
AN ACT

An Act to define the duties, functions and powers of the Auditor-General pursuant to Article VIII Section 15 of the Constitution and to provide for matters connected therewith or incidental thereto.

BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS:

1 Section 1. Short title and effective date.

2 This Act may be cited as the Auditor-General (Definition
3 of Duties, Functions and Powers) Act 1986 and shall come into effect on
4 the date on which it becomes law.

5 Section 2. Interpretation.

6 In this Act, unless the context otherwise requires -
7 "agency" means any department of government or body
8 established or funded by the government or a local government,
9 and includes the following bodies and entities and their
10 officers, directors, servants, agents, and independent
11 contractors: any ministry, authority, board, branch, bureau,
12 commission, cooperative, council, department, division, fund,
13 group, institution, political division, office, public
14 corporation, or any autonomous or semi-autonomous governmental
15 entity.

16 "audit" means an independent examination of books,
17 performance, documents, records, and other evidence relating
18 to the receipt, possession, charge, disbursement, expenditure,
19 application or use of public funds by any agency or any
20 activity of any agency or relative to any contract or grant

1 to which any agency is a party, or any operations relating to
2 any transactions, of such agency, and includes financial
3 audits, performance audits, and programme audits or any
4 combination of such audits as the Auditor-General may deem
5 appropriate.

6 "financial audit" means an audit to determine:

- 7 (a) whether financial operations of any
8 government contractor or grantee, have
9 been properly conducted;
- 10 (b) whether any financial report of any
11 agency, contractor, or grantee has been
12 fairly presented; and
- 13 (c) whether any agency, contractor, or grantee
14 has complied with laws and regulations
15 applicable to its or his operations.

16 "performance audit" means an audit to determine
17 whether an agency has managed or used its funds, personnel,
18 property, space, and other resources in an effective and
19 efficient manner, and to identify the cause of any
20 inefficiency or ineffective practice, including any inadequacy
21 in management information systems, administrative procedures,
22 or organizational structure;

23 "programme audit" means an audit to determine
24 whether the desired results or benefits of agency programmes
25 or activities or of any contract or grant, are being achieved,

1 whether the objectives established by the Nitijela; or
2 otherwise established pursuant to law or by the Constitution,
3 are being met; and whether the agency, contractor, or grantee
4 has considered alternatives which might yield desired results
5 more effectively or at lower cost.

6 Section 3. Duties and Functions.

7 (1) The Auditor-General shall transmit to each member of
8 the Nitijela at its January and August regular session of each year a
9 Semi-Annual Report as required by Article VIII, Section 15(4) of the
10 Constitution. The report shall consist of a financial audit of the
11 General Fund, trust funds, other funds of any agency whether or not
12 appropriated, each contract to which any agency is a party, and each
13 grant made or received by an agency. The audit shall cover the
14 receipt, possession, and disbursement of public funds including all
15 liabilities, receivables, and accruals of any agency, all taxes, fees,
16 receipts, and other revenues of any agency, and all other financial
17 statements issued or prepared by any agency. Personal service contracts
18 and prime contracts with employees of any agency shall be audited as
19 part of the regular operations and activities of the agency.

20 (2) The Auditor-General shall from time to time make
21 such other audits of the government agencies, activities, contracts, or
22 grants as are possible within the budget provided for him and as he
23 deem to be in the public interest and consistent with this Act.

24 (3) Upon request of a government agency the Auditor-
25 General shall provide his opinion as to whether or not any practices are

1 in accord with generally accepted accounting principles.

2 Section 4. Special duties to act to prevent fraud, waste
3 and abuse in the collection and expenditure of
4 public funds.

5 (1) The office of the Auditor General shall specifically
6 act to prevent and detect fraud, waste and abuse in the collection and
7 expenditure of all public funds. The Auditor General may audit any
8 transaction involving the procurement of supplies or the procurement of
9 any construction by Ministries of the government and the procurement of
10 any supplies and services in connection with such construction.

11 (2) The Auditor-General may conduct audits and
12 investigations when necessary relating to programmes and operations
13 involving expenditure of public funds. He may review legislation and
14 regulations relating to programmes and operations involving expenditure
15 of public funds and may make recommendations concerning the effect of
16 such legislation or regulation on the prevention and detection of fraud,
17 waste and abuse. The person in charge or the governing body of any
18 Ministry or authority engaged in the expenditure or construction, and
19 services and supplies in connection therewith, may request the
20 assistance of the office of the Auditor-General with respect to
21 implementation of any proposed policy.

22 Section 5. Staff.

23 (1) At the request of the Auditor-General the Public
24 Service Commission may appoint Assistant Auditors-General, accountants,
25 auditors, financial management analysts, investigators, clerks and such

1 other personnel as may be necessary or convenient for the effective
2 functioning of the office of the Auditor General.

3 (2) The Auditor-General may establish supplemental
4 personnel regulations including a code of ethics for the officers and
5 employees of his office. No officer or employee of the office of the
6 Auditor-General shall hold, or be a candidate for any elective public
7 office while being such officer or employee, nor shall he hold office in
8 any political party or political committee, or participate in any
9 political campaign of any candidate for public office while being such
10 officer or employee. No officer or employee shall actively engage in
11 any other business profession, or governmental office.

12 (3) Any person who violates any **such regulation** as
13 referred to in Subsection (2) shall be guilty of a breach of discipline
14 and shall accordingly be dealt with by the Public Service Commission
15 or any other body which has jurisdiction in that behalf.

16 (4) The Auditor-General may, when in his judgment it is
17 necessary, delegate any of his duties, functions and powers to any of
18 his subordinate officers or employees. Such officers or employees
19 shall report their findings to the Auditor-General for his review.

20 **Section 6. Outside specialists may be hired.**

21 (1) The Auditor-General may obtain in services of
22 independent certified public accountants, qualified management
23 consultants, or other professional persons, as he deems necessary to
24 assist him in carrying out his duties. Independent specialists shall
25 be used for any audit involving the office of the Auditor-General or

1 with respect to which the Auditor-General or the office of the
2 Auditor General has a conflict of interest, including an audit of
3 any agency, contract, or grant for which the Auditor-General has had
4 management responsibility or in which he was employed during the two
5 years preceding the time period covered by the audit, or during the
6 two years subsequent to the audit time period.

7 (2) If the Auditor-General fails to schedule an audit so
8 that it can be completed in time to comply with any applicable law or
9 the terms of any loan, grant, financial assistance, or contract, or if
10 the Auditor-General fails to commence, conduct, or complete any audit
11 as required by law, the person or agency concerned may, upon the
12 approval of the Cabinet and the Auditor-General and subject to the
13 availability of funds, enter into a contract with any independent
14 certified public accountant for the purpose of conducting the audit.
15 Such audit shall be conducted as far as possible in conformity with
16 standards adopted by the office of the Auditor General.

17 Section 7. Centralization of all auditing services
18 required by government agencies.

19 The office of the Auditor-General shall conduct or
20 supervise all audits required for or sought by any government agency.

21 Section 8. Audit standards.

22 (1) The audit standards shall be consistent with
23 provisions of this Act and with generally accepted auditing standards.
24 The audit standards shall incorporate the standards for audit of
25 Government operations, programmes, activities, and functions published

1 from time to time by the United States General Accounting Office,
2 including standards issued by the American Institute of Certified
3 Public Accountants referred to therein.

4 (2) All audits conducted or caused to be conducted by
5 the Auditor General shall be performed with the highest degree of
6 professionalism and with strict avoidance of any degree of partisanship
7 or bias.

8 Section 9. Audit procedures and requirements.

9 At the conclusion of the audit the Auditor-General or his
10 nominee shall discuss the audit with the officials whose agency, grant,
11 contract, or activity has been the subject of the audit and submit to
12 them a draft audit report. The preliminary audit and proposed findings
13 shall not be made public prior to the receipt of comments from the
14 agencies concerned. If the officials are not available for personal
15 receipt of the list of audit findings, then delivery shall be deemed to
16 be made when it is delivered to the agency. The agency shall submit to
17 the Auditor-General within 15 days after the receipt of the list of
18 findings its written statement of explanations or rebuttals concerning
19 any corrective action to be taken to preclude a recurrence of any
20 adverse findings. The Auditor General shall publish the substance of
21 the agency's response in the audit report.

22 (2) An audit report shall make special mention of:

23 (a) any violation of the laws within the scope
24 of the audit; and

1 (b) any improper expenditure, any improper
2 accounting procedures, all failures to
3 properly record financial transactions, and
4 all other inaccuracies, irregularities,
5 shortages, defalcations and other improper
6 practices.

7 (3) Specific allegations naming the persons involved in
8 improper or illegal acts found in the course of an audit shall be
9 included in a special confidential report which shall be transmitted
10 only to the Attorney-General.

11 Section 10. Committee of the Nitijela on Public Accounts.

12 (1) The Committee on Public Accounts shall review all
13 audit reports of the Auditor-General, and the Auditor-General shall
14 discuss the manner in which his recommendations can be implemented with
15 the assistance of the members of the Committee. The Committee shall
16 recommend to the Nitijela in accordance with Rule 49 of the Rules of
17 Procedure of the Nitijela any changes in law or regulations which it
18 finds necessary or desirable as a result of its work with the
19 Auditor-General.

20 Section 11. Semi-Annual Report.

21 The Auditor General shall report on his activities and
22 findings to the Nitijela as required under Section 3 and such reports
23 shall be made public promptly.

24 Section 12. Authorization for the Auditor-General to accept
25 funds for audits performed for Federal Agencies.

1 (1) The Auditor-General may enter into agreements or
2 contracts for the Federal Government, Federal Agencies, or government
3 Agencies, acting in behalf thereof, for the purpose of conducting mutual
4 financial audits of programmes funded in whole or in part by the Federal
5 Government and carried out by agencies of the government.

6 (2) Applications for grants, except where prohibited by
7 law or the provisions of the grant, shall include a request for funds
8 adequate to accomplish the objectives of the grant proposal, including
9 monies to pay for the audit or audits of the financial transactions as
10 required by law or the provisions of the grant. Monies budgeted for
11 auditing a grant shall not be used for any other purpose.

12 (3) Costs shall be charged at rates established by the
13 Auditor-General and all amounts received on account of those charges
14 shall be deposited with the Treasurer in a special account in the
15 General Fund and may be expended without further appropriation solely by
16 the Auditor-General for the operations and activities of his office.

17 (4) The term of employment of any individual or firm
18 hired by the Auditor-General under the provisions of this Section shall
19 be expressly limited in duration by the availability of federal funds
20 and shall expire on the date of expiration of the federal funds.

21 Section 13. Budget.

22 The Auditor-General shall prepare an annual budget for
23 submission to the Nitijela in the same manner as all other agency
24 budgets.

1 Section 14. Protection of informers.

2 (1) The Auditor-General may receive and investigate
3 complaints or information from any person concerning possible existence
4 of any activity constituting fraud, waste or abuse in the collection and
5 expenditure of public funds.

6 (2) The Auditor-General shall not, after receipt of a
7 complaint or information from a person, disclose the identity of the
8 person without the written consent of the person, unless the
9 Auditor-General determines the disclosure is necessary and unavoidable
10 during the course of the investigation. In that event, the person shall
11 be notified in writing prior to the disclosure.

12 (3) Any person who has authority to take, direct another
13 to take, recommend or approve any personnel action, shall not, with
14 respect to such authority, take or threaten to take any action against
15 any person as reprisal for making any complaint or disclosing any
16 information to the Auditor-General, unless the complaint made or the
17 information disclosed was with actual knowledge that it was false or
18 with willful disregard for its truth or falsity.

19 Section 15. Access to agency information.

20 (1) Access required. The Auditor-General in carrying out
21 the provisions of this Act shall pursuant to Article VIII, Section 15(3)
22 have access to all records, reports, audits, reviews, papers, books,
23 documents, recommendations, correspondence, and any other data and
24 material that is maintained by or available to any agency which in any
25 way is related to the activities with respect to which the Auditor-

1 General has duties and responsibilities. The Auditor-General shall
2 request such information, cooperation, and assistance from any
3 agency as may be necessary for carrying out his duties and
4 responsibilities. Upon receipt of a request, each person in charge
5 shall furnish to the Auditor-General or his nominee the information,
6 cooperation, and assistance requested. The Auditor-General may make
7 such investigations, audits, and reports relating to the activities of
8 the agencies audited as are necessary. The Auditor-General shall have
9 direct and prompt access to the head of any agency when necessary for
10 any purpose pertaining to the performance of his duties.

11 (2) Production of testimony or documents required.

12 The Auditor-General may request the production, on a voluntary basis, of
13 testimony or documents from any individual, firm, or non-governmental
14 entity which relate to his duties.

15 (3) Authority to subpoena for the production of records.

16 The Auditor General may require by subpoenas, the production of all
17 records, reports, audits, reviews, papers, books, documents
18 recommendations, correspondence, and any other data and material
19 relevant to any matter under audit or investigation. The subpoenas
20 shall be served in the same manner as the summons for the production
21 of documents in civil cases issued on behalf of the government, and all
22 provisions of law relative to such summons shall apply to subpoenas
23 issued under this Act.

24 (4) A judge of any Court may, upon application by the
25 Auditor-General, issue an order to compel the production of records,

1 audits, reviews, papers, books, documents, recommendations,
2 correspondence, and any other data and material relevant to any matter
3 under audit or investigation. Any failure to obey a court order made
4 under this Subsection shall be punishable by the court as contempt.

5 (5) Procedures for subpoenas to produce records.

6 Any subpoenas issued under this Section shall not be made public by the
7 Auditor-General, any officer or employee of his office nor shall any
8 documents provided under this Section be made public until such time as
9 it is necessary for the Auditor General to do so in the performance of
10 his duties.

11 (6) The provisions of Subsections (3) (4) and (5) of
12 this Section shall apply to Sections 16, 17 and 18.

13 Section 16. Access to confidential information and
14 proprietary records.

15 (1) Confidential or proprietary records or information
16 disclosed to the Auditor-General shall be subject to the same legal
17 confidentiality and protective restrictions in the office of the
18 Auditor-General as those records and information have in the hands of
19 the officially authorized custodian. Any penalties applicable to the
20 officially authorized custodian or his subordinates for the violation of
21 any confidentiality or protective restrictions applicable to those
22 records or information shall also apply to the officers and employees
23 of the office of the Auditor-General.

24 (2) The office of the Auditor-General may not publish
25 any confidential or proprietary information or records in any report,

1 including data and statistics, if that information as published is
2 directly referable to any individual.

3 (3) Inside the office of the Auditor General,
4 confidential or proprietary records or information may be used only
5 for official purposes.

6 Section 17. Access to Tax Data.

7 (1) The Auditor-General or any member of his staff
8 nominated by him shall have authority to examine and audit the books
9 and accounts of the Ministry of Finance including the Division of
10 Revenue and Taxation, and shall have access to all papers, books,
11 documents (including tax returns and tax return information), files,
12 tapes, and any forms of recording, including computers and recording
13 devices, which the Auditor-General, in his opinion, deems necessary
14 for the purpose of making the audit, if such disclosure of information
15 is not in contravention of any provision of law prohibiting the
16 dissemination thereof.

17 (2) The Auditor-General and his nominees may audit and
18 enforce a taxpayer's or debtor's compliance with the law in the same
19 manner and with the same authority as the Secretary and other officers
20 of the Ministry of Finance audit and enforce a taxpayer's or debtor's
21 compliance with the law.

22 (3) The scope of the examination may include
23 certification of financial accountability, legal compliance, or
24 evaluations of the economy, efficiency, and effectiveness of the
25 Ministry of Finance, or any combination of the foregoing.

1 (4) In the performance of the audit and examination of
2 the Ministry of Finance, the Auditor-General or any member of his staff
3 nominated by him may inspect and make copies of any papers, books,
4 records, instruments, documents (including tax returns and tax return
5 information), films, tapes, and any other forms of recording, including
6 computers and recording devices of the Ministry. He may call upon the
7 Ministry for assistance and advice, and such assistance and advice
8 shall be given through the assignment of personnel or in any other
9 manner as requested.

10 Section 18. Access to contracts and grants information.

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

19 Section 19. Power to subpoena persons to testify.

20 (1) Whenever the Auditor General has a reasonable basis
21 for believing that a person has information with respect to any matter
22 which is within the Auditor-General's jurisdiction to investigate, he
23 may require by subpoena the attendance and testimony of such person
24 under oath or affirmation.

1 (2) If necessary to secure enforcement, the
2 Auditor-General shall provide to the judge information concerning the
3 matter under investigation which shall include the name and address of
4 the prospective witness, the subject of the investigation, a summary of
5 the status of the investigation, a summary of the reasons for requesting
6 a summons for testimony, and a summary of the general scope of the
7 inquiry to be made of a prospective witness.

8 (3) The subpoenas shall be served in the same manner as
9 a summons for a witness in a civil case issued on behalf of the
10 government and all provisions of law relative to such a summons shall
11 apply to a subpoenas issued under this section. A witness required by
12 subpoena to attend and testify under oath or affirmation and produce
13 books, documents and records shall be given not less than 48 hours
14 notice of the time and place of the taking of testimony, unless the
15 notice shall unduly interfere with the conduct of the investigation and
16 prior approval for a shorter period of time for the subpoena and notice
17 has been obtained from the judge. The witness, at the time of service
18 of the subpoena, shall be notified of the matter under investigation
19 concerning which the witness will be required to testify and shall be
20 given a copy of the rules and procedures adopted by the Auditor-General
21 and shall be notified that his testimony will be taken at a private
22 session and that the issuance of the subpoena was approved by the Judge,
23 and whether the witness is a subject of an investigation. A subject of
24 an investigation is a person whose conduct is within the scope of the
25 investigation. The failure to furnish the witness with any notice or

1 information required to be given by this Section shall cause the
2 subpoena to be invalid. In addition, the witness shall be notified that
3 he has a right to consult and to have an attorney present at the time
4 the testimony is taken and that he has a constitutional right not to
5 furnish or produce evidence which may tend to incriminate him.

6 (4) A person subpoenaed to attend and testify shall appear
7 and testify under oath or affirmation before the Auditor-General or his
8 nominee.

9 (5) The information sought from the witness subpoenaed must
10 be reasonably related to the subject matter under investigation. No
11 subpoenas may be issued for purposes of harassment for any illegitimate
12 or improper purpose.

13 All constitutional and statutory rights and privileges which
14 exist with respect to any summons issued by Court, including the
15 privilege against self-incrimination, shall have the same force and
16 effect with respect to any subpoenas issued by the Auditor-General.

17 (6) A judge of any Court may, upon application by the
18 Auditor-General, issue an order to compel the attendance of a witness
19 and the giving of testimony under oath or affirmation in furtherance of
20 any audit or investigation under this Act the same manner and to the
21 same extent as before a court of law. Failure to obey the order of the
22 Court with respect to the summons may be punished by the Court as
23 contempt.

24 Section 20. Referrals: Criminal Action.

25 In carrying out his duties, the Auditor-General shall report

1 to the Attorney-General whenever the Auditor General has reasonable
2 grounds to believe that there has been any violation of the criminal
3 law. The Attorney-General may institute further proceedings.

4 Section 21. Referrals: Civil Action.

5 In any case where the Auditor General has discovered
6 fraudulent acts and believes that civil recovery proceedings may be
7 appropriate, he shall refer the matter to the Attorney-General who may
8 institute any proceedings he deems appropriate.

9 Section 22. Offence and penalties.

10 All records of the Auditor-General shall be confidential
11 unless it is deemed necessary for the Auditor-General to make the
12 records public in the performance of his duties. Any violation of the
13 requirement of secrecy of proceedings by the Auditor-General or any
14 office or employee of his office shall be an offence and shall upon
15 conviction before the High Court be punished with imprisonment for a
16 term not exceeding six months or with a fine not exceeding one thousand
17 dollars or with both.

18 The provisions of this Section shall not restrict the power of
19 Court to order the production of any records in respect of any matter
20 pending before Court.

21 Section 23. Failure to provide information.

22 (1) All agencies shall enter into their public records
23 sufficient information for a proper audit, and shall make the same
24 available to the Auditor General at his request.

1 (1) that the above Nitijela Bill No. 46 N.D.-1 has been passed
2 by the Nitijela of the Marshall Islands on the 3rd day of
3 December, 1986; and

4 (2) that I am satisfied that Nitijela Bill No. 46 N.D.-1 has
5 been passed in accordance with the Constitution of the Marshall Islands
6 and the Rules of the Nitijela.

7 I hereby place my signature before the Clerk of the Nitijela this
8 31st day of December, 1986.

9

10 /s/ Andrew Misaiah
11 Andrew Misaiah, Vice-Speaker
12 Nitijela of the Marshall Islands

12

13 Attest:

14

15 /s/ Rufina N. Jack
16 Rufina N. Jack, Clerk
17 Nitijela of the Marshall Islands

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