

AN ACT

Authorizing the Chuuk State Governor to borrow up to \$15 million dollars through the Medium Term Note Program to fund Chuuk State Equity Share and loan to a joint venture for a tuna purse-seining and cannery project and other State economic development projects, and for other purposes.

BE IT ENACTED BY THE CHUUK STATE LEGISLATURE:

1                   Section 1. Purpose. The purpose of this Act is  
2                   to authorize the State to borrow funds pursuant to the  
3                   National Compact Funds Financing Act, such borrowing to be  
4                   secured by the State's Pledged Compact Funds. The specific  
5                   category and amount of Compact Funds that may be pledged as  
6                   security shall be as set forth under this Act, specifically  
7                   including Sections 3 and 12.

8                   Section 2. Definitions. Unless the context  
9                   clearly indicates otherwise, the following definitions apply  
10                  to terms used in the Act.

11                  A. "Bond": any bond, note or other evidence of  
12                  indebtedness issued under the National Compact Funds  
13                  Financing Act, including any evidence of indebtedness  
14                  for money borrowed from commercial banks or similar  
15                  financial institutions and any reimbursement obligation  
16                  to a provider of credit enhancement;

17                  B. "Bond Repayment Fund": the fund created in  
18                  Section 624 of Title 55 of the FSM Code to provide for  
19                  the deposit and disbursement of funds pledged by a  
20                  state government and/or the National Government which  
21                  participates in a borrowing;

22                  C. "Committee": the committee referred to in  
23

1 Section 524 of Title 58 of the FSM Code;

2 D. "Compact": the Compact of Free  
3 Association between the FSM and the United States of  
4 America and its attendant agreements;

5 E. "Credit Enhancement": bond insurance,  
6 letter of credit or similar credit enhancement  
7 instruments;

8 F. "Financing Program": the Medium Term Note  
9 Program and any other program for borrowing established  
10 or permitted by the National Compact Funds Financing  
11 Act and this Act, including, without limitation,  
12 programs involving public offering or private placement  
13 of bonds or direct borrowing from commercial banks or  
14 similar financial institutions;

15 G. "FSM": the Federated States of  
16 Micronesia;

17 H. "Indenture": any Indenture, agreement or  
18 other instrument pursuant to which the Bonds shall be  
19 issued, as approved by a Resolution of the Committee;

20 I. "National Compact Funds Financing Act" or  
21 "National Acts": section 511 et esq. of Title 58 of  
22 the FSM Code, as amended, and including any amendments  
23 that may be adopted hereafter;

24 J. "Pledged Compact Funds": the amounts  
25 payable under the Compact which the President is  
26 authorized to pledge to the payment of the bonds  
27 following legislative action by the FSM and the State;

28 K. "Pledged Funds": the pledged Compact  
29 Funds and/or other pledged moneys, and investment  
30 earnings thereon;

1           L. "President": the President of the FSM or his  
2 lawfully and properly appointed designee;

3           M. "Resolution": the resolution or resolutions of  
4 the Committee authorizing the issuance and sale of  
5 Bonds on the terms and conditions, and substantially in  
6 the form, approved therein or pursuant to procedures  
7 provided therein;

8           N. "Secretary": the FSM Secretary of Finance;

9           O. "State": the State of Chuuk; and

10          P. "Trustee": the FSM fiscal agent appointed as  
11 such in the Indenture pursuant to the National Act, and  
12 any successors or assigns, who will act as such for the  
13 benefit of the holders of the Bonds;

14          Section 3. Authority to borrow. The State is  
15 hereby authorized to participate in a borrowing under the  
16 Medium Term Note Program and any other program for borrowing  
17 established or permitted by the National Compact Funds  
18 Financing Act including, without limitation, programs  
19 involving public offering or private placement of bonds or  
20 direct borrowing from commercial bank or similar financial  
21 institutions. The specific amount that may be pledged and  
22 used to cover the costs of the borrowing shall be as set  
23 forth under this Act.

24          Section 4. Authority of State Officials. When the  
25 specific amount that may be pledged and used to cover the  
26 costs of borrowing is authorized by statute:

27           A. The Governor, the Director of the Department  
28 of Treasury, or the Governor's designee, if any, to the  
29 Committee, and the Attorney General are authorized to

1 perform the functions and duties described in the  
2 National Act. In the case of the Attorney General, he  
3 is specifically authorized to provide the legal opinion  
4 described in the National Act.

5 B. Without limiting the foregoing, the  
6 Governor may authorize the pledge of security necessary  
7 to secure the borrowing, to satisfy any financial  
8 obligations attributable to the State related to or  
9 resulting from such borrowing, and to pledge such  
10 additional security as may be necessary to protect the  
11 FSM Government and any non-participating state against  
12 any loss arising in connection with the State's  
13 participation in a financing program; provided,  
14 however, that the Governor may take such actions only  
15 with respect to specific amounts allowed by State law.

16 C. The Governor is also authorized to enter into  
17 an agreement or agreements with the Secretary and any  
18 lending institution regarding the disbursement of  
19 proceeds of bonds and earnings thereon or the proceeds  
20 of borrowings from commercial banks or similar  
21 financial institutions and regarding the payment of all  
22 financial obligations attributable to the State related  
23 to or resulting from the borrowing.

24 Section 5. Delegation of authority to the President.

25 When the specific amount to be pledged and used to cover the  
26 costs of borrowing is authorized, the Governor may issue a  
27 written certification to the President that specifies the  
28 amount and source of funds or other security to be used to  
29 secure a borrowing and to cover the costs of borrowing.

30 When the anticipated project costs and/or the anticipated  
31  
32

1 costs of borrowing is/are less than the amount State law  
2 allows to be borrowed, then the amount certified by the  
3 Governor may be the lesser amount. Upon receiving the  
4 Governor's certification, the President is authorized to  
5 make irrevocable pledge(s) of the amounts of Compact Funds  
6 specified in the Governor's certificate (including any  
7 investment earnings therefrom) that would otherwise be  
8 payable to the State, or irrevocable pledge(s) of other  
9 security. The President shall not make any such pledge  
10 except to secure a borrowing of funds on behalf of the  
11 State. The pledge shall secure payment of the bonds or  
12 funds borrowed, costs and expenses and all other financial  
13 obligations resulting from or relating to the Financing  
14 Program that are not otherwise paid. The President shall  
15 also be authorized to make the necessary payments from the  
16 pledged amounts for the purpose of and to the extent  
17 required to satisfy all financial obligations attributable  
18 to the State related to or resulting from the Financing  
19 Program. The President shall certify to the Governor in  
20 writing the amount actually so pledged and the amount  
21 authorized but not actually pledged. Any funds that are  
22 authorized to be pledged by statute but that are not  
23 actually pledged or used to satisfy such financial  
24 obligations shall remain as funds of the State.

25 Section 6. Compact Funds. When the specific amount to  
26 be pledged and to be used to cover the cost of borrowing is  
27 authorized by statute, and the Governor has issued a written  
28 certification to the President as provided in Section 5 of  
29

1 this Act, and the proceeds of the Financing Program have  
2 been actually or constructively received by the State, then  
3 the State consents to and authorizes a reduction in the  
4 amount of Compact Funds received or to be received on behalf  
5 of the State through the Compact Financial Assistance Fund,  
6 with such reduction being commensurate with the amount of  
7 Compact funds pledged by the State, and irrevocably waives  
8 all rights to the receipt of such Pledged Compact Funds.

9 Section 7. Indemnification.

10 A. Recognizing the complexity of any Financing  
11 Program pursued under this Act and the National Act,  
12 the State indemnifies and holds harmless all officers,  
13 employees or other agents acting for or on behalf of  
14 the State from any and all claims, causes of action,  
15 demands, losses, costs, or damages including all court  
16 costs and attorney's fees, regardless of whether suit  
17 is actually brought (hereinafter called "claims")  
18 arising from or relating to any act or omission  
19 directly or indirectly related to the matters contained  
20 in this Act or the National Act, or related to the  
21 establishment or implementation of any Financial  
22 Program. The State accepts tender of defense upon  
23 demand and immediately reimburses any payment of claims  
24 by the officer, employee or other agent of the State.

25 B. This indemnification and hold harmless covers  
26 claims that are foreseeable and unforeseeable, whether  
27 the act or omission is deemed to be within or outside  
28 the scope of employment or responsibility, and whether  
29 caused by negligence or recklessness of any degree, or

1 otherwise. Moreover, without limitation,  
2 this indemnification and hold harmless specifically  
3 applies to the Attorney General with respect to any  
4 opinion or advice which may be required or rendered.  
5 This indemnification and hold harmless does not apply  
6 to any criminal acts.

7 Section 8. Taxes. In accordance with the National  
8 Act, neither the State nor any political subdivision thereof  
9 imposes any tax, assessment or levy on or related to a  
10 borrowing under any Financing Program.

11 Section 9. Waiver of sovereign immunity.

12 A. Notwithstanding any other law to the contrary,  
13 the State hereby waives its sovereign immunity but only  
14 to the extent necessary to permit the National  
15 Government or any other state of the FSM to bring an  
16 action and execute a judgment as to any assets of the  
17 State based on any loss arising in connection with the  
18 State's participation in a Financing Program.

19 B. The State specifically asserts and establishes  
20 its sovereign immunity from any other suit, judgment or  
21 execution with respect to any matter or action taken  
22 pursuant to this Act or the National Act. Except as  
23 expressly authorized by Subsection (A) of this Section  
24 or as expressly authorized by other State law, the  
25 State does not waive its sovereign immunity regarding  
26 the aforementioned matters or actions.

27 Section 10. Alteration of rights. After the  
28 issuance of any bonds the State does not limit or alter, or  
29 seek to limit or alter the rights thereby vested pursuant to  
30

---

1 the indenture including, without limitation, the irrevocable  
2 pledge by the President of pledged Compact funds, until the  
3 bonds, together with interest and premium, if any, thereon,  
4 are fully paid and discharged; provided, however, that  
5 nothing herein contained shall preclude such limitation or  
6 alteration if and when adequate provision is made in  
7 accordance with the term of the indenture for protection of  
8 the holders of the bonds. The FSM is authorized to make  
9 this undertaking for the State in the bonds and the  
10 Indenture.

11 Section 11. Authorization to debit certain expenses.

12 The Governor is authorized to approve, without further  
13 authorization or appropriation, the debiting of the Compact  
14 Financial Assistance Fund account of the State of Chuuk, as  
15 established by the Agreement on Internal Budget and Finance  
16 Procedures under the Compact of Free Association between the  
17 National Government and the State Governments of the  
18 Federated States of Micronesia, for expenses, including  
19 trustee fees, associated with a borrowing by the State  
20 under the National Compact Funds Financing Act.

21 Section 12. Authorization to Borrow. In order to

22 secure such borrowing, the Governor is authorized to make an  
23 irrevocable pledge of up to \$15,000,000.00 in future Compact  
24 Funds and any investment earnings thereon that would  
25 otherwise be payable to the State Government, PROVIDED, that  
26 he must follow the procedures contained in the Compact Funds  
27 Financing Act, and PROVIDED FURTHER, that the amount of such  
28 pledge shall not exceed the following amounts and the  
29 investment earnings thereon from Chuuk State's share of  
30 funds under the Compact of Free Association:  
31



---

	<u>Fiscal Year</u>	<u>Amount</u>
1		
2	1999	\$5,000,000.00
3	2000	\$5,000,000.00
4	2001	\$5,000,000.00

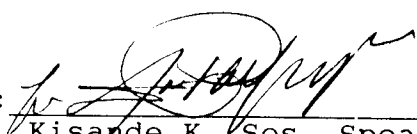
5           Section 13. Appropriation and Authorization for  
6 Appropriation. The sum of \$10.5 million which the Governor  
7 is authorized to borrow is hereby appropriated to fund Chuuk  
8 State's equity share and loan to the West Pac Joint Venture.  
9 The sum of \$4.5 million is hereby authorized to be  
10 appropriated for the Cannery Project and other economic  
11 development projects of the State. The Governor shall  
12 submit a report to the Legislature before September 30,  
13 1993, which shall:

14                   1) provide for the full disclosure of  
15 the obligations incurred against the sum appropriated by  
16 Section 13, and indicate the status of these funds as of  
17 September 1, 1993; and

18                   2) indicate the planned use, during the remainder  
19 of the fiscal year, of funds not obligated as of September  
20 1, 1993; PROVIDED, however, that a supplemental report  
21 covering the actual use and obligation of the funds shall be  
22 submitted to the Legislature or the appropriate committees  
23 thereof within 20 days after the closing of the fiscal year.

24  
25  
26  
27  
28  
29  
30

1 Section 14. Effective Date. This Act shall take  
2 effect upon approval of the Governor, or upon its becoming  
3 law without such approval.

4  
5  
6 Signed by: 


Kisande K. Sos, Speaker  
House of Representatives  
Chuuk State Legislature

7 Attested:

8 

Herter Sorim, Chief Clerk  
House of Representatives  
Chuuk State Legislature

9 Date: 12/21/92

10  
11  
12 Signed by: 

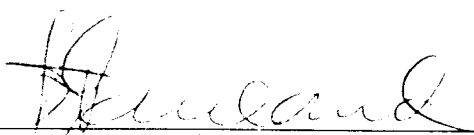
Ira E. Akapito, President  
Senate  
Chuuk State Legislature

13 Attested:

14  
15 

Datasi Albert, Chief Clerk  
Senate  
Chuuk State Legislature

16 Date: 12/27/92

17  
18  
19 Approved by: 

Sasao H. Gouland, Governor  
Chuuk State Government

20  
21 Date: 12/24/92

22  
23  
HISTORY: H.B.No.: 1-413; H.D.1; S.D.1  
S.S.C.R.No.: 3-1-03