

REPUBLIC OF SOUTH AFRICA

NATIONAL WATER AMENDMENT BILL

*(As initiated by the Portfolio Committee on Water and Environmental Affairs, as a
Committee Bill, for introduction in Parliament (proposed section 75); prior notice
of introduction published in website of Parliament.)
(The English text is the official text of the Bill.)*

(PORTFOLIO COMMITTEE ON WATER AND ENVIRONMENTAL AFFAIRS)

[B 3—2014]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Water Act, 1998, so as to make provision for the correct designation of the Department and Minister; to correct outdated references; to provide for an alignment and integration of the process for consideration of water use licences, relating to prospecting, exploration, mining or production activities; to provide for the appointment of the Minister as the responsible authority for appeals relating to prospecting, exploration, mining or production activities; to amend the authority of the Water Tribunal as appeal authority relating to prospecting, exploration, mining or production activities; to provide for the concurrence between the Minister, the Minister responsible for mineral resources[,] and the Minister responsible for environmental affairs when amending provisions of the Agreement related to prospecting, exploration, mining or production activities; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 36 of 1998

1. Section 1 of the National Water Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of “Department” of the following definition:

“**‘Department’** means the Department [of] responsible for [Water] water [Affairs] affairs [and Forestry];”;

(b) by the substitution for the definition of “Minister” of the following definition: 10

“**‘Minister’** means the Minister [of] responsible for [Water] water [Affairs] affairs [and Forestry];” and

(c) by the insertion after the definition of “riparian habitat” of the following definition:

“**‘specific environmental management Act’** has the meaning assigned to it in section (1) of the National Environmental Management Act, 1998 (Act 107 of 1998);” 15

Amendment of section 26 of Act 36 of 1998

2. Section 26 is hereby amended by the addition of the following subsection:

“(5) Regulations made in terms of this Act that may have the effect of amending the provisions of the Agreement referred to in section 163A must be made by the Minister in concurrence with the Minister responsible for mineral resources and the Minister responsible for environmental affairs and must be tabled in Parliament 30 days prior to the final publication of the regulations in the Gazette.”. 5

Amendment of section 41 of Act 36 of 1998

3. Section 41 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection: 10

“(3) A responsible authority may direct that any assessment under subsection (2)(a)(ii) must comply with the requirements contained in regulations made under [section 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989)] sections 24(5) and 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998).”; and 15

- (b) by the addition of the following subsections:

“(5) The Minister must align and integrate the process for consideration of a water use license with the timeframes and processes applicable to applications for—

- (a) licences, permits or rights for prospecting, exploration, mining and production in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); and 20

- (b) environmental authorisations in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) or any specific environmental management act.” 25

(6) Notwithstanding the provisions of section 148, any applicant for a water use licence arising out of the integration process contemplated in subsection (5), who is aggrieved by a decision of the responsible authority, may lodge an appeal to the Minister against the decision.”.

Amendment of section 148 of Act 36 of 1998

4. Section 148 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) subject to section 41(6), against a decision of a responsible authority on an application for a licence under section 41, or on any other application to which section 41 applies, by the applicant or by any other person who has timeously lodged a written objection against the application;”; and 35

- (b) by the substitution in subsection (1) for paragraph (h) of the following paragraph: 40

“(h) subject to section 41(6), against the amendment of a condition of a licence by a responsible authority on review under section 49(2), by any person affected thereby;”.

Insertion of section 163A to Act 36 of 1998

5. The following section is hereby inserted in the principal Act after section 163: 45

“Amendments to this Act

163A. (1) (a) Any proposed amendments to this Act that may have the effect of amending the provisions of the Agreement, must be subject to concurrence between the Minister, the Minister responsible for mineral resources and the Minister responsible for environmental affairs; and 50

(b) Any intervention contemplated in paragraph (a) that may lead to the amendment of the provisions of the Agreement must be tabled in Parliament prior to any steps being taken to effect those changes and

Parliament may express its view on the proposed amendment of the Agreement.

(2) Agreement for the purpose of subsection (1) means the Agreement reached between the Minister, the Minister responsible for mineral resources and the Minister responsible for environmental affairs titled ***One Environmental System*** for the country with respect to mining, which entails:

(a) that all environment related aspects would be regulated through one environmental system which is the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that all environmental provisions would be repealed from the Mineral and Petroleum Resources Development Act, 2002 (Act No 28 of 2002);

(b) that the Minister responsible for environmental affairs sets the regulatory framework and norms and standards, and that the Minister responsible for mineral resources will implement the provisions of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and the subordinate legislation as far as it relates to prospecting, exploration, mining or operations;

(c) that the Minister responsible for mineral resources will issue environmental authorisations in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) for prospecting, exploration, mining or operations, and that the Minister responsible for environmental affairs will be the appeal authority for these authorisations; and

(d) that the Minister, the Minister responsible for mineral resources and the Minister responsible for environmental affairs agree on fixed time-frames for the consideration and issuing of the authorisations in their respective legislation and also agreed to align the time frames and processes.”.

Amendment of Arrangement of Sections of Act 36 of 1998

6. The Arrangement of Sections of the principal Act is hereby amended by the insertion after item 163 of the following item:

163A. Amendments to this Act

Short title and commencement

7. This Act is called the National Water Amendment Act, 2014 and comes into operation on the same date as the National Environmental Laws Third Amendment Act, 2014.

**MEMORANDUM ON THE OBJECTS OF THE NATIONAL WATER
AMENDMENT BILL (AS INTRODUCED BY PORTFOLIO
COMMITTEE ON WATER AND ENVIRONMENTAL AFFAIRS)**

1. INTRODUCTION

It is necessary to align the National Water Act, 1998 (Act No. 36 of 1998) (“Act”) which deals with water use licence applications, specifically in respect of time frames and appeals, so as to provide for an integrated licensing system between the Department of Mineral Resources, Department of Environmental Affairs and Department of Water Affairs. The National Water Amendment Bill proposes a departure from the current appeal system (appeals to the Water Tribunal as provided for in terms of section 146 of the National Water Act).

2. CONTENTS OF BILL

Clause 1

The first proposed amendment rectifies the definitions of “Department” and “Minister” from the previous configuration of “Department of Water Affairs and Forestry” to “Department of Water Affairs” and from “Minister of Water Affairs and Forestry” to “Minister of Water and Environmental Affairs”.

Clause 2

It provides for concurrence with the Minister responsible for mineral resources when regulations are made, which may have the effect of amending the provisions of the Agreement referred to in section 163A.

Clause 3

The Act is amended to correctly reflect the applicable legislation, namely the National Environmental Management Act, 1998 (Act No. 107 of 1998). It further provides for the integrated licensing process and appeal procedure to the Minister under certain circumstances.

Clause 4

Section 148 has been amended to establish an appeal process for certain decisions, relating to water use licences in the mining sector, to be dealt with by the Minister of Water and Environmental Affairs, rather than to the Water Tribunal. This process will be elaborated on in regulations mandated by section 26(1) (k) of the National Water Act.

Clause 5

This clause provides for the procedure to be followed in the event of an amendment to the principal Act that may have the effect of amending the Agreement referred to in section 163A.

Clause 6

This clause provides for an amendment to the arrangement of sections.

Clause 7

Clause 7 provides for the short title and commencement date.

3 ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The newly established Chief Directorate: Water Use Authorisations shall perform the functions envisaged by this Committee Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

The financial implications for the State have been budgeted for within the current budget of the Department of Water Affairs.

5. DEPARTMENTS/BODIES/PERSONS CONSULTED

The following stakeholders were consulted—

- Department of Water Affairs
- Department of Environmental Affairs
- Department of Mineral Resources
- The public during the consultation process relating to amendments presently being effected to the National Environmental Management Act, 1998

6. CONSTITUTIONAL IMPLICATIONS

None

7. PARLIAMENTARY PROCEDURE

- 7.1 The Committee proposes that this Committee Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, 1996 since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.
- 7.2 The Committee is of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.