

REPUBLIC OF SOUTH AFRICA

HIGHER EDUCATION AND TRAINING LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 35401 of 30 May 2012)
(The English text is the official text of the Bill)*

(MINISTER OF HIGHER EDUCATION AND TRAINING)

[B23—2012]

ISBN 978-1-77037-980-0

No. of copies printed 1 800

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 Higher Education Act, 1997, so as to provide afresh for the establishment of a national institute for higher education; to extend the functions of a national institute for higher education; to provide for the appointment of an administrator for a national institute for higher education; and to provide for the closure of a national institute for higher education; to amend the National Qualifications Framework Act, 2008, so as to change the date on which the annual report of the South African Qualifications Authority must be submitted to the Minister; and to provide for matters connected therewith.

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

Substitution of section 38A of Act 101 of 1997, as inserted by section 3 of Act 38 of 2003

1. The following section is hereby substituted for section 38A of the Higher Education Act, 1997: 5

“Establishment of national institute for higher education

38A. (1) The Minister may, after consultation with the Council of Higher Education, establish a national institute for higher education as a juristic person [in Mpumalanga and in the Northern Cape] with a specific scope 10 or application.

(2) A national institute for higher education is managed, governed and administered by a board.

(3) If the Minister establishes a national institute for higher education in terms of subsection (1), the Minister must publish particulars of the establishment of the national institute for higher education, its board and its specific scope or application in the Government Gazette.”. 15

Amendment of section 38B of Act 101 of 1997, as inserted by section 3 of Act 38 of 2003

2. Section 38B of the Higher Education Act, 1997, is hereby amended by the substitution for paragraphs (a), (b) and (c) of the following paragraphs, respectively: 20

- “(a) coordinate the national or regional provision of higher education;
 (b) ensure the coherent provision of higher education through programme collaboration between [public] national institutes of higher education [institutions operating in the province in question]; and
 (c) advise the Minister on matters relating to the coordination of the provision of higher education [in the region in question];”.

Insertion of sections 38J, 38K, 38L, 38M, 38N and 38O in Act 101 of 1997

3. The following sections are hereby inserted in the Higher Education and Training Act, 1997, after section 38I:

“Intervention by Minister

- 38J.** (1) The Minister may issue a directive to the board of a national institute of higher education to take such action specified by the Minister if the national institute of higher education—
- (a) is in financial difficulty or is being otherwise mismanaged;
 - (b) is unable to perform its functions effectively due to dissension among board members;
 - (c) has acted unfairly or in a discriminatory or an inequitable way towards a person to whom it owes a duty under this Act;
 - (d) has failed to comply with any law;
 - (e) has failed to comply with any directive given by the Minister under this Act; or
 - (f) has obstructed the Minister or a person authorised by the Minister in performing a function in terms of this Act.
- (2) A directive contemplated in subsection (1) must state—
- (a) the nature of the deficiency;
 - (b) the steps which must be taken to remedy the situation; and
 - (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.
- (3) Before making a decision under subsection (1) the Minister must, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2002)—
- (a) give notice to the board of the intention to issue a directive;
 - (b) give the board a reasonable opportunity to make representations; and
 - (c) consider the representations contemplated in paragraph (b).
- (4) (a) If the board fails to comply with the directive within the stated period, the Minister must dissolve the board and appoint an administrator to take over the functions of the board.
- (b) For the purposes of paragraph (a), sections 38K, 38L and 38M apply with the changes required by the context.
- (5) If the Minister appoints an administrator in terms of subsection (4), the administrator may perform all the functions of the board, and an employee of the national institute for higher education in question must comply with a directive given by the administrator.
- (6) The costs associated with the appointment of an administrator shall be for the account of the national institute for higher education in question.

Appointment of administrator

- 38K.** (1) Notwithstanding any other provision of this Act, the Minister may, after consultation with the board of a national institute of higher education, if practicable, appoint a person as administrator to take over the management, governance and administration of the national institute of higher education and to perform the functions of the national institute of higher education, if any one of or if any combination of or if all of the following circumstances occur:
- (a) An audit of the financial records of the national institute for higher education or a report by a Ministerial Committee reveals financial or other maladministration of a serious nature or the serious undermining

- of the effective functioning of the national institute of higher education;
- (b) any other circumstances arising that reveal financial or other maladministration of a serious nature or the serious undermining of the effective functioning of the national institute of higher education; 5
- or
- (c) the board of the national institute of higher education requests such appointment.
- (2) The Minister may only act in terms of subsection (1)(a) or (b) if the appointment of an administrator is in the interest of the national institute of higher education in question and of higher education and training in an open and democratic society. 10
- (3) (a) The Minister appoints an administrator for such period as may be determined by the Minister, but such period may not exceed two years.
- (b) The Minister may extend the period contemplated in paragraph (a) 15
once for a period not exceeding six months.

Assistance to administrator

38L. An administrator appointed under section 38K may, with the approval of the Minister, appoint any other person with suitable knowledge and experience to assist him or her in the performance of his or her functions. 20

Remuneration and allowances

38M. The Minister, with the approval of the Minister of Finance, may determine the remuneration and allowances to be paid to the administrator and to any other person appointed in terms of section 38L. 25

Dissolution of board

38N. The board is dissolved from the date on which the Minister appoints the administrator in terms of section 38K.

Disestablishment of national institute for higher education

38O. (1) The Minister may, after consultation with the Council of Higher Education and by notice in the *Gazette*, disestablish any national institute of higher education.”. 30

Amendment of section 13 of Act 67 of 2008

4. Section 13 of the National Qualifications Framework Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection: 35
- “(2) The SAQA must submit, on or before [30 June] 31 August in each year, to the Minister an annual report which includes the financial statements and audit reports.”.

Short title

5. This Act is called the Higher Education and Training Laws Amendment Act, 2012. 40

MEMORANDUM ON THE OBJECTS OF THE HIGHER EDUCATION AND TRAINING LAWS AMENDMENT BILL, 2012

1. MAIN OBJECTS OF BILL

- 1.1 The Bill seeks to amend the Higher Education Act, 1997 (Act No.101 of 1997), by extending the powers of the Minister to establish national institutes for higher education. At present the Higher Education Act, 1997, allows the Minister to establish national institutes for higher education in Mpumalanga and the Northern Cape. In terms of the proposal in the Bill, the Minister may establish an institute only after consultation with the Council for Higher Education. An institute must be established with a specific scope or application and the Minister must publish particulars of the establishment in the *Gazette*. The Bill also seeks to empower the Minister to intervene when an institute is financially mismanaged or unable to perform its functions. The Bill proposes the appointment of an administrator to take over the functions of an institute if necessary and the dissolution of the board of the institute if an administrator is appointed. The Bill lastly seeks to empower the Minister to disestablish an institute after consultation with the Council for Higher Education and by notice in the *Gazette*.
- 1.2 The Bill also seeks to amend the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), by changing the date on which the annual report of the South African Qualifications Authority must be submitted to the Minister. The new date will be 31 August in each year and will therefore be in line with the prescripts of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

2. FINANCIAL IMPLICATIONS FOR STATE

None.

3. CONSULTATION

The Bill was published in *Gazette* No. 35113, Notice No. 181, of 2 March 2012, and all interested bodies, persons, stakeholders and the public were invited to submit comments on the Bill. Several comments were received and were accommodated in the Bill. The following stakeholders submitted comment: South African Qualifications Authority and the Office of the Premier of the Western Cape.

4. PARLIAMENTARY PROCEDURE

- 4.1 The State Law Advisers and the Department of Higher Education and Training are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-77037-980-0