

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

EXPROPRIATION BILL

[B 4—2015]

(As agreed to by the Portfolio Committee on Public Works (National Assembly))

[B 4A—2015]

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AMENDMENTS AGREED TO

EXPROPRIATION BILL

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CLAUSE 1

1. On page 4, from line 41, to omit paragraphs (a) and (b) and to substitute:
 - (a) a High Court within whose area of jurisdiction a property is situated;
 - (b) a Magistrate's Court within whose area of jurisdiction a property is situated, having competent jurisdiction and designated as such in terms of paragraph (b)(ii) in the definition of "court" in section 1, read with section 9A of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); or

2. On page 5, after line 2, to insert the following definition:

"disputing party" includes an owner, holder of an unregistered right, expropriated owner or expropriated holder that does not accept the amount of compensation offered in terms of section 14(1);

3. On page 5, after line 7, to insert the following definition:

"expropriation" means the compulsory acquisition of property by an expropriating authority or an organ of state upon request to an expropriating authority, and **"expropriate"** has a corresponding meaning;

4. On page 5, in line 42, to omit the definition of "property" and to substitute:

"property" means property contemplated in section 25 of the Constitution;

CLAUSE 3

1. On page 6, from line 19, to omit subsection (1) and to substitute:
 - (1) Subject to the provisions of Chapter 5, the Minister may expropriate property for a public purpose or in the public interest.
 - (2) If an organ of state, other than an expropriating authority, satisfies the Minister that it requires particular property for a public purpose or in the public interest, then the Minister must expropriate that property on behalf of that organ of state upon its written request, subject to and in accordance with the provisions of this Act.
 - (3) The Minister's power to expropriate property in terms of subsections (1) and (2) applies to property which is connected to the provision and management of the accommodation, land and infrastructure needs of an organ of state, in terms of his or her mandate.

2. On page 6, in line 26, to omit "(2)" and to substitute "(4)".

3. On page 6, in line 33, to omit "(3)" and to substitute "(5)".

4. On page 6, in line 33, to omit ", in the execution of his or her mandate,".

5. On page 6, in line 34, to omit “(1)” and to substitute “(2)”.

CLAUSE 4

1. On page 6, in line 43, to omit “The” and to substitute “Subject to subsection (2), the”.

CLAUSE 5

1. On page 7, in line 4, to omit “a property is required for a public purpose or in the public interest,”.
2. On page 7, in line 5, after “authority” to insert “is considering the expropriation of property, he or she”.
3. On page 8, in line 1, to omit “not already established” and to substitute “the information has not already been established”.
4. On page 8, in line 2, to omit “or before expropriating”.
5. On page 8, from line 8, to omit subparagraphs (i), (ii), (iii) and (iv) and to substitute:
 - (i) An owner;
 - (ii) a person apparently in charge of the property; and
 - (iii) any holder of unregistered rights in the property, known to the expropriating authority;
6. On page 8, from line 14, to omit subparagraph (i) and to substitute:
 - (i) the Departments responsible for rural development and land reform, for mineral resources and for water and sanitation and any other organ of state whose functions and responsibilities will be materially affected by the intended expropriation, for the purposes of establishing the existence of and the impact of expropriation on rights therein; and
7. On page 8, from line 31, to omit subsections (7) and (8) and to substitute:
 - (7) If the property in question is damaged as a result of the performance of an act contemplated in subsection (2), the expropriating authority must repair, or compensate the affected person for that damage after delivery of a written demand by the affected person and without undue delay.
 - (8) Any legal proceedings arising out of a claim referred to in subsection (7) must comply with the relevant provisions of the Institution of Legal Proceedings Against Certain Organs of State Act, 2002 (Act No. 40 of 2002).

CLAUSE 6

1. On page 8, from line 50, to omit “existing and future engineering services, infrastructure, housing and town planning” and to substitute “municipal planning”.
2. On page 8, in line 56, after “required;” to insert “and”.
3. On page 8, from line 57, to omit paragraph (d).
4. On page 8, in line 59, to omit “(e)” and to substitute “(d)”.

5. On page 9, in line 1, to omit ", subject to section 25,".
6. On page 9, from line 2, to omit "the period stipulated in subsection (2)(d)" and to substitute "20 days of receiving the request or within a reasonable time to be agreed between the expropriating authority and municipal manager or determined in terms of section 25".
7. On page 9, from line 4, to omit subsection (4).
8. On page 9, in line 8, to omit "(5)" and to substitute "(4)".
9. On page 9, in line 8, to omit "a" and to substitute "the".

CLAUSE 7

1. On page 9, after line 24, to insert:
 - (e) the intended date of expropriation or, as the case may be, the intended date from which the property will be used temporarily and the intended period of such temporary use;
 - (f) the intended date on which the expropriating authority will take possession of the property;
2. On page 9, in line 25, to omit "(e)" and to substitute "(g)".
3. On page 9, in line 28, to omit "against" and to substitute "to".
4. On page 9, in line 35, to omit "(f)" and to substitute "(h)".
5. On page 9, in line 44, to omit "(g)" and to substitute "(i)".
6. On page 9, in line 47, to omit "(h)" and to substitute "(j)".
7. On page 10, in line 5, after "compensation" to insert "should his or her property be expropriated".
8. On page 10, in line 32, to omit "can be" and to substitute "has been".
9. On page 10, in line 39, after "8(1)" to insert "within a reasonable time".
10. On page 10, in line 39, after "writing" to insert "within a reasonable time".
11. On page 10, in line 42, to omit "an" and to substitute "the".
12. On page 10, in line 43, after "accordingly" to insert "in writing within a reasonable time and must publish the notice of the decision not to proceed in accordance with section 24(2)".

CLAUSE 8

1. On page 10, in line 47, to omit "holder of an unregistered right" and to substitute "known holders of unregistered rights".

CLAUSE 10

1. On page 13, in line 4, to omit "20" and to substitute "30".
2. On page 13, in line 20, to omit "affairs".

3. On page 13, in line 31, after “accordingly” to insert “in writing”.

CLAUSE 12

1. On page 14, in line 20, to omit “to the extent that it is” and to substitute “unless there are special circumstances in which it would be”.
2. On page 14, in line 29, to omit the first “on” and to substitute “to”.

CLAUSE 13

1. On page 14, in line 41, to omit the first “(1)”.

CLAUSE 14

1. On page 15, in line 16, to omit “22” and to substitute “22,”.
2. On page 15, in line 20, to omit “form” and to substitute “forms”.

CLAUSE 15

1. On page 15, in line 54, to omit “to” and to substitute “from”.
2. On page 15, from line 55, to omit subsection (3) and to substitute:
 - (3) The provisions of section 21(2) apply if—
 - (a) an owner or holder of an unregistered right does not deliver a statement in terms of section 14(1); or
 - (b) the claimant decides not to accept the offer of compensation contemplated in subsection (1), by written reply within 20 days, or within such additional time as may be permitted in terms of section 25.

CLAUSE 17

1. On page 16, in line 20, to omit the first “on” and to substitute “by no later than”.
2. On page 16, in line 23, to omit “has” and to substitute “have”.
3. On page 16, in line 24, to omit “on” and to substitute “by no later than”.
4. On page 16, in line 25, to omit “as”.
5. On page 16, in line 35, to omit “(1)”.
6. On page 16, in line 37, to omit “to” and to substitute “than”.

CLAUSE 19

1. On page 17, in line 38, to omit “may” and substitute “must”.

CLAUSE 20

1. On page 17, in line 57, to omit “days’ “ and to substitute “days of being given”.

2. On page 18, from line 2, to omit “of an interdict in respect of the payment of” and to substitute “that an interdict prevents the expropriating authority from paying”.
3. On page 18, in line 3, after compensation to insert “to that person”.

CHAPTER 6

1. On page 18, from line 13, to omit the heading and to substitute “**MEDIATION AND DETERMINATION BY COURT**”.

CLAUSE 21

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Mediation and determination by court

21. (1) If the expropriating authority and expropriated owner or expropriated holder do not agree on the amount of compensation, they may attempt to settle the dispute by mediation, which must be initiated and finalised without undue delay by either party.

(2) If the expropriating authority and disputing party are unable to settle the dispute by consensus in the manner contemplated in subsection (1) or if the disputing party did not agree to mediation, the expropriating authority must refer the matter to a competent court to decide or approve just and equitable compensation provided that nothing in this section must change the ordinary civil onus.

(3) Subsection (2) does not preclude a person from approaching a court on any matter relating to the application of this Act.

(4) Where a court finds that a provision of this Act has not been complied with, it must make such an order as it considers just and equitable, having regard to all relevant circumstances, including-

- (a) the nature and extent of the interest of the person who has challenged the conduct in question;
- (b) the materiality of the non-compliance;
- (c) the stage which has been reached in the expropriation process; and
- (d) the interests of other persons which may be affected by the relief which is ordered.

(5) A dispute on the amount of compensation alone does not preclude the operation of section 9.

NEW CHAPTER HEADING

1. On page 18, after line 44, to insert:

CHAPTER 7 URGENT EXPROPRIATION

CLAUSE 22

1. On page 19, in line 5, to omit “in effecting the expropriation”.

2. On page 19, in line 14, to omit “Should an expropriating authority wish” and to substitute “If an expropriating authority wishes”.
3. On page 19, from line 18, to omit paragraph (b) and to substitute:
 - (b) The court may, on sufficient cause shown by the expropriating authority, extend the period of temporary usage.

NEW CHAPTER HEADING

1. On page 19, after line 27, to insert:

CHAPTER 8 WITHDRAWAL OF EXPROPRIATION

CHAPTER 7

1. On page 20, in line 1, to omit “7” and to substitute “9”.

CLAUSE 24

1. On page 20, in line 22, after “7(1)” to insert “or (7)(b)(iii)”.
2. On page 20, in line 46, to omit “(e)” and to substitute “(g)”.
3. On page 21, in line 8, to omit the second “in” and to substitute “into”.

CLAUSE 27

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Offences

27. (1) A person commits a breach of this Act if that person fails to—

- (a) comply with a directive by the expropriating authority in terms of section 7(2)(h)(i);
- (b) deliver to the expropriating authority a statement contemplated in section 7(4)(c)(i), (ii) or (iii); or
- (c) provide the information contemplated in section 8(4)(e).

(2) If a person commits a breach in terms of subsection (1)(a), (b) or (c), an expropriating authority may by notice to that person impose a prescribed administrative penalty for the breach in question.

(3) The Minister must prescribe the respective amounts of administrative penalties that may be imposed in terms of subsection (2).

(4) An administrative penalty imposed and paid in terms of this section does not constitute a previous conviction contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(5) A person who wilfully furnishes false or misleading information in any written instrument which he or she by virtue of this Act delivers or causes to be delivered to an expropriating authority, is guilty of an offence and liable on conviction to be punished as if he or she had been convicted of fraud.

CLAUSE 30

1. On page 22, in line 8, after “introduced” to insert “only”.
2. On page 22, in line 9, to omit “only”.
3. On page 22, in line 10, to omit “only”.

CLAUSE 32

1. On page 22, in line 16, after “initiated” to insert “through delivery of a notice of expropriation”.

PREAMBLE

On page 3, before the second last paragraph, to insert:

WHEREAS section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum; and

ARRANGEMENT OF ACT

1. On page 4, from line 13, to omit Chapter 6 and to substitute:

CHAPTER 6

MEDIATION AND DETERMINATION BY COURT

21. Mediation and determination by court

CHAPTER 7

URGENT EXPROPRIATION

22. Urgent expropriation

CHAPTER 8

WITHDRAWAL OF EXPROPRIATION

23. Withdrawal of expropriation

2. On page 4, in line 19, to omit “7” and to substitute “9”.