

A BILL FOR AN ACT

To further amend title 2 of the Code of the Federated States of Micronesia, as amended, by enacting a new chapter 3 thereof to provide for the appointment of an Independent Prosecutor in appropriate circumstances, and for other purposes.

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

1           Section 1. Congressional Findings. The Congress of the  
2 Federated States of Micronesia hereby makes the following  
3 findings:

4           (1) The Attorney General of the Federated States of  
5 Micronesia is a member of the President's Cabinet, and works  
6 closely with and provides legal advice to members of the  
7 President's administration. As such, the Attorney General and  
8 each Deputy Attorney General reporting to and/or supervised by the  
9 Attorney General has an apparent or actual conflict of interest in  
10 investigating and prosecuting high-ranking government officials of  
11 the Executive Branch of the National Government, including the  
12 President and Vice President.

13           (2) To insure the confidence of the people of the Federated  
14 States of Micronesia in their government and to provide assurance  
15 that no person is above the law, there is a need to provide for  
16 appointment of an Independent Prosecutor, when appropriate, to  
17 investigate and prosecute violations of the laws of the Federated  
18 States of Micronesia by certain high-ranking government officials,  
19 and to establish the independence of the Independent Prosecutor.

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1 Section 2. Title 2 of the Code of the Federated States of  
2 Micronesia, as amended, is hereby further amended by enacting a  
3 new chapter 3 thereof, entitled "Appointment of Independent  
4 Prosecutor".

5 Section 3. Title 2 of the Code of the Federated States of  
6 Micronesia, as amended, is hereby further amended by enacting a  
7 new section 301 to read as follows:

8 "Section 301. Basis for Appointment of Independent  
9 Prosecutor.

10 (1) Whenever there is specific and credible evidence  
11 that a high-ranking government official may have  
12 violated the laws of the Federated States of Micronesia,  
13 the President of the Federated States of Micronesia  
14 shall appoint an Independent Prosecutor to investigate  
15 and prosecute the matter(s) and shall in writing  
16 identify the alleged or suspected violations of law to  
17 be investigated and/or prosecuted. The authority of the  
18 President under this act may be delegated to the Vice  
19 President or to the Secretary of the Department of  
20 Justice, but only if there is reason to believe that the  
21 President was involved in the acts that may be the  
22 subject of the Independent Prosecutor's investigation or  
23 the President determines that he has an actual conflict  
24 of interest with respect to the possible investigation.

25 (2) 'Specific and credible evidence' means evidence of

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1           such a nature that would cause a reasonable person to  
2           believe that it is more likely than not that a violation  
3           of law has occurred and that such evidence is being  
4           offered for other than political purposes.

5           (3) 'High-ranking government officials' includes the  
6           President, the Vice President, any member of the  
7           President's Cabinet, including the Attorney General, any  
8           member of the President's or Vice President's Executive  
9           Staff, and any Ambassador or Consul General of the  
10           Federated States of Micronesia."

11           Section 4. Title 2 of the Code of the Federated States of  
12           Micronesia, as amended, is hereby further amended by enacting a  
13           new section 302 to read as follows:

14           "Section 302. Request for Appointment of Independent  
15           Prosecutor. A request for appointment of an Independent  
16           Prosecutor may be made to the President of the Federated  
17           States of Micronesia by the Secretary of the Department  
18           of Justice, the FSM Public Auditor, the Speaker of the  
19           Congress of the Federated States of Micronesia, the  
20           Congress of the Federated States of Micronesia by  
21           resolution, or the Governor or Attorney General of any  
22           State of the Federated States of Micronesia, and shall  
23           be in the form of a confidential document addressed to  
24           the President and entitled 'Request for Appointment of  
25           Independent Prosecutor'. The request shall be supported

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1           by specific and credible evidence."

2           Section 5. Title 2 of the Code of the Federated States of  
3 Micronesia, as amended, is hereby further amended by enacting a  
4 new section 303 to read as follows:

5           "Section 303. Appointment Procedure. Upon his own  
6           initiative or upon receipt of a 'Request for Appointment  
7           of Independent Prosecutor', and after determining that  
8           such request is supported by specific and credible  
9           evidence, the President shall appoint the Independent  
10           Prosecutor. The Independent Prosecutor shall not  
11           investigate criminal activities other than those  
12           identified at the time of his appointment except with  
13           the written authorization of the President. Upon  
14           appointing an Independent Prosecutor, the President  
15           shall give written notice of the appointment to the  
16           Speaker of Congress and to any other person who  
17           requested such an appointment pursuant to section 302 of  
18           this title. Such notice shall describe the alleged or  
19           suspected violations of law that are to be investigated  
20           or prosecuted unless the President determines that such  
21           disclosure is likely to prejudice the investigation. If  
22           the President has received a request to appoint an  
23           Independent Prosecutor, but has determined that such an  
24           appointment is unwarranted, he shall provide written  
25           notice of his decision both to the person making the

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1           request and to the Speaker of Congress. That notice  
2           shall set forth the basis for the President's decision."

3           Section 6. Title 2 of the Code of the Federated States of  
4 Micronesia, as amended, is hereby further amended by enacting a  
5 new section 304 to read as follows:

6           "Section 304. Qualifications Required. (a) A person  
7           shall be eligible to serve as the Independent Prosecutor  
8           if he/she:

9           (1) has graduated from an accredited school of law;

10           (2) is licensed to practice law before the Supreme  
11           Court of the Federated States of Micronesia, or in  
12           another jurisdiction;

13           (3) has not less than 10 years of experience  
14           practicing law as a criminal prosecutor, trial attorney  
15           or defense attorney, or a combination thereof, in any  
16           jurisdictions in which he/she is licensed to practice  
17           law;

18           (4) has not been convicted of a felony, even if  
19           pardoned;

20           (5) for each jurisdiction in which he/she is licensed  
21           to practice law, has not been the subject of any  
22           reprimand, censure, suspension or other disciplinary  
23           action for a violation of the professional rules  
24           applicable to attorneys licensed to practice in that  
25           jurisdiction;

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1           (6) is not an employee of the National Government at  
2           the time of appointment and has not been an employee at  
3           any time within the preceding year;

4           (7) is not a spouse, parent, child, sibling, son or  
5           daughter-in-law, parent-in-law or sibling-in-law to any  
6           person who there is reason to believe may have  
7           participated in the alleged violations of law to be  
8           investigated or was a victim of such violations;

9           (8) does not provide legal services, and has not  
10          within the last two years provided legal services, to  
11          any person who there is reason to believe may have  
12          participated in the alleged violations of law to be  
13          investigated or was a victim of such violations;

14          (9) does not have any other business, family or social  
15          relationship with any person who may have been a  
16          participant in or victim of the alleged violations of  
17          law, such as would impair the impartiality or fairness  
18          of the investigation, or create the appearance of doing  
19          so; and

20          (10) has not had any personal involvement in the events  
21          to be investigated.

22          (b) Prior to the appointment of any person to serve as  
23          Independent Prosecutor, that person shall submit to the  
24          President, in writing, a summary of his qualifications  
25          and a statement as to his involvement, if any, in the

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1 events or acts to be investigated and his relationship,  
2 if any, with persons who may have been participants in  
3 or victims of such events and acts."

4 Section 7. Title 2 of the Code of the Federated States of  
5 Micronesia, as amended, is hereby further amended by enacting a  
6 new section 305 to read as follows:

7 "Section 305. Term of Office. Once appointed, the  
8 Independent Prosecutor shall serve until the matter for  
9 which the appointment was deemed necessary is completed,  
10 including any appeals, or for a period not to exceed 3  
11 years, whichever is shorter. If necessary, and subject  
12 to the availability of funds, an Independent  
13 Prosecutor's term of office may be extended by the  
14 President for an additional period not to exceed one  
15 year."

16 Section 8. Title 2 of the Code of the Federated States of  
17 Micronesia, as amended, is hereby further amended by enacting a  
18 new section 306 to read as follows:

19 "Section 306. Independent Nature of Office. Subject to  
20 the limitations placed on the scope of the Independent  
21 Prosecutor's investigation at the time of his  
22 appointment, the Independent Prosecutor shall have the  
23 same administrative, investigative and prosecutorial  
24 powers as would be held by the Department of Justice if  
25 it were conducting the investigation or prosecution.

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1           Without limiting the generality of the foregoing, the  
2           Independent Prosecutor shall have the powers (a) to  
3           determine the methods by which the investigation is to  
4           be conducted, (b) to bring criminal charges in the  
5           national courts; (c) to determine who, if anyone, will  
6           be charged and the crimes to be charged, and (d) to  
7           prosecute any criminal cases upon such charges."

8           Section 9. Title 2 of the Code of the Federated States of  
9           Micronesia, as amended, is hereby further amended by enacting a  
10          new section 307 to read as follows:

11           "Section 307. Relationship with Other Investigative or  
12           Prosecutorial Agencies. Whenever a matter is within the  
13           jurisdiction of the Independent Counsel, the Attorney  
14           General, and all other officers and employees of the  
15           Department of Justice or of any other executive branch  
16           agency with investigative authority or power, shall  
17           suspend all investigations and proceedings regarding  
18           such matter, except to the extent requested by the  
19           Independent Prosecutor. The National Police and all  
20           other departments, agencies and employees of the  
21           National Government shall, upon request of the  
22           Independent Prosecutor, provide to the Independent  
23           Prosecutor such assistance and cooperation as would be  
24           provided to the Department of Justice in connection with  
25           criminal investigations and prosecutions."

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1 Section 10. Title 2 of the Code of the Federated States of  
2 Micronesia, as amended, is hereby further amended by enacting a  
3 new section 308 to read as follows:

4 "Section 308. Accounting and Appropriations.

5 (1) Upon application of the Independent Prosecutor,  
6 the Congress of the Federated States of Micronesia shall  
7 appropriate sufficient funds for the investigation and  
8 prosecution of the specific matters for which the  
9 Independent Prosecutor was appointed, provided that, in  
10 the event that the Independent Prosecutor advises  
11 Congress that the disclosure of the specific matters for  
12 which he was appointed would be likely to prejudice the  
13 investigation, Congress shall limit the extent of the  
14 disclosure required so as to enable the funding of the  
15 Independent Prosecutor without prejudicing the  
16 investigation. The Independent Prosecutor shall be the  
17 allottee of such funds and all such funds shall be  
18 expended and accounted for by the allottee in accordance  
19 with the financial management laws of the Federated  
20 States of Micronesia and any regulations promulgated  
21 thereunder.

22 (2) Not later than 30 days after the expiration of the  
23 first quarter following his/her appointment, and each  
24 quarter thereafter, the Independent Prosecutor shall  
25 submit a quarterly report to the President and to the

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1 Congress of the Federated States of Micronesia, which  
2 report shall provide a full disclosure of all sums  
3 expended by the Independent Prosecutor during the  
4 reporting period, and shall describe the work performed  
5 by the Independent Prosecutor during the quarter and the  
6 current status of his investigation or prosecution.

7 (3) The Independent Prosecutor shall promptly notify  
8 the President at any time that the investigation or  
9 prosecution for which he was appointed has been  
10 completed, or that there is no longer any reasonable  
11 ground for continuing the investigation or prosecution."

12 Section 11. Title 2 of the Code of the Federated States of  
13 Micronesia, as amended, is hereby further amended by enacting a  
14 new section 309 to read as follows:

15 "Section 309. Removal of Independent Prosecutor.

16 (1) The Independent Prosecutor shall not be removed  
17 from office except for 'good cause', physical or mental  
18 disability, or any other condition that impairs the  
19 performance of the Independent Counsel's duties. 'Good  
20 cause' includes, but is not limited to, an actual  
21 conflict of interest.

22 (2) The Independent Prosecutor may be removed from  
23 office only by order of the President.

24 (3) If removal of the Independent Counsel is  
25 effectuated pursuant to the provisions of paragraphs 1

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1           and 2 of this section, the President shall, within 30  
2           calendar days of such action, submit a report to  
3           Congress specifying the facts found and the grounds for  
4           the removal. Such report shall be made public, with  
5           necessary protections for the privacy and other rights  
6           of any individual named in the report.

7           (4) A decision to remove the Independent Counsel shall  
8           be final and shall not be reviewed in any Court of the  
9           FSM, provided that nothing in this subsection shall be  
10          deemed to prevent a request for or appointment of a new  
11          Independent Prosecutor pursuant to the provisions of  
12          this act."

13          Section 12. Title 2 of the Code of the Federated States of  
14          Micronesia, as amended, is hereby further amended by enacting a  
15          new section 310 to read as follows:

16          "Section 310. Employment Restrictions.

17          (1) While serving as the Independent Prosecutor under  
18          the provisions of this act, the Independent Prosecutor,  
19          and any person associated with a firm with which the  
20          Independent Prosecutor is associated, may not represent  
21          in such matter any person involved in any investigation  
22          or prosecution by the Independent Prosecutor.

23          (2) Each Independent Prosecutor and each person  
24          appointed by that Independent Prosecutor, if any, may  
25          not, for 2 years following termination of the service of

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1           such person, represent any person in any matter if that  
2           person was the subject of an investigation or  
3           prosecution conducted by that Independent Prosecutor.”

4           Section 13. Title 2 of the Code of the Federated States of  
5 Micronesia, as amended, is hereby further amended by enacting a  
6 new section 311 to read as follows:

7           “Section 311. Transfer of Records. Upon termination of  
8           the office of the Independent Prosecutor for any reason,  
9           the Independent Prosecutor shall transfer all records  
10           that have been created or received by that office to the  
11           Secretary of Justice for safekeeping, storage, and/or  
12           disposal in accordance with the laws and regulations of  
13           the FSM.”

14           Section 14. Severability. If any provision of this act is  
15 held invalid, the remainder of this act not similarly situated  
16 shall not be affected by that invalidation.

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

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21 Date: 5/18/05

Introduced by: /s/ Isaac V. Figir  
Isaac V. Figir

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