

## YSC, Title 14. Public Utilities

### Chapter 1. Yap State Public Service Corporation

#### Subchapters:

- I:** General Provisions
- II:** The Corporation
- III:** Board of Directors
- IV:** Staff and Management
- V:** Rates, Charges & Fees
- VI:** Miscellaneous Provisions

#### Subchapter I. General Provisions

**§101.** Short title.

**§102.** Definitions.

**§101. Short title.**

This chapter may be cited as the "Yap State Public Service Corporation".

**Source:** YSL 4-4 §1, modified

**Cross-reference:** The statutory provisions on Corporations are found in Title 23 of this Code.

**§102. Definitions.**

As used in this chapter:

(a) "Corporation" means the [Yap State Public Service Corporation](#) or its designee.

(b) "Service" includes the delivery of electrical, water, sewer, and refuse collection and disposal in the State of Yap.

**Source:** YSL 4-4 §2, modified.

#### Subchapter II: The Corporation

**§111.** Yap State Public Service Corporation.

**§112.** Duties of the Corporation.

**§113.** Powers of the Corporation.

**§114.** Funds collected.

### **§111. Yap State Public Service Corporation.**

**There is hereby created a Yap State Public Service Corporation. The Corporation shall have such divisions as the Board may deem necessary.**

**Source: YSL 4-4 §3, modified.**

### **§112. Duties of the Corporation.**

**(a) The Corporation shall supervise the construction, maintenance, operations, and regulation of all utility services, including power, sewage, refuse collection and disposal, and water; provided, that whenever feasible the Corporation may contract for private businesses to assume its duties with respect to one or more of its divisions.**

**(b) The Corporation shall within one year of confirmation of all board members implement a plan by which it or its designee will establish rates, metering, billing, and collecting fees in a fair and rational manner from all consumers of utility services so that the Corporation will be financially independent of all appropriations by the Yap State Legislature as soon as possible.**

**Source: YSL 4-4 §4, modified.**

**Cross-reference: The statutory provisions on the Legislature are found in Title 2 of this Code. The statutory provisions on appropriations are found in [chapter 10 of Title 13 of this Code](#).**

### **§113. Powers of the Corporation.**

**In order to carry out its duties, the Corporation shall have all of the powers conferred by law on a public corporation, and all powers reasonably incidental to its purpose, including the powers:**

**(a) To prescribe, adopt, amend, and repeal by-laws;**

**(b) To receive and hold funds from contractors, consumers, lessees, the government of the State of Yap, and any other sources;**

**(c) To sue and be sued in its corporate name;**

**(d) To acquire and hold any interest allowed by law in any real or personal property, tangible or intangible, in connection with the activities of the Corporation, and to sell, mortgage, or otherwise dispose of such interest;**

**(e) To borrow money from any private or public source, either within the State of Yap or the Federated States of Micronesia or in any other country, and to give security in connection with such borrowing;**

**(f) Upon prior approval by resolution of the Legislature, to make and issue tax exempt bonds and other tax exempt obligations for sale to the general public;**

**(g) Subject to the [State Contracts Act](#), to make contracts and execute all instruments necessary or convenient to exercise the powers of the Corporation;**

**(h) To hire such employees as are necessary for the operation of the Corporation and to engage the services of independent experts, advisors, and other contractors as are necessary to the fulfillment of the purposes of the Corporation and pursuant to this chapter;**

(i) To contract to transfer to private ownership or control the construction, management, and operation of the water, sewer, refuse collection and electrical power systems, in a public manner that is both timely and fair to the government, its employees and consumers which transfer shall be subject to the prior approval of the Legislature;

(j) To strengthen immediately the existing system of metering, billing, and collecting fees for utility and refuse collection services provided by the Corporation;

(k) To the extent the Corporation deems lawful and necessary, to review and establish utility rates and other fees for water, sewer, refuse collection and electrical power;

(l) To prepare and submit a budget as a government corporation pursuant to the [Yap State Budget Act](#) and to prepare and submit an annual report on operations and finances to the Governor and Legislature; and

(m) To take such action as it deems necessary and proper to operate the Corporation, further its purposes, administer its services, and perform its duties.

Source: YSL 4-4 §5, modified.

Cross-reference: The statutory provisions on Property are found in Title 29 of this Code. The statutory provisions on the Yap State Mortgage are found in [chapter 1 of Title 29 of this Code](#). The statutory provisions on tax exempt are found in [chapter 1 of Title 13 of this Code](#). The statutory provisions on the State Contracts Act are found in [chapter 5 of Title 9 of this Code](#). The statutory provisions on the Yap State Budget Act of 1979 are found in [chapter 10 of Title 13 of this Code](#).

#### **§114. Funds collected.**

The Corporation shall deposit all funds received by it in insured or fully collateralized accounts.

Source: YSL 4-4 §16, modified.

### **Subchapter III: Board of Directors**

**§121.** Board of Directors; established.

**§122.** Board of Directors; meetings.

**§123.** Rules and regulations.

#### **§121. Board of Directors; established.**

(a) The Corporation shall be governed by a Board of Directors. The Board shall be composed of seven members nominated by the Governor with advice and consent of the Legislature. At least two of the seven members shall be from the private sector. In addition, two of the members shall be from the Outer Islands with one from Falalop, Woleai, and one from Falalop, Ulithi. The Governor shall submit his nominations to the Legislature within 90 days after the effective date of this chapter.

(b) The members shall have overlapping terms of five years with the initial terms of the first members to be staggered upon drawing of lots with three serving four year initial terms and four serving five year initial terms. Each member replacing a Board member after his original

term shall have a four year term.

(c) The Board shall elect a chairman, a vice chairman and a secretary/treasurer as officers of the Corporation from among its members and establish its rules of procedures.

(d) Members shall be reimbursed for reasonable and necessary expenses actually incurred for meetings actually attended. Rules on travel and per diem rates shall be the same as those established for the State government.

(e) The Governor or the Board may remove a member for gross neglect or dereliction of duty, breach of fiduciary duty, conviction of a felony, or mental or physical incapacity. Any vacancy caused by death, resignation, removal, or otherwise shall be filled in the same manner as the original appointment but for a new term. The Board may remove any member for missing three consecutive meetings or other frequent absences without the prior written approval of the Chairman. Upon resignation, removal or expiration of the term of appointment, the member shall cease to sit on the Board and shall not be included in a quorum count.

Source: YSL 4-4 §6, modified.

#### **§122. Board of Directors; meetings.**

(a) Meetings of the Board shall be held within Yap State at a time and place publicly designated by the Board at least once every month for its first two years of existence. Thereafter it shall meet at least quarterly. Special meetings may be called by the Chairman or by the majority of the Board members.

(b) All meetings shall be open to the public, except where the Board finds that personal matters affecting the privacy of an individual or other confidential matters are to be considered. In such a case the Board may, or at the request of the individual involved shall, consider the matter in closed session; provided, that any opening of public bids, award of public bids, or other official action resulting from the meeting shall be acted upon in an open meeting.

(c) The presence of four members shall constitute a quorum for the transaction of business at any Board meeting.

Source: YSL 4-4 §7, modified.

#### **§123. Rules and regulations.**

The Board shall issue rules and regulations necessary to carry out the purpose of this chapter pursuant to the State Administrative Procedure Act.

Source: YSL 4-4 §17, modified.

Cross-reference: The statutory provisions on the State Administrative Procedure Act are found in [chapter 1 of Title 10 of this Code](#).

### **Subchapter IV: Staff and Management**

**§131. Staff of the Corporation.**

**§132. Management.**

**§133. Legal Counsel.**

**§131. Staff of the Corporation.**

(a) **Manager** . The Board shall appoint a Manager to administer the operations of the Corporation on behalf of the Board. The Manager shall have a minimum of five years professional experience in public utility services, business management, or finance and shall possess at least a bachelor's degree from an accredited college or university. The Board may establish other qualifications for the Manager, set his salary, and set his initial term of office not to exceed two years. The Board may reappoint the Manager for successive additional terms, each of which shall not exceed five years, if the Board finds that such reappointment would be in the best interests of the Corporation. The Manager may hire an assistant manager.

(b) **Manager's duties.**

(1) The Manager shall within six months of appointment prepare an operating manual to implement the general operation and management policies established by this chapter and by the Board, including all internal and personnel administration, metering, billing, and collection procedures, privatization plans, and other matters. The manual shall be transmitted to the Board for its approval.

(2) The Manager shall refer to the Board for review of all matters involving allocation of Corporation funds or property.

(3) The Manager shall:

(A) Monitor the progress toward the improvement of the financial status of utility services;

(B) Report to the Board at each Board meeting as to the activities of the Corporation;

(C) Prepare an annual report of the Corporation's operations and activities for each fiscal year within three months of the end of the fiscal year, including appropriate financial statements, and submit a draft of the report to the Board for approval;

(D) Prepare the annual administrative budget for review and approval by the Board and for submission pursuant to the Yap State Budget Act;

(E) Hire such employees as the Board may delegate power to do so; and

(F) Perform such other duties as the Board may require.

(c) **Corporate Comptroller**. The Board shall appoint a Corporate Comptroller who shall be under the supervision of the Manager and who shall have the duties set forth herein:

(1) Keep the official books and accounts of the Corporation;

(2) Prepare an annual report of the financial condition of the Corporation for the Board to be submitted to the Governor and Legislature; and

(3) Perform such other functions as the Manager or the Board may require.

(d) **Staff; transition** . The staff of the Corporation shall initially be transferred from the appropriate divisions of the Department of Public Utilities and Contracts. Such staff as are so transferred shall remain subject to the State Public Service System, if they are subject to such system, for a transition period not to exceed one year. The Corporation may employ such additional persons as the Board deems necessary. Such additional persons as are hired shall be subject to the personnel rules and regulations prepared by the Manager and approved by the Board pursuant to subsection (b)(1) of this section. In any event, new personnel shall be exempt from the State Public Service System Act.

(e) **Dismissal**. The Manager and Corporate Comptroller may be dismissed by the affirmative vote of at least four Board members.

**Source:** YSL 4-4 §8, modified.

**Cross-reference:** The statutory provisions on the State Public Service System Act are found in [chapter 1 of Title 8](#) of this Code. The statutory provisions on the Yap State Budget Act of 1979 are found in [chapter 10 of Title 13](#) of this Code.

**Commission Comment:** Clauses "i" thru "vi" of paragraph (3) of subsection (b) of this section are changed to capital alphabets to comply with standard Code formatting. The Department of Public Utilities and Contracts is amended by section 19 of this Act as the Department of Public Works and Transportation.

## **§132. Management.**

(a) The Manager and Board shall manage the Corporation in a business-like manner so as to provide the most efficient delivery of its services at the most reasonable cost to consumers.

(b) If the Board contracts with a private business to provide a utility service, the Board shall permit the business to adopt a utility rate and billing structure that provides a reasonable return on investment. The Board shall determine reasonableness by reference, in part, to the rate of return on investment earned by providers of similar utility services in other jurisdictions.

(c) The Board shall adjust the utility services collection and rate structure so that within three complete fiscal years collections from a particular utility service are sufficient to recover the costs associated with the operation and delivery of that particular utility service. These costs shall include adequate financial reserves for debt service, if any, and the replacement costs of obsolete or damaged equipment.

(d) The Board's rate schedules may provide for separate utility service rates for different islands, residential, commercial, industrial, or other categories of consumption. The rate schedule for each category of utility consumption shall be uniform within each island, except that the schedule may provide for increasing marginal rates as the consumption of a person increases.

(e) The Board shall annually review and in its discretion may revise the rate schedules. The Board shall adopt procedures to permit consumers to contest their billings.

**(f) The Board may finance the extension or improvement of utility services through tax exempt bonds or other tax exempt obligations issued by it in conjunction with the Yap Economic Development Authority.**

**(g) In the event the Board has not privatized a utility service, its consumer accounts receivable for the utility service shall not be more than 90 days past due, unless the consumer is actively contesting the billing. The Board shall cut off utility services to consumers who are not actively contesting their billing and who have accounts more than 90 days past due.**

**Source:** YSL 4-4 §9, modified.

**Cross-reference:** The statutory provisions on Yap Economic Development Authority are found in [chapter 18 of Title 20](#) of this Code.

### **§133. Legal Counsel.**

**(a) The Corporation may use services of the Attorney General of the State to serve as legal counsel for the Corporation or the Board may retain private legal counsel.**

**(b) All official documents, contracts, bonds and other instruments shall be approved as to form and legal sufficiency by attorneys for the Corporation, if private legal counsel has been retained, and the State Attorney General. The State Attorney General may approve the routine use of standardized contract forms and other documents by the Corporation in lieu of approving each separate contract and other documents.**

**Source:** YSL 4-4 §12, modified.

**Cross-reference:** The statutory provisions on the Office of the Attorney General are found in subchapter II of [chapter 1 of Title 3](#) of this Code.

## **Subchapter V: Rates, Charges and Fees**

**§141. Rates and charges; public hearing.**

**§142. User fees for electrical consumption.**

### **§141. Rates and charges; public hearing.**

**Before adopting any schedule affecting rates for services directly provided by the Corporation, the Board or its designees shall hold at least one public hearing in each Election District affected and notice of the time and place of the hearing shall be published at least once in a newspaper of general circulation in the State and broadcast at least twice on radio or television available in the State at least ten days before the date of the hearing.**

**Source:** YSL 4-4 §10, modified.

**Cross-reference:** The constitutional provision on election districts are found in [Article XI of the Constitution of the State of Yap](#).

**§142. User fees for electrical consumption.**

(a) **Publication of new schedule.** Within three months after a Board has been confirmed pursuant to this chapter, the Board shall approve a new schedule of user fees more accurately reflecting the cost of providing electrical services to the people of the State. Within three years, the new user fees shall charge all consumers an amount at least equal to the marginal costs of providing them utility services.

(b) **Electrical power charges.** The Board shall determine whether to impose as of fuel surcharge fee of up to \$.035 per kilowatt hour for all consumers of electricity. Once imposed, the Board may annually adjust the fuel surcharge fee to reflect the total costs of purchasing fuel for the production of electricity; provided, that the fuel surcharge fee shall not increase for consumers of less than 2001 kilowatt hours per month at a rate of more than \$0.02 per kilowatt hour per calendar year.

(c) **Consumer use.** The Corporation shall take all steps necessary to accurately meter and bill all consumers, including government consumers and all government buildings, for electrical power, sewage, refuse collection and disposal, and water consumption by no later than two years after the confirmation of all Board members at no less than the cost of production, operation, and maintenance of the services provided. No rate increases may be implemented until the Corporation is in full compliance with this subsection.

Source: YSL 4-4 §11, modified.

## Subchapter VI: Miscellaneous Provisions

**§151.** Audits.

**§152.** Conflicts of interest.

**§153.** Civil and criminal penalties.

**§154.** Judicial review.

**§151. Audits.**

The Yap State Public Auditor shall audit the operations, books, and records of the Corporation in accordance with the [Yap State Public Auditor Act](#). The final report of the audit shall be made public and shall be transmitted to the Board, the Manager, the Comptroller, the Governor, and the Legislature.

Source: YSL 4-4 §13, modified.

**§152. Conflicts of interest.**

No member of the Board, officer, counsel, agent, or employee of the Corporation shall in any manner, directly or indirectly, participate in the determination of any question affecting his personal interest or the interests of any enterprise in which he or his parent, spouse, son, daughter, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law or any member of his household is directly or indirectly interested.

Source: YSL 4-4 §14, modified.

**§153. Civil and criminal penalties.**

A member of the Board, officer, counsel, employee, or agent of the Corporation or any other person who embezzles, abstracts, or willfully misapplies any money, funds, credits, or securities

of the Corporation, or who willfully makes any false entry in any book, report, or statement of the Corporation, or who does any other act with intent to injure or defraud the Corporation, or who accepts any unlawful consideration which relates to his duties under this chapter, or any individual who, with like intent, conspires with, aids, or abets any person in any violation of this section, shall be dismissed from employment, permanently barred from reemployment with the Corporation, civilly liable for any losses that their actions caused the Corporation, fined not more than \$2,000.00, or imprisoned for not more than five years, or both.

Source: YSL 4-4 §15, modified.

Cross-reference: The statutory provisions on embezzlement are found in section 311 of [chapter 3 of Title 11 \(Crimes and Punishment\)](#) of this Code.

#### **§154. Judicial review.**

(a) Any person aggrieved by an act or omission of the Corporation may obtain judicial review pursuant to the [Yap State Administrative Procedure Act](#). A litigant who prevails on the merits shall receive his cost and attorneys fees.

(b) An appeal shall not stay the effective date of any schedule of utility rates.

Source: YSL 4-4 §18, modified.

Cross-reference: The statutory provisions on the State Administrative Procedure Act are found in [chapter 1 of Title 10 of this Code](#).