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 DEPARTMENT OF STATE
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NO. A-4
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HANDLING INDICATOR
 INP/Pade
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TO : Department of State (IO/UNP, EA/ANZ, S/PC)
 DEPT. PASS TO (EXCLUDING ENCLOSURES): Interior Dept. for Asst. Secretary Leesch and Office of Territories. Defense Dept. for OSD/ISA. White House for Mr. Levin (NSC).

FROM : HICOMTERPACIS POLAD, SAIPAN
 DATE: January 28, 1971

SUBJECT: TTPI - Public Lands Issue

REF : Interior Telegram 152128Z Dec 70 (SECRET) From Asst. Secretary Leesch

1. A HICOMTERPACIS telegram (CONFIDENTIAL) is being dispatched via Guam on or about January 29 in response to thereftel. The outgoing message outlines reasons why the High Commissioner and key members of his staff believe that no action should be taken now with respect to a possible transfer of public lands to district governments.
2. The outgoing message mentions Senate Bill 56 which proposes the establishment of a Joint Congressional Committee on Public Lands. This proposal is seen here as pre-empting any action by the Executive Branch at this time. A copy of the bill is enclosed.
3. Also enclosed is a copy of a draft message on the subject, prepared in late December as a "starting point" for discussion of the public lands issue. The draft provides discussion of; (a) necessary qualifications on any transfer of public lands; (b) methodology and legal implications; (c) disadvantages of such a transfer; (d) advantages; (e) political and other implications on a district-by-district basis; and, (f) conclusions and recommendations.
4. Although the political advantages to the U.S. of such a land transfer are recognized here, the administrative and other disadvantages (aside from the problem of the above cited legislation) are seen as cancelling out any benefits. Particular concern has been expressed over the following problems.

Enclosures: (1) Congress of Micronesia, Senate Bill 56
 (2) CONFIDENTIAL draft message on Public Lands Issue

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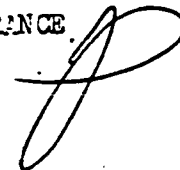
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Drafted by POLAD: JCDerrance; jcd
 Consents and Classifications Approved by: POLAD: JCDerrance

Clearances:

- a) The political and other pressures on District Administrators (if the transfer is to district governments) could be intolerable in certain districts.
- b) The proposal to establish Public Lands Trust Boards would not really solve the problem -- it is felt that truly representative boards could not be established in several key districts.
- c) The requirement to charter district governments (if the lands are to be turned over to them) is considered to have political and constitutional implications going well beyond the lands issue.
- d) Such a transfer could destroy the cadastral survey program, and this program is considered to be of vital importance to the Territory and to all districts.
- e) The boundaries of many public lands are ill-defined and some are in dispute. Until these areas are cleared up by the cadastral survey, a transfer of public lands to district governments would represent no more than a transferring of a major political problem from one level of the executive branch to another.
- f) Greater emphasis, than appears in the enclosed draft message, should be given to district staffing and funding problems.

DORRANCE



K & D

TC

REPUBLIC OF MICRONESIA

Enclosure 1
Saipan A-4

FOURTH CONGRESS, 1971

FIRST REGULAR SESSION

S. B. NO. 56

A BILL FOR AN ACT

To create a Joint Committee on Public Land, to prescribe its duties and responsibilities, to make appropriation therefor, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF MICRONESIA:

1 Section 1. There is hereby created a Joint Committee on Public Land
2 of the Congress of Micronesia, consisting of three members of the Senate to
3 be appointed by the President of the Senate and three members of the House
4 of Representatives to be appointed by the Speaker of the House. Such appointmen
5 shall be made upon the approval of this act.

6 Section 2. The Joint Committee on Public Land shall investigate, examine,
7 prepare, and submit to the Congress of Micronesia and to the High Commissioner
8 on or before July 1, 1972, a comprehensive report, to be styled as the "Public
9 Land Report", concerning problems, grievances, and suggestions for the improve
10 in the management of all public lands in the Trust Territory. Such report
11 shall, after publication and submission, be made available to the general public
12 and also to each of the six District Administrators and district legislatures.

13 Section 3. The sum of \$5,000 or so much thereof as may be found necessary,
14 is hereby appropriated out of the General Fund of the Congress of Micronesia,
15 not otherwise appropriated, to carry out the provisions of this act.

16 Section 4. This act shall take effect upon its approval by the High
17 Commissioner, or upon its becoming law without such approval.

18
19 Date: 7/24/71 Introduced by:
20

Olympio T. Borja
Olympio T. Borja

Edward DLG Pangelinan
Edward DLG Pangelinan

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Enclosure 2
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TELEGRAM

1. Following message [redacted] drafted Dec. 30.

2. Summary. Para 7 refel requested assessment possibility transferring public lands to districts or municipalities, with exception military retention areas. Coincidentally, that message crossed mine concerning Palau and manner in which land situation there is souring atmosphere surrounding status question, not to mention attitudes toward TTPI administration. Conclusion I came to as consequence that visit, and from what I know of other districts, is that it is highly desirable as matter of principle remove U.S. from center stage on this issue. As practical matter, I am not sure this can be achieved. Micronesian politicians in Congress of Micronesia may not want this can of worms any more than we do and could sabotage any transfer effort. Congressmen from some districts, but most probably Marshalls and Truk, might attempt duck responsibility of handling issue by simply charging proposal skirts real issues of eminent domain and military retention areas. Nevertheless, it is worth a try. Following sections devoted to: (a) necessary qualifications on transfer; (b) methodology and legal implications; (c) disadvantages of transfer; (d) advantages; (e) political and other implications on district by district basis; and, (f) conclusions and recommendations.

End summary.

3. Qualifications and Conditions Any transfer of public lands (which comprise 60% of TTPI land area) to district or municipal level probably

should be qualified at least to following extent:

a) Military retention areas to be excluded.

b) Right of eminent domain to be continued by TTPI administration, in its own right and on behalf of U.S. Government.

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- c) Public lands presently in use by TTPI administration as sites of public buildings, etc., should be retained in one way or another, at least for time being.
- d) Existing leases of public lands and homestead rights must be protected and not open to renegotiation prior to normal expiration of contracts.
- e) Marine or off-shore lands to remain under territorial jurisdiction.
- f) ^{AS} ~~At~~ present, controls on lease of lands for whatever purposes by non-TTPI citizens and corporations must be retained by TTPI administration. At minimum, any transfer of interest in lands to non-TTPI citizens must be approved by TTPI administration.
- g) Since release of public lands could result in heavy new expenditure requirements for administration with respect to future acquisitions, it may be worth considering prohibiting expenditure of U.S. grant funds for lease or purchase of lands for future TTPI administration purposes. Such funds should be made available from internal revenues.

4. Methodology and Legal Implications As I understand it, Congress of Micronesia since 1965 has had legal authority over disposition of public lands. Although technically there is nothing to prevent transfer being accomplished by a Secretarial Order, this would be serious political error ---we would be castigated for not "consulting" Micronesians on a basic Micronesian problem. Consequently, action must be through Congress.

5. If transfer is to be to district governments, latter will have to be chartered as corporate entities. Transfer to chartered municipalities is legally feasible, but strikes me and others here as being totally impractical. Municipalities could not cope with problems that would arise

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from such massive direct transfer, although in end many would become title recipients through district government disposition of lands.

6. A third course could be to propose establishment of District Public Land Trust Boards and transfer lands to them. Boards would be semi-autonomous bodies with (at least theoretically) no administrative or political ties, and include representatives all local traditional, political, business, religious, and other factions. Boards in turn would be responsible for ultimate disposition of lands.

7. If public lands are to be transferred to districts in one way or another, we should probably go the whole way and also transfer cadastral survey and other land management functions to district as part of package. These areas of land questions are in many respects as much a political liability as public lands themselves.

8. Assuming approach to transfer must be through Congress, informal consultations with key leaders would appear to be necessary first step to assure Congress would be receptive not only to principle of transfer, but also to qualifications and conditions. There is distinct danger Congress could adopt legislation deliberately designed to provide a veto, e.g. inclusion unacceptable clauses on military retention areas or on eminent domain. Such action by Congress would neatly turn away a political problem for them while also scoring points off us. If we can get past consultations hurdle and seem assured of reasonable and rational consideration proposal, next step would be formal message to Congress from HCCA outlining proposal including qualifications and conditions. Message should include proposal for establishment District Public Land Trust Boards along lines para six above to assure most equitable distribution lands and minimize problems of corruption and political manipulation.

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particularly in Palau and Marianas Districts. Congress would presumably establish committee to study question and develop legislation which probably would not be introduced before 1972 session. Alternative route would be for Executive Branch to develop complete legislative package. However, it would seem preferable to well and truly drop whole problem in lap of Micronesian Congress.

9. Disadvantage of Transfer Primary disadvantages of transferring public lands to districts would appear to be as follows:

a) Unquestionably such action could lead to high level of administrative corruption, and inefficiency in land management.

Further, there is no doubt but that lands would be manipulated for political purposes in certain districts, but particularly Palau and Marianas. Much of above might be at least minimized through Trust Board device.

b) Transfer of lands to districts would cause serious erosion of TTPI administration's ability control land resources for developmental purposes, particularly in areas of planning, tourism and transportation.

c) Deficiency of skilled or competent land management staff at district level could cause serious problems, unless much of present TTPI administration's central land personnel could be transferred to districts.

d) Land disputes would probably increase rather than decrease.

However, disputants would be primarily individuals and clan groups, and disputes in most instances would be of personal character and not directed at TTPI administration.

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- e) Even if revenues from public lands go to districts, there might be funding problems in connection land management program at district level. Possibly this could be taken care of by diverting funds from TTPI central administration to districts. Transfer of lands to districts would result in sharp reduction funding and personnel requirements at central level.
- f) Transfer of lands possibly could lead to further pressures for increased district autonomy in other functional areas, and erosion central government authority.
- g) There could be serious problems in several districts when existing leases expire, mainly in connection with lands presently leased either by Micronesians from other districts in any given district (e.g. Palauans in the Marianas), and lands leased by U.S. business (e.g. Dillingham and Van Camp in Palau). Either rent-gouging or eviction are distinct possibilities.

10. Advantages to Transfer Following appear to be major advantages.

- a) Transfer of public lands to districts is virtually inevitable in any event---this clearly would be part of any constitutional arrangement following termination of trusteeship agreement. Consequently, any disadvantages to such a transfer might be softened by early implementation during transitional period to self-government. Put another way, districts could go through "teething" period while certain restraining and moderating influences and controls would still be operative as part of our administrative program. Districts, during "teething" period would be assured of a wider range of technical and other

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guidance and assistance than would be the case after termination of trusteeship agreement.

- b) While such action would have little political impact in Yap, in most districts it would remove a major friction point which tends to sour attitudes toward administration and atmosphere surrounding status question. This is particularly true in Truk and Palau. It would remove us from center stage and leave Micronesians to argue among themselves. In some areas this probably would absorb almost all of their political energy and leave little to direct at us.
- c) Transfer might score a few points in the UN, but this is a minor consideration.
- d) Transfer of public lands now would settle in advance one of problems of status, while also making separation of Marianas District from rest of Territory (if this becomes necessary) a simpler task.
- e) Assuming funding of land management and of new acquisitions of land for public purposes becomes a Micronesian responsibility, this represents a potential savings area (to us), although it probably could not be realized in near future. Strain on Micronesian financial resources would probably mean we would indirectly finance such operations by picking up other programs presently financed by internal revenues, or by providing matching funds.

11. Impact on Districts Following, in broad outline, represents likely impact on each district.

- a) Marianas. Since this district already committed to close

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association with U.S., land transfer would have little impact on status question, other than to make ultimate separation from rest of territory less complex. There could be increasing problems of corruption and political manipulation. Public lands represent 88 percent of total land area.

- b) Palau. Political impact relative both status and day to day attitudes toward administration would be greater and more favorable than in any other district. As indicated in mytel 220119Z Dec 70, disposition public lands is a key political issue. However, if transfer not handled through a trust board with representation all clan and political factions, disposition of public lands within district could lead to serious violence and bloodshed. Even with trust board, there is strong possibility moderate and relatively pro-administrative faction, led by Progressive Party, would come out on short end, and power base of Liberals, most radical faction in terms of status and anti-administration attitudes, would be strengthened. But on balance, transfer of public lands still would be strong plus factor in Palau. Self-interest and greed are motivating factors in Palau to greater extent than any other district (except perhaps Marianas) with consequence "return of lands" could, more than any other single action, ease atmosphere surrounding other and more critical (to us) elements of status. Public lands are about 73 percent of total.
- c) Yap. Public lands are not serious issue in Yap where only real concerns are protection Yapese lands, culture, and traditional structure. However, Yapese members of Congress of Micronesia are strongly influenced in their attitudes on status and other

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issues by those of Congressmen from other districts. Thus a favorable reaction by latter would in very general way extend to political leadership in Yap. Only about 2 percent of lands are public.

d) Truk. Public lands are major issue in that legality their title questioned by Trukese leadership. This in turn adversely affects attitudes toward administration and atmosphere surrounding status. Thus transfer of public lands, present and claimed, probably would have favorable impact politically. Only 16 percent of lands are public. There is also danger that Trukese might choose use proposal to attack us on eminent domain.

e) Ponape. Although 64 percent of lands are public, most of these have little immediate perceivable value to Ponapeans. Most public lands are not an issue, except with respect some homsteading and leases, of public lands. Traditional leadership has opposed some of these leases which have been mainly to more progressive or "modern" elements of population. Given conditions to transfer suggested para 3d above, these leases would remain protected at least until expiration. On balance, traditional and political leadership would be favorably disposed toward transfer action even with above qualification.

f) Marshalls. Since so little of land (about 3 percent) is public, Marshallese could take position that transfer proposal skirts real issues of eminent domain and military retention of areas not in use. Marshallese political leadership in final analysis probably would support transfer proposal, if other districts were

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in favor, but in process would score as many political points as possible. Some damage might be avoided if Eniwetok could be released as part of transfer.

12. Conclusions and Recommendations There would appear to be sufficient political and administrative advantages attached to transfer of public lands to warrant early exploration of reactions in Micronesian Congress. However, there are real dangers, greatest being Congress would consider transfer too hot an issue to handle and would prefer retain present situation which does provide convenient political stick to beat us with whenever the occasion warrants. Thus, Congress could either draft legislation, or amend Executive legislative proposals in such way to assure executive veto. If Congress took this course, legislation should include unacceptable provisions on eminent domain, military retention areas or on other essential qualifications. Balancing that, Marianas, Palawan and possibly Yapese and Ponapean delegations would be inclined accept transfer even with qualifications. The first two out of sheer greed and self-interest, latter two for reasons of principle. Marshallese and Trukese could go either way, and could sway Ponapeans and Yapese with them.

13. Consequently first step should be informal sounding out of Congressional leadership, making clear what qualifications and conditions would apply. If reaction appears favorable, then transfer can be formally proposed by Hicom in message to Congress. Message should spell out broad outlines of transfer principles, but leave drafting of legislation to Congress.

Congress would undoubtedly establish a committee to examine matter, and actual legislation probably would be ready until next year at earliest.