

BILL NO. 83

(as passed)



*2nd Session, 60th General Assembly
Nova Scotia
56 Elizabeth II, 2007*

Local Bill

Halifax Regional Water Commission Act

CHAPTER 55 OF THE ACTS OF 2007

Diana Whalen
Halifax Clayton Park

[First Reading](#): December 6, 2007 (LINK TO BILL AS INTRODUCED)

Second Reading: December 11, 2007

[Third Reading](#): December 13, 2007

Royal Assent: December 13, 2007



**An Act Respecting
the Halifax Regional Water Commission**

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the Halifax Regional Water Commission Act.

2 (1) In this Act,

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

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

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

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

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

(f) "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;

(g) "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;

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

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

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

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.

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 of the Commission for purposes of any immunities conferred herein.

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

(4) Four voting Commissioners constitute a quorum of the Commission and the Commission may carry on business notwithstanding any vacancies on the Commission Board.

(5) 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.

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.

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.

7 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) 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

(c) engage in other incidental business activities, including the provision of 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.

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, 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.

9 (1) In relation to water, watershed protection, wastewater and stormwater services, systems and 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 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 Municipal Government Act 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 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.

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.

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.

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.

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.

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

15 The amount of compensation payable for land expropriated or for injurious affection is the compensation payable under the Expropriation Act.

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.

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.

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.

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.

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, 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.

21 Subject to any agreements made pursuant to Section 532 of the Municipal Government Act, 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.

22 Notwithstanding the Assessment Act or the Municipal Government Act, 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.

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 532 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.

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.

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.

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.

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.

(2) The Commission is not liable for nuisance as a result of the construction or operation of a work, if the nuisance could not be avoided by any other practically feasible method of constructing or operating the work.

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.

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.

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.

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.

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.

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.

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.

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, 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.

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, 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.

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.

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.

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.

40 Every day during which an offence continues is a separate offence.

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.

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



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