

CHAPTER 1

ECONOMIC DEVELOPMENT AUTHORITY

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36 PC 1-101. Creation of the Authority.

There is hereby created a public authority to be known as the Pohnpei Economic Development Authority, hereinafter referred to as the "Authority," with the functions, powers, and responsibilities hereinafter provided.

Source: D.L. No. 4L-159-78 §1, 11/28/78

36 PC 1-102. Principal offices.

The principal office of the Authority shall be in Pohnpei at a place declared publicly by the Board of Developers. The Authority may establish such other offices as are necessary in the performance of its duties.

Source: D.L. No. 4L-159-78 §2, 11/28/78

36 PC 1-103. Purposes of the Authority.

It shall be the purpose of the Authority to promote, to the greatest extent possible, the advancement and expansion of agriculture, marine resources, tourism, industry, energy development, banking, transportation, and community development in the state of Pohnpei in accordance with the principles, goals, and objectives of the Pohnpei State Five Year Development Plan, or its successor. To this end, the Authority is authorized:

(1) To conduct or cause to be conducted research into natural resources, experiments in marketing methods, and export possibilities, and to make known and publicize the results of such activities; PROVIDED, HOWEVER, that when the Authority proposes to enter into any research or similar investigative activity, it shall first ascertain that such activity is not being duplicated elsewhere in the state;

(2) To promote investments of entrepreneurial capital in the state, and if need be, form and operate its own industries solely or jointly with private or public entities; invest in and provide technical assistance in support of its objectives, develop and maintain facilities for lease and sale, and provide for the expansion of agriculture, marine, industrial, energy development, banking, transportation, and tourist facilities through financial assistance and other means. The Authority shall refrain, whenever practicable, from competing with or discouraging private local investment or enterprises;

(3) Except as specifically prohibited herein, to make loans to any person, firm, partnership or corporation licensed to do business in the state in furtherance of the purposes of this chapter. Each loan made by the Authority:

(a) Shall be of such sound value or so secured as to reasonably assure repayment, or shall be of such need to the economy of the state as to warrant additional risks or subsidies;

(b) May be sold to a commercial lending institution or other entity for a sum not less than the principal balance of said loan and the proceeds thereof returned to the capital fund of the Authority, subject to the terms of any resolution of the Board of the Authority authorizing the issuance of revenue bonds; and

(c) Shall include, wherever possible, an option on the part of the Authority to convert up to fifty percent (50%) of the total loans so made into equity of one form or another;

(4) To borrow monies from governmental, private, commercial or any other source, or to issue, sell or dispose of revenue bonds or other obligations from time to time under such terms and conditions as the Legislature shall prescribe, subject to the restrictions of the Pohnpei Constitution; PROVIDED that the proceeds of such loans, bonds or other obligations shall be used solely to finance specifically authorized activities and programs of the Authority; PROVIDED FURTHER that the Authority or its successor in law is hereby authorized to borrow up to \$14.5 million or so much thereof as may be authorized by the Governor to purchase, construct, and/or operate in Pohnpei fishing vessels, a fish processing plant, and appurtenant facilities, and to use the Compact §211(a)(2) capital funds of Pohnpei as collateral to secure plant and related facilities, and the terms and conditions of such loan shall be subject to the prior approval of the Governor; PROVIDED FURTHER that \$50,000 is hereby authorized for appropriation to the Legislature for expenses related to research into the Fish Processing Plant and related fishing operations and the recruitment and hiring of consultants for that purpose; PROVIDED FURTHER that the final \$680,000 shall not be disbursed by the Governor to the Economic Development Authority or its successor in law until a management and marketing plan has been reviewed and approved by the Legislature by resolution;

(5) To invest its funds in any enterprise, undertaking or other activity which, in its judgment, will further the development of desirable projects or programs within its jurisdiction in the state;

(6) To obtain or lease land and other real property held by the Pohnpei Public Lands Trust Board of Trustees as required to carry out its purposes and objectives; and

(7) To make commitments to purchase mortgages by an agency or instrumentality of the state of Pohnpei or other credit worthy entity.

Source: D.L. No. 4L-159-78 §3, 11/28/78; D.L. No. 4L-204-79 §1, 8/28/79; S.L. No. 2L-74-88 §1, 10/26/88; S.L. No. 3L-29-92 §1, 11/25/92

Note: S.L. No. 3L-29-92 §2 appropriation provision has been omitted.

36 PC 1-104. Powers and duration of the Authority.

The Authority in carrying out its purposes under this chapter shall have the following powers and duration:

(1) To have perpetual succession, unless sooner terminated by law;

(2) To adopt, amend, and repeal 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 rule or regulation other than that covering the internal operation of the Authority shall be adopted without a public hearing thereon;

(3) To sue and be sued in the name of the Authority;

- (4) To determine the character and necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid;
- (5) To acquire, in any lawful manner, any property: real, personal or mixed, tangible or intangible; and to hold, maintain, use, and operate the same, and to sell, lease, encumber or otherwise dispose of the same, whenever any of the foregoing transactions are deemed necessary or appropriate to the conduct of the activities authorized by this chapter, and on such terms as prescribed by the Authority;
- (6) To execute all instruments necessary or appropriate in the exercise of any of its functions;
- (7) To contract, pursuant to the Public Service System Act, Title 9 Chapter 2, (9 PC 2-*), for the services of such clerical, professional, and technical assistance and employees as may be necessary for the conduct of the business of the Authority; to delegate to them such powers and to prescribe for them such responsibilities as may be deemed appropriate by the Authority; to fix and pay employee compensation, pursuant to Title 9 Chapter 4 (9 PC 4-*); to require bonds from such of them as the Authority may designate, the premium therefor to be paid by the Authority; and to remove and discharge such employees and assistance, pursuant to Title 9 Chapter 2, (9 PC 2-*);
- (8) To accept gifts or donations of services, or of property: real, personal or mixed, tangible or intangible; in aid of any of the activities authorized by this chapter;
- (9) To construct, equip, operate, and maintain buildings, works, factories, plants, farms, fisheries, and other facilities, including all equipment, supplies, and machinery incident thereto;
- (10) To form, or cause to be formed, to promote, to aid and to invest in any manner within its means in the promotion of any corporation or other association, and to cause to participate in the merger, consolidation, reorganization, liquidation or dissolution of any corporation or association in which or in the business of which the Authority shall have direct or indirect interest;
- (11) To settle and adjust claims held by it against other persons or parties and by other persons or parties against the Authority;
- (12) To borrow funds required to finance revenue producing projects, subject to the debt restrictions of 36 PC 1-103(4), and to dedicate revenue derived therefrom to the repayment of such loans;
- (13) To submit from time to time to the Legislature, through the Governor, such legislation as it deems necessary to expeditiously and effectively foster desirable development projects and programs within its jurisdiction in this state;
- (14) To take such action and carry on any other operations and do all that may be necessary or appropriate to carry out the powers and duties herein or hereafter specifically granted to or imposed upon it by state law; and
- (15) To endorse, guarantee, and secure the payment and satisfaction of bonds, coupons, mortgages, deeds of trust, debentures, obligations, evidences of indebtedness, and shares of

stock of corporations registered in the Federated States of Micronesia as far as, and to the extent that the same is necessary and appropriate to carry out the Authority's authorized and permissible activities under its powers and functions and subject to the limitations of this chapter.

Source: D.L. No. 4L-159-78 §4, 11/28/78; S.L. No. 2L-57-81 §31(5), 10/1/81

36 PC 1-105. Board of Developers.

All functions and powers of the Authority shall be vested in and exercised by and under the direction of a Board of Developers, hereinafter referred to as the "Board", composed of nine members appointed by the Governor with the advice and consent of the Legislature to serve for terms of three years. Any member of the Board may be removed from the Board by the Governor or three-fourths majority vote of members of the Board for cause. Vacancies shall be filled in the manner of the original appointment for the remainder of the unexpired term.

Source: D.L. No. 4L-159-78 §5, 11/28/78; D.L. No. 4L-204-79 §2, 8/28/79; S.L. No. 2L-207-83 §1, 10/19/83; S.L. No. 6L- -06 §2-113,

36 PC 1-106. Board organization.

(1) Officers. The Board shall elect, by majority vote, from among its members a Chairman and a Secretary-treasurer to serve such terms as determined by the Board. The Board shall define the powers and duties of each officer.

(2) Meetings. The Board shall hold its first regular meeting on the second Tuesday of the first month following appointment of the full membership of the Board, and shall hold one regular meeting at least once every three months thereafter. Special meetings may be called at any time by the Chairman or by any five members of the Board. The Governor shall be temporary Chairman of the Board, without the right to vote unless otherwise appointed, until the Chairman is elected. The Chairman shall determine the time and place of each meeting and notify all members of the Board of any regular or special meeting as to the date, time, and place at least three days preceding the date of the meeting, and shall cause public notice to be made of the date, time, and place of such meeting at least two days preceding the date of the meeting. All meetings shall be open to the public, except executive sessions agreed upon by the majority vote of the members present. Two-thirds of the membership of the Board shall constitute a quorum to conduct the business of the Authority at meetings called for that purpose; PROVIDED, HOWEVER, that a majority vote of the total membership of the Board shall be required for any authorization of the Authority to incur indebtedness; such condition to be in addition to the other requirements on debt prescribed by this chapter. A written record shall be kept and maintained of attendance at meetings and all official actions taken by the Board, and a copy shall be submitted to the Legislature by the Board within ten days after each meeting.

(3) Compensation and expenses. Members of the Board who are not regularly employed by the Pohnpei Government shall be compensated at rates established by the Government Officers' Salary Act, Title 9 Chapter 4, as amended or superseded by Pohnpei law, (9 PC 4-*), for attendance at Board meetings. Pohnpei Government employees shall not be entitled to such compensation, but shall be granted administrative leave from their regular duties while

in attendance of meetings and other activities of the Authority. When required to travel, members shall be entitled to travel expenses and per diem at Pohnpei Government rates in accordance with Pohnpei Government policies. Payment of other expenses may be granted to Board members in accordance with such authorizations, guidelines, and procedures as the Board shall by three-fourths majority of the entire membership so determine.

Source: D.L. No. 4L-159-78 §6, 11/28/78; D.L. No. 4L-204-79 §3, 8/28/79; S.L. No. 1L-71-86 §4-6, 4/1/86

36 PC 1-107. Director.

The Board of Developers shall supervise by majority vote of the entire membership, a Director of the Authority who shall be appointed pursuant to the Uniform Appointments and Tenure Act, Title 9 Chapter 1, or its successor in Pohnpei law, (9 PC 1-*), and who shall be directly responsible to the Board for the day-to-day operation of the Authority and who shall administer its programs and policies. The Director shall be an ex-officio member of the Board, without the right to vote. The term of office shall be as provided in the Uniform Appointments and Tenure Act, or its successor in Pohnpei law, (9 PC 1-*). Salaries and such other allowances and emoluments for the Director shall be as established by the Board in accordance with the Government Officers' Salary Act, Title 9 Chapter 4, as amended or superseded by Pohnpei law, (9 PC 4-*).

Source: D.L. No. 4L-159-78 §7, 11/28/78; D.L. No. 4L-201-79 §1, 8/28/79; S.L. No. 2L-173-83 §7(6), 4/22/83; S.L. No. 2L-177-83 §12, 5/5/83; S.L. No. 3L-30-84 §6(2), 1/1/87; S.L. No. 1L-71-86 §4-2, 4/1/86; S.L. No. 6L- -06 §2-114,

36 PC 1-108. Development fund.

All revenues received from different sectors in the Authority shall be maintained in separate accounts in a development fund under categories identifying where it is generated, and in the case of revenues raised from bonds and other financing sources, full accountability must be maintained to ensure that funds are expended for the purpose for which funds are raised or appropriated. A full accounting of all financial activities of the Authority shall be made to the Governor and Legislature each year in the manner prescribed by 36 PC 1-110, including the source of all funds and the purposes for which they are used.

Source: D.L. No. 4L-159-78 §8, 11/28/78

36 PC 1-109. Authorization for appropriation; administration; use of revenues.

There is hereby authorized for appropriation from the general fund of Pohnpei such sum or sums as may be determined annually in the Comprehensive Budget Act for all necessary and incidental expenses of the Authority, its operations, and its programs as are authorized by this chapter. The sum or sums authorized shall be administered and expended by the Director, or his designated representative, within a budget approved by the Board, solely for the purposes specified in this chapter. All sums appropriated under the authorization of this section remaining unexpended or unobligated on September 30 each year shall revert to the general fund of Pohnpei. Unless otherwise provided or limited by Pohnpei law, the Authority shall be

entitled to expend such income and revenues raised by the Authority pursuant to its duties and responsibilities under this chapter, for such purposes as are authorized by this chapter, and in accordance with 36 PC 1-108.

Source: D.L. No. 4L-159-78 §9, 11/28/78

36 PC 1-110. Statement of activities and audits.

The Authority shall submit to the Legislature, on or before May 15 each year, an annual statement of the activities of the Authority. Within 60 days following the close of each fiscal year, the Authority shall cause an annual audit of all funds received and disbursed during the preceding fiscal year. Upon its completion, the results of the audit shall be submitted to the Legislature each year. The Authority shall be subject to audit at any time by request of the Governor or Legislature.

Source: D.L. No. 4L-159-78 §10, 11/28/78

36 PC 1-111. Utilization of government agencies and instrumentalities.

The services and facilities of agencies and instrumentalities of the Federated States of Micronesia and of the Pohnpei Government may be made available to the Authority in the exercise of its functions to the extent allowed by law.

Source: D.L. No. 4L-159-78 §11, 11/28/78

36 PC 1-112. Assets upon termination of the Authority.

If at any time and for any reason the Authority shall be terminated or cease to exist, all remaining assets of the Authority, tangible and intangible, shall pass to the custody of the Director of the Pohnpei Department of Treasury and Administration to be reallocated and disposed of in the manner prescribed by Pohnpei law.

Source: D.L. No. 4L-159-78 §12, 11/28/78

36 PC 1-113. Officers not liable.

No member or officer of the Board shall be subject to any personal liability or accountability by reason of his execution of any bonds or notes or the issuance thereof. The exercise of the powers granted by this chapter will be in all aspects for the benefit of the people of Pohnpei and for the promotion of their health and welfare.

Source: D.L. No. 4L-159-78 §13, 11/28/78

36 PC 1-114. Exemption from taxation and assessments.

The Authority shall be required to pay any tax or assessment levied by state or local governments of this state on any property owned by the Authority under this chapter or upon the income therefrom, but shall be exempt from such other taxes and assessments of the Federated States of Micronesia National Government to the maximum extent allowable by law.

Source: D.L. No. 4L-159-78 §14, 11/28/78

36 PC 1-115. Conflicts of interest.

If any member, officer or employee of the Board shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly in any contract with the Board, such interest shall be disclosed to the Board and shall be set forth in the minutes of the Board, and the member, officer or employee having such interest therein shall not participate on behalf of the Board in the authorization of any such contract.

Source: D.L. No. 4L-159-78 §15, 11/28/78

36 PC 1-116. Executive reorganization.

It is the intention of the Legislature that the Authority fulfills the major obligations of the government to promote development in the state. Within two years following the organization of the Board, the Governor shall cause to be made a comprehensive evaluation of existing services of the government in areas of development in which the Authority is given responsibility, and prepare a plan of reorganization of executive activities in the development sphere for reduction of such activities where duplication of services or functions is probable. Said plan for reorganization shall be submitted to the Legislature in the manner prescribed by the Pohnpei Constitution.

Source: D.L. No. 4L-159-78 §16, 11/28/78

36 PC 1-117. Designation of the Authority as state entity under 45 TTC §§162 – 167 (1980).

The Authority is hereby designated the sole entity under law to promote, develop, and support commercial utilization of living marine resources as provided in 45 TTC §§162 – 167 (1980). A sum or sums to be determined annually in the Comprehensive Budget Act is hereby authorized to be appropriated in accordance with 36 PC 1-109 to be used as matching funds for grants made available by the central government for this purpose. Pursuant to 45 TTC §§162 – 167 (1980), the Authority shall acquire all assets and liabilities of the Pohnpei State Fishing Authority; PROVIDED that any such assets be accounted separately from general assets of the Authority and be used solely for activities of the Authority for the advancement of marine resources. The following activities, rights, powers, licenses, and obligations formerly exercised by the Pohnpei State Fishing Authority shall be transferred to the Authority:

(1) To manage and direct transferred Fishing Authority loan fund assets in such a manner as to develop and support fisheries enterprise in the State. Loans may be made to citizens who have demonstrated competence and commitment in fishing or marine resource development. Terms, conditions, and procedures for loan application, approval, and administration shall be vested in a loan committee comprised of the Director of the Authority, the State Fisheries Officer, and a public member appointed by the Board of the Authority;

(2) To determine and formulate overall state fishery policy and recommend legislation to the Pohnpei Legislature;

(3) To encourage the development of fishing cooperative associations in the state;

(4) To act as exclusive agent for the sale of water to vessels which take on water supplies in the ports and harbors of Pohnpei; PROVIDED that the purpose of this exclusive agency shall be to ensure security and sanitation of Pohnpei's public water system and not to generate revenue.

(5) To issue annual permits for the sale of supplies and provisions including fuel, oil, and food to foreign fishing vessels and to issue regulations governing the sale of such supplies and provisions; PROVIDED that such regulations shall be promulgated in accordance with the Administrative Procedures Act, as amended, (8 PC 1*).

(6) To serve as a purchasing agent and to provide services associated with the transshipment of fish; for supplies and provisions purchased in bulk for members of fishing cooperative associations and other individuals engaged in commercial fishing activities to the extent that such bulk purchasing would efficiently provide such provisions and supplies at a lower price than would otherwise be obtainable; and to issue regulations governing the transshipment of fish; PROVIDED that such regulations shall be promulgated in accordance with the Administrative Procedures Act, as amended, (8 PC 1*);

(7) To receive from the Director of the Pohnpei Department of Treasury and Administration all monies collected under the authority of 53 TTC §101(5) (1980). Should 53 TTC §101(5) (1980) cease to have force and effect, the Authority shall be empowered to collect a surcharge of 10 percent on the full purchase price paid for supplies and provisions obtained by foreign fishing, processing or marine resource related vessels entering port in Pohnpei State; PROVIDED, HOWEVER, that nothing in this section shall be construed to limit the powers of the Authority to establish reasonable fees, charges, and surcharges incident to its commercial or other operations.

Source: D.L. No. 4L-159-78 §17, 11/28/78; D.L. No. 4L-204-79 §4, 8/28/79; S.L. No. 6L-53-05 §1, 10/7/05

Note: D.L. No. 4L-159-78 §18 repealing and §19 appropriation provisions have been omitted.

36 PC 1-118. Liberal construction.

This chapter, being necessary for the health and welfare of the people of Pohnpei, shall be liberally construed to effect the purposes thereof.

Source: D.L. No. 4L-159-78 §20, 11/28/78

36 PC 1-119. Inconsistent laws inapplicable. Insofar as this chapter are inconsistent with any general or special Pohnpei laws, or parts thereof, this chapter shall be controlling.

Source: D.L. No. 4L-159-78 §21, 11/28/78

Note: D.L. No. 4L-159-78 §22 severability provision has been omitted.