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MINISTRY OF THE ENVIRONMENT BILL, 2019

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MINISTRY OF THE ENVIRONMENT BILL, 2019

A BILL FOR AN ACT TO ESTABLISH THE MINISTRY OF THE ENVIRONMENT TO OVERSEE THE INTEGRITY OF THE ENVIRONMENT OF THE BAHAMAS, TO MAKE THE MINISTER RESPONSIBLE THEREFOR A CORPORATION SOLE, TO ESTABLISH THE ENVIRONMENTAL ADMINISTRATION FUND AND THE ENVIRONMENTAL TRUST FUND AND FOR MATTERS CONNECTED THERETO

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Ministry of the Environment Act, 2019.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

2. Interpretation.

In this Act —

“**bilateral environmental agreement**” means a legally binding agreement between two national states, which relates to the environment;

“**Environmental Impact Assessment**”, in relation to the environment, means a study identifying and evaluating —

- (a) the likely impacts of a proposed activity;
- (b) alternatives to a proposed activity; and

(c) potential means of mitigating the likely impacts of a proposed activity;

“Minister” means the Minister responsible for the environment;

“Ministry” means the Ministry of the Environment;

“multilateral environmental agreement” means a treaty, convention, protocol or other legally binding instrument created between multiple nations, which relates to the environment;

“non-governmental organisation” means a non-profit, citizen-based group that functions independently of the government.

PART II - ADMINISTRATION

3. Establishment of Ministry of the Environment.

- (1) There is established a Ministry of the Government of The Bahamas to be called the “Ministry of the Environment”, which shall be subject to the general direction and control of the Minister.
- (2) The Permanent Secretary is responsible for all matters related to the administration of the Ministry.

4. Functions of Ministry.

The functions of the Ministry are —

- (a) to manage, protect and conserve all land, water, air and living resources of The Bahamas, having regard to the environmental, economic and social benefits they may confer on The Bahamas;
- (b) to foster and maintain an optimum quality environment through specific objectives for the management and protection of land, water, air and living resources of The Bahamas;
- (c) to determine the process by which environmental policies are made, developed, known, publicised, enforced and implemented;
- (d) to provide and disseminate information and services designed to promote environmental policies, including environmental education and mechanisms for promoting effective public participation in environmental planning;
- (e) to set standards for collecting, storing, retrieving, analysing and publishing environmental data;
- (f) to undertake, commission and coordinate environmental studies and research relating to the environment of The Bahamas, which involves the collection or manipulation of living resources for scientific investigation;

- (g) to advise the Minister on all matters relating to the environment and environmental administration including —
 - (i) policies for influencing the management of natural and physical resources and ecosystems;
 - (ii) public or private sector proposals that would significantly affect the environment of The Bahamas; and
 - (iii) effective means of ensuring public participation in the formulation of environmental policy and the processes of environmental planning and protection in order to assist in decision making;
- (h) to provide the Government of The Bahamas, its agencies and other public authorities with advice on —
 - (i) procedures for the assessment and monitoring of environmental impacts;
 - (ii) pollution control and the management of pollutants in the environment;
 - (iii) the likelihood, identification, and reduction of the effects of natural hazards to the environment;
 - (iv) climate change and its effects; and
 - (v) the management of natural resources;
- (i) to facilitate and encourage conflict resolution in relation to policies and proposals that may affect the environment;
- (j) to conduct official communications relating to the environment between the Government of The Bahamas and —
 - (i) the government of any other country; or
 - (ii) any international organisation, with respect to any international convention, treaty, protocol and agreement;
- (k) to oversee and coordinate the roles and functions of the various departments, agencies, authorities and bodies that fall under the responsibility of the Ministry;
- (l) to coordinate, in conjunction with the Ministry of Foreign Affairs, the implementation of international agreements relating to the environment that are entered into by The Bahamas; and
- (m) to carry out any other function that may be conferred on the Ministry by any other law.

5. Responsibilities of Minister.

- (1) The Minister shall have overall responsibility for promoting environmental sustainability.

- (2) Notwithstanding subsection (1), it is the responsibility of the Minister to —
- (a) collaborate and coordinate with other Ministers and governmental agencies to promote and ensure compliance with respect to the implementation of this Act and the enforcement of any laws related to the environment;
 - (b) establish and maintain relations with national, regional and international organisations for the purpose of developing policies on matters relating to the environment;
 - (c) encourage and facilitate the participation of persons, non-governmental organisations and local communities in matters relating to the environment;
 - (d) protect and promote the interests of The Bahamas in the negotiation of any international convention, treaty, protocol or agreement that relates to the environment; and
 - (e) carry out such other duty consistent with the mandate of the Government as it relates to the environment.

6. Minister to be a corporation sole.

The Minister shall be a corporation sole with power to acquire, hold, lease and dispose of property of any description, to enter into contracts, to sue and be sued, and all property transferred to him by this or any other Act, or which otherwise becomes vested in the Minister, shall be held in trust for Her Majesty in right of Her Government of The Bahamas.

7. Departments, etc. under Ministry.

- (1) The following departments, agencies, authorities and bodies in existence at the date of the coming into force of this Act shall, from such date, be under the responsibility of the Ministry, and shall continue to operate, and where applicable, such operation shall continue in accordance with any law in force in relation thereto, namely —
- (a) the department responsible for environmental health services;
 - (b) the agency responsible for national geographic information services;
 - (c) the authority responsible for public parks and public beaches;
 - (d) the body responsible for forestry; and
 - (e) the body responsible for scientific research, reviewing Environmental Impact Assessments, advising on environmental projects and administering multilateral environmental agreements.

- (2) The Ministry may, after the coming into force of this Act, establish such other department, agency, authority or body, including a department with responsibility for environmental planning and protection, which shall —
 - (a) be under the responsibility of the Ministry; and
 - (b) exercise such functions as may be delegated by the Minister.

8. Environmental Administration Fund.

- (1) For the purposes of this Act, there is established a fund to be known as the “Environmental Administration Fund” (hereinafter in this Part referred to as the “Administration Fund”), which shall be under the control and management of the Minister.
- (2) The Administration Fund shall consist of —
 - (a) such sums as may be appropriated by Parliament for the use and operation of the Administration Fund;
 - (b) such sums as may be deposited into the Administration Fund by a developer for the purpose of entering into any bond;
 - (c) such sums as may be collected pursuant to any written law which provides for —
 - (i) the imposition and collection of a tax, charge or fee payable into the Administration Fund;
 - (ii) the payment of a fine or other penalty payable into the Administration Fund due to the breach of an environmental law.
- (3) Monies from the Administration Fund shall be used —
 - (a) to restore and enhance the environment of The Bahamas;
 - (b) to implement an incentive measure to reduce environmental pollution and conserve natural resources;
 - (c) to reimburse developers of sums deposited into the Fund pursuant to subsection (2)(b).
- (4) Any monies in the Administration Fund may be designated for a specific purpose or made subject to a specific condition, and any money so designated shall be preserved and utilised solely for the designated purpose.

9. Accounts and audit of Administration Fund.

- (1) The Minister shall —
 - (a) cause to be kept proper accounts and other records of receipts, payments, assets and liabilities of the Administration Fund; and

- (b) cause to be prepared in respect of each financial year, a statement of accounts of the Administration Fund in a form that complies with the best international accounting and financial standards.
- (2) The accounts of the Administration Fund shall be audited annually, before 30th April of each year, by an independent auditor appointed by the Minister.
- (3) The Minister shall —
 - (a) cause to be laid before each House of Parliament, a copy of the statement referred to in subsection (1)(b) and a copy of the report of the auditor prepared pursuant to subsection (2); and
 - (b) cause such number of copies referred to under paragraph (a) to be made available to the public at a reasonable price.

PART III – ENVIRONMENTAL TRUST FUND

10. Environmental Trust Fund.

- (1) For the purposes of this Act, there is established a fund to be known as the “Environmental Trust Fund” (hereinafter in this Part referred to as the “Trust Fund”), which shall be under the control and management of the Board of Trustees established pursuant to section 11.
- (2) The purpose of the Trust Fund is to provide stable, adequate, secure and sustainable funding to finance the conservation and management of the environment of The Bahamas pursuant to the fulfilment of any international obligations.

11. Board of Trustees of Environmental Trust Fund.

- (1) There is established a Board of Trustees of the Environmental Trust Fund (hereinafter referred to as the “Board”), which is a body corporate having perpetual succession and a common seal, and is capable of acquiring, holding and disposing of real and personal property, and of suing and being sued, and doing and suffering all things that bodies corporate may lawfully do and suffer.
- (2) The provisions of the *Schedule* shall have effect as to the constitution of the Board and otherwise in relation thereto.

12. Functions and powers of Board.

- (1) The functions of the Board are to —
 - (a) collect all revenue payable into the Trust Fund and ensure that such revenue is collected promptly and paid into such Fund;

- (b) allocate monies of the Trust Fund in accordance with section 14;
 - (c) ensure that monies disbursed from the Trust Fund are utilised for the purposes for which they have been allocated;
 - (d) generally manage the Trust Fund in accordance with the provisions of this Act; and
 - (e) carry out such other duties consistent with its functions under this Act.
- (2) The Board has all the powers that are reasonably necessary or expedient to enable it to carry out its functions under this Act.

13. Resources of Trust Fund.

The Trust Fund shall consist of such sums —

- (a) as may be appropriated by Parliament for the use and operation of the Trust Fund; and
- (b) provided to the Ministry or the Government of The Bahamas by a foreign state, international organisation, multilateral or bilateral lending agency, private individual, foundation, corporation or other entity to further the functions of the Ministry.

14. Use of Trust Fund monies.

- (1) Monies from the Trust Fund shall be used to —
- (a) fulfil any international obligation arising as a result of being a party to any bilateral or multilateral environmental agreement including, but not limited to —
 - (i) establishing environmental programmes and projects;
 - (ii) conducting project activities;
 - (iii) creating or installing software systems; or
 - (iv) acquiring consultancy services;
 - (b) defray all expenses incurred by the Board in carrying out its functions under this Act, including the remuneration of members and staff of the Board.
- (2) Any monies deposited into the Trust Fund may be designated for a specific purpose or made subject to a specific condition, and any money so designated shall be preserved and utilised solely for the designated purpose.

15. Accounts and audit of Trust Fund.

- (1) The Board shall, in respect of the Trust Fund —

- (a) keep proper accounts and other records of receipts, payments, assets and liabilities of the Trust Fund; and
 - (b) cause to be prepared in respect of each financial year a statement of accounts of the Trust Fund in a form that complies with the best commercial accounting and financial standards.
- (2) Subject to the approval of the Minister, the Board shall annually appoint an independent auditor to audit the accounts of the Trust Fund before the end of the financial year.
- (3) The Board shall provide the Minister with a copy of the statement of accounts referred to in subsection (1)(b) and a copy of any report prepared pursuant to subsection (2), and the Minister shall —
- (a) cause to be laid before each House of Parliament, a copy of the statement of accounts and a copy of the report; and
 - (b) cause such number of copies referred to under paragraph (a) to be made available to the public at a reasonable price.

16. Rules for operating the Trust Fund.

For the purpose of regulating and controlling the operation of the Trust Fund, the Board may make Rules with respect to —

- (a) the bank into which revenues of the Trust Fund are to be paid and the designation of any such bank account;
- (b) the method to be adopted in making payments into and out of the Trust Fund;
- (c) any matter necessary for the proper keeping and control of the Trust Fund.

PART IV - MISCELLANEOUS

17. Annual report.

- (1) The Minister shall, before 30th June in each year, cause to be prepared an annual report reviewing the work of the Ministry, including that of its departments, agencies, authorities and bodies.
- (2) The annual report shall also consist of —
 - (a) a copy of the statement of accounts referred to under section 9(1)(b); and
 - (b) a copy of the report prepared in accordance with an audit carried out under section 9(2).
- (3) The Minister shall forthwith lay or cause to be laid each year on the table of both Houses of Parliament, a copy of the annual report.

SCHEDULE

(section 11(2))

BOARD OF TRUSTEES OF THE ENVIRONMENTAL FUND

1. Composition of the Board

The Board shall consist of five persons, namely —

- (a) the Permanent Secretary of the Ministry of the Environment, *ex officio*;
- (b) the Financial Secretary, *ex officio*;
- (c) the Treasurer, *ex officio*;
- (d) the Director of Planning and Protection, *ex officio*; and
- (e) a representative of an environmental non-governmental organisation, who shall be appointed by the Minister.

2. Election of Chairperson and Vice-chairperson

- (1) The members shall elect a Chairperson and Vice-chairperson from among themselves at the first meeting of the Board and every two years thereafter.
- (2) The Chairperson shall preside over meetings of the Board, and the Vice-chairperson shall perform the duties and exercise the powers of the Chairperson if the Chairperson is absent or unable to perform his duties or exercise his powers.

4. Appointment of officers

The Board shall appoint a person to serve as —

- (a) a secretary, who shall perform such functions at such remuneration and upon such terms and conditions as the Board may determine; and
- (b) an accountant, who shall perform such functions at such remuneration and upon such terms and conditions as the Board may determine.

5. Proceedings of the Board

- (1) The Board shall meet at least once each month, but may meet at such other times as may be necessary or expedient for the efficient performance of its business.
- (2) If both the Chairperson and Vice-chairperson are absent from a meeting of the Board, the members in attendance at such meeting shall appoint from among themselves a person to perform the duties of Chairperson.
- (3) A quorum for a meeting consists of any three members.
- (4) If, for any reason the Chairperson is unable to preside at a meeting of the Board, the members present may elect another member to preside over that meeting.
- (5) The Board may invite any person to attend any meeting of the Board and to take part in its proceedings, but that person shall not be entitled to vote on a matter for decision at the meeting if that person, in the opinion of the Board, has expert knowledge concerning any matter to be addressed by the Board that is likely to be of assistance.
- (6) Minutes in proper form of every meeting of the Board shall be —
 - (a) kept by the Secretary;
 - (b) confirmed by the members at the next subsequent meeting of the Board; and
 - (c) signed by the Chairperson and Secretary once confirmed.

5. Remuneration

Each member of the Board shall be paid such remuneration and allowances as the Minister may determine.

OBJECTS AND REASONS

This Bill seeks to establish the Ministry of the Environment to oversee the integrity of the environment of The Bahamas, to make the Minister responsible therefor a corporation sole, to establish the Environmental Administration Fund and the Environmental Trust Fund and for matters connected thereto.

Part I of the Bill provides for the preliminary provisions, and in that connection:

Clause 1 of the Bill provides for the short title and commencement of the Bill.

Clause 2 of the Bill provides for the interpretation of various terms used in the Bill.

Part II of the Bill provides for provisions with respect to the administration of the Ministry, and in that connection:

Clause 3 of the Bill provides for the establishment of the Ministry of the Environment, which shall be subject to the general direction and control of the Minister.

Clause 4 of the Bill provides for the functions of the Ministry, which include managing, protecting and conserving all land, water, air and living resources of The Bahamas, having regard to the environmental, economic and social benefits they may confer on The Bahamas.

Clause 5 of the Bill provides for the responsibilities of the Minister. This clause provides that the Minister shall have overall responsibility for promoting environmental sustainability. Additionally, the Minister is responsible for establishing and maintaining relations with national, regional and international organisations for the purpose of developing policies or matters relating to the environment.

Clause 6 of the Bill provides for the Minister to be a corporation sole.

Clause 7 of the Bill provides that the department responsible for environmental health services, the agency responsible for national geographic information services, the authority responsible for public parks and public beaches, the body responsible for scientific research, reviewing Environmental Impact Assessments, advising on environmental projects and administering Multilateral Environmental Agreements shall be under the responsibility of the Ministry at the date of the coming into force of the Act.

Clause 8 of the Bill provides for the establishment of the Environmental Administration Fund, which shall be under the control and management of the Minister. The Environmental Administration Fund shall consist of such sums as may be appropriated by Parliament for the use of operation of the Fund, such sums deposited into the Environmental Administration Fund by developers for the purpose of entering into any bond, and such sums as may be collected pursuant to any written law which provides for the imposition and collection of a tax, charge or fee payable into the Environmental Administration Fund and the payment of a fine and other penalty payable into the Environmental Administration Fund due the breach of an

environmental law. The monies from the Environmental Administration Fund shall be used to restore and enhance the environment of The Bahamas, to implement an incentive measure to reduce environmental pollution and conserve natural resources and to reimburse developers of sums deposited into the Fund pursuant to subclause (2) (b).

Clause 9 of the Bill provides for the accounts and audit of the Environmental Administration Fund.

Part III of the Bill provides for the Environmental Trust Fund, and in that connection:

Clause 10 of the Bill provides for the establishment of the Environmental Trust Fund, which shall be under the control and management of the Board of Trustees. The purpose of this Fund is to provide stable, adequate, secure and sustainable funding to finance the conservation and management of the environment of The Bahamas pursuant to the fulfilment of any international obligations.

Clause 11 of the Bill provides for the establishment of a Board of Trustees of the Environmental Trust Fund, which shall be a body corporate.

Clause 12 of the Bill provides for the functions and powers of the Board, which include generally managing the Environmental Trust Fund in accordance with the provisions of the Act.

Clause 13 of the Bill provides for the resources of the Environmental Trust Fund. This clause provides that this Fund shall consist of such sums as may be appropriated by Parliament for the use and operation of the Environmental Trust Fund, and such sums provided to the Ministry or the Government of The Bahamas by a foreign state, international organisation, multilateral or bilateral lending agency, private individual, foundation, corporation or other entity to further the functions of the Ministry.

Clause 15 of the Bill provides for the accounts and audit of the Environmental Trust Fund.

Clause 16 of the Bill provides for the making of Rules by the Board for the purpose of regulating and controlling the operation of the Environmental Trust Fund.

Part IV of the Bill provides for the miscellaneous provisions, and in that connection:

Clause 17 of the Bill provides for the Minister to, before 30th June in each year, cause to be prepared an annual report reviewing the work of the Ministry, including that of its departments, agencies, authorities and bodies, and forthwith cause a copy of the report to be laid each year on the table of both Houses of Parliament.

The Schedule to the Bill provides for the constitution of the Board of Trustees of the Environmental Trust Fund.