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A BILL FOR AN ACT

To amend title 33 of the Code of the Federated States of Micronesia, by amending section 921 and by further amending title 55 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 14, section 1401, for the purpose of enhancing the ability of the National Government to enforce repayment of any loan it may make to a State, and for other purposes.

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

1 Section 1. Section 921 of title 33 of the Code of the  
2 Federated States of Micronesia is hereby amended to read as  
3 follows:

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

20 Section 2. Title 55 of the Code of the Federated States of  
21 Micronesia, as amended, is hereby further amended by the  
22 addition of a new chapter 14 entitled "Loans to States".

23 Section 3. Title 55 of the Code of the Federated States of  
24 Micronesia, as amended, is hereby further amended by addition of  
25 a new section 1401 to read as follows:

1           "Section 1401. Set-off rights of the National  
2           Government.

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

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

14                   (b) The National Government, without  
15           previously seeking or obtaining any judicial approval of  
16           such action, may withhold for possible future  
17           application to the payment of said delinquency any funds  
18           which it owes and would otherwise be required to pay to  
19           the state, provided that such withholding shall cease  
20           and the funds so withheld shall be promptly paid to the  
21           state if, within sixty days after the date the withheld  
22           funds were required to be paid to the state, legal  
23           action has not been commenced in the FSM<sup>o</sup> Supreme Court  
24           to seek judicial determination of the rights of the  
25           state and National Government to the funds. If such

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1 legal action is timely commenced, the funds withheld  
2 shall be disposed of as directed by the Court; and

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

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

18 (3) Funds withheld pursuant to this section shall  
19 be invested by the Secretary of Finance in good faith in  
20 the same manner as other National Government funds and  
21 any net investment gains or losses shall accrue to or be  
22 borne by the party ultimately entitled to receive such  
23 funds. Unless a withholding or application was both  
24 wrongful and in bad faith, the state shall not be  
25 entitled to any recovery of damages or interest, whether

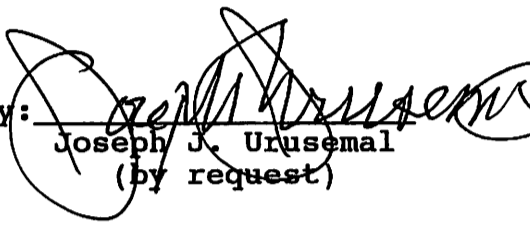
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1           for the period before or after judgment, beyond return  
2           of the amount wrongfully withheld as adjusted by such  
3           net investment gains or losses."

4           Section 4. This act shall become law upon approval by the  
5           President of the Federated States of Micronesia or upon its  
6           becoming law without such approval.

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8           Date: 11/08/96

Introduced by:   
Joseph J. Urusemal  
(by request)

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