



**Western Cape  
Government**

Environmental Affairs and  
Development Planning



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# **WESTERN CAPE BIODIVERSITY BILL**

**Briefing:**

**Standing Committee on Agriculture, Environmental Affairs & Development Planning**

**15 June 2021**

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## Presentation outline



- **Background**
- **Objects of the Bill**
- **Contents of the Bill**
- **Impact of the Bill**
- **Key stakeholders**

# Background (1)

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- **Biodiversity and protected areas in the Western Cape Province are currently regulated in terms of the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004) (NEM:BA), the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003) (NEM:PAA), the Western Cape Nature Conservation Board Act, 1998 (Act 15 of 1998), and the Nature Conservation Ordinance, 1974 (Ordinance 19 of 1974) (the Ordinance).**
- **In order to seek alignment with national legislative frameworks and to rationalise and modernise provincial legislative frameworks for biodiversity management, a process of legislative reform has been ongoing since 2012.**
- **In April 2014 the Provincial Cabinet granted approval to amalgamate the Draft Western Cape Nature Conservation Board Amendment Bill, 2012, and the Draft Western Cape Environment Conservation Bill, 2013, into one consolidated Bill.**

## Background (2)

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- **A first draft amalgamated Bill was produced by March 2015.**
- **The DEA&DP recognised the need to move beyond amalgamation and to allow for modernisation, alignment and innovation in a framework bill.**
- **CapeNature as the public entity for nature conservation, required urgent review of the Ordinance to align with the objects of the NEM: BA.**
- **The need to respond to the strategic framework of the Provincial Biodiversity Strategy and Action Plan (PBSAP) and to incorporate the Biosphere Reserves Act 2011 and its proposed amendments.**
- **A revised Bill was produced and submitted to Legal Services in March 2016 for vetting.**

## Background (3)

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- **The vetting team (DEA&DP, DoP and CapeNature) concluded a revised draft by December 2017 which was workshopped and circulated for comment to the CapeNature Executive Team and Board and DEA&DP Senior Management.**
- **Further iterations internal to the Department and CapeNature provided for comments which were incorporated into a revised draft Bill.**
- **Provincial cabinet approved the request to publish the Draft Bill in November 2018, subject to State Law Advisor settling the content based on technical review.**
- **Draft WCBB published for comment on 7 May 2019 for 60-day comment period.**
- **Requests for extension to comment period – extension notice published on 5 July, extending comment period to 7 August 2019.**

## Background (4)

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- **Comments on Draft Bill were received from 186 commentators**
- **Amendments were made in response to the comments**
- **Vetting process finalised and draft Bill amendments were translated into Afrikaans and isiXhosa**
- **Bill and the Memo on Objects certified by Legal Services**
- **Cabinet approved introduction into parliament on 1 December 2020**
- **Minister Bredell submitted the Bill to the Speaker on 22 December 2020**
- **Parliamentary language practitioners reviewed and edited Bill**
- **Parliament published for comment: 10 May to 7 June 2021**
- **Referred to the Standing Committee on 9 June 2021.**

# Objects of the Bill (1)

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- **The Western Cape Biodiversity Bill (the Bill) is primarily intended to replace the Western Cape Nature Conservation Board Act, 1998, and the Ordinance. Both statutes predate the Constitution of the Republic of South Africa, 1996 (the Constitution), and they do not adequately provide mechanisms which can conserve and manage biodiversity and ecological infrastructure to ensure that ecosystem services support an inclusive and resilient economy.**
- **Alignment to super-ordinate legal frameworks including NEM:BA and NEM:PAA and to enable robust and dynamic framework to respond to threats to biodiversity.**
- **The Bill incorporates a rationalised approach to the Western Cape Biosphere Reserves Act, 2011 (Act 6 of 2011), and its proposed amendments, which will also enable the repeal of this legislation.**
- **The Bill will also repeal the assigned provisions of the Mountain Catchment Areas Act, 1970 (Act 63 of 1970), and thereby modernise the protection of mountain catchment areas, which themselves house important ecosystems and deliver essential water provisioning services to the Province.**

# Objects of the Bill (2)

The objectives of the Bill are to—

- 1. give effect to the obligation of the state in terms of national legislation to act as trustee in relation to the environment;**
- 2. give effect to section 81(m) of the Western Cape Constitution, 1997 (Act 1 of 1998), to protect and conserve the environment in the Province, including its unique biodiversity, for the benefit of present and future generations;**
- 3. ensure the long-term ecological sustainability and resilience of biodiversity, ecosystems, ecosystem services and ecological infrastructure through implementation of the principles of ecological sustainability contemplated in clause 6 of the Bill and the protection of priority biodiversity and ecological infrastructure;**
- 4. ensure human well-being and the long-term resilience of society and the economy through the conservation of protected areas, biodiversity, ecosystems, ecosystem services and ecological infrastructure;**
- 5. enable reasonable and sustainable access to benefits and opportunities emanating from the conservation of protected areas, biodiversity, ecosystems, ecosystem services and ecological infrastructure;**
- 6. establish institutional structures and organisational capacity for the effective discharging of the conservation and management of biodiversity and nature in the Province;**



# Objects of the Bill (3)

The objectives of the Bill are to— ...

- 7. promote consultation, co-operation, integrated planning, decision-making and management in support of the conservation and sustainable use of biodiversity and ecosystem services in the Province;**
- 8. promote systematic biodiversity planning and the attainment of the biodiversity targets for conservation set in the Biodiversity Spatial Plan and the Provincial Protected Areas Expansion Strategy;**
- 9. regulate certain activities to be undertaken in a manner that enhances and protects the integrity and health of the environment;**
- 10. subject to section 231 of the Constitution, implement and give effect to international agreements and best practices pertaining to the environment and conservation of biodiversity;**
- 11. enable the financial and economic sustainability of the relevant institutions responsible for the conservation and management of biodiversity and nature in the Province; and**
- 12. enable and develop an equitable and sustainable biodiversity economy in the Province, including the promotion and development of eco-tourism in areas under the control of CapeNature.**

# Contents of the Bill

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## **TITLE: WESTERN CAPE BIODIVERSITY BILL**

**Long title: To provide for the framework and institutions for nature conservation and the protection, management and sustainable use of biodiversity and ecosystems in the Province; and for matters incidental thereto.**

## **CHAPTER 1: INTERPRETATION, OBJECTIVES AND APPLICATION**

## **CHAPTER 2: DUTIES AND PRINCIPLES**

## **CHAPTER 3: ADMINISTRATION**

## **CHAPTER 4: CAPENATURE**

### **PART 1: ESTABLISHMENT AND FUNCTIONS OF CAPENATURE**

### **PART 2: GOVERNING BOARD OF CAPENATURE**

### **PART 3: OPERATING PROCEDURES OF BOARD**

### **PART 4: ADMINISTRATION OF CAPENATURE**

### **PART 5: FINANCIAL MATTERS**

### **PART 6: DISSOLUTION OF BOARD OR CAPENATURE**

# Contents of the Bill (2)

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**CHAPTER 5 BIODIVERSITY PLANNING AND MONITORING**

**CHAPTER 6: PROTECTED AREAS, MOUNTAIN CATCHMENT AREAS, BIODIVERSITY STEWARDSHIP AND BIOSPHERE RESERVES**

**PART 1: EXPANSION OF PROTECTED AREAS**

**PART 2: MOUNTAIN CATCHMENT AREAS**

**PART 3: BIODIVERSITY STEWARDSHIP**

**PART 4: BIOSPHERE RESERVES**

**CHAPTER 7: PROTECTION OF ECOSYSTEMS, ECOLOGICAL INFRASTRUCTURE AND SPECIES**

**CHAPTER 8: AUTHORISATION**

# Contents of the Bill (3)

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## **CHAPTER 9: COMPLIANCE AND ENFORCEMENT**

**PART 1: COMPLIANCE AND ENFORCEMENT OFFICIALS AND JUDICIAL MATTERS**

**PART 2 :ADMINISTRATIVE ENFORCEMENT MECHANISMS AND PENALTIES**

## **CHAPTER 10: OFFENCES AND PENALTIES**

## **CHAPTER 11: APPEALS**

## **CHAPTER 12: GENERAL AND TRANSITIONAL PROVISIONS**

## **SCHEDULE: REPEAL OF LAWS**

# CHAPTER 1: INTERPRETATION, OBJECTIVES AND APPLICATION OF ACT

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- **Clause 1 provides for definitions of words and terms used in the Bill.**
- **Clause 2 provides for the objectives of the Bill.**
- **Clause 3 provides for the application of the Bill.**
- **Clause 4 provides for provisions to resolve conflict between the provisions of the Bill and other legislation.**

# CHAPTER 2: DUTIES AND PRINCIPLES

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- **Clause 5 provides for the duties of the state in managing biodiversity.**
- **Clause 6 provides for principles of ecological sustainability that must be applied by organs of state when making decisions or taking actions that may affect biodiversity within the Province.**

# Principles of ecological sustainability

6. Every organ of state whose decisions or actions may affect biodiversity or the environment in the Province must apply the principles of ecological sustainability, which are to—

- (a) take account of the benefits and intrinsic and use value of natural resources and ecosystems;
- (b) *ensure that biodiversity and ecosystems are protected, maintained and rehabilitated in a manner that enables the attainment of biodiversity targets for conservation set by the Province;*
- (c) *promote the resilience of biodiversity, ecosystems and ecological infrastructure;*
- (d) *ensure that development does not undermine the long-term persistence and resilience of biodiversity, ecosystems and ecological infrastructure;*

# Principles of ecological sustainability

6. Every organ of state whose decisions or actions may affect biodiversity or the environment in the Province must apply the principles of ecological sustainability, which are to—

...

- (e) ensure that the conservation and resilience of biodiversity for the benefit of present and future generations are given priority over the interests of any member or members of any community;*
- (f) avoid or, where they cannot altogether be avoided, minimise and remedy the disturbance of ecosystems and loss of biological diversity;*
- (g) ensure that indigenous biological resources are used in a manner that is ecologically sustainable, and takes into account the well-being of any faunal biological resource involved; and*
- (h) ensure that a risk-averse and cautious approach is applied, so that where there is insufficient evidence that an activity will not cause a long-term adverse effect, it should be avoided.*



# CHAPTER 3: ADMINISTRATION

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- **Clause 7 provides for the functions of the Provincial Minister, which include exercising oversight over the Head of Department, CapeNature and the Board of CapeNature; developing and implementing provincial policy; and periodically evaluating the effectiveness of the implementation and enforcement of the Bill.**
- **Clause 8 provides for the duties of the Head of Department, which include advising the Provincial Minister, after consultation with CapeNature, on matters of law, subordinate legislation and provincial policy regarding nature conservation, biodiversity, and coastal and estuarine management; coordinating provincial strategies as approved by the Provincial Minister for nature conservation, biodiversity, and coastal and estuarine management; and promoting and developing the biodiversity economy. Furthermore, the Head of Department has duties that he or she must fulfil in terms of clause 8, which are consistent with his or her duties as the accounting officer of the Department.**

# CHAPTER 4: CAPENATURE

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This chapter is divided into the following six parts:

- **Part 1: Establishment, functions and powers of CapeNature (clauses 9 to 11), clause 9 providing for the continued existence of the current Western Cape Nature Conservation Board and for it to be known as “CapeNature”.**
- **Part 2: Composition and membership of the Board (clauses 12 to 22).**
- **Part 3: Operating procedures of the Board (clauses 23 to 26).**
- **Part 4: Administration of CapeNature (clause 27).**
- **Part 5: Financial matters (clauses 28 to 31).**
- **Part 6: Dissolution of the Board or CapeNature (clauses 32 to 33).**

# CHAPTER 5: BIODIVERSITY PLANNING AND MONITORING

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- **Clause 34 provides for the publication of the Biodiversity Spatial Plan.**
- **Clause 35 provides for the purpose of the Biodiversity Spatial Plan, including the identification of biodiversity priority areas.**
- **Clause 36 provides for the contents of the Biodiversity Spatial Plan.**
- **Clause 37 provides for the use and application of the Biodiversity Spatial Plan, including its alignment with other plans provided for in national and provincial legislation.**
- **Clause 38 provides for a review of the Biodiversity Spatial Plan every five years.**

## CHAPTER 6: PROTECTED AREAS, MOUNTAIN CATCHMENT AREAS, BIODIVERSITY STEWARDSHIP AND BIOSPHERE RESERVES

- Chapter 6 is divided into four parts, which cover four mechanisms which may provide protection to various areas. In this chapter provisions of outdated legislation, which this Bill will repeal, are incorporated into the Bill, namely the Mountain Catchment Areas Act, 1970, and the Western Cape Biosphere Reserves Act, 2011.
- Part 1: Expansion of protected areas - Clause 39 provides for the Provincial Protected Areas Expansion Strategy, which is the strategy that will be drafted, adopted and published in order to promote systematic biodiversity planning and the attainment of the biodiversity targets for conservation set out in the Biodiversity Spatial Plan and the Provincial Protected Areas Expansion Strategy.
- Part 2: Mountain catchment areas - Clauses 40 and 41 provide for the declaration and management of mountain catchment areas where such declaration is required for sustaining the provision of ecosystem services, particularly water provisioning.
- Part 3: Biodiversity stewardship - Clause 42 provides for biodiversity stewardship, whereby a landowner may enter into a biodiversity stewardship agreement, which serves to further the objectives of the Provincial Protected Areas Expansion Strategy.
- Part 4: Biosphere reserves - Clauses 43 to 46 provide for the application for UNESCO designation of biosphere reserves, the management of biosphere reserves, the Biosphere Reserve Framework Plan and the funding of such biosphere reserves.

## CHAPTER 7: PROTECTION OF ECOSYSTEMS, ECOLOGICAL INFRASTRUCTURE AND SPECIES

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- **Clause 47 empowers the Provincial Minister to identify an ecosystem or part thereof or area of ecological infrastructure as in need of special protection to ensure the maintenance of its ecological integrity or the delivery of ecosystem services.**
- **Clause 48 empowers the Provincial Minister to prescribe requirements and publish guidelines for biodiversity offsets or other mitigation measures in the Province.**
- **Clause 49 provides for the publication of restricted activities or restricted methods in respect of any listed species or any category of listed species.**

# CHAPTER 8: AUTHORISATION

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- **Clauses 50 to 55 provide for the application for authorisation, the decisions on such application, and the review, suspension, withdrawal and amendment of an authorisation.**

# CHAPTER 9: COMPLIANCE AND ENFORCEMENT

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- Chapter 9 is divided into two parts:
- Part 1: Compliance and enforcement officials and judicial matters - Clauses 56 to 68 provide for the designation of nature conservation officers, nature conservation rangers and honorary nature conservation officers and sets out their respective mandates, functions and powers. The powers provided in this chapter are both necessary and appropriate for the effective combating of crimes relating to biodiversity.
- Part 2: Administrative enforcement mechanisms and penalties - Clauses 69 to 71 contain an administrative enforcement tool to supplement the criminal enforcement tools which may be used in terms of this Bill.

# CHAPTER 10: OFFENCES AND PENALTIES

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- **Clause 72 provides for offences that are categorised according to degree of severity.**
- **Clause 73 provides for maximum penalties for each category of offence that will enable a court to impose an appropriate sentence on offenders in terms of the Bill.**
- **Clause 74 provides for the cancellation of an authorisation if a person is convicted of an offence.**
- **Clause 75 provides for the award of costs.**
- **Clause 76 provides for the forfeiture of any specimen or item involved in an offence and that was seized in terms of the Bill.**



# CHAPTER 11: APPEALS

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- **Clause 77 provides for appeals against decisions by CapeNature officials.**
- **Clause 78 provides for appeals against decisions made by the Chief Executive Officer of CapeNature or a person acting under delegation by the Provincial Minister.**

# CHAPTER 12: GENERAL AND TRANSITIONAL PROVISIONS


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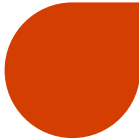
- **Cluses 79 to 89 provide for general and transitional provisions for the effective implementation of the Bill.**
- **Clause 81 provides for regulations to be made by the Provincial Minister to enable the practical implementation of the Bill.**

# SCHEDULE: REPEALS

Number and year	Title	Extent of repeal
21 of 1935	Sea Shore Act, 1935	The whole
63 of 1970	Mountain Catchment Areas Act, 1970	The whole in so far as it has been assigned to the Province by Proclamation R28 of 1995
19 of 1974	Nature Conservation Ordinance, 1974	The whole
3 of 1982	Nature Reserves Validation Ordinance, 1982	The whole
15 of 1998	Western Cape Nature Conservation Board Act, 1998	The whole
8 of 1999	Western Cape Nature and Environmental Conservation Ordinance Amendment Act, 1999	The whole
3 of 2000	Western Cape Nature Conservation Laws Amendment Act, 2000	The whole, excluding section 2 and Schedule 2.
6 of 2011	Western Cape Biosphere Reserves Act, 2011	The whole

# Impacts of the Bill (1)

-  **Articulation** with SPLUMA, WC LUPA and NEM: ICMA and NEM:BA
-  Value-based, **resilience-focused**, “future-proofed” framework to proactively address threats to biodiversity
-  **Alignment** to international and national frameworks but ability to enable advantages of **subsidiarity**

-  **Enabling** biodiversity, green & blue economies
-  **Rationalisation of regulation** for sustainable use industries (e.g., harvesting)
-  Provide for **enabling frameworks** for landowners and other authorities to manage biodiversity in **productive and urban landscapes**

IDEA

# Key affected stakeholders (1)

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- **Global community, people of South Africa and the Western Cape**
- **Government departments and entities at all spheres, specifically local government**
- **Regulated communities entrained for sustainable use**
- **Natural resource user groups**
- **Agricultural sector**
- **Non-government organisations and community organisations**
- **Landscape initiatives, e.g., Biosphere Reserves (five in the WC)**
- **Private land owners and partners in the landscape.**

# We are the ones we have been waiting for!



Western Cape  
Government

BETTER TOGETHER.

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**Enkosi**

**Thank You**

**Dankie**