



## FREE STATE LEGISLATURE

### PORTFOLIO COMMITTEE ON

#### Negotiating Mandate

**TO:** Chairperson of the Select Committee on Land Reform, Environment, Mineral Resources and Energy

**NAME OF BILL:** National Environment Management Laws Amendment Bill

**NUMBER OF BILL:** B14D -2017

**DATE OF DELIBERATION:** 09 October 2020

#### VOTE OF THE LEGISLATURE:

The Portfolio Committee on Agriculture, Rural, Economic Development, Small Business, Sport, Arts and Culture as designated by the Free State Legislature votes in favour of the Bill with the following amendments:

THE NATIONAL ENVIRONMENTAL LAWS AMENDMENT BILL (B14D-2017)		
CLAUSE	CONCERN/COMMENT/INPUT	RECOMMENDATIONS
Clause 2	The definition of "Environmental Management Instrument" must be capable of considering all those other things that may be considered as Environmental Management Instrument as defined within different provinces.	Kindly consider adding "any relevant approved Provincial Biodiversity and/or Conservation Plans" in the definition.
Clause 3(a)	This clause refers to the word "Conservation" – there is no particular legislation defining what the meaning of conservation is.	The word Conservation must be defined under NEMA Laws.
Clause 4(a)	The purpose for the inclusion of the words "or is" is not clear.	Kindly consider and amend accordingly
Clause 5 (c)	The meaning of "in control of" must be clarified.	Define "in control of" under the definition clause.
Clause 8(3)	Section 24P (3) calls upon the applicant to determine the amount applicable for financial provision. This sounds like a provision for a self-regulation system. Is this the intention of the Bill?	Kindly provide clarity.
Clause 8(6)	The word "and" instead of "or" at the end of Section 24P 8(6)(d) is capable of many interpretations.	Kindly provide clarity.
Clause 9	This clause amends Section 24P and it provides for the review of the financial provision for the mining activity every 3 years. In terms of section 27(8) of the MPRDA a mining permit is valid for a period specified in the permit which may not exceed a period of 2 years and may be renewed for 3 times for a period not exceeding 1 year.	This amendment does not take into consideration the periods provided for in the MPRDA. Kindly consider.

Clause 9	Section 17(6) of the MPRDA – a prospecting right is valid for a period specified period in the right, which period may not exceed 5 years and in terms of section 18(4) of MPRDA prospecting right may be renewed once for not more 3 years.	The financial provision or review thereof in terms of section 24P does not take this provision into consideration. Kindly consider.
Clause 9(5)	Is there a recourse where the remediation costs exceed the determined financial provision?	Kindly provide clarity
Clause 11	This clause repeats section 245 which deals with management of the residue stockpiles and deposits in terms of NEMA: Waste Act, 2008. However, motivation and provision under clause 59 (section 4(b)A of NEM:WA) amends Waste Act to the effect that stockpiles and residue deposits are no longer regulated under NEM:WA but under NEMA	Kindly provide clarity

#### NEMPAA: PROTECTED AREAS ACT

CLAUSE	CONCERN/COMMENT/INPUT	RECOMMENDATIONS
Clause 39	<p>This clause amends Section 57 by making a provision for an appointment of the CFO to the Board of SANParks to be mandatory on the basis of King III Report according to the Department.</p> <p>King III provides that for a sustainable reporting financial reporting must only be additional but it must be integrated in all the reports of the Board.</p> <p>Although there might be valid reasons, the recommendation by King III for integrated financial reports of the Board, this does not make a case for the appointment of the CFO into the board but could be one of the reasons for appointing the CFO into the Board.</p> <p>Note should be taken that strategically, integration of ethical standards should be driven from the top by the Board, with the CEO or designated executive board member being the visible link between the Board and the Executive Management.</p>	<p>CFO is already a director of a company with the statutory duties and putting the CFO on the board has a potential of bringing conflict between the CEO and the CFO.</p> <p>Appointing the CFO on the Board may be useful to ensure that CFO is directly accountable as a director for the specific accounts that he/she was responsible for producing before the Board.</p> <p>Making an appointment of the CFO mandatory through a piece of legislation be detrimental and such a decision must not be taken lightly.</p> <p>A careful and weight up consideration of the benefits and disadvantages is hereby recommended, alternatively such a decision must be left at the discretion of the Minister as the Shareholder.</p>

#### NEMBA – BIODIVERSITY ACT

CLAUSE	CONCERN/COMMENT/INPUT	RECOMMENDATIONS
Clause 17	This clause still provides for the Minister to instruct the EMI's to intervene where necessary. However, the EMI's are in general appointed by the MEC. Protocols might defeat the ends to justice.	Recommend to give the MEC discretion to mandate the EMI's for purposes of proper oversight and monitoring of the implementation of the law.

#### NATIONAL ENVIRONMENT MANAGEMENT: AIR QUALITY ACT, 2004 (NEMAQA)

CLAUSE	CONCERN/COMMENT/INPUT	RECOMMENDATIONS
Clause 34	This introduces the Municipal Council as the appeal authority in decisions taken by the Municipal Managers. This was a challenge in relation to departments as there were no guidelines on the appointment and time frames for the appeal tribunal by the MEC's.	Already Municipalities are facing a number of service delivery challenges, imposing the function of appeal to the Municipal Council is going to burden the Councils. The Committee suggests that the Council may be requested to provide reasons for any adverse decision and the appeal be lodged with the MEC responsible for Environmental Affairs. This is in line with the premise that the Departments are more empowered to

		handle the issues of environment as a core business. This will assist in handling of matters speedily.
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**NATIONAL ENVIRONMENT MANAGEMENT: INTEGRATED COASTAL MANAGEMENT ACT 2008 (NEM: ICMA)**

CLAUSE	CONCERN/COMMENT/INPUT	RECOMMENDATIONS
Clause 58	Amendment of the Act for the express provision for the retrospective application of section 60 of the Act.	The Committee notes the general principle that the law cannot apply retrospectively unless it is specifically provided for by Parliament after due process of public participation. The public participation was duly undertaken and there were no objections to this effect. The Committee was duly advised and therefore supports this amendment.

**NATIONAL ENVIRONMENTAL MANAGEMENT: WASTE MANAGEMENT ACT**

CLAUSE	CONCERN/COMMENT/INPUT	RECOMMENDATIONS
Clause 59	This section refers to residue deposits and residue stockpile being regulated in terms of NEMA whereas Section 24S which deals with the residue deposits and stockpile under NEMA has been repealed.	Kindly reconcile this cross referencing for clarity.
Clause 67	Clause 67(1)(d) (iv) causes confusion.	Kindly delete or rephrase.
Clause 75	The usage of the word "may" after Section 69 and 70 is capable of different interpretations.	Kindly amend it to read "must".



**HON. A RADEBE**  
**CHAIRPERSON OF PORTFOLIO COMMITTEE OF**  
**FREE STATE LEGISLATURE**

09 October 2020