REPUBLIC 0= South Africa



REPUBLIEK VAN Suid-Afrika

# **Government Gazette** Staatskoerant

Vol. 383

PRETORIA, 16 MAY 1997 No. 17999

# GENERAL NOTICE

#### **NOTICE 786 OF 1997**

#### **DEPARTMENT OF TRANSPORT**

The Chief Directorate Shipping of the Department of Transport hereby makes known its intention to submit to Parliament during the 1997 session the South African Maritime Safety Authority Bill contained in the Schedule. The purpose of the Bill is to establish a non-profit, independent, commercially driven and partially self-funding South African Maritime Safety Authority (SAMSA), similar to those established in Australia and New Zealand, to carry out, on an agency basis, the present functions of the Chief Directorate Shipping. SAMSA will be regulated by performance agreements with the Minister of Transport.

All government departments and other interested parties are invited to submit written comments on the Bill by 20 June 1997 to the Chief Director Shipping, Private Bag X193, Pretoria, 0001, for the attention of Mr E H Roodt. Comments may also be faxed to (012) 323 7009.

#### SCHEDULE

## SOUTH AFRICAN MARITIME SAFETY AUTHORITY BILL

To provide for the establishment of a South African Maritime Safety Authority, and for related matters.

E IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

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#### **PART 1—DEFINITIONS**

Division 2-Chief Executive Officer and staff

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#### **Definitions**

- 1. In this Act, unless the context indicates otherwise of a page of for recition and page of the recition and the second and t
- "appoint" includes re-appoint;
- "assets" means property of any description, and includes both movable and immovable property;
- "Authority" means the South African Maritime Safety Authority established by section 2;
- "Board" means the Board of the Authority referred to in section 10(1);
- "borrowing" includes raising money or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining credit in a transaction forming part of the day-to-day operations of the Authority;
- "Chair" means the Chair of the Authority;
- "Department" means the Department of Transport;
- "Deputy Chair" means the Deputy Chair of the Authority;
- "financial year" means a period beginning on 1 April of a specific year and ending on 31 March of the following year;

  year;

  year;

  year;
- "Fund" means the Maritime Safety Fund established by section 46(1); of sint and assistant to about
- "member" means a member of the Board of the Authority referred to in section 10(1);
- "Minister" means the Minister of Transport; behind a definition of the associate to long an include the manufacture of the second of the secon
- "officer" means a member of the staff of the Authority;
- "prescribed" means prescribed by regulation under section 52;
- "this Act" includes the regulations and any direction under section 5 or 28.

# PART 2—ESTABLISHMENT, FUNCTIONS AND POWERS OF AUTHORITY

#### Establishment of Authority and transfer of functions

- 2. (1) An Authority called the South African Maritime Safety Authority is established and is a juristic person.
- (2) Without prejudice to its capacity generally to perform juristic acts as a juristic person, the Authority is, in particular, competent to institute civil proceedings in all matters relating to its functions under section 3.
- (3) (a) On or after 1 April 1998 the Minister must by agreement with the Authority transfer to the Authority such functions as are specified in the agreement.
  - (b) The Minister must cause the agreement to be published in the Gazette.
  - (c) The agreement has effect from a date determined by the Minister by notice in the Gazette.

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## Objectives and functions of Authority

3. (1) The objectives of the Authority are—

- (a) to ensure safety of life and property at sea;
- (b) to prevent and combat pollution of the marine environment by ships;
- The functions of the Authority are— Talent of the Authority are Tale
- (a) to administer— of as blane as yill or to A and a notice a sebular etal aid each yet nevig a conseniors allow partylegates
  - (i) the provisions of laws specified in the agreement referred to in section 2(3); and
  - (ii) the provisions of any regulations made under such laws which relate to the provisions to be administered in terms of subparagraph (i),

and to have control of all incidental matters.

- (b) to perform such other functions as are conferred on it by or under any other Act;
- (c) to perform any other functions directed in terms of section 5; and
- (d) to perform functions incidental to any of the previously described functions.
  - (3) The Authority may perform its functions both within and outside the Republic.
- (4) In performing functions relating to the combating of pollution, the Authority must act in accordance with the related contingency plan agreed to by the Authority and the Department of Environmental Affairs and Tourism.

Plan.

(5) Subject to subsection (2), functions to provide services may be performed at the discretion of the Authority.

## Functions to be performed in accordance with objectives and international agreements and law

- 4. The Authority must perform its functions in a manner consistent with—
- (a) the objectives mentioned in section 3(1); and
- (b) the obligations of the Republic— the control of the republic the obligations of the Republic (8) and the obligations of th
  - (i) under any international agreement to which the Republic is a party; and
  - (ii) under customary international law binding on South Africa by virtue of section 232 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

#### **Directions**

- 5. (1) The Minister may give the Authority written directions as to the performance of its functions.
- (2) Directions as to the performance of functions that are conferred on the Authority by or under another Act may be only of a general nature.
- (3) Particulars of any directions given in a financial year must be included in the annual report of the Authority for that year.
- (4) In the event that the function of investigating casualties under the Merchant Shipping Act, 1951 (Act No. 57 of 1951), is transferred to the Authority by agreement under section 2(3), the Minister may establish an independent commission to receive and evaluate reports on such casualties prepared by the Authority.
  - (5) A commission established under subsection (4) reports directly to the Minister.

## Reimbursement of cost of complying with directions

6. (1) Where the Authority satisfies the Minister that it has suffered financial detriment as a result of complying with a direction given by the Minister under section 5, the Authority is entitled to be reimbursed by the State the amount that the Minister determines in writing to be the amount of that financial detriment.

(b) to provent and combat pollution of the marine early transpit by ships:

- (2) The reference in subsection (1) to suffering financial detriment includes a reference to-
- (a) incurring costs that are greater than those that would otherwise have been incurred; and
- (b) forgoing revenue that would otherwise have been received.

#### **Powers of Authority**

- 7. (1) In addition to any other powers conferred on it by this or any other Act, the Authority has, subject to this Act, power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
  - (2) Without limiting the generality of subsection (1), the powers include, subject to this Act, power—

to be form such other functions as are conferred on they or indeparts other Act.

(a) to perform functions incidental to any of the proventive regulaed functions.

- (a) to enter into contracts;
- (b) to acquire, hold and dispose of assets;
- (c) to let or hire plant, machinery, equipment or goods of the Authority not immediately required for the purposes of the Authority;
- (d) to invest money not immediately required for the purposes of the Authority in any manner that is consistent
  with sound commercial practice; and
- (e) to do anything incidental to any of the powers specified in this subsection or otherwise conferred on the Authority.

(i) under any International agreement to which is early and

entition is an entitle vinded year to a nerticing

- (3) Where the Authority performs a function, it may do so—
- (a) itself; or
- (b) in co-operation with another person; or the case of the public wall families mental as more than the
- (c) by delegating such function to another person.
  - (4) In subsection (3), "person" includes—
- (a) the State;
- (b) a Province;
- (c) the government or an agency of the government of a foreign country; and
- (d) any juristic or natural person. (g)

#### Prohibition on formation of companies and partnerships

- 138 8.0 A The Authority may not— line shiftshas a prifugitive on thour extract measurement of the same of the same
- (a) subscribe for, or purchase a majority shareholding in a company;
- (b) join in the formation of a company; or we no should statute to bris evision or noise mimos brelandoebni no
- (c) enter into a partnership. (d) and and are (4) and anadula to brill be delidade and alimnous A. (d)

#### Consultation

9. In the performance of its functions and the exercise of its powers, the Authority must consult with relevant bodies and organizations, both public and private, where appropriate.

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#### Constitution of Board of Authority altered to the state of the received and account along very redmen

- 10. (1) The Board of the Authority consists of the following members:
- (a) For the purpose if making a determination undor subsection (3), a mornbet who higher (a)
- (b) a Deputy Chair;
- (c) ex officio the Chief Executive Officer; and and analysis based and analysis distributed and product the chief Executive Officer; and and analysis based and analysis distributed analysis distributed analysis distributed and analysis distributed analysis distributed and analysis distributed analysis di
- (d) 2 to 4 other members.
  - (2) The members (other than the Chief Executive Officer) are part-time members.
- (3) The members mentioned in subsection (1)(a), (b) and (d) must be appointed by the Minister, and hold office on such terms and conditions as the Minister determines in writing.
- (4) In making appointments in terms of subsection (3), the Minister must take into account that the shipping sector and organized labour in the sector must each be represented by not more than one member of the Board and the remaining members of the Board must be appointed in their personal capacity and for their expertise and experience in the business sector, but one member of the board must be a person with substantial practical legal experience, appointed in his or her personal capacity.
- (5) The performance of the functions and the exercise of the powers of the Authority is not affected merely because of a vacancy in the membership of the Board.
- (6) The Board exercises the powers and functions of the Authority under this Act by resolution in terms of sections 17, 18 and 19.

#### Period of appointment of members—1904 1931 2022 (1950) Allered a 1964 (1954) (1954)

11. Subject to this Part, a member holds office for a period, not exceeding five years, specified in the instrument of appointment, but is eligible for re-appointment.

companies of or entitles on a system of the contract appropriate so to set for no

#### Remuneration and allowances of members

12. A member is entitled to such remuneration and allowances as the Minister determines.

Consultation

#### Independence of members

- 13. (1) Subject to the provisions of section 10(4) on representation, a member may not engage in any paid employment that, in the opinion of the Minister, conflicts with the proper performance of the duties of the member.
- (2) A member who has a direct or indirect pecuniary interest in a matter being considered by the Board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (3) A disclosure under subsection (2) must be recorded in the minutes of the meeting, and the member may not, unless the Minister or the Authority otherwise determines— and the meeting and the
- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.
- (4) For the purpose of making a determination under subsection (3), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates may not—
- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in making the determination.

# Acting appointments moras ed laum (b) bits (d) (s)(i) holiosadus ni benoitnem assumem ent (a) (a)

- 14. (1) The Minister may appoint the Deputy Chair or another member (other than the Chief Executive Officer) to act as the Chair—
- (a) during a vacancy in the office of Chair; or as ed tauta based entitle stadment pointisines and base based enti-
- (b) when the Chair is absent from duty or from the Republic or is, for any other reason, unable to perform the duties of the office.
- Chair—

  (2) The Minister may appoint a member (other than the Chief Executive Officer) to act as the Deputy

  Chair—
- (a) during a vacancy in the office of Deputy Chair; or the state of th
- (b) when the Deputy Chair is absent from duty or from the Republic or is, for any other reason, unable to perform the duties of the office.
  - (3) The Minister may appoint a person to act as a member— readment to treatment to both \$4
- (a) during a vacancy in the office of a member; or
- (b) when a member is absent from the Republic or is, for any other reason, unable to perform the duties of the office.
- (4) The provisions of section 10(4) apply *mutatis mutandis* to appointments in terms of subsection (3).
  - (5) A person appointed to act during a vacancy may not continue so to act for more than 12 months.

consultation with the Board.

resolutions without meetings

# (a) permit members to participate in a perticular meeting, or all meetings, by teleptione, closed-circnoitsngiaes

15. A member (other than the members mentioned in section 10(1)(c) and (d)) may resign by notice in writing delivered to the Minister.

or any other means of communication, and a member who so participated is to be regarded as being

#### Termination of appointment

- 16. (1) The Minister may terminate the appointment of a member—a based and anadyse (1)
- (a) for misbehaviour or physical or mental incapacity; a znedment enough to nucl princers mortility in the collection
- (b) who becomes insolvent, applies to take the benefit of any law for the relief of insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (c) who, without reasonable excuse, fails to comply with section 13(2); or
- (d) where the Minister is of the opinion that the performance of a member has been unsatisfactory for a significant period of time.
- (2) If the Minister is of the opinion that the performance of the Board has been unsatisfactory for a significant period of time, the Minister may terminate the appointment of all members or specified members.

## Meetings the Mini appointed by the Mini appo

- 17. (1) The Board is to hold such meetings as are necessary for the efficient performance of its functions.
  - (2) in The Chair not eldigile at fud unemminings to tremutate in the interest are very evil pribation.
- (a) may convene a meeting at any time; and black and rebout, at recition over the English and the Chief Executive Officer is, under the Board and time; and
- (b) must convene a meeting on receipt of a written request signed by not less than two other members.
  - (3) The Minister may convene a meeting at any time. After the Annual and an analysis of the Annual and the Annu
- (4) The Chair is to preside at all meetings at which he or she is present.
  - (5) Where the Chair is not present at a meeting—negumen gribuloni) anoilibrio bas armor ribus no
- (a) the Deputy Chair is to preside; or solite apion (d) noticeadus to smile in betriogga neers Ar (a)
- (b) if the Deputy Chair is not present, the members present are to appoint one of their number to preside.
  - (6) At a meeting four members constitute a quorum.
- (7) Questions arising at a meeting are to be determined by a majority of the votes of the members present and voting.
- vote.

Terms and conditions of service of Chief Erequiive Officer

#### **Conduct of meetings**

- appropriate. The Board may, subject to this Part, regulate proceedings at its meetings as it considers appropriate. The substitution of indicating of as to A single to Deblyong ton creating of notices are responsible.
  - (2) Without limiting the generality of subsection (1), the Board may—

- (a) permit members to participate in a particular meeting, or all meetings, by telephone, closed-circuit television or any other means of communication, and a member who so participates is to be regarded as being present at the meeting; and (a) (1) (b) the regarded as t
- (b) invite a person to attend a meeting for the purpose of advising or informing it on any matter.

#### Resolutions without meetings

- 19. (1) Where the Board so determines, a resolution is to be taken to have been passed at a meeting of the Board if, without meeting, four or more members indicate agreement with the resolution in accordance with a procedure previously determined by the Board.
- (2) Such a resolution is deemed to have been adopted on a day determined in accordance with the said procedure.

#### Division 2—Chief Executive Officer and staff

(2)) If the Minister is of the opinion that the pell-mance of the Board has been unsatisfactory for a

in where the Minister is of the opinion that the performance of a member has been unsatiallistory for

# Chief Executive Officer and mentioned and attenues to the appropriate the second of the control of the control

- 20. (1) There is a Chief Executive Officer of the Authority, who is appointed by the Minister after consultation with the Board.
- (2) Subject to this Part, a person appointed as Chief Executive Officer holds office for a period, not exceeding five years, specified in the instrument of appointment, but is eligible for re-appointment.
  - (3) The Chief Executive Officer is, under the Board, to manage the Authority.
- (4) Anything done in the name of, or on behalf of, the Authority by the Chief Executive Officer is to be taken to have been done by the Authority.
- (5) Notwithstanding subsection (1), the Minister may appoint a provisional Chief Executive Officer on such terms and conditions (including remuneration and allowances) as he or she determines in writing.
- (6) A person appointed in terms of subsection (5) holds office for a period not exceeding three years, but is eligible for re-appointment by the Board.

## Chief Executive Officer not to engage in other work of this profession and another work of the profession and another work of the profession and t

21. The Chief Executive Officer may not engage in paid employment outside the duties of his or her office without the approval of the Minister and the Board.

#### Terms and conditions of service of Chief Executive Officer

22. The Chief Executive Officer holds office on such terms and conditions (including remuneration and allowances) in relation to matters not provided for by this Act as the Minister in consultation with the Board determines in writing.

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#### Resignation

23. The Chief Executive Officer may resign by notice in writing delivered to the Board.

#### Acting Chief Executive Officer yet 08 tasel to nalquese had a subsect and which the error

- 24. (1) The Board may in consultation with the Minister appoint a person to act as Chief Executive Officer—
- during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from the Republic or is, for any other reason, unable to perform the duties of the office, but a person appointed to act during a vacancy may not continue so to act for more than 12 months.
- (2) A person, other than an officer, who is acting as Chief Executive Officer is entitled to the same remuneration and allowances as are payable to the Chief Executive Officer.
- (3) An officer who is acting as Chief Executive Officer is to continue to be paid the remuneration and allowances payable to the officer but is also to be paid—
- (a) so much of the remuneration payable to the Chief Executive Officer as exceeds the officer's usual remuneration; and
- (b) so much of any allowance payable to the Chief Executive Officer as exceeds the corresponding allowance payable to the officer; and a payable to the officer; and a payable to the officer; and a payable to the officer.
- (c) if an allowance is payable to the Chief Executive Officer but is not payable to the officer, that allowance.

# Staff of Authority is a lease and indicate as a vinority April no mule to stall electrons a master been artifully

- 25. (1) Officers are persons employed by the Authority under a contract of employment with it.
- (2) The Chief Executive Officer may, on behalf of the Authority, arrange with a State authority or another body—
- (a) for the services of officers or employees of the State or other body to be made available for the purposes of the Authority; or a service of the Authority; or a service of the State or other body to be made available for the purposes
- (b) for the services of an officer to be made available for the purposes of the State or other body.
  - (3) The provisional Chief Executive Officer referred to in section 20(5) may appoint officers.
- (4) Notwithstanding any other law, the Chief Executive Officer may, in accordance with an agreement between the Department and the Authority, transfer permanently to the Authority any person who is an officer or employee of the Department in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), with the concurrence of such person.
- (5) Before acting under subsections (2) and (4), the Chief Executive Officer must obtain the Minister's approval.

#### PART 4—OPERATION OF AUTHORITY

The Chief Executive Officer may resign by houce in writing delivered to the Board

#### Business plan

- 26. (1) The Authority must develop a business plan at least 90 days before the beginning of each financial year to be approved by the Minister.
- (2) The plan developed under subsection (1) must—out the root of years to be set to (1) and the
- (a) include a statement of the objectives of the Authority for at least five years;
- (b) outline the strategies and policies that the Authority intends to adopt in order to achieve its objectives; and
- (c) include inter alia an operational plan, financial plan, a human resources plan and performance indicators.
- in question.

Fremuneratest and allowances as are payable to the Chird Executive Officer

#### Financial targets and performance indicators against a color tenth to the many additional and the color and the co

- 27. When preparing the financial plan, the Authority must consider—
- (a) the need for high standards of maritime safety; wish ad of calls at full replife and of beldisysing aspectively.
- (b) the need for a high standard of protection for the marine environment; and see and to sound be (a)
- (c) objectives in legislation and government policies;
- (d) any directions given by the Minister under section 5; a lain of side value and section with visit and the part of the control of the cont
- (e) any payments by the State to the Authority to fund functions referred to in paragraph (g);
- (f) the need to maintain a reasonable level of reserves, having regard to estimated future infrastructure requirements;
- (g) the need to earn a reasonable rate of return on the Authority's assets (including assets wholly or principally used in the performance of functions that are directly funded by the State); and

127 The Chief Executive Citide may on behalf of the Authority arrange with a State authority of

rank for the services of officers or employeds of the State or other body to be made available for the purposes

(h) any other commercial consideration the Authority considers appropriate.

#### Minister may direct variation of financial plan

- 28. (1) The Minister may direct the Authority to vary the financial plan in respect of financial targets, and performance indicators, relating to the provision of services and facilities.
  - (2) When doing so, the Minister must consider— (2) SWING SKE TEACHER DESIGNATION (E)
- (a) the matters referred to in section 27 (other than paragraph (c)); and
- (b) any other considerations of a commercial nature that the Minister considers appropriate.
  - (3) A direction must be in writing and set out its reasons. To an additional and the development

# PART 5-FINANCE MONTH A OF STATE OF THE STATE

# Division 1—General

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#### Transfers of certain State assets to Authority

- 29. (1) Where, immediately before the commencement of this section—
- (a) a function of the Authority was being performed by the Department; and
- (b) an asset was held or used by the Department in connection with the performance of that function, the Minister may, at any time, cause the asset to be transferred to the Authority.
- (2) Subsection (1) does not prevent the State from transferring any asset to the Authority otherwise than under that subsection, provided the asset is transferred in order to further the objectives of the Authority referred to in section 3(1).

#### Statutory transfer of land, etc., to Authority

- **30.** (1) Where the Minister, by notice in the *Gazette*, for the purposes of this section describes any land owned by the State, such land is transferred to the Authority on the day specified in the notice, not being earlier than the day of publication of the notice.
- (2) Notwithstanding section 5 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and section 18 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar must, on submission to him of her of a certificate by the Minister that State land has been transferred in terms of subsection (1), make such entries and endorsements free of charge as he or she deems necessary in or on any appropriate register, title deed or other document in his or her office or laid before him or her, in order to register the transfer of such land in the name of the Authority.
- (3) A registrar must, on submission to him or her of a certificate by the Minister that a servitude, other real right or lease has been transferred in terms of subsection (1) or that a servitude exists over State land which has been transferred in terms of that subsection, make such entries and endorsements free of charge as he or she deems necessary in or on any appropriate register, title deed or other document in his or her office or laid before him or her, in order to—
- (a) register the transfer of such servitude, other real right or lease in the name of the Authority; or
- (b) confirm the existence of the servitude over the State land so transferred in favour of any other person.
- (4) Notwithstanding legal provisions to the contrary, no servitude or other right of any kind in respect of State land transferred to the Authority in terms of subsection (1) may be acquired by prescription.
- (5) In this section, "registrar" means a registrar as defined in section 102 of the Deeds Registries Act, 1937.

#### Effects of transfers from State to Authority

- 31. Where, immediately before a transfer in terms of sections 29 or 30—
- (a) a right of the State arising out of a debt, liability or obligation of any other person in favour of the State existed in respect of the assets; or

(a), a function of the Adhority was being performed by the Department, and

Statutory transfer of land, etc., to Authority

Minister may, at any time, cause the asset to be handered to the Authority

(b) a debt, liability or obligation of the State existed in respect of the assets, the right, debt, liability or obligation, as the case may be, of the State is transferred to the Authority.

# Liabilities in respect of personnel of this incidentate of them seed will yet be unique being asset as (d)

32. The Minister may, with the concurrence of the Authority, determine in writing the amount (if any) of the provisions to be made by the Authority on account of liabilities transferred from the State in respect of personnel from it.

#### Money paid in advance to the State

- Wifere the Minister, by notice in the Cazatte for the purposes of this section do 9794.
- (a) a function of the Authority was formerly performed by the Department; and
- (b) an amount received by the State is or includes an amount paid in advance on account of anything to be done by the State in performing that function; and
- there is payable to the Authority by the State an amount that the Minister, having regard to all matters that he or she considers relevant, determines in writing as being payable because of the receipt of the first-mentioned amount.

# Rights in respect of services and facilities formerly provided by Department

- 34. (1) Where, immediately before the commencement of this Act—
- (a) a function of the Authority was being performed by the Department; and
- (b) a right of the State existed, arising out of a debt, liability or obligation of any other person in favour of the State in respect of a service or facility provided by the Department in the performance of that function, the right of the State is transferred to the Authority to the extent determined in writing by the Minister taking into account the objectives of the Authority referred to in section 3(1).

real right or lease has been transferred in terms of subsection (1) or that a servicude exists ever State land which

- (2) Where, immediately before the commencement of this section—
- (a) proceedings by the State were pending in a court; and seem to find the court and t
- (b) the proceedings related to such a debt, liability or obligation,

then, to the extent that the proceedings so relate, they may be continued by the Authority and the Authority is to be substituted for the State.

Granantee of borrowings by Authority

Authority may give security

#### **Assets and liabilities of Authority**

- 35. (1) The assets of the Authority include but are not limited to—
- (a) assets that have been transferred to the Authority by or under this Act;
- (b) any amounts paid to the Authority out of money appropriated by Parliament for the purpose of funding the Authority;
- (c) any amount payable to the Authority in terms of any Act or any instrument thereunder;
- (d) amounts paid to the Authority in terms of section 45:
- (e) any reserves resulting from the operations of the Authority;
- (f) any assets acquired by the Authority in the course of its operations.
- (2) The liabilities of the Authority include but are not limited to—
- (a) the amount determined under section 32;
- (b) debts, liabilities and obligations of the State transferred to the Authority by section 31;
- (c) any assets repayable to the State by the Authority under subsection (3);
- (d) any debts incurred by the Authority in the course of its operations;
- (e) any loans raised by the Authority. Set 10 than 10 slightly self to so with uses evil years a horiting and Excellent
- (3) The assets of the Authority are repayable to the State at such times, and in such amounts, as the Minister determines in writing.
- (4) In making such a determination, the Minister must have regard to any advice that the Authority has given to the Minister in relation to its financial affairs and to the objectives of the Authority referred to in section 3(1).

## Exemption from tax sqaQ arts of solitons garblad regions to telegraphysm sonerial to retain MadTo. It is

- 36. (1) The Authority is not liable to pay tax whether under the law of the State or under that of a Province.
  - (2) Subsection (1) does not apply to customs duties or value-added tax.

#### **Borrowings from the State**

37. The Minister of Finance may, out of money appropriated by Parliament for the purpose, lend money to the Authority on such terms and conditions as he or she determines in writing.

#### Borrowings otherwise than from the State

- 38. (1) The Authority may borrow money otherwise than from the State.
  - (2) Money may be borrowed under subsection (1) wholly or partly in foreign currency.

#### Guarantee of borrowings by Authority

- 39. (1) The Minister for Finance may guarantee the performance by the Authority of obligations incurred by it under section 38.
- erts prijon (2) A contract under subsection (1) may include om to two whorks A ont of \$188 24 Aborts Vice 1 at
- (a) a provision agreeing that proceedings under the contract may be taken in the courts of a foreign country;

  or pathographic manufaction to be a manufaction of the court of
- (b) a provision waiving the immunity of the State from suit in the courts of a foreign country.
- (3) Where the Minister of Finance guarantees such a borrowing, he or she must cause to be laid before Parliament within 15 sitting days after the contract is entered into, notice specifying the amount and term of the borrowing and such other information relating to the borrowing or the guarantee as he or she considers appropriate.

#### Authority may give security (2) hollowadus reformed fund and to share our overclevener steam one (b)

- 40. The Authority may give security over the whole or part of its assets for-
- (a) the performance by the Authority of any obligation incurred under sections 37 or 38; or
- (b) the payment to the State of amounts equal to amounts paid by the State under a guarantee under section of 39. A shi tant solves was of busper event from the state under a guarantee under section of the payment to the State of amounts equal to amounts paid by the State under a guarantee under section of 39. A shi tant solves was of busper event from the state under a guarantee under section of the state under s

#### Delegation by Minister of Finance

41. The Minister of Finance may delegate to a person holding an office in the Department of Finance all or any of the powers under section 39.

## Application of Reporting by Public Entities Act

42. (1) The Authority is a listed entity in terms of section 3 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992).

(2) Subsection (1) does not at all to customs duries of value added tax.

(2) In reporting under section 2 of the said Act, the Authority must include an evaluation of its overall performance compared with the financial targets and performance indicators for the year in question.

to the Authority on such terms and conditions as he or she determines in v.s. that

Borrowings otherwise than from the State

#### Accounting and auditing

- 43. (1) The Authority must, in accordance with generally accepted accounting practice, keep such accounting and related records as are necessary to represent fairly the state of affairs and business of the Authority, and to explain its transaction and financial position.
- (2) The accounting and related records of the Authority must be audited annually by an auditor registered under section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).

#### Division 2—Charges and Levies

#### Definitions (E) notice adjact about 11 or the entropy and or appropriate the control of the property of the pr

art 44. In this Division—ad hum (1) softwarder rebrie bear emerce and etc. to the ment and the

# "charge" means—purposed risulty of tester and of naticiar in visional A art to be supplied on to be supplied and as a personal resource.

- (a) a charge for a service or facility provided by the Authority; or
- (b) a fee or other charge in respect of a matter in relation to which expenses are incurred by the Authority under this Act, including, but not limited to, a fee or other charge in respect of, or for an application for—
  - (i) the grant, issue, renewal or variation of a certificate, licence approval, permission, permit, registration or exemption under an Act or instrument under an Act; or
  - (ii) the grant or variation of an authorization, or the cancellation, suspension, variation or imposition of a condition, relating to anything referred to in subparagraph (i).

"levy" means an amount payable at intervals or at stipulated times by specified persons and based on one or more or all of the following criteria:

- (a) gross tonnage;
- (b) ship category; north. A ent of sub-steen as believoper advant sett aneq between setting to the server content of the server cont
- (c) cargo category;
- (d) age of ship;
- (e) nationality of ship,

and also based on the presence of ships in the internal waters or territorial waters of the Republic otherwise than in innocent passage.

bledines at the Authority letered to a section 3(1) in accurating with protectiber rules.

#### Charges and levies

- 45. (1) Subject to this section, the Authority may make determinations-
- (a) fixing charges and levies and specifying the persons by whom, and the times when, such charges and levies are payable; and
- (b) fixing the penalty for the purposes of subsection (8).
- (2) Before making a determination under subsection (1), the Authority must give the Minister notice in writing of the proposed determination—
- (a) specifying the day from which the determination is intended to operate; and
- (b) if it fixes a charge, levy or penalty, specifying the basis of such charge, levy or penalty; and
- (c) if it varies a charge, levy or penalty, specifying the reason for the variation.
- (3) The Minister may within 60 days after he or she has received a notice of the proposed determination, give the Authority notice in writing approving or disapproving the proposed determination, but in doing so, the Minister must have regard to the objectives and functions of the Authority in terms of section 3.
- (4) A notice under subsection (3) disapproving a proposed determination may recommend an alternative determination.

- (5) The Authority may make a determination under subsection (1) only if-
- (a) the Minister approves it; or
- (b) the period within which the Minister may give a notice to the Authority under subsection (3) has expired without the Minister having given such a notice.
- (6) The amount or rate of a charge fixed under subsection (1) must be reasonably related to the expenses incurred or to be incurred by the Authority in relation to the matter to which the charge relates and may not be such as to amount to taxation.
  - (7) A determination under subsection (1) must be published in the Gazette
- (8) Subject to subsection (9), where a charge or levy fixed under subsection (1) is not paid within the period determined by the Authority, being a period beginning on the day on which the charge or levy became due and payable, the person liable for the charge or levy is liable to pay to the Authority, in addition to the charge or levy, a penalty calculated upon the unpaid amount of the charge or levy from the day on which the charge or levy became due and payable, and compounded.
- percentage of the unpaid amount of the charge or levy for each day during which it is unpaid, calculated from the day on which the charge or levy became due and payable, and compounded.
  - (10) Charges, levies and penalties may be recovered as debts due to the Authority.

#### **Maritime Safety Fund**

- 46. (1) There is a fund, called the Maritime Safety Fund, which is to be administered by the Minister.
- (2) The Minister may pay amounts out of the Fund to the Authority for the purpose of furthering the objectives of the Authority referred to in section 3(1) in accordance with prescribed rules.

#### Fines and penalties

47. (1) There is to be paid to the Fund amounts equal to amounts received by way of penalty or fine by the State for contraventions under the laws specified in the agreement in terms of section 2(3).

45. (1) Subject to this section, the Authority may make determinations -

(c). If it values a charge, levy or penalty, specifying the reason for the variation.

(2) Amounts payable under subsection (1) are to be paid out of the National Revenue Fund (2) established by section 213 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), which is appropriated accordingly.

#### bris ydisrien to yvel PART 6—GENERAL PROVISIONS (langua fivel, aptails a agot fille (d)

#### Delegation By Minister 1.8 beviece: 25th effe to ed tells syeb 08 million vam retain M en To (2)

48. The Minister may delegate all or any of the powers under sections 29, 30, 33 and 50 to an officer of the Department.

determination, give the Authority notice in writing approving or discipctoring the proposed determination, but in

# Delegation by Authority about an all bendithern thetxe and or eluberto? eat of bandithern swisters briefly a life bandithern swisters briefly a life briefly and briefly a life briefly a life briefly and briefly a life briefly a lif

49. (1) Subject to subsection (2), the Authority may, by written instrument, delegate all or any of its powers under this or any other Act.

a consequence of the agreement in terms of section 2(2), and

things to be done as may be necessary to

a date fixed by the President by or clamation in the Gazero

(2) The powers of the Authority under sections 38(1), 40 and 45(1) may be delegated only to an officer.

58 (1) Notwithstanding any provision to the contratyrin any other to ville Minister for y during the period

# Substitution of Authority for State in contracts, etc. Its end of the most and the air results and the eff most

- 50. If the Minister so declares in writing, a specified contract or other instrument—
- (a) to which the State or the Government is a party; and
- (b) that related to an asset immediately before the transfer of that asset under this Act; has effect after the transfer as if, to the extent to which the contract or instrument so relates—
  - (i) the Authority were substituted for the State or the Government as a party; and
  - (ii) any reference to the State or the Government were, in relation to matters occurring after the transfer, a reference to the Authority.

# Publication of directions of APST ADA Who that A state emitted in a some of an ability and a state of the Apsternation of directions of the Apsternation of directions of the Apsternation of the Apsternation

**51.** Where the Minister gives a direction under section 5 or 28, the Minister must cause a copy of the direction to be published in the *Gazette* within 21 days after it is given.

#### Regulations

- **52.** The Minister may make regulations, not inconsistent with this Act—
- (a) prescribing matters required or permitted by this Act to be prescribed;
- (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- (c) prescribing the manner in which and the persons or bodies by whom charges and levies are to be collected, and the manner in which security may be furnished for the payment of such charges and levies.

#### Application of Act to Prince Edward Islands

53. This Act extends to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and any reference in this Act to the Republic includes a reference to the those Islands.

#### Amendment of laws

54. The Minister may, by notice in the Gazette-

- (a) amend the laws mentioned in the Schedule to the extent mentioned in the third column of that Schedule as a consequence of the agreement in terms of section 2(3); and
- (b) amend such other laws as may be necessary in consequence of such agreement.

# (2) The bowers of the Authority under so chara 80(1), 40 and 45(1), the anoisivorg lanoitient

- 55. (1) Notwithstanding any provision to the contrary in any other law, the Minister may during the period from the date on which this section comes into operation to the transfer date take such steps or authorize such things to be done as may be necessary to promote—
- (a) the transfer of functions performed by the Department to the Authority as envisaged in section 2(3); and
- (b) the management of the Authority.
- (2) Notwithstanding any provision to the contrary in this Act, during the period mentioned in subsection (1), the Minister must approve the business plan that will come into operation on the transfer date.
- (3) In this section, "transfer date" means the date referred to in section 2(3)(c). The article and referred to in section 2(3)(c).

#### Short title and commencement

56. This Act is called the South African Maritime Safety Authority Act, 1997, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

direction to be published in the Gazetle within 21 days after it is given.

51. Where the Minister gives a direction under section 5 or 28, the Minister must cause it copy of the

prescribing maders necessary of convenient to be presulted for certaing out or giving effect to link Act, prescribing the manuer in which and the persons of bodies by whom on ages and levics are to be collected.

sa This Act extends to the Prince Edward Island to in sections of the Purce Edward Islands

54. The Minister may, by notice in the Caretter

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and Civil y ability). Act, 1981 (a) Insert the for owing detroition after the detroit on of "arca of tine.

No. and year of Act	Title mbas I assal A mage ent so:	Amendments which may be effected by the Minister under section 54 as			
Act 57 of 1951	Merchant Shipping Act,	consequence of the agreement contemplated in section 2(3)  1. In section 2—			
ACC 37 OF 1931	1951				
iol CythorfluA" bru	나, 본래라입니다. 아이는 그 그리고 있는 가게 되었다고 있다.				
	gion of the Department of Tra	Officer .			
	die V bow and a phadus VS	A STATE OF THE STA			
arraw sarra war kiri o		Authority established by section 2 of the South Amean			
		Maritime Safety Authority Act, 1997 (Act No of			
	a 1(2)(4), 5, 19, 21, 32, 27	1997), , and			
istral antha verso	ost" f <b>är</b> ine Word "Klinister" v	(b) insert in the definition of "proper officer" in the words preceding			
		paragraph (a) the words "or the Authority" after the words "Director-			
21034	If a fulfilled us = 2 whistifuls II	General".			
3.11.11.11	areneficially and a	2. In section 4(b) substitute the word "Authority" for the word "Minister" and			
Aid ster where	Figure 16 to the word "	delete the words "subject to the laws governing the public service".			
		3. In section 5(1) insert the words "and subject to the provisions of the South			
	ca fai seobah 26.1	African Maritime Safety Authority Act, 1997 (Act No of 1997" after			
		the word "Minister".			
-11.3900	ever tennished of vicinal Reve	4. In sections 9(1)(d), 18(3), 27(2), 30, 31, 43, 44, 46, 57, 81, 82, 96, 99, 100,			
acres enjoce	8) guides to am et ar heliso				
	THE SE DOUGS ALL SOUND				
Volume Stell of	olderse, erhabed var a reniw i	"Authority" for the words "Director-General" wherever the latter occur.			
	doA actific anomic	보면 Bullet 전 10 10 10 10 10 10 10 10 10 10 10 10 10			
neltovog get i		239 and 304A substitute the word "Authority" for the word "Minister"			
		HMNL REPORT (FREE PROPERTY FREE PROPERTY FOR THE PROPERTY FOR THE PROPERTY FREE FREE FREE FREE FREE FREE FREE F			
		6. In section 343(1) insert the words "the Authority" after the words "Director-			
edt yd ban		General".			
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	edi ya banuari ser pose to				
ant of each	brigana (strabian era dhiriv).				
	and the property of the same o	(b) in paragraph (b) insert the words "or of the Authority" after the word			
911.70/9111		State".			
		8. In section 344(4) insert the words "the Authority" after the words "Director-			
note tolstieme	be a vero de la considera vero de la considera				
79		9. In section 356ter (2) insert the words "with the Authority and" after the word			
	= you out the your out or bis or by				
Act 73 of 1980	Dumping at Sea Control	10. In section 1—			
		(a) in subsection (1) insert the following definition after the definition of			
		aircraft":			
		" 'Authority' means the South African Maritime Safety Authority			
10 F V		established by section 2 of the South African Maritime Safety			
*bas (6)72		Authority Act, 1997 (Act No of 1997);"; and			
valorita A e it of	neved smooth controller	(b) in subsection (2) substitute the word "Authority" for the words			
1997 V		"Minister of Transport".			

Act 6 of 1981	Marine Pollution (Control	11.	In section	1(1)—
	and Civil Liability) Act, 1981		(a) ins	ert the following definition after the definition of "area of the
s se ko nomisa	rebute a scientificate various	- 6d ya	Rep	public":
44 75 75 76 77	t contamplated in section 2(3)			# 64 AL - 1/2 1
	Constitution Constitution and Constitution and Constitution of			established by section 2 of the South African Maritime Safety
	de mitigar a her da i mitigar of a			Authority Act, 1997 (Act No of 1997);"; and
, and	a to require our consenion of			ne definition of "principal officer" substitute the word "Authority" for
				words "Marine Division of the Department of Transport".
A; 0; e; Cr		12.		s 4(3), 5(9), 10, 18, 27 substitute the word "Authority" for the word
	olutied by section? of the Sou	Mary II		erever the latter occurs.
	cy Authority Act, 1997 (Act No.	13.		s 4, 5, 6, 7, 8, 9(1) and (2)(a), 13, 19, 21, 22, 27(1), (4),(5) and
				ute the word "Authority" for the word "Minister" wherever the latter
	n at 'proper officer in the word		occurs.	
	ards or the Authority" after the v	14.		s 12(3), 13(2), 14, 16, 17, 18 and 24 substitute the word
				' for the words "Director-General".
	brow eti not "ytnorthuAthbrow en	15.		18 substitute the word "Authority" for the word "Minister" where
	of the laws governing the photo			ast occurs.
	ords "and subject to the provision	16.	ing a raid of	the following section for section 26:
tells "Tegs."	Standy Act, 1997 (Act No. 1,178)	ia Visti		come and expenditure
			THE HARM	(1) There shall be paid into the National Revenue Fund—
	27(2), 30, 34, 45, 45, 81, 81, 81, 81, 81, 81, 81, 81, 81, 81		(-)	
	99, 707, 301, 801, 8VI : 307, 60			any amount deposited in terms of section 16 representing a
brow self state	28, 239,1844, 247 and 254 subs	224, 2		sum deemed in terms of section 9(2)(b)(ii);
	rector-General" v hareverbise la			any other money which may become payable to the State by
	3 465 09 109 .005 .991 891			virtue of the provisions of this Act;
	e word "wulfidity" for the word		edua A. (C)	any fines paid or recovered in consequence of the conviction
	words "the Aufficity" affecting t			(2) Expenses incurred—
			<u>(a)</u>	to undertake or promote the research determined by the
			-2004	Minister, on any matter which, in the opinion of the Minister, is
	rt the words "the Authority," after			connected with the pollution of the sea by harmful substances;
	the finda		(b)	for the defraying of expenses incurred by the Minister and
after the word	it the words for of the Abtharity	eni (d)		Director-General which are incidental or conducive to the
				performance of their respective functions in terms of the
	words "the Authority" after the s	ent has		provisions of this Act,
			sha	be defrayed out of money appropriated by Parliament for such
brow and refig to	de words "with the Authority at		purp	ooses.
				(3) There shall be paid to the Authority—
				any amount deposited in terms of section 16 other than a sum
	r talla halfirite b unwolko ant tu			deemed in terms of section 9(2)(b)(ii);
			<u>(b)</u>	the proceeds of the realisation of any goods, property or
	emitting Aurous Allicus Nantidie			assets in terms of section 19;
	Lacture 2 of the South Ambres			all money paid to or recovered by the Authority in
	(1997 to of 1997) (1997)			consequence of a removal in terms of section 27(6); and
	slitute the word "Authority" for the		<u>(d)</u>	any other money which may become payable to the Authority
				by virtue of the provisions of this Act.

#### (4) Expenses incurred—

- (a) when the Authority deems it necessary or expedient in the public interest, for defraying expenditure incurred in preventing or removing the pollution of the sea by harmful substances in or discharged from ships, tankers or offshore installations and in connection with matters incidental thereto;
- (b) for the payment of remuneration and allowances of persons engaged in terms of section 27(1);
- (c) for the defraying of expenses incurred in removing, or in taking steps to prevent, pollution of the sea by harmful substances, in terms of section 27(6);
- (d) for the hire or purchase of equipment, buildings, machinery and accessories, apparatus, seagoing vessels, vehicles, aircraft and any other movable or immovable property deemed by the Authority to be necessary for or conducive to the performance of its functions in terms of the provisions of this Act;
- (e) for the defraying of expenses incurred in the instruction of officers of the Authority and other persons in connection with pollution of the sea by harmful substances and in the training of such officers and persons in the prevention and removal of such pollution and in activities incidental thereto;
- (f) for any purpose connected with the performance by the
  Authority of its functions in terms of the provisions of this Act,
  shall be defrayed out of the moneys of the Authority; provided that
  for the purposes of paragraph (a) the defraying of expenditure
  incurred in preventing or removing pollution of the sea by harmful
  substances in or discharged from any ship, tanker or offshore
  installation shall not exempt the owner of such ship, tanker or
  offshore installation from liability under this Act for payment of such
  expenditure."

#### 17. In section 27-

- (a) in subsection (1) delete the words "subject to the laws governing the public service";
- (b) in subsection (2) substitute the word "Authority" for the word "State";
- (c) in subsection (2)(a) substitute the words "owned by the Authority" for each of the expressions "in the National Revenue Fund" and "from the National Revenue Fund"; and
- (d) in subsection (2)(b) substitute the words "by the Authority" for the words "from the National Revenue Fund".
- In section 29 substitute the words ", Director-General and the Authority" for the words "as well as the Director-General".

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786 South African Maritime Safety Authority Bill: To provide for the establishment of a South African Maritime Safety Authority and for related matters

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