

REPUBLIC OF SOUTH AFRICA

MARKETING OF AGRICULTURAL PRODUCTS AMENDMENT BILL

*(As amended by the Select Committee on Land and Environmental Affairs
(National Council of Provinces)) (The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 26D—2001]

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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 Marketing of Agricultural Products Act, 1996, so as to provide anew for the procedure to be followed in the constitution of the National Agricultural Marketing Council and its committees; to alter certain procedures in respect of financial matters in order to bring the said Act into line with the Public Finance Management Act, 1999; to terminate the role of parliamentary committees in the administration of the first-mentioned Act; to make further provision for the manner in which levies are to be utilised; to provide for the auditing of levies; to provide for consultation by the Minister with the National Agricultural Marketing Council before prohibitions on the import or export of agricultural products are instituted; to make further provision for the liquidation of Boards established under the repealed Marketing Act, 1968; to make further provision regarding levies collected under the said Marketing Act; and to provide for matters connected therewith.

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

Amendment of section 4 of Act 47 of 1996

1. Section 4 of the Marketing of Agricultural Products Act, 1996 (hereinafter referred to as the “principal Act”), is hereby amended— 5
- (a) by the substitution for subsections (4) and (5) of the following subsections:
- “(4) Whenever it is necessary to appoint a member of the Council—
- (a) the Minister shall, by notice in the *Gazette* as well as **[in the national news]** other appropriate media, [including at least two newspapers circulating throughout the Republic] and by invitation to the parliamentary committees, call for the nomination of persons who comply with the criteria referred to in subsection (2); 10
- (b) the Minister shall establish a selection committee, consisting of not more than seven members appointed by the Minister **[of whom two shall be the chairpersons of the parliamentary committees or their delegates];** 15
- (c) the Minister shall refer all nominations received to such selection committee;
- (d) the selection committee shall compile a short-list of candidates in accordance with the provisions of subsections (2) and (3) **[and shall submit the short-list to the Secretary to Parliament for submission to the parliamentary committees];** 20

- (e) the **[parliamentary committees]** selection committee shall, within 30 days after **[they have placed the consideration of the short-list on their agendas, jointly]** the signing of the letters of appointment of its members, recommend to the Minister a list of not less than three candidates for each of the categories contemplated in subsection (2); 5
- (f) the Minister shall appoint such number of members as is required from the list of candidates recommended by the **[parliamentary committees]** selection committee; and
- (g) within 30 days after making any appointment in terms of paragraph (f), the Minister shall inform the parliamentary committees in writing of the appointment made. 10
- (5) Until the **[parliamentary committees recommend]** selection committee recommends candidates as contemplated in subsection (4)(e), the Minister may temporarily reappoint Council members whose terms of office have expired.”; and 15
- (b) by the addition of the following subsections:
- “(13) A person may not be nominated or appointed as a member of the Council if such person—
- (a) is not a South African citizen or permanently resident in the Republic; 20
- (b) is an unrehabilitated insolvent in respect of whom the trustee of the insolvent estate has not certified that the insolvent is a fit and proper person to serve as a member of the Council;
- (c) has failed or is unable to comply in full with a judgement or order, including an order as to costs, given against such person by a court of law in civil proceedings; 25
- (d) has been convicted of an offence involving an element of dishonesty or has been sentenced for any other offence committed on or after 27 April 1994, to a period of imprisonment without the option of a fine; 30
- (e) is of unsound mind; or
- (f) has contravened section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), and it has been so determined by an equality court. 35
- (14) A member of the Council shall vacate his or her office if that member—
- (a) is declared insolvent or surrenders his or her estate voluntarily;
- (b) is convicted of an offence and sentenced to a period of imprisonment without the option of a fine; 40
- (c) resigns as a member;
- (d) is nominated as a candidate for election as a member of Parliament, a Provincial House of Traditional Leaders, the National House of Traditional Leaders, a provincial legislature or the council or other governing body of a local government body or is appointed as an official of a political party and whose functions as such are incompatible with the functions of a member; 45
- (e) is removed from office under subsection (15); or
- (f) has contravened section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), and it has been so determined by an equality court. 50
- (15) The Minister may at any time remove a member of the Council from office if such member is incompetent to fulfil his or her duties or is guilty of misconduct.”.

Amendment of section 7 of Act 47 of 1996

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2. Section 7 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Council may appoint any person it deems suitable as a member of such a committee.”.

Amendment of section 8A of Act 47 of 1996, as inserted by section 4 of Act 59 of 1997

3. Section 8A of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (3) of the following paragraphs:

- “(a) shall in each financial year, at the time determined by the Minister, submit a budget of its estimated income and expenditure during the following financial year for approval by the Minister **[obtained with the concurrence of the Minister of Finance]**;
- (b) may in any financial year, at any time submit supplementary budgetary inputs of its estimated expenditure for that financial year, to the Minister for his or her approval **[in consultation with the Minister of Finance]**.”.

Amendment of section 9 of Act 47 of 1996, as amended by section 5 of Act 59 of 1997

4. Section 9 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

- “(d) may direct any institution or body of persons designated for the purpose of the implementation or administration of a statutory measure in terms of section 14, to furnish the Council with such information pertaining to a statutory measure as the Council or the Minister **[or the parliamentary committees]** may require;”.

Amendment of section 10 of Act 47 of 1996

5. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A directly affected group **[or the parliamentary committees]** may in writing request the Minister to establish, continue, amend or repeal one or more statutory measures.”.

Amendment of section 13 of Act 47 of 1996

6. Section 13 of the principal Act is hereby amended by the substitution for the words preceding the proviso to subsection (1) of the following words:

- “The Minister may, after consideration of the Council’s recommendations and subject to the provisions of section 15, establish, amend or revoke a statutory measure by notice in the *Gazette*, refer the matter back to the Council for further investigation or decline to take any action:”.

Amendment of section 15 of Act 47 of 1996, as amended by section 6 of Act 59 of 1997

7. Section 15 of the principal Act is hereby amended by—

- (a) the deletion of subsections (1), (2) and (3); and
- (b) the addition of the following subsections:
 - “(5) Notwithstanding the provisions of subsection (4)—
 - (a) any levies collected, administered or kept by any person or body under this Act shall not form part of the assets of that person or body, and any levies remaining in the possession of or under the control of any person or body after the period for which such levies were approved, shall be utilised in a manner determined by the Minister; and
 - (b) all levies shall in a manner and to the extent satisfactory to the Auditor-General be accounted for separately from any other funds or assets under the control or in possession of such person or body and be audited on an annual basis by the Auditor-General.
 - (6) The provisions of subsection (5) shall not be construed as affecting any function of the Auditor-General in terms of section 188 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).”.

Substitution of section 22 of Act 47 of 1996

8. The following section is hereby substituted for section 22 of the principal Act:

“Prohibition of import and export of agricultural product

22. (1) In extraordinary circumstances and bearing in mind the Republic’s international obligations, the Minister may, after consultation with the [parliamentary committees] Council, by notice in the *Gazette* prohibit the importation into the Republic of any agricultural product or class thereof, or the export of any agricultural product or class thereof from the Republic, or impose conditions, specified in such notice, with regard to any such importation or export. 5

(2) Before the Minister may impose a prohibition under subsection (1), the Council shall— 10

- (a) publish a notice setting out particulars of the proposed prohibition and an explanation in connection therewith in the *Gazette* and such magazines and newspapers as may be sufficient in order to bring the proposed prohibition to the attention of directly affected groups, and inviting such directly affected groups to lodge any objections or representations relating to the proposed prohibition within a specified time; 15
- (b) if necessary, appoint a committee in terms of section 7, which shall consider such objections or representations and advise the Council; 20
- (c) consider the objections and representations from, and level of support among, directly affected groups, and the advice of the committee, if applicable; and 25
- (d) report on its findings and make a recommendation to the Minister within 60 days of the publication of the notice contemplated in paragraph (a) or such longer period as may be approved by the Minister.”.

Amendment of section 27 of Act 47 of 1996, as amended by section 12 of Act 59 of 1997

9. Section 27 of the principal Act is hereby amended—

- (a) by the deletion of subsections (2) and (3); and 30
- (b) by the addition of the following subsection:

“(4) (a) Levies that were collected or used under sections 46A and 84A of the Marketing Act, 1968 (Act No. 59 of 1968), after the repeal of that Act and before 28 February 1999, shall be deemed to have been collected or used under that Act as if that Act still applied. 35

(b) The Minister may, by notice in the *Gazette*, on the advice of the Council, authorise the transfer of funds originating from the collection of levies imposed under sections 46A and 84A of the Marketing Act, 1968, to a trust or trusts whose objectives are not inconsistent with the objectives mentioned in section 2.”. 40

Short title

10. This Act is called the Marketing of Agricultural Products Amendment Act, 2001, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE MARKETING OF AGRICULTURAL PRODUCTS AMENDMENT BILL, 2001

1.1 The Bill seeks to amend the Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996) (“the Act”). The Act authorises the establishment of regulatory measures to intervene in the marketing of agricultural products, including measures for the introduction of levies on agricultural products, establishes a National Agricultural Marketing Council and prescribes a procedure to deregulate the system of agricultural control boards.

1.2 The Act at present prescribes a central decision-making role for the relevant parliamentary committees regarding matters such as the appointment of members to the National Agricultural Marketing Council (NAMC) and the approval of marketing interventions. This role causes problems in the administration of the Act as it confuses the roles of the legislature and the executive, which roles are clearly distinguished in the Constitution, and also causes lengthy delays. The Bill aims to streamline the process and to bring the Act into line with the Constitution.

1.3 The Bill proposes to simplify the process of calling for nominations for the appointment of the NAMC. It is proposed that an invitation for nominations be published in the *Gazette* and Departmental newsletters as well as in a general media statement. The Act at present requires that the NAMC shall, as far as reasonably possible, ensure that relevant affected groups are represented on committees appointed. The Bill proposes that committees should rather be composed in a manner that is suited to the task at hand.

1.4 Section 53 of the Public Finance Management Act, 1999, contains specific prescripts for the annual budgets of non-business Schedule 3 public entities. The NAMC is listed as such an entity and the Bill proposes to bring the Act into line with the Public Finance Management Act. Amendments to clarify the procedures that apply in the case of levies and that clearly state the public nature of and control over levies collected are also proposed.

1.5 The Bill proposes an amendment to provide for a lacuna in the Act regarding the disposal of levies that were collected under the repealed Marketing Act, 1968. The Bill proposes to validate the collection and utilisation of those levies before 28 February 1999.

2. PERSONS CONSULTED

The National Agricultural Marketing Council was consulted.

3. FINANCIAL IMPLICATIONS FOR STATE

There will be no increased expenditure caused by the Bill. The amendments would result in a reduction of the cost to appoint the members of the NAMC, especially with regard to the involvement of the relevant parliamentary committees.

4. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Agriculture are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution since it contains provisions to which the procedure set out in section 74 or 76 of the Constitution applies.

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