



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

KWAJALEIN ATOLL DEVELOPMENT AUTHORITY ACT 2016

Introduced by:

HON. SENATOR DAVID PAUL

Received:

HON. SPEAKER KENNETH A. KEDI

BILL NO. 36ND1 P.L. 2016-22



**NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
 37TH CONSTITUTIONAL REGULAR SESSION, 2016**



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

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 2016**

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Republic of the Marshall Islands
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**KWAJALEIN ATOLL DEVELOPMENT AUTHORITY ACT
2016**

AN ACT to repeal Title 10 of the MIRC, Chapter 7, the Kwajalein Atoll Development Authority Act to replace with a new act to provide programs and services to the Kwajalein landowner communities at Ebeye and other Marshallese communities within Kwajalein Atoll impacted by the presence of the United States on Kwajalein Atoll; to ensure better fiscal responsibility and accountability to the people of Kwajalein Atoll; and for other purposes.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

§1. Short title.

This Act may be cited as the *Kwajalein Atoll Development Authority Act 2016*.

§2. Interpretation.

In this Act:

- (a) **“Authority”** means the Kwajalein Atoll Development Authority established under Section 3 of this Act.
- (b) **“Compact”** means the Compact of Free Association, as Amended between the Government of the Republic of the Marshall Islands and the Government of the United States that came into effect on May 1, 2004.
- (c) **“Fiscal Procedures Agreement”** means the “Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the Compact, as Amended, Between the

Government of the United States of America and the Government of the Republic of the Marshall Islands.

- (d) “**Government**” shall mean the National Government of the Republic of the Marshall Islands.
- (e) “**Subgrantee**” shall mean a grant that is passed on from the Government as Grantee.

PART II – FORMATION OF THE AUTHORITY

§3. Formation of the Authority.

- (a) There is hereby established the Kwajalein Atoll Development Authority (“the Authority”).
- (b) The Authority:
 - (i) is a body corporate with perpetual succession;
 - (ii) shall have a common seal;
 - (iii) may acquire, hold, charge, and dispose of property; and may sue and be sued in its corporate name.
- (c) Common Seal:
 - (i) all courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to any document and shall presume that it was duly affixed;
 - (ii) the common seal of the Authority shall be in the custody of the Secretary;
 - (iii) the common seal of the Authority may only be altered in such a manner as may be determined by the Board;
 - (iv) the common seal of the Authority shall not be affixed to any document except in the presence of (a) the Chairman of the Board, or (b) a member of the Board or an officer of the Authority authorized to duly act on behalf of the Chairman.
- (d) The provisions of the Associations Law, (52 MIRC, Parts I-V) shall not apply or relate to the Authority.

§4. Organization and Management.

- (a) The powers and duties of the Authority are hereby vested in and shall be exercised by the Board. The Board shall consist of nine (9) members appointed by the President from the offices and nominations as follows:
- (a) The RMI Representative as defined herein above, who shall be the official representative of the Government;
 - (c) Chief Secretary, as an ex officio;
 - (d) One (1) Senator elected to represent the Kwajalein Atoll in the Nitijela, nominated by a consensus of the Kwajalein Atoll Delegation to the Nitijela;
 - (e) The Mayor of the Kwajalein Atoll Local government or a duly authorized representative nominated by him;
 - (f) The President of the Chamber of Commerce for Ebeye Island, Kwajalein Atoll or a duly authorized representative nominated by him or her;
 - (g) Three (3) landowner representatives, nominated by the Landowners of those lands within the Kwajalein Atoll that are the subject of the Land Use Agreement between RMI Government and the Kwajalein landowners; and
 - (h) One (1) member to be nominated by a majority of the Board appointed under Subsection (1)(a), (b),(c), (d) and (e) above. In the event the Board is unable to nominate the members provided for herein, the President shall appoint said Board member from among those persons considered for nomination by the Board.
- (b) Meetings of the Board shall be held at such times and at such places as may be designated by the Board.
- (c) Every member of the Board shall, subject to Section 6 hold office for a term of four (4) years and shall, unless removed from office, be eligible for re-appointment.
- (d) The Board shall adopt bi-laws and procedures for the conduct of its meetings consistent with the terms of this Act and any regulations promulgated thereunder, provided however, that all decisions of the Board shall be by majority vote of the Board.

§5. Compensation.

- (a) No member of the Board shall receive compensation for his services to the Board, other than a reasonable sitting fee.
- (b) Any member of the Board shall be entitled to receive per diem and travel expenses at such rates and upon such terms and conditions that apply to employees of the Government.

§6. Vacation of Office.

- (a) A member of the Board vacates his or her office:
 - (i) upon death;
 - (ii) by submitting a letter of resignation as provided for in Subsection (b) of this Section;
 - (iii) by ceasing to hold that elective office which was basis for his appointment; or
 - (iv) by being removed from office as provided for in Subsection (3) of this Section.
- (b) A resignation under Subsection (a)(2) of this Section shall take effect when it is received by the President or on such later date as may be agreed by the President and the member concerned.
- (c) The Board may, for cause, remove any member of the Board from office; provided, however, that in the event good cause exists, and the Board fails to take appropriate action, the President shall remove such member. The Board, or President, in the event the Board does not take appropriate action, may suspend any member of the Board from office pending a decision for removal as provided herein above.
- (d) In the event the vacation of office be any member, the President may in accordance with Section 4(a), appoint another person in his place. Any person appointed in place of such member shall hold office during the period of the unexpired term of the member who he succeeds.
- (e) If any member of the Board is temporarily unable to discharge the duties of his office on account of ill-health or absence from the country, or any other cause, the President, may appoint another person to act in his place.

- (f) No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy among its members of any irregularity in the nomination or appointment of a member thereof.

§7. Disclosure of, and disqualification for, interest

- (a) If a member of the Board has any personal interest in the subject matter of any question before a meeting of the Board:
 - (i) he/she shall disclose such interest at the meeting; and
 - (ii) he/she shall not participate in the deliberations (except as directed by the Board), or in the decision of the Board on the question.
- (b) A disclosure under Subsection (a) of this Section shall be recorded in the minutes.
- (c) Unless the Government Representative for cause otherwise directs, failure to comply with the requirements of Subsection (a) or (b) of this Section shall not invalidate any act or proceedings of the Board.

§8. Misconduct in Public Office.

A failure to comply with Section 7 of this Chapter shall be deemed to be misconduct in public office within the meaning of 31 MIRC §146.

§9. Staff of the Authority.

- (a) The Authority:
 - (i) shall employ an executive officer who shall be a person with a sound knowledge and experience of commerce, industry, administration, or business management; and
 - (ii) may employ such other employees, agents, consultants, attorneys, accountants, or advisers as may be necessary to carry out the purpose of the Authority.
- (b) persons referred to in Subsection (1) of this Section shall be employed on such terms and conditions as may be determined by the Board.

§10 Liability.

The Authority, its members, and employees shall be deemed to be employees of the Government for purposes of the *Government Liability Act 1980*, Title 3 MIRC, Chapter 10.

**PART III – POLICIES, POWERS, AND FUNDS OF THE
AUTHORITY**

§11. Policies of the Authority.

Subject to this Act, the policies of the Government, the Compact and the Fiscal Procedures Agreement, or any other applicable law or agreement, the Authority shall be responsible for determining its own policies for carrying out its functions.

§12. Purposes and Functions of the Authority.

- (a) The primary purposes and functions of the Authority under this Act shall consist of addressing the special needs of the of the Kwajalein landowners community at Ebeye, Kwajalein Atoll and other Marshallese communities within Kwajalein Atoll with the emphasis on the Kwajalein landowners most impacted by the United States presence on Kwajalein Atoll including :
- (i) affordable quality housing for Kwajalein landowners with special emphasis on the Mid-Corridor Corridor populations at Ebeye and other Marshallese communities within Kwajalein Atoll;
 - (ii) providing essential infrastructure, in coordination with the Government, to improve the quality of life, health of the Marshallese Communities in Kwajalein Atoll;
 - (iii) other general living condition improvements for the Kwajalein landowners' community by providing secure access to land for housing and economic development, and other measures as the Board may determine.
- (b) Consistent with the functions and purposes described in subsection (a), the Authority may use funds provided under Section 14 for

purposes of local or matching contributions for any United States Federal Program or Service or with other public or private entities.

- (c) To better allow the Authority to carry out its functions and purposes and for efficiency and coordination in the use of public funds, the Government and the Authority shall concur in respect to the allocation and use of any funds available pursuant to Section 211(b)(1) and (3) of the Compact through Fiscal Year 2023, and thereafter, as provided in Paragraph 4(a) and (c) of Article X of the Military Use and Operating Rights Agreement between the Government of the United States and the Government of the Republic of the Marshall Islands as may be allocated pursuant to the Fiscal Procedures Agreement or other agreement to the Compact.

§13. Powers of the Authority.

Subject to the provisions of this Act, the Compact of Free Association as Amended, and its Subsidiary Agreements, and any other applicable laws or agreements, the Authority shall have all powers necessary or incidental to carrying out its functions under this Act.

PART IV – FINANCE

§14. Kwajalein Atoll Development Authority Fund.

- (a) There shall be established the Kwajalein Atoll Development Authority Fund (herein this Act referred to as “the Fund”).
- (b) The Fund shall be a fund other than the Marshall Islands General Fund, as same is defined in Article VIII, Section 3 of the Constitution.
- (c) Notwithstanding anything to the contrary, there shall be paid into the Fund:
- (i) the sum of \$1.9 million annually, as adjusted for inflation as a Subgrantee of the Government under the subsection 211(b)(2) of the Compact, as Amended, provided pursuant to Paragraph 4(b) of Article X of the Military Use and Operating Rights Agreement between the Government of the United States and the Government of the Republic of the Marshall Islands, as may be allocated pursuant to the Fiscal Procedures Agreement or other agreement to the Compact;

- (ii) any money appropriated by Nitijela for the purposes of the Authority, either generally or relating to any particular purpose; and
 - (iii) any money received by the Authority through loans, advances, contributions, gifts, project funding, or other income received by the Authority.
- (d) The Authority shall separately account for each of the sources of money referred to in subsection (c) of this Section.

§15. Payments out of the Fund.

- (a) Payments may be made out of the Fund for the following:
 - (i) to carry out the purposes and functions of the Authority described in Section 12;
 - (ii) to pay the costs and expenses of the Authority; and to pay the costs of administering this Act and any other Act that confers any power or duty on the Authority;
- (b) No money shall be withdrawn from the Fund except:
 - (i) in accordance with the law and duly adopted bi-laws or procedures of the Authority; and
 - (ii) with the majority vote approval of the Board which shall satisfy itself that the withdrawal is made in accordance with the law and the duly adopted bi-laws or procedures of the Authority.

§16. Borrowings, etc.

- (a) With the approval of the Cabinet, and subject to such conditions and with such limits as the Cabinet may impose, and subject to Subsections (3) and (4) of this Section, the Authority may borrow money from the Government, a bank, or any other lending institution or individual necessary and convenient to carry out its purposes.
- (b) Except as provided in Subsection (3) of this Section, the Authority may accept advances, grants, contributions, gifts, and other forms of financial assistance to carry out its purposes from any person or organization in the Marshall Islands and abroad.

- (c) No money may be borrowed nor may any advance, grant, contribution, gift and other assistance be accepted by the Authority from the Government of the United States or any of its agencies, or from any other source outside the Marshall Islands, except with the consent of the Government.
- (d) where any money is borrowed or any advance, grant, contribution, gift, or assistance is received for a specific purpose, or subject to any conditions as to its use, it may be expended or used only for that purpose or subject to those conditions.

§17 Bank Accounts.

- (a) The Authority shall open an account, or accounts with a banking institution, which is a member of the United States Federal Deposit Insurance Authority or an otherwise insured financial institution.
- (b) Separate accounts shall be maintained for each of the following:
 - (i) each project, or program in which the Authority is actively engaged; and
 - (ii) any other function which the Authority may perform and which involves expenditures by the Authority.
- (c) The accounts and record referred to in Subsection (1) of this Section.

§18. Accounts and records.

- (a) The Authority shall maintain proper accounts and records, in a form satisfactory to the Secretary of Finance, for the following:
 - (i) the Fund;
 - (ii) the expenditures of money from the Fund; and
 - (iii) the property and financial transactions of the Authority.
- (b) The accounts which shall be submitted to the Nitijela by the Minister of Finance pursuant to Article VIII, Section 5(4), of the Constitution, shall include all accounts relating to the Authority.
- (c) The accounts and records referred to in Section 17 of this Chapter and Subsection (1) of this Section shall be audited by the Auditor-General as provided for in Article VII, Section 15, of the Constitution.

§19. **Reserved**

§20. **Reports.**

- (a) The Board shall, as soon as practicable after each thirtieth day of September occurring after the commencement of this Act, prepare and furnish to the Cabinet a report on the operations of the Authority during the preceding year, together with financial statements for that year in such form as the Secretary of Finance approves.
- (b) The Cabinet shall cause the report and financial statements of the Board, together with the report of the Auditor-General, and its own comments to be submitted to the Nitijela within ten (10) session days of the Nitijela after receipt by the Cabinet.

§21. **Repeal.**

The Kwajalein Atoll Development Authority Restoration Act, 2008, 10 MIRC 7, is hereby repealed.

§22. **Transition.**

Upon the commencement of this Act, all rights, duties and obligations, assets and liabilities, and all acts, transactions, matters and things done, determined or entered into by the Kwajalein Atoll Atoll Development Authority established under the *Kwajalein Atoll Development Authority Restoration Act 2008*, shall be transferred and vest in the Kwajalein Atoll Development Authority established under this Act.

§23. **Effective Date**

This Bill, and all Acts contained herein, shall take effect in accordance with the Constitution and the Rules of Procedures of the Nitijela.

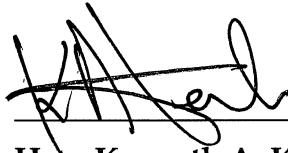
CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: 36ND1 was passed by the Nitijela of the Republic of the Marshall Islands on the 29th day of September 2016; and

2. That I am satisfied that Nitijela Bill No: 36ND1 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 18th day of October 2016.

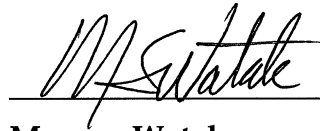


Hon. Kenneth A. Kedi

Speaker

Nitijela of the Marshall Islands

Attest:



Morean Watak

Clerk

Nitijela of the Marshall Islands