

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN WEATHER SERVICE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 36559 of 14 June 2013)
(The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B 23—2013]

ISBN 978-1-77597-026-2

No. of copies printed 1 800

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

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

To amend the South African Weather Service Act, 2001, so as to substitute and insert certain definitions; to extend the objectives and functions of the Weather Service; to provide the Minister with supervisory powers; to provide for the Board to be the accounting authority of the Weather Service; to delete certain obsolete provisions; to extend the limitation of liability of the Weather Service; to provide for offences and penalties; to amend the Schedules to the Act; and to provide for matters connected therewith.

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

1. Section 1 of the South African Weather Service Act, 2001 (Act No. 8 of 2001)
(hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion of the Roman numerals preceding each definition;
- (b) by the substitution for the definition of “advisory services” of the following definition:
- “**‘advisory services’** means any climatological advice or advice on ambient air quality, and includes advice on weather outlooks, weather forecasts, **[and]** severe weather warnings, ambient air quality information services, air quality forecasts and ambient air quality warnings;”;
- (c) by the insertion after the definition of “advisory services” of the following definitions:
- “**‘Air Quality Act’** means the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);
- ‘ambient air’** has the meaning assigned to it in section 1 of the Air Quality Act;
- ‘ambient air quality forecast’** means a prediction or estimation of ambient air quality at some time in the future using recognised air quality forecasting techniques or methodologies;
- ‘ambient air quality warning’** means an alert of exceedance or forecast exceedance of ambient air quality standards established in terms of the Air Quality Act;”;

- (d) by the substitution for the definition of “Chief Executive Officer” of the following definition:
 “**‘Chief Executive Officer’** means the Chief Executive Officer appointed in terms of section 13(1) **[and includes the interim Chief Executive Officer contemplated in section 18(6)]**”; 5
- (e) by the insertion after the definition of “department” of the following definition:
 “**‘emission’** has the meaning assigned to it in section 1 of the Air Quality Act;”; 10
- (f) by the insertion after the definition of “financial year” of the following definition:
 “**‘greenhouse gas’** has the meaning assigned to it in section 1 of the Air Quality Act;”; 15
- (g) by the insertion after the definition of “Minister” of the following definitions:
 “**‘NAAQMN’** means the National Ambient Air Quality Monitoring Network that provides ambient air quality information to the SAAQIS; **‘national framework’** means the national framework established in terms of section 7(1) of the Air Quality Act;”; and 20
- (h) by the insertion after the definition of “regulations” of the following definition:
 “**‘SAAQIS’** means the South African Air Quality Information System, and refers to the electronic information management system established in accordance with the national framework established in terms of section 7(1) of the Air Quality Act;”. 25

Amendment of section 3 of Act 8 of 2001 25

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

- (a) by the substitution for paragraph (a) of the following paragraph:
 “(a) to maintain, extend and improve the quality of meteorological **[service]** and ambient air quality-related information services for the benefit of all South Africans;”; 30
- (b) by the substitution for paragraphs (c) and (d) of the following paragraphs, respectively:
 “(c) to ensure the ongoing collection of meteorological and ambient air quality data over South Africa and surrounding southern oceans for the use by current and future generations; 35
 (d) to be the long-term custodian of a reliable national climatological, emission, greenhouse gas and ambient air quality record;”;
- (c) by the deletion of the word “and” at the end of paragraph (g);
- (d) by the substitution for paragraph (h) of the following paragraph:
 “(h) to fulfill such other weather-related or ambient air quality information international obligations as the Minister may direct[.]; and”; 40
 and
- (e) by the addition of the following paragraph:
 “(i) to be the custodian of the SAAQIS.”. 45

Amendment of section 4 of Act 8 of 2001 45

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

- (a) by the insertion in subsection (1) of the following paragraphs, after paragraph (a):
 “(aA) provide such ambient air quality information services as is necessary to achieve the objectives of the Air Quality Act; 50
 (aB) collect ambient air quality data over the Republic of South Africa;
 (aC) act as the custodian of the SAAQIS;
 (aD) receive, process and store ambient air quality data, emissions and greenhouse gas data collected for the National Atmospheric Emissions Inventory; 55
 (aE) manage, operate, maintain and develop NAAQMN;”; and
- (b) by the addition of the following subsection:
 “(5) The Weather Service may issue ambient air quality forecasts and ambient air quality warnings.”.

Insertion of section 4A in Act 8 of 2001

4. The following section is hereby inserted in the principal Act, after section 4:

“Minister’s supervisory powers

4A. (1) The Minister—

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| <p>(a) must monitor the exercise and performance of the Weather Service of its functions;</p> <p>(b) may set norms and standards for the performance by the Weather Service of its functions; or</p> <p>(c) may issue directives to the Weather Service on policy, planning, strategy and procedural issues to ensure the effective and efficient functioning of the Weather Service.</p> <p>(2) The Weather Service must perform its functions subject to any norms, standards and directives issued by the Minister in terms of subsection (1).”.</p> | <p>5</p> <p>10</p> |
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Amendment of section 5 of Act 8 of 2001

5. Section 5 of the principal Act is hereby amended by the insertion in subsection (2) after subparagraph (i) of paragraph (b) of the following subparagraph:

“(iA) air quality management;”.

Amendment of section 14 of Act 8 of 2001

6. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) **[Subject to section 18, the]** The Chief Executive Officer may, on such terms and conditions of service as may be determined by the Board, appoint **[or have]** such number of employees **[seconded]** to the Weather Service as are necessary, to enable the Weather Service to perform its functions.”.

Amendment of section 17 of Act 8 of 2001 25

7. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) **[Despite the provisions of]** In accordance with section 49(2)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the **[Chief Executive Officer]** Board is the accounting **[officer]** authority of the Weather Service, and must comply with the provisions of the Public Finance Management Act, 1999.”. 30

Repeal of section 18 of Act 8 of 2001

8. Section 18 of the principal Act is hereby repealed.

Amendment of section 27 of Act 8 of 2001

9. Section 27 of the principal Act is hereby amended by the addition of the following subsection, the existing section becomes subsection (1): 35

“(2) Neither the Weather Service nor any other person acting on behalf of the Weather Service is liable for any damage, loss or injury caused by any act performed or omitted in good faith, in the course of exercising a power or performing a function assigned by or under this Act.”.

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Insertion of section 30A in Act 8 of 2001

10. The following section is hereby inserted in the principal Act after section 30:

“Offences and Penalties

30A. (1) No person may—

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| (a) | publish, disseminate or distribute in any manner whatsoever any severe weather warning which he or she knows, believes or ought to have reasonably known or suspected— | 5 |
| | (i) to be false or misleading; and | |
| | (ii) that it may incite public reaction and may lead to the undue mobilisation of resources, public alarm, evacuations or economic loss; | 10 |
| (b) | impersonate or falsely represent himself or herself to be an employee of the Weather Service or purport to act on behalf of the Weather Service; or | |
| (c) | use official corporate branding from the Weather Service, or corporate branding closely resembling that of the Weather Service, such that it will be difficult for the reasonable person to distinguish between the original and resembling version, with the intention to deceive a member of the public into believing that the document or message presented or disseminated is an official document or message originating from the Weather Service. | 15
20 |
| | (2) A person who contravenes any provisions of subsection (1) is guilty of an offence and is liable, in the case of a first conviction, to a fine not exceeding five million rand or imprisonment for a period not exceeding five years, and in the case of a second or subsequent conviction, to a fine not exceeding ten million rand or imprisonment for a period not exceeding 10 years, or in both instances to both such fine and such imprisonment, respectively. | 25 |
| | (3) Whenever any person is convicted of an offence under subsection (2) and it appears that such person has by that offence caused loss or damage to any organ of state or other person, the court may in the same proceedings at the written request of the Minister, another organ of state or other person concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused. | 30 |
| | (4) Upon proof of such amount, the court may give judgment therefor in favour of the organ of state or other person concerned against the convicted person, and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before a competent court. | 35 |
| | (5) Whenever any person is convicted of an offence under subsection (2), the court convicting such person may summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence, and, in addition to any other punishment imposed in respect of that offence, the court may order— | 40 |
| | (a) the award of damages, compensation or a fine equal to the amount so assessed; or | 45 |
| | (b) that such remedial measures as the court may determine must be undertaken by the convicted person. | |
| | (6) Notwithstanding anything to the contrary in any other law, a Magistrate’s Court shall have the jurisdiction to impose any penalty prescribed by this Act.”. | 50 |

Amendment of Schedule 1 to Act 8 of 2001

11. Schedule 1 to the principal Act is hereby amended—

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| (a) | by the substitution for item 11 of the following item: | |
| | “11. The conducting of research [focussed] focused on reducing the impact of weather-related natural disasters and on improving [to] the quality of the public good services.”; and | 55 |

(b) by the addition of the following items:

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| <p>“14. The collection of ambient air quality data over the Republic of South Africa.</p> <p>15. The provision of ambient air quality forecasts and warning services intended for the general public benefit.</p> <p>16. To act as the custodian of the SAAQIS.</p> <p>17. The publication of air quality and air quality-related publications.</p> <p>18. The provision of emission, greenhouse gas, and ambient air quality information and advice to Government.</p> <p>19. To receive, process and store ambient air quality data, emissions and greenhouse gas data collected for the National Atmospheric Emissions Inventory.</p> <p>20. The management, operation, maintenance and the development of NAAQMN and other ambient air quality-related instruments and <u>computer programs.</u>”.</p> | <div style="border-left: 1px solid black; height: 150px; margin-left: 5px;"></div> | <p>5</p> <p>10</p> <p>15</p> |
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Amendment of Schedule 2 to Act 8 of 2001

12. Schedule 2 to the principal Act is hereby amended by the addition of the following items:

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| <p>“12. The provision of specialised ambient air quality forecasts or ambient air quality information services.</p> <p>13. The provision of services to the air quality management, air quality monitoring or air quality modelling industry.</p> <p>14. Contracted air quality-related research.</p> <p>15. The selling of ambient air quality or meteorological information packages.”.</p> | <div style="border-left: 1px solid black; height: 100px; margin-left: 5px;"></div> | <p>20</p> |
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Short title and commencement

13. This Act is called the South African Weather Service Amendment Act, 2013, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN WEATHER SERVICE AMENDMENT BILL, 2013

1. PURPOSE OF THE BILL

The purpose of the South African Weather Service Amendment Bill (“the Bill”), is to amend the South African Weather Services Act, 2001 (Act No. 8 of 2001) (“the Act”), so as to substitute and insert certain definitions; to extend the objectives and functions of the South African Weather Service (“Weather Service”), to deal with ambient air quality information services; to provide the Minister with supervisory powers; to align the Act with the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“PFMA”), by providing for the Board to be the accounting authority for the Weather Service; to delete certain obsolete provisions; to extend the limitation of liability of the Weather Service; to provide for offences and penalties; and to amend the Schedules to the Act.

2. BACKGROUND

- 2.1 The purpose of the Act was to establish the Weather Service; to determine its objects, functions and method of work; to prescribe the manner in which it is to be managed and governed; and to regulate its staff and financial matters.
- 2.2 In order to meet the information requirements for good air quality governance and to ensure compliance with the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (“NEM: AQA”), the Department of Environmental Affairs (“DEA”), together with the Weather Service, developed the South African Air Quality Information System (“SAAQIS”), and the National Ambient Air Quality Monitoring Network (“NAAQMN”) (after promulgation of the NEM: AQA in 2005). The partnership between the DEA and the Weather Service is managed in accordance with a Memorandum of Understanding.
- 2.3 SAAQIS is an electronic web-based information system that has the stated objective of providing all stakeholders with easy access to all relevant information about air quality in South Africa, and further provides different stakeholders with different useful online applications to support the effective and efficient management of air quality. The SAAQIS is in the process of being operationalised in phases. The Weather Service requires a clear mandate and empowering clause to host the SAAQIS, including storage, quality controlling, archiving and reporting of data, efficiently and effectively.
- 2.4 The NAAQMN collects and feeds information into the SAAQIS and consists of a network of government-owned electronic ambient air quality monitoring stations located around the country.
- 2.5 To ensure the sustainability of these systems, and also to ensure that the Weather Service is provided with the necessary mandate and powers to implement these systems efficiently and effectively, both parties have agreed that an amendment to the Act is desirable.

3. OBJECTS OF AMENDMENT BILL

3.1 Clause 1: Amendment of section 1

Clause 1 inserts and substitutes certain definitions to provide for the amendments proposed to the Act. The term “ambient air” is included in various definitions due to the additional objective and functions of the Weather Service.

3.2 Clause 2: Amendment of section 3

Clause 2 seeks to amend section 3 of the Act, extending the objectives of the Weather Service to include ambient air quality-related information services.

Clause 2 also seeks to add to the objectives of the Weather Service, the implementation of the SAAQIS and the NAAQMN. In this instance, the Weather Service is regarded as the custodian of the SAAQIS.

3.3 Clause 3: Amendment of section 4

Clause 3 seeks to extend the functions of the Weather Service to provide ambient air quality information services; to collect ambient air quality data; to act as custodian of the SAAQIS; to receive, process and store ambient air quality data emissions and greenhouse gas; to manage, operate, maintain and develop the NAAQMN; and to issue ambient air quality forecasts and ambient air quality warnings.

3.4 Clause 4: Insertion of section 4A

Clause 4 seeks to insert section 4A in order to provide the Minister with supervisory powers. The amendment will allow the Minister to monitor the exercise and performance by the Weather Service of its functions. In this regard, the Minister may set norms and standards for the performance by the Weather Service of its functions, or issue directives to the Weather Service on policy, planning, strategy and procedural issues to ensure its effective and efficient functioning.

3.5 Clause 5: Amendment of section 5

Clause 5 seeks to ensure that the needs of air quality management stakeholders are taken into account by the Minister when appointing members of the Board of the Weather Service.

3.6 Clause 6: Amendment of section 14

Clause 6 seeks to allow the Chief Executive Officer to appoint such number of employees from the Department of Environmental Affairs to the Weather Service, in order to enable the Weather Service to perform its functions, subject to such terms and conditions that the Board may determine.

3.7 Clause 7: Amendment of section 17

Section 17 of the Act provides for the Chief Executive Officer to be the accounting officer of the Weather Service. Section 49(2) of the PFMA provides that the Board is the accounting authority. Clause 7 seeks to align the Act with the relevant provisions of the PFMA by providing for the Board of the Weather Service to be the accounting authority.

3.8 Clause 8: Repeal of section 18

Section 18 of the Act is a transitional provision providing for the transfer of staff from the former Chief Directorate Weather Bureau of the DEA. Clause 8 seeks to repeal section 18 of the Act because section 18 is no longer relevant.

3.9 Clause 9: Amendment of section 27

Clause 9 seeks to amend section 27 to extend the limitation of liability of the Weather Service under certain circumstances.

3.10 Clause 10: Insertion of section 30A

The Act obliges the Weather Service to perform certain functions, including the provision of meteorological services, implementation of Resolution 40 and any other related resolutions of the World Meteorological Organisation, and to perform any other functions assigned to it. In this regard, section 4(3) of the Act states that only the Weather Service may issue severe weather warning over the Republic of South Africa in order to ensure that there is a

single authoritative voice. However, the Act does not provide for offences and penalties in cases of contravention of section 4(3) of the Act.

In order to ensure compliance with the provisions of the Act, clause 10 makes provision for the following offences:

- It is an offence for any person to publish, disseminate or distribute any severe weather warning which he or she believes or ought to have reasonably known or suspected to be false or misleading or that may incite public alarm;
- It is an offence for any person to impersonate or falsely misrepresent himself or herself to be an employee of the Weather Service or purport to act on behalf of the Weather Service;
- It is an offence for any person to unlawfully use the official or corporate branding of the Weather Service.

The clause also seeks to provide penalties for the offences, which will be in line with other environmental legislation.

In order to deter the commission of an offence in terms of the Act, and to circumvent the duplication of utilising the burdened court services by instituting separate civil and criminal proceedings in respect of the same matter, the proposed section 30A also empowers the court to award compensation where the offence causes damage to or loss of property. The aforesaid judgment will be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before a competent court. This will also provide a more efficient and effective civil law remedy in respect of the offences in terms of the Act. The Magistrate's Court will also be given jurisdiction to impose the penalty prescribed.

3.11 Clauses 11 and 12: Amendment of Schedules to the Act

Clauses 11 and 12 seek to effect a certain grammatical correction and to amend Schedules 1 and 2 to the Act, respectively, by providing for additional public good services and commercial services which relate to ambient air quality information.

4. FINANCIAL IMPLICATIONS FOR THE STATE

- 4.1** The Department of Environmental Affairs' budget for the Weather Service will increase to include additional funds for the implementation of the SAAQIS.
- 4.2** In this regard, a business case study was undertaken to assess and analyse the financial implications to the Weather Service for the implementation of the SAAQIS.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The amendments do not create new structures within the DEA. The DEA, in terms of the amendments, is transferring the operation, management and maintenance of the SAAQIS function to the Weather Service. In essence, the DEA will monitor and support the Weather Service in the performance of the function. Accordingly, a new Air Quality Information Unit will be established at the Weather Service to implement the SAAQIS function.

6. COMMUNICATION IMPLICATIONS

Appropriate communication measures will be implemented by the Government Communication and Information System.

7. PROVINCIAL IMPLICATIONS

None

8. CONSTITUTIONAL IMPLICATIONS

None

9. PARLIAMENTARY PROCEDURE

9.1 The State Law Advisers and the DEA are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

9.2 The State Law Advisers are 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 custom of traditional communities.

Printed by Creda Communications

ISBN 978-1-77597-026-2