

THE WATERWORKS (AMENDMENT) ACT, 1970

No. 56



of 1970

AN ACT TO AMEND THE WATERWORKS LAW, 1961, BY PROVIDING FOR EXPROPRIATION OF WATERWORKS AND OTHER PROPERTY; BY QUALIFYING THE RIGHT TO EXPROPRIATE UNDERTAKINGS AND PROVIDING FOR THE DETERMINATION OF DISPUTES IN CONNECTION WITH SUCH EXPROPRIATION; BY REMOVING DOUBT AS TO THE VESTING OF CERTAIN WATERWORKS AND SERVICES; BY QUALIFYING THE RIGHT OF WATER AUTHORITIES TO ENTER UPON LAND; BY SPECIFYING CIRCUMSTANCES IN WHICH A WATER AUTHORITY MAY CURTAIL OR WITHHOLD A SUPPLY OF WATER; BY MAKING FURTHER PROVISION FOR THE DECISION OF APPLICATIONS FOR WATER SUPPLY; BY INCREASING THE PENALTIES FOR CERTAIN OFFENCES; AND BY FURTHER RESTRICTING THE RIGHT OF PERSONS OTHER THAN WATER AUTHCRITIES TO SUPPLY WATER

Date of Assent: 16.11.70

Date of Commencement: 25.11.70

ENACTED by the Parliament of Botswana.

Short Title

1. This Act may be cited as the Waterworks (Amendment) Act, 1970.

Amendment of Section 5 of Law No. 26 of 1961

2. Section 5 of the principal law is amended —

- (a) by the insertion after “purchase”, wherever that word occurs, of “,expropriate”;
- (b) by the addition of the following proviso —

“Provided that no property of any description, or interest therein or right thereover, shall be expropriated or taken over in terms of this section

by a Water Authority without the agreement of every person entitled to such property, interest or right unless it is expropriated or taken over in the interests of public health or in order to secure the development or utilization of any property for the purpose first-mentioned above, and that where any property is expropriated or taken over without such agreement adequate compensation shall be promptly payable by the Water Authority and any dispute as to the interest or right of any person in or over the said property, the legality of the expropriation or taking over, or the amount of any compensation to which any person may be entitled by reason thereof shall be determined in accordance, *mutatis mutandis*, with the provisions of the Acquisition of Property Proclamation (Chapter 118), and for the purpose of such determination and for the purpose of obtaining prompt payment of compensation any person having an interest in or right over the property shall have all the rights of access to the High Court provided in the said Proclamation."

Amendment of Section 6 of Law No. 26 of 1961

3. Section 6 of the principal law is amended in subsection (1) by the insertion immediately after "right" of "in the interests of public health, town and country planning or land settlement or in order to secure the development or utilization of any property for the better supply of water to the community".

Amendment of Section 10 of Law No. 26 of 1961

4. Section 10 of the principal law is amended —

- (a) by the deletion of the heading and the substitution therefor of "*Compensation, Determination of Disputes, etc.*";
- (b) by the deletion of subsection (1) and the substitution therefor of —

"(1) Adequate compensation shall be promptly payable by the Water Authority to any person having an interest in or right over an undertaking acquired in terms of section six, and any dispute as to such an interest or right, the legality of the acquisition, or the amount of compensation to which such person may be entitled by reason of the acquisition shall be determined in accordance, *mutatis mutandis*, with the provisions of the Acquisition of Property Proclamation (Chapter 118) and for the purpose of such determination and for the purpose of obtaining prompt payment of compensation any such person shall have all the rights of access to the High Court provided in the said Proclamation:

Provided that the basis on which the amount of compensation payable to the owner of the undertaking shall be determined shall be that stated in the succeeding provisions of this section and not that stated in section 14 of the said Proclamation."

- (c) by the deletion in subsections (2), (3) and (4) of "arbitrators" wherever that word occurs, and the substitution therefor of "Board of Assessment".

Amendment of Section 12 of Law No. 26 of 1961

5. Section 12 of the principal law is amended by the addition of the following subsection, the existing section becoming subsection (1) —

“(2) For the avoidance of doubt it is declared that the ownership of a water-work laid down in any public place in accordance with this section in no case vests or shall vest in the owner of such public place by prescription, inherence or in any other manner save with the written agreement of the Water Authority.”

Amendment of Section 13 of Law No. 26 of 1961

6. Section 13 of the principal law is amended —

(a) by the addition of the following proviso —

“Provided that a Water Authority shall not enter upon any land in the exercise of any powers conferred by this section except in the interests of public health or in order to secure the development or utilization of any property for the better supply of water to the community.”;

(b) by the addition of the following subsections, the existing section becoming subsection (1) —

“(2) For the avoidance of doubt it is declared that the ownership of a service carried through, across or under any land in accordance with this section in no case vests or shall vest in the owner of such land by prescription, inherence or in any other manner save with the written agreement of the Water Authority.

(3) Any such service as is referred to in subsection (2) shall be immune from landlord's hypothec and from execution levied or attachment laid on property of the owner or occupier of the land in question.”

Amendment of Section 15 of Law No. 26 of 1961

7. Section 15 of the principal law is repealed and there is substituted therefor the following —

“Power of Water Authority to Curtail or Withhold Supply of Water

15. Without prejudice to the recovery or retention of any charges, meter rent, or other sums of money due or to become due under the provisions of this Law, a Water Authority may in its discretion diminish, turn off or divert the supply of water to any premises or place whenever —

- (a) any money due to any such Water Authority in respect of the supply of water to such premises or place has remained unpaid for a period of fourteen days after service, which may be effected by post, on the person supplied of an account showing such moneys to be due; or
- (b) the person supplied at such premises or place has failed to comply with any of the requirements of this Law or of regulations made thereunder; or

(c) such diminution, turning off or diversion is necessary to enable repairs, maintenance or extensions of the water system to be carried out; or

(d) there is a shortage of water."

Amendment of Section 17 of Law No. 26 of 1961

8. Section 17 of the principal law is amended by the addition of the following subsections, the existing section becoming subsection (1) —

"(2) No such application shall be unreasonably refused.

(3) Where the cost of providing any extension necessary to enable the supply applied for to be made would be excessive in relation to the moneys which would be recovered by way of charges for water, the applicant may be required to pay such cost as a condition of obtaining such supply."

Amendment of Section 21 of Law No. 26 of 1961

9. Section 21 of the principal law is amended by the deletion of "fifty rand" and "one month" and the substitution therefor of "two thousand rand" and "six months" respectively.

Amendment of Section 27 of Law No. 26 of 1961

10. Section 27 of the principal law is amended —

(a) by the deletion of the heading and the substitution therefor of "*Supply of Water by Certain Persons Prohibited*";

(b) by the deletion of the first sentence and the substitution therefor of —

"No owner or occupier of any premises within a waterworks area and no owner or occupier of any premises supplied with water under this Law, shall supply water to any other person or permit any other person to take water except —

(a) for use or consumption on those premises; or

(b) for the purpose of extinguishing a fire; or

(c) with the approval of the Water Authority."

Passed by the National Assembly this day, the 2nd November, 1970.

G. T. MATENGE,
Clerk of the National Assembly