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A BILL FOR AN ACT

To further amend title 12 of the Code of the Federated States of Micronesia (Annotated), by creating a new chapter 18 to allow for the appointment of a special prosecutor to independently investigate and prosecute claims of alleged national felonies committed by government officials, and for other purposes.

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

1           Section 1. Title 12 of the Code of the Federated States  
2 of Micronesia (Annotated), is hereby amended, by creating a new  
3 chapter 18 entitled: "Chapter 18. Special Prosecutor."

4           Section 2. Title 12 of the Code of the Federated States  
5 of Micronesia (Annotated), is hereby amended by adding a new  
6 section 1801 to chapter 18, to read as follows:

7                   "Section 1801. Short title. This act shall be  
8                   known and may be cited as the 'Special Prosecutor Act  
9                   of 2011'."

10          Section 3. Title 12 of the Code of the Federated States  
11 of Micronesia (Annotated), is hereby amended by adding a new  
12 section 1802 to chapter 18, to read as follows:

13                   "Section 1802. Purpose. The purpose of this act is  
14                   to allow for the appointment of a special prosecutor to  
15                   independently investigate and prosecute claims of  
16                   alleged national felonies committed by senior  
17                   government officials."

18          Section 4. Title 12 of the Code of the Federated States

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1 of Micronesia (Annotated), is hereby amended by adding a new  
2 section 1803 to chapter 18, to read as follows:

3 "Section 1803. Definitions. For the purposes of  
4 this chapter, unless the subject or context otherwise  
5 requires:

6 (1) 'Applicable position in the Government of  
7 the Federated States of Micronesia' means the President  
8 and Vice President and all positions appointed with the  
9 advice and consent of the Congress pursuant to section  
10 207(1) of title 2 of this code, including individuals  
11 holding such positions in an acting capacity.

12 (2) 'Committee' means the Congressional  
13 Committee on Judiciary and Governmental Operations.

14 (3) 'National felony' means any offense  
15 punishable by more than one year in prison pursuant to  
16 this Code.

17 (4) 'Judicial panel' means the panel of three  
18 Justices established pursuant to section 1804(1) of  
19 this chapter to appoint and supervise the work of the  
20 special prosecutor.

21 (5) 'Justice' means an Associate Justice of the  
22 Supreme Court of the Federated States of Micronesia or  
23 temporary Justice of the same, appointed pursuant to  
24 article XI, section 9 of the Constitution."

25 Section 5. Title 12 of the Code of the Federated States

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1 of Micronesia (Annotated, is hereby amended by adding a new  
2 section 1804 to chapter 18, to read as follows:

3 "Section 1804. Judicial panel.

4 (1) Beginning with the two-year period  
5 commencing on the date of the enactment of this  
6 chapter, and for each successive two-year period, the  
7 Chief Justice of the Supreme Court of the Federated  
8 States of Micronesia shall appoint three Justices to a  
9 judicial panel for the purpose of appointing and  
10 supervising special prosecutors. The Chief Justice  
11 shall fill any vacancy on the judicial panel for the  
12 remainder of the two-year period in which the vacancy  
13 occurs.

14 (2) The Chief Clerk of the Supreme Court shall  
15 serve as the clerk of the judicial panel and shall  
16 provide such services as are needed.

17 (3) No member of the judicial panel who  
18 participated in a function conferred on the panel under  
19 this chapter involving a special prosecutor shall be  
20 eligible to participate in any judicial proceeding  
21 involving that special prosecutor."

22 Section 6. Title 12 of the Code of the Federated States  
23 of Micronesia (Annotated), is hereby amended by adding a new  
24 section 1805 to chapter 18, to read as follows:

25 "Section 1805. Request for the appointment of a

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1           special prosecutor.

2                   (1) The Congressional Committee on Judiciary  
3           and Governmental Operations may request in writing that  
4           the judicial panel appoint a special prosecutor. Such a  
5           request should be based on:

6                           (a) information and belief that an  
7           individual may have committed a national felony while  
8           holding an applicable position in the Government of the  
9           Federated States of Micronesia; and

10                           (b) a finding of a conflict of interest or  
11           other specific reason that the investigation or  
12           prosecution of this matter could not be effectively  
13           conducted by the Attorney General or the Department of  
14           Justice.

15                           (2) The Committee's request shall contain  
16           sufficient information to constitute grounds for  
17           investigation, but need not specify a particular  
18           individual or violation."

19           Section 7. Title 12 of the Code of the Federated States  
20 of Micronesia (Annotated), is hereby amended by adding a new  
21 section 1806 to chapter 18, to read as follows:

22                   "Section 1806. Appointment and jurisdiction of  
23           special prosecutor.

24                           (1) Within ninety (90) days of receipt of a  
25           written request pursuant to section 1805 of this

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1 chapter, the judicial panel shall appoint as special  
2 prosecutor an individual who has appropriate  
3 experience, has no conflicts of interest, and who will  
4 conduct the investigation and any prosecution in a  
5 prompt, responsible, and cost-effective manner.

6 (2) The judicial panel shall define the  
7 jurisdiction of the special prosecutor, ensuring that  
8 he has adequate authority to fully investigate and  
9 prosecute the subject matter with respect to which the  
10 Committee has requested his appointment, and all  
11 matters related to that subject matter. Such  
12 jurisdiction shall also include the authority to  
13 investigate and prosecute national felonies that may  
14 arise out of the investigation or prosecution of that  
15 subject matter, including perjury, hindering  
16 prosecution, tampering with or fabricating evidence,  
17 and tampering with witnesses or informants.

18 (3) The judicial panel may expand the  
19 jurisdiction of the special prosecutor if the special  
20 prosecutor discovers or receives information about  
21 additional possible violations of criminal law, and the  
22 judicial panel, giving great weight to any  
23 recommendations of the special prosecutor, determines  
24 that there are reasonable grounds for such expansion."

25 Section 8. Title 12 of the Code of the Federated States

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1 of Micronesia (Annotated), is hereby amended by adding a new  
2 section 1807 to chapter 18, to read as follows:

3 "Section 1807. Authority of special prosecutor. A  
4 special prosecutor shall have full power and  
5 independent authority to exercise all investigative  
6 and prosecutorial functions and powers of the  
7 Department of Justice and the Attorney General."

8 Section 9. Title 12 of the Code of the Federated States  
9 of Micronesia (Annotated), is hereby amended by adding a new  
10 section 1808 to chapter 18, to read as follows:

11 "Section 1808. Funding. Upon appointment of a  
12 special prosecutor pursuant to section 1806 of this  
13 chapter, Congress shall appropriate funds for the  
14 operations and expenses of the special prosecutor  
15 relating to the specific matter under investigation.  
16 The judicial panel shall authorize the disbursement of  
17 such funds as it deems necessary to the performance of  
18 the special prosecutor's duties."

19 Section 10. Title 12 of the Code of the Federated States  
20 of Micronesia (Annotated), is hereby amended by adding a new  
21 section 1809 to chapter 18, to read as follows:

22 "Section 1809. Reports and oversight.

23 (1) The Congressional Committee on Judiciary  
24 and Governmental Operations shall have oversight  
25 jurisdiction with respect to the official conduct of

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1       any special prosecutor appointed under this chapter,  
2       and a special prosecutor shall have the duty to  
3       cooperate with the exercise of such oversight  
4       jurisdiction.

5               (2) Every six months, a special prosecutor  
6       shall file with the judicial panel a report which  
7       identifies and explains expenses incurred during the  
8       six month period, and estimates future expenses.

9               (3) A special prosecutor shall annually, and  
10       upon termination of his appointment, submit to the  
11       Congress a report on his activities, including a  
12       description of the progress of any investigation or  
13       prosecution. Such report may omit any matter that in  
14       the judgment of the special prosecutor should be kept  
15       confidential, but shall provide information adequate to  
16       justify the expenditures that the office of the special  
17       prosecutor has made.

18               (4) A special prosecutor shall advise the  
19       Congress of any substantial and credible information he  
20       receives that may constitute grounds for an  
21       impeachment.

22               (5) Upon completion of an investigation or  
23       termination of a special prosecutor all documents shall  
24       be turned over to the judicial panel and retained until  
25       the relevant statute of limitations for any alleged

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1           felony has expired.”

2           Section 11. Title 12 of the Code of the Federated States  
3 of Micronesia (Annotated), is hereby amended by adding a new  
4 section 1810 to chapter 18, to read as follows:

5           “Section 1810. Termination.

6                   (1) A special prosecutor’s appointment shall  
7           terminate:

8                           (a) when either the special prosecutor or  
9           the judicial panel determines that the investigation of  
10          all matters within the special prosecutor’s  
11          jurisdiction and any resulting prosecutions have been  
12          completed;

13                           (b) on the special prosecutor’s  
14          resignation or death; or

15                           (c) when the special prosecutor is removed  
16          by the judicial panel for good cause, physical or  
17          mental disability, or any other condition that  
18          substantially impairs the performance of the special  
19          prosecutor’s duties.

20                           (2) If a special prosecutor is removed from  
21          office, the judicial panel shall promptly submit to the  
22          Committee a report specifying the facts found and the  
23          ultimate grounds for such removal. A special prosecutor  
24          who has been removed from office may obtain judicial  
25          review of the removal in a civil action in the Supreme

1           Court of the Federated States of Micronesia. A member  
2           of the judicial panel may not hear or determine any  
3           such civil action or any appeal of a decision in any  
4           such civil action. The special prosecutor may be  
5           reinstated or granted other appropriate relief by order  
6           of the court.

7                   (3) If a vacancy arises by reason of the  
8           resignation, death, or removal of a special prosecutor,  
9           the judicial panel shall appoint a new special  
10           prosecutor to fill the vacancy."

11           Section 12. This act shall become law upon approval by the  
12           President of the Federated States of Micronesia or upon its  
13           becoming law without such approval.

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15   Date: 5/19/17

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

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