

REPUBLIC OF SOUTH AFRICA

NATIONAL VELD AND FOREST FIRE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill and prior notice of its introduction published in Government Gazette
No. 45449 of 9 November 2021)
(The English text is the official text of the Bill)*

(MINISTER OF FORESTRY, FISHERIES AND ENVIRONMENT)

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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 Veld and Forest Fire Act, 1998, so as to amend and insert certain definitions; to provide for the facilitation of the formation of fire protection associations by a municipality or a traditional council; to compel a municipality, state-owned enterprise, public entity or other organ of state which owns land to join the fire protection associations; to extend the powers of entry, search, seizure and arrest to peace officers and traditional leaders; to amend the title of the Act to the National Veldfire Act; and to provide for matter connected therewith.

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

Amendment of section 2 of Act 101 of 1998

1. Section 2 of the National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998) (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion after the definition of “chief fire officer” of the following definition:

“ **‘communal land’** means communal land as defined in the Communal Land Rights Act, 2004 (Act No. 11 of 2004);”;

(b) by the insertion after the definition of “fire danger” of the following definition: 10

“ **‘fire in the open air’** means any fire not within a building or structure, but does not include a fire in an area specifically designed for such fire, and maintained by the owner;”;

(c) by the substitution for the definition of “municipality” of the following definition: 15

“ **‘municipality’** means a municipality as referred to in section 2 of the Local Government: Municipal System Act, 2000 (Act No. 32 of 2000);”;

(d) by the insertion after the definition of “prescribe” of the following definition: 20

“ **‘public entity’** means a public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;

(e) by the substitution for the definition of “ ‘the Act’ or ‘this Act’ ” of the following definition:

“ **‘the Act’ or ‘this Act’** means the National [Veld and Forest Fire] Veldfire Act, 1998, and includes the regulations made under the Act;” 25

- (f) by the insertion after the definition of “ ‘the Act’ or ‘this Act’ ” of the following definitions:
- “ **‘traditional council’** means a traditional council as defined in section 1 of the Traditional Leadership and Governance Framework Act; **‘Traditional Leadership and Governance Framework Act’** means the Traditional Leadership and Governance Framework Act, 2003 (Act No 41 of 2003);”;
- (g) by the substitution for the definition of “veldfire” of the following definition: “ **‘veldfire’** means **[a veld, forest or mountain]** any vegetation fire that occurs outside a city, town, its adjoining industrial or residential area.”.

Amendment of section 3 of Act 101 of 1998

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

- “(3A) The municipality concerned, and in the case of a communal land, a traditional council established in that area in terms of section 3 of the Traditional Leadership and Governance Framework Act, if any, may facilitate the formation of a fire protection association process as contemplated in subsection (3), if the Minister is of the opinion that a fire protection association is required.”.

Amendment of section 4 of Act 101 of 1998

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

- (a) by the substitution in subsection (7) for the words following paragraph (b) of the following words:
- “the municipality **[or]** and designated service must become a member of the fire protection association.”; and
- (b) by the substitution for subsection (8) of the following subsection:
- “(8) The owner in respect of State land, a state-owned enterprise, a public entity or an organ of state must, within a year after the commencement of the National Veld and Forest Fire Amendment Act, 2021, join [any] a registered fire protection association [registered] in the area in which the land [lies] is situated.”.

Amendment of section 10 of Act 101 of 1998, as amended by section 10 of Act 35 of 2005

4. Section 10 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) (a) When the Minister has published a warning in terms of subsection (1)(b), no person may light, use or maintain a fire in the open air in the region where the fire danger is high or extreme, unless the Minister, on good cause shown, exempts in writing, a landowner or group of landowners from the said warning, subject to any conditions that the Minister may impose.
- (b) The Minister must, before granting any exemption, consult the fire protection association of the area, if any, and the chief fire officer.”.

Amendment of section 11 of Act 101 of 1998

5. Section 11 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

- “(a) the South African Weather **[Bureau]** Service, established in terms of the South African Weather Service Act, 2001 (Act No. 8 of 2001), if the Director-General of the Department **[of Environmental Affairs and Tourism]** responsible for the administration of the said Act agrees;”.

Amendment of section 26 of Act 101 of 1998

6. Section 26 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) (a) A forest officer, a police officer, a peace officer, a traditional leader as defined in section 1 of the Traditional Leadership and Governance Framework Act and an officer appointed in terms of section 5 or 6 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987), have the power to enforce the Act [**in terms of this Chapter**]: Provided that they have been trained to be competent by an accredited institution to exercise powers to enter, search, arrest and seize in terms of this Act. 5

(b) A reference to a fire protection officer in sections 27, 28 and 29 includes the officers and the traditional leader referred to in paragraph (a).

(3) A fire protection officer and any officer or traditional leader contemplated in subsection (2)(a), exercising powers under this Act must carry with him or her, and produce on request, the prescribed proof of his or her identity [**and appointment as a fire protection officer**].” 10

Insertion of section 32A in Act 101 of 1998

7. The following section is hereby inserted in the principal Act after section 32:

“Appeals 15

32A. (1) Any affected person may appeal to the Minister against a decision or action taken by any person or entity acting under a power delegated in terms of this Act.

(2) An appeal under subsection (1) must be noted and shall be dealt with in the manner and in accordance with the procedure prescribed by the Minister in the regulations. 20

(3) The Minister shall consider any matter submitted to him or her on appeal, after giving every person with an interest in the matter an opportunity to state his or her case.” 25

Substitution of section 37 of Act 101 of 1998 25

8. The following section is hereby substituted for section 37 of the principal Act:

“Short title

37. This Act is called the National [**Veld and Forest Fire**] Veldfire Act, 1998.”

Short title and commencement 30

9. This Act is called the National Veld and Forest Fire Amendment Act, 2021, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL VELD AND FOREST FIRE AMENDMENT BILL, 2021

1. BACKGROUND AND PURPOSE

- 1.1 The Department of Forestry, Fisheries and Environment (“the Department”) is responsible for the administration of the National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998) (“the Act”). The Act promotes the prevention and combating of wildfires in the veld, mountains and in forested areas.
- 1.2 The Department, as the custodian of this legislation, is also responsible to facilitate the amendment process in order to ensure that the Act remains responsive and relevant in the field of integrated veldfire management and prevention.
- 1.3 Although this legislation was promulgated in 1998, several other pieces of national legislation, such as the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), and the National Environmental Management Biodiversity Act, 2004 (Act No. 10 of 2004), were promulgated after the Act.
- 1.4 Furthermore, advancements of science, technology and research in relevant fields have necessitated cooperative governance in the management of natural resources.
- 1.5 It is the responsibility of the Department to create a comprehensive regulatory framework through policies and legislation to improve and maintain a sustainable agriculture and forestry environment. It is therefore of critical importance to ensure that, where necessary, amendments should be effected to ensure that there are no legislative policy vacuums that hinder sustainable forest management and threaten food security by wildfires.
- 1.6 Veld and forest fires contribute to economic, social and environmental degradation in South Africa. They threaten and undermine government’s agenda of food security in the country and result in job losses, displacement of people, habitat and biodiversity loss.
- 1.7 The regional forestry officials and the external stakeholders that interact with this legislation have requested the Department to consider amending certain provisions to make it more responsive to the operational realities and challenges on the ground. The amendments that have been proposed are based on experience gained from the implementation and administration of the Act, both by forestry officials as well as external stakeholders that implement the legislation.

2. OBJECTS OF BILL

The main object of the Bill is to effect amendments to the Act in order to—

- improve the administration of the Act;
- deal with a number of important technical enhancements;
- align the legislation with the post-1996 Constitutional framework; and
- ensure that the Act remains responsive and relevant in the field of combating and preventing veld and forest fires.

3. ANALYSIS OF PROVISIONS OF BILL

3.1 Clause 1

Clause 1 seeks to amend certain definitions and inserts new definitions relating to the additional clauses.

3.2 Clause 2

Clause 2 seeks to amend section 3 of the Act, which deals with the formation of fire protection associations. Clause 2 inserts section 3(3A). The clause makes provision for the municipalities and traditional leaders in communal lands to facilitate the formation of fire protection associations if the Minister of Forestry, Fisheries and the Environment (“the Minister”) is of the opinion that a fire protection association is needed.

3.3 Clause 3

Clause 3 amends section 4 of the Act, which provides for the registration of fire protection associations. Clause 3 provides that state-owned enterprises, public entities, organs of state and municipalities should join registered fire protection associations.

3.4 Clause 4

Clause 4 seeks to amend section 10 of the Act, which provides for communication of fire danger rating. Clause 4 empowers the Minister to set conditions for the exemption of landowners when a warning in terms of section 10(1)(b) of the Act read with section 10(2) has been issued that no person may light, use or maintain a fire in the open air in the region where the fire danger is rated as high.

3.5 Clause 5

Clause 5 seeks to amend section 11 of the Act, which provides for the delegation of powers and duties. Clause 5 provides that the Minister may delegate powers and duties to the South African Weather Services.

3.6 Clause 6

Clause 6 amends section 26 of the Act, which deals with implementation of Chapter 8 of the Act. This clause provides for the inclusion of peace officers and traditional leaders to enforce the Act under certain conditions.

3.7 Clause 7

Clause 7 seeks to insert section 32A in the Act. The proposed section 32A provides for appeals to the Minister against decisions or actions taken under delegation by delegated officers or entities, and the process to be followed.

3.8 Clauses 8 and 9

Clause 8 seeks to change the name of the Act to the National Veldfire Act, 1998. Clause 9 deals with the title and commencement of the Act.

4. COMPLETE LIST OF ALL GOVERNMENT (NATIONAL, PROVINCIAL AND LOCAL), PUBLIC ENTITIES AND THIRD PARTY STAKEHOLDERS CONSULTED

- National Forests Advisory Council;
- Department of Environmental Affairs;
- Department of Cooperative Government and Traditional Affairs;
- Department of Energy;
- Provincial Conservation Agencies;
- SA National Parks and SANBI;
- Eskom;
- Department of Agriculture, Forestry and Fisheries;
- Department of Rural development and Land Reform;
- National House of Traditional and Khoi-San Leaders;
- Department of Mineral Resources;
- SA Timber Growers Association;
- Fire Protection Associations;
- Forestry Companies (e.g. SAFCOL, Mondi, Sappi);
- Farmers;
- Local Communities and public;
- Lessees;
- Environmental Consultant;
- Municipalities;
- Provincial Departments;
- Wildlife and Environment Society of South Africa;
- KZN Wildlife;
- Department of Planning and Local Government;
- South African Local Government Agency; and
- South African Environmental Observation Network.

5. IMPLICATIONS FOR DEPARTMENT

These amendments will ensure that there is more compliance by all landowners and thus the Department will be in a position to reduce veldfire-related incidents significantly in the country. The Department will further be able to play the role of being a regulator much better when other spheres of Government are involved in administering it in their respective areas.

6. IMPLICATIONS FOR PROVINCIAL GOVERNMENT

None.

7. IMPLICATIONS FOR LOCAL GOVERNMENT

Rural development is one of the top agenda items of government and this Act contributes in ensuring that there is sustainable rural development in the country. Veldfires destroy many assets and livelihoods of communities every year and local government is forced to divert resources allocated for other service delivery to address this problem. The amendments will encourage local government to make by-laws to implement it and put in place mitigation measures that ensure that all landowners comply with the provisions of this Act.

8. FINANCIAL IMPLICATIONS

The Directorate: Forestry Regulation and Oversight is responsible for the administration, enforcement and oversight of the Act. There is a dedicated budget to ensure that the Act is implemented.

9. PARLIAMENTARY PROCEDURE

9.1 The Constitution of the Republic of South Africa, 1994 (“the Constitution”), prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.

9.2 We have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

9.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.

9.4 Therefore, the issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.

9.5 The Bill seeks to improve and enhance the administration of the Act and to ensure that the Act remains responsive and relevant in the field of combating and preventing veld and forest fires.

9.6 The Bill provides for the facilitation of the formation of fire protection associations by a municipality or a traditional council in the case of communal land as defined in the Communal Land Rights Act, 2004 (Act No. 11 of 2004). The Bill seeks to compel a municipality, state-owned enterprise, public entity or other organ of state which owns land to join fire protection associations. The Bill grants the Minister the power to exempt, and set conditions for the exemption of, landowners when a warning has been issued by the Minister that no person may light, use or maintain a fire in the open air in the region where the fire danger is rated as high.

9.7 The Bill grants peace officers and traditional leaders the power to enter, search, arrest and seize relevant evidentiary material, in the enforcement of the Act.

- 9.8 The Bill also makes provision for appeals, and provides that any affected person may appeal to the Minister against a decision or action taken by any person or entity acting under a power delegated in terms of the Act, which appeal must be noted and dealt with in the manner and in accordance with the procedure prescribed by the Minister in the Regulations.
- 9.9 The proposed amendments reflected have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution. The stated general purpose of the Bill is to improve and enhance the administration of the Act and to ensure that the Act remains responsive and relevant in the field of combating and preventing veld and forest fires.
- 9.10 The State Law Advisers are of the view the subject matter of the proposed amendments does not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.
- 9.11 The Office of the Chief State Law Adviser is therefore of the opinion that since this Bill does not deal with any of the matters listed in Schedule 4 of the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.
- 9.12 We are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities or provisions pertaining to any matter referred to in section 154(2) of the Constitution.

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