person or organization with whom he is  
8 negotiating or has any arrangement concerning  
9 prospective employment has a financial interest."

10 Section 29. Title 30 of the Code of the Federated States of  
11 Micronesia is hereby further amended by adding a new section 126  
12 of chapter 1 to read as follows:

13 "Section 126. Expenses and honoraria. Directors shall  
14 be entitled to necessary travel expenses while on the  
15 business of the Bank. Directors may receive an  
16 honorarium of such amount as may be determined by the  
17 Board. Government employees shall not be entitled to an  
18 honorarium for attending Board meetings during normal  
19 hours of employment."

20 Section 30. Title 30 of the Code of the Federated States of  
21 Micronesia is hereby further amended by adding a new section 127  
22 of chapter 1 to read as follows:

23 "Section 127. Administration of funds. The Bank is  
24 hereby authorized to administer such fund or funds as  
25 may from time to time come into its possession and under

1        its management control. Except as may be more  
2        particularly specified by law with respect to any  
3        particular fund, the Bank shall charge a reasonable fee  
4        to administer such funds and may, in the case of grant  
5        funds, waive any such fee."

6        Section 31. Title 30 of the Code of the Federated States of  
7        Micronesia is hereby further amended by adding a new section 128  
8        of chapter 1 to read as follows:

9        "Section 128. Tax exemption; No dividends.

10        (1) The Bank shall exist and operate solely for the  
11        benefit of the public and shall be exempt from any taxes  
12        or assessments on any of its property, operations, or  
13        activities. It is anticipated, although not required,  
14        that continuation of this tax exemption will be  
15        periodically reviewed by the Congress of the Federated  
16        States of Micronesia on its own motion or as requested  
17        by the Bank.

18        (2) For so long as any part of the tax exemption  
19        established in this section shall continue, the Bank  
20        shall be prohibited from paying any dividend or making  
21        any other distribution to its stockholders."

22        Section 32. Title 30 of the Code of the Federated States of  
23        Micronesia is hereby further amended by adding a new section 129  
24        of chapter 1 to read as follows:

25        "Section 129. Debt of the Bank. Any debt or obligation

1        incurred by the Bank shall not be a debt or obligation  
2        of the Government of the Federated States of Micronesia,  
3        nor shall the Government of the Federated States of  
4        Micronesia be responsible for any debt or obligation of  
5        the Bank unless specifically authorized by statute."

6        Section 33. Title 30 of the Code of the Federated States of  
7        Micronesia is hereby further amended by adding a new section 130  
8        of chapter 1 to read as follows:

9        "Section 130. Audit. At such times as the Board may  
10       provide, the books and records of the Bank shall be  
11       thoroughly examined and audited by a qualified auditor  
12       appointed by the Board, which may be the Public Auditor.  
13       Such auditor shall also determine the book value of the  
14       issued stock of the Bank, which information shall be  
15       made available to the public."

16       Section 34. Title 30 of the Code of the Federated States of  
17       Micronesia is hereby further amended by adding a new section 131  
18       of chapter 1 to read as follows:

19       "Section 131. Records and inspections.

20           (1) Records. The Bank shall maintain accurate and  
21       correct accounts, books and records of its business and  
22       properties. All such books, records and accounts shall  
23       be kept at the principal place of business of the Bank,  
24       or at such other place or places of business as may be  
25       designated from time to time by the Board.



1                    (2) Inspection of books and records. The books and  
2                    records of the Bank shall be open to the directors for  
3                    inspection from time to time upon 24 hours' notice to  
4                    the Bank of such intent to inspect."

5                    Section 35. Title 30 of the Code of the Federated States of  
6                    Micronesia is hereby further amended by adding a new section 132  
7                    of chapter 1 to read as follows:

8                    "Section 132. Checks, drafts, etc. All checks, drafts  
9                    or other orders for payment of money, notes or other  
10                   evidence of indebtedness, issued in the name of or  
11                   payable to the Bank shall be signed or endorsed by such  
12                   person or persons and in such manner as shall be  
13                   determined from time to time by resolution of the  
14                   Board."

15                   Section 36. Title 30 of the Code of the Federated States of  
16                   Micronesia is hereby further amended by adding a new section 133  
17                   of chapter 1 to read as follows:

18                   "Section 133. Contracts; How executed. The Board may  
19                   authorize any officer, agent, or employee to enter into  
20                   any contract or execute any instrument in the name of  
21                   and on behalf of the Bank. Such authority may be  
22                   general or confined to specific instances. Unless so  
23                   authorized by the Board, no officer, agent or employee  
24                   shall have any power or authority to bind the Bank by  
25                   any contract or engagement, or to pledge its credit, or

1           to render it liable for any purpose or for any amount."

2           Section 37. Title 30 of the Code of the Federated States of  
3   Micronesia is hereby further amended by adding a new section 134  
4   of chapter 1 to read as follows:

5           "Section 134. Annual report. The Bank shall as soon as  
6           possible, but not exceeding 120 days after the  
7           conclusion of each fiscal year, submit to its  
8           stockholders an annual report containing:

9                 (1) An account of its transactions throughout the  
10            year;

11                (2) A statement of the accounts of the Bank duly  
12            audited in accordance with the provisions of section 130  
13            of this chapter; and

14                (3) A list and brief description of all outstanding  
15            loans or other commitments made to any director or  
16            officer of the Bank, or to any other person or  
17            organization described in section 125 of this chapter,  
18            including a statement of whether the payment status is  
19            current or delinquent."

20           Section 38. Title 30 of the Code of the Federated States of  
21   Micronesia is hereby further amended by adding a new section 135  
22   of chapter 1 to read as follows:

23           "Section 135. Certificates and transfers of shares.

24                (1) Certificates for shares. Certificates for  
25            shares shall be of such form and device as the Board may

1 designate and shall state the name of the record holder  
2 of the shares represented thereby; its numbers; date of  
3 issuance; the number of shares for which it is issued;  
4 the par value, if any; a statement as to redemption or  
5 conversion, if any; a statement of liens or restrictions  
6 upon transfer or voting, if any; if the shares be  
7 assessable, or, if assessments are collectible by  
8 personal acting, a plain statement of such facts. Every  
9 certificate for shares must be signed by the President  
10 and a Vice President or by either the President or a  
11 Vice President and a member of the Board of Directors.

12 (2) Transfer on the books. Upon the surrender to  
13 the Secretary of the Bank of a certificate for shares  
14 duly endorsed or accompanied by proper evidence of  
15 succession, assignment or authority to transfer, it  
16 shall be the duty of the Bank to issue a new certificate  
17 and record the transaction upon its books.

18 (3) Lost or destroyed certificates. Any person  
19 claiming a certificate of stock to be lost or destroyed  
20 shall make an affidavit or affirmation of that fact and  
21 advertise the same in such manner as the Board may  
22 require, and shall if the Board so requires give the  
23 Bank a bond of indemnity, in form and with one or more  
24 sureties satisfactory to the Board, in an amount of up  
25 to double the value of the stock represented by said

1        certificate, whereupon a new certificate may be issued  
2        of the same tenor and for the same number of shares as  
3        the one alleged to be lost or destroyed."

4        Section 39. Title 30 of the Code of the Federated States of  
5        Micronesia is hereby further amended by adding a new section 136  
6        of chapter 1 to read as follows:

7        "Section 136. FSM National Government shares and FSM  
8        State governments shares.

9            (1) It is hereby authorized that the Trust  
10        Territory Economic Development Loan Fund and all of the  
11        funds (except the Investment Development Fund)  
12        appropriated by the Congress of the Federated States of  
13        Micronesia which are currently administered by the  
14        Federated States of Micronesia Development Bank shall  
15        be, and the same hereby are, dedicated to purchase  
16        shares of stock in the Bank for the National Government  
17        of the Federated States of Micronesia. All cash and the  
18        entire portfolio of loans in said funds are hereby  
19        transferred to the Bank as capital in return for the  
20        issuance of certificates of shares of stock in the Bank  
21        in favor of the National Government of the Federated  
22        States of Micronesia. All shares of stock shall be  
23        issued to and in the name of the Secretary of the  
24        Department of Finance as title trustee for the National  
25        Government. The cash value of the loan portfolio

1        transferred by the National Government shall be  
2        appraised by an independent appraiser prior to the  
3        purchase of the stock in the Bank.

4            (2) Any fund currently administered by the Bank for  
5        or on behalf of a State government shall, at the option  
6        of that State, be similarly appraised and transferred to  
7        the Bank in exchange for stock in the Bank. Such shares  
8        shall be issued to and in the name of the chief  
9        financial officer of said State, or such other State  
10       official as the State may designate, as title trustee."

11       Section 40. Title 30 of the Code of the Federated States of  
12       Micronesia is hereby further amended by adding a new section 137  
13       of chapter 1 to read as follows:

14            "Section 137. Foreign ownership. It is intended that  
15       the Bank shall have and retain the legal capacity to  
16       acquire, own title to, dispose of, and otherwise deal in  
17       land and waters in the Federated States of Micronesia.  
18       Therefore no stock in the Bank may be owned by any  
19       person or entity whose partial ownership of the Bank  
20       would cause the Bank to lose such capacity under  
21       applicable law. Any transfer of stock in the Bank to  
22       such a person or entity shall be null, void, and of no  
23       effect."

24       Section 41. Title 30 of the Code of the Federated States of  
25       Micronesia is hereby further amended by adding a new section 138



1 of chapter 1 to read as follows:

2 "Section 138. Limit on commitments to single person or  
3 project.

4 (1) The total commitment of the Bank to any single  
5 person or project shall not exceed 15 percent of the  
6 unimpaired shareholders' equity in the Bank.

7 (2) For purposes of this section, the term 'person'  
8 includes individuals, corporations, partnerships, joint  
9 ventures, trusts, governmental organizations, and all  
10 other legal entities. A commitment to any individual  
11 includes any commitment to that individual's parents,  
12 siblings, children, or grandchildren and any commitment  
13 to the co-partners or other close business associates of  
14 that individual. A commitment to any other entity  
15 includes any commitment to other persons controlling,  
16 controlled by, or under common control with that entity;  
17 to directors or officers of the entity if it is a  
18 corporation; to the constituent partners of that entity  
19 if it is a partnership; and to the co-partners or other  
20 close business associates of that entity.

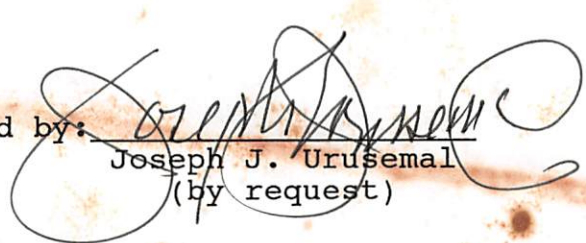
21 (3) For purposes of this section, a 'commitment' to  
22 a person or a project includes the current outstanding  
23 balance of any loan by the Bank to that person or for  
24 that project, the full remaining amount of exposure  
25 under any guarantee or letter of credit issued by the



1 Bank at the request of that person or for the benefit of  
2 that project, the original face amount of any equity  
3 investment made by the Bank in that person or project,  
4 and the amount of any undisbursed loan commitment issued  
5 to or for that person or project."

6 Section 42. This act shall become law upon approval by the  
7 President of the Federated States of Micronesia or upon its  
8 becoming law without such approval.

9  
10 Date: 5/14/93

Introduced by: 

Joseph J. Urusemal  
(by request)

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Act No. 8-22

ENGROSSING

C.B. NO. 8-26, CD/

~~C.R. NO.~~ \_\_\_\_\_

1. Measure as passed - proofread by: CV \_\_\_\_\_

\_\_\_\_\_  
Date

2. Engrossed (typed) by: \_\_\_\_\_

Aldeha

12/9/93 / 12/20  
\_\_\_\_\_  
Date

3. Engrossed Measure - proofread by: CV \_\_\_\_\_

12/20  
\_\_\_\_\_  
Date

4. Engrossed Measure - received and released by: \_\_\_\_\_

\_\_\_\_\_  
Date

5. Transmitted by Clerk: \_\_\_\_\_

for en

12-21  
\_\_\_\_\_  
Date

6. Received by President's Office \_\_\_\_\_

\_\_\_\_\_  
Date

7. Approved as Public Law No.: \_\_\_\_\_

\_\_\_\_\_  
Date

8. Disapproved - Veto Message No.: \_\_\_\_\_

\_\_\_\_\_  
Date

Note: This is the replacement of the first one.



SCR No. 8-83

**STATE OF YAP**  
OFFICE OF THE GOVERNOR  
Federated States of Micronesia  
96943

P.O. Box 39 Colonia, Yap  
Tel: (691) 350-2108/2109

Telex: 7296856 GovYap  
Fax: (691) 350-4113

September 03, 1993

Honorable Redley Killion  
Chairman,  
R&D Committee  
Congress of the Federated States of Micronesia  
Palikir, Pohnpei FM 96941

Dear Chairman Killion:

The purpose of this letter is to explain the positions of my administration on a number of legislative measures pending before your committee. The positions of my administration as expressed herein, I must point out at the outset, do not concern technical and legal aspects of the measures. Instead, they focus strictly on the policy aspects of the measures.

Reorganization and Capitalization of FSMDB. My administration is in full support of the basic purpose and intent of the bill calling for the reorganization and capitalization of the FSM Development Bank. This bank, as of now, is not but should be a genuine development bank fully capable of receiving capital not only from the FSM national and state governments but also from other sources, especially outside sources such as ADB and other regional and international financial institutions.

The importance of infusion of outside capital into our national economy, thru the FSMDB serving as a conduit, cannot be overemphasized. Additional capital, especially outside capital, is not only urgently needed; it is so essential that without it the FSM may never become increasingly economically self-sufficient.

With additional capital the FSMDB could play a much greater role in our total effort to develop our national economy. The bank could then contribute far more significantly toward the achievement of our national goal, economic self-sufficiency.

If, as a result of its reorganization, the FSMDB would have to charge higher interest rates to borrowers, such a problem could be resolved by establishing government loan programs with lower interest rates and the



Expressing full support of the Chuuk State Legislature for immediate passage of the proposed Congress of the Federated States of Micronesia bill (CB. No. 8-26) which seeks to further amend Title 30 of the FSM Code by providing, inter alia, for capitalization and restructuring of the Federated States of Micronesia Development Bank.

A RESOLUTION

1 WHEREAS, CB No. 8-26 has been introduced and is presently pending before the Eighth Congress of the Federated States of Micronesia; and

4 WHEREAS, said bill seeks to further amend Title 30 of the Code of the Federated States of Micronesia by providing among other things, for the capitalization of the Federated States of Micronesia Development Bank; and

8 WHEREAS, the capitalization of the Bank will enable private citizens and public entities of the Federated States to participate in the ownership and general management of the Bank and, at the same time, ensure the Bank's survivability and investment capabilities, thereby enhancing both the Bank's and the citizens chances for investment opportunities; and

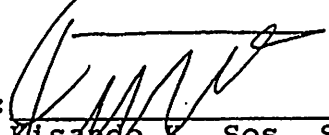
15 WHEREAS, the proposed capitalization scheme for the Bank will also provide the same with the necessary autonomy from direct and substantial government control thereby allowing the Bank to operate as an independent financial institution but conducting, its activities within the National's general economic plans, policies and priorities; now, therefore

22 BE IT RESOLVED by the House of Representatives, Second Chuuk State Legislature, First Regular Session, 1993, the

1 Senate concurring, that the Chuuk State Legislature hereby  
2 expresses its official support for passage of the  
3 above-referenced Congress of the Federated States of  
4 Micronesia Bill No. 8-26; and

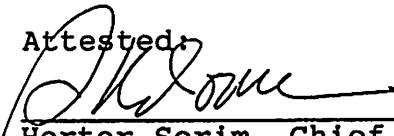
5 BE IT FURTHER RESOLVED that certified copies of this  
6 Joint Resolution be transmitted to the President, Federated  
7 States of Micronesia, Speaker of the Congress of the  
8 Federated States of Micronesia; the Board of Directors of  
9 the FSM Development Bank; and all state governors and  
10 all President and speakers of the four states legislatures.

11  
12 Signed by:

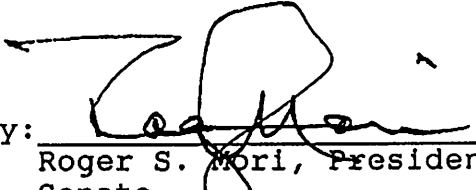
  
Kisanke K. Sos, Speaker  
House of Representatives  
Chuuk State Legislature

Date: Oct. 13, 1993

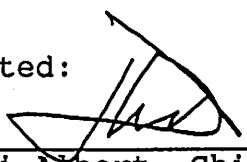
13 Attested:

  
Herter Sorim, Chief Clerk  
House of Representatives  
Chuuk State Legislature

17 Signed by:

  
Roger S. Mori, President  
Senate  
Chuuk State Legislature

18 Attested:

  
Datasi Albert, Chief Clerk  
Senate  
Chuuk State Legislature

Date: October 13, 1993

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27 HISTORY: H.J.R.NO: 2-08; HD1; S.D.1  
28 H.S.C.R.NO: 1-6  
29 S.S.C.R.NO: 2-57

30 INTRODUCER: OTOSHY O. BAELO (By Request)

31 ADOPTED: September 28, 1993



COMMITTEE ON  
RESOURCES AND  
DEVELOPMENT

A-11/6/93

Act no. 8-22  
CONGRESS OF THE FEDERATED STATES OF MICRONESIA

P. O. Box PS 3

Palikir, Sokehs

Pohnpei State, FM 96941

Tel. (691) 320-2324/2325/2326/2327/2337/2338/2707

Telex: 729-6809 Fax: (691) 320-5122

STANDING COMMITTEE REPORT NO. 8-83

NOVEMBER 25, 1993

RE: C.B. NO. 8-26

The Honorable Jack Fritz  
Speaker, Eighth Congress  
Federated States of Micronesia  
Second Regular Session, 1993

Dear Mr. Speaker:

Your Committee on Resources and Development, to which was referred C.B. No. 8-26, entitled:

C.B. No. 8-26, "A BILL FOR AN ACT TO FURTHER AMEND TITLE 30 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED BY PUBLIC LAWS NOS. 5-122, 6-80, 6-109 AND 7-25, BY REPEALING ALL SECTIONS OF CHAPTER 1 OF TITLE 30 EXCEPT SECTION 122 THEREOF, RENUMBERING AND RELOCATING SAID SECTION 122 TO A NEW CHAPTER 2 OF TITLE 30 ENTITLED 'INVESTMENT DEVELOPMENT FUND,' AND ENACTING NEW SECTIONS OF CHAPTER 1 OF TITLE 30 FOR THE PURPOSE OF REORGANIZING THE FEDERATED STATES OF MICRONESIA DEVELOPMENT BANK, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

~~The intent and purpose of the bill are expressed in the title.~~

If enacted into law, this bill will substantially restructure the FSM Development Bank, making it more autonomous. If the restructuring is carried out successfully, the Bank may become eligible to borrow money from international financial markets, will make loan decisions on a more objective basis based on the Nation's development needs, and will be in a position to make a more substantial contribution to the growth of the private sector.

I. Background

The bill was prompted by a study done by the Asian Development Bank completed almost two years ago. The study examined the internal operations of the Bank and concluded that the institution was plagued by inefficiencies. Part of the problem is that the FSM Development Bank is not really a bank, but a lending agency of the government. Banks are in the business of borrowing



NOVEMBER 05, 1993

RE: C.B. NO. 8-26

from various sources and then re-lending the borrowed money at some higher rate of interest to worthy commercial projects. In so doing, banks facilitate the flow of money from capital markets (savers and investors) to private sector businesses. A development bank differs from a commercial bank in the level of risk it is willing to tolerate. A development bank will often require less collateral and will loan to more innovative projects than a commercial lender. Nevertheless, because it lends money that it has itself borrowed, a development bank still must make loan decisions on a commercial basis, upon a showing that a project is viable, the collateral is adequate and the borrower is creditworthy. If it does not, the loans it makes will not be repaid, and the bank, in turn, will be unable to repay the money it has borrowed.

The FSMDB, on the other hand, obtains all of its funds from government appropriations, not from capital markets. It has no requirement to repay the appropriations and therefore is under little pressure to ensure that the loans it makes are viable. Further, the appropriations are determined in the political arena and political considerations necessarily influence the internal management of the Bank. For example, the Bank currently manages more than 12 accounts and subaccounts. Each one was created for a different purpose and each has its own set of guidelines and regulations. This has made it difficult, if not impossible, for the Bank to develop a coherent loan policy. The result has been a very high default rate, with little evidence that the Bank has made a meaningful contribution to economic growth.

The ADB study concluded that the FSMDB needed to make changes in both its internal operating procedures and its legal structure, before it would be in a position to borrow money from outside sources. In the two years since the study was conducted, the Bank has implemented many of the internal changes that were recommended and its financial position is improving. Passage of this bill is the next important step in putting the Bank on a sound financial footing.

The bill has been the subject of numerous hearings at the State and National levels. Written comments supporting the bill have been received from several States. Various drafts of the bill have been reviewed by ADB and the East-West Center. The final draft and the suggestions in this report reflect the comments that were received through this lengthy process.

## II. Main Features of the Bill

### **Mechanics of the Restructuring**

The FSMDB is currently a semi-autonomous agency of the National Government. If this bill passes, the Bank will become an independent corporation, owned and controlled by stockholders. Initially, the National Government will be the primary, and possibly the only, stockholder. The transition to a corporate structure will take place in the following manner:

NOVEMBER 25, 1993

RE: C.B. NO. 8-26

1. Funds created by Congressional appropriations and the Economic Development Loan Fund (EDLF) will be valued and converted into stock issued in the name of the National Government.

Every appropriation by the Congress to the Bank has been designated to a specific fund (e.g. "business development fund"). Each of these has a measurable value based on the amount of cash remaining in the fund, and the volume and quality of outstanding loans in the fund's portfolio. All of these funds and the EDLF will be valued by an independent appraiser. They will then be transferred to the Bank as capital and the National Government will be issued, in return, the appropriate number of shares of stock. The shares will be issued in the name of the Secretary of Finance as trustee for the National Government.

The Investment Development Fund will not be included among the funds converted into capital, as it was created through a specific grant from the U.S. Government and its operations are controlled by international agreements and separate legislation. The IDF will continue to be managed by the Bank in much the same manner as it is now (see section 136).

2. States will have an option of converting their holdings into stock.

The Bank currently manages a number of funds created through State appropriations. The States will have the option of having some or all of these funds valued and converted into stock in the name of the State which created the fund. If the State does not choose this option, the Bank may continue to manage the fund for the State, but may charge a fee to cover the cost of such administration (see section 136(2)).

3. Stockholders will meet and choose the Board of Directors.

Under the present law, Board members are selected by the President with the advice and consent of the Congress. If this law passes, the stockholders will select a new Board which will meet and adopt new bylaws. The new Board will be given considerable authority to operate the Bank according to commercial principles and the development needs of the Country (see sections 108 and 114).

#### **Make up of Board - qualifications of Board Members**

The new Board will consist of seven members, including the President of the Bank who will serve ex officio. All Board members will be selected by a majority vote of the stockholders. Members will serve for three-year staggered terms. The current Board will serve until a new Board is chosen (see section 114).

Board members must be persons experienced in the conduct of business, commerce, finance, banking, accounting, or development economics. These requirements are intentionally broad, and should not hamper the ability of the

NOVEMBER 05, 1993

RE: C.B. NO. 8-26

requirements are intentionally broad, and should not hamper the ability of the Bank to find qualified members. Whether a particular person meets these qualifications is a determination to be made by the stockholders that vote for the members (see section 115).

To sit on the Board, a person will not need to be a citizen of the FSM or a shareholder in the Bank. This provision was included in expectation that an outside institution that loans a considerable amount to the Bank may insist on having a representative on the Board in order to protect its interests (see section 114(1)).

#### **Board will adopt bylaws, manage and determine policy.**

One of the main purposes of this bill is to enable the Bank to manage its own activities with minimal political interference. Certain matters that are now determined by statute will be deregulated and decided as a matter of policy by the Board. For example, the Board will have the discretion to set interest rates for loans and to determine the length of grace periods, if any.

This type of flexibility is needed if the Bank is going to borrow from outside sources. The ADB and other international lending institutions make loans to development banks at market, or near-market rates. Before they will make such loans, they must be confident that the borrowing development bank will be able to charge a sufficiently high rate of interest on the loan it makes, to enable it to repay the money it has borrowed.

#### **Purchase of Shares by Private Individuals**

Under the bill, private citizens would be permitted to purchase shares in the Bank. However, because the Bank will concentrate on promoting development, it is unlikely that the Bank will earn a profit or distribute a dividend at any time in the foreseeable future. Therefore, there would be little reason for individuals to purchase shares.

#### **Foreign Ownership not Permitted**

Non-citizens will not be able to purchase shares in the Bank, even if they desire to. In order for the Bank to accept land as collateral for loans, it must retain the legal capacity to own land. The bill therefore prohibits any purchase of stock by any foreign person or entity (see section 137).

#### **Tax-exempt status**

Though the Bank will be structured like an independent corporation, it will, at least initially, be owned entirely by the State and National Governments, and it will be operating for the public benefit. The drafters therefore decided that the Bank should be exempt from all taxes. It is anticipated that the tax-exempt status will be periodically reviewed by the Congress. For so long as the Bank

NOVEMBER 25, 1993

RE: C.B. NO. 8-26

maintains its tax-exempt status, it will be prohibited from paying any dividend to its stockholders (see section 128).

### III. Concerns Expressed by State and National Leaders

This bill was the subject of numerous hearings at both the State and National levels. Many witnesses expressed concerns about particular features of the bill. The committee has considered all of the matters. Some, in the committee's view, were very well taken and require that changes be made to the bill.

#### **Make up of the Board - Lack of State Representation.**

Under the bill as introduced, all Board members would be picked by a vote of the stockholders. Under the initial restructuring, the National Government will hold more than 95% of the stock, and will have the ability to name all of the Board members. The Secretary of Finance will vote the shares of the National Government. There are no provisions in the bill that would require the Secretary to ensure that each State is fairly represented on the Board. It is conceivable that some States would not be represented at all. The committee has heard much testimony on this matter and is of the opinion that bill must be amended to address this problem. The committee is therefore offering an amendment which will require the Secretary, when voting the shares of the National Government, to do so in such a manner as to ensure representation on the Board by each State.

#### **Ability of Board Members to Obtain Loans**

Under the bill as introduced, Board members would not be prohibited from borrowing from the Bank. They would, however, be prevented from voting on any loan in which they had an interest (see section 125).

This is a change from the current law which forbids loans to Board members or their immediate families. Representatives of the Bank testified that they were concerned that many qualified business people would not be willing to serve on the Board if that would make them ineligible to obtain a loan. The committee is of the opinion that borrowing by Board members could lead to abuse, and could cause the public to lose confidence in the Bank. Therefore the committee recommends that the bill be amended to include a restriction on borrowing by Board members.

### IV Proposed Amendments

In accordance with the foregoing, and for the purpose of making technical changes, the committee recommends the following changes to C.B. No. 8-26:

NOVEMBER 05, 1993

RE: C.B. NO. 8-26

1. Page 21, line 9 - after "interest." insert the following:

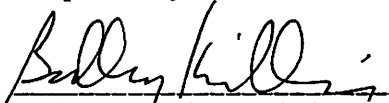
"No director or officer of the Bank shall be eligible to borrow money from or through the Bank, or to assume responsibility in whole or in part under a guarantee or indemnity or by the deposit of a security to the Bank in respect of a debt or obligation of a third party."

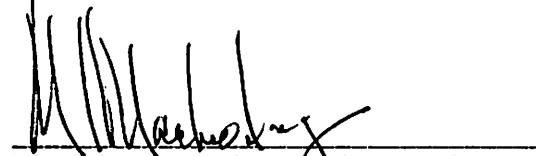
2. Page 28, line 3 - after "Bank." insert the following:

"The Secretary shall, through the management and voting of shares held in the name of the National Government, make every effort to ensure that at least one citizen from each State serves on the Board of Directors."

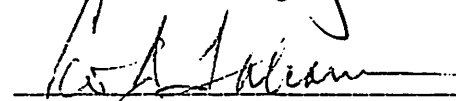
Your Committee on Resources and Development is therefore in accord with the intent and purpose of C.B. No. 8-26, as amended herein, and recommends its passage on First Reading and that it be placed on the Calendar for Second and Final Reading in the form attached hereto as C.B. No. 8-26, C.D.1.

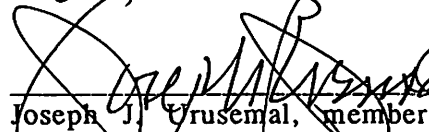
Respectfully submitted,

  
Redley Killion, chairman

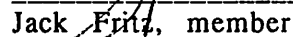
  
Moses Mackwelung, vice chairman

  
Wagner Lawrence, member

  
Leo A. Falcam, member

  
Joseph J. Crusemal, member

  
Nishima Yleizah, member

  
Jack Fritz, member