

ACT 522

WATER RESOURCES COMMISSION ACT, 1996

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ACT 522

WATER RESOURCES COMMISSION ACT, 1996

AN ACT to establish a Water Resources Commission, to provide for its composition and functions on the regulation and management of the utilisation of water resources in Ghana and for related matters.

*Establishment and Functions of the Water Resources Commission***1. Establishment of Water Resources Commission**

- (1) There is established by this Act a Water Resources Commission.
- (2) The Commission is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Commission may for and in connection with the performance of its functions purchase, hold, manage or dispose of movable or immovable property and may enter into the contracts and transactions that are reasonably related to its functions.

2. Functions of the Commission

- (1) The Commission is responsible for the regulation and management of the utilisation of water resources, and for the co-ordination of any policy in relation to them.
- (2) Without prejudice to subsection (1) of this section, the Commission shall
 - (a) propose comprehensive plans for the utilisation, conservation, development and improvement of water resources;
 - (b) initiate, control and co-ordinate activities connected with the development and utilisation of water resources; (c) grant water rights;
 - (d) collect, collate, store and disseminate data or information on water resources in Ghana;

I. The Act was assented to on 30th December, 1996 and notified in the *Gazette* on 31st December, 1996.

- (e) require water user agencies to undertake scientific investigations, experiments or research into water resources in Ghana;
- if) monitor and evaluate programmes for the operation and maintenance of water resources;
- (g) advise the Government on any matter likely to have an adverse effect on the water resources of Ghana;
- (h) advise pollution control agencies in Ghana on matters concerning the management and control of pollution of water resources; and
- (i) perform such other functions as are incidental to the foregoing.

Composition of Board and Related Provisions

3. Composition of the Board

- (1) The governing body of the Commission is a Board consisting of
 - (a) the Chairman who shall not be a Minister or a Deputy Minister,
 - (b) one person representing each of the following:
 - (i) the Ghana Water and Sewerage Corporation,
 - (ii) Organisations producing potable water,
 - (iii) the Hydrology Department of the Ministry of Works and Housing,
 - (iv) the Volta River Authority,
 - (v) the irrigation Development Authority,
 - (vi) the Water Resources Research Institute,
 - (vii) the Meteorological Service,
 - (viii) the Environmental Protection Agency,
 - (ix) the Forestry Commission, and
 - (x) the Minerals Commission,
 - (c) the Executive Secretary appointed under section 9 of this Act,
 - (d) one chief, and
 - (e) two other persons at least one of whom is a woman.
- (2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

4. Tenure of office of members

- (1) A member of the Board other than an ex officio member shall hold office for a period of three years and is eligible for re-appointment.
- (2) A member of the Board may at any time by notice in writing to the President resign from office.
- (3) A member who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member.
- (4) The President may in writing remove a member for stated reasons.

5. Filling of vacancies

(1) When a member of the Board is incapacitated by illness or any other cause from performing the functions of office for more than twelve months, the President may acting in consultation with the appropriate institution appoint another person to perform the functions of the member until the member is able to resume the performance of the functions.

(2) A person appointed to fill a vacancy shall hold office for the remainder of the term of the previous member and is, subject to the provisions of this Act, eligible for re-appointment.

6. Meetings of the Board

(1) The Board shall ordinarily meet at least once every three months for the dispatch of business at the times and at the places as determined by the Chairman.

(2) The chairman may, at the request in writing of not less than one-third of the members of the Board, convene a special meeting of the Board.

(3) The chairman shall preside at the meetings of the Board and in the absence of the chairman a member elected by the members present from among their number shall preside.

(4) The quorum at a meeting of the Board is seven members.

(5) The Board may co-opt a person to attend any of its meetings, but a co-opted person shall not vote at the meeting.

(6) Questions proposed at meetings of the Board shall be determined by a majority of the votes of the members present and voting and where the votes are equal the chairman or the member presiding shall have a casting vote.

(7) An act or a proceeding of the Board shall not be invalidated by a vacancy among its members or a defect in the appointment or qualification of a member.

(8) Subject to the provisions of this section, the Board shall regulate the procedure for its meetings.

7. Commission to appoint committees

The Board may for the performance of its functions appoint committees comprising members, or non-members or both and may assign to them the functions that are determined by the Board, but a committee composed entirely of non-members may only advise the Board.

8. Allowances for members of the Board and committees

Members of the Board and members of committees appointed by the Board shall be paid the allowances determined by the Minister responsible for Finance.

9. Executive Secretary to the Commission

(1) The President acting in accordance with article 195 of the Constitution shall appoint an officer to be designated the Executive Secretary to the Commission.

(2) The Executive Secretary is under the general supervision and direction of the Board, responsible for the day-to-day management and administration of the Commission.

(3) The Executive Secretary shall be the secretary to the Commission and shall in consultation with the chairman arrange the business and record and keep minutes of the meetings of the Board.

(4) The Executive Secretary shall perform any other functions that the Board may assign.

10. Other staff of the Commission

(1) There shall be appointed by the President acting in accordance with article 195 of the Constitution, the officers that the Commission may require for the effective performance of its functions under this Act.

(2) Other public officers may be transferred or seconded to the Commission or may otherwise give assistance to the Commission.

11. Delegation of power of appointment

The President may, subject to conditions determined by the President, delegate the power of appointment under sections 9 (1) and 10 (I) by directions in writing to the Board or to a member of the Board or to any other public officer.

Regulation of Use of Water Resources

12. Public water vested in President

The property in and control of all water resources is vested in the President on behalf of, and in trust for the people of the Republic.

13. Prohibition of use of water without authority

(1) Except in accordance with the provisions of this Act, a person shall not

(a) divert, dam, store, abstract or use water resources, or

(b) construct or maintain any works for the use of water resources.

(2) Subsection (1) of this section shall not prevent the use of water resources for the purpose of fighting fires.

14. Use of water resources for domestic purposes

(1) A person who has lawful access to water resources may abstract and use the water for domestic purposes.

(2) Subsection (1) does not authorise the construction of works for the purpose of abstracting water resources.

15. Enforcement notice

(1) Where it appears to the Commission that the use of water resources for a purpose at a place poses a serious threat to the environment or to public health, the Commission may serve on the user of the water resources, an enforcement notice requiring the user to take the necessary steps to prevent or stop the activities.

(2) An enforcement notice shall specify

(a) the offending activity,

- (b) the steps required to be taken, and
- (c) the time within which the steps shall be taken.

(3) The Commission may in an enforcement notice direct the immediate cessation of the offending activity where it considers that the circumstances so demand.

(4) A person who acts contrary to an enforcement notice issued under this section commits an offence and is liable, on summary conviction, to a fine of not less than fifteen penalty units and not more than two hundred and fifty penalty units and in default to a term of imprisonment for a term not exceeding one year or to both the fine and the imprisonment; and in the case of a continuing offence to a further fine not exceeding five penalty units for each day that the offence continues after conviction.

16. Grant of water right

(1) A person may apply to the Commission in writing for the grant of water right.

(2) The Commission shall on receipt of an application make the necessary investigations including consultations with the inhabitants of the area of the water resources concerned.

(3) The Commission shall publish in the *Gazette* notice of an application and the area in respect of which the application is made.

(4) A person who claims that an interest of that person will be affected by the grant of a water right may notify the Commission within three months of the notice in the *Gazette* of the objection to the grant of the water right and shall specify the grounds of the objection.

(5) The Board shall consider the objections made in respect of it and shall after consultation with the persons and authorities that it may consider necessary, determine whether the water right shall be granted.

(6) Where the Board is satisfied that the water right shall be granted, it shall so grant the right.

(7) The Commission may grant the water right subject to the conditions specified in the document for the grant.

(8) A grant of water right is subject to ratification by Parliament.

(9) Parliament may by resolution supported by the votes of not less than two-thirds of all the members of Parliament exempt from the provisions of subsection (8) of this section the class of water right that it shall so resolve.

17. Prohibition of transfer of water right

A water right granted under this Act shall not be transferred without the written approval of the Commission.

18. Creation of statutory wayleaves and easement

Where the grant of a water right is to a statutory corporation or any other public body whose use of the water right ensures the benefit of the public, the provisions of the Lands (Statutory Wayleaves) Act, 1963 (Act 186) shall apply for the creation of a right of way or any other similar right for the purpose of enabling the works related to the water rights to be implemented.

19. Suspension or variation of water right

(1) Where the water right has been granted and the Commission is of the opinion that the water resource in an area is insufficient or is likely to become insufficient as a result of the grant, it may by notice in writing to the holder of the water right in that area, suspend or vary the right to abstract or use the water resource in that area, for the period that the Commission considers necessary.

(2) Where a notice has been issued under subsection (1) the water right shall cease for the period of the suspension or shall be exercisable only as so varied.

20. Termination or limitation of right where water is required for public purpose

(1) Subject to section 21, where the Commission is satisfied that water resources are required for a public purpose it may by notice in writing addressed to the holder of a water right, terminate or limit that right on the grounds that the water is required for public purpose, and the right shall cease or shall be exercisable only as so limited.

(2) A declaration in writing by the Commission that water resources are required for a public purpose is conclusive evidence of that fact.

21. Compensation on suspension or cancellation of water right

. The holder of a water right is entitled to receive reasonable compensation in the circumstances in respect of the loss resulting from the termination or limitation of the right and in the absence of the agreement the Court shall determine the amount of the compensation.

22. Water right to be terminated for breach of condition

(1) Where the holder of the water right

(a) fails to comply with a condition of the grant express or implied, or

(b) has abstracted or used water resources for a purpose not authorised by the grant,

the Commission may by notice in writing addressed to the holder require the holder to remedy the default within the period specified in the notice.

(2) If the holder fails or neglects to remedy the default within the period specified the Commission may terminate the water right and inform the holder accordingly in writing.

23. Termination or limitation for non-use

Where at any time the Commission has reason to believe that the holder of a water right has not, during the preceding two years, made full beneficial use of that right, it may after giving the holder of the right opportunity of making representations to the Commission, by notice in writing addressed to the holder and having regard to the investment in capital works and the long term national interest involved in the undertaking concerned

(a) terminate the right, or

(b) limit or modify the right as specified in the notice.

24. Pollution of water

A person who, except in accordance with the provisions of this Act or with the approval of the Environmental Protection Agency

- (a) interferes with or alters the flow of, or
- (b) pollutes or fouls,

a water resource beyond the level that the Environmental Protection Agency may prescribe, commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

*Financial and Miscellaneous Provisions***25. Funds of the Commission**

The funds of the Commission include

- (a) Government subvention,
- (b) loans granted to the Commission,
- (c) the moneys accruing to the Commission in the course of the performance of its functions under this Act or any other enactment,
- (d) gifts, and
- (e) moneys from any other source.

26. Accounts and audit

(1) The Commission shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The books and accounts of the Commission shall be audited annually by the Auditor-General within three months of the end of the immediately preceding financial year.

(3) The financial year of the Commission shall be the same as the financial year of the Government.

27. Annual report

(1) The Commission shall, as soon as possible after the expiration of each financial year but within six months after the termination of the year, submit to the Minister an annual report dealing generally with the activities and the operations of the Commission within that year which shall include

- (a) a copy of the audited accounts of the Commission together with the Auditor General's report on it, and
- (b) any other information that the Minister may require.

(2) The Minister shall within two months after receiving the annual report of the Commission submit the report to Parliament with a statement the Minister considers necessary.

28. Power to obtain information

The Commission may for the proper and efficient performance of its functions request information from a person who shall, subject to any other law, comply with the request.

29. Power to inspect works, etc.

(1) The Commission may in consultation with the relevant District Assembly at a reasonable time enter on any land to inspect works constructed or under construction there and may ascertain or cause to be ascertained the amount of water abstracted or capable of being abstracted by means of the works.

(2) A person shall not obstruct the Commission in the performance of its functions under subsection (1).

(3) If in the opinion of the Board works have been constructed, maintained or used or are being so constructed as to constitute a danger to life, health, property or damage to the natural resources of the area, it may require a person for the time being enjoying the benefit of those works to demolish or to change the use of the works in the manner that the Commission considers necessary.

(4) For the purpose of this section the Board may by notice in writing suspend a water right until it is satisfied that the requirements have been fulfilled.

30. Power to require demolition of unlawful works

(1) The Commission may on the advice of a District Assembly by notice in writing require a person

(a) who has constructed or extended, or caused to be constructed or extended any works contrary to any of the conditions under which the person was required or authorised to effect the construction or extension, or

(b) whose water right in respect of which any works in existence have been terminated under the provisions of this Act or has otherwise come to an end, to modify, demolish or destroy the works within a period not being less than thirty days, specified in the notice.

(2) Where a person fails to comply with a notice served on that person under subsection (1), the Commission may cause the works to be modified, demolished or destroyed and recover the cost of the modification, demolition or destruction from the person in default by civil suit.

31. Minister to declare controlled area

Where the Minister is satisfied that special measures are necessary for the protection of water resources in or derived from an area, the Minister may by executive instrument declare that area or a part of that area, to be a protected catchment area.

32. Schemes for development of water resources in protected areas

(1) Where an area is declared a protected catchment area the Commission may in consultation with the National Development Planning Commission and the District Assembly of the protected catchment area, establish a comprehensive scheme for the development of the water resources of that area.

(2) For the purpose of establishing a comprehensive scheme, the Commission may, after giving the holder an opportunity for making representations in respect of a subsisting right within the area,

(a) declare the right terminated;

(b) declare the right limited or modified in the respect specified by the Commission; or

(c) grant the holder a new water right on the terms and conditions as it considers fit; but the holder is entitled to receive compensation in respect of the loss resulting from the termination or limitation of the right.

(3) The Commission may cause to be constructed and maintained the works that the Board considers expedient for the better protection of land and water resources within a protected catchment area.

(4) The Minister on the recommendations of the Commission and with the approval of Cabinet may levy prescribed charges on the beneficiaries of a comprehensive scheme within a protected catchment area in order to defray expenses of the construction or maintenance of the works or both.

33. Declaration of water emergency

(1) Where the Minister, after consultation with the District Assembly of an area, is satisfied that because of drought or because of an accident or an unforeseen circumstances, a serious deficiency of water for essential domestic purposes exists or is threatened in an area the Minister may by notice in the *Gazette* declare that a water emergency exists in that area.

(2) The Minister may after a declaration of water emergency, permit a person who has a supply of water in excess of the domestic purposes to supply water from the excess quantity of water to the area affected or to any other person, for the period specified.

34. Penalty for offences

A person who

(a) diverts, dams, stores, abstracts or uses water resources contrary to section 13 (1) (a),

(b) constructs or maintains any works for the use of water resources contrary to section 13 (1) (b),

(c) does not comply with a request made under section 29,

(d) obstructs the Commission in the performance of its functions under section 30 (1), or

(e) does not comply with the directives given by the Minister under section 33 (2), commits an offence and is liable, on conviction, to a fine not exceeding seven hundred and fifty penalty units or a term of imprisonment of three years or to both the fine and the imprisonment.

35. Regulations

(1) The Commission may, by legislative instrument, make Regulations

- (a) for preserving existing uses of public water;
- (b) for controlling any change in the course, current or cross current of any contained surface water in order to obtain the most beneficial use of the water;
- (c) relating to the declaration of water emergencies;
- (d) for regulating the use of contained water and ground water;
- (e) for the carrying out of investigations in respect of a function of the Commission;
- (j) for the protection of watersheds;
- (g) for the granting of permits to discharge waste into water bodies;
- (h) for prescribing the acceptable levels of pollution;
- (i) to regulate or prohibit the doing of an act by a person in a protected catchment area;
- (j) for the levying of charges under this Act; and
- (k) generally for the purpose of giving effect to the provisions of this Act.

(2) An instrument under subsection (1) of this section shall be signed personally by the chairman of the Board.

36. Transitional provisions

(1) Where a person claims an existing right of access to a water resource that person shall, within twelve months from the coming into force of this Act notify the Commission of that right.

(2) The Commission shall on receipt of the notification conduct the investigation that the Board considers necessary and where it is satisfied that that right exists in relation to the person it may take the appropriate action.

37. Interpretation

In this Act, unless the context otherwise requires,

"Auditor-General" includes an auditor appointed by the Auditor-General;

"beneficial use" means the use of water including the method of diversion, storage, transportation and application of the water which is reasonable and consistent with the public interest, including domestic, energy, agricultural, commercial, industrial, municipal, navigational and recreational use;

"Commission" means the Lake Resources Commission established by Parliament;

"contained water" means underground streams, water upon the surface of the earth in bounds created naturally or artificially and the sub-flow of the water;

"Court" means the High Court;

"existing right" means any right to water resources

(a) which on the coming into force of this Act has been lawfully acquired, is possessed by and is being beneficially used by any person, or

(b) lawfully acquired by any person before the coming into force of this Act for the purpose of supplying water to the public;

"holder" means a person who has been granted a water right under this Act;

"Minister" means the Minister responsible for Works and Housing;

"prescribed" means prescribed by or under this Act or the Regulations;

"protected catchment area" means any area declared by the Minister to be preserved for the protection of water resources in or derived from the area;

"Regulations" means Regulations made under this Act;

"water resources" means all water flowing over the surface of the ground or contained in or flowing from any river, spring, stream or natural lake or part of a swamp or in or beneath a watercourse and all underground water but excluding any stagnant pan or swamp wholly contained within the boundaries of any private land;

"works" includes any construction or activity for or related to use of water resources.

38. Repeal

*Spent.*²

2. This section provides for the repeal of sections 8 and 9 of the Rivers Act, 1903; Cap. 226 of the 1951 Edition of the Laws of the Gold Coast.