

BILL No. 15 of 2011

Thursday 21st July, 2011

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

21st July, 2011.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL NO. 15 OF 2011

GUYANA ENERGY AGENCY (AMENDMENT) BILL 2011

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 2 of the Principal Act.
3. Amendment of section 5B of the Principal Act.

4. Insertion of new sections 5BA, 5BB, 5BC and 5BD into the Principal Act.
5. Amendment of section 12 of the Principal Act.
6. Amendment of section 33A of the Principal Act.
7. Amendment of section 34 of the Principal Act.
8. Amendment of section 35 of the Principal Act.
9. Amendment of section 37 of the Principal Act.
10. Insertion of new section 38A into the Principal Act.

A BILL
Intituled

AN ACT to amend the Guyana Energy Agency Act.

A.D. 2011

Enacted by the Parliament of Guyana:-

Short title.

Cap. 56:05.

Amendment of
section 2 of the
Principal Act.

1. This Act, which amends the Guyana Energy Agency Act, may be cited as the Guyana Energy Agency (Amendment) Act 2011.

2. Section 2 of the Principal Act is amended in the following manner -

(a) by inserting the following definition immediately after the definition of "Agency" -

‘ “authorised person” means an officer or an employee of the Agency authorised by the Chief Executive Officer in writing;’;

(b) by substituting the following definition for the definition of “illegal petroleum” -

‘ “illegal petroleum or petroleum product” means petroleum or petroleum product that -

(a) does not contain the marker;

(b) contains the marker other than in the specified concentration; or

(c) contains duty free marker and is possessed by any person other than a person who is authorised by the Guyana Revenue Authority to possess duty free and tax free petroleum or petroleum products;’;

(c) by substituting the following definition for the definition of “markers” -

‘ “marker” means any substance -

(a) declared by the Minister to be duty free marker or domestic marker, as the case may be; and

(b) identified by the process patented under patent number US 5,429,952 and EP 409 842 BI, as the case may be;';

(d) by substituting the following definition for the definition of "plant" -

' "plant" means fixtures, implements, or machinery used in any industrial process and includes -

(a) any machine, engine, equipment, drum, container or device; or

(b) any component, fitting, pipe, or accessory used in or in connection with any machine, engine, equipment, drum, container or device;';

(e) by inserting the following definitions immediately after the definition of "power" -

' "premises" includes any building, structure or land;

"regulations" means regulations made under this Act;';

(f) by inserting the following definition immediately after the definition of "source of energy" -

' "specified concentration" means the concentration of marker in petroleum or petroleum product specified by the Minister from time to time by notification in the *Gazette*;';

(g) by substituting the following definition for the definition of "vehicle" -

' "vehicle" means any conveyance for the carriage of persons, their effects or goods, whether or not constructed or adapted for use on land, air or water and includes any animal-drawn cart, steam engine, steam roller, boat, ship or aircraft.';

Amendment of
section 5B of the
Principal Act.

3. Section 5B of the Principal Act is amended -

(a) by substituting in subsection (7), for the words "proportion determined by the Agency under this section", the words "specified concentration";

(b) by repealing subsections (10), (11) and (12);

(c) by substituting the following subsection for subsection (13) -

“(13) Notwithstanding anything in this section, the Minister may by order direct that the Agency shall not add markers to petroleum and petroleum products for a period commencing on a specified date and ending on another specified date or ending on a date to be determined by the Minister, by order.”.

Insertion of new sections 5BA, 5BB, 5BC and 5BD into the Principal Act.

4. The Principal Act is amended by inserting, immediately after section 5B, the following sections -

“Possession, sale, etc. of illegal petroleum or petroleum product.

5BA. (1) A person who possesses, sells, offers to sell, stores, distributes, transports, purchases or obtains or otherwise deals with illegal petroleum or petroleum product commits an offence and is liable on summary conviction to a fine of three million dollars and imprisonment for three years.

(2) Notwithstanding anything contained in section 36, the Chief Executive Officer or an authorised person shall seize the petroleum or petroleum product referred to in subsection (1) and the Chief Executive Officer may dispose of it in the manner approved by the Minister.

(3) As soon as practicable after seizing illegal petroleum or petroleum product, the Chief Executive Officer or an authorised person shall give notice in writing of the seizure and the reasons for the seizure -

(a) to any person known or believed to have an interest in the illegal petroleum or petroleum product; or

(b) where that person is overseas, to his agent in Guyana.

(4) A seizure is not invalidated or deemed illegal by reason of any failure to give notice if reasonable steps were taken to give the notice.

(5) Any person aggrieved of any decision of the Agency under this section may appeal to the Minister within three days of seizure of the illegal petroleum or petroleum product.

Unlawful possession
of marker.

5BB. A person who possesses, purchases, obtains, stores, offers for sale, sells, distributes, transports or otherwise deals with a marker except as provided by regulations commits an offence and is liable on summary conviction to a fine of three million dollars and imprisonment for one year.

Seizure of
vehicle, et.

5BC. (1) An authorised person may seize any vehicle, drum, container, or other thing containing illegal petroleum or petroleum product which shall be deemed to be taken and condemned and may be sold or otherwise disposed of in the manner as the Chief Executive Officer deems fit, unless the person from whom the seizure has been made gives notice to the Chief Executive Officer within one calendar month from the date of the seizure that he claims the vehicle, drum, container or other thing whereupon proceedings, shall be taken for the forfeiture and condemnation thereof.

(2) Where any proceedings are taken for forfeiture and condemnation, the court may order delivery of the vehicle, drum, container or thing seized, save and except for the illegal petroleum or petroleum products, to the claimant on security being given for the payment to the Agency of the value thereof in case of condemnation.

Prosecution to be
instituted within
seven years.

5BD. Prosecutions under this Act and regulations may be instituted and conducted in a court of summary jurisdiction at any time within seven years after the date of the offence."

Amendment of
section 12 of the
Principal Act.

5. Section 12 of the Principal Act is amended –

- (a) by inserting, immediately after subsection (2), the following subsection –

"(2A) The Chief Executive Officer may, in writing, delegate the exercise of any of his functions under this Act to any officer or other employee of the Agency.";

- (b) by inserting in subsection (3), immediately after the words "functions of the Chief Executive Officer", the words "except those functions that have been delegated to any other officer or employee of the Agency".

Insertion of new
section 33A into
the Principal Act.

6. The Principal Act is amended by inserting the following section immediately after section 33 –

"Power to accept compensation for offences.

33A. Notwithstanding any other provisions of this Act, the Chief Executive Officer may, in any case he deems proper and in substitution for any proceedings in a court of summary jurisdiction, with the approval of the Minister, accept on behalf of the State a sum of money by way of compensation, not exceeding the penalty so prescribed for the offence, from any person reasonably suspected of a contravention of the Act or any regulations:

Provided that any compensation shall be accepted only where the person reasonably suspected of such contravention has expressed his willingness in the form prescribed by the Chief Executive Officer that the contravention as aforesaid shall be so dealt with."

Amendment of section 34 of the Principal Act.

7. The Principal Act is amended by substituting the following section for section 34 -

"Prosecution.

34. Any person authorised in writing by the Chief Executive Officer may institute and conduct any prosecution under this Act."

Amendment of section 35 of the Principal Act.

8. The Principal Act is amended by substituting the following section for section 35 -

"Authorised persons to have powers of members of the Police Force.

35. For the purpose of exercising functions and carrying out their duties under this Act, an authorised person shall have the same powers, authorities and privileges as are given by law to the members of the Police Force."

Amendment of section 37 of the Principal Act.

9. The Principal Act is amended by substituting the following section for section 37 -

"Powers of authorised persons to enter premises or other place without warrant.

37. Where an authorised person is, for reasons to be recorded in writing, satisfied that the investigation is one of great emergency and that in the interest of justice immediate action is necessary and the delay caused by the time required to apply for and obtain a warrant to enter and search any premises would defeat the purpose of the search, he may enter and search the premises and for that purpose exercise any or all of the powers referred to in section 36 as though empowered by warrant under the hand of a magistrate under section 36."

Insertion of new
section 38A into
the Principal Act.

10. The Principal Act is amended by inserting, immediately after section 38,
the following section -

"False or misleading
information.

38A. A person who provides the Agency or an
authorised person with any statement, return, or other
information that is false or misleading in any material respect,
in connection with any document or information submitted or
required to be submitted under this Act commits an offence."

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Guyana Energy Agency Act.

Clause 1 sets out the short title.

Clause 2 seeks to insert several new definitions into the Principal Act and also seeks to clarify certain existing definitions.

Clause 3 proposes to amend section 5B (7) of the Principal Act by substituting for the words "proportion determined by the Agency" the words "specified concentration", since when one substance is dissolved in another the correct terminology is concentration. It repeals subsections (10), (11) and (12) which deal with offences and penalties which are now provided for in section 5BA (1). It also provides for the Minister to prescribe a period during which the Agency shall not add markers to petroleum and petroleum products.

Clause 4 inserts new sections 5BA, 5BB 5BC and 5BD into the Principal Act. Section 5BA proposes to make possession, sale, etc., of illegal petroleum or petroleum product an offence with a penalty of three million dollars and three years imprisonment. It also seeks to outline the procedure for seizure and disposal of such petroleum or petroleum product. Section 5BB seeks to prohibit unlawful possession of or dealings with markers. Section 5BC proposes to provide for the seizure and disposal of vehicles and all other containers of illegal petroleum or petroleum product and also seeks to outline the procedure for same. Section 5BD makes provision for a limitation period of seven years within which to institute a prosecution under the Principal Act or the regulations made thereunder.

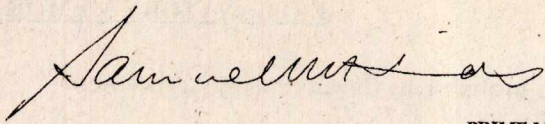
Clause 5 seeks to amend section 12 of the Principal Act to allow the Chief Executive Officer to delegate any of his functions under the Principal Act to any officer or employee of the Agency.

Clause 6 proposes to insert a new section 33A into the Principal Act to empower the Chief Executive Officer to accept compensation in substitution for any proceedings being brought before the court under the Principal Act.

Clause 7 seeks to substitute a new section for section 34 to empower the Chief Executive Officer to authorise any person in writing to institute and conduct prosecutions under the Principal act. Clause 8 provides for a new section for section 35 to clarify that an authorised person under the Principal Act shall have the powers of a member of the Police Force.

Clause 9 seeks to repeal and re-enact section 37 to empower the Chief Executive Officer to authorise any person to enter premises or other place without a warrant if he is satisfied that in the interest of justice immediate action is necessary.

Clause 10 proposes to insert a new section 38A into the Principal Act to make it punishable if a person provides false or misleading information to the Agency or an authorised person.



PRIME MINISTER