

REPUBLIC OF SOUTH AFRICA

**PROVISION OF CERTAIN LAND
FOR SETTLEMENT AMENDMENT
BILL**

(As amended by the Portfolio Committee on Land Affairs (National Assembly))

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 15B—98]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
DIE BESKIKBAARSTELLING VAN
SEKERE GROND VIR VESTIGING**

(Soos gewysig deur die Portefeuljekomitee oor Grondsake (Nasionale Vergadering))

(MINISTER VR LANDBOU EN GRONDSAKE)

[W 15B—98]

ISBN O 621276081

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Provision of Certain Land for Settlement Act, 1993, so as to delete certain definitions; to substitute certain obsolete provisions; to further regulate the publication of a notice in a newspaper; to provide that the Minister may render financial assistance for the acquisition, development and improvement of certain land and to secure tenure rights; to empower the Minister to expropriate certain land; and to further provide for the delegation of powers by the Minister; to extend the application of the said Act throughout the Republic; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 126 of 1993, as amended by section 68 of Act 67 of 1995

1. Section 1 of the Provision of Certain Land for Settlement Act, 1993 (hereinafter 5 referred to as the principal Act), is hereby amended by the deletion of the definitions of “Administrator” and “development body”.

Substitution of section 2 of Act 126 of 1993

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

“Powers of Minister with regard to certain land

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2. (1) The [Administrator] Minister may, subject to the provisions of section 3, designate for the purposes of settlement—

(a) State land which is controlled by him or her and made available by him or her for those purposes;

(b) [State land which is controlled by the Minister, or] land which is 15 purchased or acquired by him or her [in any other manner] for those purposes and which is made available by him or her for those purposes;

(c) any land which has been made available for those purposes by the owner thereof.

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(2) The [Administrator] Minister shall give notice in the [Official Gazette] of any land designated under subsection (1).

(3) The [Administrator] Minister may by notice in the [Official Gazette] [with the concurrence of the Minister] impose conditions for the use of the land designated under subsection (1).

(4) The laws governing the subdivision of agricultural land and the establishment of townships shall not apply in respect of land referred to in subsection (1) unless the Minister directs otherwise in the notice in question.”.

Substitution of section 3 of Act 126 of 1993

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

“Publication of notice in newspaper

3. (1) [The Administrator] Taking into consideration the languages most commonly used in the district, the Minister shall cause to be published in [an Afrikaans and English] at least one newspaper circulating in the district in which the designated land is situated, a notice calling upon interested parties to submit in writing to the [Administrator] Minister within a period mentioned in the notice, which period may not be shorter than 21 days, following the day upon which the notice appeared in the newspaper, any representations which they wish to make in respect of the contemplated designation: Provided that if no Substantial change in land use is likely to occur as a result of the proposed settlement in terms of this Act, the Minister may direct that no such publication shall be necessary.

(2) The [Administrator] Minister shall not designate any land before he or she has considered all the representations received by virtue of subsection (1).”.

Amendment of section 9 of Act 126 of 1993, as amended by section 68 of Act 67 of 1995

4. Section 9 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) Section 17(1) and (2) of the Deeds Registries Act, 1937 (Act No. 47 of 1937). shall not apply to and no transfer or stamp duty shall be payable in respect of the [transfer of ownership of land referred to]—
(a) transfer of ownership of land referred to in section 2(1) [(a) and (b)]; or
(b) [in section 2(1)(c) the owner of which is a development body] acquisition of land or a right in land by any person contemplated in section 10: Provided that section 17(1) and (2) of the Deeds Registries Act, 1937, shall apply in respect of the acquisition of land contemplated in section 10(1)(d).”.

Substitution of section 10 of Act 126 of 1993, as substituted by section 68 of Act 67 of 1995

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

“Financial assistance for acquisition, development and improvement of land or to secure tenure rights

10. (1) The Minister may, from money appropriated by Parliament for this purpose—
(a) acquire land for the purposes of this Act;
(b) on such conditions as he or she may determine, grant an advance or a subsidy to any person contemplated in subsection (2)—
(i) for the acquisition of land for residential purposes, agricultural production or small business development;

- (ii) for the acquisition of capital assets for the development of land contemplated in subparagraph (i);
 - (iii) for securing, upgrading and registering of tenure rights;
 - (iv) for the improvement of any land contemplated in subparagraphs (i) and (iii);
 - (v) to acquire an equity share in any existing agricultural enterprise;
 - (vi) to facilitate the planning of ~~any~~ development which may be necessary for the purposes of subparagraphs (i) to (v), including survey costs;
 - (vii) for the planning and development of land designated for settlement purposes under section 2(1);
- (c) on such conditions as he or she may determine, grant an advance or a subsidy to a Municipal Council to acquire land—
- (i) to be used as a commonage; or
 - (ii) to extend an existing commonage;
- (d) acquire land on behalf of any person contemplated in subsection (2), in which case ownership of such land, notwithstanding section 14 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), may be transferred directly from the owner of the land to any such person;
- (e) in writing, for the purposes of acquiring, planning or developing designated land or any other land contemplated in this subsection, and on such conditions as he or she may determine, authorise the transfer of funds contemplated in this section to—
- (i) a provincial government;
 - (ii) a Municipal Council;
 - (iii) any other organ of state; or
 - (iv) any other body recognised by the Minister for such purposes.
- (2) For the purposes of subsection (1), persons who may be granted an advance or a subsidy are—
- (a) persons who have no land or who have limited access to land, and who wish to gain access to land or to additional land;
 - (b) persons who wish to secure or upgrade the conditions of tenure under which they live or who wish to develop the land with the consent of the owner;
 - (c) persons who have been dispossessed of land or of a right in land but who do not have a right to restitution in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).
- (3) The laws governing the subdivision of agricultural land and the establishment of townships shall not apply in respect of land referred to in subsection (1) unless the Minister directs otherwise.”.

Insertion of section 11 in Act 126 of 1993

6. The following section is hereby inserted in the principal Act after section 10:

“Minister’s power to dispose of certain land

11. The Minister may, on such terms and conditions as he or she may deem fit, for the purposes of this Act, sell, exchange, donate or lease any land designated or acquired under this Act or, if the land is no longer required for the purposes of this Act, for any other purpose.”.

Substitution of section 12 of Act 126 of 1993

7. The following section is hereby substituted for section 12 of the principal Act:

“Expropriation Act

12. (1) Without derogating from the powers that a Minister may exercise under the Expropriation Act, 1975 (Act No. 63 of 1975), the Minister may for the purposes of this Act, exercise equivalent powers to the powers that such other Minister may exercise under the Expropriation Act, 1975. 5

(2) Notwithstanding the provisions of the Expropriation Act, 1975, the owner of the land in question shall be given a hearing before any land is expropriated in terms of this Act.

(3) In the event of expropriation, compensation shall be paid as prescribed by the Constitution, with due regard to the provisions of section 12(3), (4) and (5) of the Expropriation Act, 1975. 10

(4) Any right in land which derives from the provisions of this Act will be capable of expropriation in accordance with the provisions of any applicable legislation.”. 15

Repeal of section 13 of Act 126 of 1993

8. Section 13 of the principal Act is hereby repealed.

Substitution of section 15 of Act 126 of 1993

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

“Delegation 20

15. (1) The Minister may, on such conditions as he or she may determine—

(a) delegate to any officer in the Department of Land Affairs any power conferred upon the Minister by this Act, except the power under section 14 to make regulations; 25

(b) authorize any such officer to perform any duty imposed upon the Minister by this Act.

(2) The Minister may, either in general or in a particular case or in cases of a particular nature and on such conditions as he or she may determine—

(a) ‘delegate to the Premier of a province or, with the concurrence of the Premier, to a member of the Executive Council of that province, any power conferred upon the Minister by this Act, except the power under section 14 to make regulations; 30

(b) authorize that Premier or member of the Executive Council to perform any duty imposed upon the Minister by this Act. 35

(3) The Premier or the member of the Executive Council contemplated in subsection (2) may, subject to such conditions as the Minister may determine—

(a) delegate to the Director-General of the province or any officer of the provincial administration in question any power delegated to that Premier or member under subsection (2); 40

(b) authorize that Director-General or any such officer to perform any duty which that Premier or member is authorized to perform under subsection (2).

(4) The Minister may, with the concurrence of a Municipal Council, either in general or in a particular case or in cases of a particular nature and on such conditions as he or she may determine— 45

(a) delegate to any officer of the Municipal Council any power conferred upon the Minister by this Act, except the power under section 14 to make regulations; 50

(b) authorize that officer of the Municipal Council to perform any duty imposed upon the Minister by this Act.

(5) Any delegation of a power or authorization to perform a duty under this section—

(a) shall be done in writing; 55

(b) shall not prevent the person who effected the delegation or granted the authorization from exercising that power of performing that duty himself or herself

(c) may at any time be withdrawn in writing by that person.”.

Substitution of section 16 of Act 126 of 1993

10. The following section is hereby substituted for section 16 of the principal Act:

“Short title

16. This Act shall be called the Provision of [Certain] Land [for settlement] and Assistance Act, 1993.”.

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Substitution of word “Administrator” in Act 126 of 1993

11. The principal Act is hereby amended by the substitution for the word “Administrator”, wherever it occurs, of the word “Minister”.

Substitution of long title of Act 126 of 1993

12. The following long title is hereby substituted for the long title of the principal Act: 10
 “To provide for the designation of certain land; to regulate the subdivision of such land and the settlement of persons thereon; to provide for the rendering of financial assistance for the acquisition of land and to secure tenure rights; and to provide for matters connected therewith.”.

Extension of application of Act 126 of 1993

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13. The principal Act shall apply throughout the Republic

Short title

14. This is the Provision of Certain Land for Settlement Amendment Act, 1998, which shall be deemed to have taken effect on 27 April 1994.

**MEMORANDUM ON THE OBJECTS OF THE PROVISION OF
CERTAIN LAND FOR SETTLEMENT AMENDMENT BILL, 1998**

1. The Bill seeks to amend the Provision of Certain Land for Settlement Act, 1993 (Act No. 126 of 1993) ("the Act").

2. The objects of the Bill are the following:

2.1 Clause 1 seeks to delete the definitions of "Administrator" and "development body". These words have become obsolete and definitions thereof are therefore unnecessary. Clause 11 proposes the substitution for the word "Administrator", wherever it occurs in the Act, of the word "Minister",

2.2 Under section 2 of the Act the Administrator has the power to designate certain land for settlement in terms of the Act. Clause 2 seeks to amend section 2 of the Act so as to confer that power on the Minister and to give the Minister the power to make the laws governing the subdivision of agricultural land and the establishment of townships applicable to designated land.

2.3 In terms of section 3 of the Act the Administrator must publish in an Afrikaans and an English newspaper a notice calling upon interested parties to submit representations before he or she may designate any land. Clause 3 seeks to—

(a) impose that duty on the Minister;

(b) omit the reference to Afrikaans and English; and

(c) confer upon the Minister the power to direct that no publication is necessary if no substantial change in land use is likely to occur as a result of any proposed settlement in terms of the Act.

2.4 Clause 4 seeks to extend the exemption from transfer or stamp duty to all transactions in respect of land under the Act.

2.5 A number of problems are experienced when section 10 of the Act is applied, and clause 5 seeks to set out in greater detail the circumstances under which the Minister may grant advances or subsidies. It also seeks to extend the financial assistance which may be rendered for the acquisition, development and improvement of land. In clause 6 it is proposed that the Minister may dispose of land for the purposes of the Act, or if it is no longer required for such purposes, for any other purpose.

2.6 Clause 7 seeks to empower the Minister to expropriate land for the purposes of the Act, and clause 8 seeks to repeal section 13 of the Act. Section 13 regulates the application of the Act in the former self-governing territories.

2.7 Clause 9 seeks to empower the Minister to delegate certain powers conferred upon him or her by the Act, to functionaries in the provincial and local spheres of government.

2.8 Since the circumstances under which the Minister may grant advances and subsidies are to be extended, the short and long titles of the Act will have to be amended (clauses 10 and 12).

2.9 Since the Act does not apply in those areas of the Republic which formed part of the TBVC states, clause 13 seeks to extend the Act throughout the whole of the national territory of the Republic.

3. The Department of Finance (Inland Revenue) was consulted.

4. Parliamentary procedure

The State Law Advisers and the Department of Land Affairs are of the opinion that this Bill must be dealt with in accordance with section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 of 76 of the Constitution applies.