


Item No. 11.1.8

Halifax Regional Council

June 26, 2012

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by 
Mike Labrecque, Acting Chief Administrative Officer

DATE: June 11, 2012

SUBJECT: HRWC Act Amendments

ORIGIN

March 22, 2012 Motion of HRWC Board approving proposed amendments to the Halifax Regional Water Commission (HRWC) Act for introduction in the fall 2012 session of the Provincial Legislature.

RECOMMENDATION

It is recommended that Halifax Regional Council approve a motion of support for the proposed amendments to the Halifax Regional Water Commission (HRWC) Act for introduction in the fall 2012 session of the Provincial Legislature, in the substantive form attached.

BACKGROUND

Subsequent to the August 1, 2007 Water, Wastewater and Stormwater merger, Halifax Water introduced, via Diana Whalen, MLA, a Local Members Bill during the fall 2007 session of the Legislature. The main purpose of the Bill was to consolidate the amendments made to the HRWC Act since 1963. Subsequent to the proclamation of the HRWC Act in 2007, Halifax Water staff recently reviewed the Act and identified the need for broader powers with respect to involvement in renewable and alternative energy projects and to address a number of housekeeping issues including appointments to the Board. The proposed amendments also reflect references to the HRM Charter, which was enacted in 2008, and replace references to the Municipal Government Act.

DISCUSSION

The main focus of the proposed amendments relates to the establishment of broader powers for HRWC in relation to the development of renewable and alternative energy projects. The catalyst for this change is predominantly associated with the new Provincial COMFIT Program which provides opportunities for municipalities and municipal entities to become involved in renewable energy projects in an effort to stabilize energy costs, reduce dependence on foreign fuel sources and to better protect the environment. In particular, Halifax Water has obtained COMFIT certificates for two projects within the Lake Major watershed and is vying for another certificate for wind turbine development on the Pockwock watershed. HRM Council supported COMFIT applications for these projects.

The HRWC has also recently received confirmation from the NS Department of Energy that the generation of electricity through hydrokinetic in-line turbines would be considered renewable energy and eligible for run-of-the-river hydro rates, as part of the COMFIT Program. HRWC recently received confirmation from the Water Research Foundation that they will contribute \$175,000 in funding toward a research project to generate electricity within a control chamber in Bedford. NS Environment is also contributing \$25,000 to the project. HRWC staff believe that the proposed inline turbines which generate electricity within the water distribution system would be regulated activities and therefore come under the direct purview of the Nova Scotia Utility and Review Board.

HRWC is also reviewing expansion of the biosolids processing plant at Aerotech to generate heat and electricity and has submitted an application to the NS Department of Energy for COMFIT Program eligibility.

On June 7, 2012 HRM's Environment and Sustainability Council Committee endorsed the biosolids to energy project, and inline turbine project, and a report will be proceeding to Regional Council to seek HRM Council endorsement for the COMFIT applications for these projects.

The operation of wind turbines could be considered regulated activity of Halifax Water in relation to Nova Scotia Power's net metering program, or Halifax Water may be able to take advantage of the COMFIT Program under which wind turbines would be an unregulated business conducted to benefit the rate base. This approach would be similar to how HRWC's current unregulated business is conducted. HRWC collected \$1.8 million in revenues from unregulated activities in 2011/12 which helped reduce the utility's operating deficit for the benefit of water and wastewater customers. HRWC is adding a separate schedule to the annual audited financial statements for additional clarity around revenues and expenses associated with unregulated activities conducted by the utility.

A key recognition by HRWC staff, and entrenched within the HRWC Act, is the requirement that unregulated business cannot be subsidized by regulated business. This is a cornerstone principle of the Public Utilities Act and HRWC must conform to this requirement. Unregulated business can provide benefit to the regulated business however. Notwithstanding, if HRWC as a regulated entity wishes to pursue expanded activities as unregulated business for the benefit of rate payers, broader language in the HRWC Act, as proposed, would facilitate this approach.

In terms of impact to HRM, if HRWC owns the assets, it would be seeking the usual approval and debt guarantees applicable to any large Halifax Water capital investments but, in this case for energy projects, in particular, the development of wind turbines on the Lake Major and Pockwock watersheds. As with any guarantee, it can be called in the event there is any payment default. Unlike debt servicing for water, wastewater or stormwater assets, debt servicing associated with an unregulated energy project such as a wind energy project would not be included within the utility rate base. Debt servicing for such projects would be included in the business model for the project, and the risk to HRM in providing a guarantee to the HRWC debt would depend on the soundness of the business case. To mitigate risk, the proposed Act Amendments require that if HRWC proposes to own, operate and maintain wind turbines HRM Council approval is required.

Regardless of whether a formal guarantee is issued or not, HRWC is wholly owned by the Halifax Regional Municipality and some risk exposure exists.

As it is not tax supported debt, HRWC's debt is not considered under HRM's debt policy. The amount of debt issued by HRWC, condition of HRWC's infrastructure, and issuance of guarantees by HRM are issues considered by external credit rating agencies when preparing HRM's credit rating.

In recognition that HRM now has its own Charter, the proposed amendments will also look to reference this Legislation where appropriate, instead of reference to the Municipal Government Act (MGA). Notwithstanding, there are instances where the reference to the MGA is appropriate, and accordingly, these references have been retained in the proposed amendments. In addition to these changes, HRWC staff are proposing wording to define the terms for Commissioners appointed to the Board as two or three years subject to Council approval to

enable staggered terms for continuity. In all cases, it is recognized that Commissioners would be eligible for reappointment at the discretion of HRM Council.

There is also some minor wording that has been retained from an earlier version of the Act for good governance practice, including a recognition that the HRWC can continue to conduct its business during transition when Commissioner appointments are being made, and in the event of resignations or ineligibility of Commissioners.

The language around payment of a dividend or grant in lieu of taxes has been clarified in response to some questions raised by the Nova Scotia Utility and Review Board during the last general rate hearing in 2010.

The proposed amendments are summarized on Appendix A and detailed in a track-changes document within Appendix B. Consistent with past practice, HRWC staff has solicited input to the proposed amendments from Service Nova Scotia and Municipal Relations, the Nova Scotia Department of Energy and the legislative branch of the House of Assembly. In addition, lawyers retained by HRWC have met with HRM Legal staff to refine language to ensure the Bill is presented in consideration of all stakeholders for passage through the House of Assembly.

BUDGET IMPLICATIONS

To the extent that HRWC is able to diversify revenues through energy projects and increase the regulated water rate base or develop new unregulated business, there will be growth in taxes and/or the annual water dividend paid to HRM by HRWC.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

N/A

ALTERNATIVES

HRM Council could choose not to support the proposed amendments to the HRWC Act.

ATTACHMENTS

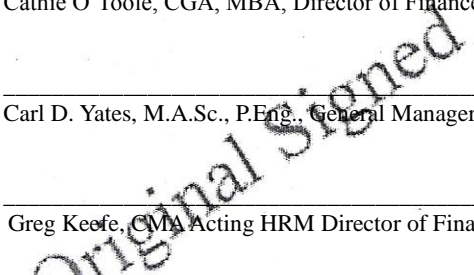
Appendix A: Overview of Proposed Changes to the HRWC Act

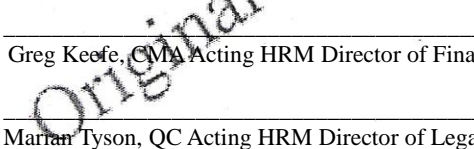
Appendix B: Proposed Amendments to the HRWC Act

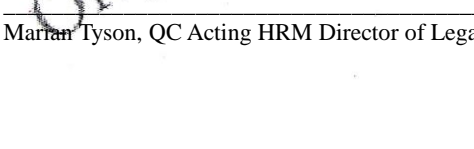
Appendix C: Track Changes version of Proposed Amendments to the HRWC Act

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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OVERVIEW OF PROPOSED CHANGES TO THE HALIFAX REGIONAL WATER COMMISSION ACT

The table below sets out the section number of each of the primary proposed amendments to the Halifax Regional Water Commission Act, followed by a short description of the proposed amendments and the rationale therefor.

In the table, the following definitions shall apply:

Charter – means the Halifax Regional Municipality Charter;

HRM – means Halifax Regional Municipality;

HRWC – means Halifax Regional Water Commission;

HRWC Act – means the Halifax Regional Water Commission Act; and

MGA – means the Municipal Government Act.

SECTION	DESCRIPTION OF CHANGE	RATIONALE
2(1)	Import definitions from Charter	Update references
2(2), 8(2), 9(1), 21, 22, 23, 35, 36	Update reference from MGA to the Charter	Update references
4(2)-4(13)	Re-insertion of provisions from pre-2007 HRWC Act relating to HRWC Board	Reinstates provisions that were inadvertently deleted at time of 2007 amendments to HRWC Act
6A	Additional provision indicating that the provisions of the HRWC Act prevail where a conflict arises with the Charter.	Provides clarity on where HRWC Act and Charter apply in respect of water, watershed protection, wastewater and stormwater services, systems and facilities
7(d)	Provision of express powers to HRWC to engage in business activities related to generation and sale of energy	Enables HRWC to participate in COMFIT and other energy-related business activities
7(2)	Provision of express power to HRWC to own wind turbines either directly or in partnership with HRM.	Facilitates the development of wind turbines on HRWC property.
9 (1)	Update reference from MGA to Charter	Update references

20(1)	Update reference to appropriate Utility Accounting Handbook	Update reference
20(3) & (4)	Additional provisions re distribution of HRWC surplus to HRM as grant in lieu of taxes or dividend	Provides clarity on HRWC's ability to distribute surplus to HRM as a grant in lieu of taxes or dividend in respect of regulated and unregulated activities.
21	Deletion of reference to business occupancy tax and update references from MGA to Charter.	Update
22	Deletion of reference to business occupancy tax and updating of references from MGA to Charter.	Update
23	Update references from MGA to Charter	Update
36	Add reference to Charter	Update

PROPOSED 2012 Amendments

An Act Respecting the Halifax Regional Water Commission

Short title

1 This Act may be cited as the Halifax Regional Water Commission Act. 2007, c. 55, s. 1.

Interpretation

2 (1) In this Act,

- (a) "Board" means the Nova Scotia Utility and Review Board;
- (b) "Charter" means the Halifax Regional Municipality Charter, S.N.S. 2008, c. 39 as amended;
- (c) "Commission" means the Halifax Regional Water Commission;
- (d) "Commission Board" means the Board of the Commission;
- (e) "Commissioner" means a member of the Commission Board;
- (f) "Council" means the Council of the Regional Municipality;
- (g) "General Manager" means the person appointed as General Manager pursuant to Section 8 and, unless the context indicates otherwise, includes a person acting under the General Manager's supervision and direction;
- (h) "land" includes
 - (i) any land, whether held in fee simple or for any lesser estate or interest,
 - (ii) any stream, water course or land covered with water, or the right to dam up or stop any flow of water and thereby to overflow any land, and
 - (iii) any easement or right in, upon or over any land or any other estate, right or interest therein, including land covered with water;
- (i) "Regional Municipality" means the Halifax Regional Municipality;
- (j) "Regulations" means the rates, rules and regulations made by the Commission and approved by the Board.
- (k) "sewage" means the combination of liquid and water-carried wastes from buildings, containing animal, vegetable or mineral matter in suspension or solution, together with such groundwater, surface water or stormwater as might be present;

(l) "sewer" means a pipe or conduit for carrying sewage, groundwater, stormwater or surface runoff, and includes all sewer drains, storm sewers, clearwater sewers, storm drains and combined sewers vested in, or under the control of, the Commission;

(m) "stormwater" means water from precipitation of all kinds, and includes water from the melting of snow and ice, groundwater discharge and surface water;

(n) "stormwater system" means a method or means of carrying stormwater, including ditches, swales, sewers, drains, canals, ravines, gullies, pumping stations, retention ponds, streams, watercourses, floodplains, ponds, springs, creeks, streets or private roads, roadways or driveways;

(o) "wastewater facilities" means the structures, pipes, devices, equipment, processes or other things used, or intended, for the collection, transportation, pumping or treatment of sewage and disposal of the effluent; and

(p) "water system" means the source, structures, pipes, hydrants, meters, devices, equipment or other things used, or intended, for the collection, transportation, pumping or treatment of water.

(2) Words and expressions not defined in this Act have the same meaning as in the Charter, unless the context otherwise requires. *2007, c. 55, s. 2.*

Halifax Regional Water Commission continued

3 The Halifax Regional Water Commission, originally incorporated as the Public Service Commission of Halifax pursuant to Chapter 47 of the Acts of 1944, is hereby continued. *2007, c. 55, s. 3.*

Commission Board

4 (1) The Commission Board consists of

(a) the Mayor of the Regional Municipality;

(b) three members of the Council appointed by the Council;

(c) three residents of the Regional Municipality, who are not members of the Council, appointed by the Council; and

(d) one member of the Regional Municipality staff, appointed by the Chief Administrative Officer of the Regional Municipality, who shall be a non-voting member of the Commission Board.

(2) Where, for any reason, there is a vacancy on the Commission Board, the Commissioners who are appointed and have consented to act may continue to act and to exercise all the powers or functions of the Commission Board until the vacancy is filled.

(3) Each member of the Commission, appointed pursuant to clause (b) of subsection (1) of Section 4 holds office for a term of two or three years, at the discretion of Council, but ceases to hold office if that member ceases to be a member of Council, or if that member, without leave of the Commission Board, is absent from three consecutive regular meetings of the Commission Board.

(4) Each member of the Commission appointed pursuant to clause (c) of subsection (1) of Section 4 holds office for a term of two or three years, at the discretion of Council, but ceases to hold office if that member ceases to be a resident of the Regional Municipality, or if that member, without leave of the Commission Board, is absent from three consecutive regular meetings of the Commission Board.

(5) The member of the Commission appointed pursuant to clause (d) of subsection (1) of Section 4 holds office for such a term as is designated by the Chief Administrative Officer at the time of the appointment, but ceases to hold office upon ceasing to be a member of the Regional Municipality staff.

(6) Each member of the Commission is eligible for re-appointment.

(7) Where a person appointed to the Commission pursuant to clause (b) or (c) of subsection (1) of Section 4 ceases to be a member of the Commission before the member's term of office expires, the Council shall, within two months after the member ceases to be a member of the Commission, appoint a person pursuant to said clause (b) or (c), respectively, to fill the vacancy and the person so appointed holds office, as long as that person has those qualifications, for the remainder of the term of the person who ceases to be a member.

(8) Where a person appointed to the Commission pursuant to clause (d) of subsection (1) of Section 4 ceases to be a member of the Commission, the Chief Administrative Officer shall appoint to the Commission another member of the staff of the Regional Municipality to hold office for such term as is designated by the Chief Administrative Officer.

(9) Each Commissioner is an officer of the Commission for purposes of any immunities conferred herein.

(10) The Commission Board shall appoint a Chair and a Vice-chair from among its members who hold office until their successors are appointed.

(11) The Commission shall appoint from its members or its employees a Secretary and Treasurer whose duties shall be determined by the Commission. One person may be appointed Secretary and Treasurer.

(12) Four voting Commissioners constitute a quorum of the Commission Board.

(13) Commissioners who are not members of Council may be paid from the revenue of the Commission such annual honorarium as the Commission Board determines, but the total of the annual honoraria must not exceed one tenth of one per cent of the gross annual revenue of the Commission. *2007, c. 55, s. 4.*

By-laws, rules, regulations and policies

5 The Commission Board may from time to time make such by-laws, rules, regulations and policies not inconsistent with this Act or the Public Utilities Act, as it deems necessary or proper for the management of its affairs. *2007, c. 55, s. 5.*

Owner of business

6 The Regional Municipality is the owner of the business of the Commission for purposes of surplus payments as provided for herein and entitlement to the assets of the Commission in the event of dissolution or winding down of the Commission. *2007, c. 55, s. 6.*

6A Where there is a conflict between this Act and the Charter, this Act prevails.

Powers of Commission

7(1) In addition to all powers of the Commission under any other Act, and subject to the supervision and regulation of the Board pursuant to the Public Utilities Act, the Commission may

(a) acquire, own or operate

- (i) water systems, facilities and utilities,
- (ii) wastewater systems, facilities and utilities, and
- (iii) stormwater systems, facilities and utilities,

for the purpose of providing water, wastewater and stormwater service to customers located within the Regional Municipality, including the power to acquire, own or operate systems, facilities and utilities not located within the Regional Municipality for the purpose of protecting or enhancing the service or reducing the cost of service to customers located within the Regional Municipality;

(b) lease land for the erection, maintenance and operation of wind turbines subject to any Regional Municipality by-laws or policies regarding wind energy.

(c) exercise all necessary powers in relation to the activities, operations and purposes of the Commission as set out in this Act or any other Act including, but not limited to, the power to

- (i) make and carry out contracts,
- (ii) buy, sell or lease interests in real or personal property,
- (iii) borrow and invest monies,
- (iv) receive and issue negotiable instruments, and
- (v) hire employees and participate in pension plans or provide pension benefits; and

(d) engage in other incidental business activities, including the generation of heat and electricity in whole or in part, from by-products of the activities set out in sub clauses 7(1)(a)(i), (ii), (iii), and including the provision to provide contract services for persons located outside the Regional Municipality, so long as such activities are carried out without subsidy from the operations of the Commission described in clause (a) and relate to the provision of water, wastewater or stormwater services and for that purpose may exercise any of the powers set out in clause (c). 2007, c.55, s.7

7.2 For the purpose of protecting or enhancing the service or reducing the cost of service to customers the Commission may directly or in partnership with the Regional Municipality own, operate or maintain wind turbines on property of the Commission and may exercise the powers set out in clause (c), subject to the approval of the Regional Municipality.

General Manager and other personnel

8 (1) The Commission Board shall employ a General Manager and fix the salary, wages or other remuneration of the General Manager.

(2) The authority and responsibilities of the General Manager in relation to the Commission Board and Commission employees are the same as those of a municipality's chief administrative officer in relation to a municipal council and municipal employees under the Charter, with such changes as the context requires.

(3) The Commission shall employ such other staff as may be necessary or desirable to carry out its powers and responsibilities. 2007, c. 55, s. 8.

Powers of General Manager

9 (1) In relation to water, watershed protection, water systems, sewage, sewers, stormwater, stormwater systems, and wastewater facilities that are within the subject-matter and territorial jurisdiction of the Commission, the General Manager has all the powers, privileges and immunities that a municipality's engineer has under the Charter, the Municipal Government Act or such successor legislation as may be enacted, with such changes as the context requires and, without limiting the generality of the foregoing, the General Manager's powers include

(a) where the Commission or the General Manager has authority to require that action be taken by a person, directing that the action be taken;

(b) where the General Manager directs that action be taken and no action is taken, causing the necessary work to be done at the expense of the person in default;

(c) entry in or upon a property without a warrant at

(i) a reasonable hour upon reasonable notice to the owner and any occupier of the property, or

(ii) any time in the event of an emergency,

for the purpose of inspection, enforcement, investigation, observation, measurement, sampling, testing or work to be done in accordance with this Act or the Regulations, or in accordance with another enactment, regulation or by-law;

(d) those powers of the engineer under Part XII of the Charter that relate to stormwater or stormwater systems, drainage or management in or near streets or roads;

(e) all the powers of the engineer under Part XIV of the Charter that relate to wastewater or stormwater facilities or systems or stormwater drainage or management, with such changes as the context requires; and

(f) all the powers of the engineer under Parts VIII and IX of the Charter in respect of subdivision applications and other municipal planning and development applications in relation to water, wastewater or stormwater services, infrastructure, systems or stormwater drainage or management, with such changes as the context requires.

(2) No person shall refuse or fail to take action when directed to do so by the General Manager pursuant to this Section.

(3) No action may be taken against the General Manager or the Commission or its officers or employees for anything done at the direction of the General Manager pursuant to this Section. 2007, c. 55, s. 9.

Enforcement of power

10 (1) Where a person refuses to allow the General Manager to exercise, or attempts to interfere or interferes with the General Manager in the exercise of, a power granted pursuant to this Act or another enactment, the General Manager may apply to a judge of the Supreme Court of Nova Scotia for an order

(a) to allow the General Manager entry to premises; and

(b) restraining a person from further interference.

(2) Any person who refuses access to the General Manager or interferes with an inspector in the exercise of a power granted pursuant to this Act or another enactment, is guilty of an offence. *2007, c. 55, s. 10.*

Entry by Commission

11 Subject to the Public Highways Act and any applicable municipal by-laws, the Commission may, in the exercise of any of its powers, enter into and upon any streets, roads, highways, squares or other places or any lands or premises and make such excavations and do and perform such other work thereon as the Commission deems necessary or expedient, with respect to the operation and maintenance of its plant and equipment. *2007, c. 55, s. 11.*

Expropriation

12 Subject to the Expropriation Act, the Commission may take and expropriate any land or any estate or interest in land for the purpose of the Commission. *2007, c. 55, s. 12.*

Plan and description of land to be expropriated

13 Where the Commission decides to expropriate land, the Commission shall cause to be prepared a plan and description of the land and, for any purposes connected with any such expropriation, the Commission or any of its officers, servants or agents may enter upon any land in respect to which the expropriation is contemplated and survey or examine the land and, where necessary in the Commission's judgement, may make borings or other excavations therein and, where such expropriation is not made, any damage to the land shall be paid for by the Commission. *2007, c. 55, s. 13.*

Expropriation procedure

14 The procedures with respect to the expropriation of land and the determination of compensation are those set out in the Expropriation Act. *2007, c. 55, s. 14.*

Compensation for expropriation

15 The amount of compensation payable for land expropriated or for injurious affection is the compensation payable under the Expropriation Act. *2007, c. 55, s. 15.*

Bonds and debentures

16 (1) The Commission has power to issue and sell bonds or debentures to borrow sums as may be authorized and approved by the Board for the purpose of the Commission and may secure such bonds

or debentures by mortgage or otherwise on the revenues and real and personal property and undertakings of the Commission, including after acquired property.

(2) Such bonds or debentures may be for such separate sums and at such rates of interest and upon such terms and conditions and in such form and payable at such period or periods or at such time or times and place or places as the Commission determines and the Board approves.

(3) Every bond or debenture issued by the Commission and every deed of trust or mortgage made by the Commission securing the same must be signed by the Chair or Vice-chair of the Commission and counter-signed by the treasurer or General Manager, whose signatures may be facsimile signatures and must bear the common seal of the Commission.

(4) The interest coupons of such bonds or debentures must be signed by the treasurer or General Manager, whose signature may be a facsimile signature, but it is not necessary for the coupons to bear the common seal.

(5) The Regional Municipality is empowered to and may from time to time guarantee unconditionally the payment of the principal and interest or the principal or the interest only of the bonds or debentures issued by the Commission or of such of the bonds or debentures issued by the Commission as the Regional Municipality may, by resolution of the Council, determine, and the Regional Municipality may also guarantee the due performance by the Commission of all terms, provisions, covenants and conditions of every deed of trust or mortgage made by the Commission securing the same, and upon such guarantee being given by the Regional Municipality, the Regional Municipality is liable according to the terms of the same for such payment or such due performance, or both, to the same extent and in all respects whatsoever as if the Regional Municipality were the principal debtor.

(6) Each guarantee given shall be in the form similar to the following, with such variations as may be necessary, and must be endorsed on every bond or debenture issued by the Commission that is subject to a guarantee:

The Halifax Regional Municipality, pursuant to the Halifax Regional Water Commission Act, hereby unconditionally guarantees to the lawful holder or holders hereof due payment of the principal and interest (or the principal or the interest) of the within bond (or debenture) according to its terms; and, where a deed of trust or mortgage is made, due performance by the Halifax Regional Water Commission of the deed of trust or mortgage securing the same,

dated.....
in favour of

Dated at Halifax, Nova Scotia 20...

IN WITNESS WHEREOF the Halifax Regional Municipality has caused its Corporate Seal to be hereunto affixed and this Guarantee to be signed by its Mayor and Clerk.

(7) The Mayor and Clerk of the Regional Municipality are hereby authorized to and shall sign each guarantee on behalf of the Regional Municipality and shall affix the corporate seal of the Regional Municipality, and such execution is conclusive evidence for all purposes of the validity of the guarantee and that the provisions of this Act with respect to such guarantee have been duly complied with.

(8) A certificate signed by the Chair or Vice-chair and Treasurer or General Manager of the Commission under the common seal of the Commission that all necessary resolutions of the Commission have been duly and regularly passed authorizing such borrowing and that such borrowings have been authorized and approved by the Board, together with such bonds or debentures

and any deed of trust or mortgage, and the form and execution of the same, and that all matters precedent and incidental thereto have been duly complied with, is conclusive evidence of the fact. *2007, c. 55, s. 16.*

Agreement with Municipality respecting borrowing

17 Where funds are borrowed under Section 16 for purposes of providing an extension of water, wastewater or stormwater service throughout the Regional Municipality, the Commission and the Regional Municipality may enter into an agreement for the Regional Municipality to pay to the Commission the amount, in whole or in part, of the funds borrowed. *2007, c. 55, s. 17.*

Imposition of charge by Municipality

18 The Regional Municipality may impose a charge to cover the cost of payments made to the Commission under an agreement referred to in Section 17 as though it were a charge for the municipal portion of the capital cost of installing a water system under clause 81(1)(c) of the Municipal Government Act. *2007, c. 55, s. 18.*

Public utility

19 The Public Utilities Act applies to the Commission and any water, wastewater or stormwater facility or system owned, operated, managed or controlled by the Commission for service to the public is deemed to be a public utility within the meaning of that Act. *2007, c. 55, s. 19.*

Annual Financial Reporting

20 (1) The Commission shall annually, following the end of its fiscal year, have prepared and submit to the Council statements of revenue and expenses, surplus or deficit account and assets and liabilities all drawn or prepared in accordance with the Water Utility Accounting and Reporting Handbook issued by the Nova Scotia Utility and Review Board, for each public utility operated by the Commission.

(2) Accompanying the financial statements referred to in subsection (1), the Commission shall, in writing, submit to the Council its recommendation of the amount or amounts of money to be paid from the surplus of the Commission's undertaking or undertakings to the Regional Municipality for the general purposes of the Regional Municipality.

(3) The amount or amounts to be paid by the Commission from the surplus of the Commission's undertaking or undertakings to the Regional Municipality for the general purposes of the Regional Municipality shall be such amount or amounts as are agreed upon by the Commission and the Council, and may be based on an amount denominated as a percentage of the Commission's rate base allocated to one or more of water, wastewater and stormwater systems or by reference to any other formula or incidental business agreement agreed upon by the Commission and the Council. *2007, c. 55, s. 20.*

(4) The amount or amounts in an agreement made pursuant to subsection (3) shall be paid as a grant in lieu of taxes on taxable assets pursuant to s. 92 of the Charter irrespective of whether the amount or amounts are calculated by reference to a formula that includes non-taxable assets, or shall be paid as a dividend. Any amount payable pursuant to subsection (3) shall be subject to review and approval by the Board.

Municipal taxes

21 Subject to any agreements made pursuant to Section 92 of the Charter, property that is owned or utilized by the Commission for the purpose of providing water service is liable to real property taxation. *2007, c. 55, s. 21.*

Exemption from municipal taxes

22 Notwithstanding the Assessment Act or the Charter, property that is owned or utilized by the Commission for the purpose of providing wastewater or stormwater service is not liable to real property taxation or any other municipal rate or tax. *2007, c. 55, s. 22.*

Municipal Grants Act

23 Notwithstanding the Municipal Grants Act and any other enactment, for the purpose of calculations under the Municipal Grants Act,

(a) the taxable assessment of property that is owned or utilized by the Commission for the purpose of providing water service is included in the calculation of uniform assessment in the same way as property of other municipal water utilities;

(b) payments made pursuant to Section 92 of the Charter are not included in the calculation of uniform assessment; and

(c) public wastewater or stormwater service provided by the Commission within a municipality is deemed to be provided by the municipality. *2007, c. 55, s. 23.*

Agreement with Municipality

24 The Regional Municipality has the authority and capacity to enter into or carry out the terms and conditions of any agreement entered into with the Commission for the purposes set out in this Act and may enter into further agreements with the Commission for modifying or amending any previous agreement. *2007, c. 55, s. 24.*

Protection of water supply

25 (1) No person shall place or permit to escape upon any land adjacent to Pockwock, Tomahawk, Chain, Long, Major, LaMont and Topsail Lakes, and all lakes, ponds or other bodies of water tributary thereto, or any lake or tributary of such lake at any time forming part of the water system of the Regional Municipality, or upon any land or water forming part of the watershed of any one of such lakes, any matter or thing of an offensive or deleterious nature or calculated to impair the quality of the water for use for domestic purposes.

(2) No person shall

(a) cut any ice on any lake forming part of the water system of the Commission or fish, bathe, wash in or otherwise impair the quality of the water in any such lake; or

(b) cut any wood or camp on any land of the Commission located on the watershed of any lake forming part of the water system of the Commission or haul any wood, wherever cut, across any such lake without first obtaining the consent in writing of the Commission.

(3) No person shall, upon any land forming part of the watershed of any of the lakes forming part of the water system of the Commission, erect or construct or place or cause or permit to be erected, constructed or placed, any building or structure unless such person has first obtained from the Commission permission to do so. *2007, c. 55, s. 25.*

Exemption from liability re negligence

26 The Commission, its officers and employees, are not liable for damages caused

(a) directly or indirectly by

(i) the design, construction, operation, maintenance, repair, breaking or malfunction of wastewater facilities, a stormwater system or a water system, or

(ii) interference with the supply of water through a water system,

unless the damages are shown to be caused by the gross negligence of the Commission or its officers or employees;

(b) by the discharge of sewage or water into premises from a sewer unless the discharge was caused by improper construction or neglect in the maintenance of the sewer, or a failure to remedy a matter that was known, or should reasonably have been known, to the Commission and should reasonably have been repaired; or

(c) in any case where this Act or the regulations have not been complied with by an owner or previous owner of premises that have been damaged. *2007, c. 55, s. 26.*

Exemption from liability re breakage or interruption

27 (1) The Commission is not liable for a loss as a result of the breakage of a pipe, conduit, pole, wire, cable or a part of a utility or service provided by the Commission, or the discontinuance or interruption of a service or connection, by reason of

(a) accident;

(b) disconnection for non-payment or non-compliance with a term or condition of service; or

(c) the necessity to repair or replace a part of a utility or service.

Exemption from liability re nuisance

27A The Commission is not liable for nuisance as a result of the construction or operation of any work owned or operated by it, including, without limitation, any water system, stormwater system or wastewater facilities, if the nuisance could not be avoided by any other practically feasible method of constructing or operating the work. *2007, c. 55, s. 27.*

Exemption from liability re failure to provide or maintain

28 The Commission, its officers and employees, are not liable for

(a) failure to provide water, wastewater or stormwater service, or the manner in which water, wastewater or stormwater service is provided, unless the Commission fails to meet a standard of care to be determined having regard to financial, economic, personnel, social, regulatory and other factors or constraints in the circumstances; or

(b) failure to maintain a place or thing that is subject to the direction, control and management of the Commission, in a reasonable state of repair, unless the Commission has actual notice of the state of disrepair and fails to take steps to remedy or otherwise deal with the state of disrepair within a reasonable time. *2007, c. 55, s. 28.*

Exemption from liability re overflow

29 Where an overflow of water or sewage from a water, wastewater or stormwater system or a drain, ditch or watercourse is a consequence of snow, ice or rain, the Commission is not liable for a loss as a result of the overflow. *2007, c. 55, s. 29.*

Exemption from liability re inspection

30 Where an inspection is carried out or ought to have been carried out pursuant to this Act or another enactment,

(a) the Commission, and its officers and employees are not liable for a loss as a result of the manner or extent of an inspection or the frequency, infrequency or absence of an inspection, unless the Commission was requested to inspect at appropriate stages, and within a reasonable time, before the inspection was required, and either the Commission failed to inspect or the inspection was performed negligently;

(b) an inspection is not performed negligently unless it fails to disclose a deficiency or a defect that

(i) could reasonably be expected to be detected, and

(ii) that the Commission could have ordered corrected;

(c) notwithstanding the Limitation of Actions Act or another Act, the Commission and its officers and employees are not liable for a loss as a result of an inspection or failure to inspect if the claim is made more than six years after the date of the application for any permit, approval or other process in relation to which the inspection was required. *2007, c. 55, s. 30.*

Exemption from liability re certification

31 Where the Commission receives a certification or representation by an engineer, architect, surveyor, or other person held out to have expertise respecting the thing being certified or represented, the Commission and its officers and employees are not liable for any loss or damage caused by the negligence of the person so certifying or representing. *2007, c. 55, s. 31.*

Limitation period

32 For the purpose of the Limitations of Actions Act, the limitation period for an action or proceeding against the Commission, a Commissioner, an officer or employee of the Commission, or against any person acting under the authority of any of them, is twelve months. *2007, c. 55, s. 32.*

Lien

33 (1) The Commission has a first lien upon a property when the General Manager notifies the Regional Municipality's treasurer of a lienable event.

(2) A lienable event arises when

(a) the General Manager lawfully causes work to be done upon, or for the benefit of, the property, pursuant to this Act or the Regulations, in which case the amount of the lien is the cost of the work plus interest at the rate prescribed in the Regulations calculated from the date of the work; or

(b) there is an overdue account owed to the Commission in relation to wastewater or stormwater service in respect of a property that has not been paid for a period of ninety days or longer, in which case the amount of the lien is the amount of the overdue account plus interest at the rate prescribed in the Regulations. *2007, c. 55, s. 33.*

Collection by Municipality

34 (1) Upon request of the Commission, or in the event of collection by the Regional Municipality of other municipal liens against a property, the Regional Municipality shall collect the lien on behalf of the Commission and, after deducting collection costs, it shall remit the proceeds to the Commission.

(2) Collection costs and proceeds shall be pro-rated between the Commission and the Regional Municipality when the collection is undertaken for both the Regional Municipality and the Commission. *2007, c. 55, s. 34.*

Enforcement proceedings

35 The General Manager may cause proceedings to be taken to enforce the provisions of this Act, or the provisions relating to wastewater or stormwater contained within Part XII and Part XIV of the Municipal Government Act and Part XII and Part XIV of the Charter, or such successor legislation as may be in force from time to time, including the prosecution of offences and or the taking of proceedings in the name of the Commission to restrain the continuance of same. *2007, c. 55, s. 35.*

Special constables

36 The General Manager may request of the Minister of Justice that designated employees of the Commission be appointed special constables pursuant to Section 88 of the Police Act for the purpose of enforcing this Act, the Public Utilities Act, or the provisions in relation to wastewater or stormwater contained within Part XII and Part XIV of the Municipal Government Act and Part XII and Part XIV of the Charter, or such successor legislation as may be in force from time to time, and for the purpose of enforcing subordinate legislation relating to the Commission pursuant to those enactments. *2007, c. 55, s. 36.*

Maps and plans as evidence

37 In any action or proceeding authorized to be taken by or for the Commission, a map or plan tendered by a witness for the Commission is sufficient evidence of the matters represented on the map or plan, in the absence of proof to the contrary. *2007, c. 55, s. 37.*

Offence

38 A person who

(a) violates this Act or any prohibition in the Regulations;

- (b) fails to do anything required by a lawful order made pursuant to this Act;
- (c) permits anything to be done in violation of this Act or any prohibition in the Regulations; or
- (d) obstructs or hinders any person in the performance of their duties under this Act or the Regulations,

is guilty of an offence. *2007, c. 55, s. 38.*

Penalty

39 Unless otherwise provided, a person who commits an offence under this Act is liable, upon summary conviction, to a penalty payable to the Commission of not less than one hundred dollars and not more than ten thousand dollars and, in default of payment, to imprisonment for a term of not more than two months. *2007, c. 55, s. 39.*

Separate offences

40 Every day during which an offence continues is a separate offence. *2007, c. 55, s. 40.*

Order to comply

41 (1) In addition to a fine imposed for an offence, a judge may order the person to comply with the provision, order or Regulation that was the subject of the offence, within the time specified in the order.

(2) Any person who fails to comply with an order made by a judge under this Section is guilty of an offence. *2007, c. 55, s. 41.*

Repeal

42 Chapter 55 of the Acts of 1963, the Halifax Regional Water Commission Act, is repealed. *2007, c. 55, s. 42.*

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Comparison Time	1.33 seconds
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Sources	
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Modified Document	[#12599426] [v2] April 17 Version: Proposed HRWC Act.docx

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TOTAL CHANGES	65

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PROPOSED 2012 Amendments

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An Act Respecting the Halifax Regional Water Commission

Short title

1 This Act may be cited as the Halifax Regional Water Commission Act. 2007, c. 55, s. 1.

Interpretation

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2 (1) In this Act,

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(a) "Board" means the Nova Scotia Utility and Review Board;

(b) "Charter" means the Halifax Regional Municipality Charter, S.N.S. 2008, c. 39 as amended;

(c) "Commission" means the Halifax Regional Water Commission;

(d) "Commission Board" means the Board of the Commission;

(e) "Commissioner" means a member of the Commission Board;

(f) "Council" means the Council of the Regional Municipality;

(g) "General Manager" means the person appointed as General Manager pursuant to Section 8 and, unless the context indicates otherwise, includes a person acting under the General Manager's supervision and direction;

(h) "land" includes

(i) any land, whether held in fee simple or for any lesser estate or interest,

(ii) any stream, water course or land covered with water, or the right to dam up or stop any flow of water and thereby to overflow any land, and

(iii) any easement or right in, upon or over any land or any other estate, right or interest therein, including land covered with water;

(i) "Regional Municipality" means the Halifax Regional Municipality;

(j) "Regulations" means the rates, rules and regulations made by the Commission and approved by the Board.

(k) "sewage" means the combination of liquid and water-carried wastes from buildings, containing animal, vegetable or mineral matter in suspension or solution, together with such groundwater, surface water or stormwater as might be present;

(l) "sewer" means a pipe or conduit for carrying sewage, groundwater, stormwater or surface runoff and includes all sewer drains, storm sewers, clearwater sewers, storm drains and combined sewers vested in, or under the control of, the Commission;

(m) "stormwater" means water from precipitation of all kinds, and includes water from the melting of snow and ice, groundwater discharge and surface water;

(n) "stormwater system" means a method or means of carrying stormwater, including ditches, swales, sewers, drains, canals, ravines, gullies, pumping stations, retention ponds, streams, watercourses, floodplains, ponds, springs, creeks, streets or private roads, roadways or driveways;

(o) "wastewater facilities" means the structures, pipes, devices, equipment, processes or other things used, or intended, for the collection, transportation, pumping or treatment of sewage and disposal of the effluent; and

(p) "water system" means the source, structures, pipes, hydrants, meters, devices, equipment or other things used, or intended, for the collection, transportation, pumping or treatment of water.

(2) Words and expressions not defined in this Act have the same meaning as in the the Municipal Government Act Charter, unless the context otherwise requires. 2007, c. 55, s. 2.

Halifax Regional Water Commission continued

3 The Halifax Regional Water Commission, originally incorporated as the Public Service Commission of Halifax pursuant to Chapter 47 of the Acts of 1944, is hereby continued. 2007, c. 55, s. 3.

Commission Board

4 (1) The Commission Board consists of

(a) the Mayor of the Regional Municipality;

(b) three members of the Council appointed by the Council;

(c) three residents of the Regional Municipality, who are not members of the Council, appointed by the Council; and

(d) one member of the Regional Municipality staff, appointed by the Chief Administrative Officer of the Regional Municipality, who shall be a non-voting member of the Commission Board.

(2) Each Commissioner is an officer Where, for any reason, there is a vacancy on the Commission Board, the Commissioners who are appointed and have consented to act may continue to act and to exercise all the powers or functions of the Commission for purposes of any immunities conferred herein Board until the vacancy is filled.

(3) The-Each member of the Commission, appointed pursuant to clause (b) of subsection (1) of Section 4 holds office for a term of two or three years, at the discretion of Council, but ceases to hold office if that member ceases to be a member of Council, or if that member, without leave of the Commission Board shall appoint a Chair and a Vice chair from among its members who hold office until their successors are appointed is absent from three consecutive regular meetings of the Commission Board.

(4) Four voting Commissioners constitute a quorum-Each member of the Commission and appointed pursuant to clause (c) of subsection (1) of Section 4 holds office for a term of two or three years, at the discretion of Council, but ceases to hold office if that member ceases to be a resident of the Regional Municipality, or if that member, without leave of the Commission Board, is absent from three consecutive regular meetings of the Commission Board the Commission may carry on business notwithstanding any vacancies on the Commission Board.

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(5) The member of the Commission appointed pursuant to clause (d) of subsection (1) of Section 4 holds office for such a term as is designated by the Chief Administrative Officer at the time of the appointment, but ceases to hold office upon ceasing to be a member of the Regional Municipality staff.

(6) Each member of the Commission is eligible for re-appointment.

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(7) Where a person appointed to the Commission pursuant to clause (b) or (c) of subsection (1) of Section 4 ceases to be a member of the Commission before the member's term of office expires, the Council shall, within two months after the member ceases to be a member of the Commission, appoint a person pursuant to said clause (b) or (c), respectively, to fill the vacancy and the person so appointed holds office, as long as that person has those qualifications, for the remainder of the term of the person who ceases to be a member.

(8) Where a person appointed to the Commission pursuant to clause (d) of subsection (1) of Section 4 ceases to be a member of the Commission, the Chief Administrative Officer shall appoint to the Commission another member of the staff of the Regional Municipality to hold office for such term as is designated by the Chief Administrative Officer.

(9) Each Commissioner is an officer of the Commission for purposes of any immunities conferred herein.

(10) The Commission Board shall appoint a Chair and a Vice-chair from among its members who hold office until their successors are appointed.

(11) The Commission shall appoint from its members or its employees a Secretary and Treasurer whose duties shall be determined by the Commission. One person may be appointed Secretary and Treasurer.

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(12) Four voting Commissioners constitute a quorum of the Commission Board.

(13) Commissioners who are not members of Council may be paid from the revenue of the Commission such annual honorarium as the Commission Board determines, but the total of the annual honoraria must not exceed one tenth of one per cent of the gross annual revenue of the Commission. 2007, c. 55, s. 4.

By-laws, rules, regulations and policies

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5 The Commission Board may from time to time make such by-laws, rules, regulations and policies not inconsistent with this Act or the Public Utilities Act, as it deems necessary or proper for the management of its affairs. 2007, c. 55, s. 5.

Owner of business

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6 The Regional Municipality is the owner of the business of the Commission for purposes of surplus payments as provided for herein and entitlement to the assets of the Commission in the event of dissolution or winding down of the Commission. 2007, c. 55, s. 6.

6A Where there is a conflict between this Act and the Charter, this Act prevails.

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Powers of Commission

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7(1) In addition to all powers of the Commission under any other Act, and subject to the supervision and regulation of the Board pursuant to the Public Utilities Act, the Commission may

(a) acquire, own or operate

_____ (i) water systems, facilities and utilities,

_____ (ii) wastewater systems, facilities and utilities, and

_____ (iii) stormwater systems, facilities and utilities,

for the purpose of providing water, wastewater and stormwater service to customers located within the Regional Municipality, including the power to acquire, own or operate systems, facilities and utilities not located within the Regional Municipality for the purpose of protecting or enhancing the service or reducing the cost of service to customers located within the Regional Municipality;

(b) lease land for the erection, maintenance and operation of wind turbines subject to any Regional Municipality by-laws or policies regarding wind energy.

~~(c)~~ exercise all necessary powers in relation to the activities, operations and purposes of the Commission as set out in this Act or any other Act including, but not limited to, the power to

_____ (i) make and carry out contracts,

_____ (ii) buy, sell or lease interests in real or personal property,

_____ (iii) borrow and invest monies,

_____ (iv) receive and issue negotiable instruments, and

_____ (v) hire employees and participate in pension plans or provide pension benefits; and

~~(d)~~ engage in other incidental business activities, including the generation of heat and electricity in whole or in part, from by-products of the activities set out in sub clauses 7(1)(a)(i), (ii), (iii), and including the provision to provide contract services for persons located outside the Regional Municipality, so long as such activities are carried out without subsidy from the operations of the Commission described in clause (a) and relate to the provision of water, wastewater or stormwater services and for that purpose may exercise any of the powers set out in clause (c). -2007, c.55, s.7

7.2 For the purpose of protecting or enhancing the service or reducing the cost of service to customers the Commission may directly or in partnership with the Regional Municipality, ~~HRM~~ own, operate or maintain wind turbines on property of the Commission and may exercise the powers set out in clause (c), subject to the approval of the Regional Municipality.

General Manager and other personnel

8 (1) The Commission Board shall employ a General Manager and fix the salary, wages or other remuneration of the General Manager.

(2) The authority and responsibilities of the General Manager in relation to the Commission Board and Commission employees are the same as those of a municipality's chief administrative officer in relation to a municipal council and municipal employees under the ~~Municipal Government Act~~ Charter, with such changes as the context requires.

(3) The Commission shall employ such other staff as may be necessary or desirable to carry out its powers and responsibilities. 2007, c. 55, s. 8.

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Powers of General Manager

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9 (1) In relation to water, watershed protection, ~~wastewater and stormwater services, systems and facilities~~ water systems, sewage, sewers, stormwater, stormwater systems, and wastewater facilities that are within the subject-matter and territorial jurisdiction of the Commission, the General Manager has all the powers, privileges and immunities that a municipality's engineer has under the Charter, the Municipal Government Act or such successor legislation as may be enacted, with such changes as the context requires and, without limiting the generality of the foregoing, the General Manager's powers include

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(a) where the Commission or the General Manager has authority to require that action be taken by a person, directing that the action be taken;

(b) where the General Manager directs that action be taken and no action is taken, causing the necessary work to be done at the expense of the person in default;

(c) entry in or upon a property without a warrant at

_____ (i) a reasonable hour upon reasonable notice to the owner and any occupier of the property, or

_____ (ii) any time in the event of an emergency,

for the purpose of inspection, enforcement, investigation, observation, measurement, sampling, testing or work to be done in accordance with this Act or the Regulations, or in accordance with another enactment, regulation or by-law;

(d) those powers of the engineer under Part XII of the Municipal Government Act-Charter that relate to stormwater or stormwater systems, drainage or management in or near streets or roads;

(e) all the powers of the engineer under Part XIV of the Municipal Government Act that relate to wastewater or stormwater facilities or systems or stormwater drainage or management, with such changes as the context requires; and

(f) all the powers of the engineer under Parts VIII and IX of the Municipal Government Act-Charter in respect of subdivision applications and other municipal planning and development applications in relation to water, wastewater or stormwater services, infrastructure, systems or stormwater drainage or management, with such changes as the context requires.

(2) No person shall refuse or fail to take action when directed to do so by the General Manager pursuant to this Section.

(3) No action may be taken against the General Manager or the Commission or its officers or employees for anything done at the direction of the General Manager pursuant to this Section. 2007, c. 55, s. 9.

Enforcement of power

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10 (1) Where a person refuses to allow the General Manager to exercise, or attempts to interfere or interferes with the General Manager in the exercise of, a power granted pursuant to this Act or another enactment, the General Manager may apply to a judge of the Supreme Court of Nova Scotia for an order

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(a) to allow the General Manager entry to premises; and

(b) restraining a person from further interference.

(2) Any person who refuses access to the General Manager or interferes with an inspector in the exercise of a power granted pursuant to this Act or another enactment, is guilty of an offence. 2007, c. 55, s. 10.

Entry by Commission

11 Subject to the Public Highways Act and any applicable municipal by-laws, the Commission may, in the exercise of any of its powers, enter into and upon any streets, roads, highways, squares or other places or any lands or premises and make such excavations and do and perform such other work thereon as the Commission deems necessary or expedient, with respect to the operation and maintenance of its plant and equipment. 2007, c. 55, s. 11.

Expropriation

12 Subject to the Expropriation Act, the Commission may take and expropriate any land or any estate or interest in land for the purpose of the Commission. 2007, c. 55, s. 12.

Plan and description of land to be expropriated

13 Where the Commission decides to expropriate land, the Commission shall cause to be prepared a plan and description of the land and, for any purposes connected with any such expropriation, the Commission or any of its officers, servants or agents may enter upon any land in respect to which the expropriation is contemplated and survey or examine the land and, where necessary in the Commission's judgement, may make borings or other excavations therein and, where such expropriation is not made, any damage to the land shall be paid for by the Commission. 2007, c. 55, s. 13.

Expropriation procedure

14 The procedures with respect to the expropriation of land and the determination of compensation are those set out in the Expropriation Act. 2007, c. 55, s. 14.

Compensation for expropriation

15 The amount of compensation payable for land expropriated or for injurious affection is the compensation payable under the Expropriation Act. 2007, c. 55, s. 15.

Bonds and debentures

16 (1) The Commission has power to issue and sell bonds or debentures to borrow sums as may be authorized and approved by the Board for the purpose of the Commission and may secure such bonds or debentures by mortgage or otherwise on the revenues and real and personal property and undertakings of the Commission, including after acquired property.

(2) Such bonds or debentures may be for such separate sums and at such rates of interest and upon such terms and conditions and in such form and payable at such period or periods or at such time or times and place or places as the Commission determines and the Board approves.

(3) Every bond or debenture issued by the Commission and every deed of trust or mortgage made by the Commission securing the same must be signed by the Chair or Vice-chair of the Commission and

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counter-signed by the treasurer or General Manager, whose signatures may be facsimile signatures and must bear the common seal of the Commission.

(4) The interest coupons of such bonds or debentures must be signed by the treasurer or General Manager, whose signature may be a facsimile signature, but it is not necessary for the coupons to bear the common seal.

(5) The Regional Municipality is empowered to and may from time to time guarantee unconditionally the payment of the principal and interest or the principal or the interest only of the bonds or debentures issued by the Commission or of such of the bonds or debentures issued by the Commission as the Regional Municipality may, by resolution of the Council, determine, and the Regional Municipality may also guarantee the due performance by the Commission of all terms, provisions, covenants and conditions of every deed of trust or mortgage made by the Commission securing the same, and upon such guarantee being given by the Regional Municipality, the Regional Municipality is liable according to the terms of the same for such payment or such due performance, or both, to the same extent and in all respects whatsoever as if the Regional Municipality were the principal debtor.

(6) Each guarantee given shall be in the form similar to the following, with such variations as may be necessary, and must be endorsed on every bond or debenture issued by the Commission that is subject to a guarantee:

The Halifax Regional Municipality, pursuant to the Halifax Regional Water Commission Act, hereby unconditionally guarantees to the lawful holder or holders hereof due payment of the principal and interest (or the principal or the interest) of the within bond (or debenture) according to its terms; and, where a deed of trust or mortgage is made, due performance by the Halifax Regional Water Commission of the deed of trust or mortgage securing the same,

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dated.....

in favour of

Dated at Halifax, Nova Scotia 20...

IN WITNESS WHEREOF the Halifax Regional Municipality has caused its Corporate Seal to be hereunto affixed and this Guarantee to be signed by its Mayor and Clerk.

(7) The Mayor and Clerk of the Regional Municipality are hereby authorized to and shall sign each guarantee on behalf of the Regional Municipality and shall affix the corporate seal of the Regional Municipality, and such execution is conclusive evidence for all purposes of the validity of the guarantee and that the provisions of this Act with respect to such guarantee have been duly complied with.

(8) A certificate signed by the Chair or Vice-chair and Treasurer or General Manager of the Commission under the common seal of the Commission that all necessary resolutions of the Commission have been duly and regularly passed authorizing such borrowing and that such borrowings have been authorized and approved by the Board, together with such bonds or debentures and any deed of trust or mortgage, and the form and execution of the same, and that all matters precedent and incidental thereto have been duly complied with, is conclusive evidence of the fact.

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2007, c. 55, s. 16.

Agreement with Municipality respecting borrowing

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17 Where funds are borrowed under Section 16 for purposes of providing an extension of water, wastewater or stormwater service throughout the Regional Municipality, the Commission and the Regional Municipality may enter into an agreement for the Regional Municipality to pay to the Commission the amount, in whole or in part, of the funds borrowed. 2007, c. 55, s. 17.

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Imposition of charge by Municipality

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18 The Regional Municipality may impose a charge to cover the cost of payments made to the Commission under an agreement referred to in Section 17 as though it were a charge for the municipal portion of the capital cost of installing a water system under clause 81(1)(c) of the Municipal Government Act. 2007, c. 55, s. 18.

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Public utility

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19 The Public Utilities Act applies to the Commission and any water, wastewater or stormwater facility or system owned, operated, managed or controlled by the Commission for service to the public is deemed to be a public utility within the meaning of that Act. 2007, c. 55, s. 19.

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Annual Financial Reporting

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20 (1) The Commission shall annually, following the end of its fiscal year, have prepared and submit to the Council statements of revenue and expenses, surplus or deficit account and assets and liabilities all drawn or prepared in accordance with the Regulations of the Board of Commissioners of Public Utilities of Nova Scotia Prescribing a Uniform System of Accounts Water Utility Accounting and Reporting Handbook issued by the Nova Scotia Utility and Review Board, for each public utility operated by the Commission.

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(2) Accompanying the financial statements referred to in subsection (1), the Commission shall, in writing, submit to the Council its recommendation of the amount or amounts of money to be paid from the surplus of the Commission's undertaking or undertakings to the Regional Municipality for the general purposes of the Regional Municipality.

(3) The amount or amounts to be paid by the Commission from the surplus of the Commission's undertaking or undertakings to the Regional Municipality for the general purposes of the Regional Municipality shall be such amount or amounts as are agreed upon by the Commission and the Council; and may be based on an amount denominated as a percentage of the Commission's rate base allocated to one or more of water, wastewater and stormwater systems or by reference to any other formula or incidental business agreement agreed upon by the Commission and the Council.

(4) The amount or amounts in an agreement made pursuant to subsection (3) shall be paid as a grant in lieu of taxes on taxable assets pursuant to s. 92 of the Charter irrespective of whether the amount or amounts are calculated by reference to a formula that includes non-taxable assets, or shall be paid as a dividend. Any amount payable pursuant to subsection (3) shall be subject to review and approval by the Board. 2007, c. 55, s. 20.

Municipal Taxes

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21 Subject to any agreements made pursuant to Section 53292 of the Municipal Government Act Charter, property that is owned or utilized by the Commission for the purpose of providing water service is liable to real property and business-occupancy taxation. 2007, c. 55, s. 21.

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Exemption from municipal taxes

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22 Notwithstanding the Assessment Act or the ~~Municipal Government Act~~ Charter, property that is owned or utilized by the Commission for the purpose of providing wastewater or stormwater service is not liable to real property ~~or business occupancy~~ taxation or any other municipal rate or tax. 2007, c. 55, s. 22.

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Municipal Grants Act

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23 Notwithstanding the Municipal Grants Act and any other enactment, for the purpose of calculations under the Municipal Grants Act,

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(a) the taxable assessment of property that is owned or utilized by the Commission for the purpose of providing water service is included in the calculation of uniform assessment in the same way as property of other municipal water utilities;

(b) payments made pursuant to Section ~~532-92~~ of the Municipal Government Act are not included in the calculation of uniform assessment; and

(c) public wastewater or stormwater service provided by the Commission within a municipality is deemed to be provided by the municipality. 2007, c. 55, s. 23.

Agreement with Municipality

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24 The Regional Municipality has the authority and capacity to enter into or carry out the terms and conditions of any agreement entered into with the Commission for the purposes set out in this Act and may enter into further agreements with the Commission for modifying or amending any previous agreement. 2007, c. 55, s. 24.

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Protection of water supply

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25 (1) No person shall place or permit to escape upon any land adjacent to Pockwock, Tomahawk, Chain, Long, Major, LaMont and Topsail Lakes, and all lakes, ponds or other bodies of water tributary thereto, or any lake or tributary of such lake at any time forming part of the water system of the Regional Municipality, or upon any land or water forming part of the watershed of any one of such lakes, any matter or thing of an offensive or deleterious nature or calculated to impair the quality of the water for use for domestic purposes.

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(2) No person shall

(a) cut any ice on any lake forming part of the water system of the Commission or fish, bathe, wash in or otherwise impair the quality of the water in any such lake; or

(b) cut any wood or camp on any land of the Commission located on the watershed of any lake forming part of the water system of the Commission or haul any wood, wherever cut, across any such lake without first obtaining the consent in writing of the Commission.

(3) No person shall, upon any land forming part of the watershed of any of the lakes forming part of the water system of the Commission, erect or construct or place or cause or permit to be erected, constructed or placed, any building or structure unless such person has first obtained from the Commission permission to do so. 2007, c. 55, s. 25.

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Exemption from liability re negligence

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26 The Commission, its officers and employees, are not liable for damages caused

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(a) directly or indirectly by

_____ (i) the design, construction, operation, maintenance, repair, breaking or malfunction of
_____ wastewater facilities, a stormwater system or a water system, or

_____ (ii) interference with the supply of water through a water system,

unless the damages are shown to be caused by the gross negligence of the Commission or its officers or employees;

(b) by the discharge of sewage or water into premises from a sewer unless the discharge was caused by improper construction or neglect in the maintenance of the sewer, or a failure to remedy a matter that was known, or should reasonably have been known, to the Commission and should reasonably have been repaired; or

(c) in any case where this Act or the regulations have not been complied with by an owner or previous owner of premises that have been damaged. 2007, c. 55, s. 26

Exemption from liability re breakage or interruption

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27 (1) The Commission is not liable for a loss as a result of the breakage of a pipe, conduit, pole, wire, cable or a part of a utility or service provided by the Commission, or the discontinuance or interruption of a service or connection, by reason of

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(a) accident;

(b) disconnection for non-payment or non-compliance with a term or condition of service; or

(c) the necessity to repair or replace a part of a utility or service.

Exemption from liability re nuisance

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27A(2) The Commission is not liable for nuisance as a result of the construction or operation of any work owned or operated by it, including, without limitation, any water system, stormwater system or wastewater facilities, if the nuisance could not be avoided by any other practically feasible method of constructing or operating the work. 2007, c. 55, s. 27.

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Exemption from liability re failure to provide or maintain

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28 The Commission, its officers and employees, are not liable for

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(a) failure to provide water, wastewater or stormwater service, or the manner in which water, wastewater or stormwater service is provided, unless the Commission fails to meet a standard of care to be determined having regard to financial, economic, personnel, social, regulatory and other factors or constraints in the circumstances; or

(b) failure to maintain a place or thing that is subject to the direction, control and management of the Commission, in a reasonable state of repair, unless the Commission has actual notice of the state of disrepair and fails to take steps to remedy or otherwise deal with the state of disrepair within a reasonable time. 2007, c. 55, s. 28.

Exemption from liability re overflow

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29 Where an overflow of water or sewage from a water, wastewater or stormwater system or a drain, ditch or watercourse is a consequence of snow, ice or rain, the Commission is not liable for a loss as a result of the overflow. 2007, c. 55, s. 29.

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Exemption from liability re inspection

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30 Where an inspection is carried out or ought to have been carried out pursuant to this Act or another enactment,

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(a) the Commission, and its officers and employees are not liable for a loss as a result of the manner or extent of an inspection or the frequency, infrequency or absence of an inspection, unless the Commission was requested to inspect at appropriate stages, and within a reasonable time, before the inspection was required, and either the Commission failed to inspect or the inspection was performed negligently;

(b) an inspection is not performed negligently unless it fails to disclose a deficiency or a defect that

_____ (i) could reasonably be expected to be detected, and

_____ (ii) that the Commission could have ordered corrected;

(c) notwithstanding the Limitation of Actions Act or another Act, the Commission and its officers and employees are not liable for a loss as a result of an inspection or failure to inspect if the claim is made more than six years after the date of the application for any permit, approval or other process in relation to which the inspection was required. 2007, c. 55, s. 30.

Exemption from liability re certification

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31 Where the Commission receives a certification or representation by an engineer, architect, surveyor or other person held out to have expertise respecting the thing being certified or represented, the Commission and its officers and employees are not liable for any loss or damage caused by the negligence of the person so certifying or representing. 2007, c. 55, s. 31.

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Limitation period

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32 For the purpose of the Limitations of Actions Act, the limitation period for an action or proceeding against the Commission, a Commissioner, an officer or employee of the Commission, or against any person acting under the authority of any of them, is twelve months. 2007, c. 55, s. 32.

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Lien

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33 (1) The Commission has a first lien upon a property when the General Manager notifies the Regional Municipality's treasurer of a lienable event.

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(2) A lienable event arises when

(a) the General Manager lawfully causes work to be done upon, or for the benefit of, the property, pursuant to this Act or the Regulations, in which case the amount of the lien is the cost of the work plus interest at the rate prescribed in the Regulations calculated from the date of the work; or

(b) there is an overdue account owed to the Commission in relation to wastewater or stormwater service in respect of a property that has not been paid for a period of ninety days or longer, in which

case the amount of the lien is the amount of the overdue account plus interest at the rate prescribed in the Regulations. 2007, c. 55, s. 33.

Collection by Municipality

34 (1) Upon request of the Commission, or in the event of collection by the Regional Municipality of other municipal liens against a property, the Regional Municipality shall collect the lien on behalf of the Commission and, after deducting collection costs, it shall remit the proceeds to the Commission.

(2) Collection costs and proceeds shall be pro-rated between the Commission and the Regional Municipality when the collection is undertaken for both the Regional Municipality and the Commission. 2007, c. 55, s. 34.

Enforcement proceedings

35 The General Manager may cause proceedings to be taken to enforce the provisions of this Act, or the provisions relating to wastewater or stormwater contained within Part XII and Part XIV of the Municipal Government Act and Part XII and Part XIV of the Charter, or such successor legislation as may be in force from time to time, including the prosecution of offences and or the taking of proceedings in the name of the Commission to restrain the continuance of same. 2007, c. 55, s. 35.

Special Constables

36 The General Manager may request of the Minister of Justice that designated employees of the Commission be appointed special constables pursuant to Section 88 of the Police Act for the purpose of enforcing this Act, the Public Utilities Act, or the provisions in relation to wastewater or stormwater contained within Part XII and Part XIV of the Municipal Government Act and Part XII and Part XIV of the Charter, or such successor legislation as may be in force from time to time, and for the purpose of enforcing subordinate legislation relating to the Commission pursuant to those enactments. 2007, c. 55, s. 36.

Maps and plans as evidence

37 In any action or proceeding authorized to be taken by or for the Commission, a map or plan tendered by a witness for the Commission is sufficient evidence of the matters represented on the map or plan, in the absence of proof to the contrary. 2007, c. 55, s. 37.

Offence

38 A person who

- (a) violates this Act or any prohibition in the Regulations;
- (b) fails to do anything required by a lawful order made pursuant to this Act;
- (c) permits anything to be done in violation of this Act or any prohibition in the Regulations; or
- (d) obstructs or hinders any person in the performance of their duties under this Act or the Regulations,

is guilty of an offence. 2007, c. 55, s. 38.

Penalty

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39 Unless otherwise provided, a person who commits an offence under this Act is liable, upon summary conviction, to a penalty payable to the Commission of not less than one hundred dollars and not more than ten thousand dollars and, in default of payment, to imprisonment for a term of not more than two months. 2007, c. 55, s. 39.

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Separate offences

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40 Every day during which an offence continues is a separate offence. 2007, c. 55, s. 40.

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Order to comply

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41 (1) In addition to a fine imposed for an offence, a judge may order the person to comply with the provision, order or Regulation that was the subject of the offence, within the time specified in the order.

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(2) Any person who fails to comply with an order made by a judge under this Section is guilty of an offence. 2007, c. 55, s. 41.

Repeal

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42 Chapter 55 of the Acts of 1963, the Halifax Regional Water Commission Act, is repealed. 2007, c. 55, s. 42.

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