A BILL FOR AN ACT

To further amend title 12 of the Code of the Federated States of Micronesia, as amended, by adding 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:


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

   "Section 1801. Short title. This act shall be known and may be cited as the ‘Special Prosecutor Act of 2011’."

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

   "Section 1802. Purpose. The purpose of this act is to allow for the appointment of a special prosecutor to independently investigate and prosecute claims of alleged national felonies committed by senior government officials."
Section 4. Title 12 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1803 to chapter 18 to read as follows:

“Section 1803. Definitions. For the purposes of this chapter, unless the subject or context otherwise requires:

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

(2) ‘Committee’ means the Congressional Committee on Judiciary and Governmental Operations.

(3) ‘National felony’ means any offense punishable by more than one year in prison pursuant to this Code.

(4) ‘Judicial panel’ means the panel of three Justices established pursuant to section 1804(1) of this chapter to appoint and supervise the work of the special prosecutor.

(5) ‘Justice’ means an Associate Justice of the Supreme Court of the Federated States of Micronesia or temporary Justice of the same, appointed pursuant to article XI, section 9 of the Constitution.”
Section 5. Title 12 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1804 to chapter 18 to read as follows:

"Section 1804. Judicial panel.

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

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

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

Section 6. Title 12 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1805 to chapter 18 to read as follows:
“Section 1805. Request for the appointment of a special prosecutor.

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

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

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

(2) The Committee’s request shall contain sufficient information to constitute grounds for investigation, but need not specify a particular individual or violation.”

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

“Section 1806. Appointment and jurisdiction of special prosecutor.

(1) Within ninety (90) days of receipt of a
written request pursuant to section 1805 of this
chapter, the judicial panel shall appoint as special
prosecutor an individual who has appropriate
experience, has no conflicts of interest, and who will
conduct the investigation and any prosecution in a
prompt, responsible, and cost-effective manner.

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

(3) The judicial panel may expand the
jurisdiction of the special prosecutor if the special
prosecutor discovers or receives information about
additional possible violations of criminal law, and the
judicial panel, giving great weight to any
recommendations of the special prosecutor, determines
that there are reasonable grounds for such expansion.”
Section 8. Title 12 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 1807 to chapter 18 to read as follows:

“Section 1807. Authority of special prosecutor. A special prosecutor shall have full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice and the Attorney General.”

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

“Section 1808. Funding. Upon appointment of a special prosecutor pursuant to section 1806 of this chapter, Congress shall appropriate funds for the operations and expenses of the special prosecutor relating to the specific matter under investigation. The judicial panel shall authorize the disbursement of such funds as it deems necessary to the performance of the special prosecutor’s duties.”

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

“Section 1809. Reports and oversight.

(1) The Congressional Committee on Judiciary and Governmental Operations shall have oversight
jurisdiction with respect to the official conduct of any special prosecutor appointed under this chapter, and a special prosecutor shall have the duty to cooperate with the exercise of such oversight jurisdiction.

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

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

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

(5) Upon completion of an investigation or termination of a special prosecutor all documents shall be turned over to the judicial panel and retained until
the relevant statute of limitations for any alleged felony has expired.”

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

“Section 1810. Termination.

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

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

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

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

(2) If a special prosecutor is removed from office, the judicial panel shall promptly submit to the Committee a report specifying the facts found and the ultimate grounds for such removal. A special prosecutor who has been removed from office may obtain judicial
review of the removal in a civil action in the Supreme Court of the Federated States of Micronesia. A member of the judicial panel may not hear or determine any such civil action or any appeal of a decision in any such civil action. The special prosecutor may be reinstated or granted other appropriate relief by order of the court.

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

Section 12. 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: __________ Introduced by: _________________________

Isaac V. Figir