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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 of 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 of 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

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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

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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

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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. The Fund  
20 could be used for business loan financing for business  
21 investments whose equity contribution does not satisfy  
22 the equity requirements of financial lending  
23 institutions. Ventures that bring in foreign investment  
24 that require a domestic financing component will also be  
25 considered.

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1           (b) Managing the Fund requires a proactive investment  
2           strategy that focuses in providing startup capital  
3           funding to new business investments and expansion of  
4           existing businesses that have the potential to  
5           contribute to the growth of the economy."

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

9           "Section 404. Special preference.

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

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

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

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

25           "Section 405. Governance Management and Administration.

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1           (a) The Board of Directors is the governing authority  
2           of the Fund. It is responsible for setting the policy  
3           objectives of the Fund and ensuring that it is managed  
4           in accordance with the purpose for which it is  
5           established in this chapter.

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

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

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

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

18                 (3) Fee arrangement;

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

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

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

25                 (7) Technical assistance to the Fund.

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1           (d) The FSM Development Bank shall transmit to the  
2           Board of Directors the Annual Report of the Fund no  
3           later than 3 months following the close of the financial  
4           year of the Fund. The Annual Report shall include the  
5           following:

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

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

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

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

21 "Section 406. Board of Directors.

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

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

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

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

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

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

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

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

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

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1           (e) Within 60 days following a vacancy in the Board of  
2           Directors, the President shall transmit to Congress a  
3           nominee for the vacancy. Congress shall vote on the  
4           nomination during the session that it is transmitted for  
5           approval or at the next session if the nomination  
6           reaches Congress when it is not in session.

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

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

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

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

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

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1           "Section 407. General guidelines for accessing the  
2           Fund. All requests made to the Fund shall be  
3           transmitted to the FSM Development Bank for processing,  
4           as follows:

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

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

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

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

23           "Section 408. Eligibility criteria.

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

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

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1           or

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

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

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

7                   (1) Create employment for FSM citizens;

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

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

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

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

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

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

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1           process shall consider the impact on the economy of the  
2           FSM and the particular state if the project is State-  
3           specific using the following criteria:

4           (a) Number of jobs created;

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

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

8           (d) Commercial viability of the project."

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

12           "Section 410. Parameters of the Fund.

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

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

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

24                   (3) An exit strategy consisting of the divestment  
25                   of the Fund's equity position in the private

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1           corporations up to a maximum period of 10 years from  
2           acquiring such position.

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

4           (c) If the request to the Fund is for a loan, the loan  
5           amount shall not exceed 75% of the total project cost."

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

9           "Section 411. Investment Monitoring.

10           (a) The Board of Directors of the Fund shall appoint a  
11           person to represent the Fund's interest in the board of  
12           the private corporation benefiting from the Fund's  
13           equity financing.

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 of 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

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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 of 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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22           Section 15. This act shall become law upon approval by the  
23 President of the Federated States of Micronesia or upon its  
24 becoming law without such approval.

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1 Date: 9/15/14

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper

(by request)

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