



The President
Palikir, Pohnpei
Federated States of Micronesia

December 20, 2024



The Honorable Esmond B. Moses
Speaker
Twenty-Third Congress
Federated States of Micronesia
Palikir, Pohnpei FM 96941

PRESIDENTIAL COMM. NO. 23-534
FSM CONGRESS

Dear Speaker Moses:

I am pleased to transmit the following act, which I have signed to become Public Law No. 23-143 with commentaries and concerns as expressed in this transmittal:

Congressional Act No. 23-148, entitled: "AN ACT TO ENACT TITLE 44 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA ENTITLED THE OFFICE OF THE INDEPENDENT PROSECUTOR, TO ESTABLISH THE OFFICE OF THE INDEPENDENT PROSECUTOR UNDER TITLE 44 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), TO SET THE AUTHORITY OF THE INDEPENDENT PROSECUTOR AND THE INDEPENDENT PROSECUTOR'S INVESTIGATION AND PROSECUTION POWERS, TO SET THE SALARY AND QUALIFICATIONS OF THE INDEPENDENT PROSECUTOR, TO PRESCRIBE THE PENALTIES FOR FAILURE TO OBEY LAWFUL SUBPOENA BY THE INDEPENDENT PROSECUTOR, TO SET THE OFFICE BUDGET TRANSMISSION AND ANNUAL REPORT REQUIREMENTS, AND FOR OTHER PURPOSES."

First of all, I take this opportunity to commend the 23rd FSM Congress for the initiative in taking action towards the passage of this important legislation to implement a constitutional amendment establishing an Independent Prosecutor.

While I have approved this act, I also have reservations and commentaries as outlined herein.

With respect to the definition of national funds, I do believe that the authority of the Independent Prosecutor should extend to all national funds, including the states' share from the national funds. The sharing of revenue does not change the nature of national funds; therefore, the Independent Prosecutor should have the ability and the responsibility to protect those funds.

I am concerned about the practical application considering the absence of clarity on the potential overlapping of legal mandates assigned to the Independent Prosecutor vis-à-vis those assigned to the Department of Justice (DOJ) and the Office of the National Public Auditor (ONPA). The role of the Independent Prosecutor to investigate and to prosecute corruption cases may infringe upon the responsibilities assigned to the DOJ and the ONPA. The DOJ investigates and prosecutes national crimes; but with this amendment, corruption cases are no longer DOJ's responsibility, but rather, the Independent Prosecutor's. The ONPA also investigates white collar crimes and may do so in collaboration with the DOJ. Initial stages of criminal investigation do not right away reveal the full scope of a national crime; in the many cases, critical elements of an offense could manifest later in the investigation. This is where potential, but critical, jurisdictional frictions may occur among national agencies. From the perspective of an overzealous Independent Prosecutor, any criminal investigation involves a potential corruption charge. On that basis, jurisdiction is exclusive, preempting the DOJ or the ONPA from taking action. This has its own downside that should be addressed or mitigated in the act. In the absence of clarity on matters of jurisdiction, the Independent Prosecutor, the DOJ and the ONPA could end up litigating against each other in court on jurisdictional issues. Worse, criminal defendants could get away with crimes to due misinterpretation or misapplication of the law. Once again, this is where clarity is key.



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I would have vetoed this act on the basis of the above commentaries, as they are considered legal defects amounting to a violation of due process rights. But in the spirit of being constructive, working together to improve this act on the understanding that the necessary changes and rectifications will be incorporated into the act at a later time, I have decided to sign this act into public law in anticipation of those changes. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Wesley W. Simina".

Wesley W. Simina
President

xc: Chief Justice, FSM Supreme Court



Office of the Chief Clerk

CONGRESS OF THE FEDERATED STATES OF MICRONESIA

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PRESIDENTIAL COMM. NO. 23-534
FSM CONGRESS



November 24, 2024

His Excellency Wesley W. Simina
President
Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear President Simina:

I have the honor to transmit herewith Congressional Act No. 23-148, "AN ACT TO ENACT TITLE 44 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA ENTITLED THE OFFICE OF THE INDEPENDENT PROSECUTOR, TO ESTABLISH THE OFFICE OF THE INDEPENDENT PROSECUTOR UNDER TITLE 44 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), TO SET THE AUTHORITY OF THE INDEPENDENT PROSECUTOR AND THE INDEPENDENT PROSECUTOR'S INVESTIGATION AND PROSECUTION POWERS, TO SET THE SALARY AND QUALIFICATIONS FOR THE INDEPENDENT PROSECUTOR, TO PRESCRIBE THE PENALTIES FOR FAILURE TO OBEY A LAWFUL SUBPOENA ISSUED BY THE INDEPENDENT PROSECUTOR, TO SET THE OFFICE BUDGET TRANSMISSION AND ANNUAL REPORT REQUIREMENTS, AND FOR OTHER PURPOSES, which was passed by the Twenty-Third Congress of the Federated States of Micronesia, Fourth Special Session, 2024, by a two-thirds vote of all the State delegations as required and as duly certified.

Sincerely yours,

Jessicalynn Reyes
Chief Clerk, Congress of the
Federated States of Micronesia

Enclosures



PRESIDENTIAL COMM. NO. 23-534
FSM CONGRESS

TWENTY-THIRD CONGRESS OF THE
FEDERATED STATES OF MICRONESIA
FOURTH SPECIAL SESSION
NOVEMBER 12 - 21, 2024

An Act

TO ENACT TITLE 44 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA ENTITLED THE OFFICE OF THE INDEPENDENT PROSECUTOR, TO ESTABLISH THE OFFICE OF THE INDEPENDENT PROSECUTOR UNDER TITLE 44 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), TO SET THE AUTHORITY OF THE INDEPENDENT PROSECUTOR AND THE INDEPENDENT PROSECUTOR'S INVESTIGATION AND PROSECUTION POWERS, TO SET THE SALARY AND QUALIFICATIONS FOR THE INDEPENDENT PROSECUTOR, TO PRESCRIBE THE PENALTIES FOR FAILURE TO OBEY A LAWFUL SUBPOENA ISSUED BY THE INDEPENDENT PROSECUTOR, TO SET THE OFFICE BUDGET TRANSMISSION AND ANNUAL REPORT REQUIREMENTS, AND FOR OTHER PURPOSES.

INTRODUCED BY SENATOR: QUINCY LAWRENCE (BY REQUEST)

DATE: MARCH 28, 2024

REFERRED TO: JUDICIARY AND GOVERNMENTAL OPERATIONS COMMITTEE
S.C.R. NO. 23-96 – NOVEMBER 20, 2024

FIRST READING: NOVEMBER 20, 2024

SECOND READING: NOVEMBER 21, 2024

A handwritten signature in black ink, appearing to read "Jessicalynn Reyes", is written over a horizontal line.

Jessicalynn Reyes
Chief Clerk, FSM Congress



Office of the Speaker

CONGRESS OF THE FEDERATED STATES OF MICRONESIA

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PRESIDENTIAL COMM. NO. 23-534
FSM CONGRESS

ACT NO. 23-148

(CONGRESSIONAL BILL NO. 23-94, C.D.1)

We hereby certify that on November 21 the foregoing act passed Second and Final Reading of the Twenty-Third Congress of the Federated States of Micronesia, Fourth Special Session, 2024, by a two-thirds vote of all the State delegations as required under article IX, section 20, of the Constitution of the Federated States of Micronesia.

A handwritten signature in black ink, appearing to read "Esmond B. Moses".

Esmond B. Moses
Speaker
Congress of the
Federated States of Micronesia

A large, stylized handwritten signature in black ink, appearing to read "Jessicalynn Reyes".

Jessicalynn Reyes
Chief Clerk
Congress of the
Federated States of Micronesia

AN ACT

To enact title 44 of the Code of the Federated States of Micronesia entitled the Office of the Independent Prosecutor, to establish the Office of the Independent Prosecutor under title 44 of the Code of the Federated States of Micronesia (Annotated), to set the authority of the Independent Prosecutor and the Independent Prosecutor's investigation and prosecution powers, to set the salary and qualifications for the Independent Prosecutor, to prescribe the penalties for failure to obey a lawful subpoena issued by the Independent prosecutor, to set the Office budget transmission and annual report requirements, and for other purposes.

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

1 Section 1. The Code of the Federated States of Micronesia
2 (Annotated), is hereby amended by creating a new Title 44
3 entitled: "Office of the Independent Prosecutor".

4 Section 2. Title 44 of the Code of the Federated States of
5 Micronesia (Annotated), is hereby amended by creating a new
6 Chapter 1 entitled: "General Provisions".

7 Section 3. Chapter 1 of title 44 of the Code of the
8 Federated States of Micronesia (Annotated), is hereby amended by
9 inserting a new section 101 to read as follows:

10 "Section 101. Short title. This Act may be referred to
11 as the "Independent Prosecutor Act of 2024".

12 Section 4. Chapter 1 of title 44 of the Code of the Federated
13 States of Micronesia (Annotated), is hereby amended by inserting
14 a new section 102 to read as follows:

15 "Section 102. Definition of terms. For the purposes of
16 this title, the following terms shall be given the

1 meanings described herein:

2 (a) "Congress" means the Congress of the
3 Federated States of Micronesia.

4 (b) "Instrumentality" means instrumentality of
5 the National Government as established by national
6 statute, including the FSM Development Bank, College of
7 Micronesia-FSM and FSM Petroleum Corporation.

8 (c) "National funds" means public funds of the
9 National Government as follows:

10 (1) General fund created by section 208 of title
11 55 of the Code of the Federated States of Micronesia
12 (Annotated) and revolving funds established under chapter
13 6 of title 55 of the Code of the Federated States of
14 Micronesia (Annotated);

15 (2) COMPACT Sector Funds or COMPACT Trust Funds,
16 but does not include sector funds specifically earmarked
17 for the States;

18 (3) Foreign aid, irrespective of the
19 disbursement mechanism and who the grantee, borrower, or
20 beneficiary is, if the National Government is a guarantor
21 or by the terms of the grant or loan, responsible for
22 managing or monitoring the use of the funds, or
23 accountable for the use thereof;

24 (4) Funds held by corporations and other
25 entities created by national statute; and

1 (5) All other funds appropriated by the Congress
2 to the states or state authorities for any purpose,
3 except those funds appropriated by Congress to the States
4 pursuant to a revenue-sharing provision of the
5 Constitution of the Federated States of Micronesia.

6 (d) "Official" means a public official.

7 (e) "President" means the President of the
8 Federated States of Micronesia.

9 (f) "Public corruption crimes" are national
10 crimes defined under subchapter 3 of Chapter 5 of title
11 11 of the Code of the Federated States of Micronesia.

12 (g) "Public official" means President, Vice
13 President, Members of Congress, Chief Justice and
14 Associate Justices of the FSM Supreme Court, heads and
15 deputy heads of the executive departments, heads of
16 offices, agencies and public corporations of the National
17 Government, and head or person in charge of any other
18 agency or instrumentality of the National Government."

19 Section 5. Title 44 of the Code of the Federated States of
20 Micronesia (Annotated), is hereby amended by creating a new
21 Chapter 2 entitled: "Office Establishment."

22 Section 6. Chapter 2 of title 44 of the Code of the
23 Federated States of Micronesia (Annotated), is hereby amended by
24 inserting a new section 201 to read as follows:

25 "Section 201. Establishment.

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1 There is hereby established the Office of Independent
2 Prosecutor to be headed by an Independent Prosecutor. It
3 may hereinafter be referred to as "the Office." Support
4 staff for the Office may include lawyers, investigators,
5 and other administrative support staff."

6 Section 7. Chapter 2 of title 44 of the Code of the Federated
7 States of Micronesia (Annotated), is hereby amended by inserting
8 a new section 202 to read as follows:

9 "Section 202. Independence.

10 (a) The Office shall be independent of
11 administrative control by the National Government.

12 (b) Nothing herein this Section shall prohibit
13 congressional oversight in aid of legislation on the
14 fiscal year budget, enforcement of reporting
15 requirements under this Title, and compliance with the
16 laws of this nation, including but not limited to title
17 11 of this Code, title 52 of this Code, and title 55 of
18 this Code."

19 Section 8. Title 44 of the Code of the Federated States of
20 Micronesia (Annotated), is hereby amended by creating a new
21 Chapter 3 entitled: "Appointment, Tenure, Qualifications and
22 Removal."

23 Section 9. Chapter 3 of title 44 of the Code of the
24 Federated States of Micronesia (Annotated), is hereby amended by
25 inserting a new section 301 to read as follows:

1 "Section 301. Tenure. The Independent Prosecutor shall
2 have a term of six (6) years, with no reappointment to a
3 consecutive term. If a successor is not appointed and
4 confirmed by the end of the term of six years, the
5 current Independent Prosecutor will remain in office in
6 an acting capacity until a successor is appointed and
7 confirmed."

8 Section 10. Chapter 3 of title 44 of the Code of the
9 Federated States of Micronesia (Annotated), is hereby amended by
10 inserting a new section 302 to read as follows:

11 "Section 302. Appointment with Advice and Consent.
12 The President shall appoint an Independent Prosecutor,
13 with the advice and consent of 2/3 of the members of
14 Congress."

15 Section 11. Chapter 3 of title 44 of the Code of the
16 Federated States of Micronesia (Annotated), is hereby amended by
17 inserting a new section 303 to read as follows:

18 "Section 303. Qualifications and Disqualifications of
19 the Office.

20 (1) Independent Prosecutor.

21 (a) The Independent Prosecutor shall:

22 (i) be licensed and in good standing to
23 practice law before the FSM Supreme Court;

24 (ii) be in good standing before every
25 jurisdiction licensed to practice law;

1 (iii) have graduated from a law school with a
2 juris doctorate and the law school must be accredited by
3 the competent authority of the jurisdiction in which the
4 law school operates, or graduated from a school with a
5 bachelor of laws and the school must be accredited by
6 the competent authority of the jurisdiction; and

7 (iv) have at least 10 years of legal
8 experience as a prosecutor or litigator.

9 (b) A person with any disciplinary actions issued
10 against him or her by any court, attorney bar
11 association, and/or jurisdiction governing the practice
12 of law, shall be disqualified from serving as the
13 Independent Prosecutor.

14 (c) A person convicted of any crime by a court in
15 any jurisdiction shall be disqualified from serving as
16 the Independent Prosecutor.

17 (d) A person found civilly liable by a court in
18 any jurisdiction for fraud, misrepresentation, deceit,
19 bribery, and/or any fraudulent activity shall be
20 disqualified from serving as the Independent Prosecutor.

21 (2) Office Staff.

22 (a) All persons employed as an attorney, lawyer,
23 litigator, and/or prosecutor at the Office shall have:

24 (i) graduated from a law school with a juris
25 doctorate and the law school must be accredited by the

1 competent authority in the jurisdiction in which the law
2 school operates, or graduated from a school with a
3 bachelor of laws and the school must be accredited by
4 the competent authority of the jurisdiction; and

5 (ii) at least 5 years of experience as a
6 lawyer or prosecutor.

7 (b) A person with any disciplinary actions issued
8 against him or her by any court, attorney bar
9 association, and/or jurisdiction governing the practice
10 of law, shall be disqualified from working as a lawyer,
11 attorney, law clerk, legal secretary, paralegal, and/or
12 in any other legal position in the Office. This
13 disqualification applies irrespective of whether the
14 position is a permanent or temporary employee position,
15 ungraded position, special services contract position,
16 or any other classification.

17 (c) A person convicted of any crime by a court in
18 any jurisdiction shall be disqualified from working as
19 an investigator, lawyer, attorney, law clerk, legal
20 secretary, paralegal and/or in any other legal position
21 in the Office. This disqualification applies
22 irrespective of whether the position is permanent or
23 temporary employee position, ungraded position, special
24 services contract position, or any other classification.

25 (d) All office staff positions are public service

1 system employee positions and subject to Title 52 of the
2 Code of the Federated States of Micronesia."

3 Section 12. Chapter 3 of the Code of the Federated States
4 of Micronesia (Annotated), is hereby amended by inserting a new
5 section 304 to read as follows:

6 "Section 304. Removal and Vacancy.

7 (1) The Independent Prosecutor may be removed from
8 office for good cause by the President with 2/3 vote of
9 the members of Congress. Removal for good cause includes
10 removal due to abuse of power, incompetence,
11 incapacitation, and/or violation of the contract terms
12 or the law.

13 (2) Upon removal of the Independent Prosecutor or
14 vacancy in the position, the FSM Supreme Court Chief
15 Justice shall immediately appoint an acting Independent
16 Prosecutor to serve until a successor is appointed by
17 the President with the advice and consent of 2/3 of the
18 members of Congress."

19 Section 13. Title 44 of the Code of the Federated States of
20 Micronesia (Annotated), is hereby amended by creating a new
21 Chapter 4 entitled "Authority and Powers."

22 Section 14. Chapter 4 of title 44 of the Code of the Federated
23 States of Micronesia (Annotated), is hereby amended by inserting
24 a new section 401 to read as follows:

25 "Section 401. Investigation and Prosecution Authority.

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1 The Independent Prosecutor shall have the exclusive
2 authority to investigate and prosecute:

3 (a) any person or entity, whether private or
4 public, and any official of the national, state or local
5 government for the commission of any national offense
6 relating to misuse of national funds;

7 (b) any official of the National Government for
8 the commission of any national offense involving public
9 corruption or public corruption crimes.

10 (c) any person for any offense of obstruction or
11 perjury committed in connection with an investigation or
12 prosecution by the Independent Prosecutor under
13 subsection (a) and/or subsection (b) of this Section.

14 (d) All prosecutions under this Title shall be
15 subject to the statutory limitations under section 105
16 of title 11 of the Code of the Federated States of
17 Micronesia (Annotated).

18 (e) All prosecutions for any national offense
19 under this Title shall only be filed in the FSM Supreme
20 Court in the name of the "Office of the Independent
21 Prosecutor."

22 Section 14. Chapter 4 of title 44 of the Code of the
23 Federated States of Micronesia (Annotated), is hereby amended by
24 inserting a new section 402 to read as follows:

25 "Section 402. Subpoena Power.

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1 (a) The Independent Prosecutor has the authority
2 to issue subpoenas to compel the testimony of witnesses
3 upon the opening of a formal investigation to appear at
4 a reasonable time before him or her, and administer
5 oaths to such persons. The Independent Prosecutor may
6 question such persons, under oath, regarding receipts
7 and expenditures of money, and any other reasonable and
8 relevant matters necessary for the due execution of the
9 duties vested in the Independent Prosecutor.

10 (b) The Independent Prosecutor may issue
11 subpoenas *duces tecum* within a reasonable time requiring
12 the production of books, records, documents, or other
13 relevant papers or objects necessary for the performance
14 of his duties.

15 (c) Any person who willfully fails or refuses to
16 appear upon receiving service of a subpoena, or who
17 willfully fails or refuses to produce any books,
18 records, documents, or other relevant papers or objects
19 designated in a subpoena *duces tecum* properly issued by
20 the Independent Prosecutor, upon conviction by the FSM
21 Supreme Court for obstruction, shall be fined not more
22 than \$2,000; or imprisoned for not more than one year,
23 or both. Failure by the Independent Prosecutor to comply
24 in any material respect with the requirements of this
25 Section shall be a defense in any proceeding against

1 such person for punishment. Any person subject to a
2 subpoena *duces tecum* shall have only those privileges
3 against producing books, records, documents, or other
4 relevant financial papers or objects which are
5 authorized under the FSM Supreme Court Rules of Evidence
6 and the FSM Constitution."

7 Section 15. Chapter 4 of title 44 of the Code of the Federated
8 States of Micronesia (Annotated), is hereby amended by inserting
9 a new section 403 to read as follows:

10 "Section 403. Search and Seizure.

11 (a) The Independent Prosecutor has the authority
12 to effect lawful search and seizure. For this purpose,
13 the Independent Prosecutor shall apply to the FSM
14 Supreme Court for the issuance of a warrant for search
15 and seizure.

16 (b) The application referred to in subsection
17 (a) shall be made in accordance with the rules of the
18 FSM Supreme Court".

19 Section 16. Title 44 of the Code of the Federated States of
20 Micronesia (Annotated), is hereby amended by creating a new
21 Chapter 5 entitled: "Office Budget, Salaries and Reporting.

22 Section 17. Chapter 5 of title 44 of the Code of the
23 Federated States of Micronesia (Annotated), is hereby amended by
24 inserting a new section 501 to read as follows:

25 "Section 501. Office Budget. The Office shall be

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1 budgeted for each fiscal year under the National
2 Government Fiscal Year budget. The Office shall transmit
3 its proposed fiscal year budget to the President for
4 review and compilation purposes by March 1st of each
5 year."

6 Section 18. Chapter 5 of title 44 of the Code of the
7 Federated States of Micronesia (Annotated), is hereby amended by
8 inserting a new section 502 to read as follows:

9 "Section 502. Office Salaries.

10 The salary of the Independent Prosecutor shall not be
11 reduced during term in office. The annual salary of the
12 Independent Prosecutor is set at \$80,000. The
13 Independent Prosecutor position shall be an exempt
14 position in accordance with section 117 of title 52 of
15 this Code. All other persons employed by the Office
16 shall be considered persons holding a position in the
17 public service system in accordance with title 52 of
18 this Code."

19 Section 19. Chapter 5 of title 44 the Code of the Federated
20 States of Micronesia (Annotated), is hereby amended by inserting a
21 new section 503 to read as follows:

22 "Section 503. Annual Report to Congress and President.

23 The Office shall transmit an annual outcome measures
24 report to the President and the Speaker of the Congress
25 of the Federated States of Micronesia by August 1st of

1 each year. The annual report shall include statistics on
2 the type, number, and outcome of:

3 (1) current year investigations and prosecutions;

4 (2) current number of prosecution pending in the
5 trial division and appellate division of the FSM Supreme
6 Court;

7 (3) total opened and closed investigations; and

8 (4) total open and closed prosecutions.”

9 Section 20. This act shall become law upon approval by the
10 President of the Federated States of Micronesia or upon its
11 becoming law without such approval.

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December 21, 2024

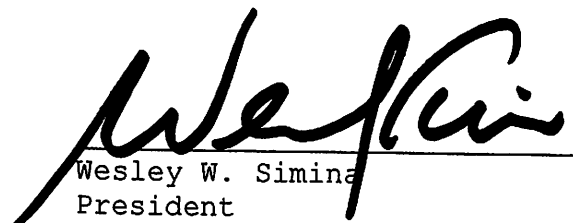
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Wesley W. Simina
President
Federated States of Micronesia

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PUBLIC LAW NO. 23-143

December 31

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