



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 485 Cape Town 9 March 2006

No. 28602

THE PRESIDENCY

No. 220

9 March 2006

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 35 of 2005: Forestry Laws Amendment Act, 2005.



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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.

(English text signed by the President.)
(Assented to 4 March 2006.)

ACT

To amend the National Forests Act, 1998, so as to delete certain words, phrases or expressions for clarity; to allow for an exemption for the use and handling of protected trees and their products; to authorise the Minister to establish a trust in respect of State forests under certain circumstances; to enable the Minister to pay lease money in respect of such State forests into a trust account; to provide for such money to be paid to certain beneficiaries; to extend the Minister's regulatory powers; and to provide for further criminal sanctions in respect of certain activities in forests; to amend the National Veld and Forest Fire Act, 1998, so as to provide for a fire danger rating which is more dangerous than "high"; and to extend the Minister's regulatory powers; to repeal the Wattle Bark Industry Act, 1960, so as to effect deregulation of the wattle bark industry; and to provide for matters connected therewith.

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

Amendment of section 7 of Act 84 of 1998

1. Section 7 of the National Forests Act, 1998 (Act No. 84 of 1998), is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5

“(a) cut, disturb, damage or destroy any indigenous[, **living**] tree in a natural forest; or”.

Amendment of section 8 of Act 84 of 1998

2. Section 8 of the National Forests Act, 1998, is hereby amended by the substitution 10 for subsection (1) of the following subsection:

“(1) The Minister may—

- (a) declare a State forest or a part of it;
- (b) purchase or expropriate land under section 49 and declare it; or
- (c) at the request or with the consent of the registered owner of land outside a 15 State forest, declare it,

as a [**specially**] protected area in one of the following categories:

- (i) A forest nature reserve;
- (ii) a forest wilderness area; or

- (iii) any other type of protected area which is recognised in international law or practice.”.

Amendment of section 15 of Act 84 of 1998

3. Section 15 of the National Forests Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection: 5

“(1) No person may—

- (a) cut, disturb, damage or destroy 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, 10

except—

- (i) under a licence granted by the Minister; or
 (ii) in terms of an exemption from the provisions of this subsection published by the Minister in the *Gazette* on the advice of the Council.”.

Amendment of section 17 of Act 84 of 1998

4. Section 17 of the National Forests Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection: 15

“(2) If the Minister is of the opinion that urgent steps are required to—

- (a) prevent the deforestation or further deforestation of; or
 (b) rehabilitate, 20
 a natural forest or a woodland [**protected under section 12(1)**] which is threatened with deforestation, or is being or has been deforested, he or she may declare it a controlled forest area.”.

Insertion of section 27A in Act 84 of 1998

5. The following section is hereby inserted after section 27 of the National Forests Act, 1998: 25

“Trusts

27A. (1) Notwithstanding the provisions of any other law, the Minister may, by notice in the *Gazette*, establish a trust in respect of a State forest or part of a State forest including a State forest or part of a State forest on land held in trust in terms of the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No. 3 KZ of 1994), where— 30

- (a) (i) a claim for restitution has been published in terms of section 11(1) of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), in respect of a State forest or part of a State forest; 35
 (ii) the owner of the land has been notified of the claim in terms of section 11(6)(a) of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);
 (iii) the right to restitution has not been finally determined; and
 (iv) that land is leased to a third party by the Minister; 40
 (b) (i) a State forest or part of a State forest is occupied by a community claiming rights in that land;
 (ii) the Minister is contemplating the granting of rights in that land to that community; and
 (iii) that land is leased to a third party by the Minister; or 45
 (c) (i) a State forest or part of a State forest is leased to a third party by the Minister; and
 (ii) it is necessary for the Minister to receive money in terms of the lease on behalf of successful claimants of various rights in respect of the land or forest. 50

(2) The Minister may direct that any money due in terms of a lease contemplated in subsection (1) be paid to the trust established in terms of that subsection.

(3) The objects of the trust are—

- (a) to receive payment of the money contemplated in subsection (2); 55

- (b) to invest such money on behalf of the beneficiaries as part of the trust property;
- (c) to pay such money or part of that money together with any yield to the beneficiaries when they receive rights in the State forest or part of the State forest involved; 5
- (d) to pay such money or part of that money together with any yield to the State, or the Ingonyama Trust where applicable, when it is clear that the beneficiaries will not acquire rights in the State forest or part of the State forest; and
- (e) to pay such money or part of that money periodically to successful claimants contemplated in subsection (1)(c)(ii). 10
- (4) The beneficiaries of the trust are any claimants contemplated in subsection (1)(a) whose claims succeed, any community contemplated in subsection (1)(b) if it is granted rights by the Minister and any successful claimants contemplated in subsection (1)(c)(ii). 15
- (5) The Minister may—
- (a) effect or terminate the appointment of any or all of the trustees on just cause shown;
- (b) create such powers, rights, obligations and exemptions for the trustees as may be necessary to achieve the objects of the trust; 20
- (c) decide on the contents, variation and termination of the trust;
- (d) temporarily perform any of the functions of the trustees where the appointment of all the trustees has been terminated; and
- (e) prevent payment to the Ingonyama Trust contemplated in section 27A if he or she is not satisfied that the Ingonyama Trust maintains and implements effective, efficient and transparent financial management and internal control systems.”. 25

Amendment of section 53 of Act 84 of 1998

6. Section 53 of the National Forests Act, 1998, is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (f) of the following paragraph: 30
- “(f) the management of State forests in general or a particular State forest or part of it, including—
- (i) mensuration of forest produce or forest products for the purpose of sale or otherwise; and 35
- (ii) access to State forests for recreation;”;
- (b) by the substitution in subsection (2) for paragraph (j) of the following paragraph:
- “(j) generally, any other ancillary or incidental administrative or procedural matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.”; and 40
- (c) by the substitution for subsection (5) of the following subsection:
- “(5) The generality of the powers conferred by subsection (2)(j) is not limited by the provisions of the preceding paragraphs.”. 45

Amendment of section 62 of Act 84 of 1998

7. 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 of temporarily protected trees or groups of trees referred to in section 14(2) or protected trees referred to in section 15(1)(a); or 50
- (ii) the possession, collection, removal, transport, export, purchase or sale of temporarily protected trees or groups of trees referred to in section 14(2) or protected trees referred to in section 15(1)(b), or any forest product derived from a temporarily protected tree, group of trees or protected tree, [referred to in section 15(1)(b)].”. 55

Amendment of section 63 of Act 84 of 1998

8. Section 63 of the National Forests Act, 1998, is hereby amended by the insertion in subsection (2) after paragraph (a) of the following paragraph:

“(aA) cuts, disturbs, damages, destroys, removes or receives forest produce other than seven-week ferns (*Rumohra adiantiforme*) from any forest is guilty of a third category offence.” 5

Amendment of section 9 of Act 101 of 1998

9. Section 9 of the National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998), is hereby amended by the substitution in subsection (4) for paragraph (d)(ii) of the following subparagraph: 10

“(ii) when the fire danger is rated as high or extreme.”

Amendment of section 10 of Act 101 of 1998

10. Section 10 of the National Veld and Forest Fire Act, 1998, is hereby amended—

(a) by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words: 15

“when the fire danger is rated as high or extreme in any region, publish a warning at the earliest possible opportunity in all the main languages used in that region—”;

(b) by the substitution for subsection (2) of the following subsection: 20

“(2) When the Minister has published a warning in terms of subsection (1)(b), no person may light, use or maintain a fire in the open air in the region where the fire danger is high or extreme.”; and

(c) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 25

“(a) say that the fire danger is high or extreme.”

Amendment of section 20 of Act 101 of 1998

11. Section 20 of the National Veld and Forest Fire Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (f) of the following paragraph: 30

“(f) generally, any other ancillary or incidental administrative or procedural matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.”; and

(b) by the substitution for subsection (3) of the following subsection: 35

“(3) The generality of the powers conferred by subsection (1)(f) is not limited by the provisions of the preceding paragraphs.”

Repeal of Laws

12. The following laws are hereby repealed:

- (1) Wattle Bark Industry Act, 1960 (Act No. 23 of 1960);
- (2) Wattle Bark Industry Amendment Act, 1967 (Act No. 44 of 1967);
- (3) Wattle Bark Industry Amendment Act, 1974 (Act No. 59 of 1974); 40
- (4) Wattle Bark Industry Amendment Act, 1986 (Act No. 24 of 1986); and
- (5) Section 4 of the Forestry Laws Rationalisation and Amendment Act, 1994 (Act No. 51 of 1994).

Short title

13. This Act is called the Forestry Laws Amendment Act, 2005. 45