

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**NATIONAL ENVIRONMENTAL
MANAGEMENT:
BIODIVERSITY BILL**

[B 30B—2003]

*(As agreed to by the Portfolio Committee on Environmental Affairs and Tourism)
(National Assembly)*

[B 30C—2003]

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AMENDMENTS AGREED TO

NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY BILL [B 30B-2003]

CLAUSE 1

1. On page 6, after line 30, to insert:

“benefit”, in relation to bioprospecting involving indigenous biological resources, means any benefit, whether commercial or not, arising from bioprospecting involving such resources, and includes both monetary and non-monetary returns;

2. On page 6, from line 35, to omit the definition of “bioprospecting” and to substitute:

“bioprospecting”, in relation to indigenous biological resources, means any research on, or development or application of, indigenous biological resources for commercial or industrial exploitation, and includes—

- (a) the systematic search, collection or gathering of such resources or making extractions from such resources for purposes of such research, development or application;
- (b) the utilisation for purposes of such research or development of any information regarding any traditional uses of indigenous biological resources by indigenous communities; or
- (c) research on, or the application, development or modification of, any such traditional uses, for commercial or industrial exploitation;

3. On page 7, from line 16, to omit the definition of “derivative” and to substitute:

“derivative”, in relation to an animal, plant or other organism, means any part, tissue or extract, of an animal, plant or other organism, whether fresh, preserved or processed, and includes any chemical compound derived from such part, tissue or extract;

4. On page 7, from line 49, to omit the definition of “indigenous biological resource” and to substitute:

“indigenous biological resource” —

- (a) when used in relation to bioprospecting, means any indigenous biological resource as defined in section 80; or
- (b) when used in relation to any other matter, means any resource consisting of —
 - (i) any living or dead animal, plant or other organism of an indigenous species;
 - (ii) any derivative of such animal, plant or other organism; or
 - (iii) any genetic material of such animal, plant or other organism;

5. On page 9, after line 46, to insert:

“stakeholder” means—

- (a) a person, an organ of state or a community contemplated in section 82(1)(a); or
- (b) an indigenous community contemplated in section 82(1)(b);

6. On page 9, from line 49, to omit “45(2), 51(2), 52(1), 54, 55(1), 56(2), 57, 65(1), 66(1), 67, 69(1), 71, 78(2) or 97(1)” and to substitute:
- 46(2), 52(1), 53(1), 55, 56(1), 57(2), 58, 66(1), 67(1), 68, 70(1), 72, 86(1) or 100(1)

CLAUSE 2

1. On page 10, from line 16, to omit subparagraph (iii) and to substitute:
- (iii) the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources;

CLAUSE 9

1. On page 11, in line 30, to omit “and”.
2. On page 11, in line 31, at the end of paragraph (b), to insert “and”.
3. On page 11, after line 31, to add:
(c) amend any notice issued in terms of paragraph (a) or (b).
4. On page 11, from line 32, to omit subsection (2) and to substitute:
- (2) (a) Before publishing a notice in terms of subsection (1), the Minister must follow a consultative process in accordance with sections 99 and 100.
(b) A consultative process referred to in paragraph (a) need not apply to a non-substantial change to the notice.

CLAUSE 11

1. On page 12, after line 5, to insert:
- (b) must monitor and report regularly to the Minister on the impacts of any genetically modified organism that has been released into the environment, including the impact on non-target organisms and ecological processes, indigenous biological resources and the biological diversity of species used for agriculture;
2. On page 12, from line 15, to omit paragraph (g) and to substitute:
- (h) must establish, maintain, protect and preserve collections of plants in national botanical gardens and in herbaria;
3. On page 12, after line 17, to insert:
- (i) may establish, maintain, protect and preserve collections of animals and micro-organisms in appropriate enclosures;

NEW CLAUSE

1. That the following be a new Clause:

Biodiversity management agreements

44. The Minister may enter into a biodiversity management agreement with the person, organisation or organ of state identified in terms of section 43(2), or any other suitable person, organisation or organ of state, regarding the implementation of a biodiversity management plan, or any aspect of it.

CLAUSE 44

1. On page 21, in line 4, to omit “and”.
2. On page 21, after line 4, to insert:
 - (b) provide for the responsible person, organisation or organ of state to monitor and report on progress with implementation of the plan; and

CLAUSE 46

1. On page 21, in line 33, to omit “substantially”.

CLAUSE 50

1. On page 22, in line 48, to omit “national”.
2. On page 22, in line 49, to omit “national”.

CLAUSE 51

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Ecosystems that are threatened or in need of protection

52. (1) (a) The Minister may, by notice in the *Gazette*, publish a national list of ecosystems that are threatened and in need of protection.

(b) An MEC for environmental affairs in a province may, by notice in the *Gazette*, publish a provincial list of ecosystems in the province that are threatened and in need of protection.

(2) The following categories of ecosystems may be listed in terms of subsection (1):

- (a) critically endangered ecosystems, being ecosystems that have undergone severe degradation of ecological structure, function or composition as a result of human intervention and are subject to an extremely high risk of irreversible transformation;

- (b) endangered ecosystems, being ecosystems that have undergone degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems;
- (c) vulnerable ecosystems, being ecosystems that have a high risk of undergoing significant degradation of ecological structure, function or composition as a result of human intervention, although they are not critically endangered ecosystems or endangered ecosystems; and
- (d) protected ecosystems, being ecosystems that are of high conservation value or of high national or provincial importance, although they are not listed in terms of paragraphs (a), (b) or (c).

(3) A list referred to in subsection (1) must describe in sufficient detail the location of each ecosystem on the list.

(4) The Minister and the MEC for environmental affairs in a relevant province, respectively, must at least every five years review any national or provincial list published by the Minister or MEC in terms of subsection (1).

(5) An MEC may publish or amend a provincial list only with the concurrence of the Minister.

CLAUSE 55

1. On page 24, in line 6, after “or” to insert “an”.

CLAUSE 62

1. On page 25, in line 55, to omit “substantially”.

CHAPTER 5

1. On page 26, in line 2, to omit the heading and to substitute:

SPECIES AND ORGANISMS POSING POTENTIAL THREATS TO BIODIVERSITY

CLAUSE 63

1. On page 26, from line 4, to omit subsection (1) and to substitute:
 - (1) The purpose of this Chapter is—
 - (a) to prevent the unauthorized introduction and spread of alien species and invasive species to ecosystems and habitats where they do not naturally occur;
 - (b) to manage and control alien species and invasive species to prevent or minimize harm to the environment and to biodiversity in particular;
 - (c) to eradicate alien species and invasive species from ecosystems and habitats where they may harm such ecosystems or habitats; and
 - (d) to ensure that environmental assessments for purposes of permits in terms of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), are conducted in appropriate cases in accordance with Chapter 5 of the National Environmental Management Act.

CLAUSE 65

1. On page 26, after line 26, to add:
 - (3) The Minister must regularly review a notice published in terms of subsection (1).

CLAUSE 69

1. On page 27, from line 9, to omit subsection (1) and to substitute:
 - (1) (a) The Minister must within 24 months of the date on which this section takes effect, by notice in the *Gazette*, publish a national list of invasive species in respect of which this Chapter must be applied nationally.
 - (b) The MEC for environmental affairs in a province may, by notice in the *Gazette*, publish a provincial list of invasive species in respect of which this Chapter must be applied in the province.
2. On page 27, from line 12, to omit subsection (2) and to substitute:
 - (2) The Minister or the MEC for environmental affairs in a relevant province must regularly review the national list or any provincial list published in terms of subsection (1), as may be appropriate.

CLAUSE 71

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of notices

72. The Minister or the MEC for environmental affairs in any relevant province may, by notice in the *Gazette*, amend or repeal any notice published by him or her in terms of section 70 (1).

CLAUSE 72

1. On page 27, from line 31, to omit paragraph (a).

NEW PART

1. On page 28, after line 55, to insert the following new Part:

Part 3*Other threats***Genetically modified organisms**

78. (1) If the Minister has reason to believe that the release of a genetically modified organism into the environment under a permit applied for in terms of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), may pose a threat to any indigenous species or the environment, no permit for such release may be issued in terms of that Act unless an environmental assessment has been conducted in accordance with Chapter 5 of the National Environmental Management Act as if such release were a listed activity as contemplated in that Chapter.

(2) The Minister must convey his or her belief referred to in subsection (1) to the authority issuing permits in terms of the Genetically Modified Organisms Act, 1997, before the application for the relevant permit is decided.

(3) For the purposes of subsection (1) “release” means trial release or general release as defined in section 1 of the Genetically Modified Organisms Act, 1997.

CLAUSE 77

Clause rejected.

NEW CLAUSE

That the following be a new Clause:

Consultation

79. (1) Before publishing a notice in terms of section 66(1), 67(1) or 70(1), or amending or repealing such a notice in terms of section 68 or 72, the Minister must follow a consultative process in accordance with sections 99 and 100.

(2) Before publishing a notice in terms of section 70(1), or amending or repealing such a notice in terms of section 72, the MEC for environmental affairs in the relevant province must follow a consultative process in accordance with sections 99 and 100.

CHAPTER 6

Chapter rejected.

NEW CHAPTER

1. That the following be a new Chapter:

CHAPTER 6

BIOPROSPECTING, ACCESS AND BENEFIT-SHARING

Purpose and application of Chapter

- 80.** (1) The purpose of this Chapter is—
- (a) to regulate bioprospecting involving indigenous biological resources;
 - (b) to regulate the export from the Republic of indigenous biological resources for the purpose of bioprospecting or any other kind of research; and
 - (c) to provide for a fair and equitable sharing by stakeholders in benefits arising from bioprospecting involving indigenous biological resources.
- (2) In this Chapter—
- “indigenous biological resources”—
- (a) includes—
 - (i) any indigenous biological resources as defined in paragraph (b) of the definition of “indigenous biological resource” in section 1, whether gathered from the wild or accessed from any other source, including any animals, plants or other organisms of an indigenous species cultivated, bred or kept in captivity or cultivated or altered in any way by means of biotechnology;
 - (ii) any cultivar, variety, strain, derivative, hybrid or fertile version of any indigenous species or of any animals, plants or other organisms referred to in subparagraph (i); and
 - (iii) any exotic animals, plants or other organisms, whether gathered from the wild or accessed from any other source which, through the use of biotechnology, have been altered with any genetic material or chemical compound found in any indigenous species or any animals, plants or other organisms referred to in subparagraph (i) or (ii); but
 - (b) excludes —
 - (i) genetic material of human origin;
 - (ii) any exotic animals, plants or other organisms, other than exotic animals, plants or other organisms referred to in paragraph (a) (iii); and
 - (iii) indigenous biological resources listed in terms of the International Treaty on Plant Genetic Resources for Food and Agriculture.

Permits

- 81.** (1) No person may, without a permit issued in terms of Chapter 7—
- (a) engage in bioprospecting involving any indigenous biological resources; or
 - (b) export from the Republic any indigenous biological resources for the purpose of bioprospecting or any other kind of research.
- (2) Before any application for a permit referred to in subsection (1) may be considered by a relevant issuing authority, the applicant must at the request of the issuing authority, disclose to the issuing authority all information concerning the proposed bioprospecting and the indigenous biological resources to be used for such bioprospecting that is relevant for a proper consideration of the application.

Certain interests to be protected before permits are issued

82. (1) Before a permit referred to in section 81(1)(a) or (b) is issued, the issuing authority considering the application for the permit must in accordance with this section protect any interests any of the following stakeholders may have in the proposed bioprospecting project:

- (a) A person, including any organ of state or community, providing or giving access to the indigenous biological resources to which the application relates; and
- (b) an indigenous community—
 - (i) whose traditional uses of the indigenous biological resources to which the application relates have initiated or will contribute to or form part of the proposed bioprospecting; or
 - (ii) whose knowledge of or discoveries about the indigenous biological resources to which the application relates are to be used for the proposed bioprospecting.

(2) If a stakeholder has an interest as set out in subsection (1)(a), an issuing authority may issue a permit only if —

- (a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder for the provision of or access to such resources;
- (b) the applicant and the stakeholder have entered into —
 - (i) a material transfer agreement that regulates the provision of or access to such resources; and
 - (ii) a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant bioprospecting; and
- (c) the Minister has in terms of sections 83(2) and 84(2) approved such benefit-sharing and material transfer agreements.

(3) If a stakeholder has an interest as set out in subsection (1)(b), an issuing authority may issue a permit only if—

- (a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder to use any of the stakeholder's knowledge of or discoveries about the indigenous biological resources for the proposed bioprospecting;
- (b) the applicant and the stakeholder have entered into a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the relevant bioprospecting; and
- (c) the Minister has in terms of section 83(2) approved such benefit-sharing agreement.

(4) An issuing authority —

- (a) may engage the applicant and stakeholder on the terms and conditions of a benefit-sharing or material transfer agreement;
- (b) may facilitate negotiations between the applicant and stakeholder and ensure that those negotiations are conducted on an equal footing;
- (c) on request by the Minister, must ensure that any benefit-sharing arrangement agreed upon between the applicant and stakeholder is fair and equitable;
- (d) may make recommendations to the Minister; and
- (e) must perform any other functions that may be prescribed.

Benefit-sharing agreements

- 83.** (1) A benefit-sharing agreement must—
- (a) be in a prescribed format;
 - (b) specify—
 - (i) the type of indigenous biological resources to which the relevant bioprospecting relates;
 - (ii) the area or source from which the indigenous biological resources are to be collected or obtained;
 - (iii) the quantity of indigenous biological resources that is to be collected or obtained;
 - (iv) any traditional uses of the indigenous biological resources by an indigenous community; and
 - (v) the present potential uses of the indigenous biological resources;
 - (c) name the parties to the benefit-sharing agreement;
 - (d) set out the manner in which and the extent to which the indigenous biological resources are to be utilised or exploited for purposes of such bioprospecting;
 - (e) set out the manner in which and the extent to which the stakeholder will share in any benefits that may arise from such bioprospecting;
 - (f) provide for a regular review of the agreement by the parties as the bioprospecting progresses; and
 - (g) comply with any other matters that may be prescribed.
- (2) A benefit-sharing agreement or any amendment to such an agreement—
- (a) must be submitted to the Minister for approval; and
 - (b) does not take effect unless approved by the Minister.

Material transfer agreements

- 84.** (1) A material transfer agreement must—
- (a) be in a prescribed format;
 - (b) specify—
 - (i) particulars of the provider, and the exporter or recipient, of the indigenous biological resources;
 - (ii) the type of indigenous biological resources to be provided or to be given access to;
 - (iii) the area or source from which the indigenous biological resources are to be collected, obtained or provided;
 - (iv) the quantity of indigenous biological resources that is to be provided, collected, obtained or exported;
 - (v) the purpose for which such indigenous biological resources are to be exported;
 - (vi) the present potential uses of the indigenous biological resources; and
 - (vii) conditions under which the recipient may provide any such indigenous biological resources, or their progeny, to a third party.
- (2) A material transfer agreement or any amendment to such an agreement—
- (a) must be submitted to the Minister for approval; and
 - (b) does not take effect unless approved by the Minister.

Establishment of Bioprospecting Trust Fund

- 85.** (1) A Bioprospecting Trust Fund is established into which all moneys arising from benefit-sharing agreements and material transfer agreements, and due to stakeholders, must be paid, and from

which all payments to, or for the benefit of, stakeholders must be made.

(2) All money paid into the bioprospecting trust fund is trust money within the meaning of section 13(1)(f)(ii) of the Public Finance Management Act.

(3) The Director-General—

- (a) must manage the Fund in the prescribed manner; and
- (b) is accountable for the money in the Fund in terms of the Public Finance Management Act.

Exemptions

86. (1) The Minister may by notice in the *Gazette*—

- (a) declare that this Chapter does not apply to indigenous biological resources specified in the notice or to an activity relating to such indigenous biological resources; and
- (b) amend or withdraw a notice referred to in paragraph (a).

(2) Before publishing a notice in terms of subsection (1) the Minister must follow a consultative process in accordance with sections 99 and 100.

CLAUSE 84

1. On page 31, from line 44, to omit paragraph (d) and to substitute:
 - (d) the export of indigenous biological resources for bioprospecting or any other type of research in terms of section 81(1).

CLAUSE 94

1. On page 34, from line 23, to omit subparagraph (viii) and to substitute:
 - (viii) the ecologically sustainable utilization of biodiversity;
2. On page 34, after line 36, to add:
 - (d) biosafety and the environment;

CLAUSE 97

1. On page 36, in line 9, to omit “21” and to substitute “30”.

CLAUSE 98

1. On page 36, in line 24, to omit “56(1), 64(1), 66(2), 70(1), 79(1) or 81(1)” and to substitute “57(1), 65(1), 67(2), 71(1) or 81(1)”.

CLAUSE 102

1. On page 37, in line 36, to omit “to which section 80 applies” and to substitute:

which concerns any interests to be protected in terms of section 82

LONG TITLE

1. On page 2 in the second line, after “Environmental” to insert “Management”.
2. On page 2 in the fifth line, to omit “of genetic material derived from” and to substitute “involving”.