
GENERAL NOTICE

NOTICE 228 OF 2011**DEPARTMENT OF HIGHER EDUCATION AND TRAINING****CALL FOR COMMENTS ON THE FURTHER EDUCATION AND TRAINING COLLEGES AMENDMENT BILL, 2011; THE HIGHER EDUCATION LAWS AMENDMENT BILL, 2011; AND THE SKILLS DEVELOPMENT AMENDMENT BILL, 2011**

I, Bonginkosi Emmanuel Nzimande, Minister of Higher Education and Training, after consultation with the Council of Education Ministers in respect of the FETCA Bill, hereby publish the Further Education and Training Colleges Amendment Bill, 2011; the Higher Education Laws Amendment Bill, 2011; and the Skills Development Amendment Bill, 2011, for comment.

All interested persons and organisations are invited to comment on the draft Bills in writing, and to direct their comments to –

The Director-General, Private Bag X174, Pretoria, 0001, for attention: Mr VL Rikhotso, email Rikhotso.v@dhet.gov.za

Kindly provide the name, address, telephone number, fax number and email address of the person or organisation submitting the comments.

The comments should reach the Department within 21 calendar days after publication of this notice.

**DR BONGINKOSI EMMANUEL NZIMANDE, MP
MINISTER OF HIGHER EDUCATION AND TRAINING
SIGNED 13 APRIL 2011**

HIGHER EDUCATION LAWS AMENDMENT BILL, 2011**(Section 75 Bill)****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 prohibition of council members and staff conducting business with the public higher education institution concerned; and to provide for matters connected therewith; to amend the National Student Financial Aid Scheme Act, 1999, so as to amend the power of the Minister to intervene by way of an administrator in the case of poor or non performance or maladministration by the Board; and to provide for Ministerial power to remove the Board, as well as the procedure for such removal; and to provide for matters connected therewith.

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

Amendment of section 27 of Act 101 of 1997

1. Section 27 of the Higher Education Act, 1997, is hereby amended by the substitution for subsection (7) of the following subsection:

"(7) **[The]** A member**[s]** of a council-

- (a) must be a person**[s]** with knowledge and experience relevant to the objects and governance of the public higher education institution concerned; **[and]**

- (b) must participate in the deliberations of the council in the best interests of the public higher education institution concerned; and
- (c) must declare any business, commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest;
- (d) may not place him or her under any financial or other obligation to outside individual or organization that might seek to influence performance and function of the council;
- (e)
 - (i) may not have a conflict of interest with the institution;
 - (ii) may not have a direct or indirect financial, personal or other interest in any matter to be discussed at a meeting and which entails or may entail a conflict or possible conflict of interest must, before or during such meeting, declare the interest;
 - (iii) must in writing, inform the chairperson of a meeting, before a meeting, of a conflict or possible conflict of interest of a council member of which such person may be aware;
 - (iv) is obliged to excuse him or herself from the meeting during the discussion of the matter and the voting thereof.”.

Amendment of section 34 of Act 101 of 1997

2. Section 34 of the Higher Education Act, 1997, is hereby amended by the insertion for subsection (4) of the following subsections:

“(4) A member of staff may not conduct business directly or indirectly with the public higher education institution which business is in conflict of interest with the public higher education institution.

(5) Business referred in subsection (4) relates to conduct that is aimed at receiving any direct or indirect financial personal gain that does not form part of the employment relationship contemplated in subsection (1).”.

Amendment of section 47 of Act 101 of 1997

3. Section 47 of the Higher Education Act, 1997, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An independent assessor appointed under section 44, must within **[30 days]** a period determined by the Minister, but not exceeding 90 days and on the terms specified by the Minister –

- (a) conduct an investigation at the public higher education institution concerned;
- (b) report in writing to the Minister on the findings of his or her investigations; and
- (c) suggest appropriate measures.”.

Insertion of sections 4A and 4B in Act 56 of 1999

4. The National Student Financial Aid Scheme Act, 1999, is hereby amended by the insertion after section 4 of the following sections:

“4A Intervention by Minister

(1) The Minister may direct the board to take any action specified by the Minister if the NSFAS-

- (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 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) If the board fails to remedy the situation within the stated period, the Minister may-

- (a) after having given the board a reasonable opportunity to be heard; and
 - (b) after having afforded the board a hearing on any submissions received,
- replace the members of the board where circumstances so require, appoint a person as an administrator who shall take over the relevant function of the board.

(4) If the Minister appoints an administrator to take over a function of the board in terms of subsection (3)-

- (a) the administrator may do anything which the board might otherwise be empowered or required to do by or under this Act, to the exclusion of the board;
- (b) the board may not, while the administrator is responsible for that function, exercise any of its powers or perform any of its duties relating to that function;
- (c) an employee or a contractor of the board must comply with a directive given by administrator.

(5) Once the Minister is satisfied that the board is once more able to perform its functions effectively, the Minister must terminate the appointment of the administrator.

(6) The costs associated with the appointment of an administrator shall be for the account of the NSFAS.

4B Failure to perform a function

(1) If the board fails to comply with any function contemplated in section 4, or fails to comply with any condition or directive or action assigned to it by the Minister in terms of section 4(g) within the specified period set by the Minister, the Minister may appoint an administrator in terms of section 17A to rectify the failure of the board.

(2) The administrator contemplated in subsection (1), must build the necessary capacity and introduce any reasonable corrective measures to remedy the situation and to provide continuity when the board resumes the function in terms of the Act after the appointment of the administrator lapsed.

(3) Before taking action under subsection (1), the Minister must-

(a) give notice to the board of the intention so to act;

(b) give the board a reasonable opportunity to make representations; and

(c) consider such representations.”.

Insertion of section 7A in Act 56 of 1999

5. The National Student Financial Aid Scheme Act, 1999, is hereby amended by the insertion after section 7 of the following section:

“7A Dissolution of the board

(1) The Minister may dissolve the NSFAS board if-

(a) the conduct of the board members necessitates such action and if the dissolution of the board is in the best interest of higher education and NSFAS;

(b) more than 75% of the members of the board has resigned; or

(c) less than 75% of members resign and the recommendation by the administrator that the efficient and effective governance and management

of the NSFAS would be prejudiced to the aims, purpose and objectives of the Act.

(2) If the Minister dissolves the board as contemplated in subsection (1), the Minister must-

- (a) appoint an administrator if such administrator as contemplated in section 17A has not already been appointed; and
- (b) reappoint a new board as contemplated in section 5, within the timeframe applicable to the appointment of the administrator.”.

Insertion of Chapter 2A in Act 56 of 1999

6. The National Student Financial Aid Scheme Act, 1999, is hereby amended by the insertion after Chapter 2 of the following Chapter:

“CHAPTER 2A

17A Appointment of administrator

(1) If –

- (a) an audit of the financial records of NSFAS; or
- (b) a report by a Ministerial Committee; or
- (c) the board requests the appointment; or
- (d) circumstances arise at the NSFAS that-
 - (i) involve financial or other maladministration of a serious nature; or
 - (ii) seriously undermine the effective functioning of the NSFAS; or
- (e) the board has failed to resolve such circumstances; and
- (f) the appointment is in the interests of the NSFAS and higher education in an open and democratic society;

the Minister may, after consultation with the board, if practicable, and notwithstanding any other provision of this Act, appoint a person as administrator to take over the authority of the board or the management of the NSFAS and perform the functions relating to governance or management on behalf of the

NSFAS for a period determined by the Minister, and such period may not exceed two years.

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

(3) Notwithstanding subsection (1), if a board is deemed to have resigned because 75 per cent or more of the members of the board resign at a meeting of the board, the Minister must appoint a person for a period determined by the Minister as an administrator to-

- (a) take over the authority of the board;
- (b) perform the board's functions relating to governance; and
- (c) ensure that a new board is constituted.

17B Assistance to administrator

An administrator appointed under section 17A may, with the concurrence 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.

17C Remuneration and allowances

The Minister, with the concurrence of the Minister of Finance, may determine the remuneration and allowances to be paid to the administrator and any other person appointed under section 17B."

Repeal of section 23 of Act 56 of 1999

7. Section 23 of the National Student Financial Aid Scheme Act, 1999, is hereby repealed.

Short title

8. This Act is the Higher Education Laws Amendment Act, 2011.

MEMORANDUM ON THE OBJECTS OF THE HIGHER EDUCATION LAWS AMENDMENT BILL, 2011

1. MAIN OBJECT OF BILL

1.1 The main object of the Bill is to amend the Higher Education Act, 1997, so as to provide for the prohibition of council members and staff conducting business with the public higher education institution concerned; and to provide for matters connected therewith; to amend the National Student Financial Aid Scheme Act, 1999, so as to amend the power of the Minister to intervene by way of an administrator in the case of poor or non performance or maladministration by the Board; and to provide for Ministerial power to remove the Board, as well as the procedure for such removal; and to provide for matters connected therewith.

1.2. The laws that the Bill seeks to amend are—

- the Higher Education Act, No. 101 of 1997 (the HE Act); and
- the National Student Financial Aid Scheme Act, No. 59 of 1999 (the NSFAS Act).

2. MAIN FEATURES OF THE BILL

2.1 HE Act (clauses 1 to 3)

2.1.1 The main features of the amendment to the Higher Education Act, 1997, are to provide for the prohibition of council members and staff conducting business with the public higher education institution concerned; and to amend the period by which an independent assessor is appointed by the Minister in terms of section 44 of the said Act.

2.2 NSFAS Act (clauses 4 to 8)

This Bill seeks to amend the power of the Minister to intervene by way of an administrator in the case of poor or non performance or maladministration by the Board; and to provide for Ministerial power to remove the Board, as well as the procedure for such removal; and to provide for matters connected therewith.

3. CONSULTATION

The Bill will be published for public comment in the *Government Gazette*, providing all stakeholders and the public with an opportunity to comment.

4. FINANCIAL IMPLICATIONS FOR STATE

Apart from publication costs, no extra financial implications are foreseen .

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Higher Education and Training are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed 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.

5.2 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.