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A BILL FOR AN ACT

To enact the Independent Prosecutor Act of 2023, by creating a new chapter 15 under title 11 of the Code of the Federated States of Micronesia (Annotated), to establish the Office of the Independent Prosecutor, to set out the duties and responsibilities of the Independent Prosecutor, prescribe its powers and authorities, and for other purposes.

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

1           Section 1. This act shall be known as the Independent  
2 Prosecutor Act of 2023.

3           Section 2. Title 11 of the Code of the Federated States of  
4 Micronesia (Annotated) is hereby amended by creating a new  
5 chapter 15 entitled: "Independent Prosecutor".

6           Section 3. Title 11 of the Code of the Federated States of  
7 Micronesia (Annotated) is hereby amended by inserting a new  
8 section 1501 under chapter 15 to read as follows:

9           "Section 1501. Statement of policy. It is the policy  
10 of the National Government of the Federated States of  
11 Micronesia to promote transparency and accountability in  
12 public service. Toward this end, the establishment of  
13 an Independent Prosecutor through a constitutional  
14 amendment duly adopted as proposed by the 4th FSM  
15 Constitutional Convention will contribute to the  
16 promotion of accountability and transparency in the  
17 delivery of services to citizens."

18           Section 4. Title 11 of the Code of the Federated States of

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1 Micronesia (Annotated) is hereby amended by inserting a new  
2 section 1502 under chapter 15 to read as follows:

3 "Section 1502. Definition of terms. The following terms  
4 shall be understood to mean as follows unless the context  
5 requires others:

6 (a) "Congress" means the Congress of the  
7 Federated States of Micronesia.

8 (b) "Instrumentality" means instrumentality of  
9 the National Government including the FSM Development  
10 Bank, College of Micronesia-FSM and FSM Petroleum  
11 Corporation.

12 (c) "National funds" means public funds of the  
13 National Government as follows:

14 (1) general fund created by section 208 of title  
15 55 of the Code of the Federated States of Micronesia  
16 (Annotated) and revolving funds established under chapter  
17 6 of title 55 of the Code of the Federated States of  
18 Micronesia (Annotated);

19 (2) COMPACT Sector funds or COMPACT trust fund  
20 but does not include sector funds specifically earmarked  
21 for the States;

22 (3) Foreign aid, regardless of disbursement  
23 mechanism, including grants and loans, irrespective of  
24 who the grantee, borrower, or beneficiary is, if the  
25 National Government is responsible for managing or

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1 monitoring the use of the funds, or accountable for the  
2 use thereof;

3 (4) Funds held by corporations and other  
4 entities created by the FSM Congress through the  
5 enactment of national statute; and

6 (5) All other funds appropriated by the FSM  
7 Congress to the states or state authorities for whatever  
8 purposes.

9 (d) "Official" means a public official.

10 (e) "President" means the President of the  
11 Federated States of Micronesia.

12 (f) "Public corruption crimes" are national  
13 crimes defined under subchapter 3 of title 11 of the FSM  
14 Code.

15 (g) "Public official" means President, Vice  
16 President, Members of the FSM Congress, Chief Justice and  
17 Associate Justices of the FSM Supreme Court, heads and  
18 deputy heads of the executive departments, heads of  
19 offices, agencies and public corporations of the National  
20 Government, and head or person in charge of any other  
21 agency or instrumentality of the National Government."

22 Section 5. Title 11 of the Code of the Federated States of  
23 Micronesia (Annotated) is hereby amended by inserting a new  
24 section 1503 under chapter 15 to read as follows:

25 "Section 1503. There is hereby established the Office of

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1           Independent Prosecutor to be headed by an Independent  
2           Prosecutor supported by such staff, including lawyers,  
3           prosecutors, investigators and other staff as may be  
4           needed for the effective and efficient operation of the  
5           office.”

6           Section 6. Title 11 of the Code of the Federated States of  
7 Micronesia (Annotated) is hereby amended by inserting a new  
8 section 1504 under chapter 15 to read as follows:

9           “Section 1504. The Independent Prosecutor shall have a  
10           term of six (6) years with no reappointment to a  
11           consecutive term. The Independent Prosecutor shall remain  
12           in office for a period of no more than 2 years until such  
13           time that a replacement is appointed and confirmed.”

14           Section 7. Title 11 of the Code of the Federated States of  
15 Micronesia (Annotated) is hereby amended by inserting a new  
16 section 1505 under chapter 15 to read as follows:

17           “Section 1505. The President shall appoint an  
18           Independent Prosecutor, with the advice and consent of  
19           2/3 of all the members of Congress. As required by  
20           Article XII section 4, enacted through a constitutional  
21           amendment, the President shall appoint the first  
22           Independent Prosecutor within one hundred eighty (180)  
23           days of the effective date of the amendment, which is  
24           July 4, 2023. If the President does not appoint the  
25           Independent Prosecutor within the one hundred eighty

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1           (180) days, the Chief Justice shall immediately appoint  
2           an acting Independent Prosecutor to serve until a  
3           successor is appointed by the President with the advice  
4           and consent of Congress."

5           Section 8. Title 11 of the Code of the Federated States of  
6 Micronesia (Annotated) is hereby amended by inserting a new  
7 section 1506 under chapter 15 to read as follows:

8           "Section 1506. The Independent Prosecutor must be a  
9           member of the FSM Bar with at least 10 years of  
10           experience as a lawyer or a prosecutor, a person of good  
11           moral character and of proven honesty and integrity."

12           Section 9. Title 11 of the Code of the Federated States of  
13 Micronesia (Annotated) is hereby amended by inserting a new  
14 section 1507 under chapter 15 to read as follows:

15           "Section 1507. The Independent Prosecutor shall have the  
16           following authority:

17                 (a) Exclusive authority to investigate and  
18                 prosecute any person or entity whether private or public  
19                 or any official of the national, state or local  
20                 government for the commission of any national offense  
21                 relating to misuse of national funds;

22                 (b) Investigate and prosecute any official of  
23                 the National Government for the commission of any  
24                 national offense involving public corruption or public  
25                 corruption crimes.

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1           (c) Investigate and prosecute any person for any  
2           offense of obstruction or perjury committed in connection  
3           with an investigation or prosecution by the Independent  
4           Prosecutor.”

5           Section 10. Title 11 of the Code of the Federated States  
6 of Micronesia (Annotated) is hereby amended by inserting a new  
7 section 1508 under chapter 15 to read as follows:

8           “Section 1508. Subpoena.

9           (a) The Independent Prosecutor has authority to  
10           issue subpoena to compel the testimony of witnesses and  
11           to appear at a reasonable time before him and administer  
12           oaths to such persons. He may question such persons,  
13           under oath, regarding receipts and expenditures of money  
14           and any other reasonable and relevant matters necessary  
15           for the due execution of the duties vested in the  
16           Independent Prosecutor.

17           (b) The Independent Prosecutor may also issue  
18           subpoenas *duces tecum* within a reasonable time requiring  
19           the production of books, records, documents, or other  
20           relevant papers or objects necessary for the performance  
21           of his duties.

22           (c) Any person who willfully fails or refuses to  
23           appear upon receiving service of a subpoena, or who  
24           willfully fails or refuses to produce any books, records,  
25           documents, or other relevant papers or objects designated

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1 in a subpoena *duces tecum* properly issued by the  
2 Independent Prosecutor, upon conviction thereof, shall be  
3 fined not more than \$1,000, or imprisoned for not more  
4 than one year, or both."

5 Section 11. Title 11 of the Code of the Federated States of  
6 Micronesia (Annotated) is hereby amended by inserting a new  
7 section 1509 under chapter 15 to read as follows:

8 "Section 1509. Search.

9 (a) The Independent Prosecutor has authority to  
10 effect lawful search and seizure. For this purpose, he  
11 may apply to the court for the issuance of warrant of  
12 search and seizure.

13 (b) The application referred to in paragraph (a)  
14 shall be made in accordance with the rules of court.

15 Section 12. Title 11 of the Code of the Federated States of  
16 Micronesia (Annotated) is hereby amended by inserting a new  
17 section 1510 under chapter 15 to read as follows:

18 "Section 1510. The Office of the Independent Prosecutor  
19 shall be independent of administrative control, as  
20 follows:

21 (a) Its operation shall be budgeted annually,  
22 however, its proposed annual budget must be transmitted  
23 to the executive branch for compilation and review  
24 purposes.

25 (b) The salary of the Independent Prosecutor and

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1        staff cannot be reduced during the term in office. The  
2        annual salary of the Independent Prosecutor is set at  
3        \$50,000.

4                (c) Nothing herein prohibits a congressional  
5        oversight in aid of legislation on the performance of the  
6        Office of the Independent Prosecutor.”

7        Section 13. Title 11 of the Code of the Federated States of  
8        Micronesia (Annotated) is hereby amended by inserting a new  
9        section 1511 under chapter 15 to read as follows:

10        “Section 1511. Independent Prosecutor may be removed for  
11        cause from office for good cause by the President with  
12        2/3 vote of all members of Congress. Upon removal of the  
13        Independent Prosecutor or vacancy in the position, the  
14        Chief Justice shall immediately appoint an acting  
15        Independent Prosecutor to serve until a successor is  
16        appointed by the President with the advice and consent of  
17        2/3 of all members of Congress.”

18        Section 14. Title 11 of the Code of the Federated States of  
19        Micronesia (Annotated) is hereby amended by inserting a new  
20        section 1512 under chapter 15 to read as follows:

21        “Section 1512. The Independent Prosecutor may conclude  
22        cooperation agreement with any department or agency of  
23        the National Government or State Government in order to  
24        effectuate, coordinate and render efficient and effective  
25        performance of its duties and functions set out in this

