

A BILL FOR AN ACT

To create a mechanism whereby member States of the Federated States of Micronesia may borrow funds from the National Government of the Federated States of Micronesia, and for other purposes.

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

1           Section 1. Short title. This act shall be known and may be cited as the  
2 "State Financial Assistance Act."

3           Section 2. Purpose. The purpose of this act is to establish a mechanism  
4 whereby a State or States may borrow funds from the National Government of  
5 the Federated States of Micronesia (the "National Government").

6           Section 3. Terms of loan. The terms of any loan shall be specified in a  
7 Loan Agreement between the National Government as Lender and the borrowing  
8 State as Borrower, a copy of which shall be appended to the Congressional Bill  
9 and Public Law appropriating funds for any loan. After Congressional approval,  
10 the terms of any loan may be varied by the parties; provided, however, that  
11 further approval of Congress shall be required for any variation which increases  
12 the loan principal, decreases the interest rate, reduces the collateral, or extends  
13 the repayment terms.

14           Section 4. Payments. Funds received from or applied for the benefit of  
15 the State in payment of principal, interest, or any other obligation of the State  
16 under a loan shall be deposited in the General Fund of the Federated States of  
17 Micronesia. Such funds shall not be available for further lending to the State  
18 except pursuant to a new appropriation.

19           Section 5. Set-off rights of the National Government.

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

24           (a) The National Government may withhold and apply to  
25 the payment of said delinquency any funds which it owes and would otherwise

1 be required to pay to the State without previously or subsequently seeking or  
2 obtaining any judicial approval of such action;

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

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

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

24 (3) Funds withheld pursuant to this section shall be invested by  
25 the Secretary of Finance in good faith in the same manner as other National

1 Government funds and any net investment gains or losses shall accrue to or be  
2 borne by the party ultimately entitled to receive such funds. Unless a  
3 withholding or application was both wrongful and in bad faith, the State shall  
4 not be entitled to any recovery of damages or interest, whether for the period  
5 before or after judgment, beyond return of the amount wrongfully withheld as  
6 adjusted by such net investment gains or losses.

7 Section 6. Initiation of Borrowing.

8 (1) The Governor of a State shall initiate a borrowing by  
9 submitting to the President of the Federated States of Micronesia a loan  
10 request, which loan request shall include a brief explanation of the reason for the  
11 request including the amount of funds requested, the proposed uses of all  
12 borrowed funds, and the sources of security for the loan (collectively the "Loan  
13 Request").

14 (2) Upon receiving a Loan Request, the President shall promptly  
15 schedule and convene a meeting, or series of meetings, between representatives  
16 of the borrowing State and the National Government wherein the parties shall  
17 determine the details of the borrowing including, but not limited to, the amount  
18 of funds requested, the type of loan, the interest rate, the collateral for the  
19 loan, and the repayment schedule, which information shall be conveyed to the  
20 offices of the Attorney General and Secretary of Finance for the Federated  
21 States of Micronesia.

22 (3) Upon receiving notification of the amount of funds requested  
23 and the collateral for the loan, the Secretary of Finance for the Federated  
24 States of Micronesia shall promptly:

25 (a) Determine whether sufficient funds are available in the

1 General Fund of the Federated States of Micronesia to fund the requested loan  
2 amount;

3 (b) Determine whether the collateral offered by the  
4 requesting State is sufficient to repay the entire amount of the loan, including  
5 principal and interest; and

6 (c) Convey to the Office of the President and Attorney  
7 General for the Federated States of Micronesia a statement certifying that  
8 items (3)(a) and (3)(b) herein have or have not been satisfied (the  
9 "Certification").

10 (4) If the Certification indicates that items (3)(a) and (3)(b) have  
11 been satisfied, the Attorney General shall prepare all necessary documents  
12 including, but not limited to, a loan agreement in substantially the form included  
13 in section 7 herein and legislation appropriating the loan amount, which  
14 documents shall be conveyed to the Office of the President for transmission to  
15 the Congress of the Federated States of Micronesia.

16 Section 7. Sample Loan Agreement.

17 (1) Basic Terms. The National Government of the Federated  
18 States of Micronesia ("Lender") hereby agrees to loan to \_\_\_\_\_ State  
19 ("Borrower"), on the terms and conditions hereinafter contained, in one or more  
20 drawdowns before \_\_\_\_\_, the sum of up to \_\_\_\_\_.  
21 Borrower hereby promises to repay to Lender, without setoff or deduction of  
22 any sort, all principal sums advanced hereunder, together with interest from the  
23 date(s) of advance, on or before the payment dates hereinafter specified.  
24 Notwithstanding the provisions hereinafter contained for securing repayment,  
25 the obligations of Borrower under this agreement are intended to be general

1 obligations of Borrower, backed by Borrower's full faith and credit.

2 (2) Interest Rate. Before maturity the interest rate shall be  
3 \_\_\_\_\_% per annum simple interest. After maturity, whether by acceleration or  
4 otherwise, the interest rate shall be \_\_\_\_\_% per annum simple interest applied to  
5 the past due principal, interest, and other amounts due hereunder. A sum is  
6 overdue if not paid on or before the tenth day after the due date.

7 (3) Payment Dates. Payments shall be due each January 1, April  
8 1, July 1, and October 1, to and including the final payment date of July 1, 2001.  
9 Any principal advanced hereunder shall be repaid in equal principal installments,  
10 plus accrued interest on the unpaid principal balance, on each payment date  
11 beginning with the first payment date that falls at least 30 days after the  
12 drawdown date and including every payment date thereafter to and including  
13 the final payment date. The repayment schedule shall be calculated separately  
14 for each separate drawdown of principal, and the total payment due on any  
15 payment date shall be the sum of the installments due on that date with  
16 respect to all of the previous drawdowns. All amounts due or to become due  
17 hereunder, for whatever reason, shall be paid, unless sooner paid, on the final  
18 payment date of July 1, 2001.

19 (4) Drawdown Conditions. Funds drawn down hereunder shall be  
20 transferred to Borrower's treasury for appropriation, allotment, obligation, and  
21 expenditure in accordance with Borrower's generally applicable laws, but only  
22 for the purposes of \_\_\_\_\_. Use for any other purpose  
23 shall be an act of default hereunder. Lender shall have the right to place one or  
24 more agents of Lender within the offices of Borrower for the purpose of  
25 monitoring the use of funds. Borrower shall take all reasonable steps toward

1 accommodating any agent and providing requested access to data.

2 (5) Security. As security for the repayment of its obligations  
3 hereunder, Borrower hereby irrevocably and absolutely assigns and transfers to  
4 Lender all moneys and rights to payment now due or which may hereafter  
5 become due to Borrower from Lender or from the United States of America  
6 ("USA") through Lender by reason of (a) current account block grants under  
7 section 211 of the Compact of Free Association between the Federated States  
8 of Micronesia ("FSM") and the USA, together with related agreements and laws  
9 (collectively the "Compact"), (b) the portion of Compact section 217 inflation  
10 adjustments which may be used for current account purposes, and (c)  
11 Borrower's share of Lender's tax revenues. So long as Borrower is not in  
12 default hereunder, Lender agrees to pay said security to Borrower in the normal  
13 course except to the extent that retention is deemed necessary by Lender for  
14 the purpose of meeting payment obligations then due or about to become due  
15 hereunder. Funds shall not be retained from category (c) above while funds in  
16 (a) and (b) remain currently available, and funds shall not be retained from  
17 category (b) while funds from (a) remain currently available. Obligations due  
18 hereunder may be paid directly out of the security without need for notice,  
19 foreclosure, legal proceedings, or any other action. Borrower represents and  
20 warrants that the security rights hereby granted are not subject to any prior  
21 grant and that they shall not, without the prior written approval of Lender, be  
22 subjected to any future grant to any person or entity except Lender.

23 (6) Waivers, Etc. In connection with the foregoing grant of  
24 security, and in order further to assure to Lender the benefits thereof to the  
25 maximum extent possible, Borrower hereby waives any and all rights it may now

1 or hereafter have under the FSM Constitution, FSM statutes, agreements  
2 between governments of the FSM, general principles of law and equity, or  
3 otherwise to obtain, demand, or sue for any of the security described above to  
4 the extent retained by Lender or applied to the obligations of this agreement.  
5 Whenever Lender may request, Borrower shall, in writing and with full legislative  
6 approval, reconfirm and regrant to Lender the security rights described in the  
7 prior paragraph or take any other action deemed necessary or convenient by  
8 Lender to facilitate its access to the security for prompt and full payment of  
9 Borrower's obligations hereunder.

10 (7) Conditions to Effectiveness of the Agreement. This agreement  
11 shall not be effective unless and until it has been approved by the Congress of  
12 Lender and the legislature of Borrower. The national legislation must come first  
13 and may be general or specific in nature. Any additional terms or conditions  
14 contained in the national legislation affecting the rights or obligations of Lender  
15 or Borrower shall be deemed incorporated herein automatically as though set  
16 forth in full herein. The state legislation must refer to this Loan Agreement  
17 specifically, approve it (as it may have been varied by the authorizing national  
18 legislation), and appropriate, allot, and direct the obligation of the security.  
19 Before Lender makes the first disbursement hereunder, Lender must have  
20 received and be satisfied with the state legislation, together with opinions of  
21 Borrower's Attorney General and Legislative Counsel that all necessary action  
22 has been taken to authorize the entering into and performance of this  
23 agreement and that this agreement is fully binding upon Borrower in accordance  
24 with its terms.

25 (8) Future Loans: Modifications. Any additional loans to Borrower

1 may, but need not, be accomplished by amendment of this agreement. Such an  
2 amendment, and any other amendment, of this agreement shall not be effective  
3 unless in writing, signed by the parties, and authorized by both the executive  
4 and legislative branches of each party.

5 (9) Miscellaneous Provisions.

6 (a) Borrower shall not designate less than 60% of its  
7 annual Compact section 211 and 217 funds as current account.

8 (b) Any payment received by Lender shall be credited first  
9 to amounts (if any) other than interest and principal due hereunder, then to  
10 interest, and finally to principal.

11 (c) If any payment is not made when due or any other  
12 obligation under this agreement is not timely met, Borrower shall be in default  
13 hereunder and Lender may take any remedial action or combination of actions  
14 available to it by law or this agreement, including but not limited to declaring the  
15 entire indebtedness to be immediately due and payable.

16 (d) Any costs of any sort incurred by Lender in enforcing  
17 this agreement, including but not limited to attorney's fees, shall be added to  
18 the indebtedness hereof and shall be payable immediately upon notice and  
19 demand from Lender to Borrower.

20 (e) Each party shall appoint and maintain a representative  
21 for purposes of giving and receiving official notices hereunder. Until further  
22 notice, Lender's representative is:

23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_



WJH

C.B. NO. 9-114

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Fax: \_\_\_\_\_

Until further notice, Borrower's representative is:

\_\_\_\_\_

Fax: \_\_\_\_\_

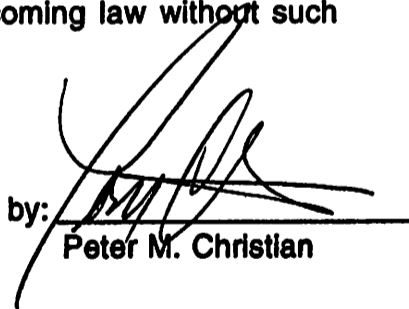
Notices shall be given in a writing hand delivered, faxed, or mailed to the recipient. Hand delivered notices are deemed given when delivered. Faxed notices are deemed given when transmission is completed to the fax number shown above. Mailed notices are deemed given on the eighth day after the date such notice is deposited in the FSM mail, postage prepaid, and addressed to the recipient at the address set forth above.

(f) If any provision of this agreement is declared to be invalid, unenforceable, or void, said provision shall be deemed stricken from this agreement and the remainder of this agreement shall have the same force and effect as if such stricken provision had never been included herein.

(g) No failure or delay on Lender's part in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, or any abandonment or discontinuance of steps to enforce such a right, preclude any other further exercise thereof or the exercise of any other rights.

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: 11-16-95

Introduced by:   
Peter M. Christian