



cooperative governance

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA

Role of the NDMC on Fires within the context of the National Veld and Forest Fire Amendment Bill. [B24-2021]

Presentation: NDMC: 11 February 2022

PRESENTATION OUTLINE

1. Purpose of the presentation
2. Overview of risks in South Africa
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9. Enforcement of natural and unnatural fires within the context of national legislation
10. Other aspects to consider in processing the Bill
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PURPOSE OF THE PRESENTATION

This presentation clarifies the role of the National Disaster Management Centre (NDMC), Provincial Disaster Management Centres (PDMCs) and Municipal Disaster Management Centres (MDMCs) in awareness, prevention, mitigation and management (including inspections and enforcement) of natural and unnatural fires within the context of the Bill.

In this regard it will also provide an overview on:

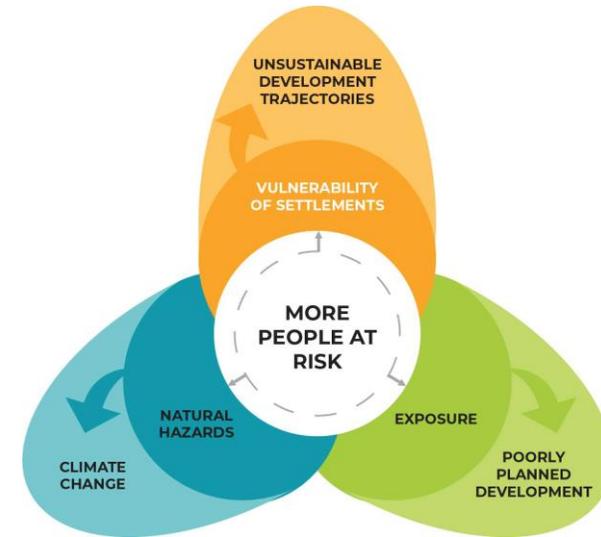
- ❑ The commitment of government through the white paper on Fire Services to reposition fire services from the mainly response orientated approach towards a fire risk reduction based approach
- ❑ The need to strengthen collaboration with other partners and stakeholders including those in the private sector involved in the provision of fire services



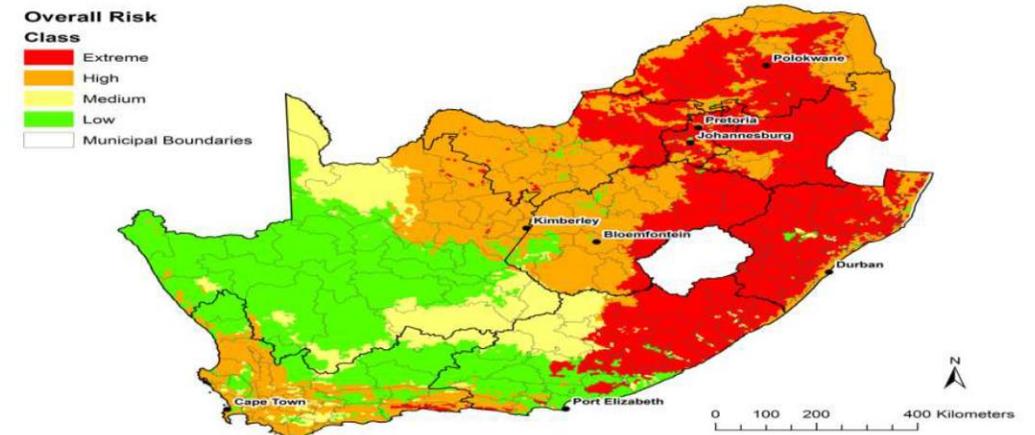
OVERVIEW OF RISKS IN SOUTH AFRICA

- ❑ South Africa faces increasing levels of disaster risk. **It is exposed to a wide range of weather hazards, including drought, cyclones and severe storms that can trigger widespread hardship and devastation.**
- ❑ **Climate change** is altering the face of disaster risk, not only through increased weather-related risks and sea-level and temperature rises, but also through increases in societal vulnerabilities, for example, from stresses on water availability, agriculture and ecosystems.
- ❑ Other forms of disasters such as the Covid-19 Pandemic, acid mine drainage (AMD) energy (electricity) and disastrous veld and forest fires are also emerging.

WORRYING OBSERVATIONS AND TRENDS



Classification of veldfire risk in South Africa....



LEGISLATIVE AUTHORITY IN TERMS OF FIRE SERVICES

In general, legislative authority in South Africa is divided among the national, provincial and local spheres of government. Section 43 of the Constitution provides in this respect that the legislative authority of the national sphere of government is vested in Parliament; that the legislative authority of the provincial sphere of government is vested in the provincial legislatures; and that the legislative authority of the local sphere of government is vested in the municipal councils.

The legislative powers of the municipal councils are set out in section 156 of the Constitution. Section 156(1) provides in this respect that a municipality has executive authority in respect of and has the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and any other matter assigned to it by national or provincial legislation. In terms of Schedule 4, Part B of the Constitution, firefighting services is a local government matter and a functional area of concurrent national and provincial legislative competence.

In addition, section 156(2) of the Constitution also provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.

Apart from sections 156(1) and (2), section 156(5) also provides that a municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

LEGISLATION ADMINISTERED BY THE DCOG THAT HAS A BEARING ON THE BILL

The role of the NDMC and LG in awareness, prevention, mitigation and management (including inspections and enforcement) of **natural and unnatural fires within the context of the Bill** is broadly set out in the legislation listed below and administered by the DCOG:

Disaster Management Act, 2002 (Act No. 57 of 2002)	Fire Brigade Services Act, 1987 (Act No. 99 of 1987)	Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000)	Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)
Chapters 3, 4 and 5 (Municipal Disaster Management)	Sections 2 (Fire Brigade Board) and 15 (Regulations) at national level and the others at provincial and municipal level	Sections 3 (Cooperative Governance), 8 (General empowerment), 9 (Assignments initiated by the executive to municipalities), Chapter 5 (IDP esp. sections 24, 25, 26,), 59, Chapter 8 (all parts)	Sections 12, 19, 72, 73, Chapter 5 (esp 84, 85, 88, 89)

DISASTER MANAGEMENT ACT, 2002 INTERFACE

The Disaster Management Act, 57 of 2002 establishes Disaster Management Centres across the three spheres of government.

In terms of **prevention and mitigation** (section 47) a MDMC, to the extent that it has the capacity, must give guidance to organs of state, the private sector, non-governmental organisations, communities and individuals in the municipal area to assess and prevent or reduce the risk of disasters (**caused by natural and unnatural fires**), including—

- (a) ways and means of—
 - (i) determining levels of risk;
 - (ii) assessing the vulnerability of communities and households to disasters that may occur;
 - (iii) increasing the capacity of communities and households to minimise the risk and impact of disasters that may occur; and
 - (iv) monitoring the likelihood of, and the state of alertness to, disasters that may occur;
- (b) the development and implementation of appropriate prevention and mitigation methodologies;
- (c) the integration of prevention and mitigation methodologies with development plans, programmes and initiatives; and
- (d) the management of high-risk developments.

(2) A municipal disaster management centre must promote formal and informal initiatives that encourage risk-avoidance behaviour by organs of state, the private sector, non-governmental organisations, communities, households and individuals in the municipal area.

DISASTER MANAGEMENT ACT, 2002 INTERFACE

The Disaster Management Act, 2002 in sections 52 and 53 requires that organs of state in the three spheres develop Disaster Management Plans (DMP).

Each municipal organ of state other than a municipality must—

- (a) conduct a disaster risk assessment for its functional area (including natural and unnatural fires);
- (b) identify and map risks, areas, ecosystems, communities and households that are exposed or vulnerable to physical and human-induced threats;
- (c) prepare a disaster management plan setting out—
 - (i) the way in which the concept and principles of disaster management are to be applied in its functional area, including expected climate change impacts and risks for that municipal entity or administrative unit;
 - (ii) its role and responsibilities in terms of the national, provincial or municipal disaster management framework;
 - (iii) its role and responsibilities regarding emergency response and post-disaster recovery and rehabilitation;
 - (iv) its capacity to fulfil its role and responsibilities;
 - (v) particulars of its disaster management strategies;
 - (vi) contingency strategies and emergency procedures in the event of a disaster, including measures to finance these strategies; and
 - (vii) specific measures taken to address the needs of women, children, the elderly and persons with disabilities during the disaster management process;
- (d) co-ordinate and align the implementation of its plan with those of other organs of state and institutional role-players;
- (e) provide measures and indicate how it will invest in disaster risk reduction and climate change adaptation, including ecosystem and community-based adaptation approaches;
- (f) develop early warning mechanisms and procedures for risks identified in its functional area; and
- (g) regularly review and update its plan.

DISASTER MANAGEMENT ACT, 2002 INTERFACE

A disaster management plan for a municipal area must—

- (a) form an integral part of the municipality's integrated development plan;
- (b) anticipate the types of disaster that are likely to occur in the municipal area and their possible effects;
- (c) place emphasis on measures that reduce the vulnerability of disaster-prone areas, communities and households;
- (d) seek to develop a system of incentives that will promote disaster management in the municipality;
- (e) identify the areas, communities or households at risk;
- (f) take into account indigenous knowledge relating to disaster management;
- (g) promote disaster management research;
- (h) identify and address weaknesses in capacity to deal with possible disasters;
- (i) provide for appropriate prevention and mitigation strategies;
- (j) facilitate maximum emergency preparedness; and
- (k) contain contingency plans and emergency procedures in the event of a disaster, providing for—
 - (i) the allocation of responsibilities to the various role-players and co-ordination in the carrying out of those responsibilities;
 - (ii) prompt disaster response and relief;
 - (iii) the procurement of essential goods and services;
 - (iv) the establishment of strategic communication links;
 - (v) the dissemination of information; and
 - (vi) other matters that may be prescribed.

DISASTER MANAGEMENT ACT, 2002 INTERFACE

The Disaster Management Act, 2002 in section 49 requires that when a disastrous event (including natural and unnatural fires) occurs or is threatening to occur in the area of a municipality, the disaster management centre of the municipality concerned must determine whether the event should be regarded as a disaster in terms of this Act, and, if so, must immediately—

- (a) initiate efforts to assess the magnitude and severity or potential magnitude and severity of the disaster;
- (b) inform the National Centre and the relevant provincial disaster management centre of the disaster and its initial assessment of the magnitude and severity or potential magnitude and severity of the disaster;
- (c) alert disaster management role-players in the municipal area that may be of assistance in the circumstances; and
- (d) initiate the implementation of any contingency plans and emergency procedures that may be applicable in the circumstances.

When informing the National Centre and the relevant provincial disaster management centre in terms of subsection (1) (b), the municipal disaster management centre may make such recommendations regarding the classification of the disaster as may be appropriate.

FIRE BRIGADE SERVICES ACT, 1987 INTERFACE

The Fire Brigade Services Act, 1987 in section 1 states that a “service” is a fire brigade service intended to be employed for—

- (a) **preventing** the outbreak or spread of a fire;
- (b) **fighting** or extinguishing a fire;
- (c) the **protection** of life or property against a fire or other threatening danger;
- (d) the rescue of life or property from a fire or other danger;
- (e) subject to the provisions of the Health Act, 1977 (Act No. 63 of 1977), the rendering of an ambulance service as an integral part of the fire brigade service; or
- (f) The **performance of any other function** connected with any of the matters referred to in paragraphs (a) to (e).

The Fire Brigade Services Act, 1987 also states that:

- a) it shall apply in the national territory referred to in section 1 of the Constitution.
- b) a local authority may establish and maintain a service in accordance with the prescribed requirements.

FIRE BRIGADE SERVICES ACT, 1987 INTERFACE

- The Fire Brigade Services Act, 1987 states that a local authority may, after consultation with the Board, and subject to the provisions of any law applicable to the local authority in relation to the promulgation of by-laws or regulations, as the case may be, make by-laws or regulations, as the case may be, which are not contrary to any law, for its area of jurisdiction regarding any matter which it may deem necessary or expedient in order to employ its service effectively.
- The Administrator (MEC) may after consultation with the Board make bylaws or regulations, as the case may be, which are not contrary to any law, regarding any matter referred to in subsection (1), and such by-laws or regulations shall apply in the area of jurisdiction of every local authority in the province concerned in so far as they are applicable and not inconsistent with the by-laws or regulations, as the case may be, of the local authority concerned.
- A by-law or regulation may in respect of a contravention thereof or failure to comply therewith provide for a punishment of a fine not exceeding R5 000 or of imprisonment for a period not exceeding six months.
- A chief fire officer may at any reasonable time enter any premises in the area of the controlling authority concerned in order to determine whether the provisions contemplated in Act are being complied with.
- If the chief fire officer finds that such provisions are not being complied with, he may issue to the owner of those premises, or his authorized agent, a written instruction to comply with the provisions in question within the period mentioned therein.

FIRE BRIGADE SERVICES ACT, 1987 INTERFACE

- One of the objectives of the NDMC is to oversee the administration and implementation of the fire services legislation and the performance of duties.
- The NDMC coordinates several national institutional structures relating to fire services and disaster management.
- The NDMC convenes quarterly meetings with its provincial counterparts to ensure effective multi-sphere coordination of fire services activities
- A number of Working Groups have also been established to look at sector-specific issues such as Fire Safety, Career Pathing and Capacity Building.
- The NDMC also provides support to provincial fire services structures through participation in meetings and related activities.

INTEGRATED (VELD) FIRE MANAGEMENT

Integrated (Veld) Fire Management can be defined as a series of actions that includes fire awareness activities, fire prevention activities, prescribed burning, resource sharing and co-ordination, fire detection, fire suppression, fire damage rehabilitation and research at local, provincial and national levels, in order to create a sustainable and well-balanced environment, reduce unwanted wildfire damage, and to promote the beneficial use of fire.

Role of Chief Fire Officer:

- 1) Oversees the development and implementation of a veldfire management strategy as one of the various other fire management strategies needed for a municipality
- 2) Assume the responsibility of being a Fire Protection Officer for a Fire Protection Association in its area of jurisdiction.
- 3) May delegate his or her powers and duties as a Fire Protection Officer to a competent person within the Service.
- 4) Work closely with the FPA(s) and other land-owners to promote and coordinate the creation of fire breaks and assist with fire burning permits.

Role of Fire Protection Officer

- 1) Oversees the development and implementation of veldfire management strategy
- 2) May delegate his or her powers and duties as a Fire Protection Officer to a competent person.
- 3) Promote and coordinate the creation of fire breaks and assist with fire burning permits.

INTEGRATED REPORTING

1. A municipal fire service must submit a report annually to the Municipal Council on Particular problems that were experienced in dealing with major fires and generally in implementing this Fire Brigade Services Act, 1987 including the way in which problems were addressed and any recommendations the fire services wishes to make in this regard.
2. A municipal fire services must, while its report is submitted to the municipal council, submit a copy of the report to the NDMC (in DCOG) and Forestry (in DFFE) and the respective provincial departments concerned.

ENFORCEMENT OF NATURAL AND UNNATURAL FIRES WITHIN THE CONTEXT NATIONAL LEGISLATION

1. Awareness

- Municipalities (and other organs of state to the Disaster Management Act, 2002) have a critical role in raising awareness on fire risk in their communities. Specific obligations are placed on both municipal and district fire services, and other organs of state, to publish on their websites and in the local media, prevention and mitigation strategies on fire hazards. Provinces and NDMC provide needed support to ensure information provided to municipalities are aligned with national and international best practices and standards.

2. Prevention

- NDMC has established collaboration and partnerships with relevant stakeholders in promoting preparedness for effective firefighting.
- This also advocates for outlining the role of Further Education and Training colleges in the provision of fire services training and education and explore mechanisms for providing specialist training to the sector.

3. Mitigation

- The NDMC developed a uniform fire risk assessment framework considering the South African National Standard (SANS) 10090:2003-Community Protection against Fire and other relevant internationally accepted standards.
- This is also achieved by promoting standardisation of norms and standards through model bylaws by assessing municipalities through fire safety and prevention capacity assessments.
- In addition, Fire services supports community initiatives aimed at reducing fire risk within its area of jurisdiction.

4. Management

- As much as the organs of state is experiencing some challenges with regards to enforcement in relation to fire management in some parts of the country, the NDMC has encouraged Municipal Fire Services to train more Fire Officers to be Peace Officers. This will enforce compliance with the municipal By Laws and FPA requirements.

5. Inspections

- Each fire service is empowered and encouraged to conduct a fire risk assessment to identify all fire hazards and risks in its area of jurisdiction and then to conduct inspections to ensure that safety standards set out in bylaws are maintained.
- Each fire service is required to categorise occupancies into high, moderate and low risks after considering life and property risks and then assign a minimum inspection frequency.

OTHER ASPECTS TO CONSIDER IN PROCESSING THE BILL

Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000)

Legislative Provision	Recommendation
<p>Section 3 (Cooperative Governance). The national and provincial spheres of government must, within the constitutional system of co-operative government envisaged in section 41 of the Constitution, exercise their executive and legislative authority in a manner that does not compromise or impede a municipality's ability or right to exercise its executive and legislative authority.</p>	<p>The principles of cooperative governance should be entrenched the Bill so that the objectives of the FPA(s) in an area is seamless with the objectives of the fire brigade services and disaster management as it relates to the preventing, reducing, mitigating the severity of, promoting emergency preparedness, ensure rapid and effective response to veld fires</p>
<p>Section 4 (Rights and duties of municipal councils). The council of a municipality has the right to govern on its own initiative the local government affairs of the local community; exercise the municipality 's executive and legislative authority, and to do so without improper interference; and finance the affairs of the municipality by charging fees for services; and imposing surcharges on fees, rates on property and, to the extent authorised by national legislation. other taxes, levies and duties.</p>	<p>The rights and duties of councils should be entrenched in the Bill so that the ability of a municipality to govern the provision fire fighting services as it relates to veld fires that occur in its area (keeping in mind the concept of wall-to-wall municipalities) is not in conflict with or against those regulating FPA established in the area by the Minister.</p>
<p>Section 8 (General empowerment). A municipality has all the functions and powers conferred by or assigned to it in terms of the Constitution, and must exercise them subject to Chapter 5 of the Municipal Structures Act. A municipality has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers.</p>	<p>The principles of cooperative governance should be entrenched the Bill so that the objectives of the FPA(s) in an area is seamless with the objectives of the fire brigade services and disaster management as it relates to the preventing, reducing, mitigating the severity of, promoting emergency preparedness, ensure rapid and effective response to veld fires</p>
<p>Section 9 (Assignments initiated by the executive to municipalities) A Cabinet member or Deputy Minister initiating the assignment of a function or a power by way of national legislation to municipalities generally must before the draft legislation providing for the assignment is introduced in Parliament consult the Minister, the national Minister of Finance and organised local government representing local government nationally and consider any assessment by the Financial and Fiscal Commission in terms of the assessment of the financial implications of the Legislation.</p>	<p>The cost of becoming a member of a FPA and the Chief Fire Officer performing functions ito the Act must be considered. The Bill should also consider the implications of assigning the similar powers to a FPO than that of a Chief Fire Officer for the same territory (The CFO has a legislative responsibility and 'duty to care' regardless of whether s/he is the FPO).</p>

OTHER ASPECTS TO CONSIDER IN PROCESSING THE BILL

Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000)

Legislative Provision	Recommendation
<p>Chapter 5 [Integrated Development Planning esp. section 24 (Municipal planning in co-operative governance), section 25 (Adoption of integrated development plans), section 26 (disaster management planning)</p>	<p>The principles of Integrated Development Planning should be entrenched the Bill so that the objectives of the FPA(s) in an area is seamless with the objectives of the fire brigade services and disaster management as it relates to the preventing, reducing, mitigating the severity of, promoting emergency preparedness, ensure rapid and effective response to veld fires</p>
<p>Section 59 (Delegations) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may delegate appropriate powers, excluding a power <i>mentioned</i> in section 160(2) of the Constitution and the power to set tariffs to decide to enter into a service delivery agreement in terms of section 76(b) and to approve or amend the municipality's integrated development plan, to any of the municipality's other political structures, political office bearers, councillors or staff members:</p> <p>(b) instruct any such political structure. political office bearer, councillor, or staff member to perform any of the municipality's duties: and</p> <p>(c) withdraw any delegation or instruction.</p>	<p>The powers and duties that a Chief Fire Officer may have in terms of section 6 the National Veld and Forest Fires Act (e.g. being the CEO of the FPA, carry out tasks assigned to him /her by the FPA or executive committee, apply to be the FPO etc.) may place the person in conflict with delegations or obligations s/he may have in terms of the LGMSA and the Fire Brigade Services Act, 1987. The processing of the Bill must entrench the role and responsibility of the CFO and clarify that where there may be a conflict the requirements of the local government legislation remains.</p>
<p>Chapter 8 (General duties, Tariff policy, By-laws, mechanisms to provide services and service level agreements, municipal service districts, multi-jurisdictional municipal service districts etc.</p>	<p>General duties, the interface of FPA rules (that may affect a community) with bylaws, mechanisms to provide veld fire services to the municipality as an external entity (link to designated service in Fire Brigade Services Act, 1987), establishment of municipal service districts (where more than one FPA exist) and or the establishment of multi-jurisdictional municipal service districts should be considered when processing the Bill. The membership fees payable into the FPA must be aligned to the fees process of council to ensure that a fair structure is in place based on democratic principles.</p>

OTHER ASPECTS TO CONSIDER IN PROCESSING THE BILL

Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

Legislative Provision	Recommendation
<p>Sections 12 (Boundaries of municipalities)</p>	<p>Fire services, prior to the operation of the LG legislation in 2000 was only required to prevent and respond to fires within the established township whilst the vast, mostly rural areas consisting of veld and forests remained unprotected until the National Veld and Forest Fires Act came into being. With the advent of local government in 2000 and the implementation of wall-to-wall municipalities the fire services and FPA were assigned the same responsibilities in terms of management of veld fires. It is proposed that the BILL consider this aspect and consider a mechanism to ensure that the assignment of functions is not duplicated</p>
<p>Section 19 A municipal council must strive within its capacity to achieve the objectives set out in section 152 of the Constitution and must annually review-</p> <ul style="list-style-type: none"> (a) the needs of the community; (b) its priorities to meet those needs; (c) its processes for involving the community; (d) its organisational and delivery mechanisms for meeting the needs of the community; and (e) its overall performance in achieving the objectives <p>A municipal council must develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers.</p>	<p>The principles of cooperative governance should be entrenched the Bill so that the objectives of the FPA(s) in an area is seamless with the objectives of the (Local Government) fire brigade services and disaster management as it relates to the preventing, reducing, mitigating the severity of, promoting emergency preparedness, ensure rapid and effective response to veld fires</p>
<p>Section 72 (Ward Committees) The object of a ward committee is to enhance participatory democracy in local government.</p>	<p>The principles of cooperative governance should be entrenched the Bill so that the ward committees are engaged in the formation of FPA and the rules governing it</p>
<p>Chapter 5 (esp 83, 84, 85, 88, 89)</p>	<p>The principles of cooperative governance should be entrenched the Bill so as to recognize and consider that the division of powers and functions with regards to fire services may be divided between categories of municipalities. It is proposed that the BILL consider this aspect and consider a mechanism to ensure that the assignment of functions is not duplicated.</p>

CONCLUDING REMARKS

The NDMC:

1. Administers section 2 and 15 of the Fire Brigade Services Act, 1987 and through this enabling mechanism:
 - a) Developed the White Paper on Fire Services which was approved by Cabinet
 - b) Promotes standardisation of norms and standards through model bylaws by assessing municipalities through fire safety and prevention capacity assessments.
 - c) Holds fire safety workshops with national and provincial structures to enhance coordination and to share good practices.
 - d) Monitors and provides oversight on fire services issues.
 - e) Developed a career path for personnel in the fire services considering the importance of multi-level entry for practitioners.
2. Engages with other national sector departments and industry stakeholders on fire services and disaster management issues.

RECOMMENDATION

It is recommended that the PC notes the presentation and considers the aspects raised in processing the Bill

THANK YOU

Ngiyabonga | Re a leboga | Ndo livhuwa | Nndza nkhenisa | Ke a leboha haholo | Dankie | Enkosi