

(11 February 2005 – to date)

[This is the current version and applies as from 11 February 2005, i.e. the date of commencement of the Water Services Amendment Act 30 of 2004 – to date]

WATER SERVICES ACT 108 OF 1997

(Government Notice 1662 in Government Gazette 18522 dated 19 December 1997. Commencement date: 19 December 1997.)

As amended by:

Water Services Amendment Act 30 of 2004 – Government Notice 130 in Government Gazette 27273 dated 11 February 2005. Commencement date: 11 February 2005.

ACT

To provide for the rights of access to basic water supply and basic sanitation; to provide for the setting of national standards and of norms and standards for tariffs; to provide for water services development plans; to provide a regulatory framework for water services institutions and water services intermediaries; to provide for the establishment and disestablishment of water boards and water services committees and their powers and duties; to provide for the monitoring of water services and intervention by the Minister or by the relevant Province; to provide for financial assistance to water services institutions; to provide for certain general powers of the Minister; to provide for the gathering of information in a national information system and the distribution of that information; to repeal certain laws; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING the rights of access to basic water supply and basic sanitation necessary to ensure sufficient water and an environment not harmful to health or well-being;

ACKNOWLEDGING that there is a duty on all spheres of Government to ensure that water supply services and sanitation services are provided in a manner which is efficient, equitable and sustainable;

ACKNOWLEDGING that all spheres of Government must strive to provide water supply services and sanitation services sufficient for subsistence and sustainable economic activity;

RECOGNISING that in striving to provide water supply services and sanitation services, all spheres of Government must observe and adhere to the principles of co-operative government;

ACKNOWLEDGING that although municipalities have authority to administer water supply services and sanitation services, all spheres of Government have a duty, within the limits of physical and financial feasibility, to work towards this object;

RECOGNISING that the provision of water supply services and sanitation services, although an activity distinct from the overall management of water resources, must be undertaken in a manner consistent with the broader goals of water resource management;

RECOGNISING that water supply services and sanitation services are often provided in monopolistic or near monopolistic circumstances and that the interests of consumers and the broader goals of public policy must be promoted; and

CONFIRMING the National Government's role as custodian of the nation's water resources;

(English text signed by the President)

[Assented to: 27 November 1997]

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

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CHAPTER I INTRODUCTORY PROVISIONS

1. Definitions

In this Act, unless the context shows that another meaning is intended -

“**approve**” means approve in writing, and “**approval**” has a corresponding meaning;

“**basic sanitation**” means the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste-water and sewage from households, including informal households;

“basic water supply” means the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quantity and quality of water to households, including informal households, to support life and personal hygiene;

“consumer” means any end user who receives water services from a water services institution, including an end user in an informal settlement;

“consumer installation” means a pipeline, fitting or apparatus installed or used by a consumer to gain access to water services and includes a meter attached to such pipeline, fitting or apparatus;

“development plan” means a water services development plan adopted in terms of this Act;

“disposal of industrial effluent” means the collection, removal, disposal or treatment of effluent emanating from industrial use of water;

“emergency situation” means any situation declared as such in terms of a law and which is likely to cause injury or loss of life;

“industrial use” means the use of water for mining, manufacturing, generating electricity, land-based transport, construction or any related purpose;

“Minister” means the Minister of Water Affairs and Forestry;

“organisation representing municipalities” means an organisation recognised under a law contemplated in section 163 of the Constitution as representing municipalities, or in the absence of such a law, any organisation or organisations considered by the Minister after consultation with the Minister for Provincial Affairs and Constitutional Development as representing municipalities, and includes an organisation representing district or rural councils as defined in the Local Government Transition Act, 1993 (Act No. 209 of 1993);

“person” includes a water services institution;

“prescribe” means prescribe by regulation;

“Province” means the Member of the Executive Council responsible for local government in the Province concerned;

“regulation” means a regulation made under this Act;

“sanitation services” means the collection, removal, disposal or purification of human excreta, domestic waste-water, sewage and effluent resulting from the use of water for commercial purposes;

“this Act” includes the regulations;

“Water board” means an organ of state established or regarded as having been established in terms of this Act to perform, as its primary activity, a public function;

“water services” means water supply services and sanitation services;

“water services authority” means any municipality, including a district or rural council as defined in the Local Government Transition Act, 1993 (Act No. 209 of 1993), responsible for ensuring access to water services;

“water services institution” means a water services authority, a water services provider, a water board and a water services committee;

“water services intermediary” means any person who is obliged to provide water services to another in terms of a contract where the obligation to provide water services is incidental to the main object of that contract;

“water services provider” means any person who provides water services to consumers or to another water services institution, but does not include a water services intermediary;

“water services work” means a reservoir, dam, well, pumphouse, borehole, pumping installation, purification work, sewage treatment plant, access road, electricity transmission line, pipeline, meter, fitting or apparatus built, installed or used by a water services institution -

- (i) to provide water services;
- (ii) to provide water for industrial use; or
- (iii) to dispose of industrial effluent;

“water supply services” means the abstraction, conveyance, treatment and distribution of potable water, water intended to be converted to potable water or water for commercial use but not water for industrial use.

2. Main objects of Act

The main objects of this Act are to provide for -

- (a) the right of access to basic water supply and the right to basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being;

- (b) the setting of national standards and norms and standards for tariffs in respect of water services;
- (c) the preparation and adoption of water services development plans by water services authorities;
- (d) a regulatory framework for water services institutions and water services intermediaries;
- (e) the establishment and disestablishment of water boards and water services committees and their duties and powers;
- (f) the monitoring of water services and intervention by the Minister or by the relevant Province;
- (g) financial assistance to water services institutions;
- (h) the gathering of information in a national information system and the distribution of that information;
- (i) the accountability of water services providers; and
- (j) the promotion of effective water resource management and conservation.

3. Right of access to basic water supply and basic sanitation

- (1) Everyone has a right of access to basic water supply and basic sanitation.
- (2) Every water services institution must take reasonable measures to realise these rights.
- (3) Every water services authority must, in its water services development plan, provide for measures to realise these rights.
- (4) The rights mentioned in this section are subject to the limitations contained in this Act.

4. Conditions for provision of water services

- (1) Water services must be provided in terms of conditions set by the water services provider.
- (2) These conditions must -
 - (a) be accessible to the public;
 - (b) accord with conditions for the provision of water services contained in bylaws made by the water services authority having jurisdiction in the area in question; and

(c) provide for -

- (i) the technical conditions of existing or proposed extensions of supply;
- (ii) the determination and structure of tariffs;
- (iii) the conditions for payment;
- (iv) the circumstances under which water services may be limited or discontinued;
- (v) procedures for limiting or discontinuing water services; and
- (vi) measures to promote water conservation and demand management.

(3) Procedures for the limitation or discontinuation of water services must -

(a) be fair and equitable;

(b) provide for reasonable notice of intention to limit or discontinue water services and for an opportunity to make representations, unless -

- (i) other consumers would be prejudiced;
- (ii) there is an emergency situation; or
- (iii) the consumer has interfered with a limited or discontinued service; and

(c) not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services.

(4) Every person who uses water services provided by a water services provider does so subject to any applicable condition set by that water services provider.

(5) Where one water services institution provides water services to another water services institution, it may not limit or discontinue those services for reasons of non-payment, unless it has given at least 30 days' notice in writing of its intention to limit water services or 60 days' notice in writing of its intention to discontinue those water services to -

(a) the other water services institution;

- (b) the relevant Province; and
- (c) the Minister.

5. Provision of basic water supply and basic sanitation to have preference

If the water services provided by a water services institution are unable to meet the requirements of all its existing consumers, it must give preference to the provision of basic water supply and basic sanitation to them.

6. Access to water services through nominated water services provider

- (1) Subject to subsection (2), no person may use water services from a source other than a water services provider nominated by the water services authority having jurisdiction in the area in question, without the approval of that water services authority.
- (2) A person who, at the commencement of this Act, was using water services from a source other than one nominated by the relevant water services authority, may continue to do so -
 - (a) for a period of 60 days after the relevant water services authority has requested the person to apply for approval; and
 - (b) if the person complies with a request in terms of paragraph (a) within the 60 day period, until -
 - (i) the application for approval is granted, after which the conditions of the approval will apply; or
 - (ii) the expiry of a reasonable period determined by the water services authority, if the application for approval is refused.

7. Industrial use of water

- (1) Subject to subsection (3), no person may obtain water for industrial use from any source other than the distribution system of a water services provider nominated by the water services authority having jurisdiction in the area in question, without the approval of that water services authority.
- (2) Subject to subsection (3), no person may dispose of industrial effluent in any manner other than that approved by the water services provider nominated by the water services authority having jurisdiction in the area in question.

- (3) A person who, at the commencement of this Act, obtains water for industrial use or disposes of industrial effluent from a source or in a manner requiring the approval of a water services authority under subsection (1) or (2), may continue to do so -
- (a) for a period of 60 days after the relevant water services authority has requested the person to apply for approval; and
 - (b) if the person complies with a request in terms of paragraph (a) within the 60 day period, until -
 - (i) the application for approval is granted, after which the conditions of the approval will apply; or
 - (ii) the expiry of a reasonable period determined by the water services authority, if the application for approval is refused.
- (4) No approval given by a water services authority under this section relieves anyone from complying with any other law relating to -
- (a) the use and conservation of water and water resources; or
 - (b) the disposal of effluent.

8. Approvals and appeal

- (1) A water services authority whose approval is required in terms of section 6 or 7 -
- (a) may not unreasonably withhold the approval; and
 - (b) may give the approval subject to reasonable conditions.
- (2) A water services authority may require a person seeking approval to provide water services to others on reasonable terms, including terms relating to -
- (a) payment for the services; and
 - (b) compensation for the cost of reticulation and any other costs incurred in providing the water service.
- (3) In determining what is reasonable under subsections (1)(a), (1)(b) and (2), a water services authority -
- (a) must consider the following factors, to the extent that the water services authority considers them to be relevant:

- (i) The cost of providing;
 - (ii) the practicability of providing;
 - (iii) the quality of;
 - (iv) the reliability of;
 - (v) the financial, technological and managerial advisability of providing;
 - (vi) the economic and financial efficiency of; and
 - (vii) the socio-economic and conservation benefits that may be achieved by providing, the water services in question; and
- (b) may consider any other relevant factor.
- (4) A person who has made an application in terms of section 6 or 7 may appeal to the Minister against any decision, including any condition imposed, by that water services authority in respect of the application.
- (5) An appellant, under subsection (4), must note an appeal by lodging a written notice of appeal with -
- (a) the Minister; and
 - (b) the person against whose decision the appeal is made,
- within 21 days of the appellant becoming aware of the decision.
- (6) A person who has made an application in terms of section 6 or 7 may appeal to the Minister if the water services authority in question fails to take a decision on the application within a reasonable time.
- (7) An appeal under subsection (6) -
- (a) must be conducted as if the application had been refused; and
 - (b) must be noted by lodging a written notice of appeal with the Minister and the water services authority in question.
- (8) A relevant Province may intervene as a party in an appeal under subsection (4) or (6).

- (9) The Minister may on appeal confirm, vary or overturn any decision of the water services authority concerned.
- (10) The Minister may prescribe the procedure for conducting an appeal under this section.

CHAPTER II

STANDARDS AND TARIFFS

9. Standards

- (1) The Minister may, from time to time, prescribe compulsory national standards relating to -
 - (a) the provision of water services;
 - (b) the quality of water taken from or discharged into any water services or water resource system;
 - (c) the effective and sustainable use of water resources for water services;
 - (d) the nature, operation, sustainability, operational efficiency and economic viability of water services;
 - (e) requirements for persons who install and operate water services works; and
 - (f) the construction and functioning of water services works and consumer installations.
- (2) The standards prescribed under subsection (1) may differentiate between -
 - (a) different users of water services; and
 - (b) different geographic areas, taking into account, among other factors, the socio-economic and physical attributes of each area.
- (3) In prescribing standards under subsection (1), the Minister must consider -
 - (a) the need for everyone to have a reasonable quality of life;
 - (b) the need for equitable access to water services;
 - (c) the operational efficiency and economic viability of water services;
 - (d) any norms and standards for applicable tariffs for water services;

- (e) any other laws or any standards set by other governmental authorities;
 - (f) any guidelines recommended by official standard-setting institutions;
 - (g) any impact which the water services might have on the environment; and
 - (h) the obligations of the National Government as custodian of water resources.
- (4) Every water services institution must comply with the standards prescribed under subsection (1).

10. Norms and standards for tariffs

- (1) The Minister may, with the concurrence of the Minister of Finance, from time to time prescribe norms and standards in respect of tariffs for water services.
- (2) These norms and standards may -
- (a) differentiate on an equitable basis between -
 - (i) different users of water services;
 - (ii) different types of water services; and
 - (iii) different geographic areas, taking into account, among other factors, the socio-economic and physical attributes of each area;
 - (b) place limitations on surplus or profit;
 - (c) place limitations on the use of income generated by the recovery of charges; and
 - (d) provide for tariffs to be used to promote or achieve water conservation.
- (3) In prescribing the norms and standards, the Minister must consider, among other factors -
- (a) any national standards prescribed by him or her;
 - (b) social equity;
 - (c) the financial sustainability of the water services in the geographic area in question;
 - (d) the recovery of costs reasonably associated with providing the water services;

- (e) the redemption period of any loans for the provision of water services;
 - (f) the need for a return on capital invested for the provision of water services; and
 - (g) the need to provide for drought and excess water availability.
- (4) No water services institution may use a tariff which is substantially different from any prescribed norms and standards.

CHAPTER III

WATER SERVICES AUTHORITIES

11. Duty to provide access to water services

- (1) Every water services authority has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient, affordable, economical and sustainable access to water services.
- (2) This duty is subject to -
- (a) the availability of resources;
 - (b) the need for an equitable allocation of resources to all consumers and potential consumers within the authority's area of jurisdiction;
 - (c) the need to regulate access to water services in an equitable way;
 - (d) the duty of consumers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for tariffs for water services;
 - (e) the duty to conserve water resources;
 - (f) the nature, topography, zoning and situation of the land in question; and
 - (g) the right of the relevant water services authority to limit or discontinue the provision of water services if there is a failure to comply with reasonable conditions set for the provision of such services.
- (3) In ensuring access to water services, a water services authority must take into account, among other factors -
- (a) alternative ways of providing access to water services;

- (b) the need for regional efficiency;
 - (c) the need to achieve benefit of scale;
 - (d) the need for low costs;
 - (e) the requirements of equity; and
 - (f) the availability of resources from neighbouring water services authorities.
- (4) A water services authority may not unreasonably refuse or fail to give access to water services to a consumer or potential consumer in its area of jurisdiction.
- (5) In emergency situations a water services authority must take reasonable steps to provide basic water supply and basic sanitation services to any person within its area of jurisdiction and may do so at the cost of that authority.
- (6) A water services authority may impose reasonable limitations on the use of water services.

12. Duty to prepare draft water services development plan

- (1) Every water services authority must, within one year after the commencement of this Act -
- (a) as part of the process of preparing any integrated development plan in terms of the Local Government Transition Act, 1993 (Act No. 209 of 1993); or
 - (b) separately, if no process contemplated in paragraph (a) has been initiated, prepare -
 - (i) a draft water services development plan for its area of jurisdiction; and
 - (ii) a summary of that plan.
- (2) The Minister may extend the one-year period in respect of a water services authority in consultation with the Minister for Provincial Affairs and Constitutional Development and the relevant Province.

13. Contents of draft water services development plan

Every draft water services development plan must contain details -

- (a) of the physical attributes of the area to which it applies;

- (b) of the size and distribution of the population within that area;
- (c) of a time frame for the plan, including the implementation programme for the following five years;
- (d) of existing water services;
- (e) of existing industrial water use within the area of jurisdiction of the relevant water services authority;
- (f) of existing industrial effluent disposed of within the area of jurisdiction of the relevant water services authority;
- (g) of the number and location of persons within the area who are not being provided with a basic water supply and basic sanitation;
- (h) regarding the future provision of water services and water for industrial use and the future disposal of industrial effluent, including -
 - (i) the water services providers which will provide those water services;
 - (ii) the contracts and proposed contracts with those water services providers;
 - (iii) the proposed infrastructure necessary;
 - (iv) the water sources to be used and the quantity of water to be obtained from and discharged into each source;
 - (v) the estimated capital and operating costs of those water services and the financial arrangements for funding those water services, including the tariff structures;
 - (vi) any water services institution that will assist the water services authority;
 - (vii) the operation, maintenance, repair and replacement of existing and future infrastructure;
- (i) of the number and location of persons to whom water services cannot be provided within the next five years, setting out -
 - (i) the reasons therefor; and
 - (ii) the time frame within which it may reasonably be expected that a basic water supply and basic sanitation will be provided to those persons; and

- (j) of existing and proposed water conservation, recycling and environmental protection measures.

14. Draft water services development plan

- (1) A water services authority must -
 - (a) take reasonable steps to bring its draft water services development plan to the notice of its consumers, potential consumers, industrial users and water services institutions within its area of jurisdiction;
 - (b) invite public comment thereon to be submitted within a reasonable time; and
 - (c) send copies of the draft water services development plan to the Minister, the relevant Province and all neighbouring water services authorities.
- (2) A copy of the draft water services development plan, a copy of its summary, all written comments and a report on all comments, other than written comments, must be -
 - (a) available for inspection at the offices of the water services authority; and
 - (b) obtainable against payment of a nominal fee.

15. Adoption of development plan

- (1) A water services authority must consider all comments received by it before adopting a development plan.
- (2) A water services authority must, on request, report on the extent to which a specific comment has been taken into account or, if a comment was not taken into account, provide reasons therefor.
- (3) A water services authority must supply a copy of every development plan to the Minister, the Minister for Provincial Affairs and Constitutional Development, the relevant Province and all neighbouring water services authorities.
- (4) A copy of the development plan -
 - (a) must be available for inspection at the offices of the water services authority; and
 - (b) must be obtainable against payment of a nominal fee.
- (5) A water services development plan must form part of any integrated development plan contemplated in the Local Government Transition Act, 1993 (Act No. 209 of 1993).

16. New development plan

A water services authority must prepare and adopt a new development plan at intervals determined by the Minister in consultation with the Minister for Provincial Affairs and Constitutional Development, in accordance with the procedure set out in sections 12 to 15.

17. Deviation from development plan

No substantial deviation from a development plan is valid unless it is embodied in a new development plan adopted in accordance with the procedure set out in sections 12 to 16.

18. Reporting on implementation of development plan

- (1) A water services authority must report on the implementation of its development plan during each financial year.
- (2) The report -
 - (a) must be made within four months after the end of each financial year; and
 - (b) must be given to the Minister, the Minister for Provincial Affairs and Constitutional Development, the relevant Province and every organisation representing municipalities having jurisdiction in the area of the water services authority.
- (3) The water services authority must publicise a summary of its report.
- (4) A copy of the report and of its summary must be -
 - (a) available for inspection at the offices of the water services authority; and
 - (b) obtainable against payment of a nominal fee.

19. Contracts and joint ventures with water services providers

- (1) A water services authority -
 - (a) may perform the functions of a water services provider itself; and
 - (b) may -
 - (i) enter into a written contract with a water services provider; or

- (ii) form a joint venture with another water services institution,

to provide water services.

- (2) A water services authority may only enter into a contract with a private sector water services provider after it has considered all known public sector water services providers which are willing and able to perform the relevant functions.

- (3) Before entering into or renewing -

- (a) a contract with a water services provider; or

- (b) a joint venture with another water services institution other than a public sector water services institution which will provide services within the joint venture at cost and without profit,

the water services authority must publicly disclose its intention to do so.

- (4) Any water services provider entering into a contract or joint venture with a water services authority must, before entering into such a contract or joint venture, disclose and provide information on -

- (a) any other interests it may have, which are ancillary to or associated with the relevant water services authority; and

- (b) any rate of return on investment it will or may gain by entering into such a contract or joint venture.

- (5) The Minister may, after consultation with the Minister for Provincial Affairs and Constitutional Development, prescribe -

- (a) matters which must be regulated by a contract between a water services provider and a water services authority;

- (b) compulsory provisions to be included in such a contract; and

- (c) requirements for a joint venture between a water services authority and a water services institution,

to ensure -

- (i) that water services are provided on an efficient, equitable, cost-effective and sustainable basis;

- (ii) that the terms of the contract are fair and equitable to the water services authority, the water services provider and the consumer; and
 - (iii) compliance with this Act.
- (6) As soon as such a contract or joint venture agreement has been concluded, the water services authority must supply a copy thereof to the relevant Province and to the Minister.
- (7) The Minister may provide model contracts to be used as a guide for contracts between water services authorities and water services providers.

20. Water services authority acting as water services provider

- (1) When performing the functions of a water services provider, a water services authority must manage and account separately for those functions.
- (2) A water services authority may act as a water services provider outside its area of jurisdiction, if contracted to do so by the water services authority for the area in question.

21. Bylaws

- (1) Every water services authority must make bylaws which contain conditions for the provision of water services, and which must provide for at least -
- (a) the standard of the services;
 - (b) the technical conditions of supply, including quality standards, units or standards of measurement, the verification of meters, acceptable limits of error and procedures for the arbitration of disputes relating to the measurement of water services provided;
 - (c) the installation, alteration, operation, protection and inspection of water services works and consumer installations;
 - (d) the determination and structure of tariffs in accordance with section 10;
 - (e) the payment and collection of money due for the water services;
 - (f) the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation; and
 - (g) the prevention of unlawful connections to water services works and the unlawful or wasteful use of water.

- (2) Conditions under which water services are provided -
- (a) may place limits on the areas to which water services will be provided according to the nature, topography, zoning and situation of the land in question;
 - (b) may provide for the limitation or discontinuation of water services where a consumer fails to meet his or her obligations to the water services provider, including -
 - (i) a failure to pay for services; or
 - (ii) a failure to meet other conditions for the provision of services;
 - (c) may place an obligation on a payment defaulter -
 - (i) to pay a higher deposit;
 - (ii) to pay a reconnection fee after disconnection of water services;
 - (d) may require a payment defaulter to pay a higher tariff for water services, where that defaulter gains access to water services through a communal water services work and the provision thereof cannot be disconnected or limited without other consumers being prejudiced;
 - (e) may provide for the general limitation or discontinuation of water services where -
 - (i) national disasters cause disruptions in the provision of services; or
 - (ii) sufficient water is not available for any other reason;
 - (f) may include an option to retain limited access to at least basic water supply or basic sanitation for a consumer whose water services are to be discontinued; and
 - (g) must be accessible to consumers and potential consumers.
- (3) A water services authority which -
- (a) provides water for industrial use; or
 - (b) controls a system through which industrial effluent is disposed of, must make bylaws providing for at least -
 - (i) the standards of service;

- (ii) the technical conditions of provision and disposal;
 - (iii) the determination and structure of tariffs;
 - (iv) the payment and collection of money due; and
 - (v) the circumstances under which the provision and disposal may be limited or prohibited.
- (4) The Minister may provide model bylaws to be used as a guide for water services authorities.

CHAPTER IV

WATER SERVICES PROVIDERS

22. Approval to operate as water services provider

- (1) No person may operate as a water services provider without the approval of the water services authority having jurisdiction in the area in question.
- (2) Any approval in terms of subsection (1) -
- (a) must be for a limited period; and
 - (b) may be granted subject to conditions.
- (3) Any person who, at the commencement of this Act, was acting as a water services provider without approval from the water services authority having jurisdiction in the area in question, may continue to do so until the expiry of reasonable notice, which notice must not be longer than one year, given by that water services authority -
- (i) that it requires the provider to enter into a contract; or
 - (ii) that the continuation will be subject to approval as contemplated in subsection (1).

23. Water services provider must give information

A water services provider must give such information concerning the provision of water services as may reasonably be called for by -

- (a) the water services authority having jurisdiction in the area in question;
- (b) the relevant Province;

- (c) the Minister; or
- (d) a consumer or potential consumer.

CHAPTER V

WATER SERVICES INTERMEDIARIES

24. Registration of water services intermediaries

A water services authority may, in its bylaws, require the registration of water services intermediaries or classes of such intermediaries within its area of jurisdiction.

25. Duties of water services intermediaries

- (1) The quality, quantity and sustainability of water services provided by a water services intermediary must meet any minimum standards prescribed by the Minister and any additional minimum standards prescribed by the relevant water services authority.
- (2) A water services intermediary may not charge for water services at a tariff which does not comply with any norms and standards prescribed under this Act and any additional norms and standards set by the relevant water services authority.

26. Default by water services intermediaries

- (1) If a water services intermediary fails to perform its functions effectively, the water services authority having jurisdiction in the area in question may direct the water services intermediary to rectify its failure.
- (2) A direction in terms of subsection (1) must set out -
 - (a) the nature of the failure;
 - (b) the steps which must be taken to rectify the failure; and
 - (c) a reasonable period within which those steps must be taken.
- (3) If the water services intermediary fails to rectify its failure within that period, the water services authority may -
 - (a) after having given the water services intermediary a reasonable opportunity to make written submissions to it; and

(b) after having afforded the water services intermediary a hearing on any submissions received, take over the relevant functions of the water services intermediary.

(4) Where a water services authority takes over any functions in terms of subsection (3) -

(a) it may exercise all relevant powers and perform all relevant duties on behalf of the water services intermediary to the exclusion of the water services intermediary; and

(b) it may use the infrastructure of the water services intermediary to the extent necessary to perform those functions.

(5) A water services authority may appoint another water services institution to act on its behalf in performing the functions of a water services intermediary in terms of subsection (4).

(6) As soon as a water services intermediary is in a position to resume its functions effectively, the water services authority must stop exercising the powers and performing the duties on the intermediary's behalf.

(7) A water services authority may recover from a water services intermediary -

(a) all outstanding expenses which it incurred; and

(b) all losses which it suffered,

as a result of having acted in terms of this section.

(8) The procedure set out in subsection (3) need not be followed in an emergency situation.

27. Monitoring performance of water services providers and water services intermediaries

Every water services authority must monitor the performance of water services providers and water services intermediaries within its area of jurisdiction to ensure that -

(a) standards and norms and standards for tariffs prescribed under sections 9 and 10 are complied with;

(b) any condition set by a water services authority under sections 6, 7 and 22 is met;

(c) any additional standards set by a water services authority, for water services intermediaries are complied with; and

- (d) any contract is adhered to.

CHAPTER VI

WATER BOARDS

28. Establishment and disestablishment of water boards

- (1) Subject to subsection (2) the Minister may by notice in the Gazette -
 - (a) establish a water board;
 - (b) give it a name or approve a change of its name;
 - (c) determine or change its service area; or
 - (d) disestablish it.
- (2) The Minister may only act in terms of subsection (1) after consultation with -
 - (a) every Province concerned;
 - (b) the water board concerned, if in existence; and
 - (c) every water services authority having jurisdiction in the service area or proposed service area.
- (3) The Minister must, when acting in terms of subsection (1)(d), have regard to the interests of consumers and creditors.
- (4) The Minister must, from time to time, review the provision of water services to water services authorities and make recommendations to Parliament on the establishment, functions and disestablishment of water boards.

29. Primary activity of water boards

The primary activity of a water board is to provide water services to other water services institutions within its service area.

30. Other activities of water boards

- (1) A water board may perform an activity other than its primary activity only if -
 - (a) it is not likely to limit the water board's capacity to perform its primary activity;

- (b) it is not likely to be to the financial prejudice of itself, any water services institution, existing consumers and other users serviced by it within its service area;
 - (c) it is in accordance with the board's policy statement; and
 - (d) it is provided for in a business plan.
- (2) Other activities of a water board may include, but are not limited to -
- (a) providing management services, training and other support services to water services institutions, in order to promote co-operation in the provision of water services;
 - (b) supplying untreated or non-potable water to end users who do not use the water for household purposes;
 - (c) providing catchment management services to or on behalf of the responsible authorities;
 - (d) with the approval of the water services authority having jurisdiction in the area -
 - (i) supplying water directly for industrial use;
 - (ii) accepting industrial effluent; and
 - (iii) acting as a water services provider to consumers;
 - (e) providing water services in a joint venture with water services authorities; and
 - (f) performing water conservation functions.
- (3) The Minister must, in consultation with the Minister of Finance, the Minister of Trade and Industry and the Minister of Public Enterprises and by notice in the *Gazette*, determine -
- (a) the nature of the activities that a water board may perform outside the borders of the Republic;
 - (b) the countries in which such activities may be performed; and
 - (c) the maximum amount of capital that a water board may take out of the Republic when an activity contemplated in subsection (4) is performed.

(Section 30(3) added by section 1 of Act 30 of 2004)

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

(Section 30(4) added by section 1 of Act 30 of 2004)

31. Powers of water boards

- (1) A water board is a body corporate, and has the powers of a natural person of full capacity, except those powers -

- (a) which by nature can only attach to natural persons; and
- (b) which are inconsistent with this Act.

- (2) A water board may -

- (a) perform its primary activity and the other activities contemplated in section 30;
- (b) set and enforce general conditions, including tariffs, for the provision of water services;
- (c) determine the procedure for convening and conducting meetings of its board;
- (d) do all things necessary for or in connection with or incidental to the performance of its activities in a manner consistent with this Act; and
- (e) enter into contracts with any person in terms of which that person undertakes and is authorised to exercise any of the powers or to perform any of the duties of the water board, provided that a water board may not by contract make over to another person its power to set general conditions, including tariffs, for the provision of water services.

- (3) Subject to section 4, a water board may limit or discontinue water services or other services provided to water services institutions, consumers or users.

- (4) A water board may establish -

- (a) advisory forums; and
 - (b) committees consisting of board members or any other persons,
- and determine how they must function.

- (5) The quorum for any meeting of a water board is one half of its members.

32. Duties of water boards

Every water board -

- (a) must give priority to its primary activity;
- (b) must enter into written contracts when performing its primary and other activities;
- (c) must consider every request by a water services institution for the provision of water services within its service area and may only refuse such request if, for sound technical and financial reasons, it would not be viable to provide those water services;
- (d) must provide water services and other services to water services institutions, consumers and users in accordance with section 4 and any conditions set in terms of section 33; and
- (e) must obtain a permit, authorisation or licence from the relevant authority for abstracting water or discharging any effluent.

33. Conditions for provision of services

- (1) A water board must set conditions for the provision of services not inconsistent with this Act, relating to at least -
 - (a) the technical conditions of supply, including demand patterns, water storage, units or standards of measurement, verification of meters, acceptable limits of error and procedures for settlement of disputes relating to the measurement of water services provided;
 - (b) the installation, alteration, operation, protection and inspection of water services works and consumer installations;
 - (c) the determination and structure of tariffs;
 - (d) the payment and collection of money due to the water board;
 - (e) the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation; and
 - (f) water conservation and the prevention of wasteful or unlawful use of water provided by the water board.
- (2) Conditions may be set generally or agreed specifically.

- (3) Before setting general conditions a water board must invite comment from water services institutions within its service area, its consumers and users.
- (4) General conditions set by a water board must be accessible to the public.
- (5) Every person who uses services provided by a water board does so subject to any applicable general conditions set by that board, unless specifically agreed otherwise.

34. Parameters for functions of water boards

- (1) In performing its activities, exercising its powers and carrying out its duties a water board must achieve a balance between -
 - (a) striving to provide efficient, reliable and sustainable water services;
 - (b) optimally using available resources;
 - (c) striving to be financially viable;
 - (d) promoting the efficiency of water services authorities;
 - (e) taking cognisance of the needs of water services institutions, consumers and users;
 - (f) taking into account national and provincial policies, objects and developments;
 - (g) acting in an equitable, transparent and fair manner;
 - (h) complying with health and environmental policies; and
 - (i) taking reasonable measures to promote water conservation and water demand management, including promoting public awareness of these matters.
- (2) For the purpose of subsection (1)(c) a water board is financially viable if it is able to -
 - (a) repay and service its debts;
 - (b) recover its capital, operational and maintenance costs;
 - (c) make reasonable provision for depreciation of assets;
 - (d) recover the costs associated with the repayment of capital from revenues (including subsidies) over time; and

- (e) make reasonable provision for future capital requirements and expansion.

35. Governance of water boards

- (1) A water board consists of a chairperson and such other members as the Minister may appoint from time to time.
- (2) Schedule 1 regulates the terms of office of board members, the procedure for the recommendation of persons for appointment as chairperson or board members and the termination of office of board members.
- (3) When appointing a member, the Minister must have regard to -
 - (a) the objects of the water board;
 - (b) the need for the board to be representative of -
 - (i) the water services authorities to which it provides water services;
 - (ii) the other interests served by the water board; and
 - (iii) the broad population;
 - (c) the expertise required for the board to function effectively; and
 - (d) the desirability or otherwise of executive employees being members of the board.
- (4) The extent to which relevant water services authorities should be represented on a water board must be determined by the Minister after consultation with every relevant organisation representing municipalities having jurisdiction in the service area.
- (5) The Minister may terminate the appointment of any or all the members of a water board.
- (6) Non-executive members of a water board may be paid out of the funds of the water board for carrying out their duties as board members, according to a level of remuneration approved by the Minister.

36. Chief executive of water board

- (1) Every water board must -
 - (a) appoint a suitable person as chief executive of the water board, for a renewable period; and

- (b) determine the duties, conditions of service and remuneration of the chief executive.
- (2) A water board must determine the salary of its chief executive, subject to the approval of the Minister.
- (3) Subject to any existing rights of a person appointed before the commencement of this Act, a water board may terminate the services of the chief executive of the water board -
 - (a) for good reason; and
 - (b) in accordance with fair labour practices and the terms of his or her contract of employment.

37. Delegation of powers

A water board may delegate any operational power to -

- (a) a committee of the board;
- (b) its chief executive; or
- (c) any of its employees.

38. Duties of water board and members

- (1) A water board must -
 - (a) ensure that its functions are performed within the parameters set in section 34(1); and
 - (b) promote its policy statement and its business plan and ensure that they are implemented.
- (2) Members of a water board must -
 - (a) perform their duties with honesty, care and diligence; and
 - (b) disclose any interest in contracts or dealings of the water board and must abstain from voting on any resolution proposed in connection with such contracts or dealings.

39. Policy statement

- (1) A water board must prepare and adopt a policy statement.
- (2) The first policy statement of a water board must be prepared and adopted within one year after -

Prepared by:

- (a) the commencement of this Act; or
 - (b) the establishment of that water board.
- (3) The policy statement must contain information concerning the water board and all other companies, institutions or bodies in which it has an interest, including -
- (a) the nature and extent of the primary and other activities to be undertaken;
 - (b) the area within which the activities will be undertaken;
 - (c) the measures to be taken to separate the primary and other activities from each other;
 - (d) details concerning the management of any financial risks relating to the board's primary and other activities;
 - (e) the board's accounting and investment policies;
 - (f) the rules and procedures to be followed before any investments are made by the board;
 - (g) the board's policy on human resources and human resource development;
 - (h) the board's policy on the environment, including measures to reduce water wastage to an acceptable level;
 - (i) the measures by which the performance of the water board will be assessed;
 - (j) whether any advisory forums have been or are to be established, and if so, the functions and composition thereof;
 - (k) the procedures for consultation with water services institutions, consumers, users and advisory forums, if established;
 - (l) the nature and extent of activities aimed at ensuring access to water services provided by the board within its service area, and the extension and improvement of those services; and
 - (m) the measures, including public awareness campaigns, to be taken to promote water conservation and water demand management; and
 - (n) any other relevant information which the Minister may prescribe from time to time.

- (4) A policy statement may be amended from time to time, and must be revised at least every five years.
- (5) Every policy statement and every amendment thereof must -
 - (a) be submitted to the Minister, the relevant Province and all water services institutions within the water board's service area; and
 - (b) be accessible to the public.
- (6) The Minister may direct a water board to amend its policy statement if the policy statement -
 - (a) is not in the best interests of the general population within its service area; or
 - (b) is not in accordance with the parameters laid down in section 34(1).

40. Business plan

- (1) A water board must, not later than one month before the commencement of each financial year, prepare and adopt a business plan relating to the following five financial years.
- (2) The business plan must at least contain information regarding -
 - (a) each specific primary and other activity to be undertaken and the performance targets for each;
 - (b) the tariff applicable to each service, the method by which it was determined, the motivation for the tariff and the estimated tariff income;
 - (c) forecasts of capital expenditure for the primary and other activities for the next five years; and
 - (d) any other information which the Minister may prescribe from time to time.
- (3) A water board may, with the approval of the Minister, exclude commercially sensitive information from its business plan.
- (4) Every business plan must be submitted to the Minister.
- (5) A business plan may be amended from time to time.
- (6) The Minister may direct a water board -
 - (a) to amend its business plan if the plan -

- (i) is not in the best interests of the general population within its service area; or
 - (ii) is not in accordance with the parameters laid down in section 34(1); or
- (b) to submit additional business plans addressing specific issues.

41. Directives to water boards

- (1) The Minister may, to the extent that it is reasonable, from time to time issue directives to a water board -
- (a) to undertake a specific activity -
 - (i) at its own cost where the activity is financially viable; or
 - (ii) against full or partial payment, as directed by the Minister; or
 - (b) to desist from a specific activity if that activity -
 - (i) is not in the best interests of the general population within its service area; or
 - (ii) is not in accordance with the parameters laid down in section 34(1).
- (2) The water board must comply with any directive given under subsection (1).

42. Different activities to be managed as separate units

- (1) A water board must manage its primary activity and each of its other activities as separate units.
- (2) A water board must maintain separate and itemised financial accounts for its primary activity and each of its other activities.
- (3) All transactions between units of a water board engaged in different activities of the water board must be carried out on terms and conditions which could be expected to apply to similar transactions between unrelated businesses.

43. Financial matters and accounts

- (1) The financial year of a water board is from 1 July to 30 June.
- (2) The accounts of a water board must be audited by a chartered accountant appointed by the water board.

- (3) A water board must, within four months after the end of each financial year, issue audited financial statements.
- (4) The accounting policy of a water board must be consistent with generally accepted accounting practices.

44. Reporting

- (1) A water board must, within four months after the end of each financial year, issue a report on the activities of the water board for that financial year.
- (2) The report -
 - (a) must be accompanied by the audited financial statements for that financial year;
 - (b) must be submitted to the Minister, any relevant Province and Parliament; and
 - (c) must be accessible to the public.
- (3) The report must contain sufficient information to allow -
 - (a) the Minister;
 - (b) any relevant Province;
 - (c) any relevant water services institutions; and
 - (d) the public,to assess the performance of the water board.

45. Investigation of affairs and financial position

- (1) A water board must give the Minister or any person authorised by him or her -
 - (a) such information as he or she reasonably requires on the affairs and financial position of the water board; and
 - (b) reasonable access to such books, accounts, documents and other assets of the water board as he or she may reasonably require.
- (2) The Minister may appoint a person to investigate the affairs or financial position of a water board.

- (3) The Minister may recover the reasonable fees and disbursements of any person so appointed from the water board concerned.

46. Assets and liabilities upon disestablishment

- (1) If the Minister, after consultation in terms of section 28, has notified a water board that he or she intends -

- (a) to change its service area; or
- (b) to disestablish it,

the Minister may direct that water board to transfer some or all of its assets and liabilities to another water board or water services authority.

- (2) A water board must do everything within its power to give effect to that direction.
- (3) Upon the disestablishment of any water board and if its assets and liabilities are not transferred to another water board or a water services authority -
 - (a) its assets and liabilities vest in the Minister;
 - (b) the Minister must wind up its affairs; and
 - (c) the Minister must assume the functions of the water board for the period of winding up.
- (4) In exercising his or her powers under subsection (1), the Minister must have regard to -
 - (a) the interests of creditors and consumers; and
 - (b) any financial contributions directly or indirectly made by consumers towards the infrastructure of the water board.
- (5) Subject to the approval of the Minister of Finance, no transfer duty, other tax or duty is payable in respect of the transfer of any assets -
 - (a) from the Minister to a water board or a water services authority;
 - (b) from a water board to the Minister; or
 - (c) from a water board to another water board or to a water services authority.

47. Litigation against water board

No court may grant an order or judgment against a water board unless the papers on which that order or judgment is sought, have also been served on the Minister.

48. Formal irregularities

A decision taken or act authorised by a water board is not invalid merely because, at the time the decision was taken or the act was authorised -

- (a) there was a casual vacancy on the board; or
- (b) a person not entitled to sit as a member of the board sat as a member, if -
 - (i) the decision was taken or act was authorised by a majority of board members who were present and who were entitled to sit as members; and
 - (ii) the members contemplated in subparagraph (i) constituted a quorum.

49. Regulations

- (1) The Minister may make regulations relating to -
 - (a) the matters to be dealt with in policy statements of a water board;
 - (b) the matters to be dealt with in the annual business plan of a water board;
 - (c) the information to be supplied in the financial statements of a water board;
 - (d) the information to be supplied in the annual report of a water board; and
 - (e) any other matter relating to the functioning of the water board and to the exercise of its powers which the Minister may consider advisable to ensure the water board's efficiency and to promote good order.
- (2) The Minister may make different regulations for different water boards.
- (3) In making regulations under this section, the Minister must consider -
 - (a) the basic values and principles required for public administration in terms of the Constitution;
 - (b) the main objects of this Act as set out in section 2;

- (c) the activities, powers and duties of the water board;
- (d) the financial position of the water board; and
- (e) the interests of consumers and potential consumers.

50. Effect of inclusion of Chapter in Act

The inclusion of this Chapter in this Act must not be construed as giving any executive or legislative power to any Province in respect of water boards.

CHAPTER VII
WATER SERVICES COMMITTEES

51. Establishment and disestablishment of water services committees

- (1) Subject to subsections (2), (3) and (4) the Minister may by notice in the Gazette -
 - (a) establish a water services committee;
 - (b) give it a name or approve a change of its name;
 - (c) determine or change its service area;
 - (d) determine its powers; or
 - (e) disestablish it.
- (2) The Minister may only act in terms of subsection (1) -
 - (a) after consultation with either the inhabitants of the proposed service area or with the established water services committee for that area; and
 - (b) in consultation with the water services authority for the area in question, the Minister for Provincial Affairs and Constitutional Development and the relevant Province,with regard to -
 - (i) the period for which the water services committee will operate;
 - (ii) the nature and extent of the water services to be provided;

- (iii) the area or the community to be served;
 - (iv) the composition of the water services committee and the appointment of its members;
 - (v) any contribution to be made by the community or its members to the provision of water services;
and
 - (vi) any other related matter.
- (3) No water services committee may be established if the water services authority having jurisdiction in the area in question is able to provide water services effectively in the proposed service area.
- (4) The Minister must, after consultation with the water services committee and the inhabitants of the area -
- (a) himself or herself; or
 - (b) at the request of the water services authority having jurisdiction in the area concerned,

disestablish a water services committee once he or she is satisfied that the relevant water services authority is able to provide water services effectively within the service area.

52. Function of water services committees

- (1) The function of a water services committee is to provide water services to consumers within its service area.
- (2) A water services committee may not unreasonably exclude any person within its service area from those water services.

53. Powers of water services committees

- (1) A water services committee is a body corporate, and has the powers of a natural person of full capacity except those powers -
 - (a) which by nature can only attach to a natural person;
 - (b) excluded by or inconsistent with this Act; and
 - (c) excluded by the Minister by notice in the Gazette.

- (2) A water services committee may set conditions, including tariffs consistent with this Act, for the provision of water services.
- (3) A water services committee may, subject to section 4, limit or discontinue water services to a consumer.
- (4) A water services committee may delegate any of its powers to a competent employee.

54. Conditions for provision of services

- (1) A water services committee must set conditions for the provision of services not inconsistent with this Act, relating to -
 - (a) the technical conditions of supply, including units or standards of measurement, verification of meters, limits of error and settlement of disputes relating to the measurement of water services provided;
 - (b) the installation, alteration, operation, protection and inspection of water services works and consumer installations;
 - (c) the determination and structure of tariffs;
 - (d) the payment and collection of money due to the water services committee;
 - (e) the circumstances under which water services may be limited or discontinued and the procedure for such limitation or discontinuation; and
 - (f) the prevention of wasteful or unlawful use of water provided by the water services committee.
- (2) A water services committee must invite comment from the inhabitants of its service area before setting conditions.
- (3) Conditions set by a water services committee must be submitted to the Minister and come into effect upon approval by the Minister.
- (4) Conditions set by a water services committee must be accessible to the inhabitants of the service area in question.
- (5) Every person who uses water services provided by a water services committee does so subject to any applicable conditions set by that water services committee.

55. Governance of water services committees

- (1) A water services committee consists of a chairperson and such other committee members as the Minister may determine from time to time.
- (2) The Minister must appoint the chairperson and members of the committee after taking into account any nominations made by members of the community served or to be served by the committee.
- (3) When appointing a member, the Minister must have regard to -
 - (a) the need for the committee to be representative of the inhabitants of the service area in question; and
 - (b) the expertise required for the committee to function effectively.
- (4) The Minister may terminate the appointment of any of the members of a water services committee after consultation with the members of the community served by that committee.
- (5) Members of a water services committee may be paid out of the funds of the committee, according to a level of remuneration approved by the Minister with the concurrence of the Minister of Finance.
- (6)
 - (a) A water services committee must draw up and adopt a constitution, which provides for the day to day functioning of the committee.
 - (b) A constitution adopted by a water services committee must be consistent with any regulations made in terms of section 61.
- (7) The Minister may provide model constitutions to be used as a guide for water services committees.

56. Duties of committee members

Members of a water services committee must -

- (a) perform their duties with honesty, care and diligence; and
- (b) disclose any conflict of interest.

57. Financial matters and accounts

- (1) The financial year of a water services committee is from 1 July to 30 June.
- (2) The accounts of a water services committee must be audited by a chartered accountant appointed by the committee if the Minister so requires.

- (3) Every water services committee must, within three months after the end of each financial year, issue financial statements and submit a copy thereof to the Minister.
- (4) The accounting policy of a water services committee must be consistent with generally accepted accounting practices.

58. Formal irregularities

A decision taken or act authorised by a water services committee is not invalid merely because, at the time the decision was taken or the act was authorised -

- (a) there was a casual vacancy on the committee; or
- (b) a person not entitled to sit as a member of the committee sat as a member, if -
 - (i) the decision was taken or act was authorised by a majority of committee members who were present and who were entitled to sit as members; and
 - (ii) the members contemplated in subparagraph (i) constituted a quorum.

59. Provision of information

- (1) A water services committee must give the Minister or any person authorised by him or her -
 - (a) such information as he or she requires on the affairs and financial position of the water services committee; and
 - (b) access to such books, accounts, documents and other assets of the water services committee as he or she may require.
- (2) The Minister or a water services authority may appoint a person to investigate the affairs or financial position of a water services committee.
- (3) The Minister may recover the fees and disbursements of any person so appointed from the water services committee concerned.
- (4) Any investigation undertaken by a water services authority under subsection (2), is undertaken at the cost of that water services authority.

- (5) A water services committee must, on request, provide information on its affairs and financial position to any person, subject to the limitations necessitated by the rights enshrined in Chapter 2 of the Constitution.

60. Assets and liabilities upon disestablishment

- (1) Upon the disestablishment of a water services committee -
- (a) its assets and liabilities vest in the Minister;
 - (b) the Minister must wind up its affairs; and
 - (c) the Minister must assume the functions of the water services committee for the period of winding up.
- (2) The Minister may, after the disestablishment of a water services committee, transfer any of its assets to the water services authority or a water board having jurisdiction in the area.
- (3) Subject to the approval of the Minister of Finance, no transfer duty, other tax or duty is payable in respect of the transfer of any assets -
- (a) from a water services committee to the Minister; or
 - (b) from the Minister to a water services authority or a water board.

61. Regulations

- (1) The Minister may make regulations relating to -
- (a) the nomination and selection of candidates for appointment as members of a water services committee;
 - (b) the criteria for qualification of members of a water services committee;
 - (c) the number, appointment and reappointment, terms of office and duties of members of a water services committee;
 - (d) the quorum for meetings of a water services committee;
 - (e) the procedure for convening and conducting meetings of a water services committee;

- (f) the remuneration for services payable to members of a water services committee with the concurrence of the Minister of Finance;
 - (g) the appointment of staff by a water services committee, their conditions of service and remuneration;
 - (h) the information to be furnished in the financial statements of a water services committee; and
 - (i) the procedure for setting conditions for the provision of services.
- (2) In making regulations under this section, the Minister must consider -
- (a) the basic values and principles required for public administration in terms of the Constitution;
 - (b) the main objects of this Act as set out in section 2;
 - (c) the financial position of the water services committee; and
 - (d) the interests of consumers and potential consumers.

CHAPTER VIII

MONITORING AND INTERVENTION

62. Monitoring of water services institutions

- (1) The Minister and any relevant Province must monitor the performance of every water services institution in order to ensure -
- (a) compliance with all applicable national standards prescribed under this Act;
 - (b) compliance with all norms and standards for tariffs prescribed under this Act; and
 - (c) compliance with every applicable development plan, policy statement or business plan adopted in terms of this Act.
- (2) Every water services institution must -
- (a) furnish such information as may be required by the Minister after consultation with the Minister for Provincial Affairs and Constitutional Development; and

- (b) allow the Minister access to its books, records and physical assets to the extent necessary for the Minister to carry out the monitoring functions contemplated in subsection (1).

63. Intervention

- (1) If a water services authority has not effectively performed any function imposed on it by or under this Act, the Minister may, in consultation with the Minister for Provincial Affairs and Constitutional Development, request the relevant Province to intervene in terms of section 139 of the Constitution.

- (2) If, within a reasonable time after the request, the Province -

- (a) has unjustifiably failed to intervene; or
- (b) has intervened but has failed to do so effectively,

the Minister may assume responsibility for that function to the extent necessary -

- (i) to maintain essential national standards;
- (ii) to meet established minimum standards for providing services; or
- (iii) to prevent that Province from taking unreasonable action that is prejudicial to the interests of another province or the country as a whole.

- (3) If the Minister assumes responsibility for any function of a water services authority in terms of subsection (2) -

- (a) the Minister must table a notice to that effect in the National Council of Provinces within 14 days of the commencement of its first sitting after the Minister has assumed responsibility for that function;
- (b) the assumption of responsibility for that function must end if it is not approved by the National Council of Provinces within 30 days after the commencement of its first sitting after the Minister has assumed responsibility for that function; and
- (c) the National Council of Provinces must regularly review that assumption of responsibility and make appropriate recommendations to the Minister.

- (4) After assuming responsibility for a function under subsection (2), the Minister may issue a directive to the water services authority to perform that function effectively.

- (5) If the water services authority fails to comply with that directive, the Minister may intervene -

- (a) by taking appropriate steps to facilitate the performance of that function, including giving financial, managerial and technical advice and assistance; or
 - (b) on notice to the water services authority, by taking over that function.
- (6) If the Minister takes over any function of a water services authority -
- (a) the Minister must table a notice to that effect in the National Council of Provinces within 14 days of the commencement of its first sitting after taking over that function;
 - (b) the Minister may, on behalf of that water services authority, exercise all the powers and carry out all the duties relating to that function;
 - (c) the governing body of that water services authority may not, while the Minister is responsible for that function, exercise any of its powers or carry out any of its duties relating to that function;
 - (d) the Minister may utilise all financial and other resources available to that water services authority relating to that function;
 - (e) the Minister may appoint a water services institution to perform that function or any part thereof; and
 - (f) the take-over of that function must end -
 - (i) if it is not approved by the National Council of Provinces within 30 days after the commencement of its first sitting after the take-over; or
 - (ii) when the water services authority is in a position to resume that function effectively.
- (7) The National Council of Provinces may from time to time review the take-over of any function of a water services authority by the Minister and make appropriate recommendations to the Minister.
- (8) Any expenses incurred or losses suffered by the Minister in taking over any function of a water services authority may be recovered from that water services authority.
- (9) In the interests of co-operative government, a Province must immediately inform the Minister of its intention to intervene by taking over any function of a water services authority under section 139 of the Constitution.
- (10) In considering the manner and implementation of any intervention under this section, the Minister must consider -

- (a) the reasons for the extent and the period of non-compliance by the water services authority concerned;
- (b) the attempts made to achieve compliance;
- (c) the effect of the non-compliance; and
- (d) any other relevant matter.

CHAPTER IX

FINANCIAL ASSISTANCE TO WATER SERVICES INSTITUTIONS

64. Powers of Minister

- (1) The Minister may after consultation with any relevant Province make grants and loans and give subsidies to a water services institution from funds -
 - (a) appropriated by Parliament;
 - (b) contributed by individuals or non-governmental organisations; or
 - (c) contributed by other governments and governmental institutions.
- (2) In making any grant or loan or giving any subsidy, the Minister must consider -
 - (a) the requirements of equity and transparency;
 - (b) the purpose of the grant, loan or subsidy;
 - (c) the main objects of this Act as set out in section 2; and
 - (d) the financial position of the applicant.

65. Applications for financial assistance

- (1) The Minister may prescribe the manner in which an application for financial assistance must be made.
- (2) The Minister may on reasonable grounds refuse financial assistance to any water services institution which fails to comply with its obligations in terms of this Act or any other law.

66. Regulations on financial assistance

Prepared by:

- (1) The Minister may make regulations relating to financial assistance in terms of this Act concerning -
 - (a) the financial feasibility of the construction, operation and maintenance of water services;
 - (b) the manner in which financial assistance must be applied for; and
 - (c) the terms and conditions whereunder any grant or loan may be made or subsidy may be given.
- (2) In making such regulations, the Minister must consider -
 - (a) the main objects of this Act as set out in section 2;
 - (b) the need for equity and transparency; and
 - (c) all relevant legislation relating to financial controls.

CHAPTER X

NATIONAL INFORMATION SYSTEM

67. Establishment of national information system

- (1) The Minister must ensure that there is a national information system on water services.
- (2) The information system may form part of a larger system relating to water generally.
- (3) The public is entitled to reasonable access to the information contained in the national information system, subject to limitations necessitated by the rights enshrined in Chapter 2 of the Constitution.
- (4) The Minister must take reasonable steps to ensure that information provided is in an accessible format.

68. Purpose of national information system

The purpose of the national information system is -

- (a) to record and provide data for the development, implementation and monitoring of national policy on water services; and
- (b) to provide information to water services institutions, consumers and the public -
 - (i) to enable them to monitor the performance of water services institutions;

- (ii) for research purposes; and
- (iii) for any other lawful reason.

69. Provision of information

The Minister may require any Province, water services institution and consumer to furnish information to be included in the national information system.

70. Funding of national information system

- (1) The Minister may fund reasonable expenditure incurred in establishing and maintaining the national information system from money appropriated by Parliament for that purpose or received from any other source for that purpose.
- (2) The Minister or the provider of the national information system may charge a reasonable fee for making information available.

CHAPTER XI GENERAL POWERS AND DUTIES OF MINISTER

71. Procedure for making regulations

- (1) The Minister must, before making regulations under this Act -
 - (a) publish the draft regulations in the Gazette for public comment within a specified time;
 - (b) send copies of and invite comment on the draft regulations from -
 - (i) the Minister for Provincial Affairs and Constitutional Development;
 - (ii) any relevant Province;
 - (iii) any relevant organisation representing municipalities; and
 - (iv) any relevant water board;
 - (c) consider all comments timeously received; and
 - (d) on request, report on the extent to which a specific comment or comments have been taken into account, or, if a comment was not taken into account, provide reasons therefor.

- (2) The Minister must, within 30 days after making a regulation under this Act, table it in Parliament for consideration in terms of section 75.

72. Consultation by Minister

If anything is required in terms of this Act to be done by the Minister after consultation with another person or body, it is sufficient compliance with such requirement if the Minister has -

- (a) requested the written comments of that person or body; and
- (b) considered any comments received.

73. General powers of Minister

- (1) The Minister may -
- (a) acquire a water services work and may transfer or dispose of any water services work belonging to the National Government;
 - (b) construct, operate, alter or repair any water services work with the permission of the relevant water services institution;
 - (c) contract with any person to perform any work which the Minister is authorised to perform under this Act;
 - (d) act as a water services provider under contract or approval only if the relevant water services authority is unable to provide the water services;
 - (e) provide water services in emergency situations;
 - (f) perform the functions of a water services authority or water board;
 - (g) levy tariffs for water services provided by him or her;
 - (h) issue guidelines to water services institutions on performing their functions in terms of this Act;
 - (i) issue model conditions for the provision of services for use by water boards and water services committees;
 - (j) prescribe measures to be taken by water services institutions to conserve water;

- (k) prescribe how any matter arising out of the repeal of any law by this Act must be dealt with, to the extent that this Act or any other law does not sufficiently provide for it; and
 - (l) on good cause, extend any time period provided for in this Act.
- (2) No water services work owned by the Minister may be transferred or disposed of -
- (a) without the approval of Parliament if its value exceeds an amount specified by notice in the Gazette from time to time by the Minister with the concurrence of the Minister of Finance; or
 - (b) without prior consultation with all affected water services institutions, if its value is within the specified amount.
- (3) The Minister acts on behalf of the National Government in owning, taking transfer or disposing of any water services work.

74. Delegation of powers

- (1) Subject to subsection (2), the Minister may in writing delegate any power vested in him or her by or under this Act.
- (2) The Minister may not delegate the power -
- (a) to make regulations;
 - (b) to issue directives under section 41;
 - (c) to intervene under section 63;
 - (d) to appoint members of a water board;
 - (e) to prescribe policy; or
 - (f) to expropriate.
- (3) A Province may in writing delegate any power given to it by this Act.

75. Consideration of draft regulations

- (1) In considering a draft regulation submitted to it, Parliament must consider whether the regulation -
- (a) is consistent with the objectives of this Act;

- (b) is within the powers conferred by this Act;
 - (c) is consistent with the Constitution; and
 - (d) requires clarification.
- (2) Parliament may, within 30 days after a regulation has been tabled in terms of section 71, or within 30 days after the commencement of the first sitting after the tabling of a regulation, reject that regulation.
 - (3) If Parliament rejects a regulation, it must state its reasons.
 - (4) The Minister must, within 30 days after being informed in writing that Parliament has rejected a regulation, repeal that regulation.

76. Advisory committees

- (1) The Minister may appoint advisory committees for matters falling within the scope of this Act.
- (2) An advisory committee consists of a chairperson and such members as the Minister may determine, with due regard to the expertise required.
- (3) A member of an advisory committee may be paid an allowance determined by the Minister.
- (4) An advisory committee has the functions conferred on it by the Minister.

CHAPTER XII

GENERAL PROVISIONS

77. Transferability of servitudes

- (1) The rights and obligations of any water services institution in terms of a personal servitude (whether registered or not) are transferable to another water services institution, notwithstanding any law to the contrary.
- (2) A registrar of deeds must register a notarially executed deed of cession to transfer a personal servitude from one water services institution to another.

78. Compliance with other laws

No approval given under this Act and nothing in this Act relieves anyone from complying with any other law relating to -

- (a) the abstraction and use of water; or
- (b) the disposal of effluent.

79. Ownership of water services works

- (1) Any water services work placed in good faith by a water services institution in or on property not owned by it, remains the property of that water services institution, whether the work is fixed to any part of that property or not, and may be removed by it.
- (2) When a water services work is removed under subsection (1), the owner or occupier of the property -
 - (a) may require the water services institution concerned to restore any physical damage caused to the property by the removal, as far as may be reasonably possible; and
 - (b) has no other claim against the water services institution concerned.
- (3) Any water services institution may transfer its rights in respect of improvements on property not owned by it to another water services institution.

80. Entry and inspection of property

- (1) Any person authorised in writing by the Minister, the Province or any water services institution may -
 - (a) at any reasonable time and without prior notice, except in the circumstances set out in subsection (3), enter any property and inspect any water services work in order to ascertain whether this Act or any regulation or directive made under it is being complied with;
 - (b) after reasonable notice to the owner or occupier of any property, enter that property with the necessary persons, vehicles, equipment and material -
 - (i) to repair, maintain, remove or demolish any water services work belonging to or operated by the Minister, the Province or water services institution concerned;
 - (ii) to remove vegetation interfering with any water services work belonging to or operated by the Minister, the Province or the water services institution concerned;
 - (iii) to establish the suitability of any water source or site for the construction of a water services work;

- (iv) search, excavate, bore or carry on any activity necessary for the recovery or measurement of water; and
 - (c) after reasonable notice to the owner or occupier of any property, cross the property in order to enter another property lawfully.
- (2) Any person entering property must identify himself or herself and present his or her authorisation.
- (3) A dwelling may only be entered -
 - (a) where it is necessary in terms of this Act to do so; and
 - (b) on reasonable notice; and
 - (c) at a reasonable time.

81. Expropriation

- (1) Property may be expropriated by the Minister or by any water board or water services committee acting with the written approval of the Minister.
- (2) The Expropriation Act, 1975 (Act No. 63 of 1975), applies to all expropriations under this Act.
- (3) Where the Minister expropriates any property under a power given by this Act, any reference to “Minister” in the Expropriation Act, 1975, must be construed as being a reference to the Minister of Water Affairs and Forestry.
- (4) Where any water board or water services committee expropriates property under a power given by this Act, any reference to “Minister” and “State” in the Expropriation Act, 1975, must be construed as being a reference to that water board or water services committee, as the case may be.

82. Offences

- (1) No person may -
 - (a) continue the wasteful use of water after being called upon to stop by the Minister, a Province or any water services authority;
 - (b) unlawfully and intentionally or negligently interfere with any water services work;

- (c) intentionally utilise water services, use water or dispose of effluent in contravention of section 6 or 7;
 - (d) intentionally obstruct any person exercising or attempting to exercise any right of entry and inspection of property under section 81;
 - (e) fail or refuse to give information, or give false or misleading information when required to give information in terms of this Act; and
 - (f) fail to provide access to any books, accounts, documents or assets when required to do so in terms of this Act.
- (2) Any person who contravenes subsection (1) is guilty of an offence and liable, on conviction, to a fine or to imprisonment or to both such fine and imprisonment.
- (3) Whenever an act or omission by any employee or agent -
- (a) constitutes an offence in terms of this Act, and takes place with the express or implied permission of any employer, the employer shall, in addition to the employee or agent, be liable to conviction for that offence; or
 - (b) would constitute an offence by the employer in terms of this Act, that employee or agent shall in addition to that employer be liable to conviction for that offence.

83. State bound by Act

This Act binds the State and its organs.

84. Repeal of laws, and savings

- (1) The laws set out in Schedule 2 are hereby repealed to the extent set out in the third column of that Schedule.
- (2) Notwithstanding subsection (1) the following organisations continue to exist and are deemed to be water boards established in terms of this Act:
- (a) Any water board established in terms of the Water Act, 1956 (Act No. 54 of 1956);
 - (b) the Rand Water Board established under the Rand Water Board Incorporation Ordinance, 1903 (Ordinance No. 32 of 1903 (Transvaal)), as consolidated in the Rand Water Board Statutes (Private) Act, 1950 (Act No. 17 of 1950); and

- (c) the North-West Water Supply Authority established by the North-West Water Supply Authority Act, 1988 (Act No. 39 of 1988 (Bophuthatswana)).
- (3) The governance, name and service areas of those water boards remain as defined in the legislation in terms of which they were established, until the Minister determines otherwise by notice in the Gazette.
- (4) All existing rights and obligations of those water boards remain in force after the commencement of this Act.
- (5) Notwithstanding subsection (1) the provisions of the Rand Water Board Statutes (Private) Act, 1950, the Water Act, 1956, and the North-West Water Supply Authority Act, 1988 (Bophuthatswana), requiring a water board to obtain the approval of the Minister in order to perform any functions, remain in force until two months after the first policy statement and business plan has been prepared and submitted to the Minister by the water board concerned.
- (6) Anything done before the commencement of this Act by an organisation contemplated in subsection (2) and any regulation made or condition set under or in terms of any law repealed by subsection (1) remains valid and is deemed to have been done, made or set under or in terms of the corresponding provision of this Act if -
 - (a) it is capable of being done, made or set under or in terms of this Act; and
 - (b) it is not in conflict with the main objects of this Act as set out in section 2.

85. Short title

This Act is called the Water Services Act, 1997.

SCHEDULE 1

WATER BOARDS

1. Terms of office of board members

- (1) A member of a water board is appointed for a period of office determined by the Minister, which may not exceed four years.
- (2) A member of a water board may be reappointed. Reappointment is limited to three consecutive terms of office.

2. Disqualification of board members

Prepared by:

No person may hold office as a member of a water board -

- (a) if he or she is an unrehabilitated insolvent; or
- (b) if he or she has been convicted of any offence involving dishonesty or has been sentenced to imprisonment without the option of a fine. A disqualification under this subitem ends three years after the sentence has been served.

3. Procedure for nomination and appointment of board members

- (1) The Minister may require a water board to constitute a selection panel to recommend persons for appointment as members of a water board.
- (2) If the Minister has done so the chief executive of a water board must publish a notice calling for nominations in two media of his or her choice, generally accessed within the water board's service area.
- (3) A notice must set out, in general terms, at least -
 - (a) the service area of the water board;
 - (b) the activities of the water board;
 - (c) the time commitments reasonably expected from water board members;
 - (d) the term of office for which the appointments are considered;
 - (e) the criteria for disqualification as a member;
 - (f) the requirements with which a nomination must comply;
 - (g) the closing date for nominations; and
 - (h) the address to which nominations must be delivered.
- (4) A copy of the notice must be sent to at least -
 - (a) every Province within which the whole or any portion of its service area is situated;
 - (b) every organisation representing municipalities having jurisdiction in the service area;
 - (c) every other person having a substantial interest in the matter, whom the chief executive of the water board considers ought to be consulted;

- (d) every water services authority having jurisdiction in the service area.
- (5) Every nomination of a person for appointment to a water board must be signed by a proposer and a seconder, none of whom may be the nominee, and must contain the nominee's signed acceptance. No person may nominate or second more than one person.
- (6) A water board must timeously constitute a selection panel, having regard to race and gender, to make recommendations from nominations received, to the Minister for appointment.
- (7) The selection panel must consist of -
 - (a) the chief executive of the board or his or her representative;
 - (b) a person representing every relevant Province, to be nominated by the Province concerned;
 - (c) a person representing the Minister, to be nominated by the Minister;
 - (d) a person of repute and good standing, residing within the service area, to be nominated by the water board.
- (8) The selection panel -
 - (a) must consider all nominations timeously received and sufficiently completed;
 - (b) may prepare a shortlist of nominees;
 - (c) may interview all shortlisted nominees; and
 - (d) must, through the chief executive of the water board, make recommendations to the Minister on the appointment of members of the water board.
- (9) In recommending nominees for appointment the selection panel must consider -
 - (a) the criteria set out in section 35 of the Act;
 - (b) the reputation and integrity of the nominees; and
 - (c) any conflict of interests which the nominees may have.
- (10) The selection panel -

- (a) must, where there are sufficient suitable candidates, recommend more nominees than the number of members which the Minister may wish to appoint;
 - (b) must motivate each recommendation made; and
 - (c) may arrange recommendations in order of preference.
- (11) If the chairperson of a water board has to be appointed, the selection panel must, if there are sufficient suitable candidates -
- (a) recommend at least three persons for the position;
 - (b) motivate each recommendation; and
 - (c) arrange the recommendations in order of preference.
- (12) The Minister must, before appointing a person to be a member of a water board, consider any recommendations made by a selection panel.
- (13) All costs -
- (a) relating to the publication of notices; and
 - (b) incurred by the selection panel,
- are for the account of the water board concerned.

4. Termination of office of board members

- (1) A member of a water board ceases to hold office -
- (a) from the effective date of his or her resignation;
 - (b) if he or she has been absent from more than two consecutive meetings without leave of the chairperson. Leave may be granted retrospectively, if the absence of a member was due to unforeseen circumstances;
 - (c) if he or she has become disqualified in terms of item 2 of this Schedule;
 - (d) if he or she has been declared to be of unsound mind by a competent authority; or
 - (e) if his or her appointment has been terminated in terms of section 35(5) of the Act.

- (2) A member who is not the chairperson, must notify the chairperson in writing of his or her resignation.
- (3) A member who is the chairperson, must notify the Minister in writing of his or her resignation.

SCHEDULE 2

Number and year of Act	Short title	Extent of repeal
Act 17 of 1950	Rand Water Board Statutes (Private) Act, 1950	The whole, except sections 2, 113 and 123 to 130 and 139
Act 54 of 1956	Water Act, 1956	Sections 26A to 26H and 107 to 138
Act 29 of 1964	Rand Water Board Statutes (Private) Act Amendment Act, 1964	The whole, except section 1
Act 31 of 1972	Rand Water Board Statutes (Private) Act Amendment Act, 1972	The whole, except section 1 and sections 25 to 30
Act 58 of 1974	Water Amendment Act, 1974	The whole
Act 107 of 1977	Rand Water Board Statutes (Private) Act Amendment Act, 1977	The whole
Act 89 of 1981	Water Amendment Act, 1981	The whole
Act 90 of 1983	Rand Water Board Statutes (Private) Act Amendment Act, 1983	The whole
Act 39 of 1988 (Bophuthatswana)	North-West Water Supply Authority Act, 1988	The whole
Act 40 of 1988	Rand Water Board Statutes (Private) Act Amendment Act, 1988	The whole, except section 1
Act 36 of 1990	Rand Water Board Statutes (Private) Act Amendment Act, 1990	The whole, except section 1