A BILL FOR AN ACT

To provide for appointment of an Independent Prosecutor, as needed, and for other purposes.

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

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

1. The Attorney General of the Federated States of Micronesia is a member of the President's Cabinet and is appointed by, subject to the supervision of, and may be removed by the President of the Federated States of Micronesia. As such, the Attorney General and each Deputy Attorney General reporting to and/or supervised by the Attorney General, has an inherent conflict of interest in investigating and prosecuting high-ranking government officials of the Executive Branch of the National Government, including the President and Vice President.

2. To insure the confidence of the people of the Federated States of Micronesia in the FSM Department of Justice and in the investigation and prosecution decisions made by the Attorney General and his/her deputies, there is a need to provide for appointment of an Independent Prosecutor, when appropriate, to investigate and prosecute violations of the laws of the Federated States of Micronesia by certain high-ranking government officials, and to establish the independence of the Independent Prosecutor.
Section 2. Basis for Appointment of Independent Prosecutor.

(1) Whenever there is specific and credible evidence that a high-ranking government official may have violated the laws of the Federated States of Micronesia, the Chief Justice of the Supreme Court of the Federated States of Micronesia shall appoint an Independent Prosecutor to investigate and prosecute the matter(s) and shall define the parameters of the matter(s) to be investigated and/or prosecuted.

(2) "Specific and credible evidence" means evidence of such a nature that it is more likely than not that a violation of law has occurred and that such evidence is being offered for other than political purposes.

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

Section 3. Request for Appointment of Independent Prosecutor. A request for appointment of an Independent Prosecutor may be made to the Chief Justice of the FSM Supreme Court by the Department of Justice, the FSM Public Auditor, the Congress of the Federated States of Micronesia, or any State of the Federated States of Micronesia, and shall be in the form of a confidential document addressed to the Chief Justice and entitled "Request for Appointment of Independent Prosecutor". The request shall be
supported by specific and credible evidence.

Section 4. **Appointment Procedure.** Upon receipt of a "Request for Appointment of Independent Prosecutor", and after determining that such request is supported by specific and credible evidence, the Chief Justice shall appoint the Independent Prosecutor from a list of candidates compiled by the Chief Justice on a case-by-case basis from recommendations made by the Chief Justice of the FSM Supreme Court, each Associate Justice of the FSM Supreme Court, and the Chief Justice of each State's Supreme Court.

Section 5. **Qualifications Required.** A person shall be eligible to serve as the Independent Prosecutor if he/she:

1. has graduated from an accredited school of law;
2. is licensed to practice law before the Supreme Court of the Federated States of Micronesia;
3. has not less than 10 years of experience practicing law as a criminal prosecutor, trial attorney or defense attorney, or a combination thereof, in any jurisdiction in which he/she is licensed to practice law;
4. has not been convicted of a felony, even if pardoned; and
5. for each jurisdiction in which he/she is licensed to practice law, has not been the subject of any ethical complaint or any investigation for a violation of the professional rules applicable to attorneys licensed to practice in that jurisdiction.

Section 6. **Term of Office.** Once appointed, the Independent
Prosecutor shall serve until the matter for which the appointment was deemed necessary is completed, including any appeals, or for a period not to exceed 3 years, whichever is shorter. If necessary, and subject to the availability of funds, an Independent Prosecutor's term of office may be extended for an additional period not to exceed one year by the affirmative vote of 3/4 of the Members of Congress.

Section 7. **Independent Nature of Office.** In exercising his/her authority, the Independent Prosecutor will have the greatest degree of independence that is consistent with the FSM Attorney General's constitutional and statutory accountability for all matters falling within the jurisdiction of the Attorney General's Office.

Section 8. **Powers and Duties of Independent Prosecutor.** Upon appointment, the Independent Prosecutor shall, with respect to the matter(s) for which the Independent Prosecutor is appointed, have full power and independent authority to exercise all administrative, investigative, and prosecutorial functions and powers of the Attorney General.

Section 9. **Relationship with Other Investigative or Prosecutorial Agencies.** Whenever a matter is within the jurisdiction of the Independent Counsel, the Attorney General, and all other officers and employees of the Department of Justice or of any other executive branch agency with investigative authority or power, shall suspend all investigations and proceedings...
regarding such matter, except to the extent requested by the Independent Prosecutor for the purpose of rendering assistance to the Independent Prosecutor's investigation or prosecution.

Section 10. Accounting and Appropriations.

(1) Upon application of the Independent Prosecutor, the Congress of the Federated States of Micronesia shall appropriate sufficient funds for the investigation and prosecution of the specific matters for which the Independent Prosecutor was appointed. The Independent Prosecutor shall be the allottee of such funds and all such funds shall be expended and accounted for by the allottee in accordance with the financial management laws of the Federated States of Micronesia and any regulations promulgated thereunder.

(2) Not later than 30 days after the expiration of the first quarter following his/her appointment, and each quarter thereafter, the Independent Prosecutor shall submit a quarterly report to the Congress of the Federated States of Micronesia, and to the Chairman of the Judiciary and Governmental Operations Committee of the Congress of the Federated States of Micronesia, which report shall provide a full disclosure of all sums expended by the Independent Prosecutor during the reporting period.


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

(2) Procedure. The Independent Prosecutor may be removed from office:

(a) by the Chief Justice of the FSM Supreme Court, after consultation with each full-time Associate Justice and with the Chairman of the Judiciary and Governmental Operations Committee of the Congress; or

(b) by congressional resolution adopted by the affirmative vote of 3/4 of the Members of the Congress.

(3) Required Report. If removal of the Independent Counsel is effectuated pursuant to the provisions of sub-paragraph (2)(a) of this section, the Chief Justice shall, within 30 calendar days of such action, submit a report to the Congress specifying the facts found and the ultimate grounds for the removal. If the removal of the Independent Counsel is effectuated pursuant to the provisions of sub-paragraph (2)(b) of this section, the Speaker of the FSM Congress shall, within 30 calendar days of such action, submit a report to the Chief Justice specifying the facts found and the ultimate grounds for the removal. In either case, such report shall be made public, with necessary protections for the privacy and other rights of any individual named in the report.

(4) Decision to Remove Final. A decision to remove the Independent Counsel shall be final and shall not be reviewed in any Court of the FSM or by the Congress of the FSM.

Section 12. Employment Restrictions.
(1) **While serving as Independent Prosecutor.** While serving as the Independent Prosecutor under the provisions of this act, the Independent Prosecutor, and any person associated with a firm with which the Independent Prosecutor is associated, may not represent in such matter any person involved in any investigation or prosecution by the Independent Prosecutor.

(2) **Post-employment restrictions.** Each Independent Prosecutor and each person appointed by that Independent Prosecutor, if any, may not, for __ years following termination of the service of such person, represent any person in any matter if that person was the subject of an investigation or prosecution conducted by that Independent Prosecutor, or in any matter involving any investigation or prosecution.

**Section 13. Transfer of Records.** Upon termination of the office of the Independent Prosecutor, the Independent Prosecutor shall transfer all records that have been created or received by that office to the Secretary of Justice for safekeeping, storage, and/or disposal in accordance with the laws and regulations of the FSM.

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

Date: 4/5/04

Introduced by: /s/ Isaac V. Figir

Isaac V. Figir