

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. 20449 of 8 September 1999) (The English text is the official text of the Bill)

(MINISTER OF EDUCATION)

[B 45—99]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP HOER ONDERWYS

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75- Wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No. 20449 van 8 September 1999 gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)

(MINISTER VAN ONDERWYS)

[w 45—99]

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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 substitute a definition; to extend the period within which the CHE must submit a report to the Minister; to provide that the principal is the chairperson of the senate and the registrar of a public higher education institution appointed by the council is the secretary to the council; to provide that the chairperson of the council must be elected from the external members of the council; to empower a council to discriminate fairly between foreign students who are not permanent residents and students who are citizens or permanent residents with regard to certain matters; to empower the Minister to appoint an administrator for a public higher education institution where there is financial or other maladministration of a serious nature; to designate the Director-General as the registrar of private higher education institutions and to empower the Minister to designate an assistant for the registrar; to extend the requirements to be determined by the registrar for the registration of private higher education institutions; to provide for the delegation of powers and assignment of duties by the principal of a higher education institution and the CHE; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 101 of 1997

1. Section 1 of the Higher Education Act, 1997 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of “registrar” of the following definition:

“ ‘registrar’ means the registrar [**designated by the Director-General**] referred to in [**terms of**] section 50(1);”;

Amendment of section 19 of Act 101 of 1997

2. Section 19 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The CHE must, within [**three**] six months after the end of each financial year, submit a report to the Minister on the performance of its functions during the past financial year.”.

Amendment of section 26 of Act 101 of 1997

3. Section 26 of the principal Act is hereby amended—

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(a) by the substitution for subsection (3) of the following subsection:
 “(3) [A] Subject to subsection (4) a structure referred to in subsection (2)(a),(b),(e),(f) and (g) must elect a chairperson, vice-chairperson and other office-bearers from among its members in the manner determined by the institutional statute or an Act of Parliament.”; and

(b) by the addition of the following subsection:
 “(4) Notwithstanding the provisions of subsection (3)—
 (a) the principal is the chairperson of the senate;
 (b) the registrar of the public higher education institution appointed by the council, is the secretary to the council; and
 (c) the chairperson of the council may not be elected from members contemplated in section 27(4)(a), (b), (d), (e),(f) and (g).”

Amendment of section 39 of Act 101 of 1997

4. Section 39 of the principal Act is hereby amended by the addition of the following subsection:
 “(4) The policy referred to in subsection (1) may discriminate in a fair manner between foreign students who are not permanent residents of the Republic and students who are citizens or permanent residents of the Republic.”

Amendment of section 40 of Act 101 of 1997

5. Section 40 of the principal Act is hereby amended by the substitution for paragraph (g) of the following paragraph:
 “(g) money payable by students for higher education programmed provided by the institution, but the council may discriminate in a fair manner between foreign students who are not permanent residents of the Republic and students who are citizens or permanent residents of the Republic when the amount payable is determined;”

Insertion of section 41A in Act 101 of 1997

6. The principal Act is hereby amended by the insertion after section 41 of the following section:

“Appointment of administrator

41A. (1) If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other maladministration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister may, notwithstanding any other provision of this Act or a private Act of Parliament, appoint a person as administrator to perform the functions relating to governance or management on behalf of the institution for a period not exceeding six months.

(2) The Minister may extend the period referred to in subsection (1) once for a further period not exceeding six months.”

Amendment of section 50 of Act 101 of 1997

7. Section 50 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) The Director-General [must designate an employee of the Department of Education as] is the registrar of private higher education institutions [to perform the functions of registrar in terms of this Act].

(2) The [Director-General] Minister may designate any other employee of the Department of Education to assist the registrar in the performance of his or her functions in terms of this Act.”

Amendment of section 53 of Act 101 of 1997

8. Section 53 of the principal Act is hereby amended by the substitution in subsection (1)(b) for subparagraph (iii) of the following subparagraph:

“(iii) complies with any other reasonable requirement determined by the registrar which may include a requirement that none of the words or expressions “university”, “technikon” or “higher education college” may appear in the name of an applicant.”. 5

Amendment of section 68 of Act 101 of 1997

9. Section 68 of the principal Act is hereby amended by the addition of the following subsections: 10

“(3) The principal of a public higher education institution may, on such conditions as he or she may determine, delegate any of his or her powers under this Act or any of those delegated to him or her in terms of subsection (2), and assign any of his or her duties in terms of this Act or any of those assigned to him or her in terms of subsection (2), to any other employee of the public higher education institution concerned. 15

(4) The CHE may, on such conditions as it may determine, delegate any of its powers under this Act or any of those delegated to it in terms of subsection (1), and assign any of its duties in terms of this Act or any of those assigned to it in terms of subsection (1). to any of its committees or employees.”. 20

Short title

10. This Act is the Higher Education Amendment Act, 1999

**MEMORANDUM ON THE OBJECTS OF THE HIGHER
EDUCATION AMENDMENT BILL, 1999**

The Higher Education Act was promulgated on 19 December 1997. In terms of section 72(4) of the said Act. "Councils, *senates and forums of technikons and universities which existed at the commencement of the Act continue to exist and perform the functions which they performed prior to such commencement, but must comply with the provisions of the Act within 18 months after the commencement of the Act.* " In the process of complying with the above provision, numerous requests have been received by the Ministry of Education to amend the Act to facilitate the smooth functioning and administration of public higher education institutions. Essentially, the issues raised are not major, e.g. to provide that the chairperson of the senate is the principal; to provide that the secretary to the council is the registrar; to provide that the chairperson of the council must be elected from the external members of the council; and to provide the power of delegation to the principal and the CHE.

The amendments to sections 39 and 40 are to empower an institutional council to discriminate fairly between foreign students who are not permanent residents and students who are citizens or permanent residents on matters relating to fee structures. It is common practice throughout the world to apply different fee structures to citizens and non-permanent residents. Although this practice is widespread in South African higher education institutions, there is legal opinion to the effect that it is unconstitutional if it is not provided for in a law of general application.

During the past year an appalling lack of management capacity, especially financial management capacity, has come to light at some of the public higher education institutions. The councils and management of these higher education institutions are not complying with their fiduciary responsibilities. Given the high cost of higher education and the fact that it is mainly funded through public resources, a need has been identified for direct intervention by the Minister to address serious financial or other maladministration at an institution or when the effective functioning of an institution is seriously undermined.

Section 50 is amended to provide that the Director-General is the registrar. This amendment will assist in removing any misunderstanding as to who is the proper administrative authority exercising the functions prescribed for the registrar in terms of the Act.

Section 53 is amended to ensure that private higher education institutions do not abuse the terms "university", "technikon" or "higher education college" and in so doing mislead the public about the nature and quality of programmed offered at such private higher education institutions.

A discrepancy between universities and technikons has been revealed in terms of the authority of a principal to delegate his or her functions. A principal at a university has, in terms of the private Act of its institution, the authority to delegate. As technikons do not have private Acts, principals of technikons do not have this authority. Section 68 is amended to give such principals the authority to delegate. A need for the CHE to delegate has also been identified to ensure effective and efficient exercise of its functions.

PARLIAMENTARY PROCEDURE

The Department and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with 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 as it deals with higher or tertiary education.

FINANCIAL IMPLICATIONS FOR STATE

The appointment of an administrator at a public higher education institution where financial or other maladministration of a serious nature has been identified or where the effective functioning of the institution is seriously undermined will have financial

implications. However, by addressing these problems, public accountability will be improved.

PERSONS/BODIES CONSULTED

The Bill has been published for public comment. Consultations have also taken place with the Council on Higher Education, as is required by the Higher Education Act. A meeting has also been held with the Department of State Expenditure and the Department of Finance.

OFFICIAL TEXT

The English text is the official text and the translated Afrikaans version thereof is attached hereto.