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Authority EO 12958  
By MT NARA Date 11/21/05

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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

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ACTION

SECRET

April 13, 1970

MEMORANDUM FOR DR. ~~XXXXXXXX~~

FROM: John H. Holdridge

SUBJECT: Decision on Micronesia

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| MICROFILM   | DATA             |
| DO <u>1</u> | INIT <u>RS</u>   |
|             | DATE <u>4-29</u> |
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State has sent you (Tab II) a packet of materials on Micronesia, in anticipation of an Under Secretaries Committee meeting which was scheduled for 11:00 a.m. this Tuesday. This was intended to permit the Committee to instruct the negotiating mission which is scheduled to go to Micronesia for another round of talks on May 4.

Subsequently, Mr. Richardson has sent (Tab I) a brief memorandum summarizing the decisions which need to be taken in order to instruct the negotiating mission. He has suggested that no Under Secretaries Committee meeting be held unless a member calls for one before 10:00 a.m. on Tuesday. If nobody feels the need of a meeting, he asks concurrence in the decision memorandum which he has sent.

I believe that one reason for all this urgency is that Mr. Richardson is the one in State who has been following Micronesia, and he is scheduled to be absent for two weeks, beginning on Wednesday. Nevertheless, I agree with State that this business can be transacted without a meeting.

To safeguard your interests, I will notify State that you do not concur in the text or the decision to skip the meeting, if you have not addressed this memorandum by Tuesday morning.

*This was done Tuesday AM*

Here are the principal new aspects in the proposed negotiating package:

- We would offer a Constitutional Convention route, which the Micronesians have wanted, and which would permit them to frame their own charter. The proposed bill authorizing such a Convention is at Tab II F. This bill itself would of course be submitted in the U.S. Congress, and it incorporates a series of limits on the nature of the Constitution which the Micronesians would draw up -- sufficient to protect our interests.

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*NS3 Form Done 4/22 RS*

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- The new bill is somewhat more liberal than the old one which you have seen in several respects: Land - It sets up an elaborate constitutional procedure to safeguard Micronesian interests, but still keeps the right of eminent domain for the USG. Elected Governor - Unlike earlier drafts, this would permit the immediate election of the Governor, and he would not be subject to the restraint of a powerful appointed adviser. Commonwealth - To reassure Micronesians of our intent to honor their identity, this would be called a Commonwealth, rather than an "unincorporated territory", but in legal practice it would closely resemble the latter, and there would be no trace of the concept of compact, which has been a thorny issue with respect to Puerto Rico. Citizenship - Micronesians could opt for American citizenship.
- Double referendum. The Micronesians would vote twice, first to hold a Convention (after the U. S. Congress passed the legislation), and second to accept the Constitution after the President had determined that it fitted the provisions of the enabling legislation. Although superficially clumsy, the authors argue convincingly (Tab II E) that this procedure will be more likely than a single referendum to get the Micronesians aboard.
- Draft Statement of U.S. Principles. This is a new feature, a written document (Tab II D) which would be given out by our delegation in May. So far, we have been unable to force the Micronesians to look seriously at the limits to our negotiating flexibility. This statement is intended to force them to take that look, and to educate and convince Micronesians other than the few presently involved in negotiation.

Mr. Richardson's proposed decision memorandum incorporates one decision which I believe is stated too explicitly. For the first time, our negotiators would begin to show some steel within the glove: they would warn that "we would be required to maintain the trusteeship indefinitely if the Micronesians do not wish to enter into a permanent association with the United States." This would not only put us on record in direct conflict with much hallowed language about Trusteeships, it is also much too specific for this stage of the game. I would propose that the language be changed to go back to the original text (see p. 17 of Tab II), which merely states that "we are not therefore prepared to consent to any change in status which would endanger" our strategic interests.

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Mr. Richardson's decision memorandum would also have us defer any further Congressional consultation until after the May negotiations, and it authorizes State/Interior consultation to develop better political reporting on Micronesia.

RECOMMENDATION:

1. That you authorize me to convey your concurrence in the draft decision memorandum at Tab I, with the following exception: the language of paragraph 3 of the memorandum should be altered to match the interagency agreed text (first full sentence on p. 17, Tab II) as to possible results of a failure to reach agreement on the nature of future association. (The bracketed second sentence on p. 17 is not an agreed text and should not be included.)

Approve JK Disapprove \_\_\_\_\_

2. That, if the change above is acceptable, you concur that there is no need for an Under Secretaries Meeting.

Approve JK Disapprove \_\_\_\_\_

APR 21 1970

Attachments

Informed Mr. Whittington (Interior) of this language.  
 " Klaus Ruser (State). OK 4/22/70

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MEETING ON MICRONESIAN STATUS  
April 14, 1970

CONFIDENTIAL

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BRIEFING MATERIALS  
UNDER SECRETARIES' COMMITTEE  
MEETING ON MICRONESIAN STATUS

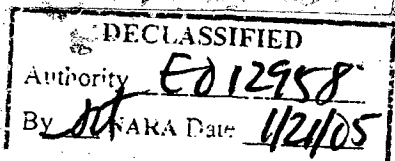
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- Tab A: February 27, 1970 letter from Chairman Salii.  
Eleven points of Micronesian proposal.
- B: March 19, 1970 letter from Chairman Salii.
- C: Changes in Political Status Act and Constitutional  
Convention Bill.
- D: Statement of Principles for presentation at May  
discussions (draft).
- E: Safeguards on the Constitutional Convention approach  
-- the Dual Referenda.
- F: Constitutional Convention Bill.

Decisions to be made.

- 1) The form of the U.S. proposal to be presented to the  
Micronesians at the May discussions in Saipan.  
(Briefing Paper, p. 11).
- 2) In the event of unfavorable reception of our position by  
the Micronesians, whether the U.S. Delegation should make  
clear the ultimate limits of the U.S. position.  
(Briefing Paper, p. 16).
- 3) Whether there should be consultation with U.S. Congressional  
leaders prior to the May discussions in Saipan.  
(Briefing Paper, p. 18).



## BRIEFING PAPER FOR UNDER SECRETARIES' MEETING

## TRUST TERRITORY OF THE PACIFIC ISLANDS

I. Introduction. The purpose of this meeting is to review and take action on the recommendations of the Interagency Group on the Trust Territory of the Pacific Islands relating to the meetings with the Micronesian Status Delegation scheduled to commence May 4 in Saipan. The Interagency Group recommendations deal with both the United States strategy for the meetings and the substance of the U.S. proposal.

In view of the limited communications between Saipan and Washington and the fact that no further meetings with the Micronesians are anticipated for some time, the Under Secretaries will probably wish to provide the U.S. Delegation with instructions which are both as comprehensive as possible and as flexible as practicable.

II. Secretaries' Meeting. The last high level consideration of Micronesian future status was at the December meeting of Secretaries Hickel and Rogers, Dr. Kissinger, and Assistant Secretary Nutter to decide whether the U.S. could forego the right of eminent domain. Their decision on the matter was negative. Another major decision made was that, although an agreement with the Micronesians was desired as soon as possible, the time pressure did not warrant foregoing a possibly more advantageous agreement which might be reached through more extended negotiation with the Micronesians. There was some discussion of the Constitutional Convention draft

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bill; however, it was generally felt that the time had not then come to abandon the Organic Act approach.

III. Assistant Secretary Loesch's Trip to Micronesia.

- A. Preparation. The Interagency Group met after the Secretaries' meeting to decide what position Assistant Secretary Harrison Loesch, Chairman of the Group, should take during his scheduled January visit to the Trust Territory. The Interagency Group decided to table with the Micronesians a revised version of the Political Status draft bill (Organic Act) previously approved by the Under Secretaries last August. Assistant Secretary Loesch was authorized basically to: 1) inform the Delegation that the Interior land proposal had been rejected; 2) present the Political Status Bill to the Delegation and request their comments prior to the next round of discussions between the two delegations.
- B. The Trip Itself. Assistant Secretary Loesch went to the Territory in early January and both informed the Micronesian Delegation of the decision on the land question (they received it without surprise, but with no indication that they had changed their position) and gave them copies of our Political Status Bill.



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IV. Delegation Attitudes on Political Status. In addition to meeting with the assembled Delegation, Secretary Loesch and his staff Assistant, Tom Whittington, a former attorney in Micronesia who had worked closely with the Congress of Micronesia, met individually and informally with members of the Delegation. The comments on status made during such conversations are probably the most accurate reflection we have available of their present attitudes. These statements have in some cases been reinforced by subsequent communications from Delegation Chairman Lazarus Salii. These attitudes and subsequent developments are the following.

- A. The Political Status Bill. Response by the Micronesian Delegation to the Political Status Bill was unfavorable. Members of the Delegation met before the session with Secretary Loesch to go over the U.S. draft, but evidently were so disappointed that they did not even review and discuss the entire bill. This did not indicate abandonment of the Status Commission's preference for association with the U.S. In fact, the Delegation did not focus particularly on the bill's substance, but rather on its appearance, especially its failure to provide for a Constitutional Convention.
- B. Constitutional Convention Approach. The Delegation had strongly favored the Constitutional Convention approach from the beginning of discussions, and presented an issue paper in the October talks favoring such an approach. They were especially disappointed, then, that the U.S. proposal had not taken this form. In fact,

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Chairman Lazarus Salii of the Delegation stated that as a result the Micronesians were drafting their own bill in this form.

Despite the Micronesians' apparent disinterest in our Political Status Act, the Interagency Group felt that it was essential to try to obtain a reaction from the Micronesians to the type of status it described. On January 16, Assistant Secretary Loesch therefore wrote a letter to the Delegation Chairman requesting the Delegation's comments on our proposal, particularly its definition of the basic relationship we envisaged between Micronesia and the U.S.

In late February the Department of the Interior received the Micronesian response: a draft bill which uses a Constitutional Convention framework and is essentially a compilation of the Micronesian issue papers tabled last October; it described a status close to independence with certain treaty ties to the U.S. Finally, in early March, Assistant Secretary Loesch received a letter from Chairman Salii, dated February 27, which stated that "...unless the United States is willing to let the Micronesians draft and adopt their own Constitution, I do not see much chance for successful negotiations between your group and ours. ...Your group must be willing to consider this." (See Tab A for list of October issue papers and February 27 letter.)

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This Micronesian compulsion for a constitutional convention appears to result from several factors. First is the dignity of deciding the specifics of one's form of government. Second is the political necessity of involving the public in the determination of their future. The Delegation apparently views achievement of these goals as the first step in fulfilling its mandate.

- C. Importance of the May Discussions. The Micronesians have stated that the May meeting is to be the last, at least in this series. Legislative Counsel, Kaleb Udui, during the January trip, stated that the Micronesian Political Status Delegation had concluded that it could not seek an extension of its mandate in its present form. Because of political pressures in the Congress and public interest and concern, the Delegation considers that it must report its findings and recommendations to the Congress at its session in July. (See Tab B, Chairman Salii's letter of March 19, 1970.)
- D. Other Recent Developments. The Micronesian Delegation has recently retained Professor J.W. Davidson of the Australian National University to assist it before and, presumably, during the May talks. Though his experience is primarily with freer forms of political association than we desire, Davidson is knowledgeable on political status matters and is reputed to be a realist. He also helped to write the 1969 Report of the Micronesian Future Political Status Commission.

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Further, Chairman Salii's March 19 letter requests information on the authority of members of the United States Delegation to speak for their respective departments or agencies, a question which may be indicative of a desire for substantive discussions and perhaps agreements.

- V. Expectation Regarding Delegations Report to the Congress. We assume that the Delegation's recommendations will relate both to the substance of the U.S. position and to further actions to be taken by the Congress of Micronesia on possible association with the United States. The Delegation, if it considers the U.S. position promising or acceptable, may recommend continuation of discussions or other positive action, and possibly even endorsement of that position by the Congress as a whole.

Alternatively the Delegation may simply report back the U.S. position with no recommendations on its substance, either favorable or unfavorable. Such a neutral attitude would leave the U.S. position to stand alone on its merits before the Congress of Micronesia and the public

Finally, if in the view of the Delegation, the U.S. position is not sufficiently promising as to warrant further discussions with the U.S., the Delegation will likely so report. This would put the U.S. in an unresponsive and negative position with the Congress of Micronesia, as well as greatly reduce Micronesian receptiveness to any new U.S. initiatives.

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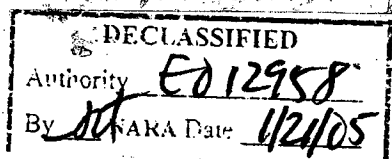
VI. Attitudes and Political Realities in Micronesia.

- A. Political Leadership. The importance of avoiding an unresponsive and negative stance lies in the existing attitudes and political realities in Micronesia as a whole, as well as the views of the Micronesian Delegation and the Congress.

While the views of average Micronesians generally follow those of the local leadership, that leadership comes at all levels: the Congress of Micronesia, district and municipal leaders, and traditional chiefs. The problem of assessing this leadership is substantially complicated by a lack of detailed and quantified political reporting as well as differences between districts and by its changing character as younger leaders replace the traditional chiefs who, seeking to maintain the security of a familiar way of life, tend to be more conservative and hold views more compatible with our interests.

It is clear, however, that all levels of leadership are intensely interested in the matter of Micronesia's future status. Although they see independence as one option, the majority still appears committed to some form of association with the U.S., as recommended by their Status Commission.

This preference is subject to erosion, however, particularly if the U.S. fails to clearly demonstrate its commitment to Micronesia's future and specifically to an association compatible with Micronesian thinking. Our administration in the Territory -- the Interior Department's Action Program -- can partially demonstrate this interest, but we must also address the matter of future status.



B. Effect of an Impasse. In the absence of such U.S. initiative, Micronesian leadership will not stand still. Moreover, it seems most likely that any movement will be in a direction unfavorable to the United States, toward independence. Not only is such a trend, which could cast the U.S. in the role of the traditional colonial power, a common historical pattern in such situations, but this alternative course has already been foreseen by the Future Political Status Commission of the Congress of Micronesia. In its April 1969 Statement of Intent the Commission states in part:

"For ourselves, we look forward to the success of future negotiations with the United States. But if these negotiations should fail, if it should not be possible to achieve the alternative we recommend, then we have only one remaining course. It is the second alternative mentioned in the Trusteeship Agreement, an alternative which might bring economic hardship and administrative difficulties. That alternative is independence. Independence is not the alternative we now recommend, but if it should prove impossible to renew our partnership with the United States as an associated free state, the Political Status Commission feels that independence would be the only road left open to us." (P. 9, Report of the Future Political Status Commission.)

It could certainly be argued that it is far too early in the process to know if the negotiations have failed. The definition of "failure" is, however, a subjective matter, not one which we alone can decide. For their part, the Micronesians are likely to view a negative and unresponsive U.S. position as a failure, and act accordingly. It is therefore extremely important that we avoid forcing the Micronesians away from their current preference -- association with the U.S. -- and toward independence.

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C. Micronesian Decision-Making. If our position is responsive to the Micronesian desires and is accurately reflected to the Congress, even without comment, this will allow the leadership -- the Delegation, the Congress and the local leaders -- to exercise its influence and to consider our position objectively. Under these conditions, the Micronesian decision-making process could come into play -- a process which generally occurs through coming to a consensus viewpoint. Meetings in Micronesia often appear interminable as people talk around and around the central issue, never seeming to talk to the basic problem. At some point, one gets the feeling that everyone has had his say, that the apparent deadlock may never be resolved. Just as suddenly, one person will make a final comment, perhaps one made many times before, all opposition will drop and the question will be settled to the satisfaction of all.

Logically, this same process should be applicable to the Micronesian Delegation, and it is possible that such a critical point is now being reached by the Delegation in its thinking. In this case, with the proper lead from us and with the members' desire to have something concrete to report to the Congress of Micronesia, they could reach a consensus around our position, or at least elements of it. Subsequently, the same result could evolve in the Congress as a whole.

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VII. Objectives and Method of Approach. Our primary objective at the May meeting is to open a channel of communications first to the Micronesian Delegation, and subsequently to the Congress and the people. We hope by this means to achieve the Micronesian support necessary to terminate the trusteeship and extend U.S. sovereignty to Micronesia. To achieve this objective, it is necessary to consider, from a negotiating standpoint, both the appearance and framework of a new status, as well as the substance of the relationship.

In terms of substance, we must insure that our position is understood; namely, that the Micronesians must realize that they cannot have the benefits without the obligations. We must make clear to them that which is unacceptable in their proposal, not so much by telling them what they cannot have, but by stressing what is required from our point of view. Finally, we must remind them of our strategic interests and that, in fact, no change in the Trusteeship Agreement, including termination, can be made without our consent.

None of these points can be made, however, without regard to the manner in which they are presented -- the framework of the status as a whole. Neither side can realistically consider specific issues out of context, as the three divergent approaches developed thus far (Political Status draft, Constitutional Convention draft, and specific issue papers) have done. Only by mutual acceptance of an approach to the Status question can full discussion of the issues be reasonable expected.



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VIII. Alternatives and Recommendation. The Interagency Group has considered three basic approaches which could be used by the U.S. Delegation in its May negotiating session:

1. Attempt again to sell the Political Status bill.
2. A statement of principles including the possibility of a constitutional convention approach.
3. A statement of principles accompanied by the Constitutional Convention bill -- The Interagency Group's Recommended Approach.

A. Attempt again to sell the Political Status bill. The Delegation could again try to sell the Political Status bill. It would be modified and improved by removing both the appointed executive option and the provision for an advisor to the elected executive. The Interagency Group believes it is now clear that the Micronesians prefer an elected executive, and that the advisor is a transparent device, the purposes of which can be otherwise satisfied. (See Tab C for further discussion of this and certain minor changes.)

Pros. This bill describes the substance of our best offer. Although none of its essential elements can be changed, other revisions are possible. If the Micronesian Delegation could be made to appreciate both the meaning of the essential elements and the flexibility contained within this position, they might be more receptive and willing to work with us to mold the bill to fit their desires. This would have substantial advantages; the U.S. would remain in control of the negotiating process, and presumably the resolution of Micronesia's future status could be completed in the optimum time frame.

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Cons. It clearly limits the Micronesian role in devising their new status; only the small Micronesian Delegation would participate, and even it would be working from a U.S. proposal. Since the Micronesian Delegation feels public participation is essential -- this feeling is at the heart of their insistence on a constitutional convention -- it is unlikely that they would enter into a dialogue of substance within the framework of this bill.

In view of the Micronesian Delegation's apparent complete rejection of the Political Status bill as presented by Assistant Secretary Loesch, the chance of their even listening to and appreciating our description and explanation of the bill is very remote. Any U.S. concessions of substance within this framework appear immaterial.

As a result, this approach would almost certainly elicit a negative report from the Delegation to the Congress of Micronesia in July, regardless of the merits of the bill itself and the status it envisages.

B. A Statement of Principles Including the Possibility of a Constitutional Convention Approach.

In order to concentrate our approach on the critical issue of the nature of the acceptable status, the U.S. Delegation could present our proposal in terms of a statement of principles (See Tab D) without reference to any particular bill. This would be prefaced with a statement that we viewed the question of

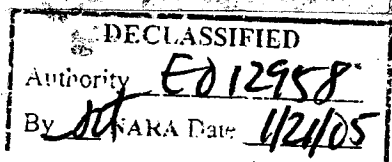
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Micronesia's relationship to the U.S. as the critical issue, and that the method of implementation, whether by Organic Act, Constitutional Convention, or other approach, is secondary.

Our principles would stress the same requirements as in the first alternative -- the status would be essentially the same. However, in addition to amendment of the executive provision, the Interagency Group would now label this status a "commonwealth". This has definite attraction to the Micronesians, and we believe that potential problems with the U.S. Congress, associated with the Puerto Rican precedent, can be met. (See Tab C.)

In setting forth the principles of the proposed association we would point out the implications of U.S. sovereignty and federal supremacy, e.g., foreign affairs, defense, and eminent domain. Conversely, we would emphasize the benefits which go with U.S. sovereignty and the other advantages we would be prepared to provide Micronesia. We would also highlight the extent of self-government which Micronesia would have -- and conversely the sort of federal interference which it might expect.

Presuming the Micronesians have not indicated that the principles expressed are unacceptable, the U.S. Delegation would then be prepared to discuss implementation, including the possibility of a constitutional convention and the limits thereof. We would stress that the convention and its constitution could deal with the internal government structure of Micronesia; the



relationship between Micronesia and the U.S., to be approved by both the U.S. Congress and the Micronesian people, could not be contradicted by the Constitution (see discussion of safeguards, Tab E.) We would stress that the U.S. proposal -- the principles of the status, the benefits, the self-government, and the constitutional convention, -- is a total package, and that the individual parts would have no standing considered alone.

Pros. Under this proposal, by discussing the possibility of Micronesian participation through a constitutional convention, we would hope to avoid the immediate impasse likely under the first alternative. We would moreover concentrate attention on the status itself, hopefully avoiding the distractions of implementation until later. This might enable us to determine if the Micronesians were actually considering the same type of status we have in mind -- and to do so before we had placed a full proposal before them.

Cons. The prime disadvantage of this approach is that we would only be talking in theories; we would not be offering a specific proposal which could be examined and envisaged in actual operation.

At worst, this could lead to suspicions that we were holding something back -- that our actual proposal would not live up to our principles or would contain some unmentioned condition. The Micronesian Delegation would find it very hard to understand why we were holding back at a time when they were preparing their final report. Further, they could resent the fact that the U.S. was not being responsive.

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At best, the absence of a draft bill would leave our proposal incomplete and certainly would stall any decision by the Delegation or the Congress, while giving away the substance of our best position. They might express interest, but would need to await something specific.

C. Statement of Principles Accompanied by the Constitutional Convention Bill -- Interagency Group Recommended Position.

The third alternative, and the one strongly recommended by the Interagency Working Group for the approval of the Under Secretaries' Committee, is to proceed with a presentation of our statement of principles as described above. If the Micronesian Delegation does not reject the basic status, we would then table our constitutional convention bill (See Tab F) for their consideration, and hopefully subsequent acceptance by the Congress of Micronesia. The bill would be modified to provide for two referendums: one (following U.S. Congressional enactment of the bill) to approve the nature of the proposed relationship between the United States and Micronesia, and the other to approve the constitution itself and put the final seal on the new status. (See Tab E for a further discussion of this modification.)

Pros. This proposal, eliminating any suspicions about the real nature of the U.S. offer while at the same time retaining all the advantages of the second alternative, would maximize the chances for an early agreement on the new status. In the first instance we would be responsive to the Micronesian Delegation's

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stated preference and would thus enhance the chances of gaining their endorsement and a favorable report. Moreover, our specific offer would be available for consideration prior to the July session of the Congress of Micronesia, maximizing the chances of positive action at that time. In the event action is postponed in July, the Micronesians would at least have a clear and complete offer for their consideration.

The Interagency Group considers that the chance of the constitutional convention getting out of hand, i.e., pushing for a looser form of association than we could accept is minimized by this alternative. The tabling of the bill itself puts the constitutional convention clearly within the framework of the total U.S. offer. Most importantly, the addition within the bill of the first referendum provides for endorsement by the Micronesian people of the limitations of the constitutional convention even before it meets. The opportunity for honest misunderstanding will be significantly reduced. In approving the constitution prior to the second referendum, the President would be able to cite any unacceptable provisions as being in violation of the expressed position of the Micronesian people, thus greatly lessening the political consequences of his veto. (See Tab F).

**IX. Ultimate U.S. Position.** In the event the Micronesian Delegation either clearly rejects our position, or non-negotiable elements thereof, or indicates substantial reservations regarding its

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acceptability, the Interagency Group believes that we must make clear the limits of the U.S. position. Specifically, the U.S. Delegation should inform the Micronesians that the Trusteeship Agreement cannot be terminated without our consent, that our strategic interests in the area, as reflected in Micronesia's unique status as a strategic trust, remain just as strong as they were in 1947; and that we are not therefore prepared to consent to any change in status which would endanger these interests. [In other words, if the Micronesians were unwilling to work out a lasting association with the U.S., its current trusteeship status would continue indefinitely. The U.S. Delegation might also point out that in this event the U.S. Congress possibly would be less sympathetic to budget requests for Micronesia and might generally lose interest in the Trust Territory.]

Obviously the manner in which the U.S. Delegation made the above points -- the severity and the scope of its presentation -- would be keyed to the exact nature of the Micronesian rejection and/or objections. This would have to be left to the judgement of the U.S. Delegation. However, the basic point would have to be made -- the Micronesians would have to realize that ultimately the U.S. controls the future of the Trust Territory of the Pacific Islands and is prepared to exercise this control.

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X. Approach to U.S. Congress. It is expected that there will be some U.S. Congressional reluctance to offering Micronesia self-government at this time without the extended trial and growth period of the other territories. This reluctance obtains whether we offer a Political Status Act or a Constitutional Convention Bill.

We continue to believe, however, that the U.S. Congress is mindful of our strategic interest in the area and that it can be brought to appreciate the importance of extending U.S. sovereignty over Micronesia. Since Micronesian support is obviously essential to achieve this goal, we believe the Congress can be persuaded to accept substantive requirements necessary to secure such support so long as essential federal prerogatives are maintained.

The question remains, however, as to when we should make this effort to persuade the Congress, i.e. the key figures in the two Interior and Insular Affairs Committees. There appear to be two basic choices, as follows:

1) Consultation soon after the May discussions in Saipan.

This would continue the policy agreed upon by the Under Secretaries last August on the narrower issue of the elected executive -- to approach the Congress only after getting a better idea of Micronesian thinking on the matter. We still do not have sufficient knowledge of Micronesian attitudes on all the issues relating to status, nor do we believe they fully understand our position. Since the purpose of the May discussions is to discuss mutual positions, it may still be



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premature to discuss the matter with Congress. We still do not have definitive answers to all questions likely to be asked; after the May meetings we hope to be so prepared. Moreover, an approach prior to the Saipan meeting raises the risk that Congressional leaders would attempt to exercise a veto on our chosen position.

The danger of postponing consultations is that key Congressional figures are likely to feel themselves presented with a fait accompli should our proposal be alive after the May talks. They could accurately point out that the executive branch was aware of potential Congressional objections to the types of proposals contemplated. Any resulting resentment -- which in the view of the Interior Department would be substantial -- could close their minds to our presentation of the bills themselves, as well as the reasoning which led to them.

2) Consultations With Congress. Prior to the May Discussions.

This would involve a confidential discussion by Assistant Secretary Loesch with the key figures on the respective Interior Committees summarizing the present situation and direction in which we are going. Secretary Loesch, as he did last October, could also invite the two committees to send staff members to Saipan to sit in on the negotiating sessions.

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In the unlikely event that the early reaction in his discussions is favorable and understanding, Secretary Loesch could describe in greater detail the exact course we expect to take at the May discussions. If, as is to be expected, the reaction is less than favorable, Secretary Loesch would attempt to keep the briefing as general as possible. To the extent specific objections were raised on key issues, he would attempt to persuade the committee leaders to our viewpoint.

Should their objections not be dropped, Secretary Loesch would point out that the executive branch's conclusions had not been reached lightly: territorial precedents had been kept fully in mind, but in order to bring the Trust Territory under U. S. sovereignty, Micronesian support was absolutely essential. While in gaining such support we could not sacrifice basic U.S. interests or federal supremacy, Secretary Loesch could point out that we are convinced that our approach will in fact work to secure U.S. interests as well as offer a good possibility of Micronesian support. He would state, therefore, that we felt it necessary to proceed in Saipan along the lines he had outlined. We would, of course, fully inform the committees of the results of the May session and be prepared to discuss the matter further on our return.

This approach avoids presenting Congress with a fait accompli. It could lead to better congressional understanding of our thinking and possibly even to tentative support. Furthermore, if disagreement exists, it must be faced eventually.

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The obvious drawback to this approach is that, if we are unable to overcome existing congressional objections, we would be flouting their clearly expressed views if we nevertheless decided to proceed on our chosen course. There could again be congressional resentment at our actions which could endanger any agreement. The Interior Department believes, however, that resentment under these conditions would be less serious and manageable.

The Interagency Group believes this is an issue which should be considered and decided by the Under Secretaries' Committee.

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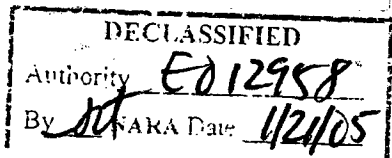
CHANGES IN POLITICAL STATUS ACT  
AND CONSTITUTIONAL CONVENTION BILL

The Interagency Group has again reviewed the two draft bills previously considered by the Under Secretaries Group and believes that certain additional refinements can usefully be made in them.

A. Changes in both the Political Status Bill and the Constitutional Convention Bill.

1. Nationality and Citizenship. Provision would be made to give the Micronesians the status of U.S. nationals, but to allow any who wished to do so to opt for U.S. citizenship by simple application to the Federal District Court. There is the precedent of American Samoa for such a procedure. (There is little practical difference between national and citizenship status. Nationals are not subject to the selective service laws under present administrative rulings.)

The Interagency Group believes that the status of U.S. nationals will have more appeal to most Micronesians since it appears to provide greater protection for their traditional rights and to recognize their desire to retain a separate identity. Some Micronesians, however, particularly in the Mariana Islands, place a very high value on obtaining U.S. citizenship. Hence, by allowing a choice, we will meet both desires.



2. Executive Provisions. The executive section would be changed to eliminate the choice of an appointed governor, since recent indications are that the Micronesians definitely wish to elect their own executive.

We would also eliminate the provision for a Presidential representative to advise and in certain cases exercise a check on the elected executive. The Group now believes first that the provision for an advisor is a transparent controlling mechanism which would not only be criticized in the UN, but would also be resented by the Micronesians. More important, the Group believes that the control to be provided by the advisor can be effectively exercised through a combination of the Federal comptroller, the U.S. Attorney for the District Court, and the U.S. Congress with its budgetary control. (We would still offer advisors to the Micronesians and encourage their acceptance, at least for a transitional period.)

B. Changes only in the Constitutional Convention Bill -- Commonwealth.

Micronesia's new status would be labeled "commonwealth" rather than "unincorporated territory". This is not a change in substance, but is expected to have great symbolic significance to Micronesians. They clearly do not want the status of Guam, and unincorporated territory, but find attractive the status of Puerto Rico, a commonwealth.

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Because of its experience with Puerto Rico, the U.S. Congress would probably be wary of using this label. We believe these Congressional reservations can be met by demonstrating that this status specifically maintains federal supremacy and that only at the end was it labeled a commonwealth. The particular question which has arisen with regard to Puerto Rico, as to whether the U.S. Congress abdicated its plenary power under the Constitution to legislate for Puerto Rico similar to a grant of statehood or independence, is clearly avoided in our formulation of the Commonwealth of Micronesia. The relevant clause of the Constitution (Article IV, Section 3 giving the U.S. Congress the power to make all needful rules and regulations respecting the territory of the United States) is made specifically applicable. Moreover, the constitutional convention bill is not described as being "in the nature of a compact" as was the case with Puerto Rico. It is this phrase which has been the main basis of claims that the U.S. Congress had relinquished its power to legislate unilaterally.

The only variation on this theme is the provision in the proposed Constitutional Convention Bill which permits changes in the Micronesian Constitution only in accordance with the procedures developed for the formulation of the Constitution. In short, though they cannot change their Constitution without complying with those procedures, neither can the Congress of the United States.



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## STATEMENT OF PRINCIPLES

DRAFT

The US Delegation wishes to set forth for the Micronesian Delegation, the Congress of Micronesia and the Micronesian people the essential elements - the principles - of an offer for a new political status for Micronesia. This offer is made in response to the initial statement of intent of the Micronesian Political Status Commission last April expressing a preference for a status of self-government in free association with the US and seeks to take into account subsequent developments including the discussions and exchanges which have taken place between the Micronesian and US Political Status Delegations. It is therefore an expression of US views on the total package of rights, obligations and privileges -- for both parties -- which would be involved in a political association between the US and Micronesia. Obviously, these principles do not describe the only possible future status for Micronesia and some elements of this status would be subject to revision, particularly in translating these principles into formal proposals. They do, however, provide a basis on which the United States believes a future status -- beneficial for both Micronesia and the US -- can be built.

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### Extension of US Sovereignty

Of primary importance is the meaning of the word "association" as it is conceived in the US offer and as it is generally accepted in international law. "Association" in this context does not mean a series of treaty relationships between two independent political entities; rather it involves much closer ties based on a common sovereignty -- in the case of the US offer, the extension of US sovereignty to Micronesia. In essence, Micronesia would become a part of the United States and would as a result assume certain obligations and receive certain rights and benefits.

### Commonwealth of Micronesia

Obviously, the statement that US sovereignty would be extended to Micronesia leaves much unsaid; American Samoa, Guam, Puerto Rico and Pennsylvania are all under US sovereignty and yet each has a significantly different status. The US offer contemplates Micronesia becoming a Commonwealth of the United States. This would provide Micronesia with internal self-government -- Micronesian control over all three branches of government. It would also define Micronesia's relationship with the United States in a manner which we believe is consistent with current Micronesian thinking:

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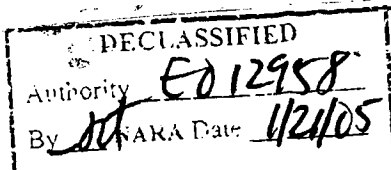
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neither a relationship so close as that of a "state" nor one implying future evolution as is the case with an "unincorporated territory". Micronesia would be a Commonwealth of the United States without any commitment to change this status in any way.

Under Commonwealth status, certain powers will be exclusively reserved to Micronesia, others will be shared with the US Government, and a few will be reserved exclusively to the Federal Government.

#### Internal Self-Government

1. Structure of the Government - The US Constitutional system is based on a republican form of government, with three separate branches and a bill of rights for the protection of the people. These three requirements would have to be met by Micronesia (as they have been by the other political sub-divisions of the United States), but aside from these limits, the Micronesian people would be able to establish a governmental structure of their own choosing. Certain minor provisions such as the need for one paramount



court for the commonwealth, would be necessary, but otherwise the choice would be in the hands of the people of Micronesia.

How all of these choices would be made -- how the governmental structure would be defined -- is subject to discussion. It could be worked out through negotiations with the Micronesian leadership and incorporated in a complete legislative proposal for submission to the US Congress, or it could be decided by the Micronesian people through a constitutional convention to define an internal government structure consistent with the terms of relationship between the commonwealth and the federal government. These are, however, matters of implementation and not basic questions of principle.

2. Powers of the Government - Obviously, in many areas the powers of the Commonwealth Government and those of the Federal Government would overlap. In general, control of commonwealth affairs would rest with the Government of Micronesia. It would decide what roads needed to be built, what airports improved, what harbor facilities constructed. It could take steps to protect and further Micronesian culture. The Micronesian Government could create and operate an educational system of its own choosing -- a curriculum fitted

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to the needs and traditions of Micronesia -- so long as free and equal education was provided to all.

The Government of Micronesia would control economic development. It would be able to provide incentives to agriculture, fishing and industry -- e.g. through loans, tax credits, or subsidies. It would be able to establish zoning laws, environmental control regulations and other requirements, both to restrict the areas where economic enterprises may function and the conditions under which they may do so. The Government of Micronesia would exercise absolute control over the sale or long-term lease of land to non-Micronesian residents. (Eminent domain procedures discussed at p. \_\_.) Since the Micronesian Government would be able to establish the requirements for residency, it would be able to maintain effective control over the activity of non-Micronesian investment in the commonwealth.

Thus, in terms of local matters and within the limits of Micronesia's dependence on financial support from the federal government, the powers of the commonwealth government would be extensive.

Relationship with the Federal Government

In an association such as that proposed by the US, there would of course also be many areas where the jurisdiction

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and responsibility of the Federal and Micronesian Governments would overlap and others where the federal government would clearly have the predominant if not the exclusive role.

1. Overlapping or Shared Responsibilities

A. Legislative Power - Both the US Congress and the Congress of Micronesia would have authority to legislate for the commonwealth, with the US Congress having supremacy in case of conflict. In the absence of applicable US law, the Congress of Micronesia would be free to legislate; it is the intent of the federal system to place as much authority and power in the political subdivision as possible. Federal legislation applicable to Micronesia would probably more often result from the commonwealth seeking benefits of the federal government than from any effort to apply federal regulations or authority.

Moreover, to ensure that Micronesia has a voice in any proposed federal legislation affecting the commonwealth, Micronesia would have a non-voting delegate in the House of Representatives. As in the case of Puerto Rico, even without a vote such a representative would not only have the chance to be heard, but, depending on his abilities, would also be able to exercise considerable influence.

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B. Judiciary - 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 and the Supreme Court of the U.S. would also be available for appeals both from decisions of the paramount commonwealth court and of the Federal District Court.

C. Taxation and Budgetary Support - The U.S. offer would make U.S. federal income taxes applicable to Micronesia, with the additional proviso that all such taxes collected in Micronesia would be retained for disbursement by the Commonwealth. [If desired, federal income taxes would not be applicable but this would result in a substantial reduction in potential local revenues.] In addition, of course, Micronesia could impose local income and other taxes.

Regardless of the sum of these taxes, the total of local revenues would be matched by an equal sum from the U.S. Treasury which would be credited to the Treasury of Micronesia and would be available for local appropriation. To the extent that local revenues plus the matching funds might be insufficient to provide for the budgetary needs of the commonwealth,



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the US Congress would be authorized to appropriate additional funds as needed. Obviously the larger the local revenues, the larger the matching fund and the smaller the commonwealth's direct dependence on the US Congress and the fewer the resulting limitations. It is for this reason that local collection of US federal income taxes appears to be in the interest of the commonwealth.

D. Land and Property Control - All property, real and personal including all of the so-called public lands now held or controlled by the Trust Territory would be turned over to the Government of Micronesia. Provision would be made for the US Government to review the need for that land now held under agreement with the Trust Territory Government and to enter into new agreements for those lands considered necessary for the public purposes.

The Government of Micronesia would be free either to retain such public property for the public good or to return it to private ownership. The Government of Micronesia would also be free, of course, to establish commonwealth eminent domain procedures.

The federal government would retain the right of eminent domain, through modified procedures, to allow acquisition of

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land for public purposes. Extensive consultations would be held with the Congress of Micronesia both as to the need for such taking and the adequacy of compensation. Disputes between the federal government and the Congress of Micronesia concerning compensation would be referred to the paramount commonwealth court; disputes concerning need would be referred to the Court of Appeals for the Ninth Circuit. Appeal procedures would also be available for the individual whose property is involved. Any property acquired by the federal government through such procedures would be only for the stated public purpose and would revert to the original owner or his heirs five years after it ceased to be used for such purpose.

/E. Other Areas of Shared Jurisdiction ]

2. Areas Reserved for the Federal Government

A. Foreign Affairs - The President is responsible for the formulation and implementation of foreign policy for all of the United States - the states, the territories and Puerto Rico. This would be true of Micronesia as well. The President, using the strength and power of the United States as a whole, seeks to follow a policy or policies which will bring benefits to the people as a whole.

Although this power is reserved to the Federal Government, this does not mean that Micronesia would be cut off from the

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outside world or forbidden direct contacts with foreign individuals and officials: quite the contrary. So long as Micronesian interests in such contacts are consistent with U.S. national policy, the federal government would assist and encourage the Commonwealth Government. This would be particularly true with regard to Micronesian efforts to increase commercial contact, whether in terms of trade or tourism, and would also extend to cultural contacts and other matters. Where policy is directly involved, Micronesian views would be welcomed and would receive sympathetic attention. There is an office in the State Department specifically responsible for assisting states, territories and commonwealths in making legitimate contacts and in insuring their views are heard.

B. Defense - Micronesian security would be assured, since the Federal Government would be responsible for the defense of Micronesia just as it is for the remainder of the U.S. Moreover, being part of the United States is not likely to make Micronesia more of a target; in view of modern strategic weaponry, any attack against the United States would almost certainly have to concentrate on our retaliatory capability and on major population and industrial centers, thus bypassing Micronesia.

C. Status of Micronesians - The Federal Government determines the status to be given to inhabitants of the

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United States, its territories and commonwealths. Aside from resident aliens, there are only two such statuses in existence -- U.S. nationals or U.S. citizens. The U.S. offer would provide the current citizens of the Trust Territory the eventual choice between these two statuses; initially all would be U.S. nationals but subsequently they could, by simple application to the federal court, become U.S. citizens. This would not preclude the Commonwealth from establishing criteria for citizenship of Micronesia, but legally this would have only local applicability and would correspond to a definition of residency.

D. Freedom of Trade and Travel and Equality for All within the U.S. - The U.S. Constitution provides for freedom of trade and travel between all parts of the United States; these provisions would also extend to Micronesia. This would allow free access into the US for Micronesian goods, and Micronesian travel for any reason, including business, studies or pleasure.

E. Postal, Currency and Banking Regulations - The Federal Government reserves the right to issue currency and to run the postal system, and would include Micronesia in that system. Federal banking laws would also apply to the commonwealth and would tie it into the U.S. commercial banking system.

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SAFEGUARDS ON THE CONSTITUTIONAL CONVENTION  
APPROACH -- THE DUAL REFERENDA

The Interagency Group has made a basic change in the constitutional convention bill which should provide a large measure of control over the results of the convention, and avoid a public confrontation thereon between the President and the Micronesian leadership.

As originally drafted and submitted to the Secretaries in December, the bill provided the following schedule of events:

- (1) preliminary agreement with the Congress of Micronesia;
- (2) submittal to the U.S. Congress for enactment;
- (3) election of a constitutional convention, and drafting of the constitution;
- (4) submission of the draft constitution to the President;
- (5) return to the Congress of Micronesia by the President of unacceptable provisions, if any;
- (6) approval of the Constitution by the President after any necessary changes;
- (7) vote on ratification by people of Micronesia;
- (8) President issues proclamation announcing new status.

The Interagency Group now proposes that an additional referendum be inserted in this process, to take place after the passage of the bill by the U.S. Congress (Step 2), but prior to the holding of the constitutional convention (Step 3). The Group believes this new referendum will have the following advantages:

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--It will provide the U.S. with the opportunity, and a legitimate excuse, to conduct a thorough political education campaign to ensure that the people understand the terms and intent of the bill. Obviously, the same purpose will be served with regard to potential delegates to the constitutional convention, whomever they may be.

--In holding a vote early, the chances of outside events interfering with the results will be diminished and the favorable attitudes of the older traditional leaders will be used to our advantage before they are replaced by younger, possibly less sympathetic spokesmen.

--Assuming a favorable vote, the delegates to the convention will know they have a clear mandate. Not only would honest misunderstandings be minimized, but the temptation to seek extreme provisions in order to impress or satisfy their supporters would be lessened.

--Again, if the bill is approved, the Micronesians would have taken the step of giving tentative approval to the type of status envisaged by the U.S. It would not be final (a second referendum with UN observers present would still be held on the constitution itself), but it would be public endorsement not lightly reversed in the second referendum.

--Finally, if despite all these preparations, the Constitution still goes beyond the limits of our bill, the President, in pointing this out, will be able to say that the provisions in question are inconsistent with the publicly expressed wishes of the people of Micronesia, not just the U.S. Congress. This should help to avoid the adverse political consequences of such rejections.

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Although, there may be risks involved in having two referendums, the Interagency Group believes them to be less than under a single referendum procedure. While there is the chance of an adverse vote before the process even gets well along, a vote has to be faced sometime and there will always be the risk of losing. Moreover, an early referendum on the issue raised in this proposal should provide for a vote on what we consider the best issue under the best conditions; we will have a thorough education campaign on a relatively straight-forward proposal; the constituency will be at its best; and people will always know that this is only the first step, and therefore not irreversible.

One could also argue that two votes are more dangerous than one -- that the opportunity for defeat is doubled -- but this is unlikely. Under the two-vote procedure, if the first vote is favorable, (and as indicated above it maximizes the positive conditions), the second vote would tend to be a rather pro forma affair. The likelihood of a U.S. -- Micronesian confrontation over the Constitution would have been minimized, and the Micronesians would only be giving the final seal of approval to a status which they had already tentatively approved.

On the other hand, a single referendum procedure would present a more complicated issue; both the constitution and the terms of the relationship would be considered together and for the first time. A minority of negative votes on either issue considered individually, might thus combine to defeat the referendum on the whole package.



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Furthermore, in the single referendum procedure, if the President had been forced to reject portions of the Constitution, a public confrontation could easily follow, and endanger the result of the vote.

Thus, despite the mathematics of the situation, two votes appear safer than one.

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ADMINISTRATIVELY RESTRICTEDCONSTITUTIONAL CONVENTION BILLA BILL

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A B I L L

To provide for the creation of a constitutional government by the people of Micronesia, the future political status of the Trust Territory of the Pacific Islands and for other purposes.

Whereas the Trust Territory of the Pacific Islands was placed under the Trusteeship system, established in the Charter of the United Nations, by means of the Trusteeship Agreement approved by the Security Council of the United Nations on April 2, 1947, and the United States Government on July 18, 1947, after due constitutional process; and

Whereas the United States of America was designated under the terms of the Trusteeship Agreement as the administering authority of the Trust Territory of the Pacific Islands; and

Whereas the United States has heretofore assumed obligations for the civil administration of the Trust Territory in accordance with the terms of the Trusteeship Agreement; and

Whereas under said Agreement the United States has the authority to extend its laws to the Trust Territory; and

Whereas the Congress of the United States of America by the Act of June 30, 1954 provided that until Congress shall further provide for the government of the Trust Territory of the Pacific Islands, the executive, legislative and judicial authority necessary for the civil administration of the Trust Territory shall continue to reside in such person or persons and shall be exercised in such manner and through such agency or agencies as the President of the United States may direct or authorize; and

Whereas by Executive Order numbered 11021, the President of the United

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States vested responsibility in the Secretary of the Interior for the civil administration of all the Trust Territory; and Whereas the Congress of Micronesia, the popularly elected legislative body of the Trust Territory of the Pacific Islands, has requested the President and the Congress of the United States to give consideration to the future political status of the Trust Territory; and Whereas a Constitutional Convention is a basic method of ascertaining the wishes of the people and seeing such wishes reflected in a structure of government; and Whereas the Congress deems it appropriate that in the process of developing self-government, the people of the islands of Micronesia should enjoy certain rights and responsibilities inherent in the representative form of government;

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Micronesian Constitutional Convention and Enabling Act".

#### TITLE I - - CONSTITUTIONAL CONVENTION

SEC. 101. In recognition of the principles of government by consent of the governed and right of self-determination, the people of the islands of Micronesia are authorized to form a government for the islands of Micronesia pursuant to a constitution of their own adoption as provided by this Act.

SEC. 102. This Act shall be submitted, within six months from the date of its enactment, to the qualified voters of the Trust Territory of the Pacific Islands for acceptance or rejection through Territory-wide referendum to be held in accordance with the laws of the Trust Territory. Upon approval of this Act by a majority of the voters

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participating in such referendum the Congress of Micronesia is authorized to call a constitutional convention to convene within six months from the date of the referendum to formulate and draft a constitution for the islands of Micronesia in accordance with this Act. The procedure for the drafting, and adoption of the constitution by the people of Micronesia shall be in accordance with the rules and regulations established by the Congress of Micronesia. The delegation from each district to the Congress of Micronesia shall select from among its members one representative to the constitutional convention. Additional delegates shall be elected from among the qualified voters of each district to be apportioned as the Congress of Micronesia shall direct, provided that each district shall receive at least one additional delegate.

SEC. 103. The recommendation of the constitutional convention of a draft constitution for the islands of Micronesia shall be submitted not later than one year after the convening of the constitutional convention to the Congress of Micronesia for transmission to the President of the United States. If the President finds that the proposed constitution provides a republican form of government, includes a bill of rights, and conforms with the applicable provisions of this Act and the Constitution of the United States of America, he shall so certify to the High Commissioner of the Trust Territory, who shall so advise the Congress of Micronesia. If the President finds that the proposed constitution does not provide for a republican form of government, or for a bill of rights, or does not conform with the provisions of this Act or the Constitution of the United States, he shall so advise the High Commissioner of the Trust Territory, stating wherein in his judgment the constitution does not so

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provide or conform. The High Commissioner shall in turn submit such message to the Congress of Micronesia for further action. The revised document shall be returned to the President and the same procedure repeated until the President and Congress of Micronesia are in agreement.

SEC. 104. (a) Upon certification by the President to the High Commissioner of the Trust Territory in accordance with section 103 of this Title, the High Commissioner shall, within thirty days after receipt of such certification, issue a proclamation for a referendum to be held not more than ninety days after the date of the proclamation on the following proposition:

"Shall the peoples of the Trust Territory of the Pacific Islands join in a political association with the United States of America as provided in the Constitution of Micronesia and the Micronesian Constitutional Convention and Enabling Act?"

(b) The High Commissioner of the Trust Territory of the Pacific Islands shall, within thirty days following the referendum, certify the results to the President. If the President finds that a majority of the legal votes cast at the referendum are in favor of adopting the proposition, he shall issue a proclamation so stating, and the Constitution of Micronesia, and Title III and IV of this Act shall become effective upon the date specified in the proclamation. In the event the foregoing proposition is not adopted at the referendum by a majority of the legal votes cast, none of the provisions of Titles III and IV of this Act shall become effective.

SEC. 105. Amendments to the Constitution of Micronesia may be made from time to time in accordance with the same procedures and subject to the same conditions as those provided for the drafting, approval and adoption of the Constitution.

## TITLE II

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SEC. 201. The Constitution of Micronesia shall be republican in form, shall provide for three separate branches, legislative, executive, and judicial and shall contain provisions either as a part thereof, or as an ordinance appended thereto to the effect that - -

(1) The inhabitants of Micronesia are nationals of the United States to the extent provided for in Title III, Chapter 2 of this Act.

(2) No legislation enacted by the Congress of Micronesia may be inconsistent with the Constitution of the United States, and the laws of the United States made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States.

(3) No law shall be passed by the Congress imposing any tax upon property of the Government of the United States or property of the Government of Micronesia. No imports or export levies shall be imposed on goods imported into Micronesia from the United States or any of its territories or transported within Micronesia, or any political subdivision thereof. No taxes or export levies shall be imposed upon the exportation of goods from Micronesia to the United States, its territories or possessions.

(4) Every member of the Congress of Micronesia and all officers of the Government of Micronesia shall take an oath or affirmation to support the Constitutions of Micronesia and the United States and all laws applicable to Micronesia.

(5) The power, authority and functions of the Executive Branch of the Government of Micronesia provided for in Title III, shall be recognized.

(6) The judicial authority of the Government of Micronesia shall be vested in one paramount court, and such inferior courts as may be provided for in the Constitution of Micronesia or by act of the Congress of Micronesia. The selection and tenure of the judges of the courts shall be provided for in the Constitution of Micronesia or by act of the Congress of



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(7) The paramount court of Micronesia shall have jurisdiction to review on appeal all decisions of the inferior courts in accordance with rules prescribed by the Congress of Micronesia. It may from time to time prescribe rules for the conduct of its business and that of the inferior courts.

(8) The decisions of the courts of Micronesia shall be subject to review by the United States Court of Appeals for the Ninth Circuit as provided for in Title III, Chapter 5 of this Act.

(9) The jurisdiction and powers of the District Court for Micronesia and of its judges and officers provided for in Title III, Chapter 5, shall be recognized.

(10) No public indebtedness shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Micronesia. Bonds or other obligations of the Government of Micronesia payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Micronesia within the meaning of this section.

(11) The rights of the United States to acquire property as set forth in Title III, Chapter 7 of this Act shall be recognized.

(12) The territorial sea of the islands of Micronesia shall be delimited in accordance with the laws and treaties of the United States, and shall not exceed the limits maintained by the United States in its international relations. All laws and treaties of the United States of general application regarding navigable waters, the territorial sea, the high seas, including but not limited to the contiguous zone and the continental shelf, and fisheries shall be applicable with respect to Micronesia.

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(13) 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 provisions of clause 1, section 2 of article IV of the Constitution of the United States.

### TITLE III

#### POLITICAL STATUS OF MICRONESIA

- Chapter 1. Government of Micronesia.
- Chapter 2. Citizenship.
- Chapter 3. Non-Voting Delegate in Congress of the United States.
- Chapter 4. Executive Power.
- Chapter 5. Power of Federal Courts.
- Chapter 6. Fiscal Provisions.
- Chapter 7. Government Property.

#### Chapter 1.

##### Government of Micronesia

SEC. 311. (a) The Trust Territory of the Pacific Islands, consisting of the islands formerly administered by the United States of America pursuant to a Trusteeship Agreement with the Security Council of the United Nations, will hereafter be associated with the United States as a self-governing, commonwealth to be known as "Micronesia".

(b) The Government of Micronesia shall have the powers set forth in this Act, shall have power to sue by such name, and with the consent of the Congress of Micronesia, may be sued upon any contract entered into with respect to, or any tort committed incident to, the exercise by the Government of Micronesia of any of its lawful powers.

(c) The relations of the Government of Micronesia with the Federal Government shall be subject to the provisions of Article 4, section 3, clause 2 of the Constitution of the United States and shall be conducted through such agency of the United States as the President may designate.

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## Chapter 2.

## NATIONALITY AND CITIZENSHIP

SEC. 321. (a) The following persons, and their children born after July 18, 1947, are hereby declared to be nationals but not citizens of the United States as of the effective date of this Act, if, on such date, they were residents of an island of the Trust Territory of the Pacific Islands or other territory over which the United States exercises rights of sovereignty:

(1) All inhabitants of the islands of the Trust Territory of the Pacific Islands on July 18, 1947, including those temporarily absent from the islands of the Trust Territory of the Pacific Islands on that date, who were residents of the Trust Territory of the Pacific Islands, who after that date continued to reside on the islands of the Trust Territory of the Pacific Islands or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality; and

(2) All persons born in the islands of the Trust Territory of the Pacific Islands who resided in the islands of the Trust Territory of the Pacific Islands on July 18, 1947, including those temporarily absent from the islands of the Trust Territory of the Pacific Islands on that date, who after that date continued to reside in the islands of the Trust Territory of the Pacific Islands or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality.

(b) All citizens of the Trust Territory of the Pacific Islands born or naturalized in the islands of the Trust Territory of the Pacific Islands on or after July 18, 1947 (whether before or after the effective

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date of this Act), subject to the jurisdiction of the United States who, before the effective date of this Act, have taken no affirmative steps to preserve or acquire a foreign nationality are declared to be nationals but not citizens of the United States on the date born or naturalized.

(c) Any person hereinbefore described who is a citizen or a national of a country other than the United States, and who desires to retain his present political status, shall make a declaration under oath of such desire within two years after the effective date of this Act, or within six months after attaining the age of 21 years, whichever comes later, said declaration to be in the form and executed in the manner prescribed by regulations. From and after the making of such a declaration any such person shall be held not to be a national of the United States.

SEC. 322. Section 325 of the Immigration and Nationality Act (66 Stat. 248, 8 U.S.C. 1436) is hereby amended by inserting, following the language "United States" at the end of the section, the language "or within any of the islands of the Trust Territory of the Pacific Islands."

SEC. 323. Section 310.(a) of the Immigration and Nationality Act (66 Stat. 239, as amended, 8 U.S.C. 1421 (a)) is hereby amended by inserting, following the language "the District Court of the Virgin Islands of the United States," the language "the District Court of Micronesia,".

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Chapter 3.

NON-VOTING DELEGATE IN CONGRESS OF THE UNITED STATES

SEC. 331. (a) There shall be a non-voting Delegate in the United States House of Representatives for Micronesia. The non-voting Delegate shall be elected by the people qualified to vote for members of the Congress of Micronesia at the next general election after the effective date of this Act and thereafter at such general election every second year thereafter. The term of office shall commence on the 3d day of January following the date of election.

(b)(1) No person shall be eligible for election as a non-voting Delegate who (a) is not a national of the United States and of Micronesia and (b) is not at least twenty-five years of age. In case of a vacancy in the office of non-voting Delegate by death, resignation, or otherwise, the office shall remain vacant until his successor is elected and qualified.

(2) The non-voting Delegate shall have such privileges in the House of Representatives as may be afforded him under the Rules of the House of Representatives. The non-voting Delegate shall receive the same compensation, allowances, and benefits as a Member of the House of Representatives.

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## Chapter 4

## THE EXECUTIVE POWER

SEC. 341. The powers and functions of the Executive Branch of the Government of Micronesia shall be established and organized as provided in the Constitution of Micronesia.

SEC. 342. (a) The Executive Branch of the Government of Micronesia shall have the following powers and duties in addition to those conferred upon it by the Constitution and laws of Micronesia. It shall be responsible for the faithful execution of the laws of Micronesia and the laws of the United States applicable to Micronesia. It may with the approval of the President restore in Micronesia such civil rights as may have been lost as the result of convictions in Federal or State courts. Whenever it becomes necessary, in case of disaster, invasion, insurrection, or rebellion, or imminent danger thereof, or to prevent or suppress lawless violence, it may request assistance of the military or naval commanders of the Armed Forces of the United States, which assistance may be given at the discretion of such commanders if not disruptive of, or inconsistent with, their Federal responsibilities.

(b) If any bill presented to the Executive Branch of the Government of Micronesia contains several items of appropriation of money, it may object to one or more of such items, or any part or parts, portion or portions thereof, while approving the other items, parts or portions of the bill. In such a case it shall append to the bill, at the time of signing it, a statement of the items, or parts, or portions thereof, to which he objects, and the items, or parts, or portions thereof, so

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objected to shall not take effect. This provision shall be in effect so long as funds have to be appropriated by the Congress of the United States pursuant to section 365(b).

SEC. 343. The President is authorized to appoint a Comptroller for Micronesia. He shall have the same duties and authorities in Micronesia as those prescribed by Public Law 90-496, 48 U.S.C. 1599 (Supp. IV, 1965-1968), for the government comptroller for the Virgin Islands.

#### Chapter 5

#### POWER OF FEDERAL COURTS

SEC. 351. (a) There is created a court of record to be designated the "District Court of Micronesia". Said district court shall have the powers of a United States District Court, and shall have original jurisdiction of all causes or controversies arising under the Constitution, treaties, and laws of the United States, regardless of the sum or value in controversy, and where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, territory, or District of the United States not domiciled in Micronesia, wherein the matter in dispute exceeds, exclusive of interest or cost, the sum or value of \$3,000.

(b) The rules heretofore or hereafter promulgated and made effective by the Supreme Court of the United States pursuant to section 2072 of Title 28, United States Code, in civil cases including admiralty and maritime cases; section 2075 of Title 28, United States Code, in bankruptcy cases; and sections 3771 and 3772 of Title 18, United States Code, in criminal

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cases; shall apply to the District Court of Micronesia and to appeals therefrom; except that no provisions of any such rules or other statute which authorize or require trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information shall be applicable to the District Court of Micronesia unless and until made so applicable by laws enacted by the Congress of Micronesia. The District Court of Micronesia may prescribe and publish rules of practice and procedure not inconsistent with the aforementioned Federal rules.

SEC. 352. Any party may appeal to the Supreme Court of the United States from an interlocutory or final judgment, or order of the District Court of Micronesia, holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies or any officer or employee thereof, as such officer or employee, is a party. A party who has received notice of appeal under this section shall take any subsequent appeal or cross appeal to the Supreme Court. All appeals or cross appeals taken to other courts prior to such notice shall be treated as taken directly to the Supreme Court.

SEC. 353. (a) The President shall, by and with the advice and consent of the Senate of the United States, appoint a judge for the District Court of Micronesia who shall hold office for the term of eight years and until his successor is chosen and qualified unless sooner removed by the President for cause. The judge shall receive a salary



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payable by the United States which shall be at the rate prescribed for judges of the United States District Courts. The Chief Judge for the Court of Appeals of the Ninth Circuit of the United States may assign a justice of the paramount Court of Micronesia, or a circuit or district judge of the Ninth Circuit, or the Chief Justice of the United States Supreme Court may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge in the District Court of Micronesia whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the court.

(b) The President shall appoint, by and with the advice and consent of the Senate of the United States, a United States attorney and United States Marshal for Micronesia to whose offices the provisions of chapters 35 and 37 of Title 28, United States Code respectively, shall apply.

(c) The provisions of chapters 21, 41, 43, 49, and 57 of Title 28, United States Code, shall apply to the District Court of Micronesia.

SEC. 354. (a) All final judgments or decrees of the paramount Court of Micronesia may be reviewed by the United States Court of Appeals for the Ninth Circuit by writ of certiorari in accordance with such rules as that Court may prescribe.

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(b) In determining whether a writ of certiorari will be granted by the United States Court of Appeals for the Ninth Circuit, the following, among other reasons, shall be considered: whether the case presents a federal question of substance, and, whether the paramount Court of Micronesia has decided a question arising under the local law of Micronesia in a manner which is inescapably wrong or patently erroneous.

SEC. 355. The laws of the United States relating to removal of causes, appeals and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings between the courts of the United States and the courts of Micronesia.

#### Chapter 6.

#### FISCAL PROVISIONS

SEC. 361. The levy of duties on goods imported into Micronesia is hereby reserved to the Government of Micronesia.

SEC. 362. All bonds issued by the Government of Micronesia or by its authority shall be exempt, as to principal and interest, from taxation by the Government of the United States or by the Government of any State, Territory, or possession, or any political subdivision thereof, or by the District of Columbia.

SEC. 363. Effective on the first day of July following the effective date of this Act, all customs duties and Federal income taxes derived from Micronesia, the proceeds of all taxes collected under the

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internal revenue laws of the United States on articles produced in Micronesia and transported to the United States, its territories, or possessions, or consumed in Micronesia, and the proceeds of any other taxes which may be levied by the Congress of Micronesia on the inhabitants of Micronesia and all quarantine, passport, immigration, and naturalization fees collected in Micronesia shall be covered into the treasury of Micronesia and held in account for the Government of Micronesia, and shall be expended for the benefit of the Government of Micronesia, as the Congress of Micronesia may by law prescribe.

SEC. 364. Effective on the first day of January following the effective date of this Act, the income tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Micronesia, except that the proceeds of such taxes shall be paid into the treasury of Micronesia.

SEC. 365. (a) As soon as possible following the termination of each fiscal year, the Executive Authority of Micronesia shall certify to the Secretary of the Treasury the net amount of revenue, exclusive of Federal matching and grant funds, received by the Government of Micronesia during the preceding fiscal year. There shall thereafter each year be transferred and paid over to the Government of Micronesia, from funds in the United States Treasury not otherwise appropriated, a sum equal to the net amount of revenue received by the Government of Micronesia, as certified by the Executive Authority.

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(b) Until such time as funds available to the Government of Micronesia pursuant to this section and sections 363 and 364 are sufficient to meet the obligations of the Government of Micronesia, there is authorized to be appropriated by the Congress of the United States such additional sums as may be needed to pay such obligations.

SEC. 366. (a) The following sections of the Tariff Act of 1930, as amended, are hereby amended by inserting "Micronesia", immediately after "Johnston Island", each place it appears therein:

- (1) Section 401(k) (19 U.S.C., sec. 1401(k)).
- (2) Section 557(a) (19 U.S.C., sec. 1557(a)).
- (3) Section 562 (19 U.S.C., sec. 1562).

(b) Section 401(a) of the Anti-Smuggling Act, as amended (19 U.S.C. sec 1709(a)), is hereby amended by inserting "Micronesia", immediately after "Johnston Island".

(c) Sections 542, 544, and 545 of Title 18 of the United States Code are hereby amended by inserting "Micronesia", immediately after "Johnston Island", each place it appears therein.

(d) For the purposes of the Tariff Schedules of the United States, Micronesia shall be entitled to the same privileges as the insular possessions of the United States which are outside the custom territories of the United States.

(e) This section shall apply with respect to articles entered or withdrawn from warehouse, for consumption after the effective date of this Act.

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SEC. 367. The Executive Authority of the Government of Micronesia shall make to the President or his delegate an annual report of the transactions of the Government of Micronesia for transmission to the Congress of the United States and such other reports at such other times as may be required by the Congress or under applicable Federal law.

#### Chapter 7

#### GOVERNMENT PROPERTY

SEC. 381. (a) The title to all property, real and personal, owned by the Government of the Trust Territory of the Pacific Islands, and all interests in such property including rights of use and including all right, title, or interest of the Government of the Trust Territory of the Pacific Islands in tidelands, submerged lands, or filled lands in or adjacent to the islands of Micronesia, held by the Government of the Trust Territory of the Pacific Islands, are hereby transferred to the Government of Micronesia. The term "tidelands, submerged lands, or filled lands" shall have the meaning ascribed to it in Section 1(a) of Public Law 88-183 (77 Stat. 338), but shall not include any such lands which by local or customary laws or rights are held in private or communal ownership.

(b) During the three-year period referred to in subsection (c), nothing herein shall impair the existing agreements between the Trust Territory Government and the United States Government or any agency or

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instrumentality thereof insofar as they relate to land use and retention, and the Government of Micronesia takes all such land as set forth in subsection (a) above subject to such agreements; provided, however, that such retention and use will at all times be consistent with the public purposes of the United States.

(c) (i) Within three years from the effective date of this Title, the retention and use rights of the United States Government covered by subsection (b) shall terminate, unless, within that time the United States proceeds to acquire, in accordance with subsection (d) or (f) hereof, whatever rights in such lands may be considered necessary for the public purposes of the United States.

(ii) In any such acquisition, the amount to be paid for the property, or interest therein, shall be the current fair market value of the interest acquired, exclusive of any improvements made by the United States or assigns, and less any amount or amounts previously paid, gratuitously or otherwise, therefor.

(d) The United States Government, its departments and agencies, are hereby authorized to, and may acquire for public purposes in Micronesia property or any interest in property, including any temporary use, in accordance with this subsection and subsection (f). Such property, including that owned or controlled by private parties or the Government of Micronesia, may be acquired under this subsection by purchase, lease, exchange, gift, or otherwise under such terms and conditions as may be negotiated by the parties, subject to the limitation in subsection (g).

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(e) In no event may the estate in property sought to be acquired by the United States be of a greater quantum than a fee on a conditional limitation. The limiting event which will terminate such a fee shall be the absence for a period of five years of the use of the land for the public purposes of the United States Government. Upon termination, fee ownership in the land shall revert automatically to the person, persons or entity from whom it was acquired, or their heirs, or successors.

(f) In the event the United States is unable to acquire property or an interest in property by negotiation in accordance with subsection (d), then it may acquire property or an interest therein in accordance with the following procedure:

(i) At least one month prior to any regular session of the Congress of Micronesia, the United States may present to the Executive of Micronesia a statement describing the property in which it wishes to acquire an interest including therein the nature of the interest sought to be acquired, the public purposes for such interest, and a detailed appraisal report of the fair market value of the interest prepared by qualified independent appraisers. The Executive shall thereupon prepare and immediately submit to the Congress of Micronesia, for consideration in its regular session, a bill incorporating the statement and requiring the conveyance of the property or interest or both therein to the United States.

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(ii) Upon the request of the United States, the Executive shall immediately call and submit to a special session or submit to a special session already convened of the Congress of Micronesia any bill otherwise covered by subsection (i) hereof.

(iii) In the event the Congress of Micronesia agrees with the need for the acquisition by the United States of the property or any interest in property sought to be acquired, and further agrees with the appraisal for the value of the property or interest, it shall pass the bill, or that part of the bill relating to that particular piece of land, and the bill, or the part thereof passed, shall become law.

(iv) In the event that the Congress of Micronesia agrees with the need for the acquisition by the United States of the property or interest sought to be acquired, but disagrees with the appraised value thereof, the United States shall be entitled to immediate possession of said property or right to exercise its interest; but both parties shall proceed forthwith to attempt to agree upon the question of value. If agreement is reached, the bill shall be amended to reflect the agreed upon value, and when passed shall become law. If no agreement can be reached, the question of value shall be promptly submitted to the highest court of Micronesia which will proceed to determine whether the price proposed by the appraisal represents the fair market value.

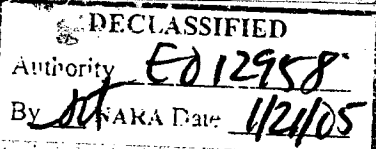


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To assist in making this determination, such court may, in accordance with such procedures as it may by rules adopt, convene a special jury of Micronesia citizens from the geographical area in which the property is located to render an advisory verdict on the question of fair market value. The decision of the court shall be final, subject, however, to review, on appeal, by the United States Court of Appeals for the Ninth Circuit, as provided in subsection (v).

(v). In the event that the Executive does not introduce a bill as required by this subsection, or the Congress of Micronesia fails to act on a bill in the session at which it has been introduced, or it does not pass the bill, or it disagrees with the need for the acquisition by the United States of property or interest in property sought to be acquired, or in the event that the United States wishes to appeal from a final decision of the highest court of Micronesia rendered in accordance with subsection (iv), then the United States shall have the right to appeal the United States Court of Appeals for the Ninth Circuit, which shall entertain such appeal in accordance with such rules as it may prescribe and shall make a final decision, binding as to need or value, or both, and, if appropriate, the court shall order the conveyance of the property or interest in property to the United States.

(vi) An appeal may be taken to the United States Court of Appeals for the Ninth Circuit by any person whose property or



interest in property is acquired by the United States under provisions of this subsection.

(vii) Final decisions of the United States Court of Appeals for the Ninth Circuit rendered in accordance with subsections (v) and (vi) may be reviewed by the United States Supreme Court on petition for a writ of certiorari in accordance with 28 U.S.C. 2101.

(g) After the effective date of this Act, 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 under the provisions of subsection (d), 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.

#### TITLE IV

##### PROVISIONS OF A TRANSITIONAL NATURE

SEC. 401. After the effective date of TITLES III AND IV of this Act, no employees of the Government of Micronesia shall be appointed as Federal employees as long as they are employed by the Government of Micronesia; except that Federal employees in the

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Government of Micronesia on the effective date of TITLES III and IV of this Act shall not be terminated as Federal employees until the expiration of their current transportation agreements.

SEC. 402. (a) The High Court of the Trust Territory of the Pacific Islands is abolished as of the effective date of this Act and all causes decided by or pending before said Court on the effective date of this Act are transferred to the District Court of Micronesia or to the courts of Micronesia as may be appropriate for disposition.

(b) The District Courts for each of the Districts of the Trust Territory of the Pacific Islands are abolished on the effective date of this Act and all causes decided by or pending before the respective Courts of said Districts on the effective date of this Act are transferred to the courts of Micronesia as may be appropriate for disposition.

SEC. 403. All appropriations made to or by the Government of the Trust Territory of the Pacific Islands prior to the effective date of this Act shall be available to the Government of Micronesia.

SEC. 404. The President of the United States shall appoint a commission of seven persons, at least three of whom shall be residents of Micronesia, to survey the field of Federal statutes and to make recommendations to the Congress of the United States within twelve months after the effective date of this Act as to which statutes of the United States not applicable to Micronesia on such date shall be made applicable to Micronesia on such date shall be made inapplicable.

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SEC. 405. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 406. This Title shall become effective in accordance with the provisions of section 105 of Title I of this Act, on the date specified in the proclamation of the President authorized by said section.