

Draft
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U.S. COMMONWEALTH PROPOSAL OF
MAY 1970

1. Kind of Political Status

A "Commonwealth." However, the proposed arrangement would allow Micronesia considerably less independence than Puerto Rico. The political status would be something between that presently enjoyed, on the one hand, by Guam and the Virgin Islands and, on the other, by Puerto Rico.

See the analysis of the U.S. proposal in the "Report of the Political Status Delegation of the Congress of Micronesia" (July 1970) pp. 31-43.

2. Source of Political Status

The U.S. Delegation proposed that a bill would be submitted to the U.S. Government entitled "The Micronesian Constitutional Convention and Enabling Act." (The bill and the explanatory Statement of Principles are in the file folder.)

The bill envisioned the Micronesians drafting their own Constitution which has to satisfy certain criteria and be approved by the President of the United States. See Sections 102 through 104, and 201. See also the subsequent discussion.

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3. Citizenship

The Micronesians would be U.S. nationals. Section 321(a).

The Statement of Principles says the Micronesians could, "by simple application to the Federal Court, become U.S. citizens." Page C-10. See the provisions at Sections 322-323.

4. Limits on Land Alienation

The draft bill contains the following provision (Section 381(g)):

"After the effective date of this Title, no privately or communally owned real property, use rights, or interests in such property in Micronesia may be transferred, sold, alienated or leased for a term in excess of ten years to non-residents, corporations owned or controlled by non-residents of Micronesia, or the United States Government . . . , except by descent or devise, unless such transfer, sale, alienation, gift, or lease is first approved in writing by the majority vote of a commission to be especially established from residents in the geographic area where the real property is located for that purpose in accordance with the laws of Micronesia."

Hence, a residency criteria is established for long-term lease or ownership. (Persons residing in Micronesia who were not Micronesians could thereby have ownership.)

Section 201(m) of the bill provides that: "The rights, privileges, and immunities of citizens of the United States shall be respected in Micronesia as though Micronesia were a State of the Union and subject to the . . ." privileges and immunities clause of the U.S. Constitution. [NB: The full impact of this clause on land restrictions will be researched separately.]

Government Land. The property held or controlled by the Trust Territory Government would be turned over to the Government of Micronesia. Section 381. All land currently held by the U.S. Government under agreement with the Trust Territory Government would be reviewed by the U.S. Government. Within three years, the U.S. Government must enter into new agreements for those lands which it considers necessary for its public purposes. Section 381(c)(1).

There are elaborate provisions whereby the U.S. Government can acquire land (either the land it holds not or further land). If the U.S. fails to obtain the agreement of the Micronesian Government or encounters other defined problems, then the U.S. has the right to proceed "in accordance with established Federal law and procedures . . . with the right of appeal . . . to the United States Court of Appeals for the Ninth Circuit." Section 381(h)(6). Hence, the U.S. Government retains its right of eminent domain.

[NB: Compare these procedures with those in the draft Compact of Free Association.]

5. Taxes

The Federal income tax would apply to Micronesia, except that the proceeds would be paid into the Micronesian treasury. Section 364.

The U.S. Delegation's Statement of Principles said that there is the alternative to make the Federal income taxes inapplicable, but concluded that "this would result in a substantial reduction in potential revenues." Page C-6.

6. Customs

A. Imports

No customs would be allowed on any goods imported from the U.S. or its territories. Section 201(c): Micronesia is allowed to impose its own tariffs on foreign goods. Section 361.

B. Exports

The Micronesians are not allowed to impose any export duties on goods exported to the U.S. or its territories. Section 201(c). As for U.S. customs, Micronesia would be entitled to the same privileges as the insular possessions of the U.S. which are outside the custom territories of the U.S. Section 366(d). (These other possessions include, among others, Guam and the Virgin Islands, but not Puerto Rico.) This means goods from Micronesia generally would not have to pay any U.S. Tariffs if more than 50 percent of their total value was a result of Micronesian

materials and/or labor. See 19 U.S.C. § 1202(3). If the goods did not pass the 50 percent test, the same tariffs would apply as for foreign goods.

7. Government Revenues and Expenditures

A. Revenues

The Micronesian Government would receive all the revenues collected from taxes and fees in Micronesia, as well as all customs duties and Federal income taxes which the U.S. derived from Micronesia and the proceeds of all internal revenue taxes on Micronesian goods shipped to the United States. Sections 363-64.

The Micronesian Government will also receive "matching funds" from the U.S. Government equivalent to the net amount of its revenue, exclusive of U.S. Federal matching and grant funds. Section 365(a). (The matching provision is novel; it encompasses much more of the Government's revenue than the Virgin Islands' matching arrangement.)

The Micronesian Government will, of course, participate in some Federal programs. Along these lines, the draft bill provides that the U.S. President should establish a commission of seven persons, at least three of whom shall be Micronesian residents, to survey the Federal statutes and to make recommendations within twelve months to the U.S. Congress as to which U.S. statutes which are not then applicable to Micronesia should be made applicable or not applicable. Section 404. (No criteria are provided.)

Finally, Congress is authorized to appropriate additional money. Section 365(b).

Also, all bonds issued by the Government of Micronesia or by its authority shall be exempt from taxation by the United States or individual states. Section 362.

B. Expenditures

The draft bill will let the Micronesian Constitution resolve most of the issues of who will decide how funds will be spent. However, the Executive Branch must have the power to make item vetoes. Section 342. And, the draft bill does establish a Comptroller appointed by the U.S. President with the same functions as in the Virgin Islands. Section 343.

8. Control Over Foreign Affairs and National Defense

The draft bill does not specifically address control over foreign affairs and national defense. However, the powers reserved to the U.S. Government clearly include these powers. See, for example, Sections 201(b) and (e), 311(c), and 342(a); Statement of Principles, p. C-9.

The Statement of Principles does promise that, so long as the Commonwealth interests in such contacts are consistent with U.S. national policy, the U.S. would assist and encourage the Commonwealth to make foreign contacts for trade, tourism, culture and other matters. Moreover, on

policy issues, Micronesian views would be welcomed. Page C-9. (Note that the draft Compact of Free Association had a much more formal and extensive undertaking by the U.S. Government.)

9. Other Duties of "Citizenship"

None specified in the draft bill for U.S. nationals.

10. Other Benefits of "Citizenship"

None specified in the draft bill for U.S. nationals. The draft bill does require that the Micronesian Constitution have a bill of rights, though its exact provisions are not specified. Section 103. Moreover, the Micronesian Constitution cannot conflict with the U.S. Constitution nor applicable U.S. laws. Section 201(b). See generally Sections 201, 342, and 351-55.

11. Eligibility for U.S. Grants and Social Programs

As discussed at item #7A, the Micronesians will be eligible for at least some Federal programs and a Commission would be established to recommend which Federal statutes should be applicable. (A similar commission had been established in 1950 for Guam and apparently one for the Virgin Islands.)

statutes should be applicable. [NB: A similar commission had been established in 1950 for Guam and apparently one for the Virgin Islands.]

12. Eligibility for Loans or Other Assistance from International Lending Institutions

See discussion at item #8.

13. Internal Political Structure

The draft bill specifies areas where the U.S. and Micronesian Governments would share responsibilities and lays down some requirements for the Micronesian Government structure.

A. Shared Responsibilities

Responsibilities would be shared by virtue of the provisions that the Micronesian Constitution and the legislative authority of the Micronesian Government would have to be consistent with the U.S. Constitution and applicable U.S. laws. See, for example, Sections 201(b) and (1), 311(c) and 342(a).

U.S. laws which are applicable cover many issues. (As discussed at item #7A, a Commission would be established to determine which laws are applicable.) Beside those mentioned in earlier discussion (e.g., income taxes), the U.S. reserves the right to issue currency, run the postal system, and apply Federal banking laws. Moreover, the rules and

regulations of many Federal agencies would be in force. Statement of Principles, pp. C-8, C-10 and C-11. See generally Section 311(c).

The Micronesians would be allowed a non-voting delegate to the U.S. House of Representatives. Section 331.

B. Micronesian Government Structure

The draft bill would require the Micronesian Government to have three branches -- executive, legislative and judicial. While many details are not specified, the bill imposes a number of further requirements.

The Executive must be elected, have the power of item veto, and have certain other specified powers. However, the U.S. President is authorized to appoint a Comptroller (along the lines of the Virgin Islands' arrangement). See Sections 201(e), 341-43, and 367.

The legislature must be popularly elected and limits are placed on its legislative authority. See, for example, Sections 201 and 381.

Micronesia would have local courts of its own choosing which would enforce and interpret local laws. In addition, the U.S. Federal Court system would be expanded to include Micronesia. This would establish a Federal District Court for Micronesia with jurisdiction over violations in the Commonwealth of the U.S. Constitution, federal

laws or treaties, and certain other cases. The Circuit Court of Appeals (Ninth Circuit) and the Supreme Court of the U.S. would be available for appeals both from decisions of the paramount Commonwealth Court and of the Federal District Court. Sections 201(f) through (i) and 351-55.

14. Mechanism for Terminating the Political Status

Nothing is provided in the draft bill.

15. Mechanism for Amending the Political Status

The draft bill provides that amendments to the Micronesian Constitution would require approval by the U.S. President and ratification by a majority of the qualified voters of Micronesia. Section 105.