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:

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

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

 “Section 401. Establishment of the Fund. There is hereby established the 2023 Investment Development Fund. For purposes of this chapter, it is referred to as the “Fund”.

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

 “Section 402. Definition. Except as otherwise specified, the following terms shall have the meanings stated below:

(a) Balance of payments means the difference in total
value between payments into and out of a country over a
given period.

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

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

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

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

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

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

(e) Equity means the shares in a corporation.

(f) Exit strategy means a preplanned means of
extracting the Fund from an investment through
divestment or sale of equity. The exit strategy shall
provide for its enforcement not only when the funding is
fully disbursed and has matured but also where a
condition of funding is breached. The Board of
Directors shall require the exit strategy to include in
every funding agreement the emplacement of sufficient
and enforceable security provisions.

(g) Exports means exports of goods and services.

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

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

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

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

(l) Joint venture corporation means a commercial
enterprise having a legal personality undertaken jointly
by two or more parties, which otherwise retain their
respective distinct legal personalities.

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

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

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

“Section 403. Purpose of the Fund.

(a) The primary purpose of the Fund is to provide supplemental equity to private sector investments that create employment opportunities for FSM citizens and generate inflow of revenue to the economy. The Fund could be used for business loan financing for business investments whose equity contribution does not satisfy the equity requirements of financial lending institutions. Ventures that bring in foreign investment that require a domestic financing component will also be considered.
(b) Managing the Fund requires a proactive investment strategy that focuses in providing startup capital funding to new business investments and expansion of existing businesses that have the potential to contribute to the growth of the economy.”

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

“Section 404. Special preference.

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

(1) tourism,
(2) fisheries,
(3) agriculture, and
(4) energy.

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

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

“Section 405. Governance Management and Administration.
(a) The Board of Directors is the governing authority of the Fund. It is responsible for setting the policy objectives of the Fund and ensuring that it is managed in accordance with the purpose for which it is established in this chapter.

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

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

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

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

(3) Fee arrangement;

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

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

(6) Business advisory services for the Fund; and

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

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

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

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

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

“Section 406. Board of Directors.

(a) The Board of Directors of the Fund shall be comprised of five (5) directors, including a chairman, appointed by the President with the advice and consent of Congress. Appointment shall be made with due
consideration given to the appointee’s experience of public finance, investment, economic development principles and written and verbal communication skills. A person appointed must have at least 4-year college degree in the field of finance, business, or economics. 

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

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

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

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

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

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

(d) Unless removed from office pursuant paragraph (i) of this section, each director shall serve until his or her term expires or a successor is elected and qualified, whichever is later in time not to exceed six months from expiration of a term, and shall be eligible for reappointment.
(e) Within 60 days following a vacancy in the Board of Directors, the President shall transmit to Congress a nominee for the vacancy. Congress shall vote on the nomination during the session that it is transmitted for approval or at the next session if the nomination reaches Congress when it is not in session.

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

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

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

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

Section 8. Title 30 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by inserting new section 407 of chapter 4 to read as follows:
“Section 407. General guidelines for accessing the Fund. All requests made to the Fund shall be transmitted to the FSM Development Bank for processing, as follows:

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

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

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

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

“Section 408. Eligibility criteria.

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

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

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

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

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

(1) Create employment for FSM citizens;

(2) Have its operations located within the FSM;

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

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

(5) Compliant with the applicable national and state environmental laws.”

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

“Section 409. Review process. An applicant must submit a business proposal along with a request for funding from the Fund. The FSM Development Bank shall conduct the evaluation process and make its recommendation to the Board of Directors in accordance with the guidelines in section 407. The Board of Directors may consult stakeholders or seek technical assistance of professionals before making a decision. The review
process shall consider the impact on the economy of the FSM and the particular state if the project is State-specific using the following criteria:

(a) Number of jobs created;

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

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

(d) Commercial viability of the project.”

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

“Section 410. Parameters of the Fund.

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

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

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

(3) An exit strategy consisting of the divestment of the Fund’s equity position in the private
corporations up to a maximum period of 10 years from acquiring such position.

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

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

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

“Section 411. Investment Monitoring.

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

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

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

“Section 412. Fund Disbursement.

(a) Upon financing approval by the Board of Directors of Fund, the FSM Development Bank shall prepare the
disbursement of fund according to the approved business plan.

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

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

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

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

(b) Repayments from the investment projects.

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

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