

Kwajalein Atoll Development Authority Restoration Act 2008

NITIJELA OF THE MARSHALL ISLANDS

29TH CONSTITUTIONAL REGULAR SESSION, 2008

**Bill No:4N.D.2
P.L.2008 -1**

KWAJALEIN ATOLL DEVELOPMENT AUTHORITY RESTORATION ACT 2008

A Bill for An Act

To restore the Kwajalein Atoll Development Authority.

BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS:

PART I – PRELIMINARY

§ 1. Short title and purpose.

(1) This Act may be cited as “Kwajalein Atoll Development Authority Restoration Act 2008.”

(2) It is the intend of this legislation to create a vehicle by which the people of Kwajalein Atoll may themselves:

(a) develop and implement programs and projects for the social, economic and cultural betterment of the people of the Kwajalein Atoll,

(b) implement the Kwajalein Atoll Development Plan, and

(c) address the special needs of the community at Ebeye, Kwjalein Atoll and other Marshallese communities within the Kwajalein Atoll,

with responsible and appropriate review by the Government of the Republic of the Marshall Islands to ensure fiscal responsibility and consistency with the development policies of the Government of the Republic.

§1A. Findings.

The Nitijela finds and declares as follows:

- (1) It is the law of the United States, as codified in 48 United States Code §1921b(1) that: "It is the policy of the United States that payment of funds by the Government of the Marshall Islands to the landowners of Kwajalein Atoll in accordance with the land use agreement dated October 19, 1982, or as amended or superseded, and any related allocation agreements, is required in order to ensure that the Government of the United States will be able to fulfill its obligation and responsibilities under Title Three of the U.S.-RMI Compact and the subsidiary agreements concluded pursuant to the U.S.-RMI Compact.";
- (2) The Land Use Agreement ("LUA") of October 19, 1982 between the Republic of the Marshall Islands ("RMI") and the landowners of Kwajalein Atoll, as amended, required the RMI to establish, as soon as practicable, a Kwajalein Atoll Development Authority ("KADA") to plan and implement the Kwajalein Atoll Development Plan referred to in Article VII of the LUA 82-85;
- (3) The LUA with the landowners of Kwajalein Atoll requires that there be a KADA and that KADA receive the \$1.9 million provided under Section 211(b)(2) of the Compact;
- (4) The LUA and Compact funds designated for KADA are part of the compensation to the Kwajalein landowners for the use of parts of Kwajalein Atoll by the United States and during LUA negotiations were specifically negotiated to be paid to KADA so as to allow KADA to plan and implement the Kwajalein Atoll Development Plan;
- (5) Not complying with the LUA may be construed as a material breach of the Compact and such is against the public policy of the Republic of the Marshall Islands;
- (6) From its establishment in 1985 until its dissolution and purported receivership in 2004, KADA successfully carried on numerous development projects including, but not limited to, building causeways, docks, power plants, roads, utilities, and other economic development projects;
- (7) Further, KADA participated in and managed the construction of the Ebeye Hospital, the Water Distribution facility, and other projects to improve the general living conditions of Kwajalein Atoll;
- (8) A restored KADA is the best and most efficient method of:
 - (a) implementing the Kwajalein Atoll Development Plan for the social, economic, and cultural betterment of the people of the Kwajalein Atoll, as required by the LUA; and
 - (b) addressing the special needs of the community of Ebeye, Kwajalein Atoll, and other Marshallese communities within the Kwajalein Atoll, as required by the amended Compact; and
- (9) The use of funds received by KADA for public electric power generation is inconsistent with its purpose.

§ 2. Interpretation.

In this Act, unless the context otherwise requires:

- (a) "the Government" means the Government of the Republic of the Marshall Islands;
- (b) "the Authority" means the Kwajalein Atoll Development Authority established under Section 4 of this Act;
- (c) "the Board" means the Board of Directors established under Section 5 of this Act;
- (d) "Governmental agency" means any corporation or statutory body established by the Government for the purpose of development generally or with respect to any particular locality or subject;
- (e) "a member of the Board" includes the chairman of the Board; and
- (f) "the Republic of the Marshall Islands representative" (hereinafter referred to as the "RMI Representative") means the official to whom the subject of Kwajalein Atoll development has been delegated by the President of the Republic of the Marshall Islands.

§ 3. Application of Article VII of the Constitution.

Article VII of the Constitution shall not apply or relate to the Authority, its Board or employees.

PART II - CONSTITUTION, ORGANIZATION AND MANAGEMENT

§ 4. Constitution of the Authority.

(1) There is hereby established the Kwajalein Atoll Development Authority ("the Authority").

(2) The Authority:

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold, charge, and dispose of property; and
- (d) may sue and be sued in its corporate name.

(3) Common Seal:

- (a) all courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to any document and shall presume that it was duly affixed;
- (b) the common seal of the Authority shall be in the custody of the Authority;
- (c) the common seal of the Authority may only be altered in such a manner as may be determined by the Authority;

(d) the common seal of the Authority shall not be affixed to any document except in the presence of (i) the chairman of the Board, or (ii) a member of the board or an officer of the Authority authorized by the Board to act on behalf of the Chairman.

(4) The provisions of the Associations Law, Title 52 MIRC, shall not apply or relate to the Authority.

§ 5. Organization and management.

(1) The power and duties of the Authority are hereby vested in and shall be exercised by the Board. The Board shall consist of seven (7) members appointed by the President from the offices and nominations as follows:

(a) The RMI Representative as defined hereinabove, who shall be the official representative of the Government;

(b) One Senator elected to represent the Kwajalein Atoll in the Nitijela, nominated by a consensus of the Kwajalein Atoll Delegation to the Nitijela;

(c) The Mayor of the Kwajalein Atoll Local Government or a duly authorized representative nominated by him;

(d) The President of the Chamber of Commerce for Ebeye Island, Kwajalein Atoll or a duly authorized representative nominated by him;

(e) two (2) landowner representatives, nominated by the Landowners of those lands within the Kwajalein Atoll that are the subject of the Land Use Agreement between the RMI Government and the Kwajalein land owners; and

(f) One (1) member to be nominated by a majority of the Board appointed under Subsection (1)(a), (b),(c),(d) and(e) above. In the event the Board is unable to nominate the members provided for herein, the President shall appoint said Board members from among those persons considered for nomination by the Board.

(2) Meetings of the Board shall be held at such times and at such places as may be designated by the Board.

(3) Every member of the Board shall, subject to Section 7, hold office for a term of four (4) years and shall, unless removed from office, be eligible for re-appointment.

§ 6. Compensation.

(1) Any member of the Board, other than a member appointed under Sections 5(1)(a),(b) and (c) of this Act, or a member who otherwise holds a salaried Government office, shall be entitled to receive such compensation for his services as the Board may determine.

(2) Any member of the Board shall be entitled to receive *per diem* and travel expenses at such rates and upon such terms and conditions as may be determined by the Board; provided,

however, that such rates shall in no event exceed the rates paid to Government employees.

(3) The duly elected and acting Chairman of the Board shall be paid an annual salary in an amount to be determined by the Board; provided, however, that the exceptions of Subsection (1) of this Section shall apply.

§ 7. Vacation of office.

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

- (a) upon death;
- (b) by submitting a letter of resignation as provided for in Subsection (2) of this Section;
- (c) by ceasing to hold that elective office which was the basis for his appointment; or
- (d) by being removed from office as provided for in Subsection (3) of this Section.

(2) A resignation under Subsection 1(b) of this Section shall take effect when it is received by the President or on such later date as may be agreed by the President and the member concerned.

(3) The Board may, for cause, remove any member of the Board from office; provided, however, that in the event good cause exists, and the Board fails to take appropriate action, the President shall remove such member. The Board, or President, in the event the Board does not take appropriate action, may suspend any member of the Board from office pending a decision for removal as provided hereinabove.

(4) In the event of the vacation of office by any member, the President may in accordance with Section 5(1) of this Section, appoint another person in his place. Any person appointed in place of such member shall hold office during the period of the unexpired term of the member who he succeeds.

(5) If any member of the Board is temporarily unable to discharge the duties of his office on account of ill-health or absence from the country, or any other cause, the President, may appoint another person to act in his place.

(6) Any appointment made by the President under this Section or Section 5 of this Act, whether permanent, temporary, or following a vacation of office, shall be published in the *Government Gazette*.

(7) No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy among its members or any irregularity in the nomination or appointment of a member thereof.

§ 8. Delegation by the Board.

(1) The Board may, by written instrument, delegate any of its powers and functions except the

power to make by-laws under Section 12 of this Act, to any person.

(2) A delegation under Subsection (1) of this Section may relate:

- (a) to the whole or any part of the Kwajalein Atoll specified in the instrument of delegation; or
- (b) to all activities conducted by the Authority or in which the Authority is concerned, or to such of them as are specified in the instrument of delegation.

(3) A delegation under Subsection (1) of this Section, may be made subject to limitations and conditions.

(4) A delegation under this Section shall be revocable at will by written instrument, and no such delegation shall prevent the exercise or performance of any power or function by the Board.

§ 9. Procedures of the Board.

Subject to this Act and to the by-laws made under Section 12 of this Act, the Board shall determine its own procedures.

§ 10. Disclosure of, and disqualification for, interest.

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

- (a) he shall disclose such interest at the meeting; and
- (b) he shall not participate 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 RMI Representative for cause otherwise directs, failure to comply with the requirements of Subsection (1) or (2) of this Section shall not invalidate any act or proceeding of the Board.

§ 11. Misconduct in public office.

A failure to comply with Section 10 of this Act shall be deemed to be misconduct in public office within the meaning of 31 MIRC §146.

§ 12. By-laws.

(1) Subject to this Act, the Board shall adopt by-laws to govern and regulate the operations of the Authority and the Board.

(2) The by-laws shall provide for:

- (a) the quorum at, and the conduct of, meetings of the board;
- (b) the appointment and duties of officers of the Board; and
- (c) any other matters relating to the Board and the operations of the Authority which the Board may deem appropriate.

§ 13. Staff of the Authority.

(1) The Authority:

- (a) shall employ an executive officer who shall be a person with a sound knowledge and experience of commerce, industry, administration, or business management; and
- (b) may employ such other employees, agents, consultants, attorneys, accountants or advisers as may be necessary to carry out the purpose of the Authority.

(2) Persons referred to in Subsection (1) of this Section shall be employed on such terms and conditions as may be determined by the Board.

§ 14. Application of bribery law.

Every member of the Board and employee of the Authority shall be subject to the provisions of 31 MIRC §118 with respect to any act in the performance of his duties under the Authority, and any such act shall be deemed to be an official act within the meaning of the aforementioned provisions of the Marshall Islands Revised Code herein referred to.

§ 15. Immunity for official acts.

(1) No suit or prosecution shall lie:

- (a) against the Authority for any act which in good faith is done, or purported to be done, by the Authority under this Act, or any regulation made under this Act; or
- (b) against any member of the Board, officer, servant, or agent of the Authority for any act which in good faith is done, or purported to be done, by him under this Act, or any regulations made under this Act, or on the direction of the Authority.

(2) Any expenses incurred by the Authority in any suit or prosecution brought by or against the Authority before any court shall be paid out of the Fund (as defined in Section 19 of this Act) of the Authority, and any costs paid to or recovered by the Authority in any such suit or prosecution shall be credited to the Fund (as defined in § 19, of this Act) of the Authority.

(3) Any expenses incurred by any such person as is referred to in Subsection 1(b) of this Section in any suit or prosecution brought against him before any court in respect of any act which is done or purported to be done by him under this Act, or any regulations made under this Act or on the direction of the Authority shall, if the court holds that such act was done in good faith, be paid out of the Fund (as defined in Section 19 of this Act) of the Authority unless such expenses are recovered by him in such suit or prosecution.

(4) No writ against person or property shall be issued against a member of the Board in any action brought against the Authority.

PART III - POLICIES, POWERS, AND FUNDS OF THE AUTHORITY

§ 16. Policies of the Authority.

Subject to this Act, the Authority shall be responsible for determining its own policies for carrying out its functions; provided, however, that such policies shall be in conformity with the development policies of the Government.

§ 17. Functions of the Authority.

(1) The primary functions of the Authority under this Act shall be:

(a) to investigate, study, develop, implement, and aid in the financing of social, economic and cultural development programs and projects for the betterment of the inhabitants of the Kwajalein Atoll by itself or jointly with other government or private organizations or agencies; and

(b) to develop and implement a comprehensive Kwajalein Atoll Development Plan to develop and improve the quality of life on Ebeye Island, as well as any other islands in the Kwajalein Atoll.

(2) For the purposes stated in Subsection (1) of this Section, the Authority shall encourage or develop, and may conduct or manage activities of social, economic or cultural importance to the inhabitants of the Kwajalein Atoll.

(3) In the conduct of any activity under Subsection (2) of this Section, the Authority shall comply with sound business and accounting practices. In the conduct of any activity authorized by this Act, the Authority shall not compete with the Government except with the approval of the Cabinet.

(4) The Authority shall also perform any other function as required by law.

§ 18. Powers of Authority.

(1) Subject to this and any other law, the Authority shall have any powers as are necessary or

convenient for carrying out its purposes.

(2) Without prejudice to the generality of the powers conferred by Subsection (1) of this Section, the Authority may:

- (a) identify, promote, assist, or engage in any new or existing economic development projects designed to increase the economic welfare of the inhabitants of Kwajalein Atoll;
- (b) acquire by lease, sublease, easement, or as otherwise allowed by law, any improved or unimproved land or interest in land, within the Kwajalein Atoll, for the purpose of development, conservation, or rehabilitation;
- (c) acquire by purchase, lease, sublease, easement, or as otherwise allowed by law, any improved or unimproved land or interest in land situated outside the Republic of the Marshall Islands for investment purposes;
- (d) erect any building or structure required by the purposes of this Act on land belonging to or administered by the Authority;
- (e) alter or reconstruct any building or property belonging to or administered by the Authority;
- (f) construct any residential buildings on land belonging to or administered by the Authority;
- (g) dispose of by sale, lease, sublease, or easement, any building or interest therein;
- (h) dispose of by lease, sublease, or easement any land or interest therein;
- (i) acquire by purchase, lease, or sublease any personal property or license which the Authority considers necessary or convenient for carrying out its purposes;
- (j) dispose of by sale, or any other manner allowed by law, any personal property or license of the Authority;
- (k) borrow money and accept advances, contributions, gifts, or other assistance in accordance with Section 21 of this Act;
- (l) lend money, invest or reinvest its funds from time to time and take and hold any property as security for the payment of funds loaned or invested;
- (m) insure or provide for the insurance of any property, project, or operation against any or all risks;
- (n) expend funds for the study and implementation of programs and projects determined by the Authority to be of social, economic or cultural benefit to the inhabitants of the Kwajalein Atoll;
- (o) appoint agents, attorneys or accountants in the Marshall Islands or abroad; and
- (p) make contracts and other instruments that the Board may consider necessary or convenient for the exercise and performance of the powers and duties of the Authority.

PART IV – FINANCE

§ 19. Kwajalein Atoll Development Authority Fund.

(1) There shall be established the Kwajalein Atoll Development Authority Fund (in this Act also

referred to as "the Fund").

(2) The Fund shall be a fund other than the Marshall Islands General Fund as same is defined in Article VIII, Section 3, of the Constitution.

(3) The Fund shall be held in any bank or trust company as may be determined by the Board from time to time.

(4) Notwithstanding anything to the contrary, there shall be paid into the Fund:

(a) any money received by the Government under the Land Use Agreement (LUA), the Compact of Free Association between the Government of the Republic of the Marshall Islands and the Government of the United States of America (the Compact), and the Military Use and Operating Rights Agreement of the Government of the United States in the Marshall Islands concluded pursuant to Sections 321 and 323 of the Compact which funds are designated for the development of Kwajalein Atoll in accordance with the LUA;

(b) any money appropriated by the Nitijela for the purposes of the Authority, either generally or relating to any particular purpose;

(c) any money received by the Authority through loans, advances, contributions, gifts, or assistance in accordance with Section 21 of this Act; and

(d) any money received by the Authority as profits, dividends or raised by the Authority through sale, mortgage, lease, sublease, easement, or otherwise from any other source, including repayment of loans and income from any business or other enterprise.

(5) The Authority shall separately account for each of the sources of money referred to in Subsection (4) of this Section.

§19A. Funds to be Paid Promptly.

Funds received by the RMI under paragraph 6 of the LUA, and any and all other Compact Funds intended for KADA shall be promptly transferred to KADA by the RMI.

§ 20. Payments out of the Fund.

(1) Payments may be made out of the Fund for the following:

(a) to carry out the purposes of the Authority;

(b) to pay the costs of any expenses of the Authority;

(c) to provide working capital, petty cash, and similar purposes; and

(d) to pay the costs of administering this Act and any other Act that confers any power or duty on the Authority.

(2) No money shall be withdrawn from the Fund except:

- (a) in accordance with the law and duly adopted by-laws of the Authority; and
- (b) with the approval of the Board which shall satisfy itself that the withdrawal is made in accordance with the law and the duly adopted by-laws of the Authority.

§ 20A. Prohibition of Use of Funds.

No money shall be withdrawn from the Fund to pay for fuel or other expenses of the generation of electricity for public sale or use.

§ 21. Borrowings, etc.

(1) With the approval of the Cabinet and subject to such conditions and within such limits as the Cabinet may impose, and subject to Subsections (3) and (4) of this Section, the Authority may borrow money from the Government, a bank, or any other lending institution or individual necessary and convenient to carry out its purposes.

(2) Except as provided in Subsection (3) of this Section, the Authority may accept advances, grants, contributions, gifts, and other forms of financial assistance to carry out its purposes from any person or organization in the Marshall Islands and abroad.

(3) No money may be borrowed nor may any advance, grant, contribution, gift and other assistance be accepted by the Authority from the Government of the United States or any of its agencies, or from any other source outside the Marshall Islands, except with the consent of the Government.

(4) Where any money is borrowed or any advance, grant, contribution, gift, or assistance is received for a specific purpose, or subject to any conditions as to its use, it may be expended or used only for that purpose or subject to those conditions.

§ 22. Bank accounts.

(1) The Authority shall open an account, or accounts with a banking institution, which is a member of the United States Federal Deposit Insurance Corporation or the United States Federal Savings & Loan Insurance Corporation.

(2) Separate accounts shall be maintained for each of the following:

- (a) each business, enterprise, project, or program in which the Authority is actively engaged; and
- (b) any other function which the Authority may perform and which involves expenditures by the Authority.

(3) Subject to Section 20(1)(c) of this Act, any money (other than petty cash) withdrawn from the Fund and not immediately expended, shall be deposited in an account opened under Subsection (1) of this Section.

§ 23. Accounts and records.

(1) The Authority shall maintain proper accounts and records, in a form satisfactory to the Secretary of Finance, for the following:

- (a) the Fund;
- (b) the expenditures of money from the Fund; and
- (c) the property and financial transactions of the Authority.

(2) The accounts which shall be submitted to the Nitijela by the Minister of Finance pursuant to Article VIII, Section 5(4), of the Constitution, shall include all accounts relating to the Authority.

(3) The accounts and records referred to in Section 22 of this Act and Subsection (1) of this Section shall be audited by the Auditor-General as provided for in Article VII, Section 15, of the Constitution.

§ 24. Investment.

With the approval of the Board, money in the Fund, or withdrawn from the Fund in accordance with Section 20(2) of this Act, and not immediately expended, may be invested as follows:

- (a) on deposits or on call with a bank or other financial institution as provided for in this Act; or
- (b) in any other manner authorized by the Constitution or law for investment of the Marshall Islands General Fund.

§ 25. Reports.

(1) The Board shall, as soon as practicable after each thirtieth day of June occurring after the commencement of this Act, prepare and furnish to the Cabinet a report on the operations of the Authority during the preceding year, together with financial statements for that year in such form as the Secretary of Finance approves.

(2) The Authority shall also submit a copy of the report, referred to in Subsection (1) of this Section to the Auditor-General who shall report to the Cabinet as to:

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and show fairly the financial operations and state of the affairs of the Authority;

- (c) whether the receipts, expenditures, and investment of money, and the acquisition and disposal of assets by the Authority during the previous year have been in accordance with this Act; and
- (d) such other matters as the Auditor-General considers appropriate.

(3) The Cabinet shall cause the report and financial statements of the Board, together with the report of the Auditor-General, and its own comments to be submitted to the Nitijela within fifteen (15) session days of the Nitijela after receipt by the Cabinet.

§ 26. Other reports.

Notwithstanding Section 25 of this Act, the Cabinet may require the Authority to submit to it a report in such a form and as to such matter as the Cabinet deems appropriate.

§ 27. Tax exemption.

(1) Subject to Subsection (2) of this Section, the income, property, and transactions of the Authority shall not be subject to any tax, rate, charge, or impost under any law.

(2) Subsection (1) of this Section shall not apply in respect to any licensing fee or similar fee that is reasonably in proportion to the administrative expenses involved.

PART V - MISCELLANEOUS

§ 28. Compliance with other Laws.

The Authority, and any business or enterprise in which the authority is engaged, shall comply with all laws, including licensing, to be prescribed in the regulations for carrying this Act into effect.

§ 29A. Repeal.

The Kwajalein Atoll Development Authority Act 2007, 10 MIRC 7, P.L. 2007-76, is hereby repealed.

§ 30A. Transition.

Upon the commencement of this Act all right, duties and obligations, assets and liabilities, and all acts, transactions, matters and things done, determined or entered into by the Kwajalein Atoll Development Authority established under the Kwajalein Atoll Development Authority Act 2007, and under any preceding Acts relating to the Kwajalein Atoll Development Authority, shall be transferred and vest in the Kwajalein Atoll Development Authority established under this Act.

CERTIFICATE

I hereby certify:

(1). that Nitijela Bill No:4N.D.2 was passed by the Nitijela of the Marshall Islands on the 4th day of April, 2008 and

(2). that I am satisfied that Nitijela Bill No: 4N.D.2 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 7th day of May, 2008.

Attest:

Jurelang Zedkaia
Speaker,
Nitijela of the Marshall Islands

Lena E. Tiobech
Acting Clerk,
Nitijela of the Marshall Islands