

TITLE 9

PUBLIC OFFICERS AND EMPLOYEES

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CHAPTER 1 UNIFORM APPOINTMENTS AND TENURE

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§1-101. Short title. — This chapter is known and may be cited as the “Uniform Appointments and Tenure Act of 1983.”

Source: S.L. No. 2L-177-83 §1, 5/5/83

§1-102. Applicability. — This chapter shall apply to the administrative heads of each of the executive departments, executive authorities, commissions, and agencies, and executive offices listed or referred to in the Executive Reorganization Act, Title 3 Chapter 1, and any amendments thereto or supersessions thereof, and to such other positions to which application of this statute is required by law.

Source: S.L. No. 2L-177-83 §2, 5/5/83; S.L. No. 1L-62-86 §6-4, 4/1/86; S.L. No. 4L-02-96 §3, 1/22/96; S.L. No. 5L-14-00 §3-2, 10/1/00

§1-103. Appointment procedures. — All offices listed in §1-102 shall be filled by appointment of the Governor and subject to the advice and consent of the Pohnpei Legislature in the manner prescribed by law. Nominations shall be made to the Legislature by the Governor not later than 60 days following his/her inauguration as Governor of this state. Nominations shall be made to the office of the Speaker of the Legislature on a form prescribed by the Attorney General and shall be marked as to the time and date of receipt by the Legislative Clerk.

Source: S.L. No. 2L-177-83 §3, 5/5/83; S.L. No. 3L-43-93 §1, 8/13/93

§1-104. Tenure. — Each appointee to an office listed in §1-102 shall serve at the pleasure of the Governor for a term consecutive with that of the Governor, unless a shorter time is prescribed by law

or the employment contract. All duties and privileges, and salary and benefits of the office of an appointee listed in §1-102 shall terminate at noon on the second Monday of January following the year of general election for the office of Governor, or at such earlier date as may be prescribed under this section.

Source: S.L. No. 2L-177-83 §4, 5/5/83; S.L. No. 3L-43-93 §2, 8/13/93

§1-105. Vacancies and temporary absences. — Vacancies or long-term absences in excess of 60 days shall be filled by appointment for the remainder of an unexpired term or long-term absence in the same manner as the original appointment. The Governor may, by administrative order, provide for temporary succession to positions that have become vacant or from which the officer is temporarily absent; PROVIDED, HOWEVER, that a temporary absence in the position of chief executive officer of an executive department or agency of the executive branch shall be filled through temporary succession of a division head of that department or agency selected by the chief executive officer of the department or agency, or if that is not possible, by selection of temporary chief executive officer by the Governor; PROVIDED FURTHER that no person may serve as the temporary chief executive officer of a department or agency of the executive branch for more than 60 days in any 180-day period.

Source: S.L. No. 2L-177-83 §5, 5/5/83; S.L. No. 1L-62-86 §6-5, 4/1/86; S.L. No. 3L-1-92 §16, 3/12/92; S.L. No. 3L-43-93, §3, 8/13/93

§1-106. Existing contracts. — Nothing in this chapter shall impair the rights and obligations of any provision of an existing employment contract for the executive head of an office listed under §1-102, for the extent of the present term of that contract; PROVIDED that any renewal of said contract shall be negotiated in a manner consistent with this chapter.

Source: S.L. No. 2L-177-83 §6, 5/5/83

Notes: 1. S.L. No. 2L-177-83 §13, 5/5/83 repealed S.L. No. 2L-173-83, 4/22/83 in its entirety. 2. The Governor signed the act on 5/5/82; however, since the act passed the Ponape Legislature on April 28, 1983, it can be assumed that the actual effective date was 5/5/83.

CHAPTER 2 PUBLIC SERVICE SYSTEM

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§2-101. Short title. — This chapter is known and may be cited as the “Pohnpei Public Service System Act of 1981.”

Source: S.L. No. 2L-57-81 §1, 10/1/81

§2-102. Establishment of the Pohnpei Public Service System. — There is hereby established for the executive branch of the State Government of Pohnpei a system of personnel administration based on merit principles and accepted personnel methods governing the classification of positions and the employment, conduct, movement, and separation of public officers and employees. This system of personnel administration shall be referred to as the Pohnpei Public Service System.

Source: S.L. No. 2L-57-81 §2, 10/1/81

§2-103. Definitions. — In this chapter, unless the context requires otherwise, the following definitions shall apply:

(1) “Adjusted base salary” means the total of base salary plus marketplace premium. If an employee is not entitled to a marketplace premium, his adjusted base salary means his base salary.

(2) “Base salary” means the specific rate of pay for a given pay level and step as contained within the base salary schedule established by law. “Base salary” does not include differentials or allowances for standby, night work, transfer, overtime, holiday work, travel, per diem or other similar allowances.

(3) “Class” or “class of positions” means a group of positions sufficiently similar so that all can reasonably be identified by the same title, be filled by applying the same qualification standards, and

be equitably compensated by the same salary level. A class may consist of only one position or of any greater number of positions.

(4) “Department head” is that person in charge of a particular department who is authorized to act as a management official.

(5) “Director” means the Director of the Department of Treasury and Administration.

(6) “Eligible list” means a list of persons who have been found qualified for appointment to a position in a particular class. Such a list may be either promotional or open-competitive.

(7) “Eligible person” or “eligible” means a person whose name is on an active eligible list.

(8) “Employee” means a person holding a position in the public service, whether permanently or otherwise.

(9) “Management official” or “management” means a person authorized to make appointments or changes in status of employees in the public service.

(10) “Open-competitive examination” means an examination for positions in a particular class, admission to which is not limited to persons employed in the public service.

(11) “Open-competitive list” means a list of persons who have been found qualified by open-competitive examination for appointment to a position in a particular class.

(12) “Position” means a group of duties and responsibilities assigned by competent authority to be performed by one person, working full-time or part-time. A position may be occupied or vacant.

(13) “Position classification plan” means the arrangement in a systematic order of the titles of all classes existing in the public service, with a description of each class.

(14) “Probation period” means a period of probationary employment status of not less than six months nor more than one year from the beginning of an employee’s service in a particular position or class in the public service.

(15) “Promotional examination” means an examination for positions in a particular class, admission to which is limited to regular employees in the public service.

(16) “Promotional list” means a list of persons who have been found qualified by promotional examination for appointment to a position in a particular class.

(17) “Public service” means all offices and other positions in the executive branch of the Pohnpei Government not exempted by §2-109.

(18) “Regular employee” or “permanent employee” means an employee who has been appointed to a position in the public service who has successfully completed a probation period.

Source: S.L. No. 2L-57-81 §3, 10/1/81; S.L. No. 5L-14-00 §3-49, 10/1/00

§2-104. Merit principles. — The Pohnpei Public Service System shall be administered in accordance with the merit principles set forth below:

(1) Equal opportunity for all regardless of sex, race, age, religion, political affiliation, ancestry, family or place of origin;

(2) No discrimination against any person because of a physical handicap unconnected to his ability to perform effectively the duties of the position in which he is employed or in which he is seeking employment; PROVIDED that the employment of said physically handicapped person will not be hazardous to him nor endanger the health and safety of others;

(3) Impartial selection of the best person for public service by means of tests which are fair, objective, and practical;

(4) Just opportunity for competent employees to be promoted within the service;

(5) Reasonable job security for competent employees, including the rights of appeal from adverse personnel actions as provided in this chapter;

(6) Systematic classification of all positions through objective job analysis; and

(7) Fair and reasonable grievance procedures, appropriate to conditions of employment, for all employees.

Source: S.L. No. 2L-57-81 §4, 10/1/81

§2-105. Preference to legal residents of the state of Pohnpei. —

(1) Notwithstanding §2-104 above, preference shall be given to qualified legal residents of Pohnpei in making appointments and promotions and providing opportunities for training in the public service.

(2) Notwithstanding Subsection (1) of this section, second preference for employment shall be given to citizens of the Federated States of Micronesia who are not legal residents of Pohnpei at the time of application to a position or promotion within said position.

(3) This section shall be enforced by appropriate regulations.

Source: S.L. No. 2L-57-81 §5, 10/1/81

§2-106. Tenure; nondiscrimination. —

(1) Every regular employee shall be entitled to hold his position during good behavior, subject to suspension, demotion, lay-off, early retirement or dismissal only as provided in this chapter and in the regulations adopted in pursuance hereof and state law relative to early retirement; PROVIDED, HOWEVER, that the tenure of a contract employee is the term of his contract.

(2) No employee in the public service systems shall be suspended, demoted, dismissed, laid off, retired early, or otherwise discriminated against because of sex, race, religion, age, political affiliation, ancestry, family or place of origin.

Source: S.L. No. 2L-57-81 §6, 10/1/81; S.L. No. 4L-38-97 §14, 6/10/97

§2-107. Retirement. —

(1) Any employee of the public service, upon reaching the age of 60 years, must retire from public service in the calendar year during his or her attainment of 60 years.

(2) Any employee may retire with full retirement benefits from public service after said employee's attaining both the retirement age and the eligibility requirements in accordance with employment classification as set forth in the Pohnpei Pension Plan, §6-104(16).

(3) Any employee wishing to contest his forced retirement shall be entitled to a hearing as provided for by §§2-138 - 2-140. He must submit in writing to the Director a statement of his intentions and a personnel review board shall be chosen not later than 15 calendar days after the Director receives such communication.

Source: S.L. No. 2L-57-81 §7, 10/1/81; S.L. No. 3L-51-93 §9-5, 12/3/93

§2-108. Director of the Department of Treasury and Administration. —

(1) The Director of the Department of Treasury and Administration, hereinafter referred to as "Director," shall direct and supervise all the administrative and technical activities of the Department with respect to this chapter, including its Division of Personnel, Labor and Manpower Development and its personnel activity.

(2) The Director shall:

- (a) Administer the system of personnel administration for the Pohnpei Government;
- (b) Prepare proposed policies and regulations to carry out this chapter;
- (c) Cooperate fully with and attend, or assign a qualified representative to attend, all meetings of the personnel review boards organized under §§2-138 - 2-140, and provide the boards with such technical advice as they may require;
- (d) Appoint other employees of the Department in accordance with all other applicable provisions of law;
- (e) Establish and maintain a current roster of all officers and employees in the public service, indicating for each the class of position held, the salary, and any other appropriate data;
- (f) Develop and maintain a system of performance evaluation for the purpose of appraising the productivity of employees in the public service;

- (g) Develop and maintain a position classification plan in accordance with this chapter and other applicable laws;
- (h) Develop and utilize recruitment and selection procedures and methods;
- (i) Develop training programs for the improvement of employee skills and for the development of systematic career programs for employees; and
- (j) Perform any other lawful acts assigned to him by the Governor, or otherwise required to carry out the provisions and purposes of this chapter.

Source: S.L. No. 2L-57-81 §8, 10/1/81; S.L. No. 5L-14-00 §3-49, 10/1/00

§2-109. Exemptions. —

(1) The Pohnpei Public Service System shall apply to all employees of and positions in the state executive branch, now existing or hereafter established, and to all personnel services performed for that government except the following, unless this chapter or provisions thereof are specifically made applicable to them:

- (a) The Governor and Lieutenant Governor;
- (b) The Public Auditor;
- (c) The directors of executive departments and administrators of executive offices established by law;
- (d) Elected officers and persons appointed to any other positions requiring the advice and consent of the Legislature;
- (e) Persons or organizations retained or hired by contract when the Director has certified that the service to be performed is special or unique and non-permanent and is essential to the public interest; and that, because of the degree of expertise or special knowledge required and the nature of the services performed, it would not be practical to obtain personnel to perform such services through normal public service recruitment procedures;
- (f) Persons presently under contract of employment not included in Paragraph (e) of this subsection, during the life of such contract, except if renewed or amended;
- (g) Temporary positions, required in the public interest, for which the need does not exceed six months;
- (h) Positions requiring part-time or intermittent work that does not exceed 20 hours in the bi-weekly pay period;
- (i) Positions filled by inmates, patients, and students of institutions of the state;
- (j) Members of any state board, public corporation, commission or similar body, in their capacity as such, unless otherwise made subject to this chapter; PROVIDED that employees thereof shall be subject to this chapter unless otherwise exempted herefrom; and
- (k) Positions specifically exempted by any other law of the state.

(2) Nothing in this section shall be deemed to affect the public services status of any incumbent as it existed on the effective date of this chapter [*October 1, 1981*].

Source: S.L. No. 2L-57-81 §9, 10/1/81; S.L. No. 4L-02-96 §2, 1/22/96; S.L. No. 5L-14-00 §3-49, 10/1/00

§2-110. Recruitment and placement. — Except as otherwise provided in this chapter, all positions covered by this chapter and for which authorizations, and, where applicable, appropriations shall have been made, shall be recruited by advertisement, for the period and by the media which are appropriate in the circumstances. The advertisement shall include at least the position, title, the salary, a brief description of the class, the location of the vacancy or vacancies, the qualification standards required, and the time and place of the examination, if any. The closing date for filing applications shall be clearly stated. On applications that are mailed, the date of postage marked on the mailing envelope shall be used to determine compliance with the deadline stated in the advertisement.

Source: S.L. No. 2L-57-81 §10, 10/1/81

§2-111. Examinations. —

(1) *General character.* There shall be competitive examinations, whenever possible and as determined by the Director, to test the relative fitness of candidates for public service positions covered by this chapter. Examinations may be in writing, by oral performance, or any combination thereof, and shall provide for ascertaining the physical and educational qualifications, experience, knowledge, and skills of applicants and their relative capacity and fitness for the duties of the position they seek. All examinations shall be free and, except for promotional examinations, shall be open to all candidates, but with such limitations in regard to health, physical conditions, education, training, experience, and other relevant matters as are appropriate to the class for which the examination is given. All examinations shall be under the control of the Director or of such person or persons as he may designate to administer them. All persons who have passed an examination may be required to take such physical examination as may be specified by the Director.

(2) *Promotional examinations.* Examinations may be promotional whenever, in the opinion of the Director, such examinations are practicable and for the best advantage of the public service. The Director shall give ample notice of any promotional examinations.

(3) *Open-competitive examinations.* Examinations shall be open-competitive whenever, in the opinion of the Director, such examinations are practicable and for the best advantage of the public service. The Director shall give ample notice of any open-competitive examinations.

(4) *Non-competitive examinations.* Non-competitive examinations may be given when, in the opinion of the Director, the class for which the examination is to be given calls for special qualifications which could not practically be evaluated through competition, or when the number of qualified candidates does not exceed the number of vacancies to be filled.

Source: S.L. No. 2L-57-81 §11, 10/1/81

§2-112. Eligible lists. —

(1) *General.* The Director shall cause to be established and maintained separate eligible lists for all classes in which vacancies exist or are anticipated. Eligible lists may be open-competitive or promotional depending on whether they result from open-competitive examinations or promotional examinations. An eligible list may remain active for one year.

(2) The Director may remove the name of a person from any eligible list or refuse to certify his name on any list of eligible persons if he finds, after giving him notice and an opportunity to be heard, that the person is no longer able to perform the necessary duties satisfactorily.

Source: S.L. No. 2L-57-81 §12, 10/1/81

§2-113. Filling vacancies. — Whenever there is a position to be filled, the authorized management official shall ask the Director to submit a list of persons eligible. The Director shall thereupon certify a list of five, or such lesser number as may be available, taken from eligible lists in the following order: first, promotional lists; and second, open-competitive lists. The highest management official of the department, or of the office or agency if not within a department, shall make the appointment from the list of eligibles submitted to him unless he finds no person available and acceptable to him on the list, in which case he will ask the Director to certify a new list, stating in writing his reasons for rejecting each of the eligibles on the list previously submitted to him. If the Director finds such reasons adequate, he shall then submit a new list of no more than five eligibles selected in a like manner, from which said management official shall make an appointment. If the Director does not find the reason adequate, he shall resubmit the list and the appointment shall be made therefrom.

Source: S.L. No. 2L-57-81 §13, 10/1/81

§2-114. Disqualification from appointment and service. — This section shall apply to all public service system positions, inclusive of all positions exempted by §2-109(1):

(1) Conviction of a felony after completion of sentence as specified in Subsection (1) of this section hereof shall not be a bar to employment in the public service unless the Director determines that the nature of the felony renders the candidate clearly unsuitable for the position applied for.

(2) The willful commission of or the attempt to commit any material deception or fraud in connection with any application or examination shall cause removal and permanent disqualification from appointment in the public service, after due notice and hearing by the Director.

Source: S.L. No. 2L-57-81 §14, 10/1/81

Note: Subsection (1) of this section formerly stated “(1) No person may be appointed or serve in the public service system who is currently under sentence, inclusive of the period for which imprisonment or other punishment has been suspended, for conviction of a felony under the laws of this State or the National Government or any other state of the Federated States of Micronesia, or of the United States of America or any political subdivision thereof.” This provision has been declared unconstitutional by the Pohnpei Supreme Court; *see Paulus v. State of Pohnpei* 3 FSM Intrm. 208 (Pon. S. Ct. Tr. 1987).

§2-115. Provisional and short-term appointment. —

(1) *Provisional appointment pending establishment of an eligible list.* When there is no eligible person available on a list appropriate for filling a vacancy in a continuing position and the public interest requires that it be filled before eligibles can be certified, the Director may authorize the filling of the vacancy through provisional appointment. The Director shall proceed without delay to announce an examination to fill the vacancy. The provisional appointment shall continue only for such a period as may be necessary to make an appointment from an eligible list but shall not extend beyond 90 days; PROVIDED that the Director may extend the provisional appointment for a maximum of 30 additional days if an examination has failed to secure any qualified available eligible person.

(2) *Emergency appointments.* To prevent the stoppage of essential public business, management officials may make emergency appointments, not to exceed ten working days, to fill positions temporarily in any serious emergency when time is insufficient to follow normal appointment procedures. The Director may, for good and sufficient cause stated in writing by the management official concerned, extend the appointment for an additional period not to exceed 20 working days.

(3) *Qualifications.* Provisional and temporary appointees must meet the qualification standards for the class of the position to be filled.

Source: S.L. No. 2L-57-81 §15, 10/1/81

§2-116. Probationary service. —

(1) Every employee shall successfully serve a probation period before becoming a regular employee. An employee whose services are unsatisfactory during his probation period may be dismissed from the public service at any time, by the responsible management official. An employee so dismissed shall have no right of appeal; but, if the employee so requests, the Director may, in his discretion, insert the employee's name on the eligible list or lists for other positions in the same class.

(2) A regular employee who is promoted or transferred to another position in the public service shall be required to serve a new probation period in his new position, but he shall be entitled to all the rights and privileges of a member of the public service except the right to appeal in the case of removal from the new position, as distinguished from dismissal from the public service.

(3) When a provisional or temporary appointee subsequently becomes a probational employee, the period of service in provisional or temporary status shall be counted toward meeting the probation period required by this section.

Source: S.L. No. 2L-57-81 §16, 10/1/81

§2-117. Position classification. — All positions subject to this chapter shall be classified by the Director according to their duties and responsibilities, and shall be grouped into classes on the basis of their similarities in duties, responsibilities, and desirable qualifications. Each class shall be given a title which shall apply to all positions therein, and which shall be used for all personnel, budgetary, and financial purposes. In preparing the position classification plan, the Director shall consult with appropriate management officials. The Director may change a position from one class to another when substantial changes have occurred in the duties and responsibilities of the position. The Director shall determine the status of occupants of positions that have been so reclassified.

Source: S.L. No. 2L-57-81 §17, 10/1/81

§2-118. Compensation plan: salaries. — There shall be a single base salary computation table for all employees and positions in the Public Service System. The Director shall assign each class of positions to an appropriate salary level of such table.

Source: S.L. No. 2L-57-81 §18(1), 10/1/81; S.L. No. 1L-114-86 §1(1), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-119. Compensation plan: periodic review. — The Director shall periodically conduct necessary and appropriate studies of rates and compensation and pay-related practices in all geographic areas from which employees for public service are normally recruited, and shall adopt such amendments to the existing compensation plan as is deemed appropriate; PROVIDED that, when the amendment includes changes in the salary table, the rates or nature of premiums, differentials or allowances, or other subjects covered in this chapter or in other laws, the Director shall submit the recommendations to the Governor for review, approval, and further transmittal to the Legislature for its consideration, and that such amendment shall become effective only after it has been enacted into law. In developing amendments, the Director shall give consideration to:

- (1) The minimum standard of living which is compatible with decency and health;
- (2) The general economic conditions of the state;
- (3) Compensation practices and conditions of appropriate labor markets;
- (4) Conditions of employment in the Pohnpei Public Service System;
- (5) The financial resources estimated to be available to the government; and
- (6) Such other matters as the Director may deem appropriate.

Source: S.L. No. 2L-57-81 §18(2), 10/1/81; S.L. No. 1L-114-86 §1(2), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-120. Compensation plan: premium. — To recognize circumstances of employment which make it appropriate that recognition be given to labor market conditions outside the state, the following premium is provided to public service employees. An employee who is recruited in a location outside the state who is a non-citizen of the Federated States of Micronesia and, at the time of original hire, a non-resident thereof, may be paid a premium based on labor market conditions in the place of recruitment and on the level of the base salary. When an employee is receiving this premium in addition to that person's base salary, the sum of the base salary plus premium shall constitute said person's adjusted base salary for the purpose of computing differentials.

Source: S.L. No. 2L-57-81 §18(3), 10/1/81; S.L. No. 1L-114-86 §1(3), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-121. Differentials. — To compensate for unusual circumstances of employment which create hardships for public service employees, the following differentials are provided for them; PROVIDED that in no case may an employee's combined differentials under §§2-122 through 2-127 exceed thirty percent (30%) of his or her adjusted base salary in a biweekly period.

Source: S.L. No. 2L-57-81 §18(4), 10/1/81; S.L. No. 1L-114-86 §1(4), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-122. Standby differential. — An employee whose duties require him or her to remain in a standby status, subject to call at any time, for a regularly scheduled period in excess of a normal 40-hour work week and who, in fact, is frequently called during this period of scheduled standby, shall be compensated at the rate of twenty percent (20%) of the adjusted base salary for each hour or portion thereof he or she shall so serve in a standby status. The standby differential shall be paid to a qualifying employee during the time he or she is on standby status and not during the time he or she is actually called to work during that period. During the time such employee is actually working during the standby period, he or she shall be entitled to time off or payment of applicable differentials where allowable under §§2-121 – 2-127.

Source: S.L. No. 2L-57-81 §18(4)(a), 10/1/81; S.L. No. 1L-114-86 §1(4)(a), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-123. Nightwork differential. — An employee whose tour of duty includes regularly scheduled hours falling between 7:00 p.m. and 6:00 a.m. shall be compensated at the rate of one hundred fifteen percent (115%) of the adjusted base salary for all hours falling within that period.

Source: S.L. No. 2L-57-81 §18(4)(b), 10/1/81; S.L. No. 1L-114-86 §1(4)(b), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-124. Hazardous work differential. — An employee who performs work which entails unusual and extreme hazards to that person's health or safety shall be compensated at the rate of one hundred twenty-five percent (125%) of the adjusted base salary for all hours in which hazardous work is performed.

Source: S.L. No. 2L-57-81 §18(4)(c), 10/1/81; S.L. No. 1L-114-86 §1(4)(c), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-125. Compensatory time-off/overtime differential. — An employee shall be paid overtime compensation at the rate of one hundred fifty percent (150%) of his or her adjusted base salary for all the time when said employee is directed to work and does work in excess of eight hours in a day or 40-hours in a week; PROVIDED, HOWEVER, that the employee's supervisor, in his discretion, may allocate compensatory leave time to the affected employee at the rate herein specified in lieu of the overtime differential; PROVIDED FURTHER, that if the supervisor shall not have accorded to the employee sufficient compensatory time off in lieu of the overtime compensation which can be used by the affected employee within 60 days following the date that such compensatory time was earned, the employee shall be entitled forthwith to the payment of overtime compensation at the rate herein prescribed for such hours for which compensatory time was credited in lieu of overtime compensation but that has not been accorded to the employee within the period herein prescribed.

Source: S.L. No. 2L-57-81 §18(4)(d), 10/1/81; S.L. No. 1L-114-86 §1(4)(d), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-126. Holiday differential. — An employee who is required to work on a legal holiday shall be compensated at the rate of two hundred percent (200%) of his or her adjusted base salary for all such hours worked.

Source: S.L. No. 2L-57-81 §18(4)(e), 10/1/81; S.L. No. 1L-114-86 §1(4)(e), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-127. Emergency differential. — Employees who are required to work in a location and for a period in which a typhoon or other natural catastrophe has been declared by the Governor and in which other government employees are released from work because of such conditions, shall be compensated for the hours worked while such emergency remains in force at the rate of two hundred fifty percent (250%) times his or her adjusted base salary. The differential provided in this section shall be paid at the rate prescribed for emergency differential in lieu of such other compensatory differentials as may otherwise apply.

Source: S.L. No. 2L-57-81 §18(4)(f), 10/1/81; S.L. No. 1L-114-86 §1(4)(f), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-128. Allowances. — To compensate employees for unusual expenses resulting from changes of work location, the following allowances are provided to public service employees:

(1) *Transfer allowance.* When an employee is recruited or transferred beyond commuting distance from his or her place of permanent residence for work elsewhere, he or she shall be entitled to all justifiable expenses connected with travel that employee and the employee's immediate family to the new work location and transportation of a reasonable quantity of household effects. He or she shall be entitled to an allowance equal to per diem at the established rate for the new duty station for a period not exceeding 30 calendar days from the date of entry into the new position.

(2) *Temporary housing allowance.* When an employee who is otherwise entitled to government housing is transferred to a new duty station where housing is not immediately available, said employee shall be paid a temporary housing allowance pending occupation of said employee's quarters at such rate as the Director finds necessary and appropriate; PROVIDED that an employee shall not receive a temporary housing allowance when receiving per diem pursuant to Subsection (1) of this section.

Source: S.L. No. 2L-57-81 §18(5), 10/1/81; S.L. No. 1L-114-86 §1(5), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-129. Holiday compensation. — All employees of the state are entitled to compensation for all legal holidays at said employee's adjusted base salary rate.

Source: S.L. No. 2L-57-81 §18(7), 10/1/81; S.L. No. 1L-114-86 §1(7), second pay period following 11/13/86; S.L. No. 4L-25-96 §6, 7/1/97

§2-130. Performance evaluation. — The Director shall develop and maintain a system of performance evaluation for the purpose of appraising the productivity of employees in the public service. Each agency shall develop performance evaluation criteria for every class or, if appropriate, for individual positions, and shall rate each employee under its jurisdiction at least once a year. The Director shall standardize performance evaluation criteria, develop evaluating procedures, and certify the final evaluations. A copy of each evaluation shall be given to the employee affected, and the management official shall give written notification to any employee whose performance is substandard. Performance evaluations shall be used in determining eligibility for retention status in reduction-in-force.

Source: S.L. No. 2L-57-81 §19, 10/1/81; S.L. No. 4L-25-96 §6, 7/1/97

§2-131. Leaves of absence. —

(1) Leaves of absence with pay may be granted to employees by management officials for reasons of annual leave (vacation), illness, training or education, or for other such reasons as will be in the best interests of the public service. Eligibility for such leaves, the method and rate of earning such eligibility, and the duration of the leaves shall be established by regulations.

(2) Leaves of absence without pay may be granted for such reasons as management officials may deem proper and consistent with the best interests of the public service. Regulations may prescribe the characteristics and eligibility of such leaves.

Source: S.L. No. 2L-57-81 §20, 10/1/81

§2-132. Employee associations. —

(1) Employees shall have the right to form associations for the purpose of presenting their views to the government and shall be free from restraint or reprisal in exercising this right. The government shall give reasonable opportunity to representatives of such associations to present their views.

(2) This does not grant the right of said associations to strike against the Government of Pohnpei. Any action of said nature will be held in violation of this subsection and any willing offender will be subject to immediate dismissal.

Source: S.L. No. 2L-57-81 §21, 10/1/81

§2-133. Outside employment. —

(1) It shall be a dischargeable offense for any employee to accept any fee, compensation, gift, payment of expenses or any other thing of monetary value in circumstances such that acceptance may result in:

- (a) Use of public office for private gain;
- (b) An undertaking to give preferential treatment to any person;
- (c) Impeding government efficiency or economy;
- (d) Any loss of complete independence or impartiality;
- (e) The making of a government decision outside official channels; or
- (f) Any adverse effect on the confidence of the public in the integrity of the government.

(2) No employee subject to this chapter shall receive compensation or any thing of monetary value, other than that to which he is duly entitled from the government, for the performance of any activity during his service and within the scope of his official responsibilities.

Source: S.L. No. 2L-57-81 §22, 10/1/81

§2-134. Grievances. — The regulations shall prescribe a system for hearing the views of employees on their working conditions, status, pay, and related matters and for hearing and adjudicating grievances of any employee or group of employees. These regulations shall ensure that employees are free from coercion, discrimination, and reprisals and that they may have representatives of their choice.

Source: S.L. No. 2L-57-81 §23, 10/1/81

§2-135. Resignation. — All resignations shall be in writing and submitted to the appropriate management official no less than 14 working days before proposed resignation of the employee.

Source: S.L. No. 2L-57-81 §24, 10/1/81

§2-136. Abandonment. — If an employee ceases work without explanation for not less than six consecutive working days he shall be deemed to have abandoned his position, and the management official shall file with the Director a statement showing termination of employment because of abandonment of position. The management official shall promptly transmit a copy of the statement to the employee by the most practical means.

Source: S.L. No. 2L-57-81 §25, 10/1/81

§2-137. Reductions-in-force. — Regulations shall be developed to govern the conditions under which an employee shall be laid-off from his position when lack of work or lack of funds makes such action necessary. The regulations shall provide that, in establishing order of layoff, consideration shall be given first, to the employee's individual merit, as shown by performance evaluations; second, to his seniority as measured by total creditable service; and third, to his qualifications of education, training, and experience.

Source: S.L. No. 2L-57-81 §26, 10/1/81

§2-138. Disciplinary action: suspension. — A management official may, for disciplinary purposes, suspend any employee without pay for such length of time as he considers appropriate. No single suspension for a period of more than three working days, whether consecutive or not, shall take effect until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the suspension and the employee's rights of appeal. A copy of the notice shall be filed with the Director without delay. With the approval of the Director, an employee may be suspended for a period longer than 30 days pending the investigation of any charge against him. When an employee has been suspended pending such an investigation and the charge is subsequently dropped, he shall be reinstated in his position with full pay and benefits retroactive to the date of suspension.

Source: S.L. No. 2L-57-81 §27(1), 10/1/81

§2-139. Disciplinary action: dismissal; demotion. — A management official may, for disciplinary reasons, dismiss or demote an employee for such causes that will promote the efficiency of the public service. Demotions may also be made for reasons other than disciplinary ones. The personnel regulations shall specify the circumstances in which such demotions may be authorized. No dismissal or demotion of a permanent employee shall be effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal. A copy of the notice shall be filed with the Director without delay.

Source: S.L. No. 2L-57-81 §27(2), 10/1/81

§2-140. Appeals from suspension, dismissal or demotion. —

(1) The Governor shall nominate, and, with the advice and consent of the Legislature, shall designate not fewer than seven persons to constitute a panel from which a Personnel Review Board may be drawn for the purpose set forth in this section. The Governor may remove a member of the panel for cause. Persons nominated shall be officers or employees of the state government, of mature judgment and experience. The Governor, Lieutenant Governor, members of the Legislature, justices and other judges of the state courts, the Attorney General, and directors of departments shall not be eligible for membership on the panel.

(2) Any regular employee who is suspended for more than three working days, demoted or dismissed may appeal through the Director within 15 calendar days after written notice of the suspension, demotion or dismissal has been transmitted to him. Upon receiving such appeal, the Director shall constitute a Personnel Review Board of three members, drawn from the panel established under Subsection (1) of this section.

(a) The Personnel Review Board shall be comprised of one member chosen by the Director, one chosen by the appellant, and a third chosen jointly by the first two members. If the first two are unable to agree on the choice of a third member, the third member shall be selected by lot from among the remaining members of the panel.

(b) No member of a Personnel Review Board shall be an officer or employee of the agency to which the appellant is or was assigned, or a close relative of either the appellant or the responsible management official.

(c) Members of a Personnel Review Board shall not receive additional compensation for such service, but shall be reimbursed for necessary expenses connected with any hearing to which they are assigned.

(3) The hearing shall be held within 15 calendar days after the Director receives the appeal. At the hearing, the appellant and the responsible management official shall have the right to be heard, to present evidence, and to be confronted by all adverse witnesses. The appellant shall have the right to be represented by counsel of his own choosing.

(4) At the hearing, technical rules of evidence shall not apply and evidence shall be taken stenographically or by manual or electronic recording machine. The Board, on its own motion or on that of the Director, management official or the appellant, shall subpoena witnesses and tangible evidence, when such witnesses or evidence are relevant to the hearing. Hearings shall be public except when the appellant requests a closed hearing.

(5) The Board shall prepare a full written statement of its findings of fact and its recommendations for action within seven calendar days after the close of the hearing. Its recommendations may include modifications or reversal of the disciplinary action from which appeal was taken. It shall forthwith transmit that statement, with such support documentation as it deems appropriate, to the highest management official responsible for the department, office or agency to implement such decision. The decision of the Board shall be final.

(6) Disciplinary actions taken in conformance with this section shall in no case be subject to review in the courts until the administrative remedies prescribed herein have been exhausted.

Source: S.L. No. 2L-57-81 §27(3), 10/1/81

§2-141. Regulations. — The Director shall draft regulations for personnel administration in the state government and shall submit such proposed regulations, together with his comments and recommendations thereon, to the Governor. The Governor, after considering the recommendations of the Director, shall promulgate personnel regulations in the manner prescribed by law. When promulgated, such regulations shall have the force and effect of law. They may relate to any matter not inconsistent with law concerning the establishment and maintenance of a system of personnel management based on merit principles, including but not limited to matters set forth in this chapter, and may be amended or repealed through the same procedure by which they were adopted by statute. Trust Territory Public Service regulations in force in the state on the effective date of this chapter [*October 1, 1981*] and not inconsistent with this chapter shall remain in effect as state regulations under this chapter until amended, superseded or repealed in the manner prescribed by this section.

Source: S.L. No. 2L-57-81 §28, 10/1/81

§2-142. Transition. — A regular employee holding a valid appointment in Trust Territory Public Service in service for this state, without further operation of law, shall be admitted without examination, in or after the effective date of this chapter [*October 1, 1981*], to a position of the same class or an equivalent class in the Pohnpei Public Service System. In subsequently computing the seniority of such an employee for retention and similar purposes, his time of service in the Trust Territory Public Service shall be credited in the same manner as if it had been in the Pohnpei Public Service System.

Source: S.L. No. 2L-57-81 §29, 10/1/81

Notes: 1. S.L. No. 2L-57-81 §18(6), 10/1/81 was implicitly repealed by S.L. No. 4L-25-96 §6, 7/1/97. 2. S.L. No. 2L-57-81 §30 superseding provision has been omitted.

CHAPTER 3 COMPENSATION RESTRUCTURING

Section

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§3-101. Short title. — This chapter is known and may be cited as the “Compensation Restructuring Act of 1996.”

Source: S.L. No. 4L-25-96 §1, 7/1/97

§3-102. Legislative findings. —

(1) The Pohnpei Legislature finds that the reductions of funding from the United States of America Government under the Compact of Free Association and the persistent refusal of the Federated States of Micronesia National Government to realign revenue-distribution formulas to accurately reflect the federal division of responsibilities may seriously impact this state’s financial ability to meet its constitutional and statutory responsibilities. The Legislature further finds that, because of the severe shortage in funds available to the state, this government may no longer maintain its public work force at levels of compensation previously provided.

(2) Article 11 §12 of the Pohnpei Constitution requires that, “Iren koasoandih kei pahn kokouda sang Kosonned pwehn iteite doadoahklahn mwohni kan, oh en katikala doadoahklahn mwohni kan ni ahsou kan me mwohni en weipokon sohte pahn itar ong doadoahklahn mwohni en weipokon me pahn wiawi nan pahr en mwohnio.” Moreover, Article 10 §8 of the Pohnpei Constitution requires that: “Pweinarail [ong pweinen Soun Kopwung en Mwoalen Kopwung Ihleile, soun kopwung teikan oh tohn pwihn en tenek kan] sohte pahn kak ketikitikla ni ahsou me re wiwia arail pwukoah nan ohpis, ihte ma mie koasoandi ieu sang kosonned ni soangen pweipwei pahrek ehu me kipe ohpiser oh tohn doadoahk koaros en government en Weipokon en Pohnpei.” Cognizant of these constitutional mandates, and mindful of the indispensable nature of the services that this government provides to our people, the Legislature hereby declares that it is in the essential public interest to take such statutory steps as may be necessary to reduce in equal proportion all of this government’s personnel costs to within levels that can be realistically supported by the limited revenues available to this state. It is for this purpose that this statute has been enacted.

Source: S.L. No. 4L-25-96 §2, 7/1/97; S.L. No. 4L-29-97 §2, 3/30/97

Notes: 1. S.L. No. 4L-29-97 §2, 3/30/97 purpose provision reads:

“The Legislature finds that the severe shortage of funds available to the state requires an early implementation of the compensation restructuring contained in S.L. No. 4L-25-96, which law is slated to take effect on July 1, 1997, and requires that the government undertake other cost-savings steps with respect to its personnel.”

2. S.L. No. 4L-29-97 §4 appropriation provision has been omitted.

§3-103. Parity among the state civil service systems. — Not later than 30 days following the effective date of this chapter [*effective date is July 1, 1997*], the Legislature, the Chief Justice of the Pohnpei Supreme Court and the Public Auditor shall adopt and issue such regulatory and administrative provisions and orders as may be necessary to ensure that their respective civil service systems are modified where necessary so that they conform in substance to the changes to the Public Service System of the executive branch effectuated by §§2-118 through 2-130.

Source: S.L. No. 4L-25-96 §7, 7/1/97

§3-104. Exempt positions. — Commencing on the effective date of this chapter [July 1, 1997], employees of the Pohnpei Government who are exempted from the Public Service System of the executive branch or similar civil service systems of the Legislature, the Judiciary, and the Office of the Public Auditor, and whose compensation is not otherwise provided for in the amendments to the laws of this state as provided in this chapter, may only be compensated at regular intervals commensurate with the regular pay periods of the government at that percentage of compensation for the period of time covered in the pay period that such exempted employee was otherwise entitled to immediately preceding the effective date of this chapter, or as may hereafter be provided by contract or other arrangement, which percentage is prescribed in the Comprehensive Budget Act for that fiscal year for the calculation of the compensation of officers and employees of the government for the same pay period.

Source: S.L. No. 4L-25-96 §14, 7/1/97; S.L. No. 4L-29-97 §5, 3/30/97

Note: S.L. No. 4L-25-96 §15 appropriation provision has been omitted.

§3-105. Compensation restructuring leave. — In addition to such leaves of absence as are regularly accorded the officers and employees of the Pohnpei Government, each officer and employee of the government whose compensation is reduced pursuant to this chapter shall be entitled to one hour of compensatory restructuring leave for each one percentage point of reduction in his regular salary for each pay period that said officer or employee shall serve at a reduced level of compensation as prescribed in the Comprehensive Budget Act for that fiscal year. Computation, accrual and use of compensation restructuring leave shall be subject to the following conditions:

(1) The computation and accrual of compensatory restructuring leave authorized by this section shall not exceed 16 hours per officer or employee per pay period, notwithstanding the fact that the percentage of reduction appearing in the Comprehensive Budget Act may exceed 16 percentage points of reduction in salary;

(2) Part-time employees shall accrue compensation restructuring leave at a rate that is proportionate to their service in relation to the service of full-time employees to the full rate of accrual;

(3) The officer's or employee's supervisor, following consultations with his superiors and those officers and employees under his supervision, shall prescribe a regular schedule for the use of compensation restructuring leave, which schedule may be modified by the supervisor from time to time;

(4) Unless a request for the use of compensation restructuring leave is unreasonably denied by the government, no officer or employee may carry over more than 40 hours of said leave to the next fiscal year; and

(5) A supervisor, upon a finding that there is not sufficient manpower to perform the services required and with the approval of the chief executive of the respective branch or office (or the chief executive's designee as authorized in writing), may require specified employees under his supervision to work during times set aside for the use of compensation restructuring leave for which additional compensation shall be made in lieu of the provision of said leave at the regular level of compensation as prescribed by the Comprehensive Budget Act for that fiscal year.

Source: S.L. No. 4L-25-96 §15A, 7/1/97

Note: §15A was inserted by S.L. No. 4L-29-97 §6, 3/30/97.

§3-106. Members of the workforce distinguished. — For purposes of this chapter, the following terms shall have the following meanings:

(1) "Employee" or "employees" as used in this chapter means every person employed by the state government who is not an officer as defined by Subsection (1) of this section. The term "employee" includes all such members of the workforce whether they are employed under a separate personal services contract, a grant agreement or a general employment action, and whether they serve under the public service system of the respective branch or are exempt therefrom. The term "employee" does not

include persons working for an independent contractor performing services privatized by the state government or a public corporation of the state which maintains a separate personnel system as authorized by state law.

(2) “Grant employee” or “grant employees” means employees of the state government whose definition of work and primary compensation come from sources outside of the state government pursuant to one or more grant agreements. For purposes of this subsection, monies coming to the state government under the financing provisions of the Compact of Free Association shall be deemed to be internal monies of the state and not emanating from a source outside of the state.

(3) “Officer” or “officers” shall mean every person who holds a position listed in or otherwise covered by §4-102. The term “officer” as used in this chapter is distinguished from and separate from the term “employee.”

Source: S.L. No. 4L-25-96 §15B, 7/1/97

Note: §15B was inserted by S.L. No. 4L-101-99 §1, 3/16/99.

§3-107. Use of grant funds restricted. — In order to ensure full compliance with the service expectations of outside grants awarded to the state of Pohnpei, funds received by any agency of the state government under a grant agreement with any entity, not part of the state government, that are budgeted for, or otherwise allocated to, the payment of personnel expenses of the grant employees currently employed under that program, may not be reprogrammed or reallocated by any state officer or employee to any other use by reason of the salary reductions required by this chapter. Such funds so affected shall be reserved for and directed to the compensation of the class of grant employees for which the funds were originally budgeted for work performed by said employees during times normally set aside for compensation restructuring leave as authorized by §3-105. Any management official found to have knowingly and willfully diverted grant monies to non-personnel uses in violation of the terms of this section shall be personally liable to the state government for the loss or diversion of said funds.

Source: S.L. No. 4L-25-96 §15C, 7/1/97

Note: §15C was inserted by S.L. No. 4L-101-99 §1, 3/16/99.

PUBLIC OFFICERS & EMPLOYEES

CHAPTER 4 COMPENSATION

Section

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SUBCHAPTER I GOVERNMENT OFFICERS' SALARY SCHEDULE

§4-101. Short title. — This subchapter is known and may be cited as the “Pohnpei State Government Officers’ Salary Act of 1984.”

Source: S.L. No. 3L-30-84 §1, 4/1/86

§4-102. Salaries for Pohnpei Government officers. — The following table of base salary computations is hereby adopted to provide for the basis upon which the base salaries of the officers filling the positions listed in the following subsections of this section shall be calculated. The actual salary to be paid to each officer so listed shall be based upon the percentage stipulated in the annual Comprehensive Budget Act (but not greater than one hundred percent (100%)) to be applied against the figures appearing in the table of base salary computations as set forth in this section and attributable to that position, subject to such adjustments as may be attributable by law to such base salary computation. The salary of each officer so calculated shall be payable in equal biweekly payments, unless otherwise provided by this section:

- (1) Executive branch:
 - (a) Governor – \$30,000;
 - (b) Lieutenant Governor – \$25,000;
 - (c) Department Directors – \$23,000;
 - (d) Administrators of executive offices – \$18,000 – \$21,000; and
 - (e) Attorney General – \$23,000; PROVIDED, HOWEVER, that the Attorney General may receive a salary premium of up to one hundred percent (100%) of the base salary.
- (2) Judiciary:
 - (a) Pohnpei Supreme Court:
 - (i) Chief Justice – \$25,000;
 - (ii) Associate justices – \$23,000;
 - (iii) Alternate resident justices while engaged in the business of the court – \$80 per day; and
 - (iv) Alternate non-resident justices while engaged in the business of the court – \$100 per hour for each hour of service authorized by the Chief Justice of the Pohnpei Supreme Court.

(b) Court of Land Tenure:

- (i) Principal judge – \$19,000;
- (ii) Judges – \$17,000;
- (iii) Assessors – \$9,000 – \$11,000;

(c) Court of Traffic and Misdemeanor Offenses [RESERVED].

(3) Legislature: All members of the Legislature – \$25,000.

(4) Chief executive officers of Pohnpei authorities and commissions who are subject to advice and consent of the Legislature pursuant to the Uniform Appointments and Tenure Act, Chapter 1, as amended or superseded by Pohnpei law – \$23,000.

(5) Members of boards, commissions, councils, and other policy-making entities for which compensation is provided by reference to this subchapter, \$20 for each day or portion thereof the member shall attend a formally convened session of such board, commission, council or other policy-making entity.

(6) Pohnpei Public Auditor – \$23,000.

Source: S.L. No. 3L-30-84 §2, 4/1/86; S.L. No. 1L-71-86 §3-1, 4/1/86; S.L. No. 3L-11-92 §1, 6/30/93; S.L. No. 3L-17-92 §1, 10/1/92; S.L. No. 3L-99-95 §19-3, 7/20/95; S.L. No. 4L-02-96 §1, 1/22/96; S.L. No. 4L-25-96 §3, 7/1/97; S.L. No. 5L-14-00 §3-3, 10/1/00

§4-103. Existing employment contract. — This subchapter shall not impair, change, increase or decrease the obligations of any existing employment contract to which the state government is or becomes a party to or is the beneficiary thereof. Every position to be filled after the effective date of this subchapter [*August 7, 1984*] by initial contractual appointment or renewal shall provide for compensation as specified in this subchapter.

Source: S.L. No. 3L-30-84 §5, 8/7/84

Extended legislative history: S.L. No. 3L-30-84 §6(1), 1/13/86 amended PDC §1-8(1)(a); S.L. No. 3L-30-84 §6(2), 1/13/86 amended D.L. No. 4L-159-78 §7, 11/28/78; S.L. No. 1L-71-86 §3-1, 4/1/86 amended S.L. No. 3L-30-84 §2, 4/1/86; S.L. No. 1L-71-86 §3-2, 4/1/86 amended S.L. No. 3L-30-84 §8; S.L. No. 3L-11-92 §1, 10/1/92 amended S.L. No. 3L-30-84 §2, 4/1/86; S.L. No. 3L-11-92 §3, 6/30/92 repealed §§3 & 4 of S.L. No. 3L-30-84 and inserted a new §3; S.L. No. 3L-17-92 §2, 10/1/92 repealed S.L. No. 3L-30-84 §3, 8/7/84; S.L. No. 3L-99-95 §19-3, 7/20/95 amended S.L. No. 3L-30-84 §2.

SUBCHAPTER II GOVERNMENT EMPLOYEES' SALARY SCHEDULE

§4-104. Short title. — This subchapter is known and may be cited as the “Pohnpei Government Salary Conversion Act of 1985.”

Source: S.L. No. 1L-71-86 §1-1, 1/1/86

§4-105. Purpose. — The purpose of this subchapter is to convert all officers and employees of the Pohnpei Government to systematic and legislatively defined salary levels and schedules, and to provide for the orderly and timely implementation thereof.

Source: S.L. No. 1L-71-86 §1-2, 1/1/86

§4-106. Definitions. — In this subchapter, unless the content otherwise requires:

- (1) “Adjusted base salary” is the total of base salary plus premium.
- (2) “Base salary” is the base salary provided in the base salary schedules established by §§4-107 and 4-102.
- (3) “Base salary rate” is synonymous and interchangeable with the term “base salary” and identifies a specific rate of pay for any given pay level and step as contained within the base salary schedule established by §4-107 or the specific rate of pay assigned to an officer under §4-102.

Furthermore, base salary rate does not include other types of compensation or payments such as premiums, differentials, or overtime, and the like.

(4) “Certified professional engineer, public accountant or architect” means a person who has received a degree in engineering, public accounting or architecture from a recognized college or university and has been accepted by a professional association within the United States of America (or such association of another country determined by the chief executive officer of the respective branch to require professional standards substantially equivalent to or higher than the relevant association within the United States) of engineers, public accountants or architects to be registered as a professional engineer, public accountant or architect in the technical field of expertise, having achieved the requisite degree of training and experience therefor.

(5) “Chief executive officer” means the Speaker of the Legislature in relation to the legislative branch, the Governor in relation to the executive branch, and the Chief Justice in relation to the judiciary branch.

(6) “Employee” means a person holding a position for which there is a defined set of work responsibilities in a department or office of the Pohnpei Government assigned by a competent authority to be performed by one person working in a full or part-time capacity, except for the positions listed in §4-102, or listed as exempt in §2-109, or its successor in Pohnpei law, and equivalent public service systems for the legislative and judicial branches of the Pohnpei Government.

(7) “Medical officer” and “dental officer” mean a person who is certified to practice medicine or dentistry in Pohnpei, but who does not meet the criteria of §4-108(4).

(8) “Officer” means a person holding a position listed in §4-102.

(9) “Personnel officer” means that person within the respective branch of the Pohnpei Government principally charged with the classification of employees thereunder.

(10) “Premium” means a percentage of the base salary of a given position’s pay level and step in §4-107 or salary level in §4-102, which is then added to the base rate to form an employee’s adjusted base pay rate as determined by the chief executive officer of the respective branch for that individual officer or employee.

(11) “Prime contract” means a full-time permanent position under a contract of not more than two years duration of a person initially recruited outside of the geographic boundaries of the Federated States of Micronesia.

Source: S.L. No. 1L-71-86 §1-3, 1/1/86

§4-107. Base salary computation table. — The base salary computation table appearing in this section is hereby adopted under the authority of the Public Service System Act, Chapter 2, or its successor in Pohnpei law, and equivalent public service systems of the legislative and judicial branches of the Pohnpei Government and each public corporation and public entity to which this subchapter is made applicable in its enabling legislation, to provide the basis upon which the official biweekly base salary for all employees covered by such systems shall be calculated. The actual salary to be paid to each employee so covered shall be based upon the percentage stipulated in the annual Comprehensive Budget Act to be applied against the figures appearing in the table of base salary computations prescribed hereunder and attributable to that position under the classification schedule of the respective public service system, subject to such adjustments as may be attributable by law to such base salary computation. The biweekly base salary so calculated for each employee shall be based upon an eighty (80) hour biweekly work period, which shall be paid to employees not specifically exempted, in accordance with the respective pay levels assigned to their positions by the personnel officer of the respective branch of government under authority of applicable statutes, regulations, and manuals. The applicable amount set out below shall be paid to each employee who works eighty (80) hours in a pay period. To determine the hourly rate for an employee who works less than eighty (80) hours in a pay period or to determine the hourly rate of applicable differentials, the biweekly base salary shall be divided by eighty (80). Such a procedure shall be used only for these purposes.

BASE SALARY COMPUTATION TABLE

MINIMUM		MAXIMUM								
Level	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	\$160.00	\$169.60	\$179.79	\$191.17	\$203.60	\$216.32	\$230.42	\$245.66	\$260.06	\$275.46
2	\$169.60	\$179.79	\$191.17	\$203.60	\$216.32	\$230.42	\$245.66	\$260.06	\$275.46	\$291.94
3	\$179.79	\$191.17	\$203.60	\$216.32	\$230.42	\$245.66	\$260.06	\$275.46	\$291.94	\$309.58
4	\$191.17	\$203.60	\$216.32	\$230.42	\$245.66	\$260.06	\$275.46	\$291.94	\$309.58	\$328.45
5	\$203.60	\$216.32	\$230.42	\$245.66	\$260.06	\$275.46	\$291.94	\$309.58	\$328.45	\$348.45
6	\$216.32	\$230.42	\$245.66	\$260.06	\$275.46	\$291.94	\$309.58	\$328.45	\$348.45	\$370.24
7	\$230.42	\$245.66	\$260.06	\$275.46	\$291.94	\$309.58	\$328.45	\$348.45	\$370.24	\$390.06
8	\$245.66	\$260.06	\$275.46	\$291.94	\$309.58	\$328.45	\$348.45	\$370.24	\$390.06	\$411.06
9	\$260.06	\$275.46	\$291.94	\$309.58	\$328.45	\$348.45	\$370.24	\$390.06	\$411.06	\$433.33
10	\$275.46	\$291.94	\$309.58	\$328.45	\$348.45	\$370.24	\$390.06	\$411.06	\$433.33	\$456.92
11	\$291.94	\$309.58	\$328.45	\$348.45	\$370.24	\$390.06	\$411.06	\$433.33	\$456.92	\$481.94
12	\$309.58	\$328.45	\$348.45	\$370.24	\$390.06	\$411.06	\$433.33	\$456.92	\$481.94	\$508.46
13	\$328.45	\$348.45	\$370.24	\$390.06	\$411.06	\$433.33	\$456.92	\$481.94	\$508.46	\$536.56
14	\$348.45	\$370.24	\$390.06	\$411.06	\$433.33	\$456.92	\$481.94	\$508.46	\$536.56	\$566.36
15	\$370.24	\$390.06	\$411.06	\$433.33	\$456.92	\$481.94	\$508.46	\$536.56	\$566.36	\$597.94
16	\$390.06	\$411.06	\$433.33	\$456.92	\$481.94	\$508.46	\$536.56	\$566.36	\$597.94	\$631.42
17	\$411.06	\$433.33	\$456.92	\$481.94	\$508.46	\$536.56	\$566.36	\$597.94	\$631.42	\$666.90
18	\$433.33	\$456.92	\$481.94	\$508.46	\$536.56	\$566.36	\$597.94	\$631.42	\$666.90	\$704.51
19	\$456.92	\$481.94	\$508.46	\$536.56	\$566.36	\$597.94	\$631.42	\$666.90	\$704.51	\$744.39
20	\$481.94	\$508.46	\$536.56	\$566.36	\$597.94	\$631.42	\$666.90	\$704.51	\$744.39	\$786.65
21	\$508.46	\$536.56	\$566.36	\$597.94	\$631.42	\$666.90	\$704.51	\$744.39	\$786.65	\$831.45
22	\$536.56	\$566.36	\$597.94	\$631.42	\$666.90	\$704.51	\$744.39	\$786.65	\$831.45	\$878.93

Source: S.L. No. 1L-71-86 §2-1, 1/1/86; S.L. No. 3L-16-92 §1, 10/1/92; S.L. No. 4L-25-96 §4, 7/1/97

§4-108. Compensation of salaried employees. —

(1) Except as otherwise provided in this section, all employees, as defined by this subchapter, holding positions in the Pohnpei Government, shall be compensated as provided by the base salary schedule as provided by §4-107.

(2) Notwithstanding Subsection (1) of this section, an employee covered under the provisions thereof who is a medical or dental officer, and who is employed in a position having a requirement or preference for such status, shall receive, in addition to the base salary, a premium of up to fifty percent (50%) of the base salary rate for the pay level and step of the position.

(3) Notwithstanding Subsection (1) of this section and except for those qualifying under Subsection (4) of this section, any employee who is a certified professional engineer, public accountant or architect and who is employed in a position having a requirement or preference for such status, shall receive, in addition to the base salary, a premium of up to one hundred percent (100%) of the base salary rate for the pay level and step of the position.

(4) Notwithstanding Subsection (1) of this section, an employee covered under the provisions thereof who has achieved advanced professional capabilities through obtaining an L.L.B. or J.D., a doctorate in medicine or dentistry or an earned doctorate in any other field from an accredited college or university and who has been certified by the appropriate professional association within the United States of America (or such association within another country determined by the chief executive officer of the respective branch to require professional standards substantially equivalent to or higher than the relevant association within the United States), and who is employed in a position having a requirement or preference for such a degree and professional status, shall receive, in addition to the base salary, a premium of up to one hundred percent (100%) of the base salary rate for the pay level and step of the position.

(5) Notwithstanding Subsection (1) of this section, any employee covered under the provisions thereof who is assigned to a permanent position in a duty station to work at locations outside the geographic boundaries or control limits of the Federated States of Micronesia shall receive, in addition to the adjusted base salary, inclusive of such premium he may receive pursuant to the foregoing

subsections of this section, a premium of up to one hundred percent (100%) of the adjusted base salary rate for the position.

Source: S.L. No. 1L-71-86 §2-2, 1/1/86

§4-109. Implementation of the salary plan. —

(1) For the purpose of the implementation of the base salary schedule, the former pay levels adopted under Public Law No. 6-65 §4 shall be equated to the pay levels of the base salary schedule established by §4-107 as follows:

Former Level	New Level	Former Level	New Level
1	1	16	11
2	2	17	11
3	3	18	12
4	3	19	13
5	4	20	14
6	4	21	15
7	5	22	16
8	5	23	17
9	6	24	17
10	6	25	18
11	7	26	19
12	7	27	19
13	8	28	20
14	9	29	21
15	10	30	22

(2) The respective personnel officer shall assign to each employee covered by §§4-107 through 4-109 a step within the level assigned thereto which represents the amount equal to, or the next highest step to the amount the employee received as base salary under the respective compensation plan in effect immediately prior to the effective date of this subchapter [*January 1, 1986*].

(3) At the effective date of this subchapter, each employee who is not exempt from this subchapter shall receive his pay in the new salary plan established herein. Except as otherwise provided for in this subchapter, no employee shall receive a reduction in salary upon implementation of the new salary plan.

(4) Nothing in the foregoing is intended to prevent the respective personnel officer, after implementation of the plan, from redesignating the pay level of any class under authority of the respective public service system.

Source: S.L. No. 1L-71-86 §2-3, 1/1/86

Note: S.L. No. 1L-71-86 §3-2 temporary provision has been omitted.

SUBCHAPTER III SEAMEN’S SALARY SCHEDULE

§4-110. Base salary schedule of seamen. — Notwithstanding any salary schedule heretofore in force in the state of Pohnpei with respect to seamen employed by the Pohnpei Government, for service on vessels owned or operated by the Pohnpei Government which provide passenger and/or freight services between the main port of Pohnpei and the ports of the outer islands of Pohnpei State, the base salary computation table appearing in this section shall provide the basis upon which the official biweekly base salary for all such seamen shall be calculated. The actual salary to be paid to each seaman so covered shall be based upon the percentage stipulated in the annual Comprehensive Budget Act to be applied against the figures appearing in the table of base salary computations prescribed hereunder and attributable to that position under the terms of this subchapter, subject to such adjustments as may be attributable by law to such base salary computation. The biweekly base salary to be paid to each seaman shall be calculated on the basis of one hundred and twelve (112) hours of

service. Such salaries shall be paid in accordance with the respective pay levels and steps assigned to their positions by the Administrator of the Office of Transportation and Infrastructure, in consultation with the Chief of the Division of Personnel, Labor and Manpower Development:

Pohnpei Government Seamen
BASE SALARY COMPUTATION TABLE

MINIMUM							MAXIMUM
Level	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	\$196.00	\$207.76	\$220.23	\$234.44	\$248.51	\$263.42	\$279.23
2	\$207.76	\$220.23	\$234.44	\$248.51	\$263.42	\$279.23	\$295.98
3	\$220.23	\$234.44	\$248.51	\$263.42	\$279.23	\$295.98	\$313.74
4	\$234.44	\$248.51	\$263.42	\$279.23	\$295.98	\$313.74	\$332.56
5	\$248.51	\$263.42	\$279.23	\$295.98	\$313.74	\$332.56	\$352.51
6	\$263.42	\$279.23	\$295.98	\$313.74	\$332.56	\$352.51	\$373.66
7	\$279.23	\$295.98	\$313.74	\$332.56	\$352.51	\$373.66	\$396.08
8	\$295.98	\$313.74	\$332.56	\$352.51	\$373.66	\$396.08	\$419.84
9	\$313.74	\$332.56	\$352.51	\$373.66	\$396.08	\$419.84	\$445.03
10	\$332.56	\$352.51	\$373.66	\$396.08	\$419.84	\$445.03	\$471.73
11	\$352.51	\$373.66	\$396.08	\$419.84	\$445.03	\$471.73	\$500.03
12	\$373.66	\$396.08	\$419.84	\$445.03	\$471.73	\$500.03	\$530.03
13	\$396.08	\$419.84	\$445.03	\$471.73	\$500.03	\$530.03	\$556.53
14	\$419.84	\$445.03	\$471.73	\$500.03	\$530.03	\$556.53	\$584.36
15	\$445.03	\$471.73	\$500.03	\$530.03	\$556.53	\$584.36	\$613.58
16	\$471.73	\$500.03	\$530.03	\$556.53	\$584.36	\$613.58	\$644.26
17	\$500.03	\$530.03	\$556.53	\$584.36	\$613.58	\$644.26	\$676.47

Source: S.L. No. 3L-75-94 §1, 10/1/94; S.L. No. 4L-25-96 §5, 7/1/97; S.L. No. 5L-14-00 §3-46, 10/1/00

§4-111. Compensation calculation. — Compensation of individual seamen under the salary schedule specified above shall be calculated and prorated on an hourly basis pursuant to applicable laws regulating hours, leave time, and terms of employment of seamen on such vessels owned or operated by the Pohnpei Government as specified in §4-110 and by the terms of each seaman's shipping articles not inconsistent with said laws.

Source: S.L. No. 3L-75-94 §2, 10/1/94

§4-112. Authorization for appropriation. — There is hereby authorized for appropriation from the general fund of Pohnpei such sums as may be appropriated annually in the Comprehensive Budget Act for the purpose of paying the salaries of seamen employed by the Pohnpei Government as referred to in §4-110.

Source: S.L. No. 3L-75-94 §3, 10/1/94

Note: S.L. No. 3L-75-94 §4 appropriation provision has been omitted.

CHAPTER 5 PER DIEM AND REIMBURSABLE EXPENSES

Section

5-101 Transportation costs and per diem

5-103 Travel advancement

5-102 Officers' travel premium

§5-101. Transportation costs and per diem. — Officers and employees of the Pohnpei Government, while on travel status on authorized Pohnpei Government business, shall be entitled to actual transportation costs and to per diem at such rates as are provided by the Federated States of Micronesia National Government for its officers and employees in like travel status. The rates so established shall be applied equally to all officers and employees of the three branches of the Pohnpei Government; PROVIDED that the following rates shall apply to all Pohnpei officers and employees while on travel status away from one's usual place of abode:

(1) Within Pohnpei State:

(a) Outside of Pohnpei Island proper – \$20; and

(b) Within Pohnpei Island proper, exclusive of legislators in attendance of Legislature business – \$25.

(2) Per diem for travel status at a location for less than a full day shall be computed at the same percentages of the above specified amounts as are used for calculation by the FSM National Government for its employees in like travel status.

Source: S.L. No. 2L-81-81 §1, 7/15/81; S.L. No. 2L-38-88 §1, 9/4/88

§5-102. Officers' travel premium. — In addition to per diem as provided in §5-101, the following state officers shall, in recognition of the added financial burdens of travel and representation inherent in these positions, be entitled to an officer's travel premium allowance of \$20 per day or portion thereof while on authorized travel status outside of Pohnpei State. Said allowance may be paid to accompanying staff upon authorization of the chief officer of the respective branch:

(1) Legislative branch: Legislators.

(2) Executive branch:

(a) Governor and Lieutenant Governor;

(b) Directors of state executive departments and administrators of executive offices; and

(c) Executive heads of state authorities and commissions.

(3) Judicial branch: State judges.

Source: S.L. No. 2L-81-81 §2, 7/15/81; S.L. No. 5L-14-00 §3-58, 10/1/00

Note: S.L. No. 2L-81-81 §3 repealing provision has been omitted.

§5-103. Travel advancement. — Notwithstanding any laws, regulations, directives, proclamations or instructions to the contrary, each Pohnpei officer or employee shall be permitted to receive a travel advancement of up to one hundred percent (100%) of the total entitlement as authorized on his travel authorization; PROVIDED that an employee or Pohnpei officer shall, after filing of all the required travel documents within ten working days after the completion of travel and upon determination by the Department of Treasury and Administration that an amount is owed to the government, promptly remit such payment within a time mutually agreed upon between the employee or officer and the Department of Treasury and Administration; PROVIDED FURTHER that failure by an employee or officer to file the necessary travel documents within the time prescribed herein shall establish a presumption that the employee or officer owes the government the total amount of travel advances accorded him and that he shall remit said amount in the manner prescribed herein; PROVIDED

FURTHER that, upon failure to pay within the time allowed, the Department of Treasury and Administration shall deduct the amount due or a reasonable fraction thereof from the employee's or officer's biweekly salary until the full amount is paid.

Source: S.L. No. 2L-38-88 §2, 9/4/88

CHAPTER 6 PENSION PLAN

[PENDING]

Section

6-101 Short title	6-133 Timing of payment of deferred compensation and contributions into the fund
6-102 Purpose	6-134 Exclusive property of the Plan
6-103 Plan established	6-135 Distribution of benefits
6-104 Definitions	6-136 Separation from service
6-105 Participation	6-137 Unforeseen emergency
6-106 Incorporation of the Plan	6-138 Election to commence benefits
6-107 Board of Directors	6-139 Selection of payment option
6-108 Management of the Plan	6-140 Beneficiaries
6-109 Compensation	6-141 Withholding of taxes
6-110 Term of office	6-142 Benefits not subject to assignment, attachment, garnishment, execution or bankruptcy
6-111 Vacation of office	6-143 Administrative expenses: other disbursements
6-112 Delegation by the Board	6-144 Deferred compensation account
6-113 Procedures	6-145 Profit-sharing account
6-114 Disclosure of interests and disqualification for interest	6-146 Administrative expense account
6-115 Indemnification for liability: misconduct in public office	6-147 Written statements
6-116 Bylaws	6-148 Establishment of the fund
6-117 Regulations	6-149 Payments into the fund
6-118 Hearings	6-150 Payments out of the fund
6-119 Judicial review	6-151 Financial statements
6-120 Administrator	6-152 Bank accounts
6-121 Staff	6-153 Investment
6-122 Functions of the Plan	6-154 Actuary
6-123 Powers of the Plan	6-155 Public Auditor
6-124 Bonding	6-156 False statements and reports
6-125 Travel policy	6-157 Mismanagement of fund
6-126 Exemption	6-158 Penalties and interest, attorneys' fees, and court costs
6-127 Deferred compensation	6-159 Taxation
6-128 Contributions by government	6-160 Service of process on the Administrator
6-129 Contributions by participating employers	6-161 Legislative changes
6-130 Investment income	6-162 Effective date
6-131 Preliminary appropriation by the Pohnpei Government	
6-132 Regular appropriations by the Pohnpei Government	

§6-101. Short title. — This chapter is known and may be cited as the “Pohnpei Pension Plan Act of 1993.”

Source: S.L. No. 3L-51-93 §1-1, 12/3/93

§6-102. Purpose. — The purpose of this chapter is to establish a Pohnpei pension plan to provide a means whereby employees of the government and private sector may supplement their retirement, disability, and survivor benefits from Social Security.

Source: S.L. No. 3L-51-93 §1-2, 12/3/93

§6-103. Plan established. — The Pohnpei Pension Plan is hereby established as a public corporation under the laws of Pohnpei.

Source: S.L. No. 3L-51-93 §1-3, 12/3/93

§6-104. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) “Accumulated value” means the total value of a participant’s deferred compensation account, profit sharing account, and interest thereon.

(2) “Actuary” means a member in good standing of any society, institute or organization of qualified actuaries recognized by the International Actuarial Association.

(3) “Administrative expense account” means an account that is established within the fund pursuant to §6-146 into which all amounts designated for administrative expenses are received and from which all administrative expenses are paid.

(4) “Administrative Procedures Act” means Title 8 Chapter 1, or its successor in state law.

(5) “Administrator” means the Administrator of the Pohnpei Pension Plan appointed under §6-120.

(6) “Beneficiary” means a person or persons designated by a participant to receive the participant’s interests in the Plan in the event of the participant’s death, or in the absence of such a designation, the participant’s estate, or any other person, whose rights under the Plan are derived as a result of the participant’s death.

(7) “Board” means the Board of Directors of the Pohnpei Pension Plan established under §6-107.

(8) “Compensation” means any salary, wage, bonus, tip, stipend, allowance or fee paid by the government or a participating employer to or on behalf of an employee, but not including:

(a) Payments made in-kind or in any form other than cash;

(b) Payments made as a result of an accident or sickness of the worker (other than sick leave);

(c) Reimbursement of medical or hospitalization expenses; and

(d) Payments made to or on behalf of the worker or his beneficiary from a trust or annuity.

(9) “Custodian” means any person, firm or corporation who is qualified and has assumed the responsibility for the possession of any or all of the fund’s assets pursuant to §6-153(2).

(10) “Deferred compensation” means the amounts withheld from the participant’s compensation and credited to the participant’s deferred compensation account.

(11) “Deferred compensation account” means an account that is established for each participant pursuant to §6-144 to maintain a record of the participant’s deferred compensation and any credited net income resulting from the investment of that deferred compensation.

(12) “Disability” means the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months. As soon after the effective date of this chapter [*see 9 PC 6-162*] as practical, the Board shall adopt rules and regulations that shall provide detailed guidelines for the determination of disability under this chapter.

(13) “Distribution” means a payment from the Plan to a participant for part or all of the balance of one or more of the accounts established for the participant.

(14) “Eligibility service” means the sum of participation service, prior service, and TTPI service.

(15) “Employee” means any natural person who, under the common law rules applicable in determining the employer-employee relationship, has entered into or works under a contract with the government or with a participating employer, in any capacity, excluding that of independent contractor, whether the contract is expressed or implied, oral or written, requiring the personal execution of any work or labor.

(16) “Employment classification” means the classification of participants into groups that determine a participant’s rights under the Plan. The employment classifications are:

Employment classification	Employee description
Class 1	Governor, Lt. Governor
Class 2	Members of the Pohnpei Legislature
Class 3	Legislative staff division heads; the Public Auditor; Justices of the Supreme Court and judicial officers whose appointments are subject to the advice and consent of the Legislature; executive officers and department heads whose appointments are subject to the advice and consent of the Legislature, under the Uniform Appointments and Tenure Act, Title 9 Chapter 1 or its successor in state law
Class 4	Police officers and firefighters
Class 5	All other government employees
Class 6	All employees of participating employers

(17) “Fiscal year” means the 12-month period commencing on October 1 and concluding on the following September 30.

(18) “Fund” means the Pohnpei Pension Plan fund.

(19) “Government” means the Pohnpei Government, including all public corporations, agencies, and instrumentalities of Pohnpei.

(20) “Investment manager” means any person, firm or corporation who is qualified and has been engaged by the Board to manage some or all of the assets of the fund pursuant to §6-153(3).

(21) “Investment consultant” means any person, firm or corporation who is qualified and has been engaged by the Board to provide investment advice pursuant to §6-153(4).

(22) “Legislature” means the Pohnpei Legislature.

(23) “Non-vested interest” means that portion of a participant’s profit-sharing account that the participant is not entitled to receive under the Plan.

(24) “Normal retirement” means the earlier of attaining the age of 60 or upon satisfaction of the eligibility requirements in the table below, based upon the participant’s most favorable employment classification:

Employment classification	Normal retirement eligibility requirement
Class 1	Completion of term of office
Class 2	Completion of term of office
Class 3	Completion of term of office
Class 4	Attain at least age 50 and complete at least 20 years of eligibility service
Class 5	Attain at least age 55 and complete at least 30 years of eligibility service
Class 6	Attain at least age 60

(25) “Participant” means an employee who participates in the Plan pursuant to §6-105.

(26) “Participating employer” means any private sector person, self-employed worker, firm, company, partnership, corporation, association, joint venture, religious organization or other entity that employs, or on whose behalf are employed, any employees, and that elects to participate in the Plan pursuant to this chapter and any rules and regulations issued by the Board.

(27) “Participation agreement” means a written agreement between the Plan and a participating employer specifying the terms and conditions under which the participating employer joins the Plan. Participation agreements may include provisions to limit the Plan’s responsibility for collecting contributions and enforcing the participating employer’s or employee’s compliance with the Plan or the participation agreement.

(28) “Participation service” means the period or periods of service as an employee of the government or a participating employer, on or after the effective date of this chapter [see 9 PC 6-162], during which the participant makes deferred compensation payments into the fund pursuant to §6-127.

(29) “Plan” means the Pohnpei Pension Plan.

(30) “Prior service” means service as an employee of Pohnpei or Ponape District during the period from May 10, 1979, up to the effective date of this chapter [*see 9 PC 6-162*].

(31) “Profit-sharing account” means an account established for each participant pursuant to §6-145 to maintain a record of contributions made by the government or a participating employer on behalf of the participant and any credited net income resulting from the investment of those contributions.

(32) “Public Auditor” means the Pohnpei Public Auditor, as established by Article 11 §8 of the Pohnpei Constitution and Title 5 Chapter 1, as amended.

(33) “TTPI service” means service rendered prior to the effective date of this chapter [*see 9 PC 6-162*], excluding prior service, for the government of the Trust Territory of the Pacific Islands, and for the government of the United States of America, including any agencies and instrumentalities thereof, provided such service was rendered in the Trust Territory of the Pacific Islands.

(34) “Unforeseen emergency” means severe financial hardship to the participant resulting from a sudden or unexpected illness or accident of the participant or a participant’s dependent, loss of the participant’s property due to a casualty or similar extraordinary and unforeseen circumstances beyond the control of the participant.

(35) “Vested interest” means that portion of a participant’s profit-sharing account to which the participant has a right to receive under the provisions of the Plan.

Source: S.L. No. 3L-51-93 §1-4, 12/3/93

§6-105. Participation. —

(1) All employees of the government, including employees of all public corporations, agencies, and instrumentalities of the government, employed by Pohnpei, are mandatory participants of the Plan.

(2) All employees of participating employers are mandatory participants of the Plan.

(3) All participants of the Plan shall defer compensation, receive contributions, and otherwise participate in the Plan in accordance with their employment classification.

(4) The Board shall determine the employment classification for all participants of the Plan.

Source: S.L. No. 3L-51-93 §1-5, 12/3/93

§6-106. Incorporation of the Plan. —

(1) The Plan:

(a) Is a corporation;

(b) Has perpetual succession;

(c) May have a seal;

(d) May enter into contracts;

(e) May acquire, hold, charge, and dispose of property;

(f) May sue and be sued in its corporate name; and

(g) For the purposes of its functions, has all the powers, functions, duties, and responsibilities of a corporation.

(2) The Financial Organization and Management Act, Title 11 Chapter 2, as amended, and the Government Liability Act, Title 58 Chapter 2, do not apply to or in relation to the Plan.

Source: S.L. No. 3L-51-93 §2-1, 12/3/93

§6-107. Board of Directors. —

(1) There shall be a Board of Directors of the Plan.

(2) The Board shall consist of five members appointed by the Governor with the advice and consent of the Legislature.

(3) The Board shall be known as the “Board of the Pohnpei Pension Plan.”

Source: S.L. No. 3L-51-93 §2-2, 12/3/93

§6-108. Management of the Plan. —

(1) Subject to this chapter, the business of the Plan shall be controlled and managed by the Board.

(2) The Board has and may exercise and perform all the powers and functions of the Plan under this chapter or any other chapter giving the Plan powers or functions.

Source: S.L. No. 3L-51-93 §2-3, 12/3/93

§6-109. Compensation. —

(1) Subject to Subsection (2) of this section, a member of the Board is entitled to be compensated at rates established by the Government Officers' Salary Act, Chapter 4, as amended or superseded, when actually performing the functions of the Board, at the direction of the Chairman.

(2) Members of the Board who are employees of the Pohnpei Government shall serve without compensation paid by the Plan, but shall continue to receive their regular salaries.

Source: S.L. No. 3L-51-93 §2-4, 12/3/93, S.L. No. 4L-25-96 §9, 7/1/97

§6-110. Term of office. —

(1) Subject to §6-111 and Subsection (2) of this section, the term of office for a member of the Board is three years.

(2) Of the members of the first Board appointed under this chapter, one shall be appointed for a term of one year, two shall be appointed for terms of two years, and two shall be appointed for terms of three years, all as determined by the drawing of lots at the organizational meeting.

(3) A member appointed to fill a vacancy during the term for which his predecessor was appointed shall be appointed for the remainder of that term.

(4) Other than in the event of resignation, a member shall hold office until his successor is appointed and takes office.

(5) A member shall be eligible for reappointment.

Source: S.L. No. 3L-51-93 §2-5, 12/3/93

§6-111. Vacation of office. —

(1) A member of the Board vacates his office:

(a) On death;

(b) Subject to Subsection (2) of this section, if he submits to the Governor his resignation in writing; or

(c) If he is removed in accordance with Subsection (3) of this section.

(2) A resignation under Subsection (1)(b) of this section takes effect when it is received by the Governor, or on such later date as is agreed between the Governor and the member of the Board concerned.

(3) A member of the Board may be removed from office by the Governor for incompetency, neglect of duty, failure to attend three or more consecutive meetings or malfeasance in office.

(4) If a vacancy occurs in the office of a member of the Board, the Governor may appoint a person to fill the vacancy with the advice and consent of the Legislature.

Source: S.L. No. 3L-51-93 §2-6, 12/3/93

§6-112. Delegation by the Board. —

(1) The Board may, by written instrument only, delegate to any person any of its powers and functions except the power to make bylaws in accordance with §6-116.

(2) A delegation under this section may be made subject to limitations and conditions.

(3) A delegation under this section is revocable by written instrument at will and no such delegation prevents the exercise or performance of a power or function by the Board.

(4) No delegation under this section shall have the effect of diminishing the responsibility of the Board and of each member for the management of the Plan.

Source: S.L. No. 3L-51-93 §2-7, 12/3/93

§6-113. Procedures. —

(1) Subject to this chapter and to the bylaws made in accordance with §6-116, the Board shall determine its own procedures.

(2) Without limiting the generality of Subsection (1) of this section, the Board shall have the authority to establish procedures, provided that they are consistent with §§6-118 and 6-119.

Source: S.L. No. 3L-51-93 §2-8, 12/3/93

§6-114. Disclosure of interests and disqualification for interest. —

(1) If a member of the Board has a personal interest, whether pecuniary or familial, in the subject matter of any question before a meeting of the Board:

(a) He shall disclose his interest at the meeting; and

(b) He shall take no part in the deliberations, except as directed by the Board, or in the decision of the Board on the question.

(2) A disclosure under Subsection (1) of this section shall be recorded in the minutes.

(3) Unless the Legislature directs otherwise, failure to comply with the requirements of Subsections (1) and (2) of this section will invalidate any proceedings of the Board in which a member has a personal, pecuniary or familial interest in the subject matter in question before a meeting of the Board.

Source: S.L. No. 3L-51-93 §2-9, 12/3/93

§6-115. Indemnification for liability: misconduct in public office. —

(1) Board members and employees of the Board shall be immune from liability for acts or omissions with respect to service for the Plan to the same extent as directing boards and employees of the Pohnpei Government are immune from such liability. Board members or employees of the Board shall not be held liable for any decisions made in the good faith, non-malicious fulfillment of their duties.

(2) In no event shall the immunity granted in Subsection (1) of this section be construed to absolve a Board member or employee of the Board of liability for willful misconduct. A Board member's failure to comply with §6-114 shall constitute willful misconduct.

Source: S.L. No. 3L-51-93 §2-10, 12/3/93

§6-116. Bylaws. —

(1) Subject to and consistent with this chapter, the Board shall adopt, amend or repeal such bylaws as are necessary to provide for the management of the business of the Plan, including the organization, meetings, and procedures of the Board, the duties of officers and employees, and the preparation and submission of required reports.

(2) Within 45 days after Legislature approval of all five members of the Board, the Board shall hold an organizational meeting at which:

(a) The members of the Board shall elect a Chairman and Vice-Chairman; and

(b) The members of the Board shall draw lots to determine the duration of their respective terms, in accordance with the requirements of Subsection (2) of §6-110.

(3) Within 90 days after the organizational meeting, the Board shall meet and adopt bylaws.

(4) The bylaws shall provide that:

(a) The Chairman shall convene and preside over the meetings of the Board and shall perform such other duties as are prescribed by the bylaws or assigned by the Board;

(b) The Vice-Chairman shall, in the absence of the Chairman, perform the duties of the Chairman;

(c) The Chairman and Vice-Chairman shall serve for a term of one year and shall not be eligible for consecutive one-year terms in each capacity;

- (d) Regular meetings of the Board shall be held quarterly at such times, at such places, and upon such notice as shall be provided in the bylaws;
- (e) Special meetings of the Board shall be called by the Chairman or any three Board members at such places and upon such notice as provided in the bylaws;
- (f) All meetings of the Board shall be open to the public; PROVIDED, HOWEVER, that the Board may, during any meeting, by a majority vote of its members present, call for an executive session that will be closed to the public;
- (g) Members of the Board or of any committee of the Board may participate in and act only at any meeting of the Board;
- (h) Full and accurate minutes of the Board meetings shall be kept in a manner prescribed in the bylaws;
- (i) Three members of the Board shall constitute a quorum for the transaction of business, and the concurrence of three members of the Board shall constitute official action of the Board; and
- (j) The Board may provide for dealing with any other matters relating to the Board and the operation of the Plan that the Board believes appropriate.

Source: S.L. No. 3L-51-93 §2-11, 12/3/93

§6-117. Regulations. — The Board shall adopt, amend or repeal regulations for the administration of the Plan pursuant to the procedures set forth in the Administrative Procedures Act, Title 8 Chapter 1, as amended or superseded.

Source: S.L. No. 3L-51-93 §2-12, 12/3/93

§6-118. Hearings. —

(1) Any person aggrieved by the action of the Board, or by the Administrator as the representative of the Board, is entitled to a hearing before the Board. Hearings shall be initiated by the submission of a petition by the aggrieved party or his legal representative to the Administrator.

(2) All parties and all persons who have an interest in the controversy who are known to the Administrator and any person requesting individual notice shall be entitled to personal notice of all hearings. Persons entitled to notice of a hearing shall be timely informed of:

- (a) The time, place, and nature of the hearing;
- (b) The legal authority and jurisdiction under which the hearing is to be held;
- (c) The particular sections of the statutes and regulations involved; and
- (d) The issues presented.

(3) If the Administrator is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definitive and detailed statement shall be furnished.

(4) Unless precluded by law, disposition without a hearing may be made of any contested matter by stipulation, agreed settlement, consent, order or default.

(5) The hearing shall be held within 30 calendar days after the submission of the petition, unless the petitioner requests a delay. At the hearing, the petitioner and any other persons as the Board shall permit shall have the right to be heard, to present evidence, to confront all adverse witnesses, and to be represented by counsel of his own choosing.

(6) At the hearing, technical rules of evidence shall not apply. At the discretion of the Board, evidence may be taken stenographically or by recording machine. The Board is authorized to issue subpoenas for witnesses and tangible evidence at the request of any party or on its own motion. Hearings shall be public except when the petitioner requests a closed hearing.

(7) Within 15 days after the conclusion of a hearing, the Board shall prepare a full written statement of the Board's findings of fact and decision. The Administrator shall forthwith transmit the

findings of fact and decision to all parties. Except as provided in §6-119, the decision of the Board shall constitute final disposition of the action.

(8) The Board may:

- (a) Administer oaths and affirmations;
- (b) Rule on the admissibility of evidence;
- (c) Take depositions or have depositions taken when the ends of justice would be served;
- (d) Regulate the course of the hearing;
- (e) Hold conferences for the settlement or simplification of the issues by consent of the parties;
- (f) Dispose of procedural requests or similar matters;
- (g) Make or recommend orders or decisions in accordance with this chapter; and
- (h) Take such other action as would serve the ends of justice.

(9) Except to the extent required for the disposition of ex-parte matters as authorized by law, the Board may not consult a person or party or representative of a person or party on a fact in issue unless notice and opportunity are given to allow all parties to participate.

(10) The Board may:

- (a) Communicate with the Administrator or other participants of the Plan, except as limited by Subsection (9) of this section; and
- (b) Have the aid and advice of one or more personal assistants, and of the Attorney General and his staff if such assistance would not be in violation of Subsection (9) of this section. Such assistants shall be constrained in the same manner as the Board as provided in Subsections (9) and (10) of this section.

(11) Any oral or documentary evidence may be received, but the Board, as a matter of policy, shall provide for the exclusion of irrelevant, immaterial, unreliable or unduly repetitious evidence. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. A sanction may not be imposed or order or decision issued except on consideration of the whole record supported by and in accordance with substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

Source: S.L. No. 3L-51-93 §2-13, 12/3/93

§6-119. Judicial review. —

(1) This section applies, according to the provisions hereof, except to the extent that statutes enacted by the Legislature explicitly limit judicial review.

(2) A person adversely affected or aggrieved by an action of the Board is entitled to judicial review in the Pohnpei Supreme Court. The Supreme Court shall conduct a de novo trial of the matter and may receive in evidence any or all of the record from the hearing before the Board, held pursuant to §6-118, that is stipulated to by the parties.

(3) To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of a Board action. The reviewing court shall:

- (a) Compel Board action unlawfully withheld or unreasonably denied; and
- (b) Hold unlawful and set aside Board actions and decisions found to be:
 - (i) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
 - (ii) Contrary to constitutional right, power, privilege or immunity;
 - (iii) In excess of statutory jurisdiction, authority or limitations, or a denial of legal rights;
 - (iv) Without substantial compliance with the procedures required by law; or
 - (v) Unwarranted by the facts.

(4) An aggrieved party may obtain a review of any final judgment of the reviewing court under this section by appeal to the appellate division of the appropriate court. The appeal shall be taken as in

other civil cases, and the judgment be reviewed by considering the finding of the reviewing court in light of whether it was justified by substantial evidence of record.

Source: S.L. No. 3L-51-93 §2-14, 12/3/93

§6-120. Administrator. —

(1) The Board shall appoint an Administrator of the Plan, who, subject to the control of the Board, shall have general supervision, direction, and control of the business, officers, and employees of the Plan, shall have general powers and duties of management usually vested in the top official of a corporation, and shall have other powers and duties as may be prescribed by the Board or the bylaws. Without limiting the generality of the foregoing, the Administrator shall:

- (a) Serve as secretary to the Board;
- (b) Attend, unless excused by the Board, all meetings of the Board and shall submit reports on the affairs of the Plan as required by the Board;
- (c) Keep and maintain all books, records, files, and accounts of the Plan and receive and act on all applications for benefits;
- (d) Prepare periodic reports relative to the operation of the Plan and an annual report as of the close of each fiscal year reflecting the results of the financial operations of the Plan and embodying all important financial and statistical data pertinent to its operations;
- (e) See that all rules and regulations of the Plan are enforced;
- (f) Keep the Board advised on the needs of the Plan and approve demands for payments of obligations within the purposes and amounts authorized by the Board;
- (g) Employ administrative, clerical, medical or other personnel necessary for the proper operation of the Plan, and engage actuarial or other professional services to assist in preparation of the annual reports, to advise in matters of policy, and to make periodic actuarial surveys;
- (h) At such time and in such manner as the Board may direct, submit to the Board detailed estimates of the budget for the Plan for the next fiscal year. Such estimates shall include:
 - (i) Audited accounts of the fund for the last fiscal year;
 - (ii) A statement showing the estimates of income and expenditures for the current fiscal year together with any summaries, schedules, and supporting data that the Administrator may deem necessary; and
 - (iii) A budget showing the estimated income and expenditures for the next fiscal year; and
- (i) Develop, in accordance with professional standards, an accounting procedure for the Plan, said procedure to be established prior to the Board's resolution that the Plan is organized and prepared to function, as provided in §6-127.

(2) The Administrator may, by written instrument, delegate to any employee any of his powers and functions under this chapter, the bylaws or directions from the Board, with any limitations, restrictions or conditions as the Administrator deems necessary. A delegation under this subsection is revocable by written instrument at will and no such delegation prevents the exercise or performance of a power or function by the Administrator.

Source: S.L. No. 3L-51-93 §3-1, 12/3/93

§6-121. Staff. —

(1) Subject to this chapter, the Administrator may, with the concurrence of the Board, employ a deputy administrator and any other employees, attorneys, actuaries, auditors, fund advisors or managers, fund custodians, investment consultants, and other advisors and consultants as the Administrator believes necessary for the performance of the functions of the Plan.

(2) Persons referred to in Subsection (1) of this section shall be employed on such terms and conditions as the Administrator determines consistent with the laws and policies of the Pohnpei Government.

Source: S.L. No. 3L-51-93 §3-2, 12/3/93

§6-122. Functions of the Plan. — The function and duty of the Plan is to maintain and operate for the employees of the Pohnpei Government and participating employers a financially sound deferred compensation and profit-sharing plan to supplement the retirement, disability, and survivor benefits from Social Security.

Source: S.L. No. 3L-51-93 §3-3, 12/3/93

§6-123. Powers of the Plan. —

(1) Subject to this chapter and any other law, the Plan shall have, in addition to any other powers conferred by this chapter and any other law, all powers that are necessary or convenient for carrying out its functions.

(2) Without limiting the generality of Subsection (1) of this section, but subject to this chapter and any other law, the Administrator, or appropriate staff personnel as authorized by §6-121, in furtherance of the Plan may:

- (a) Transact all business and enter into contracts and other instruments;
- (b) Authorize the expenditure and investment of funds;
- (c) Accept any gift, grant or bequest of any money or property of any kind for the purposes designated by the grantor, if the purposes are specified as providing cash benefits to some or all of the participants, or, if no such purposes are designated, as income from investment;
- (d) Retain, on a fee basis, accountants, actuaries, attorneys, and other advisors and consultants to assist the Plan in the performance of its functions;
- (e) Obtain from the Pohnpei Government such information as is necessary for the proper operation of the Plan; and
- (f) Maintain a bank overdraft account for the normal operation of the Plan.

Source: S.L. No. 3L-51-93 §3-4, 12/3/93

§6-124. Bonding. — The Plan shall bond its Board members, officers, and employees in such cases and in such amounts as is deemed prudent by the Plan.

Source: S.L. No. 3L-51-93 §3-5, 12/3/93

§6-125. Travel policy. — The Plan shall adopt procedures for compensating its Board members, officers, employees, and agents for travel expenses that are consistent with the law and policies of the Pohnpei Government.

Source: S.L. No. 3L-51-93 §3-6, 12/3/93

§6-126. Exemption. — Officers and employees of the Plan shall be exempt from the Public Service System Act, Title 9 Chapter 2, and compensation of the Pohnpei Government; PROVIDED that within 120 days following its organizational meeting the Board shall provide a complete personnel system for the recruitment, management, and compensation of officers and employees of the Plan.

Source: S.L. No. 3L-51-93 §3-7, 12/3/93

§6-127. Deferred compensation. —

(1) Commencing with the date indicated for the implementation of the Plan in the Executive Order issued pursuant to §6-162 with accompanying resolution relative to organization passed by the Board of Directors of the Plan, and for each succeeding pay period, each participant shall have three percent (3%) of his compensation withheld by his employer.

(2) The amount withheld from each participant's compensation shall be paid into the Fund as provided in §6-133 and shall be credited to the participant's deferred compensation account.

Source: S.L. No. 3L-51-93 §4-1, 12/3/93; S.L. No. 6L-41-05 §2, 7/4/05

§6-128. Contributions by Government. —

(1) The Pohnpei Government shall contribute for all employment classes an amount for the participant's participating service as determined by this section.

(2) The amount to be contributed by the Pohnpei Government shall be determined based upon the participant's applicable compensation and the contribution rates from the following table based upon the participant's employment classification:

Employment Classification	Contribution Rate
Class 1	Seven percent (7%)
Class 2	Seven percent (7%)
Class 3	Seven percent (7%)
Class 4	Seven percent (7%)
Class 5	Seven percent (7%)

(3) The government contribution for each participant's participating service shall be determined as the amount of compensation the participant earns multiplied by the appropriate contribution rate from the table in Subsection (2) of this section.

(4) The amount of government contribution for each participant's participating service shall be paid into the Fund as provided in §6-133 and shall be credited into the participant's profit-sharing account. The government is obligated to contribute the full amount of the government contributions provided for in this section and any such unpaid government contributions shall constitute a liability of the government.

Source: S.L. No. 3L-51-93 §4-2, 12/3/93; S.L. No. 6L-41-05 §3, 7/4/05

§6-129. Contributions by participating employers. —

(1) Each participating employer shall contribute on behalf of each participant who is an employee of that participating employer the amounts, if any, specified in the participation agreement between the Plan and the participating employer.

(2) The amount of participating employer contributions for each participant shall be paid into the fund as provided in §6-133 and shall be credited into the participant's profit-sharing account.

Source: S.L. No. 3L-51-93 §4-3, 12/3/93

§6-130. Investment income. —

(1) All amounts contributed into the fund shall be invested pursuant to §§6-148 through 6-155.

(2) The net investment income of the fund, which is the gross investment income less all investment expenses, shall be determined at the end of each calendar quarter.

(3) Ten percent (10%) of the quarterly net investment income of the fund shall be credited to the administrative expense account and shall be used exclusively for the purpose of meeting the costs of administering the Plan.

(4) The remaining ninety percent (90%) of the quarterly net investment income shall be credited to all deferred compensation accounts and profit-sharing accounts on a pro rata basis based upon the balance in those accounts as of the last day of the calendar quarter.

Source: S.L. No. 3L-51-93 §4-4, 12/3/93

§6-131. Preliminary appropriation by the Pohnpei Government. — Prior to the issuance of the Executive Order pursuant to §6-162, the Pohnpei Government is authorized to appropriate such monies from such funds of the Pohnpei Treasury as are deemed necessary to meet the initial organizational and administrative costs of the Board of Directors for the Plan. The preliminary appropriation shall be credited to the Administrative Expense Account and shall remain available until fully expended.

Source: S.L. No. 3L-51-93 §4-5, 12/3/93; S.L. No. 6L-41-05 §4, 7/4/05

§6-132. Regular appropriations by the Pohnpei Government. —

(1) The Plan's Administrator, on a timely basis, shall submit requests for regular annual appropriations by the Legislature into the fund.

(2) The amount requested by the Plan shall be sufficient to meet necessary administrative expenses and government contributions provided for in §6-128.

Source: S.L. No. 3L-51-93 §4-6, 12/3/93

§6-133. Timing of payment of deferred compensation and contributions into the fund. —

(1) No later than the tenth day after the end of each pay period commencing in accordance with §6-127(1), the government and all participating employers shall:

(a) Submit to the Administrator a report of the compensation paid each participant and the deferred compensation withheld from each participant; and

(b) Pay into the fund the total deferred compensation withheld.

(2) Appropriations by the government shall be paid into the fund within the tenth day after their lawful appropriation and authorization.

(3) Contributions by each participating employer shall be paid into the fund in accordance with the participation agreement between the Plan and that participating employer.

Source: S.L. No. 3L-51-93 §4-7, 12/3/93

§6-134. Exclusive property of the Plan. — All assets of the fund, including deferred compensation, shall remain the exclusive property of the Plan until paid to or otherwise made available to the participant or his beneficiary pursuant to applicable sections of §§6-135 through 6-143.

Source: S.L. No. 3L-51-93 §4-8, 12/3/93

§6-135. Distribution of benefits. —

(1) Benefits under this Plan shall only be paid or made available to the participant in the event of the participant's separation from service due to the retirement, disability or termination of employment of the participant or to the participant's beneficiary in the event of the death of the participant.

(2) Notwithstanding Subsection (1) of this section, benefits under this Plan shall also be made available to the participant in the event of an unforeseen emergency, as defined in this chapter.

Source: S.L. No. 3L-51-93 §5-1, 12/3/93

§6-136. Separation from service. —

(1) A participant who elects to commence benefits as provided in §6-135 for separation from service due to retirement or disability shall be entitled to the sum of the full accumulated value of the participant's deferred compensation account and the participant's vested interest in the participant's profit-sharing account.

(2) A participant who elects to commence benefits as provided in §6-135 for separation of service due to termination of employment of the participant shall be entitled to the sum of the full accumulated value of the participant's deferred compensation account and the participant's vested interest in the participant's profit-sharing account.

(3) A participant's vested interest in his profit-sharing account is determined as the full accumulated value of the participant's profit-sharing account multiplied by the participant's vesting percentage based on the participant's completed years of eligibility service as follows:

Eligibility Service	Vesting Percentage
under 4	0%
4	40%
5	50%
6	60%

7	70%
8	80%
9	90%
10 or more	100%

(4) The non-vested portion of a participant's profit-sharing account shall be forfeited by the participant who elects to commence benefits, and the forfeited amount shall be transferred into the Administrative Expense Account.

(5) A beneficiary who elects to commence benefits as provided in §6-135 for separation of service due to the death of the participant shall be entitled to the sum of the full accumulated value of the participant's deferred compensation account and profit-sharing account.

(6) A participant or beneficiary entitled to benefits from the Plan as a result of the separation of service of the participant shall select a payment option for the payment of those benefits as provided in §6-139.

(7) Commencing with the first full term of elective office following the date specified in the Executive Order issued pursuant to §6-162, persons employed in Class 1 or Class 2 who serve a full term shall be credited with four years of participation service, irrespective of whether the actual calculation of days of the term is precisely four years.

Source: S.L. No. 3L-51-93 §5-2, 12/3/93; S.L. No. 6L-41-05 §5, 7/4/05

Note: S.L. No. 6L-41-05 §6 appropriation provision has been omitted.

§6-137. Unforeseen emergency. —

(1) In the event the participant incurs an unforeseen emergency, as defined in §6-104(34), the participant may apply to the Board for an emergency withdrawal.

(2) Emergency withdrawals from a participant's deferred compensation account and profit-sharing account shall be limited to \$300 or whatever lesser, fully-accumulated amount exists in the participant's deferred compensation and profit-sharing account for meeting the funeral expenses of the participant's parents, spouse, children or full-blood brothers or sisters.

(3) Except as provided for in §6-137(2), emergency withdrawals shall only be permitted by the Board to the extent reasonably needed to satisfy the emergency and shall be paid as directed by the Board. An emergency withdrawal shall only be approved to the extent that severe financial hardship cannot be relieved by:

(a) Reimbursement or compensation from sources other than an emergency withdrawal under the Plan; or

(b) Liquidation of the participant's assets, to the extent that the liquidation of assets would not itself cause severe financial hardship.

(4) Except as provided for in §6-137(2), a participant whom the Board determines is eligible for an unforeseen emergency distribution shall be entitled to the fully-accumulated value of the participant's deferred compensation account.

(5) Except as provided for in §6-137(2), a participant entitled to benefits from the Plan as a result of an unforeseen emergency shall select a payment option for the payment of those benefits as provided for in §6-139.

Source: S.L. No. 3L-51-93 §5-3, 12/3/93

§6-138. Election to commence benefits. —

(1) Upon separation from service, but not later than 30 days after the close of the calendar year in which the participant separates from service, an irrevocable election may be made to have benefits commence at a fixed future time. The designation shall be made on a distribution request form and filed with the Administrator.

(2) In the absence of an election, benefits shall be paid to the participant or his beneficiary in accordance with rules and regulations to be adopted by the Board.

Source: S.L. No. 3L-51-93 §5-4, 12/3/93

§6-139. Selection of payment option. —

(1) The payment of benefits from the Plan shall be made primarily for the benefit of the participant.

(2) A method for payment of benefits shall be designated on the distribution request form from among the options available as follows:

- (a) Fixed payments over a period of time;
- (b) Annuity payments for the lifetime of the participant;
- (c) Annuity payments for the lifetime of the participant and one or more beneficiaries; or
- (d) In the event of benefits paid due to an unforeseen emergency, a lump sum.

(3) Fixed payments and annuity payments shall be made quarterly, commencing on the first day of the quarter following the date the distribution request form is filed with the Administrator and continuing on the first day of each subsequent quarter until the benefits are paid in full.

(4) The maximum quarterly payment shall be the greater of five percent (5%) of the total accumulated amount available to the participant or beneficiary, or \$1,000.

(5) The designation of the method of payment of benefits is irrevocable, unless modified at least 30 days prior to the date benefits are to commence.

(6) In the absence of a designation within the prescribed time, benefits shall be paid to the participant or his beneficiary in accordance with rules and regulations to be adopted by the Board.

Source: S.L. No. 3L-51-93 §5-5, 12/3/93

§6-140. Beneficiaries. —

(1) Each participant shall designate a beneficiary or beneficiaries in a manner to be approved by the Board, which beneficiary or beneficiaries shall receive the participant's benefits in the event of the participant's death. In the event a beneficiary has not been designated or the designation is ineffective, the participant's estate shall become the beneficiary. A designation of a beneficiary or beneficiaries shall only be valid until such time as the participant designates a new beneficiary or beneficiaries in a manner approved by the Board.

(2) Upon the participant's death, a beneficiary shall have all the rights of the participant under the Plan.

Source: S.L. No. 3L-51-93 §5-6, 12/3/93

§6-141. Withholding of taxes. — All payments under the Plan shall be subject to applicable withholding requirements.

Source: S.L. No. 3L-51-93 §5-7, 12/3/93

§6-142. Benefits not subject to assignment, attachment, garnishment, execution or bankruptcy. —

(1) The right to receive any payments under this Plan are non-assignable and non-transferable. Any attempt to assign or transfer shall not be recognized and shall impose no liability upon the Board.

(2) Except as otherwise provided by law, the participant or beneficiary's rights under this Plan shall not be subject to attachment, garnishment or execution or be transferable by operation of law in the event of bankruptcy or insolvency of the participant or otherwise.

Source: S.L. No. 3L-51-93 §5-8, 12/3/93

§6-143. Administrative expenses: other disbursements. —

(1) Administrative expenses and authorized disbursements other than the payment of benefits shall be made out of the administrative expense account.

(2) The Administrator shall have the continuing authority to authorize the payment of administrative expenses and other disbursements out of the administrative expense account up to an amount as authorized by the Board.

Source: S.L. No. 3L-51-93 §5-9, 12/3/93

§6-144. Deferred compensation account. —

(1) A deferred compensation account shall be maintained for each participant. The maintenance of the account does not give the participant any rights except as provided in this Plan.

(2) Each participant's account shall be credited with the amount of the participant's deferred compensation and shall be further adjusted by any increase or decrease resulting from the investments of said participant's deferred compensation account made under §§6-148 through 6-155, the costs of implementing and administering the Plan, and any withdrawals or payments of benefits.

Source: S.L. No. 3L-51-93 §6-1, 12/3/93

§6-145. Profit-sharing account. —

(1) A profit-sharing account shall be maintained for each participant. The maintenance of the account does not give the participant any rights except as provided in this Plan.

(2) Each participant's account shall be credited with the amount of the government's or participating employer's contributions made on behalf of the participant and shall be further adjusted by any increase or decrease resulting from the investments of said participant's profit-sharing account made under §§6-148 through 6-155, the costs of implementing and administering the Plan, and any withdrawals or payments of benefits.

Source: S.L. No. 3L-51-93 §6-2, 12/3/93

§6-146. Administrative expense account. —

(1) An administrative expense account shall be maintained for the Plan.

(2) The administrative expense account shall be credited with government appropriations designated for the specific purpose of meeting administrative expenses, with ten percent (10%) of the net investment income of the fund, with forfeitures, and with any other monies contributed into the fund for the purpose of meeting administrative expenses.

(3) All administrative expenses and authorized disbursements other than the payment of benefits shall be made out of the administrative expense account.

Source: S.L. No. 3L-51-93 §6-3, 12/3/93

§6-147. Written statements. — At least once each fiscal year, each participant in the Plan shall be provided with a written report showing the balance in the participant's deferred compensation account and profit-sharing account, the financial condition of the Plan and any other information as approved by the Board.

Source: S.L. No. 3L-51-93 §6-4, 12/13/93

§6-148. Establishment of the fund. —

(1) The Pohnpei Pension Plan fund is hereby established.

(2) The fund is a fund other than the general fund of Pohnpei, within the meaning and for the purposes of the Financial Organization and Management Act, Title 11 Chapter 2, as amended.

Source: S.L. No. 3L-51-93 §7-1, 12/3/93

§6-149. Payments into the fund. —

(1) There shall be paid into the fund:

(a) Any money appropriated by the Legislature for the purposes of the Plan, either generally or in relation to any particular purpose; and

- (b) Any amounts received by the Plan under or for the purposes of this chapter or any other law, including without limitation the following:
- (i) Deferred compensation of participants;
 - (ii) Contributions by government;
 - (iii) Contributions by participating employers;
 - (iv) Initial and supplemental appropriations by government;
 - (v) Penalties and interest;
 - (vi) Proceeds from the investments of funds; and
 - (vii) Grants, bequests, devises, contributions, and gifts.
- (2) Separate accounts shall be kept within the fund in respect of each particular purpose for which money is appropriated.

Source: S.L. No. 3L-51-93 §7-2, 12/3/93

§6-150. Payments out of the fund. —

- (1) Payments may be made out of the fund only for the purposes of the Plan, including without limitation the following:
- (a) The payment of benefits;
 - (b) The costs and expenses of administration of the Plan; and
 - (c) The costs of administration of this chapter and any other chapter that confers functions on the Plan.
- (2) No money may be withdrawn from the fund except as follows:
- (a) Pursuant to budgets and procedures approved by the Board consistent with Subsection (3) of this section; and
 - (b) With the authority of the Administrator who shall satisfy to himself that the withdrawal is made in accordance with this chapter, the bylaws of the Plan, and any other applicable law.
- (3) The Board shall submit the budget for the administration of the Plan to the Legislature for approval. Penalties and interest and ten percent (10%) of the investment income of the fund may be used for the administration of the Plan.
- (4) There is hereby authorized for appropriation such sums as are deposited into the Pohnpei Pension Plan fund and such sums as are appropriated in the annual Comprehensive Budget Act to be administered, obligated, and expended in accordance with this chapter and without further legislation. A delegation to expend money out of the fund is given to the Administrator.

Source: S.L. No. 3L-51-93 §7-3, 12/3/93

§6-151. Financial statements. —

- (1) The Plan shall maintain financial statements in accordance with generally accepted accounting principles for similar entities as such principles are adopted by the Public Auditor for use by the government, for the following:
- (a) The fund;
 - (b) The disposition of money paid out of the fund; and
 - (c) The property and financial transactions of the Plan, generally.
- (2) The Public Auditor shall audit the financial statements of the Plan as soon as practical after the end of each fiscal year.
- (3) The Plan shall submit the financial statements of the Plan and the Public Auditor's report to the Governor and to the Pohnpei Legislature. Said accounts and records shall be made available to the public for inspection.

Source: S.L. No. 3L-51-93 §7-4, 12/3/93

§6-152. Bank accounts. —

(1) The Plan shall open and maintain as few bank accounts as are necessary for the efficient operation of the Plan's activities.

(2) Separate accounts shall be maintained for the functions of the Plan under this chapter or any other act that confers functions on the Plan.

(3) Subject to §6-153, any money, other than petty cash, withdrawn from the fund and not immediately required shall be kept in an account opened under Subsection (1) of this section.

Source: S.L. No. 3L-51-93 §7-5, 12/3/93

§6-153. Investment. —**(1) Investments of fund.**

(a) Money in the fund in excess of the requirements for current operations, which shall include an amount sufficient to meet payments immediately due beneficiaries, shall be invested and reinvested by or under the authority of the Plan. The Plan shall invest in a manner to ensure the greatest return commensurate with sound financial policies.

(b) The Board shall have the full power to manage the investments as in its considered judgment seems most appropriate to the requirements and objectives of the Plan, including but not limited to the power to hold, sell, purchase, convey, assign, transfer, dispose of, lease, subdivide or partition any asset held or proceeds thereof; to execute or cause to be executed relevant documents; to enter into protective agreements, executive proxies or grant consents; and to do all other things necessary or appropriate to its positions as an owner and creditor.

(c) All proceeds and income from investments of whatever nature shall be credited to their appropriate fund account or accounts. Transactions in marketable securities shall be carried out at the prevailing market prices.

(d) The Plan may commingle securities and monies, subject to the crediting of receipts and earnings and charging of payments to the appropriate accounts established by this chapter.

(e) No member of the Board, employee of the Plan, nor anyone in the immediate family of such member or employee shall have any direct or indirect interest in the income, gains or profits of any investments made by the Plan, nor shall any such person receive any pay or emolument for services in connection with any investment made by the Plan. Participation in the fund under the terms of this chapter shall not be construed to include interest, pay or emolument within the meaning of this paragraph.

(f) No member, employee or agent of the Plan, nor any person in the immediate family of such member, employee or agent shall become an endorser or surety or in any manner an obligator of investments made by the Plan, nor shall any member, employee or agent be held liable for actions taken in good faith in the performance of his duties.

(g) Investments may be held as physical securities in either bearer form or registered in the name of the Plan or the nominee of the custodian. Non-physical securities may be held on book entry at a depository institution selected by the custodian, or at one of the twelve United States of America Federal Reserve banks.

(h) Due bills may be accepted from brokers against payment for securities purchased, pending delivery within a reasonable period of time, of certificates representing such investments.

(2) Fund custodian.

(a) The Plan shall engage one or more fund custodians to assume responsibility for the physical possession of the Plan's assets or evidences of assets. The terms of engagement shall require that the custodian submit such reports, accounting, and other information on such forms and at such times as requested by the Plan; hold all assets for the account of the Plan; and act only upon the instructions of the Plan, the investment committee or the investment consultants so authorized by the Plan.

(b) No fund custodian shall be engaged unless it:

- (i) Is a bank or trust company regulated by the United States Federal Reserve Board, a state authority of a state of the United States or the United States Federal Comptroller of the Currency, as is appropriate;
 - (ii) Has a net worth in excess of \$10,000,000;
 - (iii) Has the capability to clear securities transactions through the United States Depository Trust Company identification system;
 - (iv) Has at least ten years experience as a custodian of financial assets; and
 - (v) Has at least \$1,000,000,000 in custodial assets.
- (c) The contract between the Board and the fund custodian shall be of no specific duration and may be terminated at any time by either party after 30 days notice is given.
- (d) The costs of services rendered under this subsection shall be paid out of the fund.

(3) *Investment manager.*

- (a) The Plan may engage one or more investment managers to assume the responsibility and direction for the purchase and sale decisions of all assets or evidences of assets charged to them.
- (b) No person, firm or corporation shall be engaged as investment manager unless:
- (i) The person, firm or corporation is a registered investment manager with the United States of America Securities and Exchange Commission in accordance with the United States Investment Advisors Act of 1940;
 - (ii) The principal business of the person, firm or corporation is of rendering investment management supervisory services;
 - (iii) The person, firm or corporation must have been in business for a minimum of ten full years as an active manager of security portfolios; and
 - (iv) The person, firm or corporation certifies, in writing, that the assets under his/its direct investment supervision are in excess of \$200,000,000.
- (c) The Plan, in consultation with the investment consultant, may change, from time to time, the operation arrangements with the investment managers in order to facilitate efficient management and timely investment actions.
- (d) The contract between the Plan and the investment managers shall be of no specific duration and may be terminated at any time by either party after 30 days notice is given.
- (e) All costs incurred for the services provided under this subsection shall be paid out of the fund.

(4) *The investment consultant.*

- (a) The Plan may engage one or more investment consultants to provide ongoing assistance to the Plan as follows:
- (i) The screening, selection, supervision, retention, and termination of the investment managers, the maintenance and updating of the dynamic investment policy, asset allocation decisions, and any other matters involving the investment of the assets that the Administrator may desire;
 - (ii) Provision of quarterly reports of the performance of the investment managers; and
 - (iii) Provision of comparisons of the fund's performance with that of the markets as well as comparisons with other investment managers managing similar types of assets.
- (b) The investment consultant is required to make at least one report annually in person.
- (c) No investment shall be made unless in the opinion of the investment consultant it is an appropriate investment for the fund and is an authorized investment under this chapter.
- (d) The Plan may change, from time to time, the operation arrangements with the investment consultant or consultants in order to facilitate efficient management and timely investment actions.

(e) The contract between the Plan and the investment consultant or consultants shall be of no specific duration and may be terminated at any time by either party after 30 days notice is given.

(f) All costs incurred for the services provided under this subsection shall be paid out of the fund.

(5) *Authorized investments.* Investments may be of the following types:

(a) *Government obligations.* Obligations issued or guaranteed as to the principal and interest by the government of the Federated States of Micronesia or any state thereof, or by the government of the United States of America; PROVIDED that the total market value of the investment in obligations guaranteed by the government of the Federated States of Micronesia or any state thereof shall at no time exceed fifty percent (50%) of the total market value of all investments of the Plan; PROVIDED FURTHER that the principal and interest on each obligation are payable in the currency of the United States.

(b) *Corporate obligations and mortgage-backed securities.* Obligations of any public or private entity or corporation created or existing under the laws of the Federated States of Micronesia or any state thereof, or under the laws of the United States or any state, territory or commonwealth thereof, or obligations of any other government or economic community which are payable in United States dollars, or pass-through and other mortgage-backed securities; PROVIDED that:

(i) The obligation is of an agency of the United States Government; or

(ii) The obligation is rated in one of the four highest categories by two rating agencies nationally recognized in the United States; and

(iii) No investment under this heading exceeds five percent (5%) of the market value of the fund or ten percent (10%) of the outstanding value of the issue at the time of purchase.

(c) *Preferred and common stocks.* Shares of preferred or common stocks of any corporation created or existing under the laws of the Federated States of Micronesia, under the laws of the United States or any state, territory or commonwealth thereof; PROVIDED that:

(i) The purchase of such shares shall be considered reasonable and prudent by the investment consultant at the time of purchase;

(ii) Not more than fifteen percent (15%) of the market value of the fund would be invested in the stock of any one corporation; and

(iii) Not more than twenty-five percent (25%) of the market value of the fund would be invested in any one industry group.

(d) *Insurance company obligations.* Contracts and agreements supplemental thereto providing for participating in one or more accounts of a life insurance company authorized to do business in the Federated States of Micronesia and in any state, territory or commonwealth of the United States.

(e) *Interest in real property.* Interests in improved or productive real property in which, in the informed opinion of the Board and the investment consultant, it is prudent to invest funds of the Plan; PROVIDED that the total market value for these investments at no time shall exceed twenty-five percent (25%) of the total market value of all investments of the Plan. For the purpose of this subsection, "real property" includes any property treated as real property by law, including any improvements thereto. The investments in improved or productive real property may be made directly or through pooled funds, including common or collective trust funds of banks or trusts, or other pooled funds invested on behalf of the Plan by the investment advisors or managers retained by the Board.

(f) *Other obligations and securities.* Other obligations and securities in which, in the informed opinion of the Board and the investment consultant, it is prudent to invest funds of the Plan, whether or not the securities or stocks are expressly authorized by or qualified under the foregoing paragraphs; PROVIDED that the total market value for the investments under this

paragraph shall at no time exceed ten percent (10%) of the total market value of all the investments of the Plan.

Source: S.L. No. 3L-51-93 §7-6, 12/3/93

§6-154. Actuary. —

(1) The Plan, shall, as it deems appropriate and necessary, engage in such terms and conditions as the Plan may deem fit, an actuary to examine and advise the Plan.

(2) The actuary shall make actuarial valuations of the Plan not less frequently than is required by generally accepted accounting principles for similar entities as such principles are adopted by the Public Auditor for use by the Pohnpei Government.

(3) The actuary shall prepare and submit to the Plan a report on the actuarial valuation. The Plan shall, in turn, submit the report to the Governor and the Legislature, along with any recommendations for changes of this chapter.

Source: S.L. No. 3L-51-93 §7-7, 12/3/93

§6-155. Public Auditor. —

(1) The Public Auditor shall audit the accounts and records of the Plan as soon as practical after the end of each fiscal year.

(2) In the event that the Public Auditor, for whatever reason, is unable to audit the accounts and records of the Plan, then the Plan shall have the authority to engage an independent auditor for that purpose.

Source: S.L. No. 3L-51-93 §7-8, 12/3/93

§6-156. False statements and reports. — Any person who knowingly makes a false statement or declaration, or falsifies any report to or record of the Plan in an attempt to defraud the Plan, is guilty of an offense and, upon conviction thereof, is liable to imprisonment for a period of not more than one year or a fine of not more than \$2,000, or both such fine and imprisonment.

Source: S.L. No. 3L-51-93 §8-1, 12/3/93

§6-157. Mismanagement of fund. — Any person who has a fiduciary relationship with the fund and who is found to have mismanaged the fund, whether by malfeasance or misfeasance, shall be guilty of an offense and upon conviction thereof is liable to imprisonment for a period not to exceed 15 years or a fine of not more than \$100,000, or both such fine and imprisonment.

Source: S.L. No. 3L-51-93 §8-2, 12/3/93

§6-158. Penalties and interest, attorneys' fees, and court costs. —

(1) If a payment or penalty imposed by this chapter is not paid on or before the date prescribed for such payment or penalty, there shall be collected, in addition to such payments and penalties, interest levied on the unpaid balance of the payments and/or penalties at the rate of twelve percent (12%) per annum from its due date until the date it is fully paid. In the event that the unpaid balance of payments, penalties or interest due under this chapter is referred to an attorney for collection, whether or not suit is brought for the collection thereof, the debtor shall additionally be liable for all reasonable attorneys' fees and costs of collection, plus court costs.

(2) The amount of any penalties, interest, attorneys' fees or costs of collection of the delinquent contributions or other amounts due the Plan shall be paid into the fund.

Source: S.L. No. 3L-51-93 §8-3, 12/3/93

§6-159. Taxation. — The fund, income, property, and all transactions of the Plan shall, to the extent allowed by law, be exempt from any taxes or assessments under any law of the Federated States of

Micronesia or its subdivisions. Nothing herein shall be deemed to exempt employees and independent contractors of the Plan from applicable tax liability for income received from the Plan.

Source: S.L. No. 3L-51-93 §9-1, 12/3/93

§6-160. Service of process on the Administrator. — Any process or other notice required or permitted by this chapter or any other law to be served upon or given to the Plan, shall be served or given by the delivery of it to the Administrator, who is secretary of the Board.

Source: S.L. No. 3L-51-93 §9-2, 12/3/93

§6-161. Legislative changes. —

(1) Except when originating from the Legislature, all proposed amendments to this chapter concerning participation in the Plan, benefits paid by the Plan, contributions to the Plan, investment of Plan assets or management of the Plan shall be submitted to the Legislature by or through the Governor. Requests for amendments shall include actuarial certifications from the Plan's actuary indicating the financial impact of the proposed amendment and a recommendation from the Board to support the proposed amendment, oppose the proposed amendment or suggest changes to the proposed amendment.

(2) The Governor may review and comment on requests for amendments originating from the Board, but he may not revise or refuse to submit them.

Source: S.L. No. 3L-51-93 §9-3, 12/3/93

§6-162. Effective date. — This chapter shall take effect upon the approval of the Governor, or upon its becoming law without such approval; PROVIDED, HOWEVER, that no employee shall be deemed a participant of the Pension Plan as prescribed by §6-105 and no contributions shall be required of any employee or employer, including the Pohnpei Government, until the Governor, following extensive consultation with the Board of Directors of the Plan, shall issue an Executive Order which shall:

(1) Certify that the Board of Directors of the Plan has organized and is fully capable of implementing the Plan, which certification shall be accompanied by a resolution passed by the Board indicating the same;

(2) Certify that not less than 12 months of government contributions to the Plan have been appropriated into law for the initial 12 months of operation of the Plan;

(3) Indicate the source or sources of financing and forecast the amount of government contributions to the Plan for the next ten fiscal years, inclusive of the designation of such dedicated Treasury funds as the Governor deems appropriate and as he determines to be commensurate with the government's liability for payment of mandatory government contributions into the Plan as prescribed by §6-128(5); and

(4) Declare the date specific that employer and employee contributions under the Plan shall commence.

Source: S.L. No. 3L-51-93 §10-1, 12/3/93; S.L. No. 6L-41-05 §1, 7/4/05

Note: S.L. No. 3L-51-93 §9-4 severability provision has been omitted.

CHAPTER 7 [RESERVED]

PUBLIC OFFICERS & EMPLOYEES

CHAPTER 8 CODES OF ETHICS

Section

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PART A GENERAL PROVISIONS

§8-101. Short title. — This chapter is known and may be cited as the “Pohnpei Ethics Act of 2000.”

Source: S.L. No. 5L-11-00 §1-1, 8/1/00

§8-102. Construction. — This chapter shall be liberally construed by the courts of this state to promote the highest standards of ethical conduct within the state government.

Source: S.L. No. 5L-11-00 §1-2, 8/1/00

§8-103. Applicability. — This chapter shall apply to every public officer and employee as defined herein.

Source: S.L. No. 5L-11-00 §1-3, 8/1/00

§8-104. Definitions. — When used in this chapter, unless the context clearly requires otherwise, these key words shall have the indicated meanings:

(1) “Business” includes any corporation, partnership, any sole proprietorship, any trust or foundation or any other individual or organization carrying on any business whether or not operated for profit.

(2) “Compensation” means any money, thing of value or economic benefit conferred on or received by any person subject to this chapter, in return for services rendered or to be rendered by himself or another.

(3) “Controlling interest” means any proprietary or ownership interest in a business or other undertaking.

(4) “Employee” means and includes all persons employed by any agency of the Pohnpei Government as defined by Subsection (13) of this section whether or not such person is employed under or exempted from a public service system of the government, or whether such person is compensated under a salary system prescribed by law or regulation, under a special services contract, under a grant from a non-Pohnpei Government source or provides voluntary services without compensation. The term “employee” includes both full-time and part-time employees and includes employees of public corporations established by state law.

(5) “Financial interest” means an interest held by an individual, his or her spouse or dependent children, which is:

- (a) An ownership interest in a business;
- (b) A creditor interest in an insolvent business;
- (c) An employment or prospective employment for which negotiations have begun;
- (d) An ownership interest in personal or real property;
- (e) A loan or other debtor interest; or
- (f) A directorship or officership in a business.

(6) “Immediate family” means and includes mother, father, spouse, and children, both natural and adopted.

(7) “Judicial officers” includes the Justices of the Pohnpei Supreme Court, whether full or part-time, and judges of the inferior courts of the state, including judges pro tem and referees.

(8) “Legislator” means any duly elected member of the Pohnpei Legislature.

(9) “Official act or official action” means a decision, recommendation, approval, disapproval or other action, including inaction which involves the use of discretionary and non-discretionary authority.

(10) “Official authority” includes administrative, judicial or legislative powers of decision, recommendation, approval, disapproval or other discretionary or non-discretionary action.

(11) “Public office” means an office which is filled by a public officer as defined by Subsection (12) of this section, whether or not service therein entitles the occupant to compensation.

(12) “Public officer” means any officer of the Pohnpei Government who is elected or appointed to fill an elective state office prescribed by the Pohnpei Constitution and any officer that is appointed under the authority of the Pohnpei Constitution or Pohnpei law, which appointment requires the advice and consent of the Legislature, inclusive of policy and regulatory boards, councils, committees, commissions, directory boards of public corporations, and other like bodies. “Public officer” includes persons who are designated to serve in an acting capacity in a public office, notwithstanding the fact that they are neither elected nor have received the advice and consent of the Legislature to serve in said capacity; PROVIDED that for purposes of §§8-105 and 8-107, “public officer” shall not include persons serving in an acting capacity for less than one year.

(13) “State agency” or “agency” shall mean every branch of government, public corporations, all Government of Pohnpei departments, bureaus, and line agencies, autonomous and semi-autonomous agencies, instrumentalities, entities or sub-entities thereof.

Source: S.L. No. 5L-11-00 §1-4, 8/1/00

PART B SPECIFIED STANDARDS FOR PUBLIC OFFICERS

§8-105. Reporting of finances. — Every public officer shall file with the Pohnpei Ethics Commission within 90 days following the effective date of this chapter [*effective date is August 1, 2000*], and thereafter within 30 days following his or her taking of the oath of office or otherwise becoming a public officer as defined by this chapter, and thereafter on the last working day of February each year, a financial report which shall include:

(1) A listing of all business holdings in which the public officer and his or her immediate family hold a collective total of more than twenty-five percent (25%) of the controlling interest of the business, inclusive of a description of those holdings;

(2) A listing of each directorship and office on the board of directors that the public officer holds in a business;

(3) A listing of all businesses in which the public officer is gainfully employed and from which he or she received at least \$1,000 of compensation in the form of wages, profit sharing, and other valuable consideration in the previous calendar year and the total earnings from each such entity during the previous calendar year; and

(4) A listing of all other sources of income, including income from non-governmental organizations and honoraria, amounting to \$1,000 or more in the previous calendar year and a description of the amount received from each source.

Source: S.L. No. 5L-11-00 §2-1, 8/1/00

§8-106. Gifts. — No public officer shall solicit, accept or receive, directly or indirectly, any gift valued singly or in the aggregate from a single source in excess of \$500, whether in the form of money, prize, service, loan, travel, entertainment, hospitality, thing or promise or in any other form, when a reasonable person would infer that the gift is intended to influence the public officer in the performance of that individual's official duties or is intended as a reward for any official action on that individual's part.

Source: S.L. No. 5L-11-00 §2-2, 8/1/00

§8-107. Reporting of gifts. —

(1) Every public officer shall include in his or her financial report required by §8-105, a gifts disclosure statement if all the following conditions are met:

(a) The public officer, or spouse or dependent child of a public officer, received directly or indirectly from any source any gift or gifts valued singly or in the aggregate from a single source in excess of \$500, whether the gift is in the form of money, services, goods or in any other form;

(b) The source of the gift or gifts has interests that may be affected by the official action or lack of action by the public officer; and

(c) The gift is not exempted by Subsection (4) of this section from reporting requirements under this section.

(2) The gifts disclosure statement included in the financial report shall cover the period from January 1 of the preceding calendar year through December 31 of the year of the report.

(3) The gifts disclosure statement shall contain the following information:

(a) A description of the gift;

(b) A good faith estimate of the value of the gift;

(c) The date the gift was received; and

- (d) The name of the person, business entity or organization from whom, or on behalf of whom, the gift was received.
- (4) Excluded from the reporting requirements of this section are the following:
- (a) Gifts received by will or intestate succession;
 - (b) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
 - (c) Gifts from a spouse, fiancé, fiancée, any relative within three degrees of consanguinity or the spouse, fiancé or fiancée of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
 - (d) Political campaign contributions that are not intended to affect specific performance of governmental responsibilities or public interests by the official action or lack of action by the public officer; PROVIDED that this paragraph shall not exempt the public officer from the reporting of campaign contributions as may be otherwise required by state law;
 - (e) Anything available to or distributed to the public generally without regard to the official status of the recipient;
 - (f) Gifts that within 30 days after receipt are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes;
 - (g) Exchange of approximately equal value on holidays, birthdays or special occasions; and
 - (h) Gifts received as a part of the customary exchange relative to the privileges and obligations of the traditions of Pohnpei; PROVIDED that the value of the gift is commensurate with the value of such gifts generally exchanged in such instances.
- (5) Failure of a public officer to file a gifts disclosure statement as required by this section shall be a violation of this chapter.

Source: S.L. No. 5L-11-00 §2-3, 8/1/00

§8-108. Confidential information. — No public officer shall disclose information which is considered a private document by existing law, and which the public officer acquires in the course of official duties, or use the information for personal gain or for the benefit of someone else.

Source: S.L. No. 5L-11-00 §2-4, 8/1/00

§8-109. Fair treatment. — No public officer shall use or attempt to use an official position to secure or grant unwarranted privileges, exemptions, advantages, contracts or treatment, for himself or herself, a spouse, children or others, including but not limited to the following:

- (1) Seeking other employment or contract for services by the use or attempted use of the individual's office or position;
- (2) Accepting, receiving or soliciting compensation for the performance of official duties or responsibilities except as provided by law;
- (3) Using government time, equipment or other facilities for private business purposes;
- (4) Soliciting, selling or otherwise engaging in a financial transaction with a subordinate or a person or business whom the public officer inspects or supervises in official capacity; and
- (5) Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or making statements or taking action in the exercise of legislative functions. Every legislator shall file with the Pohnpei Ethics Commission a full and complete public disclosure of the nature and extent of the legislator's interest on any legislative transaction which primarily affects only the legislator or legislators involved or their spouses and not the community as a whole or a segment thereof. Disclosure must be made at time of introduction of such legislation, or when the legislator shall first have knowledge of such legislation.

Source: S.L. No. 5L-11-00 §2-5, 8/1/00

§8-110. Conflicts of interest. —

- (1) No public officer shall take any official action directly affecting:
 - (a) Business or other undertaking in which the public officer has a financial interest; or
 - (b) Private undertaking in which the public officer is engaged as legal counsel, advisor, consultant, representative or other agency capacity. A department head who is unable to be disqualified on any matter described in Paragraph (a) or (b) of this subsection may be in violation of this subsection even if the individual has complied with the disclosure requirements of this chapter; and a person whose position on a board, commission or committee is mandated by statute, resolution or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which such person has a financial interest; PROVIDED that the financial interest is related to the member's particular qualifications.
- (2) No public officer shall acquire financial interests in any business or other undertaking which the public officer has reason to believe may be directly involved in official action to be taken by the public officer.
- (3) No public officer shall assist any person or business or act in a representative capacity before any state agency for any compensation in any transaction involving the state.
- (4) No public officer shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim or other transaction or proposal in which the public officer has participated or will participate as a public officer, nor shall the public officer assist any person or business, or act in a representative capacity for a fee or other compensation on such bill, contract, claim or other transaction or proposal before the Legislature or state agency of which the individual is a public officer.
- (5) No public officer shall assist any person or business or act in a representative capacity before a state agency for a fee or other compensation, on any bill, contract, claim or other transaction or proposal involving official action by the agency if the public officer has official authority over that agency unless such public officer has complied with the disclosure requirements of this chapter.
- (6) Nothing herein shall preclude a public officer from having outside business interests or employment so long as such interests or employment do not interfere with performance of official duties and is not otherwise in direct conflict with this chapter.

Source: S.L. No. 5L-11-00 §2-6, 8/1/00

§8-111. Contracts. —

- (1) A state agency shall not enter into any contract with a public officer or with a business in which a public officer has a controlling interest, unless the contract has been awarded through an open, public process. A state agency may, however, enter into such contract without resort to competitive bidding process when, in the opinion of the procurement officer of that branch or entity of government, the property or services does not fall within the purview of competitive bidding; PROVIDED that written justification for the non-competitive award of such contract or combination of related contracts of a cumulative total of \$1,000 or more be made a matter of public record and shall be filed with the Pohnpei Ethics Commission at least five working days before such contract is entered into. With regards to members of boards, commissions, and committees, this subsection shall apply only to contracts entered into between a business in which a member has a controlling interest and a state agency in which the board, commission or committee to which the individual is appointed has jurisdiction.
- (2) A state agency shall not enter into a contract with any person or business which is represented or assisted in a material manner in the matter by a person who has been a public officer of that agency within the preceding 12 months and who participated while in state office or employment in a material manner in the matter with which the contract is directly concerned.

Source: S.L. No. 5L-11-00 §2-7, 8/1/00

§8-112. Contracts voidable. — In addition to any other penalty provided by law, any contract entered into by the state in violation of Part B of this chapter, is voidable by the state; PROVIDED that in any act to void a contract pursuant to this section, the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within 90 days after the determination of a violation under this part.

Source: S.L. No. 5L-11-00 §2-8, 8/1/00

§8-113. Requirements of disclosure. — Failure of a public officer to file a disclosure of financial interests or gifts as required by this chapter shall be a violation of this part.

Source: S.L. No. 5L-11-00 §2-9, 8/1/00

§8-114. Financial reports and disclosure statement files; disposition. —

(1) All financial reports and disclosure statements filed by a public officer shall be maintained by the Pohnpei Ethics Commission during the term of office of the public officer, and for a period of three years thereafter. Upon the expiration of the three-year period, the financial report and disclosure statement and all copies thereof shall be destroyed.

(2) Nothing herein shall bar the Pohnpei Ethics Commission from retaining a financial report or disclosure statement or copy of a financial report or disclosure statement that has become part of a charge, case or advisory opinion request or is part of an ongoing investigation.

Source: S.L. No. 5L-11-00 §2-10, 8/1/00

§8-115. Restrictions on post employment. —

(1) No former public officer shall disclose any information which by law is not available to the public and which the public officer acquired in the course of official duties or use the information for personal gain or the benefit of anyone.

(2) No former public officer shall, within 12 months after termination from employment, assist any person or business, or act in a representative capacity for a fee or other consideration, on matters involving official action by the particular state agency with which the public officer had actually served.

(3) This section shall prohibit any agency from contracting with a former public officer to act on a matter on behalf of the state within the period of limitations stated herein, unless exempted by law.

Source: S.L. No. 5L-11-00 §2-11, 8/1/00

§8-116. Violation. —

(1) Any state action obtained in violation of this part for public officers is voidable in the same manner as voidable contracts as provided for under §8-112; and the state may pursue all legal and equitable remedies available to it.

(2) The state may recover any fee, compensation, gift or profit received by such person as a result of a violation of these standards by a public officer or former public officer. Action to recover under this subsection shall be brought within two years of such violation under this part, or of the reasonable discovery of such violation.

Source: S.L. No. 5L-11-00 §2-12, 8/1/00

PART C SPECIFIED STANDARDS FOR EMPLOYEES

§8-117. Employees' ethics code. — Within 180 days following the effective date of this chapter [*effective date is August 1, 2000*], the Pohnpei Ethics Commission established by Part D of this chapter shall study and develop an appropriate code of ethics for the employees of the Pohnpei Government as defined in Subsection (4) of §8-104 and shall present to the Governor and the Legislature draft

legislation to amend this part to provide for specified standards of ethical conduct for said employees. Said presentation shall also include such draft legislation to amend the Public Service System Act, Title 9 Chapter 2, as amended or superseded by state law, and such other statutes the Commission deems necessary to effectuate the code of ethics for Pohnpei Government employees.

Source: S.L. No. 5L-11-00 §3-1, 8/1/00

PART D POHNPEI ETHICS COMMISSION

§8-118. Pohnpei Ethics Commission established. — There shall be within the Government of Pohnpei, a commission to be known as the Pohnpei Ethics Commission. The Commission shall consist of five members to be appointed by the Governor with the advice and consent of the Legislature. Each person nominated and serving on the Commission shall be a citizen of Pohnpei. No person who has ever been convicted of a felony shall be eligible to serve on the Commission. Members of the Commission shall not be a public officer as defined herein.

Source: S.L. No. 5L-11-00 §5-1, 8/1/00

§8-119. Terms of office. — The term of office of each member shall be four years, and until their successors are appointed; PROVIDED that of the original members, two shall hold office for two years, two shall hold office for three years, and one shall hold office for four years. The determination of these members' length of office shall be by lot drawn by the members at their initial meeting. No person shall be appointed consecutively to more than two terms as a member of the Commission.

Source: S.L. No. 5L-11-00 §5-2, 8/1/00

§8-120. Rules of procedure. — The Commission shall determine its own rules of procedure; PROVIDED that:

(1) The Commission shall meet at least once quarterly. Meetings may be held at any time or place as determined by the Commission, or upon the call of the Chairman or upon the written request of any three members. All members of the Commission shall be given reasonable notice of the date, time, and place of each meeting as set forth in the regulations of the Commission. All meetings shall be open to the public except executive sessions as agreed upon by unanimous vote of the members present.

(2) Three members of the Commission shall constitute a quorum for the transaction of business and the assent of three members shall be required for all actions requiring a vote unless a greater majority is required by this chapter or the rules of the Commission. No vacancy in the membership of the Commission shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Commission.

Source: S.L. No. 5L-11-00 §5-3, 8/1/00

§8-121. Organization. — The Chairman of the Commission and such other officers as the Commission shall deem necessary shall be elected by the majority of the full membership of the Commission, without regard to vacancies.

Source: S.L. No. 5L-11-00 §5-4, 8/1/00

§8-122. Compensation and expenses. — Members of the Commission shall be compensated at the rates established by the Government Officers' Salary Act, Title 9 Chapter 4 Subchapter I, as amended or superseded by state law, when actually performing functions of the Commission at the direction of the Chairman, except that those members who are Pohnpei Government employees shall instead be granted administrative leave from their regular duties while performing functions of the Commission. All members shall also receive travel expenses and per diem at Pohnpei Government rates when those amounts would be payable to government employees in the same circumstances.

Source: S.L. No. 5L-11-00 §5-5, 8/1/00

§8-123. Vacancies. — Vacancies shall be filled for the remainder of the unexpired term in the same manner as original appointments. The Governor may remove or suspend any member of the Commission for cause, upon the filing of a written finding with the Commission and upon service of a copy of the written findings on the member removed or suspended.

Source: S.L. No. 5L-11-00 §5-6, 8/1/00

§8-124. Staff. — The Commission may employ such persons as it deems necessary for the performance of its functions. The Commission shall submit an annual budget request to the Legislature for its required operations.

Source: S.L. No. 5L-11-00 §5-7, 8/1/00

§8-125. Prohibition from political activity. — Members of the Commission and its staff shall not take an active part in political management or in political campaigns during the term of office or employment.

Source: S.L. No. 5L-11-00 §5-8, 8/1/00

§8-126. Cooperation; meeting place; clerical and administrative assistance. — The Commission may request and shall receive from every state agency cooperation and assistance in the performance of its duties. The Office of the Governor shall designate a meeting place for the Commission and provide clerical and administrative assistance as required by the Commission to perform its duties under this chapter.

Source: S.L. No. 5L-11-00 §5-9, 8/1/00

§8-127. Finances. —

(1) There is hereby authorized from the general fund of Pohnpei such sums as may be appropriated and allocated in the Comprehensive Budget Act for the operational expenses of the Pohnpei Ethics Commission in the performance of its duties as prescribed by this chapter.

(2) All sums appropriated under the authorization of Subsection (1) of this section shall be administered and expended by the Chairman of the Pohnpei Ethics Commission solely for the purposes stated in Subsection (1) of this section.

(3) All sums appropriated under the authorization of Subsection (1) of this section not expended or obligated for expenditure on or before September 30 of the fiscal year for which such sums are appropriated shall revert to the general fund of Pohnpei.

Source: S.L. No. 5L-11-00 §5-10, 8/1/00

§8-128. Duties of Commission. — The Commission shall have the following powers and duties:

(1) It shall organize seminars and instructional programs to guide public officers and educate employees in matters relative to ethics in government.

(2) It shall meet with individual public officers and employees for the purpose of counseling these persons in matters specifically related to their service with government.

(3) It shall prepare written materials and media programs designed to inform the general public of the necessity of ethics in government and the steps that the Commission and other government agencies are undertaking to ensure ethical conduct by public officers and employees of the Pohnpei Government.

(4) It shall enter into discussions and undertake other activities designed to build an awareness of the need for enforceable ethics codes for public officers and employees at other levels of government and international institutions operating within Pohnpei.

(5) It shall prescribe a form for the financial reports and disclosures of gifts required by Part B of this chapter and shall establish an orderly procedure for implementing the requirements of that part.

(6) It shall undertake preliminary investigations and render advisory opinions upon the request of any public officer or employee, or former public officer or employee as to whether the facts and circumstances of a particular case constitutes or will constitute a violation of the code of ethics, and where appropriate refer the matter to the proper authority or authorities for full investigation of the alleged violation of the code.

(7) It shall cause to be published yearly summaries of its advisory opinions. The Commission shall make sufficient deletions in the summaries to prevent disclosing the identity of persons involved in the opinions.

Source: S.L. No. 5L-11-00 §5-11, 8/1/00

§8-129. Filing of false charges. —

(1) Any person who knowingly and intentionally files a false charge with the Commission, or any member of the Commission who initiates action against any public officer, employee or any other person covered by this chapter, knowing such charge to be false, shall be guilty of the crime of perjury and subject to the penalty set forth in 61 PC 10-151, as amended or superseded by state law.

(2) Whoever is convicted in a court of competent jurisdiction of the crime of perjury under this section, in addition to any other punishment prescribed by law thereof, shall be required by court order to reimburse the person against whom the false charge was filed for all of the person's legal expenses and court costs incurred in relation to that person's defense against the false complaint.

(3) If such charge is filed within six months prior to an election in which the accused's name appears on the ballot, the person filing the false complaint shall pay to the accused the amount set out above, and shall also pay an equal amount to the general fund of the Pohnpei Treasury.

(4) This section shall not supersede or preclude any other right or remedy at law available to the person falsely accused.

Source: S.L. No. 5L-11-00 §5-12, 8/1/00

§8-130. Disciplinary action for violation. — In addition to any other powers a state agency may have to discipline public officers and employees, the appropriate agency involved may reprimand, put on probation, demote, suspend or discharge any public officer or employee found to have violated this chapter.

Source: S.L. No. 5L-11-00 §5-13, 8/1/00

PART E CONCLUDING PROVISIONS

§8-131. Concurrent jurisdiction. — In addition to any provision contained in this chapter, state agencies may each prescribe further rules of conduct covering its members and may investigate and discipline its public officers and employees for any violation of this chapter, or its own rules or both.

Source: S.L. No. 5L-11-00 §6-1, 8/1/00

§8-132. Other laws and regulations. — This chapter is intended to compliment specific laws and regulations pertaining to the ethical conduct of officers and employees of the Pohnpei Government. No provision contained herein shall be construed to invalidate or supersede any other statute or regulation pertaining to the ethical conduct of officers or employees of the Pohnpei Government. In the event that the provisions of this chapter and the provisions of another statute or regulation shall address the same conduct, the most restrictive provisions shall apply.

Source: S.L. No. 5L-11-00 §6-2, 8/1/00

Note: S.L. No. 5L-11-00 §6-3 severability provision has been omitted.

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