

No. 60, 1959.]

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ACT

To amend the Sea-shore Act, 1935.

(Afrikaans text signed by the Governor-General.)
(Assented to 27th June, 1959.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Substitution of
section 1 of
Act 21 of 1935.

1. The following section is hereby substituted for section one of the Sea-shore Act, 1935 (hereinafter referred to as the principal Act):

"Definitions. 1. In this Act, unless the context indicates otherwise—

- (i) 'Administration' means the authority for the control and management of the railways, ports and harbours of the Union as established under the South Africa Act, 1909; (i)
- (ii) 'high-water mark' means the highest line reached by the water of the sea during ordinary storms occurring during the most stormy period of the year, excluding exceptional or abnormal floods; (iv)
- (iii) 'local authority' means any city council, municipal council, borough or town or village council, town board, local board, village management board, divisional council, local administration and health board or health committee constituted in terms of any law, and includes the South African Native Trust referred to in section four of the Native Trust and Land Act, 1936 (Act No. 18 of 1936), the Local Health Commission constituted under the Local Health Commission (Public Health Areas Control) Ordinance, 1941 (Ordinance No. 20 of 1941) of Natal, and the Natal Parks, Game and Fish Preservation Board constituted under the Natal Parks, Game and Fish Preservation Ordinance, 1947 (Ordinance No. 35 of 1947) of Natal; (vii)
- (iv) 'low-water mark' means the lowest line to which the water of the sea recedes during periods of ordinary spring tides; (v)
- (v) 'Minister' means the Minister of Lands, save that in relation to the sea-shore and the sea within any port or harbour which in terms of any law falls under the control and management of the Administration, 'Minister' means the Minister of Transport; (vi)
- (vi) 'sea' means the water and the bed of the sea below the low-water mark and within the territorial waters of the Union, including the water and the bed of any tidal river and of any tidal lagoon; (viii)
- (vii) 'sea-shore' means the water and the land between the low-water mark and the high-water mark; (ix)
- (viii) 'tidal lagoon' means any lagoon in which a rise and fall of the water-level takes place as a result of the action of the tides; (iii)
- (ix) 'tidal river' means that part of any river in which a rise and fall of the water-level takes place as a result of the action of the tides. (ii)".

Substitution of
section 2 of
Act 21 of 1935.

2. The following section is hereby substituted for section two of the principal Act:

"Governor-General is owner of the sea-shore and the sea. 2. (1) Subject to the provisions of this Act, the Governor-General shall be the owner of the sea-shore and the sea, except of any portion thereof which was lawfully alienated before the commencement of this Act or may be alienated hereafter under this Act or under any other law.

(2) Any portion of the sea-shore and the sea which was alienated before the commencement of this Act, shall be deemed to have been lawfully alienated.

(3) The sea-shore and the sea of which the Governor-General is declared by this section to be the owner, shall not be capable of being alienated or let except as provided by this Act or by any other law, and shall not be capable of being acquired by prescription.”.

Substitution of section 3 of Act 21 of 1935.

3. The following section is hereby substituted for section *three* of the principal Act:

“Letting of the sea-shore and the sea.

3. (1) The Minister may, on such conditions as he may deem expedient, let any portion of the sea-shore and the sea of which the Governor-General is by section *two* declared to be the owner, for any of the following purposes:

- (a) The erection of bathing boxes or tents;
- (b) the erection of beach shelters;
- (c) the erection of tea rooms and refreshment places;
- (d) the training of horses, the holding of races (including motor car and motor cycle races) and the provision of places for recreation, amusements or displays;
- (e) the provision of landing sites for aircraft and the establishment of aerodromes;
- (f) the construction or improvement of wharves, piers, jetties and landing stages;
- (g) the construction of breakwaters, sea walls, promenades, embankments, esplanades, buildings or other structures;
- (h) the construction of bathing pools and enclosures;
- (i) the erection of whaling stations or fish-canning or other factories;
- (j) to legalize any encroachments;
- (k) the carrying out of any work of public utility;
- (l) the laying of drainage or sewerage systems;
- (m) the laying of water pipes or cables;
- (n) the erection of boathouses;
- (o) the carrying out of any work which in the opinion of the Minister serves a necessary or useful purpose:

Provided that in the opinion of the Minister such letting either is in the interests of the general public or will not seriously affect the general public's enjoyment of the sea-shore and the sea.

(2) The Minister may permit, on such conditions as he may deem expedient and at such a consideration as he may determine, the removal of any material from the sea-shore and the sea of which the Governor-General is by section *two* declared to be the owner.

(3) The Minister may, by notice in the *Gazette*, delegate to any local authority, subject to such conditions as he may deem expedient, any of the powers vested in him by this section, and he may by a like notice withdraw any such delegation.

(4) Whenever any portion of the sea-shore or the sea in respect of which it is proposed to enter into any lease under sub-section (1) or to grant any permit under sub-section (2) is situated within or adjoins the area of jurisdiction of a local authority, the Minister shall first consult that local authority.

(5) Not less than one month before any lease is entered into under sub-section (1) or any permit is granted under sub-section (2), the Minister shall at the expense of the person with or to whom it is proposed to enter into such lease or to issue such permit, cause a notice wherein the proposal is made known, to be published in the *Gazette* and in not less than one newspaper circulating in the neighbourhood wherein the portion of the sea-shore or the sea concerned is situated.”.

Substitution of section 4 of Act 21 of 1935.

4. The following section is hereby substituted for section *four* of the principal Act:

“Letting or transfer of sea-shore and sea to local authority.

4. (1) The Minister may, on the conditions set out in sub-section (2) and such further conditions as he may deem expedient, let, sell or donate any portion of the sea-shore and the sea of which the Governor-General is by section *two* declared to be the owner, to any local authority.

(2) Any letting or alienation under sub-section (1) shall take place subject to the conditions—

(a) that no right acquired under sub-section (1) with regard to the sea-shore or the sea may be transferred to any person other than a local authority or the Government of the Union, unless the prior approval thereto by resolution of both Houses of Parliament is obtained; and

(b) that the Minister may at any time resume for Government or public purposes any right granted under sub-section (1), subject to payment of such compensation for improvements as may be agreed upon or settled by arbitration.

(3) The provisions of sub-section (5) of section *three* shall apply *mutatis mutandis* to any letting or alienation under sub-section (1).”

Substitution of section 5 of Act 21 of 1935.

5. The following section is hereby substituted for section *five* of the principal Act:

“Government may use the sea-shore and the sea.

5. (1) The Minister may authorize the use of any portion of the sea-shore and the sea of which the Governor-General is by section *two* declared to be the owner, for Government purposes.

(2) The Minister may cause any land in the sea or on the sea-shore to be reclaimed and such reclaimed land shall be State-owned land.”

Substitution of section 6 of Act 21 of 1935.

6. The following section is hereby substituted for section *six* of the principal Act:

“Approval of Parliament.

6. (1) Any alienation, letting or permission with regard to the sea-shore or the sea which is not authorized elsewhere in this Act or in any other law, may only take place with the approval, by resolution, of both Houses of Parliament.

(2) If an alienation, letting or permission in terms of sub-section (1) is proposed with regard to any portion of the sea-shore or the sea situated within or adjoining the area of jurisdiction of a local authority, the Minister shall, before the proposal is submitted to Parliament, consult that local authority.

(3) Not less than one month before submitting to Parliament any proposal for an alienation, letting or permission in terms of sub-section (1), the Minister shall at the expense of the person in whose favour the alienation, letting or permission is proposed, cause a notice setting forth particulars of such proposal, to be published in the *Gazette* and in not less than one newspaper circulating in the neighbourhood in which the portion of the sea-shore or the sea concerned is situated.

(4) Except where it is provided otherwise in the relevant resolution referred to in sub-section (1), the provisions of paragraphs (a) and (b) of sub-section (2) of section *four* shall apply *mutatis mutandis* to any alienation, letting or permission under sub-section (1).

Amendment of section 7 of Act 21 of 1935.

7. Section *seven* of the principal Act is hereby amended—

(a) by the insertion in sub-section (1) after the word “sea-shore” of the words “and the sea”; and

(b) by the deletion in sub-section (2) of the words “or the bed of the sea within the three miles limit”.

Amendment of section 8 of Act 21 of 1935.

8. Section *eight* of the principal Act is hereby amended by the substitution for the word “sea-shore” of the words “the land of the sea-shore and the bed of the sea”; and by the deletion of the words “and the bed of the sea within the three miles limit”.

Substitution of section 9 of Act 21 of 1935.

9. The following section is hereby substituted for section *nine* of the principal Act:

"Determina-
tion of
position of
high-water
mark.

9. (1) (a) If privately-owned land has a boundary extending to or to a stated distance from the high-water mark and it is in the public interest or in the interests of the owner of or the holder of the mineral rights in such land that the said boundary be replaced by another kind of boundary, the Surveyor-General may permit the first-mentioned boundary to be replaced by the last-mentioned boundary, provided the Minister, the owner of the land and the holder of the mineral rights have signed an agreement, as far as possible in accordance with Form B of the Second Schedule of the Land Survey Act, 1927 (Act No. 9 of 1927), whereby they accept the new boundary.

(b) If the Minister, the owner of the land or the holder of the mineral rights fails to sign the agreement referred to in paragraph (a), the provisions of sub-sections (4) to (8), inclusive, of section *sixteen* of the Land Survey Act, 1927, shall *mutatis mutandis* apply.

(c) As soon as the agreement referred to in paragraph (a) has been approved by the Surveyor-General, the new boundary shall, for the purposes of the Land Survey Act, 1927, be deemed to have been lawfully established in accordance with section *thirty-one* of that Act, and the boundary-line so established shall, in any case where the boundary extends to the high-water mark, be deemed to be the high-water mark as defined in this Act.

(2) (a) The Minister may, in respect of any State-owned land, cause a diagram to be prepared on which the seaward boundary of that State-owned land is established as near to the high-water mark as is possible according to the natural indications, and as soon as the diagram has been approved by the Surveyor-General, the beacons indicating the seaward boundary of the State-owned land shall for the purposes of the Land Survey Act, 1927, be deemed to be lawfully established in accordance with section *thirty-one* of that Act, and the boundary-line so established shall be deemed to be the high-water mark as defined in this Act: Provided that if the boundary of any privately-owned land is affected by the establishment of the said boundary-line, the provisions of section *seventeen* of the said Act shall apply *mutatis mutandis* to such establishment.

(b) For the purposes of the application of section *seventeen* of the Land Survey Act, 1927, in terms of the proviso to paragraph (a), 'owner' includes the holder of the mineral rights."

Amendment of section 10 of Act 21 of 1935.

10. Section *ten* of the principal Act is hereby amended—

(a) by the substitution in sub-section (1) for the word "Governor-General" of the word "Minister" and by the insertion after the word "regulations" of the words "or by notice in the *Gazette* authorize any local authority, in regard to any portion of the sea-shore and the sea situated within or adjoining the area of jurisdiction of such local authority, with his approval to make regulations,";

(b) by the substitution of the following paragraph for paragraph (c) of sub-section (1):
"(c) concerning the removal of any material from the sea-shore and the sea;"

(c) by the deletion in paragraph (d) of sub-section (1) of the words "within the three miles limit";

(d) by the deletion in paragraph (e) of sub-section (1) of the words "and the bed of the sea within the three miles limit";

(e) by the deletion in paragraph (f) of sub-section (1) of the words "or the bed of the sea" and the words "within the three miles limit";

- (f) by the substitution for sub-section (3) of the following sub-section:
- “(3) (a) Notwithstanding the provisions of any other law, any regulation may be declared to be applicable to the whole of the sea-shore or to any defined portion thereof or to the whole of the sea or to any defined portion thereof.
- (b) The Minister may declare any regulation to be applicable to any State-owned land adjoining or situated near the sea-shore, and for the purposes of the application of any such regulation, any State-owned land to which such regulation has been so declared to be applicable, shall be deemed to be a portion of the sea-shore.
- (c) When any regulation applies to any portion of the sea-shore situated within or adjoining the area of jurisdiction of a local authority or to any portion of the sea adjoining such portion of the sea-shore, the Minister may, by notice in the *Gazette* and in not less than one newspaper circulating in the neighbourhood in which such area of jurisdiction is situated, confer powers or impose duties in relation to the administration of such regulation upon such local authority or upon any of its officers.
- (d) Not less than thirty days before any regulation is made under this section, the Minister, or where a local authority desires to make a regulation, that local authority, shall cause a copy of the proposed regulation to be published in the *Gazette* and in not less than one newspaper circulating in the neighbourhood where the regulation will apply.
- (e) Before the Minister declares any regulation to be applicable to any portion of the sea-shore situated within or adjoining the area of jurisdiction of a local authority, the Minister shall consult the local authority concerned and submit to it a copy of the regulation.”;
- (g) by the substitution for sub-section (4) of the following sub-section:
- “(4) When a local authority is responsible for the administration of any regulation made under this section, such regulation, or any other regulation made under this section, may provide that all fees and fines recovered under that regulation, shall accrue to that local authority.”; and
- (h) by the substitution for sub-section (6) of the following sub-section:
- “(6) A local authority in whom the ownership of any portion of the sea-shore is vested, may, with the approval of the Minister, make regulations for the control of that portion of the sea-shore and the sea adjoining that portion, for any of the purposes mentioned in sub-section (1), and such regulations may with the approval of the Administrator of the province in which the land is situated, also be applied *mutatis mutandis* to any land owned by the local authority and situated next to the sea-shore.”.

Repeal of section 11 of Act 21 of 1935.

Amendment of section 12 of Act 21 of 1935.

Amendment of section 13 of Act 21 of 1935.

11. Section *eleven* of the principal Act is hereby repealed.
12. Section *twelve* of the principal Act is hereby amended by the substitution for the words “which is described in item 1 of the Schedule to this Act and which in terms of section *one* of the Defence Endowment Property and Account Act, 1922 (Act No. 33 of 1922)”, of the words “described in item 20 of the Schedule to the Defence Endowment Property and Account Act, 1922 (Act No. 33 of 1922), and which in terms of section *one* of that Act”.

13. Section *thirteen* of the principal Act is hereby amended—
- (a) by the deletion in paragraph (a) of all the words after the expression “1898-1912”;
- (b) by the substitution in paragraph (b) for the words “Railways and Harbours Administration of the Union” of the word “Administration” and by the deletion of the words “or the bed of the sea within the three miles limit”; and
- (c) by the deletion in paragraph (c) of the words “or the bed of the sea within the three miles limit”.

Repeal of
Schedule to
Act 21 of 1935.

14. The Schedule to the principal Act is hereby repealed.

Amendment of
long title of
Act 21 of 1935.

15. The long title of the principal Act is hereby amended by the substitution for the words "to be entitled to exercise control over the sea-shore and of the sea and the bed of the sea within the three miles limit" of the words "the sea within the territorial waters of the Union"; by the substitution for the words "of the bed of the sea within the three miles limit" of the words "the sea"; and by the insertion after the words "portions of the sea-shore" of the words "and the sea".

Short title.

16. This Act shall be called the Sea-shore Amendment Act, 1959.