A BILL FOR AN ACT

To appropriate the sum of $7,000,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1995, authorize future appropriations of up to an additional $12,000,000, establish loan terms and conditions, create certain set-off rights in the National Government, amend section 921 of title 33 of the Code of the Federated States of Micronesia, and make certain other provisions, all for the purpose of lending money to the State of Chuuk and assuring repayment of that loan, and for other purposes.

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

Section 1. Short title. This act is known and may be cited as the "State Financial Recovery Loan Act."

Section 2. Purpose. The purpose of this act is to establish a mechanism whereby the National Government of the Federated States of Micronesia (the "National Government") may loan money to an insolvent state in order to assist that state in making a financial recovery. The first such loan or series of loans is to the State of Chuuk (the "State") but the National Government hereby states its policy and intention to provide such loan assistance to other states of the Federated States of Micronesia ("FSM") when, if, and in the manner deemed appropriate in the future.

Section 3. Appropriation for initial loan. The sum of $7,000,000, or so much thereof as may be necessary, is hereby appropriated from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1995, for the purpose of funding a loan from the National Government to the State on terms hereinafter specified.

Section 4. Authorization for subsequent loans. The additional sum of $12,000,000 is hereby authorized to be appropriated from the General Fund of the Federated States of Micronesia in two or more future fiscal years for the purpose of funding two or more additional loans to the State on terms to be specified at the time such further funds may be appropriated.

Section 5. Terms of initial loan. The initial loan shall
be on the terms specified in the draft Loan Agreement between
the National Government as Lender and the State as Borrower, a
copy of which is appended hereto, as those terms may be varied
by the allottee; provided, however, that further approval of
Congress shall be required for any variation which increases the
loan principal, decreases the interest rate, or extends the
repayment terms.

Section 6. Conditions to funding of the initial loan.
Notwithstanding any other provision of this act, no funds shall
be advanced to the State until the allottee shall have
determined to his or her satisfaction that the State has
substantially implemented numbers 1, 2, 4, and 5, and reasonably
begun to implement number 3, of the five recommended actions of
the Joint Task Force on Restructuring and Reform set forth in a
Memorandum of Understanding signed on June 30, 1995, by the
President of the FSM, Speaker of the Congress of the FSM,
Governor of Chuuk, President of Chuuk Senate, and Speaker of the
Chuuk House (the "MOU"), which recommendations are as follows:
"first, an immediate, across-the-board 20% payroll cut; second,
sales tax reforms, including an increase of the sales tax rate
from 3% to 5%, application to a broader range of goods including
raw materials, and a luxury tax rate of 10%; third, termination
of government financing of CUC employees; fourth, imposition of
a strict travel freeze for the remainder of FY95; and fifth,
imposition of a strict hiring freeze by State government and
1 Authorities."

2 Section 7. Payments. Funds received from or applied for
3 the benefit of the State in payment of principal, interest, or
4 any other obligation of the State under the initial loan shall
5 be deposited in the General Fund of the Federated States of
6 Micronesia. Such funds shall not be available for further
7 lending to the State except pursuant to a new appropriation.
8
9 Section 8. Technical Assistance. The executive branch of
10 the National Government is authorized and encouraged to provide
11 to the State such technical assistance as is called for under
12 the MOU referred to in section 6 of this act. The Congress
13 shall look favorably and promptly upon reasonable requests for
14 funds with which to accomplish such technical assistance.
15
16 Section 9. Set-off rights of the National Government.
17 (1) Notwithstanding any law to the contrary, if any
18 payment required to be made by a state pursuant to the terms of
19 a loan from the National Government is not made when due, the
20 National Government shall be entitled to exercise any or all of
21 the following rights of set-off:
22 (a) The National Government may withhold and apply
23 to the payment of said delinquency any funds which it owes and
24 would otherwise be required to pay to the state without
25 previously or subsequently seeking or obtaining any judicial
26 approval of such action;
27 (b) The National Government, without previously
seeking or obtaining any judicial approval of such action, may
withhold for possible future application to the payment of said
delinquency any funds which it owes and would otherwise be
required to pay to the state, provided that such withholding
shall cease and the funds so withheld shall be promptly paid to
the state if, within sixty days after the date the withheld
funds were required to be paid to the state, legal action has
not been commenced in the FSM Supreme Court to seek judicial
determination of the rights of the state and National Government
to the funds. If such legal action is timely commenced, the
funds withheld shall be disposed of as directed by the Court;
and

(c) The National Government may withhold and apply
to said delinquency any funds which it owes and would otherwise
be required to pay to the state to the extent authorized in
advance to do so by the FSM Supreme Court.

(2) Funds subject to set-off under this section are
limited to the state's share of National Government tax receipts
and the state's share of any funds received from the United
States under section 211 or section 217 of the Compact of Free
Association. Funds are "required to be paid to a state" for
purposes of this section whenever they must be disbursed,
remitted, credited, or otherwise transferred to the account and
for the benefit of the state, whether through cash, check, wire
transfer, book entry, or other means.
(3) Funds withheld pursuant to this section shall be
invested by the Secretary of Finance in good faith in the same
manner as other National Government funds and any net investment
gains or losses shall accrue to or be borne by the party
ultimately entitled to receive such funds. Unless a withholding
or application was both wrongful and in bad faith, the state
shall not be entitled to any recovery of damages or interest,
whether for the period before or after judgment, beyond return
of the amount wrongfully withheld as adjusted by such net
investment gains or losses.

Section 10. Section 921 of title 33 of the Code of the
Federated States of Micronesia is hereby amended to read as
follows:

"Section 921. Application of subchapter. This
subchapter shall apply to any agreement, regardless of
its form, which is intended to give rights in personal
property, including houses on land not owned
individually or entirely by the party or parties
purporting to give an interest in the house, as security
for the performance of any obligation. Such agreements
include, among others, pledges, conditional sales
agreements, chattel mortgages, and leases under which
ownership of personal property is to pass upon
completion of the terms of the lease. Notwithstanding
the foregoing, this subchapter shall not apply to any
agreement creating rights in intangible personal
property as security for the performance of any
obligation under any loan from the National Government
to a State of the Federated States of Micronesia."

Section 11. All funds appropriated by this act shall be
allotted, managed, administered, and accounted for in accordance
with applicable law, including, but not limited to, the
Financial Management Act of 1979. The allottee shall be the
President or his designee. The allottee shall be responsible
for ensuring that these funds, or so much thereof as may be
necessary, are used solely for the purpose specified in this
act, and that no obligations are incurred in excess of the sum
appropriated. The authority of the allottee to obligate funds
appropriated by this act shall lapse as of September 30, 1996.

Section 12. 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: 8/21/95

Introduced by: Joseph J. Urusmal
(by request)
NINTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA
FIRST SPECIAL SESSION, 1995

A BILL FOR AN ACT

To appropriate the sum of $7,000,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1995, authorize future appropriations of up to an additional $12,000,000, establish loan terms and conditions, create certain set-off rights in the National Government, amend section 921 of title 33 of the Code of the Federated States of Micronesia, and make certain other provisions, all for the purpose of lending money to the State of Chuuk and assuring repayment of that loan, and for other purposes.

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

Section 1. Short title. This act is known and may be cited as the "State Financial Recovery Loan Act."

Section 2. Purpose. The purpose of this act is to establish a mechanism whereby the National Government of the Federated States of Micronesia (the "National Government") may loan money to an insolvent state in order to assist that state in making a financial recovery. The first such loan or series of loans is to the State of Chuuk (the "State") but the National Government hereby states its policy and intention to provide such loan assistance to other states of the Federated States of Micronesia ("FSM") when, if, and in the manner deemed appropriate in the future.

Section 3. Appropriation for initial loan. The sum of $7,000,000, or so much thereof as may be necessary, is hereby appropriated from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1995, for the purpose of funding a loan from the National Government to the State on terms hereinafter specified.

Section 4. Authorization for subsequent loans. The additional sum of $12,000,000 is hereby authorized to be appropriated from the General Fund of the Federated States of Micronesia in two or more future fiscal years for the purpose of funding two or more additional loans to the State on terms to be specified at the time such further funds may be appropriated.

Section 5. Terms of initial loan. The initial loan shall be on the terms specified in the draft Loan Agreement between the National Government as Lender and the State as Borrower, a copy of which is appended hereto, as those terms may be varied by the allottee; provided, however, that further approval of Congress shall be required for any variation which increases the
loan principal, decreases the interest rate, or extends the repayment terms.

Section 6. Conditions to funding of the initial loan. Notwithstanding any
other provision of this act, no funds shall be advanced to the State until the
allottee shall have determined to his or her satisfaction that the State has
substantially implemented numbers 1, 2, 4, and 6, "Office of the Public Auditor
for the Federated States of Micronesia has certified to the allottee that the
State has implemented numbers 1, 4, and 5, substantially implemented number
2," and reasonably begun to implement number 3, of the five recommended
actions of the Joint Task Force on Restructuring and Reform set forth in a
Memorandum of Understanding signed on June 30, 1995, by the President of
the FSM, Speaker of the Congress of the FSM, Governor of Chuuk, President of
Chuuk Senate, and Speaker of the Chuuk House (the "MOU"), which
recommendations are as follows: "first, an immediate, across-the-board 20%
payroll cut; second, sales tax reforms, including an increase of the sales tax
rate from 3% to 5%, application to a broader range of goods including raw
materials, and a luxury tax rate of 10%; third, termination of government
financing of CUC employees; fourth, imposition of a strict travel freeze for the
remainder of FY95; and fifth, imposition of a strict hiring freeze by State
government and Authorities."

Section 7. Payments. Funds received from or applied for the benefit of
the State in payment of principal, interest, or any other obligation of the State
under the initial loan shall be deposited in the General Fund of the Federated
States of Micronesia. Such funds shall not be available for further lending to
the State except pursuant to a new appropriation.

Section 8. Technical Assistance. The executive branch of the National
Government is authorized and encouraged to provide to the State such
technical assistance as is called for under the MOU referred to in section 6 of
this act. The Congress shall look favorably and promptly upon reasonable
requests for funds with which to accomplish such technical assistance.

Section 9. Set-off rights of the National Government.

(1) Notwithstanding any law to the contrary, if any payment
required to be made by a state pursuant to the terms of a loan from the
National Government is not made when due, the National Government shall be
entitled to exercise any or all of the following rights of set-off:

(a) The National Government may withhold and apply to
the payment of said delinquency any funds which it owes and would otherwise
be required to pay to the state without previously or subsequently seeking or
obtaining any judicial approval of such action;

(b) The National Government, without previously
seeking or obtaining any judicial approval of such action, may withhold for
possible future application to the payment of said delinquency any funds which
it owes and would otherwise be required to pay to the state, provided that
such withholding shall cease and the funds so withheld shall be
promptly paid to the state if, within sixty days after the date the withheld
funds were required to be paid to the state, legal action has not been
commenced in the FSM Supreme Court to seek judicial determination of the
rights of the state and National Government to the funds. If such legal action
is timely commenced, the funds withheld shall be disposed of as directed by the
Court; and

(c) The National Government may withhold and apply to
said delinquency any funds which it owes and would otherwise be required to
pay to the state to the extent authorized in advance to do so by the FSM
Supreme Court.

(2) Funds subject to set-off under this section are limited to the
state's share of National Government tax receipts and the state's share of any
funds received from the United States under section 211 or section 217 of the
Compact of Free Association. Funds are "required to be paid to a state" for
purposes of this section whenever they must be disbursed, remitted, credited,
or otherwise transferred to the account and for the benefit of the state,
whether through cash, check, wire transfer, book entry, or other means.

(3) Funds withheld pursuant to this section shall be invested by
the Secretary of Finance in good faith in the same manner as other National
Government funds and any net investment gains or losses shall accrue to or be
borne by the party ultimately entitled to receive such funds. Unless a
withholding or application was both wrongful and in bad faith, the state shall
not be entitled to any recovery of damages or interest, whether for the period
before or after judgment, beyond return of the amount wrongfully withheld as
adjusted by such net investment gains or losses.

Section 10. Section 921 of title 33 of the Code of the Federated States
of Micronesia is hereby amended to read as follows:

"Section 921. Application of subchapter. This subchapter shall
apply to any agreement, regardless of its form, which is intended to give rights
in personal property, including houses on land not owned individually or entirely
by the party or parties purporting to give an interest in the house, as security
for the performance of any obligation. Such agreements include, among
others, pledges, conditional sales agreements, chattel mortgages, and leases
under which ownership of personal property is to pass upon completion of the
terms of the lease. Notwithstanding the foregoing, this subchapter shall not
apply to any agreement creating rights in intangible personal property as
security for the performance of any obligation under any loan from the National
Government to a State of the Federated States of Micronesia."

Section 11. All funds appropriated by this act shall be allotted,
managed, administered, and accounted for in accordance with applicable law,
including, but not limited to, the Financial Management Act of 1979. The
allottee shall be the President or his designee. The allottee shall be responsible
for ensuring that these funds, or so much thereof as may be necessary, are
used solely for the purpose specified in this act, and that no obligations are
incurred in excess of the sum appropriated. The authority of the allottee to
obligate funds appropriated by this act shall lapse as of September 30, 1996.

Section 12. 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: ___________  Introduced by: ____________________________

Joseph J. Urusemal
(by request)