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GENERAL NOTICE

NOTICE 1767 OF 2004

DEPARTMENT OF WATER AFFAIRS AND FORESTRY

As the Minister of Water Affairs and Forestry, Buyelwa P Sonjica, MP, intends to table the draft Water Services Amendment Bill during September 2004, the Bill as intended for tabling is hereby published for public comment. The Bill provides for the authorisation of water boards by the Minister to perform activities outside the borders of the Republic of South Africa. More details are set out in the attached explanatory memorandum and Bill.

Written comments and inputs are invited from interested parties and the general public to Parliament, which must be submitted before 10 September 2004 and addressed to:

The Secretary to Parliament: For attention Ms S Cassiem
Portfolio Committee on Water Affairs and Forestry
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CAPE TOWN
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Telefax: 021 403 2182
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Copies of the Bill are obtainable from Ms Cassiem at telephone 021 403 3769.

REPUBLIC OF SOUTH AFRICA

**WATER SERVICES
AMENDMENT BILL**

(MINISTER OF WATER AFFAIRS AND FORESTRY)

[B - 2004]

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 Water Services Act, 1997, so as to enable water boards to perform activities outside the borders of the Republic of South Africa; and to provide for matters connected therewith.

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

Amendment of section 30 of Act 108 of 1997

1. Section 30 of the Water Services Act, 1997, is hereby amended by the addition of the following subsections:

“(3) The Minister must in consultation with the Minister of Finance, the Minister of Trade and Industry, and the Minister of Public Enterprise and by notice in the Gazette, determine -

- (a) the nature of the activities that a water board may perform outside the borders of the Republic;
- (b) the countries in which such activities may be performed; and
- (c) the maximum amount of capital that a water board may take out of the Republic when an activity contemplated in subsection (4) is performed.

(4) The Minister may, in consultation with the Minister of Finance, authorise a water board to perform an activity outside the borders of the Republic.”

Short title

2. This Act is called the Water Services Amendment Act, 2004.

MEMORANDUM ON THE OBJECTS OF THE WATER SERVICES AMENDMENT BILL, 2004

1. SUMMARY

- 1.1 When a water board is established in terms of section 28 of the Water Services Act, 1997 (Act No. 108 of 1997) (hereinafter referred to as the Act) a service area for that water board is determined. This service area is understood to mean a service area within the Republic of South Africa. As a water board is exclusively a statutory body, it only has the powers conferred upon it by statute. Should a water board therefore wish to operate outside the borders of the Republic of South Africa, it lacks the statutory authority to do so. Initially there was some uncertainty about this legal position. It has subsequently been clarified however by a number of legal opinions by senior counsel.
- 1.2 Umgeni Water has, however, in good faith been operating extraterritorially for some time. Rand Water has also shown a keen interest to operate outside the borders of the Republic of South Africa. An urgent need, therefore, has arisen to create statutory authority to enable water boards to operate extraterritorially. It is conceived as important to enable parastatals to make their contribution to NEPAD, also in the form of expertise and capacity building.
- 1.3 The proposed amendment of section 30 of the Act provides for two phases in the process to authorise extraterritorial activities of water boards.
- 1.4 The first phase consists of a publication by notice in the *Gazette* of the parameters within which an approval to operate extraterritorially may be granted.
 - 1.4.1 The determination of these parameters occurs on the initiative of the Minister of Water Affairs and Forestry but in consultation with the Minister of Trade and Industry, the

Minister of Finance and the Minister of Public Enterprise. This means that each of the Ministers to be consulted, can veto a proposal.

1.4.2 The parameters are determined by a fixation of the nature of the permissible activities, the permissible countries and the maximum permissible amount of money to be taken out of the country.

1.4.3 This determination is more or less a once and for all activity.

1.5 The second phase consists of the consideration of an application to operate extraterritorially by a water board, by the Minister of Water Affairs and Forestry in consultation with the Minister of Finance. Here also each Minister has the power to veto. As the assessment of financial risk is a major factor during this phase, the concurrence of the Minister of Finance is deemed essential.

1.6 When the said two Ministers consider an application by a water board, they are also bound by the existing provisions of the Act.

2. FINANCIAL IMPLICATIONS FOR THE STATE

None.

3. CONSULTATION

The following Departments, bodies and institutions were consulted by the Minister of Water Affairs and Forestry:

- 3.1 Department of Trade and Industry.
- 3.2 Department of Finance (National Treasury).
- 3.3 Department of Public Enterprise.
- 3.4 Department of Foreign Affairs.
- 3.5 Umgeni Water.
- 3.6 Rand Water.
- 3.7 South African Local Government Association.

4. PARLIAMENTARY PROCEDURE

The Chief State Law Adviser and the Department of Water Affairs and Forestry 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 provisions to which the procedure set out in section 74 or 76 of the Constitution applies.
