



NEGOTIATING MANDATE

TO: The Chairperson of the Select Committee on Land and Environmental Affairs

Hon AND Qikani

NAME OF BILL: National Environmental Management Laws Second Amendment

Bill

NUMBER OF BILL: [B13-2013]

DATE OF DELIBERATION: 28 August 2013

VOTE OF THE LEGISLATURE:

The Gauteng Provincial Legislature supports the principle and the detail of the bill with the proposed amendments and therefore votes in favour of-

- National Environmental Management Laws Second Amendment Bill

HON. N SIKAKANE

Chairperson of Agriculture and Rural Development Committee

GAUTENG PROVINCIAL LEGISLATURE

Date: 30/08/13



AGRICULTURE AND RURAL DEVELOPMENT PORTFOLIO COMMITTEE

NEGOTIATING MANDATE

ON

NATIONAL ENVIRONMENTAL MANAGEMENT LAWS SECOND AMENDMENT BILL

[B13-2013] (Section 76)

The Chairperson of the Agriculture and Rural Development Portfolio Committee, Hon. Nokuthula Sikakane, tables the Committee's Negotiating Mandate on the National Environmental Management Laws Second Amendment Bill [B13-2013], Section 76, as follows:

1. PROCESS FOLLOWED

The Deputy Speaker, Hon. Uhuru Moiloa formally referred the National Environmental Management Laws Second Amendment Bill [B13-2013], a Section 76 Bill to the Portfolio Committee on Agriculture and Rural Development, in terms of GPL Rules 252(1) (a) read with 254 (1) and 255 (1) for consideration and reporting on the 10th June 2013.

On Wednesday, 07 August 2013, the Portfolio Committee on Agriculture and Rural Development received a presentation on the Bill from the National Department of Environmental Affairs and a presentation of the opinion on the Bill from the Gauteng Department of Agriculture and Rural Development. In the same meeting, a Legal Opinion was submitted and presented by NCOP and Legal Services, and further, Research Analysis was submitted.

The Committee held a public hearing on Thursday 14 August 2013, to receive submissions from stakeholders and members of the Public.

The Committee deliberated on and adopted the Negotiating Mandate on the Bill on Friday, 30 August 2013.

2. PRINCIPLE AND DETAIL OF THE BILL

The Bill seeks to amend certain provisions of the National Environmental Management Act, 1998 (Act No. 107 of 1998) to close certain regulatory gaps.

3. OVERVIEW OF PUBLIC HEARING AND SUBMISSIONS

As part of its functions and obligation, the Committee held a public hearing on the 14th August 2013 where oral submissions were heard, and considered. The Committee further received written submissions from the Ekurhuleni Metropolitan Municipality, the Legal Resources Centre, and a joint submission from the Centre for Applied Legal Studies (CALS) and the Centre for Environmental Rights (CER)

3.1 Ekurhuleni Metropolitan Municipality: Environmental Resource Management Unit

Amendment of section 24 of Act 107 of 1998

Page 6 paragraph 30: f (i), (ii) & (iii)

The local authority in which area of jurisdiction such exercise of power may fall should also be consulted as it could have implications on its local planning and service delivery mandates.

Page 9 paragraph 35 (4)

Would the fine also be applicable in the cases of an emergency as defined in the new emergency description under the proposed section 30A

Page 12 paragraph 5 (7)

Does the definition cover emergencies caused by breakdown in infrastructure services i.e. sewer spillages? What is the definition of "sudden" as some emergencies such as danger due to dolomitic conditions can develop over a period of time but could cause an emergency situation after a while which could trigger listed activities.

The Municipal Systems Act be included under the definition of Specific Environmental Management Act under S1(f) of the bill. This would enable EMIs to enforce by-laws promulgated under the Systems Act

3.2 Joint Submission of Comments by the Centre for Applied Legal Studies (CALS) and the Centre for Environmental Rights (CER)

The submission focuses on Clause 9, that is the amendment of section 24G dealing with "Rectification of unlawful commencement of activity". In essence, the two bodies are opposed to the amendment as it is viewed as creating a shortcut procedure for commencement without an environment impact assessment. Further, there is a view that the proposed sanctions are insufficient to deter non compliance normal procedures with the Act.

It is also submitted that the administrative fine is too low and that imposition of fine should be by an independent tribunal. Amongst the proposals is a suggestion that criminal prosecution should take precedence to an application for rectification.

3.3 Legal Resources Centre (LRA)

The submission focuses on Clause 5 (e) –section 24(2)(e)- which provides for activities that may be excluded from the requirement to obtain environmental authorisation based on the exercise of discretionary powers by either the Minister or relevant MEC. The provision has been attacked on the basis that the Minister or MEC's have been assigned an unfettered discretion in making such determination.

The LRA, in essence, submits that "if broad discretionary powers contain no express constraints, those who are affected by the exercise of the broad discretionary powers will not know what is relevant to the exercise of those powers or in what circumstances they are entitled to seek relief from an adverse decision."

The proposal is that the whole section 24(2) be deleted from the Bill, alternatively that more public hearings be undertaken by national parliament additional to the hearings conducted by provinces.

4. FINANCIAL IMPLICATIONS AND SOCIO ECONOMIC IMPACT ASSESSMENT OF THE BILL FOR THE PROVINCE

4.1 FINANCIAL IMPLICATIONS OF THE BILL

The Bill does not create financial liabilities to the State.

4.2 SOCIAL IMPACT ASSESSMENT

The Bill does not have any socio-economic implications.

5. POSITION BY THE GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL AND DEVELOPMENT

The Gauteng Department of Agriculture and Rural Development supports the National Environmental Management Laws Second Amendment Bill [B13-2013] for the following reasons:

- The amendments will allow for better implementation of the NEMA and specific NEM Acts especially with the inclusion of the Waste Act, 2008 and the World Heritage Convention Act, 1999 which is implemented and enforced by the Department.
- Amending the time period for the preparation of environmental implementation plans from 4 years to 5 years to coincide with government planning periods would allow for better alignment of these plans with strategic plans.
- The amendment of section 24 to enable the use of spatial tools, norms and standards and environmental management instruments in decision-making as an alternative to the environmental authorization procedure would ensure quicker decision making as the Province has various spatial tools it has developed and is currently developing together with municipalities.
- The amendment of the current section 24C(2)(a) and (b) will provide better legal clarity as to when the Minister will be the competent authority when an activity has implications for international environmental relations and commitments.
- The amendment of section 24E to provide clarity that the minimum conditions of environmental authorisations must include a provision on the transfer of rights and obligations and not just a reference to a 'change of ownership in the property' is welcomed especially in circumstances where the holder of the authorisation is a juristic

body with representatives that may change during the currency of the environmental authorisation.

- The substantive amendments made to section 24G to address the abuse of this section are welcomed.
- The amendment to allow for criminal prosecution to still be instituted despite the fact that a person has applied for an environmental authorisation in terms of section 24G would act as a further deterrent for scrupulous developers who commence activities illegally and simply apply for section 24G without any further consequences other than the imposition of an administrative fine.
- The legal clarity on the exemptions that are allowed or not allowed under the Act is welcomed especially now that it is being proposed to specifically state that exemptions from the requirement to obtain an environmental authorisation cannot be granted.
- The amendment of section 47 to provide clarity that the Minister or the MEC must 30 days before final publication of regulations made in terms of the Act, table the regulations in Parliament or the provincial legislature is agreeable as it is in line with the Gauteng Scrutiny of Subordinate Legislation Act, 2008 as amended in 2011 which requires that before a provincial functionary makes any subordinate legislation, a draft of the subordinate legislation must be tabled in the Legislature (section 2).

6. COMMITTEE RECOMMENDATIONS

In the main Committee supports the Bill.

7. NEGOTIATING POSITION ADOPTED BY COMMITTEE

The Agriculture and Rural Development Portfolio Committee supports the principle and details on the National Environmental Management Laws Second Amendment Bill [B13-2013] Section 76.