

REPUBLIC OF KIRIBATI
No. 6 of 1980

I assent

E. Tabai
Beretitenti
22 August 1980

AN ACT TO MAKE PROVISION IN RESPECT
OF THE COUNCIL OF STATE.

Commencement: 22 August, 1980

MADE by the Maneaba ni Maungatabu and assented by the Beretitenti.

Short title. 1. This Act may be cited as the Council of State Act 1980.

Procedures of the Council. 2(1) The Council of State may by regulation provide for regulating and facilitating the performance by the Council of its functions under the Constitution.

~~(2) Subject to the this Act and to regulations, the Council may regulate its own procedure.~~

(3) The question, whether any procedures prescribed for the Council are being or have been complied with, is non-justiciable.

Control of government department. 3(1) During any period when the Council of State is performing its functions under the provision of sections 35(1) and 49(2) of the Constitution, the Council shall exercise direction and control over all government departments and, subject to such direction and control, a department shall be under the supervision of the Secretary to the department.

(2) Where the Council of State considers it necessary for public information to do so, the Council may publish any of its resolutions in such manner as it considers appropriate

Form of exercise of powers 4. Without prejudice to any other manner of execution, whether or not prescribed by the regulations, in the performance by the Council of State, under the provisions of sections 35(1) and 49(2) of the Constitution, of the functions of any authority the Council may execute any instrument in the following form, or in a form to the same effect:-

"The Council of State, performing in accordance with the Constitution the functions of (title of authority)....."

Interpretation of certain references. 5(1) In this section, "authority to which this section applies" means -
(a) the Beretitenti; or
(b) the Beretitenti, acting in accordance with the advice of the Cabinet; or
(c) the Beretitenti, acting -
(i) in accordance with the advice of; or
(ii) after consultation (by himself, the Cabinet or a Minister) with; or
(iii) on the recommendation of,

the holder of an office by virtue of which he is a member of the Council of State, or any two or three of them; or

- (d) the Cabinet; or
- (e) a Minister (whether or not a named Minister); or
- (f) any other authority the functions of which are performed by the Council of State under section 49(2) of the Constitution.

(2) In relation to the performance by the Council of State, under sections 35(1) and 49(2) of the Constitution, of the functions of any authority to which this section applies, any reference in any law or in any document having legal effect to an authority to which this section applies shall, as appropriate, be read as a reference to the Council of State

(3) After the Council of State has ceased to perform the functions referred to in subsection (2), any reference in any law or document having legal effect to the Council in its performance, under sections 35(1) and 49(2) of the Constitution, of the functions of an authority to which this section applies shall be read as a reference to that authority, and that law or document is amended accordingly.

Carrying out by members of functions of substantive offices.

6. During any period when the Chairman of the Public Service Commission, the Chief Justice and the Speaker are engaged in carrying out the functions of the Council of State they shall not be debarred from also carrying out the functions of their respective offices.

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 21 August, 1980, and is found by me to be a true and correctly printed copy of the said Bill.

.....
Clerk of the Maneaba ni Maungatabu

I certify that the above Bill was on 21 August 1980, passed by the Maneaba ni Maungatabu on a certificate of urgency under section 68(3)(a) of the Constitution.

.....
Speaker

Published by exhibition at the Public Office of the Beretitenti on 22 August, 1980.

Secretary to Cabinet

REPUBLIC OF KIRIBATI
COUNCIL OF STATE ACT 1980.

Explanatory Memorandum.

Section 49 and 35(1) of the Constitution provides that a Council of State (consisting of the Chairman of the Public Service Commission, the Chief Justice and the Speaker) "shall perform the functions of the Beretitenti and the other executive functions of the Government" during any vacancy in the office of the Beretitenti caused by his losing a motion or issue of confidence in the Maneaba ni Maungatabu.

Section 49 of the Constitution requires certain legislation if it is to be effective. The present Bill constitutes that legislation, and its various sections are described below.

Section 1 - The usual short title and commencement section.

Section 2 - The Council needs some provision for its procedures. The section is based on section 31(1) and (3) of the Constitution (which relates to the procedures of Commissions and Tribunals established by the Constitution).

Section 3 - The Council will exercise direction and control of ~~Government departments in the same manner as the Ministers, the~~ departments being under the supervision of the Secretary. The Council may publish any of its resolutions in such manner as it thinks fit.

Section 4 - It is desirable, not only for uniformity and so that people can see what is happening, but also for practical reasons associated with the reading and the printing of the laws, that there be, as far as practicable, a standard form under which the Council signs documents, etc.

Section 5 - While the Council is in charge, references in laws and legal documents to authorities whose functions the Council is performing will have to be read as references to the Council. Similarly, after the Council ceases to operate references to acts of the Council will have to be read as references to the appropriate authority.

Section 6 - It is confirmed that while performing the functions of Council of State the Members may still carry out the duties of their own posts.

Michael Jennings
Attorney General

COUNCIL OF STATE ACT, 1980

Legal Report

I hereby certify my opinion that this Act does not conflict with any of the provisions of the Constitution and may properly be assented to by the Beretitenti.

Michael Jennings
Attorney General

21 August 1980
