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GENERAL NOTICE

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General Notice

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GENERAL NOTICE

NOTICE 623 OF 2008

DEPARTMENT OF MINERALS AND ENERGY

PUBLICATION FOR COMMENTS: MINE HEALTH AND SAFETY AMENDMENT BILL

The above mentioned Bill is hereby published for public comments. Interested parties are invited to submit written comments on the Bill on or before the 30 May 2008.

Enquiries as well as written comments must be received not later than 30 May 2008 and must be addressed to:

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REPUBLIC OF SOUTH AFRICA

MINE HEALTH AND SAFETY AMENDMENT BILL

*(As introduced in the National Assembly as a section 75-Bi
(The English text is the official text of the Bill))*

(MINISTER OF MINERALS AND ENERGY)

[B ----- 2008]

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Mine Health and Safety Act, 1996 (Act 29 of 1996), so as to review and strengthen enforcement provisions; simplify the fine system; reinforce offences and penalties; substitute, add and remove ambiguities in certain definitions and expressions; effect certain amendments necessary to ensure consistency with other laws, particularly the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002), and to provide for matters connected therewith

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

Amendment of section 2 of Act 29 of 1996

1. Section 2 of the Mine Health and Safety Act, 1996 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The employer of a mine that is not being worked, but in respect of which a closure certificate in terms of the **[Minerals Act]** Minerals and Petroleum Resources and Development Act has not been issued, must take reasonable steps to continuously prevent injuries, ill-health, loss of life or damage of any kind from occurring at or because of the mine.

Amendment of section 3 of Act 29 of 1996

2. Section 3 of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section 10 of the Act 29 of 1996

3. Section 10 of the principal Act is hereby amended by the insertion of the following subsection after subsection (3):

“(3A) For each employee, the employer must keep a record of all training provided to such employee in terms of subsection (2)

Amendment of section 11 of Act 29 of 1996

4. Section 11 of the principal Act is hereby amended

(a) by the insertion in subsection (5) after paragraph (a) of the following paragraph:

“(aA) commence the investigation referred to in paragraph (a) within 10 days from the date of such accident, serious illness or health threatening occurrence that is being investigated;

(b) by the substitution in subsection (5) for paragraph (d)(i) and (e) of the following paragraph:

“(d) on completion of each investigation, prepare a report that-
(i) [**whenever possible**], identifies the causes and the underlying causes of the accident, serious illness or *health-threatening occurrence*;

”(e) deliver a copy of the report referred to in paragraph (d) *within 30 days from the date of the accident or the occurrence being investigated* to the *Principal Inspector of Mines and the health and safety committee*. If there is no *health and safety committee* the employer must deliver a copy of the report to the *health and safety representative* responsible for the *working place*.

(c) by the insertion of the following subsection after subsection (5)

“(5A) an investigation in terms of subsection (5) must be completed within 30 days after the accident or occurrence being investigated or such longer period as the *Principal Inspector of Mines* may permit.

(d) by the insertion of the following subsection after subsection 5B

“(5B) If the *Principal Inspector of Mines* is dissatisfied with the investigation or report in terms of this section, the *Principal Inspector of Mines* may instruct an inspector to conduct an investigation as contemplated under this section.

Amendment of section 13 of Act 29 of 1996

5. Section 13 of the principal Act is hereby amended by-
by the deletion of subparagraph (ii) in subsubsection (3)(a) .

(a) by the deletion of subsection (4)

Amendment of section 17 of Act 29 of 1996

6. Section 17 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) The examination referred to in subsection (1) must be held before, or within 30 days after, termination of employment.

Amendment of section 41 of Act 29 of 1996

7. Section 41 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 42 of Act 29 of 1996

8. Section 42 of the principal Act is hereby amended –
- (a) by the substitution for subsection (2) of the following subsection:
“(2) The Minister must appoint the members of the Council **[and the permanent committees of the Council]** in accordance with the regulations.
 - (b) by the substitution for subsection (2A) of the following:
“(2A) The Council may appoint permanent committees, ad hoc and any subcommittees, for any period and on any conditions
 - (c) by the insertion of the following subsection after subsection (2A)
“(2B) the structure and functions of the committees contemplated in subsection (2A) must be provided for in the constitution contemplated in section 97(3).

Amendment of section 43 of Act 29 of 1996

9. Section 43 of the principal Act is hereby amended-
- (a) by the substitution for subsection (eA) of the following subsection:
“(eA) annually **[consider an overall programme for]** advise the Minister on relevant health and safety research at mines **[for approval as prescribed and deliver a copy to the Minister of Finance for consideration]**; and

Deletion of section 44 of Act 29 of 1996

10. Section 44 of the principal Act is hereby deleted.

Amendment of section 47 of Act 29 of 1996

11. Section 47 of the principal Act is hereby amended by the substitution of subsection (1) of the following:
“(1) **[A]** The Mine Health and Safety Inspectorate is hereby relocated to the Mine Health and Safety Council.

Amendment of section 49 of Act 29 of 1996

12. Section 49 of the principal Act is hereby amended –
- (a) by the substitution in subsection (1) of paragraphs (j) and (k), respectively, of the following paragraph:
 - “(j) complete a report on health and safety at mines and the activities of the Mine Health and Safety Inspectorate for each year and submit the report to the Minister within three months of the end of the year concerned; **[and]**
 - (k) perform any duties relating to health or safety at mines that the Minister directs or prescribes[.] ; and
 - (b) by the addition to subsection (1) after paragraph (k) of the following paragraphs:

- “(l) develop an implementation plan for the effective implementation of this Act;
- (m) develop and maintain an integrated mine health and safety database and reporting system;
- (n) conduct or commission relevant research and evaluate and publish the results of research; and
- (o) provide logistical and other support for the Council.
- (c) by the substitution for subsection (3) (b) of the following subsection:
 “(3) Despite the provisions of the **[Minerals Act] Minerals and Petroleum Resources Development Act** or any other law, the Chief Inspector of Mines -
 “(b) must consult with the appropriate officer appointed in terms of **[section 4 of the Minerals Act] the Minerals Petroleum and Resources Development Act** concerning the exercise of those powers.
- (d) by the substitution for subsection 4 of the following subsection:
 “(4) To further the objectives of this Act the *Chief Inspector of Mines* may-
 (a) conclude contracts, enter into agreements with other persons; **[and] or perform any act, whether in the Republic or elsewhere, which is calculated, directly or indirectly, to enhance the value of the services which the Mine Health and Safety Inspectorate renders or perform any other act which may be prescribed;**
 (b) authorise a competent independent person to perform any or all the functions of an inspector[.]; and
- (e) by the addition to subsection (4) after paragraph (b) of the following paragraphs :
 “(c) grant, amend, suspend or revoke health and safety permits;
 (d) hire, purchase or otherwise acquire any movable and immovable property and proprietary right, and lease or dispose of property so acquired, but may not acquire or dispose of immovable property without the prior approval of the Minister, granted with the agreement of the Minister of Finance;
 (e) collaborate with any other body or institution or establish and control facilities for the collection and dissemination of scientific and technical information. in connection with any matter regarding health and safety at mines;
 (f) collaborate with any educational, scientific or other body, government or institution in connection with the provision of instruction for, or the training of persons required by the Mine Health and Safety Inspectorate;
 (g) provide, on such conditions as the Chief Inspector deems fit, financial or other assistance in connection with the training of persons in so far as is necessary to ensure that a sufficient number of trained persons is available to enable the Mine Health and Safety Inspectorate Regulator to perform its functions;
 (h) insure the Mine Health and Safety Inspectorate against any loss: damage, risk or liability which it may incur
 (i) open and operate banking accounts in the name of the Mine Health and Safety Inspectorate;
 (j) invest any of the Mine Health and Safety Inspectorates money, and
 (k) instituting or defending any legal action.

Insertion of section 49(A) in Act 29 of 1996

13. The following section is hereby inserted in the principal Act after section 49-

“49A Funds of the Mine Health and Safety Inspectorate

“(1) The funds of the Mine Health and Safety Inspectorate consists of-

- (a) money appropriated by Parliament on such terms and conditions as the Minister, with the concurrence of the Minister of Finance, may determine;
 - (b) fees paid to the Mine Health and Safety Inspectorate in terms of 49F(2)
 - (c) with the consent of the Minister of Finance, any donations made to the Mine Health and Safety Inspectorate.
- (2) The Mine Health and Safety Inspectorate must utilize its funds to defray expenses incurred by it in the performance of its functions.
- (3) The Chief Inspector of Mines must-
- (a) open a bank account in the name of the Mine Health and Safety Inspectorate with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990); and
 - (b) deposit therein all money received in terms of subsection (1).

Insertion of section 49A in Act 29 of 1996

14. The following section is hereby inserted in the principal Act after section 49A

“49B Investment

- (1) The Mine Health and Safety Inspectorate may invest any of its funds not immediately required –
- (a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act; and
 - (b) in such a manner as may be approved by the Minister.
- (2) The Mine Health and Safety Inspectorate may use interest derived from its investment

Insertion of section 49C in Act 29 of 1996

15. The following section is hereby inserted in the principal Act after section 49B

“49C Financial year of the Mine Health and Safety Inspectorate

The Mine Health and Safety Inspectorate’s financial year is from 1 April in any year to the 31 March of the following year, and the first financial year is from the specified date to 31 March.

Insertion of section 49D in Act 29 of 1996

16. The following section is hereby inserted in the principal Act after section 49C

“49D Liability of Authority (refer or remove to section 104)

(1) The State Liability Act, 1957 (Act No. 20 of 1957), applies, with the necessary changes, in respect of the Mine health and Safety Inspectorate, and in such application a reference in that Act to the Minister of a department concerned must be construed as a reference to the Chief Inspector of Mines.

(2) No person is liable for anything done or omitted in good faith when performing a function or exercising a power in terms of this Act.

Insertion of section 49E in Act 29 of 1996

17. The following section is hereby inserted in the principal Act after section 49D

“49E Judicial management and liquidation of the Mine Health and Safety Inspectorate

Despite the provisions of any other law, the Mine Health and Safety Inspectorate may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted especially for that purpose.

Insertion of section 49F in Act 29 of 1996

18. The following section is hereby inserted in the principal Act after section 49E

“49F Health and Safety Permits

(1) The Chief Inspector of Mines must grant health and safety permits with respect to any matter as may be prescribed

(2) An employer must lodge an application for a safety permit –
(a) to the Chief Inspector of Mines;
(b) in the manner determined by the Chief Inspector of Mines;
(c) together with the prescribed non-refundable application fee.

(3) An application for a safety permit must-
(a) be made in the format determined by the Chief Inspector of Mines;
(b) contain the prescribed information.

(4) The Chief Inspector must grant the health and safety permit if the applicant meets the requirements as may be prescribed.

(5) A health and safety permit-
(a) is subject to this Act, any other relevant law and the terms and conditions stipulated in the permit;
(b) is valid for the period specified in the permit, which period may not exceed two (2) years; and
(c) is not transferable.

(6) The granting of a safety permit in terms of this section does not relieve the employer of any duty imposed on the employer in terms by this Act or any other law.

Insertion of section 49G in Act 29 of 1996

19. The following section is hereby inserted in the principal Act after section 49F

“49G Co-operative governance

(1) The Chief Inspector of Mines must co-ordinate the functions of the Mine Health and Safety's with other organs of state that have responsibility for regulating or promoting any aspect of occupational health and safety, in accordance with the principles of co-operative governance contemplated in Chapter 3 of the Constitution of the Republic of South Africa.

(2) The Chief Inspector may conclude co-operative agreements with relevant organs of state to give effect to the co-operation contemplated in sub-section (1)

Amendment of section 55A of Act 29 of 1996

20. Section 55A of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection

“(1) An inspector **[who has reason to believe that an employer has contravened or failed to comply with any provision contemplated in section 91 (1B),]** may make a recommendation in writing to the **[Principal Inspector of Mines] Chief Inspector of Mines** that a fine be imposed on the employer that has failed to comply with any provision contemplated in section 91(1B).

(b) by the deletion of subsection (2);

(c) by the substitution for subsection (3) of the following subsection:

“(3) The inspector concerned must **[provide] serve** a copy of the recommendation **[or record contemplated in subsection (1) or (2) to] on –**

(d) by the addition of the following subsections :

“(4) The failure to serve a copy of the recommendation in terms of sub-section (3) does not affect the validity of the recommendation;

“(5) The employer may make written representations to the Chief Inspector of within 30 days of the recommendation;

“(6) A representation made in terms of this section may not be used against the employer in any criminal or civil proceedings in respect of the same set of facts.

Amendment of heading to section 55B of Act 29 of 1996

21. Section 55B of the principal Act is hereby amended by the substitution for the heading of the following heading:

“55B Principal Inspector of Mines may impose fine [give further instruction]

Substitution of section 55B of Act 29 of 1996

22. The following section is hereby substituted for section 55B of the principal Act:

“55B Principal Inspector of Mines may impose fine

“(1)The Chief Inspector of Mines, after considering the recommendation and any representations made in accordance with section 55A must –

- (a) disregard the recommendation;
- (b) impose a fine not exceeding the maximum amount mentioned in Table 2 of Schedule 8 ; or
- (c) refer the matter to the prosecuting authority for a decision as to whether the employer should be charged with an offence.

(2) The Chief Inspector of Mines must notify the employer, committee or a representative and the trade union as contemplated in section 55A(3) of any decision made in terms of subsection (1).

(3) An employer must pay any fine imposed in terms of this section within 30days of the imposition of the fine

(4) If the employer fails to pay the fine within the specified period, the Chief Inspector of Mines may apply to an appropriate Court for the fine to be made an order of that Court.

Amendment of heading to section 55B of Act 29 of 1996

23. Section 55C of the principal Act is hereby amended by the substitution for the heading of the following heading:

“55C [Principal Inspector of Mines may refer matter to attorney-general] Use of fines**Substitution of section 55C of Act 29 of 1996**

24. The following section is hereby substituted for section 55C in the principal Act:

“55C Use of fines

(1) Money received by the Chief Inspector of Mines in payment of fines imposed in terms of section 55B must be paid to a fund established and controlled by the Chief Inspector of Mines.

(2) The Chief Inspector of Mines must, after consultation with the Council use the money in the fund for the promotion of health and safety in the mining industry.

(3) The report of the Chief Inspector of Mines referred to in section 49(1)(i) must reflect the financial affairs of the funds.

Amendment of heading to subsection 55D of Act 29 of 1996

25. Section 55D of the principal Act is hereby amended by the substitution for the heading of the following heading:

“55D [Principal] Chief Inspector of Mines [may impose fine] must issue guidelines

Substitution of section 55D of Act 29 of 1996

26. The following subsection is hereby substituted for section 55D of the principal Act:

“55D Chief Inspectors of Mines must issue guidelines

- (1) The Chief Inspector of Mines must issue guidelines regarding the recommendation of fines by an inspector in terms of section 55A;

Deletion of section 55E to 55H

27. Sections 55E, 55F, 55G and 55H in the principal Act are hereby deleted.

Amendment of section 57 of Act 29 of 1996

28. Section 57 of the principal Act is hereby amended-
- (a) by the substitution for subsection (1) of the following:
- “(1) Any person [who is the subject of a decision of an inspector, or at whose instance a decision of an inspector was taken, except a decision contemplated in section 55A,] adversely affected by a decision of an Inspector, except a decision contemplated in section 55B or a report contemplated either in terms of section 64 of 72, may appeal against that decision to the Chief Inspector of Mines.**

Amendment of section 57A of Act 29 of 1996

29. Section 57A of the principal Act is hereby deleted.

Amendment of section 58 of Act 29 of 1996

30. Section 58 of the principal Act is hereby amended by the substitution for subsection (1), (2) and (3) , respectively of the following subsections:
- “(1) Any person adversely affected by a decision of the Chief Inspector of Mines, either in terms of section 57 (3) or in the exercise of any power under this Act, may appeal against the decision to the **[Labour] an appropriate** Court.
- (2) An appeal under subsection (1), must be lodged with the registrar of the **[Labour] an appropriate** Court in accordance with the rules of the **[Labour] an appropriate** Court, within 60 days of the date that the Chief Inspector of Mines' decision was given.
- “(3) **[The Labour] An appropriate** Court must consider the appeal and confirm, set aside or vary the decision.

Amendment of section 59 of Act 29 of 1996

31. Section 59 of the principal Act is amended-

(a) by the substitution for subsection (1) of the following subsections:

“(1) An appeal against a decision under either section 57, [57A] or 58 does not suspend the decision.

(b) by the substitution for subsection (2) of the following subsection:

“(2) Despite subsection (1)

[(a) an appeal in terms of [section 57A or 58 against a decision to impose a fine suspends the obligation to pay the fine, pending the outcome of the appeal; and]

[(b)] (a) [the Labour] an appropriate Court may suspend the operation of the decision, pending the determination of the matter, if there are reasonable grounds for doing so.

Amendment of section 63 of Act 29 of 1996

32. Section 63 of the principal Act is hereby amended by the substitution of subsection (1) of the following subsection:

“(1) For the purpose of enhancing the effectiveness of an investigation in terms of section 60 the Chief Inspector of Mines, in consultation with the appropriate **[Attorney-General] Prosecuting Authority** may issue a certificate that no prosecution may be instituted in respect of any contravention of, or failure to comply with, a provision of this Act related to the event being investigated. If a certificate is issued, no fine in terms of section 55[D]B or disciplinary action related to the event investigated may thereafter be imposed on or taken against any person.

Amendment of section 71 of Act 29 of 1996

33. Section 71 is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The person presiding at an inquiry may direct that any evidence given by a person during an inquiry may not be used **[for the purposes of sections 55A to 55D, or any appeal relating to those sections, or]** in any criminal or disciplinary proceedings against that person except in criminal proceedings on a charge of perjury against that person.

Insertion of section 75A

34. The following section is hereby inserted in the in the principal Act after section 75:

“75A Minister to enter mines

For any reason relating to *health and safety*, the *Minister*, may enter any mine at any time.

Amendment of section 91 of Act 29 of 1996

35. Section 91 of the principal Act is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:
“(1) Any person, **[other than]** including an employer, commits an offence who contravenes, or fails to comply with, any_
- (b) by the deletion of subsection 1A,
- (c) by the substitution in subsection (1B) for paragraph (a) of the following paragraph:
“(1B) Any employer is liable to a fine in terms of section 55[D]B if the employer contravenes, or fails to comply with, any -
(a) provision of this Act, other than **[a provision referred to in subsection (1A), or]** any provision of Chapter 3 **[or section 83]**;
- (d) by the substitution for subsection (1C) of the following subsection:
“(1C) Despite subsection (1B), any employer who contravenes or fails to comply with any standard in a code of practice prepared in terms of section 9 (2) is not liable to a fine in terms of section 55[D]B if-
- (e) by the substitution for subsection (2) of the following subsection:
“(2) Despite subsection (1) (a), a contravention of the provisions of Chapter 3 **[or section 83]** does not constitute an offence

Amendment of section 92 of Act 29 of 1996

36. Section 92 of the principal Act is hereby amended –

- (a) by the substitution for subsection (5) of the following subsection:
“(5) Any person convicted of an offence in terms of any section mentioned in Column 1 of **[the] Table 1 [below] in Schedule 8** may be sentenced to a fine or to imprisonment for a period not exceeding the period mentioned in Column 2 of that Table opposite the number of that section.
- (b) by the insertion after subsection (5) of the following subsection:
“(5A) The Minister, after consulting the Council and in consultation with the Minister of Justice, may adjust the maximum fine specified in Schedule 8.

Amendment of section 102 of Act 29 of 1996

37. Section 102 of the principal Act is hereby amended-

- (a) by the insertion after the definition of “mineral” of the following definition:
“Mineral and Petroleum Resources Development Act” means the Mineral and Petroleum Resources Development Act, 2002 “(Act 28 of 2002);
- (b) by the deletion of the definition of “Minerals Act”.
by the deletion of the definition of an occupational health practitioner”
- (c) by the substitution for the definition of “occupational medical practitioner” of the following definition:
“**occupational medical practitioner**” means a medical practitioner who holds a qualification in occupational medicine, or an equivalent qualification, recognised by the **[Interim National Medical and Dental**

- Council of South Africa] Health Professions Council of South Africa** or a medical practitioner engaged in accordance with section 13(4);
- (d) by the substitution in paragraph (a) of the definition of owner for subparagraph (i) of the following sub-paragraph

“(1) the holder of a prospecting permit or mining authorisation issued under the **[Minerals Act] Mineral Petroleum and resources Development Act**

- (e) by the substitution for the definition of “topsoil” of the following definition:
“topsoil” means topsoil as defined in section 1 of the **[Minerals Act] Mineral Petroleum and Resources Development Act**
- (f)

Amendment of section 104 of Act 29 of 1996

38. Section 104 of the principal Act is hereby deleted.

Short Title and commencement

39. This Act is called the Mine Health and Safety Amendment Act, 2008, and takes effect on a date to be determined by the President by proclamation in the *Gazette*

SCHEDULE 8**Table 1****MAXIMUM FINES OR PERIOD OF IMPRISONMENT THAT CAN BE IMPOSED FOR OFFENCES OF THE ACT**

Column 1 Section under which convicted	Column 2 Maximum fine and term of imprisonment
15	R500 000 or 5 yrs imprisonment
16	1 year R500 000 or 5 yrs imprisonment
21 (1), (3) or (4)	R500 000 or 5 yrs imprisonment
22	R200 000 or 2 yrs imprisonment
24	R500 000 or 5 yrs imprisonment
52	R200 000 or 2 yrs imprisonment
53	R200 000 or 2 yrs imprisonment
62	R200 000 or 2 yrs imprisonment
66 (3)	R200 000 or 2 yrs imprisonment
70	R200 000 or 2 yrs imprisonment
71	R200 000 or 2 yrs imprisonment
84	R200 000 or 2 yrs imprisonment
85	R200 000 or 2 yrs imprisonment
86, 86A	R300 000 or 3 yrs imprisonment
87,88,89,90	R50 000 or 6 months imprisonment
88	R300 000 or 3 yrs imprisonment

TABLE 2**MAXIMUM FINES THAT CAN BE IMPOSED FOR CONTRAVENTIONS OF THE ACT AS CONTEMPLATED IN SECTION 55B**

The maximum fine that can be imposed in terms of section 55B may not exceed an amount of R1 000 000.