

Government Gazette

Vol. 420, No. 21310, 30 June 2000

GENERAL NOTICE

Notice 658 of 2000

The draft National Forest and Fire Laws Amendment Bill, 2000 is published in terms of section 154(2) of the Constitution of the Republic of South Africa. Organised local government, municipalities and other interested persons may make written representations with regard to the draft. The representations must be sent by mail, mail or facsimile to:

Mr Zakhele Mvemve
Directorate: Legal Services
Department of Water Affairs and Forests
Private Bag X313
Pretoria
0001

E-mail: lbc@dwaf.pwv.gov.za

Fax: (012) 336-8318

The representations should reach Mr Mvemve within 30 days of the date of publication of this notice.

Please note:

1. Underlined words are insertions
2. Words in bold and in square brackets are deletions.

R Kasrils, MP
MINISTER OF WATER AFFAIRS AND FORESTRY
DATE:

REPUBLIC OF SOUTH AFRICA

NATIONAL FOREST AND FIRE LAWS AMENDMENT BILL

(As introduced)

(MINISTER OF WATER AFFAIRS AND FORESTRY)

[B - 2000]

BILL

To amend the National Forests Act, 1998, and the National Veld and Forest Fire Act, 1998, so as to improve their wording.

Parliament enacts the following law:

Amendment of section 2 of Act 84 of 1998

1. (a) Section 2 of Act 84 of 1998 is amended by the substitution for the definition of "State land" of the following definition:

"(xxxix) 'State land' means land which vests in the national or a provincial government -

a. including

- i. land held in trust by the Minister of Land Affairs or the Ingonyama referred to in the KwaZulu Ingonyama Trust Act, 1994 (KwaZulu Act No. 3 of 1994); and
- ii. land which is not owned by the State but is managed by the national or a provincial government exclusively or jointly with the owner in terms of an agreement; but

b. excluding land belonging to a municipality;"

- (b) Section 2 of Act 84 of 1998 is amended by the substitution for the definition of "trust forest" of the following definition:

"(xxxvii) 'trust forest' means State land which -

a. was reserved for forestry or declared as demarcated State forest or a similar status in terms of any previous forest legislation; and

b. has at any time vested in -

- i. the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);
- ii. the government of any area for which a legislative assembly was established in terms of the Self-governing Territories Constitution Act, 1971 (Act 21 of 1971); or
- iii. the governments of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei,

despite any subsequent withdrawal, retraction or amendment of the status of the forest as reserved or demarcated, the boundaries being those which **[applied when the forest was first demarcated or, failing demarcation, first reserved for forestry]** were most recently surveyed or otherwise accurately described;"

Amendment of section 7 of Act 84 of 1998

2. (a) Section 7 of Act 84 of 1998 is amended by the substitution for subsection (1) of the following subsection:

"(1) No person may -

- a. cut, disturb, damage or destroy any indigenous, living tree in a natural forest; or
- b. possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any tree, or any forest product derived from a trees which has been cut, disturbed, damaged or destroyed in contravention of paragraph (a).

except in terms of -

- i. a licence issued under subsection (4) or section 23; or
- ii. an exemption from the provisions of this subsection published by the Minister in the *Gazette* on the advice of

the Council."

(b) Section 7 of Act 84 of 1998 is amended by the substitution for subsection (4) of the following subsection:

"The Minister may **[issue a licence to cut, damage or destroy any indigenous, living tree in, or remove or receive any such tree from, a natural forest]** license one or more of the activities referred to in paragraphs (a) and (b) of subsection (1)."

Amendment of section 15 of Act 84 of 1998

3. Section 15 of Act 84 of 1998 is amended by the substitution for subsection (1) of the following subsection:

"No person may -

- a. cut, disturb, damage or destroy **[or remove]** any protected tree; or
- b. possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any protected tree, or any forest product derived from a protected tree.

except under a licence granted by the Minister."

Amendment of section 18 of Act 84 of 1998

4. Section 18 of Act 84 of 1998 is amended by the substitution for subsection (1) of the following subsection:

"(1) Any **[natural or juristic]** person or **[any]** organ of State may apply to the Minister to protect a forest, species, tree or group of trees in terms of this Chapters

Amendment of section 23 of Act 84 of 1998

5. Section 23 of Act 84 of 1998 is amended by the substitution for subsection (2) of the following subsection:

"(2) No person may engage in any activity in a State forest for which a licence is required without such a licence, unless he or she -

- a. **[he or she]** is exempted under section 24 (6);
- b. **[he or she]** is acting in the scope of his or her employment or mandate as an officer, employee or agent of the Department;
- c. **[he or she]** has a right to engage in the activity in terms of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996); or
- d. performs the activity in terms of a contract contemplated in paragraph (b) of section 24(4)."

Amendment of section 24 of Act 84 of 1998

6. (a) Section 24 of Act 84 of 1998 is amended by the substitution for subsection (3) of the following subsection:

"(3) A licensee must pay the licence fee, unless -

- a. he or she has entered into a lease agreement under section **[26]27;**
- b. he or she is a purchaser in terms of an agreement referred to in section 28 (1);
- c. it is a community which has entered into an agreement under section 30; **[or]**
- d. he or she [the licensee] is unable to pay in terms of criteria set by the Minister; or

- e. the tariff referred to in section 55(a) does not prescribe a licence fee for the activity concerned.

(b) Section 24 of Act 84 of 1998 is amended by the substitution for subsection (9) of the following subsection:

"(9) Nothing in this Act prohibits [**or affects**] the grant in terms of any law of a right to prospect for, mine or dispose of any mineral as defined in the Minerals Act, 1991 (Act 50 of 1991), or any source material as defined in the Nuclear Energy Act, 1993 (Act 131 of 1993), in a State forest, but -

- a. the holder of such a right may not [cut, disturb, damage, destroy or remove any forest produce] do anything which requires a licence in terms of section 23 without such a licence;
- b. the grant of any such right after the commencement of the National Forest and Fire Laws Amendment Act, 2000 is subject to section 3 of this Act"

Amendment of section 28 of Act 84 of 1998

7. (a) Section 28 of Act 84 of 1998 is amended by the insertion in subsection (1) after the word "in" of the words "or derived from".

(b) Section 28 of Act 84 of 1998 is amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) allow for termination of the contract at any time after it comes into effect by either party on a period of notice which is not more than five years, unless -

- i. the Minister agrees to a longer period of notice;
- ii. the contract endures for a total period of five years or less, including any periods for which the contract may be renewed;
- iii. the contract is a once-off sale of timber or other forest produce which has been harvested at the time of the sale."

(c) Section 28 of Act 84 of 1998 is amended by the substitution in subsection (5) for paragraph (f) of the following paragraph:

"(f) an act or omission by either party which complies with this subsection is not a breach of the agreement."

Amendment of section 50 of Act 84 of 1998

8. Section 50 of Act 84 of 1998 is amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister may reserve State land for forestry if -

- a. in the case of State land held in trust by the Ingonyama referred to in the KwaZulu Ingonyama Trust Act, 1994 (KwaZulu Act No. 3 of 1994), the authority with the necessary power in terms of that Act agrees;
- b. in the case of State land, other than land referred to in paragraph (a), which has at any time vested in -
 - i. the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936); or
 - ii. the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971); or

- iii. the governments of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei,

the Minister of Land Affairs agrees;

- c. in the case of State land which is not owned by the State but is managed by the national or a provincial government exclusively or jointly with the owner in terms of an agreement, the owner agrees;
- d. in the case of State land, other than land referred to in paragraphs (a), (b) and (c), the Minister of Public Works agrees.

Amendment of section 54 of Act 84 of 1998

9. (a) Section 54 of Act 84 of 1998 is amended by the substitution for subsection (2) of the following subsection

"(2) (a) After complying with subsection (1), the Minister may -

- i. amend the draft regulations; and
 - ii. subject to subsections (3) to (8), publish the regulations in final form in the Gazette.
- b. The regulations are effective from the date the Minister publishes them in the Gazette in terms of paragraph (a) of this subsection."

- (b) Section 54 of Act 84 of 1998 is amended by the substitution for subsection (3) of the following subsection

"(3) The Minister must table the regulations in Parliament, together with any written comments and advice received on them pursuant to subsection (1) -

- a. within 30 days after publishing them in terms of subsection (2); or
- b. if Parliament is not then in session, within 30 days after the next session starts."

Amendment of section 55 of Act 84 of 1998

10. (b) Section 55 of Act 84 of 1998 is deleted and substituted with the following section:

"55 Tariffs and charges

The Minister may, with the consent of the Minister of Finance -

- a. in respect of [any] State forests, issue [a tariff] tariffs of [licence] fees for licences issued in terms of this Act [which may vary according to circumstances];
- b. issue [the tariff] tariffs of charges [to be paid] for [any] -
 - i. forest produce or forest products [product] derived from State forests and sold by an organ of State; or
 - ii. services [service] rendered by [an officer or employee] officers or employees of the Department or by [a member] members of the panel referred to in section 45."

Amendment of section 62 of Act 84 of 1998

11. Section 62 of Act 84 of 1998 is amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

"(c) the prohibition on -

- i. the cutting, disturbance, damage or destruction [or removal] of protected trees

referred to in section 15 (1) (a); or

- ii. the prohibition on the possession, collection, removal, transport, export, purchase or sale of protected trees, or any forest product derived from a protected tree, referred to in section 15 (1) (b), is guilty of a first category offence."

Amendment of section 77 of Act 84 of 1998

- 12. Section 77 of Act 84 of 1998 is amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

"The South African Forestry Company Limited does not, by reason of the agreements, own or have a right to acquire ownership or ninety-nine year leasehold of any State **[forest]** land."

Amendment of Schedule 1 to Act 84 of 1998

- 13. Schedule 1 to Act 84 of 1998 is amended by the substitution for the first row of the schedule of the following:

Number and year of law	Short title	Extent of repeal
Act No. 122 of 1984	Forest Act, 1984	The whole, save for sections 7, 8, and 9 and the provisions referred to in section 73(2) of this Act and section [34] 35 of the National Veld and Forest Fire Act, 1998

Amendment of section 5 of Act 101 of 1998

- 14. (a) Section 5 of Act 101 of 1998 is amended by the substitution in subsection (1) of the following paragraph for paragraph (b):

"(b) provide in the strategy for agreed mechanisms for the co-ordination of actions with adjoining fire protection associations **[in the event of a fire crossing boundaries];**"

- (b) Section 5 of Act 101 of 1998 is amended by the substitution in subsection (1) of the following paragraph for paragraph (l):

"(l) appoint a fire protection officer, unless **[a municipality is a member]** there is a chief fire officer as contemplated in section 6(2)(a) who is willing to assume the powers and duties of fire protection officer."

Amendment of section 6 of Act 101 of 1998

- 15. Section 6 of Act 101 of 1998 is amended by the substitution for subsection (2) of the following subsection:

"(2) Where -

- a. a municipality is a member and has a service, or where a designated service is a member, the chief fire officer is the fire protection officer unless he or she declines the position;
- b. a fire protection association has as members more than one entity having a chief fire officer willing to assume the powers and duties of the fire protection officer, the fire protection officer must be **[elected as prescribed]** appointed from among those chief fire officers."

Amendment of section 9 of Act 101 of 1998

16. Section 9 of Act 101 of 1998 is amended by the substitution for subsection (4) of the following subsection:

"(4) The fire danger rating system must -

- a. take into account the relevant peculiarities of each region, including, where reasonably possible. -
 - i. the topography;
 - ii. the type of vegetation in the area;
 - iii. the seasonal climatic cycle;
 - iv. typical weather conditions;
 - v. recent weather conditions;
 - vi. **[where reasonably possible,]** current weaker conditions;
 - vii. forecasted weather conditions; and
 - viii. any other relevant matter;
- b. incorporate the formula or formulae needed to
 - i. take into account **[all]** factors affecting the fire danger for each region;
 - ii. calculate the indicators needed to rate the fire danger;
 - iii. rate the fire danger in each region for an appropriate period or periods;
- c. show the rating in a clear format;
- d. identify
 - i. what activities are dangerous and what precautions should be taken for each rating; and
 - ii. when the fire danger is rated as high."

Amendment of section 21 of Act 101 of 1998

17. (a) Section 21 of Act 101 of 1998 is amended by the substitution for subsection (2) of the following subsection

"(2)(a) After complying with subsection (1), the Minister may -

- i. amend the draft regulations; and
 - ii. subject to subsections (3) to (8), publish the regulation in final form in the Gazette.
- b. The regulations are effective from the date the Minister publishes them in the Gazette in terms of paragraph (a) of this subsection."

(b) Section 21 of Act 84 of 1998 is amended by the substitution for subsection (3) of the following subsection

"(3) The Minister must table the Regulations in Parliament, together with any written comments and advice received on them pursuant to subsection (1) -

- a. within 30 days after publishing them in terms of subsection (2); or
- b. if Parliament is not then in session, within 30 days after the next session starts."

Short title

18. This Act is the National Forest and Fire Laws Amendment Act, 2000.