EXTRAORDINARY

OFFICIAL GAZETTE
THE BAHAMAS

PUBLISHED BY AUTHORITY

NASSAU 30th November, 2019

DISASTER RECONSTRUCTION AUTHORITY ACT, 2019

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No. 36 of 2019

DISASTER RECONSTRUCTION AUTHORITY ACT, 2019

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY CORPORATE TO BE KNOWN AS THE DISASTER RECONSTRUCTION AUTHORITY; FOR THE FUNCTIONS AND POWERS RELATING TO THAT AUTHORITY; FOR THE DESIGNATION OF A DISASTER ZONE AND A SPECIAL ECONOMIC RECOVERY ZONE AND FOR CONNECTED MATTERS

[Date of Assent - 29th November, 2019]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

(1) This Act may be cited as the Disaster Reconstruction Authority Act, 2019.

(2) This Act shall come into force on a date to be appointed by the Minister by notice published in the *Gazette*.

2. Interpretation.

In this Act —

"Authority" means the Disaster Reconstruction Authority established under section 3;

"Board" means the Board of Directors of the Authority;

"Chairman" means the Chairman of the Board;

"disaster" means —

(a) an accident or a catastrophe that causes damage or loss of life; or

(b) an event or act that has unfortunate consequences;

"disaster recovery period" means the period during which an area is designated as a Disaster Zone in accordance with this Act;

"Disaster Zone" means an area designated as such pursuant to section 20;

"disaster zone reconstruction committee" means the committee appointed by the Board under section 16;

"financial year" means the period of twelve months ending on the thirtieth day of June in every year;

"international contributors" means any foreign state, international organization, entity or individual contributing to the reconstruction and restoration efforts on behalf of the Authority;

"Managing Director" means the person appointed under paragraph 9 of the *Schedule*;

"Minister" means the Minister responsible for Disaster Preparedness and Emergency Management;

"public officer" has the meaning assigned to it under the Pensions Act *(Ch. 43)*.

PART II – DISASTER RECONSTRUCTION AUTHORITY

3. Establishment of Authority.

(1) There is hereby established a body to be known as the Disaster Reconstruction Authority.

(2) The Authority shall be responsible for the management of reconstruction and restoration in an area designated as a Disaster Zone.

(3) The Authority is a body corporate having perpetual succession and a common seal, with power to purchase, lease or otherwise acquire and hold and dispose of land and other property of whatsoever kind.

(4) The Authority may sue and be sued in its corporate name and may for all purposes be described by that name.

4. Constitution and procedure of the Board.

(1) There shall be a Board of Directors of the Authority.

(2) The Board shall be the governing body of the Authority and shall perform the functions and exercise the powers of the Authority.

(3) The *Schedule* has effect with respect to the constitution and proceedings of the Board.

(4) The Minister may by Order amend or revoke the *Schedule*.

5. Functions of Authority.

The functions of the Authority are —

(a) to assess the reconstruction needs of a Disaster Zone and to prepare a reconstruction plan;

(b) to oversee the reconstruction plan and implementation thereof in a Disaster Zone;

(c) to monitor, regulate and administer all matters related to the management of reconstruction work in Disaster Zone;

(d) to arrange the distribution of funds or materials for reconstruction;

(e) to oversee the restoration of government services in a Disaster Zone;

(f) to construct, equip, furnish, maintain, operate, manage, secure and repair any public property in a Disaster Zone for use by the general public;

(g) to establish and coordinate relationships with national and international bodies engaged in similar or ancillary pursuits;

(h) to consult with the Minister on matters of national reconstruction policy and capital development programmes in a Disaster Zone;

(i) to perform such other acts as are required under this Act.

6. Powers of Authority.

The powers of the Authority are —

(a) to accept, deposit and act as trustee and manager of any gifts, donations, endowments, or bequests for the purposes of reconstruction of a Disaster Zone;

(b) to enter into contracts necessary to carry out any functions under this Act;

(c) to invest any funds representing such legacy, endowment, bequest or gift, if not immediately required;

(d) to appoint such employees as it considers necessary on such terms and conditions, including salaries, allowances, other remuneration and disciplinary control, as the Authority may determine;

(e) to second individuals from various ministries necessary to conduct the work of the Authority;

(f) to take necessary legal action to implement reconstruction operations as it deems appropriate, in any area demarcated as a Disaster Zone;

(g) without limiting or derogating from the operation but subject to the regulations, and in consultation with the relevant ministry, agency and affected person, to do or cause to be done all or any of the following things —

(i) remove or destroy, or order the removal or destruction of, any building, structure, vehicle, vegetation, animal or other property;

(ii) carry out, or cause to be carried out, excavation or other earthworks;

(iii) construct, or cause to be constructed, barriers, buildings, roadways or other structures;

(iv) subject a place or thing to a decontamination procedure;

(v) direct any person who is in a position to do so —

(aa) to stop any work or operation;

(bb) to close any premises or places;

(cc) connect, disconnect, reconnect, shut off or cut off the supply of water, drainage facilities, or electrical supply; or

(dd) make use of the gratuitous services of any person;

(h) to establish The Bahamas National Recovery and Reconstruction Trust Fund and provide for the appointment of trustees thereof.

7. Oversight of the Authority.

The Prime Minister may appoint a Minister of State, who shall be responsible for the oversight of the Authority and any disaster zone reconstruction committee appointed by the Authority.

FINANCIAL PROVISIONS

8. Funds of Authority.

(1) The funds and resources of the Authority shall consist of —

(a) such sums as may be allocated by Parliament for the purposes of the Authority;

(b) sums arising from grants, covenants, donations and other receipts from persons, including national and international bodies;

(c) sums borrowed by the Authority in accordance with section 9;

(d) all other sums or property which may in any manner become payable to or vested in the Authority in respect of any matter incidental to its functions.

(2) All funds collected or received for the purposes of this Act by the Government or any Ministry, agency or entity controlled by the Government, shall be directed and allocated to the Authority without delay.

(3) The funds of the Authority shall be applied in defraying the following expenditure —

(a) restoration and reconstruction works in a Disaster Zone;

(b) purchasing, securing and maintaining equipment necessary for restoration works;

(c) the costs associated with any survey, assessment, reconstruction and restoration plan, architectural drawing, structural drawing or other work requisitioned or produced by or on behalf of the Authority for the purpose of carrying out its functions under this Act;

(d) public safety education;

(e) the remuneration of the members of the Board and Authority, solely from the funds allocated by Parliament;

(f) any other expenditure authorized by the Authority for the discharge of its functions.

(4) Notwithstanding subsections (2) and (3), where the Authority accepts any donation of funds, materials, equipments or other goods donated for a specific purpose, that donation must be used for the specific purpose.

9. Borrowing powers.

(1) The power of the Authority to borrow shall be exercisable only with the approval of the Minister, in consultation with the Minister of Finance, as to the amount, the sources of the borrowing and the terms on which the borrowing may be effected.

(2) An approval given in any respect for the purposes of this subsection may be either general or limited to a particular borrowing or otherwise and may be either unconditional or subject to conditions.

10. Annual budget.

(1) Not later than two months prior to the commencement of a financial year, the Authority shall prepare for the financial year, an annual budget of revenue and expenditure for the Minister's information.

(2) The sum of money allocated to remuneration and pension shall not exceed twenty percent of the annual budget without the consent of the Minister.

11. Accounts and audit.

(1) The Authority shall keep proper accounts and other records and shall prepare in respect of each financial year, a statement of accounts.

(2) The accounts of the Authority for each financial year shall be audited by an auditor appointed by the Minister after consultation with the Authority.

(3) Three months after the end of each financial year, the Authority shall submit a copy of the audited accounts to the Minister, together with a copy of any report made by the auditor.

(4) The Minister shall lay a copy of such audited accounts before both Houses of Parliament, together with a copy of any report made by the auditor on the accounts.

(5) All contracts awarded by the Authority, within a fiscal year shall be publicly disclosed at the end of the fiscal year.

OFFICERS AND EMPLOYEES

12. Officers and employees.

(1) Subject to section 10(2), The Authority may employ such employees on a full-time, part-time or temporary basis and upon such conditions and terms as it determines.

(2) Notwithstanding subsection (1), the Authority may second employees from relevant government ministries in order to perform its assigned functions.

13. Transfer of public officers.

(1) Where a public officer holding a pensionable office under the Government of The Bahamas, ceases to be the holder of that office by reason of his transfer with his consent to the service of the Authority and that person subsequently retires from the service of the Authority in such circumstances that, had he remained a public officer, he would have been eligible for pension under the Pensions Act (*Ch. 43*), then in any such case subsections (2) and (3) shall have effect.

(2) A pension payable to a person mentioned in subsection (1) by the Authority to whose service he has been transferred shall be calculated and granted to him in respect of his total service under the Government of The Bahamas and with the Authority taken together and such service shall be reckoned as continuous for pension purposes.

(3) There shall be payable out of the Consolidated Fund upon the warrant of the Minister of Finance to the Authority a contribution to every pension

paid in accordance with subsection (2), such amounts as would have been payable to the person concerned by way of pension under the Pensions Act (*Ch. 43*), if that person had retired from the public service and if he has been granted a pension under the Pensions Act (*Ch. 43*) upon the date of his ceasing to be a public officer.

14. Pensions.

(1) The Authority may, as regards any officer, servant or agent in whose case it may be determined by the Authority, with the approval of the Minister of Finance, to make provision for the payment on the death, injury or retirement of that officer, servant or agent, pension, gratuity or other like benefit, pay or provide for the payment of that pension, gratuity or other like benefit to the officer, servant or agent or to others by reference to their service as may be determined.

(2) Provision for pensions, gratuities or other like benefits under this section may be either by contributory or non-contributory arrangements or partly by the one or by the other.

15. Protection of officers.

Every officer and employee appointed under this Act, and every person appointed or authorized under this Act for any purpose of this Act, shall have immunity from suit in respect of anything done by him in good faith or omitted to be done in good faith in exercise or performance, or in the purported exercise or performance, of any power, authority or duty conferred or imposed on him under this Act.

APPOINTMENT OF DISASTER ZONE RECONSTRUCTION COMMITTEES

16. Appointment of disaster zone reconstruction committees.

(1) The Board may appoint disaster zone reconstruction committees when —

(a) there is contemplation of a potential disaster; or

(b) immediately after the occurrence of a disaster,

that is on a large scale or complex in nature.

(2) The Board shall determine the composition of any committee appointed under subsection (1).

(3) A disaster zone reconstruction committee appointed under subsection (1) shall be responsible for the reconstruction and rehabilitation in the disaster zone for which it has been appointed.

(4) The Board shall determine when the reconstruction and rehabilitation of the disaster zone is completed and terminate the disaster zone reconstruction committee in writing.

(5) Notwithstanding subsection (4) a disaster zone reconstruction committee shall not operate beyond three years.

(6) Where the consequences of a disaster is of a nature that requires long term management, the management of that disaster shall be turned over to the relevant Ministry.

17. Functions and powers of disaster zone reconstruction committees.

The functions and powers of a disaster zone reconstruction committee shall be those of the Authority provided that such functions and powers shall —

(a) exercised in consultation with the Authority; and

(b) limited to the Disaster Zone for which the disaster zone reconstruction committee was appointed.

18. Funds of disaster zone reconstruction committees.

The funds and resources of a disaster zone reconstruction committee shall consist of such sums as may be allotted by the Authority.

PART III - DISASTER ZONES AND SPECIAL ECONOMIC RECOVERY ZONES

19. Designation of Disaster Zone.

The Prime Minister shall, immediately after a disaster, and after consultation with the relevant authorities, designate an impacted area as a Disaster Zone.

20. Assessment of reconstruction needs in Disaster Zone.

(1) The Authority shall immediately after a disaster, cause an assessment to be conducted in the Disaster Zone and identify the immediate needs of that zone.

(2) In assessing the needs, the Authority shall consider the reconstruction and restoration needs of —

(a) electricity, water and communication;

(b) health and educational facilities;

(c) roads, bridges and ports; and

(d) residential, business and other establishments.

(3) The Authority shall develop a reconstruction plan having regard to its assessment.

21. Reconstruction in a Disaster Zone.

(1) No person shall carry out any building or reconstruction in a Disaster Zone unless that zone or any part thereof has been approved for reconstruction by the Minister responsible for the environment by order published in the *Gazette*.

(2) Notwithstanding the provisions of the Planning and Subdivision Act (*No. 4 of 2010*), and where no Land Use Plan is in effect in respect of a Disaster Zone, an order made pursuant to subsection (1) may specify —

(a) the size, height, character or other design of a structure permitted to be constructed; or

(b) any such other requirements or prohibition that the Minister responsible for environment deems necessary in the interest of public health, public safety or national security.

22. Designation of Special Economic Recovery Zones.

(1) Pursuant to the development of a reconstruction plan, the Prime Minister may designate a part or the whole disaster zone to be a special economic recovery zone for such period of time not exceeding five years.

(2) The Minister of Finance may by Order declare any concession or tax exemption and the period for which the concession or exemption shall apply to any special economic recovery zone.

PART IV – NON-GOVERNMENTAL AND INTERNATIONAL ASSISTANCE

NON-GOVERNMENTAL ASSISTANCE

23. Authority may accept non-governmental assistance.

The Authority may accept assistance from domestic non-governmental entities.

INTERNATIONAL ASSISTANCE

24. Engagement of international assistance.

The Prime Minister may engage assistance from international contributors in response to a disaster.

25. Assessment of need for international assistance.

(1) Immediately after the designation of a Disaster Zone, and after consultation with relevant local authorities, the Authority shall make a determination, based on initial estimates of needs and damage, as to whether domestic capacities are likely to be sufficient to attend to the needs of disaster recovery assistance.

(2) In the event of a determination that domestic response capacities are not likely to be sufficient due to the scale of the disaster, the Authority shall advise the Minister and recommend that a request be made for International Disaster Assistance.

(3) If a recommendation is made under subsection (2), the Authority shall develop and publish for the general public and potential assisting international contributors, a preliminary list of goods, equipment and services required.

(4) As far as reasonably practicable, any and all assisting international contributors shall procure goods and equipment from local distributors and vendors, if available.

26. Humanitarian travel authorisation.

(1) The Department of Immigration may grant to personnel of international contributors, a humanitarian travel authorisation, provided that there are no national security or public health and safety concerns related to the particular individual.

(2) A humanitarian travel authorisation shall be —

(a) free of charge;

(b) granted for an initial period of three months;

(c) renewable free of charge for periods of up to six months and thereafter as necessary throughout the disaster recovery period.

(3) The holder of a humanitarian travel authorisation shall be allowed to undertake disaster recovery assistance work in a Disaster Zone on behalf of the Authority.

27. Authority to serve as a focal point.

(1) The Authority shall serve as a focal point in a Disaster Zone for liaising between the Government and international contributors to —

(a) promote effective facilitation; and

(b) coordinate and provide oversight of international disaster assistance.

(2) The Authority shall inform international contributors of their rights and responsibilities under this Act.

(3) During a disaster recovery period, the Authority may request —

(a) any relevant governmental body to undertake actions or make available assets or premises required to facilitate the work of international contributors to provide disaster recovery assistance;

(b) any private contributor to undertake voluntary actions, at their own expense, as needed to facilitate the work of international contributors to provide recovery assistance.

(4) A request made pursuant to subsection (3) may include a request —

(a) to decrease or waive fees for key services required for international contributors; and

(b) to extend the operating hours for the provision of such services.

PART V - MISCELLANEOUS

28. Relationship of Authority with the National Emergency Management Agency.

(1) The Authority shall collaborate with the National Emergency Management Agency in carrying out its functions under this Act.

(2) Where a donation is given for both relief and reconstruction, the relief portion shall go to the National Emergency Management Agency and the reconstruction portion shall go the Authority in the proportion directed by the donor and where there is no such direction, it shall be divided equally.

(3) The Director of the National Emergency Management Agency may delegate any or all of its functions within a Disaster Zone to the Authority where he determines it to be appropriate.

29. Minister may give directions.

(1) The Minister may give directions to the Authority of a general nature as to the policy to be followed by the Authority in the carrying out or in pursuit of its objectives.

(2) Notwithstanding subsection (1), the Minister shall not give directions relating to the appointment, termination of appointment, promotion or disciplining of any employee of the Authority, nor shall the Minister give directions in the awarding of contracts.

30. Board to furnish information to Minister.

(1) The Board shall make available to the Minister information regarding the activities of the Board, and shall furnish him with minutes of all meetings, returns, accounts of the Authority and all such information of whatsoever kind which the Minister may reasonably request.

(2) The Minister may require and the Board shall afford him facilities for the verification of information furnished in such manner and at such times as he may reasonably require.

(3) The Board shall provide the Minister with an annual report on the activities of the Authority, no later than three months after the end of each financial year.

(4) The Minister shall cause a copy of every report specified in subsection (3) to be laid on the table of both Houses of Parliament.

31. Regulations.

The Minister may, in consultation with the Authority, and without limiting the generality of the foregoing, make regulations to provide for —

(a) the immediate reconstruction efforts undertaken within the designated Disaster Zone;

(b) the inspection, control, governance, management, conduct, operation and use of government operations in the Disaster Zone;

(c) the establishment, construction, alteration, safety, maintenance and repair of facilities impacted by a natural disaster; and

(d) the better execution and carrying out of the purposes of this Act.

SCHEDULE

(Section 3)

CONSTITUTION AND PROCEEDINGS OF THE BOARD

1. Composition and tenure of the Board.

(1) There shall be a Board of Directors of the Authority.

(2) The Board shall be the governing body of the Authority and shall perform the functions and exercise the powers of the Authority.

(3) The Board of Directors of the Authority shall consist of —

(a) the Chairman and a Deputy Chairman appointed by the Minister on the advice of the Prime Minister;

(b) the Managing Director of the Authority *ex officio;*

(c) the Director of the National Emergency Management Agency or a representative;

(d) a representative of the Ministry appointed by the Minister; and

(e) not more than seven nor less than three other persons representing financial, industrial, commercial or other institutions and professional organisations and members of the general public to be appointed by the Chairman after consultation with the Minister and referred to in this *Schedule* as "appointed members".

(4) The Chairman shall not hold any political office and shall have the appropriate skill sets and time to fulfil his functions.

(5) All members of the Board other than *ex officio* members shall hold office for a period not exceeding five years, and not less than one year, but shall be eligible for reappointment once only.

2. Temporary membership.

(1) Where membership of the Board is by virtue of an office and the holder of the office is absent or unable to act, then, the person acting in the office shall be a member of the Board for as long as he so acts.

(2) If any member by reason of illness or other incapacity or absence from The Bahamas, is unable at any time to perform the duties of his position, or if the position of a member is at any time vacant, the Chairman may make a temporary appointment of a qualified person to act in his place or in such position and upon such terms and conditions and for such time as the Chairman may prescribe.

3. Resignation.

(1) Any member of the Board, other than the Chairman, may at any time resign his office by instrument in writing addressed to the Minister and

transmitted through the Chairman, and from the date of receipt by the Minister of such instrument, such member shall cease to be a member of the Board.

(2) The Chairman may at any time resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect as from the date of receipt by the Minister of such instrument.

4. Removal.

The Minister may by Order and published in the *Gazette*, revoke the appointment of any appointed member of the Board if he is satisfied that the appointed member —

(a) has been absent for more than three consecutive months without the permission of the Board;

(b) has become bankrupt;

(c) is incapacitated due to physical or mental illness; or

(d) is otherwise unable or unfit to discharge his functions.

5. Seal of Authority.

(1) The common seal of the Authority shall be kept in such custody as the Board directs and shall not be used except upon the order of the Board.

(2) The common seal of the Authority shall be authenticated by the signatures of the Chairman of the Board or any other member of the Board duly authorised by the Board in that behalf, and of the Secretary.

(3) The common seal of the Authority when affixed to any document and duly authenticated under this section shall be judicially and officially noticed, and, until the contrary is proven, any necessary order or authorisation of the Board under this section shall be presumed to have been duly given.

6. Publication of appointments and contracts.

The —

(a) appointment or resignation of a member; and

(b) any contract of the Board,

shall be published in the Gazette.

7. Remuneration.

There shall be paid from the funds of the Authority to the Chairman and other members of the Board such remuneration, if any, whether by way of honorarium, salary or fees, and such allowances, if any, as the Minister may determine.

8. Meetings.

(1) The Board shall meet at least once each month at such times as may be necessary or expedient for the transaction of business, and its meetings

shall be held at such times and places and on such days as the Chairman may determine.

(2) The Chairman, or in his absence, the Deputy Chairman, shall preside at all meetings of the Board.

(3) The Chairman, or in his absence, the Deputy Chairman and six other members of the Board shall constitute a quorum.

(4) The decision of the Board shall be by a majority of votes and in addition to an original vote, in any case in which the voting is tied, the Chairman or Deputy Chairman presiding at the meeting, shall have a casting vote.

(5) The validity of any proceedings of the Board shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

(6) Subject to this *Schedule*, the Board may regulate its own proceedings.

(7) The Board may invite any person who, in its opinion, has expert knowledge concerning any of its functions, which is likely to be of assistance to the deliberation of the Board, to attend any of its meetings and to take part in its proceedings.

9. Managing Directors.

(1) There shall be a Managing Director of the Authority who shall be appointed by the Board with the prior approval in writing of the Minister.

(2) The Managing Director may be appointed for a term not exceeding five years and shall be eligible for reappointment but not hold office for more than ten years in total.

(3) The Managing Director shall be the Chief Executive of the Authority and shall be responsible to the Board for —

(a) the day to day administration of the affairs of the Authority; and

(b) the provision of technical advice and guidance in matters of policy.

(4) The Minister shall determine the salary and any other benefits to be paid to the Managing Director of the Authority.

(5) The Managing Director may, with the prior approval of the Minister, be removed from office on the grounds of misconduct, inefficiency or other good cause.

(6) Whenever the Managing Director is absent from The Bahamas or is for any reason unable to perform the functions of his office, the Board may appoint a person to act as Managing Director during such absence or inability.

10. Appointment of officers and servants.

Save for the appointment of the Managing Director, the Board shall appoint and employ, at such remuneration and on such terms and conditions as it thinks fit, a

secretary and such other officers, servants and agents as it thinks necessary for the proper discharge of its functions.

11. Declaration of interest.

A member of the Board, who is in any way, whether directly or indirectly, interested in a contract or a proposed contract with the Authority, that is the subject of consideration by the Board, shall declare the nature of his interest at the first meeting of the Board at which it is practicable for him to do so and shall recuse himself from voting thereon.

12. Minutes.

(1) Minutes in the proper form of each meeting shall be kept by the Secretary.

(2) All decisions, resolutions and rules made by the Board with respect to the operation of the Authority, shall be recorded in the Minutes.

(3) The Minutes of a meeting of the Board shall be confirmed by the Board at its next meeting.

13. Protection of Directors.

(1) Subject to subparagraph (2), no action, prosecution or other proceedings shall be brought or instituted personally against the Chairman or any other member of the Board in respect of any act done *bona fide* in pursuance or execution or intended execution of the provisions of this Act.

(2) Where any director is exempt from liability by reason only of subparagraph (1), the Authority shall be liable to the extent that it would be if that member were a servant or agent of the Authority.

(3) If in any case, the Authority is not liable for any of the acts specified herein, then subparagraph (1) shall not operate to exempt such member from liability.