

CAYMAN ISLANDS



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**THE WATER (PRODUCTION AND SUPPLY) LAW, 2011**

**(LAW 2 OF 2011)**

**THE WATER (PRODUCTION AND SUPPLY) LAW, 2011**

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CAYMAN ISLANDS

Law 2 of 2011.

I Assent

Duncan Taylor

Governor.

1 February, 2011

**A LAW TO REPEAL AND SUBSTITUTE THE WATER (PRODUCTION  
AND SUPPLY) LAW (1996 REVISION); TO IMPROVE THE  
CONCESSION-GRANTING PROCESS; AND FOR INCIDENTAL AND  
CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Water (Production and Supply) Law, 2011. Short title and  
commencement

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

2. In this Law - Interpretation

“Authority” means the Water Authority established under section 3 of the Water Authority Law (1996 Revision); (1996 Revision)

“concession” means any instrument by which the Governor in Cabinet grants a right or privilege under this Law enabling a person to produce or supply water, or both, under this Law;

“concessionaire” means a person to whom a concession has been granted under this Law;

“domestic use” means the use of water for washing, drinking, flushing closets, private gardening and the other usual household purposes, on any premises which are used solely for private residential purposes;

“licence” means a licence issued by the Authority containing the terms and conditions upon which a concession shall be exercised;

(2002 Revision)

“non-potable water” means water which may or may not be potable water but can be beneficially used, and does not include process water, wastewater or trade effluent;

“potable water” means water which is intended for consumption by humans, that is, water which has no impurities present in amounts sufficient to cause disease or harmful physiological effects, and the bacteriological and chemical and aesthetic quality parameters of which comply with values established under section 4 of the Public Health Law (2002 Revision) or, if none have been established, standards established by the Water Authority;

“process water” means water used in an industrial process, such as water used for rinsing, cooling, chemical reactions, and gas scrubbing, and which may require specific treatment to produce the quality of water needed for the process but does not include water that will be used in the actual product manufactured;

“produce” means to take water from any reservoir, pond, well, cistern or other place and includes the recovery or processing of water by distillation, purification, desalination or any other method with the intention of enhancing its quality so that it will meet the water quality criteria for its fitness for the intended use;

“trade effluent” means any liquid either with or without particles or matter in suspension therein, which is wholly or in part produced in the course of any trade or industry carried on at trade premises and includes waste in a liquid, solid or gaseous state from those premises and may or may not include wastewater;

“wastewater” means any waste substance, liquid or solid, associated with human habitation, or which contains or may be contaminated with human or animal excrement or offal;

“water” means potable water and non-potable water;

“water system” means the operative method whereby the production and supply of water is effected; and

“works” includes wells, desalination plants, pipes, tanks, ponds, reservoirs, pumping stations, valves, hydrants, buildings, machinery, metering devices and other apparatus used in a water system.

3. This Law shall apply to the whole of the Islands or to such part or parts thereof as the Governor in Cabinet may by Order declare. Application

4. (1) Subject to subsections (3) and (4), the Governor in Cabinet may grant concessions under this Law. Governor in Cabinet  
may grant concessions

(2) Before the Governor in Cabinet grants a concession under subsection (1) he shall seek the advice of the Water Authority which shall advise him pursuant to such advisory powers as may be conferred on the Authority by any Law. (1996 Revision)

(3) All concessions shall be exercised in accordance with the terms and conditions contained in a licence issued by the Authority, which may include such matters as geographical area, means of production, supply, volume, pressure, hygiene, charges, fees, inspection, reporting and accounting, power of acquisition by the Government, cancellation, suspension and such other matters as the Authority may determine.

(4) A concession granted under this Law shall not be exercised until a licence has been issued.

5. A concessionaire under this Law is deemed to be the holder of a franchise for the purpose of section 4(1)(d) of the Local Companies (Control) Law (2007 Revision), and is exempt from obtaining a trade and business licence under the Trade and Business Licensing Law (2007 Revision). Application of certain  
other Laws  
(2007 Revision)  
(2007 Revision)

6. Where a concessionaire places or installs works upon any private premises, such works are not subject to distress or any other landlord’s remedy for non-payment of any rent nor are they liable to be taken in execution by any process of any court against any person other than the concessionaire. Protection of  
concessionaires from  
distress, etc

7. A concessionaire may supply water to any person but a concessionaire may (subject to the terms of his concession but notwithstanding any other agreement to the contrary, without incurring any liability for so doing other than to make a proportionate abatement in any agreed charge or rate) reduce the volume, or pressure of supply if, by reason of any unusual or unforeseen circumstances, he is of the opinion that maintenance of a full supply would be onerous. Supply of water

- Supply of water to defaulters may be cut off while default continues
8. Where any person otherwise entitled to be supplied with water under a concession makes default in any payment due under such agreement or takes water excessively beyond his reasonable needs, the concessionaire may cut off and discontinue such supply using any reasonable means in that behalf until the amount due together with any incidental expenses incurred to the concessionaire have been paid, whereupon the supply shall be restored without unnecessary delay.
- Inspection, etc., of supplied premises
9. A concessionaire may, from time to time, appoint inspectors who shall wear or carry such means of identification, if any, as may be prescribed, and such inspectors may, at all reasonable times, enter any supplied premises with necessary workmen, machinery and equipment to examine, remove, repair or adjust any works of the concessionaire and the concessionaire shall restore or give compensation for any damage caused by his own default or that of his inspectors or workmen in so doing.
- Concessionaire's powers of entry, etc.
10. For the purpose of initiating or maintaining a water supply to the public the concessionaire may, on giving to occupiers seven days' notice in that behalf, or without such notice in any case of emergency, enter upon any enclosed or other premises other than buildings for the purpose of installing, improving or maintaining any works but -
- (a) a concessionaire shall not thereby acquire any right over any land other than for the purpose of supply in accordance with its concession and in terms of compensation with respect to any consequential nuisance or damage;
  - (b) in case of serious risk of flooding or for the provision of a water supply for the purpose of fire fighting, a concessionaire may enter without notice upon any building accompanied, if practicable, by a constable; and
  - (c) where a nuisance or damage is caused to any person by reason of any action of a concessionaire (including any of his servants) taken under this section and compensation cannot be agreed, the question of the quantum of compensation shall be referred to the Compensation Assessment Tribunal referred to in section 12.
- Interference by private installations
11. Where any private installations or works interfere or appear calculated to interfere with a water system, a summary court may, upon the application of the concessionaire in that behalf and after hearing any party who would or might thereby be affected, make an order empowering the concessionaire to make such alteration or adjustment of such private installations or works as to the court appears just upon such terms as to compensation, if any, as appears just, and in hearing and determining such application the court shall, as nearly as may be, follow its usual procedure in civil cases.

12. (1) There shall be a Compensation Assessment Tribunal whose function shall be to assess and award compensation claimed as a result of the production or supply of water under this Law. Compensation Assessment Tribunal

(2) The Tribunal shall comprise-

- (a) one person qualified to practise law in the Cayman Islands;
- (b) one person with technical knowledge of the water industry; and
- (c) one member of the public.

(3) Except for rules of procedure relating to appeals referred to in subsection (6), the establishment, tenure and other matters relating to the operation of the Tribunal shall be determined by Order made by the Governor in Cabinet.

(4) A decision of the Tribunal may be appealed to the Grand Court on a point of law.

(5) Awards made under this section shall be enforced as if they were awards made by the Grand Court.

(6) The Chief Justice may make rules relating to appeals made under this section.

13. The Attorney General may on behalf of the public claim damages for pollution or other injury to public amenities arising from the production or supply of water, or both. Damages for injury to public amenities

14. The Governor in Cabinet may make regulations for carrying this Law into effect and, without prejudice to the generality of this provision, may prescribe - Regulations

- (a) the health and safety standards and precautions in relation to the production or supply of water, or both;
- (b) the rates of compensation for damage to members of the public arising from the production or supply of water, or both;
- (c) the establishment, management and payment of compensation for wayleaves;
- (d) the procedure for applications for, and granting of, concessions;
- (e) the terms and conditions upon and subject to which a concession shall, or may, be granted;
- (f) penalties for contravention of such regulations;
- (g) fees to be paid for anything done under this Law; and
- (h) any matters required by this Law to be prescribed.

15. (1) Any person who - Offences and penalties

- (a) subject to subsection (2) -
  - (i) produces water with the intention of supplying it, except under a concession granted under this Law; or
  - (ii) supplies water, except under a concession granted under this Law;
- (b) contravenes any provision of this Law or the terms and conditions of the licence; or
- (c) for any purpose connected with this Law makes any statement or representation in the truth of which he does not believe, proof of his belief being upon him,

commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for one year, and, if the offence of which he is convicted is continued after the conviction, he commits a further offence and is liable to a fine of five hundred dollars for every day on which the offence continues.

(2) Paragraph (a) of subsection (1) has no application to -

- (a) the production of water in quantities of one hundred US gallons or less in any one day;
- (b) persons acting for the purpose of averting danger arising from fire or other happening likely to, or capable of, causing damage to persons or property;
- (c) the production or supply of water by the Government, the armed forces of Her Majesty, the police or fire services, or any statutory body or government agent;
- (d) water produced for domestic use on a private single residential household for use thereon;
- (e) water supplied by the management of condominiums, apartment complexes, multi-family dwellings, hotels or any other commercial enterprise, for use on their premises by residents therein, if the water so supplied is obtained from a concessionaire or the Authority and is sold at the concessionaire's or the Authority's rates;
- (f) the supply of water other than piped water if that the water so supplied is obtained from a concessionaire or the Authority;
- (g) water obtained under a groundwater abstraction licence granted in accordance with the Water Authority Law (1996 Revision) and with the purpose of use stated as being water for agricultural, aquacultural or horticultural purposes; and
- (h) persons specifically exempted by the Governor in Cabinet by Order,

(1996 Revision)

but nothing in paragraph (e) shall affect the production or supply of water, or both, made after the 6th May, 1991 if such production or supply, or both, takes place from any water system or works in operation before that date, and if a concession has been obtained within twenty-four months after the commencement of this Law.

(3) Any person who -

- (a) unlawfully and maliciously destroys or does damage to any water system or works or pollutes or diverts any water in a system;
- (b) with intent to defraud, extracts water from a water system;
- (c) obstructs the execution of any works or any employee of a concessionaire while engaged in his duties as such; or
- (d) aids or abets, or having control of any person, permits such person to contravene paragraph (a), (b) or (c),

commits an offence and is, in the case of an offence against paragraph (a), liable upon conviction upon indictment to a fine of fifteen thousand dollars and to imprisonment for five years, or upon summary conviction to a fine of three thousand dollars and to imprisonment for one year, and in the case of an offence against paragraph (b) or (c) or of any other contravention of this Law liable upon summary conviction to a fine of three thousand dollars and to imprisonment for one year and, in the case of an offence against paragraph (b), liable to an additional fine of one hundred dollars per day for each day the offence is continued; and the court may, in addition to any other penalty, order the convicted person to pay such compensation to the concessionaire or to any other person who has suffered consequential damage as to it appears just.

16. The Water (Production and Supply) Law (1996 Revision) is hereby repealed but, unless the contrary intention appears, the repeal does not -

Repeal and transitional  
(1996 Revision)

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of the repealed Law or anything duly done or suffered under that repealed Law;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Law;
- (d) affect any penalty, fine, forfeiture or punishment incurred in respect of any offence committed against the repealed Law; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, fine, forfeiture or punishment referred to in this section; and any such investigation, legal proceedings or remedy may be instituted,

continued, or enforced, and any such penalty, fine, forfeiture or punishment may be imposed as if this Law had not been passed.

Passed by the Legislative Assembly the 14<sup>th</sup> day of January, 2011.

Mary J. Lawrence, JP

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.