

# TITLE 9

## NATIONAL ELECTIONS

### CHAPTERS

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**Editor's note:** Chapters 1 through 9 of this title were repealed in their entirety by section 1 of PL 14-76 that was signed into law by then President Joseph J. Urusemal on August 14, 2006.

### CHAPTER 1

#### General Provisions

### SECTIONS

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**Editor's note:** Chapter 1 of this title on General Provisions was enacted by section 2 of PL 14-76.

### **§ 101. Short title.**

This Act shall be known and cited as the “Revised National Election Act of 2005”.

**Source:** PL 14-76 § 3.

**Editor's note:** This title was repealed in its entirety and reenacted by the provisions of PL 14-76, which was signed by President Joseph J. Urusemal on August 14, 2006.

### **§ 102. Definitions.**

The following terms shall have the following meanings:

- (1) “Citizen” means a citizen as defined by the Constitution of the Federated States of Micronesia and title 7 of this code;
- (2) “Congress” means the Congress of the Federated States of Micronesia;
- (3) “Congressional Election District” means the district apportioned by population for which a two-year term Member is elected;
- (4) “Election Day” means the date in the Federated States of Micronesia on which National Elections are conducted in the Federated States of Micronesia without regard to the actual date at any Polling Place outside the Federated States of Micronesia;
- (5) “Member” means a two-year or four-year member of the Congress of the Federated States of Micronesia;
- (6) “Municipality” means a subdivision of a Congressional Election District;
- (7) “National Election” means any general or special election for a Member, or any national referendum on a constitutional amendment;
- (8) “National Election Director” means the person appointed in accordance with subsection 302(1) of this title;

(9) “National Election Office” means the office or other locations designated by the National Election Director as a location from where official national election activities are carried out;

(10) “National Voter Register” means the list of all Registered Voters in the Federated States of Micronesia who registered to vote with a National Election Office;

(11) “Polling Place” means a location officially designated by the National Election Director where voters cast their ballots in a National Election, including special polling places, VAAPP polling places, mobile polling places and traveler polling places;

(12) “Polls” may refer to two or more Polling Places, or all Polling Places generally;

(13) “President” means the President of the Federated States of Micronesia;

(14) “Public Property” means any land, buildings, facilities, vessels, vehicles, equipment, supplies or other resources that are owned, operated or controlled by the National Government, a State government or a municipal government, or any subdivision, agency or department thereof;

(15) “Public Employee” means any employee of the National Government, a State government or a municipal government, or any subdivision, agency or department thereof;

(16) “Registered Voter” means a person who has registered to vote pursuant to chapter 4 of this title;

(17) “Resident” means a person who qualifies as a resident under the laws of the State in which the person has registered, or seeks to register, to vote;

(18) “Signature List” means the certified list of Registered Voters in a Municipality or Congressional Election District that any person seeking to vote on Election Day must sign at their designated Polling Place before being issued a ballot;

(19) “State” means one of the four States of the Federated States of Micronesia;

(20) “State Election Office” means the official office or other locations designated by the State election officials or state government as a location from where official state election activities are carried out;

(21) “State Voter Register” means the list of Registered Voters for a Congressional Election District or Municipality who registered to vote with a State Election Office;

(22) “VAAPP” means voting at another polling place in accordance with section 604 of this title; and

(23) “Voter Identification Card” means an identification card issued under the authority of the National Election Director to a Registered Voter that contains the Registered Voter's name, registration number, State, Congressional Election District, Municipality, date of birth, sex, signature and other identifying information, and that provides a means of indicating whether that Registered Voter has already cast a ballot in each National Election.

**Source:** PL 14-76 § 4.

**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.

**Editor's notes:** Subsection 16 ended in a period in PL 14-76 and has been replaced with a semicolon.

### **§ 103. Eligible Voters.**

Every Citizen of the Federated States of Micronesia is eligible to vote in a National Election if he or she has fulfilled the following requirements:

- (1) is living;
- (2) is 18 years of age or older on the day of the election;
- (3) is a Resident of a State;
- (4) has been a Registered Voter for at least 30 days immediately preceding Election Day;
- (5) is not currently under a judgment of mental incompetency or insanity; and

(6) is not currently under parole, probation, or sentence for any felony for which he or she has been convicted by any court of the Federated States of Micronesia.

**Source:** PL 14-76 § 5.

### **§ 104. Election to be by secret ballot.**

All National Elections shall be by secret ballot, regardless of how State or municipal elections are conducted.

**Source:** PL 14-76 § 6.

**Cross-reference:** FSM Const., art. VI, sec. 1 states in pertinent part that: "Voting shall be secret." The provisions of the Constitution are found in Part I of this code.

### **§ 105. General elections.**

(1) All general elections for Members shall be held biennially in each odd-numbered year on the first Tuesday following the first Monday in March; provided, that where a natural disaster or other event precludes holding the election on the foregoing date, the President may postpone the election in the affected Congressional Election District, Municipality or Polling Place until the next available date on which the natural disaster or other event will not hinder voting, excluding weekends and national holidays.

(2) When a State or municipal election is scheduled to be held concurrently with a National Election, the National Election Director shall assist in that election as requested by the State or municipal government, to the extent determined by the National Election Director and within the limits of available resources.

**Source:** PL 14-76 § 7.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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.fsmsupremecourt.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/>.

### **§ 106. Special elections.**

(1) Special elections shall be conducted in the same manner as general elections, except where this title sets forth a different procedure for special elections.

(2) The National Election Director shall schedule a special election to occur 50 days after receipt of notification of the need for a special election; provided, that where a natural disaster or other event precludes holding the election on the foregoing date, the President may postpone the election in the affected Congressional Election District, Municipality or Polling Place until the next available date on which the natural disaster or other event will not hinder voting, excluding weekends and national holidays.

(3) Special elections shall be declared as follows:

(a) *After election of President and Vice President.* After the election of the President and Vice President, vacancies shall be declared for the seats to which the President and Vice President were originally elected as Members. The Speaker of Congress shall make the declaration and notify the National Election Director of the vacancies.

(b) *Other vacancies—seated Congress.* Any other vacancy in the Congress shall be filled for the unexpired term by special election, except that an unexpired term of one year or less shall be filled by appointment by the Governor of the State affected. The appointee shall possess the qualifications required by section 201 of this title and shall serve only for the unexpired term. The Speaker of Congress shall make the declaration of a vacancy to be filled by special election and notify the National Election Director of the vacancy.

(c) *Other vacancies—death of a declared winner.* In case a death of a declared winner before being sworn into office, the Governor of the State affected shall notify the Speaker of Congress, who shall immediately declare a vacancy and notify the National Election Director.

(4) *Date of special election.* If the date required by this section for a special election to be held falls on a Saturday or Sunday, the election shall be held on the first Tuesday following that Saturday or Sunday. If the date required by this section for an election to be held falls on a national holiday, the election shall be held on the next available day that is not a Saturday or Sunday.

**Source:** PL 14-76 § 8.

**Case annotations:** The Section 11 constitutional provision for special elections does not mention runoff elections if there is no candidate with a majority. Nor does it state that the gubernatorial special election shall be conducted in the same manner as the gubernatorial election in Section 7, and it also does not state that it should be conducted in a manner to be prescribed by statute. If it did then, Section 142 of the Election Code, which provides that "[a]ll special elections shall be conducted in the same manner and form as a general election, except as otherwise provided in this Act," would carry great weight and might lead the court to conclude that there was a clear, non-discretionary duty to conduct a runoff. However, there are no such provisions. *Narruhn v. Chuuk State Election Comm'n*, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

When the Constitution's framers did not include provisions for runoff elections after special elections, and even if that was through oversight, the court will not insert into the Constitution a runoff provision that is not there. Accordingly, the petition for a writ of mandamus directed to the State Election Commission commanding it to hold a runoff election will be denied. *Narruhn v. Chuuk State Election Comm'n*, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

### **§ 107. Election funding.**

Within one year prior to a general election, or 40 days prior to a special election, Congress shall appropriate a sum adequate to defray the administrative and contingent expenses of conducting National Elections as provided by this title.

**Source:** PL 14-76 § 9.

**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.

### **§ 108. Use of Public Property or Public Employees for Campaign Activities.**

(1) No Public Property shall be made available, without cost, to a candidate in a National Election, or his or her supporters, for campaign activities; provided, however, that campaign materials may be displayed on Public Property without cost so long as the campaign materials do not damage or deface that property and the candidate, or his or her supporters, remove such materials prior to 12:00 a.m. on Election Day pursuant to section 705 of this title.

(2) If Public Property is made available to a candidate in a National Election, or his or her supporters, such property shall be made available on an equal basis to all opposing candidates and their supporters.

(3) Notwithstanding anything in subsections (1) and (2) of this section, no National Government vehicle shall be used by a candidate, or his or her supporters, for campaign activities.

(4) No candidate shall use the services of Public Employees for campaign activities during working hours or while such employees are conducting government business.

**Source:** PL 14-76 § 10.

### **§ 109. Use of broadcast and print media.**

(1) If any broadcast or print media, either public or private, permits a candidate in a National Election, or his or her supporters, to use its facilities or publications, it shall afford access on an equal basis to all opposing candidates, or their supporters, without censorship. No obligation is imposed under this section upon any broadcast or print media to allow the use of its facilities or publications by any candidate in a National Election. Appearance by, or mention of, a candidate in any bona fide news story or interview shall not be deemed to be use of a broadcast facility or publication within the meaning of this section.

(2) All broadcast and print media carrying campaign advertisements shall clearly identify each campaign advertisement and shall indicate the candidate, or supporters of the candidate, responsible for the advertisement.

(3) No broadcast or print media shall permit use of its facilities or publications by any candidate in a National Election, or his or her supporters, on Election Day.

**Source:** PL 14-76 § 11.

**Case annotation:** To conclude that 9 F.S.M.C. 107(1) criminalizes either a candidate's conduct in submitting his campaign tape directly to a broadcast facility without previously submitting it to the national election commissioner, or to conclude that the owner and operator of the radio station faces a criminal penalty because it aired the tape would be to attribute an uncertain meaning to the statute, which might well cause candidates to steer far wider of the unlawful zone than they otherwise would, or should, in the important work of presenting their views to a public which needs to exercise its franchise in an intelligent manner. The court declines to credit such an uncertain meaning to the statute. *FSM v. Moses*, 9 FSM R. 139, 146 (Pon. 1999).

The national election director and his deputies in the four states, the national election commissioners, may have a duty to take all reasonable steps to insure that candidates have equal access to government broadcast facilities. *FSM v. Moses*, 9 FSM R. 139, 146 (Pon. 1999).

Candidates are to notify the national election commissioner twenty-four hours before their intended use of a government broadcast facility. *FSM v. Moses*, 9 FSM R. 139, 144 (Pon. 1999).

When there is no statutory requirement that a candidate submit his taped speech before it is aired and when there is no mention of criminal liability on the of the government broadcast facility should it do so, there is no probable cause to believe a crime has been committed, and the information and criminal summons should be dismissed without prejudice. *FSM v. Moses*, 9 FSM R. 139, 145 (Pon. 1999).

A court will not extrapolate a statute's allowable meaning to encompass submission of the taped speech directly to the radio station without first submitting it to the national election commissioner when the statute's only stated requirement is twenty-four hours' notice. *FSM v. Moses*, 9 FSM R. 139, 145 (Pon. 1999).

A political candidate's freedom of expression is guaranteed, as it is to all citizens, under section 1 of the FSM Constitution's Declaration of Rights. *FSM v. Moses*, 9 FSM R. 139, 146 (Pon. 1999).

### **§ 110. Affidavit to be sworn.**

The affidavits required pursuant to this title shall be sworn to before any officer or person authorized by law, this title, or regulations issued pursuant thereto, to administer oaths, except for the affidavit accompanying absentee ballots which does not need to be witnessed.

**Source:** PL 14-76 § 12.

**§ 111. Violations.**

(1) Any person who knowingly violates any of the provisions of this title or any rules or regulations promulgated pursuant thereto, or commits any of the unlawful acts set forth herein or elsewhere in this title, for which a penalty is not otherwise provided, shall be punished by a fine not to exceed \$500, or imprisonment for not more than one year, or both.

(2) It shall be unlawful for any person, directly or indirectly, personally or through another, to knowingly commit the following acts:

(a) give, procure, promise or lend or offer to give, procure, promise or lend anything of value for the purpose of inducing or compelling a person to vote or refrain from voting for any particular person or issue, or to sign or refrain from signing a nomination petition;

(b) compel or induce a person to vote, register to vote, sign a nomination petition or run for office knowing that such person is ineligible to do so;

(c) use or attempt to use any means of force, threat, intimidation or coercion against any person for the purpose of inducing or compelling the person to vote or refrain from voting for any particular person or issue, or to sign or refrain from signing a nomination petition;

(d) use or attempt to use any means of force, threat, intimidation or coercion against any candidate so as to cause or attempt to cause the candidate to withdraw from an election;

(e) give or present false information regarding identity, citizenship, address, period of residence, or other material information, when voting or registering to vote;

(f) vote or attempt to vote more than once in the same National Election at the same or another Polling Place;

(g) destroy, mutilate, deface, falsify, forge, conceal or remove any record, register of voters, affidavit, vote return, tally sheet, ballot, or any other official National Election publication or computer programs, unless permitted to do so under this title or any rules or regulations promulgated pursuant thereto;

(h) fail to comply with lawful orders of election officials or obstruct election officials from performing their official duties;

(i) publish a false statement of the withdrawal of candidate for election;

(j) prior to, during or after the counting of the ballots, or prior to, during or after the final certification of the vote of any election,

(i) place anything other than a ballot in a ballot box;

(ii) add or mix a forged ballot with other ballots; or

(iii) add or mix a forged application to vote with other applications to vote;

(k) except as permitted by this title, mark a ballot or cast a vote so that it can be observed by another person, or observe another person lawfully marking a ballot or lawfully casting a vote; and

(l) without authorization of the National Election Director, print, copy, imitate, or distribute, or cause to be printed, copied, imitated, or distributed any ballot that is so substantially similar in style or content to the official ballot as to cause the likelihood of confusion with the official ballot.



(3) Anyone who commits one of the acts enumerated in subsection (2) of this section shall be guilty of a national offense and upon conviction shall be fined not more than \$2,000, or imprisoned for not more than five years, or both.

(4) Any person who, directly or indirectly, personally or through another, knowingly accepts anything of value for voting or refraining from voting for any particular person or issue, or for signing or refraining from signing a nomination petition shall be guilty of a national offense and upon conviction shall be fined not more than \$500, or imprisoned for not more than one year, or both.

(5) Notwithstanding the violations provided in this section, it shall not be unlawful for a person to provide voters with private means of transportation to and from the Polling Place on Election Day so long as no public funds are expended in providing this service.

**Source:** PL 14-76 § 13.

### **§ 112. Construction of the Act.**

Election officials shall construe this title in a manner that permits all voters and candidates a fair and equal opportunity to participate in elections.

**Source:** PL 14-76 § 14.

### **§ 113. Authority to promulgate rules and regulations.**

The National Election director, with the approval of the President, shall have the power to promulgate such rules and regulations as are deemed advisable to administer and carry into effect the provisions of this title in accordance with title 17 of this code.

**Source:** PL 14-76 § 15.

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**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. Title 17 of this code is on Administrative Procedures.