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 $10,500,000 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, $1,500,000 to the State of Kosrae, $1,500,000 to the State of Yap, 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 Financial Recovery Loan Act".

2. 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 (the "State") in order to assist that State in making a financial recovery. The first such loans or series of loans are to the States of Chuuk ("Chuuk State"), Pohnpei ("Pohnpei State"), Kosrae ("Kosrae State"), and Yap ("Yap State"), but the National Government hereby states its policy and intention to provide additional loan assistance to any State of the Federated States of Micronesia ("FSM") when, if, and in the manner deemed appropriate in the future.

3. Section 3. Appropriation for initial loans. The sum of $10,500,000, 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, 1997, for the purpose of funding loans from the National Government to Chuuk State, Pohnpei State, Kosrae State and Yap State on terms hereinafter specified.

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

Section 5. Conditions to funding of Chuuk loan. Notwithstanding any other provision of this act, no funds shall be advanced to Chuuk State until the Office of the Public Auditor for the Federated States of Micronesia has certified to the allottee that the State has implemented numbers 1 and 5, substantially implemented number 2, reasonably begun to implement number 3, and continued the policy reflected in number 4 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 of Representatives (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 6. 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 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 7. Technical assistance. The executive branch of the National Government is authorized to provide to each State such technical assistance
as the National Government deems appropriate during the term of any loan
provided pursuant to this act. The Congress shall promptly review reasonable
requests for funds with which to accomplish such technical assistance.

Section 8. 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
titled to exercise any or all of the following rights of set-off:

(a) The National Government, without previously
seeking or obtaining any judicial approval of such action, may withhold for
possible future application to the payment of any 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, the National Government shall apply the funds so
withheld to the delinquency. If such legal action is timely commenced, the funds
withheld shall be disposed of as directed by the Court; and

(b) The National Government may withhold and apply to
any 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 9. 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 10. 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 of the Federated States of Micronesia 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, 1998.

Section 11. 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: 06/23/96

Introduced by:

Joseph T. Turpenal.