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of chapter 1 of title 30 of the Code of the Federated States of Micronesia, except section 122 thereof, are hereby repealed in their entirety.

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

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

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

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

5. Section 5. Title 30 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 102 of chapter 1 to read as follows:
"Section 102. Purpose. It is the intent of the Government of the Federated States of Micronesia to establish an independent financial institution operating under its own Board of Directors but conducting its activities within the framework of the National Government's general economic plans, policies and priorities."

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

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

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

"Section 104. Functions of the Bank.

(1) Subject to any existing limitation or limitations hereafter created, the Bank is authorized to engage in all banking functions that will assist in the economic advancement of the Federated States of Micronesia."
Microstates.

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

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

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

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

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

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

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

"Section 105. Powers of the Bank. In performing the functions authorized pursuant to section 104 of this
chapter, the Bank shall have and exercise all powers
normally exercised by a banking corporation, including
but not limited to the following:

(1) To adopt, alter and use a corporate seal;
(2) To adopt and amend bylaws governing the
conduct of its business and the exercise of its powers;
(3) To sue and be sued in its corporate name;
(4) To acquire in any lawful manner, real,
personal, or mixed property, either tangible or
intangible; to hold, maintain, use, and operate such
property; and to sell, lease, or otherwise dispose of
such property;
(5) To acquire in any mode and take over the whole
or any part of the business, property, good will and
liabilities of any other bank or banks;
(6) To act as agent of and as correspondent for
other banks;
(7) To make, issue, and circulate notes upon such
terms and subject to such provisions and conditions as
may be prescribed by the Board;
(8) To guarantee or become liable for the payment
of money or for the performance of any obligations, and
generally to carry on guarantee and indemnity business
of all kinds and to effect counter guarantees;
(9) To take and otherwise acquire and hold shares,
stocks, mortgages, bonds, obligations, securities, and
investments of all kinds;

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

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

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

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

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

(15) To give letters of credit on agents and
banking connections in any part of the world:

(16) To buy, sell, discount, rediscount, and hedge bills of exchange, promissory notes and treasury securities:

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

(18) To form or assist in forming any company for the purpose of carrying on any business which the Bank is authorized to carry on, or any other business which may seem conducive to any of the interests of the Bank, or to acquire by purchase or otherwise the whole or any part of the business, property, and liabilities, or the whole or any part of the shares or stock of any company carrying on or proposing to carry on any such business as aforesaid; to hold shares, stock, debentures, debenture stock, or any interest in any such company and to dispose of such shares, stock, debenture, debenture stock, or interest and to make or carry out arrangements for giving the Bank the entire or partial control and management or benefit of the business of any such company and to guarantee dividends and interest on shares, stock, debentures, debenture stock, mortgages, bonds, or securities of any such company:

(19) To issue corporate bonds for various periods
number, if any, appearing on the books.

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

(a) The name and address of each nominee;
(b) The principal occupation of each nominee;
(c) The name and address of the nominating shareholder; and
(d) The number of shares of capital stock of the Bank owned by the nominating shareholder."

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

"Section 109. Special shareholders meeting. Special meetings of the shareholders may be called for any purpose at any time by the Board or by any three or more shareholders owning, in the aggregate, not less than 25 percent of the issued stock of the Bank. Every such
special meeting, unless otherwise provided by law to the
contrary, shall be called by mailing a notice, postage
prepaid, stating the purpose of the meeting, not less
than 30 days prior to the date fixed for such meeting.
to each shareholder at his or her address appearing on
the books of the Bank. Alternatively, such notice may
be sent by fax, receipt confirmed by telephone at least
10 days prior to the date of the meeting, to a
shareholder at his or her fax number, if any, appearing
on the books of the Bank."

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

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

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

"Section 111. Quorum. A majority of the issued stock
of the Bank represented in person or by proxy shall
constitute a quorum at any meeting of shareholders,
unless otherwise provided by law; but less than a quorum
may adjourn any meeting, from time to time, and the
meeting may be held, as adjourned, without further
notice. A majority of the votes cast shall decide every
question or matter submitted to the shareholders at any
meeting, unless otherwise provided by law to the
contrary."

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

"Section 112. Voting rights; Cumulative voting.

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

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

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

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

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

Section 17. Title 30 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 114
of chapter 1 to read as follows:

"Section 114. **Board of Directors.**

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

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

(3) Until a new Board shall have been elected and qualified as provided in this chapter the Board in existence immediately prior to the time that the act establishing this chapter becomes law shall continue to
serve as the Board of Directors of the Bank, subject to
the same quorum standard as was in existence immediately
prior to said time."

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

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

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

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

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

"Section 116. Organizational meeting. Upon receipt of
the result of the election at the shareholders meeting,
the President of the Bank shall forthwith notify the
directors-elect of their election and of the time at
which they are required to meet at the office of the
Bank for the purpose of organizing the new Board. Such
meeting shall be held on the date of the election or as
soon thereafter as practicable, and, in any event, within 30 days thereof."

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

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

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

"Section 118. Special meetings. Special meetings of the Board may be called by the Chairman of the Board and shall be called at the request of two or more directors. The President shall give 10 days' written notice of any special meeting. Each member of the Board shall be given notice stating the time and place, by telegram, facsimile, letter, or personal delivery, of each such special meeting. Only matters set forth in the notice of special meeting shall be considered at such meeting."
Section 22. Title 30 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 119 of chapter 1 to read as follows:

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

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

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

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

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

(1) Chairman. The Chairman of the Board shall, if
present, preside at all meetings of the Board, and
exercise and perform such other powers and duties as may
from time to time be assigned by the Board.

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

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

"Section 122. Officers of the Bank. The officers of
the Bank shall consist of a President, a senior Vice
President, a Secretary/Treasurer (or a Secretary and a
Treasurer), and such other officers, including one or
more junior Vice Presidents, as may be specified in the
bylaws of the Bank. The President and senior Vice
President shall be appointed by and serve at the
pleasure of the Board. All other officers shall be
appointed and serve for such terms as may be specified
in the bylaws. The duties and responsibilities of the
President and Vice President(s) include but are not
limited to the following:
(1) **President.** Subject to the control of the Board, and to the extent delegated by the Board, the Chairman, the President shall be the chief executive officer of the Bank and shall have the general supervision, direction and control of the business and officers of the Bank. The President shall be delegated the duties and responsibilities of the day-to-day management and operation of the Bank. The President shall be an ex officio member of the Board, with full voting and other rights, except that the President may not hold the office of Chairman or Vice Chairman. The President shall have the general powers and duties of management usually vested in the office of the President of a corporation engaged in the banking business.

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

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

"Section 123. **Action by unanimous consent.** Any action
required or permitted to be taken by the shareholders or
the Board may be taken without a meeting thereof if all
the shareholders or directors, as appropriate, shall
individually and collectively consent in signed writing
to such action. Such written consent or consents shall
be filed with the minutes of the proceedings of the
shareholders or the Board, as appropriate, and such
action by written consent shall have the same force and
effect as a unanimous vote of such shareholders or
directors."

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

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

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

"Section 125. Acts affecting personal financial
interest. No director or officer of the Bank shall
participate personally and substantially in the making
of any decision relating to any application for a loan
or other commitment from or through the Bank in which,
to his knowledge, he, his spouse, child, close
relatives, partner, organization in which he or she is
serving as officer, director, trustee, partner, or
employee, or any person or organization with whom he is
negotiating or has any arrangement concerning
prospective employment has a financial interest."

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

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

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

"Section 127. Administration of funds. The Bank is
hereby authorized to administer such fund or funds as
may from time to time come into its possession and under
its management control. Except as may be more
particularly specified by law with respect to any
particular fund, the Bank shall charge a reasonable fee
to administer such funds and may, in the case of grant
funds, waive any such fee."
Section 31. Title 30 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 128
of chapter 1 to read as follows:
"Section 128. Tax exemption; No dividends.
(1) The Bank shall exist and operate solely for the
benefit of the public and shall be exempt from any taxes
or assessments on any of its property, operations, or
activities. It is anticipated, although not required,
that continuation of this tax exemption will be
periodically reviewed by the Congress of the Federated
States of Micronesia on its own motion or as requested
by the Bank.
(2) For so long as any part of the tax exemption
established in this section shall continue, the Bank
shall be prohibited from paying any dividend or making
any other distribution to its stockholders."
Section 32. Title 30 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 129
of chapter 1 to read as follows:
"Section 129. Debt of the Bank. Any debt or obligation
incurred by the Bank shall not be a debt or obligation
of the Government of the Federated States of Micronesia,
nor shall the Government of the Federated States of
Micronesia be responsible for any debt or obligation of
the Bank unless specifically authorized by statute."

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

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

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

"Section 131. Records and inspections.
(1) Records. The Bank shall maintain accurate and
correct accounts, books and records of its business and
properties. All such books, records and accounts shall
be kept at the principal place of business of the Bank,
or at such other place or places of business as may be
designated from time to time by the Board."
(2) Inspection of books and records. The books and records of the Bank shall be open to the directors for inspection from time to time upon 24 hours' notice to the Bank of such intent to inspect."

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

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

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

"Section 133. Contracts; How executed. The Board may authorize any officer, agent, or employee to enter into any contract or execute any instrument in the name of and on behalf of the Bank. Such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Bank by any contract or engagement, or to pledge its credit, or
to render it liable for any purpose or for any amount."

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

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

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

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

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

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

"Section 135. Certificates and transfers of shares.

(1) Certificates for shares. Certificates for shares shall be of such form and device as the Board may
designate and shall state the name of the record holder
of the shares represented thereby; its numbers; date of
issuance; the number of shares for which it is issued;
the par value, if any; a statement as to redemption or
conversion, if any; a statement of liens or restrictions
upon transfer or voting, if any; if the shares be
assessable, or, if assessments are collectible by
personal acting, a plain statement of such facts. Every
certificate for shares must be signed by the President
and a Vice President or by either the President or a
Vice President and a member of the Board of Directors.

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

(3) Lost or destroyed certificates. Any person
claiming a certificate of stock to be lost or destroyed
shall make an affidavit or affirmation of that fact and
advertise the same in such manner as the Board may
require, and shall if the Board so requires give the
Bank a bond of indemnity, in form and with one or more
sureties satisfactory to the Board, in an amount of up
to double the value of the stock represented by said
Section 39. Title 30 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 136 of chapter 1 to read as follows:

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

(1) It is hereby authorized that the Trust Territory Economic Development Loan Fund and all of the funds (except the Investment Development Fund) appropriated by the Congress of the Federated States of Micronesia which are currently administered by the Federated States of Micronesia Development Bank shall be, and the same hereby are, dedicated to purchase shares of stock in the Bank for the National Government of the Federated States of Micronesia. All cash and the entire portfolio of loans in said funds are hereby transferred to the Bank as capital in return for the issuance of certificates of shares of stock in the Bank in favor of the National Government of the Federated States of Micronesia. All shares of stock shall be issued to and in the name of the Secretary of the Department of Finance as title trustee for the National Government. The cash value of the loan portfolio
transferred by the National Government shall be
appraised by an independent appraiser prior to the
purchase of the stock in the Bank.

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

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

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

Section 41. Title 30 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 138
of chapter 1 to read as follows:

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

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

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

(3) For purposes of this section, a 'commitment' to 
a person or a project includes the current outstanding 
balance of any loan by the Bank to that person or for 
that project, the full remaining amount of exposure 
under any guarantee or letter of credit issued by the
Bank at the request of that person or for the benefit of that project, the original face amount of any equity investment made by the Bank in that person or project, and the amount of any undisbursed loan commitment issued to or for that person or project."

Section 42. 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: 5/14/93

Introduced by: [Signature]

Joseph J. Urusemal
(by request)
1. Measure as passed - proofread by: CV Date

2. Engrossed (typed) by: Adahe 12/16/31 12/20 Date

3. Engrossed Measure - proofread by: CV 12/20 Date

4. Engrossed Measure - received and released by: Date

5. Transmitted by Clerk: 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.
September 03, 1993

Honorable Redley Killion
Chairman,
R&D Committee
Congress of the Federated States of Micronesia
Pali’ kir, 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
WHEREAS, the proposed capitalization scheme for the Bank will provide the same with the necessary authority, the shareholders, the general investment committee, and the citizens' chances for investment opportunity, and the Bank's surplus and investment capability, thereby enhancing the Bank's ability to participate in the ownership and general management of States of Michigan, development banks; and among other things, for the capitalization of the Bank, the Code of the States of Michigan, by providing a further amendment to Title 0 of 3 States of Michigan; and 2 President of the Bank, before the Eighth Congress of the President of the Bank, the Office Code of the Michigan, for the Bank. WHEREAS, the Bank, under Title 10, has been introduced and is expressing full support of the Michigan State Legislature for the capitalization and reorganization of the Bank, Title 30 of the Office Code of the States of Michigan, Title 8-26, which seeks to authorize immediate passage of the proposed measure of the Bank to the Bank.
Senate concurring, that the Chuuk State Legislature hereby expresses its official support for passage of the above-referenced Congress of the Federated States of Micronesia Bill No. 8-26; and

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

Signed by: 

Misande K. Sos, Speaker of the Chuuk State Legislature

Date: Oct. 13, 1993

Attested:

Herter Sorim, Chief Clerk of the Chuuk State Legislature

Signed by: 

Roger S. Mori, President of the Senate of the Chuuk State Legislature

Date: October 13, 1993

Attested:

Datei Albert, Chief Clerk of the Senate of the Chuuk State Legislature

HISTORY: 

H.J.R.NO: 2-08; H.D1; S.D.1
H.S.C.R.NO: 1-6
S.S.C.R.NO: 2-57

INTRODUCER: OTOSHY O. BAELO (By Request)

ADOPTED: September 28, 1993
STANDING COMMITTEE REPORT NO. 8-83
NOVEMBER 65, 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 following:

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
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:
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 the present Board of 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
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
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:
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 Mäckwelung, vice chairman

Wagner, Lawrence, member

Leo A. Falcam, member

Joseph J. Orusenial, member

Nishima Yleizah, member

Jack Fritz, member