

NOTICE 1992 OF 2003**DEPARTMENT OF LAND AFFAIRS****NOTICE OF INTENTION TO INTRODUCE THE SPATIAL DATA INFRASTRUCTURE
BILL, 2003 INTO PARLIAMENT**

The Minister for Agriculture and Land Affairs intends to introduce the Spatial Data Infrastructure Bill, 2003 in the National Assembly in 2003. The Bill as it is to be introduced together with a Memorandum on the Objects of the Bill, are hereby published in terms of Rule 241(1) of the Rules of the National Assembly.

Interested persons and institutions are invited to submit written representations on the Bill within 21 (twenty one) days from the date of this publication to:

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07 July 2003

SPATIAL DATA INFRASTRUCTURE BILL

To establish the South African Spatial Data Infrastructure, the Committee for Spatial Information, and an electronic metadata catalogue; to provide for the determination of standards and prescriptions with regard to the facilitation of the sharing of spatial information; to provide for the capture and publishing of metadata and the avoidance of duplication of such capture; and to provide for matters connected therewith .

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

ARRANGEMENT OF ACT

1. Definitions
2. Application of Act
3. Purpose of South African Spatial Data Infrastructure
4. Powers and functions of Minister
5. Establishment of Committee for Spatial Information
6. Powers and functions of Committee
7. Term of office
8. Disqualification as a member of Committee
9. Meetings of Committee
10. Establishment of sub-committees
11. Spatial Information standards and prescriptions
12. Capture and publishing of metadata
13. Access to and distribution of spatial information
14. Appointment and accountability of data vendors
15. Agreements on utilisation of spatial information

16. Collaborative maintenance
17. Reporting on data quality
18. Security of spatial information
19. Delegation of powers
20. Regulations
21. Liability
22. Short title and commencement

Definitions

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

"base data set" means those themes of spatial information which have been captured or collected by a data custodian ;

"Committee" means the Committee for Spatial Information established by section 5;

"data custodian" means –

- (a) an organ of state; or
- (b) an independent contractor or person in the exercise of a public power or performance of a public function.

which captures, maintains, manages, integrates, distributes or uses spatial information;

"data set" means an identifiable collection of related spatial information;

"data vendor" means a person who supplies spatial information on behalf of a data custodian;

"Department" means the national department responsible for Land Affairs;

"Director -General" means the Director-General of the Department;

"feature" means geographic phenomena having common characteristics;

"field" means an area of a database record into which a particular item of data is entered;

"maintenance" when used in relation to spatial information, means –

- (a) measures taken to ensure that spatial information conforms to the standards and prescriptions determined in terms of this Act; or
- (b) the updating or modification of spatial information to ensure that it remains usable and reliable;

"metadata" means a description of the content, quality, condition and other characteristics of spatial information;

"Minister" means the national Minister responsible for Land Affairs;

"organ of state" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996);

"prescribe" means prescribe by regulation in terms of this Act;

"quality" means the degree to which spatial information which has been captured or collected satisfies stated or implied needs and includes geographic information about lineage, completeness, currency, logical consistency and accuracy of the spatial information;

"record" means a record as defined in section 1 of the Promotion of Access to information Act, 2000 (Act No. 2 of 2000);

"SASDI" means the South African Spatial Data Infrastructure established by section 3;

"spatial information" means information about spatial objects or features and their attributes;

"this Act" includes any regulation made or notice published in terms of this Act;

"user" means any person who has obtained access to spatial information in order to use such information.

Application of Act

2. This Act applies to organs of state which hold spatial information and to users of spatial information.

Purpose of South African Spatial Data Infrastructure

3. (1) The South African Spatial Data Infrastructure is hereby established as the national technical, institutional and policy framework facilitating the capture, management, maintenance, integration, distribution and use of spatial information.

(2) The objectives of the SASDI are to –

- (a) facilitate the capture of spatial information through co-operation among organs of state;

- (b) promote effective management and maintenance of spatial information;
- (c) promote the use and sharing of spatial information in support of spatial planning, socio-economic development and related activities;
- (d) create an environment which facilitates co-ordination and co-operation among all stakeholders regarding access to spatial information;
- (e) eliminate duplication in the capturing of spatial information;
- (f) promote universal access to such information; and
- (g) facilitate the protection of the copyright of the state in works relating to spatial information.

(3) The Director-General administers this Act and the South African Spatial Data Infrastructure.

Powers and functions of Minister

4. (1) The Minister may—
- (a) prescribe standards and measures on the sharing and integration of spatial information;
 - (b) determine the fees, costs, price or charges payable for spatial information and other records;

- (c) grant exemption from the payment of any fees required to be paid in terms of this Act; and
- (d) establish and maintain an electronic metadata catalogue as a component of the SASDI.

(2) The Minister may, in accordance section 231 of the Constitution, enter into an agreement with any person or body, within and outside the Republic of South Africa, with a view to promoting any matter relating to the management and utilisation of spatial information.

Establishment of Committee for Spatial Information

5. (1) The Committee for Spatial Information is hereby established.
- (2) The Committee consists of the following members appointed by the Minister:
- (a) two persons in the full-time employ of the Department;
 - (b) one person who is in the full time employment of each of the national departments of state identified by the Minister;
 - (c) one person from each Provincial Government, in the full-time employ of that government;
 - (d) two persons in the full-time employ of local municipalities, one of whom shall be from a municipality which is mainly rural in character and the other from a municipality which is mainly urban in character;

- (e) one person to represent the Council of Government Information Technology Officers;
 - (f) one person to represent a professional association of persons involved in Geographic Information Science;
 - (g) one person involved in the teaching or research of Geographic Information Science;
 - (h) at least one person to represent the interests of public entities contemplated In Schedules 2 and 3 of the Public Finance Management Act, 1999 that perform functions which, in the Ministers opinion, support the objects of this Act; and
 - (i) one person from each data custodian as identified by the Minister.
- (3) The Minister must appoint the members of the Committee from nominations obtained through -
- (a) public invitations for nominations; and
 - (b) a request to affected organs of state and other bodies contemplated in subsection (2).
- (4) An alternate member shall be appointed for every committee member:
- (5) The Minister must appoint from among the members of the Committee a chairperson and a deputy chairperson.
- (6) When the chairperson is unable to perform the functions of that office, they shall be performed by the deputy chairperson.

(7) The Director -General must, within 30 days from the date of appointment of the members of the Committee, publish the names, the position held by each appointee to the Committee, and the date of each appointment, by notice in the *Gazette*.

(8) If a member of the Committee dies or vacates his or her office before the expiry of his or her term of office, the Minister may appoint a person to fill the vacancy for the unexpired portion of the period for which such member was appointed.

Powers and functions of Committee

6. (1) The Committee must advise the Minister, the Director -General or an organ of state dealing with spatial information on –

- (a) matters referred to the Committee by the Minister, the Director-General or an organ of state ;
- (b) any matter regarding the capture, management, maintenance, integration, distribution and use of spatial information; and
- (c) any matter the Committee considers necessary or expedient for achieving the purpose of the Act .

(2) The Committee-

- (a) must facilitate, promote and safeguard an environment for the efficient collection, management, distribution and utilisation of spatial information;
- (b) must monitor and acquire information relating to the functioning of the SASDI;

- (c) must support the functioning of any structure or measure established under this Act ;
- (d) may print, circulate, sell, finance and administer the publication of any material relating to spatial information;
- (e) must promote awareness of its activities including dissemination of information on the importance of spatial information for effective governance, planning and decision making;-
- (f) must, within three months after the end of each financial year, submit a report to the Minister, stating the activities of the Committee and its sub - committees, and any recommendations from the Committee aimed at improving its functioning or the functioning of the SASDI; and
- (g) may do anything necessary for the proper performance of its functions or to achieve the objectives of this Act.

Term of office

7. A member of the Committee must be appointed for a period of three years and may not serve for more than two consecutive terms of office.

Disqualification as a member of Committee

8. (1) The Minister must not appoint as a member of the Committee a person who—
- (a) is an unrehabilitated insolvent;
 - (b) is mentally ill;

- (c) has been convicted, whether in the Republic of South Africa or elsewhere, of an offence involving dishonesty or an offence for which he or she was sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment;
 - (d) has been removed from an office of trust on account of improper conduct;
 - (e) has had his or her name removed from any professional register on account of misconduct and has not been reinstated;
 - (f) is a political representative at the national, provincial or municipal spheres of government; or
 - (g) is not, in the Minister's opinion, a fit and proper person to be so appointed.
- (2) A member of the Committee must vacate his or her office, if he or she —
- (a) becomes disqualified in terms of sub-section (1) from being appointed as a member of the Committee;
 - (b) has, without the leave of the Committee, been absent from two or more consecutive meetings of the Committee or a sub-committee of which he or she is a member;
 - (c) resigns by written notice addressed to the Minister;
 - (d) has been recalled by, or ceases to be associated with, the body that he or she represented at the time of his or her appointment to the Committee or,

in the case of an official in the service of the State, ceases to be such an official;

- (e) is, in the Minister's opinion, incapable of performing his or her duties due to ill health; or
- (f) has engaged in any activity that, in the Minister's opinion, has brought or may bring the Committee into disrepute.

Meetings of Committee

9. (1) The first meeting of the Committee must be held at the time and place determined by the Minister, and subsequent meetings must be held at such times and places as may be determined by the Committee.

(2) The Committee must hold at least four meetings each year, but may hold such further meetings as it determines from time to time.

(3) The chairperson may at any time on reasonable grounds and on notice of the purpose of the meeting, convene a special meeting of the Committee to be held on a date and place that he or she determines.

(4) The chairperson must convene a special meeting within 14 days of the receipt of a request by —

(a) the Minister; or

(b) at least one third of the Committee members,

stating the purpose of the meeting.

(5) A majority of all the members of the Committee constitutes a quorum at any meeting of the Committee.

(6) A decision of the majority of the members of the Committee present at any meeting constitutes a decision of the Committee.

(7) In the event of an equality of votes, the chairperson has a casting vote in addition to his or her deliberative vote.

(8) A decision taken by the Committee or an act performed under the authority of the Committee, is not invalid by reason only of a vacancy on the Committee or that a person who is not entitled to sit on the Committee, sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act authorised by the requisite majority of the members of the Committee who were present at the time and entitled to sit as members.

Establishment of Sub -committees

10. (1) The Committee may establish sub-committees for the effective performance of its functions .

(2) The Committee may appoint as members of a sub-committee persons who are not members of the Committee.

(3) The Committee may designate one of the members of a sub-committee as chairperson of the sub-committee.

Spatial information standards and prescriptions

11. (1) The Minister may determine standards and prescriptions to facilitate the sharing and integration of spatial information.

(2) No standard or prescription determined by the Minister shall take effect unless it has been published in the *Gazette* at least one month before the effective date specified in the notice.

(3) A data custodian and a data vendor must adhere to the standards and prescriptions referred to in this section.

Capture and publishing of metadata

12. (1) A data custodian must capture and maintain metadata for any spatial information held by it in accordance with this Act.

(2) A data custodian must ensure that metadata is available to users by –

- (a) making its metadata available to the Department, in the prescribed manner, for inclusion in the electronic metadata catalogue; and
- (b) including it in a manual on functions as described in section 14 of the Promotion of Access to Information Act, 2000.

(3) The Minister may from time to time by notice in the *Gazette* –

- (a) exempt any data custodian; or
- (b) exempt any type of exercise, either in a particular instance or in general,

from any provision relating to the capture or maintenance of spatial information contained in regulations made in terms of this Act.

Access to and distribution of spatial information

13. (1) The provisions of the Promotion of Access to Information Act, 2000 relating to the manner and refusal of access to records apply to any matter regulated in terms of this Act,

- (2) A data custodian or a data vendor supplying spatial information must-
- (a) provide the information in a prescribed manner; and
 - (b) provide the relevant metadata together with the spatial information.

Appointment and accountability of data vendors

14. (1) A data custodian may, in the prescribed manner, appoint a data vendor to supply products derived from the data custodian's dataset.

(2) A data custodian is accountable for the Integrity of unmodified spatial information which is supplied by the data vendor in terms of this Act.

Agreements on utilisation of spatial information

15. (1) A data custodian or a data vendor and a user may enter into a licensing agreement with regard to the use of spatial information.

- (2) A licensing agreement must provide for –
- (a) the duration of the agreement;
 - (b) the legal protection of the copyright of the State and any other interested party; and

- (c) any other provision that the parties may consider necessary and as may be prescribed.

Collaborative maintenance

16. (1) Data custodians may exchange spatial information in terms of a collaborative maintenance agreement providing for the regular updating of base data sets within an agreed period.

(2) A collaborative maintenance agreement must provide -

- (a) for the duration of the agreement;
- (b) a stipulation of the frequency with which updated versions of the base data set in question must be provided;
- (c) the format and medium to be used in providing the updated spatial information;
- (d) for the legal protection of the copyright of the State and other interested parties; and
- (e) any other provision that the parties may consider necessary and as may be prescribed.

(3) A data custodian of a base data set must, in the absence of an agreement contemplated in this section, furnish all updates of spatial information of the base data set to the data custodian of a derivative data set, within a prescribed period, in order to ensure synchronised updates of the two data sets.

(4) A data custodian of a derivative data set must update the data set within a prescribed period after receiving an update of the base data set.

(5) The data custodian of a base data set must render all reasonable assistance to the data custodian of a derivative data set to perform the updating contemplated in sub-section (4).

Reporting on data quality

17. (1) A user or data vendor must report any deficiency in the quality of spatial information, to the data custodian or data vendor who supplied the information, within a prescribed period after discovering that deficiency.

(2) The user or data vendor must provide specific and sufficient information in the report to enable the data custodian or data vendor who supplied the spatial information, to identify the record concerned and must, if possible, indicate, what the record should contain.

(3) The data custodian or data vendor must respond, in the prescribed time and manner, to the user or data vendor after receiving the report on that deficiency.

(4) If a data custodian or data vendor does not respond within the prescribed time the user or data vendor may refer the matter to the Committee, and the Committee may take any remedial action it considers necessary or expedient.

Security of spatial information

18. A data custodian must-

- (a) take reasonable steps to effect adequate and appropriate security against the loss of spatial information in his, her or its custody or any unauthorised or unlawful access to and modification or disclosure of that spatial information; and
- (b) ensure the protection of the copyright of the State and other interested parties in spatial information in his, her or its custody.

Delegation of powers

19. (1) The Minister may, in general or in a particular case or in cases of a particular nature, in writing delegate to the Director-General or any officer in the service of the national government any power conferred upon him or her in this Act.

(2) The Director-General may, in general or in a particular case or in cases of a particular nature, in writing delegate to any officer in the service of the national government any power conferred upon him or her in this Act.

Regulations

20. The Minister may by notice in the *Gazette* make regulations in respect of -

- (a) any matter which is required or permitted by this Act to be prescribed;
- (b) criteria for the nomination, selection and appointment of any person as a member of the Committee;
- (c) the manner and specification for the capturing of spatial information including any application for exemption from such manner or specification;

- (d) measures for the avoidance of duplication of capture, safeguarding the integrity of captured spatial information, and access to and distribution of spatial information; and
- (e) any administrative or procedural matter necessary to give effect to the objects of this Act.

Liability

21. No person is liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or duty in terms of this Act.

Short title and commencement

22. (1) This Act is called the Spatial Data Infrastructure Act, 2003, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

(2) Different dates may be determined in respect of different provisions of this Act and different organs of state.

**MEMORANDUM ON THE OBJECTS OF
THE SPATIAL DATA INFRASTRUCTURE BILL, 2003**

1. BACKGROUND

1.1 The Department of Land Affairs ("the Department") was mandated by the Cabinet on 29 April 1999 to lead the development of a National Spatial Information Framework to advance unimpeded access to and use of spatial/geographic information held by the State for effective and efficient governance, planning and decision-making. A necessary ingredient of this framework is the determination of a policy which promotes access to existing spatial/geographic information, the integration of such information from diverse sources and the re-use of such information.

1.2 The Department has, through its Directorate: National Spatial Information Framework (NSIF) developed policy guidelines to support improved access to and utilization of spatial/geographic information. A series of workshops and consultative meetings were held with a range of stakeholders across the country. The Bill is the product of this process. In November 2001 the Governance and Administration Directors-General Forum instructed that focused bilaterals be held with the Presidency and Statistics South Africa. These discussions were held and consensus reached.

2. OBJECTS OF BILL

2.1 The objects of the Bill, *inter alia*, are -

- (a) to provide for the establishment of the South African Spatial Data Infrastructure (SASDI) in order to regulate the collection, management, maintenance, integration, distribution and use of spatial/geographic information;

- (b) to promote the efficient and effective use of the State's spatial/geographic information resources by the sharing of the information; and
- (c) to give effect to the constitutional right of access to information held by the State, as well as information held by other persons, if the information is required for the exercise or protection of rights.

3. SUMMARY OF CONTENTS OF BILL

- 3.1 Clause 1 of the Bill provides for the definitions.
- 3.2 Clause 2 deals with the application of the Bill.
- 3.3 Clause 3 provides for the establishment and objectives of the South African Spatial Information Infrastructure (SASDI). The SASDI will be the national technical, institutional and policy framework facilitating the capture, maintenance, integration, distribution and use of spatial information as well as eliminating duplication in the capturing of spatial information.
- 3.4 Clause 4 provides the powers and functions of the Minister
- 3.5 Clause 5 provides for the establishment and composition of the Committee for Spatial Information.
- 3.6 Clause 6 outlines the powers and functions of the Committee which include advising the Minister on matters relating to the use and management of spatial information as well as facilitating, promoting and safeguarding an environment for efficient collection and distribution of spatial information.
- 3.7 Clause 7 specifies the term of office for members of the Committee.

- 3.8 Clause 8 outlines the grounds for disqualification as a member of the Committee and vacation of office. It compels the Minister not to appoint to the committee a person who is an unrehabilitated insolvent, declared by a court of law to be mentally incompetent, has been removed from an office of trust on account of misconduct etc.
- 3.9 Clause 9 outlines the procedure for meetings of the Committee, which include the quorum for meetings, the convening of special meetings and decision-making.
- 3.10 Clause 10 deals with the establishment of sub-committees to assist the Committee in the performance of its functions.
- 3.11 Clause 11 provides for the determination and publication of standards and prescriptions by the Minister to facilitate the sharing and integration of spatial/geographic information and requires organs of state to adhere to those standards and prescriptions.
- 3.12 Clause 12 requires data custodians to capture and maintain metadata for any spatial information in accordance with, the provisions of the Bill. The clause also empowers the Minister to exempt any data custodian or any type of exercise from the provisions of any regulations dealing with the capture or maintenance of spatial information.
- 3.13 Clause 13 makes the provisions of the Promotion of Access to Information Act, 2000 relating to the manner and refusal of access to records applicable to matters regulated in terms of the Bill.
- 3.14 Clause 14 deals with the appointment of data vendors and their obligations with regard to the supply of spatial information.

- 3.15 Clause 15 deals with licensing agreements on the use of spatial/geographic information between a data custodian or a data vendor and a user. It also prescribes the information which must be contained in the agreement.
- 3.16 Clause 16 contains provisions with regard to the entering into of collaborative agreements between custodians of base data sets and custodians of derivative data sets, in order to ensure synchronised updates of the data sets. The clause also prescribes the information which must be contained in the agreement.
- 3.17 Clause 17 provides a procedure for reporting a deficiency in the quality of spatial information to the data custodian from whom the information is obtained.
- 3.18 Clause 18 places a responsibility on a data custodian to take reasonable steps against the loss of, or unauthorised or unlawful access to spatial information, held by such custodian, and ensure the protection of the copyright of the State in such information.
- 3.19 Clause 19 provides for the delegation of power by the Minister or the Director-General.
- 3.20 Clause 20 provides for the making of regulations by the Minister.
- 3.21 Clause 21 contains the short title of the Bill and also provides for the date of commencement once the Bill becomes an Act of Parliament.

4. CONSULTATION

The Bill has been workshopped and consultative meetings held in all provinces with both public and private bodies, and have also been published in the Gazette for comments. A large number of comments have been received and the Bill accommodates, as far as possible, the comments received.

5. IMPLICATION FOR PROVINCES

None.

6. FINANCIAL IMPLICATIONS FOR STATE

The avoidance of duplication of data collection will result in cost saving to the country. Consultants would no longer be able to manipulate the system by selling government information to other government institutions when such information was paid for by government in the first place. In addition policy alignment within all spheres of government would improve accessibility and availability of information for planning and development. The improved information flow among organs of state would facilitate integrated development planning. Improved accuracy of spatial information would ensure accurate decisions based on improved and up-to-date Information. The development, of standards would improve interoperability of spatial data and systems. The capture and publication of metadata would not only facilitate access to spatial information but also save the state millions of Rands.

The implementation cost will include costs associated with the meetings of the national Committee for Spatial Information, sub-committees, standards implementation, publications of the Committee's activities and standards as well as experts co-opted to assist with the implementation of the Act. Officials within the department would oversee the implementation of the Act within existing departmental budget. Incidental costs of attending meetings and compliance with the provisions of this Bill by affected organs of state would be met from the funds of those organs of state.

7. PARLIAMENTARY PROCEDURE

The State Law Advisors and the Department of Land Affairs are of the view that this Bill must be dealt with in accordance with the procedures established by section 75 of the Constitution, since it contains no provision to which the procedures set out in section 74 or section 76 of the Constitution apply.