

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF WATER AND SANITATION

NO. 4097

17 November 2023

NATIONAL WATER AMENDMENT BILL, 2023

I, Mr Senzo Mchunu, Minister of Water and Sanitation, hereby publish for public consultations the National Water Amendment Bill.

Members of the public are invited to submit within 60 days from the date of publication of this Notice in the Government Gazette, written comments on the draft Amendment Bill, to the following addresses:

By post: The Director General: Department of Water and Sanitation
Private Bag X313
PRETORIA
0001
Attention: Mr Mpho Ratshisusu

By hand: 191 Waterbron Building (Reception)
Francis Baard Street, Pretoria

By Email: KhudugaM@dws.gov.za
CC KgosanaK@dws.gov.za

Any enquiries in connection with this Notice can be directed to Ms Mapula Khuduga at (012) 336 7835.



Mr Senzo Mchunu, MP
MINISTER OF WATER AND SANITATION

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REPUBLIC OF SOUTH AFRICA

NATIONAL WATER AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75 Bill; explanatory
summary of Bill and prior notice of its introduction published in Government Gazette
No. 00000000 of 0000000000000)
(The English text is the official text of the Bill.)*

(MINISTER OF WATER AND SANITATION)

[B — 2023]

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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.

BILL

To amend the National Water Act, 1998, so as to insert and amend certain definitions; to ensure equitable water allocation and optimise the use of water in support of the guiding principles of National Water Act; to prohibit undesirable consequences of private water trading; to further provide for the purpose of the Act; to provide for the review period of the national water resource strategy to be increased to 10 years; to provide for the periodic review of the determination of a class of a water resource and a water resource quality objectives; to provide for the period review of the Reserve; to further provide for the protection of water source areas; to further provide for the transfer of water use authorisations; to provide for the reallocation of water; to further provide for the making of regulations; to repeal the right to declare an existing lawful water use; to provide for additional controlled activities; to further regulate the governance matters of water user associations and their membership thereof; to provide for the transformation of water user associations; 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 36 of 1998, as amended by section 1 of Act 27 of 2014

1. Section 1 of the National Water Act, 1998 (Act No. 36 of 1998) (hereinafter referred to as the “principal Act”), is hereby amended—

(a) by the insertion before the definition of “aquifer” of the following definition:

“ **“afforestation”** means the cultivation of a group of trees for exploitation for, amongst others, its wood, bark, leaves or essential oils but excludes windbreaks.”;

(b) by the substitution for the definition of “estuary” of the following definition:

“ **“estuary”** means [a partially or fully enclosed body of water—

(a) which is open to the sea permanently or periodically; and

(b) within which the sea water can be diluted, to an extent that is measurable, with fresh water drained from land] a body of surface water—

(a) that is part of a watercourse that is permanently or periodically open to the sea;

(b) in which a rise and fall of the water level as a result of the tides is measurable at spring tides when the watercourse is open to the sea; or

(c) in respect of which salinity is measurably higher as a result of the influence of the sea;”;

(c) by the insertion after the definition of “estuary” of the following definition:

“ **“floodline”** means a line indicating the maximum level likely to be reached by floodwaters on average .”;

- (d) by the substitution for the definition of "government waterwork" of the following definition:

" **"government waterwork"** means a waterwork or a water services work owned or controlled by the Minister and includes the land on which it is situated;"

- (e) by the insertion after the definition of "instream habitat" of the following definition:

" **"irrigation"** means the artificial watering of land to either foster plant growth, suppress dust or dispose of water containing waste;"

- (f) by the insertion after the definition of "protection" of the following definition:

" **"recreational use"** means the use of water for recreational purposes and includes all activities that require the use of water, including the surface of water, for—

(a) the exclusive purpose of sport, tourism or leisure;

(b) personal or commercial recreational water use; or

(c) activities which contribute to the general health, well-being and skills development of individuals and society;"

- (g) by the substitution for the definition of "watercourse" of the following definition:

" **"watercourse"** means—

(a) a river or spring;

(b) a natural channel in which water flows regularly or intermittently;

(c) a wetland, pan, estuary, lake or dam into which, or from which, water flows; and

(d) any collection of water which the Minister may, by notice in the *Gazette*, declare to be a watercourse, and a reference to a

watercourse includes, where relevant, its bed and banks;”;

(h) by the insertion before the definition of “waterwork” of the following definition:

“ **“water source area”** means all land and aquifers which form the original collection point, and provide above average amounts, of water to the rest of South Africa’s water resources, and which meet significant social, economic and environmental water requirements;” and

(i) by the substitution for the definition of “waterwork” of the following definition:

“ **“waterwork”** includes any borehole, dam, weir, canal, pipeline, siphon, pump station, reservoir, structure, earthwork or equipment installed or used for or in connection with water use;”.

Amendment of section 2 of Act 36 of 1998

2. Section 2 of the principal Act is hereby amended—

(a) by the substitution for paragraph (k) of the following paragraph:

“(k) managing climate conditions, floods and droughts~~[,]~~ and”; and

(b) by the addition of the following paragraph:

“(l) promoting effective water conservation and water demand management.”.

Amendment of section 5 of Act 36 of 1998

3. Section 5 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) must be reviewed at intervals of not more than **[five]** 10 years.”.

Amendment of section 14 of Act 36 of 1998

4. Section 14 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) a system for classifying water resources has been prescribed; **[or] and**”.

Insertion of section 15A in Act 36 of 1998

5. The following section is hereby inserted after section 15 of the principal Act:

“Review of determination

15A. The class of a water resource and resource quality objectives, as determined in terms of section 13, may be reviewed at intervals of not more than 10 years.”.

Insertion of section 18A in Act 36 of 1998

6. The following section is hereby inserted after section 18 of the principal Act:

“Review of Reserve

18A. The Reserve, as determined in terms of section 16, may be reviewed at intervals of not more than 10 years.”.

Insertion of Chapter 3A in Act 36 of 1998

7. The following Chapter is hereby inserted after Chapter 3 of the principal Act:

“CHAPTER 3A

PROTECTION OF WATER SOURCE AREAS

This Chapter deals with the protection of water source areas that have a relatively high runoff in the region of interest, which is made accessible for supporting the region’s population or economy. These areas contribute substantially to developmental needs often far away from the sources.

Part 1:

Geographical location of water source areas

Identification of water source areas

20A. (1) The Minister must, within one year of the commencement of this Chapter, publish a notice in the *Gazette* listing scientifically identified water source areas, and attaching a map indicating—

- (a) the geographical location of each water source area; and
- (b) the major threats faced by each water source area.

(2) The Minister may, where necessary, amend the list of identified water source areas, especially where the circumstances that led to

the identification of those water source areas have changed.

(3) The Minister must, within three years of the commencement of this Chapter, publish in the Gazette, regulations for the management of activities within and around water source areas, which specify—

(a) activities which are prohibited from being conducted in and around water source areas; and

(b) activities which are restricted when being conducted in and around water source areas.

(4) The Minister may review the regulations contemplated in subsection (3) at the time of reviewing the national water resource strategy.

PART 2:

General prohibitions and restrictions within water source areas

Open cast and underground mining

20B. (1) All open cast mining and underground mining which may lead to acid rock drainage or acid mine drainage is prohibited, particularly, for those water source areas which are threatened by or vulnerable to mining.

(2) The Minister shall publish a notice prescribing the review of water use licence granted on mining activities contemplated in subsection (1), prior to the commencement of this Chapter.

(3) The responsible authority may not issue a water use licence for any water use activity identified under section 21, relating to open cast mining or underground mining within the identified water source area.

Forestry plantations

20C. (1) A water use licence shall not be granted within those water source areas which are threatened by or vulnerable to—

(a) streamflow reduction activities within or adjacent to a water source area;

or

(b) forestry plantations or incidental activities where a 32 meter setback from the water source area has not been established.

(2) The Minister must publish a notice prescribing the review of water use licences granted for such afforestation activities as contemplated in subparagraphs (a) and (b), prior to the commencement of this Chapter.

(3) The responsible authority may not issue a water use licence for any water use activity identified under section 21, if the water use is—

(a) for streamflow reduction activities within the identified water source area;

or

(b) for any forestry plantations or activities incidental thereto.

Agriculture

20D. (1) A water use licence may not be granted within those water source areas which are threatened by or vulnerable to agriculture, particularly where a 32 meter setback from the water source area has not been established.

(2) The Minister must publish a notice prescribing the review of water use licences granted for agriculture and other incidental activities as

contemplated in subsection (1), prior to the commencement of this Chapter.

(3) The responsible authority may not issue a water use licence for any water use activity identified under section 21, for any ploughing or activities incidental thereto, unless a 32 meter set back has been established.

General prohibitions and restrictions

18E. The Minister may prescribe any further prohibitions or restrictions relating to other threats that may be faced by water source areas, if it is in the public interest and it is considered necessary to do so.”.

Amendment of section 21 of Act 36 of 1998

8. Section 21 of the principal Act is hereby amended by the substitution for paragraph (f) of the following paragraph:

“(f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer [**,sea outfall**] or other conduit;”.

Amendment of section 25 of Act 36 of 1998

9. Section 25 of the principal Act is hereby amended—
(a) by the substitution for subsection (1) of the following:

Transfer of water use authorisations and prohibition of water trading

“(1) A water management institution may, at the request of a person authorised to use water for irrigation under this Act, allow that

person **[on a temporary basis]** on application under the Act to transfer water for a period not exceeding 24 calendar months, to another land belongs to the same person so authorized [and] on such conditions as the water management institution may determine~~],to]~~ the use of some or all of the water transferred for the same or different purpose **[, or to allow the use of some or all of that water]** in the same vicinity **[for the same or similar purpose”]**.

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

“(2) A person holding an entitlement to use water from a water resource in respect of any land may surrender that entitlement or part of that entitlement –

(a) in order to facilitate **[a particular]** his or her own licence application under section 41 for the use of water from the same resource in respect of other land belongs to him or her in terms of subsection 1; and

(b) on condition that the surrender only becomes effective if and when such application is granted.

(c) by the insertion in subsection (2) immediately after paragraph (b) of the following paragraph:

“(2A) The water use connected with surrender of entitlement is prohibited from trading in any form of nature, and such water must be surrendered to the National Government, acting through the Minister, unless the Minister directs otherwise”

Insertion of section 25A in Act 36 of 1998.

10. The following section is hereby inserted in the principal Act after section 25:

“Reallocation of water by Minister

25A. (1) The Minister may in the public interest allocate water between water sectors, provinces or catchments.

(2) Before making an allocation referred to in subsection (1), the Minister must consult with any affected water sector, province or catchment management agency, and inform them of the intention to allocate.

(3) The Minister may make a decision to allocate water only after having taking into consideration all relevant factors, including those listed in section 27(1).”.

Amendment of section 26 of Act 36 of 1998, as amended by section 2 of Act 27 of 2014

11. Section 26 of the principal Act is hereby amended

(a) by the deletion in subsection (1) for paragraph (l) of the following paragraph:

[“(l) relating to transactions in respect of authorisations to use water, including but not limited to –

(i) the circumstances under which a transaction may be permitted;

- (ii) the conditions subject to which a transaction may take place;
and
- (iii) the procedure to deal with a transaction;”]

(b) by the deletion in subsection (1) of the word “and” at the end of paragraph (n),
and the substitution of the full stop at the end of paragraph (o) of the expression
“; and” ; and

(c) by the addition in subsection (1) of the following paragraph:

“(p) prescribing the criteria that must be considered when redressing
the results of past racial and gender discrimination in relation to
water use.”.

Amendment of section 27 of Act 36 of 1998

12. Section 27 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (b); and
- (b) by the addition of the following subsection:

“(3) A responsible authority must prioritise the redress
of past racial and gender discrimination when issuing a licence or
general authorisation and set aside a certain volume of water in each
water management area to achieve this redress.”.

Amendment of section 29 of Act 36 of 1998

13. Section 29 of the principal Act is hereby amended—

- (a) by the deletion in subsection (2) for the following paragraph:

“[If a licensee has agreed to pay compensation to another person

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in terms of any arrangement to use water, the responsible authority may make the obligation to pay compensation a condition of the licence”].

Amendment of section 32 of Act 36 of 1998

14. Section 32 of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (b).

Repeal of section 33 of Act 36 of 1998, as amended by section 2 of Act 45 of 1999

15. Section 33 of the principal Act is hereby repealed.

Amendment of section 34 of Act 36 of 1998

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

(a) by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(aA) any new conditions or obligations, necessary to protect the water resources and the environment, which the responsible authority may impose.”; and

(b) by the addition of the following subsection:

(2A) A responsible authority may curtail a volume of water which becomes available as a result of failure by water users to exercise the full existing lawful use volume for any period specified by

the Minister.”

Amendment of section 37 of Act 36 of 1998

17. Section 37 of the principal Act is hereby amended

by the deletion in subsection (1) of “and” at the end of paragraph (d), the substitution for the full stop at the end of paragraph (e) of the expression “; and” and the addition of the following paragraph:

“(f) the exploration or production of onshore naturally occurring hydrocarbons that require stimulation, including but not limited to, fracturing and or underground gasification, to extract, and any activity incidental thereto that may impact detrimentally on the water resource.”

Amendment of section 52 of Act 36 of 1998

18. Section 42 of the principal Act is hereby amended by the addition of the following subsection:

Reasons for decisions

42. (1) After a responsible authority has reached a decision on a licence application, it must promptly -

(a) notify the applicant and any person who has objected to the application; and

(b) at the request of any person contemplated in paragraph (a), give written reasons for its decision.

(2) A responsible authority may, at any stage that a responsible authority becomes aware that there is an investigation or court proceedings relating to the contravention of or failure to comply with this Act, defer a decision to issue a licence until such time that the investigation or court proceedings have been concluded and no wrong doing is found on the part of the Applicant.

Amendment of section 52 of Act 36 of 1998

19. Section 52 of the principal Act is hereby amended by the addition of the following subsection:

“(5) upon receiving the application for the renewal of a licence, the responsible authority may issue an extension of the period of validity of the licence, which may not exceed six months, whilst considering the application.”.

Amendment of section 57 of Act 36 of 1998

20. Section 57 of the principal Act is hereby amended by the addition of the following subsection:

“(7) The Minister may require any water management institution to redetermine its water use charges if those charges do not comply with the pricing strategy for water use charges prescribed in terms of section 56 of the Act.”

Amendment of Chapter 8 of Act 36 of 1998

21. The following explanatory note is hereby substituted for the explanatory note to Chapter 8 of the principal Act:

**"CHAPTER 8
WATER USER ASSOCIATIONS**

"This Chapter deals with the establishment, powers and disestablishment of water user associations. [Water user associations are water management institutions with their primary purpose, [unlike catchment management agencies, is not water management] being operational management and monitoring of water use within their defined area, which may include operation and maintenance of both constructed and ecological infrastructure. They operate at a restricted localised level, as defined by the Minister and are in effect co-operative associations of individual water users who [wish] to undertake water related activities for their mutual benefit. A water user association may exercise management powers and duties additional to what is set out in the constitution only if and to the extent these have been assigned or delegated to it by the Minister.

The Minister establishes and disestablishes water user associations according to procedures set out in the Chapter. A water user association for a particular purpose would usually be established following a proposal to the Minister by [an interested person] water users, but such an association may also be established on the Minister's initiative. The functions of a water user association depend on its approved

constitution, which can be expected to conform to a large extent to the model constitution in Schedule 5, as amended from time to time by a notice in a Gazette. This Schedule also makes detailed provisions for the management and operation of water user associations. Although water user associations must operate within the framework of national policy and standards, particularly the national water resource strategy, the Minister may exercise control over them by giving them directives or by temporarily taking over their functions under particular circumstances.

Existing irrigation boards, subterranean water control boards and water boards established for stock watering purposes will continue in operation until they are restructured as water user associations.”.

Amendment of section 92 of Act 36 of 1998

22. Section 92 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may on his or her own initiative or after receiving a proposal containing the information required in terms of section 91(1), by notice in the *Gazette*—

- (a) establish a water user association, give it a name, determine its area of operation and approve its constitution subject to section 93(2); **[or]**
- (b) amend the name, area of operation or approve an amendment to the constitution of an established water user association[.];
- (c) consult with the catchment management agency to determine an area

of operation of a water user association considering specific public interest and water resource management conditions; or
(d) determine criteria for membership of the association..”

Amendment of section 93 of Act 36 of 1998

23. Section 93 of the principal Act is hereby amended—

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

“(1) Schedule 5 contains a model constitution which
[**may**] must be used as a basis for drawing up and proposing a constitution for a proposed water user association.”;

(b) by the deletion in subsection (2) of the word “and” at the end of paragraph (g), the substitution for the full stop at the end of paragraph (h) of the expression “; and” and the addition of the following paragraphs:

“(i) procedure for annual the general meeting; and

(j) procedure for removing a member of a management committee.”;

(c) by the insertion after subsection (2) of the following subsection:

“(2A) The constitution of a water user association must detail a strategy to achieve transformation in regard to racial and gender representation in all components of the association.”; and

(d) by the addition of the following subsection:

(5) The Minister may, by notice in the Gazette, revise the model constitution.”.

Amendment of section 94 of Act 36 of 1998

24. Section 94 of the principal Act is hereby amended by the addition of the following subsection:

“(3) A water user association may use Schedule 4 to customise its governance arrangements where necessary without deviating from accountability and reporting requirements.”.

Amendment of section 98 of Act 36 of 1998

25. Section 98 of the principal Act is hereby amended—

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

“(2) A board continues to exist until it is declared to be a water user association in terms of subsection (6) or until it is disestablished in terms of [the law by or under which it was established, which law must, for the purpose of such disestablishment, be regarded as having been repealed by] this Act.” ;and

(b) by the substitution for subsection (7) of the following subsection:

(7) Upon the publication of a notice under subsection (6), every property, right and liability of the board remains the property right and liability of the of the relevant water user association or may, by a majority vote of the irrigation board, be transferred to a non-profit organisation established in terms of the Non-Profit Organisation Act, 1997 (Act No. 71 of 1997), by members who formed the disestablished board.”.

Amendment of section 118 of Act 36 of 1998

26. Section 118 of the principal Act is hereby amended by the deletion in

subsection (3) of “or” at the end of paragraph (b) , the substitution for the full stop of the expression “; and” at the end of paragraph (c) and the addition of the following paragraph:

“(d) direct the owner of a dam with a safety risk, where that owner is a water services provider to submit at the owner's cost, and within a period specified by the Minister, any specific repairs or alterations to that dam and to implement specified operational rules at the dam, which are necessary to protect the public, property or the resource quality from a risk of failure of the dam.”.

Amendment of section 148 of Act 36 of 1998, as amended by section 4 of Act 27 of 2014

27. Section 148 of the principal Act is hereby amended –

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

(dA) a decision on the surrender of entitlement made under section 25, by a person affected thereby;

(b) by the substitution of subsection (2) of the following:

(2) An appeal under subsection (1) -

(a) does not suspend a directive given under section 19(3), 20(4)(d), 53(1) or 118(3)(b), 118(3)(c); and

Amendment of section 151 of Act 36 of 1998

28. Section 151 of the principal Act is hereby amended—

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

“(2) A person convicted of an offence in terms of subsection (1) (a), (c), (d), (e), (h), (i) or (j) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment.”; and

(b) by the addition of the following subsection:

“(3) Any person convicted of an offence in terms of subsection (1)(b), (f), (g), (k), (l), (m), (n) or (o) is liable—

(a) in the case of a first conviction, to a fine not exceeding R1 million or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment; and

(b) in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.”.

Insertion of section 156A in act 36 of 1998

29. The following section is hereby inserted in the principal Act after section 156:

“Apportionment of liability

156A. (1) Any person who is or was a director of a business entity at the time of the commission by that firm of an offence under section 151 or

a person who is or was a municipal manager of a municipality at the time of the commission by that municipality of an offence under section 151 shall, himself or herself, be guilty of such offence and liable on conviction to the penalty specified in the relevant law.

(2) Upon the conviction referred to in subsection (1), the court may make the following orders:

- (a) Recovering the amount of loss or damage (to rehabilitate or prevent damage);
- (b) determination of monetary value of any advantage gained as a consequence of the offence in question and recovery thereof; or
- (c) recovery of reasonable costs incurred for the investigation and prosecution of the offence”.

Amendment of Schedule 5 to Act 36 of 1998

30. Schedule 5 of the principal Act is hereby amended—

- (a) by the substitution in item 7 for subitem (1) of the following subitem:

“(1) All persons who, in terms of section 22(1) of the Act, excluding section 22(1)(a)(i) thereof, have an authorisation to use water and who may exercise the right from water works or sources under the control of the Association, must be considered a water users in the area of operation and be deemed a member of the Association.”;
and

- (b) by the substitution in item 15 for subitem (3) of the following subitem:

“(3) One vote per entitlement to water use.”.

Amendment of arrangement of sections of Act 36 of 1998

31. The arrangement of sections of the principal Act is hereby amended—

(a) by the insertion after item 2 of the following item:

“2A. Application of Act”;

(b) by the insertion after item 15 of the following item:

“15A. Review of determination”;

(c) By the insertion after item 18 of the following item:

“18A. Review of Reserve”;

(d) by the insertion after item 20 of the following item:

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**"CHAPTER 3A
PROTECTION OF WATER SOURCE AREAS**

Part 1:

Geographical location of water source areas

20A. Identification of water source areas

Part 2:

General Prohibitions and restrictions within water source areas

20B. Open cast and underground mining

20C. Forestry plantations

20D. Agriculture

20E. General prohibitions and restrictions”;

(e) by the deletion of item 33; and

(f) by the insertion after item 156 of the following item:

“156A. Apportionment of liability”.

Short title and commencement

31. This Act is called the National Water Amendment Act, 2022, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

WATER SERVICE AMENDMENT BILL, 2023

I, Mr Senzo Mchunu, Minister of Water and Sanitation, hereby publish for public consultations the Water Services Amendment Bill.

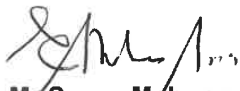
Members of the public are invited to submit within 60 days from the date of publication of this Notice in the Government Gazette, written comments on the draft Amendment Bill, to the following addresses:

By post: The Director General: Department of Water and Sanitation
Private Bag X313
PRETORIA
0001
Attention: Mr Mpho Ratshisusu

By hand: 191 Waterbron Building (Reception)
Francis Baard Street, Pretoria

By Email: KhudugaM@dws.gov.za
CC KgosanaK@dws.gov.za

Any enquiries in connection with this Notice can be directed to Ms Mapula Khuduga at (012) 336 7835.



Mr Senzo Mchunu, MP
MINISTER OF WATER AND SANITATION

2

REPUBLIC OF SOUTH AFRICA

WATER SERVICES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary
of Bill and prior notice of its introduction published in Government Gazette No.
00000000 of 0000000000000)*
(The English text is the official text of the Bill.)

(MINISTER OF WATER AND SANITATION)

[B — 2023]

130823nb

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 Water Services Act, 1997, so as to insert and amend certain definitions; to expand on the objects of the Act the regulation for safely managed sanitation, to include enforcement and rectification as further object of the Act, to provide for the accountability of water services providers in respect of the management, reporting and financial transparency through the issuance of operating license, to develop regulations relating to registration of persons who install and operate water service works; to provide for the quality of potable or drinking water; to provide for the establishment and governance structures of water boards, the appointment of the chief executive officer and employees of water boards; to provide for monitoring, enforcement and intervention, to expand on penalties for non-compliance with the Act and contravention of regulations 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 108 of 1997

1. Section 1 of the Water Services Act, 1998 (Act No.108 of 1998)

(hereinafter referred to as the “principal Act”), is hereby amended—

- (a) by the insertion after the definition of “basic water supply” of the following definition:

" **“board”** means the board of a water board appointed in terms of section 35;"

- (b) by the substitution for the definition of “consumer” of the following definition:

" **“consumer”** means any **[end user who receives water services from a water services institution, including an end user in an informal settlement]** person who receives water services within a water services authority’s area of jurisdiction, including any person in an informal settlement;"

- (c) by the substitution for the definition of “disposal of industrial effluent” of the following definition:

" **“disposal of industrial effluent”** means the collection, removal, **[disposal]** or treatment of effluent emanating from industrial use of water;"

- (d) by the substitution for the definition of “emergency situation” of the following definition:

" **“emergency situation”** means **[any situation declared as such in terms of a law and which is likely to cause injury or loss of life]** an unexpected sudden occurrence leading to a potential or serious danger to the public;"

- (e) by the insertion after the definition of "emergency situation" of the following definitions:

" **financial assistance**" means finance for planning, development, management, operation and maintenance of related infrastructure within the entire water and sanitation value chain;

"**GEPF**" means the Government Employees Pension Fund;

(f) by the insertion after the definition of "industrial use" of the following definition:

" **member**" means a member of a board appointed in terms of section 35A;";

(g) by the substitution for the definition of "Minister" of the following definition:

" **Minister**" means the **[Minister of Water Affairs and Forestry]** Minister responsible for water and sanitation;";

(h) by the insertion after the definition of [...]of the following definition:

" **Municipal Systems Act**" means the Local Government: Municipal Systems Act , 2000 (Act No. 32 of 2000);";

(i) by the insertion after the definition of "Province" of the following definition:

" **PAJA**" means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) ;";

(j) by the insertion after the definition of "Province" of the following definition:

" **Public Finance Management Act**" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);";

(k) by the substitution for the definition of "sanitation services" of the following definition:

" **sanitation services**" means the collection, removal, treatment or disposal of human excreta, and domestic , municipal, agricultural, mining and industrial wastewater";

- (l) by the insertion after the definition of "sanitation services" of the following definition:

"sanitation value chain" means all components and processes comprising a sanitation system, from the toilet capture, containment, collection, removal, treatment, recovery for use or disposal of human excreta and domestic, municipal and industrial waste water relate to the sanitation systeme:";

- (m) by the substitution for the definition of "water services" of the following definition:

"water services" means water supply services and sanitation services, or any part or combination thereof;"

- (n) by the substitution for the definition of "water services authority" of the following definition:

"water services authority" means any municipality, [including a district, or rural council as defined in the Local Government Transition Act, 1993 (Act No. 209 of 1993), responsible for ensuring access to water services] that has the power and function to ensure provision of water services within its area of jurisdiction in terms of the Constitution of the Republic of South Africa, 1996 and the Local Government: Municipal Structures Act, 1998;"

- (o) by the substitution for the definition of "water services institution" of the following definition:

"water services institution" means a water services authority, a water services provider, a water board, [and] a water services committee and a water services intermediary;" and

- (p) by the substitution for the definition of “water supply services” of the following definition:

“**“water supply services”** means the sustainable abstraction from a water resource, conveyance, treatment, storage and distribution of potable water, water intended to be converted to potable water or water for commercial use, **[but not water]** for industrial use or other use, to consumers or other water services providers.”.

Amendment of section 2 of Act 108 of 1997

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (f) of the following paragraph:

“(f) the monitoring of water services and enforcement, rectification and intervention by the Minister and by the relevant Provinces to ensure compliance with the Act;”;

- (b) by the substitution for paragraph (i) of the following paragraph:

“(i) the accountability of water services providers for the management, financial transparency, disclosure and reporting on the provision of water services; [and]”;

- (c) by the substitution for paragraph (j) of the following paragraph:

“(j) the promotion of effective water resource management and conservation [.]”; and

(d) by the addition of the following paragraphs:

“(k) licensing of water services providers in certain circumstances;

and

(l) safely managed sanitation across the sanitation value chain."

Amendment of section 4 of Act 108 of 1997

3. Section 4 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Water services must be provided in accordance with the provisions of this Act and in terms of conditions set by the water services provider".

Amendment of section 9 of Act 108 of 1997

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

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

"(e) requirements for persons who install and operate water services works, and their registration thereof;**[and]**";

(b) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

"(f) the construction and functioning of water services and consumer installations~~[.]~~";

(c) by the addition in subsection (1) of the following paragraphs:

"(g) quality of potable or drinking water; and

(h) the requirements for sanitation regulation across the sanitation

value chain.”; and

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

“2 The standards prescribed under subsection (1) may differentiate between—

(a) different users of water services; **[and]**

(b) different geographic areas, taking into account, among other factors, the socioeconomic and physical attributes of each area; **[.] and**

(c) different water services providers and their functions.”.

Amendment of section 10 of Act 108 of 1997

5. Section 10 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) No water services institution may use a tariff which is **[substantially different from any]** inconsistent with any prescribed norms and standards.”.

Substitution of section 22 of Act 108 of 1997

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

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

“(2) Any approval granted by the water services authority in terms of subsection (1)—

(a) must be for a limited period; **[and]**

- (b) may be granted subject to conditions requiring progressive improvement in water services provision sustainability and efficiency[.];
 - (c) must take into account the financial and environmental sustainability of the water services provider;
 - (d) must have followed Chapter 8 of the Municipal Systems Act informing the water services authority's decision on appropriate mechanisms to provide water services, or part thereof, in the whole or part of the jurisdiction of the water services authority;
 - (e) must take into considerations the requirements of section 22A;
 - (f) must vest management and financial accountability in the water services provider for the provision of water services; and
 - (g) must require financial disclosure and transparent reporting on all funding due to and from water services provision.”; and
- (b) by the insertion after subsection (2) of the following subsection:
- “(2A) In ensuring water services delivery, a water services authority must execute the water service authority's power and functions including the legislative and executive functions reserved for Council, and must enable the water services provider to perform its functions in accordance with the Act.”.

Insertion of sections 22A in Act 108 of 1997

7. The following section is hereby inserted in the principal Act after section 22:

“License to operate as water services provider

22A (1) No person may operate as a water service provider without being granted an operating licence in terms of this Act.

(2) A water services authority may only approve a water services provider in terms of section 22 to operate in its area of jurisdiction if the water service provider is licensed to do so in terms of this Act.

(3) An application to be licensed to operate as a water services provider must be submitted by the water services provider to the Department as prescribed.

“Regulations on operating licence

22B (1) The Minister shall, within 12 months of the enactment of this section, publish a notice in the gazette prescribing procedures, requirements, exemptions, and conditions for licensing, the application process, and granting or refusal, enforcement and revoking of operating licences.

(2) The regulations contemplated in subsection (1) –

- (a) shall call upon all water services providers to apply for licensing within 12 months of the issuing of the regulations contemplated in (1);
- (b) be reviewed and updated by the Minister after 5 years of the first publication in terms of subparagraph (1), and thereafter reviewed at an interval of at least every 10 years.
- (c) set criteria for the water service provider's application including institutional and governance arrangements, financial sustainability,

managerial capability and technical competency to provide water services;

- (d) distinguish between different categories of water services providers based on scope of water services to be provided, the size and complexity of the works and population served; and
- (e) distinguish between different classes of licenses.

Content of operating licence

22C (1) An operating licence must state at least the following:

- (a) the water services authority in whose jurisdiction the water services provider will operate;
- (b) the name and details of the water services provider to whom the license is issued;
- (c) the scope of appointment and the functions for which the water services provider is accountable for;
- (d) the licence period, which period shall be determined depending on the category of water services provider and class of license issued; provided that such period shall not exceed 30 years;
- (e) the review period of the licence, to ensure progressive improvement during the licence period;
- (f) the requirement for full financial transparency for the water services provider function and all funding due to and from the water services function;

- (g) the requirement that the water services provider is responsible and accountable for the water services function;
- (h) the requirement that the water services provider report as required by the regulations and licence conditions; and
- (i) the requirement that the water services provider comply with the Act.

Contraventions and rectification

22D (1) A water services provider who fails to meet the conditions of an operating licence shall be directed, in terms of this Act, to take any of the following actions-

- (a) to comply with set conditions; or
- (b) to rectify the failure within a reasonable time frame considering the impact of the failure on water services provision.

(2) The persistent failure of the water services provider to comply or rectify the failure as directed in terms of subsection (1) may result in the licence of the water services provider being revoked.

(3) After the revocation of the license as contemplated in subsection (2), a water services authority must, in compliance with Chapter 8 of the Municipal Systems Act, proceed to approve another licensed water services provider, provided that interim water services delivery arrangements shall be put in place by the water services authority or in terms of section 62A below for a reasonable period to ensure continuity of services delivery, to allow for the replacement process.

Substitution of section 28 of Act 108 of 1997

8. The following section is hereby substituted for section 28 of the principal Act:

“Establishment of water boards

28. (1) The Minister may establish one or as many water boards as considered necessary for the purpose of carrying out its activities and functions contemplated in this Act and any other activity or functions as the Minister may, from time to time, delegate.

(2) The provisions of the Public Finance Management Act apply to a water board contemplated in subsection (1).

(3) The Minister may, subject to subsection (5)—
(a) determine or re-determine the service area of a water board;
(b) name or rename a water board; or
(c) merge a water board into another water board.

(4) In establishing a water board the Minister must, within 30 days of establishment of a water board, publish a notice in the *Gazette* and three national newspapers with due regard to the Use of Official Languages Act, 2012 (Act No. 12 of 2012).

(6) One of the newspapers referred to in subsection (5) must be a newspaper circulating in the area of the proposed water board.

(7) The Minister may classify water boards into categories, depending on their functions and service area.”

Insertion of section 28A in Act 108 of 1997

9. The following section is hereby inserted in the principal Act after section 28:

“Objects and functions of water boards

28A. (1) The water board must develop sound financial and technical capacity to manage bulk water and water services adequately.

(2) The objects of a water board are to—

- (a) plan, finance, build, develop, manage, operate, maintain and support the bulk water services infrastructure and waste water services infrastructure including cross-boundaries infrastructure, in an efficient and effective manner in order to meet the social and economic development and international obligation needs of current and future users so as to achieve the objectives of integrated water services management; and**
- (b) support water services authorities by providing water services on their behalf to water users or by providing services directly to a water services authority, as may be requested by the water services authorities or as may be directed, from time to time, by the Minister.**

(3) The main functions of a water board are to—

- (a) manage bulk water services infrastructure;**

(b) provide bulk water to water services authorities, water services providers, and to bulk water consumers within its area or such area as may be directed, from time to time, by the Minister; and

(c) manage bulk sanitation infrastructure for waste water treatment.

(4) A water board may perform such other function which is not likely to limit or prejudice its capacity to execute its primary activity, as contemplated in section 29.

(5) The Minister must, in consultation with the Minister of Finance and the Minister of International Relations and Cooperation, and by notice in the *Gazette*, determine-

(a) the nature of the activities that a water board may perform outside the countries in which such activities may be performed; and

(b) the maximum amount of capital that a water board may take out of the Republic when a water board perform an activity outside the borders of the Republic

(6) The Minister may authorise a water board to perform an activity outside the borders of the Republic.”.

Substitution of section 35 of Act 108 of 1997

10. The following section is hereby substituted for section 35 of the principal Act:

“Board members of water boards

35. (1) A water board acts through its board members.

(2) The board members consist of—

- (a) a chairperson appointed by the Minister;
- (b) not less than seven members and not more than nine members; and
- (c) the Chief Executive Officer, as an *ex officio* member.”.

Insertion of sections 35A to 35H in Act 108 of 1997

11. The following sections are hereby inserted in the principal Act after section 35:

“Appointment of board members

35A. (1) The Minister appoints, in writing, board members after—

- (a) publishing a notice in the *Gazette* and two national newspapers and one local newspaper, with due regard to the Use of Official Languages Act, 2012 (Act No. 12 of 2012), calling upon members of the public to nominate persons to serve as board members;
- (b) one of the newspapers referred to in paragraph (a) must be a newspaper circulating in the service area of the water board;
- (c) appointing a panel to compile a short-list of persons from the nominees referred to in paragraph (a);
- (d) a panel has interviewed and submitted a list of not less than 12 recommended candidates together with their curriculum vitae to the Minister;
- (e) the Minister has approved the recommended candidates; and
- (f) cabinet has endorsed the recommended candidates.

(2) Before a panel compiles a short-list as contemplated in subsection (1)(c) candidates must be subjected to a screening process as well as background checks.

(3) The notice referred to in subsection (1)(a) must set out the—

- (a) service area of the water board;
- (b) activities of the water board;
- (c) time commitments reasonably expected from members;
- (d) term of office for which appointments are considered;
- (e) criteria for disqualification as a member;
- (f) requirements with which nominations must comply;
- (g) closing date for nominations;
- (h) procedure to be adopted regarding nominations; and
- (i) the address to which nominations must be delivered.

(4) If the shortlist of persons contemplated in subsection (1)(c) does not contain suitably qualified persons or the required number of suitably qualified persons, the Minister must, after consultation with the panel referred to in that subsection, re-advertise and follow the procedure set out in subsection (1).

(5) The board must consist of persons who—

- (a) are citizens or permanent residents of the Republic;
- (b) collectively possess the relevant qualifications, experience or skills in relation to the activities and functions of the water board;
- (c) at least three members with qualifications and expertise in the field of water resource management;

- (d) have at least one member who has—
 - (i) a legal qualification and expertise;
 - (ii) financial qualification and expertise; and
 - (iii) knowledge on the government regulatory environment; and
- (e) are broadly representative of the demographics of the Republic.
- (6) The Minister must, within 30 days of the appointment or reappointment of a member, publish the name of the appointee in the Gazette.
- (7) When appointing a member, the Minister must have regard to—
 - (a) the objects, activities, powers and duties of the water board;
 - (b) the need for the board to be representative of—
 - (i) the water services authorities to which it provides water services;
 - (ii) the other interests served by the water board; and
 - (iii) the broad population of the Republic;
 - (c) the expertise required for the board to function effectively; and
 - (d) the desirability or otherwise of executive employees of the water board being members of the board.
- (8) The extent to which relevant water services authorities should be represented on a board must be determined by the Minister after consultation with every relevant organisation representing municipalities having jurisdiction in the service area.

Disqualification, removal from office, term of office and filling of vacancies

35B. (1) A person may not be appointed as a member if such person—

- (a) is an unrehabilitated insolvent;
- (b) has been declared by a court to be mentally ill;
- (c) serves on more than three boards of public entities or private companies;
- (d) has been convicted of—
 - (i) a crime and sentenced to a term of imprisonment without the option of a fine; or
 - (ii) fraud, corruption or any other crime involving dishonesty, within a period of ten years preceding the nomination in terms of section 35A(1)(a);
- (e) is a member of the National Assembly, a provincial legislature or any municipal council, or is a delegate to the National Council of Provinces;
- (f) is not a citizen or a permanent resident of the Republic;
- (g) has, as a result of improper conduct, been removed from a position of trust by a competent court of law; or
- (h) is not fit and proper to hold office.

(2) The Minister may, in accordance with the provisions of PAJA, take a decision to remove a member from office—

- (a) on the grounds of misconduct, incapacity or incompetence;
- (b) if the member is absent from three consecutive meetings of the board without leave from the board; or
- (c) if the member becomes disqualified as is contemplated in subsection (1).

(3) A member holds office for a period not exceeding four

years, subject to subsections (1), (2) and (5).

(4) Despite subsection (3), the Minister may, after consultation with the board, extend the period of office of any or all of the members of the board for a period of not more than six months or until a new board has been appointed, whichever comes first.

(5) A member may be reappointed by the Minister for a further term not exceeding four years, but may not serve more than two consecutive terms.

(6) If a member of the board ceases to hold office, the Minister may, subject to section 35A, appoint a person who meets the requirements set out in subsection (1) in that vacancy for the remaining part of the term of office.

“Powers of board members

35C. (1) The board members have the powers and responsibilities as set out in the Public Finance Management Act, in relation to the water board.

(2) The board members must, in consultation with the Minister, approve—

(a) the general terms and conditions of employment of the employees of the water board; and

(b) structures for remuneration, allowances, subsidies and other benefits for employees contemplated in paragraph (a) in accordance with a system approved by the Minister with the concurrence of the Minister of Finance.

(3) The terms and conditions of employment contemplated in

subsection (2)(a) must be broadly in line with the guidelines issued from time to time by the Minister responsible for the public service and administration.

(4) The board members must notify the Minister immediately of any matter that may prevent or materially affect the achievement of the objects and functions of the water board.”

“Remuneration of board members

35D. A member of the board or a member of any committee of the board who is not in the full-time employment of the State must be paid such remuneration and allowances out of the funds of the water board as may be determined by the Minister, in consultation with the Minister of Finance.

Meetings of board members

35E. (1) The board members must meet at least four times a year, at such times and places as the board may determine.

(2) Should the board members wish to meet more than four times per year, permission should be obtained from the Minister.

(3) The board members may determine the procedure for its meetings.

(4) The chairperson—

(a) may, subject to subsection (2), convene a special meeting of board members; and

(b) must convene such a meeting within 14 days of receipt of a written

request signed by at least two thirds of the members to convene such a meeting.

(5) The chairperson or, in the chairperson's absence, a member, subject to subsection (6), elected by the members present, must preside at a meeting of the board members.

(6) The quorum for a meeting of the board members is two thirds of the members voting.

(7) A decision of the board members must be taken by resolution of two thirds of the members, and in the event of an equality of votes on any matter, the person presiding at the meeting has a casting vote in addition to their deliberative vote.

Disclosure of interest

35F. (1) A member must disclose to the board members, by way of a written statement, any interest contemplated in section 50(3)(a) of the Public Finance Management Act.

(2) A member must, where such member has an interest as contemplated in subsection (1), act in accordance with section 50(3)(b) of the Public Finance Management Act.

Committees of board members

35G. (1) The board members may establish one or more committees to perform such functions as the board may determine.

(2) The board members may appoint as members of such committee any—

(a) board member;

(b) employee of the water board; or

(c) other person with suitable skills or experience who must be paid such allowances as the Minister may, in consultation with the Minister of Finance, determine.

(3) A member of the board may not serve on more than two committees at a time.

(4) The board members may at any time dissolve or reconstitute a committee.

(5) The board member is not absolved from the performance of any functions entrusted to any committee in terms of this section.

Dissolution of board members

35H. (1) The Minister may dissolve the board members if—

(a) the board members are unable to perform its powers and responsibilities in terms of this Act;

(b) there is a total breakdown in the relationship between the board and the Minister;

(c) the board fails to carry out any directive issued by the Minister in accordance with section 41; or

(d) there is a breakdown in the relationship amongst the members, which renders the continued effective functioning of the board impossible.

(2) In exercising his or her powers in terms of this section, the Minister must comply with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(3) Within 21 days of the dissolution of the board, the Minister must appoint an interim board, consisting of a minimum of three persons, to assume the responsibilities of the board, until a new board is constituted in accordance with the procedure referred to in section 35A.

(4) A new board must be constituted within twelve months of the dissolution of the board as contemplated in subsection (1).

(5) Any person who was a member of the board that was dissolved in terms of this section may be reappointed to a new board.

(6) The Minister must, within 60 days of the dissolution of the board, submit a report to the National Assembly, setting out the reasons for the dissolution of the board.

Substitution of section 36 of Act 108 of 1997

12. The following section is hereby substituted for section 36 of the principal Act:

“Chief executive officer of the water board

36. (1) The board members of the water board is, subject to subsection (2), responsible for the appointment of the chief executive officer.

(2) The board members of the water board must, after following the recruitment and assessment processes, submit to the Minister, not less than three suitable candidates, and recommend one to the Minister for appointment.

(3) The chief executive officer holds office for a period not exceeding five years and is eligible for reappointment on expiry of their term, for a further period of five years.

(4) The chief executive officer must be a person who is suitably qualified and experienced to manage the day to day affairs of the water board.

(5) Subject to the Public Finance Management Act, the chief executive officer must enter into a written performance agreement with the board members within three months of his or her appointment and thereafter annually within one month of the commencement of each financial year.

(6) The chief executive officer is entitled to remuneration and allowance on recommendations of the board members and subject to the approval of the Minister.

(7) The chief executive officer is responsible for the administration and the general management and control of the day-to-day functioning of the water board.

(8) The chief executive officer reports to the board members.

(9) If the chief executive officer—

(a) is absent for a period of more than two months;

(b) is unable to carry out her or his duties; or

(c) ceases to hold office.

the board members may appoint any senior person in the service of the water board who meets the requirements contemplated in subsection (4) to act as chief executive officer, until the chief executive officer is able to resume those functions or until the vacant position of chief executive officer is filled.

(10) If the chief executive officer is absent for a period of less than two months the chief executive officer must, after consultation with the board members, appoint any senior person in service of the water board to act as chief executive officer.

(11) The acting chief executive officer has all the powers and may perform all the duties of the chief executive officer."

Insertion of sections 36A and 36B into Act 108 of 1997

13. The following sections are hereby inserted in the principal Act after section 36:

"Employees of water board

36A. The chief executive officer—

- (a) must, on such terms and conditions as the board may determine, appoint such number of employees or receive on secondment such number of persons as are necessary to enable the water board to perform its functions;
- (b) is responsible for the administrative control of the organisation and for the discipline of the employees and persons contemplated in paragraph (a); and

- (c) must ensure compliance with the Labour Relations Act, 1995 (Act No. 66 of 1995) and any other applicable employment laws.

Pensions

36B. (1) A water board may, under the Pensions Fund Act, 1956 (Act No. 24 of 1956), establish a pension fund for its employees.

(2) Any employee of a water board who was, prior to the commencement of this Act, a member of the GEPF, may—

- (a) remain a member of the GEPF;
- (b) terminate her or his membership of the GEPF and join the pension fund established in terms of subsection (1); or
- (c) elect dormant membership of the GEPF in accordance with section 27 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996)."

Amendment of section 41 of Act 108 of 1997

14. Section 41 of the principal Act is hereby amended by the addition of the following subsections:

" (3) If a water board—

- (a) is in financial difficulties or is being otherwise mismanaged;
- (b) has acted unfairly or in a discriminatory or inequitable way towards any person within its service area;
- (c) has failed to comply with any directive given by the Minister under this

Act;

(d) has obstructed the Minister in exercising a power or performing a duty in terms of this Act;

(e) is unable to exercise its powers or perform its duties effectively due to dissension among the members of the board;

(f) has failed to comply with this Act; or

(g) has become redundant or ineffective.

the Minister may—

(i) direct the board to take any action specified by the Minister; or

(ii) withhold any financial assistance which might otherwise be available to the water board, until the board has complied with such directive.

(4) A directive contemplated in subsection (3)(g)(i) must state—

(a) the nature of the deficiency;

(b) the steps which must be taken to remedy the situation; and

(c) a reasonable period within which those steps must be taken.

(5) The Minister may, if the board fails to take the steps contemplated in subsection (4)(b), act in terms of subsection (3)(g)(ii) only after

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(a) giving that board a reasonable opportunity to be heard; and

(b) considering the board's representation, if any."

15. The following section is hereby substituted for section 43 of the principal Act:

"Funding and financial matters of water board

43. (1) The funds of a water board consist of—

- (a) money appropriated by Parliament;
- (b) water use charges;
- (c) funding to exercise any directive issued by the Minister;
- (d) money obtained from any other lawful source for the purpose of exercising its powers and carrying out its duties in terms of this Act;
- (e) income derived from the performance of its functions;
- (f) loans raised by it in terms of the Public Finance Management Act;
- (g) income derived by it from investments;
- (h) capital grants from the Department for regional bulk infrastructure; or
- (i) capital grants from a water services authority for local infrastructure.

(2) A water board may raise any funds required by it for the purpose of exercising any of its powers and carrying out any of its duties in terms of this Act.

(3) The financial year of a water board is from 1 July to 30 June.

(4) The accounts of a water board must be audited by a chartered accountant appointed by the water board in compliance with the Public Audit Act, 2004 (Act No. 25 of 2004).

(5) The board must, within two months after the end of each financial year, submit financial statements to the auditors of the water board for auditing.

(6) The accounting policy of a water board must be consistent with generally accepted accounting practices."

Substitution of section 45 of Act 108 of 1997

16. The following section is hereby inserted in the principal Act after section 45:

"Disestablishment of water board"

45A. (1) The Minister may, by notice in the *Gazette*, disestablish a water board if the water board is no longer providing water services to the water services institutions.

(2) Before disestablishing a water board the Minister must-

(a) publish a notice in the *Gazette*—

(i) stating the intention to disestablish the water board and the reasons therefor; and

(ii) inviting written comments on the proposed disestablishment and giving a specified address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

(c) consider all comments received on or before the specified date."

Substitution of section 46 of Act 108 of 1997

17. The following section is hereby substituted for section 46 of the principal Act:

“Transfer of assets and liabilities after change of service area or disestablishment”

46. (1) The Minister may direct the board members of any water board affected by the changes to its service area to transfer some or all of its assets and liabilities to any other water board.

(2) Where the Minister disestablishes a water board, the Minister may direct the board members of the disestablished water board to transfer its assets and liabilities to any water board.

(3) In directing board members of a water board under subsections (1) or (2) the Minister must consider—

(a) the interests of creditors and water users;

(b) the interests of employees of the water board to be disestablished; and

(c) any financial contributions directly or indirectly made by the water users towards the infrastructure of the water board.

(4) Where a water board is disestablished and its assets and liabilities are not transferred to another water board, its assets and liabilities vest in the Director-General, who must wind up its affairs and assume the powers and duties of the water board for the period of winding up.

(5) No transfer duty, other tax or duty is payable in respect of the transfer of any assets in terms of this section.

(6) The assets and liabilities of a merged water board, as the case may be, may be transferred to another water board as the Minister may direct.

(7) The Minister may transfer water services work belonging to the state to a water board to enable it to carry out its functions."

Amendment of section 49 of Act 108 of 1997

18. Section 49 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister may make regulations relating to –
(f) the procedural requirements for licence applications for water services providers."

Amendment of heading to chapter VIII of Act 108 of 1997

19. The following heading is hereby substituted for the heading to chapter VIII of the principal Act:

"CHAPTER VIII

Monitoring, enforcement and intervention"

Monitoring of water services institutions

Amendment of section 62 of Act 108 of 1997

20. Section 62 of the principal Act is hereby amended by the substitution for subsection (2) the following subsection:

(2) (a) furnish such information as maybe required by the Minister **[after consultation with the Minister for Provincial Affairs and Constitutional Development]**; and

Enforcement

Insertion of section 62A in Act 108 of 1997

21. The following section is hereby inserted in the principal Act after section 62:

“62A. (1) The Minister or any person delegated by the Minister may issue a directive and require the water services institution to rectify its conduct or omission if a water services institution has not effectively performed any function imposed on it by or under this Act.

(2) The directive must state the following:—

(a) the nature and extent of non-compliance with the Act;

(b) the period of non-compliance by the water-services institution concerned;

(c) the effect and impact on consumers or works of the non-compliance; and

(d) any other relevant matter.

(3) The directive contemplated in subsection (1) shall require the water services institution to—

(a) comply with the directive within a time frame considered reasonable in the circumstances; and

(b) diligently continue with those measures as contained in the directive.

(4) If, due to persistent failure of the water services institution to comply with the directive, there is continued non-compliance with the Act —

(a) the Minister may, on behalf of that water services institution, exercise all the powers and carry out all the duties relating to that function, including, but not limited to, operations and maintenance, infrastructure maintenance, refurbishment and expansion, billing and revenue management, procurement and supply chain management and human resource management functions, and any other functions identified as associated with that water services provision function and/or as set out in the directive;

(b) the governing body of that water services institution may not, while the Minister is rectifying the non-compliance exercise any of its powers or carryout any of its duties relating to that function;

(c) the Minister may utilise all financial and other resources available to that water services institution's governing body relating to that function;

(d) the Minister may appoint any water services institution or institutions to perform that function or any part thereof during the process of rectification; and

(e) the actions of the Minister in terms of the directive must end when there is sustainable compliance with the directive.

(5) After the rectification process has ended, the water services institution must continue to execute its powers and function in accordance with this Act and not do anything to jeopardise the sustainability of the function.

(6) Any expenses incurred or losses suffered by or on behalf of the Minister in implementing the directive in terms of this section may be recovered from the governing body of that water services institution.

Amendment of section 82 of Act 108 of 1997

22. Section 82 of the principal Act is hereby amended by the addition of the following subparagraphs immediately after (f):

- “(e) fail or refuse to give information or give false or misleading information when required to give information in terms of this Act; **[and]**
- (f) fail to provide access to any books, account, documents or asset when required to do so in terms of this Act~~[.]~~;
- (g) if required to be licensed in terms of s22A, continue to provide water services without being licensed to do so; and
- (h) fail to comply with any obligation, instruction or directive under the Act, after being directed to do so.”

23. The following section is hereby inserted after section 82 of the principal Act -

“Appeals

82A (1) The administrative decisions made in terms of this Act which adversely affects the rights of a person must be subjected to the PAJA.

Amendment of table of contents of Act 108 of 1997

- 24.** The table of contents of the principal Act is hereby amended by—
- (a) by the addition of the following items:
- “The insertion of the following:
- “22A License to operate as water services provider
- 22B Regulations on operating licence
- 22C Content of operating licence
- 22D Contravention and rectification
- (b) the substitution for item 28 of the following item:
- “**28.** Establishment [**and disestablishment**] of water boards;
- (c) the insertion after item 28 of the following item
- “**28A.** Objects and functions of water boards”;
- (d) by the substitution for item 35 of the following item:
- “**35.** Board members of water boards”;
- (e) by the insertion after item 35 of the following items:
- “**35A.** Appointment of board members
- 35B.** Disqualification, removal from office, term of office and filling of vacancies
- 35C.** Powers of board members;
- 35D.** Remuneration of board members
- 35E.** Meetings of board members
- 35F.** Disclosure of interests
- 35G.** Committees of board members
- 35H.** Dissolution of board members”;

(f) by the substitution for item 36 of the following item:

“**36.** Chief executive officer of water board”;

(g) by the insertion after item 36 of the following items:

“**36A.** Employees of water board;

36B. Pensions”;

(h) by the substitution for item 43 of the following item:

“**43.** Funding and **[Financial matters and accounts]** financial matters of water board”;

(i) by the insertion after item 45 of the following item:

“**45A.** Disestablishment of water board”; and

(j) by the substitution for item 46 of the following item:

“**46.** **[Assets]** Transfer of assets and liabilities **[upon]** after change of service area or disestablishment”.

(k) by the insertion after item 62 of the following items:

“**62A.** Enforcement;

.....

Repeal of Schedule 1 to Act 108 of 1997

30. Schedule 1 to the principal Act is hereby repealed.

Substitution of the Long Title to Act 108 of 1997

31. The following long title is hereby substituted for the long title of the principal Act:

Short title and commencement

32. This Act is called the Water Services Amendment Bill, 2023, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.