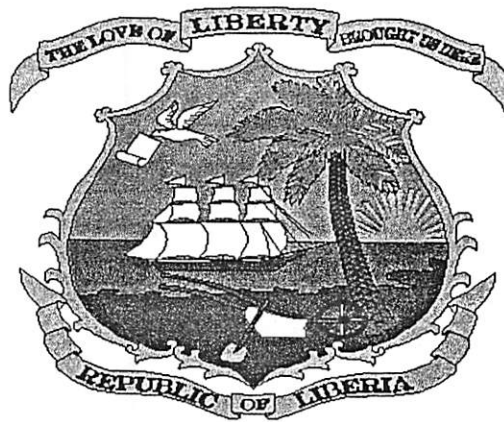


110

AN ACT
TO CREATE THE
NATIONAL BUREAU OF CONCESSIONS



REPUBLIC OF LIBERIA

PREAMBLE

WHEREAS, the Public Procurement and Concessions Act, 2005 recognized the importance of a strong law governing the procurement and concession processes in Liberia to the health of the political system and the growth of Liberia's economy;

WHEREAS, after three years of experience with the Public Procurement and Concessions Act, the Government of Liberia has caused the Public Procurement and Concession Act to be reviewed to determine whether and how the administration of the procurement and concession processes under that Act might be improved;

WHEREAS, the Government has determined in the course of this review that the institutional capacity of the Government to administer the concessions process should be strengthened by the creation of a new body, to be known as the "National Bureau of Concessions," to assist the Government in the solicitation of bids for concessions contracts, the evaluation of concession contract bids, the negotiation of concession contracts with successful bidders and the monitoring of concession contracts; and

WHEREAS, Chapter 10, Article 89 of the Liberian Constitution empowers the Legislature to enact statutes for the creation of agencies and commissions as may be necessary for the effective operation of Government

NOW THEREFORE, it is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled.

Section 1. Short Title

This Act shall be cited as the National Bureau of Concessions (NBC) Act of 2010.

Section 2. Definitions

- (1) "Public Procurement and Concessions Act" means the Public Procurement and Concessions Act 2005, as from time to time thereafter amended, modified or supplemented.
- (2) Capitalized terms used herein without other definition have the respective meanings assigned thereto in the Public Procurement and Concessions Act.

Section 3. Establishment of the National Bureau of Concessions

- (1) There is established an administrative body of the Government to be known as the National Bureau of Concessions, which shall have the duties and powers conferred upon it by this Act.
- (2) The National Bureau of Concessions shall be an independent legal entity with perpetual succession and a common seal and may sue and be sued in its corporate name and shall have the capacity to:
 - (a) exercise all powers and functions given to it under this Act;
 - (b) own movable and immovable property; and
 - (c) enter into contracts and bring or defend legal actions in its own name, including the capacity to commence legal proceedings to enforce its rights or the obligations to it of third parties, to defend any claim against it, and to participate and represent itself in any arbitration or similar legal proceeding.
- (3) The National Bureau of Concessions shall be exempt from the payment of income taxes and all customs duties and charges, as well as property and capital taxes. It shall also be exempt from payment of trade or similar levies.

Section 4. Purposes and Objectives of the National Bureau of Concessions

- (1) The principal purposes of the National shall be two-fold:
 - (a) To monitor and evaluate compliance with concession agreements in collaboration with concession entities;
 - (b) To provide technical assistance to concession entities and other organs of Government involved with the implementation of concessions in compliance with the PPCA.
- (2) The specific objectives of the National Bureau of Concessions are:
 - (a) To serve as a source of technical expertise to support all aspects of concession process;
 - (b) To assist agencies of the Government having oversight responsibility over the granting of concessions;
 - (c) To improve the monitoring and evaluation of concessions;
 - (d) To bring a consistent approach to, and increase the effectiveness of the Government in, planning, conducting bidding for, negotiating, and documenting concession agreements;

(e) To create a central repository of skills and knowledge with respect to concessions; and

(f) To promote transparency and accountability in the award and performance of concession agreements; and the application of revenue received by the Government from concessions.

Section 5. Functions of the National Bureau of Concessions

- (1) The National Bureau of Concessions shall provide technical assistance to ministries and other agencies, departments or bureaux of the Government responsible for planning, bidding, negotiating and administering concession agreements. Such assistance shall be provided when and in the manner provided for in the Public Procurement and Concessions Act or in other applicable laws; and may also be provided with respect to any aspect of the creation or administration of concessions when called for by any agency of the Government having jurisdiction.
- (2) Such technical assistance may include the following tasks or activities:
 - (a) establishing guidelines and regulations for the granting of concessions;
 - (b) undertaking preliminary or prefeasibility studies to evaluate the desirability of a proposed concession prior to commencing a concession bidding and concession negotiation process;
 - (c) planning the steps to be taken in awarding a proposed concession, whether negotiated based on an unsolicited offer awarded pursuant to a competitive bidding process;
 - (d) preparing requests for submission of prequalification data and evaluating bidder prequalification submissions;
 - (e) preparing bid documents and evaluating submissions received from bidders;
 - (f) preparing draft concession agreements;
 - (g) negotiating definitive concession agreements;
 - (h) preparing concession agreement administration plan following the execution of completed concession agreement;
 - (i) monitoring and evaluating performance under and compliance with concessions agreements as provided in Sections 7 and 8 of this Act;

- (j) formulating, promoting, supporting, and implementing training and capacity development programs in furtherance of the concession process; and
 - (k) The specific activities outlined in this subsection (2) do not limit the authority of the Bureau to assist in the concessions process when as and when called upon by a Concessions Entity, the Inter-Ministerial Concessions Committee established for a particular concession or any other entity of the Government having jurisdiction or any aspect of the creation or administration of a concession.
- (3) The National Bureau of Concessions shall serve as a focal point for coordination of external technical and professional assistance to the Government in respect of all aspects of the concession process in order that available external assistance can be allocated in accordance with the overall priorities of the Government.
- (4) The National Bureau of Concessions shall develop and maintain a concession agreement database.
- (a) In furtherance thereof, each entity of the Government subject to the Public Procurement and Concessions Act or otherwise party on behalf of the Government to a concession agreement must submit or cause the private party to such concession agreement to submit to the National Bureau of Concessions promptly after the execution thereof a complete copy, in electronic form if available, of any such agreement and of any later amendment or modification thereof.
 - (b) Sub-section 4(a) above does not extend to any such agreement that is exempted from the requirements of the Public Procurement and Concessions Act by clause (3) of Section 1 of that Act. The National Bureau of Concessions may require that documents be made available in Word, Excel, or in searchable PDF format.
 - (c) The database must be made available:
 - (i) to all ministries, departments and agencies of the Government having responsibilities for the drafting, negotiation or administration of concession agreements,
 - (ii) to other statutory body of the Government, to include, Liberia Extractive Industries Transparency Initiative, the National Investment Commission, the Public Procurement and Concessions Commission and
 - (iii) to the public (except for agreements entered into prior to the date of this Act that by their terms are required to be confidential).

- (d) Institutions requesting printed copies of any document under clause (c) of this subsection (4) shall defray all corresponding expenses related to the printing of the document.
- (5) The National Bureau of Concessions shall undertake such other activities and functions as are expressly set forth in Sections 6 through 8 of this Act.

Section 6. Coordination with Other Agencies of the Government.

- (1) The National Bureau of Concessions shall coordinate its information gathering requirements for the extractive industries with Multi-Stakeholders Steering Groups, including, the LEITI, to eliminate duplication and overlap.
- (2) The functions of the National Bureau of Concessions do not extend to the general encouragement, promotion and assistance of foreign direct investment, or to the general encouragement and fostering support for domestic entrepreneurs.
- (3) The National Bureau of Concessions shall consult each ministry, department or agency responsible for the administration of a concession agreement before requiring information from the holder of a concession agreement in addition to that required by the terms of the agreement, or under the laws, rules and regulations governing such ministry, department or agency. The National Bureau of Concessions shall collaborate with such ministry, department or agency on ways of incorporating additional information requested by the National Bureau of Concessions into the existing reporting requirements of concession holders in order to avoid duplication of effort by the reporting entity or the collection of duplicative data.

Section 7. Concession Agreement Monitoring and Compliance

- (1) The National Bureau of Concessions shall work with Government entities, party to concession agreements and Governmental agencies responsible for economic or social matters significantly affected by the performance of concession agreements (such as the Ministry of Finance, the Environmental Protection Agency, agencies responsible for rural community development, the Ministry of Health and the Ministry of Labor) to coordinate the development of criteria, guidelines, specifications, templates and standards for monitoring and evaluating the compliance of concession holders with the terms of their concession agreements.

- (2) The National Bureau of Concessions shall recognize that different information and different forms of monitoring are required for different classes or types of concessions, and shall seek to limit the number of different reports concession holders must file and the amount of information required to be provided while providing to the various government entities involved such information as is reasonably required to enable them to carry out their functions. Proposed information gathering requirements and procedures shall be made available for comment to concession holders and civil society before they are adopted.
- (3) The National Bureau of Concessions is entitled to receive copies of all reports and other submissions received by Governmental agencies having jurisdiction over concession holders. Each such Governmental agency must deliver such information to the National Bureau of Concessions on request or alternatively, each concession holder shall deliver to the National Bureau of Concessions copies of all reports and other submissions it makes to any other governmental agency having jurisdiction (subject in each case to any applicable laws relating to the privacy rights of individuals or entities).
- (4) The National Bureau of Concessions shall provide to ministries and other agencies or departments of the Government responsible for the granting or administration of concessions, to the extent of available resources, advice, technical assistance, and training in concession agreement monitoring and compliance, including assistance in analyzing, and recommending appropriate action based on, reports and other information provided by concession holders.
- (5) The National Bureau of Concessions shall call to the attention of the appropriate ministry or other department or agency of the Government material or persistent failures of a concession holder to comply with the terms of its concession agreement or applicable that are identified by the National Bureau of Concessions in its monitoring and review of concessions, including recommendations of enforcement action when the National Bureau of Concessions determines such action to be appropriate.
- (6) The information in any reports referred to in subsection (3) of this Section shall be confidential only to the extent it is required to be maintained as confidential by the ministry, department or agency of the government originally entitled to receive such reports. This subsection (6) does not bar the National Bureau of Concessions from delivering to LEITI information that LEITI is entitled to receive under the Liberia Extractive Industries Transparency Initiative (LEITI) Act of 2009 without regard to confidentiality requirements.
- (7) Each concession agreement entered into after the effective date of this Act shall acknowledge the rights of the National Bureau of Concessions to request and receive reports and other information under this Section.

Section 8. Concession Evaluation

- (1) Within one year of the enactment of this Act, the National Bureau of Concessions shall develop a plan for the conduct of on-going evaluation and assessment concession agreements in Liberia. Such plan shall provide for (but need not be limited to) determination of the extent to which concessions have:
 - (a) been realized in accordance with the schedule set forth in the original concession agreement;
 - (b) been developed as contemplated by the original concession agreement (including related infrastructure undertakings such as road or bridge construction or maintenance undertakings);
 - (c) achieved the expected direct budgetary impact taking into account payments under generally applicable revenue laws and direct payments under the relevant concession agreements;
 - (d) benefitted from exceptions made to the applicability to concessions of generally applicable revenue laws;
 - (e) met applicable environmental requirements;
 - (f) compliant with Liberianization policy as contained in the concession agreement; and
 - (g) performed any community development and social development obligations and compliant with applicable Liberian promotion of Liberian resources in obligation contained in the original concession agreement.
- (2) The evaluation and assessment plan shall also provide for evaluation of the extent to which concession agreements have been amended after their original execution to add to or reduce the obligations of the concession holder or the Government, the impact of such amendments on the questions outlined in clauses (a) through (g) of subsection (1) of this Section, the extent to which concession holders have complied with their obligations to provide information and reports to Government under their concession agreements, the utility of the information provided and the use made of such information by the Governmental agencies receiving the information.
- (3) The plan so prepared shall be submitted for comment to Government agencies involved with administering concession agreements, to all Governmental agencies that are responsible for economic or social matters significantly affected by the performance of concession agreements (such as the Ministry of Finance, the Environmental Protection Agency, agencies responsible for rural community development, the Ministry of Health and the Ministry of Labor) and to relevant organizations of civil society;

- (4) The National Bureau of Concessions shall take into account comments received, and budgetary and staffing constraints in determining an operational evaluation and assessment plan, which shall include provision for regular reporting of the findings of the evaluations and assessments; and
- (5) The National Bureau of Concession shall thereafter implement the Plan.

Section 9. Director General; Appointment; Tenure; Removal

- (1) The National Bureau of Concessions shall be headed by a Director General who shall be nominated by the President and with the consent of the Senate shall be appointed and commissioned by the President. The Director General shall be appointed for a term of four (4) years and may be reappointed for not more than two additional terms. Preference shall be given to persons with significant experience in the administration or negotiation of complex concession agreements and/or the management of concession-type enterprises.
- (2) The Director General may resign from office by notice to the President and may be removed by the President for cause.
- (3) Upon expiration of the Director General's term or upon his or her death, resignation, or removal from office, the President shall within ninety (90) days thereafter nominate a replacement to the Senate.

Section 10. Responsibilities of the Director General

- (1) The Director General shall be the chief executive officer of the National Bureau of Concessions responsible for the administration, organization, operations and management.
- (2) The Director General may establish priorities for the provision of assistance by the National Bureau of Concessions taking into account the resources available to the Bureau and any statutory responsibilities it may have under the Public Procurement and Concessions Act or other laws, subject however, to the requirement that the National Bureau of Concessions focus first on establishing the capacity to assist in the planning, bidding and negotiation of concession agreements before expanding its capacity in the information gathering, monitoring and evaluation areas.

Section 11. Staffing and Staff Qualifications of National Bureau of Concessions Personnel

- (1) Subject to budgetary limitations and to subsection (3) of this Section 11, the Director General shall engage such staff and consultants and advisers as he/she may determine to be necessary for the National Bureau of Concessions to discharge its functions properly and efficiently. The Director General may establish such departments or divisions within the National Bureau of

Concessions as may be determined necessary for the effective discharge of its responsibilities.

- (2) Without limitation to the subsection (1), the Bureau shall have a Deputy Director General, Comptroller, and Internal Auditor;
- (3) Staff shall be selected by the Director General pursuant to competitive processes in consultation with the Civil Service Agency;
- (4) Professional staff employed by the National Bureau of Concessions shall have professional qualifications and experience consistent with internationally accepted standards in concession matters.
- (5) The Government shall make budgetary resources available to the National Bureau of Concessions sufficiently to enable it to attract individuals with the qualifications referred to in subsection (3) of this Section 11.
- (6) The Director General may supplement the staff of the National Bureau of Concessions with individuals seconded by third-party non-profit institutions and professional advisers serving on a pro bono basis, in either instance subject to the requirement that such individuals and advisers be free of conflicts of interest in accordance with Section 12 of this Act. The National Bureau of Concessions may also employ consultants, selected in accordance with the applicable provisions of the Public Procurement and Concessions Act.

Section 12. Conflicts of Interest and Disclosure of Conflicts.

- (1) All officers and employees of the National Bureau of Concessions and all consultants and advisors to the National Bureau of Concessions, whether seconded to the National Bureau of Concessions, serving on a pro bono basis or serving for compensation, shall be subject to Sections 84 and 131 of the Public Procurement and Concessions Act as though named in such Sections, provided that disclosure of the interest shall be made to the Director General (or if the disclosing person is the Director General), to the Liberia Anti Corruption Commission).
- (2) For the purposes of this Section the term “interest,” when used in the context of conflicts of interest, includes both (a) any relationship, investment, benefit (pecuniary or non-pecuniary); any direct or indirect involvement or engagement of a person or a Close Relative (as defined in the Public Procurement and Concession Act) of that person in any business transaction or arrangement for profit and (b) any circumstance in which the person involved may be acting on behalf of the National Bureau of Concessions with respect to a former private sector employer of such person.

- (3) In a case referred to in (b) of subsection (2) of this Section, the Director General after consultation with the Attorney General may determine that a connection with a prior employer is sufficiently remote that the person involved need not be excluded from participation in a matter relating to such prior employer.
- (4) A person who contravenes this Section 12 shall be guilty of misconduct and subject to removal from the National Bureau of Concessions; and/or subject to any penalty that may be applicable under this Act or other applicable law.

Section 13. Annual and Other Reports and Studies

- (1) The Director General shall cause the publication and submission to the President and the Legislature, within 30 days of the end of each calendar year, of an annual report of the National Bureau of Concessions including the previous fiscal year, as follows:
 - (a) the National Bureau of Concessions' activities and operations for such fiscal year;
 - (b) a copy of the National Bureau of Concessions' financial accounts for such fiscal year, including any auditor's report with respect to such accounts if they were audited,;
 - (c) recommendations, if any, for increased efficiency and accountability with respect to, or other improvements in, the concession process;
 - (d) a specific survey and summary of the achievements of the year in the areas of monitoring and evaluation; and
 - (e) any general or specific recommendations for improvement of the work of the National Bureau of Concessions.
- (2) The Director General shall from time to time direct and cause the publication by the National Bureau of Concessions of studies and reports on specific aspects of the concession process, including (but not limited to) recommendations of proposed changes in the manner in which the concessions process is conducted or the manner in which concession agreements are documented.
- (3) The annual report referred to in Section 13(1) shall be a public document. Studies and reports referred to in Section 13(2) shall be public documents unless the Director General and the Attorney General determines that any part of such report should remain confidential, in which case the annual report shall be made public with such confidential material redacted and a statement as to the reasons for such redaction appended thereto.
- (4) All reports, studies and other data required to be available to the public shall be listed on and retrievable from a website maintained by the National Bureau of

Concessions or, to the extent not so retrievable, shall be listed in a publicly available index, with copies available at cost.

Section 14. Financial Matters of the National Bureau of Concessions

- (1) The work of the National Bureau of Concessions shall be financed by legislative appropriations made through the national budget.
- (2) The National Bureau of Concessions may, directly and indirectly, request and receive technical assistance, donations or grants from Liberia's development partners and other international or multilateral institutions in furtherance of its operations.
- (3) The National Bureau of Concessions shall adopt a system of sound financial management policies in conformity with financial regulations of the Government of Liberia and generally accepted international accounting principles to ensure prudent and efficient management of funds. The National Bureau of Concessions shall keep proper books and records of accounts for funds and resources received and expenditure incurred or made;
- (4) The National Bureau of Concessions shall be subject to audit by the General Auditing Commission. The National Bureau of Concessions may also be audited by such other private Auditor(s) as the Auditor General shall determine.
- (5) The annual budget of the National Bureau of Concessions shall be subject to the normal budgeting process of the Government applicable to its administrative departments.

Section 15. Transitional Provisions

- (1) Upon the effective date of this Act, the assets and personnel of the existing Bureau of Concessions in the Ministry of Finance shall be automatically transferred to the National Bureau of Concessions and the director of the Bureau of Concessions shall serve as acting Director General of the National Bureau of Concessions until the Director General is appointed and commissioned by the President.
- (2) This Act shall become effective upon publication into handbills.

ANY LAW TO THE CONTRARY NOTWITHSTANDING