

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT BILL

*(As introduced in the National Council of Provinces as a section 76 Bill; explanatory
summary of Bill published in Government Gazette No. 23910 of 4 October 2002)
(The English text is the official text of the Bill)*

(SELECT COMMITTEE ON LAND AND ENVIRONMENTAL AFFAIRS ON REQUEST OF MINISTER OF
ENVIRONMENTAL AFFAIRS AND TOURISM)

[B 62—2002]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP NASIONALE OMGEWINGSBESTUUR

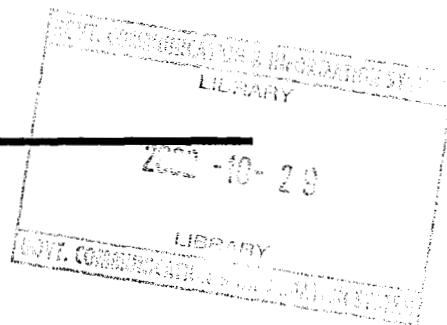
*(Soos ingedien in die Nasionale Raad van Provinsies as 'n artikel 76-wetsontwerp;
verduidelikende opsomming van Wetsontwerp gepubliseer in Staatskoerant No. 23910 van
4 Oktober 2002) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(GEKOSE KOMITEE OOR GROND EN OMGEWINGSKE OP VERSOEK VAN MINISTER VAN OMGEWINGSKE
EN TOERISME)

[W 62—2002]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the National Environmental Management Act, 1998, so as to substitute a definition; and to provide for the prohibition, restriction or control of activities which are likely to have a detrimental effect on the environment; and to provide for matters connected therewith.

Amendment of section 1 of Act 107 of 1998

“ ‘activities’ [**when used in Chapter 5 means**] includes policies, programmes, plans and projects;”.

2. Section 44 of the principal Act is hereby amended by the deletion in subsection (1) 10 after paragraph (a) of the word “and” and the insertion of the following paragraph:

"(aA) prohibiting, restricting or controlling activities which are likely to have a detrimental effect on the environment; and"

3. The long title of the principal Act is hereby amended by the insertion, before the 15 concluding phrase, of the following phrase:

“to provide for the prohibition, restriction or control of activities which are likely to have a detrimental effect on the environment;”.

4. This Act is called the National Environmental Management Amendment Act, 2002, and, subject to section 35(3)(l) of the Constitution, must be regarded as having taken effect on the date on which the principal Act took effect.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT AMENDMENT BILL, 2002

1. There is uncertainty as to whether the National Environmental Management Act, 1998 (Act No. 107 of 1998), allows measures for the prevention of environmental degradation. In order to achieve legal certainty in this regard the Bill seeks to amend that Act so as to provide expressly for measures to prohibit, restrict or control activities which are likely to have a detrimental effect on the environment.

2. Provision is made for the Bill to take effect retrospectively from the date on which the principal Act took effect so as to save having to re-enact any such measures taken before the amendment. The retrospective effect of the amendment is made subject to section 35(3)(1) of the Constitution to make it clear that Parliament intends that no one can be convicted, in terms of such measures, for having done or omitted anything prior to the enactment of the Bill.

CONSULTATION

All members of the Cabinet were consulted through the Cabinet Memorandum process.

FINANCIAL IMPLICATIONS FOR STATE

None.

PARLIAMENTARY PROCESS

The Department of Environmental Affairs and Tourism and the State Law Advisers are of the opinion that this Bill should be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely "Environment".