
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:

1 Section 1. Title 12 of the Code of the Federated States
2 of Micronesia, as amended, is hereby further amended, by
3 inserting a new chapter 18 entitled "Chapter 18. Special
4 Prosecutor."

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

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

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

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

1 Section 4. Title 12 of the Code of the Federated States
2 of Micronesia, as amended, is hereby further amended by adding
3 a new section 1803 to chapter 18 to read as follows:

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

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

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

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

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

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

1 Section 5. Title 12 of the Code of the Federated States
2 of Micronesia, as amended, is hereby further amended by adding
3 a new section 1804 to chapter 18 to read as follows:

4 "Section 1804. Judicial panel.

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

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

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

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

1 "Section 1805. Request for the appointment of a
2 special prosecutor.

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

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

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

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

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

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

25 (1) Within ninety (90) days of receipt of a

1 written request pursuant to section 1805 of this
2 chapter, the judicial panel shall appoint as special
3 prosecutor an individual who has appropriate
4 experience, has no conflicts of interest, and who will
5 conduct the investigation and any prosecution in a
6 prompt, responsible, and cost-effective manner.

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

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

1 Section 8. Title 12 of the Code of the Federated States
2 of Micronesia, as amended, is hereby further amended by adding
3 a new section 1807 to chapter 18 to read as follows:

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

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

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

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

23 "Section 1809. Reports and oversight.

24 (1) The Congressional Committee on Judiciary
25 and Governmental Operations shall have oversight

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

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

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

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

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

1 the relevant statute of limitations for any alleged
2 felony has expired."

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

6 "Section 1810. Termination.

7 (1) A special prosecutor's appointment shall
8 terminate:

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

14 (b) on the special prosecutor's
15 resignation or death; or

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

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

