

CAYMAN ISLANDS



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THE WATER AUTHORITY (AMENDMENT) LAW, 2011

(LAW 4 OF 2011)

THE WATER AUTHORITY (AMENDMENT) LAW, 2011

ARRANGEMENT OF SECTIONS

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CAYMAN ISLANDS

Law 4 of 2011.

I Assent

Duncan Taylor

Governor.

1 February, 2011

**A LAW TO AMEND THE WATER AUTHORITY LAW (1996 REVISION)
SO AS TO ALLOW THE DIVESTMENT OF THE WATER
AUTHORITY'S WASTEWATER ASSETS AND OPERATIONS; TO
PROVIDE FOR THE REGULATION OF CONCESSIONAIRES; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Water Authority (Amendment) Law, 2011.

Short title and
commencement

(2) This Law shall come into force on such day as may be appointed by Order made by the Governor in Cabinet.

2. The Water Authority Law (1996 Revision), in this Law referred to as the "principal Law", is amended in section 2 by inserting in the appropriate alphabetical sequence the following definitions -

Amendment of section 2
of the Water Authority
Law (1996 Revision) -
definitions and
interpretation

“ “capital investment plan” means those additions to its assets that a concessionaire intends to make, that, when added, will form part of its rate base as approved by the Authority;

(1996 Revision)

“concessionaire” means a person to whom a concession is granted under the Water (Production and Supply) Law (1996 Revision) or any law for the time being in force relating to the granting of concessions relating to wastewater;

“consumer” means a person who is a customer of a concessionaire; and

“rate cap and adjustment mechanism” means the mechanism for determining and modifying prices for services rendered by a concessionaire to consumers, as approved by the Authority and specified in that concessionaire’s licence;”.

Amendment of section 6 - duty of Authority in regard to water supply and sewerage

3. The principal Law is amended in section 6 as follows -

- (a) by deleting the word “and” after the semi-colon in paragraph (b);
- (b) by inserting at the end of paragraph (c) the words “and in accordance with any law for the time being in force relating to wastewater”;
- (c) by deleting the full-stop at the end of paragraph (c) and substituting a semi-colon;
- (d) by inserting the word “and” after the semi-colon at the end of paragraph (c); and
- (e) by inserting after paragraph (c) the following paragraph -

“(d) have power to do all things necessary or convenient to be done for or in connection with regulating concessionaires, which shall include -

- (i) monitoring and regulating the tariffs, rate structures, and terms and conditions for water supply and wastewater services charged to consumers by concessionaires in accordance with the respective rate cap and adjustment mechanism;
- (ii) reviewing and approving other rates offered by concessionaires outside of the respective rate cap and adjustment mechanism and available at the option of the consumer;
- (iii) recommending to the Governor the making of regulations under this Law and any law for the time being in force relating to water and wastewater;
- (iv) establishing and enforcing regulations, as well as processes and licence standards regarding the granting of licences under the Water (Production and Supply) Law (1996 Revision) and any law for the time being in force relating to wastewater;
- (v) granting, modifying or renewing a licence issued under the Water (Production and Supply) Law (1996

Revision) and any law for the time being in force relating to wastewater;

- (vi) conducting the tender process for applicants for any new concession to be issued under the Water (Production and Supply) Law (1996 Revision) and any law for the time being in force relating to wastewater, and to select the successful tender;
- (vii) monitoring and regulating all concessionaires in a manner that provides an opportunity for a fair and reasonable return to concessionaires, and protects the economic interests and well being of consumers by keeping tariffs and rate structures as low as can reasonably be achieved; and
- (viii) reviewing and approving annually the capital investment plans for all concessionaires.”.

4. The principal Law is amended in section 7 as follows -

Amendment of section 7
- powers of Authority in
regard to water supply
and sewerage

- (a) in subsection (1)(g), by deleting the word “and” after the semi-colon;
- (b) by deleting the full-stop at the end of paragraph (h) and substituting a semi colon;
- (c) by inserting the word “and” at the end of paragraph (h); and
- (d) by inserting after paragraph (h) the following paragraph -
 - “(i) grant a licence, upon such terms and conditions as it thinks appropriate, to any person to whom the Governor has issued a concession for franchised operations under the Water (Production and Supply) Law (1996 Revision) or any law for the time being in force relating to wastewater.”; and
- (e) by inserting after subsection (4) the following subsections -
 - “(5) The Authority shall carry out the functions and exercise its powers under section 6(d) in a manner which -
 - (a) is reasonable;
 - (b) does not discriminate unfairly between applicants for licences or concessionaires;
 - (c) protects the interests of consumers; and
 - (d) protects the security and public interest of the Islands.
 - (6) In carrying out the functions and duties imposed, and exercising the powers conferred, by section 6(d), the Authority shall have regard to -
 - (a) the need to regulate and supervise concessionaires in such a manner as to ensure that all reasonable

demands by consumers for water supply or wastewater service, or both, are satisfied;

- (b) the need to ensure that applicants and concessionaires are capable of financing the activities they are, or seek to be, licensed to undertake;
- (c) whether concessionaires have promoted or will promote safety, sound environmental practices, technical proficiency and efficiency in the areas of water supply or wastewater services, or both;
- (d) whether concessionaires have ensured or will ensure the continuity, security and qualities of water supply or wastewater services, or both, within the Islands;
- (e) whether concessionaires have promoted or will promote the efficient consumption or use of water by consumers; and
- (f) the needs of rural customers, the disadvantaged and the elderly.

(7) Without prejudice to subsection (6), the Authority shall have the power to establish environmental standards and to ensure that concessionaires -

- (a) comply with planning standards; and
- (b) take effective measures to comply with safety and environmental standards.

(8) For the purposes of carrying out its functions under this Law, the Authority shall have power to -

- (a) call for, from any person, and examine documents, including, but not limited to, financial records;
- (b) require that any document submitted to the Authority be verified by affidavit; and
- (c) do anything that is related or incidental to what is specified in paragraphs (a) and (b).

(9) Before granting a licence under section 7(1)(i), the Authority shall -

- (a) ensure that the applicant possesses the financial capacity, industry experience and technical qualifications necessary to perform fully the obligations attached to the licence for which the applicant is applying;
- (b) ensure that the applicant intends to commence performance of those obligations within a reasonable period of time; and

- (c) take into account -
 - (i) whether, during the term of any current or prior licence or authorisation granted in respect of the Islands or any other jurisdiction, the applicant has complied with all terms, conditions, specifications and requirements of any licence or authorisation, order, directive, rule or regulation pertaining to such licence or authorisation;
 - (ii) the protection of the environment generally, including plans for the limitation of emissions and discharges into the atmosphere, water or land;
 - (iii) whether any site or sites proposed for the water production and supply or wastewater collection and treatment system and any associated land use is appropriate in all the circumstances;
 - (iv) the efficiency of the proposed system;
 - (v) whether the persons directly associated with the application are fit and proper persons to be granted a licence;
 - (vi) whether the best interests of consumers will be promoted or enhanced; and
 - (vii) whether the security and public interest of the Islands will be preserved and protected.

(10) For the purposes of subsection (9)(c)(v), in determining whether a person is a fit and proper person, regard shall be had to all circumstances, including evidence of the person's -

- (a) honesty, integrity, and reputation;
- (b) experience, reliability, competence and capability; and
- (c) financial capacity and soundness.”.

Passed by the Legislative Assembly the 14th day of January, 2011.

Mary J. Lawrence, JP

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.