

REPUBLIC OF SOUTH AFRICA

NATIONAL VELD AND FOREST FIRE BILL

(As introduced in the National Council of Provinces)

(SELECT COMMITTEE ON LAND, AGRICULTURE AND ENVIRONMENTAL AFFAIRS)

[B 122—98]

REPUBLIEK VAN SUID-AFRIKA

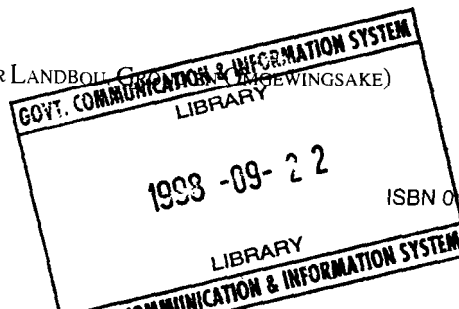
NASIONALE WETSONTWERP OP VELD- EN BOSBRANDE

(Soos ingedien in die Nasionale Raad van Provinsies)

(GEKOSE KOMITEE OOR LANDBOU, BOER- EN BOERWINGSAKE)

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BILL

To reform the law on veld and forest fires; to repeal certain provisions of the Forest Act, 1984; and to provide for related matters.

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

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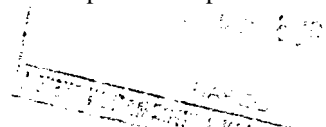
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CHAPTER 1

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INTRODUCTORY PROVISIONS

This Chapter sets out the purpose for which this Act is passed. It defines important words and terms used in the Act and guides its interpretation.

Purpose

1. (1) The primary purpose of this Act is to prevent and combat veld, forest and 35 mountain fires throughout the Republic.

(2) The Act provides for a variety of institutions, methods and practices for achieving the primary purpose.

Interpretation

- 2. (1) In this Act, unless inconsistent with the context— 40

- (i) “community” means a coherent, social group of persons with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law; (xii)
- (ii) “Department” means the national Department which has responsibility for the management of veldfires; (vii) . 5
- (iii) “designated service” means a service recognised by the Minister for Provincial Affairs and Constitutional Development in terms of section 4 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987); (i)
- (iv) “Director-General” means the Director-General of the Department; (x)
- (v) “fire” includes a veldfire; (iii) 10
- (vi) “fire danger” means the chance of a veldfire occurring or of an existing veldfire getting out of control and, if so, the anticipated rate at which, and intensity with which, it will burn; (vi)
- (vii) “fire protection association” means a fire protection association registered in terms of section 4; (v) 15
- (viii) “fire protection officer” means a person referred to in sections 5 and 6; (iv)
- (ix) “forest officer” means a forest officer designated or appointed under section 65 of the National Forests Act, 1998; (ii)
- (x) “Minister” means the Minister to whom the President assigns responsibility for veldfires in terms of section 91(2) of the Constitution; (xiii) 20
- (xi) “municipality” means a local council, a metropolitan council, a metropolitan local council, a representative council, a rural council or a district council as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and any successor to such a council; (xiv)
- (xii) “owner” has its common law meaning and includes— 25
- (a) a lessee or other person who controls the land in question in terms of a contract, testamentary document, law or order of a High Court;
- (b) in relation to land controlled by a community, the executive body of the community in terms of its constitution or any law or custom;
- (c) in relation to State land not controlled by a person contemplated in paragraph (a) or a community— 30
- (i) the Minister of the Government department or the member of the executive council of the provincial administration exercising control over that State land; or
- (ii) a person authorised by him or her; and 35
- (d) in relation to a local authority, the chief executive officer of the local authority or a person authorised by him or her; (xi)
- (xiii) “prescribe” means prescribe by regulation; (xviii)
- (xiv) “service” means a fire brigade service as defined in section 1 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987); (viii) 40
- (xv) “State forest” means a State forest as defined in section 2 of the National Forests Act, 1998; (xv)
- (xvi) “State land” means land which vests in the national or a provincial government—
- (a) including land held in trust by the Minister of Land Affairs or the Ingonyama referred to in the KwaZulu Ingonyama Trust Act (KwaZulu Act No. 3 of 1994); 45
- (b) excluding land belonging to a local authority; (xvi)
- (xvii) “the Act” or “this Act” means the National Veld and Forest Fire Act, 1998, and includes the regulations made under the Act; (ix) 50
- (xviii) “veldfire” means a veld, forest or mountain fire. (xvii)
- (2) Words derived from the words defined have corresponding meanings, unless the context indicates otherwise.
- (3) A reasonable interpretation of a provision which is consistent with the purpose of this Act must be preferred over an alternative interpretation which is not. 55
- (4) Neither—

(a) a reference to a duty to consult specific persons or authorities, nor
 (b) the absence of any reference to a duty to consult or give a hearing,
 in this Act exempts the official or authority exercising a power or performing a duty from
 the duty to proceed fairly in respect of all persons entitled to be heard.

(5) Where there is more than one owner in respect of the same land, the proper
 performance by one owner of a duty imposed in terms of this Act exempts and prevents
 the other owners from performing that duty. 5

(6) Explanatory notes, printed in bold italics, at the commencement of Chapters must
 not be used to interpret this Act.

CHAPTER 2 10

FIRE PROTECTION ASSOCIATIONS

*Chapter 2 regulates the establishment, registration, duties and functioning of fire
 protection associations. These associations must deal with all aspects of veldfire
 prevention and fire fighting. The appointment and duties of a fire protection officer
 are also regulated in this Chapter.* 15

Formation of fire protection associations

3. (1) Owners may form an association for the purpose of predicting, preventing,
 managing and extinguishing veldfires and apply for its registration as a fire protection
 association in terms of this Chapter.

(2) A fire protection association may be formed by owners who wish to co-operate for
 the purpose referred to in subsection (1) in respect of an area which has— 20

(a,) regular veldfires; or

(b) a relatively uniform risk of veldfire; or

(c) relatively uniform climatic conditions, -or

(d) relatively uniform types of forest or vegetation. 25

(3) If no fire protection association has been registered within one year after the Act
 comes into effect in an area where the Minister is of the opinion that a fire protection
 association should be formed, he or she must convene a meeting of owners in the area
 to—

(a) explain the provisions of this Chapter; 30

(b) see if there is support for the forming of a fire protection association; and

(c) identify what assistance the Department can provide in the formation,
 registration and management of a fire protection association, if there is such
 support.

(4) The Minister may give assistance to and co-operate with owners in forming a fire
 protection association. 35

Registration of fire protection associations

4. (1) An application for registration as a fire protection association must be made in
 the prescribed way.

(2) If the Minister is satisfied that— 40

(a) the applicant is capable of performing the duties imposed on a fire protection
 association in terms of this Act; and

(b) the applicant is representative of owners in the area,

he or she must register such an association and issue a registration certificate.

(3) The Minister may recognise and register as a fire protection association— 45

(a) a fire control committee or regional fire control committee established under
 section 19 of the Forest Act, 1984 (Act No. 122 of 1984);

(b) a conservation committee established under section 15 of the Conservation of
 Agricultural Resources Act, 1983 (Act No. 43 of 1983);

(c) a service, designated service or a fire brigade reserve force referred to in
 sections 3, 4 and 6A of the Fire Brigade Services Act, 1987 (Act No. 99 of
 1987); 50

- (d) a catchment management agency established under section 78 of the National Water Act, 1998;
 - (e) any nature conservancy established in terms of any ordinance of any Province;
 - (f) a fire protection committee established under section 7 of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970); 5
 - (g) a disaster management agency established in terms of any law passed for the management of disasters or for civil protection; and . .
 - (h) any voluntary association in existence at the time of the promulgation of the Act, **which** has as one of its objects the prevention and combating of veldfires, or any committee of such an association. 10
- (4) The Minister may require an applicant for registration to fulfil certain conditions either before or after registration, including the amendment of its constitution.
- (5) Only one fire protection association may be registered in respect of an area.
- (6) All owners in an area for which a fire protection association has been registered have a right to join the fire protection association, provided they undertake to abide by its constitution and rules. 15
- (7) Where a fire protection association has been registered in an area—
- (a) controlled by a municipality and that municipality has a service; or
 - (b) in which there is a designated service,
- the municipality or designated service must become a member of the fire protection association. 20
- (8) The owner in respect of State land must join any fire protection association registered in the area in which the land lies.
- (9) Nothing in this Act prevents the formation of an umbrella association for a number of fire protection associations, but a reference in this Act to a fire protection association is not a reference to such an umbrella association. 25
- (10) An umbrella association may exercise powers under this Act to perform duties in terms of this Act on behalf of a fire protection association if the Minister agrees.

Duties of fire protection associations

- 5. (1)** A fire protection association must at least— 30
- (a) develop and apply a veldfire management strategy for its area;
 - (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;
 - (c) make rules which bind its members; 35
 - (d) identify the ecological conditions that affect the fire danger;
 - (e) regularly communicate the fire danger rating referred to in sections 11 and 12 to its members;
 - (f) organise and train its members in fire fighting, management and prevention;
 - (g) inform its members of equipment and technology available for preventing and fighting veldfires; 40
 - (h) provide management services, training and support for communities in their efforts to manage and control veldfires;
 - (i) supply the Minister at least once every 12 months with statistics about veldfires in its area; 45
 - (j) furnish any information requested by the Minister in order to prepare or maintain the fire danger rating system;
 - (k) exercise the powers and perform the duties delegated to it by the Minister; and
 - (l) appoint a fire protection officer, unless a municipality is a member.
- (2) Where a municipality or a designated service is a member, the fire protection association must consult with it in the development and application of the strategy. 50

- (3) The Minister may delegate a power or duty to a fire protection association if he or she has consulted with the fire protection officer beforehand.
- (4) The rules contemplated in subsection (1)(c) must provide for—
- (a) any matter which may or must be dealt within terms of this Act;
 - (b) the minimum standards to be maintained by members in relation to all aspects of veldfire prevention and readiness for fire fighting;
 - (c) controlled burning to conserve ecosystems and reduce the fire danger; and
 - (d) any other matter which is necessary for the fire protection association to achieve its objects.
- (5) A copy of the rules must be lodged with the Minister. 10

Fire protection officers

- 6.(1) The fire protection officer must—
- (a) perform the function of chief executive officer of the fire protection association;
 - (b) carry out the tasks assigned to him or her by the fire protection association or its executive committee; 15
 - (c) take control of any fire fighting in the area for which the fire protection association has been formed, if—
 - (i) the veldfire is a threat to life or property; and
 - (ii) he or she is reasonably able to do so; 20
 - (d) enforce the rules of the association;
 - (e) monitor and report to the association and the Minister on compliance with this Act;
 - (f) train the members—
 - (i) in the law regarding veldfire prevention, management and control; 25
 - (ii) on the rules of the fire protection association; and
 - (iii) to prevent and fight veldfires; and
 - (g) inspect the members' land to ensure that they are complying with their duties in terms of the Act and the rules of the fire protection association.
- (2) Where— 30
- (a) a municipality is a member and has a service, the chief fire officer is the fire protection officer;
 - (b) a fire protection association has as members more than one municipality having a service, the fire protection officer must be elected as prescribed.
- (3) A fire protection officer has the right of entry onto the land of a member of the fire protection association on reasonable notice to carry out the duties contemplated in subsection (1)(g). 35
- (4) The Director-General may designate an officer or employee of the Department to act as fire protection officer for a fire protection association if a fire protection association does not have the means to do so itself. 40
- (5) (a) An appointment under subsection (4) must be for a fixed period. 40
- (b) The period may only be extended if, in the opinion of the Director-General, there is good reason for doing so.
- (6) (a) A fire protection officer must apply to the Director-General for registration as a fire protection officer in the prescribed way. 45
- (b) The Director-General must register a fire protection officer if he or she is satisfied that the person will be able to enforce the Act in a responsible manner.
- (7) The fire protection officer may delegate his or her powers and duties in terms of this Act, except the powers of arrest, search and seizure.

Financial and other assistance 50

7. The Minister may give a loan, grant or other assistance to—
- (a) any fire protection association for any of its activities; and

- (b) any owner who prepares a firebreak in terms of section 16 and in doing so incurs expenses in excess of what he or she would reasonably be expected to incur if the boundary of his or her land did not coincide with that of the Republic.

De-registration of fire protection associations

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8. (1) If a fire protection association has, in the opinion of the Minister, become inoperative or ineffective, he or she may reregister it and withdraw its certificate.

(2) In that event the fire protection association immediately becomes liable to—

- (a) repay any loan made to it by the Department; and
(b) return any assets lent to it by the Department.

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Limitation of liability

9. Neither the State nor any other person is liable for any damage or loss caused by—

- (a) the exercise of any power under or the performance of any duty in terms of this Chapter; or
(b) the failure to exercise any power under or perform any duty in terms of this 15 Chapter,

unless the exercise of, or failure to exercise, the power, or the performance of, or failure to perform, the duty, was unlawful, negligent or in bad faith.

Presumption of negligence

10. (1) If a person who brings civil proceedings in terms of this Act or the common 20 law proves that the defendant wrongfully caused loss resulting from a veldfire, the defendant is presumed to have been negligent in relation to the veldfire until the contrary is proved, unless the defendant is a member of a fire protection association in the area where the veldfire occurred.

(2) Any person who has suffered loss as a result of a veldfire, or his or her agent, may 25 enter and inspect land or premises on which he or she reasonably believes a veldfire to have started or from which he or she reasonably believes a fire to have spread—

- (a) together with his or her legal representative and any witnesses;
(b) at any reasonable time;
(c) for as long as is reasonably necessary to conduct an investigation; and 30
(d) on reasonable notice to the owner, who must—
(i) accompany the persons inspecting the land; or
(ii) have his or her agent do so.

CHAPTER 3

FIRE DANGER RATING

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Chapter 3 provides for the prevention of veldfires through a fire danger rating system. The Minister sets up and maintains the system, although he or she may delegate his or her powers and duties to do so to an organisation with the necessary expertise. The content of the system and the factors to be taken into account when preparing it are set out. A prohibition on the lighting of fires in the open air comes into force when the 40 Minister warns in the media that the fire danger is high.

Fire danger rating

11. (1) The Minister must prepare and maintain on a continuous basis a fire danger rating system for the entire country in consultation with—

- (a) the South African Weather Bureau or any successor to that Bureau; and
- (b) fire protection associations.
- (2) The Minister may consult other organisations with expertise, information or equipment relevant to the establishment or maintenance of a fire danger rating system.
- (3) The Minister must divide the entire country into separate regions, each region being one in which the fire danger is usually sufficiently uniform to allow for a single rating which is meaningful for the entire region, 5
- (4) The fire danger rating system must—
 - (a) take into account the relevant peculiarities of each region, including— 10
 - (i) the topography;
 - (ii) the type of vegetation in the area;
 - (iii) the seasonal climatic cycle;
 - (iv) typical weather conditions;
 - (v) recent weather conditions;
 - (vi) where reasonably possible, current weather conditions; 15
 - (vii) forecasted weather conditions; and
 - (viii) any other relevant matter;
 - (b) incorporate the formula or formulae needed to—
 - (i) take into account all factors affecting the fire danger for each region;
 - (ii) calculate the indicators needed to rate the fire danger; 20
 - (iii) rate the fire danger in each region for an appropriate period or periods;
 - (c) show the rating in a clear format;
 - (d) identify—
 - (i) what activities are dangerous and what precautions should be taken for each rating; and 25
 - (ii) when the fire danger is rated as high.
- (5) The Minister may require any fire protection association to provide information needed for the fire danger rating system within a period specified by him or her.

Communication of fire danger rating

- 12. (1) The Minister must— 30
 - (a) communicate the rating of the fire danger for each region to the fire protection associations in that region regularly;
 - (b) when the fire danger is rated as high in any region, publish a warning at the earliest possible opportunity in all the main languages used in that region— 35
 - (i) on three television channels and three radio stations broadcasting to that region; and
 - (ii) in two newspapers circulating in that region; and
 - (c) ensure that recordings are kept of the broadcasts and copies are kept of the newspaper notices.
- (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. 40
- (3) The warning referred to in subsection (1)(b) must—
 - (a) say that the fire danger is high;
 - (b) refer to the prohibition on lighting, using or maintaining fires in the open air; 45
 - and
 - (c) identify the region in which and the period for which the prohibition applies.
- (4) The Minister may publish the warning in such other media as he or she considers appropriate to ensure that it is effectively communicated.

Delegation of powers and duties 50

- 13. The Minister may delegate any of his or her powers or duties in terms of this Chapter to—
 - (a) the South African Weather Bureau if the Director-General of the Department of Environmental Affairs and Tourism agrees;

(b) any successor to that Bureau; or
 (c) an organisation with the necessary expertise,
 and may pay such an organisation for its services from money appropriated by Parliament.

CHAPTER 4

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VELDFIRE PREVENTION THROUGH FIREBREAKS

Chapter 4 places a duty on owners to prepare and maintain firebreaks. The procedure in this regard and the role of adjoining owners and the fire protection association are dealt with. Provision is also made for the making of firebreaks on the international boundary of the Republic. The Minister is given the power to exempt any owner from making a firebreak for good reason.

Duty to prepare and maintain firebreaks

14. (1) Every owner on whose land a veldfire may start or burn or from whose land it may spread must prepare and maintain a firebreak on his or her side of the boundary between his or her land and any adjoining land. 15

(2) (a) If an owner referred to in subsection (1) intends to prepare and maintain a firebreak by burning, he or she must determine a mutually agreeable date or dates with the owners of adjoining land for doing so, and inform the fire protection association for the area, if any.

(b) If agreement cannot be reached, such owner must give to the owners of adjoining land and the fire protection association for the area, if any, at least 14 days written notice of the day or days during which he or she intends burning firebreaks, fire danger permitting.

(3) An owner of adjoining land who has agreed on a day in terms of subsection (2)(a) or who receives a notice in terms of subsection (2)(b) must— 25

(a) burn his or her firebreak on the boundary concerned on the same day or days; or

(b) be present at such burning or have his or her agent attend; and

(c) ensure that a sufficient number of persons are present on his or her side of the boundary to prevent any spread of fire when the firebreak is burned. 30

(4) An owner may not burn a firebreak, despite having complied with subsection (2), if—

(a) the fire protection association objects to the proposed burning; or

(b) a warning has been published in terms of subsection 12(1)(b) because the fire danger is high in the region; or 35

(c) the conditions are not conducive to the burning of firebreaks.

(5) The owner must inform the owners of adjoining land and the fire protection association, if any—

(a) if burning cannot be done on the agreed day or days referred to in subsection (2)(a) or any of the days referred to in subsection (2)(b); and 40

(b) of the additional days on which he or she intends to burn because of the failure to do so on the day or days set in terms of subsection (2)(a) or (b).

(6) It is not necessary for the owner to give 14 days notice of the additional days.

(7) Owners of adjoining land may agree to position a common firebreak away from the boundary. 45

(8) When burning takes place on an agreed day or days in terms of subsection (2)(a) or notified day or days in terms of subsection (2)(b), both owners must be present at or have their agents attend such burning.

(9) Should an owner intend to be absent for a period longer than 14 days during the period or part of any period in which burning normally takes place, he or she must give 50

all owners of adjoining land an address and telephone number, if any, at which he or she may be contacted.

(10) If an owner of adjoining land—

(a) is not present on the agreed or notified day or days; or

(b) has not given an address and telephone number, if any, as required in 5 subsection (9),

the owner may proceed with the burning in his or her absence.

(11) A fire protection association may make rules different from the rules referred to in subsections (2) to (6) if the new rules are approved by the Minister, in which event members are bound by the new rules and exempt from the rules referred to in 10 subsections (2) to (6).

Requirements for firebreaks

15. An owner who is obliged to prepare and maintain a firebreak must ensure that, with due regard to the weather, climate, terrain and vegetation of the area—

(a) it is wide enough and long enough to have a reasonable chance of preventing 15 a veldfire from spreading to or from neighboring land;

(b) it does not cause soil erosion; and

(c) it is reasonably free of inflammable material capable of carrying a veldfire across it.

Firebreaks on borders of Republic

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16. An owner—

(a) whose land is subject to a risk of veldfire; and

(b) whose land or any part of it coincides with the border of the Republic,

must prepare and maintain a firebreak on his or her land as close as possible to that border.

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Exemption from duty to prepare and maintain firebreaks

17. (1) The Minister may exempt any owner or group of owners from the duty to prepare and maintain a firebreak or firebreaks for good reason.

(2) The exemption may be subject to conditions.

(3) The Minister must consult the fire protection association for the area, if any, before 30 granting any exemption.

Exemption from prohibitions on damaging plants

18. The right or duty to prepare and maintain a firebreak in terms of this Chapter prevails over any prohibition in any other law on the cutting, disturbance, damage, destruction or removal of any plant or tree, except that the owner must—

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(a) where possible, transplant any plant which is protected in terms of any law; or

(b) where it is safe and feasible, position the firebreak so as to avoid such plant or tree.

CHAPTER 5

FIRE FIGHTING

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Chapter 5 places a duty on all owners to acquire equipment and have available personnel to fight fires. Certain persons and officials are given the power to enter land and fight fires in an emergency. It provides for agreements to be entered into between the Minister and fire protection associations, or between such associations, to assist each other in the case of a fire.

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Readiness for fire fighting

19. (1) Every owner on whose land a veldfire may start or burn or from whose land it may spread must—
- (a) have such equipment and personnel for extinguishing fires as are—
 - (i) prescribed; or 5
 - (ii) in the absence of prescribed requirements, reasonably required in the circumstances;
 - (b) ensure that in his or her absence responsible persons are present on or near his or her land who, in the event of fire, will—
 - (i) extinguish the fire or assist in doing so; and 10
 - (ii) alert the owners of adjoining land and the relevant fire protection association, if any.
- (2) An owner may appoint an agent to do all that he or she is required to do in terms of this section.

Actions to fight fires 15

20. (1) Any owner who has reason to believe that a fire on his or her land or the land of an adjoining owner may endanger life, property or the environment, must immediately—
- (a) notify—
 - (i) the fire protection officer or, failing him or her, any member of the executive committee of the fire protection association, if one exists for the area; and 20
 - (ii) the owners of adjoining land; and
 - (b) do everything in his or her power to stop the spread of the fire. 25
- (2) Any person who has reason to believe that a fire on any land may endanger life, property or the environment, may, together with any other person under his or her control, enter that land or land to which the fire can spread in order to prevent that fire from spreading or to extinguish it.
- (3) In taking control over the fighting of a fire in terms of section 6(1)(c), any fire protection officer may— 30
- (a) take control from any person who has, until his or her arrival, controlled the fighting of the fire;
 - (b) order any person who is not younger than 16 years and not older than 60 years to assist him or her.
- (4) In the absence of a fire protection officer, a forest officer may— “ 35
- (a) take over control of the fighting of a fire in or within ten kilometres of any State forest to the exclusion of any other person; and
 - (b) order any person who is not younger than 16 years and not older than 60 years to assist him or her.
- (5) Any person acting in terms of subsection (1), (2), (3) or (4) may, if he or she considers it necessary for the protection of life, property or the environment or for preventing a fire from spreading or for extinguishing it— 40
- (a) enter any land;
 - (b) destroy trees, grass, crops or other vegetation;
 - (c) enter or break and enter any premises; 45
 - (d) prevent any person from entering any premises;
 - (e) forcibly remove from the scene any person who is in danger or who obstructs him or her in the performance of his or her duties; and
 - (f) remove or order to be removed any vehicle or other thing. 50
- (6) Whenever a fire spreads or may spread across a boundary of a fire protection association, the fire protection officer must— 50
- (a) inform the fire protection officer of the area to which the fire spreads or may spread;
 - (b) take all steps needed to co-ordinate the fire-fighting operation in accordance with the fire management strategy referred to in section 5(1)(a) and (b). 55

Agreements for mutual assistance

21. (1) The Minister may enter into an agreement with any person or persons or a fire protection association to provide mutual assistance in fighting fires.

(2) Two or more fire protection associations may enter into an agreement to provide mutual assistance in fighting and extinguishing fires on the land of or constituting a threat to their respective members.

(3) The agreements referred to in subsections (1) and (2) may provide for the payment of compensation for the assistance rendered.

CHAPTER 6

ADMINISTRATION OF ACT

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Regulations

22. (1) The Minister may make regulations to deal with—

(a) any matter that may or must be prescribed in terms of this Act;

(b) model constitutions for fire protection associations;

(c) procedures relating to registration of fire protection associations; 15

(d) procedures relating to the election of certain fire protection officers;

(e) applications for and grants of financial and other assistance to fire protection associations; and

(f) generally, the carrying out of the purposes and the provisions of this Act.

(2) The Minister may make different regulations under subsection (1) for different regions of the Republic. 20

(3) The reference to specific regulation-making powers in this section does not limit the general regulation-making powers conferred by it.

(4) The Minister may by regulation provide that infringements of certain regulations constitute criminal offences and prescribe maximum penalties for such offences. 25

(5) The penalties may not exceed those for a second category offence referred to in section 25(2).

Procedure for making regulations

23. (1) Before making or amending any regulations in terms of this Act, the Minister must— 30

(a.) publish a notice in the *Gazette*—

(i) setting out the draft regulations; and

(ii) inviting written comments to be submitted on the proposed regulations within a specified period;

(b) consider all comments received; and 35

(c) take advice from—

(i) the National Forests Advisory Council established in terms of section 33 of the National Forests Act, 1998;

(ii) the Fire Brigade Board established in terms of section 2 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987). 40

(2) The Minister makes the regulations by publishing them in the *Gazette*.

(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; or

(b) if Parliament is not then in session, within 30 days after the next session starts. 45

(4) Parliament may reject the regulations within 60 days after they have been tabled.

(5) If Parliament rejects any regulations, the Minister must—

(a) repeal them; or

(b) table amended regulations in draft form in Parliament, within 60 days of the rejection or if Parliament is not then in session, 50

within 60 days after the next session starts, failing which the regulations become invalid.

(6) If the Minister elects to amend regulations which have been rejected, he or she—

(a) must consult the executive committee of the Council and of the Board referred to in subsection (1)(c);

(b) need not follow the procedure set out in subsection (1),

before the amended regulations are tabled.

(7) If Parliament—

(a) accepts the amended regulations, the Minister must publish them within 30 days of Parliament's acceptance;

(b) rejects the amended regulations, subsections (5), (6) and this subsection apply.

(8) If the Minister complies with subsection (5)(b), the regulations as originally published continue to apply until amended regulations are accepted by Parliament and published by the Minister in terms of subsection (2).

Delegation of powers and duties

24. (1) The Minister may delegate the exercise of any of his or her powers under this Act, except the power to make regulations, and the performance of any of his or her duties in terms of this Act, to—

(a) a named official of the Department;

(b) the holder of an office in the Department

(c) an organ of State;

(d) a person who or which is not an organ of State.

(2) The Director-General may delegate the exercise of any of his or her powers under this Act, and the performance of any of his or her duties in terms of this Act, to any employee in the Department.

(3) The Minister or the Director-General, as the case may be, may permit a person or organ of State to whom a power or duty has been delegated to delegate that power or duty further.

(4) A delegation referred to in subsections (1) and (2) and the permission referred to in subsection (3)—

(a) must be in writing;

(b) may be subject to conditions;

(c) must specify the period for which it endures; and

(d) does not prevent the exercise of the power or the performance of the duty by the Minister or the Director-General, as the case may be.

CHAPTER 7

OFFENCES AND PENALTIES

This Chapter sets out the relevant offences in terms of the Act and the penalties applicable.

Penalties

25. (1) A person who is guilty of a first category offence referred to in section 26 may be sentenced on a first conviction for that offence to a fine or imprisonment for a period of up to two years, or to both a fine and such imprisonment.

(2) A person who is guilty of a second category offence referred to in section 26 may be sentenced on a first conviction for that offence to a fine or imprisonment for a period of up to one year, or to both a fine and such imprisonment.

(3) A person who is guilty of a third category offence referred to in section 26 may be sentenced on a first conviction for that offence to a fine or community service for a period of up to six months, or to both a fine and such service.

(4) A person who is guilty of a second or third category offence may be sentenced on a second conviction for that offence as if he or she has committed a first or second category offence, respectively.

(5) A court which sentences any person to community service for an offence in terms of this Act must impose a form of community service which benefits the environment if it is possible for the offender to serve such a sentence in the circumstances.

Offences

26. (1) Any person who lights, uses or maintains a fire in the open air in contravention of section 12(2) is guilty of a first category offence.
- (2) Any person who, in the open air—
- (a) leaves unattended a fire which he or she lit, used or maintained before that fire is extinguished; 5
 - (b) lights, uses or maintains a fire, whether with *or* without permission of the owner, which spreads and causes injury or damage;
 - (c) throws, puts down or drops a burning match or other burning material or any material capable of spontaneous combustion or self-ignition and, by doing so, makes a fire which spreads and causes injury or damage; 10
 - (d) lights, uses or maintains a fire in a road reserve—
 - (i) other than in a fireplace which has been designated by a competent authority; or
 - (ii) for a purpose other than the burning of a firebreak in terms of sections 14 to 18; or 15
 - (e) smokes where smoking is by notice prohibited,
- is guilty of a second category offence.
- (3) Any person who—
- (a) fails to prepare a firebreak when obliged to do so in terms of section 14(1) or 16; 20
 - (b) fails to give notice of intention to bum a firebreak in terms of section 14(2)(b);
 - (c) bums a firebreak when a fire protection association has objected in terms of section 14(4)(a); or
 - (d) fails to inform adjoining owners of the matters referred to in section 14(5), 25
- is guilty of a second category offence.
- (4) Any person who—
- (a) fails to meet the standards of readiness for fire fighting referred to in section 19(1);
 - (b) fails to notify the persons referred to in section 20(1)(a); ‘ 30
 - (c) refuses to assist a fire protection officer or a forest officer in terms of section 20(3)(b) or 20(4)(b); or
 - (d) hinders or obstructs any person referred to in section 20(2) or any fire protection officer referred to in section 20(3) or any forest officer referred to in section 20(4), 35
- is guilty of a second category offence.
- (5) Any owner, occupier or person in control of land on which a fire occurs who fails to take reasonable steps to extinguish the fire or to confine it to that land or to prevent it from causing damage to property on adjoining land, is guilty of a first category offence.
- (6) Any person who-
- (a) prevents a fire protection officer, forest officer, a police officer or an officer appointed in terms of sections 5 and 6 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987), from acting in terms of section 28, 29 or 30; or
 - (b) in any way interferes with him or her in the performance of his or her duties in terms of sections 28, 29 or 30, 45
- is guilty of a third category offence.
- (7) Negligence amounts to fault for the purposes of an offence in terms of this section.

CHAPTER 8

ENFORCEMENT

This Chapter sets out the powers of registered fire protection officers to police the provisions of this Act effectively. 50

Implementation of this Chapter

27. (1) A fire protection officer has the power to enforce the Act in terms of this Chapter only if he or she is registered in terms of section 6(6).

(2) (a) A forest officer, a police officer, and an officer appointed in terms of section 5 or 6 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987), have the power to enforce the Act in terms of this Chapter. 5

(b) A reference to a fire protection officer in sections 28,29 and 30 includes a forest officer and a police officer.

(3) A reference to an **offence** in this Chapter means an **offence** in terms of this Act.

Power to enter and search 10

28. (1) A fire protection officer may enter and search any land or premises without a warrant if he or she has reason to believe that an **offence** has been or is being committed there and—

(a) the person in control of the land or premises consents; or

(b) the fire protection officer has reason to believe that a warrant would be issued 15 if he or she were to apply for such warrant, but the delay caused by applying would defeat the object of the entry or search.

(2) A fire protection officer may, without a warrant, stop, enter and search any vehicle, or stop and search any beast of burden which he or she reasonably suspects is being or has been used in the commission of an **offence**. 20

Power to seize

29. (1) A fire protection officer may seize without a **warrant**—

(a) *any* vehicle, tool, weapon, animal or other thing which he or she has reason to believe has been or is being used in the commission of an **offence**;

(b) *any* thing which he or she has reason to believe might be used as evidence in 25 the prosecution of any person for an **offence**.

(2) Where any vehicle or animal is seized in terms of subsection (1)(a), the person in control of the vehicle or animal must take it to the place pointed out by the fire protection officer.

(3) The place pointed out must be that which in the opinion of the fire protection 30 officer is the nearest or most convenient for keeping the vehicle or animal.

(4) The vehicle or animal may be kept there pending the outcome of any proceedings in terms of this Act.

(5) If the person in control of the vehicle or animal refuses to take it to the place, a fire protection officer may do so. 35

(6) In order to **safeguard** a vehicle which has been seized, a fire protection officer may immobilise it by removing a part.

(7) The part must be kept safely and returned to the vehicle in good order when it is released.

Power to arrest 40

30. (1) A fire protection officer may arrest any person whom he or she reasonably suspects to have **committed**—

(a) a first or second category **offence**; or

(b) a third category **offence** and who in his or her opinion will fail to appear in 45 answer to a summons.

(2) In making an arrest, a fire protection officer **must**—

(a) not use more force than is reasonably necessary if the arrest is resisted;

(b) respect the constitutional rights of the person arrested.

CHAPTER 9

GENERAL AND TRANSITIONAL PROVISIONS

This Chapter deals primarily with the transition to a new legal order in veldfire management and control. Miscellaneous items which need to be regulated are also dealt with.

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Research

31. (1) The Minister may carry out or commission research into—

- (a) the prevention and combating of veldfires; and
- (b) the use of controlled fire in sustainable forest management.

(2) The Minister must make the results of the research available to all fire protection 10 associations free of charge.

Publication of notices in media

32. (1) Where a notice must be published in terms of this Act and—

- (a) the required number of television channels or radio stations do not reach an area; or

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(b) the required number of newspapers do not circulate in an area, the organ of State responsible for publication may do so in such lesser number of media as do reach the area in question.

(2) If an employee of a television channel or radio station signs an affidavit confirming—

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- (a) publication of a notice, it is presumed that the notice has been published; or
- (b) that a television channel or radio station broadcasts to a particular area, it is presumed that it so broadcasts,

until the contrary is proved.

(3) If an employee of a newspaper signs an affidavit confirming that a newspaper 25 circulates in a particular area, it is presumed that it does, until the contrary is proved.

Notices to owners

33. (1) Where any person is required to give notice to an owner in terms of this Act, he or she must do so by hand delivery of the notice.

(2) If notice cannot be given to an owner because he or she is absent, notice may be 30 given to the person apparently in charge of the land or, failing such a person, any person over the age of 16 years apparently residing on the land.

(3) If there is no person referred to in subsection (2), notice may be given by leaving a copy of the notice in a prominent place on the land in question.

Amendment of Act 122 of 1984

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34. The Forest Act, 1984 (Act No. 122 of 1984), is hereby amended—

- (a) by the deletion in section 1 of the definitions of “fire belt”, “fire control area”, “fire control committee”, “fire control region”, “fire protection scheme” and “regional fire control committee”;

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- (b) by the repeal of sections 18 to 27;

- (c) by the deletion in section 73 of paragraph (c) of subsection (1); and

- (d) by the deletion in section 75 of—

- (i) subparagraphs (iii) and (iv) of paragraph (a) of subsection (2);

- (ii) paragraph (b) of subsection (2); and

- (iii) subsections (7) and (8).

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S a v i n g s

35. (1) Anything done in terms of a law repealed by this Act—

- (a) remains valid if it is consistent with this Act, until repealed or overridden; and
 (b) becomes an action in terms of the corresponding provision of this Act.
- (2) Any regulation made in terms of the Forest Act, 1984 (Act No. 122 of 1984)—
- (a) remains valid if it is consistent with this Act, until it is repealed by the Minister; and 5
- (b) becomes a regulation made in **terms** of sections 22 and 23 of this Act.
- (3) Delegations of powers or duties in terms of the Forest Act, 1984, become delegations in terms of this Act if they are consistent with this Act.
- (4) If a duty assigned in terms of the Forest Act, 1984, was, in turn, delegated, that delegation becomes invalid, unless the duty is reassigned to the delegator within 30 days 10 after this Act is promulgated.

Short title

36. This is the National Veld and Forest Fire Act, 1998,

Commencement

37. This Act takes effect on a date fixed by the President in the *Gazette*. 15

EXPLANATORY MEMORANDUM ON THE NATIONAL VELD AND FOREST FIRE BILL, 1998

Introduction

The current Forest Act contains sections dealing with the prevention and control of veld and forest fires. These provisions apply throughout South Africa to all kinds of vegetation. Forest policy for South Africa has been set out in 'the White Paper on Sustainable Forest Development in South Africa, issued in March 1996. This identified the need to develop new forest legislation to support new policy. It also identified the need for new provisions regarding veld and forest fires.

One of the problems with the Forest Act, 1984, is that the fire control provisions do not sit comfortably in it. They apply to the entire country while the remaining provisions only apply to forests, with a few minor exceptions. This is on its own a source of confusion. In revising the forest legislation, it has been decided to separate the provisions dealing with fire control and management and put these in a separate Bill. There are also good constitutional reasons for doing so in as much as overall supervision of fire-fighting services by local authorities is a concurrent national and provincial competence. As a result, two separate Bills are to be tabled, namely the National Forests Bill and this Bill. The former is dealt with in a separate memorandum.

There are a number of inadequacies in the current provisions on veld and forest fires in the Forest Act, 1984, that dictate the need for new legislation:

- * The current provisions do not work equitably for neighbors of differing means and resources, placing the person with lesser resources at a disadvantage because of the ever-present threat of unaffordable liability should a fire spread to the property of the neighbour with greater assets.
- * The current provisions for Fire Control Committees have not worked. These would in any event not have been representative institutions.
- * Fire control areas provided for in the Bill have ceased to exist.
- * The current Act does not provide for modern approaches to fire danger rating and the control of activities during conditions of acute fire danger.
- * Instead the current Act relies on rather inflexible measures for the proclamation of fire control seasons.

The Bill seeks to address these problems. A summary of its important provisions follows.

CHAPTER 1: INTRODUCTORY PROVISIONS

This Chapter sets out the purpose of the Act which is to prevent and combat veld, forest and mountain fires. It also includes the interpretation section. Veldfires are defined to include veld, mountain and forest fires.

CHAPTER 2: FIRE PROTECTION ASSOCIATIONS

The Bill introduces the concept of the voluntary formation and registration of associations by owners. These might be in the mould of the existing commercial fire associations of Mpumalanga and KwaZulu-Natal which are run by commercial farmers and the forestry companies or they may cover a smaller number of owners in a particular area as long as it is not already covered by a registered fire protection association.

The Bill makes fire protection associations the fire control and management units at the lowest level. All landowners, including rural communities, may join a fire protection area which has been formed for an area as long as they are prepared to abide by its rules and constitution. If it is a landowner in the area, the State must be a member of such an association. Registration is supervised by the Minister.

As registration of these associations is **voluntary**, incentives are incorporated to encourage registration. The Minister is empowered to **render** financial and other assistance to associations. Members of an association are exempt from the operation of the presumption of negligence. They will also benefit from participation in the fire danger rating system referred to below. On registration an association is bound by the provisions of the Bill and must conform to minimum requirements laid down.

CHAPTER 3: FIRE DANGER RATING

An innovation in the Bill is the introduction of a fire danger rating system. This is used by the existing associations on a limited scale and is also widely used in certain overseas countries.

The Bill requires that such a system be maintained by the Minister for the whole country in consultation with the Weather Bureau and the fire protection associations. It lays down **rules** and formulae to be followed in the maintenance and implementation of the system and provides for the manner in which the index is to be published.

On publication on television and radio of a warning that the fire danger is high, a ban on fires in the open air is automatically imposed.

CHAPTER 4: VELDFIRE PREVENTION THROUGH FIREBREAKS

Firebreaks are an essential element in the prevention and fighting of **veldfires**. The provisions of the present Act in this regard are good and effective, so most of them have been retained in the Bill, but with improvements.

CHAPTER 5: FIRE FIGHTING

Every owner is required to be able to prevent and fight fire. Minimum requirements for preparedness are imposed. There **are** provisions designed to facilitate fire fighting. These include automatic permission to go onto land of another to extinguish a fire and other provisions allowing emergency action to deal with a serious fire. Provision is made for mutual agreements to assist in fire fighting.

CHAPTER 6: ADMINISTRATION OF THE ACT

The main provision in this Chapter is that which allows the Minister to make regulations. It is envisaged that the regulatory framework will ensure that provision is made, within reason, for support for fire protection associations. The Minister may, for example, include in regulations a model constitution for a fire protection association and procedures for registration, the rendering of financial and other assistance and so on.

CHAPTER 7: OFFENCES AND PENALTIES

The present Act provides for a variety of **offences** and penalties with regard to **veld**, forest and mountain fires. These have been improved upon with a view to demonstrating the seriousness with which the matter of fires is regarded. The lighting of fires in forests in certain circumstances, failure to prepare proper firebreaks and disregard of fire-fighting requirements constitute **offences**. Negligence is a sufficient basis for a finding that there was fault in relation to an **offence** in terms of this Bill.

CHAPTER 8: ENFORCEMENT

Associations are required by Chapter 2 to appoint a fire protection officer. He or she is the person to police compliance with the Bill and has all the power of a police official, including entry, search, seizure and arrest,

CHAPTER 9: GENERAL AND TRANSITIONAL PROVISIONS

Veld, forest and mountain fires cause untold damage every year and a scientific approach to the problem is essential. Research can help in improving standards of fire management and control. For this reason the Minister is authorised to commission relevant research.

The Chapter deals primarily with the transition to a new order in the management and control of veld, forest and mountain fires. It repeals Part VI of the Forest Act, 1984, and related provisions.

PERSONS AND BODIES CONSULTED

1. KwaZulu-Natal Fire Protection Association
2. South African Wood Preservers Association
3. Blandy Poles
4. Dr D W van der Zel (DWAF)
5. Carla Willis (DWAF)
6. Associated Scientific and Technical Societies of South Africa
7. TDM (Pty) Ltd
8. Gradely Farms
9. Forest Industries Association
10. Timber Treated Products (Pty) Ltd
11. Natal Forest Products (Pty) Ltd
12. Prof John Milton
13. Woodline Timber Industries
14. Prof J H Giliomee
15. Tad Poles
16. Kusel Saw Mills (Pty) Ltd
17. Mr T J Hugo (Consultant — DWAF)
18. Coastchem
19. V E Roberts
20. S A Timber Growers Association
21. Prof H F Vermaas
22. S A B S
23. Wildlife and Environment Society of S A
24. Expert and Advisory Service CC
25. R F Gevers (Pty) Ltd
26. Cape Town Bar
27. Pretoria Bar
28. Dr Bellinda Dodson
29. Frans Richard Bach
30. Anders Erik Billeschou
31. Janet Love
32. Agricultural Research Council
33. S A Lumber Millers' Association
34. Environmental Law Unit, UCT
35. Safcol
36. Memorandum. Safcol
37. Chris Kromhout
38. Hadley Kavin
39. Casper Human
40. Chief Registrar of Deeds
41. Faculty of Forestry. Stellenbosch
42. Masonite Africa Ltd
43. MEC — Agriculture, Mpumalanga
44. C J Esterhuyse (DWAF)
45. Agricultural Research Council
46. SAPPI
47. David Gevisser
48. Chris Dodson
49. Ngomi Timbers CC
50. S J Rapolai
51. Public Enterprises

52. DWAF — Knysna Area Office
53. H W Dedekind (DWAF) — Note on “evergreen” contracts
54. H W Dedekind — Supply contracts
55. Department of Finance
56. iNdllovu Regional Council
57. Safcol (further comment)
58. KwaZulu-Natal Nature Conservation Service
59. HSBC Investment Bank plc

PARLIAMENTARY PROCEDURE

The Department of Water Affairs and Forestry and the State Law Advisers are of the opinion that the Bill must be dealt within accordance with the procedure established by section 76(1) or (2) of the Constitution since it falls within functional areas listed in Schedule 4 of the Constitution, namely environment and nature conservation.