

S.L. No. 10L-59-21

AN ACT

Amending and adding sections to Chapter 1 of Title 5 of the Pohnpei Code relating to the Office of the Public Auditor; and for other purposes.

BE IT ENACTED BY THE POHNPEI LEGISLATURE:

1 Section 1. Section 1-101 of Title 5 of the Pohnpei Code is amended
2 to read as follows:

3 “§1-101. Definitions. As used in this chapter of the Code:

4 (1) “Auditing standards” means generally accepted
5 government auditing standards in the United States or
6 international auditing standards for public sector audits.

7 (2) “Auditor” means the Public Auditor for the state of
8 Pohnpei as provided in Section 8 of Article 11 of the Pohnpei
9 Constitution.

10 (3) “Departments, offices, and agencies” means and
11 includes all legislative and executive departments, boards,
12 commissions, bureaus, offices, agencies, and all independent
13 commissions and other establishments of the state government,
14 all quasi-public institutions, and all courts, which are supported
15 in whole or in part by, or which handle, state or public funds.

16 (4) “Document” means any record of information, including:

17 (a) Anything on which there is writing or any image;

18 (b) Anything on which there is any mark, figure,
19 symbol, or perforation having a meaning for a person qualified
20 to interpret it; and

21 (c) Anything from which any sound, image or
22 writing can be reproduced, with or without other aids; and
23 includes documents or information created, recorded, or stored
24 electronically by any means whatsoever, and any information
25 derived from those documents or that information.

1 (5) "Political subdivision" means and includes all local
2 jurisdictions of the state insofar as they are supported by or
3 handle state or public funds.

4 (6) "State or public funds" means and includes all monies
5 from whatever source used for support of the activities, projects
6 or programs of the state government, departments, offices,
7 agencies or any political subdivision thereof, or the monies of
8 any nonprofit organization within the state whose funding
9 comes primarily from Pohnpei State or United States of
10 America appropriations, grants or any other grantor agencies."

11 Section 2. Chapter 1 of Title 5 of the Pohnpei Code is amended by
12 adding a new Section 1-101A to read as follows:

13 "§1-101A. Office of the Public Auditor.

14 (1) There is an Office of the Public Auditor for the state
15 of Pohnpei, which is headed by the Auditor. The Office of the
16 Public Auditor exists independently of the administrative
17 control of the Government of Pohnpei.

18 (2) The Auditor is responsible for managing the
19 appropriation provided by law for the conduct of his office, and for
20 that purpose may establish such organizational divisions, including
21 a Compliance Investigation Division, as the Auditor considers
22 appropriate and prescribe their duties and responsibilities."

23 Section 3. Section 1-104 of Title 5 of the Pohnpei Code is amended
24 to read as follows:

25 "§1-104. Auditor: duties.

1 (1) The Auditor shall conduct financial audits of all
2 transactions and of all books and accounts kept by or for all
3 departments, offices, and agencies of the State Government and
4 its political subdivisions and all projects, programs, activities or
5 organizations within the state receiving public funds.

6 (2) The Auditor may at any time conduct financial audits
7 and all other examinations or other reviews to discover
8 evidence of any unauthorized, illegal, irregular, improper or
9 unsafe handling or expenditure of state funds or other improper
10 practice of financial administration.

11 (3) A financial audit shall be conducted at least once in
12 every two years after the close of a fiscal year, and at such
13 other time or times during the fiscal year as the Auditor shall
14 deem necessary or as may be requested by the Legislature or
15 Governor in accordance with generally accepted auditing
16 standards for the purpose of rendering an opinion as to the
17 fairness of the financial statements presented by the respective
18 accounting officers and of determining the validity of
19 expenditures of state or public funds.

20 (4) An audit shall be conducted in accordance with the
21 auditing standards, to the extent the Auditor determines the
22 standards to be both relevant and practicably applicable to the
23 audit.

24 (5) In carrying out his duties under this section, the
25 Auditor shall be independent of administrative and political

1 control, direction, and influence. Neither the Auditor nor any
2 employee of the Auditor acting under the Auditor's authority
3 shall be subject to personal civil or criminal liability for any act
4 or omission in carrying out his or her duties in good faith."

5 Section 4. Chapter 1 of Title 5 of the Pohnpei Code is amended by
6 adding a new Section 1-104A to read as follows:

7 "§1-104A. Types of audit.

8 (1) The Auditor may perform:

9 (a) *Financial audits and compliance audits.* This
10 type of audit determines whether the financial statements of an
11 audited entity present fairly the financial position and results of
12 financial operations in accordance with generally accepted
13 accounting principles and whether the entity has complied with
14 the laws and regulations that may have a material effect upon
15 the financial statements.

16 (b) *Performance audits.* This type of audit
17 determines whether an entity is managing and utilizing its
18 resources effectively, efficiently, and economically, the cause
19 of ineffectiveness, inefficiencies or uneconomical practices,
20 and whether the entity has complied with laws and regulations
21 concerning effectiveness, efficiency, and economy.

22 (c) *Program results.* This type of audit determines
23 whether the desired results or benefits established by the
24 Legislature or other authorizing body are being achieved and
25 whether the program administrator has considered alternatives

1 that might yield desired results at a lower cost.

2 (d) *Attestation engagements.* This type of
3 engagement can cover a broad range of financial or non-
4 financial objectives and can be part of an audit or a separate
5 engagement.

6 (2) Any given audit or review may include one or more
7 of the objectives in Subsection (1) of this section of the Code
8 in the reasonable exercise of the Auditor's discretion."

9 Section 5. Chapter 1 of Title 5 of the Pohnpei Code is amended by
10 adding a new Section 1-104B to read as follows:

11 "§1-104B. Inspections and evaluations. The Auditor may at
12 any time perform an inspection or evaluation of the design,
13 implementation, or results of the operations, programs, or
14 policies of the State Government and any departments, offices
15 and agencies. An inspection or evaluation shall be performed
16 in conformity with standards issued by the Council of the
17 Inspectors General on Integrity and Efficiency in the United
18 States, to the extent the Auditor determines the standards to be
19 practicably applicable."

20 Section 6. Section 1-107 of Title 5 of the Pohnpei Code is amended
21 to read as follows:

22 "§1-107. Follow up of audit irregularities.

23 (1) In case the Auditor at any time during, or as a result
24 of, an audit, an examination, or an inspection or evaluation,
25 discovers evidence of any unauthorized, illegal, irregular,

1 improper or unsafe handling or expenditure of Pohnpei funds,
2 or other improper practice of financial administration is
3 contemplated but not consummated, in either case, he shall
4 forthwith notify the office being audited, the Speaker of the
5 Legislature, the Governor, the Attorney General, the chief
6 executive of the local government, and the presiding officer of
7 the local council of the political subdivision concerned.
8 Nothing in this subsection prevents the Auditor from also
9 initiating a compliance investigation in relation to any
10 irregularity discovered.

11 (2) Upon receipt of the audit, examination, inspection or
12 evaluation report, the office being audited, examined, inspected
13 or evaluated shall respond to said report in writing, to the
14 Auditor and each of the officials listed in Subsection (1) of this
15 section, by indicating the action or actions immediately taken
16 to correct such deficiencies cited as well as stated action or
17 actions to be taken on deficiencies not immediately resolved.
18 Thereafter, the office shall file a monthly report with the
19 Auditor indicating its progress in clearing deficiencies until
20 such time as it can report that all deficiencies have been
21 cleared, which period shall not exceed one year.

22 (3) The Auditor shall in his annual report to the
23 Legislature make specific recommendations for the avoidance
24 of irregularities in the future. The report may refer to any office
25 which has, in the Auditor's opinion, failed without reasonable

1 justification to clear deficiencies or to comply with its
2 obligations under Subsection (2) of this section of the Code.”

3 Section 7. Chapter 1 of Title 5 of the Pohnpei Code is amended by
4 adding a new Section 1-107A to read as follows:

5 “§1-107A. Compliance investigations.

6 (1) The Auditor, when he receives an allegation of non-
7 compliance in public office, misuse of public resources,
8 financial crime, financial corruption, or any other breach of the
9 law or regulations involving, in whole or in part, public funds
10 of the State Government, may authorize the Compliance
11 Investigation Division to conduct a preliminary inquiry to
12 ascertain whether there is a reasonable cause to warrant an
13 investigation into the allegation.

14 (2) The Auditor, when he as a part of his duties and has a
15 reasonable cause to suspect non-compliance in public office,
16 misuse of public resources, financial crime, financial
17 corruption, or any other breach of the law or regulations
18 involving, in whole or in part, public funds of the State
19 Government, may authorize the Compliance Investigation
20 Division to investigate such matters.

21 (3) The Compliance Investigation Division, when
22 conducting a preliminary inquiry or an investigation, shall
23 liaise with the Attorney General during the course of
24 conducting such preliminary inquiry or investigation and
25 advise the Attorney General of the results of such a preliminary

1 inquiry or investigation.”

2 Section 8. Section 1-108 of Title 5 of the Pohnpei Code is amended
3 to read as follows:

4 “§1-108. Appropriate prosecution. After receiving the final
5 report of the Auditor of any audit, examination, or compliance
6 investigation, including the responses of the entity audited or any
7 affected individual, the Attorney General may initiate an
8 investigation or undertake such further investigation as may be
9 necessary and, if appropriate, prosecute any violation of the law.”

10 Section 9. Section 1-109 of Title 5 of the Pohnpei Code is amended
11 to read as follows:

12 “§1-109. Employees and independent contractors, and
13 organization of duties. In the performance of his duties, the
14 Auditor may employ the services of one or more certified
15 public accountants or accounting firms, and such other auditing
16 staff, assistants and clerical workers as may be necessary;
17 PROVIDED the cost thereof shall not exceed such sums as
18 may be available out of the appropriation provided by law for
19 the conduct of his office; and PROVIDED FURTHER, that
20 such accountants, firms, and assistants are entirely independent
21 of the departments, offices, and agencies of the state and its
22 political subdivisions whose affairs are subject to audit by the
23 Auditor. In the establishment of the salary of each employee,
24 the Auditor shall consult with the Division of Personnel, Labor
25 and Manpower Development. The Auditor and his full-time

1 staff shall be entitled to participate in State Government
2 employee benefit program privileges.”

3 Section 10. This act shall take effect upon its approval by the
4 Governor, or upon its becoming law without such approval.

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6 PASSED BY THE POHNPEI LEGISLATURE ON THE 3RD DAY
7 OF SEPTEMBER, 2021.

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Speaker, Pohnpei Legislature

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Attest: 
Legislative Clerk

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Approved: 
Governor, Pohnpei


Date

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