
CHAPTER 28**OUT ISLANDS UTILITIES****ARRANGEMENT OF SECTIONS**

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CHAPTER 28

OUT ISLANDS UTILITIES

An Act to encourage the construction of water supply and sewerage disposal systems on Out Islands by providing for the refund of customs duties and certain other concessions to the developer of such systems.

*52 cf 1965
E.L.A.O., 1974
5 cf 1987*

[Commencement 11th September, 1965]

- Act.
1. This Act may be cited as the Out Islands Utilities Act. Short title.
 2. In this Act — Interpretation.
 - “customs duties” means the duties of customs levied by the Tariff Act as well as any other duties or taxes now or hereafter imposed upon or payable in respect of goods imported into The Bahamas, except stamp duties; Ch. 295.
 - “developer” means a person prepared to undertake the construction of an utility project for the use of the public in any part of the Out Islands and includes the operator of an existing utility project;
 - “materials” means —
 - (a) well casing, pipework for use within well fields, well field pumps and the attendant electric motors, diesel or gasoline motors, windmills and electricity generating equipment;
 - (b) electrical distribution works including poles and cables, electrical ancillary equipment including controls, alarms, time switches and relays;
 - (c) meters, gauges and other measuring equipment;
 - (d) chlorinators, filters, sohn bridges and other water treatment and testing equipment;
 - (e) fuel and lubricating oils;

- (f) pumps, motors, tanks of all kinds, screens, pipes, fittings, valves, pipe specials, hydrants, standpipes, pre-made valve and meter boxes, cocks, towers, trestles, manhole frames and covers, scrapers and other dosing treatment equipment, well-drilling equipment, bricks, cement, aggregate, timber, reinforcing steel and other building materials,

required for or in connection with water pumping stations, water distribution systems, sewerage collection systems, sewerage pumping stations or sewerage treatment plants:

Provided that the Minister may by Order —

- (i) specify the types of fuel and lubricating oils which shall be included in this definition; and
 (ii) add to or amend such definition;

E L A O, 1974

“Minister” means the Minister responsible for Public Works;

“sewerage system” means any public latrine, street sewer, pumping station, pumping machinery, deposit tank, outfall pipe and any appliance for the conveyance or disposal of sewage;

“water supply system” means any reservoir, dam, tank, well, tunnel, conduit, pipe fountain, sluice, valve, pump or engine or any building, structure or appliance used or constructed for the supply, storage, conveyance or regulation of water;

“utility project” means any sewerage system or water supply system.

Application may
be made to the
Minister

3. Any developer who desires to construct an utility project for the use of the public in any part of the Out Islands may make application to the Minister for the approval thereof. Every such application shall be in writing and shall contain full particulars of the proposed utility project and an estimate of the cost thereof and shall be accompanied by a plan of the location of the same, by plans and drawings of the project and by such other information as the Minister may require.

4. The Minister may, if satisfied that the construction and operation, or the continued operation of the utility project in respect of which the application has been made will be in the best interests of The Bahamas, enter into an agreement with any developer making application under section 3 of this Act, licensing him to construct, maintain and operate or continue to operate an utility project in any part of the Out Islands.

Minister may enter into agreement with developer

5. (1) Every agreement made under section 4 of this Act shall provide for the operation of the utility project for the use of the general public in any part of the Out Islands subject to such terms and conditions for the protection of the interests of the public as the Minister may deem necessary.

Terms of agreement

(2) Every such agreement may provide for the following matters, or any of them, namely —

- (a) for the operation and maintenance of an utility project over or under any public street or public lands in any part of the Out Islands;
- (b) for the refund of all customs duties paid in respect of all materials necessary for the construction, maintenance and operation of the utility project concerned which may be imported into The Bahamas, purchased or taken out of bond therein by the developer during such periods as the Minister may determine;
- (c) for such other matters and concessions as the Minister may deem fit and proper having regard to the nature and location of the utility project concerned.

(3) Every such agreement shall contain such covenants on the part of the developer for the construction, maintenance and operation of the utility project and such safeguards as the Minister may deem fit and proper having regard to the nature and location of the same and shall be subject to such terms and conditions as the Minister may deem necessary for the protection of the revenue.

(4) Every such agreement shall contain mutual covenants on the part of the Minister and the developer providing for the following matters, namely —

- (a) that nothing contained in the said agreement shall be deemed to make the developer liable to pay to the Government any payments in respect

of any matter or thing done, executed or happening prior to the date on which such agreement shall cease in respect of which matter or thing payment is waived thereby, or to refund or repay any customs duties which have been refunded to the developer under the concessions granted by such agreement except in the circumstances specified in section 12 of this Act;

- (b) for the arbitration of all questions and differences between the Minister and the developer; and
- (c) for the interpretation of such agreement according to the laws of The Bahamas.

Minister to
designate
inspectors
E L A O, 1974

6. The Minister shall designate public officers to be inspectors for the purpose of this Act, and every agreement entered into under the provisions of section 4 of this Act shall provide for such safeguards as the Minister may require as to inspection by any such inspector of the site of the utility project concerned and of the buildings and installations constructed thereon and of any storeroom, warehouse, storage tank or other place under the control of the developer in which materials intended for use in connection with the utility project shall be stored, so as to ensure that customs duties shall only be refunded in respect of materials used, or which could reasonably be presumed to have been used in the construction and equipping of the project, and for such other safeguards and matters, including the keeping of records, as the Minister shall deem fit and proper in the circumstances.

Minister may
enter into
agreement with
developer for
remodelling, etc.,
existing utility
project

7. (1) A developer of an existing utility project desiring to remodel, equip, re-equip or extend the same may from time to time submit to the Minister in writing for approval full particulars of such remodelling, equipping, re-equipping or extension together with an estimate of the cost thereof, and shall supply to the Minister such other information as the Minister may require. If the Minister decides that the proposals, in whole or in part, set out in the particulars amount to remodelling, equipping, re-equipping or extension of the said utility project and that such remodelling, equipping, re-equipping or extension will be in the best interests of The Bahamas, the Minister may enter into an agreement with the developer for the refund of all customs duties in respect of all materials necessary for the purpose of carrying out all or such part of the proposals as the Minister has approved, which may be

imported into The Bahamas, purchased or taken out of bond therein by the developer during such period as the Minister may determine.

(2) A developer of an existing utility project may make application to the Minister for the refund of all customs duties paid in respect of all materials necessary for the maintenance and operation of such utility project which may be imported into The Bahamas, purchased or taken out of bond therein by such developer. If he considers that it will be in the best interests of The Bahamas the Minister may enter into an agreement with the developer for the refund of all such customs duties.

(3) Every agreement entered into pursuant to the provisions of this section shall contain such covenants on the part of the developer and such safeguards as the Minister may deem fit and proper in the circumstances and shall be subject to such terms and conditions as the Minister may deem necessary for the protection of the revenue and for ensuring that the rates and charges to be made by the developer in connection with the operation of the utility project are reasonable having regard to the overall cost of such operation.

8. Every agreement made under this Act shall be expressed to be made by and between the Minister acting for and on behalf of the Government of The Bahamas of the one part and the developer of the other part and shall be executed by the Minister under his hand and seal, and shall be executed by the developer, if a person, under his hand and seal, or, if a company, under its common seal.

How agreements
are to be made

9. Where any developer is authorized under the provisions of section 4 to construct, maintain and operate an utility project, the Minister may by order provide that the developer shall within the area covered by his licence have such of the powers, duties and responsibilities as appertain to the Minister under the Water Supplies (Out Islands) Act, subject to such modifications or exceptions as the Minister may prescribe in the order and thereupon the provisions of the said Act shall apply *mutatis mutandis* to the developer, his utility project and the consumers within such area.

Powers and
duties of
developers

Ch 197

Projects needing
sanction

10. (1) Subject to the provisions of section 14 of this Act, no utility project shall be constructed or operated for the purpose of serving the public in any part of the Out Islands without the authority of the Minister.

5 cf 1987, s 2

(2) Every person who contravenes the provisions of this section shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine not exceeding four hundred dollars and in the case of a continuing offence, to a further fine not exceeding forty dollars or to imprisonment for a term not exceeding seven days for each day during which the offence continues.

Penalty for false
declaration

11. Every person knowingly making a false declaration for the purpose of obtaining a refund of customs duties pursuant to the provisions of any agreement made under the authority of this Act shall be guilty of an offence against this Act, and shall be liable on summary conviction to a fine not exceeding two thousand dollars, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

5 cf 1987, s 2

Penalty for
wrongful
application of
materials

12. (1) No materials, in respect of which customs duties shall have been refunded pursuant to the provisions of any agreement made under the authority of this Act, shall be applied for any purpose other than for the purposes specified in such agreement:

Provided that materials which are being replaced may be used or disposed of for other purposes with the consent of the Minister and on payment of customs duties thereon based on the value of such materials at the time of such use or disposal.

5 cf 1987, s 2

(2) Every person who contravenes the provisions of this section shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine not exceeding two thousand dollars, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment and if such person shall be the developer, or if the developer is a company, a director thereof, such agreement may be cancelled by the Minister, in which case all customs duties refunded to the developer pursuant to the provisions of any agreement made under the authority of this Act may be recovered as liquidated damages.

13. (1) All proceedings for offences against this Act and for the recovery of any penalties under this Act shall be before a magistrate having jurisdiction in the place where the offence was committed, and the magistrate shall dispose thereof summarily.

Proceedings to be taken summarily

(2) All such proceedings may be prosecuted in the name of the Minister or the Commissioner of Police, or by a revenue officer or peace officer.

How proceedings to be prosecuted

14. Nothing in this Act shall be construed as derogating from or abridging any provision of the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act or of the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) (Amendment of Agreement) Act whereby special provision is made with respect to the construction, operation and maintenance of utilities and the importation into the Bahamas, purchasing or taking out of bond therein free of customs duties of certain classes of materials and supplies mentioned in such Acts.

Saving of other Acts
Ch 261
Ch 262