**03 November 2015**

**AMENDMENTS PROPOSED TO**

**EXPROPRIATION BILL**

**[B 4—2015]**

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**CLAUSE 1**

1. On page 4, from line 41, to omit paragraphs *(a)* and *(b)* and to substitute:

*(a)* a High Court within whose area of jurisdiction a property is situated;

*(b)* a Magistrate’s Court within whose area of jurisdiction a property is situated, having competent jurisdiction and designated as such in terms of paragraph *(b)*(ii) in the definition of "court" in section 1, read with section 9A, of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); or

2. On page 4, in line 48, to omit "shall" and to substitute "must".

3. On page 5, after line 2, to insert the following definition:

**"disputing party"** includes an owner, holder of an unregistered right, expropriated owner or expropriated holder that does not accept the amount of compensation offered in terms of section 14(1);

4. On page 5, after line 7, to insert the following definition:

**"expropriation"** means the compulsory acquisition of property by an expropriating authority or an organ of state upon request to an expropriating authority, and **"expropriate"** has a corresponding meaning;

5. On page 5, in line 42, to omit the definition of "property" and to substitute:

**"property"** means property contemplated in section 25 of the Constitution;

6. On page 5, from line 44, to omit "and other related reforms".

**CLAUSE 3**

1. On page 6, from line 19, to omit subsection (1) and to substitute:

 (1) Subject to the provisions of Chapter 5, the Minister may expropriate property for a public purpose or in the public interest.

 (2) If an organ of state, other than an expropriating authority, satisfies the Minister that it requires particular property for a public purpose or in the public interest, then the Minister must expropriate that property on behalf of that organ of state upon its written request, subject to and in accordance with the provisions of this Act.

 (3) The Minister's power to expropriate property in terms of subsections (1) and (2) applies to property which is connected to the provision and management of the accommodation, land and infrastructure needs of an organ of state, in terms of his or her mandate.

2. On page 6, in line 26, to omit "(2)" and to substitute "(4)".

3. On page 6, in line 33, to omit "(3)" and to substitute "(5)".

4. On page 6, in line 33, to omit ", in the execution of his or her mandate,".

5. On page 6, in line 34, to omit "(1)" and to substitute "(2)".

6. On page 6, in line 41, after "state" to insert "within a reasonable time".

**CLAUSE 4**

1. On page 6, in line 43, to omit "The" and to substitute "Subject to subsection (2), the".

2. On page 6, in line 47, to omit "section" and to substitute "sections".

**CLAUSE 5**

1. On page 7, in line 4, to omit "a property is required for a public purpose or in the public interest,".

2. On page 7, in line 5, after "authority" to insert "is considering the expropriation of property, he or she".

3. On page 7, in line 43, to omit "subparagraph" and to substitute "paragraph".

4. On page 8, in line 1, to omit "not already established" and to substitute "the information has not already been established".

5. On page 8, in line 2, to omit "or before expropriating".

6. On page 8, from line 8, to omit subparagraphs (i), (ii), (iii) and (iv) and to substitute:

(i) An owner;

(ii) a person apparently in charge of the property; and

(iii) any holder of unregistered rights in the property, known to the expropriating authority;

7. On page 8, from line 14, to omit subparagraph (i) and to substitute:

(i) the Departments responsible for rural development and land reform, for mineral resources and for water and sanitation and any other organ of state whose functions and responsibilities will be materially affected by the intended expropriation, for the purposes of establishing the existence of and the impact of expropriation on rights therein; and

8. On page 8, from line 31, to omit subsections (7) and (8) and to substitute:

 (7) If the property in question is damaged as a result of the performance of an act contemplated in subsection (2), the expropriating authority must repair, or compensate the affected person for that damage after delivery of a written demand by the affected person and without undue delay.

 (8) Any legal proceedings arising out of a claim referred to in subsection (7) must comply with the relevant provisions of the Institution of Legal Proceedings Against Certain Organs of State Act, 2002 (Act No. 40 of 2002).

**CLAUSE 6**

1. On page 8, from line 50, to omit "existing and future engineering services, infrastructure, housing and town planning" and to substitute "municipal planning".

2. On page 8, in line 56, after "required;" to insert "and".

3. On page 8, from line 57, to omit paragraph *(d)*.

4. On page 8, in line 59, to omit "*(e)*" and to substitute "*(d)*".

5. On page 9, in line 1, to omit ", subject to section 25,".

6. On page 9, from line 2, to omit "the period stipulated in subsection (2)*(d)*" and to substitute "20 days of receiving the request or within a reasonable time to be agreed between the expropriating authority and municipal manager or determined in terms of section 25".

7. On page 9, from line 4, to omit subsection (4).

8. On page 9, in line 8, to omit "(5)" and to substitute "(4)".

9. On page 9, in line 8, to omit "a" and to substitute "the".

**CLAUSE 7**

1. On page 9, after line 24, to insert:

*(e)* the intended date of expropriation or, as the case may be, the intended date from which the property will be used temporarily and the intended period of such temporary use;

*(f)* the intended date on which the expropriating authority will take possession of the property;

2. On page 9, in line 25, to omit "*(e)*" and to substitute "*(g)*".

3. On page 9, in line 28, to omit "against" and to substitute "to".

4. On page 9, in line 35, to omit "*(f)*" and to substitute "*(h)*".

5. On page 9, in line 44, to omit "*(g)*" and to substitute "*(i)*".

6. On page 9, in line 47, to omit "*(h)*" and to substitute "*(j)*".

7. On page 9, from line 52, to omit "water affairs" and to substitute "water".

8. On page 9, in line 53, after "sanitation" to insert "and for any other organ of state whose functions and responsibilities will be materially affected by the intended expropriation".

9. On page 10, in line 5, after "compensation" to insert "should his or her property be expropriated".

10. On page 10, in line 23, after "must" to insert "acknowledge receipt,".

11. On page 10, in line 32, to omit "can be" and to substitute "has been".

12. On page 10, in line 39, after "8(1)" to insert "within a reasonable time".

13. On page 10, in line 41, after "writing" to insert "within a reasonable time".

14. On page 10, in line 42, to omit "an" and to substitute "the".

15. On page 10, in line 43, after "accordingly" to insert "in writing within a reasonable time and must publish the notice of the decision not to proceed in accordance with section 24(2)".

**CLAUSE 8**

1. On page 10, in line 47, to omit "holder of an unregistered right" and to substitute "known holders of unregistered rights".

2. On page 10, in line 61, to omit "affairs and sanitation," and to substitute "and sanitation, and for any other organ of state whose functions and responsibilities will be materially affected by the intended expropriation".

3. On page 11, from line 26, to omit paragraph *(f)* and to substitute:

*(f)* the date on which the right to possession of the property will pass to the expropriating authority; and

4. On page 11, in line 50, to omit "7(2)*(f)*" and to substitute "7(2)*(h)*".

CLAUSE 9

1. On page 12, from line 8, to omit ", released from mortgage bonds, if applicable".

2. On page 12, in line 21, to omit "bond".

3. On page 12, from page 29, to omit paragraph *(b)* and to substitute:

*(b)* The right to possession passes on the relevant date contemplated in paragraph *(a)* to the person referred to therein, as the case may be.

4. On page 12, from line 32, to omit "upon which the expropriating authority takes possession of the property" and to substitute "referred to in subsection 2*(a)*".

5. On page 12, from line 42, to omit subsection (4) and to substitute:

 (4) If the expropriated owner or expropriated holder, as the case may be, desires to place the expropriating authority in possession of the expropriated property prior to the date contemplated in section 8(3)*(f)* and the expropriating authority does not agree to a date on which the right to possession of the property will pass to it, the expropriated owner or expropriated holder, as the case may be, may give the expropriating authority notice in writing of not less than 20 days before the date on which the expropriated owner or expropriated holder wishes to transfer the right to possession of the property, in which case the right to possession of the property passes to the expropriating authority on that date.

6. On page 12, from line 55, to omit "on which possession of the property passes to the expropriating authority" and to substitute "referred to in subsection (2)*(b)*".

**CLAUSE 10**

1. On page 13, in line 4, to omit "20" and to substitute "30".

2. On page 13, in line 20, to omit "affairs and sanitation," and to substitute "and sanitation, and for any other organ of state whose functions and responsibilities will be materially affected by the intended expropriation".

3. On page 13, in line 31, after "accordingly" to insert "in writing and must provide reasons for the rejection".

**CLAUSE 11**

1. On page 13, in line 44, after "which" to insert "the right to".

2. On page 13, in line 46, after "9(2)" to insert "or (4)".

3. On page 13, in line 57, after "until" to insert "the right to".

4. On page 13, in line 58, after "9(2)" to insert "or (4)".

**CLAUSE 12**

1. On page 14, in line in line 20, to omit "to the extent that it is" and to substitute "unless there are special circumstances in which it would be".

2. On page 14, in line 29, to omit the first "on" and to substitute "to".

**CLAUSE 13**

1. On page 14, in line 41, to omit the first "(1)".

**CLAUSE 14**

1. On page 15, in line 16, to omit "22" and to substitute "22,".

2. On page 15, in line 20, to omit "form" and to substitute "forms".

**CLAUSE 15**

1. On page 15, in line 54, to omit "to" and to substitute "from".

1. On page 15, from line 55, to omit subsection (3) and to substitute:

 (3) The provisions of section 21(2) apply if—

*(a)* an owner or holder of an unregistered right does not deliver a statement in terms of section 14(1); or

*(b)* the claimant decides not to accept the offer of compensation contemplated in subsection (1), by written reply within 20 days, or within such additional time as may be permitted in terms of section 25.

**CLAUSE 17**

Clause rejected.

**NEW CLAUSE**

1. That the following be a new clause:

**Payment of amount offered as compensation**

 **17.** (1) An expropriated owner or expropriated holder is entitled to payment of compensation by no later than the date on which the right to possession passes to the expropriating authority in terms of section 9(2) or (4), subject to sections 18, 19 and 20.

 (2) The payment, utilisation or deposit of any amount contemplated in sections 18, 19 and 20 does not preclude the determination of an amount by agreement or by a court: Provided that where the amount so determined is less than the amount paid, the difference must be refunded to the expropriating authority, together with interest in terms of section 13 from the date on which the amount was so paid, utilised or deposited.

 (3) Any delay in payment of compensation to the expropriated owner or expropriated holder by virtue of subsection (2) or any other dispute arising will not prevent the passing of the right to possession to the expropriating authority in terms of sections 9(2) or (4).

 (4) If the expropriating authority or expropriated owner or expropriated holder has proposed a later date than the date contemplated in subsection (1) for the payment of compensation, the party proposing later payment may, in the absence of agreement, apply to court for an order for payment on such later date, and the court may make an appropriate order, having regard to all relevant circumstances.

 (5) If value-added tax is chargeable by a claimant in terms of section 7(1)*(a)* of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), by virtue of section 8(21) of that Act, payment of compensation must be made by the expropriating authority only upon receipt of a tax invoice as required in terms of section 20 of that Act from the claimant, together with confirmation of the tax compliance status of the claimant by the South African Revenue Service.

 (6) The Minister may prescribe the information and documentation to be delivered by a person to whom compensation or interest is payable in terms of this Act, in order to facilitate electronic payment thereof.

**CLAUSE 18**

Clause rejected.

**NEW CLAUSE**

1. That the following be a new clause:

**Property subject to mortgage bond or deed of sale**

 **18.** (1) If property expropriated in terms of this Act was, immediately prior to the date of expropriation, encumbered by a registered mortgage or subject to a deed of sale, the expropriating authority may not pay out any portion of the compensation money except to such person and on such terms as may have been agreed upon between the expropriated owner or expropriated holder and the mortgagee or buyer concerned, as the case may be, after the claimant has notified the expropriating authority of the agreement.

 (2) The expropriated owner or expropriated holder and the bond holder or buyer, as the case may be, must notify the expropriating authority by no later than 30 days from the date contemplated in section 9(2) or (4), of their agreement and its terms contemplated in subsection (1), failing which the expropriating authority may deposit the compensation money with the Master in terms of section 20(2).

 (3) In the event of a dispute arising out of subsection (1), the expropriating authority may deposit the compensation money with the Master, and any of the disputing parties may apply to a court of competent jurisdiction for an order directing the Master to pay out the compensation money in such manner and on such terms as the court may determine.

**CLAUSE 19**

Clause rejected.

**NEW CLAUSE**

1. That the following be a new clause:

**Payment of municipal rates, taxes or other charges out of compensation money**

 **19.** (1) For the purposes of this section, the charges referred to are municipal rates, taxes or other charges that must be paid in order for ownership of land to be transferred by the registrar of deeds to the expropriating authority through registration in the deeds office.

 (2) If land which has been expropriated is subject to the charges contemplated in subsection (1), the municipal manager must, within 20 days of receipt of a copy of the notice of expropriation in terms of section 8(2)*(c)*(i), inform the expropriating authority in writing of such charges, as at the date contemplated in section 9(2) or (4): Provided that if the expropriating authority is the municipal council of the municipality where the land is situated, the notice is not required.

 (3) *(a)* The expropriating authority must in writing, by registered mail, inform the expropriated owner or expropriated holder of any outstanding charges contemplated in subsection (1).

 *(b)* If the said amount is not disputed in writing by the expropriated owner or expropriated holder within 10 days of the notification, the expropriating authority may utilise as much of the compensation money in question as is necessary for the payment, on behalf of the expropriated owner or expropriated holder, of any outstanding charges contemplated in subsection (1).

 (4) If the municipal manager fails to inform the expropriating authority of the outstanding charges contemplated in subsection (1) within 20 days, the expropriating authority may pay the compensation to the expropriated owner or expropriated holder without regard to the outstanding municipal property rates or other charges, and in that event and despite the provisions of any law to the contrary—

*(a)* the Registrar of Deeds must register transfer of the expropriated property;

*(b)* the expropriating authority or the person on whose behalf the property was expropriated, as the case may be, is not liable to the municipality concerned before or after such registration for the outstanding municipal property rates or other charges; and

*(c)* the expropriated owner or expropriated holder, as the case may be, continues to be liable to the municipality for the outstanding rates and charges calculated up to the date of possession, notwithstanding the registration of the expropriated property in the name of the expropriating authority or person on whose behalf the property was expropriated, as the case may be.

**CLAUSE 20**

1. On page 17, in line 49, to omit "may" and to substitute "must".

2. On page 17, in line 57, to omit "days' " and to substitute "days of being given".

3. On page 18, in line 3, to omit ", subject to section 18(2), pay the".

4. On page 18, in line 4, to omit "to" and to substitute "with".

5. On page 18, in line 10, to omit "has jurisdiction to" and to substitute "of competent jurisdiction may".

**CHAPTER 6**

1. On page 18, from line 13, to omit the heading and to substitute "**MEDIATION AND DETERMINATION BY COURT**".

**CLAUSE 21**

Clause rejected.

**NEW CLAUSE**

1. That the following be a new clause:

**Mediation and determination by court**

 **21.** (1) If the expropriating authority and expropriated owner or expropriated holder do not agree on the amount of compensation, they may attempt to settle the dispute by mediation, which must be initiated and finalised without undue delay by either party.

 (2) If the expropriating authority and disputing party are unable to settle the dispute by consensus in the manner contemplated in subsection (1) or if the disputing party did not agree to mediation, the expropriating authority must refer the matter to a competent court to decide or approve just and equitable compensation provided that nothing in this section must change the ordinary civil onus.

 (3) Subsection (2) does not preclude a person from approaching a court on any matter relating to the application of this Act.

 (4) Where a court finds that a provision of this Act has not been complied with, it must make such an order as it considers just and equitable, having regard to all relevant circumstances, including—

*(a)* the nature and extent of the interest of the person who has challenged the conduct in question;

*(b)* the materiality of the non-compliance;

*(c)* the stage which has been reached in the expropriation process; and

*(d)* the interests of other persons which may be affected by the relief which is ordered.

 (5) A dispute on the amount of compensation alone does not preclude the operation of section 9.

**NEW CHAPTER HEADING**

1. On page 18, after line 44, to insert:

 **CHAPTER 7**

**URGENT EXPROPRIATION**

**CLAUSE 22**

1. On page 18, in line 46, after "temporarily" to insert "for so long as it is urgently required".

2. On page 19, in line 5, to omit "in effecting the expropriation".

3. On page 19, from line 9, to omit subsection (5) and to substitute:

 (5) The expropriating authority must make an offer of compensation to the expropriated owner of expropriated holder within 30 days from the date on which the notice to use the property temporarily was given, and payment must be made within a reasonable time thereof: Provided that in the event of any dispute, the provisions of section 21 apply.

4. On page 19, in line 14, to omit "Should an expropriating authority wish" and to substitute "If an expropriating authority wishes".

5. On page 19, from line 18, to omit paragraph *(b)* and to substitute:

 *(b)* The court may, on sufficient cause shown by the expropriating authority, extend the period of temporary usage.

**NEW CHAPTER HEADING**

1. On page 19, after line 27, to insert:

 **CHAPTER 8**

**WITHDRAWAL OF EXPROPRIATION**

**CHAPTER 7**

1. On page 20, in line 1, to omit "7" and to substitute "9".

**CLAUSE 24**

1. On page 20, in line 22, after "7(1)" to insert "or (7)*(b)*(iii)".

2. On page 20, in line 46, to omit "*(e)*" and to substitute "*(g)*".

3. On page 21, in line 8, to omit the second "in" and to substitute "into".

**CLAUSE 27**

Clause rejected.

**NEW CLAUSE**

1. That the following be a new clause:

**Offences**

 **27.** (1) A person commits a breach of this Act if that person fails to—

*(a)* comply with a directive by the expropriating authority in terms of section 7(2)*(h)*(i);

*(b)* deliver to the expropriating authority a statement contemplated in section 7(4)*(c)*(i), (ii) or (iii); or

*(c)* provide the information contemplated in section 8(4)*(e)*.

 (2) If a person commits a breach in terms of subsection (1)*(a)*, *(b)* or *(c)*, an expropriating authority may by notice to that person impose a prescribed administrative penalty for the breach in question.

 (3) The Minister must prescribe the respective amounts of administrative penalties that may be imposed in terms of subsection (2).

 (4) An administrative penalty imposed and paid in terms of this section does not constitute a previous conviction contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

 (5) A person who wilfully furnishes false or misleading information in any written instrument which he or she by virtue of this Act delivers or causes to be delivered to an expropriating authority, is guilty of an offence and liable on conviction to be punished as if he or she had been convicted of fraud.

**CLAUSE 30**

1. On page 22, in line 8, after "introduced" to insert "only".

2. On page 22, in line 9, to omit "only".

3. On page 22, in line 10, to omit "only".

**CLAUSE 32**

1. On page 22, in line 16, after "initiated" to insert "through delivery of a notice of expropriation".

**PREAMBLE**

On page 3, before the second last paragraph, to insert:

**WHEREAS** section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum; and

**ARRANGEMENT OF ACT**

1. On page 4, from line 13, to omit Chapter 6 and to substitute:

**CHAPTER 6**

**MEDIATION AND DETERMINATION BY COURT**

21. Mediation and determination by court

**CHAPTER 7**

**URGENT EXPROPRIATION**

22. Urgent expropriation

**CHAPTER 8**

**WITHDRAWAL OF EXPROPRIATION**

23. Withdrawal of expropriation

2. On page 4, in line 19, to omit "**7**" and to substitute "**9**".