

STANDING COMMITTEE REPORT NO. 18-287

RE: C.B. NO. 18-274/R&D

SUBJECT: AMENDMENTS TO FSM VENTURE FUND

APRIL 15, 2015

The Honorable Dohsis Halbert  
Speaker, Eighteenth Congress  
Federated States of Micronesia  
Seventh Special Session, 2015

Dear Mr. Speaker:

Your Committee on Resources and Development, to which was jointly assigned C.B. No. 18-274, entitled:

"A BILL FOR AN ACT TO AMEND SECTIONS 402, 403, 404, 406, 407, 408, 409, 420, 422, 423, 424 AND 425 OF TITLE 30 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), AS AUTHORIZED BY PUBLIC LAW NO. 18-96, BY INCREASING THE PERCENTAGE OF CORPORATE INCOME TAX ABOVE A CERTAIN LEVEL TO BE INVESTED IN A FSM VENTURE FUND, ACCELERATING REDEMPTION PAYMENTS WHILE ELIMINATING INTEREST PAYMENTS, PROVIDING FOR A FUND MANGEMENT FEE, ALLOWING SUBSEQUENT CONTRIBUTIONS TO THE VENTURE FUND FOR AN EXTEDNED THREE YEAR PERIOD, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The intent and purpose of the bill are expressed in its title.

The purpose of the bill is to amend the provisions under title 30 of the FSM Code for the purpose of enticing Major Corporations to invest in the Federated States of Micronesia thereby increasing the tax base of this nation.

STANDING COMMITTEE REPORT NO. 18-287

RE: C.B. NO. 18-274/R&D

SUBJECT: AMENDMENTS TO FSM VENTURE FUND

APRIL 15, 2015

At the hearing, the Committee question what is the urgency of the bill. Steve Baker from MRA explained that this is not a new program, but it has been in effect for seven years. Because of MRA representatives' involvement with Major Companies in Japan, they advise that the FSM Venture Fund law needs to be amended to entice Major Corporations to do business in the FSM. Mr. Baker Steve indicated that Major Corporations, especially in Japan are targeting three areas (Singapore, United Kingdom, FSM). If this proposed bill becomes law before July 2015, the FSM may realize \$300,000,000 in September 2016.

In the current law, it does not indicate the place where Venture Fund is established. The proposed bill provides that a Venture Fund shall be established by the Fund Manager in a jurisdiction of the Fund Manager's choosing. However, Secretary of Finance and Administration clarified that it is the investment aspect of the Fund that he needs to authorize.

Another amendment to the FSM Venture Fund is on the percentage of tax payment contributed. Currently, if a Major Corporation has paid corporate income tax to the FSM in any one calendar such Major Corporation pays 75% of any amount paid above \$500,000,000. One of the proposed amendments in section 403(3) is to increase the 75% to 100%.

In regards to the term of the Fund, the current law provides 10 years or December 31, 2032. The proposed change to the Term of the Fund is that, no Fund may have a term beyond September 30, 2043. For Funds with a term beyond September 30, 2033, the FSM Government has the option to end the Fund on September 30, 2033 with 3 years' prior notice.

On the annual payments to Investors, the current law provides a 3% of any capital amount in the Fund at the beginning of the fiscal year. The bill proposes to have annual partial return of capital of investors to 2% of the greater of (a) the net asset value of the Fund as of the end of the preceding fiscal year, and (b) the capital amounts invested in the Fund, which will be made at a 3% rate. If in a given year the aggregate partial returns of capital to date exceed the amount that would have

STANDING COMMITTEE REPORT NO. 18-287

RE: C.B. NO. 18-274/R&D

SUBJECT: AMENDMENTS TO FSM VENTURE FUND

APRIL 15, 2015

been returned if the investors had, in each year, received 2% or 3%, then the Fund Manager may pay the investors an amount such that the partial returns paid to the investors each year do not exceed 2% or 3% of the capital amounts invested in the Fund.

The other amendment is to have Fund Manager gets a standard 2% fee, in which the Fund Manager may require an annual fee equal to 2% of the Net Asset Value. In the current law there is no fee for Fund Manager.

The other amendment is on the winding-up and Settlement of Fund. The current law provides that beginning of 2023, the Fund must begin returning the original capital to the investors by making equal annual payments so that the original capital is completely repaid by the earlier of 10 years from creation of the fund or December 31, 2032. On the wind-up at the end of the term, to return the full amount of the original capital, along with 20% of any gains. And the Fund Manager to be paid the remaining 80% of any gains.

In the bill, it is proposed that there is mandatory repayment in fiscal year 2023 of 20% of Net Asset Value as of the end of the fiscal year 2022. On wind-up, Fund to return the full amount of invested capital along with 20% of any net gains above the invested capital for the first \$100,000,000. In addition, the Fund Manager shall be paid the remaining 80% of any net gain above the invested capital for the first \$100,000,000.

In the Specified Areas of Investment, the current law discusses certain Fund Investment areas along with other types of investments that the Fund Manager may deem worthy. The proposed bill did not mention any specific investment areas, but allow the Fund Manager the option to invest in specific investment areas.

Furthermore, in regards to the current law, the Letter of Intent specifies (a) the amount of the Fund, (b) the amount to be contributed by the FSM, and (c) the identities of the Fund Manager and the guarantor. The proposed bill that the Letter of Intent to specify (a) the capital of the Fund at the initial closing, (b) the identities of the Fund Manager and the

STANDING COMMITTEE REPORT NO. 18-287

RE: C.B. NO. 18-274/R&D

SUBJECT: AMENDMENTS TO FSM VENTURE FUND

APRIL 15, 2015

Designated Entity, and (c) how the Designated Entity will meet its obligations.

It is proposed that a "Designated Entity" must, from Fund establishment, either (a) guarantee the partial annual repayments of capital or (b) commit to provide supplemental capital to remedy any shortfall, and that the Designated Entity must have an investment grade rating or be worth 10 times the original capital of the Fund.

On the annual reports, the current law provides that annual reports be provided to each investor discussing transactions and investment decisions and estimating the value of each investment. It is proposed that annual reports be provided to the Advisory Board discussing transactions and investment decisions and estimating the Net Asset Value of each investment and the total Fund.

In regards to "End of Term Appraisal", the current law provides that the Fund Manager to recommend appraiser for approval by the FSM Development Bank. If the appraiser is not approved, the matter is submitted for arbitration. It is proposed that the Fund Manager appoints appraiser that is reasonably acceptable to the Advisory Board.

The current law provides that the Advisory Board will be consisted of at least five individuals selected by the FSM President, with the advice and consent of Congress. It is proposed that in addition to the five selections by the FSM President, any person investing \$10,000,000 or more in a Fund to have one representative on the Advisory Board, and any investor investing \$20,000,000 or more to have two representatives on the Advisory Board.

On the expiry date, the current law provides no new investment to be made, or Funds created, on or after April 1, 2025. It is proposed that no new Funds shall be created on or after April 1, 2028. In addition, in the current law there is an expiration date of January 1, 2033. It is proposed that there is no explicit expiration date.

STANDING COMMITTEE REPORT NO. 18-287

RE: C.B. NO. 18-274/R&D

SUBJECT: AMENDMENTS TO FSM VENTURE FUND

APRIL 15, 2015

Your Committee wishes to offer the following amendments to the bill as follows:

1. Page 4, line 17, after "Fund", insert "exclusive of fees"
2. Page 5, line 11, delete "pad", and insert "paid" in lieu thereof.
  
3. Page 6, between lines 7 and 8, insert the following:  
"(7) In order to effectuate the FSM Venture Fund under this section, the investment by the FSM shall be deemed appropriated from the General Fund as if set forth in an appropriation act."

Your Committee wishes to note that the Department of Justice provides its comments to the proposed bill, which are already incorporated in the bill. Furthermore, it should also be noted that if FSM may realize any revenues as a result of the amendments herein. The revenues will be deposited in the Compact Trust Fund.

Your Committee on Resources and Development is in accord with the intent and purpose of C.B. No. 18-274 and upon concurrence with the Committee on Ways and Means recommends its passage on First Reading, and that it be placed on the calendar for Second and Final reading in the form attached hereto as C.B. No. 18-274, C.D.1.

STANDING COMMITTEE REPORT NO. 18-287

RE: C.B. NO. 18-274/R&D

SUBJECT: AMENDMENTS TO FSM VENTURE FUND

APRIL 15, 2015

Respectfully submitted,

/s/ David W. Panuelo  
David W. Panuelo, chairman

/s/ Victor V. Gouland  
Victor V. Gouland, vice chairman

/s/ Tiwiter Aritos  
Tiwiter Aritos, member

/s/ Berney Martin  
Berney Martin, member

Joseph J. Urusemal, member

Florencio S. Harper, member

Paliknoa K. Welly, member