

REPUBLIC OF SOUTH AFRICA

**PORT OF NGQURA
ESTABLISHMENT BILL**

*(As amended by the Portfolio Committee on Public Enterprises
(National Assembly))*

(MINISTER FOR PUBLIC ENTERPRISES)

[B 73B—98]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
INSTELLING VAN NGQURA-HAWE**

*(Soos gewysig deur die Portefeuljekomitee oor Openbare Ondernemings
(Nasionale Vergadering))*

(MINISTER VIR OPENBARE ONDERNEMINGS)

[W 73B—98]

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BILL

To provide for the establishment of a commercial port at Ngqura; for the construction, equipment, control, management, possession and maintenance of such port by Transnet Limited; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “Company” means Transnet Limited, being the company referred to in section 2 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989);
 - (ii) “Minister” means the Minister for Public Enterprises;
 - (iii) “port” means the port referred to in section 2.

Establishment of port of Ngqura 10

2. (1) The area described in the Schedule is hereby established as a port to be known as the Port of Ngqura and is hereby declared as an area within which a port may be constructed for the regulation of international and national shipping and matters related thereto.

(2) The construction, equipment, control, management, possession and maintenance of the port shall be undertaken by the Company as from a date to be determined by the President by proclamation in the *Gazette*. 15

(3) In exercising its powers in terms of subsection (2) the company must pay due regard to the social and economic welfare of the people living in the area and protect the environment of the area by— 20

- (a) promoting the generation of employment opportunities;
- (b) promoting the establishment and success of small, medium and micro enterprises; and
- (c) complying with all laws and directives regarding the protection of the environment. 25

(4) The Company shall have the power to construct, equip, control, manage, possess and maintain approach, entrance and navigational channels and turning basins with accompanying buoying, wharves, docks, basins, jetties, piers, signal stations, navigational aids, breakwaters, yards, railway lines, sidings, roads and services, storage areas, buildings, and other facilities or appurtenances or additional works necessary for or incidental to the proper working of the port. 30

(5) (a) That portion of the area described in the Schedule as “sea area” shall, on the date of the proclamation referred to in subsection (2), vest in the Company.

(b) On the written request of the Minister the relevant Registrar of Deeds must make the necessary entries or endorsements in the records of the deeds registry in question to record the transfer of the property as a result of such vesting and no office fee, transfer duty, tax or other charge is payable in respect of that transfer. 35

Costs of establishment of port

3. The costs of construction, equipping, control, operation, management, possession, and maintenance of the port shall be financed by the Company.

Powers of Company

4. (1) In addition to its powers in terms of any other law the Company shall, for the purposes of this Act, have the power— 5

- (a) to construct, equip, control, manage, operate, possess and maintain the port;
- (b) to purchase, hire or otherwise acquire or to sell, let or otherwise dispose of or to construct or cause to be constructed and to manage, work and maintain the facilities required for cargo handling, including storage sheds and silos, storage areas, railyards, roads and services, pipelines, conveyors, ship loaders and dischargers, cranes, and any other mobile and other equipment for handling, transfer, storage and conveyance of all cargo, including but not limited to solids, liquids or gases, together with all works and appurtenances incidental thereto, and to determine, and from time to time to alter, the conditions applicable to the use of the aforementioned; 10
- (c) to provide, maintain and control navigational aids;
- (d) to provide and maintain, for the purposes of the port, radio, telegraphic, telephonic or other forms of communication;
- (e) to provide and maintain such safety equipment and such other works and appliances as may be required for the needs of the port; 20
- (f) to provide tugs, pilot boats and other facilities and services for the navigation and berthing of vessels in the port, and to that end, to employ pilots, tug masters, crew and such other staff as is necessary;
- (g) to control, manage and operate the port, docks or other similar works including control of the persons working or otherwise engaged on or at the port, the goods and persons arriving at or departing from the port and, if necessary, to limit the right to land, warehouse, deliver or ship any goods within the port; 25
- (h) to stevedore, land or ship goods within the port, and to warehouse, deliver and collect any such goods, and to land or ship persons, either by itself or through its duly constituted agents; 30
- (i) to fix, and from time to time alter, all fees, charges, dues and rates for the use of the facilities at the port; and
- (j) generally to execute and do all such acts, deeds and things as may be necessary for the construction, equipping, operation, control, management, possession and maintenance of the port. 35

(2) The powers conferred upon the Company by or under this Act may be exercised either by the Company or by a subsidiary company formed or to be formed for that purpose and such subsidiary company may exercise on behalf of the Company any power conferred on the Company by or under this Act. 40

(3) The Company may, with the concurrence of the Minister and on conditions which the Minister must determine, assign any part of the port to a subsidiary company and thereupon such subsidiary company shall exercise, in respect of such part of the port, the powers which the Company could have exercised in respect of that part before such assignment. 45

Administration of port

5. The Company may administer the port either as a separate administrative entity or jointly with or as part of, any other port the control and management of which is vested in the Company. 50

Application of Schedule 1 to Act 9 of 1989

6. The provisions of Schedule 1 to the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), shall apply in relation to the construction, equipping, operation, control, management, possession and maintenance of the port. 5

Regulations

7. The Minister may make regulations regarding any matter which is necessary or desirable for facilitating the construction, equipping, operation, control, management, possession and maintenance of the port.

Short Title 10

8. This is the Port of Ngqura Establishment Act, 1998.

SCHEDULE**Sea area**

The area bounded by a line commencing at the extreme point on the east bank of the Swartkops River thence due east (true) for a distance of 1 609 metres to a point in the Indian Ocean; thence from that point to a second point in the Indian Ocean 1 609 metres due east (true) from Cape Recife; thence from that point to a third point in the Indian Ocean 1 609 metres south east (true) from the extreme point on the east bank of the Sunday's River; thence from that point 1 609 metres due north west to the extreme point on the east bank of the Sunday's River; thence along the high water mark between the extreme point of the east bank of the Sunday's River and the extreme point of the east bank of the Swartkops River, excluding the Islands of Jahleel, St. Croix and Brenton, and the 500 metre marine reserve surrounding each island.

Land areas

The Land area bounded to the north west by the N2 National Road; to the north east by the boundary between Hougham Park and Sonop Farms; to the south west by the line joining a point on the N2 National Road and the high water mark, which will become the boundary between St. George's Strand and the Ngqura DZ; to the south east by the high water mark between these boundaries.

**MEMORANDUM ON THE OBJECTS OF THE PORT OF NGQURA
ESTABLISHMENT BILL, 1998**

1. The main object of the Bill is to enable the building of a new port at Ngqura by Transnet Limited.
2. The site for the Port of Ngqura is at the mouth of the Coega River, on the coast of Algoa Bay, approximately 20 km north east of the city centre of Port Elizabeth. The port is contiguous to and an integral part of the proposed Ngqura Development Zone, which in turn is part of the Fish River Spatial Development Initiative.
3. The Bill seeks to enable Transnet to construct, equip, control, manage, possess and maintain the port as from a date to be determined by proclamation. In exercising these powers, the company must pay due regard to the social and economic welfare of the people living in the area and protect the environment of the area by—
 - (a) promoting the generation of employment opportunities;
 - (b) promoting the establishment and success of small, medium and micro enterprises; and
 - (c) complying with all laws and directives regarding the protection of the environment.
4. The powers vested in Transnet Limited through the clauses of this Bill seek to place the Port of Ngqura in the same legal standing as the existing South African commercial ports, under the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989).
5. The sea area indicated in the Schedule to the Bill is the additional sea area (i.e. additional to the existing area of jurisdiction of the Port of Port Elizabeth) over which it is deemed necessary that Transnet should have jurisdiction for orderly shipping movements. The total proposed area of Transnet's jurisdiction is the western part of Algoa Bay, enclosed by a line from one nautical mile (1 609 metres) east of Cape Recife to one nautical mile (1 609 metres) south east of the mouth of the Sunday's River. Specifically excluded from this area are the three islands (St Croix, Jahleel and Brenton) and a 500 metre zone of the sea around each island. These Islands are the responsibility of the Department of Nature Conservation of the Eastern Cape Provincial Government.
6. The proposal to construct a new port at Ngqura and to provide an adjacent Development Zone have been the subject of consultations with numerous persons, associations, firms, non-government organisations, Government Departments, parastatal bodies and others. There have been numerous interactions with the Provincial Government and the Executive of the Province has discussed the matter. In addition, the Provincial government has been consulted through the MEC for Finance and Environmental Affairs, Economics and Tourism and all local authorities in the Port Elizabeth/Uitenhage Metropolitan Area have been included in the Implementing Authority.
7. The Office for Public Enterprises and the State Law Advisers are of the opinion that the Parliamentary procedure established by section 75 of the Constitution should be applied to this Bill.