

(Intro. as House Bill No. 5-35-1, HD1, SD4)

First Regular Session, January 1997

AN ACT

To establish a code of ethics for all government officials, to regulate campaign financing, to establish an Ethics Commission, and for other purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Title. This Act shall be known as the "Code of Ethics Act."

Section 2. Legislative findings. The Olbil Era Kelulau hereby finds that legislation should be enacted to ensure that government officials perform their duties in an impartial manner, free from bias caused by their own financial interests. **Public** officials must serve the needs of all citizens equally, without regard to wealth. The cost of running for elective office has increased dramatically in recent years. As a result, more candidates have chosen to finance their campaigns by seeking large contributions from individuals and corporations, who thereby gain disproportionate influence over governmental decisions. Assets and income of **public** officials which may be affected by their official actions should be disclosed to allow the **public** to determine whether **public** officials have a financial interest in the decisions they make.

Section 3. Definitions. In this Act:

(a) "Business entity" means an organization or enterprise operated for profit.

(b) "Candidate" means any individual who has filed nomination papers with the Election Commission or who has received a contribution or made an expenditure for nomination or election to any national or state elective office. An elected officer is deemed to be a candidate until he files a statement with the Ethics Commission stating that he does not intend to seek reelection to the office he currently holds or to seek election to any other office, and that he will not accept any further contributions or make any further expenditures of contributions after the filing of the statement.

(c) "Commission", when used alone, means the Ethics Commission.

(d) "Compensation" means any thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by oneself or another, but shall not include compensation from the national or state government, or contributions.

(e) "Contribution" means a payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, whenever made, except to the extent that full and adequate consideration is received, unless it is clear from surrounding circumstances that it is

[Header A: **RPPL NO.** 5-32

(Intro. as House Bill No. 5-35-1, HD1, SD4)

]

not made for political purposes. An expenditure made at the behest of, or in coordination, cooperation or consultation with, the candidate is a contribution to the candidate unless full and adequate consideration is received for making the expenditure.

A contribution to a committee or other entity is a contribution to the candidate if the candidate has a significant influence on the actions or decisions of the committee or entity and the committee or entity makes an expenditure on behalf of the candidate. The term "contribution" does not include volunteer personal services. The term "contribution" does not include informational materials such as books or pamphlets, contributions that are not used and, within 72 hours of receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes, or any devise or personal inheritance.

(f) "Election" means any primary, general, runoff, recall or special election.

(g) "Employee" means any nominated, appointed, or elected officer or employee of any state government or the national government. "Former employee" means a person who has been an employee within the preceding two years.

(h) "Employment" means any rendering of services for compensation.

(i) "Financial interest" means:

(1) Any business entity in which the employee has a direct or indirect ownership interest, provided that interest has a fair market value of \$500 or more;

(2) An employment, or prospective employment for which negotiations have begun;

(3) Any real or personal property in which the employee has a direct or indirect ownership interest, including a leasehold interest, having a fair market value of \$1,000 or more;

(4) Any source of income, including compensation and gifts, and loans from sources other than commercial lending institutions made in the normal course of business, aggregating \$500 or more in value received by or promised to the employee during the preceding 12 months;

(5) A directorship or officership in a business;

(6) Any source of contributions aggregating \$1,000 or more in value received by or promised to the employee during the preceding 4 years.

As used in this Act, "indirect ownership interest" means any interest owned by the spouse or dependent children of the employee or by an agent on behalf of the employee, or the pro rata

share of an interest owned by a business entity in which the employee or the employee's spouse or dependent children cumulatively own a 10 percent or greater interest.

(j) "Foreign national" means any individual who is not a citizen of the Republic of Palau, or a business entity, any of the ownership interest of which is held, directly or indirectly, by an individual who is not a citizen of the Republic of Palau.

(k) "Official act" or "official action" means a decision, recommendation, approval, disapproval, or other action, or a failure to act, which involves the use of discretionary authority.

(l) "Official authority" includes administrative or legislative powers of decision, recommendations, approval, disapproval, or other discretionary action.

(m) "Payment" means a transfer, distribution, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

(n) "Person" means any individual, corporation, partnership, association, or other entity.

(o) "Public official" means any national elected official, any minister, any director of a bureau or chief of a division of the national government, any state chief executive officer, any member of a state legislature, any member of a national or state board, commission or authority, and any procurement officer or other employee responsible for the award of

contracts on behalf of the Republic, or any of its separate branches or subdivisions, or on behalf of any state, or any of its separate branches or subdivisions.

Section 4. Use of nonpublic information. No employee or former employee may use information acquired in the course of the employee's official duties for the employee's personal gain until such information has been made available to the general public.

Section 5. Use of government property. No employee may use national or state time, equipment, facilities, assets or property for political activities or other private activities that serve no governmental or public purpose.

Section 6. Conflict of interest.

(a) No employee may take, participate in taking or use his or her government position to attempt to influence any official action where it is reasonably foreseeable that the action could have a material financial effect on that employee, or on any financial interest of that employee, that is different from the effect on the public generally. An employee who is unable to disqualify himself on any matter because he is the only person authorized by law to perform the official action will not be in violation of this subsection if he has complied with the disclosure requirements in section 7.

(b) No employee may acquire a financial interest in any business or other undertaking which he has reason to believe may be directly affected by official actions to be taken by him.

(c) No employee may assist any person for compensation or act in a representative capacity before any national or state government agency in any matter that relates in any way to the governmental duties of the employee.

(d) No employee may use or attempt to use the employee's official position to secure or grant privileges, exemptions, advantages, contracts, or treatment, for himself or others, including but not limited to the following:

(1) Seeking other employment or contracts for services for the employee by the use or attempted use of the employee's office or position; and

(2) Soliciting, receiving or accepting compensation or other consideration for the performance of the employee's official duties or responsibilities except as provided by law;

(3) Soliciting, receiving or accepting any gift or other item of monetary value from any person seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or from any person whose interests may be substantially affected by the performance or

nonperformance of the employee's duties; provided that this subdivision shall not apply to wedding gifts, customary gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(e) No employee may engage in any outside employment or other outside activity that is incompatible with the full and proper discharge of the employee's office or position. The Ethics Commission shall, for each government agency, designate those outside activities that are deemed to be incompatible with the duties of the employees of that agency.

Section 7. Disclosure of financial interests.

(a) For the purpose of this section, the term "reporting period" refers to the preceding calendar year with respect to annual statements filed by **public** officials, and the preceding twelve month period with respect to assuming office and leaving office statements filed by **public** officials and statements filed by candidates.

(b) No later than February 1 of each year, within 30 days of assuming office and within 30 days of leaving office, all **public** officials shall file with the Commission financial disclosure statements for the reporting period disclosing their financial interests. All candidates shall file the

required statements no later than 60 days prior to the date of the election for state or national offices.

(c) Financial disclosure statements required by this section shall state for the reporting period:

(1) The name and mailing address of each source and amount of income, including compensation and gifts from persons other than the **public** official's or candidate's spouse or children, totaling \$500 or more, received by or promised to the **public** official or candidate, provided that contributions, and salary and benefits from the national or any state government, need not be reported under this subsection.

(2) The mailing address of every business entity incorporated, regulated, or licensed to conduct business in the Republic, and every business entity which plans to do business in the Republic or has done business in the Republic during the two years prior to the time the statement is required to be filed, in which the **public** official or candidate had a direct or indirect ownership interest having a fair market value of \$500 or more, and the amount of that interest.

(3) Every business entity in which the **public** official or candidate was an officer, director, partner, trustee, employee or held a position of management.

(4) The name of each creditor to whom the value of \$1,000 or more was owed at any time during the reporting period and the original amount and amount outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed.

(5) The location and the value of any real property in the Republic in which the **public** official or candidate held a direct or indirect ownership interest having a fair market value of \$1,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration.

(6) For annual, assuming office and leaving office statements, the names of all persons who made contributions totaling \$100 or more to the **public** official during the preceding four years.

(d) Where a **public** official's or candidate's financial interests for a reporting period are identical to those reported on the last disclosure statement filed under subsection (c), the **public**

official or candidate may file for that reporting period, in lieu of the disclosure statement required by subsection (c), a statement certifying that his or her financial interests have not changed since the filing of the last statement filed under subsection (c). All such statements shall comply with subsection (f) of this section.

(e) Where an amount is required to be reported, the person disclosing may indicate whether the amount is at least \$1,000 but less than \$10,000; at least \$10,000 but less than \$50,000; at least \$50,000 but less than \$100,000; or \$100,000 or more.

(f) The **public** official or candidate shall verify, under penalty of perjury, that he has used all reasonable diligence in preparing the disclosure statement and that to the best of his knowledge the statement is true and correct.

(g) The Election Commission, upon receipt of the nomination paper' of any person seeking a state or national elective office, shall notify the Ethics Commission of the name of the candidate for state or national office and the date on which the persons filed the nomination petition. The Election Commission, upon the expiration of the time allowed for filing, shall release to the **public** a list of all candidates who have failed to file financial disclosure statements.

(h) Any statement filed pursuant to this section may be amended at any time. Amending an incorrect or incomplete statement may be considered as evidence of good faith.

Section 8. Campaign statements.

(a) For each election at which a candidate is seeking elective office, the candidate shall file with the Commission a pre-election campaign statement which shall cover the period beginning with the date the candidate received his first contribution for the election and ending 30 days before the election and shall be filed no later than 20 days before the election.

(b) Each candidate who receives from a single source contributions totaling \$500 or more after the closing date of the pre-election campaign statement and before the election shall file a late contribution statement disclosing the total amount of such contributions, the name and address of the contributor, the amount of the contribution and the date of the contribution. The statement shall be delivered to the Commission for filing by personal delivery or facsimile transmission no later than 48 hours after the contribution is made.

A late monetary contribution need not be reported nor shall it be deemed to be accepted if it is not cashed, negotiated and deposited and is returned within 48 hours of its receipt, and a late non-monetary contribution need not be reported and shall not be deemed to be accepted if it is not used in any way and is returned to the contributor within 48 hours of its receipt.

(c) For each election at which a candidate is seeking elective office, the candidate shall file with the Commission a post-election campaign statement which shall cover the entire period during which the candidate received contributions in connection with that election. The post-election campaign statement shall be filed no later than 120 days after the election.

(d) Each pre-election and post-election campaign statement required by this Act shall contain all of the following information:

(1) The total amount of contributions received and expenditures made during the period covered by the campaign statement;

(2) If the cumulative amount of contributions (including loans) received from a person is \$100 or more, the person's name and address, and the date and amount of each contribution received from that person during the period covered by the campaign statement;

(3) For each person to whom an expenditure of \$500 or more has been made during the period covered by the campaign statement, the person's name and address, the amount of each expenditure and a brief description of the consideration for which each expenditure was made;

(4) A verification by the candidate, executed under penalty of perjury, that he has used all reasonable diligence in the preparation of the statement and that to the best of his knowledge the statement is true and correct; and

(5) Any other information that the Commission may reasonably deem necessary to fulfill the purposes of this Act or to more fully inform citizens regarding the financing of campaigns in the Republic.

(e) A monetary contribution need not be reported and shall not be deemed to be accepted if it is not cashed, negotiated or deposited and is returned to the contributor within 72 hours of its receipt, and a non-monetary contribution need not be reported and shall not be deemed to be accepted if it is not used in any way and is returned to the contributor within 72 hours of its receipt. (f) Any statement filed pursuant to this section may be amended at any time. Amending an incorrect or incomplete statement may be considered as evidence of good faith.

Section 9. Acceptance and use of contributions.

(a) It shall be unlawful for a foreign national directly or through any other person to make any contribution in connection with an election to any national or state elective office, or in connection with any convention or caucus to select candidates for any national or state elective

office or in support of or in opposition to any national or state ballot measure; or for any person, including any candidate, to solicit, accept, or receive any such contribution from a foreign national. (b) No contribution of \$250 or more may be made unless by check or money order, drawn on a bank located in the Republic, containing the name of the contributor and the name of the payee. No expenditure of \$250 or more may be made in cash.

(c) No contribution may be made, directly or indirectly, by any person in a name other than the name by which the person is identified for legal purposes.

(d) Unless returned to the contributor, all monetary contributions shall be deposited into a single account in a bank located in the Republic within 72 hours of their receipt, and all expenditures of \$250 or more shall be made by way of a check drawn on this account. The candidate shall inform the Commission of the name of the bank and the account number within five business days of establishing the account.

(e) A candidate may expend contributions only for purposes reasonably related to the election of that candidate to the office sought by the candidate.

(f) No employee may, as a candidate or on behalf of any other candidate, solicit, accept, or receive, directly or indirectly, any contribution, under circumstances in which a

reasonable person, in the position of the employee, would believe that the contribution is intended to influence the employee in the performance of the employee's official duties or is intended as a reward for any official action on the employee's part.

(g) No employee or candidate may use, or promise, threaten or attempt to use, any actual or anticipated government authority to assist or obstruct any individual in obtaining any employment, nomination, confirmation, promotion, or change in compensation or employment, in exchange for the individual agreeing to vote or contribute to, or to withhold his vote for or contribution to, any candidate.

(h) No candidate for the office of the President or Vice President of the Republic may, directly or indirectly, solicit a contribution from any employee of the executive branch of the national government with knowledge that the person from whom the contribution is solicited is an employee of the executive branch of the national government. No candidate for the Olbiil Era Kelulau may, directly or indirectly, solicit a contribution from any employee of the Olbiil Era Kelulau with knowledge that the person from whom the contribution is solicited is an employee of Olbiil Era Kelulau. No candidate for the chief executive office of any state may, directly or indirectly, solicit a contribution from any employee of the executive branch of that state with

knowledge that the person from whom the contribution is solicited is an employee of the executive branch of that state. No candidate for any state legislature may, directly or indirectly, solicit a contribution from any employee of that state legislature with knowledge that the person from whom the contribution is solicited is an employee of that state legislature. This subsection shall not prohibit a candidate from requesting contributions from an employee if the solicitation is part of a solicitation made to a significant segment of the public which may include employees.

(i) No employee may participate in political activities of any kind while in uniform.

Section 10. Ethics Commission established.

(a) There is established a commission to be known as the Ethics Commission. The Commission shall consist of three members appointed by the President with the advice and consent of the Senate. The term of each member shall be four years. Members of the Commission shall hold no other public office or public employment. The chairman of the Commission shall be elected by a majority of the Commission. Members of the Commission may be removed by the President only for good cause. Vacancies shall be filled for the remainder of any unexpired term in the same manner as the original appointment. Commission members shall be compensated at a rate of \$35 for each meeting the Commission member attends.

(b) The Commission shall adopt regulations to carry out the purposes of this Act.

- (c) The Commission shall prescribe and supply the forms for statements and reports required by this Act.
- (d) The Commission shall determine whether required documents have been filed and, if so, whether they comply on their face with the requirements of this Act.
- (e) The Commission shall notify promptly all persons who have failed to file a report or statement in the form and at the time required by this Act.
- (f) The Commission may employ staff, including legal counsel to advise and represent the Commission in actions filed by or against it, and to assist the Commission to issue advisory opinions upon the request of any person governed by this Act as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the Act.
- (g) The Commission shall initiate, receive, and consider charges concerning alleged violations of this Act, initiate or make investigations, and hold hearings.
- (h) The Commission may subpoena witnesses, administer oaths and take testimony relating to matters before the Commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the Commission. Before the

Commission may exercise any of the powers authorized herein with respect to any investigation or hearing, it shall, by a vote of a majority of its members, define the nature and scope of its inquiry. (i) On an affirmative vote of a majority of its members, the Commission shall have authority to bring civil actions on its own behalf, and take other actions consistent with the law to enforce the provisions of this Act.

(j) The members of the Commission and its staff may not take an active part in political management or in political campaigns during their term of office or employment, nor may they make contributions to political campaigns during their term of office or employment.

Section 11. Duties of the Public Auditor. The Public Auditor shall conduct mandatory audits of campaign statements filed by candidates for the Office of President and Vice President of the Republic and shall conduct random audits of other statements filed under this Act for the purpose of encouraging compliance with and detecting violations of this Act. The Public Auditor shall conduct an audit of any statement filed under this Act if requested to do so by the Commission, Attorney General or Special Prosecutor. The Public Auditor shall annually prepare and transmit to the Commission, Attorney General and Special Prosecutor a report containing the findings of the Public Auditor with respect to the accuracy and completeness of each report and statement reviewed

and his findings with respect to any statement or report that should have been but was not filed.

Section 12. Record keeping. It shall be the duty of each **public** official and candidate to maintain such detailed accounts, records, bills and receipts as are necessary to prepare financial and campaign statements and comply with the provisions of this Act. These records shall be retained for a period of four years from the filing date of the statement to which they relate.

Section 13. Penalties.

(a) Criminal penalties. Any person who knowingly or willfully violates any provision of this Act is guilty of a misdemeanor. In addition to other penalties provided by law, a fine of up to \$10,000 shall be imposed for each violation. For violations of the reporting requirements, a fine of up to three times the amount the person failed to report properly may be imposed for conviction of each violation. Prosecution under this subsection must be commenced within four years after the date on which the violation occurred, or in the case of a **public** official, four years after the **public** official leaves government service. Prosecution under this section may be undertaken by the Attorney General or Special Prosecutor.

(b) Civil penalties. Any person who intentionally or negligently violates any provision of this Act shall be liable in a civil action brought by the Commission, Attorney General, the Special Prosecutor or a citizen of the Republic for an amount not more than \$10,000 or, in the case of a violation of the reporting provisions of this Act, an amount not more than the amount or value not properly reported or \$10,000, whichever is greater. If a judgment is entered against the defendant in an action brought by a citizen of the Republic, the plaintiff shall receive 50% of the amount recovered, and shall be entitled to recover from the defendant his costs of litigation, including reasonable attorneys' fees.

Before a citizen may bring an action pursuant to this section, the citizen must submit a written request to the Commission, Attorney General and Special Prosecutor asking that they bring a civil action and a written statement setting for the specific facts upon which the citizen bases his or her allegation. If the Commission, Attorney General and Special Prosecutor fail to bring a civil action within 60 days after receipt of the written request, or bring an action that is later dismissed without prejudice to the filing of another action, the citizen may thereafter bring a civil action pursuant to this section. An action under this subsection must be commenced within four years after the date on which the violation occurred.

(c) Any **public** official or candidate who fails to timely file any statement required by this Act shall pay to the Commission a penalty of \$50 per day for each day that the disclosure is delinquent. All funds received by the Commission shall be deposited in the national treasury.

(d) If two or more persons are responsible for any violation, they shall be jointly and severally liable.

Section 14. Injunction.

(a) The Commission, Attorney General, Special Prosecutor or any citizen of the Republic of Palau may sue for injunctive relief to enjoin violations of, or to compel compliance with, the provisions of this Act.

(b) Upon a preliminary showing in an action brought by the Commission, the Attorney General, the Special Prosecutor or a citizen that a violation of section 4, 6 or 9(g) has occurred, the court shall restrain the execution of any official action in relation to which such violation occurred, pending final adjudication. If the court ultimately determines that a violation of section 4, 6 or 9(g) has occurred and that there is a substantial likelihood that the official action would not otherwise have been taken or approved, the court shall set the official action aside as void. The court may, in its discretion, choose not to grant relief otherwise required by this subsection if it determines that

to do so would work a severe hardship on the **public** or innocent persons relying on the official action.

(c) A citizen of the Republic who prevails in obtaining relief under this section shall be entitled to his costs of litigation, including reasonable attorneys' fees.

Section 15. Public Records. Every report and statement filed pursuant to this Act is a **public** record open for **public** inspection and reproduction during regular business hours of the Commission, commencing as soon as practicable, but in any event not later than three business days after the day on which it was received. No conditions shall be imposed upon persons wishing to inspect reports and statements filed under this Act. Copies shall be provided at a charge of \$.20 per page.

Section 16. Transition. Sections 4, 5, 6, 7, 8 and 9 of this Act shall not be enforced until 90 days after the effective date of this Act. During that period, the Office of the Attorney General shall, through a combination of written materials and oral presentations, educate **public** officials and employees about their duties under this Act. After that period, this function shall be assumed by the Commission. An allegation that the Office of the Attorney General or the Commission failed to adequately educate **public** officials and employees shall not constitute a defense for violating this Act.

Section 17. Repealer. Chapter 6 of Title 33 of the Palau National Code, relating to the outside employment of government employees, is repealed.

Section 18. Appropriation. The sum of \$40,000 is hereby authorized and appropriated for expenditure or obligation for fiscal year 1998 for the purpose of covering the

operational and contingent expenses of the Ethics Commission. The entire amount of funds appropriated shall come from investment earnings on the section 215 inflation adjustment to Compact section 211 (a) funds. Section 19. Effective date. This Act shall take effect upon its approval by the President of the Republic, or upon its becoming law without such approval, except as otherwise provided by law.

PASSED: July 29, 1999

Approved on 4th Aug , 1999

/s/

Kuniwo Nakamura, President

Republic of Palau