



Congress of Micronesia

CAPITOL HILL SAIPAN MARIANA ISLANDS 96950

DATE

CONF. COM. REPT. NO. 6

PRESIDENT
Tosiwo Nakayama

AUGUST 9, 1974

MARIANAS DISTRICT
Olympio T. Borja
Edward D.G. Pangolinan

RE: S.B. NO. 296, S.D.1, H.D.4

MARSHALLS DISTRICT
Anesia Kuluu
William L. Kendall
Joseph E. Sam
Richard T. Meluchi

The Honorable Tosiwo Nakayama
President of the Senate
Fifth Congress of Micronesia
First Special Session, 1974

and

PONAPE DISTRICT
Bailey Oter
Arbulo Iensi

The Honorable Bethwel Henry
Speaker, House of Representatives
Fifth Congress of Micronesia
First Special Session, 1974

TRUK DISTRICT
Tosiwo Nakayama
Andon Amarich

YAP DISTRICT
John A. Mamerfel

Dear Mr. President and Mr. Speaker:

HOUSE OF REPRESENTATIVES

Your Conference Committee, to which was referred S.B. No. 296, S.D.1, H.D.4, entitled:

SPEAKER
Bethwel Henry

S.B. No. 296, S.D.1, H.D.4, "A BILL FOR AN ACT TO ALLOW THE TRANSFER AND CONVEYANCE OF CERTAIN PUBLIC LANDS FROM THE GOVERNMENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS TO LEGAL ENTITIES IN EACH OF THE SIX DISTRICTS; TO EMPOWER THE HIGH COMMISSIONER TO TRANSFER AND CONVEY SUCH LANDS; TO PRESCRIBE CERTAIN LIMITATIONS, RESERVATIONS, AND CONDITIONS TO SUCH TRANSFER AND CONVEYANCES; AND FOR OTHER PURPOSES."

MARIANAS DISTRICT
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begs leave to report as follows:

YAP DISTRICT
John A. Mamerfel

Senate Standing Committee Report No. 221, and House Standing Committee Reports No. 293 and 316 amply set forth the intent and purpose of this bill, and we adopt them here.

MARIANAS DISTRICT
Olympio T. Borja
Edward D.G. Pangolinan

Throughout the course of the consideration of this bill by the Congress of Micronesia, the United States has ~~been~~ ~~the~~ we are bound by its interpretation of the United States Statement on the Return of Public Lands which it issued in

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November of 1972. We are not certain that this position is sustainable. There seems to be something hypocritical, something inconsistent with United States responsibilities and obligations toward Micronesia and its people, to contend that the United States can dictate policy like this in the first place. We remind the Administering Authority that, while the Trusteeship Agreement certainly contains language obligating the United States to protect Micronesian interests, it says absolutely nothing about using that agreement to protect its own interests, at least outside of the very limited rights granted to the United States by the "strategic trust" provisions. It also seems to us to be somewhat hypocritical for the Administering Authority to contend, as it has done for twenty-seven years, that it holds Micronesian lands only as trustee for the people, and then to contend that it will return these lands only on its own terms. This is not the obligation of a trustee, a fact of which we believe the Administering Authority is fully aware.

In the second place, once the United States had agreed in principle to the return of public lands to the people of Micronesia, it also agreed to negotiate the terms and conditions under which these lands would be returned. As a result, at the Seventh Round of political status negotiations, held in Washington, D.C., in November of 1973, the question of the return of public lands was discussed between the two delegations; and negotiated by them. The actual United States position, then, is not what is contained in its Policy Statement--which served only as a working document for the negotiations, in effect,--but rather, what came out of those negotiations. And we believe that it is inconsistent with the principle and spirit of those negotiations for one side--either the United States or Micronesia--to dictate what the results of those negotiations were.

As a result of those negotiations, and of the opportunities which we have had to meet with representatives of the Administering Authority throughout the course of the consideration of this bill, we are convinced that there is absolutely nothing contained in the bill, as it has been amended by the Congress of Micronesia, which would reasonably be said to threaten any legitimate interest either of the United States or of the Trust Territory Government. Thus, if the bill is disapproved

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by a unilateral determination of the Administering Authority that "their" policy has been violated, the Congress should have no choice but to construe such an action as a breach of the good faith under which the negotiations were and are being conducted. The Congress will have made its best effort to accommodate, in good faith, the best interests of the people of Micronesia and the wishes of the Administering Authority.

Many of the amendments offered by the House of Representatives to Senate Bill No. 296 were acceptable to the Senate. Disagreement centered on one area in particular: the question of the return of title to military retention lands in the Mariana Islands District. Your Committee believes that, as is the case with all other public lands, title must be returned to the people. We would point out that the interests of the United States will not in any way be threatened by this provision, since title to the lands concerned will still be subject to the indefinite use rights agreements which the United States negotiated with itself as to our lands. The continued existence of these agreements, which will still remain in force as specifically provided by the bill, will effectively give the United States the lever that it wants to avoid paying an excessive price, and there is no legitimate need to resort to the tactic of retaining title as well to accomplish the same purpose. In any event, the Congress of Micronesia will still retain its responsibility to participate in the negotiations for the leases of military land under the Compact, and the United States may be assured that we intend to grant our agreement only at a price which is neither too high nor too low.

We have also amended the House Draft by providing for Congress of Micronesia approval of any district legislature resolution authorizing the sale, lease, or exchange of any lands by the district entity to the United States. While it is our goal to maximize district control, the nature of the relationship between Micronesia and the United States indicates that the Congress of Micronesia has a clear and important role in this particular class of land transactions.

All of the other amendments made to the bill by your Committee are minor or technical in nature, and we have not discussed them at length; they are all related to amendments made initially by either of the two Houses, and references to each

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of them can be found in the respective Standing Committee Reports cited above.

The amendments are listed as follows:

1. On page 2, lines 5 through 7, the words "except those lands . . . the public domain" are deleted.
2. On page 2, lines 12 through 14, the words "except those lands . . . the public domain" are deleted.
3. On page 3, line 2, the words "among its purposes" are deleted, and the words "as its primary purpose, to which all other powers and duties are subordinate are inserted in lieu thereof.
4. On page 3, line 18, following the word "legislature" the words "subsequently approved by the Congress of Micronesia" are inserted.
5. On page 6, line 12, following the word "Government" the words ", as determined by Resolution of the district legislature; EXCEPT, HOWEVER, the High Commissioner shall have one year prior to passage of title to demonstrate to the district legislature the Government's active use, after which the district legislature may rescind its prior determination" are inserted.
6. On page 7, lines 12 and 13, the words ", economic development of that district," are deleted.
7. On page 7, line 13, following the word "and", the words "to fulfil" are inserted.
8. On page 9, line 2, the words "transferred and" are deleted.
9. On page 9, line 4, the words "transfer and" are deleted.
10. On page 9, line 5, the words "transferred and" are deleted.

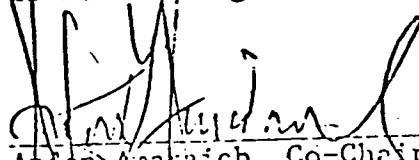
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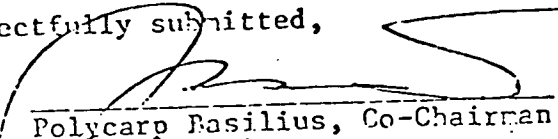
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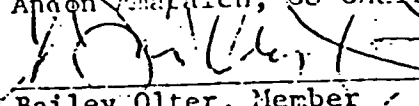
11. On page 9, line 10 is deleted in its entirety.
12. On page 11, line 2, following the word "and", the word "a" is inserted.
13. On page 11, line 11, following the word "Purpose", "To" is deleted, and the words "The purpose of this Title is to" are inserted in lieu thereof.
14. On page 11, line 13, the words "customary and traditional" are deleted.
15. On page 13, lines 17 and 18, the words "a court judgment Land Title Officer's Determination of Ownership" are deleted, and the words "judgment of a court of competent jurisdiction on the merits of such claim and not on the basis of a prior determination by a Land Title Officer or by any other agency or official prior to the establishment of the Land Commission for the district," are inserted in lieu thereof.

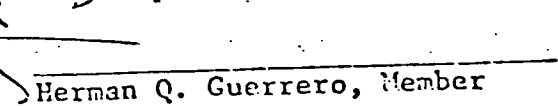
Your Conference Committee is thus in accord with the intent and purpose of Senate Bill No. 296, S.D.1, H.D.4, as amended, and recommends that the bill be adopted by both Houses of the Congress of Micronesia as Senate Bill No. 296, S.D.1, H.D.4, C.D.1, attached hereto; and your Committee begs to be discharged.

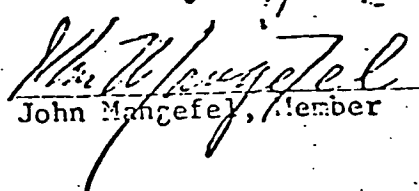
Respectfully submitted,

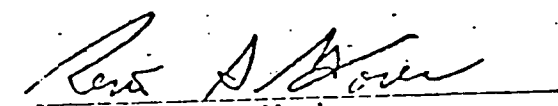

 Andon Ananich, Co-Chairman


 Polycarp Rasilius, Co-Chairman


 Bailey Olter, Member


 Herman Q. Guerrero, Member


 John Mangefel, Member


 Rasio Moses, Member

8/9/74

AN ACT

To allow the transfer and conveyance of certain public lands from the Government of the Trust Territory of the Pacific Islands to legal entities in each of the six districts; to empower the High Commissioner to transfer and convey such lands; to prescribe certain limitations, reservations, and conditions to such transfers and conveyances; and for other purposes.

BE IT ENACTED BY THE CONGRESS OF MICRONESIA:

1 Section 1. Short Title. This act shall be known as the
2 "Public Land Act of 1974."

3 Section 2. Purpose. The purpose of this act is to provide
4 for the return of public lands to the people of Micronesia, who are
5 the rightful owners thereof; to authorize and empower each of the
6 district legislatures to create or to designate a legal entity or
7 entities within its district to hold title to public lands within that
8 district in trust for the peoples thereof and to manage or dispose of the
9 same; to authorize and empower each district legislature to enact laws
10 providing for the exercise of the power of acquiring land for public
11 purposes, and to establish adjudicatory bodies which may utilize tradition
12 means, when desired, for settlement of claims of title to or rights in
13 the lands transferred; and to authorize the High Commissioner to convey
14 certain public lands within each district to such legal entity or entities

15 Section 3. Definitions. As used in this act, unless it is
16 otherwise provided or the context requires a different construction,
17 application or meaning:

18 (1) "District" means any of the administrative districts
19 of the Trust Territory of the Pacific Islands as described in Section 1,
20 Title 3, of the Trust Territory Code.

21 (2) "District Legislature" means any of the chartered district
22 legislatures of the Trust Territory of the Pacific Islands.

1 (3) "Public Lands" means:

2 (a) those lands defined as public lands by Sections
3 1 and 2, Title 67, of the Trust Territory Code and,

4 (b) those lands placed under control of the "Alien
5 Property Custodian" as defined by Section 1, Title 27, of the Trust
6 Territory Code.

7 (4) "Legal Entity" means any municipal government, district
8 government, nonprofit corporation, or individual established or designated
9 by a district legislature to receive and hold title to real property.

10 Section 4. Authority of District Legislatures. Each district
11 legislature is hereby empowered to enact laws to:

12 (1) create or designate a legal entity or entities which
13 shall have as its primary purpose, to which all other powers and duties
14 are subordinate, the return of public lands transferred to it under the
15 authority of this act to the rightful owners thereof, and shall have the
16 following powers and duties:

17 (a) to receive and hold title to public lands in trust
18 for citizens of the Trust Territory,

19 (b) to administer, manage, and regulate the use of
20 lands and income arising therefrom in trust for citizens of the Trust
21 Territory,

22 (c) to sell, lease, exchange, use, dedicate for public
23 purposes, or make other disposition of such public lands pursuant to the
24 laws of the district in which the land is located; PROVIDED, HOWEVER,
25 that the laws of the Trust Territory regarding ownership of land shall

1. apply in connection with any disposition of lands under this paragraph,
2. and PROVIDED FURTHER, that no lands may be sold, leased, exchanged, or in
3. any other way disposed of to the United States or any agency or political
4. subdivision thereof except upon authority specifically granted by
5. resolution of the district legislature, subsequently approved by the
6. Congress of Micronesia,

7. (d) to enter into contracts, sue or be sued, and
8. have such other powers and duties as may be necessary or appropriate
9. to further the purposes of this act, and

10. (e) to negotiate in good faith to meet the land
11. requirements of the United States;

12. (2) establish an adjudicatory body to resolve claims disputes
13. as to titles or rights in land transferred to such legal entity or entities;
14. PROVIDED, HOWEVER, that no such body shall have the authority to
15. redetermine any claim or dispute as to right or title to land between
16. parties or their successors or assigns where such claim or dispute has
17. been finally determined by a Land Commission or a court of competent
18. jurisdiction on the merits of such claim, and not on the basis of a prior
19. determination by a Land Title Officer or by any other agency or official
20. prior to the establishment of the Land Commission for the district, and
21. all final determinations arising therefrom shall be res judicata; and
22. PROVIDED FURTHER, that a certified copy of all determinations of such
23. adjudicatory bodies as to title of lands within a district shall be
24. recorded with the District Registrar and with the Clerk of Courts;

25. (3) establish procedural rules and regulations for such

1 adjudicatory body which may include use of local, traditional rules not
2 in conflict with applicable law; PROVIDED, HOWEVER, that the requirements
3 of due process shall be incorporated therein which shall include the
4 right to a trial de novo upon appeal to the High Court by any party to a
5 dispute involving a claim or right to lands and who has been aggrieved
6 by the adjudication of the district adjudicatory body;

7 (4) authorize a district legal entity to exercise the
8 power of acquiring land for public purposes and to this end, the district
9 legislature is authorized to enact laws and establish procedures therefor; an

10 (5) establish a program for homesteading on the land
11 transferred to the legal entity or entities created or designated pursuant
12 to this act and authorize such legal entity or entities to administer
13 such program.

14 Section 5. Authority of the High Commissioner. The High Commissioner
15 is authorized and directed to convey, pursuant to the provisions of
16 this act, to a district legal entity or entities all right, title and
17 interest of the Government of the Trust Territory of the Pacific Islands
18 in public lands.

19 Section 6. Reservations. Notwithstanding the provisions of
20 Section 5 of this act, the High Commissioner shall not convey to a
21 district legal entity or entities any right, title or interest to public
22 lands in the following categories:

23 (1) Public lands actively used by the Government
24 of the Trust Territory of the Pacific Islands, or by agencies,
25 instrumentalities, or political subdivisions thereof, as of the effective

1 date of this act, PROVIDED, that title to such public lands in a district
2 shall be conveyed to the district's legal entity or entities upon
3 the cessation of active use of such public lands by the Government as
4 determined by Resolution of the district legislature; EXCEPT, HOWEVER,
5 the High Commissioner shall have one year prior to passage of title
6 to demonstrate to the district legislature the Government's active
7 use, after which the district legislature may rescind its prior determinati

8 (2) Public lands specifically determined by the High Commissioner
9 with concurrence of the district legislature, to be needed for capital
10 improvement projects extending five years from the effective date hereof;
11 PROVIDED, that such public lands in a district shall be transferred to
12 the respective district's legal entity or entities upon the expiration of
13 such five-year period if at such time they are not in active use by the
14 Government, as determined by Resolution of the district legislature;
15 EXCEPT, HOWEVER, the High Commissioner shall have one year prior to
16 passage of title to demonstrate to the district legislature the Government's
17 active use, after which the district legislature may rescind its prior
18 determination; and

19 (3) Public lands as to which there are valid homestead entry
20 permits, or certificates evidencing compliance with such permits, and
21 as to which deeds have not been issued, as of the effective date hereof.

22 Section 7. Limitations. Notwithstanding the provisions of
23 Section 5 of this act, the High Commissioner shall not convey any right,
24 title or interest in public land to any district legal entity or entities
25 until the district legislature shall enact laws complying with the criteri

1 of this section as follows:

2 (1) compliance with all provisions of existing leases
3 and land use agreements previously entered into by the Government
4 of the Trust Territory of the Pacific Islands, or its agencies,
5 instrumentalities, or political subdivisions; PROVIDED, HOWEVER, that
6 the Government, its agencies, instrumentalities and political sub-
7 divisions may not enter into any lease or use agreement as to public
8 lands after the effective date of this act, except leases of such lands
9 to Trust Territory citizens for residential purposes, and to fulfill
10 existing contractual obligations of the Government, without the approval
11 of the district legislature of the district in which such land is located;

12 (2) continued possession of public land occupied at
13 the effective date of this act, with the concurrence of the Government of
14 the Trust Territory of the Pacific Islands, by tenants at will and
15 tenants by sufferance for a reasonable period of additional years to be
16 determined by the High Commissioner;

17 (3) receipt of all revenues derived from public lands
18 transferred under this act by a district legal entity or entities upon
19 the conveyance of title to such lands to that district entity or entities,
20 which revenues shall be used and disposed of pursuant to district law
21 for public purposes; and

22 (4) all transfers and conveyance to be made subject
23 to all valid and existing claims relating to such lands.

24 Section 8. Time of Transfer and Conveyances. Conveyances of
25 rights, titles or interests to public lands under this act to any particular

1 district legal entity or entities shall be made within one hundred and
2 twenty days after a district legislature has complied with all the
3 applicable provisions of this act.

4 Section 9. Compilation of Information. Within ninety days of
5 the effective date of this act, the High Commissioner shall compile
6 and publish, as to each district of the Trust Territory, information
7 as to the size and location of each parcel of public land which:

8 (1) is retained by the Government pursuant to the provisions
9 of Section 6 of this act; and

10 (2) is the subject of a lease or land use agreement as
11 set forth in Section 7(1) of this act, or of a tenancy at will or by
12 sufferance as set forth in Section 7(2) of this act, together with
13 the lessee, user, or tenant thereof, and together with a summary
14 of the provisions of any agreement, whether written or unwritten,
15 concerning such lease, land use, or tenancy; and

16 (3) has been conveyed by the High Commissioner pursuant to
17 the authority of Section 5 of this act; and

18 (4) is subject to conveyance under Section 5 and 6
19 of this act, but has not been conveyed.

20 The publication required by this Section shall be made
21 available to the Congress of Micronesia, to each district legislature
22 and legal entity, and to the general public, and shall be revised and
23 updated not less frequently than once every three months.

24 Section 10. Amendments.

25 (1) Chapter 1 of Title 10 of the Trust Territory Code

1 is repealed in its entirety, and a new Chapter 1 is added to Title
2 10 to read as follows:

3 "ACQUIRING LAND FOR PUBLIC PURPOSES"

4 Chapter 1

5 GENERAL PROVISIONS - DEFINITIONS

6 Sections

- 7 1. Purpose.
8 2. Power denied private corporations.
9 3. Definitions.

10 Section 1. Purpose. The purpose of this Title is to establish procedure
11 to be followed by the Government of the Trust Territory and district
12 governments to exercise their powers to acquire real property for public
13 purposes.

14 Section 2. Power denied private corporations. No private corporation
15 except as may be authorized by a district legislature pursuant to
16 the provisions of the Public Land Act of 1974 shall have the right
17 to acquire real property for public purposes.

18 Section 3. Definitions. As used in this Chapter, the following
19 terms shall have the meaning set forth below:

20 (1) "Acquiring Land for Public Purposes" is the right
21 of the Government of the Trust Territory, or a district government
22 or a district legal entity as may be provided for by district
23 law in accordance with the Public Land Act of 1974 to acquire
24 private property for public purposes and to appropriate the owner-
25 ship and possession of such property for such public purposes.

1 upon paying the owner a just compensation to be ascertained
2 according to the law. The right may be exercised by the
3 Government of the Trust Territory only after a district government
4 or a district legal entity has refused to exercise the power, or has
5 failed to act upon a request by the High Commissioner to exercise the
6 power within one year of the date of such request.

7 (2) "Public Purposes" shall be construed to cover
8 any purpose determined by the High Commissioner to be a public purpose
9 wherein the right to acquiring land for public purposes is sought to
10 be exercised by the Government of the Trust Territory of the Pacific
11 Islands, or any purpose determined to be a public purpose by a district
12 government or a district legal entity as may be appropriate wherein the
13 right to acquire land for public purposes is sought to be exercised
14 pursuant to district law or the provisions of the Public Land Act of 1974.

15 Section 4. Limitation of Power. Prior to exercising the power
16 of acquiring land for public purposes the Trust Territory Government,
17 or a district government or a district legal entity as may be provided
18 for by district law in accordance with the Public Land Act of 1974 shall:

19 (1) negotiate in good faith with the land owners for the
20 purchase of the real property determined to be necessary for public purposes

21 (2) attempt to acquire the real property, determined to be
22 necessary for public purposes by using the traditional and customary methods
23 prevailing in that district."

24 (2) The chapter title of Chapter 3 of Title 10 of the
25 Trust Territory Code is amended to read as follows:

63723

" Chapter 3

2 ACQUIRING LAND FOR PUBLIC PURPOSES — PROCEDURE AND PROCEEDINGS"

3 (3) Section 112 of Title 67 of the Trust Territory Code

4 is hereby amended to read as follows:

5 "Section 112. Conduct of hearings. In conducting hearings,
6 each Land Commission and each land registration team shall be guided by, but
7 need not conform to, the Trust Territory Rules of Civil Procedures and the
8 Rules of Evidence. Each Commission and each registration team is
9 authorized to consider such evidence as will be helpful in reaching a
10 just decision. Neither a Commission nor a land registration team, however,
11 shall endeavor to redetermine any matter already decided between the same
12 parties or those under whom the present parties claim, by judgment of
13 a court of competent jurisdiction on the merits of such claim and not
14 on the basis of a prior determination by a Land Title Officer or by any
15 other agency or official prior to the establishment of the Land Commission
16 for the district, or a determination made in accordance with the authority
17 provided by Subsections (2) and (3) of Section 4 of the Public Land Act
18 of 1974. All Commissions and land registration teams shall accept such
19 prior determination as binding on such parties without further evidence
20 than the judgment or determination of ownership. All hearings shall be
21 public and every person claiming an interest in land under consideration
22 shall be given an opportunity to be heard. Hearings must be held in the
23 municipality in which the land involved lies and when practicable shall be
24 held in the village in which or near which the land lies. All parties,
25 including any representative (appointed under Section 113 of this Chapter

1 or by a court or other proper authority) of a minor or incompetent,
2 may be represented and assisted by counsel."

3 Section 11. Citizenship of district entity. A district entity
4 shall be deemed to be a citizen of the Trust Territory for the purposes
5 of Section 11101 of Title 57 of the Trust Territory Code.

6 Section 12. Powers and duties of Chief of Lands and Surveys.
7 The statutory powers and duties of the Chief of Lands and Surveys shall
8 not extend to public lands transferred to district legal entities pursuant
9 to this act, however the Division shall furnish technical assistance upon
10 request of the district legal entity or entities.

11 Section 13. Effective date. This act shall take effect upon the
12 date of its approval by the High Commissioner or upon its becoming law
13 without such approval.

14
15
16 _____, 1974

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20 Edward E. Johnston
21 High Commissioner
22 Trust Territory of the Pacific Islands
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