

REPUBLIC OF SOUTH AFRICA

RADIOACTIVE WASTE MANAGEMENT FUND BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of)
(The English text is the official text of the Bill)*

(MINISTER OF MINERAL RESOURCES AND ENERGY)

[B—2022]

BILL

To establish a trust to provide for the collection of funds to be disbursed to the National Radioactive Waste Disposal Institute for long-term management of high-level radioactive waste; to provide for its governance and administration; and to provide for matters connected therewith.

PREAMBLE

ACKNOWLEDGING the Radioactive Waste Management Policy and Strategy for the Republic of South Africa, 2005, provides for the establishment of a Radioactive Waste Management Fund by statute and for contribution by the generators of radioactive waste in keeping with the polluter pays principle;

NOTING the Policy indicates the purpose of the Fund shall be to ensure there are sufficient provisions for the long-term management options of the various waste forms;

AND WHEREAS section 21(1)(c) of the National Radioactive Waste Disposal Institute Act, 2008 (Act No. 53 of 2008), provides the funds of the Institute consist of money transferred to the Institute from the Radioactive Waste Management Fund must be established by an Act of Parliament;

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

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CHAPTER 1

INTERPRETATION AND APPLICATION OF ACT

Definitions

1. In this Act, unless the context indicates otherwise—

“**beneficiary**” means the National Radioactive Waste Disposal Institute;

“**board**” means the board of trustees as constituted from time to time;

“**Department**” means the Department of Mineral Resources and Energy;

“**Fund**” means a trust called the “Radioactive Waste Management Fund”;

“**Institute**” means the National Radioactive Waste Disposal Institute established in terms of section 3 of the National Radioactive Waste Disposal Institute Act, 2008 (Act No. 53 of 2008);

“**Minister**” means the Minister of Mineral Resources and Energy;

“**National Nuclear Regulator**” means the regulator established by the National Nuclear Regulator Act, 1999 (Act No. 47 of 1999);

“**National Radioactive Waste Disposal Institute Act**” means the National Radioactive Waste Disposal Institute Act, 2008 (Act No. 53 of 2008);

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“**high-level radioactive waste**” means highly radioactive materials produced as a by-product of the reactions which occur inside a nuclear reactor. This waste can be in the form of spent reactor fuel which is accepted for disposal or waste material remaining after reprocessing of spent fuel;

“**Statutory Obligations**” means a legal compliance requirement which applies to the administration of the Fund;

“this Act” includes regulations made or issued in terms of this Act;

“trustees” means the trustees of the Fund constituted in terms of this Act and refers to the individual members of the board in their capacities as trustees; and

“waste generator” means a nuclear operator licensed by the National Nuclear Regulator whose operations generate high-level radioactive waste.

Application of Act

2. (1) This Act applies to activities which relate to the management of high-level radioactive waste as contemplated in section 6.

(2) This Act does not apply to low-level and intermediate-level waste.

CHAPTER 2

ESTABLISHMENT AND OBJECTS OF RADIOACTIVE WASTE MANAGEMENT FUND

Establishment of Fund

3. A trust called the “Radioactive Waste Management Fund” is established.

Objects of Fund

4. The objects of the Fund are to—

- (a) establish the polluter pays principle on a waste generator to contribute funds towards long-term radioactive waste management as contemplated in section 7;
- (b) ensure there is sufficient funding provision made to cover the expenditure to be incurred by the Institute in fulfilment of its mandate to undertake radioactive waste management activities in accordance with section 6; and
- (c) act as the financial provider in whole or part for expenditure which the Institute is required to undertake to comply with the National Radioactive Waste Disposal Institute Act, 2008 (Act No. 53 of 2008), section 21(1)(c) and other Statutory Obligations.

CHAPTER 3

FUNDS OF FUND, UTILISATION OF MONEY IN FUND AND POLLUTER PAYMENTS

Funds of Fund

5. (1) The board is charged with the responsibility of accounting for all assets, money received by the Fund, and payments made by the Fund.
- (2) The assets or funds must not form part of the assets of the trustees.
- (3) The funds of the Fund consists of—
- (a) funds deposited by waste generators in fulfilment of section 7;
 - (b) interest or income derived from investment of the Fund; and

- (c) money lawfully obtained by the Fund from any other source.

Utilisation of money in Fund

6. Subject to the provisions of this Act, the Institute, upon approval by Minister, must submit to the board, a request for transfer of funds which must only be utilised for pre-disposal activities at a waste disposal site and disposal activities of the Institute, including—

- (a) the siting, licensing, construction, operation, decommissioning of waste facilities, storage and disposal facilities for the long-term management of radioactive waste;
- (b) conducting of scientific and technical research, development and demonstration activities relating to waste disposal;
- (c) costs which may be incurred after delivery of the radioactive waste to the Institute, in connection with the pre-disposal activities at a waste disposal site; and
- (d) capacity building initiatives for radioactive waste management and disposal.

Polluter payments

7. The Minister must, on recommendation of the Institute, after consultation with the board and the Minister of Finance, by notice in the *Gazette*, make a determination of funds payable by a waste generator to the Fund in respect of management of high-level radioactive waste generated.

CHAPTER 4
GOVERNANCE OF FUND

Appointment and composition of the Radioactive Waste Management Fund

8. (1) The Minister must appoint not more than ten trustees made up as follows—

- (a) an official from the Department of Forestry, Fisheries, and the Environment;
- (b) an official from National Treasury;
- (c) an official from the Department of Mineral Resources and Energy;
- (d) an official of the Institute; and
- (e) six other persons appointed as trustees.

(2) The Minister must, from amongst the trustees referred to in subsection (1) appoint a chairperson of the board.

(3) For the purposes of the appointment of the trustees referred to in subsection (1)(e)—

- (a) the Minister must, through the media and by notice in the Gazette, invite nominations of persons as candidates for appointment;
- (b) a panel, appointed by the Minister, which may include representatives of the relevant committees of Parliament, must compile a shortlist of not more than 20 candidates from the persons so nominated; and
- (c) The Minister must, from the shortlist so compiled and from other persons nominated as contemplated in paragraph (a), appoint persons to the relevant positions on the board.

Vacation of office

9. (1) A trustee may be removed from office by the Minister on account of—
- (a) Misconduct;
 - (b) Inability to perform the duties of his or her office effectively;
 - (c) Absence from three consecutive meetings of the board without submitting notice to the chairperson; and
 - (d) Failure to disclose an interest in terms of section 13(1) or attendance at, participation in, proceedings of the board while having an interest contemplated in terms of section 13(2).
- (2) Tenders his or her resignation in writing to the Minister; or
- (3) Dies or becomes incapacitated.

Term of office and filling of vacancies

10. (1) A trustee holds office for a period not exceeding five years.
- (2) The Minister may reappoint a trustee at the expiry of his or her term of office for another five year term.
- (3) If a trustee vacates office or dies, the Minister may appoint a person in accordance with paragraph 8(1)(e) and subsection 8(3) for a five year term.

Disqualification

11. A person will not qualify to be appointed to the board if the person—
- (a) is not a citizen of and not permanently resident in the Republic,

- (b) is subject to an order of a competent court declaring the person to be mentally ill or disordered;
- (c) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of an offence for which the person is sentenced to imprisonment without the option of a fine;
- (d) at a time prior to the date of commencement of this Act was convicted, or at a time after the commencement is convicted—
 - (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), as amended, the Corruption Act, 1992 (Act No. 94 of 1992), as amended, Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004;
 - (ii) elsewhere, of an offence corresponding materially with an offence referred to in subparagraph (i);
 - (iii) whether in the Republic or elsewhere, of an offence involving dishonesty; or
 - (iv) has been convicted of an offence under this Act.
- (f) is appointed as a Member of Parliament, a Member of Provincial Legislature, and a Member of Municipal Council; or
- (g) is an employee of, or adviser to, an organisation which possesses or produce radioactive waste which may be disposed of by the Institute.

Powers of board

12. The board must—

- (a) register a trust in the name of the Radioactive Waste Management Fund.
- (b) acquire, administer and control the assets of the Fund in accordance with its objects subject to the provisions of this Act;
- (c) transfer funds to the Institute for the purpose of undertaking activities which are listed in section 6;
- (d) have all the powers as may be necessary to enable it to administer the Fund and may—
 - (i) invest in a manner as it may think fit, subject to the provisions of this Act, the capital amount and the income from the Fund which may not be immediately required;
 - (ii) realise, vary and transpose assets, investments as it may make a determination of;
 - (iii) purchase, sell, exchange, lease, hire or otherwise acquire or dispose of movable property or a right therein;
 - (iv) improve and develop a movable property or assets of the Fund;
 - (v) employ a person to manage or assist in the management of assets of the Fund and to remunerate including travelling and other expenses which may necessarily be incurred by the employee from funds provided by National Radioactive Waste Disposal Institute to administer the Fund;
 - (v) appoint agents for a specific purpose, including the power to appoint accountants, attorneys, advocates and other professional persons for a specific purpose;

- (vi) act in a court of law for the recovery amounts due to the Fund or compel the fulfilment of obligations in its favour and defend proceedings which may be instituted against the Fund;
 - (vii) enter into an agreement or arrangement regarding the terms and conditions of payment of money due to the Fund and the abandonment of claims by the Fund, subject to the approval of the Minister with the concurrence of the Minister of Finance;
 - (viii) purchase or otherwise acquire equipment which may be necessary for the purpose of meeting the administrative requirements of the Fund; and
 - (ix) open and control a bank account in the name of the Trust with a bank registered as a bank in terms of the Bank Act, 1990 (Act No. 94 of 1990), as amended.
- (e) ensure that a trustee, in a personal capacity, does not engage in trade, undertaking or business of the Fund, nor such a trustee participate in the affairs of the Fund, or provide financial assistance or services or facilities other than is required to fulfil their role as a trustee.

Disclosure of conflicting of interests

13. (1) A person must not participate in the proceedings at a meeting of the board if a person—
- (a) directly or indirectly, whether personally or through his or her spouse, partner, or associate, has a direct or indirect financial interest in the radioactive waste management industry; and

(b) or his or her spouse, partner, or associate, holds an office in or is employed by a company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest.

(2) If at any stage during proceedings before the board it appears a person has or may have an interest which may cause the conflict of interest to arise on his or her part—

(a) the person must forthwith fully disclose the nature of his or her interest and leave the meeting to enable the remaining trustees to discuss the matter and decide whether the person is precluded from participating in the meeting because of a conflict of interest; and

(b) the disclosure and the decision taken by the remaining trustees regarding the determination, must be recorded in the minutes of the meeting in question.

(3) If a trustee fails to disclose interest as required by subsection (2) or, subject to the provisions of that subsection, if a trustee is present at the venue where a meeting of the board is held or in a manner whatsoever participates in the proceedings of the board, the relevant proceedings of the board will be null and void.

CHAPTER 5

Administration of Fund

Administration of Fund

14. (1) The board must administer the Fund.

(2) The Institute must bear the administration cost of the board and recover this through funds payable by waste generators according to section 7.

(3) The Minister may at the end of a calendar year make a determination of the remuneration and allowances of the trustees considering the time spent by them in the service of the Fund.

(4) A determination made by the Minister is subject to the approval and concurrence of the Minister of Finance.

(5) The salaries and allowances so approved by the Minister, in terms of subsection 14(3) may be paid to the trustees from funds stipulated in subsection 14(2).

(6) The board shall, where applicable, apply for tax exemption status from the South African Revenue Service.

(7) The board must manage and maintain a register of waste generators.

(8) The board must ensure receipt of information from the Institute regarding both historical and current high level waste produced by waste generators according to volume.

(9) The board must ensure proper processing of applications for funding from the Institute and approve the applications. The disbursements to the Institute will be based on the payment schedule provided with the application and approved by the board.

(10) The board must ensure the Fund keeps proper records relating to the administration of the Fund, including all the financial transactions, assets, and liabilities of the Fund.

(11) The financial statements of the Fund must be audited by an auditor or firm of auditors registered in terms of section 20 of the Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991), as amended, appointed by the board.

(12) The board shall ensure the audit report is shared with Minister.

(13) The board must ensure receipt of funds payable by waste generators in compliance with section 7 into the Fund's bank account and reconcile the payments against amount due.

(14) The board must ensure the preparation of board pack for the trustees comprising at least the following—

- (a) application for funding to be approved by the board at the bi-annual meetings;
- (b) report on waste produced, charges raised, and funding received including outstanding charges;
- (c) report on invested funds and returns achieved;
- (d) a comprehensive financial report produced on a bi-annual basis;
- (e) annual financial statement to be prepared and submitted for audit; and
- (f) annual report including audited financial statements.

CHAPTER 6

GENERAL

Termination of Fund

15. (1) The Fund must only be terminated after all the beneficiary's Statutory Obligations in respect of all its high-level radioactive waste management operations at a time have been met to the satisfaction of the Minister.

(2) Despite the provisions of any other law, the Fund may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted specially for that purpose.

Regulations

16. (1) The Minister may, on recommendation of the board and by notice in the *Government Gazette*, make regulations regarding—

- (a) a matter which is required or permitted by this Act; and
- (b) an administrative or procedural matter necessary to give effect to the provisions of this Act.

(2) Before regulations are made in terms of subsection (1), the Minister must—

- (a) by notice in the *Gazette*, invite the public to comment on the proposed regulations, and
- (b) make a consideration of the comment.

Procedures

17. (1) The Institute must, for the approval of the Minister, develop a consultative framework providing for close cooperation between the Institute and waste generators with respect to matters of common interest, including implementation plans for relevant infrastructure.

(2) The board must, for the approval of the Minister, develop a procedure relating to the way the Institute requests for funds from the Fund.

Offences

18. (1) A person is guilty of an offence if that person fails to pay funds to the Fund in respect of management of high-level radioactive waste generated, in compliance with section 7.

(2) A person convicted of an offence mentioned in subsection (1) is liable on conviction of a fine or to imprisonment not exceeding 2 years.

Short title and commencement

19. This Act is called the Radioactive Waste Management Fund Act, 2022, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.