

## CHAPTER 2

### Executive Organization

#### SECTIONS

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#### **§ 201. Definitions.**

As used in this chapter:

- (1)       "*Appointment*" means an appointment by the President which requires, and to which has been given, the advice and consent of the Congress.
- (2)       "*Nominee*" means a person nominated by the President for an appointment which requires, but to which has not been given, the advice and consent of the Congress.
- (3)       "*Position*" and "*regular employee*" have the meaning and definitions stated in section 112 of title 52 of this code.

**Source:** PL 1-120 § 1; PL 7-91 § 4.

**Cross-reference:** FSM Const., art. X, § 8. The provisions of the Constitution are found in Part I of this code.

Title 52 of this code is on Public Employment.

**Editor's note:** Subsections of this section rearranged in alphabetical order. This chapter supersedes 2 TTC chapter 2.

## **§ 202. Executive authority.**

The executive authority of the Government of the Federated States of Micronesia is vested by, and in accordance with, the Constitution of the Federated States, subject to the provisions of section 207 of this chapter. The executive branch of the Government of the Federated States of Micronesia shall be organized in the manner set forth in this chapter, and as may be provided elsewhere in the law of the Federated States of Micronesia.

**Source:** PL 1-6 § 1; PL 7-91 § 5.

**Cross-reference:** FSM Const., art. X is on the Executive. FSM Const., art. X, §§ 1 and 2(a) state as follows:

Section 1. The executive power of the national government is vested in the President of the Federated States of Micronesia. He is elected by Congress for a term of four years by a majority vote of all the members. He may not serve for more than 2 consecutive terms.

Section 2. The following powers are expressly delegated to the President:

(a) to faithfully execute and implement the provisions of this Constitution and all national laws;

...

The provisions of the Constitution are found in Part I of this code.

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 official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, and other Congressional information at <http://www.fsmcongress.fm/>.

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.fsmcourtsupremecourt.org/>.

## **§ 203. Departments.**

(1) There shall be the following departments which shall be responsible for major programs or administrative support areas in the Government of the Federated States of Micronesia:

- (a) Department of Resources and Development;
  - (b) Department of Finance and Administration;
  - (c) Department of Foreign Affairs;
  - (d) Department of Health and Social Affairs;
  - (e) Department of Justice;
  - (f) Department of Transportation, Communication and Infrastructure, which shall contain among other units, a Project Management Unit for the Compact Infrastructure Grants; and
  - (g) Department of Education.
- (2) The administrative head of each department shall be designated as a “Secretary”.
  - (3) The administrative head of each office shall be designated as a “Director”.
  - (4) Succession.
    - (a) Any reference to a previously existing department, office, or division thereof shall apply to the appropriate successor entity.
    - (b) Any reference to any office or employee of an entity referred to in subsection (4)(a) of this section shall be construed as applying to the person holding the same or most similar position in the appropriate successor entity.

**Source:** PL 1-6 § 2; PL 1-114 § 1; PL 4-65 § 1; PL 5-21 § 1; PL 6-62 § 1; PL 7-97 § 1; PL 10-55 § 1; PL 15-9 § 1; PL 15-74 § 1.

**Cross-reference:** FSM Const., art. X, § 8 states as follows:

Section 8. Executive departments shall be established by statute.

The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

### **§ 204. Other Executive Offices.**

There shall be the following executive offices:

- (1) Office of the Public Defender;
- (2) Office of Statistics, Budget, Overseas Development Assistance and COMPACT Management;
- (3) Office of Environment and Emergency Management;

## (4) Office of National Archives, Culture and Historic Preservation.

**Source:** PL 1-6 § 3; PL 4-65 § 2; PL 5-21 § 2; 10-55 § 2; PL 13-75 § 10; PL 15-9 § 2.

**Cross-reference:** The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

**Case annotations:** The Office of the Public Defender was created by 2 F.S.M.C. 204(5). For at least the criminal side of the docket, this represents Congress's affirmative implementation of the Constitution's Professional Services Clause. The primary, perhaps even the sole, responsibility, for the Professional Services Clause's affirmative implementation lies with Congress. *FSM v. Kansou*, 13 FSM R. 392, 394 & n.1 (Chk. 2005).

The Professional Services Clause provides that the FSM national government recognizes the people's right to education, health care, and legal services and shall take every step reasonable and necessary to provide these services. The term "the people" refers only to natural persons, and does not include juridical persons such as corporations. *FSM v. Kansou*, 13 FSM R. 392, 394-95 (Chk. 2005).

### **§ 205. Establishment of additional departments, offices, and agencies.**

Additional departments or offices may be established by law. Independent agencies and temporary agencies may be established and need not be organized under a department or office.

**Source:** PL 1-6 § 4.

**Cross-reference:** The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code.

### **§ 206. Duties, responsibilities, and functions of departments and offices.**

The respective duties, responsibilities, and functions of each department and office within the organization of the executive branch of the Government of the Federated States of Micronesia shall be as established by, and in accordance with, administrative directive of the President until amended or superseded by law. The President shall also provide for subdivisions of departments and offices and shall set forth the duties, responsibilities, and functions thereof by administrative directive.

**Source:** PL 1-6 § 5.

**Cross-reference:** FSM Const., art. X, § 8. The provisions of the Constitution are found in Part I of this code.

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.

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### **§ 207. Appointment Authority.**

(1) The President shall nominate and, with the advice and consent of the Congress, as provided in article X, section 2(d), of the Constitution, shall appoint ambassadors, the secretaries of departments and their deputies, if any, and the head of the office of the Public Defender, including the secretaries, and heads of departments and offices established by subsequent law; and including the chairman and the members of the Board of Advisors for the Investment Development Fund to be appointed by the President; and including the Federated States of Micronesia members of the Board of Regents of the College of Micronesia; and including the Federated States of Micronesia's consul generals and the deputy chiefs of mission of the various embassies and diplomatic missions.

(2) The President or his or her designee may appoint officers and employees not included in subsection (1) of this section, without the advice and consent of the Congress; provided that such appointments are not inconsistent with the provisions of this chapter or other laws of the Federated States of Micronesia.

(3) Any nomination submitted to Congress which is not acted upon within two consecutive sessions of Congress, not including the session in which Congress first receives the nomination, or 30 days, whichever occurs later in time, shall be deemed rejected. A nomination submitted when Congress is not in session shall, for the purposes of this section, be deemed to have been received on the first day of the following session. The President shall not resubmit the nomination of any person to the Congress for its action if the same Congress shall have previously rejected such nomination, unless the Congress shall by resolution authorize such resubmission.

(4) With the exception of the Chief Justice and Associate Justices of the Supreme Court, the Public Auditor, members of boards, commissions, and other entities with fixed terms, a public official whose appointment is subject to the advice and consent of the Congress shall submit his or her resignation no later than 90 days after the President of the Federated States of Micronesia takes the oath of office, or at the time a new nominee for such position is confirmed by the Congress, whichever is earlier. The President may renominate the same public official for the same position subject to the advice and consent of the Congress.

**Source:** PL 1-6 § 6; PL 1-114 § 2; PL 3-24 § 1; PL 4-63 § 1; PL 5-2 § 1; PL 5-50 § 1; PL 7-6 § 1; PL 7-91 § 6; PL 9-128 § 1; PL 13-77 § 1; PL 15-23 § 1; PL 16-61 § 1; PL 17-2 § 1.

**Cross-reference:** FSM Const., art. X, § 2(d) states as follows:

Section 2. The following powers are expressly delegated to the President:

...

(d) with the advice and consent of Congress, to appoint ambassadors; all judges of the Supreme Court and other courts prescribed by statute; the principal officers of executive departments in the national government; and such other officers

as may be provided for by statute. Ambassadors and principal officers serve at the pleasure of the President.

The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the Legislature (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.

### **§ 208. Positions vacant pending appointment.**

Whenever a vacancy exists in a position exempted from the National Public Service System under subsections (8), (9), or (10) of section 117 of title 52 of this code, the administrative duties and ministerial functions of that position may be performed by a qualified regular employee designated by the President to serve in that position in "acting" capacity, pending an appointment to fill the vacancy. A qualified regular employee so designated by the President to serve in "acting" capacity may serve in that capacity for not more than 60 days.

**Source:** PL 1-120 § 3.

**Cross-reference:** Title 52 of this code is on Public Employment.

### **§ 209. Salaries for President and Vice President.**

As of the date of the commencement of their terms of office, the President of the Federated States of Micronesia shall receive a salary of \$32,000 per annum, and the Vice President shall receive a salary of \$30,000 per annum. The President or Vice President shall continue to receive the salary set hereby until their successors take office. Should a vacancy in either office occur, the successor shall be entitled to the salary attendant to the office assumed as of the date of succession.

**Source:** PL IC-27 § 1; PL 4-75 § 1.

**Editor's note:** PL 4-75, § 1 increased the salary of the Vice President from \$25,000 per annum to \$30,000 per annum. PL 4-75, § 2 made the effective date of this increase the beginning of the term of office of the next Vice President at the time which was expected to occur May 11, 1987.

**Cross-reference:** FSM Const., art. X, § 7. The provisions of the Constitution are found in Part I of this code.

### **§ 210. Establishment of Former President Benefit Trust Fund and Allowance for Former Presidents.**

(1) There shall be established in the Treasury of the Federated States of Micronesia a trust fund that shall be

known as the “Former President Benefit Trust Fund.” The fund shall be administered by the Secretary of Finance and Administration and shall consist of such amounts as may be advanced by the Congress of the Federated States of Micronesia by budget appropriation, and such gifts, bequests, donations, contributions or grants as may be received by the Federated States of Micronesia which are specifically designated for the benefit of former Presidents.

(2) Each former President shall be entitled for the remainder of his or her life to receive from the Trust Fund a monetary allowance in an amount of not more than \$700 per month, payable by the Secretary of Finance; provided, however, that the amount of such allowance shall not exceed an amount which, when applied equally to all eligible former presidents, would exceed the maximum distribution from such Trust Fund as determined pursuant to subsection (d). Provided further that such allowance shall not be paid to a former President for any period year in which he or she earned over \$25,000 gross per annum, unless the former President is over the age of 60.

(3) For clarity, the monetary allowance is paid to a beneficiary of a trust, and is not subject to social security contributions.

(4) As used in this section, the term “former President” means a person who shall have held the office of President of the Federated States of Micronesia, who does not then currently hold such office and whose service in such office shall have terminated other than by removal pursuant to the Constitution and statutes of the Federated States of Micronesia.

(5) At the beginning of each fiscal year, the Secretary of Finance and Administration shall determine the maximum allowable distribution from the Trust Fund. The Secretary of Finance and Administration shall take into consideration:

- (a) appropriations by Congress;
- (b) earnings of the Trust Fund;
- (c) the need to preserve the corpus of the Trust Fund;
- (d) other relevant factors that will insure the permanency of the Trust Fund;

(e) after the end of each fiscal year, and before October 31 of the next fiscal year, the Secretary of Finance and Administration will report to Congress on all activity relating to the Trust Fund.

**Source:** PL 15-47 § 1.

**Editor’s note:** Former section 210 was enacted by PL 1-6 § 7, modified by PL 1-120 § 4, and repealed in its entirety by PL 7-91. Congress created the current section 210 by enacting PL 15-47, and overriding President Emmanuel Mori’s veto on September 13, 2008.

The reference to “subsection (d)” in subsection (2) of this section has been corrected and replaced with “subsection (5)”, as this subsection refers to the determination of the maximum allowable distribution.