



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 466 Pretoria 30 April 2004 **No. 26295**



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GENERAL NOTICE

NOTICE 732 OF 2004

DEPARTMENT OF WATER AFFAIRS AND FORESTRY

The Minister of Water Affairs and Forestry, Ronald Kasrils, MP, hereby publishes the draft Water Services Act Amendment Bill, which provides for the authorisation of water boards by the Minister to perform other activities than their primary activity outside the borders of the Republic of South Africa. More details are set out in the attached explanatory memorandum and Bill.

Written comments and inputs are invited from interested parties and the general public, which must be submitted before 11 June 2004 to:

**The Director-General
Department of Water Affairs and Forestry
Private Bag X313
PRETORIA
0001; or**

**Fax: (012) 336 6560
E-mail: vda@dwaf.gov.za**

and marked for the attention of Mr A L Vermeulen (Director: Water Services Policy and Strategy).

REPUBLIC OF SOUTH AFRICA

WATER SERVICES ACT AMENDMENT BILL

(MINISTER OF WATER AFFAIRS AND FORESTRY)

[B01]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE WET OP WATERDIENSTE

(MINISTER VAN WATERWESE EN BOSBOU)

[B01]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Water Services Act, 1997 so as to enable water boards to perform activities outside the borders of the Republic of South Africa; and to provide for matters connected therewith.

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

Amendment of section 30 of Act 108 of 1997

1. Section 30 of the principal Act is hereby amended by the addition of the following subsections (3) and (4):

“(3) The Minister may, in consultation with the Minister of Finance, authorise a water board to perform an activity outside the borders of the Republic of South Africa.

(4) Before granting an authorisation as contemplated in subsection (3) the Minister in consultation with the Minister of Finance, the Minister of Trade and Industry and the Minister of Public Enterprise must determine by notice in the *Gazette* -

(a) the nature of the activities that may be authorised;

(b) the countries in which such activities may be performed; and

(c) the maximum amount of capital that may be taken out of the Republic of South Africa.”

Short title

2. This is the Water Services Amendment Act, 2004.

**EXPLANATORY MEMORANDUM ON THE WATER SERVICES ACT
AMENDMENT BILL, 2004**

1. When a water board is established in terms of section 28 of the Water Services Act, 1997 (Act No. 108 of 1997) (hereinafter referred to as *the Act*) a service area for that water board is determined. This service area is understood to mean a service area within the Republic of South Africa. As a water board is exclusively a statutory body, it only has the powers conferred upon it by statute. Should a water board therefore wish to operate outside the borders of the Republic of South Africa, it lacks the statutory authority to do so. Initially there was some uncertainty about this legal position. It has subsequently been clarified however by a number of legal opinions by senior counsel.

2. The proposed amendment of section 30 of the Act provides for two phases in the process to authorise extraterritorial activities of water boards.
 - 2.1 The first phase consists of a publication by notice in the *Gazette* of the parameters within which an approval to operate extraterritorially may be granted.
 - 2.1.1 The determination of these parameters occurs on the initiative of the Minister of Water Affairs and Forestry but in consultation with the Minister of Trade and Industry, the Minister of Finance and the Minister of Public Enterprise. This means that each of the Ministers to be consulted, can veto a proposal.
 - 2.1.2 The parameters are determined by a fixation of the nature of the permissible activities, the permissible countries and the maximum permissible amount of money to be taken out of the country.
 - 2.1.3 This determination is more or less a once and for all activity.
 - 2.2 The second phase consists of the consideration of an application to operate extraterritorially by a water board, by the Minister of Water Affairs and

Forestry in consultation with the Minister of Finance. Here also each Minister has the power to veto. As the assessment of financial risk is a major factor during this phase, the concurrence of the Minister of Finance is deemed essential.

3. When the said two Ministers consider an application by a water board, they are also bound by the following existing provisions of the Act:

3.1 Section 29: The primary activity of a water board is the provision of water services to other water services institutions in its service area.

3.2 Section 30(1): Water boards may perform activities other than their primary activity, provided that -

3.2.1 they are not likely to limit its capacity to perform its primary activity;

3.2.2 they are not likely to be to the financial prejudice of itself, any water services institution, existing consumers and other users serviced by it in its service area;

3.2.3 they are in accordance with the board's policy statement; and

3.2.4 it is provided for in its business plan.

3.3 Section 42: Ring-fencing.

3.3.1 A water board must manage each activity as a separate unit.

3.3.2 A water board must maintain separate financial accounts for each of its activities.

3.3.3 All transactions between units of a water board engaged in different activities, must be carried out on terms which could be expected to exist between unrelated businesses.