



GOVERNMENT OF KOSRAE

Office of the Governor

Post Office Box 158

Kosrae, Federated States of Micronesia 96944

Telephone: 691-370-3002/3003..Facsimile: 691-370-3162

February 8, 2016

The Honorable Tulensa W. Palik
Speaker
Eleventh Kosrae State Legislature
Tofol, Kosrae FM 96944

Dear Mr. Speaker:

Kulo nu sin God ke moule lasr. Paing kom a members ke Sroasr Masap kewa.

Wangin pa pusra yok lasr nuka sripa yok lun L.B. 11-68, L.D.1. Oinge nga fulela lusen len 30 la in eis comments nuka, panang oru el putatyang nuke pusren masap su orala kosrae State Law No. 11-53.

"TO AMEND TITLE 11, BY ADDING A NEW CHAPTER 9 FOR THE PURPOSE OF ESTABLISHING THE KOSRAE RESOURCE ROYALTY ACT; AND FOR OTHER PURPOSES."

Certified copy ke masap se inge pa attached nuke letter luk.

Kulo ma lulap.

Lyndon H. Jackson
Governor, State of Kosrae

/mct

Recd 02/08/16
@ 10:25 am
KSL/HK



ELEVENTH KOSRAE STATE LEGISLATURE
P. O. BOX 187
TOFOL, KOSRAE STATE
FEDERATED STATES OF MICRONESIA 96944
TELEPHONE: (691)370-3019/3177

Tulensa W. Palik
SPEAKER

January 7, 2016

Robert I. Taulung
VICE SPEAKER

Jarinson M. Charley
FLOOR LEADER

The Honorable Lyndon H. Jackson
Governor
State of Kosrae
Tofol, Kosrae FM 96944

LELU:
Albert T. Welly
Gilton A. Esahu
Reedson P. Abraham
Salpasr E. Tilfas
Tulensa W. Palik

Dear Governor Jackson,

TAFUNSAK:
Alokoa Jb. Sigrah
Maker L. Palsis
Robert I. Taulung
Rolner L. Joe

I have the honor to transmit herewith for your consideration and action on **L.B. No. 11-68, L.D.1, TO AMEND TITLE 11, BY ADDING A NEW CHAPTER 9 FOR THE PURPOSE OF ESTABLISHING THE KOSRAE RESOURCE ROYALTY ACT; AND FOR OTHER PURPOSES.**; which passed the Legislature, Third Special Session, by two-thirds of the Members of the Legislature; a quorum being present.

MALEM:
Jarinson M. Charley
Morgan S. Jonas
Sasaki L. George

Respectfully yours,

UTWE:
Josaiah F. Waguk
Rinson H. Edmond

Andy J. Andrew
Deputy Chief Clerk
Kosrae State Legislature

Enclosures:

ELEVENTH KOSRAE STATE LEGISLATURE
THIRD SPECIAL SESSION
SEPTEMBER 2015

A BILL FOR AN ACT

TO AMEND TITLE 11, BY ADDING A NEW CHAPTER 9 FOR THE PURPOSE TO ESTABLISH THE KOSRAE RESOURCE ROYALTY ACT; AND FOR OTHER PURPOSES.

INTRODUCED BY: Senator

Rinson H. Edmond

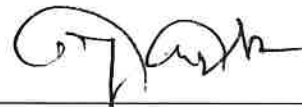
DATE: September 30, 2015

ACTION BY THE LEGISLATURE

PASSED FIRST READING: October 12, 2015

REFERRING TO: SCR No. 11-120

PASSED SECOND READING: November 13, 2015



Andy J. Andrew
Deputy Chief Clerk
Kosrae State Legislature



ELEVENTH KOSRAE STATE LEGISLATURE
P. O. BOX 187
TOFOLO, KOSRAE STATE
FEDERATED STATES OF MICRONESIA 96944
TELEPHONE: (691)370-3019/3177

LEGISLATIVE BILL No. 11-68, L.D.1

Tulensa W. Palik
SPEAKER

Robert I. Taulung
VICE SPEAKER

Jarinson M. Charley
FLOOR LEADER

LELU:
Albert T. Welly
Gilton A. Esahu
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MALEM:
Jarinson M. Charley
Morgan S. Jonas
Sasaki L. George

UTWE:
Josaiah F. Waguk
Rinson H. Edmond

We hereby certify that the foregoing Bill has passed Second and Final Readings in the Legislature, Third Special Session, 2015, by two-thirds of the members of the Eleventh Kosrae State Legislature, a quorum being present.

Tulensa W. Palik
Speaker
Eleventh Kosrae State Legislature

Andy J. Andrew
Deputy Chief Clerk
Kosrae State Legislature

A BILL FOR AN ACT

To amend Title 11, by adding a new Chapter 9 for the purpose of establish the Kosrae Resource Royalty Act; and for other purposes.

BE IT ENACTED BY THE KOSRAE STATE LEGISLATURE

1 Section 1. Findings. The Legislature finds that:

2 (1) The natural resources, including living and non-living marine and terrestrial
3 resources, situated in, on, under or over the public lands and waters of Kosrae are
4 vested in the State of Kosrae, and should be managed for the benefit of all
5 Kosraeans;

6 (2) It is the State's responsibility to ensure that the harvest of such resources is
7 sustainably managed, in accordance with the precautionary principal and
8 Kosrae's environmental impact assessment process, while allowing for the
9 maximum utilization of those resources; and

10 (3) Leases and permits to allow the harvest of natural resources from public land and
11 waters should be granted with the proper prior informed consent of the State,
12 negotiated in good faith and with transparency, in the interests of the State of
13 Kosrae and its people.

14 Section 2. Insertion. Title 11 of the Kosrae State Code, as amended, is hereby further
15 amended by adding a new Chapter 9 to read as follows:

16 "Chapter 9: Resources Royalty

17 Section 11.901. Title. This Chapter may be known and cited as the "Kosrae State
18 Resource Royalty Act of 2014".

1 Section 9.901. Purpose. The purpose of this Chapter is to provide a mechanism for
2 the assessment and payment of royalties on extraction, use or development of the
3 living and non-living natural resources of the State of Kosrae. The royalty assessment
4 and payment of royalties is in addition to:

5 (a) The requirement for a foreign investment permit obtained in accordance with
6 the Foreign Investment Act, as may be amended; and

7 (b) A lease of public land in accordance with Chapter 1 of Title 11 of the Kosrae
8 State Code, as may be amended; and

9 (c) The requirement for a Development Review Permit in accordance with the
10 Regulations for Development Projects, as may be amended;

11 (d) The requirement for a municipal business license;

12 Except that a royalty assessment is not required if there is an access and benefit
13 sharing agreement in accordance with the Research and Access and Benefit Sharing
14 Act and the regulations promulgated thereunder, as may be amended, however that
15 agreement may make specific provision for the payment of royalties however termed.

16 Section 11.903. Definitions. As used in this Chapter, unless the context otherwise
17 requires, the term:

18 (1) “Director” means the Director of the Department of Resources and Economic
19 Affairs, or his or her designee.

20 (2) “Fiscal Year” means the 12-month period from October 1 of one calendar year
21 through September 30 of the succeeding calendar year.

1 (3) “Natural Resources” means any material that, when extracted, harvested,
2 developed, cultivated, or otherwise exploited, has an economic value.

3 Natural resources include, but are not limited to:

4 (a) gas, oil, coal or other minerals; and

5 (b) reef, pelagic or ornamental fish, clams, pearls, sea-cucumber, trochus,
6 shrimp, coral, sponges, seaweed, or any other marine plant, animal or
7 organism; and

8 (c) trees, herbs, and the flowers, bark, leaves, roots, or other parts of plants;
9 whether or not those living resources referred to in subsections (b) and (c) are
10 indigenous or native to the State of Kosrae.

11 (4) “Public Land” means any land to which the State or Government holds title to,
12 or in which it has a use interest, including land which is public property. It
13 includes, but is not limited to, State-owned forests, mangroves, reef flats, blue
14 holds, channels, harbors, and the continental shelf within the territorial waters
15 of the State of Kosrae.

16 (5) “Person” means any individual, firm, corporation, association, partnership,
17 agency, authority, commission, foundation; the Government of the State of
18 Kosrae, its political subdivisions; a state created entity, municipality, or other
19 institution or entity, whether public or private.

20 (6) “Responsible Agency” means the government department or agency
21 responsible for the management of the specific natural resources or public

1 land from where the natural resource was extracted or harvested.

2 (7) "Royalty" means compensation payable to the State of Kosrae for the
3 extraction, harvest, development, cultivation, or other exploitation of the
4 natural resources of the State of Kosrae.

5 (8) "Royalty Assessment" means the assessment and calculation of royalties by
6 by the Director in accordance with Section 11.904.

7 (9) "State" means the State of Kosrae.

8 Section 11.904. Requirement for a Royalty Assessment.

9 (1) The extraction, harvest, development, cultivation, or exploitation of
10 natural resources in the State of Kosrae, on public land, shall be subject
11 to the payment of royalties.

12 (2) An application for a preliminary royalty assessment, with the following
13 information, shall be submitted to the Director prior to the commencement
14 of the activity, or at the commencement of the fiscal year in the case of
15 activities undertaken in successive years;

16 (a) Summary of activity being undertaken, including –

17 (i) The name of the natural resources (including, species if
18 relevant) being extracted, cultivated or harvested; and

19 (ii) The quality or volume (in pieces or kilograms) proposed to be
20 extracted, cultivated or harvested; and

21 (b) The expected per unit (piece rate, kilograms as is appropriate) gross

- 1 value at the time of harvest, or export from the State if it is not for
2 domestic consumption or use; and
- 3 (c) Any additional information that the Director may request.
- 4 (3) An application for a final royalty assessment, with the following
5 information, shall be submitted to the Director at the conclusion of the
6 activity, if activity is a short term or once-off activity, or within fourteen
7 (14) working days of the conclusion of the fiscal year if the activity is an
8 on-going activity:
- 9 (d) Summary of activity undertaken, including –
- 10 (i) The name of the natural resource (including, species if relevant)
11 extracted, cultivated or harvested:
- 12 (ii) The quantity or volume (in pieces or kilograms) extracted,
13 cultivated or harvested; and
- 14 (e) The per unit (piece rate, kilograms as is appropriated) gross value at
15 the time of harvest, or export from the State if it is not domestic
16 consumption or use, and appropriate evidence of this value such as
17 receipts for purchase in export market, sales records, or similar; and
- 18 (f) Any additional information that the Director may request.
- 19 (4) The Director shall provide the person with a preliminary or final royalty
20 assessment within fourteen (14) working days of receiving the application
21 for a preliminary or final royalty assessment.

1 Section 11.905. Prescription of Royalty Rates.

2 (1) The Director shall prescribe the minimum royalty rates for natural resources by
3 Regulation, within three months of the effective date of this Act.

4 (2) In cases where there is no prescribed minimum royalty rate, the Director may
5 by written notice prescribe the royalty rates for a specific project.

6 (a) The Director shall publish the notice:

7 (i) By placing copies of the notice at each municipal office, the FSM Post
8 Office, the Office of the Public Information, and the Kosrae State
9 Legislature; and

10 (ii) Local radio.

11 Section 11.906. Payment of Royalty. The royalty shall be due and payable within
12 thirty (30) calendar days of the final royalty assessment being provided to the person
13 in writing by the Director.

14 Section 11.907. Appeal Against Royalty Assessment.

15 (1) Any person aggrieved by decision of the Director in making a royalty
16 assessment may request a hearing with the Director.

17 (2) The hearing shall be conducted in accordance with rules and regulations
18 promulgated pursuant to this Chapter, or in the absence of such rules and
19 regulations in accordance with the Administrative Procedures Act.

20 (4) Any person further aggrieved by the final decision of the Department may
21 seek judicial review of the decision in accordance with the provisions of

1 the Administrative Procedures Act.

2 Section 11.908. Deposit of Fund. All royalties collected pursuant to the provisions
3 of this Chapter shall be deposited into the Kosrae State General Fund.

4 Section 11.909. Ownership of Resource. Ownership of any natural resource
5 extracted or harvested from the State of Kosrae does not pass to the person who
6 extracted or harvested the resource unless and until the assessed royalties have been
7 paid by the person.

8 Section 11.910. Seizure and Forfeiture of Natural Resources.

9 (1) The natural resources extracted or harvested by any person required under
10 this Chapter to obtain a royalty assessment, and to pay such royalties, may
11 be seized by the Director, or responsible agency, if the person does not
12 first obtain a preliminary resource assessment or does not pay such
13 royalties by the required time.

14 (2) The Director, or responsible agency, shall on seizure of the natural
15 resources, provided the person with a receipt listing the natural
16 resources seized.

17 (3) The Kosrae State Court has jurisdiction to order the seizure and
18 forfeiture of anything subject to forfeiture under subsection (1) upon a
19 determination that the seizure and forfeiture is reasonably related to an
20 offense committed in violation of this Chapter. The Attorney General may
21 initiate an action for forfeiture on behalf of the State. If the Court enters

1 judgment for the State in a civil forfeiture proceeding, the Attorney
2 General shall seize any property or other interest declared forfeited to the
3 State that has not previously been seized pursuant to this Chapter.

4 (4) Pending completion of a civil forfeiture proceeding, the seized property
5 remains in the State's custody until disposition pursuant to law. At the
6 Court's discretion, the seized property may be discharged upon deposit
7 with the Court of a satisfactory bond or other security at least equal in
8 value to the fair market value of the seized property. The bond or other
9 security shall be conditional upon the delivery of the property to the Court
10 upon order, without any impairment of its value, or payment of the fair
11 market value of the property upon order of the Court. Judgment shall be
12 recoverable on the bond or other security against the principal and any
13 sureties if any condition of the bond is breached.

15 (5) The Director, or responsible agency, may, after consultation with the
16 Attorney General, sell any natural resources that are perishable. If the
17 administrative official makes all reasonable efforts to sell the perishable
18 articles, but was unable to do so, or where the articles were unfit for sale,
19 the Director, or responsible agency may dispose of the articles as they
20 determines appropriate. The proceeds of any sale shall be deposited with
21 Court pending disposition of any legal or forfeiture proceedings under this
22 Title.

1 (6) The State shall hold any natural resources seized under this Chapter, but
2 not ordered forfeiture in any legal proceeding, until all fines, orders for
3 costs or damages and penalties imposed under this Chapter have been
4 paid. If the fines, costs, damages and penalties are not paid within the
5 time allowed by law, the State shall sell the seized natural resources and
6 remit to the owner any balance of the proceeds, after deducting all fines,
7 damages, penalties and costs, and the costs of maintenance, storage and
8 sale. If the proceeds of the sale does not satisfy the fine, damages,
9 penalties and costs owing to the State, the owner of the seized natural
10 resources remains liable for the balance.

11 (7) No person shall remove, without proper authorization, any natural
12 resources seized by the State under this Chapter. Where any natural
13 resources held or forfeited under this Chapter has been unlawfully
14 removed from the State's custody, it is subject to seizure at any time.

15 (8) The State is not liable for any loss, damage, or deterioration in the
16 condition of natural resources in its custody pursuant to this Chapter.
17 The Court may order the State to pay compensation for any proven loss
18 and for costs if it determines that:

19 (a) There were not reasonable grounds for the seizure; and

20 (b) The owner or other persons entitled to the property suffered an
21 unreasonable loss as a result of the seizure.

1 Section 11.911. Unlawful Acts. In addition to any other act, which may be
2 prohibit pursuant to any other provision of the laws or regulations of the State of
3 Kosrae, a person shall be civilly liable if he or she:

4 (1) Does not submit a royalty assessment to the Director prior to the
5 commencement of the activity, or prior to the commencement of the
6 fiscal year.

7 (2) Does not pay any amount calculated in the royalty assessment within
8 30 days of it becoming due and payable;

9 (3) Provides false and misleading information to the Director in the
10 preliminary or final royalty assessment.

11 Section 11.912. Penalties.

12 (1) There shall be a civil penalty of not more than \$1,000.00 for providing
13 false information to the Director in a preliminary or final royalty
14 assessment.

15 (2) There shall be a civil penalty of not more than \$2,000.00 for failing to
16 submit a royalty assessment or failing to pay the royalty assessment
17 within the required time.”

18 Section 11.913. Regulations. With the approval of the Governor, the Director
19 may promulgated regulations required to fully implement the provisions of this Act ”

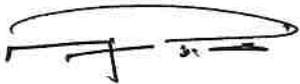
20 Section 3. Effective Date. This Act takes effect upon approval by the Governor or
21 upon its becoming law without such approval.

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2 PASSED BY THE ELEVENTH KOSRAE STATE LEGISLATURE ON THE 13TH

3 DAY OF NOVEMBER, 2015.

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Tulensa W. Palik

Speaker, Eleventh Kosrae State Legislature

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Attested by: _____



Deputy Chief Clerk

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Lyndon H. Jackson

Governor, State of Kosrae

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13

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Date: _____

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