

STANDING COMMITTEE REPORT NO. 18-110

RE: C.B. NO. 18-119/R&D

SUBJECT: AMENDMENTS TO SECTIONS 403, 407, 421,
423 AND 425 OF TITLE 30 OF THE FSM
CODE REGARDING FSM VENTURE FUNDS

JANUARY 28, 2014

The Honorable Dohsis Halbert
Speaker, Eighteenth Congress
Federated States of Micronesia
Third Regular Session, 2014

Dear Mr. Speaker:

Your Committee on Resources and Development, to which was
referred C.B. No. 18-119, entitled:

"A BILL FOR AN ACT TO FURTHER AMEND SECTIONS 403,
407, 421, 423 AND 425 OF TITLE 30 OF THE CODE OF
THE FEDERATED STATES OF MICRONESIA, AS ENACTED BY
PUBLIC LAW NO. 15-29, BY INCREASING AND SETTING A
CEILING FOR CORPORATE INCOME TAX INVESTED INTO A
FSM VENTURE FUNDS, DECREASE PERCENTAGE OF INCOME
TAX INVESTED INTO A FSM VENTURE FUND, CHANGE THE
DURATION AND THE EXPIRATION DATE OF BOTH NEW
INVESTMENTS AND NEW VENTURE FUNDS, AND FOR OTHER
PURPOSES.",

begs leave to report as follows:

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

The bill, C.B. No. 18-119, was transmitted to Congress through
Presidential Communication No. 18-183 on January 13, 2014, during
the Third Regular Session of the Eighteenth Congress. In his
communication, the President has indicated that he is
transmitting a proposed bill to further amend title 30 of the FSM
Code in order to extend the sunset provision of the Venture Fund

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act of 2007, which will expire on April 1, 2014, along with other amendments.

The first amendment is to delete subsections 403(1) and 403(2) of title 30 of the FSM Code, and renumber subsection 403(3) as subsection 403(1), insert a new subsection 403(2), and renumber subsection 403(4) as subsection 403(3).

The proposed amendments to section 403 of title 30 of the FSM Code is to change is the amount of corporate income tax that a Major Corporation pays to the FSM in any one calendar year and the percentage of the amount of income taxes the Major Corporation will be invested into the FSM Venture Fund. As proposed, the amount of money to be invested in the venture funds would be up to 50 percent of the first \$500,000,000 million and 75 percent of tax payments above the \$500,000,000 million.

In section 407, as proposed in the said bill, at the end of the life of the venture funds, investors will be paid the original capital amount plus 20 percent of the amount remaining in the fund. 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. At the end of the life of a Fund, each year investors will be paid the original capital amount invested in the funds and 3 percent interest of the capital amount (\$500 million) in the fund. By 2032 all funds must begin returning the original capital amount to the investors.

The bill proposes to repeal section 421 in its entirety. In section 423, it is proposed that an independent appraiser will value each of the holdings in the Fund before the final year of the Fund. In addition, 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.

In section 425, it is proposed that no new investments may be made and no Funds created on or after April 1, 2025, unless extended by law. Furthermore, it is proposed that the provisions in this act will expire on January 1, 2033.

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Your Committee conducted a public hearing on C.B. No. 18-119 on January 22, 2014, at 8:30 a.m. in the congress hearing room. Chairman David Panuelo chaired the hearing. Other committee members present were Senators Joseph J. Urusemal and Vice Speaker Paliknoa K. Welly. Also in attendance was Senator Yosiwo P. George. Staff Attorney Alik Jackson and Legal Counsel Lam Dang were also present at the hearing. Witnesses from the Executive branch included: Marion Henry, the Secretary of the Department of Resources and Development; Kensley Ikosia, the Secretary of the Department of Finance and Administration; Jun Bacalando, Assistant Attorney General; Kasio Mida and Steve Baker along with two staff members of the Micronesian Registrar Advisor, Inc.; Scott Garvey, Tax Advisor; and Pelsesar Petrus from the Office of the President.

After welcoming remarks, Chairman David Panuelo opened the hearing and gave an opportunity to the witnesses to comment on the bill.

Steve Baker explained to your Committee that the sunset clause in the Fund started in 2007 and it will expire on April 1, 2014. Therefore, there is a need to extend the expiration date of the Fund, which the bill is intended to do. He further explained that since the creation of the class 3 captive, companies have recorded profit and pay corporate income tax. Last fiscal year, there was a \$4 million realized in corporate income tax. This fiscal year may be more. Although there are not many million dollar companies in Japan, there may be a small number of companies in Japan that MRA are working with. In ten years, MRA might have one or more customers. What the proposed bill is intended to do is to extend the law before it expires, so there is continuity to have a solid precedence. By changing the minimum of \$50,000,000 to an higher amount of \$100,000,000, at the end of the ten year period, after the return of all principle, the 3 percent currently in the law will be increased to 20 percent. For a maximum of ten years, the money will be there. Each year the company will pay 3 percent to the government. Beginning in 2023, it is recommended to the Fund Manager to pay back the principal amount. If there is no transaction in 2023, then the corporation has to pay one-third of the principal amount.

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Your Committee inquired why capping at \$500,000,000 and if this is the potential limit. Steve Baker stated that there is no limit. Furthermore, your Committee asked how many Venture Fund established so far. Steve Baker stated that there is none. But under the captive insurance class 4, MRA might attract more companies. MRA hopes that there will be a company contributing to the Fund, which is another program to offer foreign investment.

Your Committee also asked what are some of the ingredients that the FSM has to promote for this kind of business. Steve Baker explained that MRA promotes Japanese Corporations. Currently, the Japanese companies pay 21 percent income tax to the FSM if they have subsidiaries in the FSM.

Assistant Attorney General Jun Bacalando commented that the Department of Justice is in full support of the proposed bill and is willing to work with the Committee on the bill. Secretary Ikosia commented that the Venture Fund existed since 2007. Since the FSM is venturing into ways that can generate funding, the current law needs to be changed.

Your Committee would like to offer the following amendments to the bill as follows:

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1. Page 4, line 3, delete "2023", and insert "2032" in lieu thereof.
2. Page 4, line 3, delete "so", and insert "of" in lieu thereof.
3. Page 4, line 5, delete "0", and insert "30" in lieu thereof.

Your Committee on Resources and Development is in accord with the intent and purpose of C.B. No. 18-119, as amended herein, and 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. 18-119, C.D.1.

Respectfully submitted,

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

/s/ Victor Gouland
Victor Gouland, vice chairman

/s/ Tiwiter Aritos
Tiwiter Aritos, member

/s/ Florencio S. Harper
Florencio S. Harper, member

/s/ Berney Martin
Berney Martin, member

/s/ Joseph J. Urusemal
Joseph J. Urusemal, member

Palilknoa K. Welly, member