

REPUBLIC OF SOUTH AFRICA

---

# HIGHER EDUCATION AMENDMENT BILL

---

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 25226 of 21 July 2003) (The English text is the official text of the Bill)*

---

(MINISTER OF EDUCATION)

[B 36—2003]

---

REPUBLIEK VAN SUID-AFRIKA

---

# WYSIGINGSWETSONTWERP OP HOËR ONDERWYS

---

*(Soos ingedien by die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No 25226 van 21 Julie 2003 gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

---

(MINISTER VAN ONDERWYS)

[W 36—2003]

ISBN 0 621 33854 0

**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 for the regular reporting by the Council on Higher Education on the state of higher education; to provide for consequential changes arising out of the incorporation of public higher education institutions in relation to labour and student matters; to provide for the establishment of a National Institute for Higher Education in Mpumalanga and a National Institute for Higher Education in the Northern Cape to coordinate the regional provision of higher education; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 5 of Act 101 of 1997**

**1.** Section 5 of the Higher Education Act, 1997 (hereinafter referred to as “the principal Act”), is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph—

“(d) publish information regarding developments in higher education, including [an annual report] reports on the state of higher education, on a regular basis;”.

**Amendment of section 24 of Act 101 of 1997, as amended by section 6 of Act 63 of 2002**

**2.** Section 24 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection—

“(3) Sections 22(2) to (6) and 23(2) to (2H), with the changes required by the context, apply to an incorporation referred to in subsection (1).”.

**Insertion of sections 38A, 38B, 38C, 38D, 38E, 38F, 38G, 38H and 38I in Act 101 of 1997**

**3.** The following sections are hereby inserted in the principal Act after section 38:

**“Establishment of national institute for higher education**

**38A.** (1) The Minister may establish a national institute for higher education as a juristic person in Mpumalanga and in the Northern Cape.

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

### Functions of national institute for higher education

- 38B.** The functions of a national institute for higher education are to—
- (a) coordinate the regional provision of higher education;
  - (b) ensure the coherent provision of higher education through programme collaboration between public higher education institutions operating in the province in question;
  - (c) advise the Minister on matters relating to the coordination of the provision of higher education in the region in question; and
  - (d) perform any other duty which may be prescribed.

### Composition of board 10

- 38C.** (1) The board of a national institute for higher education consists of—
- (a) a chairperson; and
  - (b) not more than 10 ordinary members.
- (2) The board may co-opt persons to the board for a period determined by the board.
- (3) The chairperson and members contemplated in subsection (1) are appointed by the Minister from nominations received in the manner prescribed for that national institute for higher education.

### Term of office of chairperson and members 20

**38D.** The chairperson and an appointed member of the board hold office for a renewable period of four years.

### Vacation of office

- 38E.** A person ceases to be a member of the board if he or she—
- (a) resigns by giving written notice to the chairperson or, in the case of the chairperson, to the Minister;
  - (b) is absent from three consecutive meetings of the board without the leave of the chairperson;
  - (c) is declared insolvent, is removed from an office of trust by a court of law or is convicted of an offence involving dishonesty or an offence for which the sentence is imprisonment without the option of a fine; or
  - (d) is declared unfit to attend to his or her personal affairs by a court of law.

### Filling of vacancies

**38F.** (1) In the event of a vacancy occurring in the office, such vacancy is filled by the Minister in terms of section 38C(3).

(2) Any person appointed to fill a vacancy holds office for the unexpired portion of the vacating member's term.

### Funds of national institute for higher education

- 38G.** (1) The funds of a national institute for higher education consist of—
- (a) money appropriated by Parliament;
  - (b) donations or contributions;
  - (c) interest; and
  - (d) any other income received.
- (2) The board—

- (a) must keep a record of all—
- (i) funds received and spent;
  - (ii) assets and liabilities; and
  - (iii) financial transactions;
- (b) must, in each financial year, submit to the Minister, at the time and in the manner which the Minister may determine, a statement of estimated income and expenditure for the ensuing financial year for the Minister's approval, granted with the concurrence of the Minister of Finance; 5
- (c) may in any financial year submit an adjusted statement of its estimated income and expenditure to the Minister for approval, granted with the concurrence of the Minister of Finance; and 10
- (d) may not incur any expenses which exceed the total amount approved in terms of paragraphs (b) and (c). 15
- (3) If the Minister does not approve of the board's statement of estimated income and expenditure or adjusted statement of estimated income and expenditure, it must submit a revised statement to him or her within a specified period. 15
- (4) (a) The money contemplated in subsection (1) must be used in accordance with the approved statement referred to in subsection (2). 20
- (b) Any balance not spent within the specified financial year must be carried over as a credit to the following financial year.
- (5) Subject to subsection (4), the board may invest any portion of its funds in such manner as the Minister, with the concurrence of the Minister of Finance, may approve. 25

#### **Annual audit**

38H. The books of account and financial statements of a national institute for higher education must be audited by the Auditor-General at the end of each financial year.

#### **Annual report**

38I. The board must, within three months after the end of each financial year, submit a report to the Minister which includes a financial statement on the performance of its functions during the preceding financial year."

#### **Short title**

4. This Act is called the Higher Education Amendment Act, 2003. 35

## **MEMORANDUM ON THE OBJECTS OF THE HIGHER EDUCATION AMENDMENT BILL, 2003**

### **1. INTRODUCTION**

This Bill seeks to amend the Higher Education Act, 1997 (Act No. 101 of 1997).

### **2. REASONS FOR AND SUBSTANCE OF BILL**

#### **Clause 1: New time framework for reporting on state of higher education**

The Council on Higher Education (CHE) requested, at its meeting of 9 June 2003, that it be allowed to report on the state of higher education once every two years, given the onerous scope and scale of this undertaking. Nevertheless, since the CHE is a public entity, it must submit an annual report to the Minister on the performance of its functions during the past financial year, within six months after the end of each financial year.

Given the nature of the work involved in preparing the annual report on the state of higher education, an unrealistic burden is placed on the CHE. It is not useful to attempt an annual review of the system, especially in the context of difficulties in obtaining reliable data. A new rigorous analysis will be possible with the proposed time framework.

#### **Clause 2: Consequential issues as a result of incorporation of public higher education institutions in relation to labour and student matters**

It is necessary to clarify and bring legal certainty to incorporation-related issues that were introduced into the Act through the Higher Education Amendment Act, 2002. Such issues concern the transfer of staff, students and academic programmes to new institutions resulting from incorporations. This Bill seeks to extend these provisions to the incorporation of subdivisions of higher education institutions into existing universities or technikons. These provisions include—

- (a) transitional arrangements relating to, for example, the academic programmes offered by institutions prior to an incorporation. Provision is made to enable these programmes to be offered by the new institution under the same rules applicable to the old institution until such programmes are amended by the council which incorporates the subdivision of another higher education institution;
- (b) issues on labour relations that pose a threat of legal uncertainty with regard to the applicability of section 197 of the Labour Relations Act, 1995 (LRA), in relation to the Higher Education Act. The amendment seeks to make it clear that all contracts of employment will automatically be transferred by operation of the law to the new institution. This approach is in line with section 197 of the LRA.

#### **Clause 3: Establishment of National Institute for Higher Education in Mpumalanga and Northern Cape**

Provision is made for the establishment of National Institutes for Higher Education in Mpumalanga and the Northern Cape. The institutes are intended to serve as the administrative and governance hubs, ensuring the coherent provision of higher education in response to regional needs. This is to be met through the offering of academic programmes in higher education institutions within the framework of the new institutes.

Cabinet supported the establishment of the National Institutes for Higher Education in Mpumalanga and the Northern Cape as part of the restructuring of higher education. The amendment gives effect to this decision. The institutes are not intended to offer their own academic programmes, but will provide for the coordination of higher education in these two provinces, including the sharing of infrastructure and resources.

The new clauses also provide for the establishment of a board to manage, govern and administer each national institute for higher education and for the funding of a national institute for higher education.

**3. CONSULTATION**

An earlier version of the Bill was published for public comment. The advice of the Council on Higher Education was obtained.

**4. FINANCIAL IMPLICATIONS FOR STATE**

None.

**5. PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Education are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.