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:

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

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

(1) members of the Congress of the Federated States of Micronesia;
(2) the President and Vice President of the Federated States of Micronesia;
(3) Justices and other Judges of the National Courts and secretaries to the Justices of the Supreme Court;
(4) the legislative counsel and the Clerk of the Congress;
(5) the Public Auditor;
(6) the administrative officer of the National Courts;
(7) the special assistants and secretaries to the President and Vice President;
(8) persons appointed by the President to fill the following positions: Secretary of External Affairs, Secretary of Finance, Secretary of Resources and Development, Secretary
of Social Services, Budget Officer, Information Officer,
Personnel Officer, National Planner, Attorney General, and
Public Defender, and their deputies, if any;

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

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

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

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

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

(14) positions requiring part-time or intermittent
work which does not exceed sixty hours in any calendar month;
(15) positions filled by inmates, patients, and students of institutions of the Federated States of Micronesia;
(16) members of any board, public corporation, commission, or similar body, in their capacity as such;
(17) officers, faculty, and employees of the Board of Regents and the College of Micronesia; and
(18) positions specifically exempted by any other law of the Federated States of Micronesia."

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

"Section 135. Filling of vacancies. All vacancies and new positions in the public service shall be filled in the following manner:

(1) Whenever there is a position to be filled, the management official shall ask the Personnel Officer to submit a list of persons eligible. The Personnel Officer shall thereupon certify a list of five, or such lesser number as may be available, taken from eligible lists in the following order: first, reemployment lists; second, promotional lists; and third, open-competitive lists. The management official shall make the appointment from the list of eligibles submitted to him unless he finds no person available and acceptable to him on the list, in which case he will ask the Personnel Officer to certify a new list, stating in writing his reasons for rejecting each of the eligibles on the list.
previously submitted to him. If the Personnel Officer finds such reasons adequate, he shall then submit a new list of no more than five eligibles selected in like manner, from which the management official shall make an appointment. If the Personnel Officer does not find the reasons adequate, he shall resubmit the list and the appointment shall be made therefrom; provided, that this subsection shall not apply to the judicial branch of the Federated States of Micronesia.

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

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

"Section 137. Provisional and short-term appointment.
(1) Provisional appointment pending

establishment of an eligible list. When there is no eligible person available on a list appropriate for filling a vacancy in a continuing position and the public interest requires that it be filled before eligibles can be certified, the Personnel Officer may authorize the filling of the vacancy through provisional appointment. The Personnel Officer shall proceed without delay to announce an examination to fill the vacancy.

The provisional appointment shall continue only for such period as may be necessary to make an appointment from an eligible list but shall not extend beyond ninety days; provided that the Personnel Officer may extend the provisional appointment for a maximum of ninety additional days if an examination has failed to secure any qualified available eligible person.

(2) Emergency appointments. To prevent the stoppage of essential public business, management officials may make emergency appointments, not to exceed ten working days, to fill positions temporarily in any serious emergency when time is insufficient to follow normal appointment procedure. The Personnel Officer may, for good and sufficient cause stated in writing by the management official concerned, extend the appointment for an additional period not to exceed twenty working days.
(3) Qualifications. Provisional and temporary appointees must meet the qualification requirements for the class of the position to be filled.

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

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

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

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

"Section 167. Title 4 applicability. Any provisions in this title which are inconsistent with title 4, the Judiciary Act of 1978, shall not apply to the judicial branch, and title 4 will govern the subject matter of such provisions."

Section 6. 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: 10-27-83

Introduced by: Hinet Ismael