

REPUBLIC OF PALAU
Office of the President

The Senate
Olbiil Era Kelulau
Koror, Republic of Palau 9694
PRES. COM. 6-74

TOMMY E. REMENGESAU, JR.

President

July 31, 2001
Serial No. 01-390

Honorable Seit Andres
President of the Senate
Sixth Olbiil Era Kelulau
Koror, Republic of Palau 96940



P.O. Box 100, Koror • Republic of Palau 96940
Phone: (680) 488-2403 / 2541 • Fax: (680) 488-1662

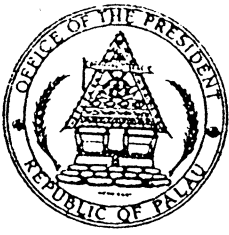
Re: The Budget Reform Act of 2001 (SB No. 6-83, SD2, HD2, CD1 PD1)

Dear President Andres:

I have reviewed the Budget Reform Act of 2001 (SB No. 6-83, SD2, HD2, CD1 PD1) that has been submitted for my signature by the OEK subsequent to my referral of the bill earlier this month. In the spirit of compromise, and in order to move toward a better budget system for the National Government, I have decided to sign the bill into law. I should indicate to both Houses of the OEK, however, that under normal circumstances, I would veto this proposed law. I have chosen to sign the bill into law taking into account our mutual understanding, arrived at during the Leadership Meeting held on July 26, 2001, that the concerns that I addressed in my referral letter, dated July 13, 2001, will be given serious consideration by the OEK in the near future.

I directed the original drafting of the Bill to not only establish performance budgeting, but also to improve Palau's overall budget process and to expand the system's transparency. Only through a transparent budget system can good and consistent budget decisions be made that are based upon clear criteria that are apparent to both the members of the OEK and to the public at large.

In order for a system to be transparent, the responsibilities of all branches of the government must be clearly set forth. This applies not only to the Executive Branch, which prepares the largest portion of the budget, but also to the Legislative Branch, which ultimately determines the nature and extent of the government's yearly expenditures. In addition, the budget system that we choose to apply to our decision-making processes should segregate expenditure issues from other unrelated issues. We do a disservice to the people of Palau when we hide these unrelated issues in an annual budget bill and thereby limit the issue to public exposure and comment.



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Finally, a budget process should guarantee that moneys appropriated are supported by a comprehensive analysis of revenue availability. This analysis should be applied not only to the budget offerings of the Executive Branch, but also to budget proposals initiated by the Legislative and Judicial Branches.

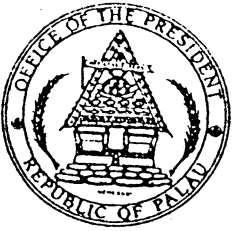
I believe that the concerns expressed in my referral letter addressed these broad issues and I was quite disappointed that the OEK failed to undertake to address these concerns. Specifically, I would request that the OEK make a good faith effort to review and respond to the following major issues, to finalize the Republic's transparent budget system for the future. I have attempted to limit the issues raised to demonstrate my good faith effort to eventually arrive at a reasonable compromise that will be in the best interests of all Palauans.

1. In deleting Sections 325 and 326 of the original bill, the OEK confused the overall budget process by effectively eliminating itself from the descriptive process. The Senate indicated in its Committee Report that these actions were taken because these simple descriptions of process would somehow "impose improper and unenforceable restrictions on constitutional legislative power." Clearly, process can be applied to the Legislative Branch as well as the Executive Branch without abridging inherent constitutional powers. In fact, transparency demands that such process be clearly set forth.

In addition, the OEK deleted a provision in Section 325 that simply required the budgeting of funds where obligations are created through legislative action. Once again, the Senate in its Committee Report cited restrictions on constitutional legislative power as the basis for this deletion. This is not a constitutional issue. This is an issue of good fund management. It is clearly consistent with 40 PNC 406, which requires certification of funds prior to expenditure, which is applied to all branches and all agencies of the National Government.

2. Under the OEK's provision relating to 'Continuing Budget Authority' (Section 326), if the OEK fails to pass a budget by September 30, 2001, it 'may' pass a continuing budget authority. This responsibility should be made mandatory. We cannot permit the on-going operations of the National Government, and the protection of the People's interests through such passage, to be at the discretion of the Legislative Branch.

3. The deletion of Section 331 of the original bill would have eliminated riders from our budget process. The Senate, in its Committee Report, indicated that such riders were often useful and that the issue was heavily debated in many countries. Unfortunately



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such debates generally revolve around the implementation or non-implementation of transparent budget systems. Riders are useful only in hiding legislative decisions within a large budget bill and thereby limiting public inspection and comment. I believe that Palau should voice its strong support for public involvement by making such riders unlawful.

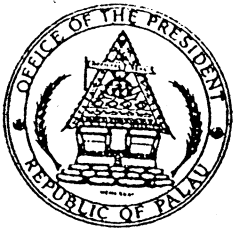
4. The requirement that any request or application for a grant be copied to the OEK makes an already complicated grant process more complicated. The OEK clearly has the constitutional power to reject any expenditure of funds and can therefore reject any grant. By injecting itself in the application phase, the OEK is merely making the job of identifying additional funding more difficult. This provision does not give the OEK any power to take action on such grant applications, which would be an intrusion on Executive Power. Why then not await the finalization of such grant process and introduction of the same in the budget process? This would assist, rather than hinder, the identification of grants intended to benefit the Republic.

Finally, I would ask that the staff of the OEK work with the Budget Office to address certain process issues. Revisions to the original bill will, in certain circumstances, make implementation of the annual budget more difficult for the people who actually prepare the budget. Through minor adjustments the job of the Budget Office could be made simpler and remain consistent with current budget practice.

Aside from these much needed additions to the bill, I must add that, even with its deficiencies, the current budget process will be improved. To its credit, the OEK left Subchapter IV, regarding Performance Reporting, in essentially its original form. This new budgeting process should go a long way toward improving the government's analysis of its own performance and thereby improve such performance.

Similarly, the OEK is to be commended for its treatment of Subchapter V regarding Capital Improvement Projects. This section was essentially retained in its original form and establishes a far stronger budget system for reviewing capital improvement projects. These new requirements will clearly lead to the identification and implementation of better infrastructure projects.

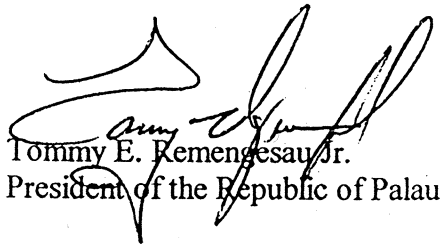
Finally, the establishment of a Reserve Fund is a major advancement in establishing a budget system that plans for the future. While I would like to further discuss the timing and implementation of this Reserve Fund, I congratulate the OEK for its recognition that such fund will result in a stronger fiscal position for Palau in the future.



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I look forward to further discussions with the OEK regarding the matters discussed above.

Sincerely,



Tommy E. Remengesau Jr.
President of the Republic of Palau



The Senate SIXTH OLBIIL ERA KELULAU

P.O. Box 8, Koror
Republic of Palau 96940

Third Regular Session

July 2001

INTRODUCED AS SENATE BILL NO. 6-83, SD2, HD2, CD1, PD1

AN ACT

To provide a new statutory framework for budgetary policies and procedures, to repeal 40 PNC Chapter 3; to amend 3 PNC Chapter 4, regarding referred bills; to amend 40 PNC 408(b) to permit comingling of the General Fund Reserve with the Compact Trust Fund for investment purposes; and for other purposes.

INTRODUCED BY SENATOR(S)/ President Tommy E. Remengesau, Jr.

ET AL,

DATE INTRODUCED March 06, 2001

SENATE ACTION

FIRST READING:	March 06, 2001
REFERRED TO:	Ways & Means and Financial Matters
STANDING COMMITTEE REPORT NO:	6-39/Sp. Comm. Rpt. No. 6-6
DATE ADOPTED:	May 02, 2001
SECOND READING:	May 02, 2001
LEGAL FORMAT:	Proper
REVIEW:	May 03, 2001
THIRD READING:	May 03, 2001
Final Reading:	July 03, 2001/July 18, 2001

HOUSE ACTION

FIRST READING:	June 06, 2001
REFERRED TO:	Ways & Means
STANDING COMMITTEE REPORT NO:	6-17
DATE ADOPTED:	June 27, 2001
SECOND READING:	June 27, 2001
LEGAL FORMAT:	Proper
REVIEW:	June 27, 2001
THIRD READING:	June 28, 2001
Final Reading:	July 02, 2001/July 19, 2001

CONFERENCE COMMITTEE ACTION

DATE:	July 03, 2001	July 02, 2001
COMMITTEE REPORT:	6-3	3
DATE PASSED:	July 03, 2001	July 02, 2001

Feliciana S. Watanabe
CLERK OF THE SENATE

Martin Sokau
HOUSE CLERK
Temporary

A BILL FOR AN ACT

To provide a new statutory framework for budgetary policies and procedures, to repeal 40 PNC Chapter 3; to amend 3 PNC Chapter 4, regarding referred bills; to amend 40 PNC 408(b) to permit commingling of the General Fund Reserve with the Compact Trust Fund for investment purposes; and for other purposes.

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1 (1) generate information that allows the determination of the extent to which
2 national government programs and services are economical and successful;

3 (2) develop well-defined goals and priorities for national government agencies
4 and programs;

5 (3) strengthen the accountability of the national government to citizens and
6 taxpayers by providing a record of the national government's performance in providing
7 effective and efficient services; and

8 (4) create appropriate incentives to encourage national government employees
9 to perform efficiently and to the best of their ability.

10 (c) to establish guidelines for the expenditure and monitoring of capital improvement
11 project funding by national and state governments.

12 Section 303. Definitions. In this chapter:

13 (a) "Agency" means any entity established or funded by law of the Republic or a local
14 government. Agency includes, but is not limited to, the following entities and their officers,
15 directors, employees, and independent contractors: any authority, board, branch, bureau,
16 commission, cooperative, council, division, fund, group, institution, political division, office, public
17 corporation, or state government, including any autonomous or semi-autonomous governmental
18 entity.

19 (b) "Annual national budget" means a consolidated budget reflecting the total estimated
20 revenues anticipated and their proposed uses for general operations, debt service, capital
21 improvement projects, and other lawful purposes.

22
23 (c) "Appropriation item" means a sum allocated to an identified budget activity.

24 (d) "Appropriation bill" means a bill that proposes the appropriation of funds from the
25 National Treasury for specified purposes.

1 (e) "Authorization" means a provision establishing authority to appropriate funds for a
2 budget activity.

3 (f) "Balanced budget" means all or part of an annual national budget in which estimated
4 revenues and other available resources equal authorized expenditures for all or the corresponding
5 part of the budget during a fiscal year.

6 (g) "Budget activity" means a purpose proposed for funding.

7 (h) "Budget call" means written instructions of the President of the Republic to any budget
8 activity regarding preparation of an annual budget, including without limitation format, order,
9 arrangement, contents, narrative justification, and due date.

10 (i) "Budget deficit" means the amount by which the ^{est. revenues < est. expend.} total authorized budget spending
11 level exceeds the ~~total~~ actual revenues collected.

12 (j) "Budget Surplus" means the amount by which ^{est. revenues > est. expend.} sums appropriated exceed actual
13 expenditures and obligations for a fiscal year; obligations and expenditures are held below the level
14 of actual receipts creating savings within the authorized budget.

15 (k) "Budget year" is the fiscal year.

16 (l) "Capital improvement project" ("CIP") means any of the following undertakings of
17 the national government or a state government:

18 (1) any construction or renovation on the real property of the Republic or of a
19 state, for any permanent physical facility, including architecture and engineering and other
20 construction and planning studies;

21 (2) any physical improvement which has an estimated useful life longer than one
22 year and is made to a leased property or to an occupied property owned by a government
23 entity;

24 (3) any acquisition of an interest in land or permanent fixtures on land, or any
25 matching funds for any United States or foreign grants within the meaning of subsections (1)
26 or (2) required because of the activities described in subsections (1) or (2).

1 (m) "Compact" means the Compact of Free Association between the Republic of Palau
2 and the United States Government and any subsequent laws and subsidiary agreements pertaining
3 thereto.

4
5 (n) "Fiscal year" means the 12-month period from October 1 of one calendar year through
6 September 30 of the next calendar year.

7 (o) "General fund" is the fund into which national government revenue collections are
8 credited for discretionary appropriations.

9 (p) "General operations" means annual budgetary operations of the executive, legislative,
10 and judicial branches of the national government, operating grants and subsidies to state
11 governments, non-governmental organizations, and other programs and activities of the national
12 government.

13 (q) "Item" means a positive sum, a single amount appropriated for a specified purpose.

14 (r) "Item reduction" or "line item reduction" is the presidential power of an item provided
15 in Article IX, Section 15 of the Constitution, which allows the President to reduce specific sums in
16 an appropriation bill passed by the Olbiil Era Kelulau.

17 (s) "Item veto" or "line item veto" is the presidential veto power of an item provided in
18 Article IX, Section 15 of the Constitution.

19 (t) "Performance measure" means a quantifiable standard of government
20 accomplishments, results, efficiency, or cost-effectiveness.

21 (u) "Program" means a group of related services or activities provided or administered
22 by an agency and accounted for in its budget.

23 (v) "Recurring budget activities" means regular and on-going activities of the national
24 government requiring annual appropriations and excludes one-time-only appropriation items or
25 completed programs or activities.

1 (w) "Reprogramming" means the reallocation of appropriated funds from one
2 appropriation item to any other appropriation item.

3 (x) "Restricted local revenues" means revenues collected from all domestic sources and
4 designated for specific purposes or programs.

5 (y) "Revenue deficit" means revenue shortfall; the amount by which ~~anticipated~~ actual
6 revenues fall short of anticipated receipts.

7 (z) "Revenue surplus" means the amount by which actual receipts exceed the amount of
8 receipts anticipated.

9 (aa) "Service population" means the recipients, users, and beneficiaries of an agency's
10 activities or the subject of an agency's regulation.

11 (bb) "Unrestricted local revenues" means revenues collected from all domestic sources
12 not designated for specific purposes or programs.

13 **Subchapter II: Annual National Budget Procedures**

14 Section 321. Annual budget preparation. The President shall prepare and introduce an
15 annual budget bill in the Olbiil Era Kelulau. Funding for general operations, debt service, and
16 capital improvement projects may be proposed in separate bills or in a unified budget. A
17 consolidated bill or the sum of separate bills, with supporting documentation, shall constitute the
18 annual national budget.

19 Section 322. Budget call. The President shall issue a budget call and prescribe the format,
20 order, arrangement, and contents of the annual budget for all budget activities. The annual budget
21 of any budget activity that fails to respond to the budget call on or before June 1 shall be established
22 by the President.

23 Section 323. Annual budget requirements. The annual budget shall contain:

- 24 (a) a funds availability analysis;
- 25 (b) schedules detailing actual expenditures and obligations for the past fiscal year and
26 providing estimated expenditures and obligations for the current and next fiscal years;

1
2 Section 325. Item veto or reduction. The President may reduce or veto an item in an
3 appropriation bill and sign the remainder of the bill, returning the item reduced or vetoed to each
4 house within fifteen calendar days together with the reason for his action.

5 Section 326. Balanced annual national budget. The annual national budget shall be a
6 balanced or surplus budget in which the total of all estimated receipts is equal to or greater than the
7 proposed total appropriations.

8 Section 327. Continuing budget authority. If an annual budget is not enacted by the
9 beginning of a fiscal year, continuing budget authority may be enacted for all regular budget
10 activities of the national government. Continuing budget authority shall provide funding at the level
11 of appropriations of the previous budget year until an annual budget for the fiscal year is enacted.
12 Authorizations and appropriations of United States grant funds under these circumstances are
13 conditional on such funds' being made available to the Republic.

14 Section 328. Lapsing of appropriated funds. Unless otherwise provided by law, all
15 appropriations shall lapse at the end of the fiscal year.

16 Section 329. Funds availability analysis.

17 (a) The President shall submit a funds availability analysis with each authorization or
18 appropriation bill. The funds availability analysis must be approved by the President and the Olbil
19 Era Kelulau, and the itemized summary provided in subsection (b)(1) shall become part of the
20 appropriation bill in support of which it is submitted. For the annual national budget, the President
21 shall submit a funds availability analysis for the preceding fiscal year, the current fiscal year, and
22 the next two fiscal years.

23 (b) A funds availability analysis for a fiscal year shall contain, but need not be limited

24 to:

1 (1) an itemized summary of revenue projections, by source, and appropriations
2 or proposed appropriations. Revenue projections shall include all grants, from all sources,
3 anticipated to be available for obligation during the budget year; and

4 (2) a detailed schedule of actual revenues for the preceding fiscal year, original
5 revenue projections for the current national budget, and revenue projections for the two fiscal
6 years immediately following the current fiscal year. The detailed schedule shall include an
7 explanation of the basis for all revenue projections, including revenues from grants,
8 providing sufficient detail to show that the projections are reasonable.

9 Section 330. General fund reserve.

10 (a) A permanent "General Fund Reserve" is hereby established, into which all unspent
11 appropriated funds shall be deposited. Except as otherwise provided in subsection (c), the following
12 revenues shall be managed and invested by the COFA Board of Trustees:

13 (1) the General Fund cumulative surplus balance;

14 (2) beginning in Fiscal Year 2002, and thereafter, an amount not less than 5
15 percent of actual unrestricted local revenue collections from the preceding fiscal year; and

16 (3) any additional funding sources identified annually and specified in the annual
17 budget.

18 (b) The General Fund Reserve may be used only for the following purposes:

19 (1) prior to the expiration of the Compact funding period, emergency
20 expenditures under a declared state of national emergency, in accordance with Article VIII,

21 Section 14 of the Constitution, for which no other funds are available; and

22 (2) after expiration of the Compact funding period, funding for any lawful
23 purpose.

24 Section 331. Foreign grants. A copy of any request or application for a grant to fund a
25 project in the Republic requested from any foreign source, including United States federal grants.

1 (c) The Chief Justice of the Supreme Court may reprogram up to 10 percent of funds.
2 cumulatively in a fiscal year, appropriated to the Judicial Branch, except as otherwise provided by
3 law.

4 (d) No new budget activity may be created as a result of reprogramming.

5 Section 352. Rescissions and deferrals. The President may, from time to time, take action
6 to impound or otherwise prevent the obligation or expenditure of budget authority for the balance
7 of the budget year, or the period of the appropriation authority, in order to prevent a budget deficit
8 or revenue deficit or create government savings, budget surplus, or revenue surplus; provided that
9 the President shall immediately notify the Olbiil Era Kelulau of any such action and the reasons
10 thereof.

11 **Subchapter IV: Performance Reporting**

12 Section 371. Performance reports.

13 (a) Every agency shall prepare a performance report for the programs and services it
14 administers or provides. The report shall include each of the following items or an explanation of
15 why an item does not apply to a program or service:

16 (1) a statement of the agency's functions, responsibilities, and objectives as set
17 forth by Executive Order or statute;

18 (2) performance measures, including measures of results of continuing activities,
19 results of completed activities, economy, and efficiency of each service and program;

20 (3) identification of service populations served by each service or program and
21 explanations of how those populations are expected to change within the period of the report;

22 (4) proposals for collecting new performance information;

23 (5) a list of all personnel positions including a job description and the salary for
24 each position.

25 (6) documentation and analysis of past and projected performance of programs
26 and services; and

1 (7) performance objectives as an incentive for improving programs and services.

2 (b) Every agency shall issue a first report in fiscal year 2002 and annually thereafter. A
3 report shall cover the last, current, and next fiscal year from the date it is required to be issued,
4 including previous forecasts and actual performance. Copies of each report shall be made available
5 for public inspection.

6 (c) Each agency shall submit its report to the President, the Olbiil Era Kelulau, and the
7 Public Auditor by April 1 each year.

8 (d) The President shall:

9 (1) develop format, forms, and instructions and coordinate training to assist
10 agencies in the preparation of their reports;

11 (2) assist agencies in determining acceptable measures of staff workload, unit
12 costs, and productivity; and

13 (3) request any needed additional information concerning any agency
14 performance report submitted.

15 (e) The President shall ensure that performance reports are complete, accurate, and
16 reasonably self-explanatory. The President shall maintain an automated performance data records
17 system for performance reports and may require additional information from the agencies necessary
18 to meet the requirements of this subsection.

19 Section 372. Attestation. Beginning in Fiscal Year 2002 and at least once every two years,
20 thereafter, the Public Auditor shall review each agency's performance report and comment on the
21 reasonableness, appropriateness, validity, and reliability of the performance measures and data
22 collection efforts. The Public Auditor shall report his or her findings to the agencies reviewed, the
23 President, and the presiding officer of each house of the Olbiil Era Kelulau.

24 Section 373. Performance review. The Olbiil Era Kelulau shall conduct performance
25 reviews during the second regular session of each calendar year to determine the success of agencies
26 in carrying out their mandates and the outcomes desired and to develop consensus on agency

1 missions and goals. Performance reports shall be utilized in the budget appropriation process to
2 provide the basis for agency funding and to facilitate the allocation and distribution of funds
3 available for appropriation.

4 **Subchapter V: Capital Improvement Projects ("CIP")**

5 Section 381. Operations and maintenance impact statement. All requests for funding for
6 capital improvement projects shall be accompanied by an operations and maintenance impact
7 statement. Such statement shall include, but shall not be limited to, the following:

- 8 (a) a description of the project, including a summary of its costs and benefits, including:
9 (1) a justification of the project; and
10 (2) a statement confirming its consistency with the Palau National Development
11 Plan or Economic Development Plan;
- 12 (b) a project schedule, including the anticipated time requirements for planning, design,
13 procurement, and construction;
- 14 (c) the estimated capital costs of the project, including costs for administration, design,
15 construction, inspection, and contingencies;
- 16 (d) the status of land ownership, rights of way, and easements;
- 17 (e) the estimated useful life of the project;
- 18 (f) the project management agency and eventual project user or project owner; and
19 (g) the estimated total annual operation and maintenance costs of the project, including
20 utilities, operations, parts, maintenance, landscaping or grounds keeping, custodial services, security
21 services, and other specialized services.

22 Section 382. Administrative costs and project budget. Where appropriate CIP projects
23 funded in whole or in part by the national government shall be charged administrative costs. The
24 means of determining administrative costs shall be set forth in rules and regulations established by
25 the Minister of Resources and Development and shall be directly related to each project.

26 Section 383. Inspection.

1 (e) the name of consultants and contractors responsible for the project's design and
2 construction;

3 (f) the approximate percentage of completion of each major project component, such as
4 land project design, preparation, and construction;

5 (g) approximate expenditures to date for each project category;

6 (h) a brief description of progress since the last reporting period; and

7 (i) a brief description of any problems, major issues, or change orders encountered on
8 the project.

9 Section 385. Project completion report. When the Minister of Resources and Development
10 has determined that a project has been completed and it is appropriate that the project be
11 administratively closed, within 30 days of such determination, he or she shall prepare a written
12 project completion report to the Minister of Administration and the presiding officers of the Olbiil
13 Era Kelulau. The project completion report shall include the same information that appears in the
14 quarterly project report; provided, that the project completion report shall also include a final funding
15 status of the project. A copy of the project's operations and maintenance impact statement shall be
16 attached to the project completion report. The project is officially completed and closed upon the
17 liquidation of all financial obligations by the Minister of Administration.

18 Section 386. Update of economic development plan. The National Economic Development
19 Plan (EDP) shall be updated whenever an appropriation is made for a CIP project that is not included
20 in the EDP."

21 Section 3. Amendment. 3 PNC Chapter 4 is hereby amended to add a new section 407
22 to read as follows:

23 "§407. Repassage of referral bills.

24 (a) Any bill referred to the Olbiil Era Kelulau by the President with recommendations
25 for amendment may be repassed by a majority vote upon one reading in each house of the Olbiil Era
26 Kelulau and returned to the President.

1 (b) The Olbiil Era Kelulau may repass a referred bill by taking action in any of the
2 following ways:

3 (1) repass the bill without change, in the form as first submitted to the President
4 before referral;

5 (2) repass the bill incorporating all amendments recommended by the President;

6 (3) repass the bill incorporating one or more amendments recommended by the
7 President; or

8 (4) repass the bill with amendments that substantially comply with one or more
9 amendments recommended by the President.

10 (c) The Olbiil Era Kelulau may not repass a referred bill which incorporates new
11 amendments not recommended by the President.

12 (d) The President's recommendations in a bill referred to the Olbiil Era Kelulau for
13 amendment may be in the form of specific statutory language to be added or deleted or may be a
14 general statement of policy or an objective, the statutory language of which may be provided by the
15 Olbiil Era Kelulau."

16 Section 4. Amendment. 40 PNC 408(b) is hereby amended to read as follows:

17 "Section 408. Trust Fund Administration.

18
19 (b) It is hereby authorized that all funds received by the Republic of Palau pursuant to
20 sections 211(b), 211(c), 211(d), 211(e), 211(f), 212(b), 213, 215, and 221(b) of the January 10, 1986
21 Compact of Free Association may be commingled into the 211(f) Trust Fund for investment
22 purposes; however, those funds and the income derived therefrom shall remain segregated for
23 appropriation and accounting purposes. No funds shall be withdrawn from the 211(f) Trust Fund,
24 or any investment account containing funds received pursuant to any Compact section, or any
25 investment account containing funds from the General Fund Reserve, except through the
26 constitutional appropriation process

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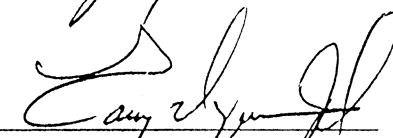
(c)

(h)"

Section 5. Effective date. This Act shall take effect upon its approval by the President of the Republic, or upon its becoming law without such approval, except as otherwise provided by law.

PASSED: July 19, 2001

Approved on this 31st day of July, 2001.



Tommy E. Remengesau Jr
President, Republic of Palau