

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 Gazette No. 34648 of 30 September 2011)
(The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B 22—2011]

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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 South African Weather Services Act, 2001, so as to substitute and insert certain definitions; to extend the objectives and functions of the South African Weather Service; to provide for a performance management system for the Chief Executive Officer; to provide for the Board to be the accounting authority for the Weather Service; to delete certain obsolete provisions; to provide for the limitation of liability of the Weather Service; to provide for the Minister to amend the Schedules to the Act; 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:—

Amendment of section 1 of Act 8 of 2001

1. Section 1 of the South African Weather Service Act, 2001 (hereinafter referred to as the principal Act), is hereby amended— 5

- (a) by the deletion of the numbering 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]** weather warnings, air pollution, concentrations of criteria pollutants in ambient air, emissions of pollutants to ambient air and air pollution warnings;”;

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- (c) by the insertion after the definition of “advisory services” of the following definitions: 15

“ **‘air pollution’** has the meaning assigned to it in section 1 of the Air Quality Act;

‘Air Quality Act’ means the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);

‘air quality information services’ means— 20

- (a) the collection, processing and provision of ambient air quality and atmospheric emission information, data and advisory services;
- (b) the operation, maintenance and development of air quality-related instruments and computer programmes;
- (c) research with the aim of— 25

- (i) improving products and the delivery of services; and
(ii) reducing the impact of air pollution on health and well-being;
and
(d) the provision of air quality information management-related training in partnership with higher education institutions; 5
‘ambient air’ has the meaning assigned to it in section 1 of the Air Quality Act;
‘atmospheric emission’ or ‘emission’ has the meaning assigned to it in section 1 of the Air Quality Act;”;
- (d) by the substitution for the definition of “Chief Executive Officer” of the following definition: 10
“ ‘**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)];”;
- (e) by the insertion after the definition of “financial year” of the following definition: 15
“ ‘**greenhouse gas**’ has the meaning assigned to it in section 1 of the Air Quality Act;”;
- (f) by the insertion after the definition of “Minister” of the following definitions: 20
“ ‘**NAAQMN**’ means the National Ambient Air Quality Monitoring Network, and refers to the network of air quality monitoring stations owned or operated by the Department that provide data to the SAAQIS;
‘**national framework**’ means the national framework established in terms of section 7(1) of the Air Quality Act;
‘**ozone-depleting substance**’ has the meaning assigned to it in section 1 of the Air Quality Act; 25
‘**pollution**’ has the meaning assigned to it in section 1 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
‘**priority area**’ has the meaning assigned to it in section 1 of the Air Quality Act;”;
- (g) by the insertion after the definition of “regulations” of the following definition: 30
“ ‘**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;”.

Amendment of section 3 of Act 8 of 2001

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

- (a) by the substitution for paragraph (a) of the following paragraph: 40
“(a) to maintain, extend and improve the quality of meteorological and ambient air quality information service for the benefit of all South Africans;”;
- (b) by the substitution for paragraphs (c) and (d) of the following paragraphs, respectively: 45
“(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;
(d) to be the long term custodian of a reliable national climatological and ambient air quality record;”;
- (c) by the deletion of the word “and” at the end of paragraph (g); 50
- (d) by the substitution for paragraph (h) of the following paragraph:
“(h) to fulfill such other [weather-related] weather or ambient air quality information-related international obligations as the Minister may direct; and”;
- (e) by the addition of the following paragraph: 55
“(i) to implement the ambient air quality information management provisions of the Air Quality Act and its national framework as the custodian of the SAAQIS and the NAAQMN.”.

Amendment of section 4 of Act 8 of 2001

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

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

“(a) provide such meteorological and air quality information services, including public good services and commercial services, as are necessary to achieve its objectives, provided that it is in the interests of the Weather Service and the State;”;

(b) by the deletion in subsection (1) of the word “and” at the end of paragraph (b);

(c) by the insertion in subsection (1) of the following paragraph after paragraph (b):

“(bA) perform the functions conferred upon or assigned to it by the Act; and”;

(d) by the addition of the following subsection:

“(5) The Weather Service may issue air pollution-related warnings if it deems it necessary.”.

Amendment of section 5 of Act 8 of 2001

4. 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;”.

Substitution of section 9 of Act 8 of 2001

5. The following section is hereby substituted for section 9 of the principal Act:

“Remuneration

9. **[Any member]** Members of the Board, other than the Chief Executive Officer and the official contemplated in section 5(1)(b), must be paid **[such]** according to a level of remuneration and allowances as approved by the Minister, **with the concurrence of the Minister of Finance, may determine**.”.

Substitution of section 13 of Act 8 of 2001

6. The following section is hereby substituted for section 13 of the principal Act:

“Chief Executive Officer

13. (1) The members of the Board contemplated in section 5(1)(b) and (c), acting in concurrence with the Minister, must appoint a person as the Chief Executive Officer.

(2) The Chief Executive Officer—

(a) is appointed for a term not exceeding five years; and

(b) may be reappointed by the Board with the concurrence of the Minister, for one additional term not exceeding five years.

(3) The Board must invite applications for the post contemplated in subsection (1) by publishing advertisements in the media circulating nationally.

(4) A person appointed in terms of subsection (2) must be a fit and proper person with appropriate qualifications and experience to perform the functions of such a post.

(5) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board may determine with the concurrence of the Minister.

(6) The Chief Executive Officer is responsible for—

(a) the management of the Weather Service;

(b) the performance of its duties;

- (c) the exercise of such powers as the Board may delegate to him or her; and
- (d) reporting to the Board on aspects of management, the performance of its duties and the exercise of the powers delegated to him or her by the Board, at such times or intervals and in such manner as the Board may determine. 5
- (7) The Board must enter into an annual performance agreement with the Chief Executive Officer within three months of his or her employment, and thereafter at the beginning of each financial year.
- (8) The Chief Executive Officer is accountable to the Board. 10
- (9) The members of the Board may, in concurrence with the Minister, terminate the services of the Chief Executive Officer—
- (a) for any sound and compelling reason;
- (b) in accordance with fair labour practice; or
- (c) in terms of his or her contract of employment. 15
- (10) (a) When there is a vacancy in the office of the Chief Executive Officer or if the Chief Executive Officer is absent or unable to perform his or her duties, the Chairperson of the Board may, in consultation with the members of the Board—
- (i) appoint another employee of the Weather Service; or 20
- (ii) in the absence of a suitable employee of the Weather Service, appoint any other person who in the opinion of the Board has the necessary skills, knowledge and experience, to act as the Chief Executive Officer for a period not exceeding six months.
- (b) Whilst acting as Chief Executive Officer, such employee or person— 25
- (i) must perform the functions and duties of Chief Executive Officer; and
- (ii) is employed subject to such terms and conditions of employment as the Board may determine, and must comply with the code of conduct and ethics policy for the Weather Service.”.

Amendment of section 14 of Act 8 of 2001 30

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

“(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 from the Department to the Weather Service as are necessary, to enable the Weather Service to perform its functions.”. 35

Amendment of section 17 of Act 8 of 2001

8. Section 17 of the principal Act is hereby amended by 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.”. 40

Repeal of section 18 of Act 8 of 2001

9. Section 18 of the principal Act is hereby repealed. 45

Insertion of section 27A in Act 8 of 2001

10. The following section is hereby inserted in the principal Act after section 27:

“Limitation of liability

27A. 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.”. 50

Insertion of section 28A in Act 8 of 2001

11. The following section is hereby inserted in the principal Act after section 28:

“Amendment of Schedules

28A. The Minister may, on the recommendation of the Weather Service, amend Schedules 1 and 2 to the Act by notice in the *Gazette* in order to give effect to the objectives of the Weather Service: Provided that at least 60 days before any such amendment, notice must be published in the *Gazette*—

(a) of the intention to effect such an amendment and of the proposed content of the amendment; and

(b) inviting any person who wishes to comment on the proposed amendment, to submit such comment in writing to the Minister within the period mentioned in the notice.”.

Insertion of section 30A in Act 8 of 2001

12. The following section is hereby inserted in the principal Act after section 30: 15

“Offences and penalties

30A. (1) No person may—

(a) issue a severe weather or air pollution-related warning without the necessary written permission from the Weather Service;

(b) supply false or misleading information about the Weather Service;

(c) unlawfully, intentionally or negligently commit any act or omission which detrimentally affects or is likely to detrimentally affect the Weather Service.

(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.

(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 or other 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.

(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.

(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—

(a) the award of damages or compensation or a fine equal to the amount so assessed; or

(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.”.

Amendment of Schedule 1 to Act 8 of 2001

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

(a) by the substitution of item 11 of the following item:

“The conducting of research [**focused**] focused on reducing the impact of weather-related natural disasters and on improving [**to**] the quality of the public good services.”; and 5

(b) by the addition of the following items:

“14. The gathering of ambient air quality and atmospheric emission data over South Africa in compliance with paragraphs 5.2.1.3 and 5.2.1.4 of the National Framework. 10

15. The introduction of air pollution forecasting and warning services intended for the general benefit of the population’s health and well-being.

16. The custody of the SAAQIS.

17. The operation of a national ambient air quality monitoring network. 15

18. The provision of advice to government regarding ambient air quality matters.”.

Amendment of Schedule 2 to Act 8 of 2001

14. Schedule 2 to the principal Act is hereby amended by the addition of the following items: 20

“12. The provision of specialised air pollution forecasting or air quality information services.

13. The provision of services to the air quality management, air quality monitoring or the environmental consultancy industry. 25

14. Air quality and air quality information management-related publications.

15. Air quality consultations, including advice to industries regulated in terms of the Air Quality Act, air quality management, air quality monitoring or the environmental consultancy industry. 30

16. Contracted air quality-related or air pollution-related research.

17. Contracted ambient air quality-related monitoring or modelling services.

18. The selling of air quality, atmospheric emission or meteorological information packages especially designed for use in air quality models.”. 35

Short title and commencement

15. This Act is called the South African Weather Service Amendment Act, 2011.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN WEATHER SERVICE AMENDMENT BILL, 2011

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 (the Weather Service) to deal with ambient air quality information services; to provide for a performance management system for the Chief Executive Officer; to align the Weather Service Board with the Public Finance Management Act, 1999 (Act No. 1 of 1999) (the PFMA), by providing for the Board to be the accounting authority for the Weather Service; to delete certain obsolete provisions; to provide for the limitation of liability of the Weather Service; to provide for the Minister to amend the Schedules to the Act by notice in the *Gazette*; 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. The Bill seeks to amend the Act to ensure that the objectives of the Act are met in a more sustainable, effective and efficient manner.
- 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) (the Air Quality Act), the Department together with the Weather Service have developed the South African Air Quality Information System (the SAAQIS) and the National Ambient Air Quality Monitoring Network (the NAAQMN) since the promulgation of the Air Quality Act in 2005. The 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 on-line applications to support the effective and efficient management of air quality. Both these systems are in operation, but require a clear mandate and empowering clause to implement them efficiently and effectively.
- 2.3 The Department, in partnership with the Weather Service, has developed the SAAQIS and the NAAQMN since 2005 in terms of a Memorandum of Agreement. Thus, to ensure the sustainability of these systems and 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.
- 2.4 The Act further provides for meteorological services, including good services necessary to achieve its objectives. The Weather Service is a member of the World Meteorological Organisation and as such has a legal obligation to comply with and implement Resolution 40 of the Twelfth Congress of the World Meteorological Organisation. In this regard, it is necessary that only the Weather Service must be able to issue severe weather-related warnings in order to ensure that there is only one authoritative voice.

3. OBJECTS OF BILL

3.1 Clause 1: Amendment of section 1

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

3.2 Clause 2: Amendment of section 2

Clause 2 seeks to amend section 3 of the Act by extending the objectives of the Weather Service to include ambient air quality. Clause 2 further seeks to institutionalise the SAAQIS and the NAAQMN within the Weather Service objectives.

3.3 Clause 3: Amendment of section 4

Clause 3 seeks to extend the functions of the Weather Service to provide air quality information services and to issue air pollution warnings if it deems it necessary.

3.4 Clause 4: Amendment of section 5

This amendment will 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.

3.5 Clause 5: Amendment of section 9

Clause 5 seeks to align the remuneration of the members of the Board with a level of remuneration approved by the Minister.

3.6 Clause 6: Amendment of section 13

Clause 6 seeks to replace section 13 of the Act by prescribing the procedure for appointment of the Chief Executive Officer. Clause 6 also provides for the Chief Executive Officer to be appointed for a five-year term, and for the reappointment of the Chief Executive Officer for an additional five-year term. Clause 6 further seeks to prescribe the responsibilities of the Chief Executive Officer.

Clause 6 compels the Board to enter into an annual performance agreement with the Chief Executive Officer within three months of his or her employment, and thereafter at the beginning of the financial year, in order to provide for a situation where the Chief Executive Officer is appointed just after the beginning of a financial year, as 11 months of employment may lapse in such a case before the Board enters into an annual performance agreement with the Chief Executive Officer. Clause 6 also sets out the grounds for the termination of the services of the Chief Executive Officer and the appointment of an acting Chief Executive Officer.

3.7 Clause 7: Amendment of section 14

This amendment is consequential due to the repeal of section 18 of the Act, namely transitional provisions providing for the transfer of staff from the former Chief Directorate Weather Bureau of the Department.

3.8 Clause 8: Amendment of section 17

Section 17 of the Act provides for the Chief Executive Officer to be the accounting officer of the Weather Service. Chapter 3 of the Act provides for the Board of the Weather Service. Section 49 of the PFMA provides that every public entity must have an authority which must be accountable for purposes of the PFMA. In terms of section 49(2) of the PFMA, the Board, and not the Chief Executive Officer, must be the accounting authority for the Weather Service. Clause 8 seeks to align the Act with the provisions of the PFMA by providing for the Board of the Weather Service to be the accounting authority of the Weather Service.

3.9 **Clause 9: 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 Department. Clause 9 seeks to repeal this section, because it is no longer relevant.

3.10 **Clause 10: Insertion of section 27A**

Clause 10 inserts section 27A to limit the liability of the Weather Service under certain circumstances.

3.11 **Clause 11: Insertion of section 28A**

The Act lists the objectives of the Weather Service, which include the provision of public good services and commercial services to all South Africans. Schedule 1 to the Act lists the public good services and Schedule 2 to the Act list the commercial services. The Bill seeks to empower the Minister to amend the Schedules to the Act by notice in the *Gazette*. The reason for this is to avoid the cumbersome procedure of passing an amendment Bill in order to amend the Schedules to the Act. In order to provide reasonable certainty in law, the proposed section 28A seeks to provide clear guidelines to guide the Minister when exercising his or her discretion, and to clearly define the purpose for which this discretion may be exercised, in respect of an amendment to the Schedules to the Act.

3.12 **Clause 12: Insertion of section 30A**

3.12.1 The Act does not provide for offences. In order to ensure compliance with the provisions of the Act, the Bill seeks to provide for offences in respect of certain matters and penalties in respect of such offences. The Bill proposes the insertion of section 30A. This amendment will, amongst others, make it an offence for any person to issue a severe weather or air pollution-related warning without written permission from the Weather Service. The amendment will also provide for a fine or a term of imprisonment in line with other environmental legislation, or both. The Magistrates' Court will also be given jurisdiction to impose the penalty prescribed in this amendment.

3.12.2 In order to deter the commission of an offence in terms of the Act, and to circumvent the duplication of utilising burdened court services by instituting separate civil and criminal proceedings in respect of the same matter, the proposed section 30A 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.

3.13 **Clauses 13 and 14: Amendment of Schedules to Act**

Clauses 13 and 14 of the Bill seek to effect a grammatical correction and to amend Schedules 1 and 2 to the Act, respectively, by providing for additional public good services and commercial services relating to the SAAQIS and the NAAQMN.

4. **FINANCIAL IMPLICATIONS FOR STATE**

4.1 The Department's budget for the Weather Service will increase to include additional funds for the implementation of the proposed amendments relating to the SAAQIS and the NAAQMN.

4.2 In this regard, a Business Case Study was undertaken to assess and analyse the financial implications to the Weather Service for the transfer of the SAAQIS and the NAAQMN function. The Business Case Study produced the following outputs:

- (a) *Output A: The SAAQIS and NAAQMN 2010-20 Development, Expansion, Operation and Maintenance Vision* — the vision of the Department and the Weather Service in respect of the development, expansion, operation and maintenance of the SAAQIS and its NAAQMN for the period 2010/11 to 2019/20;
- (b) *Output B: SAAQIS and NAAQMN 2010-20 Strategic Plan* — a description of the proposed development, expansion, operation and maintenance of the SAAQIS and its NAAQMN for the period 2010/11 to 2019/20;
- (c) *Output C: The Business Case for the Weather Service' Development, Expansion, Operation and Maintenance of the SAAQIS and the NAAQMN* — a description of the business case for the proposed development, expansion, operation and maintenance of the SAAQIS and its NAAQMN for the period 2010/11 to 2019/20;
- (d) *Output D: SAAQIS and NAAQMN Organisation Development Plan* — a description of the organisational development requirements to efficiently and effectively develop, expand, operate and maintain the SAAQIS and its NAAQMN for the period 2010/11 to 2019/20;
- (e) *Output E: Department — Weather Service Memorandum of Understanding alignment audit* — A report of how Outputs A to D align the Memorandum of Understanding between the Department and the Weather Service with suggestions on possible amendments, in order to ensure full alignment;
- (f) *Output F: 2010-11 SAAQIS and NAAQMN Business Plan* — a business plan for the development, expansion, operation and maintenance of the SAAQIS and its NAAQMN for the period 2010/11 financial year;
- (g) *Output G: Amendment Act alignment audit* — A report of how Outputs A to D are aligned with the Act and suggestions on possible amendments to ensure full alignment.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The amendments do not create new structures within the Department. The Department, in terms of the amendments, is transferring the SAAQIS and the NAAQMN function to the Weather Service. In essence, the Department will monitor and support the Weather Service in the performance of this function. Accordingly, a new Air Quality Information Unit will be established at the Weather Service to implement the SAAQIS and the NAAQMN 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 Department of Environmental Affairs are of the opinion that the provisions of the Bill relates to amendments that fall within the meaning of any matter referred to in section 44(1)(a)(ii) of the Constitution and must be dealt with in accordance with the procedure established by section 75 of the Constitution.

- 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.