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:

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

“Section 502. Definitions.

As used in this chapter:

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

"document" means any record of information, including:

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

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

(c) anything from which any sound, image or writing can be reproduced, with or without other aids;
and includes documents or information created, recorded, 
or stored electronically by any means whatsoever, and 
any information derived from those documents or that 
information.
“public funds from the National Government” means funds 
or reimbursements from the National Government arising 
from the National tax revenues, including National tax 
revenue shared with the states pursuant to article IX, 
section 5 of the Constitution of the Federated States of 
Micronesia, and all grants, subsidies, or contributions 
in the form of money, goods, or services from any source 
which are received from the National Government by 
appropriation law, or otherwise.”
Section 2. Section 503 of title 55 of the Code of the 
Federated States of Micronesia (Annotated), as amended, is hereby 
amended to read as follows:
The appointment, tenure, removal, and salary of the 
Public Auditor for the National Government of the 
Federated States of Micronesia shall be as follows: 
(1) Appointment. The Public Auditor shall be 
appointed by the President with the advice and consent 
of Congress. 
(2) Tenure. The Public Auditor shall serve for a term 
of four years and until a successor is confirmed. An
individual may be reappointed for an additional term or terms with the advice and consent of Congress.

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

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

(5) Immunity. Neither the Public Auditor nor any employee of the Public Auditor acting under the Public Auditor’s authority shall be subject to personal civil or criminal liability for any act or omission in carrying out his or her duties in good faith.”
amended to read as follows:

"Section 505. Duties.

The duties of the Public Auditor shall be as follows:

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

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

3. The Public Auditor shall perform audits as otherwise specifically required by statute.

4. The Public Auditor may at any time perform an inspection or evaluation of the design, implementation, or results of the operations, programs, or policies of the National Government and any instrumentality of the National Government as referred to in subsection (1). An inspection or evaluation shall be performed in conformity with standards issued by the Council of the
Inspectors General on Integrity and Efficiency in the United States, to the extent the Public Auditor determines the standards to be practicably applicable.

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

(6) The Public Auditor shall have the exclusive audit jurisdiction over public funds of the National Government of the Federated States of Micronesia, including loans or grants from international organizations but he shall have the authority to contract for independent auditing, inspection or evaluation services to be performed under his supervision in instances where specialized expertise is required, or where auditing, inspections, or evaluation requirements are beyond the capacity of the Public Auditor’s staff and separate funding is available.

(7) The Public Auditor shall file a report at least once a year with the Congress. The Public Auditor may file other reports at such other times as he may determine. All reports of the Public Auditor shall be made available to the public.

(8) The Public Auditor may submit recommendations with his audit and inspection or evaluation reports
which shall be confined to matters within the
jurisdiction of the Public Auditor, including compliance
or noncompliance with laws governing the expenditure of
public moneys, and the need for amendments or new laws
to secure the efficient expenditure of public funds.

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

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

(11) [48] The Public Auditor shall keep a complete
and accurate record or file of all audit reports,
inspections, investigations, releases, audit work
papers, and other materials pertaining to the work of
the Office of the Public Auditor.”

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

“Section 506. Powers. The powers of the Public Auditor
shall be as follows:

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

(2) The Public Auditor may audit the records of any
contractor performing public work on cost-reimbursement-
type contracts for the National Government to verify the cost
charged to a public contract. Any contractor performing
public work pursuant to a contract with the National
Government shall keep and maintain records adequate to establish the
validity of costs charged to the National Government.

(3) The Public Auditor may by subpoena summon persons to
appear at a reasonable time before him and administer oaths to such persons. He may question such persons, under oath, regarding receipts and expenditures of money and any other reasonable and relevant matters necessary for the performance of his duties.

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

(5) Any subpoena or subpoena duces tecum issued under the authority of the Public Auditor shall run in the name of the Federated States of Micronesia and shall be addressed to the chief or other officer of the Division of Security and Investigation of the office of the Attorney General of the National Government of the Federated States of Micronesia. The subpoena or subpoena duces tecum shall be signed by the Public Auditor and shall identify the witness to be served or the books, records, documents, or other relevant financial papers or objects to be produced together with a reference to the account subject to inspection and audit or inspection or evaluation, as the case may be.

(6) Any officer to whom such subpoena or subpoena duces tecum is directed shall forthwith serve or execute the
same upon delivery thereof to him.

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

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

(9) The Public Auditor, when he receives an allegation of non-compliance in public office, misuse of public resources, financial crime, financial corruption, or any
Section 5.

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

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

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

(11) The Compliance Investigation Division, when conducting a preliminary inquiry or an investigation, shall liaise with the Department of Justice during the course of conducting such preliminary inquiry or investigation and advise the Department of Justice of the results of such a preliminary inquiry or investigation.”
amended to read as follows:

“Section 507. Types of audits and audit standards. The types of audits and applicable audit standards shall be as follows:

1. The Public Auditor may perform [Three types of audits may be performed]:

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

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

   (c) Program results. This type of audit determines whether the desired results or benefits established by the Congress or other authorizing body
are being achieved and whether the program
administrators have considered alternatives that might
yield desired results at a lower cost.

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

(3) The Public Auditor shall perform audits in
conformity with auditing standards, to the extent the
Public Auditor determines the standards to be both
relevant and practicably applicable to the audit
[generally accepted audit standards as established by
the American Institute of Certified Public
Accountants.”]

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

“Section 508. Office of the Public Auditor.

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

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

(3) Within the appropriation provided for the conduct of
the Office, the Public Auditor may employ such staff
that the Public Auditor considers necessary for the
effective functioning of the Office and the performance
of the Public Auditor’s duties under this Act. In
employing staff, the Public Auditor must comply with the
Public Service System Act with respect to human
resources management including the management of
recruitment processes.”
Section 7. 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: 3/7/20

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper
(by request)