

REPUBLIC OF SOUTH AFRICA

FORESTRY LAWS AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 27877 of 5 August 2005)
(The English text is the official text of the Bill)*

(MINISTER OF WATER AFFAIRS AND FORESTRY)

[B 24—2005]

ISBN 0 621 35815 0

No. of copies printed 1 800

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 National Forests Act, 1998, so as to delete certain words, phrases or expressions for clarity; to allow for an exemption for the use and handling of protected trees and their products; to authorise the Minister to establish a trust in respect of State forests under certain circumstances; to enable the Minister to pay lease money in respect of such State forests into a trust account; to provide for such money to be paid to certain beneficiaries; to extend the Minister's regulatory powers; and to provide for further criminal sanctions in respect of certain activities in forests; to amend the National Veld and Forest Fire Act, 1998, so as to provide for a fire danger rating which is more dangerous than "high"; to reduce the number of television channels, radio stations and newspapers on or in which the Minister must broadcast or publish the fire danger; and to extend the Minister's regulatory powers; to amend the Wattle Bark Industry Act, 1960, so as to effect deregulation of the wattle bark industry by the repeal of certain provisions; and to provide for matters connected therewith.

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

Amendment of section 7 of Act 84 of 1998

1. Section 7 of the National Forests Act, 1998 (Act No. 84 of 1998), is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5

“(a) cut, disturb, damage or destroy any indigenous[, **living**] tree in a natural forest; or”.

Amendment of section 8 of Act 84 of 1998

2. Section 8 of the National Forests Act, 1998, is hereby amended by the substitution 10 for subsection (1) of the following subsection:

“(1) The Minister may—

- (a) declare a State forest or a part of it;
- (b) purchase or expropriate land under section 49 and declare it; or
- (c) at the request or with the consent of the registered owner of land outside a 15 State forest, declare it,

as a [**specially**] protected area in one of the following categories:

- (i) A forest nature reserve;
- (ii) a forest wilderness area; or

- (iii) any other type of protected area which is recognised in international law or practice.”.

Amendment of section 15 of Act 84 of 1998

3. Section 15 of the National Forests Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) No person may—
- (a) cut, disturb, damage or destroy any protected tree; or
 - (b) possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any protected tree, or any forest product derived from a protected tree,
- except—
- (i) under a licence granted by the Minister; or
 - (ii) in terms of an exemption from the provisions of this subsection published by the Minister in the *Gazette* on the advice of the Council.”.

Amendment of section 17 of Act 84 of 1998

4. Section 17 of the National Forests Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) If the Minister is of the opinion that urgent steps are required to—
- (a) prevent the deforestation or further deforestation of; or
 - (b) rehabilitate,
- a natural forest or a woodland [**protected under section 12(1)**] which is threatened with deforestation, or is being or has been deforested, he or she may declare it a controlled forest area.”.

Insertion of section 27A in Act 84 of 1998

5. The following section is hereby inserted after section 27 of the National Forests Act, 1998:

“Trusts

27A. (1) Notwithstanding the provisions of any other law, the Minister may, by notice in the *Gazette*, establish a trust in respect of a State forest or part of a State forest including a State forest or part of a State forest on land held in trust in terms of the KwaZulu Ingonyama Trust Act, 1994 (KwaZulu Act No. 3 of 1994), where—

- (a) (i) a claim for restitution has been published in terms of section 11(1) of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), in respect of a State forest or part of a State forest;
- (ii) the owner of the land has been notified of the claim in terms of section 11(6)(a) of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);
- (iii) the right to restitution has not been finally determined; and
- (iv) that land is leased to a third party by the Minister;
- (b) (i) a State forest or part of a State forest is occupied by a community claiming rights in that land;
- (ii) the Minister is contemplating the granting of rights in that land to that community; and
- (iii) that land is leased to a third party by the Minister; or
- (c) (i) a State forest or part of a State forest is leased to a third party by the Minister; and
- (ii) it is necessary for the Minister to receive money in terms of the lease on behalf of successful claimants of various rights in respect of the land or forest.

(2) The Minister may direct that any money due in terms of a lease contemplated in subsection (1) be paid to the trust established in terms of that subsection.

(3) The objects of the trust are—

- (a) to receive payment of the money contemplated in subsection (2);

- (b) to invest such money on behalf of the beneficiaries as part of the trust property;
 - (c) to pay such money or part of that money together with any yield to the beneficiaries when they receive rights in the State forest or part of the State forest involved;
 - (d) to pay such money or part of that money together with any yield to the State, or the Ingonyama Trust where applicable, when it is clear that the beneficiaries will not acquire rights in the State forest or part of the State forest; and
 - (e) to pay such money or part of that money periodically to successful claimants contemplated in subsection (1)(c)(ii).
- (4) The beneficiaries of the trust are any claimants contemplated in subsection (1)(a) whose claims succeed, any community contemplated in subsection (1)(b) if it is granted rights by the Minister and any successful claimants contemplated in subsection (1)(c)(ii).
- (5) The Minister may—
- (a) effect or terminate the appointment of any or all of the trustees on just cause shown;
 - (b) create such powers, rights, obligations and exemptions for the trustees as may be necessary to achieve the objects of the trust;
 - (c) decide on the contents, variation and termination of the trust; and
 - (d) temporarily perform any of the functions of the trustees where the appointment of all the trustees has been terminated.”.

Amendment of section 53 of Act 84 of 1998

6. Section 53 of the National Forests Act, 1998, is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (f) of the following paragraph:
 - “(f) the management of State forests in general or a particular State forest or part of it, including—
 - (i) mensuration of forest produce or forest products for the purpose of sale or otherwise; and
 - (ii) access to State forests for recreation;”.
 - (b) by the substitution in subsection (2) for paragraph (j) of the following paragraph:
 - “(j) generally, any other ancillary or incidental administrative or procedural matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.”; and
 - (c) by the substitution for subsection (5) of the following subsection:
 - “(5) The generality of the powers conferred by subsection (2)(j) is not limited by the provisions of the preceding paragraphs.”.

Amendment of section 62 of Act 84 of 1998

7. Section 62 of the National Forests Act, 1998, is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:
- “(c) the prohibition on—
 - (i) the cutting, disturbance, damage or destruction of temporarily protected trees or groups of trees referred to in section 14(2) or protected trees referred to in section 15(1)(a); or
 - (ii) the possession, collection, removal, transport, export, purchase or sale of temporarily protected trees or groups of trees referred to in section 14(2) or protected trees referred to in section 15(1)(b), or any forest product derived from a temporarily protected tree, group of trees or protected tree, [referred to in section 15(1)(b)],”.

Amendment of section 63 of Act 84 of 1998

8. Section 63 of the National Forests Act, 1998, is hereby amended by the insertion in subsection (2) after paragraph (a) of the following paragraph:

“(aA) cuts, disturbs, damages, destroys, removes or receives forest produce other than seven-week ferns (*Rumohra adiantiforme*) from any forest is guilty of a third category offence;”.

Amendment of section 9 of Act 101 of 1998

9. Section 9 of the National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998), is hereby amended by the substitution in subsection (4) for paragraph (d)(ii) of the following subparagraph:

“(ii) when the fire danger is rated as high or extreme.”.

Amendment of section 10 of Act 101 of 1998

10. Section 10 of the National Veld and Forest Fire Act, 1998, is hereby amended—

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

“(b) when the fire danger is rated as high or extreme in any region, publish a warning at the earliest possible opportunity in all the main languages used in that region—

(i) on [**three**] at least one television [**channels**] channel and [**three**] at least one radio [**stations**] station broadcasting to that region; and

(ii) in [**two**] at least one [**newspapers**] newspaper circulating in that region; and”;

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

“(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 or extreme.”; and

(c) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) say that the fire danger is high or extreme.”.

Amendment of section 20 of Act 101 of 1998

11. Section 20 of the National Veld and Forest Fire Act, 1998, is hereby amended—

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

“(f) generally, any other ancillary or incidental administrative or procedural matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.”; and

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

“(3) The generality of the powers conferred by subsection (1)(f) is not limited by the provisions of the preceding paragraphs.”.

Amendment of Act 23 of 1960

12. Section 2 of the Wattle Bark Industry Act, 1960 (Act No. 23 of 1960), is hereby repealed.

Short title

13. This Act is called the Forestry Laws Amendment Act, 2005.

MEMORANDUM ON THE OBJECTS OF THE FORESTRY LAWS AMENDMENT BILL, 2005

1. Amendment of the National Forests Act, 1998

- 1.1 Section 7(1)(a) of the National Forests Act, 1998 (Act No. 84 of 1998), prohibits the cutting, damaging, disturbing, or destruction of any indigenous *living* tree in natural forests. The Bill proposes to delete the word “living” as it causes practical problems. It is difficult to prove whether wood originates from a dead or a living tree.
- 1.2 The Bill proposes to delete the word “specially” in section 8(1). The term “specially protected area” in that section implies that it is a category different from a “protected area” which is not the intention of the Act. Hence the need to use the term “protected area” consistently.
- 1.3 The Bill is intended to extend the powers of the Minister in terms of section 15(1) not only to license certain acts in respect of protected trees but also to authorise such acts by means of exemption on advice of the National Forests Advisory Council. The subsection at the moment only provides for licensing and therefore does not accommodate cases where produce and products from protected trees are frequently and beneficially used by communities, where licensing would be inappropriate. This amendment will also bring this section in line with the exemption in respect of indigenous trees provided for in section 7(1).
- 1.4 Section 17(2) of the Act currently limits the Minister’s powers to prevent deforestation of and to rehabilitate a natural forest or woodland, to the forests or woodlands protected under section 12(1). The Bill seeks to amend section 17(2) so as to extend the Minister’s powers to prevent deforestation of and to rehabilitate a natural forest or woodland beyond those protected under section 12(1).
- 1.5 The Bill seeks to insert a new section 27A that will enable the Minister to establish a trust that has become necessary for the following reasons:
 - 1.5.1 A number of claimed rights in respect of State forests will still take some time to be resolved.
 - 1.5.2 At the same time the State is leasing out a considerable area of State forest land.
 - 1.5.3 As lease moneys may eventually have to be paid over to successful claimants of rights in State forests, it has become necessary for the State to keep such moneys in a trust account. A need also exists for the State to continue to receive and pay out lease moneys on behalf of some successful claimants by means of a trust.
 - 1.5.4 Where claims are unsuccessful, lease moneys kept in trust are to be paid over to the State. Where State forest land belongs to the Ingonyama Trust, lease moneys kept for claimants whose claims fail will go to the Ingonyama Trust.
 - 1.5.5 The Bill seeks to authorise the Minister to act as founder of the trust. The Minister may also appoint and dismiss the trustees and create such powers, rights, obligations and exemptions for the trustees as may be necessary to achieve the objects of the trust. The Minister may also decide on the contents, variation and termination of the trust. The Minister may also terminate the appointment of all the trustees and perform their functions herself.
- 1.6 Section 53 is sought to be amended so as to extend the regulation-making powers of the Minister in the following manner:

1.6.1 The Minister is given regulating powers for mensuration;

1.6.2 access for recreation is added;

1.6.3 a general regulation-making power is added;

1.6.4 the existing formulation of section 53(5) is improved.

1.7 Certain acts in respect of temporarily protected trees are sought to be visited with the same criminal sanction as those in respect of protected trees (section 62).

1.8 Certain acts that constitute offences in respect of seven-week ferns are sought to be made offences in respect of all forest produce (section 63).

2. Amendment of the National Veld and Forest Fire Act, 1998

2.1 In terms of Chapter 3 of the National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998), the Minister must determine a fire danger rating system for the whole country. Presently the Act provides for a highest fire danger rating of “high”. In drawing up the fire danger rating system it was found that an additional highest category of “extreme” is essential. The Bill therefore seeks to include a fire danger rating of “extreme” in the relevant provisions.

2.2 Currently the Act requires the Minister to broadcast a fire danger rating of “high” (or “extreme” as envisaged by the Bill) on three television and three radio stations. It must also be published in two newspapers. Section 9(3) requires the Minister to divide the country into separate fire danger rating regions. It has been found that there are regions which are not served by three television and radio channels and where two different newspapers are not circulated. The Bill therefore seeks to reduce the number of radio and television channels and the newspapers required to carry the danger warnings.

3. Amendment of the Wattle Bark Industry Act, 1960

A large part of the wattle bark industry is presently regulated by the Wattle Bark Industry Act, 1960 (Act No. 23 of 1960). The Bill seeks to repeal section 2 of the Act, thereby deregulating the relationship between growers and manufacturers. This is in line with the national policy of deregulating the wattle bark industry.

4 DEPARTMENTS/BODIES/PERSONS CONSULTED

The following departments and entities were consulted with regard to the Bill:

- Department of Agriculture
- South African Forestry Company
- Forestry South Africa
- Spoornet
- Fire Brigade Services
- Mimosa Parks Board
- Mpumalanga Parks Board

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Water Affairs and Forestry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 The State Law Advisers are of the opinion that it is 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 contains provisions pertaining to customary law or customs of traditional communities.