

CHAPTER 1

POHNPEI UTILITIES CORPORATION

Section

1-101 Corporation established

1-102 Responsibilities, duties, and powers of the Corporation

1-103 Legal characteristics and capacity of the Corporation

1-104 Debts and obligations of the Corporation

1-105 Tax liability

1-106 Composition of the Board; removal; vacancies

1-107 Meetings of the Board

1-108 Organization of the Board; quorum; compensation and expenses

1-109 Appointment of general manager; duties; removal

1-110 Powers of the general manager

1-111 Appointment of comptroller and general counsel; duties of each

1-112 Contract-letting by the Board

1-113 Accounting and reporting

1-114 Budget preparation

1-115 Supplemental financial assistance; authorization for appropriation; administration

1-116 Manual of administration

1-117 Employment preference

1-118 Government assistance to the Corporation

1-119 Waiver

34 PC 1-101. Corporation established.

There is hereby established in and for Pohnpei a public corporation to be known as the Pohnpei Utilities Corporation, hereinafter referred to as the "Corporation."

Source: S.L. No. 2L-179-91 §1, 2/14/91

34 PC 1-102. Responsibilities, duties, and powers of the Corporation.

The Corporation is vested with the following powers, duties, and responsibilities:

(1) To provide electrical power, piped and bottled water and sewage services, hereinafter referred to as "public utilities services," to the people of Pohnpei through the operation of public utilities systems which meet or exceed health, quality, and safety standards established by state law or regulations; PROVIDED that public utilities systems shall not include water systems operated by the local governments of this state unless such a system is transferred to the Corporation on terms mutually agreed upon by the Corporation and the respective local government in which the water system is situated; PROVIDED FURTHER that the Corporation shall not engage in the sale of bottled water for consumption or resale within the state of Pohnpei;

(2) To operate and manage the Pohnpei public utilities systems on the basis of commercially accepted practices, treating all users of the Corporation's services on equitable terms in accordance with its published fees, and requiring all users to pay for services rendered;

(3) To expand and improve upon services offered to the public, and where practicable and necessary, construct and operate new facilities in densely populated or remote areas that are now beyond ready access to existing public services;

(4) To publish and implement a structure of rates for services and products rendered or sold by the Corporation. Such rates are to be determined by the Board of Directors after consultation with the Board of Residential Properties and Public Utilities, and calculated to ensure that, to the extent practicable, adequate and equitable charges are imposed for services and that the fee structure promotes increased use of public utilities services; PROVIDED that nothing in this subsection shall prevent the Corporation from using subsidies received from governmental, international or private sources to reduce the overall costs charged to users of public utilities services; PROVIDED FURTHER that electrical power services, herein referred to as "Class A services," shall be charged and accounted for separately from water and sewage services, herein referred to as "Class B services," and that no class of utilities services provided to a customer may be suspended or cancelled due to nonpayment of a rate or charge imposed by the Corporation for the provision of any other class of utilities services distributed by the Corporation or any service related to that other class of utilities services;

(5) To acquire and maintain from the revenues and grants received by the Corporation a program of liability insurance on all personnel, facilities, and equipment controlled by the Corporation; PROVIDED that if such insurance is not available or is prohibitively expensive, as determined by the Board of Directors of the Corporation, then the Corporation shall establish and maintain a special fund to protect personnel, facilities, and equipment not

covered by insurance and to satisfy judgments or settlements on tort claims brought against the Corporation for its operations under this chapter;

(6) To invest all surplus revenues of the Corporation in the expansion and improvement of public utilities services in Pohnpei;

(7) To acquire land for public purposes subject to Article 12 of the Pohnpei Constitution and applicable law;

(8) To obtain and operate bottling machinery and water purification systems and engage in the marketing and sale of potable water to destinations outside of the state of Pohnpei; PROVIDED that any revenues derived therefrom above the costs of exporting the potable water shall be devoted to subsidizing the rates charged for piped water and sanitation services provided by the Corporation to the residents of Pohnpei; and

(9) To enter on any private or public land, house or building to which public utilities services have been, are or will be supplied, or through which utilities equipment, pipes or lines are, or will be located in order:

(a) To survey, take readings, make installations or fittings, remove meters or other instruments for measuring the quantity of public utilities services supplied;

(b) To dig out and replace or redistribute at the instruction of the landowner earth, stone, soil, sand, and gravel whatsoever for the construction, maintenance or alteration of any equipment, pipe or line, or any part thereof;

(c) To cut and remove any tree or any branch of a tree growing on such lands which may in any way affect or interfere with the operation of public utilities equipment;

(d) To open or break up any road, subject to such laws, regulations, and required agreements as may be imposed on persons engaged in construction, or otherwise obstructing public roadways;

(e) To erect and maintain posts, staywires, poles or pillars, or pipes in, upon or under any land; or

(f) For any other purpose in connection with the continued provision of public utilities services as may be agreed upon, or in the case of difference, to be determined by arbitration as set forth by rules established under this chapter.

Source: S.L. No. 2L-179-91 §2, 2/14/91; S.L. No. 3L-41-93 §1, 8/2/93; S.L. No. 5L-120-03 §1, 7/10/03

34 PC 1-103. Legal characteristics and capacity of the Corporation.

In performing the responsibilities and duties authorized by this chapter and other laws of this state, the Corporation shall have all of the characteristics of a public corporation and the capacity to exercise all powers normally exercised by a public corporation, including, but not limited to, the following:

- (1) To adopt, alter, and use a corporate seal;
- (2) To adopt and amend bylaws and other rules, regulations, and directives governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law. No bylaw, rule or regulation other than that covering the internal operation of the Corporation shall be adopted without a public hearing;
- (3) To set interest charges or other monetary penalties, require security deposits, establish monetary penalties, and procedures for termination, and to set such other procedures and policies to ensure timely payment and collection of public utilities bills;
- (4) To sue and be sued in its corporate name; PROVIDED that satisfaction of judgments or the settlement of claims on tort actions against the Corporation may only be paid out of insurance held by the Corporation or the special fund created by the Corporation pursuant to 34 PC 1-102(5), and not out of the other assets or operating capital of the Corporation, and for these purposes the doctrine of sovereign immunity is recognized and maintained for this public Corporation to the extent not expressly waived by Pohnpei public law; PROVIDED FURTHER that nothing in this subsection shall prevent the Legislature from making direct appropriations into the special fund created in 34 PC 1-102(5) for the purpose of assisting the Corporation in the satisfaction of judgments and providing self-insurance protection for personnel, facilities, and equipment not covered by insurance on such tort actions or settlement of tort claims brought against the Corporation;
- (5) To acquire, in any lawful manner, real, personal or mixed property, either tangible or intangible; to hold, maintain, use, and operate such property; and to sell, lease or otherwise dispose of such property;
- (6) To acquire and take over, in any lawful manner, the business, property, assets, and liabilities of any public entity of Pohnpei to the extent of its provision of public utilities services;
- (7) To borrow or raise any sum or sums of money and to issue corporate bonds on such security and upon such terms as may from time to time be deemed necessary for the expansion and improvement of public utilities services;
- (8) To retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as the Corporation deems appropriate; and
- (9) To do all such things as may be incidental to or conducive to the attainment of the responsibilities and duties of the Corporation.

Source: S.L. No. 2L-179-91 §3, 2/14/91; S.L. No. 3L-41-93 §2, 8/2/93

34 PC 1-104. Debts and obligations of the Corporation.

Unless otherwise expressly provided by law, the debts and obligations of the Corporation shall not be the debts or obligations of the Pohnpei Government, nor shall the Pohnpei Government be responsible for any such debts or obligations.

Source: S.L. No. 2L-179-91 §4, 2/14/91

34 PC 1-105. Tax liability.

The Corporation shall exist and operate solely for the benefit of the public and shall be exempt from any taxes or assessments on any of its property, operations or activities imposed by the Pohnpei Government or local governments and, to the extent allowable, the government of the Federated States of Micronesia. Nothing herein shall be deemed to exempt employees and independent contractors of the Corporation from tax liability for services rendered to the Corporation, and the Corporation shall be liable for employers' contributions to existing social security systems in the manner provided by law.

Source: S.L. No. 2L-179-91 §5, 2/14/91

34 PC 1-106. Composition of the Board; removal; vacancies.

All powers vested in the Corporation shall be exercised by the Board, which shall consist of seven members, called directors, who shall be appointed by the Governor with the advice and consent of the Pohnpei Legislature. Initially, the Governor shall appoint four members of the Board to four-year terms and three members to two-year terms. Thereafter, persons appointed shall hold membership on the Board for a period of four years, subject to reappointment, and until their successors have been appointed and qualify. Four members of the Board shall be appointed from the public sector and three members from the private sector. No member shall be appointed who is more than three months delinquent in paying one or more of his or her public utilities bills. Members of the Board of Directors may be removed for good cause by the Governor, good cause to include delinquency in the payment of public utilities bills for a period greater than three months. All vacancies occurring on the Board shall be filled by the Governor with the advice and consent of the Legislature, but only for the unexpired term of the member whose vacancy is being filled.

Source: S.L. No. 2L-179-91 §6, 2/14/91; S.L. No. 3L-41-93 §3, 8/2/93

34 PC 1-107. Meetings of the Board.

Within 15 days after the confirmation of the initial Board, the Governor shall call an organizational meeting, and annually thereafter, the Board shall hold a meeting for the purpose of electing its officers for the ensuing year. The Board shall meet once a month and shall hold at least one public meeting each calendar quarter and other public meetings as it may deem necessary for the transaction of its general business.

Source: S.L. No. 2L-179-91 §7, 2/14/91

34 PC 1-108. Organization of the Board; quorum; compensation and expenses.

The Board shall organize by electing one of its members as Chairman and another as Vice-Chairman. The Board shall also designate from among its members a Secretary to keep the minutes and records of the Board. Any four members of the Board shall constitute a quorum, and a concurrence of four members shall be necessary for any official action taken by the Board unless otherwise provided herein. No vacancy in membership of the Board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Board.

Directors shall be compensated at the rates established by the Government Officers' Salary Act, Title 9 Chapter 4, as amended or superseded by Pohnpei law, (9 PC 4-*), when actually attending meetings of the Board, except that those members who are government employees shall instead receive regular salaries while performing functions of the Board. Directors shall also receive travel expenses and per diem at Pohnpei Government rates when these amounts would be payable to Pohnpei Government employees in the same circumstances.

Source: S.L. No. 2L-179-91 §8, 2/14/91

34 PC 1-109. Appointment of general manager; duties; removal.

The Board shall appoint a general manager pursuant to its articles and bylaws and fix his compensation. The general manager shall have full charge and control of the operation and maintenance of all the electrical facilities and other real and personal property controlled by the Corporation, and of construction of any facilities and necessary work on vehicles, vessels, and equipment controlled by or required to be rebuilt or repaired by the Corporation. The Board may remove the general manager for good cause upon a majority vote. During any period when the position of general manager is vacant, the position shall be temporarily filled from within the organization pursuant to the articles of incorporation and bylaws.

Source: S.L. No. 2L-179-91 §9, 2/14/91

34 PC 1-110. Powers of the general manager.

The general manager of the Corporation shall have the following powers:

- (1) To ensure that all fees and bills imposed by the Corporation are charged and collected;
- (2) To attend all meetings of the Board and to submit a general report on the affairs of the Corporation;
- (3) To keep the Board advised on the needs of the Corporation;
- (4) To approve demands for payment of obligations within the purposes and amounts authorized by the Board;
- (5) To prepare or cause to be prepared all plans and specifications for the construction and repair of facilities, vehicles, vessels, and equipment operated by the Corporation;
- (6) To devote his entire time to the business of the Corporation; to select and appoint the employees of the Corporation except as otherwise provided in this chapter; to plan, organize, coordinate, and control the services of such employees in the exercise of the powers of the Corporation under the general direction of the Board; and, in lieu of hiring employees to perform any of the tasks, work or other services required by the Corporation, to contract with independent contractors, as persons, organizations or corporations, to provide such services;
- (7) To cause to be published, within 60 days after the end of each fiscal year, a financial and operations statement showing the result of operations for the preceding fiscal year and the financial status of the Corporation on the last day thereof, which publication shall be made in the manner provided by the Board; and

(8) To perform such other and additional duties as the Board may require.

Source: S.L. No. 2L-179-91 §10, 2/14/91

34 PC 1-111. Appointment of comptroller and general counsel; duties of each.

The general manager shall appoint a comptroller and a general counsel, both of whom shall report to the general manager. The comptroller and the general counsel may be terminated for good cause by the general manager. The comptroller and the general counsel shall be compensated at a rate determined by the Board. Such officers may be full-time employees of the Corporation, shared with Pohnpei Government agencies, or be placed on retainer from the private sector. The general manager may appoint one or more assistants to any such office.

(1) The comptroller shall have custody of all monies of the Corporation and shall pay out such money only in accordance with the direction of the Board and as provided in the annual budget of the Corporation. The Board shall appoint an agent as its trustee for payment of bonds issued by it and for such related purposes as the Board may provide.

(2) The general counsel shall advise the Board and the general manager in all legal matters to which the Corporation is a party or in which the Corporation is legally interested, and may represent the Corporation before the Congress of the Federated States of Micronesia, the Pohnpei Legislature, boards and governmental agencies of Pohnpei, the Federated States of Micronesia, and the United States of America.

(3) The Corporation may use the services of the attorneys for the Pohnpei Government to serve as attorneys for the Corporation, or it may appoint such attorney or attorneys as it may deem necessary, and it shall provide payment of all legal services rendered. All official documents, contracts, bonds, and other instruments in writing shall be approved as to form and legality by the general counsel for the Corporation. Such approval may be conclusively evidenced by the signature of the general counsel thereon.

Source: S.L. No. 2L-179-91 §11, 2/14/91

34 PC 1-112. Contract-letting by the Board.

The purchase of all supplies and materials and the construction of all works by independent contractors, when the expenditure exceeds \$25,000, shall be, by contract, let to the lowest responsible bidder. Notice requesting bids shall be published at least ten days before bids are received. The Board may reject any and all bids and readvertise at its discretion.

(1) If, after rejecting bids for materials and supplies, the Board determines that, in its opinion, the materials and supplies may be purchased at a lower price in the open market, the Board may authorize such purchases without further observance of the provisions requiring contracts, bids or notices.

(2) In case of major public calamity, or whenever it is in the interest of public safety or necessary to keep public utilities services operational, the Board may determine that the public interest and necessity demand the immediate expenditure of funds to keep the services

operational or in a safe condition, and thereupon authorize the expenditure of such sums as may be needed without the observation of the provisions requiring contracts, bids or notices.

(3) Where reasonable, preference in the letting of contracts shall be given to local contractors.

(4) No director shall vote on any contract awarded by the Board in which the director has a direct or indirect financial interest. This provision shall not apply to contracts awarded to a corporation in which such director owns less than five percent (5%) of the entire capital stock or in which he does not hold any office or employment. The Board shall establish procedures for the timely verification of this restriction by its general counsel.

Source: S.L. No. 2L-179-91 §12, 2/14/91; S.L. No. 3L-41-93 §4, 8/2/93

34 PC 1-113. Accounting and reporting.

The Board shall adopt and maintain a system of accounting that is in accordance with generally accepted accounting principles applicable to public corporations. The system adopted shall require that:

(1) All accounts relative to the production and distribution of electrical power, water and sewage services be separately maintained and that the expenses of the central administrative office be apportioned appropriately between and among the separate public utilities services;

(2) The Board employ a firm of independent certified public accountants who shall examine and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Corporation, copies of any such reports to be furnished to the Governor and the Pohnpei Legislature; and

(3) The Board shall report to the Governor and Legislature on the affairs of the Corporation. It shall present an annual report within 60 days after the end of each fiscal year and, if requested by the Governor or the Pohnpei Legislature, shall present special reports within 30 days after the end of each intervening quarter.

Source: S.L. No. 2L-179-91 §13, 2/14/91; S.L. No. 3L-41-93 §5, 8/2/93

34 PC 1-114. Budget preparation.

The general manager shall prepare, in advance of each fiscal year, under the supervision of the Board, an annual budget for the Corporation, taking into consideration anticipated capital and operational expenditures and anticipated revenues. The Corporation shall use the same fiscal calendar as that of the Pohnpei Government. The budget shall indicate the operational, capital, and maintenance requirements of the Corporation that will be met with the anticipated revenues of the Corporation, and such essential requirements as cannot be met without increase in the rate of revenues or outside financial assistance.

Source: S.L. No. 2L-179-91 §14, 2/14/91

34 PC 1-115. Supplemental financial assistance; authorization for appropriation; administration.

(1) To the extent that the Corporation deems it necessary and advisable, the Corporation may seek appropriations from the Legislature and, to the extent approved by the Governor, may seek grants from sources other than the Pohnpei Government, of such funds as are necessary to supplement revenues to provide for the operations, maintenance, and expansion of the public utilities services in Pohnpei; PROVIDED that:

(a) Requests for Legislature appropriations shall be submitted through the office of the Governor. The Governor shall transmit the requests to the Legislature pursuant to procedures adopted generally for the transmission of budgetary requests of government agencies.

(b) Grants from sources outside the Pohnpei Government shall be subject to such procedural and legal requirements as may be provided by state law, generally or specifically for the request, receipt, and use of such grant funds.

(2) There is hereby authorized for appropriation from the general fund of Pohnpei and such other funds of the Treasury as may be identified in the Comprehensive Budget Act, such sums as may be determined and allocated annually in the Comprehensive Budget Act, or so much thereof as may be necessary, to supplement revenues of the Corporation in providing for the general operations, maintenance, and expansion of the public utilities services in Pohnpei or for specific projects, programs or acquisitions by the Corporation as may be identified in the Comprehensive Budget Act.

(3) All sums appropriated under the authorization of Subsection (2) of this section shall be administered and expended by the general manager, as authorized and directed by the Board, solely for the purposes specified in Subsection (2) of this section.

(4) Unless otherwise specified in the Comprehensive Budget Act, any balance of the sums appropriated under the authorization of Subsection (2) of this section for a fiscal year not expended or obligated for expenditure on September 30 of that year shall revert to the respective fund of the Treasury from which appropriated.

(5) The Board shall submit as part of the Corporation's periodic reporting required by 34 PC 1-113, a full accounting of the financial activities of the Corporation with respect to appropriations and grants received pursuant to authorization of this section.

Source: S.L. No. 2L-179-91 §15, 2/14/91; S.L. No. 3L-3-92 §1, 4/15/92; S.L. No. 3L-41-93 §6, 8/2/93

Note: S.L. No. 3L-3-92 §2 temporary and §§3 & 4 appropriation provisions have been omitted.

34 PC 1-116. Manual of administration.

The Board shall establish a manual of administration to include rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the Corporation. Employees of the Corporation shall be eligible to participate in any health insurance plan, life insurance plan, retirement fund, and workers' compensation insurance available to Pohnpei Government employees. The Corporation shall contribute to such programs on the basis of periodic billings as determined by the governing authorities thereof.

Source: S.L. No. 2L-179-91 §16, 2/14/91

34 PC 1-117. Employment preference.

The Board shall attempt to employ qualified legal residents of this jurisdiction, if at all possible. However, the Board shall have as its primary concern in employing or contracting for services, the maintenance of safe, self-sufficient, modern and convenient services and facilities for the improvement of public utilities services within Pohnpei.

Source: S.L. No. 2L-179-91 §17, 2/14/91; S.L. No. 3L-41-93 §7, 8/2/93

34 PC 1-118. Government assistance to the Corporation.

For the purpose of aiding in the planning, undertaking or carrying out of this chapter and of the projects contemplated herein, and the subsequent operation and maintenance of the public utilities systems, the Pohnpei Government or any department, division, agency, authority or political subdivision thereof, may, if the chief executive of the respective governmental subdivision determines that such project will benefit and further the public purposes of the respective governmental subdivision and be of advantage to them, and if the intended action is consistent with the laws of the respective jurisdiction:

- (1) Dedicate, sell, convey or lease interests in real or personal properties, rights or privileges that it may have to the Corporation;
- (2) Incur expenses on behalf of the Corporation subject to reimbursement under such terms and conditions as may be agreed upon with the Corporation;
- (3) Do any and all things necessary to aid or cooperate in the planning or carrying out of the duties, powers, and obligations of the Corporation;
- (4) Lend or advance, grant or contribute funds to the Corporation, and provide for or waive the repayment of any such funds loaned or advanced;
- (5) Contract with or furnish services to the Corporation upon such terms and conditions as may be agreed upon; or
- (6) Enter into any agreements that may extend over any period of time notwithstanding any rule of law to the contrary applicable to public corporations or other public bodies unless specifically applied to the Corporation.

Source: S.L. No. 2L-179-91 §18, 2/14/91; S.L. No. 3L-41-93 §8, 8/2/93

Note: S.L. No. 3L-41-93 §9 transition and §10 temporary provisions have been omitted.

34 PC 1-119. Waiver.

The Financial Organization and Management Act, Title 11 Chapter 2, (11 PC 2-), the Public Service System Act, Title 9 Chapter 2, (9 PC 2-*), the Contract Review Board Act, Title 11

Chapter 6, (11 PC 6-*), and the Government Salary Conversion Act, Title 9 Chapter 4, (9 PC 4-*), shall not be applied to the Pohnpei Utilities Corporation.

Source: S.L. No. 2L-179-91 §19, 2/14/91

Note: S.L. No. 2L-179-91 §20 transition and §21 severability provisions have been omitted.