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## GENERAL NOTICE

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### **NOTICE 683 OF 2011**

#### **DEPARTMENT OF ENVIRONMENTAL AFFAIRS**

#### **EXPLANATORY SUMMARY OF THE SOUTH AFRICAN WEATHER SERVICE AMENDMENT BILL, 2011**

The Minister of Water and Environmental Affairs intends introducing the South African Weather Service Amendment Bill, 2011 in Parliament during October 2011. An explanatory summary of the Bill is hereby published in accordance with Rule 241 (1) (c) of the Rules of the National Assembly.

Copies of the draft Bill can be obtained from Mr Sibusiso Shabalala, Department of Environmental Affairs, 315 Pretorius Street, Corner Pretorius and Van Der Walt Streets, Fedsure Forum Building, 7<sup>th</sup> Floor, North Tower, Pretoria, Tel: (012) 310 3449. The draft Bill is also available on the Department of Environmental Affairs website: [www.environment.gov.za](http://www.environment.gov.za)

**BOMO EDITH EDNA MOLEWA**

**MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

## **MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN WEATHER SERVICE AMENDMENT BILL, 2011**

### **1. PURPOSE OF THE BILL**

The purpose of the Bill is to amend the South African Weather Services Act, 2001 (Act No. 8 of 2001)(Act), so as to substitute and insert certain definitions; to extend the objectives and functions of Weather Service to deal with ambient air quality information services; to provide for a performance management system for the Chief Executive Officer; to align the Weather Service Board with the Public Finance Management Act, 1999 (Act No. 1 of 1999) by providing for the Board to be the accounting authority for the Weather Service; to delete certain obsolete provisions; to provide for the limitation of liability of the Weather Service; to provide for the Minister to amend the Schedules to the Act by notice in the *Gazette*; to provide for offences and penalties; and to amend the Schedules to the Act.

### **2. BACKGROUND**

2.1 The purpose of the Act was to establish the South African Weather Service; to determine its objects, functions and method of work; to prescribe the manner in which it is to be managed and governed; and to regulate its staff and financial matters. The Bill seeks to amend the Act to ensure that the objectives of the Act are met in a more sustainable, effective and efficient manner.

2.2 In order to meet the information requirements for good air quality governance and to ensure compliance with the National Environmental Management Air Quality Act, 2004 (Act No. 39 of 2004), the Department together with the South African Weather Service have developed the South African Air Quality Information System (SAAQIS) and the National Ambient Air Quality Monitoring Network (NAAQMN) since the promulgation of the National Environmental Management: Air Quality Act in 2005. SAAQIS is an electronic web-based information system that has the stated objective of providing all stakeholders with easy access to all relevant information about air quality in South Africa and further provides different stakeholders with different useful on-line applications to support the effective and efficient management of air quality. Both these systems are in operation, but require a clear mandate and empowering clause to implement them efficiently and effectively.

2.3 The Department, in partnership with the South African Weather Service, has developed the SAAQIS and the NAAQMN since 2005 in terms of a Memorandum of Agreement. Thus, to ensure the sustainability of these systems and that the South African Weather Service is provided with the necessary mandate and powers to implement these systems efficiently and effectively, both parties have agreed that an amendment to the South African Weather Service Act, 2001 is desirable.

2.4 The Act further provides for the meteorological services, including good services as are necessary to achieve its objectives. The Weather Service is a member of the World Meteorological Organisation and as such has a legal obligation to comply and implement Resolution 40 of the Twelfth Congress of the World Meteorological Organisation. In this regard, it is necessary that only the Weather

Service must be able to issue severe weather-related warnings in order to ensure that there is only one authoritative voice.

### **3. OBJECTS OF AMENDMENT BILL**

#### **3.1 Clause 1: Amendment of section 1**

Clause 1 inserts and amends certain definitions to provide for the amendments proposed to the Act. The term “ambient air quality” is included in various definitions due to the additional objective and functions of the Weather Service.

#### **3.2 Clause 2: Amendment of section 2**

Clause 2 seeks to amend section 3 of the Act by extending the objectives of the Weather Service to include ambient air quality. Clause 2 seeks to institutionalise the SAAQIS and the NAAQMN to the South African Weather Service objectives.

#### **3.3 Clause 3: Amendment of section 4**

Clause 3 seeks to extend the functions of the Weather Service to provide air quality information services and to issue air-pollution warnings if it deems necessary.

#### **3.4 Clause 4: Amendment of section 5**

This amendment will ensure that the needs of air quality management stakeholders are taken into account by the Minister when appointing members of the Board of the Weather Service.

### **3.5 Clause 5: Amendment of section 9**

Clause 5 of the Bill seeks to align the remuneration of the members of the Board in line with a level of remuneration approved by the Minister.

### **3.6 Clause 6: Amendment of Section 13**

Clause 6 of the Bill seeks to replace section 13 of the Act by prescribing the procedure for the appointment of the Chief Executive Officer. Clause 6 of the Bill also provides for the Chief Executive Officer to be appointed for a five year term, and for the reappointment of the Chief Executive Officer for an additional five year term. Clause 6 further seeks to prescribe the responsibilities of the Chief Executive Officer. Clause 6 of the Bill compels the Board to enter into an annual performance agreement with the Chief Executive Officer within three months of his or her employment, and thereafter at the beginning of the Financial year in order to provide for a situation where the Chief Executive Officer is appointed just after the beginning of a financial year because 11 months of employment may lapse before the Board enters into an annual performance agreement with the Chief Executive Officer. Clause 6 also sets out the the grounds for the termination of the services of the Chief Executive Officer and the appointment of an acting Chief Executive Officer.

### **3.7. Clause 7: Amendment of section 14**

This amendment is consequential due to the repeal of section 18 of the Act, namely, transitional provisions providing for the transfer of staff from the former Chief Directorate Weather Bureau of the Department.

**3.8. Clause 8: Amendment of section 17**

Section 17 of the Act provides for the Chief Executive Officer to be the accounting officer of the South African Weather Service. Chapter 3 of the Act provides for the Board of the Weather Service. Section 49 of the Public Finance Management Act provides that every public entity must have an authority which must be accountable for the purposes of the Public Finance Management Act. In terms of section 49(2) of the Public Finance Management Act, the Board, and not the Chief Executive Officer, must be the accounting authority for the Weather Service. Clause 8 of the Bill seeks to align the Act with the provisions of the Public Finance Management Act by providing for the Board of the Weather Service to be the accounting authority for the South African Weather Service.

**3.9. Clause 9: Repeal of section 18**

Section 18 of the Act is a transitional provision providing for the transfer of staff from the former Chief Directorate Weather Bureau of the Department. Clause 9 seeks to repeal section 18 of the Act because section 18 is no longer relevant.

**3.10. Clause 10: Insertion of section 27A**

Clause 10 inserts section 27A to limit the liability of the Weather Service under certain circumstances.

**3.11 Clause 11: Insertion of Section 28A**

The Act lists the objectives of the South African Weather Service, which include the provision of public good services and commercial services to all South Africans. Schedule 1 to the Act lists the public good services and Schedule 2 to the Act list the commercial services. The Bill seeks to empower the Minister to amend the



Schedules to the Act by notice in the *Gazette*. The reason for this is to avoid the cumbersome procedure of providing for an amendment Bill in order to amend the Schedules to the Act. In order to provide reasonable certainty in law, the proposed section 28A seeks to provide clear guidelines, to guide the Minister when exercising his or her discretion, and to clearly define the purpose for which this discretion may be exercised, in respect of an amendment to the Schedules to the Act.

### **3.12. Clause 12: Insertion of section 30A**

3.12.1 The Act does not provide for offences. In order to ensure compliance with the provisions of the Act, the Bill also seeks to provide for offences in respect of certain matters and penalties in respect of such offences. The Bill proposes the insertion of section 30A. This amendment will, amongst others, make it an offence for any person to issue a severe weather or air pollution-related warning without the written permission from the Weather Service. The amendment will further insert a fine and, or term of imprisonment in line with other environmental legislation. The Magistrates' Court will also be given jurisdiction to impose the penalty prescribed in this amendment.

3.12.2 In order to deter the commission of an offence in terms of the Act, and to circumvent the duplication of utilising the burdened court services by instituting separate civil and criminal proceedings in respect of the same matter, the proposed section 30A also empowers the court to award compensation where the offence causes damage to or loss of property. The aforesaid judgment will be of the same force and effect and be executable in the same manner as if it had been given in a

civil action duly instituted before a competent court. This will also provide a more efficient and effective civil law remedy in respect of the offences in terms of the Act.

### **3.13 Clauses 13 and 14: Amendment of Schedules to the Act**

Clauses 13 and 14 of the Bill seek to effect a certain grammatical correction and amend Schedules 1 and 2 to the Act respectively by providing for additional public good services and commercial services which relates to the SAAQIS and the NAAQMN.

## **4. FINANCIAL IMPLICATIONS FOR THE STATE**

4.1 The Department of Environmental Affairs budget for South African Weather Service will increase to include additional funds for the implementation of the proposed amendments relating to the SAAQIS and the NAAQMN.

4.2 In this regard, a Business Case Study was undertaken to assess and analyse the financial implications to the South African Weather Service for the transfer of the SAAQIS and the NAAQMN function. The Business Case Study produced the following outputs, namely:

- (a) *Output A: The SAAQIS and NAAQMN 2010-20 Development, Expansion, Operation and Maintenance Vision* – the vision of the Department of Environmental Affairs and Weather Service in respect of the development, expansion, operation and maintenance of the SAAQIS and its NAAQMN for the period 2010/11 to 2019/20;

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- (b) *Output B: SAAQIS and NAAQMN 2010-20 Strategic Plan* – a description of the proposed development, expansion, operation and maintenance of the SAAQIS and its NAAQMN for the period 2010/11 to 2019/20;
  - (c) *Output C: The Business Case for Weather Service' Development, Expansion, Operation and Maintenance of the SAAQIS and the NAAQMN*– a description of the business case for the proposed development, expansion, operation and maintenance of the SAAQIS and its NAAQMN for the period 2010/11 to 2019/20;
  - (d) *Output D: SAAQIS and NAAQMN Organisation Development Plan* – a description of the organisational development requirements to efficiently and effectively develop, expand, operate and maintain the SAAQIS and its NAAQMN for the period 2010/11 to 2019/20;
  - (e) *Output E: Department of Environmental Affairs-South African Weather Service Memorandum of Understanding alignment audit* – A report of how Outputs A to D are aligned with the Department of Environmental Affairs and the Weather Service Memorandum of Understanding with suggestions on possible amendments to ensure full alignment;
  - (f) *Output F: 2010-11 SAAQIS and NAAQMN Business Plan* – a business plan for the development, expansion, operation and maintenance of the SAAQIS and its NAAQMN for the period 2010/11 financial year;
  - (g) *Output G: Act Amendment alignment audit* – A report of how Outputs A to D are aligned with the Amendment Act with suggestions on possible amendments to ensure full alignment.

**5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

The amendments do not create new structures within the Department of Environmental Affairs. The Department, in terms of the amendments, is transferring the SAAQIS and the NAAQMN function to the Weather Service. In essence, the Department will monitor and support the Weather Service in the performance of the function. Accordingly, a new Air Quality Information Unit will be established at the South African Weather Service to implement the SAAQIS and the NAAQMN function.

**6. COMMUNICATION IMPLICATIONS**

Appropriate communication measures will be implemented by the Government Communication and Information System.

**7. PROVINCIAL IMPLICATIONS**

None

**8. CONSTITUTIONAL IMPLICATIONS**

None

**9. PARLIAMENTARY PROCEDURE**

**9.1** The State Law Advisers and the Department of Environmental Affairs are of the opinion that the provisions of the Bill relates to amendments that fall within the meaning of any matter referred to in section 44(1)(a)(ii) of the Constitution and must

be dealt with in accordance with the procedure established by section 75 of the Constitution.

**9.2** The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.

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