

# **TITLE 8**

## **ADMINISTRATIVE LAW**



## TITLE 8 ADMINISTRATIVE LAW

### CHAPTER

#### 1 ADMINISTRATIVE PROCEDURES ACT

#### 2 IMPEACHMENT OF STATE OFFICIALS

#### 3 JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

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### CHAPTER 1 ADMINISTRATIVE PROCEDURES ACT

#### Section

1-101 Providing for administrative procedures

**§1-101. Providing for administrative procedures.** — Notwithstanding any other state law, 17 TTC (1980) shall have no application or effect on the administrative actions of the state government, its officers, agencies, and instrumentalities, or rules or regulations issued thereby; PROVIDED that in the issuance of rules or regulations the issuing state authority shall provide for prior notice and opportunity to be heard. Public notice shall include at least seven announcements relative to the proposed rule or regulation on the public radio station and posting at the Pohnpei Supreme Court building and at the local government buildings in those local jurisdictions which are affected thereby. The issuing authority shall provide for publication and reasonable distribution of all rules and regulations issued hereunder. All other restrictions and provisions of state law relative to the issuance of rules and regulations shall not be affected by this chapter.

Source: S.L. No. 2L-12-80 §1, 6/28/80

ADMINISTRATIVE LAW

## CHAPTER 2 IMPEACHMENT OF STATE OFFICIALS

### Section

2-101 Short title	2-111 Concurrence necessary to uphold impeachment
2-102 Purpose	2-112 Pronouncement of judgment
2-103 Articles of impeachment	2-113 Adoption of judgment
2-104 Filing and service of adopted resolution of impeachment	2-114 Nature of the judgment
2-105 Service by publication	2-115 Officer when impeached disqualified to act until acquitted
2-106 Answer	2-116 Resignation or removal
2-107 Failure to answer	2-117 Impeachment of Speaker of the Legislature
2-108 Hearing on sufficiency for impeachment	2-118 Impeachment not a bar to indictment
2-109 Trial	2-119 Costs and expenses
2-110 Standard of proof	

**§2-101. Short title.** — This chapter is known and may be cited as the “Pohnpei Impeachment Procedures Act of 1992.”

Source: S.L. No. 3L-40-93 §1, 8/2/93

**§2-102. Purpose.** — The purpose of this chapter is to establish the procedures by which the impeachment of state officials by the Legislature may be resolved.

Source: S.L. No. 3L-40-93 §2, 8/2/93; S.L. No. 5L-58-01 §1, 12/21/01

**§2-103. Articles of impeachment.** — Articles of impeachment shall be incorporated into a resolution. Adoption of the resolution shall require an affirmative vote of three-fourths of the members of the Legislature, without regard to vacancies.

Source: S.L. No. 3L-40-93 §3, 8/2/93; S.L. No. 5L-58-01 §2, 12/21/01

**§2-104. Filing and service of adopted resolution of impeachment.** — The Speaker of the Legislature shall file a certified copy of the adopted resolution of impeachment with the Pohnpei Supreme Court, and shall cause a filed copy of the adopted resolution of impeachment to be personally served on the impeached official, with a summons to answer the same within 30 days of service.

Source: S.L. No. 3L-40-93 §4, 8/2/93; S.L. No. 4L-75-98 §1, 4/13/98; S.L. No. 5L-58-01 §3, 12/21/01

**§2-105. Service by publication.** — If upon diligent inquiry the impeached official cannot be found within the state, upon proof of that fact, the tribunal convened pursuant to Article 13, §6(4) of the Pohnpei Constitution shall order publication to be made, in such manner as it deems proper, of a summons requiring the official to answer the adopted resolution of impeachment within 60 days of the last date of publication.

Source: S.L. No. 3L-40-93 §5, 8/2/93; S.L. No. 5L-58-01 §4, 12/21/01

**§2-106. Answer.** — The impeached official shall file an answer in writing. As to each allegation in the articles of impeachment, the impeached official may admit, deny, leave the matter to proof, or object to its sufficiency for impeachment.

Source: S.L. No. 3L-40-93 §7, 8/2/93; S.L. No. 5L-58-01 §6, 12/21/01

**§2-107. Failure to answer.** — Upon the failure of the impeached official to file an answer within the time allowed, entry of default may be had against the impeached official. No less than 30 days after

any entry of default, a motion for default judgment may be filed and served, and subsequently heard. Any granting of such a motion shall require the vote of two-thirds of the members of the tribunal.

Source: S.L. No. 3L-40-93 §7A, 8/2/93

Note: §7A was inserted by S.L. No. 5L-58-01 §7, 12/21/01.

**§2-108. Hearing on sufficiency for impeachment.** — As to any objection to sufficiency for impeachment, the tribunal shall set a date for hearing. As a result of the hearing, the tribunal shall either uphold or overrule each objection. As to any objection overruled, the impeached official shall be given 20 days from the date of the tribunal's order to file an answer. The answer shall either admit, deny, or leave the matter to proof.

Source: S.L. No. 3L-40-93 §8, 8/2/93; S.L. No. 5L-58-01 §8, 12/21/01

**§2-109. Trial.** — Within 30 days after every allegation has been either admitted, denied, or left to proof, the tribunal shall file an order setting the matter for trial. Trial shall commence no sooner than 60 days nor later than 90 days from the date of the tribunal's order.

Source: S.L. No. 3L-40-93 §9, 8/2/93; S.L. No. 4L-75-98 §2, 4/13/98; S.L. No. 5L-58-01 §9, 12/21/01

**§2-110. Standard of proof.** — As to any article of impeachment, the impeached official may not have judgment against him unless the facts alleged therein are proved by the preponderance of the evidence, and such facts constitute an impeachable offense.

Source: S.L. No. 3L-40-93 §10, 8/2/93; S.L. No. 4L-75-98 §3, 4/13/98; S.L. No. 5L-58-01 §10, 12/21/01

**§2-111. Concurrence necessary to uphold impeachment.** — The impeachment cannot be upheld without the concurrence of two-thirds of the members of the tribunal; and if such two-thirds do not concur in upholding an impeachment, the impeached official must be declared acquitted.

Source: S.L. No. 3L-40-93 §11, 8/2/93; S.L. No. 5L-58-01 §11, 12/21/01

**§2-112. Pronouncement of judgment.** — Within 10 days after the termination of trial, the tribunal shall pronounce judgment, in the form of an opinion entered upon the court record.

Source: S.L. No. 3L-40-93 §12, 8/2/93; S.L. No. 5L-58-01 §12, 12/21/01

**§2-113. Adoption of judgment.** — On the adoption of the opinion, by a majority of the tribunal, who voted on the question of acquittal or upholding the impeachment, it becomes the judgment of the tribunal.

Source: S.L. No. 3L-40-93 §13, 8/2/93; S.L. No. 5L-58-01 §13, 12/21/01

**§2-114. Nature of the judgment.** — Upon upholding the impeachment the judgment must be solely that the impeached official be removed from office.

Source: S.L. No. 3L-40-93 §14, 8/2/93; S.L. No. 5L-58-01 §14, 12/21/01

**§2-115. Officer when impeached disqualified to act until acquitted.** — No officer shall exercise his office, after the notice of impeachment as provided in Article 13 §§6(2) and 6(3) of the Pohnpei Constitution is served upon him, until he is acquitted.

Source: S.L. No. 3L-40-93 §15, 8/2/93

**§2-116. Resignation or removal.** — Upon its being brought to the tribunal's attention that the impeached official has resigned from office or been removed from office by other means, the tribunal shall file an appropriate order terminating the proceedings brought hereunder within 10 days.

Source: S.L. No. 3L-40-93 §15A, 8/2/93

Note: §15A was inserted by S.L. No. 5L-58-01 §15, 12/21/01.

**§2-117. Impeachment of Speaker of the Legislature.** — If the Speaker of the Legislature is impeached, another Speaker may be chosen.

Source: S.L. No. 3L-40-93 §16, 8/2/93; S.L. No. 4L-75-98 §4, 4/13/98

**§2-118. Impeachment not a bar to indictment.** — If the offense for which the impeached official is impeached be a crime, the prosecution thereof is not barred by the impeachment or the upholding thereof.

Source: S.L. No. 3L-40-93 §17, 8/2/93; S.L. No. 5L-58-01 §16, 12/21/01

**§2-119. Costs and expenses.** — The costs and expenses of the special prosecutor shall be charged to the Legislature. The impeached official shall be responsible for the costs and expenses of the official's defense, subject to reimbursement at the discretion of the Court, only upon acquittal.

Source: S.L. No. 3L-40-93 §18, 8/2/93

Notes: 1. §18 was inserted by S.L. No. 5L-58-01 §17, 12/21/01. 2. S.L. No. 5L-58-01 §5 repealed S.L. No. 3L-40-93 §6, 8/2/93 in its entirety. 3. S.L. No. 5L-58-01 §18 transition provision has been omitted.

ADMINISTRATIVE LAW



## CHAPTER 3 JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

### Section

3-101 Pohnpei Supreme Court review of  
administrative actions  
3-102 Right of review

3-103 Relief pending review  
3-104 Scope of review

### **§3-101. Pohnpei Supreme Court review of administrative actions. —**

(1) The Trial Division of the Pohnpei Supreme Court shall have the authority to review all actions of any agency of the Government of Pohnpei in accordance with this chapter or any other statute or regulation that provides for a broader scope of judicial review.

(2) For purposes of this chapter, the actions of an agency include the actions of every entity, authority, and instrumentality of the Government of Pohnpei, but does not include the actions of the Pohnpei Legislature or the courts of this state, when exercising their constitutional authority to make or adjudicate law, or any activities of the Legislature or the courts related to the conduct of their constitutional duties.

Source: S.L. No. 3L-99-95 §14-1, 7/20/95

**§3-102. Right of review. —** A person suffering legal wrong because of agency action within the meaning of a relevant statute is entitled to judicial review thereof by the Trial Division of the Pohnpei Supreme Court. Such action before the Trial Division may seek relief in addition to other monetary damages and may state a claim that an agency or an officer or employee thereof acted unlawfully, or failed to act lawfully in an official capacity or under the color of legal authority. The Pohnpei Government may be named as a defendant in any such action, and a judgment or decree may be entered against the Pohnpei Government. Any mandatory or injunctive decree shall specify the officer or officers (by name and title), and their successors in office, personally responsible for compliance. Nothing herein affects the power or duty of the court to dismiss any action or deny relief on any appropriate legal or equitable ground.

Source: S.L. No. 3L-99-95 §14-2, 7/20/95

**§3-103. Relief pending review. —** When an agency finds that justice so requires, it may postpone the effective date of the action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the Trial Division of the Pohnpei Supreme Court, or the Appellate Division of the Supreme Court should an appeal be taken, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve the status or rights pending conclusion of the review proceedings.

Source: S.L. No. 3L-99-95 §14-3, 7/20/95

**§3-104. Scope of review. —** To the extent necessary to render a decision and when presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. The court shall:

- (1) Compel agency action unlawfully withheld or unreasonably delayed; and
- (2) Hold unlawful and set aside agency action, findings and conclusions found to be:
  - (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
  - (b) Contrary to constitutional right, power, privilege or immunity;
  - (c) In excess of statutory jurisdiction, authority or limitations, or short of statutory right;
  - (d) Without observance of procedure required by law;

- (e) Unsupported by substantial evidence in a case reviewed on the record of any agency hearing provided by statute; or
  - (f) Unwarranted by the facts to the extent that the facts are subject to trial de novo by the court.
- (3) In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.
- Source: S.L. No. 3L-99-95 §14-4, 7/20/95

(Next page is Title 9 divider)