

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
NATIONAL ENVIRONMENT
LAWS
AMENDMENT BILL**

[B 66—2008]

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

[B 66A—2008]

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AMENDMENTS AGREED TO

NATIONAL ENVIRONMENT LAWS AMENDMENT BILL
[B 66—2008]

LONG TITLE

1. On page 2, third paragraph, to omit “Environment” and to substitute “Environmental”.
2. On page 2, fourth paragraph, to omit “Environment” and to substitute “Environmental”.
3. On page 2, fifth paragraph, to omit “Environment” and to substitute “Environmental”.
4. On page 2, fifth paragraph, to omit “2000” and to substitute “2004”.
5. On page 2, sixth paragraph, to omit “Environment” and to substitute “Environmental”.

CLAUSE 1

1. On page 3, in line 9, to omit “two” and to substitute “five”.
2. On page 3, in line 13, to omit “10” and to substitute “five”.

CLAUSE 2

1. On page 3, in line 22, to omit “10” and to substitute “[**10**] five”.

CLAUSE 11

1. On page 5, in line 10, after “(a)”, to insert “and (b)”.

CLAUSE 12

1. On page 5, after line 13, to insert the following paragraph:
(a) the insertion after subsection (1) of the following subsection:

<p>“(1A) Subsection (1) also applies to a significant pollution or degradation that—</p> <p>(a) occurred before the commencement of this Act;</p> <p>(b) arises or is likely to arise at a different time from the actual activity that caused the contamination; or</p> <p>(c) arises through an act or activity of a person that results in a <u>change to pre-existing contamination</u>.”.</p>

2. On page 5, from line 21, to omit “Subject to subsection (9), the Director-General or provincial head of department may recover all costs incurred ,including anticipatory costs, as a result of it acting under subsection (7), which costs may be claimed and recovered before acting under subsection (7), from any or all of the following persons—”

and to substitute

“Subject to subsection (9), the Director-General or provincial head of department may recover **[all costs incurred as a result of it acting]** costs for reasonable remedial measures to be undertaken under subsection (7), before such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons—”.

3. On page 5, in line 29, after “cause”, to insert “significant”.
4. On page 5, in line 33, after “environment”, to insert “in a significant manner”.

CLAUSE 13

1. On page 5, in line 44, to omit “100 000” and to substitute “1 million”.
2. On page 5, in line 44, to omit “10 years” and to substitute “1 year”.

NEW CLAUSES

That the following be the new clauses:

Amendment of heading to Part 2 of chapter 7 of Act 107 of 1998

15. The following heading is hereby substituted for the heading to Part 2 of chapter 7 of the National Environmental Management Act, 1998:

“Part 2: Application and enforcement of Act and any specific environmental management [Acts] Act”.

Amendment of section 31A of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003

16. Section 31A of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) This Part applies to the enforcement of this Act and **[the] any specific environmental management [Acts] Act.”.**

CLAUSE 17

1. On page 6, in line 27, after “vehicle”, to insert “, vessel, aircraft, pack-animals, container, bag, box, item and the like”.
2. On page 6, in line 32, after “vehicle”, to insert ““, vessel, aircraft, pack-animals, container, bag, box, item and the like”.
3. On page 6, in line 37, to omit “business or residential premises, **[or]** land or vehicle”

and to substitute

“**[business or residential premises or land]**”.
4. On page 6, in line 37, after “vehicle”, to insert “building, land, premises, vehicle, vessel, aircraft, pack-animals, container, bag, box, item and the like”.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 34D of Act 107 of 1998, as inserted by section 7 of Act 46 of 2003.

23. Section 34D of the National Environmental Management Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The court convicting a person of an offence in terms of this Act or any of the specific environmental Acts may declare any item including but not limited to any specimen, container, vehicle, vessel, aircraft or document that was used for the purpose of or in connection with the commission of the offence and was seized under the provisions of this Part, to be forfeited to the State.”.

CLAUSE 21

1. On page 7, in line 28, after “Act”, to insert “or any of the specific environmental management Acts”.

CLAUSE 23

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Insertion of section 49A in Act 57 of 2003

26. The following section is hereby inserted in the National Environmental Management: Protected Areas Act, 2003, after section 49:

“Ownership of and control over animal species occurring in and escaping from protected areas

49A. (1) An animal occurring in protected areas is, for as long as it occurs in a protected area, and unless the contrary is proven, a public asset and held in trust by the State for the benefit of present and future generations.

(2) If an animal contemplated in subsection (1) escapes, the managing authority of a protected area must—

(a) take all steps reasonably necessary to capture such animal; or
(b) deal with such animal in a manner that—

(i) best serve the public interest, or

(ii) avert or minimise any danger posed by such animal.

(3) Subject to subsection (4), no person may in any way hinder or interfere with the management authority in its efforts to give effect to the provisions of subsection (2).

(4) The management authority must implement the provisions of subsection (2) in a manner which takes into account the threat posed by such escaped animal to the spread of animal diseases or other veterinary harm.

(5) Any person who becomes aware of an animal escaping from a protected area must immediately report this to the management authority of the area concerned.

(6) This section does not prevent a person from killing an animal in self-defence where human life is threatened: Provided that any steps taken in this regard are immediately reported to the management authority concerned.

(7) Notwithstanding the common law or any other legislation, all animals which emanate or escape from a protected area, remain at all times thereafter a public asset until such animal is lawfully acquired by another party.

(8) Neither a management authority nor any of its members, officers or employees shall be liable for any damage or loss caused by any animal in or escaping from a protected area unless the damage or loss caused is attributable to any negligent or intentional act or omission of the management authority or any of its members, officers or employees.”.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 1 of Act 10 of 2004

30. Section 30 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the insertion of the following definitions after the definition of “**Board**”:

“**“commercialisation”**, in relation to indigenous biological resources, includes the following activities:

(a) the filing of any complete intellectual property application, whether in South Africa or elsewhere;

- (b) obtaining or transferring any intellectual property rights or other rights;
 - (c) commencing clinical trials and product development, including the conducting of market research and seeking pre-market approval for the sale of resulting products; or
- the multiplication of indigenous biological resources through cultivation, propagation, cloning or other means to develop and produce products, such as drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours and extracts; **“commercialisation phase of bioprospecting”** means any research on, or development or application of, indigenous biological resources where the nature and extent of any actual or potential commercial or industrial exploitation in relation to the project is sufficiently established to begin the process of commercialisation;”.
2. by the insertion of the following definition after the definition of **“Director-General”**:

“discovery phase of bioprospecting” means any research on, or development or application of, indigenous biological resources where the nature and extent of any actual or potential commercial or industrial exploitation in relation to the project is not sufficiently clear or known to begin the process of commercialisation;”.

CLAUSE 27

1. On page 9, from line 11, to omit “(b) must **[monitor]** conduct general surveillance monitoring and report regularly to the Minister on the impacts of **[any]** all categories of genetically modified **[organism that has been]** organisms 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]**”

and to substitute

“must monitor and report regularly to the Minister on the environmental impacts of [any] all categories of 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]** , post commercial release, based on research that identifies and evaluates risk;”.

NEW CLAUSES

1. That the following be the new clauses:

Amendment of section 33 of Act 10 of 2004

32. Section 33 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by—

- (a) the substitution for subsection (3) of the following subsection:

“(3) A notice in terms of subsection (1)(a) or (2)(a) must assign a name to the national botanical garden, and Schedule 1 must be amended accordingly.”.

- (b) the substitution for subsection (4) of the following subsection:

“(4) All notices in terms of sections (1), (2) and (3) must be included in Schedule 1 to this Act, which will contain the name and definition of the land in question, of all proclaimed national botanical gardens.”.

Amendment of section 34 of Act 10 of 2004

33. Section 34 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Minister may, by notice in the *Gazette* amend Schedule 1 in order to—”.

Insertion of section 36A in Act 10 of 2004

34. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 36:

“Winding up or dissolution of Institute

36A(1) The Institute may not be wound up or dissolved except by or in terms of an Act of Parliament.

(2) Upon its winding-up or dissolution the South African Biodiversity Institute must transfer its remaining assets or the proceeds of those assets, after satisfaction of its liabilities, to the State or to an equivalent Schedule 3A Public Entity which has the same objectives as the South African Biodiversity Institute and which itself is exempt from income tax in terms of section 10 (1)(cA) of the Income Tax Act, 1962 (Act No. 58 of 1962).”.

CLAUSE 30

1. On page 9, in line 39, to omit “55” and to substitute “[55] 56”.

CLAUSE 38

1. On page 11, in line 16, after “permit”, to insert “and any new information at the time of the renewal application.”.

SCHEDULE

1. On page 15, in first row, column 3, to omit “31Q”.