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A BILL FOR AN ACT

To create the Federated States of Micronesia National Government Ethics Commission; to specify its duties, functions, and responsibilities; to specify conflict of interest situations for public officials and public employees; to authorize the appropriation of \$10,000 from the General Fund of the Federated States of Micronesia for the fiscal year ending September 30, 1994, therefore; and for other purposes.

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

1 Section 1. Short title. This act may be cited as the
2 "Federated States of Micronesia National Government Conflict of
3 Interest Act."

4 Section 2. Definitions. As used in this act:

5 (1) "Business" means any corporation, partnership, sole
6 proprietorship, firm, enterprise, franchise, association,
7 organization, self-employed individual, holding company, joint stock
8 company, receivership, trust, or any legal entity through which
9 business is conducted for profit.

10 (2) "Business with which the person is associated" means
11 any business in which the person or a member of the person's
12 immediate family is a director, officer, owner, or employee.

13 (3) "Candidate for public office" means any person who
14 has filed a declaration of candidacy or a petition to appear on the
15 ballot for election as a public official and any person who has been
16 nominated by a public official or governmental body for appointment to
17 serve as a public employee.

18 (4) "Commission" means the Federated States of Micronesia
19 National Government Ethics Commission.

20 (5) "Gift" means a payment, loan, subscription, advance,
21 deposit of money, service, or anything of value, unless
22 consideration of equal or greater value is received.

23 (6) "Governmental body" means any department, commission,
24 council, board, bureau, committee, legislative body, agency, or other
25 establishment of the Federated States of Micronesia National

1 Government.

2 (7) "Immediate family" means a spouse residing in the
3 person's household and dependent children.

4 (8) "Income" means any money or thing of value received, or
5 to be received as a claim on future services, whether in the form of a
6 fee, salary, expense, allowance, forbearance, forgiveness, interest,
7 dividend, royalty, rent, capital gain, or any other form of
8 recompense or any combination thereof.

9 (9) "Ministerial action" means an action that a person
10 performs in a given state of facts in a prescribed manner in
11 obedience to the mandate of legal authority, without regard to, or
12 the exercise of, the person's own judgment upon the propriety of
13 the action being taken.

14 (10) "Person" means a business, individual, corporation,
15 union, association, firm, partnership, committee, club, or other
16 organization or group of persons.

17 (11) "Public employee" means any individual who receives
18 compensation at an annual rate of \$5,000 or more from the National
19 Government or who is responsible for taking or recommending official
20 action of a nonministerial nature with regard to:

21 (a) Contracting or procurement;

22 (b) Administering or monitoring grants or subsidies;

23 (c) Inspecting, licensing, regulating, or auditing

24 any person; or

25 (d) Any other activity where the official action has

1 an economic impact greater than a de minimus nature on the interest
2 of any person.

3 (12) "Public official" means an elected official in the
4 executive or legislative branch and justices of the judicial branch
5 of the National Government.

6 Section 3. Statement of financial interests required to be
7 filed.

8 (1) Each public official and public employee shall file a
9 statement of financial interests for the preceding calendar year with
10 the Commission on or before December 1 of each year that the person
11 holds such a position.

12 (2) Each candidate for elective public office shall file a
13 statement of financial interests for the preceding calendar year with
14 the Commission within 10 days of filing a legal declaration of
15 candidacy or petition to appear on the ballot for election as a
16 public official; PROVIDED, that this subsection shall not apply to a
17 person who has filed a statement pursuant to section 3, subsection
18 (1). A declaration of candidacy or petition to appear on the ballot
19 shall not be considered legal unless a statement of financial
20 interests is timely filed in proper form, and the name shall not
21 appear on the ballot.

22 (3) If the candidate files a legal declaration of
23 candidacy or petition to appear on the ballot for election prior to
24 January 1 of the year in which the election is held, the candidate
25 shall also file a statement for the year preceding the year in which

1 the election is held.

2 (4) Each candidate for public office nominated by a public
3 official or governmental body and subject to confirmation by a public
4 official or governmental body shall file a statement of financial
5 interests for the preceding calendar year with the Commission and with
6 the official or body that is vested with the power of confirmation at
7 least 10 days before the official or body shall approve or reject the
8 nomination.

9 (5) No public employee shall be allowed to take the oath
10 of office or enter or continue upon such duties unless that employee
11 has filed a statement of financial interests with the Commission as
12 required by this act. Any public official, public employee, or
13 candidate for public office who fails to file or falsely files a
14 statement is guilty of a misdemeanor.

15 (6) The statement of financial interests shall be filed on
16 a form prescribed by the Commission and shall be signed under penalty
17 of perjury by the person required to file the statement.

18 (7) The statement shall include the following information
19 for the preceding calendar year with regard to the person required to
20 file the statement and the members of the person's immediate family:

21 (a) The names of all businesses with which the person
22 is associated;

23 (b) The category or type and amount of all sources of
24 income in excess of \$1,000. It shall be sufficient to report whether
25 the amount is: less than \$2,500; \$2,500-\$5,000; \$5,000-\$10,000;

1 \$10,000-\$25,000; or more than \$25,000;

2 (c) The name and the amount of stock in excess of
3 \$1,000 at fair market value held in a business by the person;

4 (d) The legal description of all real property in the
5 Federated States of Micronesia, excluding the person's primary
6 residence, the fair market value of which exceeds \$2,500, in which a
7 financial interest was held, and a statement of the amount and nature
8 of the consideration received or paid in exchange for such interest,
9 and the name and address of the person furnishing or receiving such
10 consideration; and

11 (e) The name, address, and type of security given of
12 each creditor to whom the value of \$5,000 or more was owed and still
13 outstanding; PROVIDED, that debts arising out of retail installment
14 transactions need not be included.

15 Section 4. Restricted activities.

16 (1) No public official or public employee shall represent
17 a person other than the branch of the National Government or entity
18 thereof for compensation before any governmental body where the
19 matter before the governmental body is of a nonministerial nature.
20 This section shall not be construed to prohibit the performance of
21 ministerial functions including, but not limited to, applications for
22 permits and licenses, incorporation papers, and other documents.

23 (2) No person shall offer or give to a public official or
24 public employee or a member of that official's or employee's immediate
25 family and no public official or public employee shall solicit a gift

1 to influence that public official or public employee in any official
2 duties.

3 (3) No public official or public employee shall accept any
4 benefit or compensation in addition to that received in an official
5 capacity for having exercised official powers or performed official
6 duties.

7 (4) No public official or public employee shall use or
8 disclose confidential information gained in the course of or by
9 reason of any official position or activities to further that
10 official's or employee's own financial interests or those of anyone
11 else.

12 (5) Any public official who has a substantial personal
13 financial interest distinct from that of the general public in any
14 governmental decision shall disqualify himself or herself from voting
15 on that decision.

16 (6) The majority of the members of a non-elective
17 governmental body or of a standing committee of a governmental
18 body shall not have a substantial financial interest distinct from
19 that of the general public in matters subject to the jurisdiction of
20 the body or committee.

21 Section 5. National Government Ethics Commission.

22 (1) There is hereby created a National Government Ethics
23 Commission consisting of five members and including public officials,
24 public employees, and other citizens. Appointments to the Commission
25 shall be made by the President of the Federated States of

1 Micronesia. Any vacancy occurring on the Commission shall be filled
2 within 30 days in the manner in which that position was originally filled.

3 (2) Members of the Commission shall serve for 5-year
4 staggered terms.

5 (3) The Commission shall elect a chairman and vice
6 chairman; in the absence of the chairman or in the event of a vacancy
7 in that position, the vice chairman shall serve as chairman.

8 (4) The Commission shall have the authority to appoint an
9 executive director and such additional personnel as it requires to
10 perform its duties. The executive director shall serve at the
11 pleasure of the Commission.

12 (5) Any action by the Commission shall require the
13 affirmative vote of three of its members and four members shall
14 constitute a quorum.

15 (6) The chairman or any four members of the Commission may
16 call a meeting provided that adequate advance notice of the meeting
17 is given.

18 (7) Members of the Commission shall be compensated at the
19 rate of \$50 per Commission meeting attended and shall receive
20 reimbursement for their actual and necessary expenses.

21 Section 6. Duties of the Commission. The Commission shall:

22 (1) Prescribe and publish, after notice and opportunity
23 for public comment, rules and regulations to carry out the provisions
24 of this act;

25 (2) Prescribe forms for statements required by this act,

1 and furnish such forms to persons required to file such statements;

2 (3) Prepare and publish a manual or guidelines setting
3 forth recommended uniform methods of reporting for use by persons
4 required to file under this act;

5 (4) Accept and file any information voluntarily supplied
6 that exceeds the requirements of this act;

7 (5) Preserve the statements filed with it for 6 years from
8 the date of receipt;

9 (6) Make statements and reports filed with the Commission
10 available for public inspection and copying for a reasonable cost
11 during regular office hours;

12 (7) Compile and maintain a current list and summary of all
13 statements filed;

14 (8) Prepare and publish reports as it may deem
15 appropriate;

16 (9) Audit statements and reports filed with the
17 Commission;

18 (10) On its own initiative or upon request, issue and
19 publish advisory opinions on the requirements of this act for those
20 who wish to use the opinion to guide their own conduct; and

21 (11) Prepare an annual report to the Congress and the
22 President of the Federated States of Micronesia and the public
23 summarizing the activities of the Commission and recommending any
24 changes in the act.

25 Section 7. Investigations by the Commission.

1 (1) Upon a complaint signed under penalty of perjury by
2 any person, or upon its own motion, the Commission shall investigate
3 any alleged violation of this act. All Commission proceedings and
4 records relating to an investigation shall be confidential until a
5 final determination is made by the Commission. The executive
6 director shall notify any person under investigation by the
7 Commission of the investigation and of the nature of the alleged
8 violation and shall continue to provide information to the complainant
9 and the person under investigation concerning action taken by the
10 Commission together with the reasons for such action or nonaction.

11 (2) If after investigation the Commission finds that
12 probable cause exists for believing the allegation of the complaint,
13 after adequate notice to the accused, it shall conduct a hearing on
14 the matter. Such hearings shall be at closed session unless the
15 accused petitions for a public hearing.

16 (3) The Commission shall have the same power to compel the
17 attendance of witnesses and to issue subpoenas as is granted
18 legislative committees.

19 (4) Any person whose activities are under investigation
20 shall be entitled to be represented by counsel of the accused's own
21 choosing and shall have an opportunity to examine all records to be
22 used at the hearing.

23 (5) The Commission shall keep a record of its
24 investigations, inquiries, and proceedings; all records and
25 transcripts of any investigations or inquiries under this section

1 shall be confidential until a final determination is made by the
2 Commission.

3 (6) The Commission shall report any finding of misconduct
4 along with such information and documents as it deems appropriate to
5 the appropriate law enforcement authorities.

6 Section 8. Penalties.

7 (1) Any person who violates the provisions of this act is
8 guilty of a misdemeanor and shall be fined not more than \$50,000, or
9 imprisoned for not more than 1 year, or both.

10 (2) The penalties prescribed in this act do not limit the
11 power of the Congress of the Federated States of Micronesia to
12 discipline its own Members pursuant to section 17 of article IX of
13 the Constitution and do not limit the power of agencies or
14 commissions to discipline officials or employees.

15 Section 9. Authorization for appropriation. The sum of \$10,000
16 is hereby authorized to be appropriated from the General Fund of the
17 Federated States of Micronesia for the fiscal year ending September
18 30, 1994, for the purpose of defraying operational and contingent
19 expenses of the Federated States of Micronesia Ethics Commission.

20 Section 10. Effective date. This act shall become law upon
21 approval by the President of the Federated States of Micronesia or
22 upon its becoming law without such approval.

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24 Date: 10-13-93

Introduced by: 
Isaac V. Figir

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