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FOURTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST REGULAR SESSION, 1985

C.B. No. 4-1

A BILL FOR AN ACT

To create a National Commercial Bank of the Federated States of Micronesia, to appropriate the sum of \$100,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1985, therefor, 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
2 the "National Commercial Bank Act of 1985."

3 Section 2. Statement of intent. It is the intent of the Congress of
4 the Federated States of Micronesia to create a financial institution that
5 will be capable of attracting and maintaining both domestic and foreign
6 capital and of providing the people of the Federated States of Micronesia with
7 adequate banking facilities and of promoting the general welfare of the
8 people of the Federated States of Micronesia.

9 Section 3. Creation of a National Commercial Bank. There is hereby
10 created a body corporate to be known as the National Commercial Bank of
11 the Federated States of Micronesia, hereinafter referred to as the
12 "National Bank."

13 Section 4. Duration. The National Bank shall exist until such time
14 as it is dissolved by the Congress of the Federated States of Micronesia,
15 or otherwise dissolved pursuant to law.

16 Section 5. Place of business. The principal office of the National
17 Bank shall be in the State of Pohnpei. The National Bank may establish
18 such branch office or offices as the Board of Directors may deem necessary
19 and appropriate.

20 Section 6. Duties of the National Bank. The duties of the National
21 Bank include, inter alia, the following:

22 (1) To do, conduct, and transact generally the business of a
23 commercial bank and to do all things and exercise all powers and
24 perform all functions which a commercial bank is authorized or empowered
25 to do, exercise, or perform under and by virtue of the laws of the

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1 Federated States of Micronesia, or which it may by law hereafter be
2 authorized to do, exercise, or perform; to receive deposits of money, deal
3 in commercial paper, make loans thereon, lend money on real or personal
4 property, discount bills, notes, or other commercial paper, and to buy and
5 sell securities, gold and silver bullion, foreign coins or bills of
6 exchange; and to do all the things in this subsection as the functions of
7 such commercial bank and insofar as is consistent with the laws of the
8 Federated States of Micronesia;

9 (2) To do, conduct, and transact generally the business of a
10 savings bank, and to do all things, exercise all powers, and perform all
11 functions which a savings bank is authorized or empowered to do, exercise,
12 or perform under and by virtue of the laws of the Federated States of
13 Micronesia, or which it may by law hereafter be authorized to do, exercise,
14 or perform; to accumulate, loan, and invest the funds of its depositors;
15 to receive deposits of money; to loan, invest, and collect the same with
16 interest; to repay depositors with or without interest; to invest such
17 funds in such property, securities, and obligations; to declare and pay
18 dividends on its general deposits; to pay a stipulated rate of interest
19 on deposits made for a stated period, or upon special terms; and to do all
20 of the things in this subsection as the functions of such savings bank and
21 insofar as is consistent with the laws of the Federated States of Micronesia;

22 (3) To do, conduct, and transact generally the business of a
23 trust company and do all things, exercise all powers, and perform all
24 functions which a trust company is authorized or empowered to do, exercise,
25 or perform under and by virtue of the laws of the Federated States of

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1 Micronesia, or which it may, by law, hereafter be authorized to do,
2 exercise, or perform; to take, receive, and hold in trust, property both
3 real and personal, for individuals, firms, companies, associations, or
4 corporations, and to accept and execute trusts of every description which
5 may be committed to it by any person, executor, administrator, administrator
6 with the will annexed, guardian, trustee, assignee, receiver, or by any
7 corporation, or by any State, or by the National Government of the Federated
8 States of Micronesia; to accept the employment of and act as executor of
9 any last will and testament and as administrator, or administrator with the
10 will annexed, of the estates of deceased persons, and as assignee, receiver,
11 trustee, and depositary in all such matters, and in a legal manner to
12 attend to the management and settlement of estates, guardianships, assignee-
13 ships, and receiverships, and to act as trustee, agent, or attorney for
14 individuals, firms, companies, associations, or corporations, and to attend
15 to any and all manner of trusts; to act as agent for the purpose of register-
16 ing or countersigning the certificates of stocks, bonds, or other indebted-
17 ness of any corporation, company, association, municipality, State, or
18 public authority on such terms as may be agreed upon; to act as transfer
19 agent and registrar of certificates, stocks, or bonds; to purchase, hold,
20 sell, and take such property, real and personal, as may be mortgaged,
21 pledged, and hypothecated or conveyed to it in trust, or for its benefit
22 for money loaned in pursuance of its regular business, and as may be purchased
23 by it as sales under mortgages, pledges, hypothecations, or deeds of trust
24 made for its benefit for money so loaned or as may be conveyed to it by
25 borrowers of money in satisfaction of or in discharge of loans made thereon;

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1 to purchase, hold, own, and sell personal property; and to do all of the
2 things in this subsection as the functions of such trust company, and
3 insofar as is consistent with the laws of the Federated States of Micro-
4 nesia;

5 (4) To conduct a safe deposit business, and in the conduct
6 of said safe deposit business to store and hold for others personal
7 property and securities with or without compensation, and to maintain
8 vaults and safes and receptacles therein for the storage, safe-depositing,
9 and safe-keeping of personal property and securities, and to rent and
10 hire such safes and receptacles to others upon such terms and conditions
11 as the corporation may deem advisable; and

12 (5) To conduct the business of a commercial bank, savings
13 bank, and trust company, as hereinbefore set forth, in and as separate or
14 different departments of said National Bank, in a manner consistent with
15 the laws of the Federated States of Micronesia.

16 Section 7. Corporate powers. Subject to any limitations contained
17 in the Articles of Incorporation and in compliance with other provisions
18 of this act and other applicable laws of the Federated States of Micronesia,
19 the National Bank shall have all the powers of a natural person in carrying
20 out its business activities, including, but not limited to, the power to:

21 (1) Adopt, use, and at will alter a corporate seal, but failure
22 to affix a seal does not affect the validity of any instrument;

23 (2) Adopt, amend, and repeal bylaws;

24 (3) Qualify to do business in any other State, territory,
25 dependency, or foreign country;

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1 (4) Issue, purchase, redeem, receive, take, or otherwise acquire;
2 own, hold, sell, lend, exchange, transfer, or otherwise dispose of; pledge,
3 use, and otherwise deal in and with its own shares, bonds, debentures,
4 and other securities;

5 (5) Make donations, regardless of specific corporate benefit,
6 for the public welfare or for community funds, or hospitals, or for
7 educational, scientific, civic, or similar purposes;

8 (6) Assume obligations; enter into contracts, including
9 contracts of guaranty or suretyship; incur liabilities; borrow and lend
10 money; and otherwise use its credit, and secure any of its obligations,
11 contracts, or liabilities by mortgage, pledge, or other encumbrance of all
12 or any part of its property, franchises, or income;

13 (7) Participate with others in any partnership, joint venture,
14 or other association, transaction, or arrangement of any kind, whether or
15 not such participation involves sharing or delegating control with or to
16 others;

17 (8) Sue and be sued in its own name; and

18 (9) Exercise such powers, consistent with its Articles of
19 Incorporation and bylaws and with the provisions of this act and other
20 applicable laws of the Federated States of Micronesia, as the Board may
21 deem necessary and proper to perform the duties provided under section 6
22 of this act.

23 Section 8. Shares of the National Bank.

24 (1) The National Bank is hereby authorized to issue share
25 accounts as provided in this section. All share accounts shall be

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1 represented by share account books containing a certificate of membership
2 and evidencing the participation value of the share account.

3 (2) Share accounts may be purchased by any person who is a
4 citizen of the Federated States of Micronesia or by any domestic corporation.
5 Share accounts may be purchased by a foreign participator; PROVIDED that such
6 foreign participation shall not exceed 40 percent of the outstanding share
7 accounts. Share accounts shall not be transferable or assignable.

8 (3) Share accounts shall be sold for _____ or multiples
9 thereof.

10 Section 9. Dividend. The Board may not declare a dividend nor make
11 any distribution thereof unless:

12 (1) The amount of the retained earnings of the National Bank
13 immediately prior thereto equals or exceeds the amount of the proposed
14 distribution;

15 (2) Immediately after giving effect thereto:

16 (a) The sums of the assets of the National Bank would be
17 at least equal to $1\frac{1}{4}$ times its liabilities; and

18 (b) The current assets of the corporation would at least
19 be equal to its current liabilities; PROVIDED that 10 percent of the
20 assets of the National Bank shall be set aside as reserve; PROVIDED FURTHER
21 that such reserve shall not be available as a dividend.

22 Section 10. Management. The business and affairs of the National
23 Bank shall be managed and all corporate powers shall be exercised by or
24 under the direction of the Board. The Board may delegate the management
25 of the day-to-day operation of the business of the National Bank to the

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1 general manager thereof, who shall be hired by the Board; PROVIDED that the
2 business and affairs of the corporation shall be managed and all corporate
3 powers shall be exercised under the ultimate direction of the Board.

4 Section 11. Board of Directors.

5 (1) There is hereby created a Board of Directors of the National
6 Bank, hereinafter referred to as the "Board."

7 (2) The Board shall consist of five members to be appointed or
8 elected as follows:

9 (a) One member shall be appointed by the President of the
10 Federated States of Micronesia with the advice and consent of the Congress
11 of the Federated States of Micronesia; and

12 (b) Four members shall be selected by majority vote of the
13 shareholders.

14 (3) Members of the Board shall serve their terms as follows:

15 (a) The President's appointee shall serve a 4-year term;
16 and

17 (b) The four members elected by the shareholders shall
18 separately determine by lot which member among them shall serve an initial
19 term of 1 year, which member shall serve an initial term of 2 years, which
20 member shall serve an initial term of 3 years, and which member shall serve
21 an initial term of 4 years.

22 (4) The initial terms of the Board members shall expire at noon
23 on the day of the first meeting of the Board in the first, second, third, or
24 fourth year, respectively, following the first meeting.

25 Section 12. Vacancy on the Board. A vacancy on the Board of the one

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1 member appointed by the President shall be filled by appointment by the
2 President of the Federated States of Micronesia, subject to the advice and
3 consent of the Congress of the Federated States of Micronesia. The
4 appointee shall serve for the unexpired term of the member he replaces.
5 Any vacancy on the Board of one of those elected members shall be filled
6 by majority vote of the stockholders.

7 Section 13. Officers of the Board. At the first meeting of the
8 Board the members shall proceed to elect a Chairman by majority vote of
9 the members present; PROVIDED that a quorum is present. Any officer of
10 the Board may be removed from office by the affirmative vote of two-thirds
11 of the members of the Board.

12 Section 14. Employees of the Bank. The Board shall hire a general
13 manager who shall be responsible for the day-to-day affairs of the Bank.
14 The Board may hire other employees as it deems fit and proper.

15 Section 15. Provisional Board of Directors. The President is hereby
16 authorized to appoint four members to the provisional Board of Directors,
17 subject to the advice and consent of the Congress of the Federated States
18 of Micronesia.

19 Section 16. Duties of the provisional Board of Directors. The
20 provisional Board of Directors shall plan, organize, and implement measures
21 necessary and proper to effect the provisions of this act until such time
22 as the permanent Board is organized. The provisional Board of Directors
23 shall be in existence for a period of not more than 2 years from the date
24 of the confirmation of the last nominee.

25 Section 17. Bylaws. The shareholders may by majority vote of the

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1 entire membership adopt, amend, alter, or repeal such bylaws for the Bank
2 in a manner consistent with this act. The bylaws may provide for the
3 management of the business of the Bank; the regulation of its affairs; the
4 organization, conduct, and meetings of the Board; the duties of the officers
5 of the Bank; the officers for whom bonds could be furnished and the amounts
6 thereof; and for any other matters consistent with the purposes of this act.

7 Section 18. Disqualifications. No member of the Board or officer of
8 the National Bank during the term for which he was appointed or reappointed
9 and for 2 years following the expiration of the term for which he was appointed
10 or reappointed shall be eligible either to borrow money from or through the
11 National Bank or to assume responsibility in whole or in part under a
12 guarantee of indemnity or by the deposit of a security to the National Bank
13 with respect to a debt or obligation of a third party.

14 Section 19. Audit. The books and records of the Bank shall be
15 examined and audited annually by the Public Auditor of the Federated States
16 of Micronesia. The audit report shall be made available to all interested
17 persons. A copy of the audit report shall be transmitted to the President
18 of the Federated States of Micronesia and to the Speaker of the Congress of
19 the Federated States of Micronesia.

20 Section 20. Costs of administration. There is hereby authorized to
21 be appropriated from the General Fund of the Federated States of Micronesia
22 such amount of funds as is necessary to carry out the cost of administration
23 of this act. The Board of Directors of the National Bank shall, to the
24 extent feasible, forecast the needed appropriations for the fiscal year
25 and request the funds from the Congress of the Federated States of Micronesia.

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1 Nothing herein contained shall prohibit the Board from seeking or soliciting
2 funds for its operation and capitalization from additional sources within
3 or outside the Federated States of Micronesia.

4 Section 21. Expenses. All members of the Board shall be entitled to
5 necessary travel expenses and per diem at standard rates of the National
6 Government of the Federated States of Micronesia while on the business of
7 the National Bank. Board members who are neither employees nor officials
8 of a State government or of the National Government of the Federated States
9 of Micronesia shall be paid \$35 per day plus per diem, where applicable,
10 while on the business of the National Bank.

11 Section 22. Tax exemption. It is hereby found and declared that the
12 purpose for which the National Bank is created is a public purpose for the
13 benefit of the people of the Federated States of Micronesia, and that,
14 therefore, the National Bank shall not be required to pay any taxes or
15 assessments on any of its property acquired or to be acquired by it or on
16 its operations or activities.

17 Section 23. Debts of National Bank not public debts. The debts or
18 obligations of the National Bank shall not be debts or obligations of the
19 National Government of the Federated States of Micronesia, nor shall the
20 National Government of the Federated States of Micronesia be responsible
21 for the same.

22 Section 24. Willfully defrauding the National Bank. Any Board
23 member, director, officer, employee, or agent of the National Bank who
24 embezzles, abstracts, or willfully misapplies any monies, funds, credits,
25 or securities of the National Bank, or who willfully makes any false

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1 entry in any book, report, or statement of the National Bank, or who does
2 any other act, with intent to injure or defraud the National Bank; or any
3 individual who, with like intent, aids or abets any director, officer,
4 employee, or agent in any violation of this section; or any individual who
5 makes a false statement with the intent of defrauding the National Bank of
6 monies, funds, credits, or securities, shall be fined not more than \$20,000,
7 or imprisoned for not more than 10 years, or both.

8 Section 25. Appropriation of funds. The sum of \$100,000, or so much
9 thereof as may be necessary, is hereby appropriated from the General Fund
10 of the Federated States of Micronesia for the fiscal year ending September
11 30, 1985, for the purpose of carrying out the provisions of this act.
12 The Board shall be the allottee of the funds.

13 Section 26. Allotment of funds. All funds appropriated by this act
14 shall be allotted, managed, administered, and accounted for in accordance
15 with applicable law, including, but not limited to, the Financial
16 Management Act of 1979. The allottee shall be responsible for ensuring
17 that these funds, or so much thereof as may be necessary, are used solely
18 for the purpose specified in this act, and that no obligations are
19 incurred in excess of the sum appropriated. The authority of the allottee
20 to obligate funds appropriated by this act shall lapse as of September
21 30, 1985.

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1 Section 27. Effective date. This act shall become law upon approval
2 by the President of the Federated States of Micronesia or upon its
3 becoming law without such approval.

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5 Date: 5/13/85

Introduced by: Elias H. Thomas
Elias H. Thomas

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