

REPUBLIC OF SOUTH AFRICA

NATIONAL ENERGY BILL

*(As introduced in the National Assembly (proposed section 75);
explanatory summary of Bill published in Government Gazette No. 31124 of 3 June 2008)
(The English text is the official text of the Bill)*

(MINISTER OF MINERALS AND ENERGY)

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BILL

To ensure that diverse energy resources are available, in sustainable quantities and at affordable prices, to the South African economy in support of economic growth and poverty alleviation, taking into account environmental management requirements, international commitments and obligations and interactions amongst economic sectors; to establish institutions to be responsible for promotion of efficient generation and consumption of energy, energy modelling and planning, increased generation and consumption of renewable energies, energy research, contingency energy supply, holding of strategic energy minerals, adequate investment in, appropriate upkeep of and equitable access to energy infrastructure; to provide measures for the furnishing of certain data and information regarding energy demand, supply and generation; and to provide for matters connected therewith.

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

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CHAPTER 1

DEFINITIONS AND OBJECTS

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Board**” means the Board of the South African National Energy Development Institute contemplated in section 18; 5
- “**Central Energy Fund Act**” means the Central Energy Fund Act, 1977 (Act No. 38 of 1977);
- “**Department**” means the Department of Minerals and Energy;
- “**Director-General**” means the Director-General of the Department of Minerals and Energy or anyone appointed to act on his or her behalf; 10
- “**energy carrier**” means a substance or system that moves or carries energy in a usable form from one place to another;
- “**energy data**” means energy-related statistics, facts, figures, information and records of the energy industry and all other economic sectors; 15
- “**energy efficiency**” means economical and efficient production and utilisation of an energy carrier or resource;
- “**energy modelling**” means a mathematical representation, by a set of logical and quantitative parameters, of economic and other related processes within the energy sector as well as the interactions amongst the processes and other factors which 20 have a relationship with the energy sector;
- “**energy security**” means availability of diverse energy resources, in sustainable quantities and at affordable prices, to the South African economy in support of economic growth and poverty alleviation, whilst taking into account environmental management requirements, international commitments and interactions among 25 economic sectors;
- “**greenhouse gases**” means gases present in the atmosphere, which reduce the loss of heat into space, thereby contributing to an increase in global temperatures through a process known as the greenhouse effect;
- “**Integrated Energy Masterplan**” means national energy plan contemplated in section 16, approved by Cabinet and published in the *Gazette* by the Minister; 30
- “**Minister**” means the Minister of Minerals and Energy;
- “**organ of state**” means an organ of state as defined in section 239 of the Constitution;
- “**prescribed**” means prescribed by regulation; 35
- “**Promotion of Access to Information Act**” means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**regulation**” means any regulation made in terms of this Act; 40
- “**renewable energy**” means energy generated from natural non-depleting resources, including solar energy, wind energy, biomass energy, biological waste energy, hydro energy, geothermal energy and ocean and tidal energy;
- “**this Act**” includes regulations made in terms of this Act.

Objects of Act 45

2. The objects of this Act are to—
- (a) ensure uninterrupted supply of energy to the Republic;
- (b) promote diversity of supply of energy and its sources;
- (c) facilitate effective management of energy demand and its conservation;
- (d) promote energy research; 50
- (e) promote appropriate standards and specifications for the equipment, systems and processes used for producing, supplying and consuming energy;
- (f) ensure collection of data and information relating to energy supply, transportation and demand;
- (g) promote evidence-driven energy and related sectors’ policy formulation; 55

- (h) provide for optimal supply, transformation, transportation, storage and demand of energy that are planned, organised and implemented in accordance with a balanced consideration of security of supply, economics, consumer protection and a sustainable development;
- (i) provide for safety, health and environment matters that pertain to energy; 5
- (j) facilitate improvement of the quality of life of the people of the Republic;
- (k) commercialise energy-related technologies;
- (l) ensure effective planning for energy supply, transportation and consumption;
- (m) promote sustainable development of South Africa's economy; and
- (n) ensure the fulfilment of international commitments and obligations pertaining to energy. 10

CHAPTER 2

ENERGY SUPPLY, OPTIMISATION AND UTILISATION

Provision of data and access to data sources

- 3. (1) The Minister must prescribe— 15
 - (a) mandatory provision of any data and information reasonably required for the purposes of the energy modelling and planning from any person and the time period for the provision of such data and information, where such data is not already made available to any other public institution; and
 - (b) connection to any data and information management system, or any other system within the public administration, for the acquisition of energy data and information, in accordance with the Promotion of Access to Information Act and the Statistics Act, 1999 (Act No. 6 of 1999), where such data or information is collected by that public institution. 20
- (2) The Minister may, for the purpose of ensuring optimal collection of data, subject to observation of confidentiality of information in the possession of a particular entity, permit sharing of information with any other entity within and outside of the boundaries of the Republic. 25
- (3) The information provided under this Act that is not already in the public domain, may only be supplied to persons outside of the Department subject to the provisions of the Promotion of Access to Information Act. 30

Safety, health and environment

- 4. (1) The Minister may, in consultation with the Minister of Trade and Industry and the Minister of Environmental Affairs and Tourism, establish a programme or programmes, not contemplated in other legislation, to minimise the negative safety, health and environmental impacts of energy carriers. 35
- (2) The Minister may, in consultation with the Minister of Trade and Industry and the Minister of Environmental Affairs and Tourism, for the purposes of ensuring safe, healthy and environmentally sensible use of energy, prescribe standards and specifications, not elsewhere legislated or regulated, for— 40
 - (a) the composition, colouring, labelling and form of energy carriers;
 - (b) the transport of energy carriers;
 - (c) the storage and packaging of energy carriers;
 - (d) low-smoke fuels;
 - (e) the prohibition of the sale or combustion of polluting fuels in specified areas; 45
 - (f) electromagnetic radiation;
 - (g) cooking, heating, lighting and other energy consuming household appliances; and
 - (h) any other energy-consuming appliance in all sectors of the economy.

Energy access by households 50

- 5. (1) The Minister may establish a programme or programmes that provide for the universal access to appropriate forms of energy for all South Africans at affordable prices.
- (2) The programmes contemplated in subsection (1) must take into account—
 - (a) the safety, health and environmental suitability of such energy; 55

- (b) the availability of resources;
- (c) the optimisation of existing energy infrastructure;
- (d) the need for new infrastructure;
- (e) the provision of information and training regarding energy and its optimal utilisation; 5
- (f) the sustainability of the energy provision;
- (g) affordability;
- (h) cost-effectiveness; and
- (i) appropriate governance procedures for government-sponsored programmes as prescribed by the Public Finance Management Act. 10

Energy-related international obligations

- 6.** (1) The Minister may, in consultation with the Ministers of Foreign Affairs, of Environment Affairs and Tourism and of Trade and Industry—
- (a) institute programmes, including authorising officials in the Department;
 - (b) establish agencies or entities; and 15
 - (c) take any other reasonable steps,
- to give effect to the energy implications of international agreements entered into or ratified by the Government of the Republic.
- (2) The Minister may prescribe measures to give effect to subsection (1) provided that such measures comply with the Public Finance Management Act. 20

CHAPTER 3

NATIONAL ENERGY MODELLING AND INFORMATION AGENCY

Establishment of National Energy Modelling and Information Agency

- 7.** The National Energy Modelling and Information Agency is hereby established as a juristic person. 25

Functions of National Energy Modelling and Information Agency

- 8.** (1) The functions of the National Energy Modelling and Information Agency are to—
- (a) collect, collate and analyse relevant energy data and information for use in energy modelling and planning; 30
 - (b) manage data and information provided to it for the purposes of the development, implementation, assessment and monitoring of integrated energy and related plans;
 - (c) provide reliable information for the purposes of energy and related planning;
 - (d) develop and maintain supply, demand, infrastructure and macro-economic modelling capability aimed at assisting with the— 35
 - (i) development of an integrated energy Masterplan;
 - (ii) development of energy-related sector-specific plans;
 - (iii) development of national energy policy;
 - (iv) development of macro-economic, environmental and fiscal policies; 40
 - (v) coordination of energy development with related activities; and
 - (vi) development of energy-related greenhouse gas mitigation plans;
 - (e) provide energy data and information so as to comply with national, regional and international obligations;
 - (f) produce and publish energy supply and use reviews and forecasts; 45
 - (g) produce and publish energy models, including assumptions and any other information deemed relevant for the purposes of verifying energy models and their outputs;
 - (h) support national, provincial and local governments by conducting a policy impact analysis; and 50
 - (i) make available, in a manner prescribed, energy statistics and energy information to the public.

- (2) The National Energy Modelling and Information Agency must, in accordance with this Act—
- (a) advise the Minister on—
 - (i) the strategic risks faced by the energy sector;
 - (ii) the relationship between the Republic's energy sector and its global counterparts; 5
 - (iii) the capacity of energy infrastructure and requirements for expansion;
 - (iv) the economic impact of energy regulation; and
 - (v) greenhouse gas emissions from the energy sector;
 - (b) provide analyses to the Minister on— 10
 - (i) the possible impact of any energy policy published on the economy;
 - (ii) continued availability of energy;
 - (iii) the cost of energy; and
 - (iv) any other relevant matter;
 - (c) provide analyses to Cabinet of the possible impact on energy provision and consumption of any policy, strategy or plan contemplated by Cabinet; 15
 - (d) consider any energy-related matter referred to it by the Minister; and
 - (e) report to the Minister in accordance with section 55 of the Public Finance Management Act.

Constitution of National Energy Modelling and Information Agency 20

9. (1) The National Energy Modelling and Information Agency comprises of an Energy Information Administrator, who is the head of the agency, and its data management and modelling staff.
- (2) The Minister must appoint a person with suitable qualifications and experience as the Energy Information Administrator for a period of five years. 25
- (3) The Minister may re-appoint the Energy Information Administrator on expiry of his or her term of office.
- (4) The Minister may designate any other person within the National Energy Modelling and Information Agency, who is suitably qualified, to perform the functions of the Energy Information Administrator whenever— 30
- (a) the Energy Information Administrator is, for any reason, unable to perform his or her duties; or
 - (b) the office of the Energy Information Administrator is vacant.
- (5) The Minister must, in consultation with the Minister of Finance, determine the Energy Information Administrator's remuneration, allowances, benefits and other terms and conditions of employment, taking into account the demands of the job and the equivalent compensation for such position paid in the private sector. 35
- (6) No person may be appointed as or remain an Energy Information Administrator if that person—
- (a) is not a South African citizen or the holder of a permit as a permanent resident in the Republic; 40
 - (b) is an unrehabilitated insolvent;
 - (c) has—
 - (i) within a period of 10 years immediately before the date of the proposed appointment, been convicted of an offence involving dishonesty; or 45
 - (ii) served a sentence of imprisonment without the option of a fine for any other offence; or
 - (d) has after his or her appointment been—
 - (i) convicted of an offence involving dishonesty; or
 - (ii) sentenced to imprisonment without the option of a fine for any other offence. 50
- (7) The Energy Information Administrator is responsible for—
- (a) the day-to-day management of the affairs of the National Energy Modelling and Information Agency;
 - (b) the appointment of employees and contracting with persons to assist the National Energy Modelling and Information Agency in the performance of its functions; and
 - (c) administration over the personnel of the National Energy Modelling and Information Agency.

- (8) The remuneration and allowances of personnel of the National Energy Modelling and Information Agency must be market-related.
- (9) The Energy Information Administrator must appoint personnel to the National Energy Modelling and Information Agency who—
- (a) collectively have an understanding of— 5
 - (i) all primary energy resources and carriers;
 - (ii) all energy-demand sectors;
 - (iii) all energy infrastructure;
 - (iv) the South African macro-economic structure; and
 - (v) the geopolitics of energy; 10
 - (b) collectively have extensive knowledge of—
 - (i) economic, financial and optimisation modelling;
 - (ii) collecting and managing data and information;
 - (iii) processing and analysing data and information; and
 - (iv) publishing financial, economic and related information and reports; 15
 - (c) are broadly representative of the people of the Republic; and
 - (d) demonstrate impartiality and objectivity.

Vacation of office and termination of appointment of Energy Information Administrator

- 10.** (1) The Energy Information Administrator must vacate his or her office if he or she— 20
- (a) becomes of unsound mind;
 - (b) resigns by written notification of at least one month to the Minister;
 - (c) materially fails to perform any duty imposed on him or her in terms of this Act; or 25
 - (d) becomes disqualified on any of the grounds referred to in section 9(6).
- (2) The Minister may terminate the appointment of an Energy Information Administrator if he or she contravenes section 15.

Operating principles governing National Energy Modelling and Information Agency 30

- 11.** (1) Energy modelling conducted by the National Energy Modelling and Information Agency must—
- (a) only take into account published government policies;
 - (b) not be driven by private agendas;
 - (c) only include proven energy production technologies, or near-proven energy production technologies, where all parameters related to such technologies are reasonably known; 35
 - (d) be bound by technological, socio-economic and other realities;
 - (e) clearly indicate all assumptions made in the development and operation of each model; 40
 - (f) only use proven and generally accepted financial, economic and technical theories;
 - (g) only be data- and information-driven; and
 - (h) if based on a model of another country or another application, be fully calibrated with South African data and information in order to best describe the South African environment or the new application. 45
- (2) The models used by the National Energy Modelling and Information Agency, together with the assumptions and any other information deemed relevant for the purposes of verifying the models and their outputs, must be published electronically on the Agency's website. 50
- (3) The reports that are published by the National Energy Modelling and Information Agency must be influenced only by its analysis and not by any other sectoral influence.
- (4) The National Energy Modelling and Information Agency must, as much as possible, promote integration with other relevant national databases and information systems to ensure efficiency in data sourcing and to minimise duplication of data and information storage and management. 55

Duties of personnel of National Energy Modelling and Information Agency

- 12.** The personnel of the National Energy Modelling and Information Agency must—
- (a) perform all their functions in terms of this Act;
 - (b) act in a justifiable and transparent manner;
 - (c) at all times, act in the interest of the Republic and not in their own or sectoral interests; 5
 - (d) act independent of any undue influence or instruction; and
 - (e) act in a manner that is required and expected from the holder of a public office.

Publications by National Energy Modelling and Information Agency

- 13.** (1) The National Energy Modelling and Information Agency must annually, before the end of May, publish— 10
- (a) a review of energy demand and supply for the previous year; and
 - (b) a forecast of energy supply and demand for the following 25 years.
- (2) Any publication made by the National Energy Modelling and Information Agency must— 15
- (a) be based on the collective analysis of the personnel of the National Energy Modelling and Information Agency;
 - (b) be in the public interest;
 - (c) be within the powers as set out in this Act;
 - (d) be approved by the majority of the senior personnel of the National Energy Modelling and Information Agency; 20
 - (e) include minority views;
 - (f) be in writing;
 - (g) be signed by the Energy Information Administrator; and
 - (h) be available to the general public. 25

Funding of National Energy Modelling and Information Agency

- 14.** The funds of the National Energy Modelling and Information Agency consist of—
- (a) money appropriated by Parliament;
 - (b) levies imposed by or under separate legislation;
 - (c) donor funding; and 30
 - (d) any other appropriate source.

Accounting by National Energy Modelling and Information Agency

- 15.** (1) The National Energy Modelling and Information Agency must perform its functions in accordance with the Public Finance Management Act.
- (2) The National Energy Information Administrator must open one or more accounts in the name of the National Energy Modelling and Information Agency with a financial institution and deposit therein all money received from the sources contemplated in section 14. 35
- (3) The financial records of the National Energy Modelling and Information Agency must be audited by the Auditor-General. 40
- (4) The financial year of the National Energy Modelling and Information Agency starts on the first day of April of one year and ends on the thirty-first day of March of the following year.

CHAPTER 4

INTEGRATED ENERGY PLANNING 45

Integrated energy planning

- 16.** (1) The Minister must, on an annual basis, develop the Integrated Energy Masterplan to be published in the *Gazette*.
- (2) The Integrated Energy Masterplan must deal with issues relating to the supply, transformation, transport, storage and demand of energy in a way that accounts for— 50
- (a) a balanced consideration of security of supply;

- (b) economically available resources;
 - (c) affordability;
 - (d) accessibility;
 - (e) social equity;
 - (f) employment; 5
 - (g) the environment;
 - (h) international commitments; and
 - (i) consumer protection.
- (3) The Integrated Energy Masterplan must—
- (a) be based on the results of the energy modelling activities envisaged in section 11; 10
 - (b) take account of plans relating to transport, electricity, petroleum, water, trade, macro-economy, energy infrastructure development, housing, air quality management, greenhouse gas mitigation and industrial building by relevant authorities and departments; 15
 - (c) serve as a guide for energy infrastructure investments;
 - (d) provide all viable options and guide the selection of the correct technology to meet energy demand; and
 - (e) guide, and be guided by plans from, all supply, production and demand sectors whose plans impact on or are impacted upon by the Masterplan. 20
- (4) Integrated energy planning must take into account—
- (a) sustainable development;
 - (b) optimal use of indigenous and regional resources;
 - (c) balance between supply and demand;
 - (d) economic viability; 25
 - (e) environmental, health, safety and social impacts; and
 - (f) developmental requirements of the Southern African region.
- (5) A Integrated Energy Masterplan must have a planning horizon of 25 years.
- (6) The development of the Integrated Energy Masterplan must be governed by the Promotion of Administrative Justice Act. 30

CHAPTER 5

SOUTH AFRICAN NATIONAL ENERGY DEVELOPMENT INSTITUTE

Establishment of South African National Energy Development Institute

- 17.** (1) The South African National Energy Development Institute is hereby established as a juristic person. 35
- (2) The South African National Energy Development Institute must undertake the functions of the—
- (a) Renewable Energy Division contemplated in section 26, including its programmes and initiatives;
 - (b) National Energy Efficiency Division contemplated in section 28, including all its programmes and initiatives; and 40
 - (c) Energy Research and Development Division contemplated in section 30.

Constitution of South African National Energy Development Institute

- 18.** (1) Subject to this Act, the South African National Energy Development Institute is managed and controlled by a Board, which— 45
- (a) must determine the South African National Energy Development Institute's policies and procedures;
 - (b) must exercise control over the performance of the South African National Energy Development Institute's functions; and
 - (c) has the same powers and authority as are conferred upon the South African National Energy Development Institute in terms of this Act to— 50
 - (i) achieve its objects;
 - (ii) fulfil its functions; and
 - (iii) perform its duties.

- (2) The Minister must, in consultation with the Minister of Science and Technology, appoint as members of the Board—
- (a) a Chairperson;
 - (b) a Deputy Chairperson;
 - (c) representatives from the Departments of Minerals and Energy, Trade and Industry, Science and Technology, Environmental Affairs and Tourism and Transport; 5
 - (d) a representative from the electricity industry;
 - (e) a representative from the mineral oil industry; and
 - (f) a representative from one of the academic institutions undertaking energy research. 10
- (3) The Chief Executive Officer appointed in terms of section 21, or if unavailable, an employee of the South African National Energy Development Institute designated by the Chief Executive Officer, must attend all meetings of the Board and has the right to speak, but not to vote, at such meetings. 15
- (4) If the Chairperson cannot perform his or her duties, the Deputy Chairperson must perform such duties until the Chairperson can resume his or her duties or until the Minister, in consultation with the Minister of Science and Technology, has appointed a replacement for him or her.
- (5) The Chairperson or Deputy Chairperson presides at any meeting of the Board. 20
- (6) A member of the Board, excluding the Chief Executive Officer, holds office for a period not exceeding four years, but may be reappointed.
- (7) The members of the Board, with the exclusion of those members who are in the full-time employment of an organ of state, must be appointed on such conditions, including conditions relating to the payment of remuneration and allowances, as the Minister may, with the concurrence of the Ministers of Finance and of Science and Technology, determine. 25
- (8) The members of the Board must be persons who have relevant qualifications and experience or who have special knowledge or experience in relation to one or other aspect of the South African National Energy Development Institute's functions. 30
- (9) The Minister may, from time to time, reserve any matter provided for in this Act as a matter in respect of which a decision of the Board will be subject to the consent of the Minister and the Minister of Science and Technology.
- (10) The Minister and the Minister of Finance may jointly from time to time reserve any financial matter provided for in this Act, as a matter in respect of which a decision of the Board shall be subject to the consent of the Minister with the concurrence of the Minister of Finance. 35

South African National Energy Development Institute committees for specific purposes

- 19.** (1) The Board may nominate any of its members to join one or more committees, which must, subject to the instructions of the Board, perform those functions of the Board as the Board may determine. 40
- (2) (a) A committee contemplated in subsection (1) consists of such number of persons, including employees of the South African National Energy Development Institute, as the Board deems necessary. 45
- (b) The Board may at any time dissolve or reconstitute a committee.
- (3) If a committee referred to in subsection (1) consists of more than one member, the Board must designate one member as a Chairperson.
- (4) The South African National Energy Development Institute may pay the members of a committee referred to in subsection (1) who are— 50
- (a) not in the full-time service of the State;
 - (b) not employees of the South African National Energy Development Institute; and
 - (c) not a member of the Board,
- the remuneration and allowances determined by the Minister, with the concurrence of the Minister of Finance. 55
- (5) The Board shall not be discharged from their responsibility from any function performed in terms of this section by any committee of the Board.

Meetings of Board of South African National Energy Development Institute

- 20.** (1) The meetings of the Board must be held at such times and places as determined by the Chairperson of the Board.
- (2) The Chairperson, or in his or her absence, the Deputy Chairperson, may at any time call a special meeting of the Board, which must be held at such time and place as the Chairperson or the Deputy Chairperson, as the case may be, may direct. 5
- (3) The quorum for a meeting of the Board is the majority of its members.
- (4) Subject to subsection (3), a decision of the Board is taken by resolution of a majority of the members present at any meeting of the Board and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote as a member of the Board. 10
- (5) No decision taken by or act performed under the authority of the Board shall be invalid by reason only of—
- (a) a vacancy on the Board; or
 - (b) the fact that a person who was not entitled to sit as a member of the Board, sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Board who were present at the time and entitled to sit as members. 15

Chief Executive Officer of South African National Energy Development Institute

- 21.** (1) The Board appoints the Chief Executive Officer of the South African National Energy Development Institute. 20
- (2) The Chief Executive Officer—
- (a) is responsible for and exercises control over the performance of the functions of the South African National Energy Development Institute; and
 - (b) must report on the affairs of the South African National Energy Development Institute to the Board as may be required of him or her by the Board. 25
- (3) If the Chief Executive Officer is absent or unable to carry out his or her duties, or in the event of a vacancy, the Board may appoint an employee of the South African National Energy Development Institute to act as Chief Executive Officer, and that employee shall, while so acting, have all the powers and perform all the duties of the Chief Executive Officer. 30
- (4) The Chief Executive Officer is appointed for a period of not more than five years on the conditions, including conditions relating to the payment of remuneration and allowances, which the Board may determine in accordance with a system approved, from time to time, by the Minister, with the concurrence of the Ministers of Finance and of Science and Technology. 35

South African National Energy Development Institute employees and conditions of service

- 22.** (1) The Chief Executive Officer of the South African National Energy Development Institute may, on the conditions which must be determined by the Board, appoint the employees of the South African National Energy Development Institute whom it deems necessary to assist the South African National Energy Development Institute in the performance of its functions. 40
- (2) The South African National Energy Development Institute must pay its employees such remuneration, allowances, subsidies and other benefits as the Board may determine, in accordance with a system approved from time to time by the Minister, with the concurrence of the Minister of Finance. 45
- (3) The South African National Energy Development Institute may, in addition to employees referred to in subsection (1), be assisted in the performance of its functions by officers and employees in the public service who have been placed at the disposal of the South African National Energy Development Institute in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994). 50
- (4) The Board may, on such conditions as it may deem fit and for a fixed period of time, second an employee of the South African National Energy Development Institute to perform a particular service for an organ of state or for the government of any other country or territory, provided that— 55

- (a) such an employee's rights, privileges and benefits by virtue of his conditions of service as an employee of the South African National Energy Development Institute are not adversely affected by such secondment; and
- (b) such employee consents thereto.

Transitional provisions 5

- 23.** (1) In this section—
- (a) “**CEF (Proprietary) Ltd.**” means the company referred to in the Central Energy Fund Act, 1977 (Act No. 38 of 1977);
 - (b) “**NEEA**” means the entity known as the National Energy Efficiency Agency which existed immediately before the commencement of this Act as a division of CEF (Proprietary) Ltd.; 10
 - (c) “**SANERI**” means the entity known as the South African National Energy Research Institute which existed immediately before the commencement of this Act as a division of CEF (Proprietary) Ltd.
- (2) As from the date of commencement of this Act— 15
- (a) the person who immediately before that date occupied the office of Chief Executive Officer of SANERI, is deemed to be the Chief Executive Officer of the South African National Energy Development Institute and continues to hold that office, without any interruption, for the remainder of the period for which he was appointed as the Chief Executive Officer of SANERI; 20
 - (b) the persons who immediately before that date constituted the personnel of SANERI and of NEEA, are deemed to be the personnel of the South African National Energy Development Institute, without any interruption of service;
 - (c) all assets and liabilities which vested in SANERI and NEEA as divisions of CEF (Proprietary) Ltd immediately before that date vest in the South African National Energy Development Institute. 25

Funding of South African National Energy Development Institute

- 24.** (1) The funds of the South African National Energy Development Institute consist of—
- (a) money appropriated by Parliament; 30
 - (b) donations or contributions which the South African National Energy Development Institute may receive from any person, body, government or administration;
 - (c) revenue obtained through the commercialisation of energy technologies resulting from research and development programmes; and 35
 - (d) money received from any other appropriate source.
- (2) The South African National Energy Development Institute must utilise its funds for defraying expenses in connection with the performance of its functions.
- (3) The South African National Energy Development Institute must utilise its money in accordance with the statement of its estimated income and expenditure contemplated in subsection (4), as approved by the Minister. 40
- (4) The Board must in each financial year, as required by the Public Finance Management Act, submit a statement of the South African National Energy Development Institute's estimated income and expenditure during the following financial year to the Minister for his or her approval. 45
- (5) The Board may invest any unexpended portion of the South African National Energy Development Institute's funds with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), or, subject to the approval of the Minister with the concurrence of the Minister of Finance, dispose thereof in any other manner. 50
- (6) The Board may create surplus funds as envisaged by subsection (5) and deposit such funds as the Minister, acting with the concurrence of the Minister of Finance, may approve.

Accounting and auditing at South African National Energy Development Institute

- 25.** (1) The Chief Executive Officer is the accounting officer charged with the responsibility of accounting for all money received and payments made by the South African National Energy Development Institute. 55

(2) The accounting officer must cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the South African National Energy Development Institute and to explain the transactions and financial position of the business of the South African National Energy Development Institute.

(3) The accounting and compilation of annual financial statements of the South African National Energy Development Institute must be done in accordance with the Public Finance Management Act. 5

Establishment and functions of Renewable Energy Division

26. (1) The Minister must establish a Renewable Energy Division within the South African National Energy Development Institute. 10

(2) The functions of the Renewable Energy Division are to—

- (a) establish programmes and initiatives to increase and promote the uptake of renewable energy technologies;
- (b) optimise the contribution of renewable energy to the national energy supply grid; and 15
- (c) to contribute to sustainable development.

Measures to promote renewable energy

27. (1) The Minister may prescribe—

- (a) targets for the use of renewable energy after consulting with the National Energy Modelling and Information Agency; 20
- (b) minimum contributions to the national energy supply from renewable energy sources;
- (c) the nature of the sources that may be used for renewable energy contributions to the national energy supply;
- (d) the manner in which any person, state institution, agency and regulator responsible for energy matters must comply with paragraphs (a) to (c); 25
- (e) technology standards for renewable energy;
- (f) certifications and qualifications necessary for persons involved in the application of renewable energy measures; and
- (g) institute measures and incentives designed to promote the production, consumption, investment, research and development of renewable energy. 30

(2) (a) The Minister may establish, within the South African National Energy Development Institute, a Tradable Renewable Certificates System or any other system which is aimed at or would result in increased consumption of renewable energies in South Africa. 35

(b) For the purpose of this subsection “**Tradable Renewable Certificates System**” means electronic records that verify the origin of energy from registered renewable energy facilities.

(3) The Minister may establish a regulatory framework, for the supply and for increased access of renewable energy into the national power grid, by— 40

- (a) setting targets for the renewable energy source contribution into the national energy mix;
- (b) creating obligations by means of regulation for priority purchase and transmission of renewable energy generated electricity;
- (c) prescribing fees by means of regulation to be paid by renewable energy plant operators to gain access into the national grid; 45
- (d) developing regulations for the development and uptake of renewable energy sources and technologies; and
- (e) any other means that he or she deems appropriate.

(4) The Minister may establish a renewable energies subsidy and grant fund within the Renewable Energy Division of the South African National Energy Development Institute. 50

(5) The Minister may establish a Renewable Energy Finance and Subsidy Office within the Renewable Energy Division of the South African National Energy Development Institute. 55

(6) The functions of the Renewable Energy Finance and Subsidy Office are to—

- (a) develop and publish the criteria to evaluate project proposals eligible for funding in terms of the procedures manual for the Renewable Finance and Subsidy Office;

- (b) invite project developers to submit project proposals to access the fund;
- (c) evaluate project proposals using the published criteria;
- (d) award subsidy contracts and disburse funds to project proposals that meet the criteria; and
- (e) manage and monitor progress on subsidy contracts awarded. 5

National Energy Efficiency Division

- 28.** (1) The Minister must establish and maintain a National Energy Efficiency Division within the South African National Energy Development Institute.
- (2) The functions of the National Energy Efficiency Division are to— 10
- (a) undertake energy efficiency measures as directed by the Minister;
 - (b) increase energy efficiency throughout the economy;
 - (c) increase the gross domestic product per unit of energy consumed; and
 - (d) optimise the utilisation of finite energy resources.

Measures to promote energy efficiency

- 29.** (1) The Minister may establish national energy efficiency programmes to promote the efficient production and consumption of energy. 15
- (2) The Minister may, in support of the national energy efficiency programmes, publish national targets for energy efficiency after consulting the National Energy Modelling and Information Agency and, in a manner consistent with the Standards Act, 1993 (Act No. 29 of 1993), and in consultation with the South African Bureau of Standards, prescribe— 20
- (a) individual minimum levels of energy efficiency measures for particular sectors of the economy;
 - (b) the manner in which state institutions responsible for energy generation and production must comply with paragraph (a); 25
 - (c) standards for energy efficiency measurements, testing procedures and verification marks;
 - (d) procedures for determining the energy efficiency of technologies, processes, appliances, devices, motor vehicles and buildings;
 - (e) energy efficiency standards for specific technologies, processes, appliances, devices, motor vehicles and buildings; 30
 - (f) certifications necessary for the application of energy efficiency technologies and procedures;
 - (g) energy efficiency labelling of appliances, devices, motor vehicles and buildings; 35
 - (h) the prohibition of the manufacture, importation or sale of appliances, devices, motor vehicles and fuel-burning appliances for reasons of poor energy efficiency; and
 - (i) the manner in which paragraphs (c) to (h) are applied, monitored and enforced. 40

Establishment and functions of Energy Research and Development Division

- 30.** (1) The Minister must establish and maintain an Energy Research and Development Division within the South African National Energy Development Institute.
- (2) The functions of the Energy Research and Development Division are to— 45
- (a) direct, monitor, conduct and implement energy research and technology development in all fields of energy, other than nuclear energy; and
 - (b) promote energy technology innovation and conduct research and develop technologies which support— 50
 - (i) cost-effective, clean, safe and efficient supply, production, transformation, transport and consumption of energy;
 - (ii) sustainable availability and utilisation of energy resources;
 - (iii) cost-effective, efficient and safe disposal of energy waste; and
 - (iv) reduction and mitigation of greenhouse gas emissions.

- (c) provide for—
- (i) improvement of the quality of life of the people of the Republic;
 - (ii) training and development in the field of energy research and technology development;
 - (iii) establishment and expansion of industries in the field of energy; and 5
 - (iv) commercialisation of energy technologies resulting from energy research and development programmes.
- (3) The Energy Research and Development Division may—
- (a) register patents and intellectual property in its name resulting from its activities; 10
 - (b) issue licenses to other persons for the use of its patents and intellectual property;
 - (c) publish information concerning its objects and functions;
 - (d) establish facilities for the collection and dissemination of information in connection with research, development and innovation; 15
 - (e) undertake any other energy technology development related activity as directed by the Minister, with the concurrence of the Minister of Science and Technology; and
 - (f) promote relevant energy research through cooperation— 20
 - (i) between the Republic and other countries in matters relating to energy research, development and innovation; and
 - (ii) with other government departments, universities, technical universities, colleges, educational and science councils, private firms and any other entities, institutions or persons equipped with the relevant skills and expertise. 25
- (4) The Energy Research and Development Division may, in the area of energy research—
- (a) make grants to educational and scientific institutions in aid of research by their staff or for the establishment of facilities for such research;
 - (b) co-operate with educational and scientific institutions and other persons; 30
 - (c) co-operate with educational authorities and scientific or technical societies or industrial institutions representing employers and employees;
 - (d) promote the training of research workers by granting bursaries, grants-in-aid for research and making monetary contributions to research programmes out of its funds; 35
 - (e) co-operate with persons and associations in other countries undertaking research;
 - (f) in respect of end products of research, development and technology transfer undertaken by the Energy Research and Development Division, produce and sell reports, computer programmes and other intellectual property; and 40
 - (g) exercise or perform any power or duty entrusted to or conferred upon the Energy Research and Development Division in terms of any other law.
- (5) The Energy Research and Development Division must, subject to its other functions in terms of this Act or any other law—
- (a) undertake the investigations or research that the Minister, in consultation with the Minister of Science and Technology, may assign to it; and 45
 - (b) advise the Minister and the Minister of Science and Technology on research in the field of energy technology.

Discoveries, inventions and improvements

- 31.** (1) Subject to subsections (5) and (6), the rights in all discoveries and inventions and in all improvements in respect of processes, apparatus and machines made by—
- (a) employees of the Energy Research and Development Division of the South African National Energy Development Institute or officers and employees in the public service who have been placed at the disposal of the Energy Research and Development Division of the South African National Energy Development Institute in terms of section 22 (3); 55
 - (b) persons assisting the Energy Research and Development Division of the South African National Energy Development Institute with any investigation or research; or

- (c) persons to whom bursaries or grants-in-aid have been granted by the Energy Research and Development Division of the South African National Energy Development Institute,
vests in the South African National Energy Development Institute.
- (2) The South African National Energy Development Institute may make the discoveries, inventions and improvements referred to in subsection (1) available for use in the public interest subject to the conditions and the payment of fees or royalties that the South African National Energy Development Institute may determine. 5
- (3) In respect of the rights in any discovery, invention or improvement that are contemplated in subsection (1), the South African National Energy Development Institute may award to the person responsible for the discovery, invention or improvement such bonus as it deems fit, or make provision for financial participation by him or her in the profits derived from such discovery, invention or improvement to such extent as the Minister may determine with the concurrence of the Minister of Finance. 10
- (4) The South African National Energy Development Institute may apply for a patent in respect of any discovery, invention or improvement contemplated in subsection (1), and shall for the purposes of the Patents Act, 1978 (Act No. 57 of 1978), be regarded as the assignee of the discoverer or inventor in question. 15
- (5) Unless it is otherwise agreed, the rights in a discovery, invention or improvement made by the Energy Research and Development Division of the South African National Energy Development Institute in the course of an investigation for or on behalf of another person, government or administration shall vest with the South African National Energy Development Institute. 20
- (6) The provisions of this section shall not apply in respect of a discovery, invention or improvement referred to in subsection (1) which, in the opinion of the Minister, was made by the person concerned otherwise than— 25
- (a) in the course of his or her employment as an employee of the Energy Research and Development Division of the South African National Energy Development Institute;
 - (b) during the performance of functions in respect of which he or she has been placed at the disposal of the Energy Research and Development Division of the South African National Energy Development Institute in terms of section 22 (3); 30
 - (c) in the course of any investigation or research while assisting the Energy Research and Development Division of the South African National Energy Development Institute; or 35
 - (d) in the course of any research in respect of which he or she receives a bursary or grant-in-aid from the Energy Research and Development Division of the South African National Energy Development Institute, which is not connected with such employment, functions, investigation or research. 40

CHAPTER 6

SECURITY OF SUPPLY

Prescription of measures to ensure security of supply

- 32.** (1) The Minister may prescribe— 45
- (a) minimum levels of stock for all primary energy carriers and feed stock for the production of energy carriers;
 - (b) minimum levels of strategic minerals stocks; and
 - (c) any other targets for energy feed stock to be adhered to, to adequately provide for security of energy supply.
- (2) The Minister must prescribe the conditions under which— 50
- (a) the strategic stocks may be built; and
 - (b) withdrawals may be made from such strategic stocks.

Establishment and functions of National Liquid Fuels Strategic Reserve Stocks Capability

- 33.** (1) The Minister may establish, through a directive served on CEF (Pty) Ltd, a capability to ensure the monitoring, directing and overseeing of the national liquid fuels strategic reserve stocks within CEF (Pty) Ltd. 5
- (2) The Central Energy Fund must, as directed by the Minister—
- (a) procure and manage the strategic liquid fuel stocks;
 - (b) undertake security of supply measures;
 - (c) identify, in consultation with the Department, the amount of strategic refinery feed stock and finished products that must be maintained in the Republic; 10
 - (d) manage the strategic refinery feed stock and finished products stocks on behalf of the State;
 - (e) maintain and operate the facilities for the storage of refinery feed stock and finished petroleum products;
 - (f) put in place structures, systems and processes to ensure the ongoing 15 operations of the strategic storage facilities;
 - (g) manage the logistics and implement emergency plan;
 - (h) execute the emergency reaction plan together with the South African National Emergency Services; and
 - (i) implement policies and regulations as set out in the strategic stocks strategy. 20

CHAPTER 7

ENERGY INFRASTRUCTURE

Measures and programmes for energy infrastructure

- 34.** (1) The Minister may prescribe measures and programmes to ensure— 25
- (a) adequate provision of energy-related infrastructure; and
 - (b) operating reliability of all key energy infrastructure, to the minimum standards as may be determined by the Minister.
- (2) The Minister may, in consultation with the Minister for Public Enterprises, establish entities and programmes to—
- (a) undertake security of supply measures; 30
 - (b) provide for adequate investment in energy infrastructure;
 - (c) promote security of supply through equitable access to common infrastructure by all parties;
 - (d) invest in critical energy infrastructure required for security of supply, which is intended for normal operations; and 35
 - (e) ensure upkeep of all critical energy infrastructure.

CHAPTER 8

GENERAL PROVISIONS

Regulations

- 35.** (1) The Minister may, in consultation with all Cabinet Ministers whose areas of responsibility will be affected by the proposed regulations, without derogating from his or her general regulatory powers, by notice in the *Gazette* make regulations regarding— 40
- (a) the publication of energy statistics or information;
 - (b) the type, manner and form of data and information that must be provided by any person; 45
 - (c) the form and manner of the link between the energy database and information system to any other system within the public administration;
 - (d) minimum contributions to national energy supply from renewable energy sources;
 - (e) standards and specifications for renewable energies; 50
 - (f) programmes and initiatives that may be necessary to increase the uptake of renewable energy technologies;
 - (g) minimum levels of energy efficiency in each sector of the economy;

- (h) steps and procedures necessary for the application of energy efficiency technologies and procedures;
 - (i) labelling of household appliances, devices and motor vehicles;
 - (j) prohibition of the manufacture, importation or sale of electrical and electronic products and fuel-burning appliances for reasons of poor energy efficiency; 5
 - (k) standards and specifications for energy carriers;
 - (l) the prohibition of disposal methods of certain fuels or post-combustion residues;
 - (m) holding of strategic reserve stocks, including financing mechanisms for such stocks; and 10
 - (n) any other matter that may or has to be prescribed, determined or provided for by regulation in terms of this Act.
- (2) Before promulgating regulations, the Minister—
- (a) may consult with the National Energy Modelling and Information Agency when constituted; 15
 - (b) must invite public comments on such regulations; and
 - (c) must duly consider such comments.

Offences and penalties

- 36.** (1) A person who contravenes or fails to comply with any provision of this Act, shall be guilty of an offence and liable on conviction to— 20
- (a) a fine not exceeding five million rand;
 - (b) imprisonment for a period not exceeding five years; or
 - (c) both such fine and such imprisonment.
- (2) The Minister may, by a notice in the *Gazette*, amend the amount referred to in subsection (1) in order to counter the effect of inflation. 25

Short title and commencement

- 37.** (1) This Act is called the National Energy Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*.
- (2) Different dates may be so fixed in respect of different provisions of this Act.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENERGY BILL, 2008

1. BACKGROUND AND OBJECTS

A White Paper on Energy Policy was approved by Cabinet and published during December 1998. Subsequent to that, several Acts envisaged by the White Paper were promulgated, however several aspects which were not addressed were highlighted.

The Energy Bill was first developed in 2003 to address all policy gaps among the promulgated Acts and provide policy clarity with respect to the aforementioned Acts. In 2004 Cabinet approved that the consultations regarding the Bill be conducted. The Bill was thoroughly discussed and was amended where appropriate. It was then submitted to Cabinet for tabling in Parliament in 2006. However it was withdrawn before it could be tabled in order to ensure that it adequately addresses the critical issues affecting energy security in South Africa whilst recognising policy objectives of the White Paper on Energy Policy.

Cabinet approved the Energy Security Masterplan for Liquid Fuels and the Energy Security Masterplan for Electricity in August and December 2007 respectively. The effective implementation of the Energy Security Masterplans necessitated a legal framework which would adequately empower the Minister to ensure implementation of all energy security aspects as envisaged therein.

The purpose of the Energy Bill is therefore to address not only those energy policies not already implemented through already promulgated Acts, but also to address energy security in South Africa.

The content of the Energy Bill addresses the following key White Paper on Energy Policy issues:

- The provision of data and access to data sources. Currently energy data is collected on a voluntary basis and this has resulted in unavailability or insufficient data required for effective energy planning within the Department. This provision will enable the mandatory collection of energy data by the Department of Minerals and Energy where such data is not already collected by other government departments or other public entities.
- The establishment of a programme or programmes aimed at minimising the negative impact energy carriers may cause to health and the environment. This will empower the Department of Minerals and Energy to render certain energy carrier and equipment specifications and standards, developed under the Standards Act, 1993 (Act No. 29 of 1993), mandatory. It will allow the Minister of Minerals and Energy to develop, in collaboration with the Minister of Trade and Industry and the Minister of Environmental Affairs and Tourism, certain energy related standards that might not already exist.
- The establishment of programmes that provide for universal access to appropriate forms of energy to households.
- The fulfilment of international commitments and obligations pertaining to energy.
- The establishment of a National Energy Modelling and Information Agency which will provide an energy modelling capability aimed at assisting with the development of an integrated energy Masterplan and energy related sector plans. It will also provide for input into the development of national energy policy and related macro-economic policies.
- The establishment of an Integrated Energy planning capability which will provide the Department of Minerals and Energy with a legal mandate to undertake this function.
- The establishment of a South African National Energy Development Institute, which will undertake functions related to the development of energy through various programmes and initiatives. These will include the establishment of—
 - * a Renewable Energy Division which will provide the Department of Minerals and Energy with a legal mandate for a budget and structure to undertake this function;
 - * an Energy Efficiency Division which will provide the Department of Minerals and Energy with a legal mandate for a budget and structure to undertake this function; and

- * an Energy Research and Development Division which will provide for sustainable energy supply through nationally directed research and development.
- The establishment of a National Liquid Fuels Strategic Reserve Stocks capability which will provide for the procurement and management of strategic liquid fuels stocks.
- The establishment of programmes and measures to ensure adequate investments in and development of energy infrastructure.

2. FINANCIAL IMPLICATIONS FOR THE STATE

Finance has been made available in the national budget for both energy research and development and renewable energies and, to some extent, energy efficiency through a levy of electricity. Additional funds will be required for the development and operation of the energy modelling and the energy development entities. Where possible, these additional funds will be sourced through dedicated levies on each energy carrier.

3. PERSONS/BODIES CONSULTED

A draft copy of the Bill was provided to the following bodies: Department of Water Affairs and Forestry, Department of Transport, Department of Trade and Industry, Department of Housing, Department of Public Enterprises, Department of Foreign Affairs, Department of Education, Department of Environmental Affairs and Tourism, National Treasury, Department of Arts, Culture, Science and Technology, Department of Agriculture, Department of Public Works, Department of Provincial and Local Government, Department of Public Services and Administration, Department of Social Development, South African Local Government Association, South African Bureau of Standards, CSIR, Eskom Holdings Ltd, National Electricity Regulator and the Central Energy Fund.

4. PARLIAMENTARY PROCEDURE

- 4.1 The State Law Advisers and the Department of Minerals and Energy 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.
- 4.2 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.

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