

Chapter 1

Historical and Cultural Preservation

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22 PC 1-101. Short title. This chapter is known and referred to as the “Historic and Cultural Preservation Act of 2002.”

Source: S.L. No. 5L-88-02 §1, 1/11/03

22 PC 1-102. Purpose. The Legislature finds and declares that:

(1) The state of Pohnpei contains a wealth of historic, archaeological, and cultural properties that represent the foundations of the culture and traditions of the people of Pohnpei, and which are important to the maintenance and development of the identity, pride, and integrity of the people of Pohnpei, and to the world’s understanding of Micronesian history and culture.

(2) Preservation and protection of historic, archaeological, and cultural properties presents a unique challenge because of the nature of these resources, which form a fragile, finite, non-renewable, and irreplaceable resource subject to damage, loss, and destruction by neglect, oversight, uncontrolled development and land use, foreign impact, and patterns of modern land use.

(3) Increased knowledge of the historic, archaeological, and cultural resources that form the legacy of the people of Pohnpei, establishment of a better means of identifying and administering these resources, and encouragement for their preservation, study, and interpretation will improve the planning and execution of state, local, and private undertakings and will assist economic growth and development.

(4) With thoughtful planning and consideration these historic, archaeological, and cultural resources can be preserved and co-exist with modern economic, social, and political developments of the state. The guiding principle to be used in the implementation of this chapter shall be to foster conditions under which modern society and historic, archaeological, and cultural resources in the state can exist in harmony and fulfill the social, economic, and other requirements of present and future generations.

Source: S.L. No. 5L-88-02 §2, 1/11/03

22 PC 1-103. Declaration of policy. It is the policy of the state of Pohnpei, as stated in Article 7, §5 of the Pohnpei Constitution, to identify, preserve, and administer places, artifacts, and information of historical and cultural importance for the benefit of the public.

Source: S.L. No. 5L-88-02 §3, 1/11/03

22 PC 1-104. Definitions. Unless the context clearly indicates otherwise, the following meanings shall apply in this chapter:

(1) “Board” or “Review Board” means the Pohnpei Historic and Cultural Preservation Review Board established under 22 PC 1-105.

(2) “Government funds” means any appropriation, grant assistance, aid or donation of any governmental entity or public corporation of the FSM national government, the government of the state of Pohnpei, and its political subdivisions, any foreign government or any international institution or organization whose financing principally comes from government sources.

(3) “Historic property” or “historic resource” means any site, structure, object, building or area of significance in the history, archaeology or culture of Pohnpei State as selected or designated by the Board, or eligible for selection and designation by the Board, for inclusion in the State Registry of Historical Properties as established under 22 PC 1-114, including artifacts, records, and material remains related to such property or resource.

(4) “Legislature” means the Pohnpei Legislature.

(5) “Person” shall mean an individual, partnership, corporation, association, trust, institution or any other entity or group, or any officer, employee, agent, department or instrumentality of the state or political subdivision thereof.

(6) “Preservation” or “historic preservation” includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, education, and training, regarding historic, archaeological, and cultural properties and resources.

(7) “Real property” means any land, whether surface or submerged, and all permanent attachments thereto and fixtures thereon, whether ancient or modern.

(8) “Registered historic property” means an historic property listed in the State Registry of Historical Properties.

(9) “Registry” means the State Registry of Historical Properties established under 22 PC 1-114.

(10) “Undertaking” means a project, activity or program involving construction, alteration, disposition or improvement of real property which:

(a) Affects a registered historic property;

(b) Is financed in whole or in part with government funds as defined by Subsection (2) of this section; or

(c) Requires an earth moving permit or a building permit issued by the Pohnpei Government, or any instrumentality thereof; PROVIDED, HOWEVER, that “undertaking” shall not include routine maintenance and upkeep that does not involve a change in design, material or outer appearance or a change in those characteristics which qualified the site or property for entry into the Registry.

Source: S.L. No. 5L-88-02 §4, 1/11/03

22 PC 1-105. Historic and Cultural Preservation Review Board. There is hereby established a board to be known as the Pohnpei Historic and Cultural Preservation Review Board.

Source: S.L. No. 5L-88-02 §5, 1/11/03

22 PC 1-106. Board organization.

(1) Members. The Board shall be composed of eleven voting members and the Chief of the Division of Historic Preservation, who shall serve in an ex-officio capacity without the right to vote. The eleven voting members shall be appointed by the Governor with the advice and consent of the Legislature.

(a) There shall be one appointed member from each of the six local jurisdictions on the island of Pohnpei, one member from each of the islands of Sapwuahfik, Nukuoro, and Kapingamarangi, and one member from each of the islands of Mwoakilloa and Pingelap. Each such member shall be a registered voter in the local jurisdiction represented by the member.

(b) Initially, four members shall be appointed to serve for three years, four shall be appointed to serve for two years, and three shall be appointed to serve for one year. Thereafter, appointments shall be for three-year terms. Any member may be appointed to successive or subsequent terms. Members shall hold office until a successor has been appointed and qualified. A vacancy shall be filled for the remainder of the unexpired term in the same manner as an original appointment.

(c) A member may be removed for cause, after notice and opportunity to be heard, by the Governor or by three-fourths majority of the remaining members, without regard to vacancies.

(2) Officers and technical assistance. The Board shall elect from among its members a Chairman, Vice-chairman, Secretary, and such other officers as the Board may desire.

(a) The term of office, duties, and powers of each office shall be defined by the Board and adopted as part of its rules and regulations.

(b) Clerical and administrative support shall be provided by the Division of Historic Preservation.

(c) Experts, consultants, and professionals may be employed or contracted as the Board deems appropriate and as the budget and annual appropriations may allow.

(3) Meetings. Six members shall constitute a quorum to conduct the business of the Board. When a quorum is present at the outset of a meeting, a majority vote of those present during that meeting shall prevail on any question.

(a) The Board shall hold regular meetings every three months. Special meetings may be called by the Governor, Chairman, or by any three members of the Board. The time and place of each meeting shall be established by the Board.

(4) Compensation and expenses. Members of the Board shall be compensated at rates established for policy board members by the State Government Officers' Salary Act of 1984, Title 9 Chapter 4, as amended or superseded by state law. When required to travel, members shall be entitled to travel expenses and per diem in accordance with the rates and requirements of state law.

Source: S.L. No. 5L-88-02 §6, 1/11/03

22 PC 1-107. Duties and powers of the Board. The Historic and Cultural Preservation Review Board shall:

(1) Advise the Governor and the Legislature on matters relating to historic preservation, recommend measures to coordinate activities of national, state, and local governments and private institutions and individuals relating to historic preservation, and advise on the dissemination of information pertaining to such activities.

(2) Establish policies and approve properties for inclusion on the State Registry of Historical Properties, as established by 22 PC 1-114.

(a) Establish policies and criteria to be used in recommending registration of historic properties as set forth in 22 PC 1-114.

(b) Solicit nominations from any person or official of the national, state, or local governments for registration of historic properties as set forth in 22 PC 1-114.

(c) By majority vote, approve nominations solicited under 22 PC 1-114 and report its decisions to the Governor.

(d) Solicit the acquisition and lease of and officially accept and hold in trust for Pohnpeian society, any property, real or personal, for the purposes of this chapter.

(e) Review at least once every four years significant threats to historic properties included in or eligible for the Registry, as set forth in 22 PC 1-114.

(f) Advise the Governor and the Chief of the Division of Historic Preservation in matters relating to the management, maintenance, and preservation of historic properties.

(g) Advise and review projects for the restoration, reconstruction, rehabilitation, protection, preservation, maintenance, and management of registered historic properties or properties eligible for registration.

(3) Review and comment upon projects and undertakings that affect historic properties listed in or eligible for the Registry.

- (a) Review and comment upon the programs and policies of the Division of Historic Preservation.
 - (b) Review the policies and programs of government agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this chapter.
 - (c) Through discussions and a program of reviewing and commenting upon proposed government policies and procedures, ensure that government offices and agencies contribute to the preservation and enhancement of historic properties.
 - (d) Recommend the conduct of studies in such areas as the adequacy of legislation and administrative statutes and regulations pertaining to historic preservation activities of state and local governments.
 - (e) Advise as to guidelines for the assistance of state and local governments in drafting legislation relating to historic preservation.
- (4) Advise, review and comment upon educational programs that inform the public on the value and significance of historic properties and the importance of preserving the historical and cultural attributes of Pohnpei, including the use of historical materials for educational and scientific purposes.
- (a) Encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation.
 - (b) Advise and review proposed and planned publication of books, pamphlets, periodicals, and other publications on the history, archaeology, and culture of the state of Pohnpei.
 - (c) Inform and educate national, state, and local governments, other nations and international organizations, and private groups and individuals as to the Board's authorized activities.
 - (5) Advise, review, and promulgate such rules and regulations as may be necessary and proper to carry out the purposes and provisions of this chapter in accordance with all applicable laws, which rules and regulations shall have the force and effect of law; PROVIDED that in issuing such rules and regulations, the Board shall place no restriction on any property that may result in inverse condemnation thereof.
 - (6) Engage in other activities that are not inconsistent with the purposes of this chapter.

Source: S.L. No. 5L-88-02 §7, 1/11/03

22 PC 1-108. Division of Historic Preservation. Within the Department of Land and Natural Resources, there shall be a Division of Historic Preservation, which shall be responsible for the comprehensive historic preservation program.

Source: S.L. No. 5L-88-02 §8, 1/11/03

22 PC 1-109. Duties and responsibilities of the Division of Historic Preservation. The Division of Historic Preservation shall:

(1) Establish and maintain programs and facilities to preserve the anthropological heritage of Pohnpei.

(a) Establish a comprehensive historic preservation program which shall include, but not be limited to, the development of an ongoing program of historical, architectural, archaeological, anthropological, and cultural research and development, including surveys, excavations, scientific recording, interpretation, and publications of the historic resources within the state and its political subdivisions.

(b) Develop a statewide survey to identify documents and gather information on actual, registered, or potentially eligible historic properties, and furnish to the Review Board any such information, together with recommendations as to whether such properties should be included in the Registry of Historical Properties, and develop a program for recording and archiving the body of oral traditions of the people of the state and its political subdivisions.

(c) Compile, maintain, and administer the State Registry of Historical Properties, as established under 22 PC 1-114, and in accordance with regulations established by the Review Board.

(d) Conduct a comprehensive inventory of cultural and historic properties within the state and its political subdivisions, and maintain a database for these properties.

(e) Conduct surveys for the identification of historic properties in advance of development projects and undertakings.

(f) Issue historic preservation clearances and issue or deny permits, pursuant to 22 PC 1-110 through 22 PC 1-112, for use, access, and development of land containing registered historic properties or properties eligible for registration.

(g) Prepare, review, and revise a state historic preservation plan, and periodically review and update the historic preservation plan.

(h) Apply for and receive gifts, grants, technical assistance, and other funding from public and private sources in accordance with state law and policy.

(i) Provide technical assistance to state and local government agencies, and public and private agencies involved in historic preservation activities.

(j) Provide advisory and technical assistance to the government for the identification, preservation, restoration, management, and maintenance of registered historic properties.

(k) Coordinate activities of the state and local governments in accordance with the state historic preservation plan.

(l) Develop a written history of Pohnpei, compiling and indexing information on the traditional laws of the state and their underlying principles.

(m) Employ professional and technical staff necessary to carry out the provisions of this chapter through the state public service system and within the limits of appropriations therefor.

(n) Enter into such contracts with public or private persons, entities or agencies as may be necessary to carry out the provisions of this chapter and within the limits of appropriations therefor.

(o) Serve as, or determine the depository for, all field notes, photographs, negatives, maps, artifacts or other materials generated or recovered through historic and cultural preservation projects supported in whole or in part by the state or taking place on lands within the state.

(2) Establish and implement programs and projects to encourage the continuation of Pohnpeian customs and traditions.

(a) Stimulate public interest in historical and cultural preservation, including the development and implementation of interpretative programs for historic properties listed in the Registry and the exhibition of historic properties.

(b) Develop an educational program and service for the purpose of making available to the public facts and information on historic properties within the state, including oral traditions significant to the cultural heritage of the state and its political subdivisions.

(c) Assist government agencies and private businesses, including hotels that serve foreign visitors, investors, and tourists, in educating foreign visitors about Pohnpei's cultural heritage.

(3) Establish and maintain a state museum.

(a) Develop a statement of purpose for a state museum, and conduct or have conducted studies on museum models to determine the most appropriate model on which to pattern a state museum.

(b) Establish a state museum that shall be a separate and discrete entity within the Division of Historic Preservation.

(c) Be responsible for review and oversight of the policies, programs, and management of the state museum, and appoint a professional director who shall be responsible for the daily administration of the museum.

(4) Engage in activities that are not inconsistent with the purposes of this chapter.

Source: S.L. No. 5L-88-02 §9, 1/11/03

22 PC 1-110. Preliminary project review and process for agency clearance or referral.

(1) Before any undertaking, as defined by 22 PC 1-104(10), is commenced, the chief administrative person in charge of the undertaking shall apply to the Chief of the Division of Historic Preservation, on a form provided by the Division of Historic Preservation, for a historic preservation clearance or permit relative to the undertaking and its effects on the property. The Chief of the Division of Historic Preservation shall forthwith deliver a copy of the application to the Historic Preservation Review Board following his receipt thereof.

(2) Within fifteen working days following the receipt of the application, the Chief of the Division of Historic Preservation shall conduct a preliminary examination of the undertaking, and if he is satisfied that the undertaking will not result in any substantive alteration in the historic properties of the state, he shall so notify the Board of his determination. If within five working days of the delivery of the notification, no board member shall order the matter referred to the Board pursuant to Subsection (5) of this section, the Chief of the Division of Historic Preservation shall issue a written historic preservation clearance to the applicant to proceed.

(3) If within the fifteen working days of preliminary review, the Chief of the Division of Historic Preservation determines, in his discretion, that the undertaking has the potential to result in a significant effect on the historic properties of the state, he shall refer the application to the Review Board for action pursuant to 22 PC 1-111.

(4) At any time that an application is before the Chief of the Division of Historic Preservation and for a period of five working days following delivery to the Board of notice of the Chief's determination for clearance as prescribed in Subsection (2) of this section, any member of the Review Board may order the application to be referred to the Board for its investigation and decision pursuant to 22 PC 1-111.

(5) If after twenty working days following receipt of the application, the Chief of the Division of Historic Preservation shall have not made a decision to grant a clearance under Subsection (2) of this section, or to refer the application to the Review Board under Subsection (3) of this section, and if none of the members of the Review Board ordered the referral of the application under Subsection (4) of this section, the applicant shall be entitled to a clearance in like manner as if it had been granted by the Chief of the Division of Historic Preservation.

(6) If the referral pursuant to this section concerns historic properties that are not registered pursuant to the provisions of this chapter, the Chief of the Division of Historic Preservation shall so notify the landowner thereof, along with information on the processes and advantages of registering said historic property.

Source: S.L. No. 5L-88-02 §10, 1/11/03

Note: In Subsection (1) of this section, Subsection (10) of Section 4 was incorrectly referenced as Subsection (11) of Section 4 in the original law.

22 PC 1-111. Investigation and decision by Review Board.

(1) Within 60 calendar days following receipt of a referral or removal from the Chief of the Division of Historic Preservation pursuant to 22 PC 1-110, the Review Board shall conduct a study of the undertaking and its potential effect on the historic properties of the state.

(2) If the Board shall find that the proposed undertaking may have a significant effect on historic properties, the Review Board shall immediately initiate consultations with the project administrator, the landowner, and any local authorities having concerns or interests in the proposed undertaking, and shall take into account local customs, interests, and desires with respect to the proposed undertaking. The goal of the consultations shall be to maximize the beneficial effects or to eliminate or mitigate any harmful effects to the historic property. The economic, social and other benefits to be gained from the activity shall be balanced and weighed equally against this goal.

(3) At the conclusion of its investigations and consultations, but not later than 60 calendar days following the referral or removal of the matter from the Chief of the Division of Historic Preservation, the Review Board shall issue its decision to approve or deny the application and shall notify the applicant in writing of its decision. Upon the issuance of an affirmative decision of the Review Board, the Chief of the Division of Historic Preservation shall issue a historic preservation permit to the applicant to proceed; PROVIDED that such permit shall include such conditions as the Review Board deems necessary to protect or to minimize the adverse effects on the historic properties of the state while allowing the undertaking to proceed.

(4) If no Board decision has been rendered within 60 calendar days following the referral or removal of an application pursuant to 22 PC 1-110, the applicant shall be entitled to the issuance of a permit in like manner as if the Review Board had rendered a decision in the applicant's favor; PROVIDED, HOWEVER, that for good cause, and upon majority vote of the full membership of the Review Board, without regard to vacancies, the Review Board may extend its period of review for an additional period, not to exceed 60 additional calendar days.

Source: S.L. No. 5L-88-02 §11, 1/11/03

22 PC 1-112. Work in progress. Notwithstanding the issuance of a clearance under 22 PC 1-110 or the granting of a permit under 22 PC 1-111, in the event that it is determined that a registered historic property or any other property which by its nature is clearly recognized as historic property is likely to be affected by the continuation of any undertaking specified in said sections, the project administrator shall immediately notify the Chief of the Division of Historic Preservation thereof. Work on the undertaking affecting that property shall immediately cease and shall not be commenced again until a clearance is issued or a permit granted therefor pursuant to the procedures specified in 22 PC 1-110 and 22 PC 1-111.

Source: S.L. No. 5L-88-02 §12, 1/11/03

22 PC 1-113. Judicial review. All actions and decisions of the Chief of the Division of Historic Preservation and the Review Board pursuant to this chapter shall be subject to

judicial review in the manner prescribed by 8 PC 3-101 through 8 PC 3-104, as amended or superseded by state law.

Source: S.L. No. 5L-88-02 §13, 1/11/03

22 PC 1-114. State Registry of Historical Properties. There is hereby established a State Registry of Historical Properties for the purposes of preserving, protecting, and educating present and future generations about culturally important and significant historic and cultural resources that are important and meaningful in the continuation and maintenance of the traditions and heritage of the people of Pohnpei. The Registry is to be compiled, maintained, and administered by the Chief of the Division of Historic Preservation. The Chairman of the Board, in consultation with members of the Board, shall seek to ensure that historic properties preserved under this chapter fully reflect the historical experience of the state.

(1) Any person, member of the Board or official of the national, state or local governments may nominate any property in the state for entry into the Registry. Upon receipt of a nomination, the Board shall recommend the conduct of such investigations, studies, and hearings as it deems necessary to make a determination of eligibility.

(2) A majority vote of the Board shall be required to approve the inclusion of an eligible and proposed property in the Registry.

(3) Any historical property may be placed in the Registry if:

(a) In the case of private property, the landowner or property owner agrees in writing to the designation; or

(b) The designation is made during and as part of the review and permit procedure as set out in 22 PC 1-110; or

(c) The historic property is owned by the government; or

(d) In the case of property owned by any governing bodies or persons other than the state of Pohnpei, the property owner agrees in writing to the designation.

(4) The designation of a property under the Registry shall not be affected by the transfer of title or interests in the property to any other person or entity, unless the transferee, where applicable, shall indicate in writing a decision to remove the property from the Registry pursuant to Subsection (5) of this section.

(5) A property may be removed from the Registry upon a majority vote of full membership of the Review Board without regard to vacancies following notice and opportunity of the property owner and community to be heard, or upon written request of the property owner having authority to agree to include such property in the Registry under Subsection (3)(a) and (3)(d) of this section.

(6) The Review Board shall promulgate regulations establishing a uniform process and standards for entering and removing historic properties from the Registry and for

documenting historic properties by public agencies and private parties for purposes of incorporation into the records and archives housed in the Division of Historic Preservation.

(7) The Review Board, with the assistance of the Chief of the Division of Historic Preservation, shall, at least once every four years, review significant threats to historic properties included in, or eligible for inclusion in, the Registry, in order to:

- (a) Determine the kinds of properties that may be threatened;
- (b) Ascertain the causes of the threats; and
- (c) Develop and submit to the Governor recommendations for appropriate action.

Source: S.L. No. 5L-88-02 §14, 1/11/03

22 PC 1-115. Conflict of interest. Members of the Review Board and officials and staff of the Division of Historic Preservation shall not benefit directly or indirectly (either financially or through personal gain) from a decision in which they participate. Members of the Review Board, officials, and staff of the Division of Historic Preservation shall not review their own work nor gain any advantage because of their position on the Review Board or in the Division of Historic Preservation.

Source: S.L. No. 5L-88-02 §15, 1/11/03

22 PC 1-116. Prohibited acts.

(1) Injury to historic property. No person shall knowingly and willfully remove, appropriate, excavate, injure, deface, disturb, disfigure, damage or alter any registered historic property, or any property clearly recognizable as eligible for registration, on public or private land, without the prior approval and written permission of the Board.

(2) Forgeries and illegal sales. No person shall knowingly and willfully reproduce, retouch, rework, or forge any registered historic property, or any property clearly recognizable as eligible for registration, or represent it or offer it for trade or sale as an original and genuine object. It shall be unlawful for any person to knowingly and willfully offer for sale or exchange any registered historic property or any property clearly recognizable as eligible for registration with the knowledge that it has been collected or excavated in violation of any of the terms of this chapter.

Source: S.L. No. 5L-88-02 §16, 1/11/03

22 PC 1-117. Enforcement. The Historic and Cultural Preservation Review Board may enjoin any violation or threatened violation of this chapter. Any person who knowingly and willfully

violates any section of this chapter, or the rules and regulations promulgated under this chapter, shall be guilty of a misdemeanor and shall be fined not more than \$1,000 or one percent (1%) of the total budget for the undertaking which caused the violation, whichever is the greater amount, for each violation or imprisoned for not more than six months, or both such fine and imprisonment. If the violator directly or indirectly has caused the loss of, or damage to, a registered historic property or a property clearly recognizable as eligible for registration, the violator shall be fined an additional amount determined by the court to be equivalent to the value of the lost or damaged historic property, including, but not limited to, costs of restoration, replacement or repair of the historic property. Each day of continued violation shall constitute a distinct and separate offense for which the offender may be punished. Equipment used by a violator for the taking, appropriation, removal, excavation, injury, destruction, disfigurement, damage or alteration of historic property, or for the transportation of the violator to or from the historic property, shall be subject to seizure and disposition by the state of Pohnpei without compensation to its owners.

Source: S.L. No. 5L-88-02 §17, 1/11/03

22 PC 1-118. Forgeries and illegal sales. Any person violating the prohibition on forgeries and illegal sales established under 22 PC 1-116 shall be guilty of a misdemeanor and shall be fined not more than \$1,000 for each violation or imprisoned for not more than one month, or both such fine and imprisonment. Each object offered for sale or trade in violation of this chapter shall constitute a distinct and separate offense for which the offender may be punished.

Source: S.L. No. 5L-88-02 §18, 1/11/03

22 PC 1-119. Financing.

(1) Within 30 days following the effective date of this chapter [effective date is January 11, 2003] and periodically thereafter the Governor shall present to the Legislature a budget concerning the financial aspects of the administration of this chapter.

(2) There is hereby authorized for appropriation from the general fund of Pohnpei and such other funds of the Pohnpei Treasury as may be identified in the Comprehensive Budget Act, such sums as are determined annually in the Comprehensive Budget Act for the administration of this chapter. All such sums shall be administered and expended by the Governor solely for the purposes specified in this chapter.

(3) The Governor shall submit an annual report on or before October 15, describing the administration and expenditure of monies appropriated for the preceding fiscal year. All sums appropriated for any fiscal year remaining unexpended or unobligated as of September 30 thereof shall revert to the Treasury fund from which appropriated.

Source: S.L. No. 5L-88-02 §19, 1/11/03

