

REPUBLIC OF SOUTH AFRICA

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**PORTFOLIO COMMITTEE AMENDMENTS  
TO**

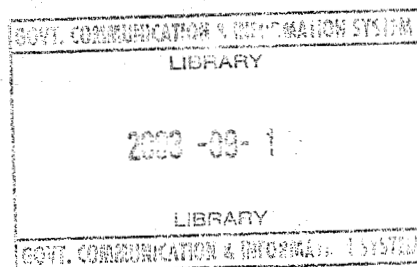
**PETROLEUM PIPELINES BILL**

**[B 22—2003]**

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*(As agreed to by the Portfolio Committee on Minerals and Energy)  
(National Assembly)*

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**[B 22A—2003]**

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**AMENDMENTS AGREED TO****PETROLEUM PIPELINES BILL  
[B 22-2003]****CLAUSE 1**

1. On page 3, in line 33, to omit "petroleum".
2. On page 3, in line 36, after the second "petroleum" to insert:  
  
excluding those located on the premises of—
  - (a) a manufacturer of petroleum products;
  - (b) a storage facility;
  - (c) a retailer of petroleum products;
  - (d) an agricultural cooperative.
3. On page 3, in line 38, to omit "may" and to substitute "will".
4. On page 3, from line 42, to omit the definition of "storage facility" and to substitute:

storage facility means any bulk storage facility and its auxiliary equipment that is or is intended to be used for the storage of petroleum and excludes storage facilities—

- (a) on the premises at which petroleum products are manufactured and where such storage facilities are integral to the process of manufacture;
- (b) for own final use;
- (c) used for the retailing of petroleum products to the public;
- (d) used by an agricultural cooperative exclusively for its members; and
- (e) used to transport petroleum by road, rail, sea and air;

**CLAUSE 2**

1. On page 4, in line 13, to omit "and".
2. On page 4, in line 14, after "products" to insert "and".
3. On page 4, after line 14, to insert:  
  
(j) ensure an appropriate supply of petroleum to meet market requirements.

**CLAUSE 4**

Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause:

**Powers and duties of Authority**

4. The Authority must, as appropriate, in accordance with this Act—

- (a) issue licences for—
  - (i) the construction and conversion of petroleum pipelines, loading facilities and storage facilities; and
  - (ii) the operation of petroleum pipelines, loading facilities and storage facilities;
- (b) gather and store information relating to the construction, conversion and operation of petroleum pipelines, loading facilities and storage facilities;
- (c) undertake investigations and enquiries into the activities of licensees;
- (d) act as mediator or arbitrator in accordance with the provisions of this Act;
- (e) consult, where necessary, with Government Departments and other bodies and institutions regarding any matter contemplated in this Act;
- (f) set or approve tariffs and charges in the manner prescribed by regulation;
- (g) monitor and take appropriate action, if necessary, to ensure that access to petroleum pipelines, loading facilities and storage facilities is provided in a non-discriminatory, fair and transparent manner;
- (h) expropriate land or any right in or any right in respect of land, necessary for the exercise of a licensee's rights;
- (i) promote competition in the petroleum pipeline industry;
- (j) take decisions that are not at variance with published Government policy;
- (k) perform any activity incidental to the performance of its duties;
- (l) make rules in accordance with section 33(3); and
- (m) exercise any power or perform any duty conferred or imposed on it under any law.

## CLAUSE 5

1. On page 5, in line 2, after “as” to insert:  
the Authority may determine with the approval of
2. On page 5, in line 2, to omit “may approve” and to substitute “and”.

## CLAUSE 6

1. On page 5, from line 6, to omit subsection (1) and to substitute:
  - (1) A person may not be appointed or remain a member of the Authority if that person—
  - (a) is not a South African citizen resident in the Republic of South Africa;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of an offence involving dishonesty; or

- (d) is in the employ of, or affiliated to, an organ of state in any sphere of government, or has any conflict of interest in this regard.
2. On page 5, from line 14, to omit subsections (2), (3) and (4) and to substitute:
- (2) The Minister must appoint, as members of the Authority, persons who—
    - (a) have adequate legal, technical, business, economic or other experience relevant to petroleum pipelines;
    - (b) are collectively representative of South African society as a whole; and
    - (c) demonstrate impartiality and objectivity.
  - (3) Before appointing members to the Authority, the Minister must by notice in the *Gazette*, call for nominations from members of the public.
  - (4) All members must—
    - (a) upon appointment, disclose if they are in the employ of or act as consultants to, or have any relationship with any person, firm, association or company engaged in the petroleum pipelines industry, or have any pecuniary interest in any such firm, association or company;
    - (b) upon appointment, disclose if their spouse, life partner, child, business partner or associate or employer is in the employ of or acts as a consultant to, or has any relationship with any person, firm, association or company engaged in the petroleum pipelines industry, or has any pecuniary interest in any such firm, association or company; and
    - (c) notify the Minister and the Authority when those interests change.
  - (5) A member must not at any time be present during the discussion of, or the making of a decision on, or take part in any, matter before the Authority in which that member or his or her spouse, life partner, child, business partner, associate or employer, other than the State, has a direct or indirect interest.
  - (6) If a member acquires or contemplates acquiring an interest contemplated in subsection (4)(a), such member must immediately, in writing, declare that fact to the Minister and the Authority.

#### CLAUSE 7

- 1. On page 5, in line 27, to omit “he or she” and to substitute “that member”.
- 2. On page 5, from line 37, to omit “or fails to perform a duty imposed on him or her by this Act”.

#### CLAUSE 9

- 1. On page 6, in line 16, after “Authority” to insert:  
may exercise all their powers under this Act and
- 2. On page 6, after line 16, to insert:  
(a) perform all their duties in terms of this Act;

### CLAUSE 10

1. On page 6, after line 28, to insert:
 

(c) within the powers of the Authority, as set out in this Act;
2. On page 6, after line 37, to insert:
 

(3) Any person adversely affected by a decision of the Authority may bring such decision under review by the High Court.

### CLAUSE 11

1. On page 6, from line 49, to omit subsection (5) and to substitute:
 

(5) Notwithstanding subsections (1) and (3), the Minister may determine that the Authority appoint or make use of persons employed or contracted by another licensing or regulatory authority falling under the Minister's jurisdiction.

### CLAUSE 12

1. On page 7, in line 2, to omit "mediation, arbitration" and to substitute "dispute resolution".
2. On page 7, in line 2, to omit "; and".
3. On page 7, from line 3, to omit paragraph (d).

### CLAUSE 13

1. On page 7, in line 6, to omit "comply" and to substitute "perform its functions in accordance".
2. On page 7, from line 14, to omit subsection (5).

### CLAUSE 14

Clause rejected.

### NEW CLAUSE

1. That the following be a new Clause:

#### **Reporting by Authority**

**14.** The annual report for public entities required in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), must be accompanied by information on the following matters:

- (a) Licences granted, amended or withdrawn;
- (b) regulations made and directives issued;
- (c) the envisaged strategies of the Authority;
- (d) the existing position and envisaged commercial developments with respect to the construction and operation of petroleum pipelines, loading facilities and storage facilities;

- (e) the position regarding labour, health, safety and environmental issues in the industry; and
- (f) such other matters as the Authority may consider necessary.

#### CLAUSE 16

1. On page 7, in line 50, after "must" to insert:  
     be the owner of the pipeline or facility in question and must
2. On page 8, in line 9, to omit "and price".
3. On page 8, in line 11, to omit "and".
4. On page 8, after line 11, to insert:  
     (g) the identity and particulars of the individual who will be responsible for the control, management and operation of the pipeline or facility in question; and

#### CLAUSE 20

1. On page 9, after line 7, to insert:  
     (b) to promote historically disadvantaged South Africans, in the manner prescribed;  
     (c) to provide for an appropriate supply of petroleum products to meet market requirements;
2. On page 9, from line 14, to omit paragraphs (d), (e), (f), (g) and (h) and to substitute:  
     (f) a petroleum pipeline may be licensed for either crude oil or petroleum products, or both, as long as sufficient pipeline capacity is available for crude oil to enable the uninterrupted operation of the crude oil refinery located at Sasolburg, to operate at its normal operating capacity at the commencement of this Act and for so long as that refinery continues as a going concern;  
     (g) shippers of petroleum must have access to petroleum pipelines and a pipeline's capacity must be shared among all users and prospective users thereof in proportion to their needs and within the commercially reasonable and operational constraints of the pipeline, subject to paragraph (f) and an appropriate payment to reserve the required capacity as a condition of service;
3. On page 9, in line 43, to omit "(i)" and to substitute "(h)".
4. On page 9, from line 49, to omit paragraph (l) and to substitute:  
     (l) third parties must have access to loading facilities with the capacity being shared among all users and prospective users in proportion to their needs, subject to an appropriate payment to reserve the required capacity as a condition of service;
5. On page 9, in line 54, to omit "(m)" and to substitute "(l)".
6. On page 9, in line 58, after "facilities" to insert:  
     : Provided that an applicant for a storage facility licence or an amendment of such licence may elect to give users access to the facility on the basis that the capacity is shared among all users in proportion to their needs

7. On page 10, in line 2, to omit “(p)” and to substitute “(o)”.
8. On page 10, in line 17, to omit “and”.
9. On page 10, after line 17, to insert:
  - (y) licensees must—
    - (i) submit to the Authority annually an emergency plan for implementation in the event of system failures, accidents and other emergencies;
    - (ii) train the appropriate operating and maintenance employees with regard to the applicable portions of the plan; and
    - (iii) establish liaison with the appropriate emergency response officials with respect to the plan;
  - (z) petroleum pipeline licensees must have a plan for reviewing changes in conditions affecting the integrity and safety of their pipelines, including periodic patrolling and reporting of construction activities and such changes of conditions;
  - (aa) licensees must establish and maintain liaison with local authorities that issue permissions for excavations by third parties that could damage the licensees pipelines;
  - (bb) licence conditions may be temporarily changed by the Authority in an emergency and, where possible, in consultation with the licensee; and

#### CLAUSE 21

1. On page 10, in line 32, to omit “, prices”.
2. On page 10, in line 33, after “grounds” to insert “approved by the Authority”.

#### CLAUSE 24

1. On page 11, from line 8, to omit subsection (2) and to substitute:
 

(2) Licensees must give the Authority notice in writing, at least 12 months or such shorter period as the Authority may approve in advance, of their intention to cease their activities.

#### CLAUSE 25

1. On page 11, from line 21, to omit subsection (3).

#### CLAUSE 26

1. On page 11, in line 30, to omit “, including but not limited to, the” and to substitute “such as”.

#### CLAUSE 27

1. On page 11, in line 37, to omit “a guarantee” and to substitute “financial security”.
2. On page 11, in line 38, after “any” to insert “licence”.

### CLAUSE 28

1. On page 11, in line 43, after "pipeline" to insert:  

and approve the tariffs for storage facilities and loading facilities
2. On page 11, from line 45, to omit paragraph (a) and to substitute:
  - (a) must be—
    - (i) based on a systematic methodology applicable on a consistent and comparable basis;
    - (ii) fair;
    - (iii) non-discriminatory;
    - (iv) simple and transparent;
    - (v) predictable and stable;
    - (vi) such as to promote access to affordable petroleum products;
3. On page 11, after line 49, to insert:
  - (3) The tariffs set or approved by the Authority must enable the licensee to—
    - (a) recover the investment;
    - (b) operate and maintain the system; and
    - (c) make a profit commensurate with the risk.
  - (4) The Authority must monitor the application of tariffs and take appropriate action when necessary to ensure that they are applied in a non-discriminatory manner and licensees must provide the information required by the Authority in this regard.
4. On page 11, in line 52, after "if" to insert "set or".
5. On page 12, from line 1, to omit " , or if the new proposed tariff is not approved".
6. On page 12, after line 2, to omit subsection (4) and to substitute:
  - (6) A licensee may not charge a tariff for the licensed activity in question other than that set or approved by the Authority.

### CLAUSE 31

1. On page 12, in line 37, to omit "and".
2. On page 12, in line 39, after "facilities" to insert "; and".
3. On page 12, after line 39, to insert:
  - (c) failure to abide by tariffs set or approved by the Authority.

### CLAUSE 33

1. On page 13, in line 7, to omit "may" and to substitute "must as appropriate".
2. On page 13, from line 9, to omit paragraph (b) and to substitute:
  - (b) the rehabilitation of land used in connection with a licensed activity, including the provision of financial security for rehabilitation purposes and the composition and amount of such security;



3. On page 13, from line 17, to omit paragraph (f).
4. On page 13, in line 19, to omit "and".
5. On page 13, after line 19, to insert:  

(g) liaison between licensees and local authorities as contemplated in section 20(1)(x) and (z); and
6. On page 13, in line 28, before "procedures" to insert "public notification of, and the".

#### CLAUSE 35

1. On page 13, in line 52, to omit "or operating".