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 management fee, allowing subsequent contributions to the venture fund for an extended three year period, and for other purposes.

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

1. Section 1. Section 402 of title 30 of the Code of the Federated States of Micronesia (Annotated), as authorized by Public Law No. 18-96, is hereby amended to read as follows:

   "Section 402. Purpose. The purpose of this act is to encourage the establishment of Venture Funds in the Federated States of Micronesia, hereinafter referred to as ‘FSM’, and to provide an incentive for large foreign-owned companies to register Major Corporations in the FSM. The Congress finds it desirable and necessary to promote the continued expansion of the tax base of the nation. The Congress believes that agreeing to invest a portion of large corporate income tax payments by Major Corporations in Venture Funds, to be managed by parents or affiliates of such Major Corporations, would attract large foreign-owned enterprises to more seriously consider registering Major Corporations in the FSM and
directing larger amounts of profitable business through such Major Corporations. [By requiring that a portion of such Venture Funds be invested in new companies and industries registered in the FSM, the Congress is encouraging the development of “knowledge industries” that tap into humankind’s creative genius in developing new forms of communications, materials, energy, and healthcare]. Such new FSM corporations with intellectual property could continue to generate income over the coming years and decades. The government will be able to then tax these incomes, thus expanding the tax base that is needed by the government to provide the services that the citizens and residents of the FSM demand. It is recognized that the nation currently does not have the resources to make investments in these new industries and that a private-public partnership is needed to finance and grow these industries. Therefore, it is in the best interests of the FSM and its people that incentives are provided for Major Corporations to establish professionally managed funds that will consider new business opportunities and make wise investments.”

Section 2. Section 403 of title 30 of the Code of the Federated States of Micronesia (Annotated), as authorized by Public Law No. 18-96, is hereby amended to read as follows:
"Section 403. Creation.

(1) Any Major Corporation that pays corporate income tax to the FSM exceeding $100,000,000 but not exceeding $500,000,000 in any one calendar year may require that an amount equivalent to up to fifty percent (50%) of the amount of income taxes it paid will be invested by the FSM into a FSM Venture Fund, and that the Major Corporation may also select the Fund Manager for this Fund.

(2) Any Major Corporation that pays corporate income tax to the FSM exceeding $500,000,000 in any one calendar year may require that an amount equivalent to up to 50% of $500,000,000 and up to (75%) 100% of the amount in excess of $500,000,000 of income taxes it paid will be invested by the FSM into a FSM Venture Fund, and that the Major Corporation may also select the Fund Manager for this Fund.

(3) [These FSM Venture Funds, hereinafter each referred to as a ‘Fund’, will invest in new industries that may include software development, development of new drugs, medicines, and medical devices and procedures, entertainment, Internet content and distribution, telecommunication devices and access, high growth technology businesses benefiting from the rapid adoption and deployment of broadband and mobile]
technologies, development of new and improved materials, new forms of energy and other types of investments that that Fund Manager may deem worthy] If a Major Corporation has paid corporate income tax to the FSM in any one calendar year so that a Fund has consequently been established pursuant to paragraph (1) or (2) above, and such Major Corporation thereafter pays corporate income tax exceeding $100,000,000 to the FSM in any subsequent calendar year during the term of the Fund, then the Major Corporation may require that an amount equivalent to up to fifty percent (50%) of the amount of income tax it paid in such subsequent calendar year be invested by the FSM into the existing Fund, until the Major Corporation has paid an aggregate amount of corporate income tax to the FSM equal to $500,000,000. The remaining tax payment made in the first calendar year after the establishment of the Fund shall be deposited to the Trust Fund established under the Trust Fund Agreement between the Government of the United States and the Government of the Federated States of Micronesia implementing sections 215 and 216 of the Compact of Free Association, as amended. After the Major Corporation has paid an aggregate amount of corporate income tax to the FSM in excess of $500,000,000, then the Major Corporation may require
that an amount equivalent to up to one-hundred percent (100%) of the amount of income tax it paid in such subsequent calendar year be invested by the FSM into the Fund. The number of Fund ownership interests received by the Fund Investors in connection with such subsequent investments will be calculated based on the net asset value per Fund ownership interest in effect in the date of each such subsequent investment. For the purposes, the aggregate amount of corporate income tax paid by the Major Corporation to the FSM will include the income taxes paid in the initial calendar year in respect of which the Fund was originally established and in all subsequent calendar years.

(4) The FSM may designate any other investor that is authorized to invest pursuant to section 408 (such designated investor, together with the FSM, “Fund Investors”) to provide a portion of the amounts required to be invested into the Fund by the FSM pursuant to paragraph (2) or (3) above.

(5) For the purposes of calculating the corporate income tax paid by a Major Corporation under paragraphs (1), (2) or (3) above, corporate income taxes paid to the FSM by any other entity that directly or indirectly controls, is controlled by, or is under common control with, the Major Corporation will be deemed paid by such
Major Corporation.

(6) Within 30 days of the date of the letter described in section 404, (i) the Secretary of Finance and Administration shall authorize the establishment of each FSM Venture Fund, hereinafter referred to as a 'Fund', and (ii) the Fund Manager shall establish the Fund in a jurisdiction selected by it.”

Section 3. Section 404 of title 30 of the Code of the Federated States of Micronesia (Annotated), as authorized by Public Law No. 18-96, is hereby amended to read as follows:

“Section 404. Letter of intent. Each of the Major Corporation that intends to establish a Fund must deliver a letter to the President of the Federated States of Micronesia Development Bank, between 60 days and 90 days after the delivery of its payment of corporate income tax to the FSM, signed by a director of the Major Corporation, (i) stating that it intends to establish a Fund [ and ], (ii) specifying the amount of [ the Fund, specifying ] investment, being the capital amount [ it requires the FSM Government to invest ] pursuant to section 403, in that Fund at the initial closing of such Fund, and (iii) selecting the Fund Manager of the Fund. The letter will also describe the [ guarantor of ] Designated Entity for the Fund [ and ], give evidence that the [ guarantor ] Designated Entity
meets the requirements listed in section 409 below, and
describe the mechanism by which the Designated Entity
elects to meet its obligations under section 409.
Attached to this letter must be an Investment Statement
that describes the qualifications, capabilities, and
experience of the Fund Manager, the general strategy of
the Fund along with the projected allocation of the
investments by industry, stage of development, and
country.”

Section 4. Section 406 of title 30 of the Code of the
Federated States of Micronesia (Annotated), as authorized by
Public Law No. 18-96, is hereby amended to read as follows:

“Section 406. Deadline for depositing funds. [Each
fund will be established by the Secretary of Finance and
Administration no later than 60 days after the date of
publication of the notice described in Section 405, and
all investors] All Fund Investors must have deposited
their monies into the Fund no later than the end of the
60th day after publication[.] of the notice described in
section 405. The President of the Federated States of
Micronesia Development Bank will ensure that the
government and all other investors have their funds
deposited into the Fund by this date. The Secretary of
Finance and Administration is authorized and required to
deposit into the Fund such tax revenue as may be
required pursuant to sections 403 and 404 of this
Chapter."

Section 5. Section 407 of title 30 of the Code of the
Federated States of Micronesia (Annotated), as authorized by
Public Law No. 18-96, is hereby amended to read as follows:

"Section 407. Duration of funds. [Each Fund will end
on the date that is the earlier of 10 years from the
date the Fund was created, or December 31, 2032.];

Settlement; capital return; management fee. The term of
each Fund will be as specified by the Fund Manager, but
no Fund may have a term beyond September 30, 2043. For
any Fund with a term beyond September 30, 2033, the
Secretary of Finance and Administration will have the
option to end such term on September 30, 2033 by
delivering a notice thereof to the Fund Manager at least
three years in advance. At the end of the life of a
Fund, the following amounts must be paid to [investors]
each investor: (1) the [original] capital amounts
invested in the [funds] Fund by that investor, net of
all amounts of invested capital previously returned to
that investor; and (2) [20% of] with respect to any
amount remaining in the Fund after repayment of the
[original capital amount and all interest payments are
made to investors. Each investor’s share of the 20% of
any amount remaining in the Fund after repayment of the
original capital amount and all interest payments are made to investors] invested capital amounts under the preceding clause (1), net of withholdings for taxes due upon, and costs and expenses of, liquidation (such remaining amount hereinafter referred to as the “Net Gain”), a pro-rata portion of an amount equal to 20% of the first $100,000,000 of Net Gain, plus a pro-rata portion of an amount equal to 10% of any Net Gain in excess of $100,000,000. Each investor’s pro-rata portion of the Net Gain will be in proportion to [each investor’s original investment in the Fund.] such investor’s Fund ownership interests. Any remaining Net Gain not paid to the investors under clause (2) above will be paid to the Fund Manager. Notwithstanding the preceding [sentence, beginning in 2023, all Funds must begin returning the original capital amount] paragraph, in fiscal year 2023 each Fund must return to the investors [by making equal payments each year so that the entire payment of the original capital amount] in aggregate an amount equal to twenty percent (20%) of the net asset value of the Fund as of the end of the preceding fiscal year (in addition to the previous returns of invested capital to the investors [is made by the earlier of 10 years from the creation of the Fund, or December 31, 2032. Any installment payment of the
original capital] made pursuant to the following paragraph of this section 407). Such amount will be paid to the investors within [30] 120 days of the [end of each fiscal year, except for payments for the final year of the Fund] beginning of fiscal year 2023. With respect to each fiscal year during the term of the Fund, an annual partial return of invested capital equal to 2% of the greater of (a) the net asset value of the Fund as of the end of the preceding FSM National Government fiscal year and (b) the capital amounts invested in the Fund by the investors will also be paid to the investors in aggregate within 120 days after the beginning of the fiscal year, except that (i) the initial partial return of invested capital will be based on the amounts deposited in the Fund by the deadline specified in section 406 of this chapter; (ii) payment in respect of the final fiscal year of the Fund may be made on or prior to the Fund’s liquidation; and (iii) Fund ownership interests received by the Fund Investors pursuant to section 403(3) of this chapter will instead be entitled to an annual partial return of invested capital so payable to the Fund Investors at the rate of three-percent (3%) per annum. Notwithstanding the preceding sentence, if, with respect to any fiscal year during the term of the Fund, any partial return of
invested capital payable to the investors pursuant to the foregoing provisions would result in the investors receiving in aggregate, including all prior partial returns of invested capital paid to the investors, an amount greater than if in each year the investors had received two-percent (2%) or three-percent (3%), as applicable, of the capital amounts invested in the Fund by the investors, then the Fund Manager shall be entitled to pay to the investors, in respect of such fiscal year, such amount so that the partial returns of capital paid to the investors each year, in aggregate, do not exceed two-percent (2%) or three-percent (3%), as applicable, of the capital amounts invested in the Fund by the investors. Furthermore, [interest at the rate of 3% per annum of any Capital amount in the Fund at] with respect to each fiscal year during the term of the Fund, the Fund Manager may require that the Fund pay an annual management fee equal to up to two-percent (2%) of the net asset value of the Fund as of the end of the preceding fiscal year to the Fund Manager within 120 days after the beginning of the fiscal year [will also be paid to the investors within 30 days of the end of each fiscal year, except for the final year of the Fund. Any payments due to the investors for the final year of the Fund will be due on the earlier of the last day for
the fiscal year of the Fund, or December 31, 2032],
except that (i) the initial management fee will be based
on the amounts deposited in the Fund by the deadline
specified in section 406 of this chapter and (ii)
payment of the management fee owed with respect to the
final fiscal year of the Fund may be made on or prior to
the Fund’s liquidation.”

Section 6. Section 408 of title 30 of the Code of the
Federated States of Micronesia (Annotated), as authorized by Public
Law No. 18-96, is hereby amended to read as follows:

“Section 408. Investment in Venture Funds by Federated
States of Micronesia citizens and corporations.
[Citizens] As provided in this Chapter, citizens and
corporations of the Federated States of Micronesia may
invest in a Fund. Any time that the FSM is required to
invest in such Fund pursuant to section 403. The minimum
investment shall be $100,000.”

Section 7. Section 409 of title 30 of the Code of the
Federated States of Micronesia (Annotated), as authorized by Public
Law No. 18-96, is hereby amended to read as follows:

“Section 409. [Guarantee of repayment of original
capital amounts. The Fund manager or its parent
organization, or an unrelated party (the “Guarantor”),
must at the outset] Repayment of capital amounts. If at
the liquidation of a Fund the amounts payable to the
Fund Investors, together with all amounts of invested capital previously returned to the Fund Investors, would not be sufficient to return to the Fund Investors in aggregate an amount equal to the aggregate capital amount invested in the Fund by the Fund Investors, then the Fund Manager shall return to the Fund Investors such portion of the aggregate management fees paid to it to remedy such capital shortfall. In addition, upon establishment of a Fund the Designated Entity will, at its option, either guarantee the repayment of the original to Fund Investors of the capital amounts invested in a Fund by the Fund Investors at the end of the life of the Fund or commit to provide supplemental capital to remedy any such capital shortfall. “Designated Entity” means the Fund Manager, its parent organization or an unrelated party. The Designated Entity must be rated at least investment grade rated by Moody’s or Standard and Poor’s or Fitch or a national rating organization acceptable to the President of the Federated States of Micronesia Development Bank, or it must have a net worth of least ten times the original capital of the Fund. The President of the Federated States of Micronesia Development Bank will ensure that the Designated Entity meets the criteria set out in this
Section 8. Section 420 of title 30 of the Code of the Federated States of Micronesia (Annotated), as authorized by Public Law No. 18-96, is hereby amended to read as follows:

"Section 420. Section 420. [Guarantee of payment of interest. The Guarantor must also guarantee] Payment of partial capital returns. The provisions of section 409 will also apply with respect to the payment of [interest to investors at] partial capital returns to the [end of] Fund Investors each fiscal year during the life of the Fund[, at the rate of 3% per annum] under section 407 of this Chapter."

Section 9. Section 422 of title 30 of the Code of the Federated States of Micronesia (Annotated), as authorized by Public Law No. 18-96, is hereby amended to read as follows:

"Section 422. Reports [to investors]. [At] Within 90 days after the end of each fiscal year during the term of the Fund, the Fund Manager will issue a report to [each investor] the Advisory Board stating new investments, sales or other dispositions of investments, the rationale for new investments and dispositions of investments, and the rationale for each current holding, [and its] the net asset value of the Fund as of the end of such fiscal year, the estimate of the value of each investment as of the end of such fiscal year, and the
resulting gain or loss during [the current] such fiscal year and since the inception of the Fund. The net asset value of the Fund as of the end of each fiscal year as well as the estimate of the value of each investment as of the end of such fiscal year, and the resulting gain or loss during such fiscal year and since the inception of the Fund, must be approved by the Fund’s auditor or another independent appraiser.”

Section 10. Section 423 of title 30 of the Code of the Federated States of Micronesia (Annotated), as authorized by Public Law No. 18-96, is hereby amended to read as follows:

“Section 423. Appraiser[’s annual report]. Ninety days before the end of the [final year] term of the Fund, an independent appraiser qualified in the valuation of companies, appointed by the Fund Manager and reasonably acceptable to the Advisory Board, will value each of the holdings in the Fund, and the overall Fund. The appraiser will issue a report detailing the current value of each investment, and the methodology for determining each investment’s valuation. The report will be signed by the appraiser and sent [directly to each investor] to the Advisory Board 30 days before the end of the [final year] term of the Fund. The cost of the appraiser will be an appropriate expense of the Fund. [Six months before the end of the final year of the
Fund, the Fund Manager will recommend an appraiser to
the President of the Federated States of Micronesia
Development Bank. If the Board of Directors of the
Federated States of Micronesia Development Bank approves
the recommendation, the appraiser will be hired. If it
does not, the matter will be decided by the arbitration
panel described in the contract between the Investors
and the Fund Manager].”

Section 11. Section 424 of title 30 of the Code of the
Federated States of Micronesia (Annotated), as authorized by
Public Law No. 18-96, is hereby amended to read as follows:

“Section 424. Advisory Board. Each Fund shall
have an Advisory Board that shall give advice to the
Fund Manager. The Board shall consist of at least
5 people that are selected by the President of the
Federated States of Micronesia, with the advice and
consent of the Congress; provided, that each investor
that invests in aggregate $10,000,000 or more but less
than $20,000,000 in the Fund shall be entitled to a
representative in the Advisory Board, and each investor
that invests in aggregate $20,000,000 or more in the
Fund shall be entitled to two representatives in the
Advisory Board. The Board shall meet at least once a
year in person at the headquarters of the Fund Manager
and shall give advice to the Fund Manager. The costs of
the Advisory Board shall be an appropriate expense of the Fund.”

Section 12. Section 425 of title 30 of the Code of the Federated States of Micronesia (Annotated), as authorized by Public Law No. 18-96, is hereby amended to read as follows:

“Section 425. Expiration date. No new [investments] Fund may be [made and no Funds] created pursuant to [section] Section 403 of this [act, specifically section 401] Chapter, on or after April 1, [2025, unless extended by law. The provisions in this act, specifically Section 401, will expire on January 1, 2033] 2028, unless extended by law.”

Section 13. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 4/14/15

Introduced by: /s/ David W. Panuelo

David W. Panuelo