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A BILL FOR AN ACT

To further amend chapter 5 of title 55 of the Code of the Federated States of Micronesia (Annotated), as amended, by amending section 502 thereof, in order to provide a definition of "auditing standards"; by amending section 503 thereof, in order to provide an immunity provision; by amending section 505 thereof, in order to expand the duties of the Public Auditor; by amending section 507 thereof, in order to clarify the types of audits; by inserting a new section 508 in order to establish the Office of the Public Auditor; and for other purposes.

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

2           Section 1. Section 502 of title 55 of the Code of the  
3 Federated States of Micronesia (Annotated), as amended, is hereby  
4 amended to read as follows:

5           "Section 502. Definitions.

6           As used in this chapter:

7           "auditing standards" means generally accepted government  
8           auditing standards in the United States or international  
9           auditing standards for public sector audits

10          "document" means any record of information, including:

11                   (a) anything on which there is writing or any  
12                   image;

13                   (b) anything on which there is any mark, figure,  
14                   symbol, or perforation having a meaning for a person  
15                   qualified to interpret it; and

16                   (c) anything from which any sound, image or  
17                   writing can be reproduced, with or without other aids;

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1           and includes documents or information created, recorded,  
2           or stored electronically by any means whatsoever, and  
3           any information derived from those documents or that  
4           information.

5           *"public funds from the National Government"* means funds  
6           or reimbursements from the National Government arising  
7           from the National tax revenues, including National tax  
8           revenue shared with the states pursuant to article IX,  
9           section 5 of the Constitution of the Federated States of  
10          Micronesia, and all grants, subsidies, or contributions  
11          in the form of money, goods, or services from any source  
12          which are received from the National Government by  
13          appropriation law, or otherwise."

14          Section 2. Section 503 of title 55 of the Code of the  
15          Federated States of Micronesia (Annotated), as amended, is hereby  
16          amended to read as follows:

17                 "Section 503. ~~Appointment–Tenure–Removal–Salary.~~

18                 The appointment, tenure, removal, and salary of the  
19                 Public Auditor for the National Government of the  
20                 Federated States of Micronesia shall be as follows:

21                         (1) Appointment. The Public Auditor shall be  
22                         appointed by the President with the advice and consent  
23                         of Congress.

24                         (2) Tenure. The Public Auditor shall serve for a term  
25                         of four years and until a successor is confirmed. An

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1 individual may be reappointed for an additional term or  
2 terms with the advice and consent of Congress.

3 (3) Removal. The Congress may remove the Public  
4 Auditor from office for cause by a two-thirds vote. In  
5 the event of such removal, the Chief Justice shall  
6 appoint an Acting Public Auditor until a successor is  
7 confirmed.

8 (4) Salary. The Public Auditor shall receive an  
9 annual salary of which shall not exceed \$40,000, and  
10 shall be determined based on qualifications and  
11 experience. Upon the appointment of a Public Auditor the  
12 salary level for the position shall be fixed by the  
13 President with the advice and consent of Congress. Such  
14 salary shall not be reduced during the Public Auditor's  
15 term of office. In the event of removal or of a vacancy  
16 in the office, the successor shall be entitled to the  
17 salary attendant to the office as of the date of  
18 succession.

19 (5) Immunity. Neither the Public Auditor nor any  
20 employee of the Public Auditor acting under the Public  
21 Auditor's authority shall be subject to personal civil  
22 or criminal liability for any act or omission in  
23 carrying out his or her duties in good faith."

24 Section 3. Section 505 of title 55 of the Code of the  
25 Federated States of Micronesia (Annotated), as amended, is hereby

1 amended to read as follows:

2 "Section 505. Duties.

3 The duties of the Public Auditor shall be as follows:

4 (1) The Public Auditor shall inspect and audit  
5 transactions, accounts, books, and other financial  
6 records of every branch, department, office, agency,  
7 board, commission, bureau, and statutory authority of  
8 the National Government and of other public legal  
9 entities, including, but not limited to, States,  
10 subdivisions thereof, and nonprofit organizations  
11 receiving public funds from the National Government.

12 (2) The Public Auditor shall inspect and audit  
13 transactions, accounts, books, and other financial  
14 records associated with any project, program, and  
15 activity receiving funding in whole or in part from  
16 public funds of the National Government.

17 (3) The Public Auditor shall perform audits as  
18 otherwise specifically required by statute.

19 (4) The Public Auditor may at any time perform an  
20 inspection or evaluation of the design, implementation,  
21 or results of the operations, programs, or policies of  
22 the National Government and any instrumentality of the  
23 National Government as referred to in subsection (1). An  
24 inspection or evaluation shall be performed in  
25 conformity with standards issued by the Council of the

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1           Inspectors General on Integrity and Efficiency in the  
2           United States, to the extent the Public Auditor  
3           determines the standards to be practicably applicable.

4           (5) [~~4~~] The Public Auditor shall have the  
5           discretion to perform audits, inspections, or  
6           evaluations, or assist in the performance of audits,  
7           upon request by the States.

8           (6) [~~5~~] The Public Auditor shall have the exclusive  
9           audit jurisdiction over public funds of the National  
10          Government of the Federated States of Micronesia,  
11          including loans or grants from international  
12          organizations but he shall have the authority to  
13          contract for independent auditing, inspection or  
14          evaluation services to be performed under his  
15          supervision in instances where specialized expertise is  
16          required, or where auditing, inspections, or evaluation  
17          requirements are beyond the capacity of the Public  
18          Auditor's staff and separate funding is available.

19          (7) [~~6~~] The Public Auditor shall file a report at  
20          least once a year with the Congress. The Public Auditor  
21          may file other reports at such other times as he may  
22          determine. All reports of the Public Auditor shall be  
23          made available to the public.

24          (8) ~~(7)~~ The Public Auditor may submit recommendations  
25          with his audit and inspection or evaluation reports

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1           which shall be confined to matters within the  
2           jurisdiction of the Public Auditor, including compliance  
3           or noncompliance with laws governing the expenditure of  
4           public moneys, and the need for amendments or new laws  
5           to secure the efficient expenditure of public funds.

6           (9) Upon receipt of an audit report or a report on an  
7           inspection or evaluation, the entity being audited,  
8           inspected, or evaluated must respond to any  
9           recommendations, in writing to the Public Auditor, by  
10          indicating the action or actions immediately taken to  
11          address the recommendations as well as stated action or  
12          actions to be taken on recommendations not immediately  
13          addressed. Thereafter, the public entity must file a  
14          monthly report with the Public Auditor indicating its  
15          progress in addressing the recommendations until such  
16          time as it can report that all recommendations have been  
17          addressed, which period shall not exceed one year.

18          (10) The Public Auditor may in his report to Congress  
19          under subsection (7) refer to any public entity which  
20          has, in the Public Auditor's opinion, failed without  
21          reasonable justification to address recommendations or  
22          to comply with its obligations under subsection (9).

23          (11) [~~+8~~] The Public Auditor shall keep a complete  
24          and accurate record or file of all audit reports,  
25          inspections, investigations, releases, audit work

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1 papers, and other materials pertaining to the work of  
2 the Office of the Public Auditor.”

3 Section 4. Section 506 of title 55 of the Code of the  
4 Federated States of Micronesia (Annotated), as amended, is hereby  
5 amended to read as follows:

6 “Section 506. Powers. The powersu of the Public Auditor  
7 shall be as follows:

8 (1) The Public Auditor may examine and inspect all  
9 books, records, files papers, documents, and all  
10 financial affairs of every branch, department, office,  
11 agency, board, commission, bureau, and statutory  
12 authority of the National [~~of~~]Government, as well as  
13 other public legal entities, including state and non-  
14 profit organizations receiving funds from the National  
15 Government.

16 (2)The Public Auditor may audit the records of any  
17 contractor performing public work on cost-reimbursement-  
18 type contractsu for the National Government [~~of the~~  
19 ~~Federated States of Micronesia~~] to verify the cost  
20 charged to a public contract. Any contruactor performing  
21 public work pursuant to a contract with the National  
22 Government [~~of the Federated States of Micronesia~~] shall  
23 keep and maintain records adequate to establish the  
24 validity of costsu charged to the National Government.

25 (3) The Public Auditor may by subpoena summon personsu to

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1 appear at a reasonable time before him and administer  
2 oaths to such persons. He may question such persons,  
3 under oath, regarding receipts and expenditures of money  
4 and any other reasonable and relevant matters necessary  
5 for the performance of his duties.

6 (4) The Public Auditor may issue subpoena duces tecum  
7 within a reasonable time requiring the production of  
8 books, records, documents, or other relevant financial  
9 papers or objects necessary for the performance of his  
10 duties.

11 (5) Any subpoena or subpoena duces tecum issued under  
12 the authority of the Public Auditor shall run in the  
13 name of the Federated States of Micronesia and shall be  
14 addressed to the chief or other officer of the Division  
15 of Security and Investigation of the office of the  
16 Attorney General of the National Government of the  
17 Federated States of Micronesia. The subpoena or subpoena  
18 duces tecum shall be [~~singed~~] signed by the Public  
19 Auditor and shall identify the witness to be served or  
20 the books, records, documents, or other relevant  
21 financial papers or objects to be produced together with  
22 a reference to the account subject to inspection and  
23 audit or inspection or evaluation, as the case may be.

24 (6) Any officer to whom such subpoena or subpoena duces  
25 tecum is directed shall forthwith serve or execute the

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1 same upon delivery thereof to him.

2 (7) Any person who willfully fails or refuses to appear  
3 upon receiving service of subpoena, or who willfully  
4 fails or refuses to produce any books, records,  
5 documents, or other relevant financial papers or objects  
6 designated in a subpoena duces tecum properly issued by  
7 the Public Auditor, upon conviction thereof, shall be  
8 fined not more than \$ 1,000.00, or imprisoned for not  
9 more than one year, or both. Failure by the Public  
10 Auditor to comply in any material respect with the  
11 requirements of this chapter shall relieve any person of  
12 the obligation to appear or the obligation to produce  
13 designated materials, and such failure shall be defense  
14 in any proceeding against such person for punishment.

15 (8) Any person subject to a subpoena duces tecum shall  
16 have only those privileges against producing books,  
17 records, documents, or other relevant financial papers  
18 or objects which are authorized under the rules of  
19 evidence of the Supreme Court of the Federated States of  
20 Micronesia, the Constitution of the Federated States of  
21 Micronesia, the Trust Territory Bill of Rights, or other  
22 applicable law.

23 (9) The Public Auditor, when he receives an allegation  
24 of non-compliance in public office, misuse of public  
25 resources, financial crime, financial corruption, or any

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1 other breach of the national law or regulations  
2 involving, in whole or in part, public funds (including  
3 funds received from a development organization by loan  
4 or grant) from the National Government, may authorize  
5 the Compliance Investigation Division to conduct a  
6 preliminary inquiry to ascertain whether there is a  
7 reasonable cause to warrant an investigation into the  
8 allegation.

9 (10)The Public Auditor, when in the performance of his  
10 duties [~~and~~] has a reasonable cause to suspect non-  
11 compliance in public office, misuse of public resources,  
12 financial crime, financial corruption, or any other  
13 breach of the national law or regulations involving, in  
14 whole or in part, public funds from the National  
15 Government, may authorize the Compliance Investigation  
16 Division to investigate such matters.

17 (11)The Compliance Investigation Division, when  
18 conducting a preliminary inquiry or an investigation,  
19 shall liaise with the Department of Justice during the  
20 course of conducting such preliminary inquiry or  
21 investigation and advise the Department of Justice of  
22 the results of such a preliminary inquiry or  
23 investigation."

24 Section 5. Section 507 of title 55 of the Code of the  
25 Federated States of Micronesia (Annotated), as amended, is hereby

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1 amended to read as follows:

2 "Section 507. Types of audits and audit standards.

3 The types of audits and applicable audit standards shall  
4 be as follows:

5 (1) The Public Auditor may perform [~~Three types of~~  
6 ~~audits may be performed~~]:

7 (a) Financial audits and compliance audits.

8 This type of audit includes, but is not limited to,  
9 audits under section 505(1) and (2), and determines  
10 whether the financial statements of an audited entity  
11 present fairly the financial position and results of  
12 financial operations in accordance with generally  
13 accepted accounting principles and whether the entity  
14 has complied with laws and regulations that may have a  
15 material effect upon the financial statements.

16 (b) Performance audits. [~~Economy and~~  
17 ~~efficiency.~~] This type of audit determines whether an  
18 entity is managing and utilizing its resources  
19 effectively, economically and efficiently, the cause of  
20 inefficiencies or uneconomical practices, and whether  
21 the entity has complied with laws and regulations  
22 concerning effectiveness, economy and efficiency.

23 (c) Program results. This type of audit  
24 determines whether the desired results or benefits  
25 established by the Congress or other authorizing body

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1 are being achieved and whether the program  
2 administrators have considered alternatives that might  
3 yield desired results at a lower cost.

4 (2) Any given audit or review may include one or more  
5 of the objectives in subsection (1) of this section in  
6 the reasonable exercise of the Public Auditor's  
7 discretion.

8 (3) The Public Auditor shall perform audits in  
9 conformity with auditing standards, to the extent the  
10 Public Auditor determines the standards to be both  
11 relevant and practicably applicable to the audit  
12 ~~[generally accepted audit standards as established by~~  
13 ~~the American Institute of Certified Public~~  
14 ~~Accountants." ]~~

15 Section 6. Chapter 5 of title 55 of the Code of the  
16 Federated States of Micronesia (Annotated), as amended, is hereby  
17 amended by inserting new section 508 to read as follows:

18 "Section 508. Office of the Public Auditor.

19 (1) There is an Office of the Public Auditor for the  
20 Federated States of Micronesia, which is headed by the  
21 Public Auditor. The Office of the Public Auditor  
22 exists independently of the Government and is to be  
23 independent of administrative and political control,  
24 direction and influence.

25 (2) The Public Auditor is responsible for managing and

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1 authorizing expenditure under the appropriation provided  
2 by law for the conduct of the Office, and for that  
3 purpose may establish such organisational divisions  
4 (including the Compliance Investigation Division) as the  
5 Public Auditor considers appropriate and prescribe their  
6 duties and responsibilities. The Public Auditor may  
7 enter an administrative arrangement with the Finance  
8 Department for the administration of the Office's  
9 finances and to ensure that all expenditure under  
10 appropriation that has been authorized by the Public  
11 Auditor is certified and paid according to the  
12 applicable legal requirements.

13 (3) Within the appropriation provided for the conduct of  
14 the Office, the Public Auditor may employ such staff  
15 that the Public Auditor considers necessary for the  
16 effective functioning of the Office and the performance  
17 of the Public Auditor's duties under this Act. In  
18 employing staff, the Public Auditor must comply with the  
19 Public Service System Act with respect to human  
20 resources management including the management of  
21 recruitment processes."

1 Section 7. This act shall become law upon approval by the  
2 President of the Federated States of Micronesia or upon its  
3 becoming law without such approval.

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5 Date: 3/7/20

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper  
(by request)

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