

CHAPTER 1

MANAGEMENT AND ADMINISTRATION

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42 PC 1-101. Short title.

This chapter is known and may be cited as the “Public Lands Act of 1987.”

Source: S.L. No. 1L-155-87 §1, 7/29/87

42 PC 1-102. Purpose.

The purpose of this chapter is to establish a division within the Department of Land and Natural Resources for the management and administration of public lands and to transfer to this division the Pohnpei Public Lands Trust.

Source: S.L. No. 1L-155-87 §2, 7/29/87

Note: Reference to repealed law, D.L. No. 4L-69-76, as amended, has been omitted.

42 PC 1-103. Definitions.

As used in this chapter, unless the context clearly requires otherwise:

(1) “Board” means the Public Lands Trust Board of Trustees as established by 42 PC 1-105.

(2) "Central Government" means the central government of the Trust Territory of the Pacific Islands and any successor thereof.

(3) “Division” means the Division of Public Land as created by 3 PC 1-104(5)(a) and established by 42 PC 1-104.

(4) “Director” means the Director of the Department of Land and Natural Resources.

(5) “Eminent domain” means the right to condemn property for public use or purposes and to appropriate ownership and possession of such property for public use upon paying the owner just compensation to be ascertained according to applicable law.

(6) “Fiscal year” means the operation fiscal year of Pohnpei State.

(7) “Legislature” means the Pohnpei Legislature.

(8) "Order" means Secretarial Order No. 2969 promulgated by the Secretary of the Interior of the United States of America on December 26, 1974.

(9) “Public lands” means public lands as defined by the Order and any other lands, or any right, title or interest therein, capable of being held by the Trust in trust for the people of Pohnpei as authorized by Pohnpei law or resolution.

(10) “Traditional leaders” means paramount traditional leaders of the Nahnmwarki and Nahnken rank, or the equivalent thereof in local custom and tradition.

(11) “Trust” means the Pohnpei Public Lands Trust established pursuant to D.L.No. 4L-69-76, as amended.

(12) “Trust fund” means the Pohnpei Public Lands Trust Fund as established by 42 PC 1-116.

Source: S.L. No. 1L-155-87 §3, 7/29/87; S.L. No. 5L-14-00 §3-36, 10/1/00

Note: Subsection (9) is further defined by the following provisions:

(1) Secretarial Order No. 2969 §2(c) Definitions:

“Public Lands” means:

(1) those lands defined as public lands by Sections (1) and (2), Title 67, of the Trust Territory Code except those lands designated as military retention lands held, used, or occupied by the United States under use and occupancy agreements and not returned to the public domain, and,

(2) those lands placed under control of the “Alien Property Custodian” as defined by Section 1, Title 27, of the Trust Territory Code, except those lands designated as military retention lands held, used, or occupied by the United States under use and occupancy agreements and not returned to the public domain.

(2) TTC §925 (1966); 67 TTC §1 (1970); 67 TTC §1 (1980) “Public lands” defined:

“Public lands” means those lands situated within the Trust Territory which were owned or maintained by the Japanese government as government or public lands, and such other lands as the government of the Trust Territory has acquired or may hereafter acquire for public purposes.

(3) TTC §532 (1966); 27 TTC §1 (1970); 27 TTC §1 (1980) Defined: Alien property, as used in this chapter, includes property situated in the Trust Territory which was formerly owned by private Japanese nationals, by private Japanese organizations, by the Japanese government, or by Japanese government organizations, agencies, quasi-corporations or government-subsidized corporations. Such property shall be deemed to include tangible and intangible assets, as well as any right, title or interest therein.

42 PC 1-104. Division of Public Land implemented.

There is hereby established within the Department of Land and Natural Resources, a Division of Public Land as created by 3 PC 1-104(5)(a). The Division shall consist of a division chief and support personnel who shall provide administrative and technical support through the Director to the Board of Trustees in the conduct of their legal and fiduciary responsibilities in respect to the Pohnpei Public Lands Trust.

Source: S.L. No. 1L-155-87 §4, 7/29/87; S.L. No. 5L-14-00 §3-36, 10/1/00

Note: The Pohnpei Public Lands Trust was created by D.L. No. 4L-69-76, 1/1/76 and transferred by S.L. No. 1L-155-87 to the Division of Management and Administration of Public Lands.

42 PC 1-105. Board of Trustees.

The Board of Trustees of the Pohnpei Public Lands Trust established pursuant to D.L. No. 4L-69-76 is hereby continued and recognized as trustees to all rights, title, and interest to public lands in Pohnpei for the benefit of the people of Pohnpei, subject to the obligations and restrictions of the Pohnpei Constitution and the laws of Pohnpei. Commencing with the effective date of this chapter [July 29, 1987], the Board of Trustees shall consist of nine trustees appointed by the Governor with the advice and consent of the Legislature. Trustees shall be pwilidaks of Pohnpei, shall have been citizens of Pohnpei for at least ten years immediately preceding their appointment, and shall be at least 25 years of age.

Source: S.L. No. 1L-155-87 §5, 7/29/87

42 PC 1-106. Tenure of Board members.

(1) Appointments to the Board of Trustees shall be for a term of three years unless removed earlier by the Governor or the Board, or impeached in the manner prescribed for officers of the Pohnpei Government.

(2) A member shall hold office until his successor has been seated unless removed by the Governor or the Board, or by impeachment.

(3) Any member may be removed from the Board for neglect, misconduct, inability to serve, absence without cause for three consecutive Board meetings or gross inefficiency in office by the Board.

Source: S.L. No. 1L-155-87 §6, 7/29/87

Note: Transition language relating to carry over of Board members under previous law has been omitted.

42 PC 1-107. Vacancies.

In the event of a vacancy on the Board by reason of death, resignation, removal or any other reason, such vacancy shall be filled for the remainder of the unexpired term of the predecessor in the same manner as the original appointment.

Source: S.L. No. 1L-155-87 §7, 7/29/87

42 PC 1-108. Officers.

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

Source: S.L. No. 1L-155-87 §8, 7/29/87

42 PC 1-109. Meetings of the Board. 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 every other month thereafter. Special meetings may be called at any time by the Chairman or by any five members of the Board. 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 of the date, time, and place of such meeting to be broadcast on the broadcast station projected to reach the greatest number of people in Pohnpei, at least two days preceding the date of the meeting. All meetings shall be open to the general public, except executive sessions agreed upon by unanimous vote of the members present. Two-thirds of the membership of the Board shall constitute a quorum to conduct the business of the Board; PROVIDED, HOWEVER, that a majority vote of the total membership of the Board shall be required for any question presented that affects title or leasehold rights to real property in Pohnpei. A written journal of its meetings shall be kept and maintained which shall include but not be limited to meeting attendance and all official actions of the Board, and a copy shall be submitted to the traditional leaders, the Legislature, and the chief executive of each local government by the Board within ten days after each meeting.

Source: S.L. No. 1L-155-87 §9, 7/29/87

42 PC 1-110. Compensation and expenses of the Board.

(1) When attending Board meetings or while engaged in other services for the Board within Pohnpei as are authorized by the Board, the members of the Board shall be compensated at the rate of \$10 for each half day or portion thereof (four hours or less) that the member shall so serve, and \$20 for each day a member shall serve in excess of four hours; PROVIDED, HOWEVER, that members of the Board who are Pohnpei Government employees shall not be entitled to the said compensation provided herein by this subsection, but shall be granted administrative leave from their regular duties while in attendance of meetings and other activities of the Board.

(2) When required to travel within Pohnpei for meetings and activities of the Board, members of the Board shall be entitled to transportation expenses when such service is not available and provided by the Division.

(3) When overnight lodging within Pohnpei away from their usual abode is required, members of the Board shall be entitled to a daily per diem at Pohnpei Government rates in accordance with Pohnpei Government policies.

(4) When required to travel outside Pohnpei, members of the Board shall be entitled to travel expenses and per diem at Pohnpei Government rates in accordance with Pohnpei Government policies.

Source: S.L. No. 1L-155-87 §10, 7/29/87

42 PC 1-111. Powers, duties, legal capacities, and characteristics of the Board.

The Public Lands Trust Board of Trustees shall have the following powers, duties, legal capacities, and characteristics:

- (1) To have perpetual juridical existence;
- (2) To receive and hold title to public lands in trust for the people of Pohnpei;
- (3) To administer, manage and regulate the use of lands held by the Trust and income arising therefrom in trust for the people of Pohnpei pursuant to this chapter;
- (4) To establish a program for homesteading on public lands and administer such program pursuant to Pohnpei law;
- (5) To sell, lease, exchange, use, dedicate for public purposes, or make other disposition of such public lands pursuant to Pohnpei law;
- (6) To acquire lands by negotiation and purchase that are necessary or appropriate to fill the needs of the general public, as authorized by Pohnpei law or resolution;
- (7) To acquire lands by eminent domain as authorized by Pohnpei law;
- (8) To enter into contracts, sue and be sued in the name of the Trust, and have other powers and duties as may be necessary or appropriate to further the purposes of this chapter; and
- (9) To negotiate in good faith, and execute binding formal agreements to meet the land requirements of the United States of America as may be designated under the terms of the Compact of Free Association.

Source: S.L. No. 1L-155-87 §11, 7/29/87

Note: This section replaces §10 of D.L. No. 4L-69-76 that was repealed by S.L. No. 1L-155-87. References to §10 of D.L. No. 4L-69-76 in other sections of this Title have been redirected to this section of the Code.

42 PC 1-112. Division chief: duties and responsibilities.

The Division of Public Land shall be under the administrative direction of a division chief who shall have the following powers and duties under the direction of the Director:

- (1) To direct the implementation of the policies, projects, and programs of the Division as are determined by the Governor and the Board;

- (2) To maintain liaison by the Division through the Governor with the Legislature, the Administration, the traditional leaders, and others concerned with the objectives and programs of the Division;
- (3) To maintain close communication with the Chairman of the Board as to the current status and activities of the Division;
- (4) To report to the Board at each meeting on the status of the Division, its programs, projects, financial standing and plans, and to recommend to the Board projects and programs for the Division;
- (5) To administer the staff and operations of the Division;
- (6) To manage staff personnel pursuant to the Public Service System Act, Title 9 Chapter 2, (9 PC 2-*), and to carry out all other functions regarding Division personnel;
- (7) To exercise supervision over all Division property and funds subject to the Financial Organization and Management Act, Title 11 Chapter 2, (11 PC 2-*);
- (8) To propose legislation to the Legislature through the Governor pertaining to the programs, powers, and duties of the Division; and
- (9) To establish rules and regulations, in accordance with this chapter and applicable law, for the conduct of the business and activities of the Division.

Source: S.L. No. 1L-155-87 §12, 7/29/87; S.L. No. 5L-14-00 §3-36, 10/1/00

42 PC 1-113. RESERVED

42 PC 1-114. Compliance with existing leases and agreements.

On receiving public lands, the Trust shall be bound by and comply with all provisions of existing leases and land use and occupancy agreements previously entered into by the central or district governments of the Trust Territory of the Pacific Islands, their agencies, instrumentalities or political subdivisions.

Source: S.L. No. 1L-155-87 §13, 7/29/87

42 PC 1-115. Continuation of occupancy by tenants.

The Trust shall permit the continued possession of public lands actually occupied and used on the effective date of the Order [December 26, 1974] with concurrence of the Government of the Trust Territory of the Pacific Islands, by tenants-at-will and tenants-by-sufferance for a reasonable period of additional years as has been agreed by the Pohnpei Public Lands Authority and the High Commissioner of said government.

Source: S.L. No. 1L-155-87 §14, 7/29/87

42 PC 1-116. Trust fund. All revenues generated from the administration, management, and disposition of public lands shall be transmitted by the Board and the Division to the Director of the Department of Treasury and Administration for deposit in a Pohnpei Public Lands trust fund hereby continued in the Treasury. All monies received by the trust fund shall be appropriated by the Legislature for public purposes relative to the administration, management, development, and disposition of public lands. The Director of the Department of Treasury and Administration shall submit to the Legislature an annual statement of the income and expenditures of the trust fund for the previous fiscal year, and projected income of the trust fund for the current fiscal year.

Source: S.L. No. 1L-155-87 §15, 7/29/87; S.L. No. 5L-14-00 §3-36, 10/1/00

42 PC 1-117. Authorization for appropriation; administration.

There is hereby authorized for appropriation from the Pohnpei Public Lands trust fund and the general fund of Pohnpei such sum or sums to be determined annually in the Pohnpei Comprehensive Budget Act for all necessary and incidental expenses of the Division and the Trust and their operations and programs as are authorized by this chapter. The sum or sums herein authorized for appropriation shall be administered and expended by the Chief of the Division of Public Land, upon concurrence of a majority of the Board, solely for the purposes specified in this section. All sums appropriated under the authorization of this section for a fiscal year remaining unexpended or unobligated on September 30 each year shall revert to the respective fund from which the appropriation was made.

Source: S.L. No. 1L-155-87 §16, 7/29/87; S.L. No. 5L-14-00 §3-36, 10/1/00

42 PC 1-118. Annual statement and audit.

The Board of Trustees shall submit to the Legislature, on or before October 15 each year, an annual statement of the activities of the Trust. Within 60 days following the close of each fiscal year, the Board 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.

Source: S.L. No. 1L-155-87 §17, 7/29/87

42 PC 1-119. Conflict of interest.

(1) If any member of the Board of Trustees or any officer or employee of the Division 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 or the Division, or in the acquisition of any interest in real property held by the Trust, or as a contractor for the construction of any improvements on an interest in real

property acquired from the Trust or predecessor in law, he shall disclose such interest to the Board and such interest 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 or the Division in any votes or transactions of the Board or the administrative activities of the Division relative thereto.

(2) Notwithstanding Subsection (1) of this section, no member of the Board of Trustees may, during his membership therein nor for at least one year following his membership thereon, acquire directly or indirectly, in his own name, by a disclosed or undisclosed agent, or through an association or business in which he owns more than ten percent (10%) interest therein, any interest in real property held by the Trust in excess of a singular temporary use permit not to exceed 120 days which may not be renewed nor re-executed.

(3) The Governor may prescribe further rules relative to conflict of interest governing members, officers, and employees of the Board and the Division.

Source: S.L. No. 1L-155-87 §18, 7/29/87

42 PC 1-120. Transition.

(1) All rights, title, interests, and liabilities relative to the management and disposition of properties in Pohnpei Public Lands Trust established pursuant to D.L. No. 4L-69-76 shall continue unaffected except as provided by this chapter.

(2) The Board of Trustees shall continue to exercise its legal and fiduciary responsibilities in respect to the Trust, and the use and disposition thereof, in a manner consistent with this chapter, and shall be deemed the successor to the Public Lands Authority in statutory and legal references relative to the use and disposition of Trust properties.

(3) The Governor shall provide for the transfer of former Authority employees and fiscal assets of the Authority, not a part of the Trust, to the Division established by this chapter.

(4) All rights, interests, and liabilities of the Authority, not a part of the Trust, are assumed by the executive branch of the Pohnpei Government.

(5) The Governor may, by administrative order, further define the devolution of responsibilities, assets, and liabilities of the Public Lands Authority to the Board of Trustees and the Division of Public Land.

Source: S.L. No. 1L-155-87 §19, 7/29/87; S.L. No. 5L-14-00 §3-36, 10/1/00

Notes: 1. All rights, titles, interests, and liabilities relative to the management and disposition of properties in the Pohnpei Public Lands Trust were originally created in D.L. No. 4L-69-76, 1/1/77. 2. S.L. No. 1L-155-87 §20 severability provision has been omitted.

Extended legislative history: D.L. No. 4L-69-76 established the Public Lands Authority. D.L. No. 4L-69-76 §3 was amended by D.L. No. 4L-93-77 §1, 5/13/77 and D.L. No. 4L-136-78 §12, 3/27/78; D.L. No. 4L-69-76 §5 was amended by D.L. No. 4L-93-77 §2, 5/13/77; D.L. No. 4L-69-76 §8 was amended by D.L. No. 4L-93-77 §3, 5/13/77; D.L. No. 4L-69-76 §9 was

amended by D.L. No. 4L-93-77 §4, 5/13/77, S.L. No. 2L-10-80 §1, 6/28/80, and S.L. No. 1L-71-86 §4-4, 1/1/86; D.L. No. 4L-69-76 §10 was amended by S.L. No. 2L-57-81 §31(4), 5/18/81, S.L. No. 2L-173-83 §7(5), 4/22/83, and S.L. No. 2L-177-83 §11, 5/5/83; D.L. No. 4L-69-76 §11(1) was amended by D.L. No. 4L-93-77 §5, 5/13/77; D.L. No. 4L-69-76 §16 was amended by D.L. No. 4L-93-77 §6, 5/13/77, and D.L. No. 4L-136-78 §29, 3/27/78; D.L. No. 4L-69-76 §17 was amended by D.L. No. 4L-136-78 §30, 3/27/78; D.L. No. 4L-69-76 §18 was amended by S.L. No. 2L-73-81 §1, 6/30/81; D.L. No. 4L-69-76 §19 was amended by D.L. No. 4L-93-77 §7, 5/13/77; D.L. No. 4L-69-76 §20 was amended by D.L. No. 4L-93-77 §8, 5/13/77; D.L. No. 4L-69-76 §23 was amended by S.L. No. 2L-104-81 §1, 12/2/81. S.L. No. 1L-155-87 repeals D.L. No. 4L-69-76.