

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN
NATIONAL WATER RESOURCES
INFRASTRUCTURE AGENCY SOC
LIMITED AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 52455 of
4 April 2025)*
(The English text is the official text of the Bill)

(MINISTER OF WATER AND SANITATION)

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.

BILL

To amend the South African National Water Resources Infrastructure Agency SOC Limited Act, 2024, so as to provide for the listing of the Agency as a major public entity in Schedule 2 to the Public Finance Management Act; to provide for the delisting of the Trans-Caledon Tunnel Authority from Schedule 2 to the Public Finance Management Act; and to provide for matters connected therewith.

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

Amendment of section 3 of Act 34 of 2024

1. Section 3 of the South African National Water Resources Infrastructure Agency SOC Limited Act, 2024 (hereinafter referred to as the “principal Act”), is hereby amended by the deletion of subsection (2). 5

Insertion of section 52A in Act 34 of 2024

2. The following section is hereby inserted in the principal Act after section 52:

“Amendment of laws

52A. With effect from—

- | | | |
|-----|--|----------|
| (a) | the incorporation date, the Public Finance Management Act is hereby amended by the insertion in Schedule 2 after the item with the words “SA Forestry Company Limited” of the following item:
“South African National Water Resources Infrastructure Agency SOC Limited”; and | 10
15 |
| (b) | the date of disestablishment of the Trans-Caledon Tunnel Authority in terms of section 37(2) of the South African National Water Resources Infrastructure Agency SOC Limited Act, the Public Finance Management Act is hereby amended by the deletion in Schedule 2 of the following item:
“Trans-Caledon Tunnel Authority.”. | 20 |

Short title

3. This Act is called the South African National Water Resources Infrastructure Agency SOC Limited Amendment Act, 2025.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN NATIONAL WATER RESOURCES INFRASTRUCTURE AGENCY SOC LIMITED AMENDMENT BILL, 2025

1. BACKGROUND

- 1.1 The South African National Water Resources Infrastructure Agency SOC Limited Amendment Bill, 2025 (the “Bill”), seeks to amend the South African National Water Resources Infrastructure Agency SOC Limited Act, 2024 (Act No. 34 of 2024) (the “Act”) by the deletion of section 3(2).
- 1.2 The Bill seeks to amend the Public Finance Management Act, 1999 (Act No. 1 of 1999) (the “Public Finance Management Act”) by providing for the listing of the Agency in Schedule 2 to the Public Finance Management Act. The Bill also makes provision for the delisting of the Trans-Caledon Tunnel Authority (the “TCTA”) from Schedule 2 to the Public Finance Management Act, once it is disestablished in terms of section 37(2) of the Act.

2. OBJECTS OF BILL

- 2.1 The objects of the Bill are summarised as follows:
 - (a) To provide for the deletion of section 3(2);
 - (b) to provide for the listing of the Agency in Schedule 2 to the Public Finance Management Act; and
 - (c) to provide for the delisting of the TCTA from Schedule 2 to the Public Finance Management Act.
- 2.2 The Bill contains the following clauses:
 - 2.2.1 **Clause 1** seeks to amend section 3 of the Act by deleting subsection (2), which provides that Schedule 2 to the Public Finance Management Act will be amended by the Minister responsible for Finance to include the listing of the Agency as a major public entity. The deletion of subsection (2) addresses the legal anomaly relating to the creation of an *ultra vires* power for the Minister responsible for Finance to amend Schedule 2 to the Public Finance Management Act in terms of a different process to that which is prescribed in the Public Finance Management Act.
 - 2.2.2 **Clause 2** seeks to insert a new section 52A, which provides for the amendment of laws. Section 52A provides for the amendment of Schedule 2 to the Public Finance Management Act by inserting the Agency in Schedule 2 and provides for the delisting of the TCTA, once it is disestablished.
 - 2.2.3 **Clause 3** provides for the short title and commencement.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. CONSULTATION

- 4.1 The following stakeholders and statutory bodies have been consulted:
 - (a) The TCTA; and
 - (b) The National Treasury, in terms of section 4 of the Public Finance Management Act. Section 4 has been complied with, and the Minister of Finance has been notified that this Bill will cause an amendment to Schedule 2 of the Public Finance Management Act, by the listing of the Agency and the delisting of the TCTA.

5. IMPLICATIONS FOR PROVINCES

None.

6. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

None.

7. COMMUNICATION IMPLICATIONS

None.

8. CONSTITUTIONAL IMPLICATIONS

None.

9. PARLIAMENTARY PROCEDURE

9.1 The Department of Water and Sanitation and the Office of the Chief State Law Adviser are of the opinion that the Bill must be dealt with in accordance with the Parliamentary procedure established by section 75 of the Constitution of the Republic of South Africa, 1996 (the “Constitution”), since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.

9.2 Chapter 4 of the Constitution specifies the manner in which legislation must be enacted by Parliament. It prescribes different procedures for Bills, including ordinary Bills not affecting provinces (section 75 procedure), and ordinary Bills affecting provinces (section 76 procedure). The determination of the procedure to be followed in processing the Bill is referred to as tagging.

9.3 In terms of section 76(3) of the Constitution, a Bill must be dealt with in accordance with section 76 if it falls within a functional area listed in Schedule 4. Schedule 4 to the Constitution lists functional areas of concurrent national and provincial legislative competence. In the Constitutional Court judgment of *Ex-Parte President of the Republic of South Africa In Re: Constitutionality of the Liquor Bill*¹ (“*Liquor Bill* judgment”), Cameron AJ held the following:

“[27] It must be borne in mind that section 76 is headed ‘ordinary Bills affecting provinces’. This is my view, a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 be dealt with under section 76.

[29] Once a Bill falls within a functional area listed in Schedule 4, it must be dealt with not in terms of section 75, but by either the section 76 (1) or the section 76(2) procedure. . . ”.

9.4 Following the *Liquor Bill* judgment, the Constitutional Court, in the judgment of *Tongoane and Others vs Minister for Agriculture and Land Affairs and Others*² (“*Tongoane* judgment”), confirmed the following:

“[59] . . . the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.”.

9.5 Furthermore, the Constitutional Court held that—

“[66] . . . procedural safeguards are designed to give more weight to the voice of the provinces in legislation substantially affecting them. . . they are fundamental to the role of the NCOP in ensuring

¹. (CCT/12/99) [1999] ZACC 15.

². 2010 (8) BCLR 741 (CC).

that provincial interests are taken into account in the national sphere of government. . . ”.

- 9.6 The Bill seeks to amend the Public Finance Management Act to provide for the listing of the Agency in Schedule 2 to the Public Finance Management Act and the delisting of the TCTA, once it is disestablished in terms of 37(2) of the Act. This process is a technical amendment to correct the current process under section 3(2) of the Act. Therefore, it will not have an impact on the provinces. It is for this reason that the State Law Advisers are of the view that the Bill must be classified as a section 75 Bill.
- 9.7 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders, in terms of section 39 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions that affect traditional or Khoi-San communities or pertain to customary law or customs of traditional or Khoi-San communities.