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."
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5 Section 2. Definitions. As used in this act:
6 (1) "Business" means any corporation, partnership, sole
7 proprietorship, firm, enterprise, franchise, association,
8 organization, self-employed individual, holding company, joint stock
9 company, receivership, trust, or any legal entity through which
10 business is conducted for profit.
11 (2) "Business with which the person is associated" means
12 any business in which the person or a member of the person's
13 immediate family is a director, officer, owner, or employee.
14 (3) "Candidate for public office" means any person who
15 has filed a declaration of candidacy or a petition to appear on the
16 ballot for election as a public official and any person who has been
17 nominated by a public official or governmental body for appointment to
18 serve as a public employee.
19 (4) "Commission" means the Federated States of Micronesia
20 National Government Ethics Commission.
21 (5) "Gift" means a payment, loan, subscription, advance,
22 deposit of money, service, or anything of value, unless
23 consideration of equal or greater value is received.
24 (6) "Governmental body" means any department, commission,
25 council, board, bureau, committee, legislative body, agency, or other
26 establishment of the Federated States of Micronesia National
1 Government.

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

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

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

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

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

7 (a) Contracting or procurement;

8 (b) Administering or monitoring grants or subsidies;

9 (c) Inspecting, licensing, regulating, or auditing any person; or

10 (d) Any other activity where the official action has
an economic impact greater than a de minimus nature on the interest of any person.

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

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

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

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

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

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the election is held.

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

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

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

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

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

(b) The category or type and amount of all sources of income in excess of $1,000. It shall be sufficient to report whether 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
16 Section 4. Restricted activities.
17 (1) No public official or public employee shall represent
18 a person other than the branch of the National Government or entity
19 thereof for compensation before any governmental body where the
20 matter before the governmental body is of a nonministerial nature.
21 This section shall not be construed to prohibit the performance of
22 ministerial functions including, but not limited to, applications for
23 permits and licenses, incorporation papers, and other documents.
24 (2) No person shall offer or give to a public official or
25 public employee or a member of that official's or employee's immediate
26 family and no public official or public employee shall solicit a gift
1 to influence that public official or public employee in any official
duties.

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

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

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

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


(1) There is hereby created a National Government Ethics
Commission consisting of five members and including public officials,
public employees, and other citizens. Appointments to the Commission
shall be made by the President of the Federated States of
Micronesia. Any vacancy occurring on the Commission shall be filled within 30 days in the manner in which that position was originally filled. Members of the Commission shall serve for 5-year staggered terms. The Commission shall elect a chairman and vice chairman; in the absence of the chairman or in the event of a vacancy in that position, the vice chairman shall serve as chairman. The Commission shall have the authority to appoint an executive director and such additional personnel as it requires to perform its duties. The executive director shall serve at the pleasure of the Commission. Any action by the Commission shall require the affirmative vote of three of its members and four members shall constitute a quorum. The chairman or any four members of the Commission may call a meeting provided that adequate advance notice of the meeting is given. Members of the Commission shall be compensated at the rate of $50 per Commission meeting attended and shall receive reimbursement for their actual and necessary expenses.

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

Prescribe and publish, after notice and opportunity for public comment, rules and regulations to carry out the provisions of this act;

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 forth recommended uniform methods of reporting for use by persons required to file under this act;
3 (4) Accept and file any information voluntarily supplied that exceeds the requirements of this act;
4 (5) Preserve the statements filed with it for 6 years from the date of receipt;
5 (6) Make statements and reports filed with the Commission available for public inspection and copying for a reasonable cost during regular office hours;
6 (7) Compile and maintain a current list and summary of all statements filed;
7 (8) Prepare and publish reports as it may deem appropriate;
8 (9) Audit statements and reports filed with the Commission;
9 (10) On its own initiative or upon request, issue and publish advisory opinions on the requirements of this act for those who wish to use the opinion to guide their own conduct; and
10 (11) Prepare an annual report to the Congress and the President of the Federated States of Micronesia and the public summarizing the activities of the Commission and recommending any changes in the act.

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
12 (2) If after investigation the Commission finds that
13 probable cause exists for believing the allegation of the complaint,
14 after adequate notice to the accused, it shall conduct a hearing on
15 the matter. Such hearings shall be at closed session unless the
16 accused petitions for a public hearing.
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18 (3) The Commission shall have the same power to compel the
19 attendance of witnesses and to issue subpoenas as is granted
20 legislative committees.
21
22 (4) Any person whose activities are under investigation
23 shall be entitled to be represented by counsel of the accused's own
24 choosing and shall have an opportunity to examine all records to be
25 used at the hearing.
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27 (5) The Commission shall keep a record of its
28 investigations, inquiries, and proceedings; all records and
29 transcripts of any investigations or inquiries under this section
shall be confidential until a final determination is made by the Commission.

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

Section 8. Penalties.

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

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

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

Section 10. Effective date. 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: 10-13-93

Introduced by: Isaac V. Figir