

TITLE 34

PUBLIC UTILITIES

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CHAPTER 1 POHNPEI UTILITIES CORPORATION

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§1-101. Corporation established. — There is hereby established in and for Pohnpei a public corporation to be known as the Pohnpei Utilities Corporation, hereinafter referred to as the “Corporation.”

Source: S.L. No. 2L-179-91 §1, 2/14/91

§1-102. Responsibilities, duties, and powers of the Corporation. – The Corporation is vested with the following powers, duties, and responsibilities:

(1) To provide electrical power, piped and bottled water and sewage services, hereinafter referred to as “public utilities services,” to the people of Pohnpei through the operation of public utilities systems which meet or exceed health, quality, and safety standards established by state law or regulations; PROVIDED that public utilities systems shall not include water systems operated by the local governments of this state unless such a system is transferred to the Corporation on terms mutually agreed upon by the Corporation and the respective local government in which the water system is situated; PROVIDED FURTHER that the Corporation shall not engage in the sale of bottled water for consumption or resale within the state of Pohnpei;

(2) To operate and manage the Pohnpei public utilities systems on the basis of commercially accepted practices, treating all users of the Corporation's services on equitable terms in accordance with its published fees, and requiring all users to pay for services rendered;

(3) To expand and improve upon services offered to the public, and where practicable and necessary, construct and operate new facilities in densely populated or remote areas that are now beyond ready access to existing public services;

(4) To publish and implement a structure of rates for services and products rendered or sold by the Corporation. Such rates are to be determined by the Board of Directors after consultation with the Board of Residential Properties and Public Utilities, and calculated to ensure that, to the extent practicable, adequate and equitable charges are imposed for services and that the fee structure promotes increased use of public utilities services; PROVIDED that nothing in this subsection shall prevent the Corporation from using subsidies received from governmental, international or private sources to reduce the overall costs charged to users of public utilities services; PROVIDED FURTHER that electrical power services, herein referred to as "Class A services," shall be charged and accounted for separately from water and sewage services, herein referred to as "Class B services," and that no class of utilities services provided to a customer may be suspended or cancelled due to nonpayment of a rate or charge imposed by the Corporation for the provision of any other class of utilities services distributed by the Corporation or any service related to that other class of utilities services;

(5) To acquire and maintain from the revenues and grants received by the Corporation a program of liability insurance on all personnel, facilities, and equipment controlled by the Corporation; PROVIDED that if such insurance is not available or is prohibitively expensive, as determined by the Board of Directors of the Corporation, then the Corporation shall establish and maintain a special fund to protect personnel, facilities, and equipment not covered by insurance and to satisfy judgments or settlements on tort claims brought against the Corporation for its operations under this chapter;

(6) To invest all surplus revenues of the Corporation in the expansion and improvement of public utilities services in Pohnpei;

(7) To acquire land for public purposes subject to Article 12 of the Pohnpei Constitution and applicable law;

(8) To obtain and operate bottling machinery and water purification systems and engage in the marketing and sale of potable water to destinations outside of the state of Pohnpei; PROVIDED that any revenues derived therefrom above the costs of exporting the potable water shall be devoted to subsidizing the rates charged for piped water and sanitation services provided by the Corporation to the residents of Pohnpei; and

(9) To enter on any private or public land, house or building to which public utilities services have been, are or will be supplied, or through which utilities equipment, pipes or lines are, or will be located in order:

(a) To survey, take readings, make installations or fittings, remove meters or other instruments for measuring the quantity of public utilities services supplied;

(b) To dig out and replace or redistribute at the instruction of the landowner earth, stone, soil, sand, and gravel whatsoever for the construction, maintenance or alteration of any equipment, pipe or line, or any part thereof;

(c) To cut and remove any tree or any branch of a tree growing on such lands which may in any way affect or interfere with the operation of public utilities equipment;

(d) To open or break up any road, subject to such laws, regulations, and required agreements as may be imposed on persons engaged in construction, or otherwise obstructing public roadways;

(e) To erect and maintain posts, staywires, poles or pillars, or pipes in, upon or under any land; or

(f) For any other purpose in connection with the continued provision of public utilities services as may be agreed upon, or in the case of difference, to be determined by arbitration as set forth by rules established under this chapter.

Source: S.L. No. 2L-179-91 §2, 2/14/91; S.L. No. 3L-41-93 §1, 8/2/93; S.L. No. 5L-120-03 §1, 7/10/03

§1-103. Legal characteristics and capacity of the Corporation. — In performing the responsibilities and duties authorized by this chapter and other laws of this state, the Corporation shall have all of the characteristics of a public corporation and the capacity to exercise all powers normally exercised by a public corporation, including, but not limited to, the following:

(1) To adopt, alter, and use a corporate seal;

(2) To adopt and amend bylaws and other rules, regulations, and directives governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law. No bylaw, rule or regulation other than that covering the internal operation of the Corporation shall be adopted without a public hearing;

(3) To set interest charges or other monetary penalties, require security deposits, establish monetary penalties, and procedures for termination, and to set such other procedures and policies to ensure timely payment and collection of public utilities bills;

(4) To sue and be sued in its corporate name; PROVIDED that satisfaction of judgments or the settlement of claims on tort actions against the Corporation may only be paid out of insurance held by the Corporation or the special fund created by the Corporation pursuant to §1-102(5), and not out of the other assets or operating capital of the Corporation, and for these purposes the doctrine of sovereign immunity is recognized and maintained for this public Corporation to the extent not expressly waived by Pohnpei public law; PROVIDED FURTHER that nothing in this subsection shall prevent the Legislature from making direct appropriations into the special fund created in §1-102(5) for the purpose of assisting the Corporation in the satisfaction of judgments and providing self-insurance protection for personnel, facilities, and equipment not covered by insurance on such tort actions or settlement of tort claims brought against the Corporation;

(5) To acquire, in any lawful manner, real, personal or mixed property, either tangible or intangible; to hold, maintain, use, and operate such property; and to sell, lease or otherwise dispose of such property;

(6) To acquire and take over, in any lawful manner, the business, property, assets, and liabilities of any public entity of Pohnpei to the extent of its provision of public utilities services;

(7) To borrow or raise any sum or sums of money and to issue corporate bonds on such security and upon such terms as may from time to time be deemed necessary for the expansion and improvement of public utilities services;

(8) To retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as the Corporation deems appropriate; and

(9) To do all such things as may be incidental to or conducive to the attainment of the responsibilities and duties of the Corporation.

Source: S.L. No. 2L-179-91 §3, 2/14/91; S.L. No. 3L-41-93 §2, 8/2/93

§1-104. Debts and obligations of the Corporation. — Unless otherwise expressly provided by law, the debts and obligations of the Corporation shall not be the debts or obligations of the Pohnpei Government, nor shall the Pohnpei Government be responsible for any such debts or obligations.

Source: S.L. No. 2L-179-91 §4, 2/14/91

§1-105. Tax liability. — The Corporation shall exist and operate solely for the benefit of the public and shall be exempt from any taxes or assessments on any of its property, operations or activities imposed by the Pohnpei Government or local governments and, to the extent allowable, the government of the Federated States of Micronesia. Nothing herein shall be deemed to exempt

employees and independent contractors of the Corporation from tax liability for services rendered to the Corporation, and the Corporation shall be liable for employers' contributions to existing social security systems in the manner provided by law.

Source: S.L. No. 2L-179-91 §5, 2/14/91

§1-106. Composition of the Board; removal; vacancies. — All powers vested in the Corporation shall be exercised by the Board, which shall consist of seven members, called directors, who shall be appointed by the Governor with the advice and consent of the Pohnpei Legislature. Initially, the Governor shall appoint four members of the Board to four-year terms and three members to two-year terms. Thereafter, persons appointed shall hold membership on the Board for a period of four years, subject to reappointment, and until their successors have been appointed and qualify. Four members of the Board shall be appointed from the public sector and three members from the private sector. No member shall be appointed who is more than three months delinquent in paying one or more of his or her public utilities bills, nor shall any member be appointed who has twenty-five percent (25%) or more ownership interest in a business that is more than three months delinquent in paying one or more of its public utilities bills. Members of the Board of Directors may be removed for good cause by the Governor, good cause to include delinquency in the payment of public utilities bills for a period greater than three months. All vacancies occurring on the Board shall be filled by the Governor with the advice and consent of the Legislature, but only for the unexpired term of the member whose vacancy is being filled.

Source: S.L. No. 2L-179-91 §6, 2/14/91; S.L. No. 3L-41-93 §3, 8/2/93; S.L. No. 7L-21-09 §1, 1/9/09

§1-107. Meetings of the Board. — Within 15 days after the confirmation of the initial Board, the Governor shall call an organizational meeting, and annually thereafter, the Board shall hold a meeting for the purpose of electing its officers for the ensuing year. The Board shall meet once a month and shall hold at least one public meeting each calendar quarter and other public meetings as it may deem necessary for the transaction of its general business.

Source: S.L. No. 2L-179-91 §7, 2/14/91

§1-108. Organization of the Board; quorum; compensation and expenses. — The Board shall organize by electing one of its members as Chairman and another as Vice-Chairman. The Board shall also designate from among its members a Secretary to keep the minutes and records of the Board. Any four members of the Board shall constitute a quorum, and a concurrence of four members shall be necessary for any official action taken by the Board unless otherwise provided herein. No vacancy in membership of the Board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Board. Directors shall be compensated at the rates established by the Government Officers' Salary Act, Title 9 Chapter 4 Subchapter I, as amended or superseded by Pohnpei law, when actually attending meetings of the Board, except that those members who are government employees shall instead receive regular salaries while performing functions of the Board. Directors shall also receive travel expenses and per diem at Pohnpei Government rates when these amounts would be payable to Pohnpei Government employees in the same circumstances.

Source: S.L. No. 2L-179-91 §8, 2/14/91

§1-109. Appointment of general manager; duties; removal. — The Board shall appoint a general manager pursuant to its articles and bylaws and fix his compensation. The general manager shall have full charge and control of the operation and maintenance of all the electrical facilities and other real and personal property controlled by the Corporation, and of construction of any facilities and necessary work on vehicles, vessels, and equipment controlled by or required to be rebuilt or repaired by the Corporation. The Board may remove the general manager for good cause upon a majority vote

. During any period when the position of general manager is vacant, the position shall be temporarily filled from within the organization pursuant to the articles of incorporation and bylaws.

Source: S.L. No. 2L-179-91 §9, 2/14/91

§1-110. Powers of the general manager. — The general manager of the Corporation shall have the following powers:

- (1) To ensure that all fees and bills imposed by the Corporation are charged and collected;
- (2) To attend all meetings of the Board and to submit a general report on the affairs of the Corporation;
- (3) To keep the Board advised on the needs of the Corporation;
- (4) To approve demands for payment of obligations within the purposes and amounts authorized by the Board;
- (5) To prepare or cause to be prepared all plans and specifications for the construction and repair of facilities, vehicles, vessels, and equipment operated by the Corporation;
- (6) To devote his entire time to the business of the Corporation; to select and appoint the employees of the Corporation except as otherwise provided in this chapter; to plan, organize, coordinate, and control the services of such employees in the exercise of the powers of the Corporation under the general direction of the Board; and, in lieu of hiring employees to perform any of the tasks, work or other services required by the Corporation, to contract with independent contractors, as persons, organizations or corporations, to provide such services;
- (7) To cause to be published, within 60 days after the end of each fiscal year, a financial and operations statement showing the result of operations for the preceding fiscal year and the financial status of the Corporation on the last day thereof, which publication shall be made in the manner provided by the Board; and
- (8) To perform such other and additional duties as the Board may require.

Source: S.L. No. 2L-179-91 §10, 2/14/91

§1-111. Appointment of comptroller and general counsel; duties of each. — The general manager shall appoint a comptroller and a general counsel, both of whom shall report to the general manager. The comptroller and the general counsel may be terminated for good cause by the general manager. The comptroller and the general counsel shall be compensated at a rate determined by the Board. Such officers may be full-time employees of the Corporation, shared with Pohnpei Government agencies, or be placed on retainer from the private sector. The general manager may appoint one or more assistants to any such office.

(1) The comptroller shall have custody of all monies of the Corporation and shall pay out such money only in accordance with the direction of the Board and as provided in the annual budget of the Corporation. The Board shall appoint an agent as its trustee for payment of bonds issued by it and for such related purposes as the Board may provide.

(2) The general counsel shall advise the Board and the general manager in all legal matters to which the Corporation is a party or in which the Corporation is legally interested, and may represent the Corporation before the Congress of the Federated States of Micronesia, the Pohnpei Legislature, boards and governmental agencies of Pohnpei, the Federated States of Micronesia, and the United States of America.

(3) The Corporation may use the services of the attorneys for the Pohnpei Government to serve as attorneys for the Corporation, or it may appoint such attorney or attorneys as it may deem necessary, and it shall provide payment of all legal services rendered. All official documents, contracts, bonds, and other instruments in writing shall be approved as to form and legality by the general counsel for the Corporation. Such approval may be conclusively evidenced by the signature of the general counsel thereon.

Source: S.L. No. 2L-179-91 §11, 2/14/91

§1-112. Contract-letting by the Board; exception. — The purchase of all supplies and materials and the construction of all works by independent contractors, when the expenditure exceeds \$25,000, shall be, by contract, let to the lowest responsible bidder. Notice requesting bids shall be published at least ten days before bids are received. The Board may reject any and all bids and readvertise at its discretion.

(1) If, after rejecting bids for materials and supplies, the Board determines that, in its opinion, the materials and supplies may be purchased at a lower price in the open market, the Board may authorize such purchases without further observance of the provisions requiring contracts, bids or notices.

(2) In case of major public calamity, or whenever it is in the interest of public safety or necessary to keep public utilities services operational, the Board may determine that the public interest and necessity demand the immediate expenditure of funds to keep the services operational or in a safe condition, and thereupon authorize the expenditure of such sums as may be needed without the observation of the provisions requiring contracts, bids or notices.

(3) Where reasonable, preference in the letting of contracts shall be given to local contractors.

(4) No director shall vote on any contract awarded by the Board in which the director has a direct or indirect financial interest. This provision shall not apply to contracts awarded to a corporation in which such director owns less than five percent (5%) of the entire capital stock or in which he does not hold any office or employment. The Board shall establish procedures for the timely verification of this restriction by its general counsel.

(5) Notwithstanding the bidding requirements of this section and in the public interest to assure that the people of Pohnpei State are accorded a continuous and reliable source of petroleum products, the Board is authorized and directed to enter into one or more fuel supply agreements consistent with the five-year FSM Petroleum Corporation fuel supply agreement dated September 4, 2007, such agreement or agreements not to exceed a cumulative total of five years; PROVIDED that the exception to public bidding contained in this section shall not take effect until after the Governor has entered into a legally binding agreement with the FSM National Government guaranteeing full indemnity to Pohnpei State in the event of Pohnpei's liability arising from the state's participation in the FSM Petroleum Corporation or the state's execution of the fuel supply and asset sale and purchase agreement making the FSM Petroleum Corporation operational; PROVIDED FURTHER that any such agreement or agreements by PUC that are consistent with the five-year FSM Petroleum Corporation fuel supply agreement dated September 4, 2007 shall become void and the waiver of the bidding requirements required by this section shall be reinstated if at any time during said five year agreement, the Board of Directors of the FSM Petroleum Corporation shall be amended by FSM law or altered by any other means to change the appointment procedure for Pohnpei State's representation on the Board of Directors of said corporation or to reduce, dilute or in any way limit the voting rights of Pohnpei State's member of the Board from that set forth in P.L. No. 15-08, as it was enacted into law on September 11, 2007, or to alter the composition or reduce the powers of the Executive Council for said corporation to set the terms and timing of any subsequent divestment of the assets and operations of the corporation to Pohnpei State as prescribed in the amendments to the codified provisions of P.L. No. 15-08 so enacted into law by virtue of P.L. No. 15-21.

Source: S.L. No. 2L-179-91 §12, 2/14/91; S.L. No. 3L-41-93 §4, 8/2/93; S.L. No. 7L-01-08 §3, [agreement signed on ?]

Editor's note: The inclusion the phrase "the waiver of" in the "PROVIDED FURTHER" clause is seen to be a technical inconsistency and legislation is being prepared to address these words in this section.

§1-113. Accounting and reporting. — The Board shall adopt and maintain a system of accounting that is in accordance with generally accepted accounting principles applicable to public corporations. The system adopted shall require that:

(1) All accounts relative to the production and distribution of electrical power, water and sewage services be separately maintained and that the expenses of the central administrative office be apportioned appropriately between and among the separate public utilities services;

(2) The Board employ a firm of independent certified public accountants who shall examine and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Corporation, copies of any such reports to be furnished to the Governor and the Pohnpei Legislature; and

(3) The Board shall report to the Governor and Legislature on the affairs of the Corporation. It shall present an annual report within 60 days after the end of each fiscal year and, if requested by the Governor or the Pohnpei Legislature, shall present special reports within 30 days after the end of each intervening quarter.

Source: S.L. No. 2L-179-91 §13, 2/14/91; S.L. No. 3L-41-93 §5, 8/2/93

§1-114. Budget preparation. — The general manager shall prepare, in advance of each fiscal year, under the supervision of the Board, an annual budget for the Corporation, taking into consideration anticipated capital and operational expenditures and anticipated revenues. The Corporation shall use the same fiscal calendar as that of the Pohnpei Government. The budget shall indicate the operational, capital, and maintenance requirements of the Corporation that will be met with the anticipated revenues of the Corporation, and such essential requirements as cannot be met without increase in the rate of revenues or outside financial assistance.

Source: S.L. No. 2L-179-91 §14, 2/14/91

§1-115. Supplemental financial assistance; authorization for appropriation; administration. —

(1) To the extent that the Corporation deems it necessary and advisable, the Corporation may seek appropriations from the Legislature and, to the extent approved by the Governor, may seek grants from sources other than the Pohnpei Government, of such funds as are necessary to supplement revenues to provide for the operations, maintenance, and expansion of the public utilities services in Pohnpei; PROVIDED that:

(a) Requests for Legislature appropriations shall be submitted through the office of the Governor. The Governor shall transmit the requests to the Legislature pursuant to procedures adopted generally for the transmission of budgetary requests of government agencies.

(b) Grants from sources outside the Pohnpei Government shall be subject to such procedural and legal requirements as may be provided by state law, generally or specifically for the request, receipt, and use of such grant funds.

(2) There is hereby authorized for appropriation from the general fund of Pohnpei and such other funds of the Treasury as may be identified in the Comprehensive Budget Act, such sums as may be determined and allocated annually in the Comprehensive Budget Act, or so much thereof as may be necessary, to supplement revenues of the Corporation in providing for the general operations, maintenance, and expansion of the public utilities services in Pohnpei or for specific projects, programs or acquisitions by the Corporation as may be identified in the Comprehensive Budget Act.

(3) All sums appropriated under the authorization of Subsection (2) of this section shall be administered and expended by the general manager, as authorized and directed by the Board, solely for the purposes specified in Subsection (2) of this section.

(4) Unless otherwise specified in the Comprehensive Budget Act, any balance of the sums appropriated under the authorization of Subsection (2) of this section for a fiscal year not expended or obligated for expenditure on September 30 of that year shall revert to the respective fund of the Treasury from which appropriated.

(5) The Board shall submit as part of the Corporation's periodic reporting required by §1-113, a full accounting of the financial activities of the Corporation with respect to appropriations and grants received pursuant to authorization of this section.

Source: S.L. No. 2L-179-91 §15, 2/14/91; S.L. No. 3L-3-92 §1, 4/15/92; S.L. No. 3L-41-93 §6, 8/2/93

Note: S.L. No. 3L-3-92 §2 temporary and §§3 & 4 appropriation provisions have been omitted.

§1-116. Manual of administration. — The Board shall establish a manual of administration to include rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the Corporation. Employees of the Corporation shall be eligible to participate in any health insurance plan, life insurance plan, retirement fund, and workers' compensation insurance available to Pohnpei Government employees. The Corporation shall contribute to such programs on the basis of periodic billings as determined by the governing authorities thereof.

Source: S.L. No. 2L-179-91 §16, 2/14/91

§1-117. Employment preference. — The Board shall attempt to employ qualified legal residents of this jurisdiction, if at all possible. However, the Board shall have as its primary concern in employing or contracting for services, the maintenance of safe, self-sufficient, modern and convenient services and facilities for the improvement of public utilities services within Pohnpei.

Source: S.L. No. 2L-179-91 §17, 2/14/91; S.L. No. 3L-41-93 §7, 8/2/93

§1-118. Government assistance to the Corporation. — For the purpose of aiding in the planning, undertaking or carrying out of this chapter and of the projects contemplated herein, and the subsequent operation and maintenance of the public utilities systems, the Pohnpei Government or any department, division, agency, authority or political subdivision thereof, may, if the chief executive of the respective governmental subdivision determines that such project will benefit and further the public purposes of the respective governmental subdivision and be of advantage to them, and if the intended action is consistent with the laws of the respective jurisdiction:

(1) Dedicate, sell, convey or lease interests in real or personal properties, rights or privileges that it may have to the Corporation;

(2) Incur expenses on behalf of the Corporation subject to reimbursement under such terms and conditions as may be agreed upon with the Corporation;

(3) Do any and all things necessary to aid or cooperate in the planning or carrying out of the duties, powers, and obligations of the Corporation;

(4) Lend or advance, grant or contribute funds to the Corporation, and provide for or waive the repayment of any such funds loaned or advanced;

(5) Contract with or furnish services to the Corporation upon such terms and conditions as may be agreed upon; or

(6) Enter into any agreements that may extend over any period of time notwithstanding any rule of law to the contrary applicable to public corporations or other public bodies unless specifically applied to the Corporation.

Source: S.L. No. 2L-179-91 §18, 2/14/91; S.L. No. 3L-41-93 §8, 8/2/93

Note: S.L. No. 3L-41-93 §9 transition and §10 temporary provisions have been omitted.

§1-119. Waiver. — The Financial Organization and Management Act, Title 11 Chapter 2, the Public Service System Act, Title 9 Chapter 2, the Contract Review Board Act, Title 11 Chapter 6, and the Government Salary Conversion Act, Title 9 Chapter 4 Subchapter II, shall not be applied to the Pohnpei Utilities Corporation.

Source: S.L. No. 2L-179-91 §19, 2/14/91

Note: S.L. No. 2L-179-91 §20 transition and §21 severability provisions have been omitted.

CHAPTER 2

BOARD OF RESIDENTIAL PROPERTIES AND PUBLIC UTILITIES

Section

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§2-101. Purpose. — Although the cost of maintenance and repair of residential properties and of the production of utility services is escalating yearly, levels of budgetary assistance to the state are now being frozen and in many instances reduced. This is resulting in a loss to the state of capital investment in these properties and utilities, and a reduction in services that can financially be provided, as well as a denial of the expansion of such utilities to new consumers. The purpose of this chapter is to establish a Board of Residential Properties and Public Utilities to constantly monitor the use of these facilities and services, and to set rates for the use or consumption of the same by both the public and private sectors, the payment of which will be devoted to new, better maintained, and improved facilities and services.

Source: D.L. No. 4L-191-79 §1, 8/9/79 S.L. No. 6L-79-06 §3-102, 11/1/06

§2-102. Board established. — There is hereby created a Pohnpei Board of Residential Properties and Public Utilities composed of seven members appointed by the Governor with the advice and consent of the Legislature.

Source: D.L. No. 4L-191-79 §2, 8/9/79; S.L. No. 5L-14-00 §3-50, 10/1/00; S.L. No. 6L-79-06 §2-115, 11/1/06

§2-103. Terms; vacancies; removal. — Appointed members shall serve for terms of three years; PROVIDED that in his initial appointments the Governor shall designate three members to serve initial terms of two years each. Members may be reappointed. Vacancies shall be filled in the manner of the original appointment for the remainder of the unexpired term. A Board member may be removed for cause by a two-thirds majority of the entire membership. Such decision may be appealed to a court of competent jurisdiction.

Source: D.L. No. 4L-191-79 §3, 8/9/79

§2-104. Officers. — The Board shall elect from among its members a Chairman, Vice-Chairman, and Secretary-treasurer by majority vote to serve such terms as determined by the Board. The Board shall define the powers and duties of each officer.

Source: D.L. No. 4L-191-79 §4, 8/9/79

Note: Provision on temporary chairman has been omitted.

§2-105. Meetings. — The Board shall hold its first meeting within 30 days following the effective date of this chapter [*effective date is August 9, 1979*], and at least once every six months thereafter. Special meetings may be called at any time by the Chairman or by any three members of the Board. The Chairman shall determine the time, and place of each meeting and notify all members of the Board of any regular or special meeting as to the date, time and place at least three days preceding the

date of the meeting, and shall cause public notice of the date, time, and place of such meeting to be broadcast on the public radio station at least two days preceding the date of the meeting. All meetings shall be open to the general public, except executive sessions agreed upon by the unanimous vote of the members present. A written record shall be kept and maintained of attendance at meetings and all official actions taken by the Board, and a copy shall be submitted to the Governor and to the Legislature by the Board within ten days after each meeting. Two-thirds of the membership of the Board shall constitute a quorum to conduct business; PROVIDED, HOWEVER, that a majority vote of the total membership of the Board shall be required to establish or readjust any rental or service rates within the jurisdiction of the Board.

Source: D.L. No. 4L-191-79 §5, 8/9/79

§2-106. Compensation and expenses. — Members of the Board who are not employed by the Pohnpei Government or its instrumentalities shall be compensated at rates established by the Government Officers' Salary Act, Title 9 Chapter 4 Subchapter I, as amended or superseded by Pohnpei law, for attendance at Board meetings. When required to travel for official purposes, members of the Board shall receive travel expenses and per diem at Pohnpei Government rates and in accordance with Pohnpei Government policies. Such other expenses may be paid to Board members as are authorized by law.

Source: D.L. No. 4L-191-79 §6, 8/9/79; S.L. No. 1L-71-86 §4-3, 4/1/86

§2-107. Board's powers, duties, and responsibilities. — The Board shall have the following powers, duties, and responsibilities:

- (1) To establish bylaws for the operation of the Board pursuant to this chapter;
- (2) To evaluate the capital investment, condition, and value of publicly owned or maintained residences, inclusive of appliances and furnishings therein, and to establish fair rental values on the same; PROVIDED that prior to October 1, 1980, no rental value may be set on any individual or single-family residential unit in excess of \$150 per month;
- (3) Upon such evaluation provided in Subsection (2) of this section, to establish the rates of deposits against damage to residential properties to be charged against users of the properties, the remainder to be returned after assessment of damage, if any, upon cessation of use;
- (4) Upon such evaluation provided in Subsection (2) of this section, to establish monthly appliance maintenance fees to be charged against the users thereof;
- (5) To evaluate the capital investment, condition, and value of publicly owned or publicly maintained utilities, and of the operation and maintenance costs of providing utility services, and to establish fair user rates on the same; such rates to be separately determined as follows:
 - (a) Water;
 - (b) Electricity;
 - (c) Sewage;
 - (d) Garbage and refuse disposal;
 - (e) Telephone; and
 - (f) Other services as provided.
- (6) In establishing user rates as provided in Subsection (5) of this section, to establish within the Board's discretion, uniform rates within each category without distinction as to type of uses;
- (7) In establishing user rates as provided in Subsection (5) of this section, to establish, in the Board's discretion, reasonable discounts against rates for the installment of solar water heaters and cookers, insulation for air conditioning, and other energy and utility saving devices; such discounts to be available to government as well as private users of utility services;
- (8) To monitor the acquisition, assignment, and use of residential units and the expansion and production, maintenance, and distribution of utility services, and to make recommendations thereon to the Governor and the Legislature;

(9) To employ such personnel and recruit such advisors and consultants as may be necessary for the Board to carry out its functions pursuant to this chapter; PROVIDED that the Governor to the extent practicable shall provide technical and administrative assistance to the Board as needed; and

(10) To assume such other powers, duties, and responsibilities as are necessary for the Board to carry out effectively the functions entrusted in the Board by this chapter.

Source: D.L. No. 4L-191-79 §7, 8/9/79

§2-108. Exemptions denied. — Notwithstanding Public Law No. 5-87 of the Trust Territory and except as otherwise provided in this chapter, no person occupying publicly-owned residential properties in the state of Pohnpei, nor any person or entity, public or private, consuming or using public utility services in this state shall be exempt from application of this chapter nor of the obligation to pay for the use of public residential properties or public utilities in accordance with the rates established by the Board pursuant to this chapter.

Source: D.L. No. 4L-191-79 §8, 8/9/79

§2-109. Government employment contracts. — No rates, nor any portion thereof, for use of residential properties or utility services, for which a government employment contract or agreement that was executed prior to the effective date of this chapter [*August 9, 1979*] gives said employee an exemption, shall apply to the employee to the extent of such exemption for the duration of the current term of the contract or agreement. Any such exemption provided in a contract or agreement executed or renewed after the effective date of this chapter shall be void; PROVIDED that an agency on its own initiative and if otherwise authorized may contract with said employee to reimburse him for payments made. Commencing on October 1, 1981, any government agency, irrespective of the level of government, employing a person inclusive of U.S. Civil Service employees who is contractually or otherwise exempted from payment of Board-established rates or any portion thereof, shall be accountable to the Pohnpei Government for such payments on behalf of the person so exempted.

Source: D.L. No. 4L-191-79 §9, 8/9/79

§2-110. Jurisdiction of the Board. — Jurisdiction of the Board shall not extend to residential properties constructed or purchased after the effective date of this chapter [*August 9, 1979*] and financed and maintained by the central government of the Federated States of Micronesia, nor of any residential properties of a local government, nor shall jurisdiction of the Board apply to use of utility services produced, maintained, and distributed solely at the expense of said governments.

Source: D.L. No. 4L-191-79 §10, 8/9/79

§2-111. Rate application. — No rates established by the Board may become effective prior to October 1, 1979, nor may any rate establishment or modification, the effect of which increases then existing obligations, take effect less than 60 days following the decision of the Board; PROVIDED that in the instance of an emergency or unusual circumstances as determined by the Board and approved by the Governor, a surcharge not to exceed fifty percent (50%) of existing rates may be applied for a period not to exceed 90 days.

Source: D.L. No. 4L-191-79 §11, 8/9/79

§2-112. Levy and collection. — The Governor shall provide for the levy and collection of payments and fees at the rate established by the Board pursuant to this chapter, and in conformance with national and state laws and regulations not inconsistent with this chapter. The Governor may, by regulation issued in compliance with 17 TTC (1980), further provide for the collection of such payments and fees and for the assessment of interest and penalties in the instance of delinquency or failure in payment.

Source: D.L. No. 4L-191-79 §12, 8/9/79

Note: D.L. No. 4L-191-79 §§13 & 14 were repealed by S.L. No. 1L-19-85 §§5 & 6, 4/1/85.

§2-113. Authorization for appropriation; administration. — 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 operational expenses of the Pohnpei State Board of Residential Properties and Public Utilities. The sums shall be administered and expended by the Chairman of the Board solely for the purposes specified in this section. The balance of any sums so appropriated under this authorization remaining unexpended or unobligated for expenditure at the end of the fiscal year for which they were appropriated shall revert to the general fund of Pohnpei.

Source: D.L. No. 4L-191-79 §15, 8/9/79

§2-114. Reporting. — The Governor and the Chairman of the Board shall report to the Legislature on or before October 30 each year, giving a full accounting of their respective administrative and financial activities for the previous fiscal year pursuant to §2-113.

Source: D.L. No. 4L-191-79 §16, 8/9/79

§2-115. Obligation denied. — Nothing in this chapter shall be construed to obligate any government employee to reside in a publicly owned or publicly maintained residential unit upon which the Board has established a rate of rental payments.

Source: D.L. No. 4L-191-79 §17, 8/9/79

CHAPTER 3 COMMISSION ON ENERGY

Section

3-101 Purpose	3-104 Progress reports
3-102 Commission established	3-105 Financing
3-103 Duties and responsibilities	

§3-101. Purpose. — It is the sense of the Legislature that the future vitality and economic growth of this state is dependent on an abundant, reliable, and inexpensive supply of electrical power. The purpose of this chapter is to establish a permanent commission on energy to monitor continuously the status of energy production and distribution within the state, and to research and recommend policies and programs for its improvement.

Source: S.L. No. 2L-168-83 §1, 2/18/83

§3-102. Commission established. — There is hereby established a Pohnpei State Commission on Energy.

(1) The Commission shall consist of:

- (a) The Administrator of the Office of Economic Affairs or his designee;
- (b) The Administrator of the Office of Fisheries and Aquaculture or his designee;
- (c) The Administrator of the Office of Transportation and Infrastructure or his designee; and
- (d) A member appointed by the Speaker of the Pohnpei Legislature upon consultation with the Legislature leadership.

(2) The Commission shall convene on the first Monday of the month following the effective date of this chapter at a time and place determined by the Governor, and shall meet not less than once every three months thereafter.

(3) The Commission shall appoint its own officers and determine its own procedures not inconsistent with this chapter.

(4) Members of the Commission shall be accorded administrative leave while in service for the Commission and shall not be entitled to additional compensation therefor but shall be entitled to necessary expenses incurred in such service.

Source: S.L. No. 2L-168-83 §2, 2/18/83; S.L. No. 2L-174-83 §1, 4/25/83; S.L. No. 5L-14-00 §3-28, 10/1/00; S.L. No. 7L-20-08 §15, 11/26/08

§3-103. Duties and responsibilities. — The Commission shall have the following duties and responsibilities to:

(1) Continue the work begun by the Inter-Agency Task Force on Energy as presented in its final report as adopted by the Second State Legislature, Fourth Regular Session, 1983, in Standing Committee Report No. 1 thereof;

(2) Thoroughly review and continuously monitor existing power generation facilities and distribution lines as well as current rate structures and make recommendations concerning the same;

(3) Research alternate systems of power generation and distribution and investigate possible modifications to existing systems;

(4) Prepare and submit a five-year energy conservation and development plan, and prepare and submit an update of the plan at least annually after its adoption;

(5) Recommend legislation on energy-related matters;

(6) Initiate and direct demonstrations, public information programs, seminars, and workshops on energy-related matters;

(7) To the extent possible, recruit and manage such volunteer and paid assistants and consultants as the Commission deems necessary to carry out its duties and responsibilities under this section; and

(8) Undertake such other activities consistent with this chapter that the Commission deems necessary to carry out its duties and responsibilities under this section.

Source: S.L. No. 2L-168-83 §3, 2/18/83

§3-104. Progress reports. — The Commission shall, not less than annually, file a progress report with the Governor and the Legislature in which it shall include a complete accounting since the last such report of its activities and a presentation of its plans, recommendations, and legislation as provided in §3-103.

Source: S.L. No. 2L-168-83 §4, 2/18/83

§3-105. Financing. —

(1) The Commission may receive funding from other sources when authorized by state law relative thereto.

(2) The Chairman shall, not later than October 15 each year, file with the Governor, the Legislature, and the Public Auditor a complete accounting of all financial activities of the Commission for the previous fiscal year.

Source: S.L. No. 2L-168-83 §5, 2/18/83

CHAPTERS 4 – 9 [RESERVED]

CHAPTER 10 WATER AND SANITATION FINANCES

Section

10-101 Purpose	10-105 Terms of repayment; application of funds paid in excess or in advance of the state's obligations
10-102 Authorization to borrow on the public credit	10-106 Water and Sanitation Services Development Fund
10-103 Loan repayment	10-107 Indemnity
10-104 Authorization, appropriation, and assurance for the repayment of the ADB loan	10-108 National assistance

§10-101. Purpose. — Pohnpei currently lacks an island-wide water system that delivers safe drinking water and that safely carries away waste water. To improve the living conditions of Pohnpeians and to support the economic development of the state through the provision of a reliable and safe water-supply and sanitation infrastructure, the Legislature finds that there is a great need for a project to assess and develop the water resources of the state, and to operate and maintain water supply and sanitation systems in manners that will protect the environment and maintain the ecological balances of the water resources of the state. The Pohnpei Utilities Corporation (hereinafter called “PUC”) is responsible for the provision of potable water delivery and sanitation services to the people of Pohnpei. The Asian Development Bank (hereinafter called “ADB”) has offered the Federated States of Micronesia financial assistance in the form of a long-term loan to enhance the ability of the PUC and similar entities in the other states of the FSM to expand and improve their water and sanitation systems. The purpose of this chapter is to make it possible for the PUC to accept this generous offer of financial assistance by authorizing the Pohnpei Government to participate in the onlending process.

Source: S.L. No. 4L-57-97 §1, 12/4/97

§10-102. Authorization to borrow on the public credit. —

(1) Acknowledging the authority of Pohnpei State to receive foreign financial assistance under Article XII §1(b) of the FSM Constitution, and mindful of the requirements of Article 11 §13 of the Pohnpei Constitution, the Government of Pohnpei State is hereby authorized to borrow from the ADB through the national government of the Federated States of Micronesia and onlend to the PUC an amount equivalent to one-million, one-hundred-seventy-four-thousand (1,174,000) special drawing rights and not more than \$100,000 in consultancy services for a Pohnpei water supply and sanitation project. In this connection, the Governor is hereby authorized to negotiate and execute such financing agreements among the Pohnpei Government, the national government, and the PUC as are necessary to carry out the purposes of this chapter. Such agreements shall set forth the terms and conditions of the loan as described in this chapter and the terms and conditions of onlending the proceeds of the loan by the Pohnpei Government to the PUC. All such agreements shall be negotiated to be in conformity with this chapter.

(2) It shall be a condition of an agreement between the Pohnpei Government and the PUC that water tariffs shall not be increased by the PUC for two years after the effective date of this chapter [*effective date is December 4, 1997*] without an appropriate amendment to this law repealing this subsection.

Source: S.L. No. 4L-57-97 §2, 12/4/97

§10-103. Loan repayment. —

(1) Primary repayment of the ADB loan, charges for consultancy services, other and all incidental charges with respect thereto as authorized by this chapter shall be the responsibility of the PUC from such tariff revenues and other cost-recovery policies and mechanisms as the Corporation shall prescribe by means of a tripartite agreement among the national government, the Pohnpei Government and the PUC. Repayment of the loan by the PUC may be made directly to the national government, and shall carry such interest, service charges and incidental fees as the parties thereto shall prescribe in the tripartite agreement; PROVIDED that such agreement shall contain a covenant that any and all interest and fees required to be paid or voluntarily paid on an accelerated basis to the national government by the PUC that exceeds the total obligation of the Pohnpei Government for the service charge described by §10-105 for that period and not required to be paid by the national government to the ADB shall be promptly paid to the Director of the Department of Treasury and Administration of the Pohnpei Government for deposit in the Water and Sanitation Services Development Fund established by §10-106.

(2) In the event that, for any reason, except as is stated in Subsection (3) of this section, the Corporation shall not be able to meet its obligations as prescribed by Subsection (1) of this section, the secondary source of repayment of such loan obligations, consultancy charges, and incidental charges shall be the Pohnpei Government, in accordance with §10-104. Such obligations shall include the payment of any acceleration of the loan payments or the calling in of the loan due to a material default on the part of the PUC or the Pohnpei Government, but shall not include such requirement to make payments on the acceleration of loan payments or the calling in of the loan due to the material default of the national government, any other state government, or any other entity.

(3) The obligation of the Pohnpei Government for the repayment of loan obligations of the PUC or of the state resulting from any expenditures incurred in the recruitment or use of consultants from or through the ADB or the national government for the project for which the loan has been made, shall not exceed \$100,000 and shall not be authorized by this section unless the Governor shall concur in writing to the specific consultancy service so offered to the project; PROVIDED that the state may, but shall not be obligated to, make further authorization by statute for additional consultancy service costs.

Source: S.L. No. 4L-57-97 §3, 12/4/97

§10-104. Authorization, appropriation, and assurance for the repayment of the ADB loan. —

(1) There is hereby authorized for appropriation from such funds of the Treasury into which monies due and payable to the state from the national government by virtue of Article IX §5 of the FSM Constitution and applicable national statutes establishing the distribution of revenues thereunder, and §§211 and 217 of the Compact of Free Association are deposited, such monies as are necessary to meet the financial obligations of Pohnpei State for that fiscal year, under §10-103.

(2) The appropriation of state monies so provided under the authorization of Subsection (1) of this section shall not be subject to any lien or encumbrance that shall have priority over the repayment of the loan, unless otherwise agreed to by the national government.

(3) The monies so appropriated under the authorization of Subsection (1) of this section shall be administered and expended by the Governor solely for the purposes specified in this section; PROVIDED that no monies may be withdrawn from the Treasury for the purposes of meeting the obligations of the Pohnpei Government under the terms of this chapter, except upon written demand from the national government, which demand shall be adequately documented in the manner required by the appropriate financing agreement or agreements with the national government as negotiated by the Governor under the terms of this chapter.

(4) Such agreements as are entered into between the Pohnpei Government and the national government under the authority of this chapter may provide for security and the right of set-off to be exercised by the national government of such monies within the Treasury funds identified in

Subsection (1) of this section that are in the custody of the Secretary of the Department of Finance of the national government by virtue of Article IX §5 of the FSM Constitution and applicable intergovernmental agreements and national statutes establishing the distribution of revenues thereunder and §§211 and 217 of the Compact of Free Association to satisfy such Pohnpei Government obligations as required by §10-103.

(5) The authority for security and the right of set-off as prescribed by Subsection (4) of this section is deemed by the Legislature to be full and satisfactory security under the name and credit of the Pohnpei Government for the repayment of the loan specified in this chapter. No other security or conveyance or encumbrance of state assets, in trust or otherwise, shall issue from the Pohnpei Government for the repayment of said loan. In addition, any agreement as shall be entered into by the Pohnpei Government pursuant to Subsection (4) of this section, allowing for the national government to so set-off monies held in the custody of the Secretary of the National Department of Finance, shall contain such covenants and other protections as are necessary to ensure that only those monies that are actually due and payable are so set-off or applied to the loan repayment, and that the PUC and the Pohnpei Government are given adequate notice and a full accounting of the purpose and extent of the intended action.

(6) The Governor shall provide for an accounting of any and all monies appropriated under the authorization of Subsection (1) of this section on an annual basis, and cause to be returned to the Treasury such monies as are determined as no longer necessary to meet the obligations of the Pohnpei Government pursuant to §10-103.

Source: S.L. No. 4L-57-97 §4, 12/4/97

§10-105. Terms of repayment; application of funds paid in excess or in advance of the state's obligations. —

(1) The Pohnpei Government agrees to the payment of a loan in various international currencies equivalent to 1,174,000 Special Drawing Rights (a standard term of valuation utilized in concessionary loans made by the ADB and which valuation in current dollars is defined in the agreement between the national government and the Pohnpei Government pertaining to this loan), to which a service charge of one percent (1%) shall be attached and the costs of consultancy services as authorized by §10-103(3). The obligation for repayment of obligations thereunder shall commence on the tenth anniversary of the loan and the period of repayment shall be 40 years.

(2) The Pohnpei Government may enter into an agreement with the national government for the acceleration of the commencement of the state to repay its obligations under this chapter by not more than five years, and for its requirement to fulfill its total obligations by not more than 15 years; PROVIDED that such agreement shall be conditioned on a covenant within said agreement that any interest or profits received by the national government from the use or investment of said funds paid by the Pohnpei Government or the PUC prior to the surrender of such accelerated payments to the ADB shall be credited to the state and shall be promptly paid to the Director of the Department of Treasury and Administration for deposit in the Water and Sanitation Services Development Fund created by §10-106.

Source: S.L. No. 4L-57-97 §5, 12/4/97

§10-106. Water and Sanitation Services Development Fund. —

(1) There is hereby established within the Treasury a special revenue and expenditure fund to be known as the Pohnpei Water and Sanitation Services Development Fund, into which all monies due and payable to the state pursuant to the terms of §10-103(1) and §10-105 shall be paid. The fund so created shall cease to exist upon a finding by the Director of the Department of Treasury and Administration that the fund is no longer entitled to receive any additional funds and that all assets and reserves of the fund have been fully expended.

(2) Monies deposited within said fund shall be made available to the Pohnpei Utilities Corporation, upon the request of the PUC and without the need for further or additional appropriation, for expenditure by the PUC on such capital improvement and infrastructure projects as are identified by the PUC for the development, improvement and repair of water and sanitation services provided by the PUC to the people of Pohnpei, and that are consistent with the overall development plans of the state.

(3) Payments to the PUC of fund assets shall be made pursuant to one or more grant agreements between the Governor and the PUC, which agreements shall provide the procedures for the draw-down, use and accountability of the expenditure of the funds made available to the PUC from the Treasury fund established by this section; PROVIDED, HOWEVER, that monies deposited in the Water and Sanitation Services Development Fund, for the purposes specified in this section, shall be deemed to be deposited for the benefit of the PUC, and approval for their draw-down and use by the PUC shall not be unreasonably denied by the Pohnpei Government.

(4) The Governor shall submit annual reports to the Legislature within 30 days following the close of each fiscal year wherein monies are either received or expended from the Water and Sanitation Services Development Fund for the duration of the existence of said fund.

Source: S.L. No. 4L-57-97 §6, 12/4/97

§10-107. Indemnity. —

(1) The Governor is authorized and directed to negotiate such agreements as are necessary to ensure that the Pohnpei Government shall be fully indemnified by the PUC in the event that the Pohnpei Government is required to make any payments under §10-103, or is subject to the execution of any agreements for the payment of loan obligations out of any authorized security interests of the state pledged for the repayment of the loan. Any such agreement shall contain such covenants as are necessary to secure the Pohnpei Government's right of indemnity, which security shall include a pledge of such assets that are acquired by the PUC from the proceeds of the loan and such tariffs for water and sanitation as are attributable to the increased services to the general public as are made possible through the implementation of the loan.

(2) Such covenants as are required or authorized by this section shall recognize the essential nature of the water and sanitation services being provided by the PUC and shall not be written or exercised by the Pohnpei Government in such manner as will unduly jeopardize the health or safety of the people of Pohnpei.

Source: S.L. No. 4L-57-97 §7, 12/4/97

§10-108. National assistance. — The national government is sincerely requested to give sympathetic consideration to the continuing request of this state for the national level of government to coordinate its appropriations for water and sanitation projects with state development plans in this sector and the expansion efforts of PUC. Once this level of mutually supportive consultation is reached, the Legislature is confident that future congressional appropriations can and will become the basis for a joint program that will maximize the potentials of this loan, extending its benefits to as many of the people of Pohnpei as possible.

Source: S.L. No. 4L-57-97 §8, 12/4/97

**TITLE 35
[RESERVED]**

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