

REPUBLIC OF SOUTH AFRICA

DISASTER MANAGEMENT AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76);
prior notice of its introduction together with a draft Bill published in Government Gazette
No. 43834 of 23 October 2020)
(The English text is the official text of the Bill)*

(DR. P GROENEWALD, MP)

[B ...-2021]

ISBN ?-?-?-

No. of copies printed ?

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.

BILL

To amend the Disaster Management Act, 2002, so as to amend the duration of a state of disaster; to provide that any action taken as a result of a declaration of a state of disaster is only effective prospectively; to further provide that only the National Assembly, provincial legislature or council of a municipality may resolve to extend a national, provincial or local state of disaster respectively, and to provide for the duration of the extension; to further provide for the requisite majorities required in the National Assembly, provincial legislature and council of a municipality in order to extend a national, provincial or local state of disaster respectively; to provide that a resolution to extend a national, provincial or local state of disaster as the case may be, may only be adopted after a public debate in the respective legislatures; to provide for oversight by the National Assembly and provincial legislature over a national or provincial state of disaster respectively; to amend the provisions dealing with the lapsing of a national, provincial or local state of disaster and the termination of the regulations and by-laws made in terms of it as the case may be; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 27 of Act 57 of 2002

1. Section 27 of the Disaster Management Act, 2002 (hereinafter referred to as the “principal Act”) is hereby amended—

(a) by the substitution for subsection (5) of the following subsection:

“(5) A national state of disaster that has been declared in terms of subsection (1), and any other action taken in consequence of that declaration, may be effective only—

[(a) lapses three months after it has been declared;

(b) may be terminated by the Minister by notice in the *Gazette* before it lapses in terms of paragraph (a); and

(c) may be extended by the Minister by notice in the *Gazette* for one month at a time before it lapses in terms of paragraph (a) or the existing extension is due to expire]

(a) prospectively; and
(b) for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the national state of disaster.”; and

(b) by the addition of the following subsections:

“(6) The Minister may terminate a national state of disaster by notice in the Gazette before it lapses as contemplated in subsection (5)(b).

(7) (a) The National Assembly may extend a national state of disaster for no more than three months at a time.

(b) The first extension of the national state of disaster must be by a resolution adopted with a supporting vote of a majority of the members of the National Assembly.

(c) Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the National Assembly.

(d) The National Assembly may only adopt a resolution in terms of this subsection following a public debate in the National Assembly.

(8) The Minister must table a copy of the notice declaring a national state of disaster and a copy of any regulation made or direction issued in terms of subsection (2) in the National Assembly as soon as possible after the publication thereof.

(9) The National Assembly may—

(a) disapprove of any such regulation or direction, or of any provision thereof;
or

(b) make any recommendation to the Minister in connection with any such notice, regulation or direction, or any provision thereof.”

Insertion of section 27A in Act 57 of 2002

2. The following section is hereby inserted in the principal Act after section 27:

“Lapsing of national state of disaster regulations

27A. (1) Any regulation made or direction issued in terms of section 27(2), or any provision thereof, ceases to be of force and effect as from the date on which—

(a) the declaration of that national state of disaster lapses as contemplated in section 27(5)(b); or

(b) the National Assembly resolves under section 27(9)(a) to disapprove of any such regulation or direction, or provision thereof, to the extent to which it is so disapproved,

whichever is the earlier date.

(2) The provisions of subsection (1) may not derogate from—

(a) the validity of anything done in terms of any such regulation or direction, or of any provision thereof up to the date upon which it so ceased to be of force and effect; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred, as at the date contemplated in paragraph (a), under and by virtue of any such regulation or direction, or of any provision thereof.”

Amendment of section 41 of Act 57 of 2002

3. Section 41 of the principal Act is hereby amended—

(a) by the substitution for subsection (5) of the following subsection:

“(5) A provincial state of disaster that has been declared in terms of subsection (1), and any other action taken in consequence of that declaration, may be effective only—

[(a) lapses three months after it has been declared;

(b) may be terminated by the Premier by notice in the provincial gazette before it lapses in terms of paragraph (a); and

(c) may be extended by the Premier by notice in the provincial gazette for one month at a time before it lapses in terms of paragraph (a) or the existing extension is due to expire]

(a) prospectively; and

(b) for no more than 21 days from the date of the declaration, unless a provincial legislature resolves to extend the provincial state of disaster.”;
and

(b) by the addition of the following subsections:

“(6) The Premier may terminate a provincial state of disaster by notice in the provincial gazette before it lapses as contemplated in subsection (5)(b).

(7) (a) The provincial legislature may extend a declaration of a provincial state of disaster for no more than three months at a time.

(b) The first extension of the provincial state of disaster must be by a resolution adopted with a supporting vote of a majority of the members of the provincial legislature.

(c) Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the provincial legislature.

(d) A provincial legislature may only adopt a resolution in terms of this subsection following a public debate in that legislature.

(8) The Premier must table a copy of the notice declaring a provincial state of disaster and a copy of any regulation or direction made in terms of subsection (2) in the provincial legislature as soon as possible after the publication thereof.

(9) The provincial legislature may—

(a) disapprove of any such regulation or direction, or of any provision thereof;
or

(b) make any recommendation to the Premier in connection with any such notice, regulation or direction, or of any provision thereof.”.

Insertion of section 41A in Act 57 of 2002

4. The following section is hereby inserted in the principal Act after section 41:

“Lapsing of provincial state of disaster regulations

41A. (1) Any regulation made or direction issued in terms of section 41(2), or any provision thereof, ceases to be of force and effect as from the date on which —

(a) the declaration of that provincial state of disaster lapses as contemplated in section 41(5)(b); or

(b) the provincial legislature resolves under section 41(9)(a) to disapprove of any such regulation or direction, or of any provision thereof, to the extent to which it is so disapproved, whichever is the earlier date.

(2) The provisions of subsection (1) may not derogate from—

(a) the validity of anything done in terms of any such regulation or direction, or of any provision thereof up to the date upon which it so ceased to be of force and effect; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred, as at the date contemplated in paragraph (a), under and by virtue of any such regulation or direction, or of any provision thereof.”.

Amendment of section 55 of Act 57 of 2002

5. Section 55 of the principal Act is hereby amended—

(a) by the substitution for subsection (5) of the following subsection:

“(5) A [municipal] local state of disaster that has been declared in terms of subsection (1), and any other action taken in consequence of that declaration, may be effective only—

[(a) lapses three months after it has been declared;

(b) may be terminated by the council by notice in the provincial gazette before it lapses in terms of paragraph (a); and

(c) may be extended by the council by notice in the provincial gazette for one month at a time before it lapses in terms of paragraph (a) or the existing extension is due to expire]

(a) prospectively; and

(b) for no more than 21 days from the date of the declaration, unless council resolves to extend the local state of disaster.”; and

(b) by the addition of the following subsections:

“(6) The council may terminate a local state of disaster by notice in the provincial gazette before it lapses as contemplated in subsection (5)(b).

(7) (a) The council may extend a declaration of a local state of disaster for no more than three months at a time.

(b) The first extension of the local state of disaster must be by a resolution adopted with a supporting vote of a majority of the members of the council.

(c) Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the council.

(d) The council may only adopt a resolution in terms of this subsection following a public debate in that council.”.

Insertion of section 55A in Act 57 of 2002

6. The following section is hereby inserted in the principal Act after section 55:

“Lapsing of local state of disaster by-laws

55A. (1) Any by-law made or direction issued in terms of section 55(2), or any provision thereof, ceases to be of force and effect as from the date on which the

declaration of that local state of emergency lapses as contemplated in section 55(5)(b).

(2) The provisions of subsection (1) may not derogate from—

(a) the validity of anything done in terms of any such by-law or direction, or of any provision thereof up to the date upon which it so ceased to be of force and effect; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred, as at the date contemplated in paragraph (a), under and by virtue of any such by-law or direction, or of any provision thereof.”.

Short title

7. This Act is called the Disaster Management Amendment Act, 2021.

MEMORANDUM ON THE OBJECTS OF THE DISASTER MANAGEMENT AMENDMENT BILL, 2021

1. INTRODUCTION

On 30 January 2020, the Director-General of the World Health Organisation (“the WHO”) declared the novel coronavirus (COVID-19) outbreak a public health emergency of international concern, which is the WHO's highest level of alarm. Following this announcement the Minister responsible for cooperative government and traditional affairs declared a national state of disaster in terms of section 27 of the Disaster Management Act, 2002 (Act No. 57 of 2002) (“The Disaster Management Act”). Various sets of regulations were also published following the declaration of the national state of disaster, which imposed a national lockdown.

The national state of disaster as well as the accompanying regulations had severe consequences and a negative impact on the lives of every citizen in South Africa. Citizens’ basic human rights were restricted and certain behaviours and actions were prohibited. The economic consequences were disastrous and millions of people lost their jobs.

The Disaster Management Act does not currently provide adequate legislative accountability and oversight over the regulations published in terms of it, the duration of a state of disaster, nor in respect of the extension of a state of disaster.

In a constitutional democracy, any legislation, which has such severe consequences and which impacts all the citizens and their human rights should be subject to more legislative accountability and oversight.

2. OBJECTS OF THE BILL

The purpose of the Bill is to amend the Disaster Management Act, 2002 (Act No. 57 of 2002) in order to amend the duration of a state of disaster. The Bill further seeks to provide that only the National Assembly, provincial legislature or municipal council may resolve to extend a declaration of a national, provincial or local state of disaster respectively and for how long. The Bill also provides for the requisite majorities required in the National Assembly, provincial legislature and municipal council in order to extend a national, provincial or local state of disaster respectively. The Bill further provides that a resolution to extend a national, provincial or local state of disaster may only be adopted after a public debate. The Bill finally seeks to provide for oversight by the National Assembly over a national state of disaster, and oversight a by provincial legislature over a provincial state of disaster.

3. CONTENTS OF THE BILL

- 3.1 Clause 1 amends section 27 of the Act by the substitution for subsection (5) of a new subsection (5) as well as the addition of four further subsections. The clause now provides *inter alia* that a national state of disaster may be effective only prospectively and for no more than 21 days, unless the National Assembly resolves otherwise. It also provides that a Minister may terminate a national state of disaster before it lapses. It further provides that a copy of the notice declaring a national state of disaster must be tabled in the National Assembly. The clause also provides that the National Assembly may disapprove of any regulations or directions made under such a

declaration or may make recommendations to the Minister pertaining to such regulations and directions.

- 3.2 Clause 2 inserts clause 27A into the Act. This clause provides for the lapsing of a national state of disaster. The clause further regulates the validity of anything done under or by virtue of any regulation or direction from the time of the declaration of the national state of disaster to the time it lapses.
- 3.3 Clause 3 amends section 41 to provide *inter alia* that a provincial state of disaster may be effective only prospectively and for no more than 21 days, unless a provincial legislature resolves otherwise. It also provides that a Premier may terminate a national state of disaster before it lapses. It further provides that a copy of the notice declaring a national state of disaster must be tabled in a provincial legislature. The clause also provides that a provincial legislature may disapprove of any regulations or directions made under such a declaration or may make recommendations to the Premier pertaining to such regulations and directions.
- 3.4 Clause 4 inserts clause 41A into the Act. This clause provides for the lapsing of a provincial state of disaster. The clause further regulates the validity of anything done under or by virtue of any regulation or direction during the time from the declaration of the provincial state of disaster until the time it lapses.
- 3.5 Clause 5 amends section 55 to provide that a local state of disaster may be effective only prospectively and for no more than 21 days, unless a municipal council resolves to extend it. It also provides that a council may terminate a national state of disaster before it lapses. The clause further sets out how a council may extend a local state of disaster.
- 3.6 Clause 6 inserts clause 55A into the Act. This clause provides for the lapsing of a local state of disaster. The clause further regulates the validity of anything done under or by virtue of any by-law or direction during the time from the declaration of the local state of disaster until the time it lapses.
- 3.7 Clause 7 contains the short title.

4. FINANCIAL IMPLICATIONS FOR THE STATE

There will be no financial implications for the state.

5. DEPARTMENTS, BODIES OR PERSONS CONSULTED

None

6. PARLIAMENTARY PROCEDURE

- 6.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established by section 76(3) of the Constitution, as its provisions in a substantial manner deal with “disaster management”, a functional area of concurrent national and provincial legislative competence listed under Schedule 4 to the Constitution.
- 6.2. The Member is of the opinion that it is 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 may

contain provisions pertaining to customary law or customs of traditional communities.

