

GENERAL NOTICES ALGEMENE KENNISGEWINGS

NOTICE 234 OF 2015

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES (DAFF)
DRAFT NATIONAL VELDFIRE AMENDMENT BILL, 2015
INVITATION FOR PUBLIC COMMENTS

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

Some of the Key amendments of the National Veld Forest Fire Amendment Bill include:

- Clear definition of the veldfire
- The role of the Traditional Leaders and Councils with regard to veldfire management especially in communal lands.
- Provision for the penalty to the state, state owned entity and municipalities for not acquiring membership of the Fire Protection Association.
- Assignment, delegations and administration of matters pertaining to veld and forest fire management.
- Provision for the appeal process

Copies of the Legislation amendment may be obtainable from the Directorate Forestry Regulation and Oversight, email: LukeR@daff.gov.za or from the DAFF website (www.daff.gov.za).

Please follow the steps below to view the draft Amendment Bill from the website:

- Step one: Open the DAFF website, www.daff.gov.za
- Step two: Click on Legislation
- Step three: Click on Bills
- Step four : Open the Forestry Amendment Bill

Interested stakeholders wishing to comment are kindly requested to forward their written comments to the Directorate: Forestry Regulation and Oversight within 30 days of the date of the publication of this notice.

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

Deliver To: 110 Hamilton building, Pretoria; or

Fax to: 012 309 5840; or

Email to: LukeR@daff.gov.za

Please note that comments received after the closing date may be disregarded. The Directorate Forestry Regulation and Oversight may be reached at Tel. (012) 309 5756 for any enquires.

REPUBLIC OF SOUTH AFRICA

NATIONAL VELDFIRE AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. of) (The English text is the official text of the Bill)

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B—2013]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments
- _____ Words underlined with a solid line indicate insertions in existing enactments
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BILL

To amend the National 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 empower the Minister to develop a framework for monitoring, evaluation, assessment and reporting in respect of veld and forest fire management; to amend the title of the Act to National Veldfire Act; to amend the short title and to substitute the long title; 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 101 of 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of "municipality" of the following definition:

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

(b) by the insertion of the definition of "open air fire" of the following definition:

"open air fire" means any fire not within a building or structure, but does not include a fire in an area specifically designed and maintained for that purpose;"

(c) by the insertion after the definition of "prescribe" of the following definition:

"public entity" means a public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(d) 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 (Act No. 101 of 1998), and includes the regulations made under the Act;"
and

(e) by the insertion after the definition of "the Act" or "this Act" of the following definitions:

" 'traditional council' means a tradition 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);"

(f) by the substitution for the definition of "veldfire" of the following definition:

" 'veldfire' means [a veld, forest or mountain] any vegetation fire on rural land."

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 a traditional council established in that area in terms of section 3 of the Traditional Leadership and Governance Framework Act, if any, must facilitate the formation of a fire protection association if, after the process contemplated in subsection (3), if the Minister is still 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 for subsection (7) of the following subsection:

"(7) (a) An owner in respect of State land; and

(b) a municipality, state owned enterprise, public entity or an organ of state, which owns land, must, within a period of one year after the commencement of the National Veld and Forest Fire Amendment Act, 2013, join a fire protection association registered in the area in which the land is situated."; and

(b) by the deletion of subsection (8).

Amendment of section 7 of Act 101 of 1998**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 classified as 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."

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;"

Substitution of section 16 of Act 101 of 1998

6. The following section is hereby substituted for section 16 of the principal Act:

"Exemption from prohibitions on damaging plants

16. The right or duty to prepare and maintain a firebreak in terms of this Chapter **[prevails over any prohibition in any other law on the]** is subject to compliance with the relevant legal requirements in respect of cutting, disturbance, damage, destruction or removal of any plant or tree, except that the owner must, where—
- (a) **[where]** possible, transplant any plant or tree which is protected in terms of any law; or
 - (b) **[where]** it is safe and feasible, position the firebreak so as to avoid such plant or tree."

Amendment of section 25 of Act 101 of 1998

7. Section 25 of the principal Act is hereby amended by the addition of the following subsection:

"(8) (a) An owner in respect of State land; and

(b) a municipality, state owned enterprise, public entity or an organ of state, which owns land, that does not, within a period of one year after the commencement of the National Veld and Forest Fire Amendment Act, 2013, acquire membership of the fire protection association as contemplated in section 4(7), is guilty of a first category offence."

Amendment of section 26 of Act 101 of 1998

8. 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**].
- (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]** applicable authority".

Amendment of section 32 of Act 101 of 1998

9. Section 32 of the principal Act is hereby amended by the insertion of section 32A.

“Appeals**Appeals against decision or action against the Delegated Officer**

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

(2)(a) The Minister must-

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

(ii) appoint as members of the board-

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

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

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

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

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

- (b) The chairperson may for the purpose of the hearing of an appeal-
- (i) summon any person who have material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before the board at a date, time and place specified in the summons, to be questioned or to produce that document, and the chairperson may retain or examination any document so produced; and
- (ii) administer an oath to or accept an affirmation from any person called a witness at the hearing.
- (c) A person who appeals as contemplated in subsection (1) and the Delegated Officer may be represented.
- (5) If a person appointed in terms of subsection (2)(a)(ii)-
- (a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;
- (b) is unable to act and another person cannot be appointed in time; or
- (c) is, after the investigation has commenced, unable to continue therewith.
- The parties may agree that the investigation be continued by the remaining members, in which event, where the member who had died or has become incapacitated was or is the chairperson of the board, the

Minister must designate one of the remaining members to act as chairperson.

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

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

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

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

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

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

(10) An aggrieved person who does not wish to follow the procedure contemplated by section 32A, may apply to the relevant court to have the decision of the Delegate Officer reviewed”.

Amendment of section 37

10. Section 37 is hereby amended by the substitution of section 37 for the following section:

"Short title

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

Short title and commencement

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