

TITLE 32

**SEA AND AIR
TRANSPORTATION**

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CHAPTER 1 PORT AUTHORITY

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§1-101. Short title. — This chapter is known and may be cited as the “Pohnpei Port Authority Act of 1991.”

Source: S.L. No. 2L-224-91 §1-1, 1/13/92

§1-102. Purpose. — It is the sense of the Legislature that because of the distance between the islands of this state and their remoteness from large commercial centers of the world, transportation constitutes a vital link in the state's efforts toward social development and economic self-sufficiency. It is the purpose of this chapter to establish an Authority to facilitate use of available transportation systems, and to promote Pohnpei as the natural crossroads for north and south as well as east and west travel and transport through the Pacific region.

Source: S.L. No. 2L-224-91 §1-2, 1/13/92

§1-103. Definitions. — As used in this chapter, unless the context requires otherwise:

- (1) "Authority" means the Pohnpei Port Authority.
- (2) "Board" means the Board of Directors of the Authority.
- (3) "General manager" means the general manager of the Authority.
- (4) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, body politic, municipal corporation, including any trustees, receiver, assignee or other similar representative thereof.
- (5) "Port" means any publicly owned or operated port in the state, coupled with all related facilities, except such ports and port-related facilities as are situated within the Planned Development Zone located along the Dekehtik Causeway and designated as a planned development zone by state law, and for which specific regulatory controls are otherwise provided pursuant to state law enacted after March 31, 1998. Port includes both seaports and airports.

(6) "Rules and regulations" means rules and regulations of general application issued by the Authority interpreting or regulating the application of this chapter, but shall not apply to the internal operation of the Authority, nor to management of ports owned or operated by the Authority.

(7) "Revenue" means all monies or receipts, however derived, received or collected from the rates, rentals, fees, and charges prescribed for the use and services of and the facilities and commodities furnished by the ports, including, without limitation, all money received for the imposition of any fee or imposed for the use, benefit or privilege exercised by the ports by users, tenants, licensees or concessionaires thereof.

Source: S.L. No. 2L-224-91 §1-3, 1/13/92; S.L. No. 4L-66-98 §10, 2/23/98

§1-104. Creation of the Authority. — There is hereby created a body corporate in the state of Pohnpei called the Pohnpei Port Authority. Its functions shall be public and it shall have the right to sue and be sued in its own name. The Authority shall be solely responsible and liable for any indebtedness, obligation or liability incurred by the Authority, and the revenues, grants, and assets of the Pohnpei Government shall be immune from attachment, seizure, forced sale or any other form of judicial remedy thereof.

Source: S.L. No. 2L-224-91 §2-1, 1/13/92

§1-105. Powers of the Authority. — The Authority, in addition to the powers and duties elsewhere conferred and imposed, shall have the following powers and duties:

(1) It may generally carry on the business of acquiring, establishing, developing, extending, maintaining, operating, and managing ports, with all powers incident thereto.

(2) It shall be authorized and shall have exclusive jurisdiction to plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, and regulate the ports within the state; to protect, police, and to establish minimum building codes and regulations for its ports; and it shall be authorized to purchase, lease, and sell real or personal property, supplies, goods, materials, and commodities and to furnish and supply services and utilities incidental to the operation of its properties.

(3) The Authority, in operating any port owned, leased or controlled by it, may enter into contracts and leases, and make other arrangements with any person for terms not exceeding 25 years, granting the privilege of using or improving such port, or a portion thereof or space therein for any port-connected purposes; may confer, except as to fishing vessels, the privilege of supplying goods,

commodities, things, services or facilities or such ports or of making available services to be furnished by the Authority or its agents at such ports; PROVIDED, HOWEVER, that no lease or exclusive use or franchise of Authority properties, facilities, services or use rights may be executed or granted to another by the Authority except as allowed by regulations issued by the Authority which shall among other things provide for full public notice, selection, and disclosure of lessees and grantees; PROVIDED FURTHER that reasonable preference may be given to citizens of this state in the selection process. It shall determine the charges or rentals for the use of any property under its management and control, and the terms and conditions under which the property may be used. Charges shall be reasonable and uniform for the same class of service, and established with due regard to the value of the property and improvements used and the expense of the operation of the Authority. The Authority shall have and may enforce liens to enforce the payment of any such charges through appropriate judicial proceedings. The right to levy charges or rental for the use of the property under its management shall be exclusively that of the Authority and all such charges and rentals as well as other revenues of the Authority shall be and remain revenues of the Authority to be applied as herein set forth.

(4) The Authority may contract with any person, firm or corporation for the planning, supervision, financing, construction, operation, and maintenance of, or may itself construct or otherwise acquire, operate, and maintain all structures or improvements which, in its judgment, are useful, desirable or convenient in efficiently operating and maintaining its ports and facilities relating thereto. The Authority may also enter into agreements with the Pohnpei Government, the government of the Federated States of Micronesia, their departments and agencies, for the rendering of services performed by such departments and agencies to the ports controlled by the Authority including but not limited to the rendering of the police, fire fighting, maintenance, planning, and purchasing services.

(5) The Authority shall, upon the concurrence of the Governor and in accordance with the Administrative Procedures Act, Title 8 Chapter 1, as amended or superseded, and this chapter, have the power to adopt and enforce rules and regulations for the orderly, safe, and sanitary operation of its ports. Public safety officers of the state shall have the power to make arrests when necessary to prevent or abate the commission of any offense against any rule or regulation of the Authority in like manner as offenses against state law.

(6) The Authority shall have such free use of government pouch mail as is available to the government.

(7) The Authority, including but not limited to its franchise, capital, obligations including interest thereon, reserves, surpluses, loans, income, assets, and property of any kind shall be exempt from all licensing and taxation now or hereafter required or imposed by the Federated States of Micronesia or by the state, or any political subdivision or taxing authority of the Federated States of Micronesia, or of future entities created to take the place of the above to the maximum extent allowable by law. However, such exemption shall not apply to persons entering into independent contracts with the Authority.

(8) The Authority shall maintain such records, libraries, research materials, administrative or office materials and other property, real or personal, deemed to be necessary to enable the Authority to carry out the purposes of this chapter. Upon the request of the general manager, employees of the government of the state may be assigned by the government to assist the Authority to carry out activities of the Authority as set forth herein. The expenses thereof, if any, shall be reimbursed by the Authority.

(9) The fiscal year of the Authority shall correspond to that of the Pohnpei Government.

(10) The principal office of the Authority shall be in the state of Pohnpei.

(11) The Authority may employ agents and employees, and contract for the services of qualified managers, specialists or experts, as individuals or as organizations, to advise and assist the Authority and its employees. Except as provided by Section 3-8 of S.L. No. 2L-224-91 [*see note*], they shall be exempt from the application of the Public Service System Act, Title 9 Chapter 2. The Authority may set its own compensation, wage, and salary scales. The wage and salary scales shall be commensurate

with those paid by the state for positions requiring comparable education, training, and experience, except for the compensation of the general manager and other specialists for which no comparable state positions exist.

(12) The Authority is authorized to apply for, accept, and use, in the name of the Authority, any lands now controlled by other persons or entities that may be made available to the Pohnpei Government for the purposes of the Authority.

(13) The Authority shall procure insurance against liability or loss in connection with its operations hereunder in such amounts and from such insurers as it deems practicable.

(14) Budget:

(a) The Authority, on or before the March 15 each year, shall prepare and submit to the Governor a detailed statement of its proposed budget for the ensuing fiscal year.

(b) Within a period of 30 days after the submission of said proposed budget, the Governor shall notify the Authority of his approval or disapproval thereof. In the event said proposed budget is approved by the Governor, the same shall constitute the adopted budget of the Authority for the next fiscal year period.

(c) In the event the Governor notifies the Authority of his disapproval of the proposed budget, the Authority and the Governor or their representatives shall, within ten days after notification by the Governor, meet and discuss the proposed budget in an endeavor to agree upon a satisfactory budget.

(d) In the event a satisfactory agreement is not reached within ten days thereafter, the said proposed budget shall be submitted for consideration and decision to a board of arbiters, to consist of two members of the Authority, two members to be appointed by the Governor, and the fifth member to be appointed by the other members. The said board of arbiters shall thereafter submit such a budget as the majority of said board shall agree upon. The decision of the arbiters shall be final and the budget submitted shall constitute the adopted budget of the Authority for the ensuing fiscal year.

(e) No expenditures shall be made for a purpose not included in the adopted budget, and no debt, obligation or liability shall be incurred or created in any period for which the budget was adopted in excess of the amounts specified therein for each purpose named unless with the express approval of the Governor.

(15) An annual budget of the Authority may be amended at any time in the same manner as the adoption of the initial budget for that fiscal year as established for the Authority pursuant to Subsection (14) of this section; PROVIDED that such amendment may not be applied retroactively.

(16) Any other provision herein to the contrary notwithstanding, the written concurrence of the Governor shall first be secured by the Authority before entering into any contract extending for more than one year or which involves the payment or receipt of \$25,000 or more.

(17) The enumeration of specific powers and duties under this section shall not be deemed to be exclusive.

Source: S.L. No. 2L-224-91 §2-2, 1/13/92; S.L. No. 3L-35-93 §1, 7/8/93

Note: Subsection (11) reference "Except as provided by Section 3-8 of S.L. No. 2L-224-91," is read in the original act "Except as provided by Section 3-7 of this act," but this is found to be incorrect and should have referenced Section 3-8 which is entitled "Procurement, accounting, and personnel rules applicable during transition."

§1-106. Composition of the Board; removal; vacancies. — All powers vested in the Authority shall be exercised by the Board, which shall consist of seven members, who shall be appointed by the Governor with the advice and consent of the Pohnpei Legislature. 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. A Board member may only be removed for cause either by the Governor or by two-thirds vote of the remaining members of the Board. 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-224-91 §2-3, 1/13/92

§1-107. Meetings of the Board. — Within 15 days after the appointment of the initial Board at the call of the Governor, 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-224-91 §2-4, 1/13/92

§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. Members of the Board shall be compensated at the rates established by the Government Officers' Salary Act, Title 9 Chapter 4 Subchapter I, as amended or superseded, for members of Pohnpei Government policy boards and commissions, when actually attending meetings of the Board, except that those members who are employees of the Pohnpei Government and other cooperative entities shall instead receive their regular salaries while performing functions of the Board. All members shall also receive travel expenses and per diem at Pohnpei Government rates when those amounts would be payable to Pohnpei Government employees in the same circumstances.

Source: S.L. No. 2L-224-91 §2-5, 1/13/92

§1-109. General manager; duties. — The Board shall appoint a general manager who shall be the chief administrative officer to serve at the pleasure of the Board. The salary of the general manager shall be set by the Board. The general manager shall have full charge and control of the operation and maintenance of the ports controlled by the Authority, and of construction of any ports, facilities, and necessary works controlled by or required to be constructed or repaired by the Authority.

Source: S.L. No. 2L-224-91 §2-6, 1/13/92

§1-110. Powers of the general manager. — The general manager of the Authority shall have the following powers:

- (1) To ensure that all rules and regulations of the Authority are enforced;
- (2) To attend all meetings of the Board and to submit a general report on the affairs of the Authority;
- (3) To keep the Board advised of the needs of the Authority;
- (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 works and facilities operated by the Authority;
- (6) To devote his entire working time to the business of the Authority; to select and appoint the employees of the Authority, 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 Authority 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 Authority, 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 Authority on the last day thereof, which publication shall be made in the manner provided by the Board;
- (8) To perform such other and additional duties as the Board may require; and
- (9) To be an ex-officio, nonvoting member of the Board.

Source: S.L. No. 2L-224-91 §2-7, 1/13/92

§1-111. Comptroller; general counsel; duties of each. — The general manager shall, upon consultation with the Board, appoint a comptroller and a general counsel, both of whom shall serve and may be removed for good cause by the general manager and whose duties and compensation shall be fixed by the Authority. Such officers may be full-time employees of the Authority, shared with other 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 Authority and shall pay out such money only in accordance with the direction of the general manager and as provided in the annual budget of the Authority.

(2) The general counsel shall advise the Board and the general manager in all legal matters to which the Authority is a party or in which the Authority is legally interested and may represent the Authority before the Congress of the Federated States of Micronesia, the Pohnpei Legislature, and other domestic and foreign governmental and international organizations, entities, and bodies.

(3) The Authority may use the services of the attorneys for the Pohnpei Government to serve as attorneys for the Authority, or it may appoint such attorney or attorneys as it may deem necessary, and it shall provide payment of all legal services rendered which are not provided without compensation by the Pohnpei Government. All official documents, contracts, bonds, and other instruments in writing shall be approved as to form and legality by the general counsel for the Authority. Such approval may be conclusively evidenced by the signature of the general counsel thereon.

Source: S.L. No. 2L-224-91 §2-8, 1/13/92; S.L. No. 3L-109-95 §1, 11/2/95

§1-112. Procurement code. — Within 120 days following its organization, the Board, by regulation, shall provide for a comprehensive procurement code for the Authority which shall provide for cost-effective means to obtain services, supplies, and materials and construction contracts at competitive prices and which shall ensure all business entities within the state are accorded reasonable notice and fair opportunity to engage in business activities with the Authority. Among other things, the procurement code shall provide that:

(1) The purchase of all supplies and materials, and the construction of all works, when the expenditure exceeds \$5,000, shall be let, by contract, 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;

(2) 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. The Authority, as an instrumentality of the Pohnpei Government, shall utilize the services of the government purchasing agencies wherever practical;

(3) In case of major public calamity, or whenever it is in the interest of transportation safety or necessary to keep the ports operable by the Authority, the Board may determine that the public interest and necessity demand the immediate expenditure of funds to keep the port facilities open to traffic 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; and

(4) No member of the Board shall have any financial interest, direct or indirect, in any contract awarded by the Board. This provision shall not apply to contracts awarded to a corporation in which such member does not hold or maintain a managerial or professional position or relationship or in which he owns less than five percent (5%) of the entire capital stock. The procurement code shall establish procedures for the timely verification of this restriction by its general counsel.

Source: S.L. No. 2L-224-91 §2-9, 1/13/92

§1-113. Financial matters. — The Board shall adopt and maintain a system of accounting that is in accordance with generally accepted accounting principles applicable to ports.

(1) The Board shall 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 Authority. Copies of any such reports shall be furnished to the Governor and the Pohnpei Legislature.

(2) The Board shall report to the Governor and the Legislature on the affairs of the Authority. 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.

(3) There is hereby established a fund that shall be known as the “Pohnpei Port Authority Fund” which shall be maintained separate and apart from other funds of the state by the Authority and independent records and accounts shall be maintained in connection therewith.

(4) All monies received by the Authority from whatever source derived shall be deposited in said fund or in such other funds as may be established pursuant to this chapter, in eligible banks as defined by §1-114.

(5) All expenditures, except as otherwise provided by law, shall be made from the Pohnpei Port Authority fund.

Source: S.L. No. 2L-224-91 §2-10, 1/13/92

§1-114. Designation of depository for Authority. — The Board shall designate one or more banks licensed to do business within the state and eligible to receive the deposit of monies of the Treasury under the Financial Organization and Management Act, Title 11 Chapter 2, to serve as depository for the funds of the Authority. All funds of the Authority shall be deposited in such depository bank or banks. Before designating a depository bank or banks, the Board of Directors shall issue a notice stating the time and place, when and where the Board will meet for such purpose and invite banks in the state to submit application to be designated depositories. The term of service for depository shall be prescribed by the Board. Such notice shall be published at least one time in a newspaper of general circulation in the state or so placed on public broadcast as specified by the Board. At the time mentioned in the notice, the Board shall consider the applications and the management and conditions of the banks filing the same, and shall designate as depository or depositories the bank or banks which offer the most favorable terms and conditions for the handling of the funds of the Authority, and which the Board finds have proper management and are in a condition to warrant handling of Authority funds. Membership on the Board of an officer or director of a bank shall not disqualify such bank from being designated as depository; PROVIDED that such Board member shall state to the Board, in writing, his interest therein prior to a Board decision thereon and may not participate in Board discussions or votes thereon. If no applications are received by the time stated in the notice, the Board shall designate some bank or banks within the state upon such terms and conditions as it may find advantageous.

Source: S.L. No. 2L-224-91 §2-11, 1/13/92

§1-115. Employee rights and responsibilities. — Within 120 days following its organization, the Board shall establish rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees for the Authority. Employees of the Authority 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 Authority shall contribute to such programs on the basis of periodic billings as determined by the governing authorities thereof.

Source: S.L. No. 2L-224-91 §2-12, 1/13/92

§1-116. Employment preference. — The Board shall attempt to employ qualified citizens of this state, 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 travel within the state and between the state and outside locations.

Source: S.L. No. 2L-224-91 §2-13, 1/13/92

§1-117. Right to challenge Authority's rules or regulations. — Any person substantially interested or affected in his rights as to person or property by a rule or regulation adopted by the Authority may petition the Authority for a reconsideration of such rule or regulation, or for an amendment, modification or waiver thereof. Such petition shall set forth a clear statement of the facts and grounds upon which reconsideration, amendment, modification or waiver is sought. The Authority shall grant the petitioner a public hearing within 30 days after filing of said petition and the Authority's decision upon the petition shall be publicly released not more than 20 days after the final public hearing held upon the petition.

Source: S.L. No. 2L-224-91 §2-14, 1/13/92

§1-118. Publication of rules and regulations. — In addition to the notice of adoption of rules or regulations relative to civil penalties, a substantive statement shall be published, in condensed form, along with said notice, so as to afford an intelligent direction of the mind to the act forbidden by the civil rules or regulations; one notice may embrace any number of rules and regulations; said notice must advise that breach of the particular rules or regulations will subject the violator to a civil penalty as set by the Board in the adoption of the rules and regulations. Said notice must also state that the full text of the rules and regulations are on file at the principal office of the Authority, where the same may be read by any interested person during reasonable business hours.

Source: S.L. No. 2L-224-91 §2-15, 1/13/92

§1-119. No financial interests by members. — No member of the Board, officer or employee of the Authority, either for himself or as agent for anyone else, shall benefit, directly or indirectly, by reason of any sale, purchase, contract or transaction entered into by the Authority except where and to the extent permissible under this chapter. Any person not so excepted who shall directly or indirectly become interested in any such sale, purchase, contract or transaction while serving as a member of the Board, officer or employee of the Authority shall be guilty of a misdemeanor. Upon the filing of a complaint of such misdemeanor, the Board in its judgment may suspend the services of the charged person pending final determination thereof. Upon conviction thereof, he shall be punished by a fine not to exceed \$1,000, or by confinement in the state jail for not more than one year, or by both such fine and imprisonment. Immediately upon conviction of a violation thereof, said person shall forfeit his office or position.

Source: S.L. No. 2L-224-91 §2-16, 1/13/92

§1-120. Authority exempt from execution and bond requirements. — No execution shall be issued or levied by virtue of any judgment that may be recovered against the Authority, but the Board may provide for the payment of judgments from future revenues of the Authority after the final recovery of any judgment or by the payment out of any funds on hand and uncommitted. Lands, improvements, monies, or debts due the Authority, personal and real property, and assets of every description, belonging to the same, shall be exempted from execution and sale, and from involuntary liens; but the Board shall make provision by the levying of appropriate port user fees and charges or otherwise for the payment of any and all indebtedness owed by the Authority. No writ of garnishment or attachment shall issue against the Authority or the members of the Board thereof, or its officers or employees, to subject or cause any debts due or which may hereafter become due from the Authority to be paid to any person or corporation, or any claim or demand upon any funds in the hands of the Authority or any of its officers, nor shall the Authority or the Board or any of its officers or agents be required to answer any writ of garnishment. The Authority shall not be required to give any bond as security for costs, supersedeas or any security in any suit or action brought by or against it, or in proceedings to which it may be a party in any court for any action or nonaction of the Authority

occurring within the jurisdiction of this state, and the Authority shall have the remedies of appeal and writ of error to all courts without bond, supersedeas or security of any kind. No builder's, materialman's, contractor's, laborer's or mechanic's lien of any kind or character shall ever attach to or become a lien upon any property, real or personal, belonging to the Authority. No assignment of wages shall be binding upon or be recognized by the Board.

Source: S.L. No. 2L-224-91 §2-17, 1/13/92

§1-121. Authority may establish height and obstruction regulations. —

(1) The Board shall have the power and authority to promulgate, adopt, and enforce appropriate height regulations to prevent and remove hazards and obstructions which may interfere with the landing or take off of aircraft from any airport owned or operated by the Authority and regulations as to piers and other water obstructions in harbors and sea-lanes for seaports owned or operated by the Authority. To such end, all appropriate boards, commissions, and the Governor shall cooperate with the Authority in coordinating their actions, plans, and programs, and in enforcing such appropriate regulations.

(2) In addition to Subsection (1) of this section, the Authority shall have primary responsibility for the administration of the Transportation Zone Act, Chapter 2, as amended.

Source: S.L. No. 2L-224-91 §2-18, 1/13/92

§1-122. Government assistance to the Authority. — 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 Authority ports, and where permissible under law, the Pohnpei Government or any agency or political subdivision of such, may, if the chief executive of the respective political jurisdiction or political subdivision determines that such project will benefit and further the public purposes of the respective government and be of advantage to them:

(1) Dedicate, sell, convey or lease interests in real or personal properties, rights or privileges that it may have to the Authority;

(2) Incur expenses on behalf of the Authority subject to reimbursement under such terms and conditions as may be agreed upon with the Authority;

(3) Do any and all things necessary to aid or cooperate in the planning or carrying out the duties, powers, and obligations of the Authority;

(4) Lend or advance, grant or contribute funds to the Authority, and provide for or waive the repayment of any such funds loaned or advanced; and

(5) Contract with or furnish services to the Authority upon the terms and conditions as may be agreed upon.

Source: S.L. No. 2L-224-91 §2-19, 1/13/92

§1-123. Penalties. — Except as otherwise specifically provided in this chapter, any person who violates any provision of this chapter, or any valid rule or regulation promulgated hereunder, or who refuses or neglects to comply with any lawful order given by the general manager or his delegate concerning the operation of the ports under the control of the Authority, is punishable by a fine not to exceed \$1,000, or by imprisonment not to exceed three months, or both such fine and imprisonment.

(1) Any person who violates any provision of this chapter, or any rule, regulation or order issued hereunder, or any term, condition or limitation of any permit, certificate or operating authority issued by the Authority shall be subject to a civil penalty not to exceed \$1,000 for each violation. If the violation is a continuing one, each day the violation continues is a separate offense.

(2) Any civil penalty may be compromised by the general manager with the concurrence of the Board. The amount of the penalty, when finally determined or agreed upon, may be deducted from any sums owed by the Authority to the person or persons charged.

(3) If an aircraft or seacraft is involved in a violation and the violation is by the owner or person in command of the aircraft or seacraft, then liability for the penalty shall devolve upon the person who has assumed responsibility for the aircraft or seacraft while it is at any port operated by the Authority.

(4) Any person assessed a civil penalty may contest it. If, for any reason, the person so assessed fails to pay upon demand of the general manager, the civil penalty may be collected by the Authority through proceedings against the person in the courts of the state brought by the Attorney General or the general counsel for the Authority.

Source: S.L. No. 2L-224-91 §2-20, 1/13/92; S.L. No. 5L-14-00 §3-39, 10/1/00

§1-124. Enforcement of assessment of civil penalties. — *Enforcement by general manager.* The general manager shall enforce rules and regulations of the Authority governing the assessment of civil penalties.

(1) The rules and regulations shall provide for a reasonable time, not less than ten days, for due notice to the person assessed of the nature of the violation committed, and during which the person assessed may answer the assessment by denying liability, by offering a compromise to the general manager or by paying the assessment.

(2) The rules and regulations shall also provide notice that failure to pay the final civil penalty assessed by the time set in the rules and regulations may result in collection of the penalty through the courts of the state.

Source: S.L. No. 2L-224-91 §2-21, 1/13/92

§1-125. Authority may acquire port facilities. — The power of the Authority conferred by this chapter to purchase or otherwise acquire an existing port or ports shall expressly include the power and authority to purchase or acquire any publicly owned port facilities in fee or of any interest therein, or to enter into any lease agreement therefor, upon such terms and conditions of sale and purchase, or lease, as may be mutually agreeable to the Authority and the owner of any such facilities. The Pohnpei Public Lands Trust Board of Trustees is hereby authorized and directed to convey without cost all interests in port facilities owned or operated by them to the Authority, and any such conveyance may be consummated without the necessity of notice of intention to convey or the necessity of advertisement, or an election on the part of either party, any provision of the laws of the state to the contrary notwithstanding; PROVIDED, HOWEVER, that such conveyance shall retain the right of reversion to the Board of Trustees of any interest in real property conveyed to the Authority under this section and which is no longer used by the Authority for the purposes of this chapter; PROVIDED FURTHER that such real property shall revert to the Public Lands Trust when prescribed by statute.

Source: S.L. No. 2L-224-91 §2-22, 1/13/92; S.L. No. 6L-18-04 §7, 10/12/04

Note: S.L. No. 2L-224-91 §§3-1 – 3-10 & 3-14 transition provisions and 2L-224-91 §3-11A as inserted by 4L-09-96 §1, have been omitted.

§1-126. Intra-island seaport departure/user fees prohibited. — The Pohnpei Port Authority (“PPA”) shall not impose or collect any departure/user fees for passengers utilizing the facilities of seaports owned or controlled by the PPA for travel solely within the state of Pohnpei.

Source: S.L. No. 6L-88-07 §1, 1/9/07; S.L. No. 7L-58-10 §1, 1/12/10

CHAPTER 2 TRANSPORTATION ZONE

Section

2-101 Short title	2-109 Uses permitted in the zone
2-102 Purpose	2-110 Height limit established
2-103 Definitions	2-111 Nonconforming buildings
2-104 Interpretation	2-112 Nonconforming use of land
2-105 Designation of Dekehtik Island as a transportation zone	2-113 Enforcement of chapter
2-106 Zoning map: adopted	2-114 Building permit required
2-107 Zone boundaries	2-115 Lease or license approval required
2-108 Conformance of uses to zone regulations	2-116 Rules and regulations
	2-117 Permits and licenses previously issued

§2-101. Short title. — This chapter is known and may be cited as the “Transportation Zone Act of 1987.”

Source: S.L. No. 1L-198-87 §1, 12/2/87

§2-102. Purpose. — The purpose of this chapter is to establish certain minimum regulations for the protection and promotion of public health, safety, and the general welfare of the people of Pohnpei, which regulations are deemed necessary in order to encourage the most appropriate use of land, buildings, and structures in Dekehtik Island to assure adequate provisions for the public purposes for which it is intended.

Source: S.L. No. 1L-198-87 §2, 12/2/87

§2-103. Definitions. — For the purposes of this chapter, unless the context requires otherwise, the following definitions shall apply:

(1) “Accessory building” means a detached subordinate building located in the zone with a main building, the use of which is customarily secondary to that of the main building or to the use of the land.

(2) “Authority” means the Pohnpei Port Authority.

(3) “Building” means any structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

(4) “Nonconforming building” means a building or structure which does not conform to the regulations of this chapter and which lawfully existed at the time this chapter or the regulations, with which it does not conform, became effective.

(5) “Nonconforming use” means a use of a building or land which does not conform with this chapter or the regulations promulgated pursuant to this chapter and which lawfully existed at the time this chapter or the regulations, with which it does not conform, became effective.

(6) “Public automobile parking area” means an open area, other than a street or private automobile parking area, designed to be used for the parking of two or more automobiles.

(7) “Story” means that portion of a building between the surface of any floor and the surface of the floor or ceiling next above it.

(8) “Structure” means anything constructed or erected which requires location on the ground or attachment to something having a location on the ground.

(9) “Use” means the purpose for which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.

(10) “Zone” means transportation zone.

Source: S.L. No. 1L-198-87 §3, 12/2/87; S.L. No. 2L-224-91 §3-11(1), 1/13/92

§2-104. Interpretation. — This chapter shall be held to be the minimum requirements for the protection and promotion of public health, safety, and general welfare, and shall be construed in furtherance of these objectives.

Source: S.L. No. 1L-198-87 §4, 12/2/87

§2-105. Designation of Dekehtik Island as a transportation zone. — In order to carry out the purposes and provisions of this chapter, Dekehtik Island is hereby designated as a “transportation zone.” The aforesaid zone symbols and the boundaries of such zone shall be shown upon a map and made a part of this chapter, being designated as the “transportation zoning map.” Said map and all the notations, references and other information shown thereon are as much a part of this chapter as if the matters and information set forth by said map were fully described herein.

Source: S.L. No. 1L-198-87 §5, 12/2/87

§2-106. Zoning map: adopted. — The map entitled “zoning map,” as identified by Ponape Drawing Number, “Dr. No. 7053/71, overall area: sq. ft. 18,534,494.23,” is hereby adopted as the zoning map for the purposes of this chapter. Such map and all the notations, references, and other information shown shall be as much a part of this chapter as if the matters and information set forth by said map were all fully described herein.

Source: S.L. No. 1L-198-87 §6, 12/2/87

§2-107. Zone boundaries. — The zone boundaries shall be determined by the use of the scale appearing on the “zoning map,” unless otherwise specifically shown by dimension; PROVIDED, HOWEVER, that, in any case where there is uncertainty as to the intended location of a zone boundary, the Department of Land and Natural Resources shall have the power and duty to determine its intended location.

Source: S.L. No. 1L-198-87 §7, 12/2/87

§2-108. Conformance of uses to zone regulations. — No building or structure shall be erected and maintained, nor any existing building or structure be altered, enlarged or moved, and maintained, nor any building or land be used for any purpose, except for the uses permitted in the zone in which such building or land is located, as hereafter provided in this chapter.

Source: S.L. No. 1L-198-87 §8, 12/2/87

§2-109. Uses permitted in the zone. — Pursuant to this chapter, uses permitted in the transportation zone shall be as follows:

- (1) Any activities and complementary services relating to the promotion and development of sea and air transportation;
- (2) An area for warehouses and cold storage plants;
- (3) Air and sea terminals and facilities and accessory buildings or structures;
- (4) Public automobile parking areas;
- (5) Plants, offices, and attendant facilities for the receiving, storing, processing, packaging, and marketing of fish, other marine resources and agricultural food products and produce;
- (6) Uses customarily associated with any of the above-listed uses, and accessory buildings and structures; and
- (7) Major utilities.

Source: S.L. No. 1L-198-87 §9, 12/2/87; S.L. No. 2L-78-88 §1, 12/12/88

§2-110. Height limit established. — No building or structure shall be erected, nor shall any existing building or structure be altered, enlarged or moved to exceed a height limit of two stories or 30 feet;

PROVIDED, HOWEVER, that the following structures or equipment may be erected and maintained above the permitted height limit: aerials, flagpoles, steeples, towers, fire or parapet walls, water or fuel tanks or other similar structures.

Source: S.L. No. 1L-198-87 §10, 12/2/87

§2-111. Nonconforming buildings. — A nonconforming building may be maintained and repaired, except as otherwise provided in this chapter. A building or structure nonconforming as to this chapter shall not be added to or enlarged in any manner, unless said building or structure, including such additions and enlargements, is made to conform to all this chapter. Any nonconforming use of a building or structure existing on the effective date of this chapter [*December 2, 1987*] may be continued. The use of a nonconforming building may be changed to conform with any use which is permitted in the zone.

Source: S.L. No. 1L-198-87 §11, 12/2/87

§2-112. Nonconforming use of land. — Any uses or leases of land within the zone existing on the effective date of this chapter [*December 2, 1987*] may be continued; PROVIDED that such lease for any nonconforming use may not be extended or renewed upon its expiration.

Source: S.L. No. 1L-198-87 §12, 12/2/87

§2-113. Enforcement of chapter. — The Authority shall have the power and duty to enforce this chapter.

Source: S.L. No. 1L-198-87 §13, 12/2/87; S.L. No. 2L-224-91 §3-11(2), 1/13/92

§2-114. Building permit required. — Before commencing the construction of a new building or structure, or the alteration, enlargement or moving of an existing building or structure within the boundaries of the zone, a permit authorizing such work shall first be obtained from the Authority. No building permit shall be issued by the Authority for the erection, alteration, enlargement or use of any building or structure or part thereof, or for the use of any land, which is not in accordance with this chapter. Any building permit issued in conflict with this chapter shall be null and void.

Source: S.L. No. 1L-198-87 §14, 12/2/87; S.L. No. 2L-224-91 §3-11(2), 1/13/92

§2-115. Lease or license approval required. — No lease or license pertaining to the use of land or buildings shall be issued by any department, officer or employee of the Government of Pohnpei, vested with such duty, unless the application for such lease or license has been approved by the Authority. Any lease or license issued in conflict with this chapter shall be null and void.

Source: S.L. No. 1L-198-87 §15, 12/2/87; S.L. No. 2L-224-91 §3-11(2), 1/13/92

§2-116. Rules and regulations. — The Authority shall establish and promulgate rules and regulations implementing this chapter.

Source: S.L. No. 1L-198-87 §16, 12/2/87; S.L. No. 2L-224-91 §3-11(2), 1/13/92

§2-117. Permits and licenses previously issued. — The Authority shall honor otherwise valid permits and licenses issued by the Director of the Department of Land and Natural Resources during such time as he was authorized to issue such permits and licenses under this chapter for the duration of the period and for the purposes for which such permits and licenses were issued.

Source: S.L. No. 1L-198-87 §18, 12/2/87

Note: §18 was inserted by S.L. No. 2L-224-91 §3-11(3), 1/13/92.

SEA & AIR TRANSPORTATION

CHAPTER 3 AIRPORT PASSENGER FACILITY FEES

Section

3-101 Pohnpei Port Authority may impose and collect passenger facility fee

§3-101. Pohnpei Port Authority may impose and collect passenger facility fee. — In addition to such powers as are vested in the Pohnpei Port Authority, (PPA), pursuant to §1-105, the PPA shall have the authority to impose and collect passenger facility fees for the privilege of passengers utilizing the facilities of airports owned or controlled by the PPA; PROVIDED that the imposition of such fees shall not exceed the maximum passenger utilization fee allowed by the United States of America Federal Aviation Administration for collections by the Guam Airport Authority with respect to passengers utilizing the facilities owned or controlled by that Authority; PROVIDED FURTHER that revenues earned by PPA from the imposition of the passenger utilization fees may only be expended for the operations and improvement of the airports owned or controlled by the PPA.

Source: S.L. No. 4L-111-99 §1, 10/1/99

Notes: 1. S.L. No. 4L-111-99 §2 repealed S.L. No. 2L-73-88 in its entirety. 2. S.L. No. 4L-111-99 §3 superseded Title 21 of the Trust Territory Code in its entirety. 3. S.L. No. 4L-111-99 §4 temporary provision has been omitted.

CHAPTERS 4 & 5 [RESERVED]

SEA & AIR TRANSPORTATION

CHAPTER 6 WATER TRAFFIC CONTROLS

SUBCHAPTER I REEF MARKER CONSTRUCTION PROGRAM

Section

6-101 Establishment

6-102 Construction

6-103 Administration

SUBCHAPTER II REEF MARKER STANDARDS AND OFFENSES

6-104 Standards

6-105 Interference with markers prohibited

6-106 Penalties

SUBCHAPTER I REEF MARKER CONSTRUCTION PROGRAM

§6-101. Establishment. — A fund shall be established in the Comprehensive Budget Act to establish and maintain reef markers in Pohnpei State.

Source: PDC §5-100(a), 3/71

§6-102 Construction. — All reef markers to be constructed under the fund established by §6-101 shall be concrete and may be painted or marked with reflectors. The construction of and erection at the designated points of these markers shall be done by any individual or group who offers the lowest cost of work.

Source: PDC §5-100(b), 3/71

§6-103 Administration. — The Governor and/or his duly authorized representative shall designate the points for these markers starting from the state center to all the other areas in Pohnpei State that require reef markers. The administration, supervision, and expenditure of the aforesaid fund shall be the responsibility of the Governor and/or his duly designated representative.

Source: PDC §5-100(c), 3/71

SUBCHAPTER II REEF MARKER STANDARDS AND OFFENSES

§6-104. Standards. — All reef markers that have been or will be put on the reef shall conform to the following provisions as official markers:

- (1) The square reef markers shall indicate the shore side reef;
- (2) The diamond markers shall indicate the ocean side reef;
- (3) The triangular markers shall indicate small coral heads which are passable on either side;
- (4) In marking channels to the shore, markers painted red shall indicate the right hand reef, and markers painted black shall indicate the left hand reef; and
- (5) All reef markers shall extend not less than four (4) feet above the high-water mark.

Source: PDC §5-101(a), 3/71

§6-105. Interference with markers prohibited. — It shall be unlawful to remove, change, destroy or moor a boat, canoe or any object to any reef marker or other aid-to-navigation established by the United States of America Coast Guard, the Federated States of Micronesia Government, the Pohnpei Government or the various local governments of Pohnpei.

Source: PDC §5-101(b), 3/71

§6-106. Penalties. — Any person who willfully violates §6-105 shall, upon conviction thereof, be imprisoned for a period not to exceed three months, or fined not more than \$50, or both such fine and imprisonment.

Source: PDC §5-101(c), 3/71

CHAPTER 7 WATERCRAFT

Section

7-101 Watercraft operation: culverts, bridges, tunnels	7-104 Obstruction of channels
7-102 Channels: keeping to the right	7-105 Penalties
7-103 Narrow channels	7-106 Watercraft operation: passing

§7-101. Watercraft operation: culverts, bridges, tunnels. — Any person who operates any motorboat, motor canoe or other watercraft propelled by motor shall proceed slowly and exercise reasonable care and caution when operating within 60 feet of the culvert beneath the causeway to Dekehtik Island and any other culvert, bridge, and tunnel in Pohnpei State. Any person who operates any motorboat, motor canoe or other watercraft propelled by motor in violation of this section shall, upon conviction thereof, be imprisoned for a period of not more than six months, or fined not more than \$100, or both such fine and imprisonment.

Source: S.L. No. 2L-222-71 §1, 6/16/71

§7-102. Channels: keeping to the right. — Any boat, canoe or self-propelled craft, upon entering or passing through a channel shall keep to the right side of the channel at all times when safe and practicable to do so. However, during low tide or when in a swift current the boat, canoe or craft running at the right side of the channel shall have the right to proceed.

Source: PDC §5-102(a), 3/71

§7-103. Narrow channels. — In channels of 60 feet or less in width, the operator of a powered boat, canoe or craft shall:

- (1) Proceed through the channel at slow speed;
- (2) Not overtake and pass any boat, canoe or craft proceeding in the same direction, except in instances where such boat, canoe or craft is used for the purpose of carrying a person to a dispensary or hospital for emergency medical treatment, for emergency police or public health purposes, or for dispatch of emergency messages; PROVIDED that in these instances the operator of the powered boat, canoe or craft shall make known his intention to overtake and pass to the operator of the boat, canoe or craft being overtaken and passed, and passing shall be done with care in order to prevent swamping or causing difficulty to the other boat; and
- (3) Not enter from a side channel into a main channel unless there is no boat, canoe or craft in the passage within 50 feet of either side of the entrance to the main channel.

Source: PDC §5-102(b), 3/71

§7-104. Obstruction of channels. — It shall be unlawful to tie, moor or anchor a boat, canoe or other craft or logs in the middle of any channel of Pohnpei State. It shall be unlawful to put up or cause to be put branches of trees, nets, rocks or any other obstacle in the channel or leave such obstacles as are no longer in use in waterways of Pohnpei State which interfere with free and safe passage.

Source: PDC §5-102(c), 3/71

§7-105. Penalties. — Any person who willfully violates any of §§7-101 through 7-104 shall, upon conviction thereof, be imprisoned for a period not to exceed six months, or fined not more than \$100, or both such fine and imprisonment, and shall be responsible for all expenses as a result of injury to

people and property occurring from the operation of his boat, canoe or craft in violation of §§7-102 through 7-105.

Source: PDC §5-102(d), 3/71

§7-106. Watercraft operation: passing. — Every motorboat, motor canoe, and other watercraft driven by a motor, when passing in the waters of Pohnpei State another watercraft of less than 25 feet in length going in any direction shall slow down and exercise reasonable care so that no hazard is created to the other craft or its passengers. Any person who operates a motorboat, motor canoe or other watercraft driven by a motor in violation of this section shall, upon conviction thereof, be imprisoned for a period of not more than six months, or fined not more than \$100, or both such fine and imprisonment, and in addition shall pay restitution to any person who suffers loss or injury primarily as a result of the violation.

Source: PDC §5-103, 3/71

CHAPTER 8 AIRPORT RESTRICTED ACCESS

Section

8-101 Restricted areas of Pohnpei International Airport

§8-101. Restricted areas of Pohnpei International Airport. —

(1) It shall be unlawful for any person without lawful authority to enter or remain upon any taxiway, airstrip or other facilities at the Pohnpei International Airport upon which the Governor has caused to be erected signs in both English and Pohnpeian clearly visible to the general public indicating that such area is restricted from public access pursuant to this section, and indicating that persons without lawful authority are not permitted to enter or remain upon the same. This subsection shall not apply to the terminal building where the public is invited.

(2) Any person who violates this section shall, upon conviction thereof, be punishable by imprisonment for a period not to exceed six months, or fined not more than \$100, or both such fine and imprisonment.

Source: D.L. No. 4L-118-77 §§1 & 2, 11/16/77

Note: D.L. No. 4L-118-77 §3, 11/16/77 repealed PDC §5-4, 3/71.

CHAPTER 9 [RESERVED]

SEA & AIR TRANSPORTATION

CHAPTER 10 TRANSPORTATION FINANCES

Section

10-101 Establishment of outer island airfield fund

10-102 Authorization for appropriation; administration

§10-101. Establishment of outer island airfield fund. — There is hereby established the Pohnpei State outer island airfield fund for the purpose of assisting in financing the costs of design, construction, maintenance, and repair of airfields, and necessary and related buildings on the outer islands of Pohnpei State.

Source: D.L. No. 4L-88-77 §1, 7/1/77

§10-102. Authorization for appropriation; administration. — There is hereby authorized for appropriation from the general fund of Pohnpei or such fund into which capital account monies of the Compact of Free Association are deposited a sum or sums to be determined annually in the Comprehensive Budget Act to provide operating capital for the fund established by §10-101. The sums herein authorized for appropriation shall be administered and expended by the Governor upon consultation with the chief executives of the outer island local governments of Pohnpei solely for the purpose specified in §10-101; **PROVIDED, HOWEVER**, that no funds from the sums authorized herein shall be obligated for construction for any airfield without prior submission of engineering plans as certified by a recognized expert. The Governor shall report to the Pohnpei Legislature within 15 days after the closing day of the previous legislature fiscal year relating to all matters concerning the administration and expenditure of the sum herein authorized for appropriation. The sum herein authorized for appropriation shall remain available until fully expended.

Source: D.L. No. 4L-88-77 §2, 7/1/77; D.L. No. 4L-136-78 §9, 3/27/78; S.L. No. 1L-136-87 §1, 7/14/87

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