

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN NATIONAL SPACE AGENCY BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 30220 of 31 August 2007)
(The English text is the official text of the Bill)*

(MINISTER OF SCIENCE AND TECHNOLOGY)

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BILL

To provide for promotion of use of space and co-operation in space-related activities, foster research in astronomy, advance scientific engineering through human capital, support the creation of an environment conducive to industrial development in space technologies within the framework of national government policy, and for that purpose to establish the South African National Space Agency; to provide for the objects and functions of the South African National Space Agency and for the manner in which it must be managed and governed; and to provide for matters connected therewith.

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

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Definitions

1. In this Act, unless the context indicates otherwise—
“**Agency**” means the South African National Space Agency established by section 2;
“**Board**” means the Board of the Agency contemplated in section 6; 30

- “**Chief Executive Officer**” means the person appointed as such in terms of section 15;
- “**Department**” means the Department of Science and Technology;
- “**GEPF**” means the Government Employees Pension Fund;
- “**GEPL**” means the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996); 5
- “**Minister**” means the Minister responsible for science and technology;
- “**national space science and technology strategy**” means any strategy determined in terms of section 3;
- “**space**” means the area beyond the earth’s measurable atmosphere; 10
- “**Space Affairs Act**” means the Space Affairs Act, 1993 (Act No. 84 of 1993);
- “**space mission applications**” means the day-to-day management of spacecraft;
- “**this Act**” includes any regulation made in terms of section 21.

Establishment of South African National Space Agency

2. (1) The South African National Space Agency is hereby established as a juristic person. 15
- (2) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the Agency.

National Space Science and Technology Strategy

3. The Minister must determine national space science and technology strategies in order to give effect to national space policy contemplated in the Space Affairs Act. 20

Objects of Agency

4. The objects of the Agency are to—
- (a) promote the peaceful use of space;
 - (b) support the creation of an environment conducive to industrial development in space technology; 25
 - (c) foster research in astronomy, earth observation, communications, navigation and space physics;
 - (d) advance scientific, engineering and technological competencies and capabilities through human capital development and outreach programmes; and 30
 - (e) foster international co-operation in space-related activities.

Functions of Agency

5. (1) The Agency must—
- (a) implement any space programme in line with the policy determined in terms of the Space Affairs Act; 35
 - (b) advise the Minister on the development of national space science and technology strategies and programmes;
 - (c) implement any national space science and technology strategy; and
 - (d) acquire, assimilate and disseminate space satellite data for any organ of state.
- (2) The Agency may, in order to perform any duty contemplated in subsection (1) and in order to achieve its objects— 40
- (a) enter into an agreement with any person, government or administration on the terms and conditions agreed upon by the Agency and that person, government or administration;
 - (b) purchase or otherwise acquire, or dispose of, any property and may hire out, let, pledge or otherwise encumber that property; 45
 - (c) for the purposes of developing or exploiting any invention or technological space expertise—
 - (i) establish a company contemplated in the Companies Act, 1973 (Act No. 61 of 1973), or in collaboration with any other person establish such a company; and 50
 - (ii) acquire an interest in any company or other juristic person undertaking the development or exploitation of an invention or technological space innovation;
 - (d) establish any programme in line with national space policy in respect of— 55

- (i) enabling technologies that will provide leadership in coordinating and supporting applied research;
- (ii) coordination and support to the development of space and astronomy missions;
- (iii) space mission applications; and 5
- (iv) space mission operations;
- (e) support programmes or projects relating to scientific space research;
- (f) co-operate with space and space-related agencies of other countries in the peaceful use and development of space; and
- (g) do anything necessary for the proper performance of its functions or to 10 achieve its objects.

Board of Agency

6. (1) The Agency acts through its Board.
- (2) The Board consists of— 15
- (a) a chairperson appointed by the Minister;
 - (b) not less than 10 and not more than 15 members; and
 - (c) the Chief Executive Officer, as an *ex officio* member.

Appointment of Board members

7. (1) The Minister, after consultation with Cabinet, must appoint persons to be 20 members of the Board.
- (2) The Minister must by notice in two newspapers and the *Gazette* invite all interested persons to submit, within a period specified in the notice, the names of persons fit to be appointed as members of the Board.
- (3) The Minister must appoint a panel which must compile a shortlist of candidates to be appointed as Board members contemplated in section 6(2)(a) and (b). 25
- (4) The panel must—
- (a) make recommendations to the Minister for the appointment of the Board members contemplated in section 6(2)(a) and (b);
 - (b) act in a transparent and fair manner; and
 - (c) ensure that the candidates are competent and broadly representative of the 30 South African population, according to race, gender and disability.
- (5) If the shortlist compiled in terms of subsection (3) does not contain suitable persons or the required number of suitable persons contemplated in section 6(2)(a) and (b), the Minister may call for further nominations in the manner set out in subsection (2).
- (6) The Board must— 35
- (a) consist of persons who—
 - (i) are citizens of the Republic or have the right of permanent residence in the Republic; and
 - (ii) have distinguished themselves in the field of the space science industry or possess the relevant qualifications, experience or skills in relation to 40 some aspect of the functions of the Agency;
 - (b) be broadly representative of the various sectors in the field of space science and technology; and
 - (c) have at least one member who has a legal qualification and one member with financial expertise. 45

Disqualification and removal of Board members

8. (1) A member contemplated in section 6(2)(a) or (b) ceases to hold office if—
- (a) the member resigns by written notice to the Minister;
 - (b) the member's estate is sequestrated or is assigned for the benefit of, or if the member compounds with, the creditors of the member; 50
 - (c) if the member becomes an unrehabilitated insolvent;
 - (d) a competent court has declared the member to be mentally ill;
 - (e) the member has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with a political objective;
 - (f) the member has been convicted in the Republic or elsewhere of fraud, theft, 55 forgery, bribery, corruption or any other offence involving dishonesty, and was sentenced to imprisonment without the option of a fine;

- (g) the member is absent from three consecutive meetings of the Board without the leave of the Board;
 - (h) the member is elected as a member of Parliament, a provincial legislature or any municipal council;
 - (i) the member ceases to be a citizen of, or to have the right of permanent residence in, the Republic; or
 - (j) the member has, as a result of improper conduct, been removed from a position of trust by a competent court of law.
- (2) A person may not be appointed as a member of the Board if any of the provisions of subsection (1)(b) to (f) and (i) to (j) apply to her or him.
- (3) (a) The Minister may remove a member of the Board from office—
- (i) on the grounds of misconduct, incapacity or incompetence; or
 - (ii) for any other sound and compelling reason.
- (b) A decision to remove a member of the Board from office in terms of paragraph (a) must be based on the recommendation of an independent panel appointed by the Minister.
- (4) The Minister may dissolve the Board on reasonable grounds.
- (5) If a member of the Board dies, ceases to hold office or is removed from office, the Minister may, having followed the procedure contemplated in section 7, appoint a person in that vacancy for the remaining part of the term of office.
- (6) A member of the Board holds office for a period not exceeding four years, subject to subsections (2) and (3).
- (7) No member may serve more than two consecutive terms.

Functions of Board

9. (1) The Board must perform any function imposed upon it in accordance with a policy direction issued by the Minister and in terms of this Act.
- (2) The Board must—
- (a) oversee the functions of the Agency;
 - (b) monitor the research priorities and programmes of the Agency;
 - (c) give effect to the strategy of the Agency, in the performance of its functions; and
 - (d) notify the Minister immediately of any matter that may prevent or materially affect the achievement of the objects of the Agency.
- (3) The Board may, after consultation with the Minister, establish or disestablish organisational divisions of the Agency.

Remuneration of members of Board

10. A member of the Board or a member of any committee of the Board who is not in the full-time employment of the State must be paid such remuneration and allowances out of the funds of the Agency as may be determined by the Minister, in consultation with the Minister of Finance.

Meetings of Board

11. (1) The Board must meet at least four times a year at such times and places as the Board may determine.
- (2) The Board may determine the procedure for its meetings.
- (3) The chairperson—
- (a) may convene a special meeting of the Board; and
 - (b) must convene such a meeting within 14 days of receipt of a written request signed by at least two third of the members of the Board to convene such a meeting.
- (4) The chairperson or, in the chairperson's absence, a member of the Board elected by the members present, must preside at a meeting of the Board.
- (5) The quorum for a meeting of the Board is the majority of the Board members eligible to vote.
- (6) A decision of the Board must be taken by resolution of the majority of the members present at any meeting of the Board, and in the event of an equality of votes on any matter, the person presiding at the meeting has a casting vote in addition to her or his deliberative vote.

Disclosure of interest

12. (1) A member of the Board must upon appointment disclose to the Minister by way of a written statement any interest which could reasonably compromise the Board in the performance of its functions.

(2) A member of the Board may not vote or in any manner be present during or participate in the proceedings at any meeting of the Board if, in relation to any matter before the Board, she or he may have an interest which precludes her or him from performing her or his functions as a member of the Board in a fair, unbiased and proper manner.

Committees of Board

13. (1) The Board may establish one or more committees to perform such functions as the Board may determine.

(2) The Board may appoint as members of such committee any—

- (a) member of the Board;
- (b) employee of the Agency; or
- (c) other person with suitable skills or experience who must be paid such allowances as the Minister may determine, subject to section 8.

(3) A member of the Board may not serve on more than two committees at a time.

(4) The Board may at any time dissolve or reconstitute a committee.

(5) The Board is not absolved from the performance of any function entrusted to any committee in terms of this section.

Governance Committee

14. The Board—

- (a) must establish a Governance Committee to—
 - (i) assist the Board to perform its functions and to advise it in connection with any matter relating to the effective governance of the Agency;
 - (ii) monitor and evaluate the performance of the Board in order to assess the Board's effectiveness using appropriate instruments of the Board, and must provide these results to the Board annually; and
 - (iii) assist the Board to implement effective measures to achieve compliance with relevant laws and guidelines on good corporate governance;
- (b) must appoint as members of the Governance Committee—
 - (i) a chairperson, who must be a member of the Board other than the chairperson referred to in section 6(1)(a); and
 - (ii) at least two other members who may be members of the Board but may not be employees of the Agency.

Chief Executive Officer of Agency

15. (1) The Board must, with the approval of the Minister, appoint a suitably skilled and qualified person as the Chief Executive Officer.

(2) The appointment of the Chief Executive Officer must be made after following a transparent and competitive selection process.

(3) The Chief Executive Officer is appointed for a term not exceeding five years and is subject to such conditions relating to remuneration and allowances as the Board may determine.

(4) The Chief Executive Officer must enter into a performance agreement with the Board within three months of taking up the post as Chief Executive Officer.

(5) The Chief Executive Officer is responsible for the administration and the general management and control of the day-to-day functioning of the Agency, subject to the directions and instructions issued by the Board.

(6) The Chief Executive Officer is responsible and accountable to the Board for—

- (a) all money received by the Agency and the utilisation of that money; and
- (b) the property of the Agency.

(7) The Chief Executive Officer must report to the Board on matters that may adversely affect the functioning of the Agency.

(8) If the Chief Executive Officer is absent for a period of more than two months or is unable to carry out her or his duties, or if there is a vacancy in the office of the Chief

Executive Officer, the Board may, with the concurrence of the Minister, appoint any person who meets the requirements determined in subsection (1) to act as Chief Executive Officer, until the Chief Executive Officer is able to resume those functions or until the vacant position of Chief Executive Officer is filled.

(9) If the Chief Executive Officer is absent for a period of less than two months the Board may, without the concurrence of the Minister, appoint any person to act as Chief Executive Officer. 5

(10) The acting Chief Executive Officer has all the powers and may perform all the duties of the Chief Executive Officer.

(11) The Chief Executive Officer may not serve for more than two consecutive terms. 10

Employees of Agency

16. (1) Subject to subsection (2), the Chief Executive Officer—

- (a) must, on such conditions as she or he may determine, appoint such number of employees or receive on secondment such number of persons as are necessary to enable the Agency to perform its functions; 15
- (b) is responsible for the administrative control of the organisation and for the discipline of the employees and persons contemplated in paragraph (a); and
- (c) must ensure compliance with applicable labour legislation.

(2) The Board must approve—

- (a) the general terms and conditions of employment of the employees contemplated in subsection (1); 20
- (b) a human resource policy; and
- (c) structures for remuneration, allowances, subsidies and other benefits for employees contemplated in subsection (1) in accordance with a system approved by the Minister with the concurrence of the Minister of Finance. 25

(3) The terms and conditions of employment contemplated in subsection (2)(c) must be broadly in line with the guidelines issued from time to time by the Minister responsible for the public service and administration.

Pensions

17. (1) The Agency may, under the Pensions Fund Act, 1956 (Act No. 24 of 1956), establish a pension fund for its employees. 30

(2) Any employee of the Agency who was, prior to the commencement of this Act, a member of the GEPEF, may—

- (a) remain a member of the GEPEF;
- (b) terminate her or his membership of the GEPEF and join the pension fund established in terms of subsection (1); or 35
- (c) elect dormant membership of the GEPEF in accordance with section 27 of the GEPL.

Funds of Agency

18. (1) The funds of the Agency consist of— 40

- (a) money appropriated by Parliament;
- (b) fees, royalties or other revenue obtained in terms of this Act;
- (c) donations or contributions received by the Agency; and
- (d) revenue accruing to the Agency from any other source.

(2) The Agency must utilise its funds to defray the expenses incurred by the Agency in the performance of its functions. 45

(3) Money received by way of donation or contribution must be utilised in accordance with any conditions imposed by the donor or contributor concerned.

(4) The Agency may, subject to the approval of the Minister and in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), invest any of its funds not immediately required. 50

Delegation

19. (1) The Chief Executive Officer may, subject to such conditions as she or he may determine, delegate to an employee of the Agency any function entrusted to the Chief Executive Officer under this Act. 55

(2) A delegation in terms of subsection (1) does not prohibit the performance of the function in question by the Chief Executive Officer.

(3) The delegation must be in writing.

Regulations

20. The Minister may, after consultation with the Board, make regulations 5
regarding—

- (a) the method of reporting to the Minister on Board meetings and the frequency of those reports;
- (b) interim measures for the continued management and functioning of the Agency in the event that the Minister dissolves the Board in terms of section 10 8(4); and
- (c) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

Short title and commencement 15

21. This Act is called the South African National Space Agency Act, 2008, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN NATIONAL SPACE AGENCY BILL, 2008

1. PURPOSE OF BILL

- 1.1 The Bill provides for the establishment of the South African National Space Agency (SANSA) as a public entity that will co-ordinate and integrate national space science and technology programmes and conduct long-term planning for and implementation of space-related activities in South Africa for the benefit of all citizens.
- 1.2 The Bill provides for the appointment of the Board, the Chief Executive Officer and employees of the South African National Space Agency (the Agency) and sets out the objects, powers and duties of the Agency.

2. OBJECTS OF BILL

- 2.1 The Bill sets out the primary objectives of the Agency, as follows:
 - 2.1.1 Promoting the peaceful uses of space;
 - 2.1.2 Supporting the creation of an environment conducive to industrial development in space technologies;
 - 2.1.3 Fostering research in astronomy, earth observation, communications, navigation and space physics;
 - 2.1.4 Advancing scientific, engineering and technological competencies and capabilities through human capital development and outreach programmes; and
 - 2.1.5 Fostering international co-operation in space-related activities.
- 2.2 The functions of the Agency that will lend support to its primary objectives include—
 - 2.2.1 the implementation of any space programme in line with the Space Affairs Act, 1993 (Act No. 84 of 1993);
 - 2.2.2 the furnishing of advice to the Minister on the development of national space science and technology strategy;
 - 2.2.3 the implementation of the National Space Science and Technology Strategy; and
 - 2.2.4 the acquisition, assimilation or dissemination of space satellite data for any organ of state.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

- 3.1 **Departments of:** Trade And Industry (DTI), Land Affairs, the National Treasury, Provincial and Local Government, Public Enterprises, Transport, Communications, Public Service and Administration and Foreign Affairs.
- 3.2 **State-Owned Enterprises and related public bodies:** FOSAD Economic Cluster, Denel, Space Secretariat, Space Council (via the DTI), Satellite Applications Centre, National Research Foundation, South African Water Service and the Institute for Software & Satellite Applications.

3.3 **Private Entities:** Sun Space and Information Systems (Industry).

3.4 **Multilateral Forums:** National Committee of the International Astronomical Union and the National Committee of the International Committee on Space Research.

4. FINANCIAL IMPLICATIONS FOR STATE

4.1 Core funding of the Agency will be provided for through National Treasury allocations and will be utilised to service the following items:

4.1.1 Staff costs;

4.1.2 Operating costs;

4.1.3 Programme costs (enabling technologies, mission development, mission operations and applications);

4.1.4 Infrastructure costs;

4.1.5 Human capital development costs; and

4.1.5 Public awareness of space.

4.2 The Agency will access funding from other governmental departments for services that it will provide for them.

4.3 The Agency will enter into agreements with public and private entities to generate income.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Science and Technology are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 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.