



SWAZILAND
GOVERNMENT GAZETTE
EXTRAORDINARY

VOL. XXX]

MBABANE, Monday June 15th., 1992

[No. 875

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SUPPLEMENT TO
THE
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PUBLISHED BY AUTHORITY

THE WATER SERVICES CORPORATION BILL, 1992

(Bill No. 13 of 1992)

(To be presented by the Minister for Housing and Township Development)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to provide for the establishment of a Water Services Corporation to take over the functions of the existing Water and Sewerage Board which will cease to operate on the coming into being of the Corporation and to provide for matters incidental to the establishment of the Corporation.

A.F.M. THWALA
Attorney-General

A BILL
entitled

An Act to provide for the establishment of a Water Services Corporation and for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

THE WATER SERVICES CORPORATION BILL, 1992

ARRANGEMENT OF SECTIONS

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SCHEDULE

PART I — PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Water Services Corporation Act, 1992 and shall come into force on a date to be appointed by the Minister by notice in the Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires—

“area for which the Corporation is responsible” means an area specified in the Schedule to this Act or any amendment thereof by the Minister under Section 14;

“abstracting” where it relates to water, means abstracting water by means of water-works;

“Corporation” means the Water Services Corporation established under Section 3;

“Corporation’s services” means:

- (a) the supply of potable or industrial water; or
- (b) the collection, treatment and disposal of waste water;

“Board” means the Board of Directors established in terms of Section 4;

“case of emergency” with reference to a right of entry conferred under this Act on or into land or premises, means a case in which the person requiring entry on or into the land or premises in question has reasonable cause to believe that circumstances exist which are likely to endanger life or property, and that immediate entry is necessary to verify the existence of those circumstances or to ascertain their cause or to effect a remedy;

“conduit” means a structure above or underground used to convey water, sewerage or waste water;

“consumer” means a person provided or entitled to be provided with water or sewerage services by the Corporation;

“financial year” means the period from the 1st April in one year to the 31st March in the following year and in respect of the first accounting period it shall be the period, whether shorter or longer than twelve months as the Corporation may determine;

“Minister” means the Minister responsible for Housing and Township Development;

“minor works” means works executed solely for the purpose of erecting or placing pipelines (not being works which relate to the placing or intended placing of a pipeline or part of a pipeline for a continuous length of one hundred metres or more in a public road) or works executed solely for the purpose of maintaining, repairing, or altering pipelines of plant;

“owner” means:

- (a) the person in whom from time to time is vested the legal title to any immovable property;

- (b) where the property has been leased for 10 years or more, the lessee of such property;
- (c) where the legal administration of such property is vested in a person as trustee, executor, curator, assignee or administrator, such person;
- (d) where the owner referred to in paragraph (a), (b) or (c) is absent, the agent or person receiving the rent for the property in question;

"occupier", "owner" or "person" in the case of a firm or partnership includes all or any of the members of such firm or partnership, and in the case of a company or any body of persons not being a firm or partnership, the secretary or manager of such company or body of persons, or where there is no secretary or manager, any member of the board of directors, managing board or committee of such company or body of persons;

"occupier" includes the person receiving or entitled to receive the rents payable by a lodger or tenant, whether on his own account or as agent for any other person entitled or interested therein;

"premises" means any building, room, tenement, hut, shed, tent or other structure, above or below the ground, together with the land upon which it is situated and any adjoining land used in connection therewith, and any land without buildings or tents and includes any vehicle or conveyance, and open air premises;

"plant" means any mobile or static mechanical device used by the Corporation in its operations and construction activities;

"plumbing" means all internal piping within premises used for the water supply and waste water conveyance;

"potable water" means water for human consumption which complies with any health regulations made under law;

"right of way" means the area within which a servitude or right of way has been obtained;

"road" means any road, whether public or private, together with the kerbs, storm-water drains and supporting banks thereof, and any street, square, court, alley, lane, bridge, footway, trace, track, path, passage or highway, whether a thoroughfare or not;

"roadworks" means the reconstruction, widening, diversion or alteration of the level or any road or part thereof or any alteration in the relative widths or the carriageways or footways thereof;

"servitude" means any of the powers exercised by the Corporation under Section 24 of this Act in respect of land belonging to an owner or under the control of any local authority;

"sewage" means domestic waste water;

"sewer" means a conduit for the purpose of transporting waste water;

"treatment plant" means any man-made facilities for the purpose of improving water quality;

"waterworks" means—

- (a) a canal, channel, well, reservoir, protecting wall, embankment, weir, dam, borehole, pumping installation, pipeline, sluice gate, filter, sedimentation tank, road, telephone line or other work constructed, erected or used for or in connection with the impounding, storage, passage, drainage, control or abstraction of water, or the development of water power, including the generation, transmission and supply of electricity, or the filtration or purification of water, or the protection of public streams against erosion or siltation, or flood control, or the protection of any water work or irrigated land, or the use of water for any purpose, or the conservation of rain water;
- (b) land occupied for or in connection with the impounding, storage, passage, drainage, control, abstraction, filtration, purification, development of power (including generation of electricity), or any use of water, and includes any area occupied or required or held for the purpose of being irrigated or for flood control purposes;

"wire" means any wire above or below the ground used for electricity or telephone.

PART II: ESTABLISHMENT AND MANAGEMENT OF THE CORPORATION

Establishment of the Corporation.

3. There is hereby established a body corporate to be known as the Water Services Corporation with perpetual succession and a common seal, and which shall have power to sue and be sued in its corporate name and to acquire, hold and dispose of movable and immovable property for the purposes of the Corporation.

Board of Directors of the Corporation.

4. (1) There shall be a Board of Directors of the Corporation (referred to in this Act as "the Board") which shall consist of the following—

- (a) a Chairman appointed by the Minister;
- (b) the Managing Director;
- (c) the Principal Secretary of the Ministry responsible for Housing and Township Development;
- (d) the Principal Secretary of the Ministry responsible for finance; and
- (e) not more than five persons (not being public officers or employees of the Corporation) appointed by the Minister by virtue of their knowledge of and experience in water-related services, commerce, industry, agriculture or administration generally.

(2) The Board shall be responsible for the formulation of policy and general administration of the Corporation.

Terms of office of Directors.

5. The chairman and the directors appointed under subsection (1)(e) of section 4 shall, subject to the provisions of this Act hold office for such period not exceeding three years and on such terms, including remuneration, fees and allowances, as may be determined in the instruments of their appointment and shall be eligible for re-appointment.

Disqualification for membership of the Board.

6. A person shall be disqualified from being appointed a member of the Board if—
- (a) he is a paid employee of the Corporation, other than the Managing Director;
 - (b) he is an unrehabilitated insolvent; or
 - (c) he has within five years before his appointment been convicted of any offence and has been sentenced to imprisonment for a period of not less than three months without the option of a fine.

Termination of appointments of Directors.

7. The Minister may summarily terminate the appointment of the Chairman or any other Director for misconduct, inefficiency or negligence in the carrying out, or the failure to carry out, his duties.

Vacation of office by members.

8. (1) A Director of the Board may resign his office at any time by giving notice in writing to the Minister.
- (2) The office of a Director shall become vacant upon the happening of any of the following events, namely, if he—
- (a) becomes insolvent under any law relating to insolvency or bankruptcy; or
 - (b) is convicted in Swaziland of any offence and has passed on him a sentence of imprisonment for a period of not less than three months without the option of a fine;
 - (c) has, for a period of six consecutive months, been absent from meetings of the Board, otherwise than by reason of illness or some other cause approved during that period by the Board; or
 - (d) is incapacitated by prolonged physical or mental illness.

Appointments to fill casual vacancies.

9. Where, for any reason whatsoever, the place of a Director becomes vacant before the end of his term of office the vacancy shall, if the unexpired portion of the term of office of the vacating Director is six months or more, be filled by the appointment of a new Director who shall hold office for so long only as the former Director would have held office.

Meetings and procedures of the Corporation.

10. (1) The Board shall meet at least once every three months for the despatch of the business of the Board.

(2) A quorum at a meeting of the Board shall be three and every question before any such meeting shall be decided by a majority of members present and voting subject to the provisions relating to the casting vote of the chairman or acting chairman.

(3) In the absence of the chairman, but subject to there being a quorum, the members present shall nominate one of their number as acting chairman to preside at such meeting.

(4) The chairman or in his absence the acting chairman shall preside at meetings of the Board and shall have a casting as well as a deliberative vote.

(5) Subject to the provisions of this section, the Board shall regulate its own procedures.

Disclosure of interest.

11. (1) Any Director of the Board who is directly or indirectly financially interested in any contract or arrangement proposed to be entered into by or on behalf of the Corporation with any other person, shall forthwith disclose such interest to the Board, and shall not take any part in discussions of the Board relating to such proposed contract or arrangement or vote in respect thereof.

(2) Any person contravening subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand Emalangeni or imprisonment not exceeding one year, and in addition the Minister may without any notice revoke his appointment as a Director of the Board.

Managing Director, Director of Finance and Auditor.

12. (1) There shall be a Managing Director of the Corporation who shall be nominated by the Board and appointed by the Minister in accordance with section 8 of the Public Enterprises (Control and Monitoring) Act, 1989 (in this Act referred to as the "Public Enterprises Act") and whose terms and conditions of service shall be determined by the Minister in his instrument of appointment or otherwise in writing from time to time.

(2) The Managing Director shall be the chief executive of the Corporation and shall be responsible for the conduct of the Corporation's business.

(3) There shall be a Director of Finance of the Corporation who shall be appointed by the Board in accordance with section 8(2) of the Public Enterprises Act, and whose terms and conditions of service shall be determined by the Board in consultation with the Minister.

(4) There shall be an Auditor of the Corporation who shall be nominated by the Board and appointed by the Minister in accordance with section 9 of the Public Enterprises Act.

Other Staff.

13. (1) Subject to the provisions of section 42, the Corporation shall employ such officers and other persons as are reasonably necessary for the proper management and operation of the Corporation's undertakings, and on such terms and conditions as the Corporation, on the recommendation of the Managing Director and with the approval of the Minister, may determine.

(2) Apart from the position of the Managing Director, the Director of Finance, the Auditor or such other senior positions as may be designated from time to time by the Board, the appointment and dismissal of all other employees shall, subject to regulations made under section 41(b), be made by the Managing Director or such senior officer as he may delegate to perform this function.

(3) Any major adjustments to the level or structure of employees' salaries and wages or other terms and conditions of service of its employees the Corporation shall comply with the provisions of the Public Enterprises Act.

PART III: OBJECTS AND FUNCTIONS OF THE CORPORATION

Objects of the Corporation.

14. (1) The objects of the Corporation shall be to abstract, store, transport, purify and supply water and collect, convey, treat and dispose sewage in the areas specified in the Schedule to this Act.

(2) The Minister may, at the request of the Corporation, by notice in the Gazette at any time amend the Schedule.

(3) The Corporation may undertake any assignment for the supply of water to or the collection and disposal of sewage from persons residing or carrying on business outside the areas specified in the Schedule or any amendment thereof, and any such assignment shall be at the cost of the recipient, including an element representing the overheads and handling costs incurred by the Corporation in providing the service.

(4) Without derogating from the generality of subsection (1) the Corporation shall—

- (a) secure, so far as practicable, the development, extension, improvement and reduction in the cost of its services;
- (b) make such provision as appears to it to be appropriate either by itself or in consultation with any other person, for advancing the skills of its employees by education, training or otherwise;
- (c) conduct, either by itself or jointly with any other person, research, experiments or trials with the aim of improving any of those aspects of water or sewage mentioned in subsection (1);
- (d) advise the Minister on all matters relating to policy in regard to the objects of the Corporation stated in subsection (1).

Transfer of functions of Water and Sewerage Board.

15. The functions which immediately before the commencement of this Act were exercisable by the Water and Sewerage Board under any enactment or instrument shall be exercisable by the Corporation and accordingly in any enactment or instrument any reference to the Water and Sewerage Board shall be construed as a reference to the Corporation.

Powers and functions with regard to water supply.

16. (1) The Corporation shall unless prevented by drought, other extraordinary event or unavoidable accident provide to the public, in accordance with the provisions of this Act, a supply of potable water for domestic purposes and a potable or otherwise satisfactory water supply for industrial or commercial purposes on areas for which the Corporation is responsible.

(2) Without prejudice to subsection (1) the Corporation shall, in particular, in those areas for which it is responsible—

- (a) prepare schemes for the development of water resources and for the supply of water and construct, maintain and operate such schemes;
- (b) keep under constant review the quality, reliability and availability of water supplies and advise the Minister thereon;
- (c) control and regulate the production, treatment, storage, transmission, distribution and use of water for public purposes;
- (d) design, construct, acquire, operate and maintain water works for the purpose of supplying water for public purposes;
- (e) inspect and advise on the management, collection, production, transmission, treatment, storage, supply and distribution of water.

(3) No person shall abstract water by means of borehole in any area for which the Corporation is responsible unless that person has made an application to the Corporation in the prescribed form for a permit.

(4) The user of any borehole in existence before the commencement of this Act in any area for which the Corporation is responsible shall, not later than 3 months after the commencement of this Act, make application to the Corporation in the prescribed form for a permit to continue the use of such borehole.

(5) The Corporation may grant the permit subject to such conditions as it deems fit.

Security for payment for Services.

17. (1) The Corporation may, either before or after it has supplied its services to any premises, by notice in writing require the consumer, if he has not already done so, to give it, within seven days after the date of the service of the notice, sufficient security by cash deposit or otherwise, for payment by the consumer of all moneys which may become due to the Corporation in respect of the supply.

(2) The provisions of subsection (1) shall apply where in the opinion of the Corporation any security already given has become invalid or insufficient.

Discontinuance of supply of Services.

18. (1) The Corporation may discontinue its services to a consumer if the consumer—

- (a) fails within fourteen days of its becoming due to pay any sum, not being the subject of a *bona fide* dispute, due from the consumer for services supplied by the Corporation under this Act:

Provided that if such consumer has given to the Corporation a deposit as security for supply of its services the Corporation shall not discontinue the supply unless the sum due to it for the supply exceeds the sum deposited and payment of the sum due has been demanded;

- (b) fails to pay any sum, not being the subject of a *bona fide* dispute, due by him to the Corporation under this Act otherwise than for services supplied to that consumer;
- (c) fails to give any deposit or other security which that consumer is required to give under this Act;
- (d) without notifying the Corporation, makes any alteration or addition to the consumer's internal plumbing system which has the effect of interfering with the Corporation's meters or enables the consumer unlawfully to abstract water from the Corporation's supply;
- (e) fails to give reasonable facilities for meter reading;
- (f) fails to give the Corporation or an inspector of machinery reasonable facilities to exercise the powers relating to inspection and testing conferred under this Act;
- (g) interferes or attempts to interfere with the Corporation's services, apparatus or seals;
- (h) uses a meter supplied to him by the Corporation so as to interfere with the efficient use of services supplied to any other person;
- (i) fraudulently abstracts, wastes or diverts or causes to be abstracted, wasted or diverted, or consumes or uses or causes to be consumed or used water or other services supplied by the Corporation;
- (j) in the case of water supplied by the Corporation, the amount of which is not ascertained by meter, uses the water in a way different from, or in an amount greater than, that for which the consumer has contracted to pay;

- (k) in the case of water supplied to the consumer for any specified purpose, use or application, uses such water without the Corporation's consent for another purpose, use or application in respect of which a higher price may be charged by the Corporation.

(2) The Corporation shall not be liable for any loss, damage or cost arising out of the provisions of subsection (1) in respect of the discontinuance or interruption in the supply of its services.

(3) If the Corporation is by virtue of this section authorised to discontinue the supply of its services it may disconnect any conduit through which the supply is provided and may refuse to reconnect the supply until—

- (a) the matter complained of has been rectified to its satisfaction or the sums due to it have been paid, as the case may be; and
- (b) there have been paid to it—
 - (i) any expenses incurred by it in cutting off the supply;
 - (ii) any expenses reasonably likely to be incurred by it in reconnecting the supply; and
 - (iii) any prescribed fee.

Interruption of supply.

19. (1) The Corporation may interrupt the supply of its services for such periods as may be necessary for carrying out inspections, tests, repairs, alterations, reconstructions or the making of new connections provided that, except in cases of emergency, the Corporation shall give twenty-four hours' notice by advertisement in a local newspaper or otherwise to all consumers whose supply it intends to interrupt and who may reasonably be expected to require a supply during the period of interruption.

(2) The Corporation shall not be liable for any loss, damage or costs arising out of the interruption of the supply of its services in terms of subsection (1).

Powers and functions with regard to sewerage.

20. (1) The Corporation shall, unless prevented by drought, other extraordinary event or unavoidable accident provide in accordance with the provisions of this Act, such public sewers as may be necessary in those areas for which it is responsible and also in such areas as may be designated by the Minister in consultation with the Corporation.

(2) In discharging its functions under this section the Corporation shall comply with the Public Health Act No. 5 of 1969 and any regulations made thereunder.

(3) Without prejudice to subsection (1) the Corporation may, in particular—

- (a) prepare schemes for sewerage and sewage disposal services and construct, maintain and operate such schemes;
- (b) design, construct, acquire, operate and maintain sewage works for the purpose of receiving, treating and disposing of sewage;
- (c) control and regulate the disposal of sewage, and monitor the quality of sewage to be disposed, through sewage plants which are not part of the Corporation's systems:

Provided that sewage from such sewage plants shall be discharged through the Corporation's treatment ponds;

- (b) inspect and advise on the installation, maintenance and management of such sewage plants as are mentioned in paragraph (c);
- (e) adopt or take over the operation of any such plant as is mentioned in paragraph (c) on such terms as it may agree with the owner thereof.

(4) The Corporation's power (or in areas designated by the Ministry, its duty) to provide sewerage services under subsections (1) and (3) shall be subject to the provisions of such regulations as may be prescribed under section 41, and until such regulations are prescribed the provisions of the Urban Area Drainage Regulations 1961 shall apply with such modifications, adaptations, qualifications and exceptions as may be necessary to give effect to this Act.

PART IV: GENERAL POWERS OF THE CORPORATION AS TO WORKS

Declaration of water control and catchment areas.

21. For the discharge of its functions under sections 16 and 20 the Minister may on the advice of the Corporation by legal notice published in the Gazette declare such water controlled area or catchment area as the Minister may deem necessary.

Functions of existing authorities to cease.

22. Any person or authority which before the commencement of this Act exercised any of the functions conferred on the Corporation by this Act shall on such commencement cease to exercise any such function.

Entry on premises.

23. (1) Any duly authorised officer or agent of the Corporation may at all reasonable times enter onto any premises to which the Corporation has supplied its services—

- (a) for the purpose of ascertaining the quantity of water consumed or supplied;
- (b) in order to install, inspect, maintain, test or repair meters, plant or fittings;
- (c) (if the supply of water is no longer required or if the Corporation is authorised under this Act to discontinue the supply) for the purpose of removing any meters, plant or fittings belonging to the Corporation;
- (d) in order to monitor the quality of sewage for disposal.

(2) If the Corporation satisfies the Minister, or a Magistrate by affidavit or oral evidence on oath, that it is seeking to exercise a right of entry to any premises and that—

- (a) the occupier of the premises has refused to consent to the entry after not less than twenty-four hours notice thereof has been given to him; or
 - (b) the premises are unoccupied; or
 - (c) an application for admission to the premises would defeat the object of the entry,
- the Minister, or the Magistrate by warrant under his hand, may authorise the Corporation to enter those premises.

(3) An authority granted under this section shall continue in force until the purpose for which the entry was authorised has been effected.

(4) Any person who in the exercise of a right of entry conferred by this Act enters any premises which are unoccupied, or any premises the occupier of which is temporarily absent, shall leave the premises as effectually secured against trespassers as he found them.

(5) Any person who obstructs the lawful exercise of a right of entry conferred by this Act shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand Emalangeni or imprisonment not exceeding two years.

(6) Notwithstanding subsections (1) to (5) the officers or agents of the Corporation may, in case of emergency, enter any premises without giving notice to any person and there execute such emergency works as may be necessary in the circumstances.

Servitudes (placing of conduits, plant on land of others etc).

24. (1) Subject to this Act, the Corporation may—

- (a) place any conduit below the ground across any land upon which no buildings have been constructed;
- (b) for the purpose of supplying its services to the occupier of premises, place a conduit or meter in, through or across any stair, passage or court providing a common means of access to the premises;
- (c) use any land, building, wall or bridge for supporting any conduit;
- (d) place any plant on any land upon which no buildings have been constructed.

(2) Before exercising any of the powers referred to in subsection (1) the Corporation shall serve notice in writing of its intention to do so on the owner or occupier or controlling authority of the land, building, road, wall or bridge in respect of which the power is to be exercised.

(3) The Corporation may in the notice referred to in subsection (2) prohibit the construction of any building or structure or the doing of any other act which in its opinion might interfere in any way with the exercise of any power by the Corporation referred to in such notice, and any such prohibition shall remain in force unless the Regional the Minister otherwise directs in terms of subsection (6).

(4) If any person fails to comply with any prohibition imposed on him under subsection (3) the Corporation may by its duly authorised officers or agents enter upon the land and remove or demolish any such building or structure or take any such other steps as it deems necessary for the exercise of its powers.

(5) If the Corporation serves a notice on any person under subsection (2) it shall cause a plan to be prepared sufficiently indicating the manner in and the extent to which the power to which the notice relates is to be exercised and any plan so prepared shall, at a place to be specified in the notice, be open to inspection at all reasonable times by or on behalf of any person on whom the notice has been served.

(6) If a person served with a notice under subsection (2) fails to give his consent to the exercise of the power to which the notice relates within fourteen days of the service of the notice upon him, or attaches to his consent any terms or conditions to which the Corporation objects the Minister may give his consent to the exercise of the power, either unconditionally or subject to such terms and conditions (not being pecuniary terms or conditions as to compensation except insofar as these may be authorised under this Act), as he thinks fit, and the Corporation may thereupon exercise the power accordingly.

(7) If the Corporation, acting under this section places any conduit or plant in, over, under, along or across any road, railway, watercourse, dam, or airfield, it shall place such plant so as not to hinder, obstruct or interfere with the passage along such road, railway or watercourse or the use of such dam or airfield.

(8) The Minister may by legal notice published in the Gazette declare any building or class of buildings not to be buildings within the meaning of this section.

Power to enter on land to survey, etc.

25. (1) Any duly authorised officer or agent of the Corporation may, for the purposes of the Corporation—

- (a) enter upon any land or premises and survey it or any portion of it;
- (b) cut down, burn or otherwise clear away any trees, shrubs or grass which interferes or is likely to interfere with the construction, maintenance, alteration or removal of any existing or proposed works of the Corporation.

(2) The power to enter upon any land or premises conferred under subsection (1) shall include power to pass over or through land or premises where it is necessary to do so in order to reach some other land or premises on or in respect of which it is intended to exercise any power conferred upon the Corporation by this Act.

(3) The powers conferred on the Corporation under this section, if exercised for the purpose of carrying out any survey, shall include the power to dig or bore into the subsoil.

(4) In the exercise of the powers conferred under this section the Corporation shall—

- (a) except in a case of emergency or for the purpose of inspecting, maintaining, or preventing interference with the safe and proper operation of or repairing any of the Corporations' installations, serve notice in writing of its intention on the owner or occupier of the premises in respect of which the power is to be exercised;
- (b) where the person so served fails to give his consent to the power to which the notice relates or attaches to his consent any terms or conditions to which the Corporation objects, the Minister may give his consent to the exercise of the power, subject to such terms and conditions (not being pecuniary terms or conditions as to compensation except insofar as may be authorised by this Act) as he thinks fit, and the Corporation may thereupon exercise the power accordingly.

(5) In the exercise of the powers conferred under this subsection and subsections (1) and (2) the Corporation shall do as little damage as may be practicable and shall make full compensation to any person affected for all damage sustained by that person in consequence of the exercise of such power:

Provided that no compensation shall be payable by the Corporation to any person respect of any trees, shrubs, grass or any other kind of vegetation cut down, burnt or cleared away by the Corporation under this Act if it or any of it was not in existence at the time of placing of the conduit on account of which the cutting, burning or clearing away was carried out.

(6) The amount of such compensation shall, in the event of disagreement, be determined by arbitration in accordance with the Arbitration Act No. 24 of 1904.

Moving of conduits, etc.

26. (1) The Minister may make an order requiring the Corporation to alter the position of any of its conduits which have been placed on, or affixed to any land, building, wall or bridge.

(2) An order under subsection (1) may—

- (a) be made either of the Minister's own motion or on the application of the owner or occupier of the land, building, wall or bridge to which it relates;
- (b) be made subject to such terms and conditions (not being pecuniary terms or conditions as to compensation) as the Minister thinks fit; and
- (c) (if it is not made of the Minister's own motion) contain provisions requiring the person on whose application it is made to refund to the Corporation the whole or a specified part of the cost of carrying out the order.

Power to break up roads, etc.

27. (1) Subject to this Act the Corporation may, for the purpose of constructing, placing, maintaining, repairing, altering or removing conduits or apparatus, open or break up the pavement of any road or bridge or open or break up any sewer, drain or tunnel thereunder.

(2) Before carrying out any works (not being emergency or minor works) which necessitate the exercise of any of the powers referred to in subsection (1) the Corporation shall—

- (a) serve notice in writing upon the person or authority having management or control of any road, bridge, drain or tunnel likely to be affected by the exercise of any power (hereinafter referred to in this section and in sections 28 and 29 as "the person concerned") of its intention to carry out such works, together with a plan thereof; and
- (b) furnish the person concerned with such other information in connection with the proposed works as he may reasonably require.

(3) If the person concerned upon whom a plan has been served under subsection (2) disapproves of the plan, or fails to reach a decision on the plan within sixty days of receiving it, or approves the plan subject to modifications or conditions to which the Corporation objects, the Minister may, on the application of the Corporation, approve the plan subject to such conditions (not being pecuniary terms or conditions as to compensation) or modifications as he thinks fit.

(4) The Corporation shall not begin any works to which this section applies (other than emergency or minor works) unless—

- (a) (in cases where it is required) it has furnished the local authority with a plan of the works; the plan has been approved under this section by the local authority or the Minister, as the case may be, and the Corporation has, after such approval, given the local authority not less than seven days' notice of its intention to begin the works; and
- (b) in the case of minor works, the Corporation has given the person concerned not less than seven days' notice of its intention to begin the works.

(5) If it carries out works to which this section applies the Corporation shall—

- (a) carry out such works (not being emergency or minor works) in accordance with the plan approved under this section by the person concerned;
- (b) carry out and complete the works with all such despatch as is reasonably practicable;
- (c) except in the case of emergency or minor works, afford the person concerned reasonable facilities for supervising the opening and breaking up and the subsequent repair of roads, bridges, drains and tunnels affected;

- (d) ensure at its own expense that—
 - (i) where the surface of a road or bridge is opened or broken up it is protected and lighted in such manner as to give adequate warning to the public;
 - (ii) no greater width or length of a road or bridge than is reasonably necessary is opened or broken up at any time;
 - (ii) there is no greater obstruction of or interference with traffic on any road or bridge than is reasonably necessary;
- (e) repair any road or bridge broken or opened up in connection with the works, and keep them in good repair for three months after repair and for as long as the surface broken up continues to subside subject to a limit of six months; and
- (f) repair any drain or tunnel opened or broken up in connection with the works.
- (6) Where works to which this section applies are emergency works, the Corporation—
 - (a) may carry out the works without submitting a plan thereof to the person concerned;
 - (b) shall as soon as may be after completing the works furnish the person concerned with a plan of such works.
- (7) If the person concerned—
 - (a) objects to any works carried out by the Corporation in contravention of subsections (2) to (4) or which are emergency works; or
 - (b) complains that the Corporation has failed to fulfil any obligations imposed upon it by subsection (5);

that person may, after giving the Corporation fourteen days' notice in writing of the objection or complaint, and an opportunity to enter into an agreement with him for meeting such objection or complaint, refer the matter to the Minister who may approve the works and dismiss the objection or complaint or give such other direction (including directions for the work to be altered or for repairs to be carried out by the Corporation at its own expense or by the person concerned at the Corporation's expense) as he thinks fit.

Alteration of pipes etc.

28. (1) The Corporation may by notice in writing call upon any person concerned to alter, either permanently or temporarily, at the expense of the Corporation, the position of any pipe, wire or drain controlled by that person which is likely to interfere with the exercise of the Corporation's powers under this Act, and that person may in like manner call upon the Corporation to alter, either permanently or temporarily, at the expense of the person concerned, the position of any conduit or other apparatus of the Corporation which interferes with the exercise of that person's lawful powers or rights.

(2) Where the person concerned upon whom notice under subsection (1) has been served by the Corporation does not within a reasonable time carry out the alteration called for under the notice the Minister may, on the application of the Corporation and subject to such terms and conditions (not being pecuniary terms or conditions as to compensation) as he thinks fit, authorise the Corporation to make the alteration at the expense of the person concerned.

Works which affect other lawful works.

29. (1) If in the exercise of its powers the Corporation's works are likely to interfere with any lawfully placed drain, pipe, wire, line or apparatus belonging to or controlled by the person concerned, or if in the exercise of any lawful power in relation to the laying of a drain, pipe, wire, line or apparatus the works of any person concerned are likely to interfere with any conduit or apparatus belonging to the Corporation, the person carrying out the works (hereinafter in this section referred to as "the operator") shall—

- (a) not undertake any works until he has given to the person concerned controlling the drain, pipe, wire, line or apparatus likely to be affected by such works seven days' notice of his intention to carry out the works, including a plan showing the nature of the works and the place where he intends to carry them out;
- (b) during the carrying out of any works, give to the person concerned reasonable facilities for supervising the execution of the works;
- (c) where any works include tunnelling or boring under any sewer, drain, pipe, wire, line or apparatus, ensure that there is proper temporary support therefor during the carrying out of the works and that a permanent foundation is provided;
- (d) where the operator is the Corporation and the works include the laying of a conduit crossing over or near any drain, pipe or wire, ensure that the conduit is so laid as not to be capable of touching the drain, pipe or wire and is effectively insulated therefrom; and
- (e) where the operator is a person other than the Corporation and the works include the laying of a drain, pipe or wire crossing over or near to any conduit, ensure that the drain, pipe or wire is so laid as not to be capable of touching the conduit and is effectively insulated therefrom.

(2) Subsections (1)(a) and (b) shall not apply in the case of minor works.

(3) In the case of emergency works the operator shall be deemed to have complied with the requirements of subsection (1) if he—

- (a) takes all such steps towards satisfying the requirements as are reasonably practicable;
- (b) supplies the person concerned as soon as may be information reasonably sufficient to indicate the nature of the works which he carried out.

(4) If the person concerned complains that the operator has failed or is failing to fulfil any obligation imposed upon him under this section he may, after giving the operator fourteen days' notice in writing of the complaint and an opportunity to enter into an agreement with him for meeting it, refer the matter to the Minister who may uphold or dismiss the complaint or give such directions thereon (including directions for works to be carried out or for works already carried out to be altered either by the operator at his own expense or by the person concerned at the operator's expense) as he thinks fit.

Approval and supervision of works by the Corporation.

30. (1) Where any person gives notice to the Corporation that works in relation to water supply or sewerage which he proposes to carry out are such as may be appropriate for adoption on completion by the Corporation, or which are likely significantly to affect any of the Corporation's systems or works, the Corporation may specify the design of such works and the manner in which they shall be carried out, and may supervise the carrying out of such works to its satisfaction.

(2) Where a notice referred to in subsection (1) has not been given, the Corporation may refuse to adopt or otherwise accept responsibility for any such works carried out unless they have been altered or replaced to its satisfaction.

(3) All reasonable costs incurred by the Corporation in considering proposals or supervising works under this section shall, before adoption or acceptance by the Corporation, be reimbursed by the person carrying out the works.

PART V : FINANCIAL PROVISIONS

Principles of Financial Operations.

31. (1) The Corporation shall conduct its affairs on sound commercial lines and, in particular, so carry out its functions under this Act and so prescribe the charges payable in respect of the supply by the Corporation of water and sewerage facilities as to ensure that taking one year with another its revenues are sufficient to produce on the fair value of its assets a reasonable return measured by taking its net operating income as a percentage of the fair value of its fixed assets in operation plus an appropriate allowance for its working capital.

(2) For the purposes of this section "net operating income" means the amount of income remaining after subtracting from total operating revenues all charges which in accordance with generally accepted accounting principles are chargeable to revenue account, including appropriate provisions for depreciation of assets, adequate maintenance and taxes, but before deducting interest and other charges on borrowing or taking into account non-operating income and expenditure.

(3) In determining what constitutes a reasonable return, all pertinent economic and financial considerations shall be taken into account which shall include but not be limited to the need for net operating income in an amount sufficient to—

- (a) meet interest payments on borrowings;
- (b) provide for repayments to be made each year in respect of loans incurred by the Corporation to the extent to which such repayments exceed the year's provision for depreciation charged to revenue account;
- (c) provide a reasonable proportion of the funds needed for expanding the Corporation's activities and improving its services;
- (d) provide reserves for replacement, expansion or other purposes if and to the extent to which the Corporation deems it necessary to establish such reserves.

Tariffs and Contracts.

32. (1) Subject to the provisions of this Act and the Public Enterprises Act, the Corporation may impose such conditions as it thinks fit in contracts or agreements for the supply of water and sewerage facilities.

(2) The prices to be charged by the Corporation for its services shall be so fixed as to enable it to comply with section 31 and such prices—

- (a) shall be in accordance with such tariffs as may from time to time be fixed by the Corporation;
- (b) shall be, if the current tariffs are inappropriate because of special circumstances, as may be agreed between the Corporation and the consumer to whom the services are or to be supplied; or

(c) may include a rent or other charge in respect of any water meter and fittings provided by the Corporation on the consumer's premises.

(3) Tariffs determined under subsection (2) shall be published in the Gazette and elsewhere in such manner as in the opinion of the Corporation will secure adequate publicity for them.

(4) The Corporation, in determining tariffs and entering into agreements for the supply of its services, shall not show undue preference as between consumers similarly situated as regards place and time of supply, quality and quantity supplied and the purpose for which the supply is taken.

(5) The Corporation, in exercising its powers under subsection (2), shall not determine such tariffs or prices as are likely to result in the creation of reserves of its functions or obligations unreasonably in excess of those required for the proper discharge of its functions or obligations.

(6) The Corporation shall not make any major adjustment to the level or structure of tariffs, prices, rates or other fees or charges without either the approval in writing of the Minister or receipt of his directive under section 10 of the Public Enterprises Act.

(7) For the purposes of subsection (2) of section 10 of the Public Enterprises Act "major adjustment" in relation to tariffs determined by the Corporation shall be construed as any increase which exceeds the rate of inflation current in Swaziland at the time the tariff is determined minus one per cent.

Borrowing powers.

33. (1) The Corporation may—

- (a) borrow temporarily, by way of bank overdraft or otherwise, such sums as it may require for meeting its obligations or exercising or performing its functions; and
- (b) from time to time, for such purposes, in such amounts and on such conditions as the Minister may approve, raise money by way of loans.

(2) The repayment of moneys borrowed by the Corporation and the payment of interest thereon and all charges connected therewith shall be a liability of the Corporation and shall be charged on its property, assets and revenue.

Accounts, Audit and Annual Report.

34. (1) The Corporation shall keep proper accounts and related records and shall prepare in respect of each financial year a statement of accounts showing in detail the assets and liabilities (real and contingent) and income and expenditure of the Corporation, in a form which shall comply with the best commercial accounting standards applicable to water undertakings.

(2) The accounts of the Corporation in respect of each financial year shall within four months after the end thereof be audited by auditors appointed by the Minister under section 12(4) of this Act.

(3) The Corporation shall within four months after the end of each financial year prepare a report on its operations which, together with a copy of its audited annual accounts as well as any report by the auditors on its management and accounting practices, shall be submitted to—

- (a) the Minister;
- (b) the Minister responsible for Finance;
- (c) the Standing Committee referred to in the Public Enterprises Act;
- (d) the Public Enterprises Unit established under the Public Enterprises Act.

(4) The Corporation shall, in addition to taking the steps specified in subsection (3), comply with the other requirements specified in section 7 of the Public Enterprises Act.

(5) The Minister shall within six months after the end of each financial year cause to be laid before Parliament the Corporation's audited accounts for that year and shall take such other steps as are specified in section 7 of the Public Enterprises Act.

Funds and Investments.

35. (1) The Corporation shall establish a general fund into which all moneys received by it shall be paid in the first instance and out of which all payments by the Corporation shall be made, except payments from a reserve fund established under this section.

(2) The Corporation shall establish, maintain and make contributions to such other funds as may be necessary for the proper and efficient discharge of its functions and obligations, and in particular shall establish and maintain, and out of its profits make contributions to, a reserve fund for the purpose of financing the expansion of its activities.

(3) The Corporation may, with the approval of the Minister establish, maintain and make contributions to, any other fund which is in its opinion desirable for the proper and efficient discharge of its functions.

(4) The Corporation may from time to time invest any sums standing to its credit in securities and property approved either generally or specifically by the Minister, and may from time to time, with like approval, sell or vary any or all such securities or property.

PART VI : MISCELLANEOUS

Offences and Penalties.

36. Any person who—

- (a) unlawfully interferes with any of the Corporation's property used in connection with the supply of its services or does or causes to be done anything which is calculated to interfere with or damage the supply of such services shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand Emalangeni or imprisonment not exceeding two years or both;
- (b) without the authority of the Corporation, unlawfully breaks or detaches any seal or locking device shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand Emalangeni or imprisonment not exceeding twelve months or both;
- (c) contravenes section 16(3) or (4) shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred Emalangeni or to imprisonment not exceeding three months or to both.

Corporation's conduits not subject to execution etc.

37. (1) Notwithstanding any other law, any plan or fitting belonging to the Corporation which is placed in or upon any premises not in the possession of the Corporation for the purpose of supplying its services under this Act shall—

- (a) not be subject to attachment at the suit of any person or be subject to a landlord's hypothec for the rent of the premises on which such plant or fitting may be, nor be subject to attachment or seizure by the trustee of an insolvent person in whose possession it may be;
- (b) shall at all times continue to be the property of, and removable by, the Corporation, whether or not such plant or fitting is fixed or fastened to any part of the premises in or upon which it is placed or to the soil under those premises.

(2) Nothing in this section shall affect the amount of the assessment for rating of any premises on which any plant or fittings belonging to the Corporation are fixed.

(3) The fact that a consumer has paid to the Corporation the cost, or a sum representing the cost, of providing any connection, or has otherwise paid any sum to the Corporation to meet the capital cost or part of the capital cost of providing the consumer with a supply shall not confer upon the consumer any right of property or ownership in any plant or fittings of the Corporation.

Protection of certain persons from personal liability.

38. Nothing done by any member, officer or agent of the Corporation shall if done in good faith for the purpose of carrying out any of the provisions of this Act, render any of them liable to any civil claim in respect thereof.

Exemptions.

39. The Corporation is hereby exempted from—

- (a) stamp duty in respect of any document executed by or on behalf of the Corporation;
- (b) payment of transfer duty in respect of its acquisition of any immovable property;
- (c) the provisions of the Land Speculation Control Act, 1972.

Fire Hydrants.

40. (1) The Corporation shall comply with any request from the Swaziland Fire Service to incorporate fire hydrants in their mains systems and to maintain them thereafter in good working condition.

(2) The cost of providing, installing and maintaining all such hydrants shall be reimbursed to the Corporation by or on behalf of the Swaziland Fire Service.

Regulations.

41. The Minister may on the advice of the Corporation by legal notice published in the Gazette make regulations to give effect to any of the provisions of this Act, and in particular in respect of any of the following matters—

- (a) terms and conditions of employees of the Corporation;
- (b) appointment, removal or dismissal of employees including discipline of employees of the Corporation;
- (c) remuneration, pensions, gratuities and other retiring benefits of employees of the Corporation;
- (d) supply of water to consumers including supply for temporary and standby purposes and use of booster stations;
- (e) installation and use of meters by consumers;

- (f) sewerage and sewage collection and disposal; and
- (g) fixing of tariffs, fees and other charges for water and sewerage services.

Transfer of staff of water and Sewerage Board.

42. There shall be transferred to the Corporation such employees of the Water and Sewerage Board as the Minister may determine in accordance with such procedure and conditions for selection and appointment of those employees as may be prescribed by the Minister in consultation with the Minister for Labour and Public Service.

Transfer of Assets and Liabilities.

43. On a date to be appointed by the Minister by notice in the Gazette (in this section referred to as the "appointed date") there shall be transferred to and vested in the Corporation by virtue of this section and without further assurance such assets, liabilities and obligations of the Water and Sewerage Board as the Minister may determine, and with effect from the appointed date the Corporation shall, in respect of those assets, liabilities and obligations so transferred or vested, have all the rights and be subject to all the liabilities and obligations which the Water and Sewerage Board has, or is subject to, immediately before the appointed date.

Revocation.

44. (1) The Administration of the Water and Sewerage Board Special Fund Regulations 1974 are hereby revoked.

(2) Notwithstanding such repeal, any regulations or orders made or issued under the regulations, or any unexpired licences issued thereunder, shall continue to be valid unless otherwise revoked under this Act.

SCHEDULE

(Under Section 14)

Areas in which the Corporation is empowered to supply services:

Croydon
Hlatikulu
Hluti
Kubuta
Kwaluseni
Lavumisa
Lobamba
Lomahasha
Lubuli
Malkerns
Mananga
Mankayane
Manzini
Matsapha

Mbabane
Ngwanya
Nhlangano
Nkoyoyo
Pigg's Peak
Siphofaneni
Siteki
Vuvulane