
A BILL FOR AN ACT

To further amend title 30 of the Code of the Federated States of Micronesia, as amended, by creating a new chapter 4 in order to establish the 2023 Investment Development Fund, to provide for its purpose and objective, its management and administration, and guidelines for access, to set forth the eligibility criteria, the review process and the parameters of the fund, and to establish investment monitoring and procedures for disbursement of funds, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Title 30 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by creating new
3 chapter 4 entitled: "2023 Investment Development Fund".

4 Section 2. Title 30 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by inserting new
6 section 401 to chapter 4 to read as follows:

7 "Section 401. Establishment of the Fund. There is
8 hereby established the 2023 Investment Development Fund.
9 For purposes of this chapter, it is referred to as the
10 "Fund".

11 Section 3. Title 30 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by inserting new
13 section 402 to chapter 4 to read as follows:

14 "Section 402. Definition. Except as otherwise
15 specified, the following terms shall have the meanings
16 stated below:

17 (a) Balance of payments means the difference in total

1 value between payments into and out of a country over a
2 given period.

3 (b) Board of Directors means the Board of Directors
4 under section 406 appointed to oversee the activities of
5 the Fund.

6 (c) Commercial viability means the ability of
7 business, product, or service to compete effectively and
8 make a profit.

9 (d) Conflict of interest means that a person has a
10 conflict of interest if such person or a family member
11 could benefit directly or indirectly from a decision on
12 a matter over which he or she has influence or control,
13 or if a matter over which a person has influence or
14 control relates in any way to:

15 (1) a business or property the person directly or
16 indirectly owns or controls;

17 (2) a business or property owned or controlled,
18 directly or indirectly, by a family member; or

19 (3) a business or property in which the person
20 has a beneficial interest of any kind, whether through a
21 trust or otherwise.

22 (e) Equity means the shares in a corporation.

23 (f) Exit strategy means a preplanned means of
24 extracting the Fund from an investment through
25 divestment or sale of equity. The exit strategy shall

1 provide for its enforcement not only when the funding is
2 fully disbursed and has matured but also where a
3 condition of funding is breached. The Board of
4 Directors shall require the exit strategy to include in
5 every funding agreement the emplacement of sufficient
6 and enforceable security provisions.

7 (g) Exports means exports of goods and services.

8 (h) Financial institution means an establishment that
9 focuses on dealing with financial transactions, such as
10 investments, loans, and deposits.

11 (i) Financial management means the efficient and
12 effective management of corporate funds in such a manner
13 as to accomplish the lawful objectives of a corporation
14 and the conditions of funding.

15 (j) Financial year means the financial year or the
16 fiscal year of the Fund. Unless a different designation
17 is made by the Board of Directors, the financial year of
18 the Fund refers to the 12-month period from October 1 of
19 one calendar year through September 30 of the succeeding
20 calendar year.

21 (k) Import substitution means replacing foreign
22 imports with domestic production.

23 (l) Joint venture corporation means a commercial
24 enterprise having a legal personality undertaken jointly
25 by two or more parties, which otherwise retain their

1 respective distinct legal personalities.

2 (m) Moral turpitude means a conduct that is considered
3 contrary to community standards of justice, honesty, or
4 good morals.

5 (n) Patient Capital Approach means that the Fund is
6 willing to make investments in projects with no
7 expectation of turning a quick profit. The Fund will
8 forgo the immediate return in anticipation of
9 substantial return to the economy in the longer term in
10 the form of job creation, income, tax revenue, improved
11 balance of payment, and economic growth in general."

12 Section 4. Title 30 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended by inserting new
14 section 403 of chapter 4 to read as follows:

15 "Section 403. Purpose of the Fund.

16 (a) The primary purpose of the Fund is to provide
17 supplemental equity to private sector investments that
18 create employment opportunities for FSM citizens and
19 generate inflow of revenue to the economy. Up to fifty
20 percent (50%) of the Fund could be used as a last resort
21 source of financing for the Federated States of
22 Micronesia Development Bank whenever it does not have
23 enough available capital to finance loan for viable
24 project.

25 (b) Managing the Fund requires a proactive investment

1 strategy that focuses in providing startup capital
2 funding to new business investments and expansion of
3 existing businesses that have the potential to
4 contribute to the growth of the economy."

5 Section 5. Title 30 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by inserting new
7 section 404 to chapter 4 to read as follows:

8 "Section 404. Special preference.

9 (a) Special preference shall be given to the following
10 sectors:

- 11 (1) tourism,
- 12 (2) fisheries,
- 13 (3) agriculture, and
- 14 (4) energy.

15 (b) The special preference accorded in this section
16 reflects the national development priorities of the
17 government of the Federated States of Micronesia. The
18 priorities will be reviewed over time. All proposals
19 submitted for other investment sectors shall be
20 considered based on their merits."

21 Section 6. Title 30 of the Code of the Federated States of
22 Micronesia, as amended, is hereby further amended by inserting new
23 section 405 to chapter 4 to read as follows:

24 "Section 405. Governance Management and Administration.

25 (a) The Board of Directors is the governing authority

1 of the Fund. It is responsible for setting the policy
2 objectives of the Fund and ensuring that it is managed
3 in accordance with the purpose for which it is
4 established in this chapter.

5 (b) The Fund shall be managed and administered by the
6 FSM Development Bank under the authority and supervision
7 of the Board of Directors. The cost of managing the
8 Fund shall be funded using the interest earned on the
9 Fund.

10 (c) The Board of Directors shall enter into a
11 management contract with the FSM Development Bank in
12 order to set the following terms and conditions:

13 (1) Duties and responsibilities of the FSM
14 Development Bank in managing the Fund;

15 (2) Authority of the Board of Directors in
16 supervising the management of the Fund;

17 (3) Fee arrangement;

18 (4) Establishment of a secretariat for the Fund
19 in the FSM Development Bank;

20 (5) Procurement of highly qualified experts in
21 the relevant fields to perform the analysis and review
22 of Fund applications as required in section 407;

23 (6) Business advisory services for the Fund; and

24 (7) Technical assistance to the Fund.

25 (d) The FSM Development Bank shall transmit to the

1 Board of Directors the Annual Report of the Fund no
2 later than 3 months following the close of the financial
3 year of the Fund. The Annual Report shall include the
4 following:

5 (1) Annual Financial Statements, which shall be
6 subject to audit.

7 (2) Annual Operational Report of the Fund
8 activity during the year including the number of
9 projects approved, their overall value, employment
10 created, and impact on the balance of payments.

11 (e) The Annual Report, once approved by the Board of
12 Directors, shall be furnished to the President and the
13 Congress of the Federated States of Micronesia. Nothing
14 in this section undermines the duty or authority of the
15 Public Auditor under chapter 55 of title 55 of the
16 Code."

17 Section 7. Title 30 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by inserting new
19 section 406 to chapter 4 to read as follows:

20 "Section 406. Board of Directors.

21 (a) The Board of Directors of the Fund shall be
22 comprised of five (5) directors, including a chairman,
23 appointed by the President with the advice and consent
24 of Congress. Appointment shall be made with due
25 consideration given to the appointee's experience of

1 public finance, investment, economic development
2 principles and written and verbal communication skills.
3 A person appointed must have at least 4-year college
4 degree in the field of finance, business, or economics.

5 (b) A person is not eligible to serve as director of
6 the Fund if:

7 (1) he or she is convicted of a felony or
8 convicted of an offense involving moral turpitude,

9 (2) he or she has a conflict of interest at the
10 time of appointment, or

11 (3) he or she does not meet the qualification
12 under paragraph (a),

13 (4) he or she has previously petitioned a court
14 to be declared bankrupt or has significant involvement
15 in a business that went bankrupt.

16 (c) Each director has term of three (3) years,
17 provided, that, the first three initial directors shall
18 serve for a term of five (5) years.

19 (d) Unless removed from office pursuant paragraph (i)
20 of this section, each director shall serve until his or
21 her term expires or a successor is elected and
22 qualified, whichever is later in time not to exceed six
23 months from expiration of a term, and shall be eligible
24 for reappointment.

25 (e) Within 60 days following a vacancy in the Board of

1 Directors, the President shall transmit to Congress a
2 nominee for the vacancy. Congress shall vote on the
3 nomination during the session that it is transmitted for
4 approval or at the next session if the nomination
5 reaches Congress when it is not in session.

6 (f) At its organizational meeting, and every two years
7 thereafter, the Board of Directors shall elect its
8 chairman. Whenever necessary, the Board of Directors
9 may elect other officers.

10 (g) The Board of Directors makes decision by simple
11 majority, each director casting one vote. Three
12 directors participating in a meeting constitute quorum.
13 Any director who has conflict of interest shall fully
14 disclose the conflict of interest and shall inhibit from
15 participating in the decision of the Board of Directors.

16 (h) A director is not liable for an official action
17 taken or decision made in good faith on behalf of the
18 Fund.

19 (i) For cause shown, a director may be removed by four
20 affirmative votes. At any time, the President may for
21 cause remove a director by appointing a replacement."

22 Section 8. Title 30 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by inserting new
24 section 407 to chapter 4 to read as follows:

25 "Section 407. General guidelines for accessing the

1 Fund. All requests made to the Fund shall be
2 transmitted to the FSM Development Bank for processing,
3 as follows:

4 (a) All applications shall be reviewed with due
5 diligence in accordance with the board-approved internal
6 guidelines in examining business proposals.

7 (b) The review of the applications shall be assigned
8 to highly qualified professional with expertise in the
9 relevant field as required by the nature of the business
10 stated in the application. It is the responsibility of
11 the FSM Development Bank to procure such expertise
12 without causing disruption to its regular operation.

13 (c) The applications shall be reviewed thoroughly and
14 independently. When the review is complete, a
15 recommendation shall be presented to the Board of
16 Directors for final decision. The Board of Directors
17 may require any additional information or analysis as it
18 deems necessary."

19 Section 9. Title 30 of the Code of the Federated States of
20 Micronesia, as amended, is hereby further amended by inserting new
21 section 408 to chapter 4 to read as follows:

22 "Section 408. Eligibility criteria.

23 (a) To be eligible for the Fund, an applicant must be:

24 (1) A private corporation domiciled in the FSM,

25 or

1 (2) A joint venture corporation between FSM
2 citizens and foreign nationals, or

3 (3) A private foreign corporation wanting to
4 establish a business within the FSM.

5 (b) To be eligible for funding, a project must:

6 (1) Create employment for FSM citizens;

7 (2) Have its operations located within the FSM;

8 (3) Increase the value of exports or result in
9 import substitution;

10 (4) Economically, financially, and technically
11 viable; and

12 (5) Compliant with the applicable national and
13 state environmental laws."

14 Section 10. Title 30 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by inserting new
16 section 409 to chapter 4 to read as follows:

17 "Section 409. Review process. An applicant must submit
18 a business proposal along with a request for funding
19 from the Fund. The FSM Development Bank shall conduct
20 the evaluation process and make its recommendation to
21 the Board of Directors in accordance with the guidelines
22 in section 407. The Board of Directors may consult
23 stakeholders or seek technical assistance of
24 professionals before making a decision. The review
25 process shall consider the impact on the economy of the

1 FSM and the particular state if the project is State-
2 specific using the following criteria:

3 (a) Number of jobs created;

4 (b) The economic and social effect of the project;

5 (c) Impact on the balance of payments position of the
6 FSM;

7 (d) Commercial viability of the project."

8 Section 11. Title 30 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by inserting new
10 section 410 to chapter 4 to read as follows:

11 "Section 410. Parameters of the Fund.

12 (a) The Fund will consider investment projects within
13 the range of \$100,000 and \$5,000,000, subject to the
14 following conditions:

15 (1) The Fund shall not take more than forty-five
16 percent (45%) equity position in a corporation.

17 (2) The proponent of a project must at all times
18 contribute to the project cost. This contribution is
19 permitted to be combined with financing through the
20 Fund. Such combined contribution by the Fund and by the
21 proponent of a project shall be no less than 25% of the
22 project cost.

23 (3) An exit strategy consisting of the divestment
24 of the Fund's equity position in the private
25 corporations up to a maximum period of 10 years from

1 acquiring such position.

2 (b) The Fund shall adopt the Patient Capital
3 Approach."

4 Section 12. Title 30 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by inserting new
6 section 411 to chapter 4 to read as follows:

7 "Section 411. Investment Monitoring.

8 (a) The Board of Directors of the Fund shall appoint a
9 qualified person to represent the Fund's interest in the
10 board of the private corporation. The person appointed
11 shall avoid any conflict of interest and, should it
12 arise as to the person, disclose it to the Board of
13 Directors and to the administrator of the Fund.

14 (b) The FSM Development Bank shall monitor the
15 investment of the Fund giving attention to the financial
16 management of the corporation and the quarterly reports
17 on the progress of the investment. It is the duty of
18 the FSM Development Bank to update the Board of
19 Directors on the status of the Fund's investment.

20 Section 13. Title 30 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by inserting new
22 section 412 to chapter 4 to read as follows:

23 "Section 412. Fund Disbursement.

24 (a) Upon financing approval by the Board of Directors
25 of Fund, the FSM Development Bank shall prepare the

1 disbursement of fund according to the approved business
2 plan.

3 (b) The FSM Development Bank shall prudently invest
4 the balance of the Fund not committed for disbursement
5 in a manner that would generate reasonable return and
6 would ensure its availability once investment projects
7 are approved."

8 Section 14. Title 30 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by inserting new
10 section 413 to chapter 4 to read as follows:

11 "Section 413. Sources of the Fund. The Fund derives
12 its funding from the following sources:

13 (a) Annual appropriation from Congress between \$10
14 million and \$15 million annually.

15 (b) Repayments from the investment projects.

16 (c) Other sources, domestic or foreign, the nature of
17 which is not incompatible with the purpose for which the
18 Fund is established."

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24 Section 15. This act shall become law upon approval by the
25 President of the Federated States of Micronesia or upon its

1 becoming law without such approval.

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3 Date: 11/19/14

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper

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