EIGHTH POHNPEI LEGISLATURE
THIRD SPECIAL SESSION, 2012

L.B. No. 42-12
L.D.1
L.D.2
L.D.3
L.D.4

S.L. NO. 61-09-12

AN ACT

To enable the reform of power generation and distribution in Pohnpei; amending various provisions of Title 34 and Title 11 of the Pohnpei Code with respect thereto; providing for power purchase agreements between Pohnpei Utilities Corporation (PUC) and large-scale generators of electrical power; PROVIDED further that not later than January 1, 2014, the Board of Directors of the Pohnpei Utilities Corporation shall develop and present to the Governor and the Pohnpei Legislature a study on the feasibility of outsourcing of other aspects of the production of utilities services provided by PUC to the general public; enabling PUC to enter into partnerships, joint ventures and other creative financing arrangements when authorized by amendments to Chapter 1 of Title 34 of the Code; providing for feed-in tariffs for small-scale renewable energy generators; providing for independent reviews of proposed new power rates; and for other purposes.

BE IT ENACTED BY THE POHNPEI LEGISLATURE:

1. Section 1. Purpose and intent. The Legislature finds that power generation in Pohnpei is facing a severe crisis that requires unprecedented action in order to prevent severe disruption of power shortages to the people of Pohnpei. It is the intent of this legislation to enable swift and vigorous action by:

   1. Eliminating the Board of Residential Properties and Public Utilities and replacing it with a new independent rate review process to ensure that the setting of new power rates are in line with international best practices;

   2. Providing for staggered membership on the Board of Directors of the Pohnpei Utilities Corporation for continuity in the leadership of the Corporation;

   3. Enabling the Pohnpei Utilities Corporation to outsource the generation of power;

   4. Enabling the Pohnpei Utilities Corporation to enter into partnerships, joint ventures and other creative financing arrangements that will encourage and permit new capital investment in power generation infrastructure when authorized by amendment to Chapter 1 of Title 34 of the Code; and

   5. Enabling the consumers of electricity in Pohnpei, such as homeowners and small businesses, to lower their cash power demands
through the installation of renewable energy equipment that can feed
electricity into PUC's distribution grid.

Section 2. Section 1-102 of Title 34 of the Pohnpei Code is hereby
amended to read as follows:

"§1-102. Responsibilities, duties, and powers of the
Corporation. The Corporation is vested with the following
powers, duties and responsibilities:

(1) To provide electrical power, piped and
bottled water and sewage services, hereinafter referred to as
"public utilities services," to the people of Pohnpei
through the operation of public utilities systems which meet or
exceed health, quality, and safety standards established by state
law or regulations; PROVIDED that public utilities systems
shall not include water systems operated by the local
governments of this state unless such a system is transferred to
the Corporation on terms mutually agreed upon by the
Corporation and the respective local government in which the
water system is situated; PROVIDED FURTHER that the
Corporation shall not engage in the sale of bottled water for
consumption or resale within the state of Pohnpei;

(2) To operate and manage the Pohnpei public
utilities systems on the basis of commercially accepted
practices, treating all users of the Corporation's services on
equitable terms in accordance with its published fees, and
requiring all users to pay for services rendered; PROVIDED
that management of Pohnpei public utility systems on the basis
of commercially accepted practices may include outsourcing
generation of power to independent power producers pursuant
to power purchase agreements as provided in 34 PC 1-112A,
including entering into management or lease agreements for
existing facilities; PROVIDED FURTHER that management of
Pohnpei Public Utilities system on the basis of commercially
accepted practices may also include entering into joint ventures
or partnerships with private or government corporations in
accordance with internationally accepted best practices for the
operation and management of public utilities systems when so
authorized by amendments to this chapter; PROVIDED
FURTHER that not later than January 1, 2014, the Board of
Directors of the Pohnpei Utilities Corporations shall develop
and present to the Governor and the Pohnpei Legislature a study
on the feasibility of outsourcing of other aspects of the
production of utilities services provided by PUC to the general
public;
(3) To expand and improve upon services offered
to the public, and where practicable and necessary, construct
and operate new facilities in densely populated or remote areas
that are now beyond ready access to existing public services;
(4) To publish and implement a structure of rates
for services and products rendered or sold by the Corporation.
Such rates are to be determined by the Board of Directors
following such independent reviews as are required by state law.
Such rates shall be calculated to ensure that, to the extent
practicable, adequate and equitable charges are imposed for
services and that the fee structure promotes increased use of
public utilities services and is sufficient to promote capital
investment; PROVIDED that nothing in this subsection shall
prevent the Corporation from using subsidies received from
governmental, international or private sources to reduce the
overall costs charged to users of public utilities services;
PROVIDED FURTHER that electrical power services, herein
referred to as “Class A services,” shall be charged and
accounted for separately from water and sewage services, herein
referred to as “Class B services,” and that no class of utilities
services provided to a customer may be suspended or cancelled
due to nonpayment of a rate or charge imposed by the
Corporation for the provision of any other class of utilities
services distributed by the Corporation or any service related to
that other class of utilities services;
(5) To acquire and maintain from the revenues
and grants received by the Corporation a program of liability
insurance on all personnel, facilities, and equipment controlled
by the Corporation; PROVIDED that if such insurance is not
available or is prohibitively expensive, as determined by the
Board of Directors of the Corporation, then the Corporation
shall establish and maintain a special fund to protect personnel,
facilities, and equipment not covered by insurance and to satisfy judgments or settlements on tort claims brought against the Corporation for its operations under this chapter;

(6) To invest all surplus revenues of the Corporation in the expansion and improvement of public utilities services in Pohnpei;

(7) To acquire land for public purposes subject to Article 12 of the Pohnpei Constitution and applicable law;

(8) To obtain and operate bottling machinery and water purification systems and engage in the marketing and sale of potable water to destinations outside of the state of Pohnpei; PROVIDED that any revenues derived therefrom above the costs of exporting the potable water shall be devoted to subsidizing the rates charged for piped water and sanitation services provided by the Corporation to the residents of Pohnpei; and

(9) To enter on any private or public land, house or building to which public utilities services have been, are or will be supplied, or through which utilities equipment, pipes or lines are, or will be located in order:

(a) To survey, take readings, make installations or fittings, remove meters or other instruments for measuring the quantity of public utilities services supplied;

(b) To dig out and replace or redistribute at the instruction of the landowner earth, stone, soil, sand, and
gravel whatsoever for the construction, maintenance or
alteration of any equipment, pipe or line, or any part thereof;
(c) To cut and remove any tree or any
branch of a tree growing on such lands which may in any way
affect or interfere with the operation of public utilities
equipment;
(d) To open or break up any road, subject
to such laws, regulations, and required agreements as may be
imposed on persons engaged in construction, or otherwise
obstructing public roadways;
(e) To erect and maintain posts, staywires,
street lights, poles or pillars, or pipes in, upon or under any land;
or
(f) For any other purpose in connection
with the continued provision of public utilities services as may
be agreed upon, or in the case of difference, to be determined by
arbitration as set forth by rules established under this chapter.”
Section 3. Section 1-106 of Title 34 of the Pohnpei Code is
hereby amended to read as follows:
§1-106. Composition of the Board; removal; vacancies.
(1) All powers vested in the Corporation shall be
exercised by the Board, which shall consist of seven members,
called directors, who shall be appointed by the Governor with
the advice and consent of the Pohnpei Legislature.
(2) The terms of all seven members of the Board
holding office on the effective date of the most recent amendment to this section shall all expire on the first Monday in November, 2012; PROVIDED that members shall continue to serve after the first Monday in November, 2012 until their successors have been appointed or reappointed, but no longer than 30 days following said date. In appointing or reappointing their successors to take office on the first Monday in November, 2012, the Governor shall forward two nominees to the Pohnpei Legislature to serve for a term that will expire on the first Monday in November, 2013, two nominees to the Pohnpei Legislature to serve for a term that will expire on the first Monday in November, 2014, two nominees to the Pohnpei Legislature to serve for a term that will expire on the first Monday in November, 2015, and one nominee to the Pohnpei Legislature to serve for a term that will expire on the first Monday in November, 2016. Thereafter, 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, but no longer than 30 days following the expiration of their respective terms.

(3) Nominations to fill the seats of Board members whose terms will be expiring each year shall be transmitted by the Governor to the Pohnpei Legislature not more than 60 days nor less than 30 days prior to the expiration of their respective terms.
(4) Four members of the Board shall be appointed from the public sector and three members from the private sector. No member shall be appointed who is more than three months delinquent in paying one or more of his or her public utilities bills, nor shall any member be appointed who has twenty-five percent (25%) or more ownership interest in a business that is more than three months delinquent in paying one or more of its public utilities bills.

(5) Members of the Board of Directors may be removed for good cause either by the Governor or by two-thirds vote of the remaining members of the Board. Good cause shall include delinquency in the payment of public utilities bills for a period greater than three months. An action by the Governor to remove a Board member for cause shall be effectuated by a written notice served upon the affected Board member indicating the reasons for removal and granting the opportunity for the affected member to present evidence in his defense and to be represented by counsel in an administrative hearing called for said purpose within 15 days following receipt by the affected Board member of the notice of removal; PROVIDED that the affected Board member shall be suspended from his Board duties during the time needed for the completion of the administrative hearing. An action to remove a Board member is subject to judicial review pursuant to Chapter 3 of Title 8 of this Code.

(6) 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."

Section 4. Title 34 of the Pohnpei Code is amended by adding a new Section 1-112A to read as follows:

"§1-112A. Power purchase agreements. PUC is hereby empowered to enter into power purchase agreements with independent generators of electrical power in accordance with the following provisions:

(1) Prior to entering into any power purchase agreement, PUC shall cause to be conducted a comprehensive and professional feasibility study of its existing power generation capabilities to service the power needs of the state and the availability and competence of possible generators of power in the public and private sectors that may be willing to enter into power purchase agreements with PUC. The feasibility study shall contain a professional analysis of the comparative advantages and disadvantages of purchasing power from an independent generator of power in contrast to PUC upgrading of its own power production capacities. The feasibility study shall be signed by the Chairman of the PUC Board of Directors and the general manager of PUC. The feasibility study shall also be signed by a licensed professional engineer and a certified public account attesting to the accuracy of the technical and financial representations in the feasibility
study. Copies of the feasibility study shall be transmitted to the
Governor of Pohnpei and to the Pohnpei Legislature.

(2) Within 30 days following the receipt of the
feasibility study, the Governor shall make a determination
whether said document meets the requirements of Subsection
(1) of this section; PROVIDED that upon notice to PUC, the
Governor may extend such time for review for an additional
period of not more than 90 days to obtain a professional and
independent analysis of the document. Upon reaching his
decision, the Governor shall so notify the Board and
management of PUC with courtesy copies transmitted to
the Legislature. Should the Governor determine that the
feasibility study is insufficient to justify PUC’s intent to enter
into a power purchase agreement with an independent generator
of power, he shall state his reasons therefor in his notification to
PUC, and PUC shall not enter into any such power purchase
agreement until the Governor notifies PUC that his objections
have been addressed and have been satisfactorily resolved.
Should the matter not be resolved within 180 days of the initial
submission of the feasibility study, the issue may be transmitted
to the Legislature by either the Office of the Governor or the
Board of Directors of PUC with a recommendation for statutory
action.

(3) Prior to entering into any agreement with an
independent generator of power, PUC shall, by regulation,
establish standards for the interconnection of independently
operated electric generators with the distribution and
transmission systems operated by PUC. The standards shall be
consistent with generally accepted industry practices and
guidelines. The standards shall be established to ensure the
reliability of electricity service and the safety of customers,
utility employees, and the general public.

(4) Any contract or other legally binding agreement
entered into by PUC for the purchase of electrical power under
this section shall be subject to the contracting provisions of 34
PC 1-112; PROVIDED that:

(a) The independent generator of power must
have demonstrated the capability of consistently delivering not
less than two megawatts of reliable electric power to the PUC
grid in accordance with the standards established under
Subsection (3) of this section within one year of the date of the
signing of the power purchase agreement;

(b) The purchase price of power from the
independent generator of power shall not exceed the current
costs incurred by PUC in the production of the same amount of
electricity, inclusive of production operating expenses and the
depreciation of generation equipment, but such calculation shall
not include the costs incurred by PUC in the distribution and
transmission to the general public of the power so purchased or
produced;
Subject to the restrictions of Paragraph (d) of this subsection, a power purchase agreement shall not exceed 25 years, but may be renewed on the mutual consent of PUC and the independent generator of power; and

(d) The power purchase agreement may include entering into management or lease agreements for existing facilities of the PUC; PROVIDED that any such management or lease agreement may not exceed 15 years, but may be renewed on the mutual consent of PUC and the independent generator of power, after which any permanent improvements in said facilities shall become the property of PUC.”

Section 5. Chapter 2 of Title 34 of the Pohnpei Code is hereby repealed in its entirety and a new Chapter 2 is inserted in lieu thereof to read as follows:

“CHAPTER 2

UTILITIES RATES REVIEWS

§2-101. Review required. Within 30 days following the effective date of this amended chapter and within 30 days following an announcement by the Pohnpei Utilities Corporation (hereinafter referred to as “PUC”) of any proposed increase in the rates or charges it imposes on the general public for the provision of electricity, water or sewerage services, the Governor shall cause a review to be conducted on said rate or increase; PROVIDED that for purpose of this chapter, “increase” shall not include fluctuations in surcharges solely for
the cost of fuel incorporated in any rate or charge already
subject to review under the provisions of this chapter.

§2-102. Selection panel. Each review required by 34 PC 2-101
shall be conducted by an independent firm or organization
contracted by the Governor upon the recommendation and
selection thereof by a selection panel;

(1) The panel shall consist of:
    (a) The Administrator of the Office of
         Transportation and Infrastructure;
    (b) The Director of the Department of Treasury
         and Administration;
    (c) The Administrator of the Office of
         Economic Affairs;
    (d) A prominent member of the business
         community appointed by the Governor following consultation
         with the Pohnpei Chamber of Commerce; and
    (e) A representative of the residential population
         of Pohnpei appointed by the Governor following consultation
         with the chief executives of the local governments of Pohnpei.

(2) Membership on the panel shall be deemed public
service for which compensation shall not issue.

(3) Administrative support and expenses of the panel
shall be provided by the Governor.

(4) The panel shall continue in existence for 30 days
following the expiration of the contract with the independent firm
or organization selected under this chapter as provided in
34 PC 2-108.

§2-103. Independent firms and organizations. Selection of
each respective independent firm or organization shall be
based upon a determination by the panel of the most
knowledgeable and experienced firm or organization which
has submitted a reasonable and cost-effective proposal
following public advertisement and public solicitation of
proposals. In selecting and contracting a firm or organization
to conduct a required review under the provisions of this
chapter, the panel and, thereafter, the Governor shall comply
with all procurement requirements of Title 11 of this Code, and
its regulations and such other relevant procurement and
contracting laws and regulations as are now or may hereafter
be enacted for this state. The panel shall submit its findings
and recommendations in a written report to the Governor
within ten working days following the deadline for the
submission of proposals, which report shall contain an
accounting of the panel’s procedures in selecting the firm or
organization, an analysis of the reasons that firm or
organization was selected, PUC or entities to be reviewed by
the firm or organization, the period of review, and a listing of
duties and responsibilities that the panel believes should be
included in a government contract for services of the firm or
organization. The Governor shall act promptly to contract
with the selected firm or organization following receipt of the
selection report from the panel.

§2-104. Conduct of reviews. In conducting a review under the
provisions of this chapter, a contracted firm or organization shall:

(1) Conduct a financial analysis of the rates and fees
currently being charged and which are being proposed by PUC
to determine:

(a) Whether the rates and fees being imposed or
proposed by PUC are commensurate with the abilities of the
public to pay for such services and the financial needs and
responsibilities of PUC, taking into account:

(i) Such financial assistance and
subsidies as are being provided to PUC from other sources;

(ii) The income and operating expenses
of PUC;

(iii) The rate of depreciation of its current
fixed capital assets; and

(iv) Its projected financial, physical and
personnel needs over the next five and ten-year cycles.

(b) Whether the rates and fees imposed on
consumers or proposed for the future bear a reasonable relation
to the value of the properties, commodities and/or services
currently provided or planned for the future;

(c) The consistency and quality of the services
or commodities provided to the general public, and the
demonstrated ability of PUC to maintain and improve those services or commodities in manners consistent with the state’s development priorities and its own long-range development plans;

(d) The internal management of PUC and its ability to operate in a safe, efficient and cost-effective manner;

(e) Consumer relations and fairness as to methods both officially adopted and actually utilized by PUC in selecting recipients of interests in the public properties controlled by PUC or in dealing with the sales of commodities or with service expansion and selection of new users of services provided;

(f) Adequacy and fairness of procedures and practices both officially adopted and actually utilized by PUC on a daily basis in denying or cutting off services and in imposing other penalties and fees for nonpayment of service or commodity billings or for other matters of noncompliance; and

(g) Such other matters as may be included or referred to in the contract for services between the government and the firm or organization.

§2-105. Preliminary reports. Within 90 days following the execution of a contract for a firm’s or organization’s services under the provisions of this chapter, the firm or organization shall submit a preliminary report of its findings and recommendations to the Governor, the Legislature and PUC.
§2-106. Public hearings. Within 30 days following the submission of its preliminary report, the firm or organization, with the assistance of the Office of the Governor, shall conduct one or more public hearings within Pohnpei State at which PUC and the general public shall be invited to attend. The purpose of the hearings shall be to solicit comments on the preliminary report for possible modifications to the final recommendations of the firm or organization as specified in 34 PC 2-107.

§2-107. Final report. Within 30 days following the conclusion of the public hearings required by 34 PC 2-106, the firm or organization shall submit its final report to the Governor, the Legislature and PUC. Additional copies shall be made available to the media and general public by the firm or organization; PROVIDED that a reasonable fee may be charged for each copy provided to the media or general public.

§2-108. Follow-up. The firm or organization shall conduct follow-up visitations and studies when required by its contract for services to consider the progress being made by the entities under the recommendations of the final report as specified in 34 PC 2-107 of this chapter.

§2-109. Financing.

(1) The cost of financing the reviews by independent firms or organizations as required by this chapter shall be jointly and equally borne by the Governor and PUC; PROVIDED that if the state shall receive financial assistance from other sources for a

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review, the financial obligations with respect to the Office
of the Governor and PUC shall be reduced in equal portions
unless the terms of the assistance grant shall require otherwise.

(2) There is hereby authorized for appropriation from
the general fund of the Pohnpei Treasury and such other
Treasury funds as may be identified in the Comprehensive
Budget Act, such sum or sums as shall be appropriated in the
Comprehensive Budget Act for the expenses borne by the
Governor to fulfill the government’s responsibilities pursuant
to this chapter.

(3) Appropriations made pursuant to the authorization
of Subsection (2) of this section shall be administered and
expended by Governor solely for the purposes of this chapter.
The balance of any such appropriation remaining unexpended
or unobligated for expenditure at the close of the fiscal year for
which it was appropriated shall revert to the fund from which
the appropriation was made. Within 15 days following the
close of the fiscal year of appropriation and within 15 days of
the close of every fiscal quarter thereafter until the monies are
completely expended or returned to Treasury, the Governor
shall submit a financial report with respect thereto to the
Legislature.

§2-110. Imposition of rate increase. No rate increase may be
imposed by PUC upon the public for any service for which a
review is required by this chapter until 30 days following
submission of the final report to the government required
by 34 PC 2-107."

Section 6. Title 34 of the Pohnpei Code is amended by adding a
new Chapter 4 thereto to read as follows:

"CHAPTER 4

RENEWABLE ENERGY FEED-IN TARIFFS

§4-101. Findings and purpose. The Legislature finds that the
current system of energy production within the state is highly
dependent on very expensive, imported fossil fuels. The purpose
of this chapter is to encourage the development of alternate and
sustainable sources of energy obtained from small scale operations
which utilize the natural resources of this state.

§4-102. Definitions. As used in this chapter, the following words
shall have the following meanings:

(1) "Capacity" means the electrical capacity that
an eligible renewable energy generator may produce during
regular operations, not including standby capacity.

(2) "Eligible renewable energy generator" means the
operator of a system for the generation of electricity, the capacity
of which does not exceed fifty kilowatts, that is fueled or driven
by a renewable energy source derived from the natural resources
of this state. In order to be accorded "eligible" status, a renewable
energy generator must already be connected to the PUC grid of
electrical distribution.

(3) "Feed-in transmission meter" means a meter which is
installed in the connection between an eligible renewable energy generator and the electricity distribution grid of PUC, which meter measures the flow of electricity both to and from the eligible renewable energy generator and the electricity distribution grid.

(4) "PUC" means the Pohnpei Utilities Corporation created by Chapter 1 of this title.

(5) "Renewable energy source" means solar, hydroelectric, wind, methane gas produced from organic or animal wastes, bio-mass, bio-diesel, ocean waves, and tidal flows.

§4-103. Electricity from eligible renewable energy generators.

(1) PUC shall connect an eligible renewable energy generator to PUC's distribution and transmission system within 90 days following a request by an eligible renewable energy generator and payment by the eligible renewable energy generator of the reasonable costs of a feed-in transmission meter. In the event that PUC refuses to connect an eligible renewable energy generator to said distribution and transmission system through the use of the feed-in transmission meter within the time prescribed herein, PUC shall provide electricity free of charge to the eligible renewable energy generator, but not in excess of $20 dollars a day, until such time as the eligible renewable energy generator is so connected.

(2) PUC shall, by regulation, establish standards for the
interconnection of eligible renewable energy generators with the
distribution and transmission systems operated by PUC. The
standards shall be consistent with generally accepted industry
practices and guidelines. The standards shall be established to
ensure the reliability of electricity service and the safety of
customers, utility employees, and the general public. The costs
of the feed-in transmission meter shall be paid by the eligible
renewable energy generator at the time of installation. All other
direct costs encountered by PUC that are associated with the
interconnection of eligible renewable energy generators shall be
deducted from the credits due to the respective eligible
renewable energy generator from electricity transmitted by that
eligible renewable energy generator to PUC's electricity
distribution grid.

§4-104. Renewable energy exchange agreements. PUC shall
enter into renewable energy exchange agreements with each
eligible renewable energy generator for a term of not less than
ten years to credit electricity produced by said eligible
renewable energy generator and transmitted to the electric
distribution grid of PUC against the electricity drawn from the
electric distribution grid of PUC; PROVIDED that such credit
shall not exceed the consumption of electricity drawn by that
renewable energy generator from the electric distribution grid of
PUC.

§4-105. Financing.
(1) PUC shall include in the preparation of its annual budget as required by 34 PC 1-114, sufficient funding to carry out the purposes of this chapter.

(2) In addition to budgeting the funding necessary to compensate eligible renewable energy generators in accordance with the renewable energy exchange agreements specified in 34 PC 4-104, PUC shall endeavor to provide other incentives to help eligible renewable energy generators in the acquisition, installation and operation of their renewable energy generation systems. Such incentives may include, but need not be limited to, assistance in the purchase of renewable energy generation systems and additional subsidies to eligible renewable energy generators who are only capable of producing electricity in small quantities.

The Pohnpei Government shall, to the extent practical, assist PUC in these endeavors pursuant to 34 PC 1-115.

§4-106. Monitoring. The Commission on Energy, established pursuant to Chapter 3 of this title, shall continuously monitor the activities of PUC and eligible renewable energy generators who have obtained renewable energy exchange agreements with PUC under this chapter, and make periodic reports to the Legislature and the Governor on the successes and challenges of the renewable energy program set forth in this chapter.”

Section 7. Chapter 2 of Title 11 of the Pohnpei Code is amended by adding a new Section 2-113A to read as follows:

“§2-113A. Government housing. The rental rates for the
occupancy of government housing shall be determined by the Director of the Department of Treasury and Administration, pursuant to rules and regulations issued by the Director in accordance with Chapter 1 of Title 8 of the Pohnpei Code.”

Section 8. Effective date. This act shall take effect upon its approval by the Governor, or upon its becoming law without such approval.


Speaker, Pohnpei Legislature

Attest: Legislative Clerk

Approved: Governor, Pohnpei

Date