

**PUBLIC AUDITOR 40 PNCA § 203**

**Chapter 2**

**Public Auditor**

**Subchapter I**

**General Provisions**

§ 201. Short title.

§ 202. Purpose.

§ 203. Definitions.

**§ 201. Short title.**

This chapter may be cited as the “Public Auditing Act of 1985.”

**Source**

RPPL 2-6 § 100, modified.

**§ 202. Purpose.**

It is the purpose of this chapter to implement Article XII, Section 2, of the Constitution of the Republic of Palau by creating an Office of the Public Auditor to conduct audits of all agencies and activities of the Republic and to assign such additional duties to the Public Auditor as the Olbiil Era Kelulau deems necessary.

**Source**

RPPL 2-6 § 101, modified.

**§ 203. Definitions.**

As used in this chapter:

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

- (b) “Audit” means an independent examination of books, performance, documents, records, and other evidence relating to the receipt, possession, obligation, disbursement, expenditure, or use of public funds by any agency or any activity of any agency; or relating to any contract or grant to which any agency is a party, including any operations relating to the transactions. Audit includes financial audits, performance audits, and program audits or any combination of the audits that the Public Auditor may deem appropriate.
- (c) “Constitution” means the Constitution of the Republic of Palau.
- (d) “Coordinating Group” means the Interagency Audit Coordinating Advisory Group established by section 230 of this chapter.
- (e) “Financial audit” means an audit to determine:
- (1) whether financial operations of any agency, or any relevant financial operations of any government contractor or grantee, have been properly conducted;
  - (2) whether any financial report of any agency, contractor, or grantee has been fairly presented; and
  - (3) whether any agency, contractor, or grantee has complied with laws and regulations applicable to their operations.
- (f) “Performance audit” means an audit to determine whether an agency has managed or used its funds, personnel, property, space, and other resources in an effective and efficient manner, and to identify the cause of any inefficiency or ineffective practice, including any inadequacy in management information systems, administrative procedures, or organizational structure.
- (g) “Program audit” means an audit to determine whether the desired results or benefits of agency programs or activities, or of any contract or grant, are being achieved, whether the objectives established by the Olbiil Era Kelulau, or otherwise established pursuant to law or by the Constitution, are being met, and whether the agency, contractor, or grantee has considered alternatives which might yield desired results more effectively or at lower cost.
- (h) “Republic” means the Government of the Republic of Palau.

### **Source**

RPPL 2-6 § 102; terms put into alphabetical order and section modified.

### **Subchapter II**

#### **Establishment of Office**

§ 221. Office of the Public Auditor; establishment.

§ 222. Appointment and removal of the Public Auditor; compensation; vacancy.

§ 223. Duties of the Public Auditor.

§ 224. Special duties to act to prevent fraud, waste and abuse in the collection and expenditure

of public funds.

§ 225. Employees of Office.

§ 226. Outside specialists may be hired.

§ 227. Centralization of all auditing services required by an agency of the Republic.

§ 228. Audit standards.

§ 229. Audit procedures and requirements.

§ 230. Establishment of Coordinating Group.

§ 231. Annual report.

**§ 221. Office of the Public Auditor; establishment.**

An Office of the Public Auditor, to be headed by the Public Auditor, is established as an independent agency of the Republic to audit the receipt, possession, and disbursement of public funds by agencies of the Republic and to perform such other duties as required in this **chapter**.

**Source**

RPPL **2**-6 § 200, modified.

**§ 222. Appointment and removal of the Public Auditor; compensation; vacancy.**

(a) The President shall appoint the Public Auditor subject to confirmation by the Olbiil Era Kelulau. No person shall be appointed Public Auditor unless he or she is a certified public accountant, has received an equivalent, internationally recognized certification, or has served as acting Public Auditor for a period of three years or more, and has a minimum of five years experience in accounting or governmental finance.

(b) The Public Auditor shall be appointed for a term of six years.

(c) The salary of the Public Auditor shall be within the grades and steps specified in 33 PNCA § 702, payable biweekly. The salary shall be determined by the President based upon the experience and qualifications of the applicant for the position of Public Auditor. The salary limit does not include recruitment, transportation and repatriation costs and benefits, or housing allowances and benefits, as allowed by Executive Branch regulation and stated in the standard employment contract.

(d) The Public Auditor may be removed only for cause and by the affirmative vote of two-thirds of the members of each house of the Olbiil Era Kelulau.

(e) In the event that there is a vacancy in the Office of the Public Auditor, the Chief Justice of the Supreme Court shall appoint a temporary public auditor with the same qualifications as required by law for the Public Auditor who shall serve until the vacancy is filled as provided in the Constitution and subsections (a) and (b) of this section. In no case may the Chief Justice appoint a person who has previously been rejected for such appointment by the Olbiil Era Kelulau.

#### Source

RPPL 2-6 § 201, modified. Subsection (c) amended by RPPL 3-50 § 1 and RPPL 4-21 § 4, modified. Subsection (a) amended by RPPL 5-34 § 31. Subsections (a) and (e) amended by RPPL 7-25 § 25a, modified.

### § 223. Duties of the Public Auditor.

(a) Not later than June 30 of each year, the Public Auditor shall transmit to the President and to the presiding officer of each house of the Olbiil Era Kelulau an annual report for the previous fiscal year required by Article XII, Section 2, of the Constitution. The report shall consist of a financial audit of the National Treasury, each trust fund, each other fund of any agency whether or not appropriated, each contract to which any agency is a party, and each grant made or received by any agency. The audit shall cover the receipt, possession, and disbursement of public funds including all liabilities, receivables, and accruals of any agency, all taxes, fees, receipts, and other revenues of any agency, all other financial transactions involving any agency, and any financial statement issued or prepared by any agency. Personal service contracts and prime contracts with employees of any agency shall be audited as part of the regular operations and activities of the agency.

(b) The Public Auditor shall from time to time make such other audits of the Republic's agencies, activities, contracts, or grants as are possible within the budget provided him and as he deems to be in the public interest and consistent with this chapter.

(c) Upon request of an agency of the Republic the Public Auditor shall provide its opinion as to whether or not certain practices are in accord with generally accepted accounting principles.

(d) The Public Auditor shall undertake as soon as possible, a financial audit of all expenditures and receipts of the Republic since its inception as a constitutional government in 1981. The result of this audit shall be submitted to the Coordinating Group as established by section 230 of this **chapter**, and in accordance with its rules and procedures.

#### **Source**

RPPL **2**-6 § 202, modified.

### **§ 224. Special duties to act to prevent fraud, waste and abuse in the collection and expenditure of public funds.**

(a) The Office of the Public Auditor shall specially act to prevent and detect fraud, waste and abuse in the collection and expenditure of all public funds. The Public Auditor may audit any transaction involving the procurement of supplies or the procurement of any construction by agencies of the Republic and the procurement of any supplies and services in connection with such construction.

(b) The Public Auditor may conduct audits and inspections, when necessary, relating to programs and operations involving expenditure of public funds. He may review legislation and regulations relating to programs and operations involving expenditure of public funds and may make recommendations concerning the effect of such legislation or regulation on the prevention and detection of fraud, waste and abuse. He may recommend policies which will assist in the prevention or detection of fraud, waste and abuse. The person in charge of, or the governing body of any agency of the Republic, involved in the expenditure of public funds for the purpose of procurement of supplies or construction, and the services and supplies in connection therewith, may request the assistance of the Office of [the] Public Auditor with respect to implementation of any suggested policy.

#### **Source**

RPPL **2**-6 § 203, modified.

### **§ 225. Employees of Office.**

(a) The Public Auditor may appoint and remove such employees as he deems necessary to perform the duties of his office, which employees shall be exempt from Civil Service laws and regulations. His employees may include assistant public auditors, accountants, auditors, financial management analysts, investigators, attorneys, paralegals, secretaries, and clerks.

(b) The Public Auditor may establish personnel regulations including code of ethics for the employees of his office. No employee of the Office of the Public Auditor shall hold, or be a candidate for, any elective public office while an employee, nor shall he participate in any political campaign of any candidate for public office while an employee. Except as

otherwise provided by law, no employee shall engage in any other business or profession, or hold any governmental office, including, but not limited to, membership on any governmental board, commission, authority or committee.

(c) The Public Auditor may, when in his judgment it is necessary, delegate any of his duties and powers to any of the employees employed by him. The employees shall report their findings for review by the Public Auditor.

**Source**

RPPL 2-6 § 204, as amended by RPPL 4-6 § 1, modified.

**§ 226. Outside specialists may be hired.**

(a) Independent specialists shall be used for any audit involving the Office of the Public Auditor, or with respect to which the Public Auditor or the Office of the Public Auditor has a conflict of interest, including an audit of any agency, contract, or grant for which the Public Auditor has had management responsibility or in which he was employed

(1) during the two years preceding the time period covered by the audit, or

(2) during the two years preceding or subsequent to the audit time period.

(b) If the Public Auditor fails to schedule an audit so that it can be completed in time to comply with any applicable law or the terms of any loan, grant, financial assistance, or contract, or if the Public Auditor fails to commence, conduct, or complete any audit as required by law, the person or agency concerned may, upon the approval of the President and Public Auditor, and subject to the availability of funds, enter into a contract with any independent certified public accountant for the purpose of conducting the audit. The audit shall be conducted as closely as possible to the standards adopted by the Office of the Public Auditor.

**Source**

RPPL 2-6 § 205, modified.

**§ 227. Centralization of all auditing services required by an agency of the Republic.**

The Office of the Public Auditor shall conduct or supervise all audits required for, or sought by an agency of the Republic.

**Source**

RPPL 2-6 § 206, modified.

**§ 228. Audit standards.**

(a) The audit standards shall be consistent with the provisions of this chapter and with generally accepted auditing standards. The audit standards shall incorporate the Standards for Audit of Government Operations, Programs, Activities, and Functions published from time to time by the United States General Accounting Office, including those standards issued by the American Institute of Certified Public Accountants referred to therein.

(b) All audits conducted or caused to be conducted by the Public Auditor shall be performed with [the] highest degree of professionalism and with strict avoidance of any degree of partisanship or bias.

#### Source

RPPL 2-6 § 207, modified.

### § 229. Audit procedures and requirements.

(a) At the conclusion of the audit, the Public Auditor or his designee shall discuss the audit with the officials whose agency, grant, contract, or activity is subject to audit and submit to them a list of his proposed findings which may be included in the audit report. The preliminary audit and proposed findings shall not be made public prior to the receipt of comments from the agencies solicited. If the officials are not available for personal receipt of the list of audit findings, then delivery shall be deemed made when it is delivered to the agency. The agency shall submit to the Public Auditor within 30 days after the receipt of the list of findings, its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings. The Public Auditor shall promptly notify the agency involved as well as the Coordinating Group in the event of an agency's failure to respond or the filing of unresponsive answers to the adverse or critical audit findings. The Public Auditor shall publish the substance of the agency response in the audit report.

(b) An audit report shall make special mention of:

(1) any violation of the laws within the scope of the audit; and

(2) any improper expenditure, any improper accounting procedures, all failures to properly record financial transactions, and all other inaccuracies, irregularities, shortages, and defalcations.

(c) Specific allegations naming the persons involved in improper or illegal acts found in connection with an audit shall be included in a separate confidential special report which shall be transmitted only to the Attorney General, the Interagency Audit Coordinating Advisory Group and Federal agencies when applicable.

#### Source

RPPL 2-6 § 208, modified.

**§ 230. Establishment of a Coordinating Group.**

(a) An Interagency Audit Coordinating Advisory Group is established consisting of the Presiding Officer of each House of the Olbiil Era Kelulau, the Director of the National Treasury, and the Attorney General.

(b) The Coordinating Group shall not be deemed an agency for purposes of this chapter or any other law, but shall meet or confer as necessary to perform the functions assigned to it by this chapter.

(c) The Coordinating Group shall review all audit reports of the Public Auditor, and the Public Auditor shall discuss the manner in which his recommendations can be implemented with the assistance of the members of the Coordinating Group. The Coordinating Group shall recommend to the President and to the Olbiil Era Kelulau any changes in law or regulations which it finds necessary or desirable as a result of its work with the Public Auditor.

**Source**

RPPL 2-6 § 209, modified. Subsection (a) amended by RPPL 5-35 § 1.

**§ 231. Annual report.**

The Public Auditor shall report on his activities and findings to the Olbiil Era Kelulau and the President at least once every calendar year, and this report shall be made public promptly.

**Source**

RPPL 2-6 § 210, modified.

**Subchapter III**

**Budgeting and Funding**

**§ 251. Budget.**

§ 252. Authorization for Public Auditor to accept funds for audits performed for Federal agencies.

**§ 251. Budget.**



The Public Auditor shall advise the Coordinating Group of his annual budget at least 30 days before the date specified by the President for transmittal of the budget to the Olbiil Era Kelulau. The budget shall be in accord with the requirements [of] chapter 3 of Title 40 of this Code. After consideration of any comments made by the Coordinating Group, the Public Auditor shall transmit his proposed budget in the form and manner specified by the President. The President shall include the budget, as transmitted in his annual budget required by this section.

#### **Source**

RPPL 2-6 § 300, modified.

#### **Notes**

The bracketed “[of]” does not appear in the original legislation.

### **§ 252. Authorization for Public Auditor to accept funds for audits performed for Federal agencies.**

- (a) The Public Auditor may enter into agreements or contracts for the Federal Government, Federal agencies, or agencies of the Republic, acting in behalf thereof, for the purpose of conducting mutual financial audits of programs funded in whole or in part by the Federal Government and carried out by agencies of the Republic.
- (b) Applications for grants, except where prohibited by law or the provisions of the grant, shall include a request for funds adequate to accomplish the objectives of the grant proposal, including monies to pay for the audit or audits of the financial transactions as required by law or the provisions of the grant. Monies budgeted for auditing a grant shall not be used for any other purpose.
- (c) The term of employment of any individual or firm hired by the Public Auditor under the provisions of this section shall be expressly limited in duration by the availability of Federal funds and shall expire on the date of expiration of the Federal funds.

#### **Source**

RPPL 2-6 § 301, modified.

### **Subchapter IV**

#### **Authority to Gather Information; Criminal Penalties**

§ 271. Protection of whistleblowers.

§ 272. Access to agency information.

§ 273. Access to confidential information and proprietary records.

§ 274. Access to tax data.

§ 275. Access to contracts and grants information.

§ 276. Power to summon persons to testify.

§ 277. Referrals; criminal action.

§ 278. Referrals; civil action.

§ 279. Secrecy of records; penalty for violation.

§ 280. Penalties; failure to make proper audit; making false audit; failure to produce documents or information.

**§ 271. Protection of whistleblowers.**

(a) The Public Auditor may receive and investigate complaints or information from any person concerning the possible existence of any activity constituting fraud, waste and abuse in the collection and expenditure of public funds.

(b) The Public Auditor shall not, after receipt of a complaint or information from a person, disclose the identity of the person without the written consent of the person, unless the Public Auditor determines the disclosure is necessary and unavoidable during the course of the investigation. In that event, the person shall be notified in writing prior to the disclosure.

(c) Any person who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any person as reprisal for making any complaint or disclosing any information to the Public Auditor, unless the complaint made, or the information disclosed was with actual knowledge that it was false or with willful disregard for its truth or falsity.

**Source**

RPPL 2-6 § 400, modified.

**§ 272. Access to agency information.**

(a) The Public Auditor in carrying out the provisions of this chapter shall have access to all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence, and any other data and material that is maintained by, or available, to any agency which in any way relates to the activities to which the Public Auditor has duties and

responsibilities. The Public Auditor shall request such information, cooperation, and assistance from any agency as may be necessary for carrying out his duties and responsibilities. Upon receipt of a request, each person in charge shall furnish to the Public Auditor or his designee the information, cooperation, and assistance requested. The Public Auditor may make such investigations, audits, and reports relating to the activities of the agencies audited as is necessary and may conduct any examination of any public documents. The Public Auditor shall have direct and prompt access to the head of any agency when necessary for any purpose pertaining to the performance of his duties.

(b) The Public Auditor may request the production, on a voluntary basis, of testimony or documents from any individual, firm, or nongovernmental entity which relate to his duties.

(c) The Public Auditor may require by summons, the production of all records, reports, audits, review, papers, books, documents, recommendations, correspondence, and any other data and material relevant to any matter under audit or investigation.

The summons shall be served by the police in the same manner as the summons for the production of documents in civil cases issued on behalf of the Republic, and all provisions of law relative to the summons shall apply to summons issued under this chapter. Any justice of the Supreme Court of Palau may, upon application by the Public Auditor, issue an order to compel the production of records, audits, reviews, papers, books, documents, recommendations, correspondence, and any other data and material relevant to any matter under audit or investigation. Any failure to obey a court order is punishable by the court as contempt.

(d) Any summons issued under this section shall not be made public by the Public Auditor or any employee of his agency, or the police who serve the summons, nor shall any documents provided under this section be made public until such time as it is necessary for the Public Auditor to do so in the performance of his duties.

(e) The provisions of paragraphs (c) and (d) of this section shall apply to sections 273, 274, and 275.

#### Source

RPPL 2-6 § 401, modified.

### **§ 273. Access to confidential information and proprietary records.**

(a) Confidential or proprietary records or information disclosed to the Public Auditor shall be subject to the same legal confidentiality and protective restrictions in the Office of the Public Auditor as those records and information have in the hands of the official authorized custodian. Any penalties applicable to the officially authorized custodian or his employees for the violation of any confidentiality or protective restrictions applicable to those records or information shall also apply to the employees and agents of the Office of the Public Auditor.

(b) The Office of the Public Auditor may not publish any confidential or proprietary information or records in any report, including data and statistics, if that information as published is directly matchable to any individual.

(c) Inside the Office of the Public Auditor, confidential or proprietary records or information may be used only for official purposes.

#### **Source**

RPPL 2-6 § 402, modified.

#### **§ 274. Access to tax data.**

(a) The Public Auditor or any members of his staff designated by him shall have authority to examine and audit the books and accounts of the Bureau of National Treasury including the Division of Revenue and Taxation, and shall have access to all papers, books, documents (including tax returns and tax return information), films, tapes, and any other forms of recordation, including computers and recording devices, which the Public Auditor, at his discretion, deems necessary for the purpose of making the audit, if the disclosure of information is not in contravention of any provision of law prohibiting the dissemination thereof.

(b) The Public Auditor and his designee may audit a taxpayer's or debtor's compliance with the law of the Republic in the same manner and with the same authority as the Chief and employees of the Division of Revenue and Taxation have to audit taxpayer's or debtor's compliance with the Republic's laws. The Public Auditor shall conduct his audit activities in accordance with an administrative plan agreed upon by the Director of the Bureau of National Treasury and Public Auditor.

(c) The scope of the examination may include certification of financial accountability, legal compliance, or evaluations of the economy, efficiency, and effectiveness of the Bureau of National Treasury, or any combination of the foregoing.

(d) In the performance of the audit and examination of the Bureau of National Treasury, the Public Auditor or any members of his staff designated by him may inspect and make copies of any papers, books, records, instruments, documents (including tax returns and tax return information), films, tapes, and any other form of recordation, including computers and recording devices of the Bureau. He may call upon the Bureau for assistance and advice, and the assistance and advice shall be given through the assignment of personnel or in any other manner as requested.

#### **Source**

RPPL 2-6 § 403, modified.

#### **§ 275. Access to contracts and grants information.**

Any contract to which an agency is a party, except a personal service or prime contract with an employee of the agency, and any grant awarded by any agency, with or without formal advertising, shall include a clause to the effect that the Public Auditor shall, until the expiration of three years after final payment, have access to and the right to examine and copy any records, data, or papers of any subcontractor or subgrantee, relevant to the contract or grant.

### Source

RPPL 2-6 § 404, modified.

### § 276. Power to summon persons to testify.

(a) Whenever the Public Auditor has a reasonable basis for believing that a person has information with respect to any matter which is within the Public Auditor's jurisdiction to investigate, he may require by summons the attendance and testimony under oath of the person.

(b) If necessary to secure enforcement, the Public Auditor shall provide to the judge or justice information concerning the matter under investigation which shall include: the name and address of the prospective witness; the subject of the investigation; a summary of the status of the investigation; a summary of the reasons for requesting a summons for testimony; and a summary of the general scope of the inquiry to be made of a prospective witness.

(c) The summons shall be served in the same manner as a summons for a witness in a civil case issued on behalf of the Republic and all provisions of law relative to a summons issued in such a case shall apply to a summons issued under this section. A witness required by summons to attend and testify under oath and produce books and records shall be given not less than 48 hours notice of the time and place of the taking of testimony, unless the notice shall unduly interfere with the conduct of the investigation and prior approval for a shorter period of time for the summons and notice has been obtained from the judge or justice. The witness, at the time of service of the summons, shall be notified of the matter under investigation concerning which the witness will be required to testify and shall be given a copy of the rules and procedures adopted by the Public Auditor and shall be notified that his testimony will be taken at a private session and that the issuance of the summons was approved by the judge or justice and whether the witness is a subject of an investigation. A subject of an investigation is a person whose conduct is within the scope of the investigation. The failure to furnish the witness with any notice or information required to be given by this section shall cause the summons to be invalid. In addition, the witness shall be notified that he has a right to consult with and to have an attorney present at the time the testimony is taken and that he has a constitutional right not to furnish or produce evidence which may tend to incriminate him.

(d) A person summoned to attend and testify shall appear and testify under oath before the Public Auditor or his designee.

(e) The information sought from the summoned witness must be reasonably related to the subject matter under investigation. No summons may be issued for the purpose of harassment or for any illegitimate or improper purpose. All constitutional and statutory rights and privileges which exist with respect to any summons issued by a court, including the privilege against self-incrimination, shall have the same force and effect with respect to any summons issued by the Public Auditor.

(f) Any justice of the Supreme Court may, upon application by the Public Auditor, issue an order to compel the attendance of witnesses summoned and the giving of testimony under oath in furtherance of any audit or investigations under this chapter in the same manner and to the same extent as before the Supreme Court of the Republic. Failure to obey the order of the court with respect to the summons may be punished by the court as contempt.

#### **Source**

RPPL 2-6 § 405, modified.

#### **§ 277. Referrals; criminal action.**

(a) In carrying out his duties, the Public Auditor shall report to the Attorney General whenever the Public Auditor has reasonable grounds to believe there has been violations of Federal or the Republic's criminal law. The Attorney General may institute further proceedings.

(b) If the Public Auditor has reasonable grounds to believe the President or Attorney General has violated Federal or the Republic's criminal law, the Public Auditor may use his legal counsel or retain special counsel who shall serve as an Assistant Attorney General for purposes of investigating and prosecuting, if necessary, the criminal law violations.

#### **Source**

RPPL 2-6 § 406, modified.

#### **§ 278. Referrals; civil action.**

The Public Auditor shall have the authority to institute the civil recovery action in any case where the Public Auditor has discovered fraudulent acts and believe[s] that civil recovery proceedings may be appropriate.

#### **Source**

RPPL 2-6 § 407, modified.

#### **§ 279. Secrecy of records; penalty for violation.**

All records of the Public Auditor shall be confidential unless it is deemed necessary for the Public Auditor to make the records public in the performance of his duties. Violations relative to the secrecy of proceedings by the Public Auditor or any member of his staff shall be punished by imprisonment for not more than six months or by a fine for not more than \$1,000.00.

#### Source

RPPL 2-6 § 408, modified.

#### **§ 280. Penalties; failure to make proper audit; making false audit; failure to produce documents or information.**

- (a) All agencies shall enter into their public record sufficient information for a proper audit, and shall make the same available to the Public Auditor at his request.
- (b) Any person who wilfully fails or refuses to furnish or produce any book, record, paper, document, data, or sufficient information necessary to a proper audit which the Public Auditor is authorized by law to perform shall be guilty of an offense, punishable by not more than three months imprisonment or a fine of \$1,000.00, or both.
- (c) A willful failure or refusal by any person to furnish or provide upon request any book, record, paper, document, data, or sufficient information necessary to a proper audit which the Public Auditor is authorized by law to perform shall be cause for removal of the official or employee from their office as provided by law.