

CHAPTER 2.**HISTORIC PRESERVATION****ARRANGEMENT OF SECTIONS****Section****PART I - PRELIMINARY**

- §201. Short title.
 §202. Declaration of intent.
 §203. Interpretation.

PART II - HISTORIC PRESERVATION

- §204. Establishment of Office.
 §205. Historic Preservation Officer and Staff.
 §206. Powers and duties of the Historic Preservation Office.
 §207. Identification of cultural and historic properties.
 §208. Use of cultural and historic properties.

PART III - ADVISORY COUNCIL FOR HISTORIC PRESERVATION

- §209. Establishment of Council.
 §210. Membership; terms; vacancies; compensation
 §211. By-laws and procedure.
 §212. Disclosure of, and disqualification for, interest.
 §213. Powers and duties of the Council.

PART IV - FINANCE

- §214. Historic Preservation Fund.
 §215. Payments into the Fund.
 §216. Payments out of the Fund.

Section

- §217. Accounts and Records.
 §218. Exemption.

PART V - ENFORCEMENT

- §219. Seizure and confiscation authorized.
 §220. Violation and penalties.
 §221. Misconduct in public office.
 §222. Application of bribery laws.
 §223. Protection for actions taken.
 §224. Immunity.
 §225. Attorney General.

PART VI - MISCELLANEOUS

- §226. Dri Kabeel.
 §227. Local Government Liaison.
 §228. Costs and fees.
 §229. Rules and regulations.
 §230. Land use.
 §231. Repeal; savings; transition
 §232. Severability.
 §233. Special Exemptions.

An Act to promote the preservation of the historic and cultural heritage of the Republic of the Marshall Islands.

Commencement: 12 March 1991
 Source: P.L. 1991-111
 P.L. 1994-80
 P.L. 1994-99

PART I - PRELIMINARY**§201. Short title.**

This Chapter may be cited as the Historic Preservation Act 1991. [P.L. 1991-111, §1.]

§202. Declaration of intent.

(1) The Nitijela finds and declares the following:

(a) the identity of the Republic of the Marshall Islands is provided by the cultural heritage of the Marshallese people, consisting of the heritage of all of the atolls and islands comprising the Republic;

(b) it is the duty of each Marshallese citizen to encourage and actively promote the nation's cultural heritage for the benefit of future generations;

(c) the cultural and historic properties of the Republic, including submerged resources, form a fragile, finite and unrenewable resource of the cultural heritage of the Republic in need of preservation and proper management;

(d) cultural and historic properties can in most cases co-exist with modern development, and preservation of such properties may involve creative activities other than static protection in place and unchanged, including but not limited to adaptive use, rehabilitation and data recovery; and

(e) protection of all cultural and historic properties in place and unchanged could seriously impede the wise use and development of lands in the public interest, frustrate scientific research, unduly restrict the cultural use of such properties, and allow such properties to fall into disrepair through disuse.

(2) It is the intent of the Nitijela that this Chapter be implemented in a manner that balances the preservation of cultural and historic properties against the needs of development and continuing use of land and other resources.

(3) The guiding principle to be used in the implementation of this Chapter shall be to foster conditions under which modern society and prehistoric and historic resources in the Republic can exist in productive harmony and fulfill the social, economic and other requirements of present and future generations. [P.L. 1991-111, §2.]

§203. Interpretation.

In this Chapter, unless the context otherwise requires:

(a) "Agency" means any agency of the Government of the Republic of the Marshall Islands or Local Governments of the Republic, including any independent board or commission;

(b) "Artifact" means any object related to, derived from, or contained in a cultural and historic property that is important in the study, interpretation or public appreciation of such property;

(c) "Council" means the Advisory Council for Historic Preservation created by Section 209 of this Chapter;

(d) "Cultural and historic property" means any site, structure, district, landmark, building, object, or combination thereof, that:

(i) is included in the Republic of the Marshall Islands National Register of Historic Places;

(ii) is determined by the Historic Preservation Office to be eligible for the National Register; or

(iii) meets any of the criteria set forth in regulations promulgated in

accordance with Section 207(e) of this Chapter

(e) “Cultural exchange” means the exchange of artifacts, information, practices, ideas, arts, or crafts between the Republic and any other political entity, organization, or institution;

(f) “Cultural heritage” means any aspect of the culture of the Republic as expressed in the oral traditions;

(g) “Cultural Resource Officer” means the Local Government liaison between the Historic Preservation Office and a Local Government, appointed pursuant to Section 227 of this Chapter;

(h) “Culture” means the traditions, beliefs, traditional practices, arts, crafts and other social institutions of the people of the Republic, or of a particular community within the Republic;

(i) “Data recovery” means the study of a cultural and historic property, by or under the supervision of qualified scholars with expertise appropriate to the property, and including appropriate analysis and dissemination of study results, in order to recover, understand, and make available information about the property;

(j) “Development” means the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining or extraction of any materials, change in the density or intensity of use of land including, but not limited to, subdivision of land and any other division of land including lot parceling; change in the intensity of use of water, ecology related thereto, or alteration of the size of any structure, including any facility of any private, public, or municipal government or utility, and the removal of any significant vegetation;

(k) “Donation” means the provision of artifacts or other material derived from or related to a cultural and historic property, either permanently or for a fixed period of time, to a nonprofit organization recognized by the Historic Preservation Office on the basis of its cultural significance to the Republic of the Marshall Islands;

(l) “Fund” means the Historic Preservation Fund established under Section 214 of this Chapter;

(m) “Historic sites” means those cultural resources and terrestrial, intertidal and submarine sites and landscapes that were produced since the advent of written records in the Marshall Islands and that are of archaeological or historical interest;

(n) “HPO” or “Office” means the Historic Preservation Office established under Section 204 of this Chapter;

(o) “Human remains” means any part of the human body which has been part of a burial site, or any other site, and which has been encountered or uncovered in the process of scientific investigations or construction work or otherwise;

(p) “Impact” means any modification in an element of a cultural and historic property that tends to damage or reduce the integrity of that element and includes both direct and indirect impacts;

(q) “Landmark” means any geographical or geomorphological feature associated with oral traditions or historic events of the Republic;

(r) “Minister” means the Minister having responsibility over the subject matter of Internal Affairs;

(s) “Mitigation” means the alleviation of an impact on a cultural resource by the

means of restoration, rehabilitation or data recovery;

(t) “Oral traditions” means that body of knowledge of the indigenous people of the Marshall Islands about their past, including their beliefs, traditional practices (including traditional medicine and medical practices), skills, environment, and their spiritual world, which has been handed down, primarily in spoken form, from generation to generation;

(u) “Permitting” means issuance of a written license or warrant, including any condition, to any person, empowering such person to do some act not forbidden by law, but otherwise not allowed without such authority, or the modification or amendment of any permit or condition thereof subsequent to its issuance;

(v) “Person” means the National Government or a Local Government of the Republic of the Marshall Islands or any agency or department thereof the Government of the United States of America or any agency or department or any municipality thereof; any sovereign state or nation; any public or private institution; any public or private corporation, association, partnership, joint venture or other legal entity; any lessee or other occupant of property; or any individual, acting singly or as part of a group;

(w) “Plan”, depending on the context, means:

(i) the design, specifications, and schedule of a development action;

(ii) a national or local cultural and historic preservation plan, developed in accordance with regulations promulgated under Section 207(a) of this Chapter, designed to ensure that cultural and historic properties are wisely integrated into contemporary land uses and development; or

(iii) a plan for treatment of a particular cultural and historic property or group of such properties subject to impact by a development action or actions;

(x) “Prehistoric sites” means those cultural resources and terrestrial, intertidal and submarine sites and landscapes that were produced by the pre-literate, indigenous people of the Marshall Islands and that are archaeological interest;

(y) “Preservation” means the identification, evaluation, recording, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, or reconstruction of a cultural and historic property, or any combination of the foregoing activities;

(z) “Private domestic use” includes the construction of a privately owned restaurant or take-out eating establishment in which food is served for consumption off the premises with less than five hundred (500) square meters of ground space;

(aa) “Rehabilitation” means the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use, while preserving or restoring the property’s significant historical or cultural elements;

(bb) “Restoration” means the process of accurately recovering the form and details of a property as it appeared at a particular period of time by removing later work and replacing missing original work;

(cc) “Scientific identification” means the study of artifacts, other material, and information derived from or relating to a cultural and historic property or properties, for purposes of increasing knowledge about such properties or about topics of scientific or humanistic research. Such study may include destructive activities such as the gassification of samples for radiometric age determination, where appropriate;

(dd) "Significance level" means the classification of the significance of a resource for the cultural heritage of the Republic;

(ee) "Submerged resources" are those prehistoric or historic sites and artifacts located in the intertidal or sub-tidal zone within the internal, archipelagic or territorial waters of the Republic as defined in Sections 105, 106 and 107 of the Marine Zones (Declaration) Act

(ff) "Survey" means a systematic, planned effort to identify, record, and evaluate cultural and historic properties, in a manner consistent with applicable professional standards, or the act of conducting such a survey;

(gg) "Traditional sites" means those sites, landmarks and locations to which oral traditions of the indigenous people of the Marshall Islands are attached; and

(hh) "Use" of a cultural and historic property means its use for traditional cultural purposes, for scientific or humanistic study, or for productive contemporary purposes. [P.L. 1991-111, §3. Paragraphs and clauses were renumbered to be consistent with the format and style of the Code.]

PART II- HISTORIC PRESERVATION OFFICE

§204. Establishment of Office.

There is hereby established within the Ministry of Internal Affairs a Historic Preservation Office (hereinafter, "HPO"). [P.L. 1991-111, §4.]

§205. Historic Preservation Officer and Staff.

(1) The HPO shall consist of the following persons:

(a) a Historic Preservation Officer, who shall be the head of the HPO, and who shall be the Secretary of Internal Affairs; and

(b) a Deputy Historic Preservation Officer who shall be appointed by the Historic Preservation Officer, and who shall be a member of the public service and qualified either by training, experience or education to carry out the purposes of this Chapter.

(2) The Historic Preservation Officer may hire such staff, including technical or other advisors, as may be necessary to assist in the performance of the functions of the Office.

(3) The Historic Preservation Officer may divide the Office into such divisions as may be necessary to perform the functions of the Office. [P.L. 1991-111, §5.]

§206. Powers and Duties of the Historic Preservation Office.

The Historic Preservation Office shall:

(a) be responsible for the implementation of this Chapter, and carry out all laws of the Republic of the Marshall Islands pertaining to cultural and historic preservation and all other applicable laws of the Republic;

(b) issue or deny permits, after review by the Council, for use, access, and development of land containing cultural and historic properties, and for the taking of any artifact of cultural or historical significance from the Republic of the Marshall Islands for cultural exchange, scientific identification, or donation to the bona fide non-profit organization recognized on the basis of its cultural significance to the Republic;

(c) be responsible for the identification and recording of cultural and historic properties throughout the Republic;

- (d) conduct a survey and identification of cultural and historic properties in advance of development;
- (e) be responsible for the formulation of national and local cultural and historic preservation plans; and prepare and periodically update the national cultural and historic preservation plan in accordance with regulations promulgated under Section 207(a) of this Chapter;
- (f) develop a program of recording and archiving the body of oral traditions of the atolls of the Republic of the Marshall Islands.
- (g) develop an educational program and service for the purpose of making available to the public facts and information pertaining to historic and archaeological sites, buildings, structures and other properties as well as oral traditions significant to the cultural heritage of the Republic;
- (h) develop a policy and program for the utilization of cultural and historical properties and information deriving from a study of those properties for the benefits of tourism;
- (i) encourage the adoption of measures to ensure that new buildings and infrastructure improvements adapt harmoniously to the spatial organization and setting of cultural and historic properties, and that they take into account the social and cultural activities, ways of life and social relationships, and land tenure practices of the occupants and other users of such properties;
- (j) develop, in cooperation with the National Archives, the Council of Iroij and the Ministry of Education, a comprehensive list of items of the traditional material culture prohibited for export from the Republic;
- (k) develop, in cooperation with the National Environmental Protection Authority, historic preservation guidelines for earthmoving contractors and drivers of heavy excavating equipment;
- (l) develop rules of conduct and licensing procedures for archaeological and anthropological contractors intending to work in the Republic;
- (m) cooperate with the Tourism Office within the Ministry of Resources and Development and with individual tourist agencies and operators to ensure that the local culture is adequately and accurately represented;
- (n) administer this Chapter in a manner that minimizes paperwork and redundant permit requirements;
- (o) seek to coordinate implementation of this Chapter with the implementation of historic and cultural preservation laws in the United States of America and the Pacific region;
- (p) take such measures as are necessary to control the export of artifacts from the Republic in cooperation with other applicable government agencies, and cooperate with authorized officials of other governments in the control of such exportation; and
- (q) upon notification by the Historic Preservation Officer of comparable position from another country, take such measures as are necessary to secure and confiscate those artifacts which have been exported illegally from other countries and have been imported to the Republic in cooperation with other applicable government agencies, and cooperate with authorized officials of other governments in the control of such exportation. [P.L. 1991-111, §6. Paragraphs were renumbered to be consistent with the format and style of the Code.]

§207. Identification of Cultural and Historic Properties.

The Minister or his designee shall promulgate regulations, upon the advice and consent of the Advisory Council for Historic Preservation and in accordance with the Marshall Islands Administrative Procedure Act 1979, 6 MIRC 1, for the identification of cultural and historic properties. These regulations shall include, but not be limited to, the following:

- (a) establishing national and local cultural and historic preservation plans;
- (b) providing for a comprehensive inventory of cultural and historic properties;
- (c) recording cultural and historic properties;
- (d) providing for survey and identification in advance of development;
- (e) establishing criteria for recognition as a cultural and historic property;
- (f) classifying the significance levels of prehistoric, historic and traditional sites; and
- (g) all other regulations which are necessary with respect to the identification of cultural and historic properties. [P.L. 1991-111, §7.]

§208. Use of cultural and historic properties.

The Minister or his designee shall promulgate regulations, upon the advice and consent of the Advisory Council for Historic Preservation and in accordance with the Marshall Islands Administrative Procedure Act 1979, 6 MIRC 1, for the use of cultural and historic properties. These regulations shall include, but not be limited to, the following:

- (a) establishing a permitting procedure for the protection of cultural and historic properties on public and private lands, and delineating activities exempt from that procedure;
- (b) establishing a schedule for the conduct of surveys;
- (c) providing for the disposition of archaeologically recovered human remains;
- (d) providing for permits for access to prehistoric and historic submerged resources;
- (e) providing for the taking and export of artifacts and for their seizure and confiscation;
- (f) providing for archaeological and anthropological investigations, and for a schedule governing the conduct of archaeological and anthropological research; and
- (g) all other regulations which are necessary with respect to the use of cultural and historic properties. [P.L. 1991-111, §8.]

PART III - ADVISORY COUNCIL FOR HISTORIC PRESERVATION**§209. Establishment of Council.**

There is hereby established the Republic of the Marshall Islands Advisory Council for Historic Preservation (hereinafter the "Council"). [P.L. 1991-111, §9.]

§210. Membership; terms; vacancies; compensation.

- (1) The Council shall consist of the following seven (7) voting members:
 - (a) the following five (5) members ex officio.
 - (i) the Minister of Internal Affairs, who shall serve as the Chairman of the Council;
 - (ii) the Secretary of the Ministry of Education or the Secretary's designee;
 - (iii) the Secretary of the Ministry of Social Services or the Secretary's

designee;

(iv) the Secretary of the Ministry of Resources and Development, or the Secretary's designee; and

(v) the Chairman of the Republic of the Marshall Islands Environmental Protection Authority or the Chairman's designee; and

(b) two (2) members of the general public, who shall be appointed by the President after consultation with the Minister, and who shall be sufficiently qualified in the area of historic and cultural preservation.

(2) The Council shall also consist of two (2) regular nonvoting members, who shall be the Historic Preservation Officer and the Chairman of the Council of Iroij or the Chairman's designee, and who shall serve in an advisory capacity.

(3) The Council shall select from among its voting members a Vice-Chairman.

(4) The Council may seek such assistance from technical or other advisors or government agencies as necessary to assist in the performance of the functions of the Council.

(5) The five members ex officio shall serve for the duration of their tenure in office. The two members of the general public shall each serve for a term of four (4) years, and may be reappointed for one additional term only. Vacancies among the members of the general public shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(6) The members of the Council shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties. Members traveling on official business shall receive per diem compensation at established Republic rates. [P.L. 1991-111, §10.]

§211. By-laws and procedures.

Subject to this Chapter and any other law, the Council shall determine its own by-laws, which shall provide for:

(a) the number of meetings per year to be held by the Council;

(b) the quorum at and the conduct of meetings of the Council;

(c) the appointment and duties of a Secretary of the Council; and

(d) any other matters relating to the Council and its operations and procedures which it deems appropriate. [P.L. 1991-111, §11.]

§212. Disclosure of, and disqualification for, interest.

(1) If a member of the Council has any personal interest in the subject matter of any question before a meeting of the Council, that member:

(a) shall disclose such interest at the meeting; and

(b) shall not participate in the deliberations (except as directed by the Council) or in the decision of the Council on the question.

(2) A disclosure under subsection (1) of this Section shall be recorded in the minutes.

(3) Failure to comply with the requirements of subsection (1) or (2) of this Section shall invalidate any act or proceeding of the Council taken in relation to the subject matter. [P.L. 1991-111, §12.]

§213. Powers and Duties of the Council.

The Council shall:

- (a) advise the Minister and the HPO on all matters pertaining to this Chapter or on any matters referred to the Council by the Minister or the HPO;
- (b) determine whether particular properties, groups of properties, or classes of properties should be designated as cultural and historic properties;
- (c) review and approve the national cultural and historic preservation plan and revisions of that plan as provided in accordance with regulations promulgated under Section 207(a) of this Chapter;
- (d) subject to Section 230 of this Chapter, review requests for permits and proposed land uses, monitor exempt activities and review findings of the HPO pursuant to regulations promulgated under Section 208(a) of this Chapter;
- (e) review and approve any and all regulations promulgated under this Chapter,
- (f) review and approve loans and leases under this Chapter;
- (g) participate in the development of curation facilities pursuant to this Chapter;
- (h) from time to time and in consultation with Local Governments and the HPO, recognize local advisory committees to assist it in its work; and
- (i) prepare and publish a written annual report summarizing its activities and reporting on the status of cultural and historic preservation in the Republic of the Marshall Islands, and furnish copies to the President, the Chief Secretary, and the Speaker of the Nitijela. [P.L. 1991-111, §13. Paragraphs were renumbered to be consistent with the format and style of the Code.]

PART IV - FINANCE**§214. Historic Preservation Fund.**

(1) There shall be established a fund which shall be known as the Historic Preservation Fund, hereinafter referred to as “the Fund”.

(2) The Fund is a [special revenue] fund within the National Treasury and under the control and supervision of the Ministry of Finance, which shall provide for its administration in accordance with the Financial Management Act of 1990, as amended, 11 MIRC 1. [P.L. 1991-111, §14, amended by P.L. 1994-99, §3(20)(a).]

§215. Payments into the Fund.

(1) There shall be paid into the Fund:

- (a) any monies appropriated by the Nitijela for the purposes of the HPO either generally or in relation to any particular purpose;
- (b) any monies recovered by or awarded to the HPO by way of costs, penalties, fees, fines, damages or other monies in any suit, prosecution or other proceeding under this Chapter or any other law;
- (c) any monies received from other Ministries involved in senior citizens and youth programs, for the purpose of executing the duties of the HPO under Section 226 of this Chapter;
- (d) any monies received under the historic preservation funding made available to the Republic by the United States National Parks Service or any other United States agency; and

(e) any other monies received by the HPO by way of loans, grants, advances, contributions, gifts or other assistance, provided that such funding or its use does not constitute a conflict of interest with the principles of responsible and ethical government.

(2) Where any money is borrowed or any advance, grant, contribution, gift or assistance is received for a specific purpose or subject to any conditions, it may be expended or used only for that purpose or subject to those conditions. [P.L. 1991-111, §15; subsection (2) deleted by P.L. 1994-99, §3(20)(b).][Subsection re-numbered as (2) as original subsection (2) was repealed by P.L. 1994-99[Rev2003]

§216. Payments out of the Fund.

(1) Payment may be made out of the Fund only for:

(a) carrying out the powers and duties of the HPO for the purpose of cultural and historic preservation in accordance with this Chapter and regulations promulgated under this Chapter, and all other applicable laws;

(b) the costs and expenses of the HPO, including administration;

(c) working capital and petty cash, and for similar purposes; and

(d) giving effect to the provisions of this Chapter and any regulations made under this Chapter.

(2) The salaries of the Historic Preservation Officer and the Deputy Historic Preservation Officer shall not be made available from the Fund, but shall be a charge upon the Marshall Islands General Fund.

(3) No money shall be withdrawn from the Fund except in accordance with this Chapter and with the procedures prescribed by the Financial Management Act, 11 MIRC 1. [P.L. 1991-111, §16; amended by P.L. 1994-99, §3(20)(c).]

§217. Accounts and records.

(1) The Secretary of Finance shall maintain, in accordance with the procedures prescribed by the Financial Management Act, 11 MIRC 1, proper accounts and records with respect to the Fund, any money paid into or out of the Fund, and any property purchased with money from the Fund.

(2) The accounts to be laid before the Nitijela by the Minister of Finance under Article VIII, Section 5(4) of the Constitution of the Republic of the Marshall Islands, shall include accounts relating to the HPO.

(3) The accounts and records referred to in Section 208 of this Chapter and subsections (1) and (2) of this Section shall be audited by the Auditor-General as provided for in Article VIII, Section 15 of the Constitution of the Republic of the Marshall Islands.

(4) Before the end of the month of June of each year, the HPO shall submit to the Minister a report of the work of the HPO including its property and financial transactions during the previous financial year.

(5) Before submitting the report referred to in subsection (4) of this Section to the Minister, the HPO shall submit the report to the Auditor-General, who shall report to the Minister:

(a) whether the financial statements in the report are based on proper accounts and records;

(b) whether the statements in the report are in agreement with the accounts and records and show fairly the financial operation and the state of the affairs of the HPO;

(c) whether the receipt and expenditure of monies, the acquisition and disposal of assets, and the operations of the HPO during the financial year have been in accordance with this Chapter; and

(d) with respect to such other matters arising out of the report as the Auditor General considers should be reported to the Minister.

(6) The Minister shall cause the report and financial statements of the HPO, together with the report of the Auditor General and the Minister's own comments, to be laid before the Nitijela within fifteen (15) days after their receipt by him, or if the Nitijela is not in session, within fifteen (15) days after the commencement of the next session of the Nitijela.

(7) Notwithstanding the provisions of this Section, the Minister may at any time require the HPO to submit to the Minister a report in such form as to such matters as the Minister deems necessary. [P.L. 1911-111, §18; amended by P.L. 1994-99, §3(20)(e).][This section, and all succeeding sections re-numbered as original §217 was repealed by P.L. 1994-99[Rev2003]

§218. Exemption.

The income, property and transactions of the HPO shall not be subject to any tax, rate, charge or impost under any other law. [P.L. 1991-111, §19.]

PART V - ENFORCEMENT

§219. Seizure and confiscation authorized.

(1) Airport security personnel, customs officers and any other person authorized by the Minister of Transportation and Communications to make seizures on aircraft or vessels shall have the right to:

(a) search all luggage and goods leaving the Republic; and

(b) seize all items that he has reasonable cause to believe to be prohibited for export in accordance with regulations promulgated under Section 208(e) of this Chapter.

(2) The HPO shall make a determination in writing within thirty (30) days of the seizure of any item seized in accordance with subsection (1) of this Section as to whether the seized item was prohibited from export. Any item found not to be prohibited from export shall be returned to or forwarded to its owner. Any item found to be prohibited from export shall be confiscated by the HPO, and shall remain in the custody of the HPO to await disposition in accordance with this Section.

(3) If an item is confiscated by the HPO, the owner of the item shall have the right to appeal the decision of the HPO to the Council within ninety (90) days of the date of the decision of the HPO. The Council shall issue its decision within thirty (30) days of the date of the filing of the appeal, which shall be binding on each of the parties.

(4) The ownership of any item rightfully seized and confiscated pursuant to this Section shall vest in the Government of the Republic, which may deliver the item to the HPO or to any museum or other institution that it deems appropriate, provided that such delivery shall not act to divest the Government of ownership in any item so delivered. [P.L. 1991-111, §20.]

§220. Violation and penalties.

(1) Any person who violates this Chapter, or any regulations, by-laws, permits requirements

or orders issued or made under this Chapter, shall upon conviction be liable to a fine of not more than ten thousand dollars (US \$10,000) for each separate offense, or to a term of imprisonment not exceeding six (6) months, or both. If the violator directly or indirectly has caused the loss of, or damage to, registered historic sites or tangible cultural property, the violator shall be fined an additional amount of money determined by the court to be equivalent to the value of the lost or damaged historic site of tangible cultural property. Each day of continued violation of this provision shall constitute a distinct and separate offense for which the offender may be punished. Equipment used by the violator for the knowing, intentional or willful taking, appropriation, excavation, injury, destruction, or alteration of a historic or tangible cultural property or for the transportation of the violator to or from the historic site or the location of the tangible cultural property shall be subject to seizure and disposition by the Republic without compensation to its owners.

(2) Any person who violates this Chapter, or any regulations, by-laws, permits, requirements or orders issued or made under this Chapter, to the extent that an entire cultural or historical resource is destroyed or impaired to such a degree that it cannot be fully rehabilitated shall be fined the cost of the study and data recovery program which would have been conducted if the violator had complied with the law, which shall be imposed in addition to any other fines imposed under this Chapter.

(3) If a construction applied for as a private domestic use has in fact not been built for such use, the applicant shall be liable for an amount not exceeding ten thousand dollars (US \$10,000) but not less than five thousand dollars (US \$5,000), regardless of whether or not cultural or historic property has been damaged.

(4) All fees and fines, as well as proceeds resulting from the sale of seized equipment, shall be deposited into the Historic Preservation Fund. [P.L. 1991-111, §21.]

§221. Misconduct in public office.

A failure to comply with Section 212 of this Chapter regarding disclosure of and disqualification for interest, shall be deemed to be misconduct in office within the meaning of Section 146 of the Criminal Code, 31 MIRC 1. [P.L. 1991-111, §22.]

§222. Application of bribery laws.

Every member and employee of the Council or HPO shall be subject to the provisions of Section 118 of the Criminal Code. 31 MIRC 1, with respect to every act in the performance of his duties under the Council or HPO, and any such act shall be deemed to be an official act within the meaning of Section 118 of the Criminal Code. [P.L. 1991-111, §23.]

§223. Protection for actions taken.

(1) No suit or prosecution shall lie:

(a) against the Council or HPO for any act which in good faith is done or purported to be done by the Council or HPO under this Chapter or any regulation made under this Chapter; or

(b) against any member, officer, servant or agent of the Council or HPO for any act which in good faith is done or purported to be done by him under this Chapter or any regulation made under this Chapter or under the direction of the Council or HPO.

(2) Any expenses incurred by the Council or HPO in any suit or prosecution brought by or

against the Council or HPO before any court shall be paid out of the Historic Preservation Fund; and any costs, fines or damages paid to or recovered by the Council or HPO in any such suit or prosecution shall be credited to that Fund.

(3) Any expenses incurred by any such person referred to in subsection (1)(b) of this Section in any suit or prosecution brought against him before any court with respect to any act which is done or purported to be done by him under this Chapter, any regulation made under this Chapter, or under the direction of the Council or HPO shall, if the court holds that such act was done in good faith, be paid out of the Historic Preservation Fund unless such expenses are recovered by him in such suit or prosecution. [P.L. 1991-111, §24.]

§224. Immunity.

No writ against person or property shall be issued against a member of the Council or HPO in any action brought against the Council or HPO. [P.L. 1991-111, §25.]

§225. Attorney-General.

The Attorney General may provide legal assistance and representation to the Council or HPO in any suit or prosecution brought by or against the Council or HPO or against any member, officer, servant or agent of the Council or HPO, and may, upon the request of the Council or HPO, advise them on matters of the law. [P.L. 1991-111, §26.]

PART VI- MISCELLANEOUS

§226. Dri Kabeel.

(1) There is hereby created the title of “Dri Kabeel” as an official recognition of persons possessing traditional knowledge and skills.

(a) The title shall be bestowed upon Marshallese men and women who are widely acclaimed to be the unsurpassed masters in their fields.

(b) There shall not be two Dii Kabeel having the same profession, traditional knowledge or skill, until most of the traditional crafts and skills are represented.

(c) The selection process shall be free of any influence by creed, age, birth place or political or genealogical affiliation of the person.

(d) The selection process shall ensure that the number of male and female Dri Kabeel is approximately the same.

(e) The person shall bear this title until his or her death.

(2) The determination of Dn Kabeel shall be as follows:

(a) The public shall be invited to make recommendations for people to be considered eligible for the title.

(b) The HPO shall review these recommendations in conjunction with members of the Council of Iroj and other authorities knowledgeable in the field.

(c) The HPO shall prepare a list of candidates eligible for the title, from which the Council shall elect candidates.

(d) The election of candidates shall take into account:

(i) their knowledge in the skills to be honored;

(ii) the applicability of such skills in modern society; and

(iii) their willingness to train young apprentices in such skills to the best of their ability.

(3) If a person chosen to become a Dri Kabeel accepts that title, that person shall agree to train one apprentice for a minimum of one year and a maximum of five (5) years in those skills and that knowledge for which the person has received that title. After the apprentice has completed the training, the Dri Kabeel may take on an additional apprentice.

(4) The selection of apprentices shall be conducted in the following manner;

(a) the HPO shall publish advertisements for such apprenticeships inviting applications from young Marshallese men and women;

(b) the HPO, in conjunction with the Council, shall draw up a list of five (5) candidates to serve as apprentices; and

(c) the final decision for the selection of apprentices shall be the responsibility of the respective Dri Kabeel.

(5) Upon accepting an apprenticeship of a Dri Kabeel, the apprentice agrees to:

(a) complete the apprenticeship; and

(b) use the skills learned for the benefit of the people of the Marshall Islands.

(6) The Dri Kabeel shall receive an annual allowance of one thousand dollars (US \$1,000).

(7) If the Dri Kabeel and the apprentice agree that the apprentice shall live with the family of the Dri Kabeel, the family of the Dri Kabeel shall in addition receive an annual allowance of two thousand dollars (US \$2,000) for each year of the apprenticeship. [P.L. 1991-111, §27.]

§227. Local Government Liaison.

(1) There shall be within each Local Government of the Republic, a Cultural Resource Officer who shall be appointed by the head of each Local Government Council, with the advice and consent of each such Council, and who shall serve as the liaison between the HPO and each Local Government. The Cultural Resource Officer shall work in cooperation with the Local Government Council, the Planning Commission established under the Planning and Zoning Act 1987, 10 MIRC 2, and any other National and Local Government agency as appropriate.

(2) The Minister shall promulgate regulations, upon the advice and consent of the Administrative Procedure Act 1979, 6 MIRC 1, with respect to the functions and duties of Cultural Resource Officers appointed under subsection (1) of this Section. [P.L. 1991-111, §28.]

§228. Costs and Fees.

(1) Except in cases where undue hardship would result, it shall be the sole responsibility of the party or parties whose actions damage a cultural or historic property to bear the costs of avoiding, mitigating or satisfactorily reducing the level of damage to that property.

(2) Except as provided under subsection (3) of this Section, undue hardship may be claimed in those circumstances where:

(a) the construction applied for is destined for private domestic use only;

(b) the area affected by the construction is 0.5 acres or less; or

(c) the costs of mitigation exceed five percent (5%) of the total construction budget.

(3) Undue hardship may not be claimed in circumstances where:

(a) the construction is funded by United States government funds or other overseas

aid;

(b) the construction is funded by the National Government or any Local Government of the Republic; or

(c) the construction is funded by companies with more than thirty percent (30%) overseas capital.

(4) If undue hardship is claimed under subsection (2)(c) of this Section, the contractor shall provide five percent (5%) of the final and total construction budget to the HPO. The HPO shall conduct the mitigation using the funds provided and additional funds drawn from the Historic Preservation Fund. For purposes of this subsection, the word “contractor” means the person or organization that has undertaken the construction activities subject to this Chapter. [P.L. 1991-111, §29.]

§229. Rules and regulations.

(1) The Minister or the Minister’s designee may promulgate such rules and regulations, in accordance with the Marshall Islands Administrative Procedure Act 1979, 6 MIRC 1, as are necessary to carry out the purposes of this Chapter.

(2) In the promulgation of any rules or regulations in accordance with this Chapter, the Minister or the Minister’s designee shall work in cooperation with the Republic of the Marshall Islands Environmental Protection Authority with respect to its rule-making powers under Section 121 (2)(f) of the National Environmental Protection Act 1984, 35 MIRC 1. [P.L. 1991-111, §30.]

§230. Land Use.

(1) Before engaging in any land use activities as authorized under this Chapter, or any regulations, by-laws, permits, requirements or orders issued or made under this Chapter, the HPO and/or the Council, as appropriate, shall obtain the written approval of the Iroijlaplap, Iroijedrik where necessary, Alap and the Senior Dri Jerbal of such land, who shall be deemed to represent all persons having an interest in that land.

(2) The HPO and/or the Council, as appropriate, shall work in cooperation and coordination with the following authorities and agencies with respect to any activities affecting the land or sea of the Republic:

(a) the Republic of the Marshall Islands Environmental Protection Authority established under the National Environmental Protection Act 1984, 35 MIRC 1;

(b) Local Government Planning Commissions established under the Planning and Zoning Act 1987, 10 MIRC 2;

(c) the Republic of the Marshall Islands Marine Resources Authority established under the Marshall Islands Marine Resources Act 1997;

(d) the Republic of the Marshall Islands Visitors Authority established under the Marshall Islands Visitors Authority Act 1997;” and

(e) any other National or Local Government ministry or agency, statutory authority or public corporation having been delegated any powers to control or otherwise manage land use or the use of resources within the territorial sea of the Republic and any other waters in which the Republic, either through the National Government or a Local Government, has jurisdiction.

(3) Before the alienation or disposition of any land in the Republic to or by the HPO and/or the Council, as appropriate, whether by way of sale, mortgage, lease, license or otherwise, the

approval of the Iroijlaplap, Iroijedrik where necessary, Alap and the Senior Dri Jerbal of such land shall be obtained in accordance with Article X, Section 1(2) of the Constitution of the Republic of the Marshall Islands.

(4) In addition to any other requirements of this Chapter and any other law, no land right or other private property may be taken by the HPO or the Council for public use except as provided under Article II, Section 5, of the Constitution of the Republic of the Marshall Islands, and in accordance with the Land Acquisition Act 1986, 9 MIRC 2.

(5) Nothing in this Chapter shall prohibit a landowner and or other persons having land rights in any land that is declared to be a cultural and historic property in accordance with this Chapter or regulations promulgated under this Chapter from providing for the management and control of that land if that person so chooses and is deemed to be capable of doing so by the HPO. The Landowner and/or other persons having land rights in that land shall work with the HPO, the Council, and with any other applicable government ministry or agency, statutory authority or public corporation in the exercise of such management and control, which may include such activities as cleaning and maintaining the land, regulating the flow of persons through or across that land, and collecting reasonable fees to provide for the upkeep and maintenance of that land. [P.L. 1991-111, §31.]

§231. Repeal; savings; transition.

(1) Title 67, Chapter 6 (Sections 251 through 256) of the Trust Territory Code (1980), relating to historic sites and antiquities, is hereby repealed.

(2) All acts, transactions, matters, and things done, determined, or entered into, by the Trust Territory Government pursuant to 67 TTC (1980), Sections 251 to 256, shall be deemed to have been done, determined, and entered into by the Ministry through the Historic Preservation Office.

(3) All assets, liabilities, rights, and obligations of the Trust Territory Government made pursuant to 67 TTC (1980), Sections 251 to 256, and existing immediately before the effective date of this Chapter, are transferred to and are assets, liabilities, rights, and obligations of the Government of the Republic of the Marshall Islands.

(4) Notwithstanding subsection (1) of this Section, all licenses and permits issued in accordance with rules or regulations promulgated under 67 TTC (1980), Sections 251 to 256, shall remain in full force and effect in accordance with their terms for one hundred eighty (180) days after rules or regulations have been adopted in accordance with this Chapter, at which time they shall be deemed to be invalid.

(5) Civil or criminal liability for violations of rules or regulations promulgated under 67 TTC (1980), Sections 251 to 256, shall not be extinguished but shall continue subject to the limitation of prosecution set forth in Section 108 of the Criminal Code, 31 MIRC 1. [P.L. 1991-111, §32.]

§232. Severability.

If any provision of this Chapter, or the application of any provision of this Chapter, to any person or to any instrumentality or circumstances is held invalid, such invalidity shall not affect the other provisions or the application of this Chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this Chapter are declared severable. [P.L. 1991- 111, §33.]

§233. Special Exemptions.

Notwithstanding anything to the contrary in any other law or regulation, the Cabinet may exempt from any or all of the requirements of this Chapter and/or the regulations promulgated hereunder, as the same may be amended from time to time, any proposed land use activity that it should deem vital to the national interest; provided that any such exception shall clearly set forth the vital interests involved. [P.L. 1994-80, §3.]

[BLANK PAGE]