

**TITLE 11**

**PUBLIC FINANCE AND**

**PROCUREMENT**



## TITLE 11 PUBLIC FINANCE AND PROCUREMENT

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### CHAPTER 1 BUDGET

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**§1-101. Short title.** — This chapter is known and may be cited as the “Pohnpei Budget Act of 1981.”  
Source: S.L. No. 2L-87-81 §1, 10/22/81

**§1-102. Budget Division.** — There shall be in the Office of the Governor a Division of Budget that shall be headed by a Program and Budget Officer under the direct supervision of the Governor.  
Source: S.L. No. 2L-87-81 §2, 10/22/81; S.L. No. 5L-14-00 §3-57, 10/1/00

**§1-103. Division responsibilities.** — It shall be the general power and responsibility of the Budget Division to prepare for the approval of the Governor and presentation to the Legislature a complete financial plan for the Pohnpei Government for the next two fiscal years. In this respect, the Division shall have the authority:

(1) To prepare and report to the Legislature, through the office of the Governor, any information, financial data or statistics that may be required, such as monthly or quarterly estimates of the state’s income, cost figures, and information on the current operations of the executive branch of the state government, or any part thereof; and

(2) To receive, when requested, any information, financial data or statistics relative to the judiciary and legislative branches when needed to compile information relative to the complete financial plan called for by this section.

Source: S.L. No. 2L-87-81 §3, 10/22/81

**§1-104. Division formulation of budget; division hearings. —**

(1) The Program and Budget Officer, upon approval of the Governor, shall prescribe forms, adhering to the budget forms adopted by the state and national leaders, rules and procedures for the formulation by executive branch entities, agencies, and independent bodies of budget information and financial plans, prescribing deadlines for submission to the Division of Budget.

(2) The legislative and judiciary branches shall utilize budget forms prescribed by the Program and Budget Officer, if requested by the Governor to provide the Division of Budget with information relative thereto.

(3) Upon receipt of such material and compilation thereof, the Governor, through the Division of Budget, shall conduct budget hearings with the heads of executive departments and divisions, agencies, and independent bodies relative to their requests. All such budget hearings conducted by the Governor shall be open to the public, except in matters of confidentiality. The Governor may require the attendance of any executive branch officer or employee, agency and independent body officer or employee and question him in matters relative to the budget. At such hearings any officer, employee or representative entity may protest budget items.

Source: S.L. No. 2L-87-81 §4, 10/22/81

**§1-105. Other governmental entities. —** Agencies, bureaus, commissions, independent boards, officers of the legislative branch, judiciary branch, and any other entity receiving public funds shall, at the request of the Governor, submit to him for his information in preparing the state budget, the budgets which they propose to submit to the Legislature. When requested, the above entities shall use standard budget forms as prescribed in §1-104.

Source: S.L. No. 2L-87-81 §5, 10/22/81

**§1-106. Printing and availability of budget. —** The Governor shall cause the budget, prepared pursuant to §1-104, to be printed or otherwise reproduced, and shall make copies of the budget available at reasonable cost to the general public simultaneous with its presentation to the Legislature.

Source: S.L. No. 2L-87-81 §6, 10/22/81

**§1-107. Components of the Pohnpei Budget. —** The Pohnpei Budget as formulated and presented shall be divided into three parts as follows:

(1) Part I shall consist of a budget message by the Governor that shall outline the financial policy of the executive branch of the state for the next two fiscal years, describing in connection therewith the important features of the financial plan, giving emphasis to major budget changes and revenue sources. The message shall also include a summary statement of all anticipated revenues and grant funds, from whatever source, for the next two years and a balanced relation between such state income and proposed expenditures over the next two fiscal years. This summary shall be contrasted with the corresponding figures for the last completed fiscal year and the year in progress. In the message or in an appendix thereto the Governor shall set forth in detail:

(a) The financial condition of the state government at the beginning and end of the fiscal year last completed;

(b) The financial condition of the state government at the beginning of the current fiscal year and condition anticipated at the end of the current fiscal year;

(c) The anticipated financial condition of the state government at the beginning and end of the next two fiscal years;

- (d) The bonded indebtedness, debts authorized, debts redeemed, interest requirements, and condition of sinking funds;
- (e) Any other information necessary to make known, in practicable detail, the financial operation of the state government;
- (f) If anticipated revenues and grant funds are lesser than the total of all expenditures and obligations recommended or incurred in any fiscal year, recommendations as to how the deficit shall be met; and
- (g) If anticipated revenues and grant funds are greater than the total of all expenditures and obligations recommended or incurred in any fiscal year, recommendations as to how the surplus could be most effectively utilized. The general budget summary shall also be supported by explanatory schedules or statements, classifying the expenditures contained therein by organizational units, objects, funds, and grants, and the income by organization units, sources, funds, and grants.

(2) Part II shall include the detailed budget estimates of both expenditures, obligations, revenues, reimbursements, and grant receipts for the next two fiscal years. It shall also include statements of bonded indebtedness of the state government, showing the debt redemption requirements, the debt authorized and unissued, and the condition of the sinking funds. Detailed charts, outlines, and other descriptive material shall be included to support and specifically explain the financial plan set forth in Part I of the budget.

(3) Part III shall include all authorization and appropriation legislation required by law for the authorization of the use of grant funds for the next two fiscal years and the authorization and appropriation of state revenues and other receipts for the next fiscal year. Recommended bills of authorization shall set forth in specifics the source of funding and the administration and reporting of the use of monies authorized thereunder. If the sources of such monies are state revenues or other state generated receipts, requiring state appropriation, the recommended bills of authorization shall further provide, where appropriate, for the reversion of the unobligated or unexpended balances of appropriated monies. Indebtedness may only be incurred as specifically authorized by state law.

Source: S.L. No. 2L-87-81 §7, 10/22/81

**§1-108. Time of presentation.** — Presentation of the budget prescribed by §1-107 shall be made to the Legislature by the Governor no later than January 15 of the preceding fiscal year; PROVIDED that an extension of not more than 30 days may be granted if requested by the Governor and approved by the Legislature prior to the deadline.

Source: S.L. No. 2L-87-81 §8, 10/22/81; S.L. No. 5L-90-03 §1, 1/28/03; S.L. No. 6L-23-04 §1, 12/8/04; S.L. No. 6L-58-05 §1, 12/15/05; S.L. No. 6L-89-07 §1, 1/12/07

**§1-109. Budget Transmission Act.** — Following submission of the budget by the Governor, pursuant to §1-108, the Legislature shall review the budget submission and shall enact a Budget Transmission Act, which shall contain such summary budgetary authorizations as are found necessary by the Legislature to fulfill the requirements of the Compact of Free Association, inclusive of any amendments thereto and relevant subsidiary agreements. No budget documents may be transmitted in the name of the Government of Pohnpei to the FSM National Government, the U.S. Federal Government or any committee or other recipient for which budgetary submissions are required by said Compact or subsidiary agreements except as authorized by the Budget Transmission Act enacted for the respective fiscal year for which such budgetary documents are being transmitted.

Source: S.L. No. 2L-87-81 §8A, 10/22/81

Note: §8A was inserted by S.L. No. 5L-90-03 §2, 1/28/03.

**§1-110. Legislature authorizations and appropriations.** — Unless otherwise provided by state constitutional law, no authorizations of expenditures or appropriation bills, except those recommended

by the Governor for immediate passage, may be enacted until the bill appropriating money for the budget for the next fiscal year is enacted. The Comprehensive Budget Act and any additional authorizations of expenditures and appropriations shall be consistent with the terms and conditions of the Budget Transmission Act for the respective fiscal year for which such Comprehensive Budget Act and additional authorizations and appropriations are enacted.

Source: S.L. No. 2L-87-81 §9, 10/22/81; S.L. No. 5L-90-03 §3, 1/28/03

**§1-111. Governor to submit details to successor. —**

(1) The Governor shall submit to his successor in office:

(a) A detailed record of all expenditures made in the current and preceding fiscal years of all expenditures and obligations incurred by the state government from all revenues, grants, receipts, and other financial sources available to the state government;

(b) A record of fund and grant balances, applications made for grants and income to each fund in the State Treasury from or during the preceding and current fiscal year; and

(c) A statement of the bonded debt and of the obligations and assets of the state as of the close of the preceding fiscal year and as determined for the time of departure from office.

(2) The records and statements required by Subsection (1) of this section shall be submitted in such form as to permit the entry of the items in the Pohnpei Budget.

Source: S.L. No. 2L-87-81 §10, 10/22/81

## CHAPTER 2 DEPARTMENT OF TREASURY AND ADMINISTRATION

### Section

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**§2-101. Short title.** — This chapter is known and may be cited as the “Financial Organization and Management Act of 1987.”

Source: S.L. No. 1L-203-87 §1, 11/19/87

**§2-102. Establishment of department; definitions.** — The Department of Treasury and Administration shall be headed by the Director of the Department of Treasury and Administration who shall act under the direct supervision of the Governor and in accordance with this chapter and any amendments thereto. As used herein, “Department” shall mean the Department of Treasury and Administration, “Director” shall mean the Director of the Department of Treasury and Administration, and “Pohnpei Treasury” shall mean the treasury established by §§2-105 through 2-109.

Source: S.L. No. 1L-203-87 §2, 11/19/87

Note: Historical language has been omitted.

**§2-103. Duties and responsibilities of the Director.** —

(1) It is the duty of the Director to support, enhance, protect, and promote the public credit of Pohnpei. This responsibility includes: the collection and management of all revenues and other monies due the state of Pohnpei; the proper accounting and administration of all other monies and tangible personal property acquired or received by Pohnpei; the control and management of the disbursement and expenditure of the monies of Pohnpei when duly and properly authorized by Legislative appropriations or by other applicable law; the submission to the Governor and Legislature of quarterly summaries of deposits and expenditures of the monies of Pohnpei; the preparation of fiscal and other reports reflecting the performance of these duties and responsibilities or as may be required by law; and the performance of all other services concerning Pohnpei’s finances as may be directed from time to time. The Director may delegate these duties and responsibilities to the divisions of the Department of Treasury and Administration, or to others as is permitted by law.

(2) The Director shall be the accountant for all funds of the Pohnpei Treasury. The Director or the Director’s designee shall record and certify every receipt and disbursement of all monies paid to, by or through the Pohnpei Treasury. The Director may have any governmental account audited. The Director shall have full and complete supervision of all funds within the Pohnpei Treasury, including the power to withhold approval of a disbursement when necessary to prevent misappropriation of public funds as well as when a disbursement request exceeds specific appropriations or cash availability.

(3) The Director shall keep a complete set of double entry books in which any activity involving government accounts, the amounts appropriated by the Legislature, other amounts entrusted to the Director for management and all daily financial business transactions shall be recorded in detail. The Director shall also keep ledgers for the methodical and systematic accounting of all funds, appropriations, and other amounts entrusted to the Director's management, all assets and liabilities, the income and expenditure of all funds, and all grants of the Pohnpei Government. The Director is hereby authorized to use the automatic data processing system. All financial information stated in this subsection may be maintained therein. The Director shall further keep such record books and all such other auxiliary books and documents as the Director may deem necessary for the proper administration of the Department. The Director shall employ accepted accounting principles regarding all transactions stated herein.

Source: S.L. No. 1L-203-87 §3, 11/19/87

Note: S.L. No. 1L-203-87 §4 transition provision has been omitted.

**§2-104. Commissioner of the Division of Revenue and Taxation as collection agent.** — The Commissioner of the Division of Revenue and Taxation, otherwise known as the Division Chief, shall be the chief collection agent for the Pohnpei Government. The Commissioner and the Director, in their respective capacities, shall have the following duties, powers and responsibilities:

(1) The Commissioner shall administer and execute all Pohnpei State tax laws. He shall conduct investigations, maintain necessary records, verify accuracy and veracity of returns, provide public education on the taxes of Pohnpei, and prescribe the form of tax returns. All tax money collected shall be deposited as soon as practicable in the General Fund of Pohnpei unless otherwise provided by law. The Director shall assume all the duties, responsibilities, and powers ascribed to the Chief of Finance in S.L. No. 2L-86-81, as amended, and in regulations issued and approved pursuant thereto. Unless otherwise provided by law, the Commissioner shall also serve as Pohnpei's collector and fiscal agent for all other fees, licenses, payments, and monies due. For efficiency, the Director may contract, with approval of the Governor, with the national government to assume, delegate or otherwise coordinate the ministerial duties of collecting state government and national government taxes and fees.

(2) The Director and the Commissioner are authorized to undertake such collection and enforcement procedures for the collection of state taxes as are prescribed in the Comprehensive Taxation Reform Act, Title 12, as amended or superseded by state law.

(3) The books and records of the Commissioner or the Division obtained or prepared pursuant to this section shall be available for inspection and audit by the Public Auditor, the Governor, and the Legislature.

Source: S.L. No. 1L-203-87 §5, 11/19/87; S.L. No. 4L-35-97 §16-10, 5/10/97

Note: S.L. No. 2L-86-81, the Financial Management Act of 1981, was superseded in its entirety by S.L. No. 1L-203-87, the Financial Organization and Management Act of 1987.

**§2-105. Pohnpei Treasury: established.** — There is hereby established for the Pohnpei Government, the Pohnpei Treasury that shall be comprised of all monies attributable to or managed by the Pohnpei Government.

Source: S.L. No. 1L-203-87 §6(1), 11/19/87; S.L. No. 2L-80-88 §1, 12/15/88



**§2-106. Pohnpei Treasury: funds.** — As used in this chapter, unless the context clearly indicates otherwise, “fund” shall mean an independent fiscal accounting entity with a self-balancing set of accounts recording cash and other resources together with all related liabilities, obligations, reserves, and equities. Unless otherwise provided by law, all revenues and other receipts together with all related liabilities and obligations shall be managed through one of the following funds or such other funds as the Director shall establish by regulations adopted or amended pursuant to §2-114:

(1) *General fund.* The general fund is hereby established to account for all monies received by or entrusted to the care, custody or management of the Pohnpei Government except those that are required to be accounted for in another fund.

(2) *Special revenue funds.* Special revenue funds are hereby established to account for proceeds from specific revenue sources designated by law and restricted to expenditures for specified purposes.

(3) *Capital project funds.* Capital project funds are hereby established to account for monies to be used for the acquisition or construction of capital improvements as specified by Pohnpei law.

(4) *Debt service funds.* Debt service funds are hereby established to account for the management of general long-term debts.

(5) *Internal service funds.* Internal service funds are hereby established to account for intergovernmental agency transactions involving payment or reimbursement from one agency to another for goods or services received.

(6) *Enterprise funds.* Enterprise funds are hereby established to account for government-assisted or monitored businesses which:

(a) Operate in a manner similar to private enterprise to provide goods and services to the public on a continuing basis and are financed primarily through user or consumer charges; and

(b) Where the revenue earned is used for capital improvement and maintenance, operational expenses, and for other purposes related to the business.

(7) *Trust and agency funds.* Trust and agency funds are hereby established to account for assets held by the government as trustee and shall include expendable trust funds, nonexpendable trust funds, pension trust funds, and agency trust funds.

(8) *Fixed assets fund.* The fixed assets fund is hereby established to account for the Pohnpei Government fixed asset accounts including depreciation, appreciation, and other related matters.

(9) *Local government fund.* The local government fund is hereby established to account for all financial resources earmarked for the local governments under the revenue sharing arrangement required by Article 11 §3 of the Pohnpei Constitution and the laws of Pohnpei.

Source: S.L. No. 1L-203-87 §6(2), 11/19/87; S.L. No. 2L-80-88 §1, 12/15/88

**§2-107. Pohnpei Treasury: custody and administration.** — The Pohnpei Treasury shall be under the custody and administration of the Director who shall:

(1) Provide for deposits therein and management thereof;

(2) Provide for the establishment and maintenance of records to account for such funds; and

(3) Whenever appropriate, provide for the deposit of public monies in the following interest, dividend or revenue yielding accounts or investment plans; PROVIDED that for purposes of this subsection the term “deposit” shall mean any placement of public monies into an account for safekeeping or as an investment, including, but not limited to, checking accounts, savings accounts, trust accounts, and other accounts or purchases of security instruments primarily as an investment and shall not include deposits and investments undertaken pursuant to an appropriation law:

(a) *United States of America financial institutions.* When public funds are deposited into United States banks or savings and loan associations they must be insured by the FDIC or FSLIC.

(b) *Bonds*. When public funds are invested in bonds, they shall be rated A or better by Moody's Inc. or Standard and Poors.

(c) *Domestic financial institutions*. Public funds may be deposited or invested in any domestic bank formally established pursuant to the applicable laws of the Federated States of Micronesia and must be insured by the FDIC or FSLIC including, but not limited to, deposits into any of its accounts and the purchase of equity interests in such bank.

(d) *Other financial institutions*. When public funds are invested in other financial institutions or commercial enterprises they must have assets greater than US\$500,000,000 or its equivalent or be part of a safe and prudent investment plan of the state developed and managed by the Department of Treasury and Administration with the assistance of competent investment advisors and managers selected by the Director and approved by the Governor; PROVIDED that such investment advisors and managers must be registered with the United States Securities and Exchange Commission in accordance with the United States Investment Advisor Act of 1970, have been in business as an investment advisor actively managing securities portfolios for nine full years or two complete market cycles, have assets under management of no less than US\$750,000,000 and be required to report to the state, in writing, at least quarterly; PROVIDED FURTHER that the investment plan of the state shall follow written policy guidelines that set forth the conditions and limits of each type of investment to achieve a reasonable balance between safety and a high rate of return and that these guidelines shall be established by the Department and implemented with the approval of the Governor and Legislature.

Source: S.L. No. 1L-203-87 §6(3), 11/19/87; S.L. No. 2L-80-88 §1, 12/15/88

**§2-108. Pohnpei Treasury: accrual of accounts income.** — The income of the accounts shall accrue to the benefit of the general fund of the Pohnpei Treasury, unless otherwise provided by law.

Source: S.L. No. 1L-203-87 §6(4), 11/19/87; S.L. No. 2L-80-88 §1, 12/15/88

**§2-109. Pohnpei Treasury: payment authorization.** — No monies may be paid out from the Pohnpei Treasury except when authorized and appropriated by law and when there is a valid obligation to pay out such monies; PROVIDED, that grant funds shall be paid out in the manner consistent with applicable laws and directives of the donor.

Source: S.L. No. 1L-203-87 §6(5), 11/19/87; S.L. No. 2L-80-88 §1, 12/15/88

**§2-110. Documentary evidence required to support obligations of funds.** —

(1) No amount shall be recorded as an obligation of the Pohnpei Government unless it is supported by documentary evidence of:

(a) A binding written agreement executed by the parties and certified by the Director as to the existence of the appropriation, if required, or the availability of the fund or monies, with both the execution and certification occurring before the expiration of the applicable time limit, if any; or

(b) A valid written loan agreement authorized by law, showing the amount of the loan to be made and the terms and schedule of repayment thereof; or

(c) An order required by law to be placed with any agency; or

(d) An order issued pursuant to a law authorizing the purchase without advertising or bid; or

(e) A grant or subsidy payable:

(i) From appropriations for fixed amounts or according to a formula set by Pohnpei law; or

(ii) Pursuant to an agreement, directives of the donor or plans approved and authorized by Pohnpei law; or

- (f) A liability which may result from pending litigation to which the Pohnpei Government is a party and for which monies have been appropriated or authorized by Pohnpei law; or
- (g) Employment or travel expenses authorized in accordance with Pohnpei law, or services provided by public utilities for the Pohnpei Government; or
- (h) Any other legal liability or obligation of the Pohnpei Government for which funds have been appropriated.

(2) No appropriation or fund which is limited for obligation purposes to a definite period of time shall be available for expenditure after the expiration of such period except for the liquidation of amounts obligated in accordance with Subsection (1) of this section; PROVIDED, that all obligations and claims against said appropriation shall be forever barred unless presented to the Department for collection within one year after the obligation arose against said appropriation and such timely presentation for collection shall be a prerequisite to any judicial action or suit on the obligation or claim; PROVIDED FURTHER, that to be valid, a copy of the obligation must be deposited with the Director on or before the expiration of the fiscal period during which said obligation arose.

Source: S.L. No. 1L-203-87 §7, 11/19/87

**§2-111. Closing out accounts and transfer of unexpended balances.** — The Director shall, upon 30 days advanced written notice to the Legislature and to the head of the department or office, or other public officer who is charged with the duty of expending an appropriation of public monies and following a determination that all obligations have been fully paid and satisfied, close out the appropriation account and transfer the unexpended balance to the appropriate fund of the Pohnpei Treasury whenever any one of the following occurs:

- (1) The Director determines that the purposes of the appropriation have been accomplished;
- (2) The time has expired within which those purposes may be accomplished;
- (3) The reasons for the appropriation have ceased to exist; or
- (4) The expiration of a period of 24 months during which time no financial expenditures have been charged to the account, which period of inactivity shall be presumed by the Director to indicate that the purposes for which the appropriation was made have already been accomplished or the reasons for which the appropriation was made shall have ceased to exist.

(5) The Director shall include a special segment in his financial reports to the Legislature as required by 11 PC 2-103 and as otherwise required by law, detailing his activities pursuant to this section.

Source: S.L. No. 1L-203-87 §8, 11/19/87; S.L. No. 7L-08-08 §1, 6/3/08

**§2-112. Over-obligation of state and grant funds prohibited.** —

(1) Unless otherwise specifically authorized by law, no officer or employee of the Pohnpei Government or allottee of funds shall make or authorize an expenditure from, or create or authorize an obligation pursuant to any appropriation, apportionment, reapportionment, grant or allotment of funds of the Pohnpei Government:

- (a) In excess of the amount made available by law or grant agreement regardless of whether said amount is stated as a specific dollar limit or as a method or formula to be used to calculate said limit; or
- (b) In advance of the availability of funds authorized by law; or
- (c) For purposes other than those stated in the Pohnpei law.

(2) In case of violations of Subsection (1) of this section, the Director shall immediately report to the Governor, the Legislature, the Public Auditor, and the Attorney General all pertinent facts together with a statement of any action taken.

(3) Any person who knowingly, willfully or recklessly violates Subsection (1) of this section shall be guilty of an offense against the Pohnpei Government, and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one year, or both such fine and imprisonment.

Such penalties shall be in addition to all other civil and criminal penalties prescribed or recognized by Pohnpei law.

(4) Penalties relative to the misuse of grant funds shall be as otherwise prescribed by law.

Source: S.L. No. 1L-203-87 §9, 11/19/87

**§2-113. Director as Procurement and Property Management Officer.** — The Director of the Department of Treasury and Administration shall be the Procurement and Property Management Officer for the Pohnpei Government. As such, the Director shall be responsible for the establishment and administration of a centralized system for procuring, inventorying, inspecting, testing, storing, accounting, and disposing of all tangible personal property of the Pohnpei Government. The acquisition and disposal of such property shall be by competitive public bidding in accordance with procedures set forth in regulations adopted pursuant to the authority granted by §2-114; PROVIDED that such regulations may include reasonable exceptions to the bidding requirement when the circumstances warrant.

Source: S.L. No. 1L-203-87 §10, 11/19/87

**§2-114. Rules and regulations.** — The Director is hereby authorized to issue and promulgate rules and regulations implementing this chapter which, upon public notice and hearing as required by law and upon review and approval of the Governor, shall have the force and effect of law. All rules and regulations heretofore adopted by and for the Department pursuant to the authority granted by prior laws (including those laws that are repealed by this chapter) shall continue in full force and effect until amended, repealed or superseded hereafter.

Source: S.L. No. 1L-203-87 §11, 11/19/87

Note: S.L. No. 1L-203-87 §13 severability provision has been omitted.

Extended legislative history: 1. PDC §1-200, 3/71 provided for the District Treasurer; PDC §1-200(b) was amended by D.L. No. 3L-58-73 §10, 5/29/73; PDC §1-200(c) was amended by D.L. No. 3L-18-72 §1, 5/25/72 and D.L. No. 3L-58-73 §11, 5/29/73; PDC §1-200 was repealed by D.L. No. 3L-91-74 §1, 6/29/74 and a new §1-200 was established; PDC §1-200E was amended by D.L. No. 4L-136-78 §26, 3/27/78 and was repealed by S.L. No. 2L-32-80 §1, 9/30/80; PDC §1-200 was repealed by S.L. No. 2L-86-81 §13(1), 11/13/81. 2. PDC §1-201 provides for the District Tax Collector; PDC §1-201(a) was amended by D.L. No. 3L-28-72 §1, 6/12/72 and D.L. No. 3L-58-73 §12, 5/29/73; PDC §1-201 was repealed by D.L. No. 3L-91-74 §2, 6/29/74 and a new PDC §1-201 was established. 3. S.L. No. 2L-86-81 §13(1), 11/13/81 repealed PDC §§1-200 and 1-201 and provided for a Division of Finance; S.L. No. 2L-86-81 §3(1) was amended by S.L. No. 1L-17-85 §1, 4/23/85; S.L. No. 2L-86-81 §6 was amended by S.L. No. 1L-19-85 §2, 4/1/85. 4. S.L. No. 1L-203-87 §6 was amended by S.L. No. 2L-80-88 §1, 12/15/88; S.L. No. 1L-203-87 §12, 11/19/87 superseded S.L. No. 2L-86-81, 11/13/81, as amended, in its entirety.

## CHAPTER 3 LINES OF CREDIT

### Section

3-101 Line of credit authority	3-105 Payment of principal, interest, and incidental charges: security
3-102 Filing of agreements required	3-106 Reporting required
3-103 Use of lines of credit	3-107 Criminal sanctions
3-104 Administrative procedures	3-108 Other laws applicable

**§3-101. Line of credit authority.** — The Governor, upon prior consultation with the Pohnpei Legislature, is hereby authorized to enter into agreements to provide for lines of credit in order to maintain a constant cash flow to meet valid obligations for projects and programs for economic development and the construction and major repair of public facilities identified for the use of lines of credit under the annual Comprehensive Budget Acts of Pohnpei; PROVIDED, that:

(1) The cumulative total of indebtedness (inclusive of interest and incidental charges) incurred through all such agreements at any one time may not exceed \$1,000,000 or the total of the amounts authorized to be drawn against lines of credit for such projects and programs in the Comprehensive Budget Act, whichever is less;

(2) No line of credit may be established which provides for a repayment on a draw upon the line of credit in excess of 12 months or the current term of the Governor, whichever is less;

(3) The interest rates and incidental charges incurred under such lines of credit shall not exceed limits established by law within the Federated States of Micronesia; and

(4) Sufficient monies are available within the operations accounts of the Department of Treasury and Administration to pay all interest and incidental charges relative to such indebtedness.

Source: S.L. No. 1L-81-86 §1, 9/4/86

**§3-102. Filing of agreements required.** — The Governor shall file with the Pohnpei Legislature and the Pohnpei Auditor a complete copy of each agreement entered into by the Governor pursuant to §3-101, within five days following the execution of said agreement.

Source: S.L. No. 1L-81-86 §2, 9/4/86

**§3-103. Use of lines of credit.** — No line of credit may be drawn upon nor any transaction made relative thereto without written approval of the Director of the Department of Treasury and Administration. The concurrence in writing of the Program and Budget Officer shall be required in each instance there is a draw upon the line of credit provided in the agreement. No draw may be made upon a line of credit without prior certification by the Director of the Department of Treasury and Administration to the Governor and the Legislature Committee on Finance that:

(1) A specific financial plan has been established in writing for the repayment of the draw on the line of credit identifying the project or program to be financed under the draw including a citation of the specific provision in the Comprehensive Budget Act authorizing the use of lines of credit for that project or program, the sources of revenue to be used in repayment and the schedule of repayment; and

(2) The total amount of all draws upon lines of credit for a project or program does not exceed the remaining balance due to be paid on that project or program; and

(3) If the project or program is to be funded by appropriation from the Pohnpei Treasury, without reimbursement from a grant or outside capital improvement project source, the total amount of all draws upon lines of credit therefor does not exceed the amount appropriated thereto in the Comprehensive Budget Act; or

(4) If payment for the project or program is to be reimbursed from a grant or outside capital improvement project source, the total amount of all draws upon lines of credit therefor does not exceed the amount allocated thereto by the reimbursement source as indicated in writing to the Pohnpei Government by an authorized official within the source agency or entity; PROVIDED that prior to certification hereunder the Director of the Department of Treasury and Administration shall have received written acknowledgment by the project administrator or contracting officer within the Pohnpei Government responsible for carrying out the project or program that he has received and will ensure compliance with all known procedural requirements necessary for reimbursement; PROVIDED FURTHER that such acknowledgment shall be countersigned as to completeness and accuracy by the Pohnpei Attorney General.

Source: S.L. No. 1L-81-86 §3, 9/4/86

**§3-104. Administrative procedures.** — The Governor shall prescribe such internal administrative procedures as he deems necessary for the use of lines of credit pursuant to agreements entered into under the authority of §3-101.

Source: S.L. No. 1L-81-86 §4, 9/4/86

**§3-105. Payment of principal, interest, and incidental charges: security.** —

(1) Payment of the principal of indebtedness incurred under a line of credit established pursuant to §3-101 shall be from deposits in the Treasury of the Pohnpei Government in the account or fund for which the line of credit is drawn.

(2) Payment of the interest and all other charges incidental to the line of credit agreement and indebtedness incurred thereunder shall be from the operations accounts of the Department of Treasury and Administration.

(3) No other revenue source nor asset of the Pohnpei Government may be pledged or used as security for payment of a draw upon a line of credit agreement established under the authority of this chapter, except from such sources and in the amounts prescribed in the Comprehensive Budget Act for the specific project or program for which the draw upon the line of credit is made and the amounts in the operating budget of the Department of Treasury and Administration specifically allocated to servicing the debt incurred by the draw upon the line of credit.

Source: S.L. No. 1L-81-86 §5, 9/4/86

**§3-106. Reporting required.** — Within 15 days following the close of a fiscal quarter, the Governor shall file with the Legislature and the Public Auditor a complete report of all transactions undertaken pursuant to each line of credit agreement entered into pursuant to §3-101 and active within that fiscal quarter; PROVIDED that the final quarterly report for each fiscal year shall include a summary of all four quarters and a final accounting for the full fiscal year; PROVIDED FURTHER that no draws upon any line of credit established under this chapter may be made after the 15th day following the close of a fiscal quarter until the report required for that quarter has been filed in the manner prescribed by this section.

Source: S.L. No. 1L-81-86 §6, 9/4/86

**§3-107. Criminal sanctions.** — In addition to all other criminal and civil requirements, liabilities, and penalties prescribed or recognized by law, any officer or employee of the Pohnpei Government who shall knowingly and willfully violate any provision of this chapter shall be guilty of an offense against Pohnpei, and upon conviction thereof, shall be fined less than \$1,000, or imprisoned not more than one year, or both such fine and imprisonment.

Source: S.L. No. 1L-81-86 §7, 9/4/86

**§3-108. Other laws applicable.** — In addition to the requirements of this chapter, the establishment and use of lines of credit authorized hereunder shall be subject to the Financial Organization and Management Act, Chapter 2, as amended or superseded, and all other applicable Pohnpei laws.

Source: S.L. No. 1L-81-86 §8, 9/4/86





## CHAPTER 4 COMPACT FUNDS

Section

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**§4-101. Short title.** — This chapter is known and may be cited as the “Pohnpei Compact Funds Financing Act.”

Source: S.L. No. 2L-133-89 §1, 10/18/89

**§4-102. Purpose.** — This chapter authorizes the state to borrow funds under the National Compact Funds Financing Act by participating in a medium-term note program and any other financing program secured by the state’s share of Compact funds. The funds borrowed pursuant to the authority granted herein shall be used by the state for economic development projects and for the construction and major repair of public facilities as set out in of Article 2 §13 of the Pohnpei Constitution and as may be permitted by the Compact and related agreements. Such funds may also be invested to generate revenues for the aforementioned uses. It is also the purpose of this chapter to designate the maximum amount of the state’s share of Compact funds that may be pledged and used for the costs of a borrowing pursuant to the authority granted by this chapter. The specific amount that may be pledged and used for the costs of a borrowing shall be set by statute.

Source: S.L. No. 2L-133-89 §2, 10/18/89

**§4-103. Definitions.** — Unless the context clearly indicates otherwise, the following meanings shall apply to this chapter:

(1) “Bond” or “bonds” means any bond, note or other evidence of indebtedness issued under the National Compact Funds Financing Act, including any evidence of indebtedness for money borrowed from commercial banks or similar financial institutions and any reimbursement obligation to a provider of credit enhancement.

(2) “Bond repayment fund” means the fund created in 55 FSMC §624 to provide for the deposit and disbursement of funds pledged by a state government and/or the national government which participates in a borrowing.

(3) “Committee” means the committee referred to in 58 FSMC §524.

(4) “Compact” means the Compact of Free Association between the FSM and the United States of America and its attendant agreements.

(5) “Credit enhancement” means bond insurance, letters of credit or similar credit enhancement instruments.

(6) “Financing program” means the medium-term note program and any other program for borrowing established or permitted by the National Compact Funds Financing Act and this chapter, including, without limitation, programs involving public offering or private placement of bonds or direct borrowing from commercial banks or similar financial institutions.

(7) “FSM” means the Federated States of Micronesia.

(8) “Indenture” means any indenture, agreement or other instrument pursuant to which the bonds shall be issued, as approved by a resolution of the committee as defined in Subsection (3) of this section.

(9) “National Compact Funds Financing Act” or “National Act” means 58 FSMC §511 et seq., as amended, and includes any amendments that may be adopted hereafter.

(10) “Pledged Compact funds” means the amounts payable under the Compact which the President of the FSM is authorized to pledge to the payment of the bonds following legislative action by the FSM and the state.

(11) “Pledged funds” means the pledged Compact funds and/or other pledged monies, and investment earnings thereon.

(12) “President” means the President of the FSM or his lawfully and properly appointed designee.

(13) “Resolution” means the resolution or resolutions of the committee authorizing the issuance and sale of bonds on the terms and conditions, and substantially in the form approved therein or pursuant to procedures provided therein.

(14) “Secretary” means the FSM Secretary of Finance.

(15) “State” means Pohnpei State.

(16) “Trustee” means the FSM fiscal agent appointed as such in the indenture, pursuant to the National Act, and any successors or assigns who will act as such for the benefit of the holders of the bonds.

Source: S.L. No. 2L-133-89 §3, 10/18/89

**§4-104. Authorization to borrow.** — The state is hereby authorized to participate in the medium-term note program and any other program for borrowing established or permitted by the National Compact Funds Financing Act including, without limitation, programs involving public offering or private placement of bonds or direct borrowing from commercial banks or similar financial institutions. The maximum amount of the state’s Compact funds that may be pledged to secure repayment and to cover the costs of borrowing under any financial program is designated in §4-112. The specific amount that may be pledged and used to cover the costs of the borrowing shall be authorized by statute.

Source: S.L. No. 2L-133-89 §4, 10/18/89

**§4-105. Authority of state officials.** — When the specific amount that may be pledged and used to cover the costs of borrowing is authorized by statute:

(1) The Governor, the Director of the Department of Treasury and Administration, the Governor’s delegate, if any, to the committee established by the National Act, and the special counsel are authorized to perform the functions and duties described in the National Act. In the case of the special counsel, he is also authorized to provide the legal opinion described in the National Act.

(2) Without limiting the foregoing, the Governor may authorize the pledge of security necessary to secure the borrowing, to satisfy any financial obligations attributable to the state related to or resulting from such borrowing, and, with the consent of the Legislature by resolution, may pledge such additional security as may be necessary to protect the FSM Government and any nonparticipating state against any loss arising in connection with the state’s participation in a financing program; PROVIDED, HOWEVER, that the Governor may take such actions only with respect to specific amounts allowed by state law.

(3) The Governor is also authorized to enter into an agreement or agreements with the Secretary and any lending institution regarding the disbursement of proceeds of bonds and earnings thereon or the proceeds of borrowings from commercial banks or similar financial institutions and also regarding the payment of all financial obligations attributable to the state related to or resulting from the borrowing.

Source: S.L. No. 2L-133-89 §5, 10/18/89; S.L. No. 2L-142-89 §1, 12/28/89

**§4-106. Delegation of authority to the President.** — When the specific amount to be pledged and used to cover the costs of borrowing is authorized by statute, the Governor may issue a written certification to the President that specifies the amount and source of funds or other security to be used to secure a borrowing and to cover the cost of borrowing. When the anticipated project costs and/or the anticipated costs of borrowing is/are less than the amount state law allows to be borrowed, then the amount certified by the Governor may be the lesser amount. Upon receiving the Governor's certification, the President is authorized to make irrevocable pledge(s) of the amounts of Compact funds specified in the Governor's certificate (including any investment earnings therefrom) that would otherwise be payable to the state, or irrevocable pledge(s) of other security. The President shall not make any such pledge except to secure a borrowing of funds on behalf of the state. The pledge shall secure payment of the bonds or funds borrowed, costs and expenses and all other financial obligations resulting from or relating to the financing program that are not otherwise paid. The President shall also be authorized to make the necessary payments from the pledged amounts for the purpose of and to the extent required to satisfy all financial obligations attributable to the state related to or resulting from the financing program. The President shall certify to the Governor in writing the amount actually so pledged and the amount authorized but not actually pledged. Any funds that are authorized to be pledged by statute but that are not actually pledged or used to satisfy such financial obligations shall remain as funds of the state.

Source: S.L. No. 2L-133-89 §6, 10/18/89

**§4-107. Compact funds.** — When the specific amount to be pledged and to be used to cover the cost of borrowing is authorized by statute, the Governor has issued a written certification to the President as provided in §4-106, and the proceeds of the financing program have been actually or constructively received:

(1) The state consents to and authorizes a reduction in the amount of Compact funds received or to be received on behalf of the state through the Compact financial assistance fund, with such reduction being commensurate with the amount of pledged Compact funds pledged by the state. The state further irrevocably waives all rights to the receipt of such pledged Compact funds.

(2) As additional security, the state authorizes the deposit of funds other than pledged Compact funds in a sub-fund of the bond repayment fund established by 55 FSMC §627.

Source: S.L. No. 2L-133-89 §7, 10/18/89

**§4-108. Indemnification.** —

(1) Recognizing the complexity of any financing program pursued under this chapter and the National Act, the state hereby agrees to indemnify and hold harmless all officers, employees or other agents acting for or on behalf of the state from any and all claims, causes of action, demands, losses, costs or damages, including all court costs and attorneys' fees, regardless whether suit, hereinafter called "claims," is actually brought, arising from or relating to any act or omission directly or indirectly related to the matters contained in this chapter or the National Act, or related to the establishment or implementation of any financing program, or to the repayment of any borrowing under any financing program. The state shall accept tender of defense upon demand and immediately reimburse any payment of claims by the officer, employee or other agent of the state.

(2) This indemnification and hold-harmless covers claims that are foreseeable and unforeseeable, whether the act or omission is deemed to be within or outside the scope of employment or responsibility, and whether caused by negligence or recklessness of any degree, or otherwise. Moreover, without limitation, this indemnification and hold-harmless specifically applies to the special counsel with respect to any opinions or advice which may be required or rendered. This indemnification and hold-harmless does not apply to any criminal acts.

Source: S.L. No. 2L-133-89 §8, 10/18/89

**§4-109. Taxes.** — In accordance with the National Act, neither the state nor any political subdivision thereof shall impose any tax, assessment or levy on or related to a borrowing under any financing program.

Source: S.L. No. 2L-133-89 §9, 10/18/89

**§4-110. Waiver of sovereign immunity.** —

(1) Notwithstanding any other law to the contrary, including the Financial Organization and Management Act, Chapter 2, as amended, the state hereby waives its sovereign immunity but only to the extent necessary to permit the national government or any other state of the Federated States of Micronesia to bring an action and execute a judgment as to any assets of the state based on any loss arising in connection with the state's participation in a financing program.

(2) The state specifically asserts and establishes its sovereign immunity from any other suit, judgment or execution with respect to any matter or action taken pursuant to this chapter or the National Act. Except as expressly authorized by Subsection (1) of this section, or as expressly authorized by other state law, the state does not waive its sovereign immunity regarding the aforementioned matters or actions.

Source: S.L. No. 2L-133-89 §10, 10/18/89

**§4-111. Alteration of rights.** — After the issuance of any bonds, the state will not limit or alter, or seek to limit or alter the rights thereby vested and vested pursuant to the indenture including, without limitation, the irrevocable pledge by the President of pledged Compact funds, until the bonds, together with interest and premium, if any, thereon, are fully paid and discharged; PROVIDED, that nothing herein contained shall preclude such limitation or alteration if and when adequate provision is made in accordance with the terms of the indenture for protection of the holders of the bonds. The FSM is hereby authorized to make this undertaking for the state in the bonds and the indenture.

Source: S.L. No. 2L-133-89 §11, 10/18/89

**§4-112. Designation of the maximum amount that may be pledged.** — Subject to further legislation authorizing and establishing the specific amounts that may be pledged and that may be used to cover the cost of borrowing for any financing program, the following amounts are hereby designated as the maximum amounts during any given fiscal year that may be pledged or used to cover such costs:

(1) Compact funds:

(a) One hundred percent (100%) of the state's §211(a) capital account funds; and

(b) Sixty-five percent (65%) of the state's §214(c) energy account funds;

(2) Such additional security from the state's general fund or other Compact funds as is necessary to protect the national government and any nonparticipating state against any loss arising in connection with the state's participation.

Source: S.L. No. 2L-133-89 §12, 10/18/89

**§4-113. Authorization to debit certain expenses.** — Without further authorization or appropriation, any appropriate Compact financial assistance fund account of the FSM National Government or the Pohnpei Government may be debited for expenses, including trustee fees, associated with a Pohnpei State borrowing under this chapter.

Source: S.L. No. 2L-133-89 §13, 10/18/89

Note: S.L. No. 2L-133-89 §14 savings provision has been omitted.

**CHAPTER 5  
PUBLIC CREDIT FOR ELEMENTARY SCHOOLS**

Section

5-101 Short title	5-107 Approval of the loan package by statute: modifications
5-102 Purpose	5-108 Financial administration of loan capital
5-103 Authorization for negotiation	5-109 Administration of financed projects
5-104 Loan negotiations	5-110 Progress report
5-105 Security	
5-106 Notice to Legislature	

**§5-101. Short title.** — This chapter is known and may be cited as the “Public Credit for Elementary Schools Act of 1999.”

Source: S.L. No. 4L-133-99 §1, 11/10/99

**§5-102. Purpose.** — The purpose of this chapter is to provide for a program establishing the procedural requirements for the attainment and use of public credit in the financing of capital improvements of the public elementary schools of Pohnpei.

Source: S.L. No. 4L-133-99 §2, 11/10/99

**§5-103. Authorization for negotiation.** — For the purposes described in this chapter, the Governor of the state of Pohnpei is hereby authorized to negotiate loan packages on the credit of the state of Pohnpei for capital improvements for the following public elementary schools:

- (1) Kolonia Elementary School;
- (2) Nett Elementary School;
- (3) Ohmine Elementary School;
- (4) Palikir Elementary School;
- (5) Rohng Kitti School;
- (6) Sapwalap Elementary School; and
- (7) [RESERVED].

Source: S.L. No. 4L-133-99 §3, 11/10/99

**§5-104. Loan negotiations.** — The Governor of the state of Pohnpei shall negotiate with recognized public loan entities and established commercial lending institutions for loan capital for capital improvement projects for the schools listed in §5-103 on such terms as shall be commercially reasonable and at competitive interest rates. The Governor is authorized to negotiate for compensating balances to be deposited as an inducement to a preferred interest rate; PROVIDED that the deposit is placed in an institution authorized for the deposit of Pohnpei Treasury monies as specified in §2-107.

Source: S.L. No. 4L-133-99 §4, 11/10/99

**§5-105. Security.** — No public trust land, public facility, governmental asset, public revenue or grant source may be pledged or assigned as security for the repayment of a loan authorized by this chapter unless specifically authorized by statute enacted pursuant to §5-107 for the project for which public credit is being attained.

Source: S.L. No. 4L-133-99 §5, 11/10/99

**§5-106. Notice to Legislature.** — Prior to entering into any loan agreement pursuant to this chapter, the Governor shall submit to the Legislature:

(1) A complete justification for the project for which public credit is requested, which justification shall include, but need not be limited to, an economic and social analysis of the project, land use requirements, architectural and engineering specifications, estimated costs of construction and implementation, and all sources of financing for the construction of the project, inclusive of public credit, direct appropriations, grants, and donations;

(2) A copy of the complete loan package that has been negotiated by the Governor for said loan; and

(3) Draft legislation for the approval of the loan package which shall include provisions specifying:

(a) Approval of the loan documents which shall incorporate the term (duration) of the loan, the calculation of interest and other charges, and the total amount of loan obligations over the course of the life of the loan;

(b) Approval of the deposit of compensating balances where required or authorized by the loan package;

(c) Specific authorizations, appropriations, and/or dedications of public funds and assets necessary to repay all loan obligations, amortized over the life of the loan;

(d) Authorization for the pledge or assignment of security where appropriate; and

(e) Such other statutory details as the Governor deems necessary.

Source: S.L. No. 4L-133-99 §6, 11/10/99

**§5-107. Approval of the loan package by statute: modifications.** — The Governor may not enter into any loan agreement for any project under the terms of this chapter until passage of a statute by the Legislature approving the loan package as presented to the Legislature pursuant to §5-106. Following passage of said statute, the Governor may enter into agreements for such modifications of the loan package as he deems necessary without the necessity of additional enabling legislation; PROVIDED that such modifications do not result in:

(1) The pledge or assignment of security not authorized by the approval statute;

(2) The mandatory deposit of compensating balances not authorized in the approval statute;

(3) The acceleration of the repayment of loan obligations not included in the schedule of repayments for which monies or other assets have been authorized, appropriated or otherwise dedicated to the repayment thereof in the approval statute; or

(4) The payment of additional monies or transfer of additional assets above that authorized in the approval statute.

Source: S.L. No. 4L-133-99 §7, 11/10/99

**§5-108. Financial administration of loan capital.** —

(1) All sums borrowed pursuant to this chapter shall be received by the Director of the Department of Treasury and Administration on behalf of the state and deposited into a special Debt Service Fund of the Pohnpei Treasury to be used solely for the purposes prescribed by this chapter. The Director shall establish separate accounts in said fund for the receipt of loan capital and for the receipt of appropriations and funds from other sources for the repayment of all loan obligations.

(2) The Director shall administer each account created pursuant to Subsection (1) of this section in strict compliance with the Financial Organization and Management Act, Chapter 2, as amended, and all other applicable state laws and regulations.

(3) All sums borrowed pursuant to this chapter not expended or obligated for expenditure for the project specified therefor shall revert to the fund designated to repay the loan or shall be used to immediately repay a portion of the loan.

(4) The Director shall file annual financial reports with the Governor and the Legislature for each year that any public credit remains due and payable under this chapter.

Source: S.L. No. 4L-133-99 §8, 11/10/99

**§5-109. Administration of financed projects.** — Unless another administrator is stipulated in the approval statute enacted pursuant to §5-107, the Governor shall be responsible for the administration and expenditure of monies received through public credit solely for the project so identified and not in excess of the amount so authorized for the particular project. In the administration of such monies and the projects financed thereby, the Governor or other designated administrator shall be subject to all financial management, procurement, conflicts of interest, public contracting, and other requirements specified by law and regulation.

Source: S.L. No. 4L-133-99 §9, 11/10/99

**§5-110. Progress report.** — The Governor or other designated administrator shall submit a progress report to the Legislature six months after the project commences and yearly thereafter until the project is completed, on all matters concerning the administration of the project and funds expended therefor.

Source: S.L. No. 4L-133-99 §10, 11/10/99





## CHAPTER 6 PUBLIC CONTRACTS

### Section

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6-103 Setting aside of funds	6-108 Contract Review Board
6-104 Public invitation and open-competitive bidding required	6-109 Duties of the Board
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	6-111 Exemptions
	6-112 Sanctions
	6-113 Contracts void
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**§6-101. Definitions.** — As used in this chapter, unless the context clearly requires otherwise:

(1) “Capital improvement project” means any construction project, whether vertical or horizontal, or whether for new construction, modification, renovation or repair, and inclusive of site preparation, earth moving, and road construction.

(2) “Contracting officer” means the state officer or employee specified by statute, regulation or agency rule for the administration of a project; PROVIDED that if there be no person so specified, “contracting officer” means the chief executive officer of the branch of the Pohnpei Government responsible for letting the contract.

(3) “Contract Review Board” means the board created pursuant to §6-108.

(4) “State agency” includes all state offices, departments, divisions, boards, commissions, councils, committees or other entities of the executive branch, offices of the judiciary branch, and offices of the legislative branch of the Pohnpei Government.

Source: S.L. No. 1L-199-87 §1, 12/3/87

**§6-102. Certification of funds required.** — No announcement for a bid for letting of a contract for any capital improvement project subject to the bidding requirements of this chapter may be made until the Director of the Department of Treasury and Administration has certified that sufficient funds have been authorized by state law and are appropriated or have otherwise been made available for the specific project for which the contract has been let. Such certification shall be on a form prescribed by the Attorney General and shall indicate the specific fund or funds upon which the expenditure is to be drawn, the state authorization statute and the specific state appropriation for the use of such fund or funds; or if it be not from the Pohnpei Treasury, such source or sources from which the monies are made available together with a signed statement by the Director of the Department of Treasury and Administration that the expenditure proposed is within the conditions and financial limitations of the specific grant being drawn upon.

Source: S.L. No. 1L-199-87 §2, 12/3/87; S.L. No. 5L-14-00 §3-44, 10/1/00

**§6-103. Setting aside of funds.** — Upon certification as required by §6-102, the Director of the Department of Treasury and Administration shall cause the sums so certified to be set aside solely for use on the project so specified. Thereafter, such sums may be expended solely for the purposes for which they have been certified until such time that the contracting officer has certified to the Director that the sums are no longer needed for the project for which they have been set aside.

Source: S.L. No. 1L-199-87 §3, 12/3/87; S.L. No. 5L-14-00 §3-44, 10/1/00

**§6-104. Public invitation and open-competitive bidding required.** — No capital improvement project administered by any state agency, officer or employee, in excess of a cumulative total of \$10,000 of state funds and other sources made available to this state may be contracted to any person for construction thereof unless such contract be let to the lowest responsible bidder, subject to §6-106, following public invitation and open-competitive bidding. The Governor, by regulation issued pursuant to this chapter, shall prescribe the procedures relative to invitation to bid, submission of bids, bid review, and contractor selection; PROVIDED that prior to the issuance of said regulations the procedures so taken by the state shall be in a form consistent with the requirements of this chapter.

Source: S.L. No. 1L-199-87 §4, 12/3/87

**§6-105. Contract award and renewal, extension, amendment, change-order, cancellation, termination, reissuance, and other modifications thereof.** — The contracting officer, upon prior consultation with the Office of the Attorney General and written approval of the Contract Review Board, shall be responsible for the execution of contracts on behalf of the Pohnpei Government and any renewal, extension, amendment, change-order, cancellation, termination, reissuance or other modification thereof; PROVIDED that if the aggregate value of the modification be less than \$2,500, the Contract Review Board shall be given prior notice, but need not concur in the action.

Source: S.L. No. 1L-199-87 §5, 12/3/87; S.L. No. 5L-14-00 §3-44, 10/1/00

**§6-106. Reasonable preference to certain contractors.** — In the awarding of contracts pursuant to §6-105, reasonable preference may be accorded to contractors resident in this state and other contractors providing substantial subcontracts and employment to residents of this state.

Source: S.L. No. 1L-199-87 §6, 12/3/87

**§6-107. Exceptions.** — Capital improvement projects subject to the bidding requirements of this chapter may be let to State agencies, or the United States of America Civic Action Team resident in the State, or local governments without competitive bidding where directed by law or upon a showing in writing by the Contracting Officer that market conditions indicate that the project could not be constructed less expensively or of sufficient quality by private sector contractors resident within the State. Capital improvement projects may also be let to local governments without competitive bidding upon a showing in writing by the Contracting Officer that the project will assist the government in the development of its ability to manage local capital improvement projects. The Contracting Officer and State agencies, Civic Action Team or local governments party to the contract shall provide for a full and public accounting of all funds so expended by virtue of the contract. All transactions relative thereto shall be subject to audit by the Pohnpei Auditor's Office.

Source: S.L. No. 1L-199-87 §7, 12/3/87; S.L. No. 6L-57-05 §4, 12/12/05

**§6-108. Contract Review Board.** — There is hereby created within and for the Pohnpei Government, a Contract Review Board that shall consist of five members appointed from within the Pohnpei Government by the Governor with the advice and consent of the Legislature to serve for a term consistent with that of the Governor. No person authorized to serve as a contracting officer of the Pohnpei Government may serve on the Board. Members may be removed from the Board pursuant to Article 9 §10 of the Pohnpei Constitution. Vacancies shall be filled for the remainder of unexpired terms in the same manner as initial appointments. Service on the Board shall be without additional compensation than that which would be received by the Board member in his regular governmental position. The organizational meeting of the Board shall be called by the Governor. The Board shall elect a chairman and such other officers as it may deem necessary from among its own members and determine its own rules of procedure; PROVIDED that the assenting signatures of at least three members shall be required of any substantive action of the Board. The Board shall maintain written minutes of its proceedings. The Office of Transportation and Infrastructure shall provide technical and

clerical assistance to the Board. The Board shall be attached to said Office for administrative purposes. The Office of the Attorney General shall provide legal assistance to the Board.

Source: S.L. No. 1L-199-87 §8, 12/3/87; S.L. No. 5L-14-00 §3-44, 10/1/00

**§6-109. Duties of the Board.** — The Contract Review Board shall have the following responsibilities:

(1) Review the activities of all agencies and officers of the Pohnpei Government operating under this chapter;

(2) Review for sufficiency all notices required by this chapter prior to their release;

(3) Review and, where it deems appropriate, consent to the award of contracts under this chapter in excess of a cumulative total of \$10,000, and any renewal, extension, amendment, change-order, cancellation, termination, reissuance or any other modification thereof, which change or modification has an aggregate value of \$2,500 or more; and

(4) Assume such other responsibilities as may be necessary to effectuate the purposes of this chapter.

Source: S.L. No. 1L-199-87 §9, 12/3/87

**§6-110. Conflict of interest.** —

(1) If any member, officer or employee of the Board, or a contracting officer shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly in any contract with the Board or the state, or as a contractor for the construction of any capital improvement projects, he shall disclose such interest in writing to the Board and such interest shall be set forth in the minutes of the Board, and the member, officer, employee or contracting officer having such interest therein shall not participate on behalf of the Board or the state in any votes or transactions of the Board relative thereto.

(2) Notwithstanding Subsection (1) of this section, no member of the Board may, during his membership therein nor for at least one year following his membership thereon, acquire directly or indirectly, in his own name, by a disclosed or undisclosed agent, or through an association or business in which he owns more than ten percent (10%) interest therein, any interest in any capital improvement projects of the state.

(3) The Board may, in its bylaws, prescribe further rules relative to conflict of interest governing members, officers, and employees of the Board.

Source: S.L. No. 1L-199-87 §10, 12/3/87

**§6-111. Exemptions.** — This chapter shall not apply to construction contracts on capital improvement projects within the state administered by the officer in charge of construction of the U.S. Department of the Navy, Marianas, the United States Army Corps of Engineers or the Federated States of Micronesia National Government.

Source: S.L. No. 1L-199-87 §11, 12/3/87

**§6-112. Sanctions.** — In addition to any other civil or criminal penalty prescribed by law, any state officer or employee who willfully or recklessly violates or fails to comply with any provision of this chapter shall be subject to disciplinary action, and, upon a finding of gross violation hereof, may be removed from office in the manner prescribed by law.

Source: S.L. No. 1L-199-87 §12, 12/3/87

**§6-113. Contracts void.** — Any capital improvement project contract subject to the requirements of this chapter entered into after the effective date of this chapter [*December 3, 1987*] and not let in compliance with this chapter shall be void.

Source: S.L. No. 1L-199-87 §13, 12/3/87

**§6-114. Prior legal review.** — No contract awarded under this chapter shall create a binding legal obligation on the state without prior review and approval by the Office of the Attorney General as to legality and form.

Source: S.L. No. 1L-199-87 §14, 12/3/87; S.L. No. 5L-14-00 §3-44, 10/1/00

Note: S.L. No. 1L-199-87 §15, 12/3/87 superseded S.L. No. 2L-82-81, 7/17/81 as to all contracts issued after the organization of the Contract Review Board mandated by this chapter.

## Chapter 7 INVESTMENTS

Section

**7-101. Corporate investments.**  
**7-102. Shareholder activities.**  
**7-103. Directorships.**

**7-104. Investment earnings.**  
**7-105. Transfer of equity.**

**§7-101. Corporate investments.** — All shares of corporate stock, or other forms or incidences of ownership in a corporation, owned by the state of Pohnpei, shall be held by the Director of the Department of Treasury and Administration in the name of, and in trust for, the state of Pohnpei.

Source: S.L. No. 7L-20-08 §2, 11/26/08

**§7-102. Shareholder activities.** — Shareholder voting rights and other rights and privileges of equity ownership in a corporation held by the state of Pohnpei shall be voted and otherwise acted upon by a person appointed by the Governor with the advice and consent of the Legislature as entitled to vote and act upon said shares; PROVIDED that no elected official of the Pohnpei Government shall be eligible for such appointment. Such person shall continue to hold such rights and privileges for a term consistent with the term of the Governor, and until his successor is designated, unless removed by the Governor for cause after written notice and opportunity to be heard. Such person may not assign to any other person or entity any proxy rights or privileges pertaining to such shares without the written consent of the Governor. If a vacancy is created in a shareholder's position by death, resignation or for any other reason, such vacancy shall be filled in like manner as the original appointment for the remainder of the term; PROVIDED that in the event that there is an unexpected vacancy in the shareholder's position, the Governor may make a temporary designation among persons eligible for appointment under this section pending the filling of the vacancy pursuant to this section; PROVIDED FURTHER that such designation shall not exceed 60 days and may not be renewed in the name of the same individual.

Source: S.L. No. 7L-20-08 §2, 11/26/08

**§7-103. Directorships.** — In the event that an officer or employee of the state government is elected as a member of the board of directors of a corporation by virtue of an equity investment by the state, such service on a board shall be deemed public service; PROVIDED that no elected official of the Pohnpei Government shall be eligible for such directorship. Such officer or employee shall be accorded administrative leave with full pay while performing directorship duties. Any monetary compensation paid to or on behalf of the said director shall be paid into the general fund of Pohnpei; PROVIDED that this requirement shall not apply to per diem, travel or non-monetary corporate privileges accorded generally to the corporation's board members.

Source: S.L. No. 7L-20-08 §2, 11/26/08

**§7-104. Investment earnings.** — Any earnings received by the state of Pohnpei as the payment of dividends, or otherwise, as a result of its investment in a corporation shall be deposited in the general fund of Pohnpei.

Source: S.L. No. 7L-20-08 §2, 11/26/08

**§7-105. Transfer of equity.** — No sale, divestment or other transfer of any share in a corporation or other equity of a corporation held by the state of Pohnpei may occur unless authorized by law enacted specifically therefor or as a result of a corporate merger or other corporate action taken by or applied

to the corporation in the normal course of business. Any monies received from such transfer shall be deposited in the general fund of Pohnpei. Any equity in another corporation or other consideration so received as a result of such transfer shall be held in trust pursuant to §7-101.

Source: S.L. No. 7L-20-08 §2, 11/26/08

**CHAPTERS 8 – 9**  
**[RESERVED]**

## CHAPTER 10 PUBLIC SUPPORT FINANCES

### Section

10-101 Executive branch: authorization for appropriation; administration

10-102 Micronesian Legal Services Corporation: authorization for appropriation; administration

10-103 Education and health projects and programs: authorization for appropriation; administration

10-104 Health projects and programs: authorization for appropriation; administration

10-105 Civic Action Team projects and programs: authorization for appropriation; administration

10-106 Energy projects and programs: authorization for appropriation; administration

### **§10-101. Executive branch: authorization for appropriation; administration. —**

(1) There is hereby authorized for appropriation from the general fund of Pohnpei and such special grant funds as may be made available to the Government of Pohnpei a sum or sums to be determined annually in the Comprehensive Budget Act, or so much thereof as may be necessary, for the operations and activities of the executive branch of the Pohnpei Government.

(2) The sums herein authorized for appropriation shall be allocated annually among the departments, offices, and agencies of the executive branch, and the administrative head of each such department, office, and agency shall, upon approval of the Governor and consistent with the representations of the budget presented to the Legislature, administer and expend the sums appropriated and allocated thereto.

(3) The Governor shall report to the Legislature on or before October 15 each year on all matters relating to the administration and expenditure of the sums appropriated under the authorization of this section for the previous fiscal year.

(4) The balance of all sums appropriated under the authorization of this section remaining unexpended or unobligated for expenditure on September 30 each fiscal year for which they were appropriated shall revert to the respective fund of the Treasury from which they were so appropriated.

(5) Appropriations to agencies for which there is a specific authorization for appropriation in the Pohnpei Code or by Pohnpei statute shall be governed by the provisions of the Code or respective statute under which said appropriation is made, and to such extent shall be exempt from this section.

Source: S.L. No. 1L-19-85 §3, 4/1/85

Note: S.L. No. 1L-19-85 §§2 & 5 – 7 repealing provisions and §8 funds transferer provision have been omitted.

### **§10-102. Micronesian Legal Services Corporation: authorization for appropriation; administration. —**

(1) There is hereby authorized for appropriation from the general fund of Pohnpei a sum or sums to be determined annually in the Comprehensive Budget Act for the purpose of assisting in the financing of the Pohnpei State office of the Micronesian Legal Services Corporation.

(2) The sums appropriated pursuant to this authorization shall be administered and expended by the Governor, upon request and with concurrence of the Executive Director of the Micronesian Legal Services Corporation, solely for the purpose stated in Subsection (1) of this section. The Governor shall report to the Legislature on or before October 15 each year on all matters concerning the expenditure of the sums appropriated for the just concluded fiscal year under the authorization of this section. Any balance of the sums appropriated for a fiscal year under the authorization of this section not expended or obligated for expenditure on September 30 of that fiscal year shall revert to the general fund of Pohnpei.

Source: S.L. No. 2L-117-82 §§1 & 2, 6/2/82

**§10-103. Education and health projects and programs: authorization for appropriation; administration. —**

(1) There is hereby authorized for appropriation from the general fund of Pohnpei and such funds in the Pohnpei Treasury into which Compact §221(b) monies are deposited a sum or sums to be determined annually in the Comprehensive Budget Act for the purpose of financing the costs of certain Pohnpei State education and health projects and programs.

(2) The sums herein authorized for appropriation shall be administered and expended by the Governor of Pohnpei solely for the purpose stated in Subsection (1) of this section. The Governor shall report to the Legislature on or before October 15 each year on all matters concerning the expenditure of the sums authorized for appropriation by this section. Any balance of the sum or sums appropriated under the authorization of this section not expended or obligated for expenditure on September 30 each year shall revert to such funds of the Pohnpei Treasury from which they were appropriated.

Source: S.L. No. 4L-12-96 §§1 & 2, 10/16/96

**§10-104. Health projects and programs: authorization for appropriation; administration. —**

(1) There is hereby authorized for appropriation from the general fund of Pohnpei and such funds in the Pohnpei Treasury into which Compact §216(a)(2) monies are deposited a sum or sums to be determined annually in the Comprehensive Budget Act for the purpose of financing the costs of certain Pohnpei State health projects and programs.

(2) The sums herein authorized for appropriation shall be administered and expended by the Governor of Pohnpei solely for the purposes stated in Subsection (1) of this section. The Governor shall report to the Legislature on or before October 15 each year on all matters concerning the expenditure of the sums authorized for appropriation by this section. Any balance of the sum or sums appropriated under the authorization of this section not expended or obligated for expenditure on September 30 each year shall revert to such funds of the Pohnpei Treasury from which they were appropriated.

Source: S.L. No. 4L-13-96 §§1 & 2, 10/16/96

**§10-105. Civic Action Team projects and programs: authorization for appropriation; administration. —**

(1) There is hereby authorized for appropriation from the general fund of Pohnpei and such funds in the Pohnpei Treasury into which Compact §212 monies are deposited a sum or sums to be determined annually in the Comprehensive Budget Act for the purpose of financing the costs of supporting the United States of America Civic Action Teams within the state and for such development projects and programs as may be undertaken by the Teams.

(2) The sums herein authorized for appropriation shall be administered and expended by the Governor of Pohnpei, upon consultation with such coordinating council(s) as may be organized within the state to direct the efforts of the Civic Action Teams deployed within this state, solely for the purposes stated in Subsection (1) of this section. The Governor shall report to the Legislature on or before October 15 each year on all matters concerning the expenditure of the sums authorized for appropriation by this section. Any balance of the sum or sums appropriated under the authorization of this section not expended or obligated for expenditure on September 30 each year shall revert to such funds of the Pohnpei Treasury from which they were appropriated.

Source: S.L. No. 4L-14-96 §§1 & 2, 10/16/96

**§10-106. Energy projects and programs: authorization for appropriation; administration. —**

(1) There is hereby authorized for appropriation from the general fund of Pohnpei and such funds in the Pohnpei Treasury into which Compact §214(b) monies are deposited a sum or sums to be determined annually in the Comprehensive Budget Act for the purpose of financing the costs of certain Pohnpei State energy projects and programs.



(2) The sums herein authorized for appropriation shall be administered and expended by the Governor of Pohnpei solely for the purposes stated in Subsection (1) of this section. The Governor shall report to the Legislature on or before October 15 each year on all matters concerning the expenditure of the sums authorized for appropriation by this section. Unless another date is indicated in the specific appropriation provision of a Comprehensive Budget Act authorized by this section any balance of the sum or sums appropriated under the authorization of this section not expended or obligated for expenditure on September 30 each year shall revert to such funds of the Pohnpei Treasury from which they were appropriated.

Source: S.L. No. 4L-20-96 §§1 & 2, 10/28/96; S.L. No. 5L-21-00 §6, 10/26/00

Notes: 1. S.L. No. 4L-20-96 §3 repealing and §4 appropriation provisions have been omitted. 2. S.L. No. 5L-21-00 §§1 - 5 & 7 - 10 appropriation provisions have been omitted.

(Next page is Title 12 divider)