

## CHAPTER 2

### Candidates

#### **SECTIONS**

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**Editor's note:** Chapter 2 of this title on Candidates was enacted by section 16 of PL 14-76.

#### **§ 201. Qualifications of Senators.**

To be eligible for election as a Member of the Congress, a person shall:

- (1) have attained the age of 30 years by Election Day;
- (2) be a Resident of the State from which he or she is seeking election on Election Day and for at least five years prior to that date;
- (3) be a Citizen of the Federated States of Micronesia on Election Day and for at least 15 years prior to that date;
- (4) not be under a judgment of mental incompetency or insanity; and
- (5) not have been convicted of a felony by a State or National Court of the Federated States of Micronesia or its predecessor Government of the Trust Territory of the Pacific Islands.

**Source:** PL 14-76 § 17.

**Case annotations:** When a constitution establishes specific eligibility requirements for a particular constitutional office, the legislature is without power to require different qualifications and when there is no direct authority in the constitution for the legislature to establish qualifications for office in excess of those imposed by the constitution, such extra qualifications are unconstitutional. *Olap v. Chuuk State Election Comm'n*, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution does not, either expressly or by implication, give the Legislature any authority whatsoever, to add qualifications for persons seeking a legislative office beyond those in the Constitution. *Olap v. Chuuk State Election Comm'n*, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

It is beyond the power of the Legislature to enact a law to prohibit government employees from becoming candidates for legislative

service. *Olap v. Chuuk State Election Comm'n*, 9 FSM R. 531, 534 (Chk. S. Ct. Tr. 2000).

### **§ 202. Nomination of candidates.**

(1) Nomination of candidates shall require submission of a nomination paper, including a petition and an affidavit, to the national election commissioner of the State concerned.

(2) The petition shall be initiated by a candidate and shall specify whether the candidate is running for a four-year or a two-year term seat in Congress. The petition shall be signed by at least 25 qualified voters of the Congressional Election District wherein the candidate seeks election in the case of a two-year term seat, or of the State wherein the candidate seeks election in the case of a four-year term seat.

(3) The affidavit shall be completed and signed by the candidate and affirm that the candidate fulfills the qualifications of Senators as set forth in section 201 of this chapter.

(4) The name of any candidate shall be printed on an official ballot to be used for choosing candidates only if, at least 120 days prior to a general election or 40 days prior to a special election, a nomination paper shall have been filed in the office of the national election commissioner of the State concerned. There shall be deposited with the nomination paper a filing fee of \$100. The national election commissioner of the State concerned shall, upon receipt of the nomination paper, endorse thereon the day, hour, and minute that such nomination paper is received. Any person who is elected as a write-in candidate shall, after certification of the election results, pay a \$100 fee and submit the affidavit, but not the petition, required by this section.

**Source:** PL 14-76 § 18.

**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.

### **§ 203. Withdrawal of candidates.**

(1) Any candidate may withdraw his or her candidacy before a general election by giving notice in writing to the national election commissioner of the State in which the candidate is seeking election to forward to the National Election Director, or directly to the National Election Director, whichever is more practical.

(2) Upon filing a nomination paper for a special election, no candidate shall be allowed to withdraw his or her candidacy.

**Source:** PL 14-76 § 19.

### **§ 204. Substitution of candidates.**

(1) Where the death, disqualification or, in the case of a general election, withdrawal of a candidate, or candidates, more than 70 days before a general election or 30 days before a special election has resulted in either, no candidates or, an unopposed candidate running for a particular seat in Congress, substitute candidates may be nominated for that seat prior to 60 days before a general election, or 20 days before a special election.

(2) Where the death, disqualification or withdrawal of a candidate, or candidates, under subsection (1) of this section occurs less than 70 days before a general election or 30 days before a special election, the National Election Director shall determine whether it is feasible to conduct the National Election as scheduled, and if it is not feasible, the President shall postpone the National Election pursuant to subsection (1) of section 105 or subsection (2) of section 106 of this title.

(3) A person nominated as a substitute candidate must be nominated by petition in the same manner as the candidate who has died, withdrawn, or been disqualified.

**Source:** PL 14-76 § 20.

**Editor's notes:** The word "candidates" in the title of this section was capitalized in PL 14-76. This has been changed to lower case to be consistent with the other sections and standard code formatting.

**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.

### **§ 205. Congress as sole judge of its Members.**

The Congress shall be the sole judge of the elections, returns, and qualifications of its Members; provided, however, that in case of a tie vote in an election, the winner shall be determined in a runoff election between the candidates so tied in accordance with section 712 of this title.

**Source:** PL 14-76 § 21.

**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.

**Case annotations:** Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. *Aten v. National Election Comm'r (III)*, 6 FSM R. 143, 145 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. *Aten v. National Election Comm'r (III)*, 6 FSM R. 143, 145 & n.1 (App. 1993).

If Congress seats a candidate unconditionally an election contest becomes a non-justiciable political question. *Nelson v. FSM Nat'l Election Dir.*, 16 FSM R. 356, 359 (Chk. 2009).

### **Section 206. Convening, organization, elections of President and Vice President.**

A newly elected Congress shall convene on the date its Members commence their terms of office and be organized no later than the fourth day immediately following the convening day. The President and Vice President may be elected only after the Congress is fully organized. To be eligible for the office of the President and Vice President, a Member must be a member of Congress for a four-year term, and shall also have been a resident for at least 15 years and a Citizen by birth of the Federated States of Micronesia.

**Source:** PL 14-76 § 22.

**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.