

## Chapter 10

### **Water and Sanitation Finances**

#### Section

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34 PC 10-101. Purpose.

Pohnpei currently lacks an island-wide water system that delivers safe drinking water and that safely carries away waste water. To improve the living conditions of Pohnpeians and to support the economic development of the state through the provision of a reliable and safe water-supply and sanitation infrastructure, the Legislature finds that there is a great need for a project to assess and develop the water resources of the state, and to operate and maintain water supply and sanitation systems in manners that will protect the environment and maintain the ecological balances of the water resources of the state. The Pohnpei Utilities Corporation (hereinafter called "PUC") is responsible for the provision of potable water delivery and sanitation services to the people of Pohnpei. The Asian Development Bank (hereinafter called "ADB") has offered the Federated States of Micronesia financial assistance in the form of a long-term loan to enhance the ability of the PUC and similar entities in the other states of the FSM to expand and improve their water and sanitation systems. The purpose of this chapter is to make it possible for the PUC to accept this generous offer of financial assistance by authorizing the Pohnpei Government to participate in the onlending process.

Source: S.L. No. 4L-57-97 §1, 12/4/97

34 PC 10-102. Authorization to borrow on the public credit.

(1) Acknowledging the authority of Pohnpei State to receive foreign financial assistance under Article XII §1(b) of the FSM Constitution, and mindful of the requirements of Article 11 §13 of the Pohnpei Constitution, the Government of Pohnpei State is hereby authorized to borrow from the ADB through the national government of the Federated States of Micronesia and onlend to the PUC an amount equivalent to one-million, one-hundred-seventy-four-thousand (1,174,000) special drawing rights and not more than \$100,000 in consultancy services for a Pohnpei water supply and sanitation project. In this connection, the Governor is hereby authorized to negotiate and execute such financing agreements among the Pohnpei Government, the national government, and the PUC as are necessary to carry out the purposes of this chapter. Such agreements shall set forth the terms and conditions of the loan as described in this chapter and the terms and conditions of onlending the proceeds of the loan by the Pohnpei Government to the PUC. All such agreements shall be negotiated to be in conformity with this chapter.

(2) It shall be a condition of an agreement between the Pohnpei Government and the PUC that water tariffs shall not be increased by the PUC for two years after the effective date of this chapter [effective date is December 4, 1997] without an appropriate amendment to this law repealing this subsection.

Source: S.L. No. 4L-57-97 §2, 12/4/97

#### 34 PC 10-103. Loan repayment.

(1) Primary repayment of the ADB loan, charges for consultancy services, other and all incidental charges with respect thereto as authorized by this chapter shall be the responsibility of the PUC from such tariff revenues and other cost-recovery policies and mechanisms as the Corporation shall prescribe by means of a tripartite agreement among the national government, the Pohnpei Government and the PUC. Repayment of the loan by the PUC may be made directly to the national government, and shall carry such interest, service charges and incidental fees as the parties thereto shall prescribe in the tripartite agreement; PROVIDED that such agreement shall contain a covenant that any and all interest and fees required to be paid or voluntarily paid on an accelerated basis to the national government by the PUC that exceeds the total obligation of the Pohnpei Government for the service charge described by 34 PC 10-105 for that period and not required to be paid by the national government to the ADB shall be promptly paid to the Director of the Department of Treasury and Administration of the Pohnpei Government for deposit in the Water and Sanitation Services Development Fund established by 34 PC 10-106.

(2) In the event that, for any reason, except as is stated in Subsection (3) of this section, the Corporation shall not be able to meet its obligations as prescribed by Subsection (1) of this section, the secondary source of repayment of such loan obligations, consultancy charges, and incidental charges shall be the Pohnpei Government, in accordance with 34 PC 10-104. Such obligations shall include the payment of any acceleration of the loan payments or the calling in of the loan due to a material default on the part of the PUC or the Pohnpei Government, but shall not include such requirement to make payments on the acceleration of loan payments or the calling in of the loan due to the material default of the national government, any other state government, or any other entity.

(3) The obligation of the Pohnpei Government for the repayment of loan obligations of the PUC or of the state resulting from any expenditures incurred in the recruitment or use of consultants from or through the ADB or the national government for the project for which the loan has been made, shall not exceed \$100,000 and shall not be authorized by this section unless the Governor shall concur in writing to the specific consultancy service so offered to the project; PROVIDED that the state may, but shall not be obligated to, make further authorization by statute for additional consultancy service costs.

Source: S.L. No. 4L-57-97 §3, 12/4/97

34 PC 10-104. Authorization, appropriation, and assurance for the repayment of the ADB loan.

(1) There is hereby authorized for appropriation from such funds of the Treasury into which monies due and payable to the state from the national government by virtue of Article IX §5 of the FSM Constitution and applicable national statutes establishing the distribution of revenues thereunder, and §§211 and 217 of the Compact of Free Association are deposited, such monies as are necessary to meet the financial obligations of Pohnpei State for that fiscal year, under 34 PC 10-103.

(2) The appropriation of state monies so provided under the authorization of Subsection (1) of this section shall not be subject to any lien or encumbrance that shall have priority over the repayment of the loan, unless otherwise agreed to by the national government.

(3) The monies so appropriated under the authorization of Subsection (1) of this section shall be administered and expended by the Governor solely for the purposes specified in this section; PROVIDED that no monies may be withdrawn from the Treasury for the purposes of meeting the obligations of the Pohnpei Government under the terms of this chapter, except upon written demand from the national government, which demand shall be adequately documented in the manner required by the appropriate financing agreement or agreements with the national government as negotiated by the Governor under the terms of this chapter.

(4) Such agreements as are entered into between the Pohnpei Government and the national government under the authority of this chapter may provide for security and the right of set-off to be exercised by the national government of such monies within the Treasury funds identified in Subsection (1) of this section that are in the custody of the Secretary of the Department of Finance of the national government by virtue of Article IX §5 of the FSM Constitution and applicable intergovernmental agreements and national statutes establishing the distribution of revenues thereunder and §§211 and 217 of the Compact of Free Association to satisfy such Pohnpei Government obligations as required by 34 PC 10-103.

(5) The authority for security and the right of set-off as prescribed by Subsection (4) of this section is deemed by the Legislature to be full and satisfactory security under the name and credit of the Pohnpei Government for the repayment of the loan specified in this chapter. No other security or conveyance or encumbrance of state assets, in trust or otherwise, shall issue from the Pohnpei Government for the repayment of said loan. In addition, any agreement as shall be entered into by the Pohnpei Government pursuant to Subsection (4) of this section, allowing for the national government to so set-off monies held in the custody of the Secretary of the National Department of Finance, shall contain such covenants and other protections as are necessary to ensure that only those monies that are actually due and payable are so set-off

or applied to the loan repayment, and that the PUC and the Pohnpei Government are given adequate notice and a full accounting of the purpose and extent of the intended action.

(6) The Governor shall provide for an accounting of any and all monies appropriated under the authorization of Subsection (1) of this section on an annual basis, and cause to be returned to the Treasury such monies as are determined as no longer necessary to meet the obligations of the Pohnpei Government pursuant to 34 PC 10-103.

Source: S.L. No. 4L-57-97 §4, 12/4/97

34 PC 10-105. Terms of repayment; application of funds paid in excess or in advance of the state's obligations.

(1) The Pohnpei Government agrees to the payment of a loan in various international currencies equivalent to 1,174,000 Special Drawing Rights (a standard term of valuation utilized in concessionary loans made by the ADB and which valuation in current dollars is defined in the agreement between the national government and the Pohnpei Government pertaining to this loan), to which a service charge of one percent (1%) shall be attached and the costs of consultancy services as authorized by 34 PC 10-103(3). The obligation for repayment of obligations thereunder shall commence on the tenth anniversary of the loan and the period of repayment shall be 40 years.

(2) The Pohnpei Government may enter into an agreement with the national government for the acceleration of the commencement of the state to repay its obligations under this chapter by not more than five years, and for its requirement to fulfill its total obligations by not more than 15 years; PROVIDED that such agreement shall be conditioned on a covenant within said agreement that any interest or profits received by the national government from the use or investment of said funds paid by the Pohnpei Government or the PUC prior to the surrender of such accelerated payments to the ADB shall be credited to the state and shall be promptly paid to the Director of the Department of Treasury and Administration for deposit in the Water and Sanitation Services Development Fund created by 34 PC 10-106.

Source: S.L. No. 4L-57-97 §5, 12/4/97

34 PC 10-106. Water and Sanitation Services Development Fund.

(1) There is hereby established within the Treasury a special revenue and expenditure fund to be known as the Pohnpei Water and Sanitation Services Development Fund, into which all monies due and payable to the state pursuant to the terms of 34 PC 10-103(1) and 34 PC 10-105 shall be paid. The fund so created shall cease to exist upon a finding by the Director of the Department of Treasury and Administration that the fund is no longer entitled to receive any additional funds and that all assets and reserves of the fund have been fully expended.

(2) Monies deposited within said fund shall be made available to the Pohnpei Utilities Corporation, upon the request of the PUC and without the need for further or additional appropriation, for expenditure by the PUC on such capital improvement and infrastructure projects as are identified by the PUC for the development, improvement and repair of water and sanitation services provided by the PUC to the people of Pohnpei, and that are consistent with the overall development plans of the state.

(3) Payments to the PUC of fund assets shall be made pursuant to one or more grant agreements between the Governor and the PUC, which agreements shall provide the procedures for the draw-down, use and accountability of the expenditure of the funds made available to the PUC from the Treasury fund established by this section; PROVIDED, HOWEVER, that monies deposited in the Water and Sanitation Services Development Fund, for the purposes specified in this section, shall be deemed to be deposited for the benefit of the PUC, and approval for their draw-down and use by the PUC shall not be unreasonably denied by the Pohnpei Government.

(4) The Governor shall submit annual reports to the Legislature within 30 days following the close of each fiscal year wherein monies are either received or expended from the Water and Sanitation Services Development Fund for the duration of the existence of said fund.

Source: S.L. No. 4L-57-97 §6, 12/4/97

#### 34 PC 10-107. Indemnity.

(1) The Governor is authorized and directed to negotiate such agreements as are necessary to ensure that the Pohnpei Government shall be fully indemnified by the PUC in the event that the Pohnpei Government is required to make any payments under 34 PC 10-103, or is subject to the execution of any agreements for the payment of loan obligations out of any authorized security interests of the state pledged for the repayment of the loan. Any such agreement shall contain such covenants as are necessary to secure the Pohnpei Government's right of indemnity, which security shall include a pledge of such assets that are acquired by the PUC from the proceeds of the loan and such tariffs for water and sanitation as are attributable to the increased services to the general public as are made possible through the implementation of the loan.

(2) Such covenants as are required or authorized by this section shall recognize the essential nature of the water and sanitation services being provided by the PUC and shall not be written or exercised by the Pohnpei Government in such manner as will unduly jeopardize the health or safety of the people of Pohnpei.

Source: S.L. No. 4L-57-97 §7, 12/4/97

#### 34 PC 10-108. National assistance.

The national government is sincerely requested to give sympathetic consideration to the continuing request of this state for the national level of government to coordinate its appropriations for water and sanitation projects with state development plans in this sector and the expansion efforts of PUC. Once this level of mutually supportive consultation is reached, the Legislature is confident that future congressional appropriations can and will become the basis for a joint program that will maximize the potentials of this loan, extending its benefits to as many of the people of Pohnpei as possible.

Source: S.L. No. 4L-57-97 §8, 12/4/97

