
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF TRANSPORT**NOTICE 372 OF 2019****NATIONAL PORTS ACT, 2005 (ACT NO.12 OF 2005)****PUBLICATION FOR COMMENTS: DRAFT NATIONAL PORTS AMENDMENT BILL,
2019**

The draft National Ports Amendment Bill, 2019 is hereby published for public comments.

Interested persons are requested to submit written comments and inputs within 30 days from the date of publication of this Notice.

Comments may be sent to the Director General of Department of Transport for the attention of Ms Glory Semenya and Ms Moloko Machaka

By post to the following address:

Department of Transport

Private BAG x 193

Pretoria

0001

Email semenyag@dot.gov.za or machakam@dot.gov.za

[Tel:012 309 3499](tel:0123093499) or [012 309 3676](tel:0123093676)

REPUBLIC OF SOUTH AFRICA

NATIONAL PORTS AMENDMENT BILL, 2019

(As introduced in the National Assembly (proposed section 75 Bill), explanatory summary of Bill published in Government Gazette No. of) (The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

[B – 2019]

GENERAL EXPLANATORY NOTE:

[]

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

Words underlined with a solid line indicate insertions to the existing enactments.

BILL

To amend the National Ports Act, 2005, so as to substitute and insert certain definitions; to amend the provisions dealing with the establishment of the Regulator; to amend the provisions dealing with the funding of the Regulator; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 12 of 2005

1. Section 1 of the National Ports Act, 2005 (Act No.12 of 2005)(hereinafter referred to as the principal Act) is hereby amended—

(a) by the substitution for the definition of “Companies Act” of the following definition:

**“Companies Act” means the Companies Act, [1973 (Act No.61 of 1973)]
2008 (Act No.71 of 2008);”**

(b) by the insertion after the definition of “Port Consultative Committee” of the following definition:

"port facility' means any operation which has a geographically determined place within a port of operation for the provision of port services and is not a port terminal;"

(c) by the insertion after the definition of "port terminal" of the following definition:

"port user' means any current or future user or provider of a port facility, port services, port terminals, port infrastructure, port repair facilities, off-shore cargo-handling facilities or terminal operations;".

Amendment of section 29 of Act 12 of 2005

2. Section 29 of the principal Act is hereby amended by the substitution for section 29 of the following section:

"29. There is hereby established an independent ports regulatory body, vested with legal personality, to be known as the Ports Regulator of South Africa".

Amendment of section 42 of Act 12 of 2005

3. Section 42 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The funds of the Regulator consists of—

- (a) money appropriated by Parliament;
- (b) interest on investments;
- (c) fees charged for the filing of complaints **[or]** and appeals with the Regulator^[.] and other regulatory services rendered in terms of the Act;

- (d) regulatory charges imposed as a share of the approved total revenue allowed to the Authority by the Regulator and approved by the Minister; or
- (e) money received from any other source, with the approval of the Minister of Transport and the Minister of Finance.”

Short title

4. This Act is called the National Ports Amendment Bill, 2019 and is hereby published for public comments.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL PORTS AMENDMENT BILL, 2019

1. BACKGROUND AND PURPOSE OF THE BILL

1.1 The National Ports Amendment Bill, 2019 (“Bill”) seeks to amend the National Ports Act, 2005 (Act No.12 of 2005) (“principal Act”) to enable the implementation of the funding model for the Ports Regulator of South Africa (“Regulator”).

1.2 The main objects of the Bill are to—

- (a) correct technical deficiencies in the principal Act; and
- (b) enhance the funding of the Regulator.

1.3 The proposed amendment to the funding model of the Regulator as envisioned in section 42 of the principal Act, is a response to the Minister of Transport and the Deputy Minister of Transport’s request to the Regulator for a sustainable funding model for the Regulator.

1.4 The independence and security of funding is important in order to ensure a degree of autonomy with regard to the activities and responsibilities of the Regulator. Without secure funding, the ability of the Regulator to effectively execute its mandate may be constrained from year to year.

2. CLAUSE BY CLAUSE ANALYSIS

2.1 Clause 1

2.1.1 Clause 1 of the Bill seeks to amend section 1 of the principal Act by substituting and inserting certain definitions.

2.2 **Clause 2**

2.2.1 Clause 2 of the Bill seeks to amend section 29 of the principal Act which deals with the establishment of the Regulator by the insertion of the words “of South Africa” after the words “Ports Regulator”.

2.3 **Clause 3**

2.3.1 Clause 3 of the Bill seeks to amend section 42 (1) of the principal Act which deals with the funding of the Regulator. Clause 3 envisages the introduction of a hybrid funding model that retains the current budgetary approval processes with oversight by the Department of Transport as well as the National Treasury but removes the direct financial burden of regulation from the national budget. This will retain the credibility of national budgetary processes and lend transparency to the price setting process, as the impact on users of the ports system will ultimately pay for regulation. Based on average volumes for the South African port system from 2015 to date, the average percentage regulatory charge to be added to the tariff book in order to raise the Regulator’s current budget is in the region of 0.5 – 0.7% in terms of which application would be made to the Minister annually, in order to fund and grow the organisation and the work that it does. Collection will be facilitated through the normal invoicing process by the Authority and transferred monthly to the Regulator on the 15th of every month. The amount will be determined as 12 equal instalments prior to the start of the financial year and in line with the approved budget.

2.4 **Clause 4**

2.4.1 Clause 4 provides for the short title of the Bill.

3. **DEPARTMENTS/BODIES CONSULTED**

3.1 The Department has consulted the Regulator as well as industry stakeholders with regard to the proposed amendments.

4. **FINANCIAL IMPLICATIONS**

4.1 The Bill is not expected to have any additional financial implications that were not envisaged by the principal Act.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Transport are of the opinion that this 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.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or the customs of traditional communities.