

AN ACT

To amend Section 502 of the Special Prosecutor Act (Chapter 5 of Title 2 of the Palau National Code) to provide for an Interim Special Prosecutor, and for other related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIIL ERA KELULAU DO ENACT AS FOLLOWS:

1           Section 1. Legislative findings. The Special Prosecutor Act (Chapter 5 of Title 2  
2 of the Palau National Code) creates an independent Office of the Special Prosecutor for  
3 the Republic of Palau. The Office is headed by a Special Prosecutor who “act[s] as the  
4 prosecutor for the national government in any case in which the Ministry of Justice is  
5 unable to prosecute because of an actual or potential conflict of interest or other ethical  
6 considerations.” The Special Prosecutor is appointed for a term of five years by the  
7 President with the advice and consent of the Senate. In recent times, however, the  
8 position has been vacant. Although the President has appointed a candidate as  
9 mandated, the Senate was unable to reach a consensus as to his confirmation. The Olbiil  
10 Era Kelulau recognizes that there has been a considerable public misconception of the  
11 independent position the Special Prosecutor exercises and that such misunderstanding  
12 is further promoted by the ongoing vacancy of the position. Recognizing the importance  
13 of having in place a designated individual to investigate and prosecute in situations in  
14 which the Attorney General is unable to do so due to a conflict of interest, the Olbiil Era  
15 Kelulau finds that a new position should be created to take on some of the essential  
16 duties of the Office of the Special Prosecutor. Therefore, the Olbiil Era Kelulau finds  
17 that the Special Prosecutor Act shall be amended to provide for an Interim Special  
18 Prosecutor in the event the Senate is unable to reach a consensus on the confirmation of  
19 the President’s appointment. The Interim Special Prosecutor will be in a temporary  
20 position; the position expires if a Special Prosecutor is appointed, the two-year term  
21 ends, or the Attorney General removes the Interim Special Prosecutor. Unlike the  
22 Special Prosecutor, the Interim Special Prosecutor will be subject to the supervision of  
23 the Attorney General to ensure that the Interim Special Prosecutor is competently

1 carrying on the work of the Office of the Special Prosecutor. Given the temporary  
2 nature of the position, the Attorney General will also direct the Interim Special  
3 Prosecutor to make certain that the work done by the Interim Special Prosecutor can be  
4 easily transferred to the Special Prosecutor when one is appointed.

5 Section 2. Amendment. Section 502 of Title 2 of the Palau National Code is  
6 hereby amended as follows:

7 “§ 502. Office of the Special Prosecutor; creation; appointment; removal.

8 (a) There is hereby created an Office of the Special Prosecutor for the Republic  
9 of Palau. The Office shall be headed by a Special Prosecutor appointed for a term of  
10 five years by the President with the advice and consent of the Senate and shall be within  
11 the Office of the President for budget purposes only.

12 (b) The Special Prosecutor or Interim Special Prosecutor shall, within 30 days of  
13 assuming office, become licensed to practice law before the courts of the Republic as a  
14 condition of retaining office. Rule 3 of the Palau Rules of Admission for Attorneys shall  
15 be modified so that he may practice law in Palau as a Special Prosecutor or Interim  
16 Special Prosecutor for 5 years without taking the Palau bar examination.

17 (c) The Special Prosecutor will not be removed from his duties except for cause.  
18 If the President removes the Special Prosecutor he must submit a report on the cause for  
19 removal within 7 days to the President of the Senate and the Speaker of the House of  
20 Delegates.

21 (d) The Attorney General may appoint an Interim Special Prosecutor who will  
22 take office without the advice and consent of the Senate

23 (1) if the President nominates a Special Prosecutor but the Special  
24 Prosecutor is not confirmed by the Senate and the President does not nominate a  
25 different person to become Special Prosecutor in the 60 days following the failed  
26 confirmation; or

27 (2) if the position of Special Prosecutor is vacant for a period of six  
28 months regardless of whether the President nominated a person to become

1           **Special Prosecutor.**

2           **(e) No person may be appointed as Interim Special Prosecutor if that person was**  
3 **an employee of the Office of the Attorney General in the year prior to being appointed**  
4 **as Interim Special Prosecutor.**

5           **(f) The Interim Special Prosecutor will serve in the position as described under**  
6 **Section 507 until the earliest of the following four events occurs:**

7                   **(1) a Special Prosecutor is appointed with the advice and consent of the**  
8 **Senate;**

9                   **(2) two years elapse from the time of the appointment of the Interim**  
10 **Special Prosecutor;**

11                   **(3) the Interim Special Prosecutor is removed by the Attorney General for**  
12 **cause; or**

13                   **(4) the Interim Special Prosecutor resigns or otherwise leaves office.**

14           **(g) If the Interim Special Prosecutor is removed by the Attorney General under**  
15 **subsection (f)(3), the Attorney General must submit a report on the reason for the**  
16 **removal within 7 days to the President of the Senate and the Speaker of the House of**  
17 **Delegates.**

18           **(h) If the term of the Interim Special Prosecutor lapses under subsection (f)(2),**

19                   **(1) the same person may be reappointed as Interim Special Prosecutor by**  
20 **the Attorney General if the Senate failed to confirm a different person**  
21 **nominated to become Special Prosecutor within the previous six months; or**

22                   **(2) a different person may be appointed as Interim Special Prosecutor by**  
23 **the Attorney General.**

24           **(I) If the Interim Special Prosecutor is removed for cause under subsection (f)(3),**  
25 **or resigns or leaves office under subsection (f)(4), the Attorney General may appoint a**  
26 **new Interim Special Prosecutor.**

27           **(j) The President may nominate the Interim Special Prosecutor to become the**  
28 **Special Prosecutor. If the Interim Special Prosecutor is not confirmed by the Senate to**

1 become Special Prosecutor, the Interim Special Prosecutor will continue in office as  
2 Interim Special Prosecutor.”

3 Section 3. Amendment. Chapter 5 of Title 2 of the Palau National Code is  
4 amended to add a new Section 507 to state as follows:

5 “§ 507. Interim Special Prosecutor.

6 (a) The Interim Special Prosecutor has all the powers, functions and duties of the  
7 Special Prosecutor as provided under Section 503(a). However, the independence of the  
8 Special Prosecutor as described under Section 503(b) applies to the Interim Special  
9 Prosecutor only to the extent that it does not contradict the supervision by the Attorney  
10 General as prescribed in this section.

11 (b) Within 7 days of the end of each quarter of the fiscal year, the Interim Special  
12 Prosecutor will submit a report to the Attorney General detailing the expenditures of  
13 the Office of the Special Prosecutor, the number of complaints received, the number of  
14 matters investigated and prosecuted, and general descriptions of the matters  
15 investigated and prosecuted.

16 (c) The Attorney General may require that the Interim Special Prosecutor  
17 include other information in the report provided under subsection (b) sufficient for the  
18 Attorney General to form the opinion that the Interim Special Prosecutor is  
19 maintaining the Office of the Special Prosecutor in a manner that ensures the continuity  
20 of ongoing investigations and prosecutions in the event that a Special Prosecutor is  
21 appointed or the term of the Interim Special Prosecutor expires.

22 (d) Within 30 days of receiving a report under subsection (b), the Attorney  
23 General may demand to meet with the Interim Special Prosecutor for the purpose of  
24 determining that the Interim Special Prosecutor

25 (1) is not subject to removal for cause under Section 502(f);

26 (2) has accurately reported information in the report; or

27 (3) is maintaining the Office of the Special Prosecutor in a manner that  
28 ensures the continuity of ongoing investigations and prosecutions in the event

1           that a Special Prosecutor is appointed or the term of the Interim Special  
2           Prosecutor expires.

3           (e) If, at any time, the Attorney General forms the opinion that the Interim  
4           Special Prosecutor is failing to maintain the Office of Special Prosecutor in a manner  
5           that ensures the continuity of investigations and prosecutions, the Attorney General  
6           may make recommendations to the Interim Special Prosecutor to improve the  
7           operations of the Office so that the continuity of investigations and prosecutions is  
8           ensured.”

9           Section 4. Effective date.

10           This Act shall take effect upon its approval by the President of the Republic of  
11           Palau, or upon its becoming law without such approval.

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**PASSED: April 18, 2014**

Approved this 24<sup>th</sup> day of April, 2014

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/s/  
**Tommy E. Remengesau, Jr.**  
**President of the Republic of Palau**