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NINTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FOURTH REGULAR SESSION, 1996

C. B. NO. 9-266

A BILL FOR AN ACT

To establish a mechanism whereby the National Government of the Federated States of Micronesia may loan money to a State facing financial crisis or insolvency in order to assist that State in making a financial recovery; to appropriate the sum of \$7,500,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1997, to establish set-off rights for the National Government, to 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 \$5,000,000 to the State of Chuuk, \$2,500,000 to the State of Pohnpei, and assuring repayment of those loans, and for other purposes.

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

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

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

12 Section 3. Appropriation for initial loans. The sum of \$7,500,000, or so
13 much thereof as may be necessary, is hereby appropriated from the General
14 Fund of the Federated States of Micronesia for the fiscal year ending
15 September 30, 1997, for the purpose of funding loans from the National
16 Government to Chuuk State and Pohnpei State on terms hereinafter specified.

17 Section 4. Terms of loans. The loans shall be on the terms specified in
18 the Loan Agreements between the National Government as Lender and each of
19 the State of Chuuk and the State of Pohnpei as Borrowers, a copy of each of
20 which is appended hereto, as those terms may be varied by the allottees;
21 provided, however, that further approval of Congress shall be required for any
22 variation which increases the loan principal, decreases the interest rate,
23 extends the repayment terms, or which might alter or change the Borrowers'
24 assignment of Compact funds or the conditions the Borrowers must meet to
25 qualify to receive the funds as set forth in section 6 of this act.

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

18 Section 6. Payments. Funds received from or applied for the benefit of
19 the State in payment of principal, interest, or any other obligation of the State
20 under the loan shall be deposited in the General Fund of the Federated States
21 of Micronesia. Such funds shall not be available for further lending to the State
22 except pursuant to a new appropriation.

23 Section 7. Technical assistance. The executive branch of the National
24 Government is authorized to provide to the State such technical assistance as
25 is called for under the MOU referred to in section 6 of this act. The Congress

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1 shall promptly review reasonable requests for funds with which to accomplish
2 such technical assistance.

3 Section 8. Set-off rights of the National Government.

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

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

19 (b) The National Government may withhold and apply to
20 any delinquency any funds which it owes and would otherwise be required to
21 pay to the State to the extent authorized in advance to do so by the FSM
22 Supreme Court.

23 (2) Funds subject to set-off under this section are limited to the
24 State's share of National Government tax receipts and the State's share of
25 any funds received from the United States under section 211 or section 217 of

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1 the Compact of Free Association. Funds are "required to be paid to a State"
2 for purposes of this section whenever they must be disbursed, remitted,
3 credited, or otherwise transferred to the account and for the benefit of the
4 State, whether through cash, check, wire transfer, book entry, or other means.

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

13 Section 9. Section 921 of title 33 of the Code of the Federated States
14 of Micronesia is hereby amended to read as follows:

15 "Section 921. Application of subchapter. This subchapter shall
16 apply to any agreement, regardless of its form, which is intended
17 to give rights in personal property, including houses on land not
18 owned individually or entirely by the party or parties purporting to
19 give an interest in the house, as security for the performance of
20 any obligation. Such agreements include, among others, pledges,
21 conditional sales agreements, chattel mortgages, and leases
22 under which ownership of personal property is to pass upon
23 completion of the terms of the lease. Notwithstanding the
24 foregoing, this subchapter shall not apply to any agreement
25 creating rights in intangible personal property as security for the

1 performance of any obligation under any loan from the National
2 Government to a State of the Federated States of Micronesia."

3 Section 10. All funds appropriated by this act shall be allotted,
4 managed, administered, and accounted for in accordance with applicable law,
5 including, but not limited to, the Financial Management Act of 1979. The
6 allottee shall be the President of the Federated States of Micronesia or his
7 designee. The allottee shall be responsible for ensuring that these funds, or so
8 much thereof as may be necessary, are used solely for the purpose specified in
9 this act, and that no obligations are incurred in excess of the sum
10 appropriated. The authority of the allottee to obligate funds appropriated by
11 this act shall lapse as of September 30, 1998.

12 Section 11. This act shall become law upon approval by the President of
13 the Federated States of Micronesia or upon its becoming law without such
14 approval.

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16 Date: October 31, 1996

Introduced by: Redley Kifion
Redley Kifion

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