

REPUBLIC OF SOUTH AFRICA

NATIONAL FOREST AND FIRE LAWS AMENDMENT BILL

*(As introduced in the National Council of Provinces as a section 76 Bill; explanatory
summary of Bill published in Government Gazette No. 22065 of 16 February 2001)
(The English text is the official text of the Bill)*

(SELECT COMMITTEE ON LAND AND ENVIRONMENTAL AFFAIRS)

[B 14—2001]

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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 Forests Act, 1998, so as to amend certain definitions; to make further provision regarding the possession and disposal of trees and forest products in natural forests; to make provision for the protection of species of trees; to exempt certain contractors from having to obtain a licence; to make the granting of a prospecting or mining licence in a State forest subject to certain principles; to provide for once-off sales of forest produce and products; to provide further for the termination of an agreement; to correct an anomaly; to make further provision regarding the reservation of State land for forestry; to provide further for the procedure for making regulations; to make new provision with regard to tariffs; to expand the provision creating offences; to clarify the effect of agreements entered into by Safcol on the ownership of State land; and to correct a reference; to amend the National Veld and Forest Fire Act, 1998, so as to provide for the situation where the chief fire officer of a municipal structure does not want to perform the functions of a fire protection officer in the fire protection association; and to provide that certain listed factors should be taken into account in a fire danger rating system only where it is reasonably possible to do so; to provide further for the procedure for making regulations; and to provide for matters connected therewith.

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

Amendment of section 2 of Act 84 of 1998

1. Section 2 of the National Forests Act, 1998, is hereby amended—

(a) by the substitution for the definition of “State land” of the following definition: 5

“ ‘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 10

(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 15

(b) excluding land belonging to a municipality;” and

- (b) by the substitution for the definition of “trust forest” of the following definition:
- “ ‘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 5
 - (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 No. 21 of 1971); or 10
 - (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 in terms of any law;” 15

Amendment of section 7 of Act 84 of 1998 20

2. Section 7 of the National Forests Act, 1998, is hereby amended—
- (a) 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 **[or remove or receive any such tree from]** a natural forest; or 25
 - (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 tree contemplated in paragraph (a),
- except in terms of—
- [a](i)** a licence issued under subsection (4) or section 23; or 30
 - [b](ii)** an exemption from the provisions of this subsection published by the Minister in the *Gazette* on the advice of the Council.”; and
- (b) by the substitution for subsection (4) of the following subsection:
- “(4) 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 paragraph (a) or (b) of subsection (1).” 35

Amendment of section 10 of Act 84 of 1998

3. Section 10 of the National Forests Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph (e) of the following paragraph: 40
- “(e) in terms of an exemption under section **[7(1)(b)]** 7(1)(b)(ii) or 24(6); or”.

Amendment of section 15 of Act 84 of 1998

4. Section 15 of the National Forests Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection: 45
- “(1) 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.”. 50

Amendment of section 18 of Act 84 of 1998

5. Section 18 of the National Forests Act, 1998, is hereby 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 of tree, tree or group of trees in terms of this Chapter.”.

Amendment of section 23 of Act 84 of 1998

6. Section 23 of the National Forests Act, 1998, is hereby amended by the substitution 5
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 10
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);
 - (d) performs the activity in terms of a contract contemplated in paragraph (b) of 15
section 24(4).”.

Amendment of section 24 of Act 84 of 1998

7. (1) Section 24 of the National Forests Act, 1998, is hereby amended—

- (a) 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; 20
 - (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) the licensee is unable to pay and qualifies for exemption in terms of 25
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.”; and
- (b) by the substitution for subsection (9) of the following subsection:

“(9) Nothing in this Act prohibits **[or affects]** the grant in terms of any 30
law of a right to prospect for, mine or dispose of any mineral as defined in the Minerals Act, 1991 (Act No. 50 of 1991), or any source material as defined in the Nuclear Energy Act, 1993 (Act No. 131 of 1993), in a State forest but—

 - (a) the holder of such a right may not **[cut, disturb, damage, destroy 35
or remove any forest produce]** do anything which requires a licence in terms of section 23 without such a licence; and
 - (b) the grant of any such right after the commencement of the National Forest and Fire Laws Amendment Act, 2001, must be made subject 40
to the principles set out in section 3(3) of this Act.”.

Amendment of section 28 of Act 84 of 1998

8. Section 28 of the National Forests Act, 1998, is hereby amended—

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

“(1) (a) The Minister;

 - (b) a person who has entered into a lease agreement under section 45
27;
 - (c) a party to a community forestry agreement entered into under section 30; or
 - (d) the South African Forestry Company Limited,
may enter into an agreement to sell timber or any other forest produce in 50
or derived from a State forest to any other person.”.
- (b) 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 55
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;
or
 - (iii) the contract is for a once-off sale of timber or other forest produce which has been harvested at the time of the sale;”;
- (c) by the substitution in subsection (5) for paragraph (f) of the following paragraph:
- “(f) **[the termination of the agreement in terms of subparagraph (i) of paragraph (a)]** an act or omission by either party in terms of this subsection is not a breach of the agreement.”.

Amendment of section 50 of Act 84 of 1998

9. Section 50 of the National Forests Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Minister may reserve State land [**which is not a State forest**] 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

10. Section 54 of the National Forests Act, 1998, is hereby amended—

- (a) 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).”.
- (b) 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.”.

Substitution of section 55 of Act 84 of 1998

11. The following section is hereby substituted for section 55 of the National Forests Act, 1998:

“Tariffs and charges

55. The Minister may, with the consent of the Minister of Finance—

- (a) in respect of **[any]** State **[forest]** forests, issue **[a tariff]** tariffs of **[licence]** fees **[which may vary according to circumstances]** for licences issued in terms of this Act;
- (b) issue **[the tariff]** tariffs of charges **[to be paid]** for **[any]**—
 - (i) **[product]** forest produce or forest products derived from State forests and sold by an organ of State; or
 - (ii) **[service]** services 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 10

12. Section 62 of the National Forests Act, 1998, is hereby 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 20

13. Section 77 of the National Forests Act, 1998, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

- “(b) 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

14. Schedule 1 to the National Forests Act, 1998, is hereby amended by the substitution for the expression “section 34” in the third column of the expression “section 35”.

Amendment of section 5 of Act 101 of 1998 30

15. Section 5 of the National Veld and Forest Fire Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(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]**”; and
- (b) by the substitution in subsection (1) for paragraph (l) of the following paragraph:
 - “(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 a fire protection officer.”.

Amendment of section 6 of Act 101 of 1998

16. Section 6 of the National Veld and Forest Fire Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection: 45

- “(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

17. Section 9 of the National Veld and Forest Fire Act, 1998, is hereby amended by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs:

- “(a) take into account the relevant peculiarities of each region, including, where reasonably possible— 5
- (i) the topography;
 - (ii) the type of vegetation in the area;
 - (iii) the seasonal climatic cycle;
 - (iv) typical weather conditions;
 - (v) recent weather conditions; 10
 - (vi) **[where reasonably possible,]** current weather conditions;
 - (vii) forecasted weather conditions; and
 - (viii) any other relevant matter;
- (b) incorporate the formula or formulae needed to— 15
- (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;”.

Amendment of section 21 of Act 101 of 1998

18. Section 21 of the National Veld and Forest Fire Act, 1998, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 20
- “(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).”; and 25
- (b) by the substitution for subsection (3) of the following subsection: 30
- “(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

19. This Act is the National Forest and Fire Laws Amendment Act, 2001. 35

MEMORANDUM ON THE OBJECTS OF THE NATIONAL FOREST AND FIRE LAWS AMENDMENT BILL, 2001

The National Forest and Fire Amendment Bill, 2001, is introduced for the purpose of amending and effectively implementing the—

- (a) National Forest Act, 1998 (Act No. 84 of 1998); and
 - (b) National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998),
- which were promulgated in 1998.

The National Forests Act, 1998

1. The definitions of “State land” and “trust forest” are not adequate. The amendment of the definition of “State land” is proposed so as to allow for land transferred to communities to remain a state forest in terms of a joint management agreement. The amendment of the definition of “trust forest” recognises that the boundaries of state forests have changed over time.

2. The present position is that only trees may be protected, but not their produce or products. The Bill seeks to prevent people from freely dealing in produce or products of protected trees or species.

3. The Act failed to take into account contracts between licensees and third parties. In those cases the contractor should not be expected to pay an additional licence fee. A further method of exempting people from paying licence fees is sought to be added, viz. the Minister may refrain from fixing a fee.

4. The granting of mining rights in state forests is now made subject to the stringent requirements of section 3.

5. Long-term supply contracts are terminable on a notice of five years. This does not take into account renewable contracts. Now the five years includes the periods of renewal. Once-off sales were overlooked and provision is now made for them.

6. The Minister may, in terms of the Act, reserve state land for forestry. However, this land is currently under the control of different Ministers and other authorities. The amendment sets out those authorities whose concurrence the Minister must seek before he may reserve the land.

7. When regulations under the Act would come into effect has not been made clear and has caused disagreement. The Bill seeks to rectify this by introducing a simpler and clearer procedure. Tariffs may be levied for forest products or forest produce sold by the Department. Further tariffs are now being introduced, viz. those for produce or products sold by other organs of state and for services rendered by employees of the Department.

8. An error exists in the Act in that it states that Safcol does not own the forests in which it operates. What was intended, was to say that it does not and cannot own the land on which those forests stand.

The National Veld and Forest Fire Act, 1998

1. The Act provides for cooperation between fire protection associations, but only in cases where fires cross the boundaries of those associations. This is too limiting and the Bill now provides for such cooperation in all cases.

2. Fire fighting is a specialised activity and municipal fire officers can render a valuable service in the event of forest fires. However, they cannot be compelled to perform these functions, as the Act compels them to. So the Bill now makes provision for the officers to make themselves available voluntarily. It is impracticable to require a fire danger rating system to take into account all the matters mentioned in the Act as this may not always be possible. The element of reasonableness is now introduced.

3. Similarly the Bill streamlines the procedure for the promulgation of regulations under this Act.

Financial implications for State

No expenditure on the part of the State is foreseen.

Bodies or organisations consulted

Safcol

Parliamentary procedure

The Department of Water Affairs and Forestry and the State Law Advisers are of the opinion that the procedure provided for in section 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), should be followed with regard to this Bill. This is an amendment Bill to legislation which falls within the functional areas listed in Schedule 4 of the Constitution, namely “Administration of indigenous forests”, “Environment” and “Nature conservation”.