

REPUBLIC OF SOUTH AFRICA

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# NATIONAL WATER AMENDMENT BILL

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*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No. 20539 of 8 October 1999) (The English text is the official text of the Bill)*

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(MINISTER OF WATER AFFAIRS AND FORESTRY)

[B 53—99]

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REPUBLIEK VAN SUID-AFRIKA

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# NASIONALE WATERWYSIGINGSWETSONTWERP

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*(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No. 20539 van 8 Oktober 1999 gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

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(MINISTER VAN WATERWESE EN BOSBOU)

[W 53—99]

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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.
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## BILL

**To amend the National Water Act, 1998, so as to effect textual improvements; and to change the procedure for the appointment of members of the Water Tribunal; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 32 of Act 36 of 1998**

1. Section 32 of the National Water Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (1) of the following subsection: 5

- “(1) An existing lawful water use means a water use—
- (a) which has taken place at any time during a period of two years immediately before the date of commencement of this Act and which—
    - (i) was authorised by or under any law which was in force immediately before the date of commencement of this Act; 10
    - (ii) is a stream flow reduction activity contemplated in section 36(1); or
    - (iii) is a controlled activity contemplated in section 37(1); or
  - (b) which has been declared an existing lawful water use under section 33 **[and which—** 15
    - (i) **was authorised by or under any law which was in force immediately before the date of commencement of this Act;**
    - (ii) **is identified as a stream flow reduction activity in section 36(1); or**
    - (iii) **is identified as a controlled activity in section 37(1)].**”.

**Amendment of section 33 of Act 36 of 1998** 20

2. Section 33 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

- “(1) A person may apply to a responsible authority to have a water use which is not one contemplated in section 32(1)**[(b)(i), (ii) or (iii)](a)**, declared to be an existing lawful water use. 25
- (2) A responsible authority may, on its own initiative, declare a water use which is not one contemplated in section 32(1)**[(b)(i), (ii) or (iii)](a)**, to be an existing lawful water use.
- (3) A responsible authority may only make a declaration under subsections (1) and (2) if it is satisfied that the water use— 30

- (a) took place lawfully more than two years before the date of commencement of this Act and was discontinued for good reason; or
- (b) had not yet taken place at any time before the date of commencement of this Act but—
  - (i) would have been lawful had it so taken place; and 5
  - (ii) steps towards effecting the use had been taken in good faith before the date of commencement of this Act.”.

#### Amendment of section 146 of Act 36 of 1998

3. Section 146 of the principal Act is hereby amended—
- (a) by the substitution for subsection (5) of the following subsection: 10
 

“(5) The chairperson, the deputy chairperson, and the additional members of the Tribunal are appointed by the Minister on the recommendation of the Judicial Service Commission contemplated in section 178 of the Constitution and the Water Research Commission established by section 2 of the Water Research Act, 1971 (Act No. 34 of 1971), in accordance with item 3 of Schedule 6.” 15
  - (b) by the substitution for subsection (8) of the following subsection:
 

“(8) The Minister may, after consultation with the Judicial Service Commission or the Water Research Commission referred to in subsection (5), as the case may be, and after giving the member an opportunity 20 to make representations and considering such representations, for good reason terminate the appointment of any member of the Tribunal.”.

#### Amendment of item 3 of Schedule 6 to Act 36 of 1998

4. Item 3 of Schedule 6 to the principal Act is hereby amended by the substitution for subitems (1), (4), (5), (6) and (7) of the following subitems, respectively: 25
- “(1) Whenever necessary, the Minister must **[request the Judicial Service Commission to]**—
- (a) publish a notice in the *Gazette* calling for nominations for appointment to the Water Tribunal; and
  - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which **[the Commission]** he or she considers to be appropriate. 30
- (4) Each of [The] the Judicial Service Commission and the Water Research Commission—
- (a) must consider all valid nominations received before the date contemplated in subitem (2)(f); 35
  - (b) may prepare a short list of nominees;
  - (c) may interview all short-listed nominees; and
  - (d) must, subject to subitem (6), make recommendations to the Minister on the appointment of members of the Tribunal. 40
- (5) In recommending a nominee for appointment each of the Judicial Service Commission and the Water Research Commission must consider—
- (a) the criteria set out in section 146(4) of the Act;
  - (b) the reputation and integrity of the nominee; and
  - (c) any conflict of interests which the nominee may have. 45
- (6) (a) The Judicial Service Commission must recommend at least two persons qualified in law for appointment as chairperson of the Tribunal.
- (b) The Water Research Commission must recommend persons qualified in water resource management, engineering or related fields of knowledge for appointment as deputy chairperson and additional members of the Tribunal. 50
- (c) The Judicial Service Commission or the Water Research Commission, as the case may be, must recommend a candidate for appointment for every vacancy, including that of chairperson or deputy chairperson, where necessary.
- (7) The Department must pay all costs—
- (a) relating to the publication of notices in terms of subitem (1); and 55
  - (b) incurred by the Judicial Service Commission and the Water Research Commission in the performance of **[its task] their tasks.**”.

**Short title**

5. This is the National Water Amendment Act, 1999.

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL WATER AMENDMENT BILL, 1999**

1. The Bill seeks to amend sections 32 and 33 of the National Water Act, 1998 (Act No. 36 of 1998), so as to define the concept of an existing lawful water use more clearly.

2. The Bill also seeks to amend the provisions of the abovementioned Act dealing with the nomination of candidates for appointment as members of the Water Tribunal. This amendment is occasioned by the fact that the Judicial Services Commission does not regard itself as having the necessary capacity to assess the merits of persons qualified in water resource management, engineering or related fields of knowledge. Section 146 of the Act requires persons with those qualifications to be appointed to the Water Tribunal. The Bill seeks to provide for such persons to be nominated by the Water Research Commission.

### **PARLIAMENTARY PROCEDURE**

The Department of Water Affairs and Forestry and the State Law Advisers are of the opinion that the 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.

### **FINANCIAL IMPLICATIONS FOR STATE**

No additional financial implications are foreseen as a result of this Bill.

### **CONSULTATION PROCESS**

The Bill has been published for comment and consultations have taken place between the Department of Water Affairs and Forestry and the Judicial Service Commission.

### **OFFICIAL TEXT**

The English text of this Bill is the official text and the Afrikaans text is the official translation.