

## AN ACT

Enacting Title 50 of the Truk District Code to provide for the transfer of Public Lands and the exercise of the power of eminent domain, and for other purposes.

Be it enacted by the Legislature of the Truk District that:

Section 1. Enactment. Title 50 of the Truk District Code is enacted to read as follows:

## Title 50. Public Lands and Condemnation

## Chapter 1. Public Lands

## Section:

- 100. Intent
- 101. Governor Designated
- 102. Enumeration of Powers
- 103. Claims Board
- 104. Powers of Claims Board
- 105. Eminent Domain
- 106. Compliance with Secretarial Order

§ 100. Intent. It is the intent of the Legislature to provide for the State of Truk an efficient and responsible administration of public lands in accord with Secretarial Order 2969.

§ 101. Governor Designated. The Governor of the State of Truk is designated to and shall have exclusive competence to represent the government of the State of Truk with respect to all public lands located within the State of Truk provided that the Governor shall not dispose of any public land without the advice and consent of the Legislature.

§ 102. Enumeration of Powers. With respect to all public lands located within the State of Truk, the Governor shall have the power:

- (1) to receive and hold title to public lands in trust for the people of the State of Truk;
- (2) to administer, manage and regulate the use of public lands;

(3) to lease, use and dedicate for public purpose public lands;

(4) to sell, exchange or make other disposition of public lands with the advice and consent of the Legislature;

X (5) to enter into contracts, sue, be sued, and negotiate in good faith and execute binding formal agreements to meet land requirements as required under terms of future status agreements;

(6) to institute and maintain action in exercise of the power of eminent domain;

(7) to establish and administer a program for homesteading;

(8) to deposit into the General Fund all revenues derived from use of public lands;

(9) to appoint members of the claims board; and

(10) to exercise other powers as may be necessary and appropriate to administer public lands.

§ 103. Claims Board. A claims board consisting of three members to be appointed by the Governor with the advice and consent of the Legislature for terms of four years is established.

§ 104. Powers of Claims Board. The claims board shall have the power:

(1) to establish rules and regulations for the organization of and the procedure for hearings before the claims board;

(2) to adjudicate and resolve claims and disputes as to title and rights in land transferred to the State of Truk and eminent domain proceedings; and

(3) to exercise other powers to carry out the orderly business of its adjudicatory function including the powers to compel the attendance of witnesses and evidence, and cite and recommend prosecution for contempt of its lawful orders under its rules and regulations.



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\* § 105. Eminent Domain. The Government of the State of Truk may take by judicial powers any land, or interest therein with the State of Truk when necessary or advantageous for public purposes. Payment of fair and adequate compensation shall be made to those deprived of their land or interest therein by such taking.

§ 106. Compliance with Secretarial Order. For the duration of the United States of America Administration of the State of Truk under the United Nations Trusteeship Agreement, the following are to be considered as the law regarding public lands:

(1) paramount power of eminent domain remains in the central government of the Trust Territory of the Pacific Islands;

(2) rights regarding conservation, navigation or commerce in navigable waters, tidelands, filled lands, submerged lands and lagoons may be exercised so not as to unnecessarily interfere with all prior traditional rights;

(3) all leases and land use and occupancy agreements shall continue in full force and effect unless terminated by mutual consent of the parties thereto by the terms of such agreement or by operation of law;

(4) tenants at will and at sufferance in occupation of public lands shall enjoy quiet possession unless the High Commissioner objects;

(5) transfer and conveyances of public land shall be subject to all valid existing claims; and

(6) the United States Government and the Central Government of Trust Territory of the Pacific Islands and their agencies or political sub-division shall be free and blameless from any and all claims arising after the conveyance of public land other than those resulting directly from the actions of the United States Government, the Government of the Trust Terri-

tory of the Pacific Islands, their agents or political sub-divisions.

Chapter 2. Condemnation

Sections:

200. Complaint; declaration of taking before judgement; deposit;
201. Vesting of title, and of right to compensation;
202. Determination and award of compensation;
203. Failure of interested parties to appear;
204. Costs;
205. Title disputes; determination;
206. Arbitration of compensation disputes;
207. Appeal;
208. Payment of arbitrators;
209. Incapacity of claimants;
210. Applicability of United States Federal Rules of Civil Procedure;
211. Complaint; caption and contents; names of defendants;
212. Filing complaint;
213. Joinder of properties to be taken;
214. Order for distribution of deposit;
215. Notice to defendant; delivery to court; form;
216. Service of notice;
217. Proof of service;
218. Amendment of notice or proof of service;
219. Appearance or answer; waiver of defenses;
220. Amendment of pleading;
221. Substitution of parties;
222. Dismissal of action;



223. Stipulated dismissal;

224. Dismissal by court;

225. Effect of dismissal;

226. Deposit; distribution.

§ 200. Complaint; declaration of taking before judgment; deposit. The procedure for the complaint; and deposit shall be:

(1) When the Governor desires to acquire any land, easement, right-of-way, or other property interest, he may file a complaint in the trial division of the High Court and, at any time before judgment, may file a declaration of taking signed by the People's Attorney, declaring that the lands or other property rights described in the complaint are taken for the use of the government. The declaration of taking shall contain, or have annexed thereto:

- a) A statement of the property rights are taken;
- b) A description of the property taken sufficient for identification;
- c) A statement of the estate of interest or property, right taken for public use;
- d) A plan showing the lands taken; and
- e) A statement of the sum of money estimated by the government to be just compensation for the land to be taken.

(2) When the government desires to enter into the possession of the property immediately after the service of notice, the notice shall state any damage sustained by the occupant, lessee, lessor or owner of such property by reason of the immediate occupancy by the government which shall be included in the compensation to the aggrieved parties. When the required notice has not been given and the government desires to enter into the possession of the property at any time during the proceedings

and before the rights of the parties and the amount of compensation are determined, the complaint shall also specify the date upon which the government enters into the possession of the property.

(3) Along with the declaration of taking, the government shall deposit in the court, to the use of the persons entitled thereto, the amount of the estimated compensation stated in the declaration.

(4) Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith or on account of the just compensation to be awarded in the proceeding. If the compensation finally awarded for the lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the government for the amount deficiency. If the compensation finally awarded to defendant is less than the amount which has been paid to him, the court shall enter judgment against him and in favor of the government for the overpayment.

§ 201. Vesting of title, and of right to compensation.

Upon the filing of the declaration of taking and the deposit, the title to the lands in fee simple absolute, or such less estate or interest therein as in specified in the declaration, shall rest in the Government of the State of Truk, and the lands shall be deemed to be condemned and taken for the use of the government, and the right to just compensation for the lands shall vest in the persons entitled thereto.

§ 202. Determination and award of compensation.

Just compensation shall be ascertained and awarded in the court proceeding and established by the judgment of the court. The judgment shall



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include as part of the just compensation awarded, interest at the rate of three percent per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into court shall be charged with commissions or poundage.

§ 203. Failure of interested parties to appear. When the parties interested in the property involved in condemnation proceedings fail to appear within the time set by this Chapter, the court may proceed to fix the amount of compensation by arbitration, as provided for in this chapter, and also determine the ownership of the property. Such award and determination shall be as effective as though the parties had appeared and answered. Any sums ordered to be paid by the government shall be held by the government for seven years, to be paid to the proper claimant on demand. Such sums shall bear no interest.

§ 204. Costs. Costs of litigation shall not be assessed against any party.

§ 205. Title disputes; determination. The procedure for title dispute shall be:

(1) When a dispute as to the ownership of the property prevents the amicable settlement of and payment for the property, the People's Attorney shall so certify to the trial division of the High Court, requesting that court determine the ownership of communal land shall be referred to the claims board prior to the High Court, solely for the purpose of determination of ownership.

(2) When a dispute is so certified by the People's Attorney or upon appeal from the Claims Board, the court shall hear the same as a civil matter, and shall, after proper hearing, enter its order and judgment determining ownership of the property, which shall be good against all persons.

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§ 206. Arbitration of compensation disputes.

Arbitration of compensation shall be:

(1) When the government does not agree to pay the sum demanded or the parties or any of them do not accept the deposit made by the government, either before or after the settlement of the question of title, the sum to be paid by the government shall be determined by arbitration.

(2) One arbitrator shall be appointed by the Governor on behalf of the government, one shall be appointed by the person or persons claiming compensation, and one, who shall be the chairman, shall be appointed by the other two arbitrators.

(3) In the event the person or persons claiming compensation do not agree upon an arbitrator or the two arbitrators who are to choose the third arbitrator fail to agree upon third arbitrator by a day to be fixed by the court, an arbitrator shall be named and appointed for them by the court.

(4) The award shall be determined by a majority of the arbitrators after viewing the property involved and considering such evidence concerning the value of the property as may be submitted by interested parties.

(5) The award shall be made within one month after the arbitrators have entered upon their duties, or have been called on to act by notice in writing from any party unless the court shall set a different time. The Chairman of the arbitrators shall, within the time limit for the award, file the determination of the amount of the award with the court, enclosed in a sealed cover endorsed with the names of the parties to the arbitration. The court shall open the award and forward a copy of the same to the parties.



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(6) The decision of the arbitrators shall be final if notice of appeal is not served within the time limited by law.

§ 207. Appeal. Appeals from arbitration shall be taken by the following:

(1) Decisions of the arbitrators or claims board may be appealed to the trial division of the High Court by any person or by the government.

(2) The adverse party or parties shall be served written notice of the intention to appeal within 10 days after the appealing party receives notice of the award from the trial division of the High Court. The notice of appeal, together with proof of service, shall be filed with the clerk of the High Court within two days after service is completed.

(3) On appeal, the trial division shall hear the matter de novo and such evidence, including the testimony of the arbitrators, as is material, may approve, modify, revise or reject the award of the arbitrators, and may to the same or different arbitrators to be appointed in the same manner as the original arbitrators.

(4) Following its decision, the court shall enter an order that upon the payment of the required sum of the government shall be the lawful owner of the property. The order shall bind all persons.

§ 208. Payment of arbitrators. Payment to arbitrators shall be made by the government for the time they are actually engaged in hearing the case, and for their traveling expenses to and from the place of hearing. The amount of the payment shall be fixed by the court, but the payment to each arbitrator shall not exceed \$10.00 per day, plus transportation.

§ 209. Incapacity of claimants. When a question arises as to the legal capacity of any claimant for compensation to execute a discharge or release upon payment of the sum agreed

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to be paid, rendered, or awarded, the court shall appoint a guardian or take such other action as may be required by law.

§ 210. Applicability of United States Federal Rules of Civil Procedure. The Rules of Civil Procedure for the District Court of the United States of America shall govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this chapter.

§ 211. Complaint; caption and contents; names of defendants; Special Rules are:

(1) The complaint shall contain a caption setting forth the name of the court the title of the action, the file number and the designation "complaint."

(2) The government shall name as defendants the property, designated generally by kind, quantity and location, and at least one of the owners of some part or interest in the property.

(3) The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property, a designation of the defendants who have been joined as owners thereof or of some interest therein.

(4) Upon the commencement of the action, the government need join as defendants only those persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property the government shall add as defendants all persons having or claiming to have an interest in that property whose names can be records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "unknown owners".



§ 212. Filing Complaint. In addition to filing the complaint with the court, the government shall furnish to the court at least one copy thereof for the use of the defendants and additional copies at the request of the clerk of the court or a defendant.

§ 213. Joinder of properties to be taken. The Government may join in the same action one or more separate pieces of property, whether in the same or different ownership, and whether or not sought for the same use.

§ 214. Order for distribution of deposit. Following the filing of the complaint, the court may order such distribution of any deposit of the estimated compensation for the property taken as the facts warrant.

§ 215. Notice to defendant; delivery to court; form;  
Notice shall be:

(1) Upon the filing of the complaint the government shall forthwith deliver to the clerk of the court joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall also be delivered.

(2) The delivery of the notice and its service have the same effect as the delivery and service of a summons under the Federal Rules of Civil Procedure of the United States of America.

(3) Each notice shall state the court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of the property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the People's Attorney an answer within 20 days after service of the notice, and that the failure to so serve an answer constitutes a consent to the taking and to the authority of the court to hear the action and to fix the compensation. The notice shall conclude with the address of the People's Attorney

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where he may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

§ 216. Service of Notice. Personal service of the notice, with copies of the complaint, shall be made by any policeman of the State of Truk or any person duly appointed by the court, in the manner described in the Federal Rules of Civil Procedure. If personal service cannot be made upon any defendant, the service may be accomplished by mailing a copy of a notice by registered mail to the defendant at his last known post-office address; the notice shall also be posted on the property to be acquired and at the court house, and if a newspaper is published in the State of Truk a copy of the notice shall be published therein once each week for three successive weeks. Notice shall be in both the English and local languages.

§ 217. Proof of Service. Proof of Service of the notice shall be made in the manner provided for the return amendment of a summons under the Federal Rules of Civil Procedure.

§ 218. Amendment of notice or proof of service. Amendment of the notice or of proof of service shall be allowed in the manner provided in the Federal Rules of Civil Procedure.

§ 219. Appearance or answer; waiver of defenses. After proper service:

(1) if a defendant has no objection or defense to the taking of his property, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter, he shall receive notice of all proceedings affecting it; or

(2) if a defendant has any objection or defense to the taking of his property, he shall serve his answer within 20 days after the service of notice upon him. The answer shall identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and state all his objections and defenses to the taking his property. A defendant waives all defenses



and objections not so presented, but at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

§ 220. Amendment of pleading. To amend pleadings:

(1) Without leave of court, the government may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by Section 225 of this title;

(2) The government need not serve a copy of an amendment, but shall serve notice of the filing, as provided in the Federal Rules of Civil Procedure upon any party affected thereby who has appeared and, in the manner provided in this chapter, upon any party affected thereby who has not appeared;

(3) The government shall furnish to the clerk of the court for the use of the defendants at least one copy of each amendment, and he shall furnish additional copies on the request of the clerk or of a defendant; or

(4) Within the time allowed by this chapter, a defendant may serve his answer to the amended pleading, in the form and manner and with the same effect as therein provided.

§ 221. Substitution of parties. To substitute parties:

(1) if a defendant dies, becomes incompetent or transfers his interest after his joinder in the action, the court may order substitution of the proper party upon motion and notice of hearing; or

(2) if the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in Section 216 of this title.

§ 222. Dismissal of action. If no hearing to determine the compensation to be paid for piece of property has begun and the government has not acquired the title or a lessor interest or taken possession, the government may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

§ 223. Stipulated dismissal. Before the entry of any judgment vesting the government with title or a lessor interest in or possession of property, the action may be dismissed in whole or in part, without an order of the court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and if the parties so stipulate, court may vacate any judgment that has been entered.

§ 224. Dismissal by court. At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lessor interest, but shall award just compensation for the possession, title or lessor interest so taken. The court at any time may sever a defendant unnecessarily or improperly joined.

§ 225. Effect of dismissal. Except as otherwise provided in the notice, or stipulation of dismissal, or order of the court, dismissal is with prejudice.

§ 226. Deposit; distribution. Distribution of deposit:

1) The government shall deposit with the court the money required by this chapter.

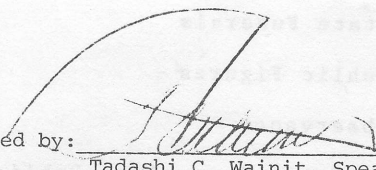
2) The court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation.

3) If the compensation finally awarded to any defendant exceeds the amount which has been paid to him on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that



defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the court shall enter judgment against him and in favor of the government for the overpayment."

Section 2. Effective Date. This act shall take effect upon approval by the Governor or upon its becoming law without such approval. Provided Section 106 of Chapter 1 Title 50 shall have no effect after the termination of the United States Administration under the Trusteeship agreement.

Signed by: 

Tadashi C. Wainit, Speaker  
Truk State Legislature

Attested to: 

Datasi Albert  
Legislative Clerk/Secretary  
Truk State Legislature

Date: May 22, 1979

Approved by: 

Erhart Aten, Governor  
Truk State Government

Date: May 24, 1979