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A BILL FOR AN ACT

To amend sections 117, 135, and 137 and to add two new sections to title 52 of the Code of the Federated States of Micronesia to bring the National Public Service System Act within the constitutional principles of separation of powers and judicial independence, and for other purposes.

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

1 Section 1. Section 117 of title 52 of the Code of the Federated
2 States of Micronesia is hereby amended to read as follows:

3 "Section 117. Application of chapter; Exemptions. The
4 National Public Service System shall apply to all employees
5 of and positions in the central Government of the Federated
6 States of Micronesia now existing or hereafter established and
7 to all personnel services performed for that Government except
8 the following, unless this chapter or provisions thereof are
9 specifically made applicable to them:

10 (1) members of the Congress of the Federated States
11 of Micronesia;

12 (2) the President and Vice President of the
13 Federated States of Micronesia;

14 (3) Justices and other Judges of the National Courts
15 and secretaries to the Justices of the Supreme Court;

16 (4) the legislative counsel and the Clerk of the
17 Congress;

18 (5) the Public Auditor;

19 (6) the administrative officer of the National
20 Courts;

21 (7) the special assistants and secretaries to the
22 President and Vice President;

23 (8) persons appointed by the President to fill the
24 following positions: Secretary of External Affairs, Secretary
25 of Finance, Secretary of Resources and Development, Secretary

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1 of Social Services, Budget Officer, Information Officer,
2 Personnel Officer, National Planner, Attorney General, and
3 Public Defender, and their deputies, if any;

4 (9) persons appointed to any other positions by
5 the President with the advice and consent of the Congress;

6 (10) the Liaison Officer in Washington and all
7 ambassadors;

8 (11) persons or organizations retained by contract
9 when the Personnel Officer has certified that the service to
10 be performed is special or unique and nonpermanent and is
11 essential to the public interest, and that, because of the
12 degree of expertise or special knowledge required and the
13 nature of the services to be performed, it would not be
14 practical to obtain personnel to perform such services through
15 normal public service recruitment procedures;

16 (12) persons presently under contract of employment
17 not included in subsection (11) of this section, during the
18 life of such contract. No contract of employment shall be
19 entered into, renewed, or amended after the effective date
20 of this chapter, except in accordance with the provisions of
21 this chapter;

22 (13) temporary positions, required in the public
23 interest, for which the need does not exceed six months;

24 (14) positions requiring part-time or intermittent
25 work which does not exceed sixty hours in any calendar month;

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1 (15) positions filled by inmates, patients, and
2 students of institutions of the Federated States of Micronesia;

3 (16) members of any board, public corporation,
4 commission, or similar body, in their capacity as such;

5 (17) officers, faculty, and employees of the Board
6 of Regents and the College of Micronesia; and

7 (18) positions specifically exempted by any other law
8 of the Federated States of Micronesia."

9 Section 2. Section 135 of title 52 of the Code of the Federated
10 States of Micronesia is hereby amended to read as follows:

11 "Section 135. Filling of vacancies. All vacancies and new
12 positions in the public service shall be filled in the follow-
13 ing manner:

14 (1) Whenever there is a position to be filled,
15 the management official shall ask the Personnel Officer to
16 submit a list of persons eligible. The Personnel Officer
17 shall thereupon certify a list of five, or such lesser number
18 as may be available, taken from eligible lists in the follow-
19 ing order: first, reemployment lists; second, promotional
20 lists; and third, open-competitive lists. The management
21 official shall make the appointment from the list of eligibles
22 submitted to him unless he finds no person available and
23 acceptable to him on the list, in which case he will ask the
24 Personnel Officer to certify a new list, stating in writing
25 his reasons for rejecting each of the eligibles on the list

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1 previously submitted to him. If the Personnel Officer finds
2 such reasons adequate, he shall then submit a new list of no
3 more than five eligibles selected in like manner, from which
4 the management official shall make an appointment. If the
5 Personnel Officer does not find the reasons adequate, he
6 shall resubmit the list and the appointment shall be made
7 therefrom; provided, that this subsection shall not apply
8 to the judicial branch of the Federated States of Micronesia.

9 (2) A management official may fill a vacant po-
10 sition in his department, office, or other agency by promoting
11 any regular employee therein without examination, if the em-
12 ployee meets the minimum class qualifications of the position
13 to which he is to be promoted, and if the position is in the
14 same series as the position held by the employee or is clearly
15 an upward progression in the same career-ladder of positions;
16 provided that a qualified employee who is a citizen of the
17 Federated States of Micronesia shall be given preference for
18 promotion over a noncitizen employee; and provided further,
19 that when there is no material difference between the qualifi-
20 cations of employees holding the same citizenship status, the
21 employee with the longest public service will receive first
22 consideration for promotion."

23 Section 3. Section 137 of title 52 of the Code of the Federated
24 States of Micronesia is hereby amended to read as follows:

25 "Section 137. Provisional and short-term appointment.

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- 1 (1) Provisional appointment pending
2 establishment of an eligible list. When there is no
3 eligible person available on a list appropriate for
4 filling a vacancy in a continuing position and the
5 public interest requires that it be filled before
6 eligibles can be certified, the Personnel Officer may
7 authorize the filling of the vacancy through provisional
8 appointment. The Personnel Officer shall proceed without
9 delay to announce an examination to fill the vacancy.
10 The provisional appointment shall continue only for such
11 period as may be necessary to make an appointment from an
12 eligible list but shall not extend beyond ninety days;
13 provided that the Personnel Officer may extend the pro-
14 visional appointment for a maximum of ninety additional
15 days if an examination has failed to secure any qualified
16 available eligible person.
- 17 (2) Emergency appointments. To prevent the
18 stoppage of essential public business, management of-
19 ficials may make emergency appointments, not to exceed
20 ten working days, to fill positions temporarily in any
21 serious emergency when time is insufficient to follow
22 normal appointment procedure. The Personnel Officer may,
23 for good and sufficient cause stated in writing by the
24 management official concerned, extend the appointment for
25 an additional period not to exceed twenty working days.

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1 (3) Qualifications. Provisional and
2 temporary appointees must meet the qualification require-
3 ments for the class of the position to be filled.

4 (4) Judiciary exempt. Subsections (1) and
5 (2) of this section shall not apply to the judicial
6 branch of the Federated States of Micronesia."

7 Section 4. A new section is hereby added to title 52 of
8 the Code of the Federated States of Micronesia to read as follows:

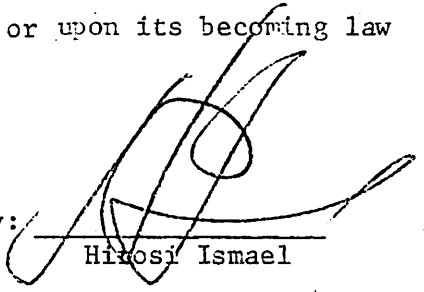
9 "Section 158. Judiciary exempt. Sections 154 through
10 157 of this subchapter do not apply to the judicial branch
11 of the National Government of the Federated States of
12 Micronesia, as the subject matter of said sections regarding
13 the judicial branch is covered by section 114 of title 4 of
14 this code."

15 Section 5. A new section is hereby added to title 52 of the
16 Code of the Federated States of Micronesia to read as follows:

17 "Section 167. Title 4 applicability. Any provisions in this
18 title which are inconsistent with title 4, the Judiciary
19 Act of 1979, shall not apply to the judicial branch, and
20 title 4 will govern the subject matter of such provisions."

21 Section 6. This act shall become law upon approval by the
22 President of the Federated States of Micronesia or upon its becoming law
23 without such approval.

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25 Date: 10-27-82

Introduced by: 
Hiroshi Ismael