

OBJECTS AND REASONS

This Bill would provide for

- (a) the management of storm water;
- (b) the execution of works necessary to prevent flooding and control flooding and inundations caused by excessive rains and by high tides;
- (c) the mitigation of injury to persons from the movement of storm water;
- (d) the prevention and the mitigation of the effects of the movement of storm water on the health of persons;
- (e) the reduction of property damage caused by flooding; and
- (f) related matters.

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BARBADOS

A Bill entitled

An Act to provide for the management of storm water, the execution of works necessary to prevent flooding and inundations caused by excessive rains and by high tides, mitigation injury to persons from the movement of storm water, the prevention and the mitigation of the effects of the movement of storm water on the health of persons, the reduction of property damage caused by flooding and for related matters

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Storm Water Management Act, 2024*.

Interpretation

2. In this Act,

“Chief Technical Officer” means the Chief Technical Officer in the Ministry of Transport and Works;

“Director of Planning and Development” has the meaning assigned to it by the *Planning and Development Act, 2019* (Act 2019-5);

“drainage reserve” means the regulated area adjacent to and including a drainage way;

“emergency works” includes flood works required to mitigate identified potential dangers, loss of life or damage to property, prior, during or after a rainfall event or past event that can result in a major flood hazard;

“flood area” means any area declared by the Minister to be a flood area under section 5;

“flood plain” means any land area susceptible to being inundated by flood waters from any source;

“flood works” includes

- (a) the entire or partial construction, alteration, repair, improvement, cleaning, raising, lowering or grading of any bank, channel or watercourse or any land adjacent to such bank, channel or watercourse;
- (b) the digging or clearing of wells and drains;
- (c) the removal of any plant, trees, growing crops, building, structure or any other thing that prevents the free drainage of water

which is necessary for the protection of persons and lands from floods and inundations, prevention of damage to property and mitigation of flood risk to existing and future developments;

“flood zone” means the flood risk for a particular area;

“highways” has the meaning assigned to it by the *Highways Act*, Cap. 289;

“land” includes messuages, buildings, erections, tenements and hereditaments of any tenure, and rights and easements in, over, under or in respect of the same;

“Minister” means the Minister responsible for storm water management;

“owner” means the person for the time being receiving the rack rent of the land in connection with which the word is used, whether on his own account, or as agent or trustee for any other person, or who would so receive the same if the land were let at a rack rent;

“premises” includes lands and streets;

“storm water” means surface water or runoff generated rainfall;

“storm water infrastructure” means infrastructure associated with drainage of storm water;

“watershed” means an area of land that drains all the streams and rainfall to a common outlet such as the outflow of a reservoir, mouth of a bay, or any point along a stream channel.

Act binds the State

3. This Act binds the State.

Administration of Act

4. The Chief Technical Officer shall be responsible for the administration of this Act.

Declaration of flood area

5.(1) The Minister may, after consultation with the Chief Technical Officer, by order declare an area to be a flood area.

(2) The Minister shall, before he makes an order under subsection (1), lay before both Houses of Parliament, a map delineating the boundaries of the proposed flood area.

Coastal zone management

6. The Chief Technical Officer shall in exercise of his functions, have regard to the following:

- (a) the coastal zone management plan referred to under the *Coastal Zone Management Act*, Cap. 394;
- (b) the physical development plan referred to under the *Planning Development Act, 2019* (Act 2019-5);
- (c) the *Marine Pollution Control Act*, Cap. 392A.

Flood works to be executed in accordance with plans

7.(1) The Chief Technical Officer may, from time to time, prepare or cause to be prepared plans for the approval of the Minister for the execution of flood works in any flood area.

(2) A land developer shall submit to the Chief Technical Officer and the Director of Planning and Development a plan or map detailing the outline of the watershed for consideration by the Chief Technical Officer and the Director of Planning and Development detailing the estimated amount of water runoff for the proposed land development.

(3) The plan or map referred to in subsection (2), shall be submitted through the office of the Director of Planning and Development, who shall forward the same to the Chief Technical Officer for consideration.

- (4) The flood plans prepared under subsection (1) shall show the limits of the flood area, the line level and type of flood works which are in the opinion of the Chief Technical Officer, necessary for protecting persons and premises from floods and inundations.
- (5) Where flood works or watershed plans have been approved, written notice thereof shall be given to any person whose land, premises, plants, trees or growing crops may be affected by such flood works.
- (6) A copy of flood works or watershed plans shall be submitted to the office
- (a) the Registrar of Titles; and
 - (b) the Director of Planning and Development.
- (7) A person may apply to the Registrar of Titles to inspect the flood works or watershed plan free of charge.
- (8) Where a land developer fails to submit a plan referred to in subsection (2), the development shall not be considered for approval.

Power to execute flood works

8. The Chief Technical Officer may execute, carry out and complete all or any of the flood works in such flood areas as are specified in the plan prepared under section 7.

Power to enter and execute flood works

- 9.(1) The Chief Technical Officer or anyone authorised by him
- (a) may enter upon any premises for the purpose of doing any work necessary for
 - (i) the preparation of plans,
 - (ii) the estimation and preparation of flood works to be executed; or
 - (iii) an evaluation of compensation to be paid;

- (b) may enter upon a private premises represented in a plan approved under section 7 and execute any flood works; or
- (c) may, in the execution of flood works, carry the flood works through, along, across or under premises, sidewalk or cellar.

(2) For the purposes of entering upon premises pursuant to subsection (1) the Chief Technical Officer or any person authorised by him shall give notice in writing to the owner or occupier of the premises no less than 48 hours before entry.

(3) The Chief Technical Officer shall before executing planned flood works, give the owner or occupier of the land intended to be affected by the flood works, notice in writing no less than 14 days before the commencement of the proposed works.

Power to execute urgent flood works

10. Notwithstanding sections 5, 7, 8 and 9, where flooding occurs or there is immediate danger of flooding either

- (a) in a location that is not included in an area declared to be a flood area; or
- (b) in an area declared to be a flood area but in respect of which plans have not been prepared or approved in accordance with section 7,

the Chief Technical Officer may enter without prior notice, upon a private premises in such location or area and execute such flood disaster preparation or emergency response works as are necessary to prevent flooding or facilitate the drainage of flood waters.

Removal of buildings, trees, growing crops, etc.

11.(1) Whenever the flood works or any part of such works to be executed in a flood area consist of the removal of a building, structure or any plants, trees or growing crops, or any other matter or thing, the Chief Technical Officer may

by notice require the owner to remove the same within such time as the Chief Technical Officer thinks fit.

(2) When in the execution of any flood works a person is required to remove any building, structure, plants, trees, growing crops or any other thing as provided in subsection (1), the owner of the buildings, plants, trees, growing crops or other things shall be entitled to such reasonable allowance towards the expense of removing the same.

Power to inspect

12.(1) The Chief Technical Officer or any person authorised by him may enter any private premises for the purpose of inspecting drainage infrastructure and enforcing maintenance on the premises thereof.

(2) Where the Chief Technical Officer or any person authorised by him enters a premises pursuant to subsection (1) and finds that the premises are in need of maintenance he shall give notice to the owner or occupier of the premises.

(3) A notice under subsection (2) shall set out the nature of the maintenance required and the prescribed time for the maintenance to be completed.

(4) A land owner or occupier fails to comply with the notice issued under subsection (2), is guilty of an offence and is liable to a fine of \$10 000.

Requirement for storm drainage

13.(1) A landowner shall install an on-site storm water disposal system.

(2) A landowner who resides in a known flood zone or flood prone area shall not dispose of storm water on a public road or public drainage infrastructure.

(3) A land developer shall construct or cause to be constructed in every land development projects adequate drainage systems to mitigate against flooding within the development area.

(4) A land developer shall comply with the Barbados National Building Code referred to in the *Planning Development Act, 2019* (Act 2019-5).

(5) A person who fails to comply with the subsection (2) and subsection (4) is guilty of an offence and is liable to a fine of \$10 000.

Duty of land owner

14.(1) A land owner or occupier shall keep access to outfalls or to beaches, as the case may be, free and clear from all restriction for the purposes of this Act.

(2) A person who fails to comply with the requirements of subsection (1) is guilty of an offence and is liable on indictment to a fine of \$20 000 or to imprisonment to a term of 2 years or to both.

Duty to submit plan

15.(1) A land developer shall submit to the Chief Technical Officer and the Director of Planning and Development a storm water drainage plan for the proposed development area

(2) The plan referred to in subsection (1) shall contain the following:

- (a) name of the proposed development;
- (b) location of the proposed development;
- (c) location of the storm water drainage systems;
- (d) number of systems to be installed;
- (e) the estimate storm water generate from a one in 50 year return storm;
and
- (f) any other relevant information that the Chief Technical Officer or the Director of Planning and Development may require.

Duty to adhere to Building Code

16.(1) An owner or occupier of land shall adhere to the drainage requirements of the Barbados National Building Code in force as determined by the Barbados National Standards Institution.

(2) An owner or occupier who fails to adhere to the Barbados National Building Code, is guilty of an offence and is liable to a fine of \$10 000.

Execution of works for protection of persons and lands from floods and inundations

17.(1) For the protection of persons and lands from floods and inundations every owner or occupier of lands on which there are suck wells shall, at least once a year, clean or cause the suck wells to be cleaned.

(2) Where it appears to the Chief Technical Officer that an owner or occupier of lands on which there are suck wells has refused to comply with the provisions of subsection (1) the Chief Technical Officer may serve or cause to be served on the owner or occupier of such lands a notice in writing signed by the Chief Technical Officer or by any person authorised by the Chief Technical Officer in that behalf requiring the owner or occupier to execute works as the Chief Technical Officer considers necessary.

(3) Where personal service of a notice under subsection (2) cannot be effected, whether by reason of absence of the owner or occupier from Barbados or otherwise, the Chief Technical Officer may, on an affidavit that the owner cannot be found, direct that notice be served

(a) by affixing a copy thereof to a conspicuous part of the premises; and

(b) by publishing the notice in a daily newspaper circulated in Barbados.

(4) A notice referred to in subsection (2) shall specify the nature of the works to be executed and the period of time for the execution of the works, after the expiration of which period the Chief Technical Officer may cause the works to be carried out if they have not previously been carried out.

(5) Where flood works are executed by the Chief Technical Officer in accordance with subsection (4) the Chief Technical Officer shall demand, from the owner or occupier of the land on which the flood works were carried out, payment of the actual costs incurred.

Owner or occupier of land to pay for flood works

18.(1) Where an owner or occupier of land injures, obstructs or alters a highway thereby adversely interfering with the drainage of the highway he shall pay to the State the actual costs of any flood works required to be carried out by the Chief Technical Officer to rectify the owner's injury, obstruction or alteration of the highway.

(2) Where a land owner or occupier builds or constructs any structure inclusive of enclosures that obstructs, blocks or prevents the proper inspection and or maintenance of storm water critical infrastructure, it shall be removed at the expense of the owner or occupier.

(3) A land owner or occupier who contrary to a warning by the Chief Technical Officer or his agent, builds or constructs any structure inclusive of enclosures that obstructs, blocks or prevents the proper inspection and or maintenance of storm water critical infrastructure, shall have that structure or enclosure removed at the expense of the owner or occupier.

(4) Any salvageable material removed under subsection (2) shall be stored at a depot for no more than 28 days after the removal pending the collection by the owner or occupier of the land.

(5) Where the owner or occupier fails to remove the material mentioned under subsection (2) within the period referred to in subsection (3), the material shall be disposed of and the owner or occupier shall not be entitled to any compensation relating thereto.

Building and crops prohibited in flood area without permission

19.(1) No person shall, on or in a flood area, erect or cause or permit to be erected any building therein or grow, cultivate or allow to be grown or cultivated any shrub, tree, plant or any growing crop therein without the written permission of the Minister and upon such terms and conditions as the Minister may prescribe.

(2) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction by a court of summary jurisdiction to a fine of \$25 000 or to a term of imprisonment for 3 years or to both.

Prohibition on disposal of storm water

20.(1) No person shall dispose of any water, waste water or any debris on or in a storm water infrastructure without the written permission of the Chief Technical Officer.

(2) Where the Chief Technical Officer issues permission pursuant to subsection (1) that permission shall be given on such terms and conditions as the Chief Technical Officer deems fit.

(3) A person who contravenes subsection (2) is guilty of an offence and is liable to a fine of \$20 000.

Disposal of garbage, debris, etc.

21. A person who disposes of garbage, debris, bulk waste or any other waste that blocks, causes to be blocked or threatens the free movement of water in or around drainage infrastructure, water courses or water drains is guilty of an offence and is liable to a fine of \$20 000 or to imprisonment for a term of 2 years or to both.

Erection of fences, walls, etc.

22.(1) No person shall

- (a) erect a fence;
- (b) erect a wall or cause a wall to be erected;
- (c) construct or develop any form of fence or hedge; or
- (d) construct or caused to be constructed any encumbrance,

on or over any drainage infrastructure.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable to a fine of \$10 000 or to imprisonment to a term of 12 months or to both.

Disposal of construction materials

23.(1) No person shall dispose of or caused to be disposed any construction materials within any environs of the roads, water ways or drainage conveyance systems.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment to a term of 12 months or to both.

Restriction on placement of infrastructure

24.(1) No utility company, its agents or employees shall place or cause to be placed on, in or over any drainage infrastructure, any materials belonging to the company.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable to a fine of \$20 000.

Restriction on obstructing draining infrastructure

25. No person shall park any vehicle or place any object over any drainage infrastructure that restricts access to that infrastructure.

Power to remove obstruction in emergency

26.(1) Where an emergency access is required, the Chief Technical Officer or any person authorised by the Chief Technical Officer may move or caused to be moved any vehicle or thing that restricts access to the area where the emergency exists.

(2) The owner of the vehicle or thing removed, shall be liable for all costs associated with the removal of the vehicle under subsection (1).

Power of the State to take lands

27. Whenever for the purpose of executing any flood works in accordance with this Act, it is in the opinion of the Minister necessary to take any premises or lands, the State may take and use such premises and lands which may be required for the purpose of executing such works and shall for such purpose have and exercise all the powers conferred upon the State by the *Land Acquisition Act*, Cap. 228 in relation to the taking of lands for public purposes.

Compensation

28.(1) Subject to section 10, any person may claim compensation for any damage caused by the execution of flood works or in respect of any lands or interest taken, used or injuriously affected.

(2) When any person liable to execute flood works and the Minister are unable to agree as to the amount of compensation, if any, the same shall be determined by arbitration in accordance with this Act.

Matters disregarded in computing compensation

29.(1) No compensation shall be payable in respect of any of the following provisions in a flood area, namely any provision which

- (a) prohibits or restricts building operations permanently on the ground that by reason of the situation or nature of the land, the erection of dwellings thereon would be likely to involve danger or injury to health or to the life and safety of the residents of such dwellings; or
- (b) prohibits, otherwise than by way of prohibiting building operations, the use of land for a purpose likely to involve danger or injury to health or to the life and safety of persons resorting thereto or restricts, otherwise than by way of restricting building operations, the use of land so far as may be necessary for preventing such danger or injury.

(2) The fact that any land was used or capable of being used for the erection of dwellings prior to the date of commencement of this Act, shall not be taken into account in the assessment of compensation and no account shall be taken of the rental value of such land.

(3) Any enhancement of the value of other land shall be taken into account in the assessment of compensation.

(4) Where the Minister has declared an area to be a flood area in accordance with sections 5 and 7 and it is proved to the satisfaction of the Minister that the owner or occupier of any land or building in such area was given due notice prior to such declaration whether before or after the commencement of this Act to the effect that no building should be erected thereon, no compensation shall be payable in respect of any building in such flood area, the erection of which was begun after due notice was so given.

Arbitration

30.(1) Any question in dispute which is required by any provision of this Act to be settled by arbitration shall be referred to the determination of 2 arbitrators, one to be appointed by each party to the dispute or to an umpire in case such arbitrators fail to agree such umpire to be chosen by the arbitrators before entering upon the matters submitted to them.

(2) Where, for the space of 14 days after such dispute arises and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, is served by the one party on the other party to appoint an arbitrator, such last-mentioned party fails to appoint such arbitrator, then upon such failure the party making such request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matter which shall be in dispute.

(3) The award or determination of the question in dispute by a single arbitrator, the arbitrators or the umpire, as the case may be, shall be final and binding on the parties in difference and every submission to arbitration under this section

shall be deemed to be an arbitration within the *Arbitration Act*, Cap. 110, and be subject to the provisions relating to arbitration contained in that Act.

Notices

31.(1) Any notice under this Act may be served on the owner or occupier of any premises by leaving it with the occupier of such premises or with some other person in residence of his abode; and, if there is no occupier, by putting up such notice or plan in a conspicuous part of the premises.

(2) Where planned maintenance of drainage infrastructure is scheduled, the Chief Technical Officer shall issue notice to the land owners and occupiers in the location in which the planned drainage works are to be conducted.

(3) Notice issued under subsection (2) shall be not less than 7 days before the commencement of the drainage works.

Offences

32. Any person who

- (a) assaults, resists, obstructs or intimidates the Chief Technical Officer or any person authorised by the Chief Technical Officer in the execution of his duties under this Act;
- (b) uses abusive language, indecent or insulting language to the Chief Technical Officer or any person authorised by the Chief Technical Officer in the execution of his duties under this Act;
- (c) interferes with or hinders the Chief Technical Officer or any person authorised by the Chief Technical Officer in the execution of his duties under this Act; or
- (d) contravenes the provisions of this Act,

is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 12 months or to both.

Recovery of costs

33. The costs of carrying out flood works by the Chief Technical Officer under sections 18 or 19 is a debt due to the State and is recoverable in summary proceedings before a magistrate for District “A” notwithstanding that the costs exceed the monetary limit on the jurisdiction of the Magistrate’s Court.

Repeal

34. The *Prevention of Floods Act*, Cap. 235 is repealed.

Commencement

35. This Act shall come into operation on a date to be fixed by proclamation.