

# **Kwajalein Atoll Development Authority Act 2004 [10 MIRC Ch 7]**

10 MIRC Ch 7

## **MARSHALL ISLANDS REVISED CODE 2004**

### **TITLE 10. - PLANNING AND ECONOMIC DEVELOPMENT**

#### **CHAPTER 7.**

#### **KWAJALEIN ATOLL DEVELOPMENT AUTHORITY**

##### **ARRANGEMENT OF SECTIONS**

##### **Section**

##### **Part I - Preliminary.**

§701. Short Title.

§702. Interpretation.

##### **Part II - Constitution of Authority.**

§703. Reconstitution of Authority.

§704. Organization and Management.

§705. Compensation.

§706. Vacation of Office.

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

§708. Misconduct in Public Office.

§709. Staff of the Authority.

§710. Liability.

##### **PART III – POLICIES, POWERS, AND FUNDS OF THE AUTHORITY**

§711. Policies of the Authority.

§712. Purposes and Functions of the Authority.

§713. Powers of the Authority.

##### **PART IV – FINANCE**

§714. Kwajalein Atoll Development Authority Fund.

§715. Payments out of the Fund.

§716. Borrowings, etc.

§717. Reports.

§718. Other Reports.

##### **PART V – REPEAL AND RECEIVERSHIP**

§719. Repeal.

§720. Dissolution, Receivership and Savings.

-----

An Act to reconstitute and reform the Kwajalein Atoll Development Authority to provide programs and services to the Kwajalein landowner communities at Ebeye and other Marshallese communities within Kwajalein Atoll impacted by the presence of the United States on Kwajalein Atoll; to ensure better fiscal responsibility and accountability to the people of Kwajalein Atoll; and for other purposes:

**[Section numbering modified to conform to new Code format]**

Commencement: 2004

Source P.L. 2004-19

## **PART I – PRELIMINARY**

### **§701. Short title.**

This Act may be cited as the 'Kwajalein Atoll Development Authority Act 2004'. **[P.L. 2004-19, §1.]**

### **§702. Interpretation.**

In this Act:

(a) 'the Authority' means the Kwajalein Atoll Development Authority established under Section 3 of this Act.

(b) 'the Compact, as Amended' means the Compact of Free Association, as Amended concluded with Government of the United States on April 30, 2003, as approved by the Government of the Republic of the Marshall Islands on February 16, 2004.

(c) 'Fiscal Procedures Agreement' means the Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as Amended, Between the Government of the United States of America and the Government of the Republic of the Marshall Islands signed on December 11, 2003.

(d) 'Government' shall mean the Government of the Republic of the Marshall Islands.

(e) 'President' shall mean the President of the Republic of the Marshall Islands. **[P.L. 2004-19, §2.]**

## **PART II – CONSTITUTION OF THE AUTHORITY**

### **§703. Reconstitution 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 contract, sue and be sued in its corporate name.

(3) The provisions of the Associations Law, (52 MIRC Ch.1)<sup>1</sup> shall not apply or relate to the Authority. **[P.L. 2004-19, §3] [subsections and paragraphs re-numbered to conform to format]**

<sup>1</sup> **[correct citation inserted by Revisor]**

#### **§704. Organization and Management.**

(1) The powers and duties of the Authority are hereby vested in and shall be exercised by the Board. Subject to the provisions of Section 706, the Board shall consist of six (6) members appointed by the President from offices and nominations as follows:

- (a) The Chief Secretary of the Government;
- (b) The Secretary of Finance of the Government;
- (c) One Senator elected to represent Kwajalein Atoll in the Nitijela, nominated by a consensus of the Kwajalein Atoll delegation to the Nitijela;
- (iv) The Mayor of the Kwajalein Atoll Local Government;
- (v) Two Iroj members selected by consensus from among the four Irojlaplap of Kwajalein Atoll;

(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 706, hold office for a term of four (4) years and shall, unless removed from office, be eligible for re-appointment. The Board shall select the Chairman by unanimous vote. In the event that the Board is unable to select a Chairman, the President shall select the Chairman.

(4)The Board shall adopt procedures for the conduct of its meetings consistent with the terms of this Act and any regulations promulgated thereunder, provided however, that all decisions of the Board shall be by unanimous vote of the Board. **[P.L. 2004-19, §4][subsections and paragraph renumbered to conform to code format]**

#### **§705. Compensation.**

- (1) No member of the Board shall receive compensation for his services to the Board.
- (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 that apply to employees of the Government. **[P.L. 2004-19, §5.]**

#### **§706. 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 between 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 the President, in the event that 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 vacation of office by any member, the President may in accordance with subsection (1) of Section 704, appoint another member in his place. Any person appointed in place of such member shall hold office during the period of the un-expired 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 a person to act in his place. **[P.L. 2004-19, §6] [subsections and paragraph re-numbered to conform to code format]**

#### **§707. 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 that 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 (a) of this Section shall be recorded in the minutes.

(3) Failure to comply with the requirements of subsections (1) and (2) of this Section shall invalidate any act or proceeding of the Board. [P.L. 2004-19, §7][subsections and paragraph re-numbered to conform to code format]

#### **§708. Misconduct in Public Office.**

A failure to comply with Section 707 of this Act shall be deemed to be misconduct in public office within the meaning of 31 MIRC, Chapter 1, Part XX, Section 146. [P.L. 2004-19, §8.]

#### **§709. 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 executive management and administration; and
- (b) may employ such other employees and consultants as may be necessary to carry out the purposes of the Authority.

(2) Persons referred to in subsection (1) shall:

- (a) be exempt from the provisions of Section 1 of Article VII of the Constitution; and
- (b) be employed on such terms and conditions as may be determined by the Board.

(3) Total operational costs for the Authority shall not exceed fifteen per cent (15%) of the annual budget of the Authority in any fiscal year. [P.L. 2004-19, §9][subsections and paragraph re-numbered to conform to code format]

#### **§710. Liability.**

The Authority, its members, and employees shall be deemed to be employees of the Government for purposes of the Government Liability Act 1980, Title 3 MIRC, Chapter 10. [P.L. 2004-19, §10.]

### **PART III – POLICIES, POWERS, AND FUNDS OF THE AUTHORITY**

#### **§711. Policies of the Authority.**

Subject to this Act, the policies of the Government, subsection 211(b)(2) of the Compact, as Amended, and the Fiscal Procedures Agreement, the Authority shall be responsible for determining its own policies for carrying out its functions. [P.L. 2004-19, §11.]

#### **§712. Purposes and Functions of the Authority.**

(1) The primary purposes and functions of the Authority under this Act shall consist of addressing the special needs of the Kwajalein landowners community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll with the emphasis on the

Kwajalein landowners most impacted by the United States presence on Kwajalein Atoll including:

(a) affordable quality housing for Kwajalein landowners with special emphasis on the Mid-Corridor populations at Ebeye and other Marshallese communities within Kwajalein Atoll;

(b) education programs for the Kwajalein landowners' community including, but not limited to, scholarships at post-secondary educational institutions to supplement any programs provided by the Government;

(c) health care programs including, but not limited to provision for health insurance programs for the benefit of the Kwajalein landowners to supplement any health care programs provided by the Government;

(d) other general living condition improvements for the Kwajalein landowners' community.

(2) Consistent with the functions and purposes described in subsection (1), of this Section, the Authority may use funds provided under Section 714 for purposes of local or matching contributions for any United States Federal Program or Service or with other public or private entities. [P.L. 2004-19, §12][subsections and paragraph re-numbered to conform to code format]

### **§713. Powers of the Authority.**

Subject to the provisions of this Act and any other law, the Authority shall have any powers as are necessary or convenient for carrying out its purposes and functions. [P.L. 2004-19, §13.]

## **PART IV – FINANCE**

### **§714. Kwajalein Atoll Development Authority Fund.**

(1) There shall be established the Kwajalein Atoll development Authority Fund (in this Act 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) Notwithstanding anything to the contrary, there shall be paid into the Fund:

(a) the sum of \$1.9 million annually, as adjusted for inflation received by the Government under the subsection 211(b)(2) of the Compact, as Amended, provided pursuant to pursuant to Paragraph 4(b) of Article X of the Military Use and Operating Rights Agreement between the Government of the United States and the Government of the Republic of the Marshall Islands, and the Land Use Agreement (LUA) between the Government of the RMI and the Landowners of Kwajalein Atoll;

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

(c) any money received by the Authority through loans, advances, contributions, gifts, or other income received by the Authority.

(4) The Government shall be responsible for the administration of the Fund. **[P.L. 2004-19, §14][subsections and paragraph re-numbered to conform to code format]**

#### **§715. Payments out of the Fund.**

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

- (i) to carry out the purposes and functions of the Authority described in Section 712;
- (ii) to pay the costs and expenses of the Authority; and
- (iii) 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 bylaws or procedures of the Authority; and
  - (b) with the unanimous approval of the Board which shall satisfy itself that the withdrawal is made in accordance with the law and the duly adopted bylaws or procedures of the Authority.
- [P.L. 2004-19, §15.]**

#### **§716. Borrowings, etc.**

(1) With the approval of the Cabinet, and subject to the terms of the Fiscal Procedures Agreement, and subsections (2) and (3) of this Section, the Authority may borrow money from a United States Federal Government Agency or other institution necessary or convenient to carry out its purposes.

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

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

(4) Where any money is borrowed or any grant, contribution, advance, gift or assistance is received for a specific purpose, or subject to any conditions for its use, it may be expended or used only for that purpose or subject to those conditions. **[P.L. 2004-19, §16][subsections and paragraph renumbered to conform to code format]**

#### **§717. Reports.**

(1) The Board shall, as soon as practicable after the thirtieth day of September 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.

(2) The operations of the Authority shall be subject to audit by the Auditor-General including any contractor of the Auditor-General.

(3) The Cabinet shall cause the report referred to subsection (1) of this Section to be submitted to the Nitijela within (15) session days after receipt by Cabinet. The audits referred to in subsection (2) of this Section shall be submitted to the Nitijela when such audits are available. [P.L. 2004-19, §17][subsections and paragraph re-numbered to conform to code format]

#### **§718. Other Reports.**

Notwithstanding Section 717 of the Act, the Cabinet may require the Authority to submit to it a report in such form and as to such matter as the Cabinet deems appropriate. [P.L. 2004-19, §18.]

### **PART V – REPEAL AND RECEIVERSHIP**

#### **§719. Repeal.**

Except as provided in Section 120, the Kwajalein Atoll Development Authority Act 1989, P.L. 1989-36, 10 MIRC Chapter 7A, is repealed in its entirety and replaced with the provisions of this Act. [P.L. 2004-19, §19.]

#### **§720. Dissolution, Receivership and Savings.**

(1) Solely for purposes of this Section, the term 'Authority' and 'Board' shall refer to the Authority and Board established under the 'Kwajalein Atoll Development Authority Act 1989' P.L. 1989-36, 10 MIRC, Chapter 7A.

(2) The Board is hereby dissolved and relieved of its powers and authority, and the Authority shall be placed into receivership with the appointment of a Receiver by the Cabinet as provided in this Section.

(3) As soon as practicable after the effective date of this Act, Cabinet shall appoint a person or entity of suitable experience and qualifications to act as Receiver for the purposes set forth in this Section.

(4) All powers, rights, duties, responsibilities, assets and liabilities of the Authority shall vest with, and be held by, the Receiver as of the date of his appointment.

(5) The Receiver shall:

(a) take such actions as may be necessary or incidental to recovering any unaccounted funds provided to the Authority for such past periods as the Cabinet may determine;

(b) take such measures as may be necessary and appropriate to wind up the affairs of the Authority including, but not limited to, the settlement of lawful existing debts of the Authority; an inventory and accounting of the Authority's assets and property including the

sale and disposition of such assets and property as may be appropriate; the performance, rescission, or settlement of any contract or agreement of the Authority; collect, organize, consolidate, and take possession and control of any bank accounts, investments, cash, or other monetary assets of the Authority; and otherwise control and administer the affairs of the Authority;

(c) conduct such investigations as he deems reasonable and necessary to carry out the purposes of the receivership; and

(d) provide an accounting of the activities of the Authority for such periods as the Cabinet may determine under any terms of reference given by the Cabinet;

(6) In carrying out the duties and responsibilities of the receivership, the Receiver shall have the power:

(a) to issue summons or subpoenas to individuals and entities to appear, testify and produce for examination any books, papers, documents, records, data or property that the Receiver deems relevant to his duties and responsibilities;

(b) to recover, take possession of the accounts, property or assets of the Authority in order to protect and preserve such accounts, property or assets;

(c) to employ individuals to assist him in his duties and responsibilities including, but not limited to employment of legal counsel; and

(d) to the extent necessary, seek judicial enforcement of actions taken pursuant to the receivership including the bringing of actions on behalf of the Authority to recover property or to compel production of books, documents, papers, or records including application to the High Court to compel compliance with any summons or subpoena. Failure to comply with such order shall be punishable as a contempt of court under the Judiciary Act 1983, as amended; and

(e) such other powers as may be necessary or incidental to carrying out the duties and responsibilities of Receiver.

(7) The Receiver shall be paid from such funds and on such terms and conditions as the Cabinet may determine.

(8) The term of the receivership shall be one (1) year from the date that Cabinet appoints a receiver, unless extended by the Cabinet or by Order of the High Court, as the case may be.

(9) The Receiver shall file such reports of his activities from time to time as the Cabinet may require.

(10) The Cabinet may promulgate regulations as may be necessary to carry out the provisions of this Section.

(11) The provisions of the Kwajalein Atoll Development Authority Act 1989, P.L. 1989-36, 10 MIRC Chapter 7A shall remain in effect for the term of the receivership as provided in

subsection (h) of this Section for the purpose of carrying out the provisions of this Section.  
**[P.L. 2004-19, §20][subsections and paragraph re-numbered to conform to code format]**

-----