

BAHAMAS NATIONAL TRUST (AMENDMENT) BILL, 2010

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24 June 2010

BAHAMAS NATIONAL TRUST (AMENDMENT) BILL, 2010

A BILL FOR AN ACT TO AMEND THE BAHAMAS NATIONAL TRUST ACT

Enacted by the Parliament of The Bahamas

1. Short title.

This Act which amends the Bahamas National Trust Act may be cited as the Bahamas National Trust (Amendment) Act, 2010.

2. Amendment of section 4 of the principal Act.

Subsection (4) of section 4 of the principal Act is repealed and replaced as follows —

“(4) The Bahamas National Trust shall —

- (a) from time to time advise the Government of The Bahamas in matters concerned with the areas to be or become Trust property and the policy to be pursued for the preservation thereof and the means of enforcing the same; and
- (b) be at liberty from time to time to advise both the Government of The Bahamas and the private sector generally on development issues and policies relating to conservation, the environment, biodiversity, natural and cultural heritage and resource management.”.

3. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended —

- (a) in subsection (1) —
 - (i) in paragraph (b), by the insertion of the words “or youth” immediately after the word “student”;
 - (ii) in paragraph (f), by the insertion of the word “(general)” immediately after the words “members,”;
 - (iii) by the insertion immediately after paragraph (j) of the following paragraphs —
 - “(k) corporate members;
 - (l) senior citizen life members;
 - (m) family members.”;
 - (iv) by the deletion of paragraph (b) – (m) and the substitution therefor of the following —
 - “(b) student or youth members shall be of such an age and shall be annual subscribers to the funds of the Bahamas National Trust of such minimum amount as the council may by resolution from time to time determine. The council may from time to time by resolution determine different minimum annual subscriptions for different classes of student or youth members;
 - (c) general members shall be annual subscribers to the funds of The Bahamas National Trust of such minimum amount as the council may by resolution from time to time determine;
 - (d) contributing members shall be annual subscribers to the funds of the Bahamas National Trust of such minimum amount as the council may by resolution from time to time determine;
 - (e) supporting members shall be annual subscribers to the funds of the Bahamas National Trust of such minimum amount as the council may by resolution from time to time determine;
 - (f) sustaining members shall be the persons who shall hereafter pay to the funds of the Bahamas National Trust such minimum amount as the council may by resolution from time to time determine;
 - (g) life members (general) shall be the persons (within age groups which may be hereinafter prescribed by the council) who shall hereafter pay to the funds of the Bahamas National Trust such minimum amount as the

council may by resolution from time to time determine;

- (h) sponsor members shall be persons who shall hereafter pay to the funds of the Bahamas National Trust such minimum amount as the council may by resolution from time to time determine;
- (i) benefactor members shall be persons who shall hereafter pay to the funds of the Bahamas National Trust such minimum amount as the council may by resolution from time to time determine;
- (j) honorary members shall be any person or persons who shall give to the Bahamas National Trust any property which or any part of which in the opinion of the council is proper to be preserved for the benefit of The Bahamas or who shall give to the Bahamas National Trust such sum of money or other property or distinguished service or assistance as shall appear to the council to entitle such person or persons to be distinguished as honorary members;
- (k) local corresponding members shall be any persons who, without pecuniary contribution, undertake to further the objects of the Bahamas National Trust in any parish district or place in such manner as to the council may deem fit;
- (l) corporate members, shall be such corporate or other bodies or associations as the council may from time to time by resolution determine who make annual subscriptions to the funds of the Bahamas National Trust of such minimum amount as the council may by resolution from time to time determine. The Council may from time to time by resolution determine different minimum annual subscriptions for different classes of corporate members;
- (m) senior citizen life members shall be the persons (above the age of 60) who shall hereafter pay to the funds of the Bahamas National Trust the sum of one thousand dollars or such other sum as the council may from time to time specify in that behalf;
- (n) family members shall be persons who are members of the family of an ordinary subscribing member residing with such member and who make to the funds of the National Trust an annual subscription of such

minimum amount as the council may by resolution from time to time by resolution determine.”; and

- (b) by the repeal of subsection (2) and the replacement therefor of the following —

“(2) The council shall have power by resolution from time to time to add to or alter such other classes as the council may from time to time determine as well as the amount of the subscriptions required to qualify persons as members of the Bahamas National Trust.”.

4. Amendment of section 7 of the principal Act.

Section 7 of the principal Act is amended by the deletion of the words “on the first day of January” and the substitution of the words “on the date of their annual membership subscription”.

5. Amendment of section 9 of the principal Act.

Section 9 of the principal Act is amended by the insertion immediately after the words “this Act” appearing at the end of that section of the words “until changed or varied to comply with such election procedures and rules for nominations of candidates for election to council, presentation of proxies, postal ballot voting, electronic voting, prescribing notice and time procedures for motions and other like election and rules for conduct of annual general meetings as the council may by resolution determine and establish as a by-law”.

6. Repeal and replacement of section 10 of the principal Act.

Section 10 of the principal Act is amended —

- (a) by the repeal of subsection (1) and the replacement therefor of the following —

“(1) The affairs of the Bahamas National Trust shall be administered by a council to be called "the Council of the Bahamas National Trust" consisting of a President of the council and twenty-eight members of whom fifteen shall be elected by the members of the Bahamas National Trust present at the annual general meeting in person or their proxies and by members of the Bahamas National Trust who shall have either voted by post or electronically by computer transmitted ballot in compliance with such election procedures as the council may by resolution determine and establish as a by-law and with effect from the annual general meeting next after the first day of March of the year next after the coming into effect of this provision —

- (a) five of the elected members to council shall be elected to serve for a three year period and at each subsequent three year interval five of the elected members to council shall likewise be elected to serve for a three year period, the election selection process to be in compliance with such election procedures as the council may by resolution determine and establish as a by-law; the other six elected members to council shall be elected for one year in the previous manner;
- (b) three of the elected members to council shall be elected to serve for a three year period and at each subsequent three year interval thereafter three of the elected members to council shall likewise be elected to serve for a length of three years, the election selection process to be in compliance with such election procedures as the council may by resolution determine and establish as a by-law; the other three elected members to council shall be elected for one year in the previous manner;
- (c) three of the elected members to council shall be elected to serve for a three year period and at each subsequent three year interval thereafter three of the elected members to council shall likewise be elected to serve for a three year period, the election selection process to be in compliance with such election procedures as the council may by resolution determine and establish as a by-law.”;
- (b) in subsection (2) —
 - (i) by the insertion immediately after the words “The New York Zoological Society” of the words “(now called The Wildlife Conservation Society)”;
 - (ii) by the insertion immediately after the words “The Audubon Society” of the words —

“The University of Florida	One member”;
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 - (iii) by the insertion immediately after the words “The Minister of Agriculture”, of the words “and Marine Resources”

	One member”;
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 - (iv) by the deletion of the words “The Minister for Tourism” and all the words appearing opposite thereto and the substitution of the following —

“The Minister responsible for Tourism”	One Member”;
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 - (v) by the insertion immediately after the words “The Minister responsible for Tourism” the following —

- | | |
|--|--------------|
| “The College of The Bahamas | One member |
| The Minister responsible for Education | One member |
| The Minister responsible for the Environment | One member”; |
| and | |
- (c) by the insertion immediately after subsection (3) of the following new subsection —
- “(3A) Any annual general meeting of the Bahamas National Trust may designate and change from time to time any of hereinbefore mentioned body or persons which or who for the time being have been removed as appointed members to council or other eminent scientific or education institutions or persons as special advisors to council with the right to sit in upon council meetings as special advisors.”

7. Amendment of section 12 of the principal Act.

Section 12 of the principal Act is amended —

- (a) in subsection (2), by the insertion immediately after the words “business at meetings” of the words “and for a code of conduct for members of the council and the removal of council members acting in breach thereof”; and
- (b) by the insertion immediately after subsection (3) of the following new subsection —

“(14) For the avoidance of doubt the Executive Director and other officers and employees of the Bahamas National Trust shall be deemed to have authority to execute contracts, orders or other documents for goods and services or advancing projects and initiatives within the sphere of authority assigned to the Executive Director and other officers and employees acting within the scope thereof in good faith.”

8. Amendment of section 13 of the principal Act.

Subsection (2) of section 13 of the principal Act is repealed and replaced as follows —

“(2) The registered office of the Bahamas National Trust shall be at such place in the City of Nassau, The Bahamas as the council may by resolution determine.”

9. Amendment of section 14 of the principal Act.

Section 14 of the principal Act is amended —

- (a) by the re-numbering of the section as subsection “(1)”; and

- (b) by the insertion immediately after subsection (1) of the following new subsections —

“(2) Conveyances and other instruments or indentures by which realty or personalty are passing to the Bahamas National Trust shall be exempted from stamp duty.

(3) Land held by the Bahamas National Trust which is or becomes inalienable or held as easements shall not be capable of being adversely possessed and, the Limitation Act, *Ch. 83* and laws of adverse possession and prescription shall not affect such freehold or leasehold.”.

10. Amendment of section 18 of the principal Act.

Section 18 of the principal Act is amended —

- (a) by the re-numbering of the section as subsection (1); and
(b) by the insertion immediately after subsection (1) of the following new subsection—

“(2) Notwithstanding any other law, regulation or general accounting practice thereunto pertaining —

(a) it shall not be necessary to place any value on inalienable property or on other property or personal chattels held in trust or acquired by the Bahamas National Trust for preservation or in respect of which a resolution of the Council pursuant to section 14(1) hereof is made;

(b) it shall not be necessary to take account of any obligation for the future maintenance of property held by the Bahamas National Trust for preservation.”.

11. Amendment of section 24 of the principal Act.

Section 24 of the principal Act is amended —

- (a) in paragraph (b), by the insertion immediately after the word “fire” of the words “of fireworks”;
(b) by the repeal of paragraph (c) and the replacement therefor of the following —

“(c) for prohibiting or regulating the firing or discharge of explosives fireworks, firearms and harpoon guns, crossbow or longbow arrows, slingshots or the throwing or discharge of missiles or the use of harpoons lances, grains or gigs, and spears including spears discharged by an Hawaiian sling or spear gun on such lands, submarine areas or property or in such submarine areas without lawful authority;”;

- (c) in paragraph (e) —
 - (i) by the insertion immediately after the words “building structure” of the word “artifact”; and
 - (ii) by the insertion immediately after the words “such lands” of the words “submarine areas”;
- (d) by the repeal of paragraphs (g) and (h) and the replacement thereof of the following —
 - “(g) for prohibiting any person without lawful authority from hunting, fishing, trapping, hauling with nets or bolos of any kind, spearing, striking harassing chasing or driving or shooting, touching, taking or gathering by any means setting traps or nets or liming trees or laying snares for birds, fishes or other animals, taking birds' eggs or nests and shooting, driving or chasing game or other animals any flora or fauna, including the eggs, nest, young or larvae or seeds, roots or cuttings thereof on such lands, submarine areas or property;
 - (h) for prohibiting or regulating the drawing or propelling upon such lands, submarine areas or property without lawful authority of any carriage, cart, caravan, truck, motor car, cycles, all-terrain vehicles, motor cycles all-terrain vehicles, motor vehicles or other vehicle as well as boat, vessel or marine personal recreational water craft or aircraft and the erecting or permitting to remain on such lands, submarine areas or property without the consent of the Bahamas National Trust and other lawful authority any building, shed, tent, fence, post, railing, cairn or other structure whether used in connection with the playing of games or not and for authorising an officer of the Bahamas National Trust to remove therefrom any vehicle or vessel or other prohibited thing drawn or propelled thereon and any tent or structure erected thereon in contravention of the by-laws and for prescribing any roads, trails or footpaths other than public roads upon which motor cars and cycles may be used or person move;”;
- (e) in paragraph (i) —
 - (i) by the insertion immediately after the words “or other like thing” of the words “or making any movie or film for commercial purposes”; and
 - (ii) by the insertion immediately after the words “an officer” of the words “or warden”;

- (f) in paragraph (l), by the insertion immediately after the words “horses or” of the words “dogs, cats, raccoons and other animals,”;
- (g) by the repeal of paragraph (m) and the replacement therefor of the following —
 - “(m) for prohibiting any person without lawful authority from turning out or permitting to remain on such lands any cattle, sheep, goats, dogs, cats, racoons or other animals, reptiles or other life-forms including micro-organisms and whether of the plant or animal kingdom whatsoever, and for authorising an officer of the Bahamas National Trust to remove therefrom any cattle, sheep or other animal being thereon in contravention of the bylaws or suffering from disease;”;
- (h) in paragraph (o), by the insertion immediately after the words “an officer” of the words “or warden”;
- (i) in paragraph (p), by the insertion immediately after the words “an officer” of the words “or warden”;
- (j) by the repeal of paragraph (q) and the replacement therefor of the following —
 - “(q) for the imposition of fines not exceeding one hundred thousand dollars and/or imprisonment for a period not exceeding six months and other penalties including the confiscation of chattels and vessels with their tackle and apparel upon persons found guilty upon summary conviction of an offence under any of the by-laws, provided that there shall be a right of appeal from a magistrate's decision to the Supreme Court of The Bahamas;”;
- (k) by the repeal of paragraph (s) and the replacement therefor of the following —
 - “(s) for prohibiting or regulating the excavating of any harbour or marina, boat basin, dock, ramp, or constructing, erecting or placing or permitting to remain on such lands, submarine areas including all areas below high water mark or property without the consent of the Bahamas National Trust and other requisite lawful authority any harbour or marina, boat basin, dock, ramp building, shed, tent, fence, post, railing, steps or cross-over, dock, piling, breakwater, mooring, artificial reef, groin, cairn or other structure.”.

12. Repeal and replacement of section 25 of the principal Act.

The principal Act is amended by the repeal of section 25 and the replacement therefor of the following —

“25. Constabulary.

- (1) For the enforcement of the by laws, the Bahamas National Trust may appoint with power to dismiss and maintain such number of officers or wardens as the Bahamas National Trust deems necessary for the protection of the Trust property and such officers and wardens shall have the power, authorities and protection of —
 - (a) a constable under the common law as well as under the provisions of any Act;
 - (b) a Fisheries Inspector under the Fisheries Resources (Jurisdiction and Conservation) Act¹.
- (2) In this section and generally throughout this Act, the expression “officer” or “warden” of the Bahamas National Trust shall be deemed to include volunteers engaged as such as well as a paid officer or warden of the Bahamas National Trust and peace officers assigned or engaged in Bahamas National Trust matters.”.

13. Amendment of First Schedule to the principal Act.

The First Schedule to the principal Act is amended —

- (a) by the insertion immediately after paragraph 1 of the following new paragraph —
 - “1A. The regulations herein below stated shall stand as the regulations governing the calling and holding of general meetings of the Bahamas National Trust until changed or varied to comply with such election procedures and rules for nominations of candidates for election to council, presentation of proxies, postal ballot voting, electronic voting, prescribing notice and time procedures for motions and other like election and rules for conduct of annual general meetings as the council may by resolution determine and establish as a by-law pursuant to section 9.”; and
- (b) in paragraph (3), by the deletion of the word “thirty” and the substitution therefor of the words “two hundred”.

14. Amendment of Second Schedule to the principal Act.

The Second Schedule to the principal Act is amended in paragraph 3, by the insertion immediately after the words “Stock Exchange,” of the words “or any duly constituted Bahamas or other International Stock Exchange”.

¹Ch. 244

OBJECTS AND REASONS

This Bill seeks to amend the Bahamas National Trust Act, *Ch. 321*.

Clause 1 of the Bill makes provision for the name of the Bill.

Clause 2 of the Bill seeks to amend section 4 of the Act to widen the original mandate of the Bahamas National Trust. This clause seeks to make provision for the Bahamas National Trust to give general advice to both the Government and the private sector on *inter alia* development issues and policies.

Clause 3 of the Bill seeks to amend section 6 of the Act to clarify, diversify and expand the categories of membership of the Bahamas National Trust.

Clause 4 of the Bill seeks to amend section 7 of the Act to allow members of the Trust to pay annual subscriptions on their anniversary of joining.

Clause 5 of the Bill seeks to amend section 9 of the Act to make provision for the Bahamas National Trust Council to make by-laws to remove the requirement that members have to be physically present at Annual General Meetings. This amendment seeks to make provision for the implementation of postal and electronic balloting or voting by proxy.

Clause 6 of the Bill seeks to amend section 10 of the Act to increase the membership of the Bahamas National Trust to twenty-nine members consisting of 15 elected members and 14 appointed members, thus allowing the Bahamas National Trust to be seen as having “democratic NGO status”. With the increase of the number of appointed members, the College of The Bahamas and the University of Florida will now qualify for Council membership. This clause also seeks to further amend section 10 make provision for the appointment of special advisors to the Bahamas National Trust.

Clause 7 of the Bill seeks to amend section 12 of the Act to make provision for the Bahamas National Trust Council to regulate its meetings to include the power to create a Code of Conduct.

Clause 8 of the Bill seeks to amend section 13 of the Act to clarify the position as to what level of transaction requires formal resolutions, the use of a seal, as well as which contracts may be executed by individuals without formalities. In addition, this clause amends subsection 2 to make provision for the Bahamas National Trust Council to determine the location of its Registered Office.

Clause 9 of the Bill seeks to amend section 14 of the Act, in subsection (2), to make provision for legal instruments passing land or personal property to the Bahamas National Trust, to continue to be exempt from stamp duty under the Stamp Act. This clause also seeks to amend subsection 3 of section 14 to reduce the instances of encroachment on lands which are the property of the Bahamas National Trust. This proposed amendment seeks to protect the public interest as represented by the Bahamas National Trust.

Clause 10 of the Bill seeks to amend section 18 of the Act to alleviate auditors having to put a financial value on a national park which is held in perpetual trust.

Clause 11 of the Bill seeks to amend section 24 of the Act to allow the Bahamas National Trust to make, revoke or alter by-laws prohibiting the use of fireworks which have the potential to frighten and disturb wildlife and increase the risk of fire for park infrastructure. The clause also seeks to widen the category of weaponry which may be prohibited by the Bahamas National Trust. This clause also seeks to include modern “high end toys” which were not in the contemplation in the original Act, for example, jet skis, air boats, trail bikes etc. The amendment to section 24 of the Act also seeks to make provision for The

Bahamas National Trust to regulate movie and film making for commercial purposes on lands of the Trust. This clause has also sought to amend section 24 of the Act to allow the Trust to make by-laws which prohibit dogs, cats, raccoons and other animals from being exercised or broken in on Trust property, without lawful authority. By virtue of this clause, the power to remove or exclude a person from Trust lands or Trust property may now be exercised by a warden of the Bahamas National Trust. This clause also seeks to make provision for the increase of the maximum fine to be imposed where a person is found guilty of an offence under any of the by-laws of The Bahamas National Trust. Accordingly, this Bill seeks to increase the maximum fine from five hundred dollars to one hundred thousand dollars. Lastly, this clause seeks to make provision for The Bahamas National Trust to make, revoke or alter by laws which prohibit or regulate the excavation of any harbour or marina, boat, basin, dock *inter alia*.

Clause 12 of the Bill seeks to amend section 25 of the Act to clarify the position regarding the powers of the Bahamas National Trust Wardens including volunteer wardens.

Clause 13 of the Bill seeks to amend the First Schedule to the Act to make the provisions of the Schedule consistent with the amended section 9. In addition, this Clause seeks to increase the number of members required for the convening of an extraordinary meeting.

Clause 14 of the Bill seeks to amend the Second Schedule to the Act to widen the authorized investment scope to include securities fully quoted on duly constituted stock exchanges in The Bahamas as well as internationally.