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GENERAL NOTICE

NOTICE 143 OF 2015

RE-PUBLICATION OF THE DRAFT NATIONAL FORESTS AMENDMENT BILL, 2015

INVITATION FOR PUBLIC COMMENTS

I, Senzeni Zokwana, Minister of Agriculture, Forestry and Fisheries hereby invite all interested institutions, organizations and individuals to submit written comments on the draft National Forests Amendment Bill.

Interested and or affected stakeholders wishing to comment are kindly requested to forward their written comments to the Directorate: Forestry Regulation and Oversight within 30 days of the date of the publication of this notice. Comments can be submitted to the Department through:

Post to: Private Bag X 93, Pretoria, 0001; or

Deliver to: 110 Hamilton building, Pretoria; or

Fax: 012 309 5840; or

Email to: ShumaniD@daff.gov.za or RennyM@daff.gov.za

Please note that comments received after the closing date may be disregarded. The Directorate Forestry Regulation and Oversight may be reached at Tel. (012) 309 5765 or 309 5709 for any enquires.

MR SENZENI ZOKWANA
MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES



agriculture,
forestry & fisheries

Department:
Agriculture, forestry & fisheries
REPUBLIC OF SOUTH AFRICA

REPUBLIC OF SOUTH AFRICA

NATIONAL FORESTS AMENDMENT BILL

—————
(As introduced in the National Assembly (proposed section 75))
(The English text is the official text of the Bill)
—————

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B—2013]

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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
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BILL

To amend the National Forests Act, 1998, so as to provide for clear definitions of natural forests and woodlands; to provide for public trusteeship of the nation's forestry resources; to increase the promotion and enforcement of sustainable forest management; to increase the measures provided for in the Act to control and remedy deforestation; to provide for clear procedures for making regulations; and to provide for matter connected therewith.

Amendment of section 2 of Act 84 of 1998

1. Section 2(1) of Act 101 of 1998 (hereinafter referred to as the "principal Act"), is hereby amended by the substitution for the definitions of "**natural forest**" and "**woodland**" of the following definitions, respectively:

" **'natural forest'** means a group of predominantly indigenous trees—

- (a) whose crowns are largely contiguous in its undisturbed state;
- (b) which occur in association with characteristic kinds of plants or animals;

- (c) which are supported by accepted national scientific criteria and definitions to be natural forest which include species composition or stage of succession; or
- (d) which have been declared by the Minister to be a natural forest in accordance with section 7(2);

'woodland' means a group of indigenous trees which are not a natural forest, but whose crowns cover **[more than]** at least five per cent of the area **[bounded by the trees forming the perimeter of the group]** they occupy, and which may in a degraded state have a crown cover less than five per cent."

Insertion of section 2A in Act 84 of 1998

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

"Public trusteeship of nation's forestry resources

2A. As the public trustee of the nation's forest resources the National Government, acting through the Minister, must ensure that these resources, together with the land and related ecosystems which they inhabit, are protected, conserved, developed, regulated, managed, controlled and utilised in a sustainable and equitable manner, for the benefit of all persons and in accordance with the constitutional and developmental mandate of government."

Amendment of section 3A of Act 84 of 1998

3. Section 3 of the principal Act is hereby amended by the insertion of the following subsection after subsection (3):

"(3A) The exceptional circumstances contemplated in subsection (3)(a) are only applicable to land use or development which is of national, regional or local strategic significance."

Amendment of section 4 of Act 84 of 1998

4. Section 4 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Minister may—
(a) publish the criteria and indicators in the *Gazette*;
(b) publish standards in the form of regulations made under section 53(2)(b); and;
(c) identify clearly the circumstances in respect of which a breach of a standard may constitute an offence."

Amendment of section 7 of Act 84 of 1998

5. Section 7 of the principal Act is hereby amended—
(a) by the insertion after subsection (1) of the following subsection:

"(1A) An exemption contemplated in subsection (1) must be published in the *Gazette* within one month after approval."

(b) by the addition of the following subsections:

"(5) (a) The Minister may issue a licence for the destruction of an indigenous tree in a natural forest or part thereof only under exceptional circumstances contemplated in section 3(3A);

(b) The Minister may—

- (i) prescribe a format for applications for land use or development to be considered as exceptional circumstances; and
- (ii) appoint a committee within the Department to consider such applications.

(6) If a person is in breach of subsection (1)(a), the Minister may, by written notice—

(a) inform that person of the—

- (i) nature of the alleged breach;
- (ii) steps which the person must take to prevent or to redress the said breach; and
- (iii) period within which he or she must take the steps referred to in subparagraph (ii).

(b) in addition to any penalties in terms of section 63(2)—

- (i) direct him or her to take the steps specified in the notice to prevent further damage or to redress the said breach; and
- (ii) determine the period within which he or she must take the steps referred to in subparagraph (i).

(7) If the person failed to comply with the directive within the period determined under subsection (6)(b), the Minister may—

- (i) take reasonable steps to remedy the situation;
- (ii) recover consequential damage or costs from the person concerned; or
- (iii) approach a competent court for relief.

(8) The Minister may publish a framework or guidelines for the development of management plans for natural forests, based on scientific advice."

Amendment of section 8 of Act 84 of 1998

6. Section 8 of the principal Act is hereby amended by the addition of the following subsection:

"(3) A person may not conduct any activity in a protected area which contradicts the conservation; recreation or management objectives of that area, except—

- (a) in exceptional circumstances as may be determined by the Minister in the regulations; and
- (b) where that activity is in the public interest."

Amendment of section 14 of Act 84 of 1998

7. Section 14 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) The Minister may issue a written order to immediately terminate the felling, mutilation or destruction of an individual tree or group of trees if he or she has reasonable grounds to believe that such a tree or group of trees may qualify to be declared as—

- (i) protected as contemplated in section 12(a) and (b), until such time that a notice in this regard is published in the *Gazette* in accordance with section 14(2); or
- (ii) a controlled forest area in accordance with section 17."

Amendment of section 15 of Act 84 of 1998

8. Section 15 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

"possess, collect, remove, transport, export, import, purchase, sell, donate or in any other manner acquire or dispose of any protected tree, or any forest product derived from any protected tree, except—";

(b) by the insertion after subsection (1) of the following subsections:

"(1A) If, in the opinion of the Minister, a person is in breach of subsection (1)(b), the Minister may, by written notice, inform such person of the—

- (i) nature of the alleged breach;
- (ii) steps which the person must take to prevent or to redress the said breach; and
- (iii) period within which he or she must take the steps referred to in subparagraph (ii).

(1B) The Minister may, if a person fails to comply, whether in part or fully, with a written notice issued in accordance with subsection (1A),—

- (i) take reasonable steps to remedy the situation;
- (ii) recover consequential damages and costs from the person concerned; and
- (iii) approach a competent court for appropriate relief.

(1C) The Minister may, by notice in the *Gazette*, publish a framework, based on scientific advice, for the management and protection of particular trees, groups of trees, woodlands, or trees belonging to a particular species as contemplated in section 12."; and

(c) by the substitution for subsection (3) of the following subsection:

"(3) The Minister must, by notice in the *Gazette* and in two newspapers circulating nationally, publish—

- (a) a list of all species protected under section 12; and

(b) an appropriate warning of the prohibition referred to in subsection (1) and the consequences of **[its]** an infringement thereof,

[annually in the Gazette and in two newspapers circulating nationally] in every instance that the list contemplated in subsection (3)(a) is amended: Provided that the list must be so published at least every five years."

Amendment of section 17 of Act 84 of 1998

9. Section 17 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) (a) If the Minister is of the opinion that urgent steps are required to—

~~[(a)](i) prevent the deforestation or further deforestation of; or~~

~~[(b)](ii) rehabilitate,~~

a natural forest or a woodland which is threatened with deforestation, or is being or has been deforested, he or she may declare **[it] that natural forest or woodland as a controlled forest area without prior consultation with, or affording a prior hearing to, any affected person.**

(b) The Minister must, as soon as reasonably possible after the declaration contemplated in paragraph (a)—

(i) consult with, and afford a hearing to, any affected person;

(ii) consider any presentation received during such consultation or hearing; and

(iii) confirm, vary or cancel the declaration concerned.

(c) If the Minister is of the opinion that the owner failed to comply with the notice issued in terms of subsection (3), the Minister may—

(i) take reasonable steps to remedy the situation;

(ii) recover consequential damage or costs from the owner or person concerned; or

(iii) approach a competent court for appropriate relief."; and

(b) by the addition of the following subsection:

"(13) (a) If the Minister is of the opinion that an owner is in breach of a provision of this Act, the Minister may, by written notice, inform such person of the—

(i) nature of the alleged breach;

(ii) steps which the person must take to prevent or redress the said breach; and

(iii) period within which he or she must take the steps referred to in subparagraph (ii).

(b) If a person fails to comply, whether in part or fully, with the written notice issued in accordance with paragraph (a), the Minister may—

(i) take reasonable steps to remedy the situation;

(ii) recover consequential damages and costs from the person concerned; or

(iii) approach a competent court for appropriate relief."

Amendment of section 23 of Act 84 of 1998

10. Section 23 of the principal Act is hereby amended by the addition of the following subsection:

"(4) No person may engage in any prospecting or mining activity in a State forest." so as to repeal **24(9)**.

Amendment of section 27 of Act 84 of 1998

11. Section 27 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"The lease agreement [**may**] must provide for—".

Amendment of section 34 of Act 84 of 1998

12. Section 34 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraphs (h) and (i) of the following paragraphs, respectively:

"(h) the forest products industries;**[and]**

(i) trade unions representing employees in the forest products industry[.]; and";

(b) by the addition in subsection (2) of the following paragraph:

"(j) youth and women."

Amendment of section 35 of Act 84 of 1998

13. Section 35 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

"(4) Members of the Council and members of **[a committee]** the committees of the Council referred to in section 36 who are not in the full-time employment of the State may be paid for their services, except for attending Council meetings."; and

(b) by the substitution for subsection (5) of the following subsection:

"(5) The Minister must determine the remuneration and allowances payable to members of the Council and members of **[a committee]** the committees of the Council referred to in section 36 with the consent of the Minister of Finance."

Amendment of section 36 of Act 84 of 1998

14. Section 36 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) The functions of the Committee on Forest Access are to advise the Council, Department and the Minister on—

- (a) a ruling referred to in section 20(10);
- (b) promoting the grant and exercise of access to forests;
- (c) promoting education on the sustainable management and use of forests; and
- (d) the use of the Trust funds."

Amendment of section 37 of Act 84 of 1998

15. Section 37 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The chairperson of the Council must provide the Minister with advice or information emanating from any meeting of the Council within **[two weeks]** a period not exceeding one month after the date of the said meeting."

Amendment of section 47 of Act 84 of 1998

16. 47(3) the substitution of the following:
[A province may implement those provisions of the Act relating to the powers and duties assigned to it-
(a) **from the date of the assignment;**
(b) **in the area to which the assignment relates;**
(c) **until the assignment ends]** The assignment of any power or duty in this Act by the Minister to a member of a provincial Executive Council or to a Municipal Council must be made in accordance with section 99 of the Constitution of the Republic of South Africa, 1996.

47 (4) the addition of the following subsection:
The assignment of any power or duty in this Act to another member of Cabinet must be made in accordance with section 97 of the Constitution of the Republic of South Africa

Amendment of section 48 of Act 84 of 1998

17. Section 48 of the principal Act is hereby amended by the substitution for section 48 of the following section:

"Delegation of powers and assignment of duties

48. (1) The Minister may delegate the exercise of any of his or her powers, other than a power referred to in subsection (4), and assign the performance of any of his or her duties, to—

- (a) a named official in the Department;
- (b) the holder of an office in the Department;
- (c) an organ of State; or
- (d) a person who or which is not an organ of State.

(2) The Minister may permit a person or organ of State to whom a power or duty has been [**assigned or**]delegated or assigned, to delegate or assign that power or duty further.

(3) A delegation or assignment referred to in subsection (1) and the permission referred to in subsection (2)—

- (a) must be in writing;
- (b) may be subject to conditions;
- (c) must specify the period for which it lasts; and
- (d) do not prevent the exercise of the power or the performance of the duty by the Minister himself or herself.

(4) The Minister may not delegate the power or assign the duty—

- (a) to assign;
- (b) to make regulations;
- (c) to develop policy; or
- (d) to appoint a member of the Council.

(5) The Minister may withdraw any delegation or assignment in writing."

Amendment of section 54 of Act 84 of 1998

18. Section 54 of the principal Act is hereby amended—

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

"(3) The Minister must table the regulations in Parliament, together with any written comments and advice received on **[them]**the regulations concerned pursuant to subsection (1).~~—~~

- (a) **[within 30 days after publishing them in terms of subsection (2); or**
- (b) **if Parliament is not then in session, within 30 days after the next session starts.]**";

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

"(4) Parliament may reject the regulations **[within 60 days]** after they have been tabled.";

(c) by the substitution for subsection (5) of the following subsection:

"(5) If Parliament rejects any regulations, the Minister must—

(a) repeal **[them]** the regulations concerned; or

(b) table amended regulations in draft form in Parliament~~[,]~~, **[within 60 days of the rejection, or, if Parliament is not then in session, within 60 days after the next session starts, failing which the regulations become invalid.]**.

Amendment of section 57 of Act 84 of 1998

19. Section 57 of the principal Act is hereby amended by the insertion of Part 3 and section 57A as follows:

Part 3: Appeals

Appeal against decision or action against the Licensing Officer

57A (1) A person who feels aggrieved by any decision or action taken by the Licensing Officer in terms of this Act may appeal in the prescribed manner to the Minister against such decision or action.

(2)(a) The Minister Must—

(i) refer the appeal for further investigation and decision to a board to be established by the Minister.

(ii) appoint as members of the board—

(aa) one person on account of his or her knowledge of relevant fields of law who must be designated as chairperson; and

(bb) two other persons who have expert knowledge of the subject of the appeal.

(b) The remuneration of a member of the board must be prescribed.

(3) Any person appointed in terms of subsection (2)(a)(ii) must recuse himself or herself as a member of the board if he or she has any direct or indirect personal interest in the outcome of the appeal.

(4) (a) An appeal in terms of subsection (1) must be heard on the date and at the time and place determined by the chairperson and the chairperson must inform the person appealing and any other party that has an interest in the appeal in writing of the date, time and place of the hearing.

(b) The chairperson may for the purpose of the hearing of an appeal—

(i) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before the board at a date, time and place specified in the summons, to be questioned or to produce that document, and the chairperson may retain or examination any document so produced; and

(ii) administer an oath to or accept an affirmation from any person called a witness at the hearing.

(c) A person who appeals as contemplated in subsection (1) and the Licensing Officer may be represented.

(5) If a person appointed in terms of subsection (2)(a)(ii)—

(a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;
(b) is unable to act and another person cannot be appointed in time; or
(c) is, after the investigation has commenced, unable to continue therewith.
The parties may agree that the investigation be continued by the remaining members, in which event, where the member who had died or has become incapacitated was or is the chairperson of the board, the Minister must designate one of the remaining members to act as chairperson.

(6)(a) if the parties do not agree in the manner contemplated in subsection (5), the investigation must be adjourned in order that the Minister may appoint a member, in accordance with the requirements of subsection (2)(a)(ii), in the place of the member who has died or has become incapacitated.

(b) Where an appointment has been made in terms of paragraph (a) the investigation must, if the parties so agree be continued as from the stage at which the investigation was interrupted by the death or incapacitation of a member or must, if the parties do not so agree, be commenced afresh.

(7) The board may, after investigation of the appeal—

(a) confirm, set aside or vary the relevant decision or action of the Licensing Officer and

(b) order the Licensing Officer to execute the decision of the board in connection therewith.

(8) The decision of the board must be in writing and a copy thereof must be furnished to the Licensing Officer, appellant and any other party.

(9) If the board sets aside any decision, direction or action by the Licensing Officer, the prescribed fee if any, paid by the appellant in respect of the appeal must be refunded to him or her, if the board varies such decision or action, the board may direct that the whole or any part of such fee if any, be refunded to the appellant.

(10) An aggrieved person who does not wish to follow the procedure contemplated by section 57 A, may apply to the relevant court to have the decision of the Licensing Officer reviewed.

Amendment of section 58 of Act 84 of 1998

20. Section 58 of the principal Act is hereby amended—

(a) by the substitution for subsection (6) of the following subsection:

"(6) A person who is guilty of a fifth category offence referred to in section 61 may not be sentenced to imprisonment, but may be sentenced to a fine **[up to]** not exceeding R**[50 000]**10 million."; and

(b) by the substitution in subsection (8) for paragraph (b) of the following paragraph:

"(b) for any offence in terms of this Act, may suspend or revoke a licence granted to the offender under section 7, 15 or 23."

Substitution of section 61 of Act 84 of 1998

21. The following section is hereby substituted for section 61 of the principal Act:

"Offences relating to sustainable forest management

61. Any person who fails to take the steps which he or she has been instructed to take in terms of section 4(8), 14(1)(b) and 17(13) within the period or the extended period laid down, is guilty of a fifth category offence."

Amendment of section 62 of Act 84 of 1998

22. Section 62 of the principal Act is hereby amended—

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

"(1) Any person who contravenes the prohibition of certain acts in relation to trees in natural forests referred to in section 7(1) is guilty of a [**second**] first category offence.";

(b) by the substitution for subsection (3) of the following subsection:

"(3) Any person who contravenes a prohibition or any other provision in a notice declaring a controlled forest area under section 17(3) and (4) is guilty of a [**second**] first category offence."; and

(c) by the addition of the following subsection:

"(6) (a) Any person who contravenes a condition in a licence issued in terms of sections 7(1) or 15(1) is guilty of a second category offence.

(b) Any person who fails to comply with a notice by the Minister as contemplated in sections 7(1)(b) and 15(1)(c), within the period or the extended period provided for in the notice, is guilty of a fifth category offence."

Substitution of section 65 of Act 84 of 1998

23. The following section is hereby substituted for section 65 of the principal Act:

"Appointment of forest officers

65. The Director-General may—

- (a) designate posts in the Department or in any provincial administration or municipality, whose incumbents are forest officers; **[and]**
- (b) appoint any other suitably qualified persons as forest officers[.];
- (c) define different levels of forest officers; and
- (d) determine qualification criteria for forest officers."

Short title and commencement

24. This Act is called the National Forests Amendment Act, 2013 and comes into operation on a date fixed by proclamation in the *Gazette*.

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