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CONTENTS • INHOUD

No.

Page
No. Gazette
 No.

GENERAL NOTICE

Rural Development and Land Reform, Department of

General Notice

850 Geomatics Profession Bill, 2012: Notice of intention to introduce the Bill to Parliament 3 35801

GENERAL NOTICE

NOTICE 850 OF 2012

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

NOTICE OF INTENTION TO INTRODUCE THE GEOMATICS PROFESSION BILL, 2012 IN PARLIAMENT

The Minister of Rural Development and Land Reform intends to introduce the Geomatics Profession Bill, 2012 (hereafter referred to as the "Bill") in the National Assembly in 2012. An Explanatory Summary of the Bill is hereby published in accordance with rule 241(c) of the Rules of the National Assembly of Parliament.

The main purpose of the Bill is to provide for the transformation of the geomatics profession, the establishment of the South African Geomatics Council as a juristic person and facilitation of accessibility to the geomatics profession. The Bill also seeks to provide for measures designed to protect the public from unethical geomatics practices and to provide for measures in order to maintain a high standard of professional conduct and integrity. The Bill, when enacted, will repeal the current Professional and Technical Surveyors' Act, 1984.

EXPLANATORY SUMMARY OF THE GEOMATICS PROFESSION BILL, 2012

1. BACKGROUND

- 1.1 The surveying profession in South Africa is regulated by the Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984) ("the Act"). The South African Council for Professional and Technical Surveyors, established by the Act, controls and regulates the education, training, registration and discipline of surveyors registered in terms of the Act.
- 1.2 The Act provides for the registration of different categories of surveyors. Each of the categories is divided into different fields of survey, namely cadastral (or land), topographical, engineering and mining surveying.

- 1.3 In spite of various initiatives by the said Council, the profession is still far from being representative of the South African demographics. Areas where the profession still needs to be transformed are, amongst others, the composition of the Council, the entry requirements into the profession, the funding of the Council, rationalisation of the categories of surveyors, work reservation and disciplinary procedures.
- 1.4 In order to provide for a mechanism to accelerate the transformation of the surveying profession in a meaningful manner which would serve the interests of both the profession and the public and for the benefit of present and future generations, the Geomatics Profession Bill ("the Bill") has been drafted.

2. OBJECTS OF THE BILL

- 2.1 Chapter 1 of the Bill contains the definitions and geomatics profession principles in order to guide the interpretation, administration and implementation of the aims thereof. Clause 2, *inter alia*, acknowledges that geomatics and the geomatics profession are areas of expertise involving a number of activities. It acknowledges that geomatics must pursue and serve the interests of the public to benefit the present and future generations. It obliges the South African Geomatics Council ("the Council") to strive to achieve the transformation of the profession to ensure its legitimacy and effectiveness and to achieve high standards of quality and integrity in the profession.
- 2.2 Chapter 2 provides for the establishment of the Council, its composition, the disqualification of members, committees of the Council, the functions, powers and duties of the Council, meetings and decisions of the Council, the remuneration of members, funds of the Council and the keeping and auditing of accounts. In terms of clause 3 the Council to be established is a juristic person. Clause 4 determines that the Council will consist of at least 11 but not more than 14 members. Members are to be appointed by the Minister after having invited nominations for persons to be considered to represent the specific categories and will, *inter alia*, be geomatics professionals in the full-time employ of the State, geomatics professionals who represent professional land surveyors and

recognised voluntary associations, a person representing the Council on Higher Education as well as persons representing the interests of the public. This Council is smaller and more streamlined than the one established in terms of the Act. The appointment of members by the Minister will further ensure a more representative Council. To ensure a smooth transition, clause 4(2) makes provision for not more than five members of the council established in terms of the Act, to remain in office for the first term of the new Council. Provision is also made for the appointment of alternate members.

- 2.3 Clause 5 of the Bill provides for the disqualification of persons as members of the Council and vacation of office. These are principles normally embodied in legislation pertaining to members of statutory bodies.
- 2.4 Clause 6 of the Bill empowers the Council to establish committees to assist it in the performance of its functions. The Council is obliged to establish an Education and Training Committee to serve solely as a committee on educational and training matters and to advise or assist the Council on these matters. This clause should be read with clause 36(9) which makes provision for the Education Advisory Committee which was established under the Act, to continue to exist until the Education and Training Committee has been established.
- 2.5 Clause 7 of the Bill provides for the functions of the Council. These functions are aimed at regulating the geomatics profession in order to promote and protect the public interest, to register persons, to institute and enforce disciplinary action, to support the functioning of disciplinary and appeal structures and to ensure and promote a high quality of training and education. These functions will promote and protect the interests of both the geomatics profession and the public.
- 2.6 Clause 8 of the Bill provides for the powers and duties of the Council with regard to administrative matters, the registration of persons, fees, education and training including rules which determine conditions relating to professional development, as well as financial and general matters. The Council must appoint a Registrar and must keep and maintain a register of registered persons, which register will be open for public inspection. To determine competency standards, the Council

must consult with the relevant quality council referred to in Chapter 5 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008). Accreditation visits must be paid to educational institutions that offer educational programmes with regard to geomatics. Matters pertaining to education and training must be dealt with in consultation with the Council on Higher Education. As far as finance is concerned, the Council is empowered to collect moneys due to it, invest funds, raise loans, lend money and mortgage immovable property. The Council may also acquire or lease movable or immovable property. The written approval of the Minister and the Minister of Finance is required for most of the financial related activities contained in clause 8(1)(c), (e) and (2).

- 2.7 Clause 9 of the Bill determines that the Council must hold at least two meetings each year. The first meeting of the Council and any future first meetings of a newly appointed Council must be chaired by the Chief Surveyor-General.
- 2.8 Clause 10 of the Bill regulates the decision process of the Council.
- 2.9 Clause 11 of the Bill determines the remuneration of members of the Council and committees of the Council who are not in the full-time service of the State. Such members are paid out of the Council's funds. The remuneration and allowances are determined by the Minister with the concurrence of the Minister of Finance.
- 2.10 Clause 12 of the Bill provides for the Council's funds and the keeping and auditing of records. The Minister may, with the concurrence of the Minister of Finance, on receipt of a budgeted request, grant to the Council, out of money appropriated by Parliament, such amount the Minister considers necessary. At present the Council has to contend with funding received from inadequate registration fees. Funding via the budget of the Department will enable the Council to carry out its duties and responsibilities more effectively. The Council's statement of income and expenditure must at the close of the financial year be audited by a registered auditor. The auditor's statement and balance sheet must lie open for public inspection.

2.11 Chapter 3 of the Bill deals with the registration of persons in specific categories, the cancellation of registration of such persons, the return of registration certificates and the identification of geomatics profession work. This clause should be read with clause 36(3) where provision is made for persons who are registered in terms of the Act, to automatically be deemed to be registered in an appropriate category in terms of the Bill.

2.11.1 In terms of clause 13 of the Bill, the categories of registration are candidate geomatics practitioner, geomatics technician, geomatics technologist and geomatics professional.

2.11.2 The entry requirements for each category are brought in line with the relevant educational levels as determined by the Council in liaison with the relevant quality council referred to in Chapter 5 of the National Qualifications Framework Act, 2008. The relevant qualifications must be registered on the National Qualifications Framework. In certain instances, persons must also have completed specific practical training and must have passed a competency assessment.

2.11.3 Provision is made for candidate geomatics practitioners being persons registered for an accredited and appropriate geomatics educational programme. Specific recognition is also given to technicians. The existing barriers whereby certain persons cannot become professionals without completing a university degree are thus eliminated.

2.11.4 The Act does not provide for work reservation and consequently there is no incentive for people to register. The exception is in terms of the Land Survey Act, 1997 (Act No. 8 of 1997), where only registered professional land surveyors may perform cadastral surveys. The Bill however provides for work reservation in clause 13(2) and should therefore encourage persons to register, which will be in the interest of both the profession and the public.

- 2.12 Clause 14 of the Bill provides for circumstances when a registered person's registration may be cancelled. The person must, however, be notified of the intended cancellation and be given an opportunity to make representations before a decision is taken in respect of the cancellation of registration. In terms of clause 15 of the Bill, a person whose registration has been cancelled, must return the certificate of registration to the Registrar within 30 days. This is to protect the public from persons performing work for which they are no longer registered.
- 2.13 Clause 16 of the Bill obliges the Council to consult with voluntary associations and any person, body or industry determined by the Minister, pertaining to the identification of areas of geomatics work to be reserved for registered persons. The Minister may prescribe the geomatics work to be reserved for each category of registered persons and may even prescribe areas of work which may be carried out by persons registered in terms of other legislation. This is to ensure that persons registered perform work for which they are properly trained and to protect the interests of registered persons and the public. This will also contribute to the quality of the work performed.
- 2.14 Chapter 4 of the Bill deals with the recognition of voluntary associations by the Council. In terms of clause 17, the Council may recognise any voluntary association which has as its main object the promotion and protection of the interests of the geomatics profession and which applies its profit in promoting its main objects. The recognition of voluntary associations as contemplated in the Bill would benefit the geomatics profession.
- 2.15 Chapter 5 of the Bill deals with professional conduct. A code of conduct for registered persons, which must also be available to members of the public, must be provided for by the Council. In addition to the code of conduct, clause 18(6) of the Bill contains a number of requirements pertaining to proper conduct. Clause 18(7) determines when a registered person is guilty of improper conduct. Charges of improper conduct must be investigated in accordance with the provisions of clause 19. A registered person's right to a fair investigation is protected because he or she may not be questioned unless he or she is informed

- of the right to be assisted or represented by another registered person or a legal representative, that he or she is not obliged to make a statement and that any statement made may be used in evidence against him or her. After the investigation the investigating officer must submit a report with his or her recommendations to the Council.
- 2.16 In terms of clause 20 the Council must charge the registered person with improper conduct if sufficient grounds exist. A charge sheet must be delivered to the registered person who may admit or deny the charge. If a registered person charged has admitted his or her guilt of the charge, the Council may find such person guilty without referring the charge to a disciplinary tribunal and also impose an appropriate sanction.
- 2.17 Clause 21 provides for the appointment of a disciplinary tribunal by the Council if the person charged of improper conduct denies or admits the charge and the charge is subject to the imposition of certain sanctions. The composition of the members of the disciplinary tribunal is such that the interests of both the Council and the person charged will be served.
- 2.18 Clause 22 regulates the disciplinary hearing process. The person charged must be subpoenaed to appear before the disciplinary tribunal. The disciplinary tribunal may retain any book, document or object produced for the duration of the hearing and the law pertaining to privilege applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a trial before a court of law, applies to disciplinary tribunal hearings. Any record of evidence on the charge before the disciplinary tribunal which was presented before any tribunal which investigated an event or conduct relating to the hearing before the disciplinary hearing is admissible without any further evidence if the chairperson of the disciplinary hearing of first instance certifies that the investigation was lawful, reasonable and procedurally fair. If the improper conduct with which the registered person is charged, amounts to an offence to which the person has been convicted by a court of law, a certified copy of the record of the trial and conviction by the court, serves as sufficient proof of the commission of that

offence, unless the conviction has been set aside by a superior court. In order to ensure a fair hearing, a person charged is entitled to legal representation.

- 2.19 Clause 23 regulates the proceedings after the disciplinary tribunal hearing. The disciplinary tribunal must within 30 days decide if the person is guilty of improper conduct and within 14 days after the decision inform the Council of the reasons for its findings and the Council must inform the person accordingly. The person charged must be informed of his or her right to appeal against the findings. If a person is found guilty of improper conduct, the tribunal may also recommend an appropriate sanction or sanctions to the Council and may furthermore award costs. The Council may give effect to such a recommendation of the tribunal and must publish the outcome of a disciplinary hearing in the Council's annual report.
- 2.20 Chapter 6 of the Bill regulates the establishment of an Appeal Board and its functioning. The Appeal Board is established by clause 24(1) and consists of five members appointed by the Minister, namely three registered persons who have been practicing or teaching geomatics for a period of not less than five years and two members of the public of whom at least one person is qualified in law with at least five years experience in the legal profession. In order to enhance the transformation process it is required from the Minister to take the principles of transparency and representivity into account and to have due regard to the geomatics profession principles, the categories and branches of the geomatics profession and the need to ensure and promote gender, disability and other demographic representation.
- 2.21 Clause 25 regulates the meetings, procedures and administration of the Appeal Board. An appeal must be heard by not fewer than three members of the Appeal Board and a decision of the majority of the members present at a meeting constitutes a decision of the Appeal Board. Appeals must be conducted in accordance with the procedures prescribed by the Minister in consultation with the Minister of Justice and Constitutional development. An appeal must be decided within 60 days from the date of lodgment and the appellant and the Council must be informed of the decision within a further 60 days. The Registrar

performs the administrative functions of the Appeal Board and must keep records of the proceedings.

- 2.22 Clause 26 regulates the remuneration and allowances of members of the Appeal Board. Members are paid out of the Council's funds as the Minister, with the concurrence of the Minister of Finance, from time to time determines.
- 2.23 In terms of clause 27, an appeal may be lodged against a finding of a disciplinary tribunal, a sanction imposed, certain decisions of the Council and a rule made by the Council. The Appeal Board may dismiss or uphold an appeal.
- 2.24 Clause 28 provides for an appeal to the High Court if an appeal is dismissed by the Appeal Board. The appellant must give notice to the Appeal Board of an appeal to the High Court. This clause also empowers the Council to appeal to the High Court against any decision of the Appeal Board.
- 2.25 Chapter 7 regulates certain general issues. Clause 29 empowers the Council to determine guideline professional fees after consultation with voluntary associations. A draft of the guideline fees must be published in the *Gazette* for comment by interested persons.
- 2.26 Clause 30 empowers the Minister to make regulations and the Council to make rules, by notice in the *Gazette*. In both instances the draft regulations and rules must be published in the *Gazette* together with a notice calling on interested persons or voluntary associations for comment. The Council may, if circumstances necessitate the immediate publication of a rule, publish the rule without consultation. Any person objecting to such a rule may, however, comment after the publication or appeal to the Appeal Board.
- 2.27 Clause 31 deals with procedures and evidence with regard to the entering of information in the register to be kept and certificates to be signed by the Registrar.

- 2.28 Clause 32 deals with the rectification of errors where the Minister is empowered to authorise anything which is required to be done or performed on or before a specified time or during a specified period has not been done or performed, if the Minister is satisfied that the failure was due to an error or oversight.
- 2.29 Clause 33 provides for liability by determining that the Council, or any member, committee or employee thereof, is not liable in respect of any legal proceedings in relation to an act performed in good faith. This clause also exempts registered persons who in the public interest refuse or fail to perform certain acts endangering the safety or health of the public or fellow employees, from liability.
- 2.30 Clause 34 seeks to empower the Minister to delegate certain powers to the Director-General or any other official in the Department. It also empowers the Council to delegate certain of its powers to a member of the Council, a committee, the chairperson of a committee, the Registrar or any other Council employee.
- 2.31 Clause 35 provides for offences and penalties in line with the provisions of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991). Clause 35(6) specifically makes it an offence for any person who is not registered in terms of the provisions of the Bill, to perform work which is only to be performed by such registered persons.
- 2.32 Clause 36 makes provision for transitional arrangements and determines that the South African Council for Professional and Technical Surveyors continues to exist and may exercise its powers and perform its duties until the date of the first meeting of the Council, on which date the former council ceases to exist. This clause also deals with the transition of the existing categories of surveyors to new categories contemplated in the Bill. Rules made by the council in terms of the Act remain valid until it is replaced by a rule made in accordance with the provisions of the Bill. It furthermore provides for the vesting of rights, obligations, assets and liabilities of the council established in terms of the Act, in the Council envisaged

by the Bill. As mentioned in paragraph 2.4, provision is also made for the Education Advisory Committee which was established under the Act, to continue to exist until the Education and Training Committee has been established in terms of the provisions of the Bill.

2.33 Clause 37 read with Schedules 1 and 2 to the Bill, provides for the repeal and amendment of laws.

2.34 Clause 38 determines that the State is bound by the Act.

2.35 Clause 39 contains the short title and the date of commencement of the Act.

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Copies of the Bill and the Memorandum on the Objects of the Bill can be obtained from :

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