



SWAZILAND

GOVERNMENT GAZETTE

EXTRAORDINARY

VOL. XXX]

MBABANE, Wednesday, August 12th, 1992

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SUPPLEMENT TO
THE
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PART A - BILLS

16. The Swaziland Environment Authority Bill, 1992 S1

S1

THE SWAZILAND ENVIRONMENT AUTHORITY BILL, 1992

(Bill No. 16 of 1992)

(To be presented by the Minister for Natural Resources and Energy)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to establish an Authority which shall be responsible for the protection of the environment and to provide for incidental matters.

A.F.M. THWALA
Attorney General

A BILL entitled

An Act to establish the Swaziland Environment Authority
ENACTED by the King and the Parliament of Swaziland

ARRANGEMENT OF SECTIONS

Section.

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2. Interpretation.
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5. Functions and powers of the Authority.
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Short Title.

1. The Act may be cited as the Swaziland Environment Authority Act, 1991.

Interpretation.

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

“Authority” means the Swaziland Environment Authority established under section 4;

“Chairman” means the Chairman of the Authority appointed under section 7.

“Environment” means, without being limited to, the atmosphere, water in all its forms, land, soil and subsoil flora, fauna, energy sources, minerals, topographical formations with energy potential, geothermal resources, living resources, landscape resources and other elements and factors such as residues, garbage, waste and refuse, noise, living conditions in human settlements and man-made products;

“Director” means the Director appointed under section 11;

“Minister” means the Minister responsible for environment protection;

“pollution” means any alteration of the physical, chemical, or biological properties of the atmosphere, water, soil and subsoil by direct or indirect human action to such an extent that the results are harmful to human and animal life, safety or welfare and to the environment in general;

“Public Officer” means a public officer as defined in the Civil Service Board Order, 1973;

Application.

3. The provisions of this Act and the decisions of the Authority shall bind the Government and any other persons, bodies and institutions.

Establishment of the Authority.

4. There is hereby established the Swaziland Environment Authority which shall exercise the functions and powers conferred upon it by this Act.

Functions and powers of the Authority.

5. (1) The functions and powers of the Authority shall be to:
 - (a) establish standards and guidelines relating to the pollution of the air, water and land as well as those relating to noise and other forms of environmental pollution;
 - (b) assist the Minister in formulating policies relating to environmental matters;
 - (c) develop in cooperation with other Government authorities, as appropriate, economic measures to encourage environmentally sound and sustainable activities;
 - (d) co-ordinate the activities of all bodies concerned with environmental matters and to serve as the main channel of communication between these bodies and the Government;
 - (e) monitor trends in the state of the environment and institute measures for its protection and improvement for implementation by the appropriate designated authorities or bodies in the country, or, where necessary, by the Authority itself acting in collaboration with other bodies;
 - (f) undertake, conduct and promote investigations, studies, surveys, research, analysis, into environmental matters of immediate or long term relevance to Swaziland;

- (g) promote, in collaboration with other appropriate bodies and organizations, training and education programmes in the field of environment with a view to creating national awareness in all sectors and upgrading national capabilities and skills in these fields;
- (h) participate in National Development Planning to ensure that environmental considerations are included in the planning process and require that Ministries consider environmental impacts of all projects before these are approved;
- (i) serve as the official focal point for co-operating and liaising with national and international organizations in environmental matters;
- (j) without prejudice to the economic and social advance of Swaziland, to ensure the observance of proper safeguards in the planning and execution of all development projects, including those already in existence, that are likely to interfere with the quality of the environment;
- (k) advise the Minister and to make appropriate recommendations either upon request or on its own initiative on any environmental problems or trends of any importance;
- (l) establish guidelines for preparing Environmental Impact Assessments on all development projects;
- (m) review and approve from an environmental stand point projects with potential impact on the environment.
- (n) control all forms of environmental pollution including pollution caused by the discharge of toxic wastes into the air, water and land in the manufacture of toxic or hazardous chemicals;
- (o) institute measures for the co-ordination and enforcement of environmental protection legislation and of international conventions and for the prosecution of the offences in co-operation with relevant bodies and police forces;
- (p) perform such other functions as may be assigned to it by the Minister or are incidental or conducive to the exercise by the Authority of any or all of these functions.

(2) To enable the Authority to carry out its functions and exercise its powers under this section, the Authority shall review all projects with a view to determining their potential impact on the environment.

- (a) If upon the review of any project the Authority is satisfied:-
 - (i) that its potential impact on the environment is minimal it may approve the project;
 - (ii) that its potential impact on the environment is substantial it may require the person or body that intends to implement the project to submit to the Authority an environmental impact assessment in accordance with the guidelines established under Section 5 (1) (1).

(3) Subject to this Act, the Authority may delegate to another body or persons any of its functions under this section and may impose conditions with respect to the exercise of such delegated functions as it may think fit:

Provided that nothing in this subsection shall be construed so as to absolve the Authority from ultimate responsibility for any act done by any such body or person in pursuance of such delegation.

(4) (a) The Authority or any other body or person authorized by the Authority may:-

- (i) request in writing from any person or by summons require any person to attend at a time and place specified in the summons, to give any information which the Authority or any such member or staff of the Authority consider necessary for the purposes of giving effect to this Act;
 - (ii) enter and inspect any premises where the Authority has reason to believe the provisions of this Act are being contravened or are reasonably likely to be contravened;
 - (iii) subject to subsection (5), close any premises or stop any operation, works, or project that is in its or his opinion is causing or is reasonably likely to cause danger to the environment or the public.
- (b) In this subsection "premises" includes any land or building other than a building used exclusively as a dwelling house.

(5) The Authority shall not exercise its powers under subsection (4) (a) (iii) unless it has given notice to the person or body concerned to rectify or remove the cause of the danger or potential danger and that person or body has refused or failed to do so within the period specified in the notice.

Composition of the Authority.

6. (1) The Authority shall consist of:-

- (a) A Chairman appointed by the Minister under section 7;
- (b) seven members being the Principal Secretaries of the Ministries of Agriculture and Co-operatives, Works and Construction, Commerce and Industry, Economic Planning and Development, Natural Resources and Energy, Housing and Urban Development, Education and Health or their representatives who shall be senior officers;
- (c) four persons from different Non-Governmental organizations which demonstrate a balance of perspective relating to environment and development, who shall be appointed by the Minister from among persons nominated by such organizations, at the request of the Minister;
- (d) four persons who are citizens noted for their special knowledge of or interest in environmental matters, who shall be appointed by the Minister; and
- (e) the Director who shall be *ex-officio* member of the Authority and its secretary but without a right to vote.

(2) Subject to section 8, a member of the Authority referred to in section 6 (1) (c) and (d) above, shall hold office for a period of three years and shall be eligible for re-appointment on such terms and conditions as the Minister may determine.

Chairman of the Authority.

7. There shall be a Chairman of the Authority who shall be appointed by the Minister and shall:-

- (a) hold office for a period of 3 years upon such terms and conditions as the Minister may determine;
- (b) chair all meetings of the Authority and may himself or in consultation with the Director and the secretary of the Authority convene all its meetings at any reasonable time; and
- (c) work closely with the Director to ensure the smooth operation of the Authority.

Vacation of office by Authority Members.

8. A member of the Authority shall vacate his office if he:-

- (a) becomes insolvent under any law relating to the insolvency of persons in Swaziland;
- (b) becomes of unsound mind or is in any other way physically incapacitated;
- (c) gives in writing three months notice of his resignation;
- (d) is absent from three consecutive Authority meetings without leave of the Chairman;
- (e) is convicted of an offence and sentenced to a term of imprisonment of six months or more; or
- (f) being a member of the Authority who is a public officer he ceases to be a public officer or is for any reason suspended from his office in the public service for a period of three or more months or is transferred from the position which qualified him for appointment.

(2) In the event the office of a member becomes vacant under subsection (1) a replacement shall be appointed for the remainder of his term under section 6.

Meetings of the Authority.

9. (1) The Authority shall ordinarily meet for the dispatch of business at such time and place as the Authority may decide but shall meet at least once every three months.

(2) The Chairman of the Authority shall in addition to his powers under section 7 (c) and (d), at the written request of any three members of the Authority, within fourteen days of the receipt of the request, convene and preside over a meeting of the Authority.

(3) In the absence of the Chairman, but subject to the quorum, the members present may elect one of them to act as Chairman.

(4) The quorum for a meeting of the Authority shall be eight members who shall include three members who are public officers and three who are not.

(5) All decisions of the Authority shall be made by a majority of the votes of the members present and in the event of an equality of votes, the Chairman, or in his absence the acting Chairman, shall have a casting vote in addition to his deliberative vote.

(6) The Authority may co-opt any person to attend any meeting of the Authority but without a right to vote.

(7) The validity of any act or proceedings of the Authority shall not be affected by any vacancy or absence among its members or any defect in the appointment of a member thereof.

(8) Subject to this Act the Authority may regulate its own procedure.

Committees of the Authority.

10. The Authority may:-

- (a) appoint such committees consisting of such persons as it may determine, and upon such terms as it thinks fit, to advise it on the exercise of any of its functions and powers;
- (b) seek advice from any person or consult any public body, in the discharge of its functions and any such person or public body shall give such advice or render such assistance as the Authority may reasonably require.

Director of the Authority.

11. (1) There shall be a Director of the Authority who shall be a public officer appointed under the Civil Service Order, 1973.

(2) The Director shall:-

- (a) have such qualifications and experience as may be necessary for the proper execution of his functions under this Act;
- (b) ensure that the day to day operations of the Authority are carried out;
- (c) be responsible for the implementation of the decisions of the Authority;
- (d) assist the Chairman as necessary and with his approval help organize meetings of the Authority;
- (e) co-ordinate the activities of the committees appointed under section 10.
- (f) prepare and present such reports as the Authority may require;
- (g) prepare and issue the annual report of the Authority, and any other publications as the Authority may require;
- (h) promote co-operative arrangements between the Authority and national, international and non-governmental organizations;
- (i) promote public awareness on environmental matters;
- (j) perform such other functions as may be assigned to him.

(3) The Director shall be assisted in the discharge of his functions under this Act by -

- (a) such other public officers as may be necessary for the proper carrying out of his functions;
- (b) such experts or consultants as may be necessary for the carrying out of any of the Authority's functions.

Immunity from Civil Liabilities.

12. A member or staff of the Authority or any person authorised by the Authority to carry out any functions under this Act shall not be sued in law for any thing done, or omitted to be done, in the *bona fide* discharge of his duties under this Act.

Research and records.

13. The Authority shall, with a view to facilitating present or future research or planning, maintain and preserve such records relating to its functions and activities as it shall consider proper; and shall have the power to engage in research in respect of any matter relating to these functions and to publish any part and the results of any research in which it may engage.

Annual reports.

14. The Authority shall annually prepare and submit to the Government a report on the activities of the Authority during the preceding year.

Remuneration.

15. (1) There shall be payable to a member of the Authority, or a member of Committee of the Authority, such remuneration, fees and allowances as the Minister, may determine by notice in the Gazette.

(2) Any remuneration, fees or allowance which may become payable under this section shall be paid out of the consolidated fund of the Government.

Offences.

16. (1) Any person who:-

- (a) contravenes any standards or guidelines set by the Authority under section 5 (1) (a);
- (b) fails, without any reasonable excuse, the proof of which shall be on him, to provide any information requested from him or refuses or neglects to attend in obedience to a request or summons issued under section 5 (4) (a) (i);
- (c) knowingly provides false information in response to a request for information or summons under section 5 (4) (a) (i); or
- (d) obstructs the Authority or any member of its staff, body or person authorised by the Authority, in the inspection of any premises under section 5 (4) (a) (ii) or from performing any function or exercising any power under this Act;

shall be guilty of an offence and liable on conviction to a fine not exceeding E50,000 or to a term of imprisonment not exceeding 10 years or to both.

(2) Where any offence under this section is committed by a body of persons -

- (a) in the case of a body corporate other than a partnership, a member of the Board of Directors, that body or a person acting as such shall also be deemed to be guilty of that offence; and
- (b) in the case of a partnership, every partner shall be deemed to be guilty of that offence.

Provided that no such member or partner shall be deemed to be guilty of the offence, if he proves that such offence was committed without his knowledge and that he exercised due diligence to prevent the commission of the offence having regard to all the circumstances.

Appeals.

17. (1) Any person who is aggrieved by any notice, order or decision of the Authority taken in exercise of its powers and functions under this Act may, within 7 days of the notice, order or decision appeal in writing to the Minister whereupon the execution of the notice, order or decision shall be stayed.

(2) The Minister may confirm, vary or rescind the notice, order or decision or direct that the thing shall be proceeded with, varied or abandoned, as the case maybe, or make any order which the Authority is competent to make.

Regulations.

18. (1) The Minister may at the recommendation of the Authority make regulations for:-
- (a) the setting of standards and the provision of guidelines for the control of environmental pollution and the imposition of penalties for their infringement;
 - (b) the procedures for the introduction of Environmental Impact Assessments on development projects;
 - (c) measures required to facilitate the most appropriate enforcement procedures for the respect of the legal provisions tending to protect the environment. These may include, but are not limited to, requirements to restore or replace degraded areas where practicable, to mitigate damage to the environment or human health, and to reimburse the Government for costs incurred in responding to problems caused by the offending acts;
 - (d) prescribing the forms for requests and summons that may be required under this Act;
 - (e) promoting environmental awareness, education, research and training;
 - (f) prescribing the conditions and procedures for considering the environmental impacts of projects under section 5 (1) (h); and
 - (g) generally for the better carrying out of the objects of this Act.

Supremacy of the Act.

19. Where there is an inconsistency with any other law which affects the environment, this Act shall prevail.