

A BILL FOR AN ACT

To establish election procedures for a special election for the Legislative seat of Ikelau Hamlet in the Fourth Koror State Legislature.

THE PEOPLE OF KOROR REPRESENTED IN THE LEGISLATURE OF THE STATE OF KOROR DO ENACT AS FOLLOWS:

SECTION 1. FINDINGS.

The statewide general election for the Fourth Koror State Legislature was conducted on September 1, 1992. The election results for Ikelau Hamlet showed that Carson Olkeriil received 99 votes, while Thomas Sakuma received 57 votes. After the election, however, the National Election Commission refused to certify Carson Olkeriil as the winner due to the fact that Carson Olkeriil was serving a sentence for a felony at the time of the filing for candidacy, and at the time of the election. The National Election Commission also refused to certify Thomas Sakuma as the winner, and stands ready to conduct a special election for the Legislative seat for Ikelau Hamlet.

As a result of the fact that no candidate was certified as the winner, the legislative seat for Ikelau Hamlet was never filled, and therefore, no vacancy exists under Article VIII, section 12, of the Koror State Constitution (vacancy due to recall, impeachment, death, resignation, or disabilities), and a special election is not required to be held within forty-five (45) days.

SECTION 2. DEFINITIONS.

Where appearing herein, the following terms are defined as:

A. "Administrator" means Koror State Executive Administrator as defined by Article VII of Koror State Constitution.

B. "Commission" means the Election Commission for the national government of the Republic of Palau.

C. "Election Commissioner" means the Chairman of the Election Commission of the Republic of Palau.

F. D. "Registrar" is the head of the Koror State Election Board, as selected by a majority of the members of the Koror State Election Board.

G. E. "Election Board" means the Koror State Election Board as appointed by the Election Commission of the national government after submission of names by the Administrator.

H. F. "State" is the State of Koror.

I. G. A word of the masculine gender includes the female gender.

SECTION 3. ELECTION DATE AND APPLICABILITY OF THIS ACT.

A. The special election to fill the seat of Ikelau Hamlet in the Fourth Koror State Legislature shall be conducted on February 16, 1993.

[SIC] C. The special election shall be conducted from 8:30 a.m. to 5:30 p.m. at one location situated in Ikelau Hamlet, to be determined by the State Election Board.

C. This Act shall only be effective and apply to the special election for Ikelau Hamlet occurring as a result of irregularities in the general election of September 1, 1992, and any subsequent election resulting from an irregularity in such special election. In the event of a conflict between this Act and Koror Public Law No. K3-51-92, then the provisions of this Act shall prevail.

SECTION 4. STATE ELECTION BOARD.

A. The State Election Board created pursuant to Koror Public Law No. K3-51-92 shall have the following powers and duties for the special election:

- 1) To register, examine and determine the qualifications of voters according to the requirements, guidelines and factors in Sections 6 and 7 of this Act;
- 2) To receive, investigate and decide, subject to appeal to the Election Commission, complaints concerning registration irregularities;
- 3) To perform other duties as prescribed by law or by the Election Commission;
- 4) To select, supervise, and manage the polling place;
- 5) To receive, preserve and maintain the ballot boxes, locks, maps, cards or instructions and other supplies and equipment necessary

to conduct the election;

6) To provide for the issuance of all notices and publications concerning the election, and to give such instructions deemed necessary for the orderly conduct of the election.

SECTION 5. VOTER QUALIFICATION AND RESIDENCY.

A. Qualifications to Register to Vote.

Every resident of Ikelau Hamlet shall be entitled to vote in the special election if that person fulfills all of the following requirements as of the time of registration, or as of the date of the special election for subsection (1):

- 1) Is a Palauan citizen at least eighteen years of age or older;
- 2) Is not determined to be mentally incompetent by a court of law;
- 3) Is not serving a sentence for any felony;
- 4) Has not previously voted or registered to vote in any state other than the State of Koror within the preceding twelve months preceding his registration, unless he can show that he has in fact changed his principal place of residence by physically moving from such other state to the State of Koror in the interim, and that he meets the requirements of subsection "6)" below;
- 5) Is not registered to vote in any other state;
- 6) Has maintained his residence within the State of Koror for at least the three hundred and thirty-five (335) days immediately preceding his registration, and has not established, had, or maintained a residence in any other place during such time; and
- 7) Under the provisions hereof, is registered to vote in the State at least thirty (30) days prior to the date of the special election.

B. For the purposes of this Act, "Residence" means the place in which a person has been physically present on a substantially continuous basis (at least 300 days out of 365 consecutive days) with the intent to establish and

maintain his permanent home. Any other provision of law notwithstanding, the following factors shall be considered in deciding whether a person is a resident of the State and of Ikelau Hamlet under this Act:

1. The amount of time the person is physically present within the State;
2. Whether the person maintains a home for himself within the State;
3. The existence and maintenance of close ties with family, relatives, and friends who are physically present on a reasonably continuous basis within the State;
4. The conduct of business within the State and the maintenance of business contacts with persons who are physically present on a reasonably continuous basis within the State;
5. The degree of personal involvement in the social, political, cultural, governmental, traditional, and religious affairs of, and organizations operating within, the State;
6. The ownership or leasing of property within the State;
7. The attempt of the person to register to vote in a state other than Koror or the registration for voting purposes in such other state;
8. Whether the person could establish a residency for the purpose of voting in a state other than Koror;
9. The foregoing factors as applied to establish the connection of persons with a state other than Koror.
10. Other indicia of the connection of the person with another state.

SECTION 6. VOTER REGISTRATION.

A. No person may register to vote as a resident of Ikelau Hamlet if they are registered to vote in another Hamlet or another state.

- 1.) Except for registrations by students as provided in subsection (2) herein, all registration applications must be made in person to a member of the Election Board or to other persons authorized by the

National Election Commission to receive registration applications. All registrations and re-registrations may occur no later than 4:30 p.m. on the thirtieth (30th) day before the special election for Ikelau Hamlet. However, if any such person is confined to his home or hospital or is unable to come to the office due to physical incapacity, then the Registrar may go to him in order to allow the person to register.

2.) Student Exception. No registration in person shall be required of a full-time student at any institution of learning, but such a person shall make and subscribe to an affidavit on the form set forth herein.

3.) First Time Registrations. A citizen of the Republic of Palau who has reached the age of 18 years, or who will have reached the age of 18 years on or before the date of the special election, and who meets the requirements set forth in Section 5 of this Act, and who, except for the requirement of registration, is otherwise entitled to vote, may register to vote in Ikelau Hamlet.

4.) Changes in Registration. A person currently registered to vote in any state election in the Republic of Palau in any place other than the State of Koror may change his registration to the State of Koror provided that he has been a resident of Koror as set forth in Section 5 of this Act. A person seeking to change his registration to Koror State must affirmatively show that he meets the residency requirements established in Section 5 of this Act.

5.) Voters Deemed Registered. All voters of Koror State who are currently registered as voters of Ikelau Hamlet in the National Voters Registry maintained by the National Election Commission are deemed registered and shall not be required to register again for the special election.

B. Each person desiring to register shall make and subscribe to an application in the following form, which shall be in Palauan and English:

AFFIDAVIT ON APPLICATION FOR REGISTRATION (OCHOLT EL MO RA

ONGIT EL KIREL A OMELUCHES EL NGAKL RA SENGKYO)

Republic of Palau
(Republic of Belau)

State of Koror
(State era Oreor)

(MOLUCHES EL UA IKAL LLECHUKL EL DIAK'L YOKOMOJI)

1. My full name is _____.
(A cherrungel el ngklel a _____).

2. I was born at _____ on the _____ of
in the year _____. I will be 18 years of age or older on the
date of the next general election.
(Ak mlechell ra _____ ra _____ el kebesengil a
_____ a rak ra _____. Ak mo teruich ma
eyai (18 yrs.) a rekik/malechub engar bab a rekik era 18 yrs. ra el
chal mei el klou el sengkyo.)

3. My age is _____. My occupation is _____.
(A rekik a _____.) (A urrerek a _____.)

4. I live at _____ Hamlet of Koror State and have
lived there since the _____ day of _____, 19_____.
(Ak kiei ra _____ Hamlet ra Koror State emla kiei er ngii
ra _____ sils, _____ (buil) ra rak ra 19_____.)

(If the length of time that you have lived at such Hamlet is less than
twelve months before today, please answer Paragraph 5).
(Al sekum a deleng cheklem er tial Hang a nge-songes ra kesengil eng
teruich ma erul buil er el chal sils, e monger ra ongeim el ker
eriu.)

5. Before _____ (the date stated in your answer to
question 4), I resided in the State of _____ from
_____ 19_____ to _____ 19_____;
and before then, I resided in the State of
from _____, 19_____ to _____, 19_____.

(Ak kmla kiei ra State ra _____ ra _____ 19
el mo lmuut ra _____ 19_____.)

6. In what state(s) other than Koror State have you either voted or registered to vote, and on what dates, in the twelve months before today? (Kau kemla register malechub ekemla sengkyo ra ngiidil state(s) el diak el state ra Oreor ra ngiidil time ra elsel a Teruich ma Erul buil el melmuut er el chal sils?)

_____(State) ra rak ra 19_____, ma
_____(State) ra rak ra 19_____.

7. I am a citizen and resident of the State of Koror, Palau.
(Ak chedal a State ra Koror, Republic of Belau, el kiei er ngii.)

I have maintained a residence in Koror for the last year, and I have not maintained a residence outside of Koror for the last year.
(Ak mla kiei ra Oreor ra elsel elchal rak e dirkak kngeklii a deleng cheklek el mora ikrel Oreor ra elsel osisiu el rak.)

8. I have not been determined to be mentally incompetent by any court of law.
(Chelechal taem eng dirkak moterkokl ra kort ra llach el kmok mekngit a bteluk.)

9. I am not currently serving a sentence for any felony for which I have been convicted by any court.
(Chelechal taem eng diak ngara kelebesengel a ngiidil klou el tellemall ra llach el ktilmelii e mutaut er ngii ra kerekeriil.)

10. I solemnly swear that my foregoing answers and statements are true, so help me God.
(Ak kongei el ngara reng lultuil ra llach el kmo aikal mla mekedmokl el tekoi a klemerang, ma Dios a ngosukak.)

/s/
Voter's Signature
(Saing ra Chad el sengkyo)

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF
19_____.
(NGMILEKEDMOKL E MECHEDAOL ER MEDAK ER CHELECHAL
KEBESENGIL A _____ RA 19_____.)

Koror State Registrar
(Saing ra official ra State era Oreor)

The applicant shall strike out allegations that are inapplicable and shall swear to the truth of the allegations in his application. In any case, where the Registrar desires or believes the same to be expedient, the Registrar may demand that the applicant produce a witness or witnesses and other proof to substantiate further the allegations of his application.

C. Re-registration.

A voter having once registered shall not be required to re-register again for the special election, except if the voter changes his name or residence, or his registration is lost or destroyed, or some intervening disqualification occurs with respect to the requirements of Section 5 of this Act.

SECTION [SIC]8. REGISTRAR; DUTIES.

A. The registrar shall be in charge of the registration of voters and, in addition to his duties as enumerated by K1-13-86 and K3-51-92, shall provide administrative services to the Commission. The Registrar shall have such other duties as set forth by the National Election Commission.

B. If the Registrar is satisfied that the applicant is entitled to be registered as a voter, the Registrar shall do the following tasks:

- 1) number the affidavits consecutively as approved;
- 2) enter into the general State Register the following facts:
 - (a) The affidavit's number;
 - (b) Date of registration;

c) The applicant's name, age, occupation, and residence; and (d) any other information that the Registrar may deem necessary; and

3) enter the name so registered into its proper place in the general alphabetical index, together with a reference to the page in the Register on which the registration appears.

C. The Registrar shall file the accepted affidavits in consecutive numbers and keep the same in some convenient place so as to be open to public inspection and examination. The Registrar shall comply with all other procedures established by the National Election Commission.

SECTION 8. NOMINATION OF CANDIDATES FOR SPECIAL ELECTION.

A. No person may be a candidate for the Ikelau Hamlet legislative seat unless he or she meets the requirements to be a registered voter for a Koror State general election, as set forth in Section 5 of this Act, as of the date of filing for candidacy, and is in fact a registered voter in Ikelau Hamlet as of the date of the special election. In addition, the legislative candidate must be a resident of Ikelau Hamlet for at least one (1) year immediately preceding the election.

B. Nominating Petitions.

1) Nomination of candidates shall be made by petition signed by the candidate and by any five (5) qualified registered voters of Ikelau Hamlet. The candidate and each petitioner shall print and sign his respective name and state his hamlet residence (Ikelau) on the petition. Neither the candidate nor any of the petitioners may simultaneously be a member of the State Election Board or the National Election Commission.

2) Petitions that are duly signed shall be presented to the Registrar who shall verify the signatures of the candidate and the petitioners. Upon verification, he shall transmit the petition to the National Election Commissioner who shall, within 72 hours of his receipt of the petition, certify or deny the petition. The National Election Commissioner will, within

twenty-four (24) hours of his action, notify the candidate of such certification or denial.

3) In order to be a valid petition, it must be presented to the Registrar no later than thirty (30) days before the election.

SECTION 9. BALLOTS.

A. The special election shall be held by official ballot only. All voting shall be done by secret ballot. An official ballot is a typed or printed paper as provided by the national Election Commission for the special election. It shall contain the names of candidates, and spaces for write-in candidates. The national Election Commission shall designate the form and cause the printing and issuance of the official ballot. The Commission shall cause the printing of specimen ballots, which are official ballots with the word "Specimen" in big bold letters across them, and shall cause them to be publicized and to be posted in front of the polling place during the special election to inform the public and the voters of the nature and format of the official ballot.

B. The official ballots shall be distributed according to the procedures set forth by the national Election Commission.

SECTION 10. CONDUCT OF THE SPECIAL ELECTION.

A. Location of Polling Place.

The Election Board shall, at least twenty days before the special election, select and publicize the location of the polling place in Ikelau Hamlet.

B. Ballot Boxes and Materials.

The National Election Commission will provide the polling place with sufficient number of ballots, staff, and necessary materials and supplies.

C. Opening and Closing of Polls.

At exactly eight-thirty in the morning of the day of the special election, the Election Commissioner or his duly authorized agent shall proclaim aloud at the polling place that the poll is open. It shall remain open until five-thirty in the afternoon on the same day, after which time the

polling place shall be closed; provided that if at the hour of closing there are other voters in the polling place or in line at the door who are qualified to vote and have not been able to do so since appearing, the polling place shall be kept open for a sufficient time to enable them to vote; provided, further, that if all registered voters appearing on the registered voter's list have voted, the polling place may close irrespective of the time of day.

D. Checking of Register and challenges.

Every person who desires to vote at the polling place shall report his full name and address to the election officials. One election official shall clearly and audibly announce them. Then another election official shall check the register of voters and determine whether or not the person appearing is a registered voter, and if so, he shall announce the name and address appearing in the register. At this time any person may challenge the qualifications and rights of the person to vote and may submit such challenge to the Commission's members of election officials. The Commission, by any of its members, shall immediately rule upon such challenge. If it grants such challenge, the person may not vote. If it denies such challenge, the person may immediately cast his ballot. Such decision of the Commission may later be challenged pursuant to this Act. The Commission member or election official at the polling place, when the polling place closes, shall swear to the Election Commissioner that all ballots cast at that polling place were cast in accordance herewith.

E. Spoiled Ballots.

Any voter who spoils a ballot may return it to a member of the Commission or to its election official and receive another in its place. He shall be given one ballot at a time. The number of ballots given to him shall not exceed three (3).

F. Campaigning, Drugs, and Alcohol Forbidden Near Polling Places.

No campaigning and no use of alcoholic beverages or other unlawful drugs shall be allowed or conducted within 100 feet of the ballot box on the special election day, and no alcoholic beverages shall be sold or otherwise provided to any person in (Ikela Hamlet/the State] between 7:00 a.m. and 7:00

p.m. during that day. No candidate shall be allowed within 100 feet of the ballot box except for the purpose of casting his ballot. There shall be no campaigning over any broadcast or telecasting station on the day of the election.

G. Poll Watchers.

Each candidate shall be entitled to have not more than two poll watchers at the polling place. The Commission shall provide a badge or other form of identification for each such poll watcher, who shall conspicuously display it whenever near the polling place.

H. Disposition of Ballot Boxes After Completion of Voting.

After all voting is completed, the Commission and its officials, by the safest and most expeditious means available, will secure and lock the ballot boxes, will secure all other supplies provided to the polling place, and shall deliver them all to the Election Commissioner. Each person who so secures, locks, and delivers such boxes shall swear to the Election Commissioner that he has not in any way altered or tampered with the ballots that were cast or the ballot boxes and that he has safely delivered all such ballots and boxes to the Election Commissioner.

I. Counting of Ballots; Rejected Ballots.

1) The commission will establish one or more counting and tabulating committees and their procedures. The committees shall determine the acceptability of all votes cast. Counting and tabulating of ballots shall begin after all the polling place is closed and shall continue, with reasonable rest periods, until all the votes cast shall have been counted. Each candidate or his authorized representative shall be entitled to be present at the counting and tabulation of the votes. Upon completion of the counting and tabulation of all votes cast, the Election Commissioner will make a public announcement of the unofficial results.

2) All ballots that the committee has declared invalid due to defacement or other irregularity shall be sorted, and the committee shall place on each one a notation indicating that it is a rejected ballot. Upon the committee's completion of the counting of the ballots, it shall replace the rejected ballots into the ballot box and return them, along with the

validly cast ballots, to the Election Commissioner.

J. Validity of Ballot.

1) Technical Error.

A ballot shall not be rejected for any technical error which does not render it impossible to determine the voter's choice, even though the ballot is soiled or partially defaced.

2) Imperfectly Marked Ballots.

If for any reason, a ballot is imperfectly marked or if it is impossible to determine the voter's choice for any office, his ballot shall not be counted for that office, but the rest of his ballot, if properly marked, shall be counted. Two or more markings in one voting square or a mark made partly within and partly without a voting square or space does not by itself make a ballot void.

SECTION 11. ABSENTEE AND CONFINED VOTERS.

A. Absentee Voter.

(1) Any registered voter of the State for Ikelau Hamlet who will not be present in the State on the date of the special election may, on any date before the date of the special election, make written request for an absentee ballot from the Commission. Upon receipt of the request for an absentee ballot, the Commission forthwith will either deliver in person or send to the voter, (a) a ballot, (b) a statement to be signed under oath by the voter, notarized, and returned by the voter to the Commission, to the effect that the voter is or shall be absent from the State on the date of the election, and (c) and any other information it so requires.

(2) In order for an absentee ballot to be included and counted in the election, it must either (a) be postmarked no later than four days before the date of the election or be received at the Palau Post office no later than two days after the date of election, (b) or be otherwise received by the Commission by the election date.

B. Confined Voters.

Any registered voter of the State for Ikelau Hamlet who is present in

the State on the date of the special election but is physically unable to go to the polling place due to physical handicap or illness may, no later than noon of the voting day, make written request to the Commission to vote without going to the polling place. If such request is made, then the Commission will cause the ballot of the confined voter to be taken to him for his voting before the polling place closes and shall cause such ballot to be placed into a ballot box.

SECTION 12. ELECTION RESULTS.

A. Certification of Election Results; Declaration of Winner.

The Election Commissioner, within ten (10) days after the date of the voting, will certify the results of the special election and shall declare the winning candidate for the Ikelau Hamlet legislative seat.

B. Requirements to Win an Election.

The candidate who receives the most votes for the Ikelau Hamlet legislative seat shall be the winning candidate.

C. Ties; Runoffs.

In case of a tie vote in the election, then the Commission shall conduct a runoff election, which shall be conducted no earlier than 12 but no later than 20 days after the date of certification of the votes in the first election.

D. In the event of any irregularity in the election or in the certification of a winner, either of which causes a candidate to withdraw or otherwise become ineligible or disqualified, a new special election shall be conducted for the Ikelau Hamlet legislative seat.

SECTION 14. RECOUNT AND APPEALS.

A. Recount.

(1) A petition for recount may be filed by any candidate or voter in the special election if such candidate or voter honestly believes that there was fraud or error committed in the casting, canvassing, or return of the votes cast or in any other aspect of the voting process. The petition shall be filed with the Commission within twelve days of the date on which the Election commissioner certifies the vote and announces the results of the

election.

(2) Such petition shall contain a sworn statement that petitioner has reasons to believe and does believe (a) that records or copies of records of the election are erroneous specifying wherein he deems such records or copies thereof to be in error, or votes were cast by persons not entitled to vote therein, or there was any other error or fraud in the election process and (b) that he believes that a recount of the ballots cast will affect the result of the election.

(3) The Commission will announce its decision, either granting denying the petition, within ten days of the date on which the petition was filed. Such decision shall be accompanied with a statement of the facts and reasons supporting such decision. The petitioner may, within seven days from his receipt of the decision of the Commission, appeal his case to the Trial Division of the Palau Supreme Court, which will review the appeal and render a decision, which shall be subject to review by the Appellate Division of the Palau Supreme Court. If the Court's decision is in favor of recount, the Commission shall proceed as provided in paragraphs (4) and (5) below.

(4) Regardless of whether a voter or candidate files a petition for recount, if the Election Commissioner determines that there is a substantial question of fraud or error in the voting process and that there is a substantial possibility that the outcome of the election would be affected by a recount, he shall cause recount to be held in the manner specified herein.

(5) The recount shall be conducted by the Commission's counting and tabulating committee within ten (10) days after the decision of the Commission or of the Court. The counting and tabulation shall be in public. Such committee shall certify under oath the result and give a copy thereof to the Administrator, the Commission, and the petitioner.

B. Appeals.

Appeals from any decision of the Commission concerning a challenge affecting the acceptability of a voter or votes, the validity of any nominating petition, or any other matter affecting or concerning the election

may be had in the manner prescribed in paragraph A of this Section.

SECTION 14. PROHIBITIONS: PENALTIES.

A. No person shall or may (1) give false information for the purpose of establishing his eligibility to vote or to register to vote, nor shall any person withhold information which may disqualify him or her from being eligible to vote; (2) conspire with another person for the purpose of encouraging such person's registration or voting in violation of the Act, (3) pay or offer to pay money or other valuable consideration or accept payment of money or of other valuable consideration either for registering to vote or for voting in any election; (4) discriminate on the basis of clan, sex, age, or family relationship against any person in their efforts to register or vote, or (5) threaten, intimidate, coerce, or force any other person to violate any provision of this Act, to not vote or to vote in any particular way, or to not register to vote. Any person who violates this section shall be guilty of a misdemeanor and shall pay a fine of 500.00 upon conviction.

B. Any person who violates any other provision of this Act, or who assists or aids in a violation of this Act, shall be guilty of a misdemeanor and shall pay a fine of 100.00 for each offense upon conviction.

C. Any person who violates any provision of this Act may also be liable in a civil action for the costs incurred in conducting the election, or enforcing any other provisions of this Act, including the costs of conducting another election, and including attorney's fees.

SECTION 15. NATIONAL ELECTION LAWS.

Nothing in this Act shall be construed to conflict with the law set forth in Title 23 of the Palau National Code.

SECTION 16. SEVERANCE.

In the event that a court of competent jurisdiction or the Election Commissioner, or his duly authorized representative, or the Election Commission, nullifies or otherwise strikes any part of this Act, then the remaining portions shall remain and continue in full force and effect.

SECTION 17. EFFECTIVE DATE.

This Act shall become effective upon certification by the National

