

## CHAPTER 5

### Public Auditor

**Editor's note:** Chapter 4, originally reserved for the Public Auditor in the 1982 edition of the code, has been renumbered chapter 5.

#### SECTIONS

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#### **§ 501. Short title.**

This chapter shall be known as the “National Public Auditor Act of the Federated States of Micronesia.”

**Source:** PL 3-47 § 1.

#### **§ 502. Definitions.**

As used in this chapter, “public funds from the National Government” means funds or reimbursements from the National Government arising from the National tax revenues, including National tax revenue shared with the states pursuant to article IX, section 5 of the Constitution of the Federated States of Micronesia, and all grants, subsidies, or contributions in the form of money, goods, or services from any source which are received from the National Government by appropriation law, or otherwise.

**Source:** PL 3-47 § 2.

**Cross-reference:** *Art. IX, sec. 5 of the Constitution states as follows:*

*Section 5.* National taxes shall be imposed uniformly. Not less than 50% of the revenues shall be paid into the treasury of the state where collected.

The provisions of the Constitution are found in Part I of this code.

**§ 503. Appointment—Tenure—Removal—Salary.**

The appointment, tenure, removal, and salary of the Public Auditor for the National Government of the Federated States of Micronesia shall be as follows:

(1) *Appointment.* The Public Auditor shall be appointed by the President with the advice and consent of Congress.

(2) *Tenure.* The Public Auditor shall serve for a term of four years and until a successor is confirmed. An individual may be reappointed for an additional term or terms with the advice and consent of Congress.

(3) *Removal.* The Congress may remove the Public Auditor from office for cause by a two-thirds vote. In the event of such removal, the Chief Justice shall appoint an Acting Public Auditor until a successor is confirmed.

(4) *Salary.* The Public Auditor shall receive an annual salary of which shall not exceed \$40,000, and shall be determined based on qualifications and experience. Upon the appointment of a Public Auditor the salary level for the position shall be fixed by the President with the advice and consent of Congress. Such salary shall not be reduced during the Public Auditor's term of office. In the event of removal or of a vacancy in the office, the successor shall be entitled to the salary attendant to the office as of the date of succession.

**Source:** PL 3-47 § 3; PL 9-38 § 1; PL 12-38 § 1.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

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The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

### **§ 504. Benefits.**

At the time he is confirmed the Public Auditor shall be entitled to all benefits, other than those covered by chapter 3 of title 52 of this code, as are available to all regular Government prime contract employees under the same terms and conditions which apply to members of the National Public Service System.

**Source:** PL 3-47 § 4.

**Cross-reference:** Chapter 3 of title 52 (Public Employment) of this code is on Exempt Employees.

### **§ 505. Duties.**

The duties of the Public Auditor shall be as follows:

(1) The Public Auditor shall inspect and audit transactions, accounts, books, and other financial records of every branch, department, office, agency, board, commission, bureau, and statutory authority of the National Government and of other public legal entities, including, but not limited to, States, subdivisions thereof, and nonprofit organizations receiving public funds from the National Government.

(2) The Public Auditor shall inspect and audit transactions, accounts, books, and other financial records associated with any project, program, and activity receiving funding in whole or in part from public funds of the National Government.

(3) The Public Auditor shall perform audits as otherwise specifically required by statute.

(4) The Public Auditor shall have the discretion to perform audits, or assist in the performance of audits, upon request by the States.

(5) The Public Auditor shall have the exclusive audit jurisdiction over public funds of the National Government of the Federated States of Micronesia, but he shall have the authority to contract for independent auditing services to be performed under his supervision in instances where specialized expertise is required, or where auditing requirements are beyond the capacity of the Public Auditor's staff and separate funding is available.

(6) The Public Auditor shall file a report at least once a year with the Congress. The Public Auditor may file other reports at such other times as he may determine. All reports of the Public Auditor shall be made available to the public.

(7) The Public Auditor may submit recommendations with his audit reports which shall be confined to matters within the jurisdiction of the Public Auditor, including compliance or noncompliance with laws governing the expenditure of public moneys, and the need for amendments or new laws to secure the efficient expenditure of public funds.

(8) The Public Auditor shall keep a complete and accurate record or file of all audit reports, inspections, investigations, releases, audit work papers, and other materials pertaining to the work of the Office of the Public Auditor.

**Source:** PL 3-47 § 5.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

### **§ 506. Powers.**

The powers of the Public Auditor shall be as follows:

(1) The Public Auditor may examine and inspect all books, records, files, papers, documents, and all financial affairs of every branch, department, office, agency, board, commission, bureau, and statutory authority of the National Government, as well as other public legal entities, including States and nonprofit organizations receiving funds from the National Government.

(2) The Public Auditor may audit the records of any contractor performing public work on a cost-reimbursement-type contract for the National Government of the Federated States of Micronesia to verify the cost charged to the public contract. Any contractor performing public work pursuant to a contract with the National Government of the Federated States of Micronesia shall keep and maintain records adequate to establish the validity of costs charged to the National Government.

(3) The Public Auditor may by subpoena summon persons to appear at a reasonable time before him and administer oaths to such persons. He may question such persons, under oath, regarding receipts and expenditures of money and any other reasonable and relevant matters necessary for the due execution of the duties vested in the Public Auditor by this chapter.

(4) The Public Auditor may issue subpoenas *duces tecum* within a reasonable time requiring the production of books, records, documents, or other relevant financial papers or objects necessary for the performance of his duties.

(5) Any subpoena or subpoena *duces tecum* issued under the authority of the Public Auditor shall run in the name of the Federated States of Micronesia and shall be addressed to the chief or other officer of the Division of Security and Investigation of the Office of the Attorney General of the National Government of the Federated States of Micronesia. The subpoena or subpoena *duces tecum* shall be signed by the Public Auditor and shall identify the witness to be served or the books, records, documents, or other relevant financial papers or objects to be produced together with a reference to the account subject to inspection and audit.

(6) Any officer to whom such subpoena or subpoena *duces tecum* is directed shall forthwith serve or execute the same upon delivery thereof to him.

(7) Any person who willfully fails or refuses to appear upon receiving service of a subpoena, or who willfully fails or refuses to produce any books, records, documents, or other relevant financial papers or objects designated in a subpoena *duces tecum* properly issued by the Public Auditor, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned for not more than one year, or both. Failure by the Public Auditor to comply in any material respect with the requirements of this chapter shall relieve any person of the obligation to appear or the obligation to produce designated materials, and such failure shall be defense in any proceeding against such person for punishment.

(8) Any person subject to a subpoena *duces tecum* shall have only those privileges against producing books, records, documents, or other relevant financial papers or objects which are authorized under the rules of evidence of the Supreme Court of the Federated States of Micronesia, the Constitution of the Federated States of Micronesia, the Trust Territory Bill of Rights, or other applicable law.

**Source:** PL 3-47 § 6.

**Cross-reference:** The provisions of the Trust Territory Bill of Rights are found in sections 101 to 114 of title 1 (General Provisions) of this code. The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

### **§ 507. Types of audits and audit standards.**

The types of audits and applicable audit standards shall be as follows:

(1) Three types of audits may be performed:

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

(b) *Economy and efficiency.* This type of audit determines whether an entity is managing and utilizing its resources economically and efficiently, the causes of inefficiencies or uneconomical practices, and whether the entity has complied with laws and regulations concerning economy and efficiency.

(c) *Program results.* This type of audit determines whether the desired results or benefits established by the Congress or other authorizing body are being achieved and whether the program administrators have considered alternatives that might yield desired results at a lower cost.

(2) Any given audit or review may include one or more of the objectives in subsection (1) of this section in the reasonable exercise of the Public Auditor's discretion.

(3) The Public Auditor shall perform audits in conformity with generally accepted audit standards as established by the American Institute of Certified Public Accountants.

**Source:** PL 3-47 § 7.

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