

REPUBLIC OF SOUTH AFRICA

NATIONAL STUDENT FINANCIAL AID SCHEME 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 48—99]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE " NASIONALE SKEMA VIR FINANSIËLE BYSTAND VIR *, STUDENTE

(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)

BILL

To establish the National Student Financial Aid Scheme (NSFAS); to provide for the management, governance and administration of the NSFAS; to provide for the granting of loans and bursaries to eligible students at public higher education institutions and for the administration of such loans and bursaries; to provide for the recovery of loans; and to provide for matters connected therewith.

PREAMBLE

WHEREAS it is desirable to address equity in and access to higher education; and

WHEREAS it is necessary to establish an expanded national student financial aid scheme that is affordable and sustainable.

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

CHAPTER 1

DEFINITIONS AND PURPOSE

Definitions

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1. In this Act, unless the context indicates otherwise—

- (i) “board” means the NSFAS board referred to in section 3(2); (xiii)
- (ii) “borrower” means a student to whom a loan has been granted in terms of this Act; (ix)
- (iii) “bursar” means a student to whom a bursary has been granted in terms of this Act; (ii)
- (iv) “CHE” means the Council on Higher Education established by section 4 of the Higher Education Act, 1997 (Act No. 101 of 1997); (xiv)
- (v) “Department” means the government department responsible for education at national level; (iv) 15
- (vi) “designated higher education institution” means a higher education institution with which the NSFAS has entered into an agreement in terms of section 20; (i)
- (vii) “Director-General” means the Director-General of the Department; (v)
- (viii) “employer” means any person or body who employs a borrower; (xvi) 20
- (ix) “financial year” means the period beginning on the first day of March of a year and ending on the last day of February of the next year; (iii)
- (x) “higher education” means all learning programmed leading to qualifications higher than grade 12 or its equivalent in terms of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), and includes tertiary education as contemplated in Schedule 4 to the Constitution; (vii) 25
- (xi) “higher education institution” means any higher education institution that is established, deemed to be established or declared as a public higher education institution under the Higher Education Act, 1997 (Act No. 101 of 1997); (viii) 30

- (xii) “loan”. means a loan granted to a person by the NSFAS in order to enable the person to defray the costs connected with his or her education at a designated higher education institution, and those connected with the board and lodging of that person for purposes of attending the institution; (x)
- (xiii) “Minister” means the Minister of Education; (xi) 5
- (xiv) “NSFAS” means the National Student Financial Aid Scheme established by section 3; (xii)
- (xv) “student” means any person registered as a student at a higher education institution; (xv) *
- (xvi) “this Act” includes the regulations contemplated in section 27. (vi) 10

Purpose of Act

- 2. (1) The purpose of this Act is to establish a financial aid scheme for students at higher education institutions.
- (2) The aim of the NSFAS is to provide financial aid to eligible students who meet the criteria for admission to a higher education programme. 15

CHAPTER 2

ESTABLISHMENT, COMPOSITION, GOVERNANCE AND FUNCTIONS OF NSFAS

Establishment of National Student Financial Aid Scheme

- 3. (1) The National Student Financial Aid Scheme (NSFAS) is hereby established as a juristic person. 20
- (2) The NSFAS is managed, governed and administered by the NSFAS board.

Functions of NSFAS

- 4. The functions of the NSFAS are—
 - (a) to allocate funds for loans and bursaries to eligible students; 25
 - (b) to develop criteria and conditions for the granting of loans and bursaries to eligible students in consultation with the Minister;
 - (c) to raise funds as contemplated in section 14(1);
 - (d) to recover loans;
 - (e) to maintain and analyse a database and undertake research for the better utilisation of financial resources; 30
 - (f) to advise the Minister on matters relating to student financial aid; and
 - (g) to perform other functions assigned to it by this Act or by the Minister.

Composition of board

- 5. (1) Subject to subsection (4), the board consists of— 35
 - (a) eleven members appointed by the Minister of whom—
 - (i) one member must be employed by the Department;
 - (ii) one member must be nominated by the Minister of Finance; and
 - (iii) one member must be designated by the Minister as chairperson of the board; 40
 - (b) not more than four members who may be co-opted by the board; and
 - (c) the executive officer contemplated in section 9(1), who is the secretary and who has no voting rights.
- (2) The selection of the appointed members and co-opted members must be undertaken in such a manner as to ensure, insofar as is practically possible, that— 45
 - (a) the functions of the NSFAS in terms of this Act are performed according to the highest professional standards;
 - (b) the membership taken as a whole—
 - (i) is broadly representative of the higher education system and related interests; 50
 - (ii) has deep knowledge and understanding of higher education;
 - (iii) has financial expertise and experience;

- (iv) appreciates the role of the higher education system in reconstruction and development: and
- (v) has known and attested commitment to the interests of higher education: and
- (c) due attention is given to the representivity of the board on such relevant 5 factors as race, gender and disability.
- (3) The Minister must, by notice in the *Gazette* and a national newspaper circulating in every province of the Republic, and by any other means necessary, invite nominations for the eleven appointed members of the board from—
 - (a) the public: 10
 - (b) the CHE:
 - (c) national organisations representing-
 - (i) students:
 - (ii) academic employees;
 - (iii) employees other than academic employees: 15
 - (iv) university principals:
 - (v) technikon principals:
 - (vi) higher education college principals;
 - (vii) organised business; and
 - (viii) organised labour: and 20
 - (d) non-governmental organisations.
- (4) The Minister must consider the nominations contemplated in subsection (3) in appointing the members contemplated in subsection (1)(a), subject to subsections (2) and (5).
- (5) At least three of the members contemplated in subsection (1)(a) must be 25 appointed on account of their particular financial experience and expertise.

Term of office of chairperson and members

- 6. (1) The chairperson and an appointed member of the board hold office for a period of four years.
- (2) A co-opted member of the board holds office for a period determined by the board. 30
- (3) The chairperson and an appointed member of the board may not serve for more than two consecutive terms of office.

Vacation of office

- 7. 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 35 chairperson, to the Minister;
 - (b) is absent from three consecutive meetings of the board without the leave of the chairperson or, in the case of the chairperson, the leave of the executive committee;
 - (c) is declared insolvent, is removed from an office of trust by a court of law or is 40 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 unable to attend to his or her personal affairs by a court of law.

Filling of vacancies

- 8. If the chairperson or a member vacates his or her office, the resultant vacancy must 45 be filled by appointment or co-option in accordance with section 5.

Executive officer and employees of NSFAS

- 9. (1) The board must appoint an executive officer—
 - (a) to manage and administer the affairs of the NSFAS under the authority of the 50 board;
 - (b) to perform the functions determined by the board;
 - (c) to supervise the employees of the NSFAS; and
 - (d) to account for the assets and liabilities of the NSFAS.

(2) The board may appoint such other employees as it deems necessary to assist the executive officer.

(3) The board must, with the concurrence of the Minister and the Minister of Finance, determine the conditions of service of the executive officer and the other employees of the NSFAS.

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Executive committee

10. (1) The board must establish an executive committee and determine its functions.

(2) The executive committee consists of—

(a) the chairperson of the board;

(b) the member appointed from the Department as contemplated in section 5(1)(a)(i); and

(c) three other members of the board appointed by the board.

(3) A decision of the executive committee must be regarded as a decision of the board, unless such decision is revoked at the next meeting of the board.

(4) Anything done in consequence of a decision of the executive committee before its revocation, is not invalid by reason only of the fact that the decision is revoked by the board under subsection (3).

Finance committee

11. (1) The board must appoint a finance committee consisting of—

(a) the chairperson of the board;

(b) the member appointed from the Department as contemplated in section 5(1)(a)(i);

(c) the member nominated by the Minister of Finance as contemplated in section 5(1)(a)(ii); and

(d) not more than five financial experts who may be from the private sector or members of the board.

(2) The finance committee must advise the board on the financial management of the NSFAS, which includes, but is not limited to, loan recovery, fund raising and investment of repayments.

(3) The finance committee performs such other functions as the board may delegate or assign to it.

Other committees

12. (1) The board may establish other committees in addition to the executive committee and the finance committee, to assist it in the performance of its functions.

(2) Any committee other than the executive committee may include persons who are not members of the board.

(3) The chairperson of a committee must be appointed by the board.

(4) Members of the committees contemplated in subsection (2) may be appointed for such periods as the board may determine.

Meetings of board and committees

13. (1) Meetings of the board and its committees must be held at such times and places as may be determined by the chairperson concerned, but the chairperson must convene a meeting of the board at least twice a year or if asked to do so in writing by at least one third of the members of the board or by the Minister, as the case may be.

(2) Whenever the chairperson is absent from any meeting of the board or a committee, the members present must elect a person from among themselves to preside at that meeting.

(3) The board may make rules relating to the procedure at meetings of the board and its committees, including the quorum for such meetings, and any other matter necessary or expedient for the performance of the functions of the board or its committees.

(4) The proceedings at a meeting of the board or of a committee are not invalid by reason only of the fact that a vacancy exists on the board or such committee, as the case may be, at the time of such meeting.

Funds of NSFAS

- 14. (1)** The funds of the NSFAS consist of—
- (a) money appropriated by Parliament;
 - (b) donations or contributions;
 - (c) Interest; 5
 - (d) money repaid or repayable by borrowers; and
 - (e) any other income received by the NSFAS.
- (2)** The board—
- (a) must keep a record of all funds received and spent and of all assets, liabilities and financial transactions; 10
 - (b) must in each financial year, at such time and in such manner as the Minister may determine, submit a statement of its estimated income and expenditure for the ensuing financial year to the Minister for his or her approval granted with the concurrence of the Minister of Finance;
 - (c) may in any financial year submit adjusted statements of its estimated income and expenditure to the Minister for his or her approval, granted with the concurrence of the Minister of Finance; and 15
 - (d) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (b) and (c).
- (3)** If the Minister does not approve the board’s statement of its estimated income and expenditure, the Minister must require the board to provide a revised statement to him or her within a specified period. 20
- (4)** The money contemplated in subsection (1) must be used by the NSFAS in accordance with the approved statement referred to in subsection (2). and any unexpended balance must be carried forward as a credit to the following financial year. 25
- (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.

Annual audit

15. The books of account and financial statements of the NSFAS must be audited by the Auditor-General at the end of each financial year. 30

Annual report

- 16. (1)** The board must, within three months after the end of each financial year, submit a report to the Minister which must at least include a financial statement on the performance of its functions during the preceding financial year.
- (2)** The Minister must table copies of the report in Parliament as soon as is reasonably practicable. 35

Remuneration and allowances of members of board and committees

17. The chairperson of the board, every other member and any person appointed as a member of a committee, who is not in the full-time service of the State may, in respect of services rendered by him or her in connection with the affairs of the board or a committee, be paid by the NSFAS—

- (a) such traveling, subsistence and other allowances; and
- (b) in the case of the chairperson of the board, such additional remuneration, as the Minister, with the concurrence of the Minister of Finance, may determine. 40

CHAPTER 3

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ADMINISTRATION OF LOANS AND BURSARIES

Application for loan or bursary

18. Any student may, subject to the provisions of this Act, apply in writing to the NSFAS for a loan or a bursary on an application form determined by the board.

Conditions of loans and bursaries

19. (1) Loans or bursaries granted by the board may be subject to such conditions as it may determine, either generally or in respect of a particular loan or bursary.

(2) A loan or bursary is granted in respect of a particular course of study, which must be specified in the loan or bursary agreement in question, and may not be used for any other purpose.

(3) A written agreement must be entered into between the NSFAS and every borrower or bursar.

(4) The board must impose a condition in respect of any loan or bursary to the effect that if the borrower or bursar does not perform satisfactorily in his or her studies, the board may terminate the granting of finance in terms of the agreement and that the borrower or bursar must comply with any obligation as a result of the granting of the loan or bursary on or with effect from the date specified by the board.

(5) The amount of the loan or bursary is paid by the NSFAS to the designated higher education institution concerned by way of allocations in respect of amounts payable to the institution by the borrower or bursar.

(6) No provision of this Act must be construed as giving any person the right to obtain a loan or bursary from the NSFAS.

Designated higher education institution

20. (1) The board may enter into an agreement with a higher education institution which agrees to become a designated higher education institution for purposes of administering loans and bursaries to students of that institution on behalf of the NSFAS.

(2) The agreement referred to in subsection (1) must authorise the institution on behalf of the NSFAS—

(a) to administer loans and bursaries granted to students of the institution;

(b) to receive loan and bursary applications from students;

(c) to consider and assess the applications in the light of the criteria for the granting of loans and bursaries determined by the NSFAS;

(d) to grant loans and bursaries if the criteria are met, after ascertaining that funds are available; and

(e) to enter into a written agreement with a borrower or bursar in accordance with the provisions of this Act and on the terms and conditions determined by the NSFAS.

(3) A designated higher education institution must—

(a) at such intervals as are agreed on by the institution and the board, report to the board on the progress made by a borrower or bursar with regard to the course of study followed by him or her; and

(b) immediately notify the board if a borrower or bursar discontinues his or her studies.

CHAPTER 4

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RECOVERY OF LOANS**Repayment of loans**

21. (1) Subject to this section, a loan must be repaid as provided in the loan agreement.

(2) A borrower may repay a loan wholly or in part before the due date.

(3) If a borrower fails to make repayments as provided in this Act, his or her name may be placed by the board on any list of defaulting debtors published by any person or body whose business it is to compile and publish such lists.

(4) The name of a borrower may not be placed on a list contemplated in subsection (3) by the board unless he or she—

- (a) has been notified by the board by registered letter addressed to his or her chosen *domicilium citandi et executandi*, of the failure to make repayments and of the intention of the board to act in terms of subsection (3); and
- (b) has been afforded a reasonable opportunity to pay the arrear amount and has failed to do so.

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Obligations of borrower

22. (1) A borrower must for as long as he or she is indebted to the NSFAS—
- (a) at such intervals as may be fixed by the board, furnish the board—
- (i) with his or her postal and residential addresses, as well as his or her chosen *domicilium citandi et executandi*;
- (ii) with information regarding his or her employment status;
- (iii) if he or she is employed, with the name and address of the employer; and
- (iv) with any other relevant information required by the board; and
- (b) immediately notify the board of—
- (i) any change of address and furnish the new address;
- (ii) any change in his or her employment status; and
- (iii) any change of employer and furnish the name and address of the new employer.
- (2) Any failure by a borrower to comply with the obligations referred to in subsection (1) renders the loan immediately repayable.

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Obligations of employer

23. (1) The board may by written notice sent by registered mail inform the employer of a borrower—
- (a) that the borrower is indebted to the NSFAS in consequence of a loan granted by the NSFAS to the borrower; and
- (b) of the deductions that the employer has to make from the remuneration of the borrower.
- (2) Any employer who is given notice in terms of subsection (1) must make deductions from the remuneration payable by him or her to the borrower according to the scales prescribed by regulation.
- (3) Any amount deducted by an employer in terms of subsection (2) must be paid over to the NSFAS, and any amount so paid over must be regarded as a proportionate discharge of the loan by the borrower concerned.
- (4) Any amount deducted in terms of this section must for the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), or any other applicable law, be regarded as forming part of the remuneration of the borrower.
- (5) Any employer who fails to make a deduction and payment in accordance with this section is guilty of an offence and on conviction may, in addition to a fine, be ordered to make such deduction and payment.
- (6) The administration costs for the deductions must be borne by the NSFAS.

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Obligations of South African Revenue Service

24. Despite section 4 of the Income Tax Act, 1962 (Act No. 58 of 1962), the South African Revenue Service must, at the request of the board, furnish it with the name and address of the employer of a borrower, if such information is known to the South African Revenue Service.

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CHAPTER 5**GENERAL****Information to be provided to NSFAS**

25. Every science, research and professional council, every higher education institution and any other person or body who grants loans or bursaries to students must provide the NSFAS with such information as the NSFAS may reasonably require for the performance of its functions in terms of this Act.

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Delegation of powers

26. (1) The Minister may, on such conditions as he or she may determine, delegate any of his or her powers under this Act, except the powers conferred upon him or her by sections 5(4) and 27, to the Director-General.

(2) The Director-General may, on such conditions as he or she may determine, 5 delegate any of his or her powers under this Act or delegated to him or her in terms of subsection (1), to an employee of the Department.

(3) The board may, on such conditions as it may determine, delegate any of its powers under this Act to any of its committees or to any employee of the NSFAS.

Regulations

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27. The Minister may make regulations on any matter which may or must be prescribed by regulation in terms of this Act and any matter which is necessary or expedient to prescribe in order to achieve the objects of this Act.

Repeal of law

28. The Provision of Special Funds for Tertiary Education and Training Act, 1993 15 (Act No. 121 of 1993), is hereby repealed.

Transitional arrangements

29. (1) Despite section 28, the Tertiary Education Fund of South Africa, a company recognised in terms of section 2 of the Provision of Special Funds for Tertiary Education and Training Act, 1993 (Act No. 121 of 1993), hereinafter referred to as "TEFSA", 20 continues to perform the functions which it performed prior to the commencement of this Act, until a date determined by the Minister by notice in the *Gazette*.

(2) Despite section 2(2)(h) of the Provision of Special Funds for Tertiary Education and Training Act, 1993 (Act No. 121 of 1993), all assets which vested in TEFSA immediately prior to the date referred to in subsection (1), vest in the NSFAS on that 25 date.

(3) Existing agreements of employment between the executive officer and the employees of TEFSA must on the date referred to in subsection (1), be deemed to be agreements entered into between those employees and the NSFAS and must continue to exist subject to applicable labour laws, and those employees must be deemed to have 30 served continuously under the same employer without interruption.

(4) On or before the date referred to in subsection (1), TEFSA must reregister as a company in terms of the Companies Act, 1973 (Act No. 61 of 1973).

Short title

30. This Act is called the National Student Financial Aid Scheme Act, 1999. 35

MEMORANDUM ON THE OBJECTS OF THE NATIONAL STUDENT FINANCIAL AID SCHEME BILL, 1999

This Bill provides for the establishment of the National Student Financial Aid Scheme (NSFAS), for the management, governance and administration of the NSFAS, for the granting of loans and bursaries to eligible students at public higher education institutions and the administration of such loans and bursaries, for the recovery of loans, and for matters connected therewith.

BACKGROUND

The Government conceptualised the NSFAS as a loan and bursary scheme in 1996 in order to address the rising student debt problem in higher education institutions, and to give effect to the Governments commitment to redressing the inequities of the past.

The establishment of the NSFAS and its modus operandi was based on the interim proposals of the National Commission on Higher Education (NCHE) which had been requested by the Minister of Education to investigate the feasibility of establishing a NSFAS.

The NCHE emphasised that its interim proposals should form the basis for the development of a more comprehensive and long-term set of policies for student financial aid. This was endorsed in the *Education White Paper 3: A Programme for the Transformation of Higher Education*, which suggested that further research, including identifying and assessing alternatives to the NSFAS, was necessary to underpin the development of a comprehensive and sustainable student financial aid scheme.

A report, *A Framework for a National Student Financial Aid Scheme*, was released by the Department of Education in August 1998. The report outlines the Ministry's framework for a comprehensive and sustainable student financial aid scheme.

The report recommends the following:

- * The establishment of an expanded NSFAS that is affordable and sustainable.
The NSFAS should take the form of a National Loan and Bursary Scheme based on the current scheme administered by TEFSA (the Tertiary Education Fund of South Africa, a company recognised in terms of section 2 of the Provision of Special Funds for Tertiary Education and Training Act, 1993 (Act No. 121 of 1993)).
- * The NSFAS should incorporate all the major elements of the current loan and bursary scheme.
- * The expanded loan scheme should be administered by TEFSA on the grounds of its proven and effective management, its ability to keep administrative costs at a minimum, and its excellent symbiotic relationship with higher education institutions.
- * The restructuring of the regulatory framework within which TEFSA operates to take into account the fact that the Government, both directly, through budget allocations, and indirectly, through mobilising donor funds as part of bilateral and multilateral agreements, is the main source of funds for the NSFAS.
- * TEFSA (which is a section 21 company) should be converted into a statutory agency that is administratively independent, with a Board appointed by the Minister of Education on the basis of nominations from stakeholders. The Board will be responsible for advising the Minister on the overall policy and administration of the NSFAS.
- * The Board should establish a finance committee comprising members from the Departments of Education and Finance, and financial experts from the private sector. The function of the finance committee would revolve around the financial management of the NSFAS, specifically issues of loan recovery, injection of funds and investment of repayments.

- * The mobilisation of public opinion in support of the principles of a loan and bursary scheme, in particular, as they relate to the responsibilities of recipients with respect to repayment.

The main source of funding for the NSFAS will have to be the fiscus, especially if Government's commitment to access and redress is to be addressed.

There is overwhelming evidence that the enthusiasm of international donors for contributing to the NSFAS is waning. However, efforts should be made to persuade international donors to continue to provide funds for the NSFAS in the short term, that is, prior to the establishment of an expanded and sustainable scheme. This would only be possible if Government makes a clear long-term financial commitment to the development of the NSFAS.

In terms of magnitude, conservative projections of student enrolment suggest that on average, annual injections of just under R400 million are required.

DISCUSSION

A Bill has been drafted that incorporates the abovementioned policy framework.

Three issues that warrant further discussion have been identified through the consultation process:

- * It has been requested that the name of the Board stay TEFSA and that the name of the Bill be changed accordingly. The establishment of a system of financial aid to needy eligible students is the main object of the Bill, and the emphasis is on the National Financial Aid Scheme and not on the Board governing this Scheme. Although it is acknowledged that TEFSA has a good reputation and standing in the higher education community, the use of NSFAS is already firmly entrenched as the name under which the new system will operate.
- * The composition of the Board will be not more than sixteen members of whom the executive officer will have no voting right. The principle is to have a small, but effective Board to govern and manage this scheme. Committees with "outside" expertise or interest are used to ensure that the interests of all stakeholders are catered for.
- * Consideration has been given to the provision of tax incentives to encourage private sector contributions to the NSFAS, but the Department of Finance has resisted any inclusions in this Bill that may have an eroding effect on the tax basis of the country. However, it has been agreed with the Department of Finance that, in order to recover student debts effectively by means of a deduction by the employer from the remuneration of an employee with such debt, the names of such employers need to be provided. It should be noted that the procedure to recover funds from the employer was entrenched in the Provision of Special Funds for Tertiary Education and Training Act, 1993 (Act No. 121 of 1993), but has proved to be ineffective with employers in the private sector, as the required information about such employers was not available to enforce the provision. Thus, despite section 4 of the Income Tax Act, 1962 (Act No. 58 of 1962), provision has been made to request the South African Revenue Service to provide such information, as the name of the employer is the only information required. As no financial or other private information will be required, the information that section 4 seeks to protect is not affected. There is an agreement with the Minister of Finance that the Income Tax Act, 1962, will be amended to include a similar provision and that clause 24 will be repealed by such amendment.

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. It contains no provision to

which the procedure set out in section 74 or 76 of the Constitution applies, as it deals with tertiary education.

FINANCIAL IMPLICATIONS FOR STATE

No additional financial implication is foreseen as a result of this Bill, as TEFSA is converted into a statutory body through this Bill.

PERSONS/BODIES CONSULTED

The Bill has been published for public comment. Consultations have 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, the Department of Finance and TEFSA.

OFFICIAL TEXT

The English text of this Bill is the official text and the Afrikaans text is the official translation.