

REPUBLIC OF SOUTH AFRICA

TRANSFORMATION OF CERTAIN RURAL AREAS BILL

(As amended by the Portfolio Committee on Land Affairs (National Assembly))

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 120B—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE TRANSFORMASIE VAN SEKERE LANDELIKE GEBIEDE

(Soos gewysig deur die Portefeuljekomitee oor Grondsake (Nasionale Vergadering))

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 120B—98]

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BILL

To provide for the transfer of certain land to municipalities and certain other legal entities; the removal of restrictions on the alienation of land; matters with regard to minerals; the repeal of the Rural Areas Act, 1987, and related laws; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context otherwise indicates—
- (i) “board area” means an area, or part of an area, consisting of one or more pieces of land, whether they are contiguous or not, to which the provisions of the Rural Areas Act, 1987, applied immediately before the commencement of this Act; (vii) 5
 - (ii) “elected committee” means a committee, elected by the residents of a board area who have reached the age of 18 years or older, which has satisfied the Minister that it represents the majority of such residents; (x) 10
 - (iii) “entity” means—
 - (a) a municipality;
 - (b) a communal property association registered in terms of section 8 of the Communal Property Associations Act, 1996 (Act No. 28 of 1996); or 15
 - (c) another body or person approved by the Minister in general or in a particular case; (ii)
 - (iv) “Minister” means the Minister for Agriculture and Land Affairs; (iv)
 - (v) “municipality” means a municipality referred to in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993); (v) 20
 - (vi) “remainder” means land situated in a board area other than township land, including land which has been planned, classified and subdivided as an agricultural area or outer commonage in terms of section 20(2) of the Rural Areas Act, 1987; (viii)
 - (vii) “resident” means a person who, at the date of commencement of this Act— 25
 - (a) ordinarily resides in a board area; or
 - (b) under law is liable for the payment of assessment rates, rent, service charges or levies to the municipality concerned in respect of land situated in a board area; (iii)
 - (viii) “Rural Areas Act, 1987” means the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987); (xi) 30
 - (ix) “township” means any township situated in a board area established, approved, proclaimed or otherwise recognised as such under any law; (i)
 - (x) “transitional period” means a period referred to in section 9; (vi) and
 - (xi) “trust land” means land situated in a board area that vests in the Minister in terms of section 7 of the Rural Areas Act, 1987. (ix) 35

Transfer of trust land in a township

2. At the commencement of this Act, all trust land situated in a township must vest in the municipality of the area where such land is situated, subject to the continued existence of any registered or registrable rights of a person in or over a piece of land in the township. 5

Transfer of land in the remainder

3. (1) (a) Trust land in the remainder or land in the remainder which vests in a municipality in terms of a law listed in the Schedule, may be transferred to an entity at any time prior to the expiry of the transitional period.

(b) Different pieces of land referred to in paragraph (a) may be transferred to different entities. 10

(c) Land referred to in paragraph (a) may be transferred from the registered owner thereof directly to the relevant entity, irrespective of the vesting or ownership of that land immediately prior to such transfer, and the provisions of section 14 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to such transfer. 15

(2) No transfer of land referred to in subsection (1) must take place unless the Minister is satisfied that, in the event of a transfer to—

(a) a municipality, the legislation applicable to such a municipality; or

(b) a communal property association or other body approved by the Minister, the rules of such association or body, 20

make suitable provision for a balance of security of tenure rights and protection of rights of use of—

(i) the residents mutually;

(ii) individual members of such a communal property association or other body; 25

(iii) present and future users or occupiers of land,

and the public interest of access to land on the remainder and the continued existence or termination of any existing right or interest of a person in such land.

(3) If in the opinion of the Minister the legislation or rules referred to in subsection (2) do not fully achieve the objects of subsection (2), he or she may determine terms and conditions for the transfer of such land, in order to achieve such objects. 30

(4) (a) The municipality of a board area may within three months after the commencement of this Act and must within three months after the date referred to in section 9(1)(a) submit a notice to the Minister setting out how and when it intends determining to which entity the land referred to in subsection (1) should be transferred.

(b) If the municipality fails to submit a notice referred to in paragraph (a) within three months after the date referred to in section 9(1)(a), an elected committee may submit such a notice to the Minister. 35

(c) The notice referred to in paragraph (a) may include—

(i) a date of a special meeting to be convened for that purpose; or

(ii) a written survey reflecting the name, identity number or date of birth, address and signature of the residents; or 40

(iii) any other matter relating to the manner in which it intends making the determination referred to in paragraph (a).

(d) Upon receipt of the notice referred to in paragraph (a), the Minister must cause it to be published in the *Gazette* and in a newspaper circulating in the district in which the land is situated, unless the Minister determines such other procedures as he or she may deem fit. 45

(5) After compliance with the notice referred to in subsection (4)(c), the municipality or elected committee must submit a written report to the Minister recommending to which entity or entities the land referred to in subsection (1) must be transferred. 50

(6) If, upon receipt of the report referred to in subsection (5), the Minister is satisfied with the recommendation, he or she must inform the municipality or elected committee of his or her decision and must take steps to transfer such land to the entity concerned.

- (7) If, upon receipt of the report referred to in subsection (5), the Minister is not satisfied with the recommendation, he or she must inform the municipality or elected committee of the reasons for his or her rejection and specify how a new recommendation should be made to him or her.
- (8) The Minister may designate any person to— 5
- (a) assist the municipality or elected committee in making the recommendation referred to in subsection (7); or
 - (b) investigate the matter and submit a written report to the Minister recommending to which entity the land referred to in subsection (1) must be transferred.
- (9) Any person designated under subsection (8) may, for the purposes of his or her investigation— 10
- (a) gather such information as he or she may deem necessary;
 - (b) hear or receive representations from any person;
 - (c) question any person who in his or her opinion may have relevant information available; 15
 - (d) by agreement between interested parties, settle any difference as to the land which forms the subject of the investigation, or the boundaries of such land;
 - (e) if requested by interested parties, determine the boundaries of such land or, if they cannot be determined, establish such boundaries after consultation with interested parties; and 20
 - (f) at any reasonable time, enter upon such land or any contiguous land.
- (10) Any person designated under subsection (8) may, in the performance of his or her functions, be accompanied by such persons as he or she may deem necessary.
- (11) The Minister must issue a certificate of designation to a person designated under subsection (8) and such person must, at the request of any person affected by the performance of his or her functions under this section, produce such a certificate of designation. 25
- (12) If, upon receipt of the recommendation or report referred to in subsection (7) or (8), the Minister is—
- (a) satisfied with the recommendation, he or she must inform the municipality or elected committee of his or her decision and must take steps to transfer such land to the entity concerned; 30
 - (b) not satisfied with the recommendation, or if the residents fail to make a recommendation within the transitional period, the Minister may decide to which entity the land referred to in subsection (1) must be transferred and must take steps to transfer the land to such entity. 35
- (13) Any trust land which is not transferred at the expiry of the transitional period vests in the Minister, who may continue to hold such land in trust and may at any time thereafter dispose of that land in accordance with the principles of this Act.
- (14) If the land referred to subsection (1), or any portion thereof, has not been surveyed, the Minister must cause such land to be surveyed. 40
- (15) No transfer duty, stamp duty or other registration fees are payable in respect of any transfer in terms of this Act.
- (16) The Minister may direct that any costs, including survey costs, necessary for the implementation of the provisions of this section be defrayed in full or in part from monies appropriated by Parliament for that purpose. 45

Principles to be adhered to by a municipality

- 4.** (1) When dealing with the land transferred to a municipality in terms of sections 3(6) and 12(a) or (b), such municipality—
- (a) must afford residents a fair opportunity to participate in the decision making processes regarding the administration of the land; 50
 - (b) must not discriminate against any resident;
 - (c) must give residents reasonable preference in decisions about access to the land;
 - (d) must not sell or encumber the land, or any substantial part of it, without the consent of a majority of residents at a public meeting called for that purpose; 55

- (e) is accountable to the residents;
- (f) must manage and record effectively all financial transactions regarding the land; and
- (g) has fiduciary responsibilities in relation to the residents.

(2) Despite the provisions of any law regarding the disposal of municipal land in a township, the residents must be given reasonable preference to acquire land referred to in section 3(1). 5

Removal of restrictions

5. (1) Subject to section 4, at the commencement of this Act, any provision, irrespective of whether it is contained in any law listed in the Schedule or registered against the title of land situated in a board area which— 10

- (a) placed any restriction on the period for which the land right concerned was granted;
- (b) placed any restriction, other than by virtue of an agreement to which the holder of such land tenure right was a party, on the capacity of the holder to alienate, bequeath, let, hypothecate or otherwise deal with such land right; or 15
- (c) placed any restriction on the transfer of such land right to, or on the possession, use or occupation of such erf or piece of land by, any person of a particular population or ethnic group or who is not of a particular population or ethnic group, 20

is abolished.

(2) No transfer duty, stamp duty or other fees are payable in respect of any such abolition.

Mineral rights

6. (1) Despite the repeal of the Rural Areas Act, 1987, and despite section 3 of this Act, at the commencement of this Act all mineral rights in land referred to in section 51(1) and (2) of the Rural Areas Act, 1987, vest in the State. 25

(2) (a) Despite anything to the contrary contained in any other law, prospecting for or mining of minerals on land situated in a board area must only be undertaken with the written consent of the Minister of Minerals and Energy in terms of sections 6(3) and 9(2) of the Minerals Act, 1991 (Act No. 50 of 1991). 30

(b) The said Minister may only give his or her consent after consultation and with the approval of the entity concerned, which approval may not be unreasonably withheld.

(3) Despite anything to the contrary contained in any other law, the Minister of Minerals and Energy in granting the consent referred to subsection (2) must impose such fees, restrictions and conditions as he or she may deem fit, in particular with respect to— 35

- (a) a preference to exploitation by the residents, and in suitable instances in collaboration with external institutions, taking the optimal utilisation, exploration and exploitation of the minerals and the rehabilitation of the surface into account; 40
- (b) surface rentals;
- (c) the establishment of an equity sharing arrangement to the mutual benefit of all parties concerned; and
- (d) work opportunities to the extent reasonably possible for residents.

(4) Despite section 6(2)(b) and (3), any application submitted to the Department of Minerals and Energy before the commencement of this Act for the consent of the Minister of Minerals and Energy in terms of section 51(3) of the Rural Areas Act, 1987, must be dealt with in accordance with the provisions of the said section 51(3) and must not be subject to section 6(2)(b) and (3) of this Act. 45

Regulations

7. The Minister may make regulations regarding—
- (a) any matter required or permitted to be prescribed in terms of this Act; and
 - (b) generally, all matters which in his or her opinion are necessary or expedient to be prescribed in order to achieve the objects of this Act.
- 5

Delegation of powers

8. (1) (a) The Minister may, either in general or in a particular case or in cases of a particular nature, in writing delegate any power conferred upon him or her by or under this Act, except the power referred to in section 7, to—
- (i) a Premier of a province; or 10
 - (ii) any officer in the service of the national government.
- (b) Any person to whom any power has been delegated under paragraph (a) must exercise that power subject to the directions of the Minister.
- (c) The Minister may, at any time, revoke in writing such delegation, and the delegation of any power must not prevent the Minister, during the period of revocation, from exercising that power himself or herself. 15
- (2) (a) The Premier of a province to whom any power has been delegated under subsection (1)(a)(i) may, subject to any directions referred to in subsection (1)(b) and such other conditions and periods of time as he or she may consider necessary, in writing delegate any such power to— 20
- (i) any member of the Executive Council of that province; or
 - (ii) any officer in the service of the provincial government.
- (b) Any person to whom any power has been delegated under paragraph (a) must exercise that power subject to the directions of the Premier.
- (c) The Premier may, at any time, revoke in writing such delegation, and the delegation of any power may not prevent the Premier, during the period of revocation, from exercising that power himself or herself. 25

Transitional period

9. (1) (a) A transitional period is a period of 18 months which commences on a date determined by the Minister by notice in the *Gazette*. 30
- (b) The Minister may determine different dates for different board areas or parts of board areas.
- (c) When determining the date referred to in paragraph (a), the Minister must take into account the demarcation of the municipal boundaries of a board area in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998). 35
- (2) The Minister may, by notice in the *Gazette*, extend such period for another period of six months.

Repeal of Act 9 of 1987 and related laws

10. (1) The laws listed in the Schedule are repealed to the extent indicated in the third column thereof. 40
- (2) (a) The repeal of the laws listed in the Schedule comes into operation on a date determined by the President by proclamation in the *Gazette*.
- (b) Different dates may be determined in respect of—
- (i) different board areas or parts of board areas; and
 - (ii) different laws or parts of laws. 45
- (c) The President must determine the date referred to in paragraph (a) on the recommendation of the Minister.
- (d) The Minister must inform the Minister for Provincial Affairs and Constitutional Development timeously of his or her intention to make a recommendation referred to in paragraph (c) to the President. 50
- (3) If, prior to the date referred to subsection (2), in the application of this Act in a board area—
- (a) any conflict is found to exist between a provision of this Act and a provision of a law listed in the Schedule; or

(b) any provision of this Act and any provision of any law listed in the Schedule are found to give rise to administrative difficulty, the President may, by proclamation in the *Gazette*, determine to which extent either a provision of this Act or a provision of a law listed in the Schedule must apply to that area, in any manner he or she may deem necessary to remove the conflict or difficulty. 5

Short title

11. This Act is called the Transformation of Certain Rural Areas Act, 1998.

SCHEDULE

Laws repealed by section 10

No. and year of law	Short title	Extent of repeal
Act No. 9 of 1987	Rural Areas Act (House of Representatives), 1987	The whole
Act No. 90 of 1990	Mier Rural Area Act (House of Representatives), 1990	The whole
Act No. 121 of 1990	Rural Areas Amendment Act (House of Representatives), 1990	The whole
Act No. 71 of 1991	Businesses Act, 1991	Section 7(1)(b), in so far as it repealed or amended the Rural Areas Act, 1987
Act No. 108 of 1991	Abolition of Racially Based Land Measures Act, 1991	Sections 57 to 71
Act No. 112 of 1991	Upgrading of Land Tenure Rights Act, 1991	Section 6(5) and paragraph 3 of Schedule 2
Act No. 112 of 1993	Rural Areas Amendment Act (House of Representatives), 1993	The whole
Proclamation No. R. 154 of 31 October 1994		The whole

MEMORANDUM ON THE OBJECTS OF THE TRANSFORMATION OF CERTAIN RURAL AREAS BILL, 1998

PART 1

1. OBJECTS AND EXPLANATION

The Bill seeks to repeal the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987), and to establish a fair procedure whereby land held by the Minister of Land Affairs in trust for residents (“trust land”) will be transferred to residents, as well as to provide for the removal of restrictions against title deeds and arrangements in respect of mineral rights.

PART 2

2. CLAUSE BY CLAUSE ANALYSIS

2.1 Clause 1 seeks to define certain terms used in the Bill.

2.2 Clause 2 provides for the vesting of trust land situated in a township in a municipality, subject to residents’ registered or registrable rights in respect of land in the township.

2.3 Trust land which is situated outside a township, is presently generally used for grazing or agricultural production. Clause 3 seeks to have the residents decide to whom such land must be transferred. The clause also prescribes the procedure for such transfer.

2.4 Clause 4 lays down certain principles which will apply if residents decide that land should be transferred to a municipality. These will ensure that residents’ existing rights to that land are protected, and that the municipality will have fiduciary responsibilities towards the residents, exercising its powers to their benefit and with their knowledge.

2.5 Clause 5 removes certain restrictions contained in certain laws or registered against the title of the land concerned.

2.6 Clause 6 makes certain arrangements with regard to mineral rights. All mineral rights in trust land in the rural areas concerned vest in the State on the date of enactment of the Bill. The needs and interests of residents must however be taken into account. No prospecting for or mining of minerals on land in these areas must be undertaken without the consent of the Minister of Minerals and Energy, which consent must only be granted after consultation with and with the approval of the entity concerned. The Minister of Minerals and Energy may furthermore impose fees, restrictions and conditions in respect of surface rentals to the benefit of residents. The object is to allow for negotiated agreements to be reached between the State and mining companies which will directly benefit the residents and the State.

2.7 Clauses 7 and 8, respectively, give the Minister the power to make regulations and to delegate his or her powers under the Bill.

2.8 Clause 9 establishes a transitional period of 18 months. During this period residents will decide to whom the land should be transferred.

2.9 Clause 10 repeals the Rural Areas Act, 1987 (Act No. 9 of 1987), and all related laws. Once the residents have made their decision to whom the land must be transferred and the land is transferred, the repeal of the Act and related laws will come into effect. The Bill makes provision for the repeal to come into operation on different dates in respect of different areas or different laws. The repeal of the Act and related laws will bring to an end administrative uncertainty as the governance of these areas will then be done solely in terms of local government legislation.

PART 3

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

Consultations have taken place with affected residents in all 23 areas concerned, various non-government organisations, the provincial governments of the Western Cape, Northern Cape, Eastern Cape and the Free State, as well as the national Departments of Mineral and Energy Affairs and Constitutional Development.

PART 4

4. PARLIAMENTARY PROCEDURE

The State Law Advisors and the Department of Land Affairs are of the opinion that the Bill must be dealt with in accordance with section 75 of the Constitution.