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Honourable Chairperson, Mr M. Mapulane, MP  
Chairperson: Portfolio Committee on Environmental Affairs  
Parliament  
PO Box 15  
CAPE TOWN  
8000

Dear Mr. Mapulane

**NATURAL RESOURCES MANAGEMENT AGENCY: NATIONAL  
ENVIRONMENTAL LAWS AMENDMENT BILL, 2017**

**Introduction**

1. The Chairperson of the Portfolio Committee on Environmental Affairs ("the Portfolio Committee") requested that the Department of Environmental Affairs ("the Department"), together with the Parliamentary Law Adviser and the State Law Adviser must meet and discuss the applicability of Rule 286 of the Rules of the National Assembly in respect of the proposed amendments by the Department regarding the establishment of the Natural Resources Management Agency, and advise the Portfolio Committee accordingly. On 9 February 2018, we duly met and discussed the issue.

2. In terms of the new proposal, the Department desires to establish a Natural Resources Management Agency ("the Agency"), whose objectives, among others, are to function as a specialist implementing entity of the Department in respect of matters assigned to the Agency in terms of the Bill, to promote the management of natural resources in order to ensure that environmental assets are conserved,

valued, sustainably used and enhanced and to promote the management of natural resources in order to enhance socio-economic benefits and employment opportunities, particularly for the poor and marginalised groups, in full support of the Expanded Public Works Programme.

### **Legislative process**

3. The Bill was introduced in Parliament by the Minister in terms of Rule 276 of the Rules of the National Assembly ("the Rules"). The proposed establishment of the Agency was not included in the Bill. Therefore, it is the Department that must propose the new amendments in the Bill to the Portfolio Committee and such proposal must follow the correct legislative process as provided for in terms of the Rules for formal consideration by the Portfolio Committee.

4. The Bill, after introduction, was referred to the Portfolio Committee by the Speaker for legislative processing in terms of Rule 283(3). The new amendment must be dealt with by the Portfolio Committee in terms of Rule 286, which outlines the committee process that the Portfolio Committee must comply with.

5. Rule 286 provides as follows:

#### **"Process in committee**

**286.** (1) *If a Bill has been published for public comment in terms of Rule 276 or 295, the Assembly committee to which the Bill is referred must give interested persons and institutions an opportunity to comment on the Bill.*

(2) *If a Bill has not been published for public comment and the committee to which the Bill is referred considers public comment on the Bill to be necessary, it may by way of invitations, press statements, advertisements or in any other manner, invite the public to comment on the Bill.*

(3) *A committee to which a Bill introduced by an Assembly member in his or her individual capacity has been referred must provide reasonable notice to the person in charge of the Bill before it considers the Bill.*

(4) *The committee—*  
 (a) *must inquire into the subject of the Bill and report on it to the Assembly;*  
 (b) *may seek the permission of the Assembly to inquire into extending the subject of the Bill;*  
 (c) *if the Bill amends provisions of legislation, must, if it intends to propose amendments to other provisions of that legislation, seek the permission of the Assembly to do so;*  
 (d) *may, or if ordered by the Speaker must, consult any other committee*

- that has a direct interest in the substance of the Bill;*
- (e) *must, if the Bill was introduced by a member in his or her individual capacity, give the relevant department in the national executive authority or executive organ of state in the national sphere of government sufficient opportunity to make submissions to the committee on the objects and particulars of the Bill;*
  - (f) *may, or if permitted by the Assembly to extend the subject of a Bill in accordance with Paragraph (b) or (c) must, consult the person in charge of the Bill;*
  - (g) *may consult the JTM on whether any amendments to the Bill proposed in the committee—*
    - (i) *may affect the classification of the Bill, or*
    - (ii) *may render the Bill constitutionally or procedurally out of order;*
  - (h) *may not propose an amendment that —*
    - (i) *affects the classification of the Bill, except as provided in Subrule (5) and Joint Rule 163, or*
    - (ii) *renders the Bill constitutionally or procedurally out of order within the meaning of Joint Rule 161;*
  - (i) *after due deliberation, must consider a motion of desirability on the subject matter of the Bill and, if rejected, must immediately table the Bill and its report on the Bill;*
  - (j) *if the motion of the desirability is adopted, must proceed to deliberate on the details of the legislation;*
  - (k) *may recommend approval or rejection of the Bill or present with its report an amended Bill or a redraft of the Bill, provided that in the case of a redraft the subject of the Bill has not been extended without the permission of the Assembly as contemplated in Paragraphs (b) and (c);*
  - (l) *must report to the Assembly in accordance with Rule 288;*
  - (m) *may report to the Assembly on a Bill introduced in the Assembly and classified as being subject to Section 18(1) of the Traditional Leadership and Governance Framework Act, 2003, only after 30 days have passed since the referral to the National House of Traditional Leaders in terms of Rule 278; and*
  - (n) *if an amended Bill or a redraft of the Bill is to be presented to the Assembly, must formally adopt the final version of the Bill as it is to be presented.*

(5) *The committee may propose an amendment that changes the classification of a Section 75 to a Section 76 Bill, or a Section 76 to a Section 75 Bill, only if the JTM is of the view that the Bill as amended is unlikely to lead to unmanageable procedural complications.*

(6) *In the process of inquiring into a Bill, the committee must, where applicable, as far as possible apply the following separate formal stages:*

- (a) *Informal discussion on the principles and subject of the Bill, including—*
  - (i) *a briefing by the department concerned and, in the case of a member's Bill, by the member concerned, and*
  - (ii) *consideration of public comments that have been received;*
- (b) *adoption of a motion of desirability, relating to whether the principles of the Bill and the need for the Bill are accepted;*
- (c) *invitation for further public comment and submissions on the substance of the Bill, followed by the hearing and examination of such or other oral submissions if deemed necessary;*

- (d) *deliberation by members, taking into consideration proposed amendments and comments and proposals received and evidence presented;*
- (e) *formal consideration of the Bill, clause by clause, including amendments as formally proposed; and*
- (f) *consideration and adoption of the committee's report and adoption of the final version of the Bill as it is to be presented to the Assembly".*  
(our underlining)

6. The proposed amendments regarding the establishment of the Agency appear to be substantial amendments that may extend the subject matter of the Bill. Therefore, Rule 286 is applicable in this case.

7. If the Portfolio Committee publishes the introduced version of the Bill in terms of Rule 286, this means that the public comments will be confined to the contents of the Bill as they are reflected at the moment. This would mean that the public will not have been privy to the new proposed amendments regarding the establishment of the Agency, which in our view have the effect of extending the scope and subject matter of the Bill as it stands.

8. Thus, if the Department makes the proposal to the Portfolio Committee, the Portfolio Committee has to apply Rule 286(4)(a) and (b), inquire into the subject of the Bill and thereby deliberate on the proposed amendments. If, after deliberations the Portfolio Committee adopts a motion of desirability in respect of the proposed amendments and which have the effect of extending the subject matter of the Bill, the Portfolio Committee must seek the permission of the Assembly into extending the subject of the Bill i.e. the inclusion of the proposed amendments.

9. In our view, since the public will not have been aware of the new substantial amendments because they were not included in the introduced version of the Bill, and in terms of Rule 286(6)(c), the Portfolio Committee must publish the Bill again, and invite further public comments and submissions. The Bill must include the new proposed amendments dealing with the establishment of the Agency. This must be followed by public hearings and examinations of such or other oral submissions, if deemed necessary. This will ensure that the public is included in the legislative process, in line with section 59<sup>1</sup>(1)(a) of the Constitution of the Republic of South

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<sup>1</sup> **"Public access to and involvement in National Assembly**

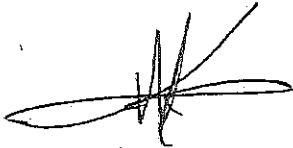
**59. (1) The National Assembly must—**  
(a) *facilitate public involvement in the legislative and other processes of the Assembly and its committees; and*

Africa, 1996 ("the Constitution") which provides that the National Assembly must facilitate public involvement in the legislative and other processes of the Assembly and its committees.

### Conclusion

10. It is important that the proposal for the inclusion of the amendments in respect of the establishment of the Agency complies with section 59 of the Constitution and Rule 286 relating to public participation and the legislative process as outlined in Rule 286.

Yours sincerely



**FOR THE OFFICE OF THE CHIEF STATE LAW ADVISER  
KWETA/HOON/MASAPU**

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- (b) *conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken—*
- (i) *to regulate public access, including access of the media, to the Assembly and its committees; and*
- (ii) *to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.*
- (2) *The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society."*

