



RENEWABLE ENERGY ACT 2008

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I assent,

GEORGE TUPOU V,

1st June, 2009.

AN ACT

AN ACT TO REGULATE THE USE OF RENEWABLE ENERGY IN THE KINGDOM AND RELATED MATTERS

[9th, October, 2008]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART 1 - PRELIMINARY

1. Short Title

This Act may be cited as the Renewable Energy Act 2008.

2. Definitions

In this Act, unless the context otherwise requires –

“Advisory Committee” means the Renewable Energy Advisory Committee appointed under section 8;

“Authority” means the Renewable Energy Authority established under this Act;

“concession agreement” means a renewable energy concession agreement made under section 14;

“Competent Authority” has the same meaning as in the Price and Wage Control Act;

“Energy Planning Section” means the energy section of the Ministry;

“group company” means, in relation to a company, a wholly owned subsidiary of that company;

“Minister” means the Minister of Lands, Survey, Natural Resources and Environment;

“Ministry” means the Ministry of Lands, Survey, Natural Resources and Environment;

“physical assets” means a renewable energy system and all fittings related thereto, including buildings, vehicles, plant, equipments and machinery;

“renewable energy” means any form of energy that is not derived from fossil fuels and specifically excludes energy from petroleum products and energy from coal products;

“renewable energy operators” means persons involved in the ownership, management, maintenance, design or installation of renewable energy projects.

3. Objects

The principal objects of this Act are –

- (a) to promote the development of the renewable energy industry in the Kingdom by:
 - (i) researching and developing opportunities of renewable energy in the Kingdom;
 - (ii) encouraging the use of commercially sustainable renewable energy technology for both grid connected and stand alone power supply systems;
 - (iii) regulating the technical and safety standards for renewable energy technologies;
 - (iv) regulating the licensing of persons involved in the design, research, installation and management of renewable energy projects;
 - (v) regulating renewable energy operators;
 - (vi) regulating the feed-in tariffs for renewable energy generated electricity; and
 - (vii) supporting the engagement of the private sector in renewable energy projects in the Kingdom.
- (b) to establish an authority to deal with matters relating to renewable energy.
- (c) to empower such authority to regulate all matters relating to renewable energy.
- (d) to promote the implementation of commercially sustainable renewable energy based electrification services by encouraging economically efficient investment in the use of and infrastructure to provide electrification services.
- (e) to promote access by people resident in the remote areas of the Kingdom to renewable energy services to the extent that it is reasonably and commercially practicable to provide such services.

4. Renewable energy to which this Act applies

- (1) Subject to subsection (3), this Act shall apply to the production, storage or distribution of any form of energy derived from a renewable source specified under subsection (2), where –
 - (a) the production, storage or distribution of renewable energy is made on a commercial basis;
 - (b) the production, storage or distribution of renewable energy is for the use in a commercial enterprise; or
 - (c) the renewable energy is intended for a third party.
- (2) Renewable energy sources include the following, and any other source specified by regulations made under this Act -
 - (a) Biofuel;
 - (b) Biogas;
 - (c) Biomass;
 - (d) Fuel Cells;
 - (e) Geothermal;
 - (f) Hydrogen;
 - (g) Hydropower;
 - (h) Ocean Thermal Energy conversion (OTEC);
 - (i) Plant, animal or marine resources;
 - (j) Solar;
 - (k) Tidal;
 - (l) Wave;
 - (m) Wind.
- (3) This Act shall not apply to electricity that has been converted from direct current to alternate current, although originally derived from a renewable energy source.

PART 2 - RENEWABLE ENERGY AUTHORITY

5. Establishment

The Renewable Energy Authority is hereby established.

6. Proclamation

- (1) His Majesty in Council may, by proclamation made under this section, declare that any person or authority shall become and thereby be vested with the functions and powers of the Renewable Energy Authority provided under this Act. A proclamation made under this section shall be published in the Gazette.

- (2) In the event of a proclamation being made under subsection (1), any matter pertaining to the proclaimed Authority, including institutional or administrative matters, that are necessary to be provided or prescribed, may be so provided or prescribed by the proclamation, or regulations made under this Act.

7. Minister as the Authority

Until such time that a proclamation is made pursuant to section 6 -

- (a) the functions and powers of the Renewable Energy Authority shall be vested in the Minister; and
- (b) there shall be a Renewable Energy Advisory Committee to advise the Minister on matters relating to renewable energy.

8. Advisory Committee

- (1) The Advisory Committee shall comprise of the following members -
- (a) Secretary for Lands, Survey, Natural Resources and Environment, who shall be the chairman;
 - (b) Head of the Energy Planning Section of the Ministry, who shall be the secretary of the Advisory Committee; and
 - (c) 2 members appointed by the Minister from consumers of any form of renewable energy.
- (2) The members of the Advisory Committee appointed under subsection 1 (e) -
- (a) shall hold office for 2 years, but are eligible for reappointment;
 - (b) may be terminated for inability to perform the functions of the office, neglect of duty, misconduct, or failure to comply with any disclosure of interest requirements applicable to members of the committee;
 - (c) may resign by notice in writing to the Minister, with immediate effect.
- (3) (a) The quorum for a meeting of the Advisory Committee shall be the Chairman and any 4 members.
- (b) The members of the Advisory Committee may be remunerated in accordance with Government policy.

9. Functions of the Advisory Committee

The Advisory Committee shall review and recommend to the Authority any matter relating to the functions and powers of the Authority, and the means by which they are to be implemented, and in particular to-

- (a) receive all relevant documentations relating to applications submitted pursuant to the requirements of this Act or regulations made under this Act;

- (b) ensure appropriate coordination is made between relevant departments and the private sector with regard to renewable energy projects;
- (c) review concession agreements made under this Act;
- (d) recommend to the Authority any conditions to be attached to any concession agreement and the means by which it should be implemented.

10. Secretariat

The Ministry shall provide the secretariat for the Authority.

PART 3 - FUNCTIONS AND POWERS

11. Functions of Authority

The functions of the Authority are –

- (a) to take enforcement actions under this Act or any regulations made under this Act;
- (b) carry out all activities required by the terms of any agreement made under this Act;
- (c) carry out all activities necessary or desirable for the licensing of renewable energy operators as may be prescribed by regulations made under this Act;
- (d) develop and recommend regulations establishing standards for any matter relating to the specification of renewable energy equipments and the production, storage and distribution of renewable energy;
- (e) to advise and assist any person, upon request, on any matter relating to renewable energy;
- (f) to co-operate with public authorities in reviewing laws (in particular but not limited to fiscal measures including duties and taxes), practices and procedures with a view to promoting the use of renewable energy;
- (g) to conduct research, promote public awareness and disseminate information to the public relating to required standards, safe use, or any other matter relating to the utilization of renewable energy;
- (h) to use its best endeavors to achieve an optimal socio-economic structure through sustainable energy development;
- (i) to do all things necessary for the performance of its functions and the exercise of its powers under this Act or otherwise as it is required to do under or by this Act; and
- (j) to facilitate the implementation of any relevant international obligation of the Kingdom.

12. Powers of the Authority

The powers of the Authority are –

- (a) to enforce this Act or any regulations made under it;
- (b) to enforce any rights under any concession agreement made under this Act;
- (c) to do all things necessary to enforce any offences provided under this Act or any regulations made under this Act; and
- (d) to do all lawful things necessary to carry out its functions or it is entitled to do under this Act or any regulations made under this Act.

PART 4 - RENEWABLE ENERGY AGREEMENTS**13. Prohibition**

In accordance to Section 14, no person may produce, store or distribute any energy derived from a renewable source, except under the authority of a renewable energy agreement entered into under section 14 or the person is exempted under this Act.

14. Agreements

- (1) This section shall apply to the extraction of any form of energy from a source for commercial purposes.
- (2) The Authority may enter into a concession agreement permitting any person to produce, store or distribute any energy derived from any renewable energy source, which may included the rights to do the same for the whole Kingdom, or any district, town or island.
- (3) A concession agreement entered into under subsection (1) shall conform with the requirements of this Act.
- (4) Any penalties provided in a concession agreement shall be enforceable in accordance with the terms of the agreement.
- (5) Every concession agreement made under subsection (1) shall be made publicly available by the Authority by notice in the media, and be available for inspection at the Authority's office.

15. Terms of agreements

A concession agreement made under section 14 shall provide for –

- (a) the method of producing, storing or distributing the renewable energy;
- (b) the maximum amount of renewable energy to be produced, stored or distributed;
- (c) the standards required for efficient and safe production, storage or distribution;

- (d) the likely assets required for the establishment of the plant, premises or facility for the production, storage or distribution of renewable energy;
- (e) the intended uses and users of the renewable energy;
- (f) the appropriate tariff if the renewable energy is to be supplied to a third party;
- (g) the appropriate tariff if the renewable energy is to be supplied directly to consumers;
- (h) the penalties to be imposed for breaches of any required standards;
- (i) the duration of the concession agreement;
- (j) the circumstances in which a party can terminate the concession agreement;
- (k) adequate protection of the interests of any party upon termination; and
- (l) any other reasonable terms.

16. Regulatory fees

- (1) Every person who enters into a concession agreement with the Authority shall pay to the Authority any regulatory fees imposed under, and in accordance with, the terms of the concession contract.
- (2) Any failure by a person to pay regulatory fees in accordance with the concession agreement shall be recoverable in any court as a debt due to the Authority.
- (3) The amount of any unpaid fee, charge or levy is recoverable in any court as a debt to the Authority.

PART 5 - SECURITY OF SUPPLY

17. Removal or transfer of assets

- (1) The physical assets that are used for the production, storage or distribution of any renewable energy may not be removed from the Kingdom without the permission of the Authority if such removal would cause any person to be unable to meet any obligations under a concession agreement under section 14, current concession agreement under Section 14.
- (2) Notwithstanding subsection (1) Ownership of the physical assets that are used for the production, storage or distribution of renewable energy in the Kingdom may not be transferred unless –
 - (a) the transferee is a party to or a group company of a party to a concession agreement entered into under section 14;
 - (b) the transferee is a nominee of the Authority;

- (c) the particular asset or assets being transferred are not material to the continuity or security of the production, storage or distribution of the renewable energy in the Kingdom; or
- (d) in any other case, with the consent of the Authority.

PART 6 - OFFENCES

18. Criminal prosecution

- (1) Any person who contravenes any of the provisions of section 13 or section 17 of this Act commits an offence and shall be liable upon conviction –
 - (a) in the case of a natural person, for each offence to a fine not exceeding \$5,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000.
- (2) The prosecution of an offence under this section may be made within 2 years from the time when the alleged offending took place, and may be conducted by–
 - (a) the Attorney General;
 - (b) the Authority; or
 - (c) a member of the Police.
- (3) A person referred to in paragraphs (b) and (c) of subsection (2) may conduct any proceeding arising under this section subject to any direction issued by the Attorney General.

19. Investigation

If the Authority becomes aware whether by notification by another person or otherwise that there are reasonable grounds to suspect a person has committed an offence under section 18, then:

- (a) the Authority shall promptly investigate the alleged offence; and
- (b) if the Authority is satisfied on reasonable grounds that a prima facie case can be established, the Authority shall promptly take such action as is appropriate to prevent a continued contravention of section 13 or section 17.

20. Injunction

Without limiting the rights and obligations of the Authority under section 18, if:

- (a) a party to a concession agreement under section 14 has reasonable grounds to suspect a person has committed an offence under section 18; and

- (b) that party is adversely affected by the suspected contravention of section 13 or section 17,

that party shall be entitled to seek injunctive relief to prevent a continued contravention of section 13 or section 17.

PART 7 - MISCELLANEOUS

21. Transitional provision

- (1) Any renewable energy installation operating at the time this Act comes into effect shall be given 12 months to comply with the provisions of this Act or any regulations made under this Act.
- (2) If at the end of 12 months from the coming into effect of this Act such an installation does not comply with the provisions of this Act or regulations made under this Act, it shall be lawful for the Authority to close down the installation.

22. Regulations

- (1) The Minister may, with the consent of Cabinet, make regulations for the proper and efficient administration of this Act.
- (2) Without limiting the generality of the powers under subsection (1), regulations may be made for the following purposes –
 - (a) the licensing of renewable energy operators including the establishment of offences and penalties;
 - (b) the technical and safety standards including the establishment of offences and penalties;
 - (c) prescribing any powers for the purposes of carrying out any of the functions of the Authority;
 - (d) any matter relating to the ownership of renewable energy projects;
 - (e) the requirements for the establishment or construction of any plant, premises or facilities for the production, storage or distribution of renewable energy;
 - (f) specifying any renewable energy source;
 - (g) providing or prescribing any institutional or administrative matters relating to a proclamation made under this Act;
 - (h) any matter relating to any international obligation of the Kingdom;
 - (i) the fees, charges, levies or tariffs, or the manner in which fees, charges, levies or tariffs are to be calculated, collected and paid to the Authority or any other person;
 - (j) the manner in which a concession agreement is to be made public under this Act;

- (k) the demarcation point in which renewable energy is passed to a third party or consumer;
- (l) any prohibition on the carrying out of activities relating to renewable energy;
- (m) the method of production, storage, distribution or use, or the quantity of renewable energy involved in the operation by any person;
- (n) the provision of information to the Authority; or
- (o) the rights of the Authority, or its nominee, to enter on the property of any person carrying on or proposing to carry on any production, storage or distribution of renewable energy, for the purpose of assessing whether the person is in compliance with this Act or any regulations made under this Act.

Passed by the Legislative Assembly this 9th day of October 2008.