EIGHTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA
FIRST REGULAR SESSION, 1993

A BILL FOR AN ACT

To further amend title 32 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21, 5-54, 5-109, 5-134 and 6-36, by repealing section 211 in its entirety and by further amending sections 202, 209, 210, 213 and 214, as amended by Public Laws Nos. 5-21 and 5-134, to amend the Foreign-Investment Act to eliminate the power of the Secretary of Resources and Development to impose limitations on the issuance of foreign-investment permits; to require the Secretary of Resources and Development to obtain the approval of certain State authorities before issuing an interstate foreign-investment permit; and to require the President to approve foreign-investment permits before their issuance; by renumbering section 212 and sections 215 through 229; and for other purposes.

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

Section 1. Section 211 of title 32 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134, is hereby repealed in its entirety.

Section 2. Section 202 of title 32 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134, is hereby further amended to read as follows:

"Section 202. Definitions. When words defined in this section are used in this chapter, unless otherwise required by the context, the following definitions shall govern:

1. 'Applicant' means any individual or entity which has filed an application for a foreign-investment permit pursuant to this chapter.

2. 'Business' means any sole proprietorship, partnership, corporation, or any other association engaged in commerce.

3. 'Citizen' means any person or business not included in the definition of noncitizen contained in this chapter.

4. 'Licensee' means any noncitizen who has been issued a foreign-investment permit under this chapter, including agents or employees of the noncitizen.

5. 'Listed State' means any State of the Federated States of Micronesia which is listed in a foreign-investment permit application pursuant to section 205 of this chapter as a State in which the applicant desires to do business."
(46) 'Noncitizen' means any person who is not a citizen of the Federated States of Micronesia, and any business in which any interest is owned by a person who is not a citizen of the Federated States of Micronesia.

(57) 'President' means the President of the Federated States of Micronesia.

(68) 'Secretary' means the Secretary of Resources and Development of the Federated States of Micronesia.

(79) 'State authority' means any official or entity designated by a State of the Federated States of Micronesia to consider foreign-investment applications under this chapter and, failing such designation, means the Governor of a State.

(10) 'Unlisted State' means any State of the Federated States of Micronesia which is not listed in a foreign-investment permit application pursuant to section 205 of this chapter as a State in which the applicant desires to do business."

Section 3. Section 209 of title 32 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134, is hereby further amended to read as follows:

"Section 209. Application - State approval. (1) At the time the application is received by the Secretary, a copy of the application shall within 3 days be delivered to the State authority of each State."

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The Secretary shall deliver copies of any information which he obtains under section 208 of this chapter to the State authorities.

(2) The State authorities from unlisted States may examine the application and may make a timely recommendation as to the approval or disapproval of the application. The State authorities from unlisted States shall have thirty 45 days from receipt of the informational material from the Secretary to deliver recommendations to the Secretary.

(3) The State authorities from listed States shall examine and approve or disapprove the application immediately before its submission to the Secretary and President for final approval. The State authority from each listed State shall within 25 days of receipt of the application and immediately provide its reasons for approving or disapproving the application within 10 days of reaching its decision in a report which shall be delivered to the Secretary, the President and the applicant. The Secretary and President cannot approve a permit application allowing investment in a listed State unless the State authority from the listed State approves the application.

(4) The scope of all foreign-investment permits will
be limited to business activities in listed States which
have approved the subject application. The conduct of
business in unlisted States constitutes a violation of
section 229 of this chapter."

Section 4. Section 210 of title 32 of the Code of the Federated
States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134,
is hereby further amended to read as follows:

"Section 210. Application - Decision by Secretary.

(1) Prior to rendering a decision concerning the
application, the Secretary shall receive the information and
input called for in sections 208 and 209 of this chapter,
including approval of the application by the State agency(ies)
listed under listed States.

(2) Upon receipt of the information and input called for in sections 208 and 209 of this chapter,
of said approval of the said and the information and input
required under subsection (1) of this section or upon the expiration of the time set for the
submission of such input, whichever occurs first, the
Secretary shall, within an additional thirty days, decide
whether or not to grant the foreign-investment permit with
respect to some or all of the listed States that have approved
the application, based on all relevant factors, including:

(3)(1) the economic, social, or environmental need for
the business activity to be performed;

(¶42) the degree to which such activities will affect change in exports or imports;

(¶43) the extent to which such activities will deplete a nonrenewable natural resource, or will disturb the environmental balance or the conservation of renewable natural resources, or will pollute the atmosphere or water;

(¶44) the extent of participation by citizens at the outset in the ownership and management of the enterprise, and in the case of an applicant which is a corporation chartered outside the Federated States, the degree of willingness and specific plans to form a Federated States corporation in the future and to offer at least fifty-one percent of the ownership and capital to citizens;

(¶45) the willingness and specific plans of the applicant to give employment preference to citizens and to train citizens for positions in management and at other levels by instituting training programs;

(¶46) the extent to which the capital, managerial skills, and technical skills required for such an enterprise are available among the Federated States citizens at the current time or can be expected to be available in the near future;

(¶47) the extent to which an operation will contribute to the overall economic well-being of the Nation
and each State affected and the extent to which any interest, including economic, social, traditional, or environmental, of any State or the Nation may be affected;

(948) the extent to which the activity will contribute to the constitutional policy of making education, health care, and legal services available to the people of the Federated States of Micronesia; and

(999) the recommendations, if any, made by the State authorities from unlisted States."

Section 5. Section 213 of title 32 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134, is hereby further amended to read as follows:

"Section 2132. Application - Business lacking interstate or international character. If the Secretary determines that the applicant's business does not fall within any of the categories set out in section 206 of this chapter, the following procedure shall apply:

(1) Upon making the section 206 determination, the Secretary shall refer the foreign-investment permit appli-
cation to the State authority of the single listed State affected by the applicant's business.

(2) The State authority from the single listed State shall approve or disapprove the permit application, stating its reasons for approving or disapproving the application within 90 days of reaching its decision in a report
which shall be delivered to the Secretary, the President
and the applicant within forty-five days of the
receipt of the application by the State authority. The
Secretary shall promptly grant or deny the permit in
conformity with the action taken by the State authority
from the single listed State and shall immediately notify
the applicant and the President of the action taken. When
the State authority has approved the application, the
permit shall become effective 30 days after receipt by the
Secretary of such notice, unless within such 30 days,
the President, pursuant to section 213, has requested the
State authority to reconsider the application. The
Secretary may not grant a permit without first receiving
approval from the State authority from the single listed
State.

(3) If the State authority approves the application,

it may impose limitations on the issuance of the permit."

Section 6. Section 214 of title 32 of the Code of the Federated
States of Micronesia, as amended by Public Laws Nos. 5-21 and 5-134,
is hereby further amended to read as follows:

"Section 214213. President's action on foreign-investment
permits.

(1) Within twenty days of receipt of notice of a
permit action taken by the Secretary, the President
shall

The Secretary may review the decision of the Secretary if he determines that the action taken would adversely affect a compelling National interest relating to foreign affairs or to the general public welfare, the President may:

(a) if the application is for a business with an interstate or international character, reverse the decision of the Secretary;

(b) if the application is for a business lacking an interstate or international character, request the authority of the single listed State to reconsider the application, providing such information as the President deems appropriate. Such State authority shall then have 10 days to reconsider its original decision. The decision made by the State authority in response to the President’s request shall be final. If the State authority takes no action within 10 days of receiving the President’s request, the original decision of the State authority becomes final.

(2) If the President takes no action within the prescribed time limits, the Secretary’s action stands. No partial application may be granted without first receiving approval of the President.

(3) If the President reverses the action taken by the Secretary, he shall notify the Secretary, the applicant,
and the State authorities by certified mail of his decision
and the reasons for the decision.

"[Upon the receipt by the Secretary to final
until the requirements of this section have been met"

Section 7. Sections 212, 215, 216, 217, 218, 219, 220, 221,
222, 223, 224, 225, 226, 227, 228 and 229 of title 32 of the Code of
the Federated States of Micronesia are hereby renumbered as sections
211, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226,
227 and 228, respectively.

Section 8. 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: May 21, 1993
Introduced by: /s/ Moses Mackwelung
Moses T. Mackwelung