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NEGOTIATING MANDATE NATIONAL ENVIRONMENT LAWS AMENDMENT BILL [B66B-2008]

The Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning (the Committee) met on 28 October 2008 for the briefing by Hon. A Watson, the permanent delegate representing Mpumalanga in the National Council of Provinces (NCOP) on the National Environment Laws Amendment Bill [B66B-2008] (the Bill).

The committee conducted public hearings on the Bill on 05 November 2008 to solicit public views and inputs. The committee also called for written submissions from individuals who were not able to air views during the public hearings. On 07 November 2008 the committee met to consider the views and inputs of the public as well as the written submissions on the Bill.

After deliberation, the Committee supports the principles underlying the Bill, taking into account the observations of the Committee as contained in the attached report, which amongst others includes the following:

- a. **Clause 1 and Clause 29:** there should be consistency in the Bill with regards to fines for offences committed under the Atmospheric Pollution Prevention Act, 1965 and the National Environmental Management: Air Quality Act, 2004. It is therefore proposed that both said Acts be amended to indicate that fines for first offenders are R5 million and R10 million for second and subsequent offenders;
- b. **Clause 19 (b),** which seeks to amend Section 31K of Act 107 of 1998: the phrase "**and the like**" should be clarified in order to avoid any ambiguity in interpretation;
- c. **Editorial:** Clause 13, line 53: Insert the word "**or**" between "R1 million" and "to".

The Committee hereby mandates the delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) to negotiate in favour of the Bill after taking the following proposals into consideration:



OFFICE OF THE SECRETARY

HON. SW LUBISI
CHAIRPERSON: PORTFOLIO
COMMITTEE ON AGRICULTURE
AND LAND ADMINISTRATION;
ECONOMIC DEVELOPMENT AND PLANNING

10/11/2008 DATE

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REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE AND LAND ADMINISTRATION; ECONOMIC DEVELOPMENT AND PLANNING ON THE NATIONAL ENVIRONMENT LAWS AMENDMENT BILL [B66B-2008]

1. Introduction

The National Environment Laws Amendment Bill [B66B-2008] (the Bill) was referred to the Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning (the Committee) for consideration and with the responsibility to report back its recommendations to the House.

2. Objectives of the bill

The National Environment Laws Amendment Bill [B66B-2008] was introduced to Parliament in October 2007 to amend various environmental Acts. The essence of the amendment is to consolidate the provisions of various environmental Acts to be consistent with the National Environmental Management Act (NEMA), 107 of 1998. It also updates the penalties and criminal provisions of older legislation such as the Atmospheric Pollution Prevention Act, 45 of 1965 (APPA) to be in line with the NEMA and other specific environmental management Acts. It also provides magistrate's courts the jurisdiction to handle environmental offences. Furthermore, the amendment provides that the failure to report an emergency incident that affects the environment negatively be elevated to constitute an offence that is punishable by paying a fine or being imprisoned.

The Bill seeks to amend the:

- Atmospheric Pollution Prevention Act, 1965, so as to adjust the penalties provided for in the said Act;
- Environment Conservation Act, 1989 so as to adjust the penalties provided for in the said Act and to remove the need to publish directions in the *Gazette*;
- National Environmental Management Act, 1998 [NEMA Act] so as to delete certain definitions; to provide for the establishment of fora or advisory committees; to make provision for increased powers of the courts; to extend the scope of routine inspections to the search of vehicles; to remove the requirement that Environmental Management Inspectors (EMI's) should carry notices of designation with them; and

to regulate the jurisdiction of magistrate's courts in instances where the maximum fines have been increased;

- National Environmental Management: Protected Areas Act, 2003 so as to provide for increased measures of control over escaped animals and to adjust the penalties provided for in the said Act;
- National Environmental Management: Biodiversity Act, 2004 so as to provide for general surveillance monitoring; to provide further consideration for a Biodiversity management plan; to provide that an environment impact assessment (EIA) must be obtained when genetically modified organisms are involved; to introduce notification requirements in the discovery phase of a bioprospecting project; to take into consideration knowledge of specific individuals when issuing specific bioprospecting permits; to allow for the Director-General or a trustee to manage the Bioprospecting Fund; to allow for the renewal or amendment of a permit; to amend the regulations to allow for hunting; and to effect certain textual alterations;
- National Environmental Management: Air Quality Act, 2004 so as to provide for a processing fee to review a licence; and to include directors or senior managers in a juristic person for the criteria for a fit and proper person;
- And to provide for matters connected therewith.

3. Method of work

The Bill was referred to the Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning for consideration and further processing. Thereafter the Committee was briefed on the Bill by Hon. A Watson, the permanent delegate representing the Province of Mpumalanga in the NCOP on 28 October 2008.

In attendance at the briefing were Officials from the National Department of Environmental Affairs and Tourism (DEAT), the Environmental Services Chief Directorate of the Provincial Department of Agriculture and Land Administration (DALA) and the Mpumalanga Tourism and Parks Agency (MTPA). The Legal Services section of the Legislature was also present at the briefing.

During the deliberations, the committee raised some concerns on the Bill, which the DEAT responded to as follows:

CONCERN	DEAT RESPONSE	SUGGESTED AMENDMENT
<p>Clause 1 Atmospheric Pollution Prevention Act</p> <p>Suggestion that the penalty for the second or subsequent conviction be a fine not exceeding ten thousand rand or imprisonment for a period not exceeding ten years</p>	<p>The standardization of penalties was a main driver of the amendment – the agreed ratio being R1 million and/or 1 year</p>	<p>Amend to reflect that the penalty for the second or subsequent conviction be a fine not exceeding ten million rand and/or imprisonment for a period not exceeding ten years</p>
<p>Clause 2 Environment Conservation Act</p> <p>Subsection (4) Why is the fine lower than fines for the other offences? (Both ECA and APPA)</p>	<p>This legislation will be repealed soon.</p>	<p>No amendment required.</p>
<p>Clause 2 Environment Conservation Act</p> <p>Suggest the following amendment to subsection (4)</p> <p>"(4) Any person who contravenes a provision of section 20(1), 20[(6)](9), 22(1) or 23(2) or a direction issued under section 20(5) or fails to comply with a condition of a permit, permission, authorisation or direction issued or granted under the said provisions shall be guilty of an offence and liable on conviction</p>	<p>The Department did not amend the original text, and is of the view that the word "and" is sufficient to indicate the intention behind it. The wording thus far lead to no interpretation difficulties, but the Department does not have any objection to the insertion of the wording "in addition" before the wording "to a</p>	<p>The Department is of the view that no additional amendment is required, but does not have an objection against the amendment as suggested.</p>

to a fine not exceeding [R100 000] R5 million or to imprisonment for a period not exceeding [10] five years or to both such fine and such imprisonment, and in addition to a fine not exceeding three times the commercial value of any thing in respect of which the offence was committed.	fine not exceeding three times the commercial value ..."	
Clause 2 Environment Conservation Act Subsection (5) The ratio across the Bill used for penalties is 1 million for 1 year. Is R100 000 or 1 year a mistake?	Comment noted. The original fine was a fine not exceeding R2 000 and/ or imprisonment not exceeding 6 months...	Suggest that this provision is amended to read to a fine not exceeding R500 000 and/ or imprisonment not exceeding 6 months.
Clause 20 National Environmental Management Act The amendment now has the impact that the Director-General or Head of Department can revoke or vary authorizations, which was originally issued by the Minister or MEC, instead of being done under delegated authority.	Agree with comment.	Suggest that the amendment be omitted.
Clause 26 Protected Areas		

<p>Act</p> <p>Section 49A takes powers away from MEC's. Will create enormous confusion in private sector. Does not refer to specific animals – how is one going to prove that animal escapes from a protected area – current provision is not limited to specific animals. Animals in private reserves now become public asset. Park authorities do not have the capacity to capture escaped animals. Liability clause also problematic.</p> <p>The provinces mostly affected by this regulation are Northern Province and Mpumalanga. Mpumalanga Province recently entered into an agreement with SANPARKS about escaped animals.</p>	<p>It is our view that section 49A does not take away any powers of the MEC. The provision increases the power of the management authority. Animals in private game reserves do not become public assets. Please note the qualification in subclause (1). However, it is clear from the comments received thus far that this clause may require more debate. We therefore recommend that this clause be omitted from the Bill.</p>	<p>Suggest that the amendment be omitted from the Bill.</p>
<p>Exemption clauses should make provision for review after a period of time.</p>	<p>The Department is of the view that the exemption clauses should rather make provision for its withdrawal if there is a good reason for it, rather</p>	<p>No amendment required.</p>

	than for review, because the instances where the Minister allows for an exemption are those instances where a	
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Copies of the Bill and invitations to the public hearings were sent to the following stakeholders:

- The Mayors and the Speakers of the following municipalities:
 - Mbombela Local Municipality
 - Thembisile Municipality
 - Pixley Ka Seme Municipality
- Traditional Leaders
- Parliamentary Constituency Offices
- NinhamShand Environmental and Engineering Consultants
- Wildlife and Environment Society of South Africa (WESSA)
- Federation for a Sustainable Environment (FSE)
- Environment Escarpment Protection Group (EEPOG)
- Mpumalanga Lakes District Protection Group (MLDPG)
- Schoemanskloof Conservancy
- SANPARKS (Kruger National Park)
- SASOL
- SAPPI
- SANBI (South African National Biodiversity Institute)

The committee made a call for written submissions using the following media:

- Newspaper advertisement (The Sowetan)
- Radio advertisement (Radio Ligwalagwala)

Written comments were received from the following stakeholders:

- Department of Agriculture and Land Administration
- Mpumalanga Tourism and Parks Agency
- South African National Biodiversity Institute (Lowveld Botanical Gardens)

The hearings were arranged to be conducted as follows:

DATE	DISTRICT	VENUE	ATTENDANCE
05/11/2008	Ehlanzeni	Elandshoek Community Hall; Mbombela Local Municipality	162
05/11/2008	Gert Sibande	Siyazenzela Community Hall; Perdekop, Pixley Ka	116
05/11/2008	Nkangala	Hall, Thembisile Municipality	

The Honourable Members who were deployed at the various public hearings clearly explained the Bill to those present and responded in detail to the clarity-seeking questions that were posed to them. Officials from the DALA and MTPA were also in attendance at the public hearings and availed themselves to answer questions about the Bill.

The people participated by engaging the Legislature through questions and comments on the Bill and supported it. Most of the issues that were raised by the public are covered in the Bill, one such example being inflicting penalties on environmental offenders. The major environmental offences that seemed to affect the people were water and air pollution caused by mining companies and industries, as well as the land pollution caused by illegal dumping sites.

People were informed that they should not build any structure without the approval of the municipality, since it could lead to damage of the environment if and when that structure has to be demolished. Furthermore, it was pointed out that taking plants and trees across the border without a permit was illegal and it was an offence. Members of the communities should be aware of this and should report any such irregularities to the authorities. People were also urged to report illegal dumping since it is an environmental offence. Stray animals should also not be killed by anyone since they are protected by the law unless if they are a threat. The Committee noted that ongoing public education is needed on environmental issues in all districts of the province.

Complaints about water, electricity and sanitation were directed to the relevant municipal structures via the ward councillors, who should ensure that the needs of the communities are addressed.

Subsequently, the Committee considered the report on the National Environment Laws Amendment Bill [B66B-2008] on 07 November 2008 and conferred the necessary negotiating mandate.

4. Inputs by the Public

The members of the public raised the following concerns at the public hearings:

- Clause 10(c) of the Bill, which dates back to the Environmental Management Act of 1998 should indicate that the Minister may **require** *[remove the word "recommend"]* any organ of state which has not submitted and adopted an environmental implementation plan or environmental management plan to comply with the specified provision as outlined in clause 10(b).
- Currently the environmental management inspectors (EMI's) are not very visible to the public. The feeling of the public was that these EMI's should be placed in all municipalities and should be easily identified by the community members;
- It was appreciated that mining companies should pay high fines for environmental degradation and the negative social impact on members of communities;
- The people felt that there is a need for understanding of environmental issues as lack of understanding impacts negatively on environmental management and protection; hence there is an urgent need to build a tertiary institution in the province.
- Mining companies and industries allow their waste material to seep into streams and rivers, which are then used for domestic purposes by nearby communities and it ultimately leads to people getting sick;
- The air pollution caused by major industries contributes to the poor Air Quality and also leads to lung infections in the communities members. Access to proper medical care for such infected people is a concern;
- Government needs to be pro-active in terms of assisting people that are affected by the air and water pollution caused by SAPPI Ngodwana;

- The measurement of Air Quality is important, therefore affected communities must be kept informed of the air quality monitoring device that is to be installed in the province as well as the process of monitoring the quality of the air;

5. Committee Observations

The committee noted with appreciation that some of the inputs made by the public were constructive and were in line with the purpose of the public hearings. For example, the proposal on Clause 10 (c) about the compliance by organs of state with the provision in Clause 10(b) to submit environmental management plans and environmental implementation plans. The Committee noted that the Bill seeks to ensure that municipal and other management plans are aligned with the National Environmental

Based on the positive responses from the public and the written comments received from stakeholders, the Committee concludes that the Bill, once passed, will ensure that the environmental legislation (as amended) will adequately address the various aspects of environmental management in such a way that offenders will be penalized appropriately.

In terms of Clause 1 and Clause 29, the Committee was of the view that there should be consistency in the Bill with regards to fines for offences committed under the Atmospheric Pollution Prevention Act, 1965 and the National Environmental Management: Protected Areas Act, 2004. Therefore the Committee proposes that both above-mentioned Acts should indicate that the fines are R5 million for first time offenders and R10 million for second and subsequent offenders.

Department of Agriculture and Land Administration (the DALA)

The DALA was of the view that the purpose and intention of the Bill are clear. The Committee noted that the Department supports the Bill and acknowledges that the Bill will consolidate the provisions of various environmental laws in order to ensure greater alignment with the NEMA Act of 1998 and will enhance the implementation thereof, specifically in terms of stricter penalties for environmental offences.

The Committee acknowledged that the DALA is in support of the Bill but points out that the maximum penalty provided for in the APPA and Environment Conservation Act should be R10 million instead of R5 million in

order to be consistent with the rest of the specific environmental management Acts.

Mpumalanga Tourism and Parks Agency (MTPA)

In terms of the proposed insertion of Section 49A as contemplated in Clause 26 of the Bill, the following proposals were submitted:

- The definition of **"animal"** is too broad and should be changed to specifically denote wild animals or game;

Consequently, the MTPA feels that one of the practical legal implications of the reference to *"protected areas"* in clause 49A as it currently reads, is that all animals (e.g. dogs / horses / rhinos / elephants) occurring in a protected area which has, for instance, been so declared in respect of land which belongs to a private individual will be that such animals will become *"public assets"*, which will be held *"in trust by the State for the benefit of present and future generations"*. In other words, the status of such animals will be that of *"public assets"*. The owner

ownership rights in respect of any such animal in respect of expenses incurred by such owner in respect of such animal.

The concern of the MTPA relates to who will assume the responsibility for maintaining (feeding, caring) such animal. The MTPA feels that it is not clear whether these far-reaching implications and results were intended or foreseen by the Bill. Therefore, their view is that Clause 49A should be amended to reflect the intention as set out in the Explanatory Memorandum. Once passed, the Act itself should be clear and unambiguous.

Furthermore, the MTPA pointed out that from time to time, the management authorities of certain National Parks experience problems in respect of animals which have escaped from such National Parks, which situation requires such management authorities to take appropriate steps to address such problem. However, it should also be appreciated that the conservation authority of a Province has certain responsibilities with respect to wild animals encountered within such Province and which wild animals are outside National Parks, Provincial Reserves and Protected Areas. More often than not, decisions on appropriate steps to be taken in respect of such escaped wild animals must be taken forthwith and as a matter of urgency without being able to first ascertain the exact origin of such escaped wild animals. Consequently, in order to ensure smooth cooperation between the management authority of a National Park from which a wild animal has escaped, and the conservation authority of a Province in which such escaped

animal is found, the following insertion of subclause (9) after subclause (8) is recommended:

"(9) Whenever a management authority of a National Park exercises or performs a power or function in terms of subsection (2), such power or function must be exercised or performed in consultation with the conservation authority of the Province in which such escaped animal is found."

In the light of the above-mentioned, it is recommended that, in order to adequately legislate in respect of such problem animals which have escaped from National Parks and further to avoid the legal implications as alluded to above, which would emanate from the interpretation of section 49A as it currently reads.

South African National Biodiversity Institute (SANBI) / (Lowveld Botanical Gardens)

The SANBI fully supported the increased penalties for environmental offences as proposed by the Bill.

Clause 13 line 53: Insert the word "is".

6. Recommendations

The Committee examined the Bill [B66B-2008] and supports the principles underlying it.

The Committee recommends that the delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) be conferred with authority and a mandate to negotiate in favour of the Bill, taking into account the inputs, observations and proposals noted in this report.

Hon. SW Lubisi
Chairperson: Portfolio Committee on
Agriculture & Land Administration;
Economic Development & Planning

Date