

A BILL FOR AN ACT

To provide for appointment of an Independent Prosecutor, as needed, and for other purposes.

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

1 Section 1. Congressional Findings. The Congress of the
2 Federated States of Micronesia hereby makes the following
3 findings:

4 (1)The Attorney General of the Federated States of Micronesia is a
5 member of the President's Cabinet and is appointed by, subject to
6 the supervision of, and may be removed by the President of the
7 Federated States of Micronesia. As such, the Attorney General and
8 each Deputy Attorney General reporting to and/or supervised by the
9 Attorney General, has an inherent conflict of interest in
10 investigating and prosecuting high-ranking government officials of
11 the Executive Branch of the National Government, including the
12 President and Vice President.

13 (2)To insure the confidence of the people of the Federated States
14 of Micronesia in the FSM Department of Justice and in the
15 investigation and prosecution decisions made by the Attorney
16 General and his/her deputies, there is a need to provide for
17 appointment of an Independent Prosecutor, when appropriate, to
18 investigate and prosecute violations of the laws of the Federated
19 States of Micronesia by certain high-ranking government officials,
20 and to establish the independence of the Independent Prosecutor.

1 Section 2. Basis for Appointment of Independent Prosecutor.

2 (1)Whenever there is specific and credible evidence that a high-
3 ranking government official may have violated the laws of the
4 Federated States of Micronesia, the Chief Justice of the Supreme
5 Court of the Federated States of Micronesia shall appoint an
6 Independent Prosecutor to investigate and prosecute the matter(s)
7 and shall define the parameters of the matter(s) to be
8 investigated and/or prosecuted.

9 (2)"Specific and credible evidence" means evidence of such a
10 nature that it is more likely than not that a violation of law has
11 occurred and that such evidence is being offered for other than
12 political purposes.

13 (3)"High-ranking government official" includes the President, the
14 Vice President, any member of the President's Cabinet, including
15 the Attorney General, any member of the President's or Vice
16 President's Executive Staff, and any Ambassador or Consul General
17 of the Federated States of Micronesia.

18 Section 3. Request for Appointment of Independent Prosecutor. A
19 request for appointment of an Independent Prosecutor may be made
20 to the Chief Justice of the FSM Supreme Court by the Department of
21 Justice, the FSM Public Auditor, the Congress of the Federated
22 States of Micronesia, or any State of the Federated States of
23 Micronesia, and shall be in the form of a confidential document
24 addressed to the Chief Justice and entitled "Request for
25 Appointment of Independent Prosecutor". The request shall be

1 supported by specific and credible evidence.

2 Section 4. Appointment Procedure. Upon receipt of a
3 "Request for Appointment of Independent Prosecutor", and after
4 determining that such request is supported by specific and
5 credible evidence, the Chief Justice shall appoint the Independent
6 Prosecutor from a list of candidates compiled by the Chief Justice
7 on a case-by-case basis from recommendations made by the Chief
8 Justice of the FSM Supreme Court, each Associate Justice of the
9 FSM Supreme Court, and the Chief Justice of each State's Supreme
10 Court.

11 Section 5. Qualifications Required. A person shall be
12 eligible to serve as the Independent Prosecutor if he/she:

- 13 (1) has graduated from an accredited school of law;
14 (2) is licensed to practice law before the Supreme Court of the
15 Federated States of Micronesia;
16 (3) has not less than 10 years of experience practicing law as a
17 criminal prosecutor, trial attorney or defense attorney, or a
18 combination thereof, in any jurisdiction in which he/she is
19 licensed to practice law;
20 (4) has not been convicted of a felony, even if pardoned; and
21 (5) for each jurisdiction in which he/she is licensed to practice
22 law, has not been the subject of any ethical complaint or any
23 investigation for a violation of the professional rules applicable
24 to attorneys licensed to practice in that jurisdiction.

25 Section 6. Term of Office. Once appointed, the Independent

1 Prosecutor shall serve until the matter for which the appointment
2 was deemed necessary is completed, including any appeals, or for a
3 period not to exceed 3 years, whichever is shorter. If necessary,
4 and subject to the availability of funds, an Independent
5 Prosecutor's term of office may be extended for an additional
6 period not to exceed one year by the affirmative vote of 3/4 of
7 the Members of Congress.

8 Section 7. Independent Nature of Office. In exercising
9 his/her authority, the Independent Prosecutor will have the
10 greatest degree of independence that is consistent with the FSM
11 Attorney General's constitutional and statutory accountability for
12 all matters falling within the jurisdiction of the Attorney
13 General's Office.

14 Section 8. Powers and Duties of Independent Prosecutor.
15 Upon appointment, the Independent Prosecutor shall, with respect
16 to the matter(s) for which the Independent Prosecutor is
17 appointed, have full power and independent authority to exercise
18 all administrative, investigative, and prosecutorial functions and
19 powers of the Attorney General.

20 Section 9. Relationship with Other Investigative or
21 Prosecutorial Agencies. Whenever a matter is within the
22 jurisdiction of the Independent Counsel, the Attorney General, and
23 all other officers and employees of the Department of Justice or
24 of any other executive branch agency with investigative authority
25 or power, shall suspend all investigations and proceedings

1 regarding such matter, except to the extent requested by the
2 Independent Prosecutor for the purpose of rendering assistance to
3 the Independent Prosecutor's investigation or prosecution.

4 Section 10. Accounting and Appropriations.

5 (1) Upon application of the Independent Prosecutor, the Congress of
6 the Federated States of Micronesia shall appropriate sufficient
7 funds for the investigation and prosecution of the specific
8 matters for which the Independent Prosecutor was appointed. The
9 Independent Prosecutor shall be the allottee of such funds and all
10 such funds shall be expended and accounted for by the allottee in
11 accordance with the financial management laws of the Federated
12 States of Micronesia and any regulations promulgated thereunder.

13 (2) Not later than 30 days after the expiration of the first
14 quarter following his/her appointment, and each quarter
15 thereafter, the Independent Prosecutor shall submit a quarterly
16 report to the Congress of the Federated States of Micronesia, and
17 to the Chairman of the Judiciary and Governmental Operations
18 Committee of the Congress of the Federated States of Micronesia,
19 which report shall provide a full disclosure of all sums expended
20 by the Independent Prosecutor during the reporting period.

21 Section 11. Removal of Independent Prosecutor.

22 (1) *Grounds.* The Independent Prosecutor shall not be removed from
23 office except for "good cause", physical or mental disability, or
24 any other condition that impairs the performance of the
25 Independent Counsel's duties. "Good cause" includes, but is not

1 limited to, an actual conflict of interest.

2 (2)*Procedure*. The Independent Prosecutor may be removed from
3 office:

4 (a)by the Chief Justice of the FSM Supreme Court, after
5 consultation with each full-time Associate Justice and with the
6 Chairman of the Judiciary and Governmental Operations Committee of
7 the Congress; or

8 (b)by congressional resolution adopted by the affirmative vote of
9 3/4 of the Members of the Congress.

10 (3)*Required Report*. If removal of the Independent Counsel is
11 effectuated pursuant to the provisions of sub-paragraph (2) (a) of
12 this section, the Chief Justice shall, within 30 calendar days of
13 such action, submit a report to the Congress specifying the facts
14 found and the ultimate grounds for the removal. If the removal of
15 the Independent Counsel is effectuated pursuant to the provisions
16 of sub-paragraph (2) (b) of this section, the Speaker of the FSM
17 Congress shall, within 30 calendar days of such action, submit a
18 report to the Chief Justice specifying the facts found and the
19 ultimate grounds for the removal. In either case, such report
20 shall be made public, with necessary protections for the privacy
21 and other rights of any individual named in the report.

22 (4)*Decision to Remove Final*. A decision to remove the Independent
23 Counsel shall be final and shall not be reviewed in any Court of
24 the FSM or by the Congress of the FSM.

25 Section 12. Employment Restrictions.

1 (1) *While serving as Independent Prosecutor.* While serving
2 as the Independent Prosecutor under the provisions of this act,
3 the Independent Prosecutor, and any person associated with a firm
4 with which the Independent Prosecutor is associated, may not
5 represent in such matter any person involved in any investigation
6 or prosecution by the Independent Prosecutor.

7 (2) *Post-employment restrictions.* Each Independent
8 Prosecutor and each person appointed by that Independent
9 Prosecutor, if any, may not, for ___ years following termination of
10 the service of such person, represent any person in any matter if
11 that person was the subject of an investigation or prosecution
12 conducted by that Independent Prosecutor, or in any matter
13 involving any investigation or prosecution.

14 Section 13. Transfer of Records. Upon termination of the
15 office of the Independent Prosecutor, the Independent Prosecutor
16 shall transfer all records that have been created or received by
17 that office to the Secretary of Justice for safekeeping, storage,
18 and/or disposal in accordance with the laws and regulations of the
19 FSM.

20 Section 14. Severability. If any provision of this act is
21 held invalid, the remainder of this act not similarly situated
22 shall not be affected by that invalidation.

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Section 15. 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: 4/5/04

Introduced by: /s/ Isaac V. Figir
Isaac V. Figir

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