

REPUBLIC OF SOUTH AFRICA

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# GEOSCIENCE AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Gazette No. 33014 of 12 March 2010)  
(The English text is the official text of the Bill)*

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(MINISTER OF MINERAL RESOURCES)

**[B 12—2010]**

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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.

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# BILL

To amend the Geoscience Act, 1993, so as to mandate the Council for Geoscience to be the custodians of geotechnical information, to be a national advisory authority in respect of geohazards related to infrastructure and development, and to undertake exploration and prospecting research in the mineral and petroleum sectors; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### Amendment of section 1 of Act 100 of 1993

1. Section 1 of the Geoscience Act, 1993 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of “**chairman**” of the following definition:

“ [‘**chairman**’] ‘**chairperson**’ means the [chairman] chairperson of the [Management] Board appointed in terms of section 4;”;

(b) by the insertion after the definition of “**chairman**” of the following definition:

‘**Chief Executive Officer**’ means the person appointed in terms of section 18 as the Chief Executive Officer of the Council;”;

(c) by the substitution for the definition of “**discovery**” of the following definition:

“ ‘**discovery**’ means a technological or scientific discovery, [but excluding] including a discovery of a mineral deposit;”;

(d) by the substitution for the definition of “**Executive Management Committee**” of the following definition:

“ [‘**Executive Management Committee**’ means the Executive Management Committee] ‘**Executive Committee**’ means the Executive Committee of the Board referred to in section 15;”;

(e) by the deletion of the definition of “**executive officer**”;

(f) by the insertion after the definition of “**executive officer**” of the following definitions:

“ ‘**geohazards**’ means—

(a) a geological state or an incipient geological condition that has the potential to develop further into a situation leading to harm, damage or uncontrolled risk;

- (b) phenomena that are related to geological and environmental conditions and involve long-term and short-term geological processes which range in magnitude from relatively small to large scale features and may affect the local and regional socio-economy; and
  - (c) areas characterized by potential life-threatening geological conditions in South Africa, including dolomite land, undermined areas, areas of potential slope stability problems and areas prone to potential severe seismicity and flood-line areas;
- ‘geoscientific information’** includes geotechnical information, exploration, mining, geohydrology, geochemistry, geophysics, engineering geology, economic geology, geochronology, palaeontology, geohydrological aquifer systems, geotechnical investigations, marine geology, geomagnetism, seismology, geohazards and environmental geology;”;
- (g) by the substitution for the definition of **“Management Board”** of the following definition:
    - “**‘[Management] Board’** means the **[Management]** non-executive Board referred to in section 4;”;
  - (h) by the substitution for the definition of **“mineral”** of the following definition:
    - “**‘mineral’** means a mineral as defined in section 1 of the **[Minerals Act, 1991 (Act No. 50 of 1991)]** Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”;
  - (i) by the substitution for the definition of **“Minister”** of the following definition:
    - “**‘Minister’** means the Minister of Mineral **[and Energy Affairs]** Resources;”;
  - (j) by the insertion after the definition of **“Minister”** of the following definition:
    - “**‘petroleum’** means petroleum as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”;
  - (k) by the substitution for the definition of **“prospecting”** of the following definition:
    - “**‘prospecting’** means prospecting as defined in section 1 of the **[Minerals Act, 1991 (Act No. 50 of 1991)]** Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”.

### Substitution of section 3 of Act 100 of 1993

2. The following section is hereby substituted for section 3 of the principal Act:

#### **“Objects of Council**

3. The objects of the Council are to—

- (a) promote the search for, and exploitation of, any mineral and petroleum in the Republic;
- (b) undertake research in the field of geoscience;
- (c) act as a national advisory authority in respect of—
  - (i) geohazards related to infrastructure and development; and
  - (ii) geo-environmental pollution brought about by mineral and petroleum exploitation and by other activities; and
- (d) provide specialized geoscientific services.”.

### Substitution of section 4 of Act 100 of 1993

3. The following section is hereby substituted for section 4 of the principal Act:

#### **“[Management] Board**

4. (1) With a view to the achievement of the objects of the Council its affairs shall be managed by a **[Management]** Board, which shall, subject to the provisions of this Act, determine the policy and goals of the Council and exercise control over the performance of the functions of the Council.

- (2) The **[Management]** Board shall consist of—
- (a) the **[chairman]** chairperson, who shall be appointed by the Minister;
  - (b) at least **[eight]** nine but not more than **[ten]** 12 other members appointed by the Minister, of whom—
    - (i) one shall be an official of the Department of Mineral **[and Energy Affairs]** Resources nominated by the Director-General: Mineral **[and Energy Affairs]** Resources; 5
    - (ii) one shall be an official of the Department of **[Environment]** Water and Environmental Affairs nominated by the Director-General: **[Environment]** Water and Environmental Affairs; 10
    - (iii) one shall be an official of the Department of **[Regional and Land Affairs]** Rural Development and Land Reform nominated by the Director-General: **[Regional and Land Affairs]** Rural Development and Land Reform; 15
    - [(iv) one shall be an official of the Department of Water Affairs and Forestry nominated by the Director-General: Water Affairs and Forestry;]** 15
    - (v) one shall be a person who is involved in the mining industry **[and was nominated by the Chamber of Mines];**
    - (vi) one shall be a person who is involved in **[geoscientific education or training and was nominated by the Geological Society of South Africa]** the petroleum industry; 20
    - (vii) one shall be a person who is involved in commerce; **[and**
    - (viii) one shall be a person with knowledge or experience of mineral activities who is involved in industrial development and was nominated by the Industrial Development Corporation; and]** 25
    - (ix) one shall be an official of the Department of Science and Technology nominated by the Director-General: Science and Technology; 30
    - (x) one shall be a person with appropriate experience, expertise or skills to enhance the Board's capability in performing its functions effectively; and
    - (xi) one shall be an official of the National Treasury nominated by the Director-General: National Treasury; and 35
  - (c) the **[executive officer]** Chief Executive Officer, who shall serve *ex officio* as a member of the **[Management]** Board.
- [(3) After the expiry of the term of office of the first chairman the Minister shall appoint the chairman after consultation with the other members of the Management Board.]** 40
- (4) The Minister may, whenever he or she deems it necessary or expedient, subject to the provisions of subsection (1), appoint an alternate member for any member of the **[Management]** Board.
- (5) The members or alternate members of the **[Management]** Board shall be persons who— 45
- (a) have special knowledge of or experience in any aspect of the Council's functions; or
  - (b) by virtue of the offices occupied by them are able to make a contribution to the achievement of the objects of the Council.”.

#### Substitution of section 5 of Act 100 of 1993

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4. The following section is hereby substituted for section 5 of the principal Act:

#### “Functions of Council

5. (1) For the purpose of achieving its objects, the Council may perform the following functions:

- (a) Undertake geoscientific research and related technological develop- 55  
ment;
- (b) compile and develop a comprehensive and integrated collection of knowledge and information of geology, geochemistry, geophysics, engineering geology, economic geology, geochronology, palaeontol-

- ogy, geohydrological aquifer systems, geotechnical investigations, marine geology **[and]**, geomagnetism **[;]**, seismology, geohazards, environmental geology and other related disciplines;
- (bA) promote onshore and offshore exploration for, and production of, petroleum; 5
- (bB) promote the search for, and the exploitation of, any minerals in the Republic;
- (bC) bring to the notice of the Minister any information in relation to the exploration and production of petroleum, prospecting for and mining of mineral resources which is likely to be of use or benefit to the Republic; 10
- (c) serve as the national custodian of geotechnical information, exploration and prospecting information and all other geoscientific information relating to the earth, the marine environment and geomagnetic space, all of which shall be lodged with the Council; 15
- (d) study **[mineral resources]** the—  
 (i) distribution and nature of mineral and petroleum resources; and  
 (ii) geo-environmental aspects of past, current and future mineral and petroleum exploitation;
- (e) study the use of the surface and the subsurface of land and the seabed, and from a geoscientific viewpoint advise government institutions and the general public on the judicious and safe use thereof with a view to facilitate sustainable development; 20
- (eA) review and evaluate all geotechnical reports in respect of geohazards that may affect infrastructure and development at prescribed tariffs; 25
- (f) develop and maintain the National Geoscientific Library, the National Geoscientific Information Centre, the National Borehole Core Depository, the National Geophysical and Geochemical Test Sites, **[and]** the **[Geological Museum as part of the Transvaal Museum]** National Geoscience Museum, the National Seismological Network and the National Geoscience Analytical Facility; 30
- (g) conduct investigations and render specialized services to public and private institutions;
- (h) **[(i)]** undertake—  
 (i) research of its own accord; **[or]** 35  
 (ii) **[undertake]** research on behalf of the State or any other government institution, or on behalf of any person or institution, or support such research financially; **[and]** or  
 (iii) any exploration and prospecting research activities with a view to attracting investment to the mineral and petroleum resource sector; and 40
- (i) do anything that is necessary for or conducive to the achievement of the said objects.
- (2) In order to promote relevant research and to support its objects the Council may— 45
- (a) make grants to universities, **[technikons,]** colleges and other educational and scientific institutions in aid of research by their staff or for the establishment of facilities for such research;
- (b) undertake joint research projects with government departments [of State], universities, **[technikons,]** colleges, other educational and scientific institutions and other persons; 50
- (c) co-operate with educational authorities and scientific or technical societies for the promotion of the education and training of researchers, technical experts and other supporting personnel in schools, **[technikons,]** colleges and universities; 55
- (d) grant study bursaries and loans to researchers, and make monetary contributions for research programmes in support of its own **[man-power]** human resource development requirements; **[and]**
- (e) co-operate with persons and institutions undertaking research in other countries by the exchange of geoscientific knowledge and information by means of international meetings and research projects~~[.];~~ and 60

- (f) serve as the national advisory authority to various local, provincial and national authorities in respect of—
- (i) geohazards that may affect infrastructure and development; and
  - (ii) geo-environmental pollution brought about by mineral and petroleum exploitation and by other activities through the production of geoscientific and geological information.
- (3) In order to perform the functions and achieve the objects of the Council, the **[executive officer]** Chief Executive Officer may—
- (a) on behalf of the Council conclude agreements with any person or institution or, subject to the provisions of section 8, with any government or administration, on the conditions upon which the **[Management]** Board and that person, institution, government or administration may agree;
  - (b) act as the official representative of the Council at all national and international organisations and meetings;
  - (c) defend legal proceedings instituted against the Council and institute legal proceedings connected with its functions;
  - (d) with the approval of the Minister, granted with the concurrence of the Minister of **[State Expenditure]** Finance, for or on behalf of the Council purchase or otherwise acquire or possess or hire immovable property, and alienate, let, pledge or otherwise encumber such property;
  - (e) with the approval of the Minister, granted with the concurrence of the Minister of Finance, raise money by way of loans on such terms and conditions and against such security as the **[Management]** Board may deem expedient;
  - (f) hire or let services against payment;
  - (g) produce and sell reports, maps, computer programs and other intellectual property which the Council generates in the course of its research;
  - (h) do everything that is conducive to the performance of the functions or the achievement of the objects of the Council or is calculated, directly or indirectly, to enhance the value of or render profitable the property or rights of the Council.
- (4) The Council shall, in addition to its other functions in terms of this Act or any other law—
- (a) perform such functions and undertake such investigations or research as the Minister may assign to it; and
  - (b) advise the Minister on research in the field of geoscience.
- (5) The functions of the Council mentioned in this section shall be performed by the **[executive officer]** Chief Executive Officer, except in so far as they have been assigned by this Act or by the Minister to any other person.”.

#### **Amendment of section 6 of Act 100 of 1993**

##### **5. Section 6 of the principal Act is hereby amended—**

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

“(1) Notwithstanding the provisions of any other law, the Council shall have the right to inspect any information of the Department of Mineral **[and Energy Affairs]** Resources which the Minister, or an officer of the said Department designated by the Minister, may approve on such conditions as the Minister or the said officer may determine.”;

and
- (b) by the addition after subsection (2) of the following subsection:
 

“(3) All geotechnical reports pertaining to infrastructure and development shall be submitted to the Council.”.

#### **Amendment of section 7 of Act 100 of 1993**

##### **6. Section 7 of the principal Act is hereby amended—**

- (a) by the substitution for the heading of the following heading:

**“Prohibition on mining development and certain [prospecting and research by Council”]; and**

(b) by the substitution for paragraph (a) of the following paragraph:

(a) undertake any mining development [**or undertake prospecting specifically with a view to mining development**] for itself; and”.

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#### **Amendment of section 8 of Act 100 of 1993**

7. Section 8 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Council may at the request of [**or with the prior approval of**] the Minister or for the purposes of furthering its objects undertake geoscientific research and perform generic geological functions in any country or territory outside the Republic on behalf of any person, institution, government or administration.”;

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

“(3) Notwithstanding anything to the contrary contained in this Act, geoscientific research and the performance of generic geological functions under subsection (1) shall be undertaken on such terms and conditions as may be agreed upon between the [**Management Board**] Council and the person, institution, government or administration on whose behalf the research and the performance of functions are to be undertaken [**, and as approved by the Minister.**]”;

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(c) by the addition after subsection (4) of the following subsection:

“(5) The Board shall report to the Minister on the activities contemplated in subsection (1).”.

#### **Insertion of sections 8A and 8B in Act 100 of 1993**

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8. The following sections are hereby inserted after section 8 of the principal Act:

##### **“Appointment of geotechnical appeal committee**

**8A.** The Board shall, in consultation with the Minister, appoint a geotechnical appeal committee comprising geotechnical, legal and other relevant experts.

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##### **Internal appeal process**

**8B. (1)** Any person who is aggrieved by an administrative decision taken under this Act may, within 30 days of becoming aware of such decision, lodge with the Chief Executive Officer of the Council an appeal in writing in which he or she sets out in detail the grounds on which his or her appeal is based.

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(2) The Chief Executive Officer shall communicate decisions of the appeal committee within a period of 60 days from the date of lodging an appeal.

(3) Subject to section 7(2)(c) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), no court shall review an administrative decision contemplated in subsection (1) unless the remedy provided for in that subsection has first been exhausted.

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(4) Sections 6, 7(1) and 8 of the Promotion of Administrative Justice Act, 2000, apply to any court proceedings contemplated in this section.”.

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#### **Substitution of section 9 of Act 100 of 1993**

9. The following section is hereby substituted for section 9 of the principal Act:

##### **“Period of office and conditions of service of members of [Management] Board, and filling of vacancies**

**9. (1)** A member or an alternate member of the [**Management**] Board, except the [**executive officer**] Chief Executive Officer, shall hold office for

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such period, but not exceeding three years, as the Minister may determine at the time of his or her appointment.

(2) Any person whose term of office as a member or an alternate member of the **[Management]** Board has expired[,] shall be eligible for re-appointment.

(3) If a member or an alternate member of the **[Management]** Board for any reason vacates his or her office, the Minister may appoint a person to act in the place of such member or alternate member for the unexpired period of his or her term of office.

**[(4) The Minister may at any time terminate the period of office of a member or alternate member of the Management Board if such member is unable to perform his duties or is guilty of misconduct.]**

(5) With the exception of the **[executive officer]** Chief Executive Officer or a member or an alternate member who is in the full-time employment of the State or the Council, the members or alternate members of the **[Management]** Board shall be appointed on such conditions, including conditions relating to the payment of remuneration and allowances, as the Minister may determine with the concurrence of the Minister of **[State Expenditure]** Finance.”.

#### **Substitution of section 10 of Act 100 of 1993**

**10.** The following section is hereby substituted for section 10 of the principal Act:

**“[Chairman] Chairperson and [vice-chairman] deputy chairperson of [Management] Board**

**10.** (1) The Minister shall appoint a member of the **[Management]** Board as **[vice-chairman]** deputy chairperson to act as **[chairman]** chairperson whenever the **[chairman]** chairperson is unable to perform his or her functions as **[chairman]** chairperson.

(2) The **[chairman or vice-chairman]** chairperson or deputy chairperson, or in their absence a member of the **[Management]** Board elected by the members present, shall preside at a meeting of the **[Management]** Board.

(3) The provisions of this Act shall not prohibit the **[executive officer]** Chief Executive Officer from being appointed by the Minister as **[chairman]** chairperson of the **[Management]** Board for such period as the Minister may determine.”.

#### **Substitution of section 11 of Act 100 of 1993**

**11.** The following section is hereby substituted for section 11 of the principal Act:

**“Limitation of powers of [Management] Board and [executive officer] Chief Executive Officer**

**11.** (1) The Minister may from time to time reserve any matter provided for in this Act, as a matter in respect of which a decision of the **[Management]** Board or the **[executive officer]** Chief Executive Officer shall be subject to the approval of the Minister.

(2) The Minister and the Minister of Finance **[or the Minister and the Minister of State Expenditure as may be required,]** may from time to time jointly reserve any financial matter provided for in this Act, as a matter in respect of which a decision of the **[Management]** Board or the **[executive officer]** Chief Executive Officer shall be subject to the consent of the Minister with the concurrence of the Minister of Finance **[or the Minister of State Expenditure, as the case may be]**.”.



### Amendment of section 12 of Act 100 of 1993

12. Section 12 of the principal Act is hereby amended—

- (a) by the substitution in paragraph (d) for subparagraphs (i) and (ii) of the following subparagraphs:
  - “(i) is in terms of the provisions of the [**Electoral Act, 1979 (Act No. 45 of 1979)**] Electoral Act, 1998 (Act No. 73 of 1998), nominated as a candidate for election as a member of Parliament; or
  - (ii) is in terms of the [**Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1983)**] Constitution of the Republic of South Africa, 1996, designated or appointed as a member of Parliament or any other legislative or executive authority of the State.”.

### Amendment of section 13 of Act 100 of 1993

13. Section 13 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of the following words:
  - “(1) A member or an alternate member of the [**Management**] Board, except the [**executive officer**] Chief Executive Officer, shall vacate his or her office if—”;
- (b) by the substitution for paragraph (c) of the following paragraph:
  - “(c) (i) in the case of a member, he or she has been absent from more than two consecutive meetings of the [**Management**] Board without the leave of the [**chairman**] chairperson; [or]
  - (ii) in the case of the [**chairman**] chairperson, he or she has been so absent without the leave of the [**Management**] Board; or
  - (iii) in the case of an alternate member, he or she has without any reason acceptable to the [**chairman**] chairperson been so absent during the absence, or a vacancy in the office, of the member in whose stead he or she was appointed as a member or an alternate member,
 unless the [**Management**] Board condones his or her absence on good cause shown;”;
- (c) by the deletion of paragraph (d);
- (d) by the substitution for paragraph (e) of the following paragraph:
  - “(e) he or she ceases to hold the qualification by virtue of which he or she was appointed as a member or an alternate member of the [**Management**] Board; or;” and
- (e) by the addition after paragraph (f) of the following subsections:
  - “(2) the Minister may at any time terminate the period of office of a member of the Board if such member is unable to perform his or her duties or is guilty of misconduct as contemplated in section 12.
  - (3) The Minister may on good cause shown dissolve the Board and appoint a new Board in accordance with section 9(3).”.

### Repeal of section 14 of Act 100 of 1993

14. Section 14 of the principal Act is hereby repealed.

### Substitution of section 15 of Act 100 of 1993

15. The following section is hereby substituted for section 15 of the principal Act:

#### “[**Executive Management**] Board Committee

15. (1) The [**Management**] Board may [**nominate an executive management committee**] establish a Committee, which shall, subject to the directions of the [**Management**] Board, during the periods between meetings of the [**Management**] Board perform such functions of the [**Management**] Board as the [**Management**] Board may determine from time to time.

(2) The **[Executive Management]** Committee shall not be competent, except in so far as the **[Management]** Board may otherwise direct, to set aside or vary a decision of the **[Management]** Board.

(3) The **[Executive Management]** Committee shall consist of the **[executive officer and the chairman]** chairperson and **[the vice-chairman]** deputy chairperson of the **[Management]** Board, and as many, but not fewer than two, other members of the **[Management]** Board as the **[Management]** Board may determine. 5

(4) The **[chairman]** chairperson or in his or her absence the **[vice-chairman]** deputy chairperson of the **[Management]** Board shall be the **[chairman]** chairperson of the **[Executive Management]** Committee. 10

(5) The provisions of section 17 (3) and (4) shall *mutatis mutandis* apply in respect of meetings of the **[Executive Management]** Committee.

(6) The **[Management]** Board shall not be discharged from responsibility for the performance of any function entrusted to the **[Executive Management]** Committee in terms of this section. 15

(7) The **[Management]** Board may vary or set aside any decision of the **[Executive Management]** Committee [, **except a decision in consequence of which a payment has been made or any other right has been granted to any person**].”. 20

#### **Repeal of section 16 of Act 100 of 1993**

**16.** Section 16 of the principal Act is hereby repealed.

#### **Substitution of section 17 of Act 100 of 1993**

**17.** The following section is hereby substituted for section 17 of the principal Act:

##### **“Meetings of [Management] Board”** 25

**17.** (1) The meetings of the **[Management]** Board shall be held at such times and places as the **[Management]** Board may determine: Provided that the first meeting shall be held at such time and place as the **[chairman]** chairperson may determine.

(2) The **[chairman]** chairperson, or in his or her absence the **[vice-chairman]** deputy chairperson, may at any time in his or her discretion call a special meeting of the **[Management]** Board, which shall be held at such time and place as the **[chairman or the vice-chairman]** chairperson or the deputy chairperson, as the case may be, may direct. 30

(3) The quorum for a meeting of the **[Management]** Board shall be a majority of its members. 35

(4) A decision of the **[Management]** Board shall be taken by resolution of a majority of the members present at any meeting of the **[Management]** Board and, in the event of an equality of votes on any matter, the person presiding at such meeting shall have a casting vote in addition to his or her deliberative vote as a member of the **[Management]** Board. 40

(5) No decision taken by or act performed under the authority of the **[Management]** Board shall be invalid by reason only of a casual vacancy on the **[Management]** Board or of the fact that a person who was not entitled to sit as a member of the **[Management]** Board, sat as a member at the time when the decision was taken or that act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the **[Management]** Board who were present at the time and entitled to sit as members. 45

(6) For the purposes of this section “member” shall include an alternate member present at a particular meeting of the **[Management]** Board during the absence, or a vacancy in the office, of the member for whom he or she has been appointed. 50

(7) The **[Management]** Board may with the approval of the Minister accord observer status at any meeting of the **[Management]** Board to designated representatives of any person, institution, government or administration on whose behalf the Council is doing or has done 55

geoscientific research or is performing or has performed generic geological functions in terms of section 8.”.

### **Substitution of section 18 of Act 100 of 1993**

18. The following section is hereby substituted for section 18 of the principal Act:

“**[Executive officer] Chief Executive Officer of Council**

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18. (1) (a) The **[Management] Board** shall with the concurrence of the Minister appoint **[an employee of the Council as executive officer]** a Chief Executive Officer of the Council.

(b) The **[executive officer] Chief Executive Officer** of the Council shall hold office for a period not exceeding five years, but shall be eligible for re-appointment. 10

(2) The **[executive officer] Chief Executive Officer** shall be responsible for the management and the performance of the functions of the Council by virtue of this Act and such functions as may be assigned to him or her by the **[Management Council] Board** or the Minister in terms of the provisions of this Act or by the provisions of this Act or any other law, and shall report on such matters as the **[Management] Board** or the Minister may determine. 15

(3) The **[executive officer] Chief Executive Officer** shall perform his or her functions contemplated in subsection (2) in accordance with the policy and goals determined by the **[Management] Board** and subject to the control of the said Board. 20

(4) Whenever the **[executive officer] Chief Executive Officer** is unable to carry out his or her duties or perform his or her functions for any reason, or whenever there is a vacancy in the office of **[executive officer] Chief Executive Officer**, the **[Management] Board**, after consulting the Minister, may appoint a person **[designate an employee of the Council]** to act as **[executive officer] Chief Executive Officer** during such inability, or until **[an executive officer] a Chief Executive Officer** has been appointed in terms of subsection (1), and that **[employee] person** shall, while so acting, have all the powers and perform all the functions of the **[executive officer] Chief Executive Officer**. 25 30

(5) The **[executive officer] Chief Executive Officer** shall be appointed on such conditions, including conditions relating to the payment of remuneration, allowances, subsidies and other benefits, as the **[Management] Board** may determine in accordance with a system approved from time to time by the Minister with the concurrence of the Minister of **[State Expenditure] Finance**.”. 35

### **Amendment of section 19 of Act 100 of 1993**

19. Section 19 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 40

“(a) in addition to the employees referred to in subsection (1)(a), be assisted in the performance of his or her functions by officers and employees in the employment of the State who have been placed at the disposal of the Council in terms of the provisions of section 15(3)(a) of the Public Service Act, **[1984 (Act No. 111 of 1984)] 1994 (Proclamation No. 103 of 1994)**.”. 45

### **Amendment of section 20 of Act 100 of 1993**

20. Section 20 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) (a) The **[executive officer] Chief Executive Officer** shall utilize the funds of the Council for defraying expenses in connection with the performance of its functions. 50

(b) The **[executive officer] Chief Executive Officer** shall utilize any money contemplated in subsection (1)(a) in accordance with the approved statement of its estimated income and expenditure referred to in subsection (6): Provided that, subject to the provisions of paragraph 55

- (a), the **[executive officer]** Chief Executive Officer may with the approval of the **[Management]** Board, granted with the concurrence of the Minister, utilize any amount or portion of any amount required to be utilized for a particular purpose in connection with that matter: Provided further that the **[executive officer]** Chief Executive Officer may, with the approval of the **[Management]** Board, granted with the concurrence of the Minister, utilize any balance of the money remaining at the end of the Council's financial year in question for any expenses in connection with the performance of its functions. 5
- (c) The **[executive officer]** Chief Executive Officer shall utilize any donations or contributions contemplated in subsection (1)(e) for such purposes and in accordance with such conditions, if any, as may be specified by the donor or contributor in question.”; 10
- (b) by the substitution for subsection (3) of the following subsection: 15
- “(3) The **[executive officer]** Chief Executive Officer may in respect of any work performed or services rendered by him or her under this Act, or for the use of the facilities of the Council or rights resulting from any discoveries, inventions or improvements made by employees of the Council, charge such fees or make such other financial arrangements as the **[Management]** Board may deem fit.”; 20
- (c) by the substitution for subsection (4) of the following subsection: 25
- “(4) The **[executive officer]** Chief Executive Officer shall open an account in the name of the Council with an institution registered as a bank in terms of the **[Deposit-taking Institutions Act]** Banks Act, 1990 (Act No. 94 of 1990), and shall deposit therein all money received in terms of this section.”; 30
- (d) by the substitution for subsection (5) of the following subsection: 35
- “(5) (a) The **[executive officer]** Chief Executive Officer may invest any unexpended portion of the Council's funds with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), or, subject to the approval of the Minister acting with the concurrence of the Minister of **[State Expenditure]** Finance, dispose thereof in any other manner. 40
- (b) The **[Management]** Board may with the approval of the Minister, granted with the concurrence of the Minister of **[State of Expenditure]** Finance, establish such reserve funds and deposit therein such amounts as it may deem necessary or expedient.”; and 45
- (e) by the substitution in subsection (6) for paragraph (a) of the following paragraph: 50
- “(a) The **[Management]** Board—
- (i) shall in each financial year, at a time determined by the Minister, submit a statement of the Council's estimated income and expenditure during the following financial year;
- (ii) may at any stage in any financial year submit supplementary statements of the Council's estimated expenditure for that financial year, 55
- to the Minister for his or her approval, granted with the concurrence of the Minister of **[State Expenditure]** Finance.”.

#### **Amendment of section 21 of Act 100 of 1993**

- 21.** Section 21 of the principal Act is hereby amended— 50
- (a) by the substitution for subsections (1) and (2) of the following subsections:
- “(1) The **[executive officer]** Chief Executive Officer shall be the accounting officer charged with the responsibility of accounting for all money received and all payments made by the Council.
- (2) The accounting officer and the **[Management]** Board shall comply with the provisions of the **[Reporting by Public Entities Act, 1992 (Act No. 93 of 1992)]** Public Finance Management Act, 1999 (Act No. 1 of 1999).”. 55

**Amendment of section 22 of Act 100 of 1993**

**22.** Section 22 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) If a person who is in the employment of the Council and who has in terms of subsection (1) been ordered to pay an amount, fails to pay such amount within the period stipulated in the notice in question, the amount may, subject to the provisions of subsections (4), (5) and (6), be deducted from his or her monthly salary: Provided that such deduction shall not in any month exceed a fourth of his or her monthly salary.”;

(b) by the substitution for subsection (5) of the following subsection:

“(5) A person who has in terms of subsection (1) been ordered to pay an amount, may within a period of 30 days from the date of such order appeal in writing against such order to the [Management] Board, stating the grounds for his or her appeal, and the [Management] Board may, after such investigation as it may deem necessary, dismiss the appeal, or order that the appellant be exempted, either wholly or partly, as the [Management] Board may deem fair and reasonable, from the payment of such amount.”; and

(c) by the substitution for subsection (6) of the following subsection:

“(6) A person who has in terms of subsection (1) been ordered to pay an amount may, instead of appealing to the [Management] Board under subsection (5), apply within a period of 30 days from the date of such order, or within such further period as the court may allow, to a competent court for an order setting aside such first-mentioned order or reducing such amount, and the court may upon such an application, if it is not convinced by the accounting officer on the merits of the case that the order was rightly made or that the amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be.”.

**Substitution of section 23 of Act 100 of 1993**

**23.** The following section is hereby substituted for section 23 of the principal Act:

**“Delegation of powers and assignment of functions**

**23.** (1) The [Management] Board may—

(a) on such conditions as it may determine, in writing delegate to the [chairman] chairperson or any other member of the [Management] Board, the [executive officer] Chief Executive Officer or any other employee of, or holder of an office with, the Council or to a committee established under section 15 [or 16], any power conferred upon the [Management] Board by or under this Act;

(b) in writing assign to the [chairman] chairperson or any other member of the [Management] Board, the [executive officer] Chief Executive Officer or any other employee of, or holder of an office with, the Council or a committee established under section 15 [or 16], any function assigned to the [Management] Board by or under this Act.

(2) The [executive officer] Chief Executive Officer may—

(a) in writing delegate to an employee of, or the holder of an office with, the Council any power conferred upon him or her by or under this Act in his or her capacity as [executive officer] Chief Executive Officer; or  
(b) in writing assign to such employee or holder of an office any function assigned to him or her by or under this Act in the said capacity.

(3) Any delegation or assignment under subsection (1) or (2) may be made subject to such conditions and restrictions as may be determined by the [Management] Board or by the [executive officer] Chief Executive Officer, as the case may be, and may be rescinded or amended by the [Management] Board or the [executive officer] Chief Executive Officer, as the case may be.

(4) The [Management] Board and the [executive officer] Chief Executive Officer shall not be divested of any power or function delegated



or assigned under subsection (1) or (2) by **[it or him]** the Board or the Chief Executive Officer, and may **[, subject to the provisions of subsection (5),]** amend or withdraw any decision made in the exercise of such delegated power or in the performance of a function so assigned.

**[(5) A decision made in the exercise of a power so delegated and in consequence of which a payment has been made or any right has been conferred upon any person, shall not be amended or withdrawn.]**

(6) Where a power or function is delegated or assigned under subsection (1) or (2) to the holder of an office, such power or function shall be deemed to have been delegated or assigned to the serving holder of such office or to any person acting in his or her stead.

(7) The Minister may issue a directive to authorize Council officials to enter any land within the borders of the Republic of South Africa in order to execute the Council's mandate, save where there is prohibition under any other law."

#### **Amendment of section 24 of Act 100 of 1993**

**24.** Section 24 of the principal Act is hereby amended—

(a) by the substitution for subsections (2), (3), (4), (5), and (6) of the following subsections:

“(2) The **[Management]** Board may make the discoveries, inventions and improvements referred to in subsection (1) and the rights which are vested in the Council available for use in the public interest subject to such conditions and the payment of such fees or royalties as the **[Management]** Board may determine.

(3) If the rights in any discovery, invention or improvement are vested in the Council in terms of subsection (1), the **[Management]** Board may award to the person responsible for the discovery, invention or improvement such bonus as it deems fit and make provision for financial participation by him or her in the profits derived from such discovery, invention or improvement to such extent as the Minister may determine with the concurrence of the Minister of **[State Expenditure] Finance**.

(4) The **[Management]** Board may on behalf of the Council apply for a patent in respect of any discovery, invention or improvement contemplated in subsection (1) and the Council shall for the purposes of the Patents Act, 1978 (Act No. 57 of 1978), be regarded as the assignee of the discoverer or inventor in question.

(5) The rights in a discovery, invention or improvement made by the employees of the Council in the course of an investigation for or on behalf of another person, government or administration shall vest in the Council, unless otherwise agreed upon between the **[Management]** Board and the person, government or administration concerned.

(6) The provisions of this section shall not apply in respect of a discovery or an invention or improvement contemplated in subsection (1) if, in the opinion of the **[Management]** Board, such discovery, invention or improvement was made by the person concerned otherwise than—

- (a) in the course of his or her employment as an employee of the Council;
  - (b) during the performance of functions in respect of which he or she has been placed at the disposal of the Council in terms of section 19(2);
  - (c) in the course of any investigation or research with which he or she assisted the Council; or
  - (d) in the course of any research in respect of which he or she receives a bursary or grant-in-aid from the Council,
- and which is not connected with such employment, investigation or research.”.

#### **Amendment of section 25 of Act 100 of 1993**

**25.** Section 25 of the principal Act is hereby amended—

(a) by the substitution for the words preceding paragraph (a) in subsection (1) of the following words:

- “(1) The Minister may, after consultation with the **[Management]** Board, make regulations as to—”; and
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) The procedure at meetings of the **[Management]** Board;”. 5

#### **Amendment of section 26 of Act 100 of 1993**

- 26.** Section 26 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:
- “(b) which immediately prior to the commencement of this Act was being 10  
utilised by the Geological Survey Branch of the Department of  
Mineral **[and Energy Affairs]** Resources; and
- (c) which the Minister, with concurrence of the Minister of **[State Expenditure]** Finance, and where applicable, the Minister of Public 15  
Works, may designate;”; and
- (b) by the substitution for subsection (5) of the following subsection:
- “(5) The Council may, with the approval of the Minister, granted with  
the concurrence of the Minister of **[State Expenditure]** Finance and the  
Minister of public Works, alienate immovable property that has passed to  
the Council in terms of subsection (1).”. 20

#### **Short title and commencement**

- 27.** This Act is called the Geoscience Amendment Act, 2010, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.



## **MEMORANDUM ON THE OBJECTS OF THE GEOSCIENCE AMENDMENT BILL, 2010**

### **1. BACKGROUND**

The Geoscience Amendment Bill, 2010 (“the Bill”) seeks to amend the Geoscience Act, 1993 (Act No. 100 of 1993). The Bill was approved by Cabinet on 2 December 2009 for public consultation and for introduction in Parliament.

### **2. OBJECT OF BILL**

The main objects of the Bill are to mandate the Council for Geoscience (“the Council”) to be the custodians of geotechnical information, to be a mandatory national advisory authority in respect of geo-hazards related to infrastructure development, to undertake exploration and prospecting research in the mineral and petroleum sectors and to add to the functions of the Council.

The Bill seeks to put mechanisms in place to address problems which are associated with infrastructure development on dolomitic land in the Republic. It empowers the Council to be the custodian of all geotechnical data, for the purpose of compiling a complete geotechnical risk profile of the country. It further enables the Council to become the custodians of technical information relating to exploration and mining.

### **3. SUMMARY OF BILL**

The Bill mandates the Council to provide geotechnical advice pertaining to infrastructural development on dolomitic land to various organs of state as well as to the public in general. It mandates the Council to be the custodians of geotechnical information. It effects certain amendments of a technical nature to the principal Act.

### **4. DEPARTMENTS/BODIES/PERSONS CONSULTED**

The Bill was published for public comment on 12 March 2010.

The following Departments and statutory bodies were consulted on the Bill:

National Treasury;

Public Works;

Housing;

Education;

Water Affairs;

Local and Provincial Government; and

South African Local Government Association.

### **5. IMPLICATIONS FOR PROVINCES**

None.

## 6. FINANCIAL IMPLICATIONS FOR THE STATE

The estimated financial costs for the implementation of the Bill once promulgated are as follows:

Advisory Mandatory Authority	Year 1	Year 2	Year 3
Appeal Committee	11 781 500,00	11 740 850,00	12 914 935,00
Evaluation and Review of Geotechnical reports and Dolomite Authority	39 512 000,00	38 529 700,00	42 382 670,00
<b>National Geoscience Information Centre</b> (Minerals, Petroleum, Geotechnical and Seismic Information) Document management, Data management and Archiving	28 868 660,00	23 593 526,00	18 692 878,60
<b>MRD — Prospecting and Exploration (excluding Petroleum)</b>	18 332 262,74	12 635 699,84	12 518 150,00
<b>Annual Totals</b>	98 494 422,74	86 499 775,84	86 508 633,60
<b>Year 1 excluding assets</b>	<b>79 481 422,74</b>		
<b>Total budget for 3 years</b>	<b>271 502 832,18</b>		
<b>Assets included in Year 1 total</b>	<b>19 013 000,00</b>		

## 7. PARLIAMENTARY PROCEDURE

- 7.1. The State Law Advisers and the Department of Mineral Resources 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 provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.





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