
GENERAL NOTICE

NOTICE 181 OF 2012

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

CALL FOR COMMENTS ON THE FURTHER EDUCATION AND TRAINING COLLEGES AMENDMENT BILL, 2012 AND THE HIGHER EDUCATION LAWS AMENDMENT BILL, 2012

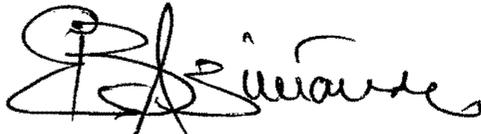
I, Bonginkosi Emmanuel Nzimande, Minister of Higher Education and Training, consultation hereby publish the Further Education and Training Colleges Amendment Bill, 2012 and the Higher Education Laws Amendment Bill, 2012, for comment.

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 on the draft Higher Education and Training Bills must be submitted not later than 26 March 2012.



Dr BE Nzimande, MP
Minister of Higher Education and Training
Date: 01/03/12

FURTHER EDUCATION AND TRAINING COLLEGES AMENDMENT BILL, 2012**(Section 76 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 Further Education and Training Colleges Act, 2006, so as to amend certain definitions; to amend the provisions of the establishment of a public college; and matters connected therewith.

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

Amendment of section 1 of Act 16 of 2006

1. Section 1 of the Further Education and Training Colleges Act, 2006, is hereby amended by:-

- (a) the substitution for the definition of “college” of the following definition:
“college” means a public or private Vocational and Continuous Education and Training Colleges or a Community Education and Training Centre that is established, declared or registered under this Act, but does not include a college under the authority of a Government Department other than the Department and ‘centre’ has the same meaning”;

- (b) the substitution for the definition of “further education and training” of the following definition:

“further education and training” means all learning and training programmes leading to qualifications or part-qualifications at levels [2](1) to 4 of the National Qualifications Framework or such further education and training levels determined by SAQA and contemplated in the [-] National Qualifications Framework Act, 2008 (Act 67 of 2008) provided for at a college in terms of this Act, [which levels are above general education but below higher education];”.

- (c) the deletion of the definition of “general education”.

Amendment of section 3 of Act 16 of 2006

2. Section 3 of the Further Education and Training Colleges Act, 2006, is hereby amended by:-

- (a) the substitution for subsection (1) of the following subsection:
(1)The Minister may, by notice in the Gazette and from money appropriated for this purpose, establish a public college with a distinctive type of either:-
- a) Vocational and Continuous Education and Training College; or
 - b) Community Education and Training Centre.
- (b) the substitution for subsection (2) of the following subsection:
(2)Every public college contemplated in subsection (1)(a) or (b) is a juristic person.
- (c) the addition of the following subsection:
“(2A) The Notice contemplated in subsection (1) must contain the following:

- (a) date of the establishment of the institution;
- (b) the type of the institution as contemplated in subsection (1);
- (c) the name of the institution;
- (d) the physical location and address of the institution.”.

Insertion of Chapter 4A in Act 16 of 2006

3. The following chapter is inserted in the Further Education and Training Colleges Act, 2006, after Chapter 4:

”CHAPTER 4A

THE ESTABLISHMENT OF SOUTH AFRICAN INSTITUTE FOR VOCATIONAL AND CONTINUOUS EDUCATION AND TRAINING

The Establishment of South African Institute for Vocational and Continuous Education and Training

**21A (1) The Minister may establish a South African Institute for Vocational and
Continuous Education and Training as a juristic person.**

**(2) A national Institute for Vocational and Continuous Education and Training is
managed, governed and administered by a board.**

Functions of the South African Institute for Vocational and Continuous Education and Training

**21B (1) The functions of the South African Institute for Vocational and Continuous
Education and Training are to-**

- (a) assist and support the development of lifelong learning;**

- (b) assist and support the development of an open and distance education and training;
- (c) assist and support in the development of learning, teaching and assessment materials;
- (d) assist and support the development of public colleges and development of the skills system;
- (e) assist in the development of curriculum of public colleges and ensure that the curriculum development is institutionalised with long term capacity within the specific institutional type as contemplated in subsection 3(1);
- (f) conduct research and innovate development in further education and training;
- (g) undertake and promote research in the areas of teaching and learning in vocational and occupational programmes that lead to qualifications or part-qualifications;
- (h) advise the Minister on any matter relating to Vocational and Continuous Education and Training;
- (i) develop materials for career guidance;
- (j) develop capacity and upgrade teaching staff skills in Vocational and Continuous Education and Training;
- (l) provide management training in the Vocational and Continuous Education and Training sector;
- (m) provide management, leadership and operational training at all levels for Services Education and Training Authorities as contemplated in section 9 of the Skills Development Act, 1998 (Act 97 of 1998);
- (n) provide management, leadership and operational training for officials of the Department of Education and Training;
- (o) promote dialogue between Colleges and between employers and Services Education and Training Authorities;
- (p) interact with Professional Councils and promote dialogue between them and Education and Training Institutions and the Department;

- (q) publish a journal related to Further Education and Training and Skills Development;
- (r) establish and maintain a library information service to support the institute and the institutions served by the Institute;
- (s) conduct and promote labour market research; and
- (t) perform any other function which may be prescribed by the Minister.

The Board of the South African Institute for Vocational and Continuous Education and Training

21C Composition of board

(1) The board of the South African Institute for Vocational and Continuous Education and Training 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.

21D Term of office of chairperson and members

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

21E Vacation of office

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.

21F Filling of vacancies

(1) In the event of a vacancy occurring in the office, such vacancy is filled by the Minister in terms of section 21C (3).

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

21G Funds of the South African Institute for Vocational and Continuous Education and Training

(1) The funds of the South African Institute for Vocational and Continuous Education and Training 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;

- (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
- (d) may not incur any expenses which exceed the total amount approved in terms of paragraphs (b) and (c).

(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.

- (4) (a) The money contemplated in subsection (1) must be used in accordance with the approved statement referred to in subsection (2).
- (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."

21H Intervention by Minister

(1) The Minister may issue a directive to the board to take such action specified by the Minister if the South African Institute for Vocational and Continuous Education and Training -

- (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 authorized 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 such representations.

(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 21I, 21J and 21K 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 South African Institute for Vocational and Continuous Education and Training 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 South African Institute for Vocational and Continuous Education and Training

211 Appointment of administrator

(1) Notwithstanding any other provision of this Act, the Minister may, after consultation with the board if practicable, appoint a person as administrator to take over the management, governance and administration of a South African Institute for Vocational and Continuous Education and Training and to perform the functions of the South African Institute for Vocational and Continuous Education and Training if –

- (a) an audit of the financial records of South African Institute for Vocational and Continuous Education and Training; or a report by a Ministerial Committee reveals financial or other maladministration of a serious nature; or serious undermining of the effective functioning of the South African Institute for Vocational and Continuous Education and Training;
- (b) any other circumstances arise that reveals financial or other maladministration of a serious undermining of the effective functioning of the South African Institute for Vocational and Continuous Education and Training; or
- (c) the board 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 South African Institute for Vocational and Continuous Education and Training and higher education and training in an open and democratic society.

- (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) once for a period not exceeding six months.

21J Assistance to administrator

An administrator appointed under section 21I 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.

21K Remuneration and allowances

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 under section 21J.

21L Dissolution of board

The board is dissolved from the date the Minister appoints the administrator in terms of section 21H or 21I.

21 M Closure of the South African Institute for Vocational and Continuous Education and Training

(1) The Minister may, after consulting the Council of Higher Education and by notice in the Gazette, close a South African Institute for Vocational and Continuous Education and Training”.

Amendment of section 59 of Act 16 of 2006

4. Section 59 of the Further Education and Training Colleges Act, 2006, is hereby amended by the substitution of the following:

“59 Short Title

This Act is called the Further Education and Training Act, 2006.”.

Transitional arrangements

5. (1) Despite the amendments to section 3 of the Principal Act by this Act –
- (a) the respective College that is in existence prior to the commencement of this Act, continues to exist and is deemed to be established as a Vocational and Continuous Education and Training College in terms of section 3(1)(a) of the principal Act as amended by this Act;
 - (b) the members of a respective College Council, Academic Board and Student Representatives Council appointed in terms of the principal Act and who are in office immediately prior to the commencement of this Act, must continue to perform the functions of the College Council, Academic Board and Student Representatives Council of the respective Vocational and Continuous Education and Training College as contemplated in section 3(1)(a) of the principal Act as amended by this Act until the specific members term of office expires;
 - (c) any regulations, policy or college statutes made under the principal Act that was applicable to colleges immediate prior to the commencement of this Act, continue to exist to the extent that they are applicable to Vocational and Continuous Education and Training Colleges contemplated in section 3(1)(a) of the principal Act as amended by this Act;
 - (d) a process or action which was stated by a public college prior to the commencement of this Act is deemed to be a process or action which was started by a public Vocational and Continuous Education and Training College as contemplated in section 3(1)(a) of the principal Act as amended by this Act;
 - (e) an employee of a public college who was employed by the State or the public college immediately prior to the commencement of this Act continues to be employed by the State or the Vocational and Continuous Education and Training College as contemplated in section 3(1)(a) of the principal Act as amended by this Act; and

- (f) all assets, rights, liabilities and obligations of the public College that vested in the public college immediately prior to the commencement of this Act continue to vest in the Vocational and Continuous Education and Training College as contemplated in section 3(1)(a) of the principal Act as amended by this Act.
- (2) (a) For the purposes of this section the following definitions apply –
- (i) “AET Act” means the Adult Education and Training Act, 2000 (Act No. 52 of 2000);
 - (ii) “AET Centre” means a public Adult Education and Training Centre that is in existence at the commencement of this Act and was established as a public Adult Education and Training Centre in terms of section 3 of the Adult Education and Training Act.
- (b) Despite the amendments to section 3 of the Principal Act by this Act –
- (i) the respective Adult Education and Training Centre that is in existence prior to the commencement of this Act, continues to exist and is deemed to be established as a Community Adult Education and Training Centre in terms of section 3(1)(b) of the principal Act as amended by this Act;
 - (ii) the members of a Governing Body of a respective Adult Education and Training Centre appointed in terms of the Adult Education and Training Act No. 52 of 2000 and who are in office immediately prior to the commencement of this Act, must continue to perform the functions of the Centre Council of the respective Community Adult Education and Training Centre as contemplated in section 3(1)(b) of the principal Act as amended by this Act until a new Council is appointed by the Minister in terms of the principal Act as amended by this Act;
 - (iii) any regulations or policy made or deemed to be made under the Adult Education and Training Act that was applicable to Adult Education and Training Centres immediate prior to the

commencement of this Act, continue to exist to the extent that they are applicable to Community Adult Education and Training Centre contemplated in section 3(1)(b) of the principal Act as amended by this Act;

- (iv) a process or action which was stated by a public Adult Education and Training Centre prior to the commencement of this Act is deemed to be a process or action which was started by a public Community Adult Education and Training Centre as contemplated in section 3(1)(b) of the principal Act as amended by this Act;
- (v) an employee who worked at a public Adult Education and Training Centre who was employed by the State or the public Adult Education and Training immediately prior to the commencement of this Act continues to be employed by the State or the Community Adult Education and Training Centre as contemplated in section 3(1)(b) of the principal Act as amended by this Act; and
- (vi) all assets, rights, liabilities and obligations of the public Adult Education and Training Centre that vested in the public Adult Education and Training Centre immediately prior to the commencement of this Act continue to vest in the Community Adult Education and Training Centre as contemplated in section 3(1)(b) of the principal Act as amended by this Act.

Repeal of Law

6. The Adult Education and Training Act No. 52 of 2000, as amended by the Education Laws Amendment Act No. 50 of 2002, Education Law Amendment Act No. 31 of 2007 and the Higher Education and Training Laws Amendment Act No. 25 of 2010 is repealed as a whole.

Short title and Commencement

7. (1) This Act is the Further Education and Training Colleges Amendment Act, 2012 and comes into operation on a date to be determine by the Minister by notice in the *Government Gazette*.

(2) Different dates may be determine under subsection (1) in respect of different provisions of this Act.

MEMORANDUM ON THE OBJECTS OF THE FURTHER EDUCATION AND TRAINING COLLEGES AMENDMENT BILL, 2012

1. MAIN OBJECT OF BILL

1.1 The main object of the Bill is to amend the Further Education and Training Colleges Act, 2006 (FETC Act) to provide for the inclusion of two institutional types within the existing legal framework provided for within this Act. The two institutional types will be Vocational and Continuous Education and Training Colleges (VCET Colleges) and Community Education and Training Centres (CET Centres), as identified in the Green Paper of Higher Education and Training, 2012. These amendments seek to convert the existing FET Colleges to become VCET Colleges and the existing Adult Education and Training Centres established in terms of the Adult Education and Training Act, 52 of 2000, to be converted into Community Education and Training Centres. These Centres will operate within the existing provisions of the FETC Act, 2006. The Adult Education and Training Act, 2000 (AET) will be repealed and the Centres will be deemed to be established under the FET Act, 2006. Therefore the governance structures, funding, management and other related functions will be exercised within the powers provided for n and according to the structures of the FET Act.

1.2 The scope of the qualifications that these two institutional types may offer will be amended to include all qualifications from level 1 to level 4 of the National Qualifications Framework and the qualifications offering per institutional types will be determined by landscape policy applicable to the respective institutional type. This will allow CET Centres to provide both basic and further education and training qualifications, such as the

adult matric. It is envisaged that the qualifications offering by the VCET Colleges will mainly be in accordance with those offered by FET Colleges.

1.3 The establishment of a South African Institute for Vocational and Continuous Education and Training as envisaged in the Green Paper is also introduced by this Bill. This Bill will provide the framework within which this institute may be established and funded, as well as the related functions thereof.

1.4 Lastly this Bill seeks to amend the name of the FET Colleges Act to the FET Act, 2006. This amendment is needed as one of the institutional types is foreseen to become a College, but will be established as a CET Centre.