

TITLE - 4

LOCAL GOVERNMENT AFFAIRS¹

CHAPTER 1

LOCAL GOVERNMENTS

Arrangement of Sections

Section

PART I-PRELIMINARY

- §101. Short title.
- §102. Interpretation.
- §103. Reserved.

PART II-NATIONAL CONSTITUTIONAL PROVISIONS

- §104. Saving of existing Municipal Councils.
- §105. Right to a system of Local Government.
- §106. Power to make ordinances.
- §107. Local Government Areas.

PART III-LEGAL STATUS OF LOCAL GOVERNMENTS

- §108. Incorporation of Local Governments.

PART IV-CONSTITUTIONS OF LOCAL GOVERNMENTS

Division 1-General

- §109. Requirement of written constitution.
- §110. Former chartered Municipal Councils.
- §111. Former unchartered Municipal Councils.

Division 2-Minimum Requirements of Constitution

- §112. Application of Division 2.
- §113. The legislature.
- §114. The executive.
- §115. The head of the Local Government.
- §116. Staff.
- §117. Meetings of Councils.
- §118. Budget and accounts.
- §119. Wards.
- §120. Amendment of the constitution.

PART V- AMALGAMATION AND TRANSFER OF TERRITORY

- §121. Amalgamation.
- §122. Transfer of territory.

Section

PART VI - ELECTIONS

Division 1- Preliminary

- §123. Electoral methods.
- §124. Elections by ballot.
- §125. Elections by consensus.

Division 2- Elections by Consensus

- §126. Certifying officers.
- §127. Announcement of election.
- §128. Election meetings.
- §129. Declaration of result of election.

Division 3- Miscellaneous

- §130. Unmanageable electorates.
- §131. Administrative instructions by Chief Electoral Officer.
- §132. Offenses in relation to election by consensus.

PART VII- GRANTS TO LOCAL GOVERNMENTS.

- §133. The Fund.
- §134. Payments into the Funds.
- §135. Payments out of the Fund.
- §136. Withdrawals, etc.
- §137. Accounts, etc.

PART VIII- RELATIONS WITH CENTRAL GOVERNMENT.

- §138. Functions of Secretary.
- §139. Local Government Advisor.
- §140. Audit.
- §141. Inquiries.
- §142. Suspension of local government.
- §143. National budget consultation.
- §144. Order of collection of taxes.
- §145. Vesting of certain functions in LG.
- §146. Administrative memoranda by Minister.
- §147. Reports by Minister.

¹[Title of this chapter modified to reflect topics covered under this title]

PART IX- MISCELLANEOUS

- §148. Intergovernmental arrangements.
 §149. Joint committees.
 §150. Loans.
 §151. Peace officers.
 §152. Service on local government.
 §153. Regulations.
 §154. Reserved.

PART X - TRANSITIONAL PROVISIONS

- §155. Saving of existing local governments.

Schedule - Model Local Government Constitution.

An Act to provide for the implementation of Article IX, and Article XIII, Section 2 of the Constitution of the Marshall Islands by providing for the manner of operation of the system of local government.

Commencement:	18 February 1981
Source:	M.I. Code (1975)
	P. L. 1981-2
	P. L. 1981-16
	P. L. 1986-37
	P. L. 1991-114
	P. L. 1994-99
	P. L. 2003- 80
	P. L. 2006-67

PART I - PRELIMINARY**§101. Short title.**

This Chapter may be cited as the “Local Government Act 1980”. [P.L. 1981-2, §1.]

§102. Interpretation.

(1) In this Chapter:

- (a) “amend”, in relation to the constitution of a local government, includes repeal and replace;
- (b) “Central Government law” means the Constitution of the Marshall Islands, an Act or, to the extent that it has the force of law in the Republic, any other legislative or executive instrument (other than an ordinance), or a provision of any of those laws;
- (c) “Central Government tax” means a tax of any kind that is imposed under a Central Government law;
- (d) “Council” means the legislative arm of a local government, by whatever name it is known;
- (e) “eligible voter” means, in relation to an election or a referendum, a person who

is entitled, in accordance with the Elections and Referenda Act 1980 (2 MIRC 1), to vote in the election or referendum;

(f) “executive committee” means the executive arm of a local government, by whatever name it is known,

(g) “head of a local government” means a person in the office provided for by Section 115 of this Chapter, by whatever name that office is known;

(h) “local government area” means the area of jurisdiction of a local government, as described in Section 107 of this Chapter;

(i) “Minister” means the Minister responsible for local government matters;

(j) “municipal ordinance” means any ordinance duly enacted before the effective date of the Constitution of the Marshall Islands by any municipality in the exercise of the powers granted under any law of the Trust Territory of the Pacific Islands;

(k) “ordinance” means an ordinance that is in force, and includes a subordinate instrument made under any such ordinance,

(l) “referendum” means a referendum conducted under the Elections and Referenda Act 1980 (2 MIRC 1);

(m) “registered voter” means, in relation to an election or a referendum, a person who would be a registered voter, for the purpose of that election or referendum, under the Elections and Referenda Act 1980 (2 MIRC 1) if, in the case of an election by consensus, the election were conducted under that Chapter,

(n) “Secretary” means the Department head of the Department of the Minister’s Ministry, or a member of that Department nominated by the Minister for that purpose;

(o) “ward” means one of the areas into which, for electoral purposes, a local government area may be divided, as provided for in Section 119 of this Chapter.

(2) In this Chapter, a reference to consensus is a reference to agreement by the great majority of the people concerned, to such an extent that a head count would be clearly superfluous

(3) In this Chapter, a reference to an election “by ballot” is a reference to an election under Part VIII of the Election and Referenda Act 1980 (2 MIRC 1). [P.L. 1981-2, §2.]

§103. *Reserved.*

PART II- NATIONAL CONSTITUTIONAL PROVISIONS

§104. *Saving of existing Municipal Councils.*

Article XIII, Section 2 of the Constitution of the Marshall Islands provides as follows: “Every Municipal Council, whether chartered or not, existing immediately before the effective date of this Constitution shall be a local government for the purposes of Article IX.” [P.L. 1981-2, §4.]

§105. *Right to a system of Local Government.*

Article IX, Section 1(1) of the Constitution of the Marshall Islands provides as follows: “the people of every populated atoll or island that is not part of an atoll shall have the right to a system of local government which shall operate in accordance with any applicable law.” [P.L. 1981-2, §5.]

§106. Power to make ordinances.

Article IX, Section 2 of the Constitution of the Marshall Islands provides that:

- (a) “A local government may make ordinances for the area in respect of which it has jurisdiction, provided that such ordinances are not inconsistent with any Act”; and
- (b) “an ordinance may provide for the levying of taxes and for the appropriation of funds for local purposes”. [P.L. 1981-2, §6.]

§107. Local Government Areas.

(1) Article IX, Section 1(2) and (3) of the Constitution of the Marshall Islands provides as follows.

“(2) The system of local government shall in each case extend to the sea and the seabed of the internal waters of the atoll or island and to the surrounding sea and seabed to a distance of 5 miles from the baselines from which the territorial sea of that atoll or island is measured.”

“(3) The whole of the land and sea areas to which any system of local government extends shall lie within the jurisdiction of a local government: and, where there is more than one local government, the land and sea boundaries of their respective jurisdictions shall be as defined by law.”

(2) Any amendment to the constitution of a local government that involves an alteration to the boundaries of a local government area requires the approval of the Minister unless he certifies that the alteration does not affect and is not likely to affect any other local government.

(3) The principles to be applied in granting or withholding approval are:

(a) as to land boundaries, that they should:

- (i) as far as practicable, follow natural features;
- (ii) not unduly cut across the boundaries of land holdings: and
- (iii) not unduly fragment social groups: and

(b) as to seabed boundaries, that they should comply with the median line principle except to the extent that this would involve cutting across the boundaries of rights in the seabed in which case those boundaries should, if practicable, be followed.

(4) Unless the Minister is satisfied that any of the principles set out in subsection (3) of this section would be contravened to a serious extent he shall not withhold his approval under subsection (2) of this section, except that he may make it a condition of his approval that the alteration to the boundaries be approved in a referendum held among such persons as he determines to be likely to be affected by the alteration.

(5) For the purposes of this section, the amalgamation of two or more local government areas shall not be taken to involve an alteration to boundaries. [P.L. 1981-2, §7.]

PART III - LEGAL STATUS OF LOCAL GOVERNMENTS**§108. Incorporation of Local Governments.**

For the purposes of the performances of its functions under Article IX of the Constitution of

the Marshall Islands, this Chapter, or any other law, a local government:

- (a) is a corporation with perpetual succession;
- (b) shall have a seal;
- (c) may acquire, hold charge, and dispose of property;
- (d) may sue and be sued in its corporate name;
- (e) may do and suffer any thing that a corporation may do and suffer, but as provided

by Article I Section (4)(c) of the Constitution of the Marshall Islands, no property or assets of a local government shall be seized or attached to satisfy any judgment. [P.L. 1981-2, §8.]

PART IV - CONSTITUTIONS OF LOCAL GOVERNMENTS

Division 1 - General

§109. Requirement of Written Constitution.

(1) All Local Governments must, subject to section 111 of this chapter, have written constitutions in accordance with this chapter.

(2) Subject to sections 110(2) and 111(3) of this Chapter, if a local government does not have a written constitution that complies with this chapter the provisions of the schedule appearing at the end of this chapter shall be deemed to be the constitution of such local government, subject to such modifications to meet local requirements as the Minister, after consultation with the Attorney-General, by order, determines. [P.L. 1981-2, §9.]

§110. Former Unchartered Municipal Counties.

(1) As of the effective date of this chapter, the constitution of a local government that was a chartered municipal Council to which Article III Section 2 of the Constitution of the Marshall Islands applies is its charter as in force immediately before that date.

(2) If any provision of a constitution established by Subsection (1) of this section is inconsistent with any provision of this chapter other than the schedule appearing at the end of this chapter, then:

(a) until the end of the period of six (6) months or such longer period as the Minister allows, after the effective date of this Chapter, or until the Constitution is amended to remove the inconsistency, whichever occurs first, the provisions of the Constitution prevails over the provisions of this chapter;

(b) if at the end of that period of six months, or such longer period as the Minister allows, after the effective date of this Chapter the constitution has not been amended to remove the inconsistency, the Minister, may by order amend the constitution in such a way as to remove the inconsistency. [P.L. 1981-2, §10.]

§111. Former unchartered Municipal Councils.

(1) A local government that was an unchartered Municipal Council to which Article XIII, Section 2 of the Constitution of the Marshall Islands applies shall, within the period of six (6) months, or such longer period as the Minister allows, after the effective date of this Chapter adopt a constitution that is in accordance with this Chapter.

(2) The constitution shall be adopted by resolution of the Council subject to approval in a

referendum in the local government area.

(3) If at the end of the period of six (6) months, or such longer period as the Minister allows, after the effective date of this Chapter a constitution has not been adopted and approved in accordance with Subsections (1) and (2) of this Section, the provisions of the Schedule appearing at the end of this Chapter shall be deemed to be the constitution, subject to such modifications to meet local requirements as the Minister, after consultation with the Attorney-General, by order determines. [P.L. 1981-2, §11.]

Division 2-Minimum Requirements of the Constitution

§112. Application of Division 2.

The constitution of every local government shall comply with this Division, but may contain other provisions not inconsistent with this Chapter or any other Central Government law. [P.L. 1981-2, §12.]

§113. The legislature.

(1) The constitution of every local government shall provide for a Council, in which the ordinance-making powers of the local government under Article IX, Section 2 of the Constitution of the Marshall Islands, shall be vested

(2) The Council shall consist of such number of members as the constitution provides, but not less than two-thirds (2/3), or such lesser number exceeding one-half (1/2) as the Minister in special circumstances approves, shall be elected by eligible voters.

(3) The Constitution of every Local Government shall provide that elections to the Council shall be conducted once in every fourth calendar year, and the term of office of any elected member shall not exceed four (4) calendar years, as follows:

(a) if the general election is by ballot, the election shall, beginning in the year 1995, be conducted in every fourth calendar year on the third Monday in November in accordance with Section 140 of the Elections and Referenda Act 1980 (2 MIRC 1); or

(b) if the general election is by consensus, the first election meeting of the general election shall, beginning in the year 1995, be conducted in every fourth calendar year on the third Monday in November in accordance with Part VI, Division 2 of this Chapter. [P.L. 1981-2, §13, amended by P.L. 1991-2, §2(1), deleting subsection (3) and substituting new subsection (3).]

§114. The executive.

(1) The constitution of every local government shall provide for an executive committee, which shall be the principal executive arm of local government and shall have such powers, functions, duties and responsibilities as are conferred or imposed on it by this or any other Act, the constitution of the local government or an ordinance.

(2) The executive committee shall consist of the head of the local government and such other members of the Council selected in such manner as the constitution provides.

(3) Nothing in Subsection (2) of this Section prevents:

(a) persons other than members of the Council being nonvoting members of the executive committee; or

(b) the executive committee including all members of the Council. [P.L. 1981-2, §14.]

§115. The head of the Local Government.

(1) The constitution of every local government shall provide for an office of head of the local government, and for the manner of election or appointment to it.

(2) Unless the appointment is an ex officio one, the term of office of the head of a local government shall not exceed four (4) years.

(3) The head of a local government:

(a) is the chairman of the executive committee;

(b) if he is not already a member of the Council, is ex officio a member of it; and

(c) has such powers, function, duties and responsibilities as are conferred or imposed on him by this or any other Act, the constitution of the local government or an ordinance.

[P.L. 1981-2, §15.]

§116. Staff.

(1) The constitution of every local government shall make provision for the staff of the local government.

(2) The staff of a local government are not members of the Public Service, and Article VII of the Constitution of the Marshall Islands does not apply to them.

(3) Nothing in this Section prevents the Minister from making arrangements for the secondment to a local government of a member of the Public Service, or from making available to a local government the services of a member of the Public Service. [P.L. 1981-2, §16.]

§117. Meetings of Councils.

(1) The constitution of every local government shall provide for a meeting of the Council at least once every three (3) months.

(2) Unless the constitution of a local government provides for a quorum that is different (not being less than one-half (½) of the total membership), the quorum for a meeting of the Council shall be one-half (½) of the total membership.

(3) Unless this Chapter or the constitution of the local government requires a greater majority for a particular purpose, all questions at a meeting of a Council shall be decided according to the majority of the votes of those present and voting.

(4) Unless the constitution of a local government provides otherwise:

(a) the head of the local government shall preside at all meetings of the Council when he is present, and in his absence a member of the Council elected by the members present shall preside;

(b) the member presiding has a deliberative vote but not a casting vote; and

(c) no decision shall be made on an evenly divided vote.

(5) Subject to this Chapter and the constitution of the local government, a Council shall make its own rules of procedure. [P.L. 1981-2, §17; amended by P.L. 1981-J6, §2, amending Subsection (1) to change the meeting from once every month to once every three months.]

§118. Budget and accounts.

(1) The constitution of a local government shall provide for the executive committee to introduce into the Council at least one set of budget estimates of revenues and expenditures and at

least one Appropriation Ordinance with respect to each financial year, and shall further provide that no money of the Council shall be expended unless appropriated by ordinance for the purpose, or for a purpose that includes the purpose, for which it is to be expended.

(2) Subject to any instructions issued under Section 146(2) of this Chapter, the constitution of a local government shall make provision, to the satisfaction of the Minister, for the keeping of proper accounts and records of revenue, expenditure, assets and liabilities. [P.L. 1981-2, §18.]

§119. Wards.

(1) The constitution of a local government may provide for the division of the local government area into areas to be known as wards, each returning one or more members to the Council.

(2) Nothing in Subsection (1) of this Section prevents:

(a) the whole of a local government area being declared to be a single ward for all or any purposes; or

(b) a ward consisting of a number of other wards.

[P.L. 1981-2, §19.]

§120. Amendment of the constitution.

(1) The constitution of a local government shall provide for its amendment either:

(a) by ordinance approved by a two thirds (2/3) majority of the total membership of the Council;

(b) by ordinance ratified by referendum of all eligible voters in the local government area; or

(c) by both such procedures.

(2) The constitution may prescribe additional requirements (such as special notice) for its amendment. [P.L. 1981-2, §20.]

PART V - AMALGAMATION AND TRANSFER OF TERRITORY

§121. Amalgamation.

(1) With the approval of the Minister (which approval shall not be unreasonably withheld), any two or more local governments may, by resolution, decide to amalgamate.

(2) On the passing of the resolutions, the local governments concerned may, by agreement, establish a constitutional convention consisting of some or all of their members and such other persons (if any) as are agreed.

(3) The constitutional convention may adopt a constitution in accordance with this Chapter for the combined area of the local governments.

(4) The constitution so adopted shall be subject to:

(a) ratification:

(i) by resolution of each Council; and

(ii) by a majority of the eligible voters in each of the local government areas in a referendum in the combined area of the local governments; and

(b) approval by the Minister.

(5) The Minister shall not withhold his approval under Subsection (4)(b) of this Section

unless he is satisfied, after consultation with the Attorney-General, that the constitution is inconsistent with this Chapter.

(6) If the Minister withholds his approval in accordance with Subsection (5) of this Section, he may suggest amendments to remove the inconsistency, and if those amendments are agreed to by a two-thirds (2/3) majority of the total membership of each Council, or a majority of the eligible voters in each of the local government areas in a referendum in the combined area of the local governments, the constitution, as amended accordingly, shall be deemed to have been ratified and approved in accordance with Subsection (4) of this Section.

(7) Where there is more than one local government on an atoll or island, the Cabinet may, by written order to each of them, require them to amalgamate, in accordance with this Section, within a period, not being less than six (6) months, fixed by the Cabinet or such longer period as the Minister allows.

(8) If at the end of the period referred to in Subsection (7) of this Section, the local governments have not amalgamated, the Cabinet may, by order to each of them, declare that the provisions of the Schedule appearing at the end of this Chapter, apply with respect to the atoll or island, with such modifications to meet local requirements as the Minister may, after consultation with the Attorney General, by order determine.

(9) In a case to which Subsection (8) of this Section applies, on the effective date of the new constitution:

- (a) the former local governments are abolished; and
- (b) all property, assets and liabilities of the former local governments rest in the new local government for the atoll or island in such manner and on such conditions as the Minister, after consultation with the Attorney-General, by order determines. [P.L. 1981-2, §21.]

§122. Transfer of property.

(1) Two local governments may agree on the transfer of part of the area of one into the area of the other, or for the exchange of areas.

(2) The transfer or exchange shall not take effect unless and until:

(a) it is approved by the Minister (which approval shall not be unreasonably withheld);

(b) the agreement has been ratified by a majority of the eligible voters in each of the local government areas, and a majority of the eligible voters in the area to be transferred (or in each of the areas to be exchanged) in referendum in the combined area of the local agreements; and

(c) the constitution of each local government has been amended, conditioned on the agreement taking effect, to make adjustments to take account of the transfer or exchange. [P.L. 1981-2, §22.]

PART VI- ELECTIONS

DIVISION - 1

§123. Electoral methods.

(1) Elections for the purposes of this Chapter shall be either by ballot, or by consensus, and

where provision is made in the constitution of a local government for an election the constitution may specify which method shall be used.

(2) If a constitution does not so specify, elections shall be by ballot. [P.L. 1981-2, §23.]

§124. Elections by ballot.

An election that is to be conducted by ballot shall be conducted in accordance with the Elections and Referenda Act 1980 (2 MIRC 1). [P.L. 1981-2, §24.]

§125. Elections by consensus.

An election that is to be conducted by consensus shall be conducted in accordance with Division 2 of this Part. [P.L. 1981-2, §25.]

Division 2- Election by Consensus

§126. Certifying officers.

(1) The Chief Electoral Officer shall appoint for each local government area one or more responsible and impartial persons to be the certifying officer or officers for the area.

(2) The head of the local government, a member of the Council, or a candidate, is not eligible to be a certifying officer. [P.L. 1981-2, §26.]

§127. Announcement of election.

When an election is to be held, a certifying officer shall, in whatever manner is customary in the area concerned for the announcement of important news, announce two election meetings, on dates approximately one week apart. [P.L. 1981-2, §27.]

§128. Election meetings.

(1) At the first election meeting, a certifying officer shall:

(a) carefully explain the purpose of the meeting;

(b) exclude, to the best of his ability, all persons who are not eligible voters;

(c) attempt to get a decision by the consensus as to the person or persons to be elected, or as to acceptable candidates; and

(d) immediately before closing the meeting, publicly announce his findings (if any), the date of the next meeting, and the fact that the purpose of the meeting will be to make a final decision.

(2) At the second election meeting, a certifying officer shall:

(a) carefully explain the result (if any) of the previous meeting and the purpose of the present meeting;

(b) exclude, to the best of his ability, all persons who are not eligible voters;

(c) attempt to get a decision, or a confirmation of the previous decision, by consensus as to the person or persons to be elected; and

(d) if he gets a decision:

(i) announce the fact and close the meeting; and

(ii) certify the result to the local government and to the Chief Electoral

Officer; or

(e) if he does not get a decision, proceed in accordance with Subsection (l)(d) of this Section and hold a further meeting or further meetings until either:

(i) a decision is arrived at (in which case he shall proceed in accordance with Paragraph (d) of this Subsection): or

(ii) he decides that a decision by consensus is not likely to be arrived at within a reasonable time.

(3) If the certifying officer decides that a decision by consensus is not likely to be arrived at within a reasonable time, he shall certify accordingly to the local government and to the Chief Electoral Officer, and an election by ballot shall be held as soon as practicable. [P.L. 1981-2, §28.]

§129. Declaration of result of election.

The result of the election shall be announced in the same manner as the result of an election by ballot, under Section 185 of the Elections and Referenda Act 1980 (2 MIRC 1). [P.L. 1981-2, §29.]

Division 3- Miscellaneous

§130. Unmanageable electorates.

Where in the opinion of the Chief Electoral Officer an electorate is such (whether because of area, number of electors, geography or otherwise) that the holding of a single meeting for the purposes of an election would be impracticable, or would be ineffective to properly ascertain public opinion, he may, by written order to the local government, so declare, either generally or in a particular case, and all elections, or the particular election, as the case may be, in that electorate shall be by ballot. [P.L. 1981-2, §30.]

§131. Administrative instructions by Chief Electoral Officer.

(1) The Chief Electoral Officer may issue administrative instructions, not inconsistent with this Chapter, for the guidance of certifying officers and others in the conduct of elections by consensus.

(2) Failure to comply with any provision of any instruction issued under Subsection (1) of this Section does not of itself invalidate an election. [P.L. 1981-2, §31.]

§132. Offenses in relation to elections by consensus.

(1) The following provisions of the Elections Offenses Act (2 MIRC 2), with the necessary modifications, apply to and with respect to elections by consensus in the same way that they apply to and with respect to elections by ballot:

- (a) Section 205 (double voting);
- (b) Section 206 (personation);
- (c) Section 207 (voting while not entitled);
- (d) Section 210 (radio campaigning on polling day);
- (e) Section 211 (Bribery);
- (f) Section 212 (intimidating Voters and candidates);
- (g) Section 214 (interference with election or referendum);
- (h) Section 215 (false and misleading information);

- (i) Section 216 (gambling on polling
- (j) Section 217 (alcoholic beverages on polling day);
- (k) Section 218 (general penalty); and
- (1) Section 219 (attempts).

(2) For the purposes of the application to elections by consensus of the provisions of the Elections and Referenda Act 1980 (2 MIRC I) referred to in Subsection (1) of this Section, references in those provisions to the day of an election shall be read as references to the day of any meeting held under Section 128 of this Chapter. [P.L. 1 981-2, §32.][Offenses in §211 and 212 modified by P.L. 2003-80].

PART VII- GRANTS TO LOCAL GOVERNMENTS

§133. The Fund.

(1) A Local Government Fund is hereby established, for the specific purpose of acting as a channel through which monies may be granted by the Government of the Marshall Islands to local governments.

(2) The Local Government Fund is a [trust and agency] fund within the National Treasury and under the control and supervision of the Ministry of Finance, which shall provide for its administration in accordance with the Financial Management Act of 1990, as amended, 11 MIRC 1. [P.L. 1981-2, §33; amended by P.L. 1981-16, §3, replacing “Local Government Fund” amended by P.L. 1994-99, §3(2).]

§134. Payments into the Fund.

There shall be paid into the local Government Fund any amounts appropriated by the Nitijela for the purposes of the Fund, and any other amounts payable by or under any other law into the Fund. [P.L. 1 981-2, §34; amended by P.L. 1981-16, §4, substituting new Section 34.]

§135. Payments out of the Fund.

Monies may be paid out of the Local Government Fund only to or on behalf of local governments. [P.L. 1981-2, §35; amended by P.L. 1981-16, § 5, replacing “Local Government Trust Fund” with “Local Government Fund”.]

§136. Withdrawals, etc.

(1) No money may be withdrawn from the Local Government Fund except with the authority of the Secretary of Finance, who shall satisfy himself that the withdrawal is made in accordance with this Chapter, and any other applicable law.

(2) A delegation under Article VIII, Section 5(1) of the Constitution of the Marshall Islands to expend monies out of the Local Government Fund is given to the Secretary of Finance. [P.L. 1981-2, §36; amended by P.L. 1 981-1 6, § 6, adding “and any other applicable law” to Subsection (1) and replacing “Local Government Trust Fund” with “Local Government Fund”]

§137. Accounts, etc.

(1) The Secretary of Finance shall maintain proper accounts and records of the Local Government Fund, and the accounts to be laid before the Nitijela by the Minister of Finance under Article VIII, Section 5(4) of the Constitution of the Marshall Islands shall include amounts relating

to the Fund.

(2) The accounts and records maintained under Subsection (1) of this Section are subject to audit under Article VIII, Section 15 of the Constitution of the Marshall Islands. [P.L. 1981-2, §37; amended by P.L. 1981-16, §7, replacing “Local Government Trust Fund” with “Local Government Fund”]

PART VIII- RELATIONS WITH CENTRAL GOVERNMENT

§138. Functions of Secretary.

The Secretary shall maintain a continuing general oversight of the operation of the system of local government and of the individual local governments, and in particular shall:

(a) coordinate relations between each local government and the Government of the Marshall Islands;

(b) arrange periodic seminars and workshops for the purpose of training and informing members of the staffs of local governments:

(c) supervise the Local Government Advisor referred to in Section 139 of this Chapter; and

(d) at least one in each period of twelve (12) months, at such time or times as is or are directed by the Minister, submit to the Minister a report summarizing the needs, problems and achievements of each local government and of the system of local government, with appropriate recommendations. [P.L. 1981-2, §38.]

§139. Local Government Advisor.

(1) Within the Ministry there shall be a Local Government Advisor.

(2) The function of the Local Government Advisor is to maintain personal and regular contact with the local governments so as:

(a) to expedite the exchange of information between the local governments and the Secretary;

(b) to assist in identifying the needs of each local government area for effective and efficient self-government;

(c) to check that the procedures and practices of each local government comply with the law; and

(d) generally to assist local governments. [P.L. 1981-2, §39.]

§140. Audit.

(1) The Minister may arrange for an audit inspection of the funds and accounts of a local government to be carried out by the Auditor-General or a person authorized by him in the following circumstances:

(a) on the petition of not less than twenty-five percent (25%) of the registered voters in the local government area; or

(b) of his own motion, if he has reason to suspect any fiscal irregularity in the conduct of the affairs and operations of the local government.

(2) For the purpose of an audit inspection under Subsection (1) of this Section, the Auditor-General or authorized person has the powers and rights specified in Article VIII, Section 15 of the Constitution of the Marshall Islands.

(3) The report on the audit inspection shall be sent to the Minister (who may, if he thinks it proper to do so, publish it), and to the local government. [P.L. 1981-2, §40.]

(4) Where the Minister has been provided with evidence that any member of a Local Government has committed or is committing illegal activities, the Minister shall refer the matter to the Attorney General's office for further investigation or prosecution

(5) For the purposes of subsection (4), evidence provided to the Minister may include:

- (a) findings of the Auditor-General in the report provided under subsection (3); or
- (b) reliable evidence from any other source.

(6) Any member of a Local Government who is convicted of an offense under this Chapter or any other enactment of the Marshall Islands or under the Constitution of Local Government shall:

- (a) if convicted of a misdemeanor offense, be suspended; or
- (b) if convicted of a felony, be terminated from employment.

(7) Where an elected official has been required to stand down from office under subsection 6(b), a new officer shall be elected or appointed in accordance with the provisions of the Constitution of that Local Government. [P.L. 1981-2, §40.] [Amended by P.L. 2006-67]

§141. Inquiries.

(1) The Minister may appoint, in writing, a person to inspect the affairs of a local government under the following circumstances:

- (a) on the petition of not less than twenty-five percent (25%) of the registered voters in the local government area; or
- (b) of his own motion, if he has reason to suspect any irregularity, mismanagement or failure to comply with the law in the conduct of the affairs and operations of the local government.

(2) An inspector:

- (a) shall be allowed, by the local government and other persons, full and free access to all records of or relating to the local government,
 - (b) may take evidence, orally or in writing, from any person, on oath or affirmation;
 - (c) may require any person to attend and give evidence, or to produce any document;
- and

(d) generally, shall make full and impartial inquiry into the affairs and operations of the local government.

(3) For the purposes of his inquiry an inspector may administer oaths and affirmations.

(4) A person who hinders or obstructs an inspector in the performance of his functions, or subject to Subsection (5) of this Section, fails to comply with a requirement under Subsection (2)(c) of this Section, shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$500 or to a term of imprisonment not exceeding six (6) months, or both.

(5) It is a defense to a charge of an offense against Subsection (4) of this Section if the accused person proves that the evidence or document was not relevant to the inquiry.

(6) The report of the inquiry shall be sent to the local government and to the Minister who may, if he thinks it proper to do so, publish it.

(7) Where the Minister has been provided with evidence that any member of a Local

Government has committed or is committing illegal activities, the Minister shall refer the matter to the Attorney General's office for further investigation or prosecution.

- (8) For the purposes of subsection (7), evidence provided to the Minister may include-
- (a) findings of the inspector in the report provided under subsection (6); or
 - (b) reliable evidence from any other source.

(9) Any member of a Local Government who is convicted of an offense under this Chapter or any other enactment of the Marshall Islands or under the Constitution of a Government, shall:

- (a) if convicted of a misdemeanor offense, be suspended; or
- (b) if convicted of a felony, be terminated from employment.

(10) Where an elected official has been required to stand down from office under subsection 9(b), a new officer shall be elected or appointed in accordance with the provisions of the Constitution of that Local Government. [P.L. 1981-2, §41.][Amended by P.L. 2006-67].

§142. Suspension of local government.

(1) If the operation, administration or financial condition of a local government endangers the health, safety or economic well being of a local government area, or if suspension is recommended in a report under Section 140 or 141 of this Chapter, the Cabinet may, by written order served on the local government:

- (a) suspend the operation of a local government; and
- (b) appoint an Administrator-Receiver for the local government and vest in him some or all of the powers and functions of the local government.

(2) In relation to powers and functions vested in him under Subsection (1)(b) of this Section, the Administrator-Receiver shall be deemed to be, and shall act in the name of, the local government.

(3) The suspension and the appointment of an Administrator-Receiver shall be immediately communicated to the local government and promulgated in the local government area.

(4) Nothing prevents an action for declaratory judgment in the High Court or other remedy by any member of the Council arising out of the same issues, or out of the suspension or of the appointment or actions of the Administrator Receiver.

(5) The suspension of a local government and the appointment of an Administrator Receiver terminates automatically upon the occurrence of either of the following, but in any case upon termination by the Cabinet:

- (a) if the High Court advises or declares that the appointment was not justified;
- (b) at the end of the period of one year;
- (c) immediately after the next general election to the Council; or
- (d) when the Administrator-Receiver advises the Minister, in writing, that the danger is past or the other cause of the suspension has been eliminated.

(6) An Administrator-Receiver may, by notice in writing to the Minister, resign his office, and the Cabinet may terminate his appointment at any time without terminating the suspension.

(7) Prior to the end of the term of appointment of the Administrator-Receiver, or in the case of a termination under Subsections (5) or (6), on the termination of his or her appointment, an Administrator-Receiver shall account to:

- (a) the Minister; and
- (b) through the Minister, to the Cabinet and the local government -

for his activities (including his financial and property operations). [P.L. 1981-2, §42.][Amended

by P.L. 2006-67].

§143. National budget consultation.

Before allocating in the budget estimates finance to and as between local governments, the Cabinet shall consult with the heads of all local governments. [P.L. 1981-2, §43.]

§144. Order of collection of taxes.

Without prejudice to the generality of the provisions in Article IX, Section 2(2) of the Constitution of the Marshall Islands:

(a) A local government Council may impose and collect tax on the consumption of beer and liquor; and

(b) If a local government tax is of the same kind as a Central Government tax liability to the latter has priority over liability to the former. [MI. Code (1975) if 4.201-4.203; amended by P.L. 1981-2, §44.]

§145. Vesting of certain Central Government functions in local governments.

(1) With the agreement of the local government, where the Cabinet is of the opinion that, because of its being of essentially local concern a Central Government law would more appropriately be administered, or a function vested by a Central Government law in a member of the Public Service would more appropriately be performed (in relation to the area of a local government) by the local government, the Cabinet may, by order, vest the administration of that law, or the performance of that function, in the local government in relation to that area.

(2) An ordinance may make provision for the more effective implementation of an order under Subsection (1) of this Section. [P.L. 1981-2, §45.]

§146. Administrative memoranda by Minister.

(1) The Minister may issue instructions (to be known as “Local Government Administrative Memoranda”), not inconsistent with this Chapter, relating to matters of administration and procedures in the system of local government, and in particular with respect to:

(a) the format and publication of ordinances; and

(b) collaboration and the coordination of activities between local governments and between local governments and the Government of the Marshall Islands

(2) The Minister, after consultation with the Minister of Finance, may issue instructions (to be known as “Local Government Financial Memoranda”), not inconsistent with this Chapter, relating to matters of financial administration in the system of local government, and in particular with respect to:

(a) accounts and accounting;

(b) the maintenance of proper records of the financial transaction of local governments and of dealings with their property or property in their possession or control; and

(c) the duties and responsibilities of members of the staffs of local governments in these regards.

(4) Failure to comply with any instruction issued under Subsection (1) or (2) of this Section does not of itself invalidate or make ineffective any act of a local government acting on its behalf, but such a failure may be a ground for disciplinary or other proceedings against a person if an Act

or an ordinance so provides. [P.L. 1981-2, §46.]

§147. Reports by Minister.

(1) The Minister shall, at least one in every period of twelve (12) months present to the Nitijela a report on the operation of this Chapter and of the system of local government.

(2) At the first appropriate opportunity, the Minister shall report to the Nitijela the suspension under Section 142 of this Chapter of the operation of a local government, or the termination of a suspension. [P.L. 1981-2, §47.]

PART IX - MISCELLANEOUS

§148. Inter-governmental arrangements.

(1) Two or more local governments, or the Minister on behalf of the Government of the Marshall Islands and one or more local governments, may agree as to the performance of any work or service by one party on behalf of another party, on such terms and conditions as are agreed on.

(2) Subsection (1) of this Section extends to the collection of taxes and tax-sharing arrangements.

(3) An agreement under Subsection (1) of this Section is of no force or effect until ratified by ordinance by each of the local governments involved. [P.L. 1981-2, §48]

§149. Joint committees.

(1) Two or more local governments may agree on the establishment of a joint committee to perform any function (other than the power to make laws) which can more effectively be performed jointly.

(2) An agreement under Subsection (1) of this Section is of no force or effect until ratified by ordinance by each of the local governments involved. [P.L. 1981-2, §49.]

§150. Loans.

(1) A loan made to a local government, or a charge against the future revenue of a local government, is void and unenforceable unless authorized or ratified by ordinance.

(2) Unless authorized by the Minister a local government shall not incur indebtedness chargeable to future revenue which extends beyond the next five (5) full financial years, and a local government shall not in any financial year incur any indebtedness or grant any charge against future revenue such that the total liability of the local government in that year for debt services exceeds fifteen percent (15%) of the estimated revenue for that year.

(3) Subsections (1) and (2) of this Section do not apply to the acceptance of loans from, or the granting of charges to, the Government of the Marshall Islands.

(4) In this Section, "debt service" means payment of the interest on a loan, loan charges and such installments of principal as are or become legally due. [P.L. 1981-2, §50; amended by P.L. 1986-37, §2, including the words "unless authorized by the Minister" in Subsection (2).]

§151. Peace Officers.

(1) A local government may, by ordinance, provide for the appointment and powers of peace officers.

(2) The powers conferred under Subsection (1) of this Section may include power to enforce all or any ordinances, but unless deputized by the Chief of Police for the purpose, no peace officer

may enforce any Central Government law.

(3) Nothing in Subsection (1) of this Section prevents persons other than peace officers from being empowered by law to enforce particular ordinances. [P.L. 1981-2, §51.]

§152. Service on Local Government.

Where any document or thing is to be given to, served on or communicated to a local government, it may be given to, served on or communicated to the head of the local government. [P.L. 1981-2, §52.]

§153. Regulations.

The Cabinet may make regulations, not inconsistent with this Chapter, prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Chapter and in particular with regard to the exercise of the powers and the performance of the functions, duties and responsibilities of an Administrator-Receiver. [P.L. 1981-2, §53.]

§154. Reserved.

PART X - TRANSITIONAL PROVISIONS

§155. Saving of existing local governments.

(1) For the avoidance of doubt it is hereby declared that, subject to Subsection (2) of this Section and to Section 108 of this Chapter, nothing in this Chapter affects the status or identity of any local government, or of the Council, executive committee or head of any local government, in existence immediately before the effective date, or any act done or suffered by or in relation to any local government before that date.

(2) An ordinance in force immediately before the effective date of this Chapter continues in force as of that date except to the extent that it is inconsistent with this Chapter or the constitution of the local government. [P.L. 1981-2, §55.]