

REPUBLIC OF SOUTH AFRICA

NATIONAL ENERGY BILL

(As amended by the National Assembly)
(The English text is the official text of the Bill)

(MINISTER OF MINERALS AND ENERGY)

[B 52D—2008]

ISBN 978-1-77037-387-7

No. of copies printed 1 800

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 and interactions amongst economic sectors; to provide for energy planning, increased generation and consumption of renewable energies, contingency energy supply, holding of strategic energy feedstocks and carriers, adequate investment in, appropriate upkeep and access to energy infrastructure; to provide measures for the furnishing of certain data and information regarding energy demand, supply and generation; to establish an institution to be responsible for promotion of efficient generation and consumption of energy and energy research; and to provide for all matters connected therewith.

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

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS AND OBJECTS

5

1. Definitions
2. Objects of Act

CHAPTER 2

ENERGY SUPPLY, OPTIMISATION AND UTILISATION

3. Provision of data and access to data sources
 4. Safety, health and environment
 5. Energy access by households
- 10

CHAPTER 3

INTEGRATED ENERGY PLANNING

6. Integrated energy planning
- 15

CHAPTER 4

SOUTH AFRICAN NATIONAL ENERGY DEVELOPMENT INSTITUTE

7. Establishment of South African National Energy Development Institute
 8. Constitution of South African National Energy Development Institute
 9. South African National Energy Development Institute sub-committees for specific purposes
- 20

10.	Meetings of Board of South African National Energy Development Institute	
11.	Chief Executive Officer of South African National Energy Development Institute	
12.	South African National Energy Development Institute employees and conditions of service	5
13.	Transitional provisions	
14.	Funding of South African National Energy Development Institute	
15.	Accounting and auditing at South African National Energy Development Institute	
16.	Discoveries, inventions and improvements	10

CHAPTER 5

SECURITY OF SUPPLY

17.	Acquisition and maintenance of National Strategic energy feedstocks and carriers	
18.	Investment in and maintenance of energy infrastructure	15

CHAPTER 6

GENERAL PROVISIONS

19.	Regulations	
20.	Offences and penalties	
21.	Short title and commencement	20

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 8;	25
	“ Department ” means the Department of Minerals and Energy;	
	“ 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;	30
	“ energy efficiency ” means economical and efficient production and utilisation of an energy carrier or resource;	
	“ energy feedstocks ” means any substance used or that can be used as a raw material in an industrial process producing energy;	35
	“ energy infrastructure ” means public and privately owned physical structures which are used for the production, transformation, conversion, transportation or distribution of energy carriers;	
	“ energy related sectors ” means all sectors which are impacted by or have an impact on the energy sector;	40
	“ energy resource ” means non-value added material or mineral that can be used to produce energy or be converted to an energy carrier;	
	“ free basic electricity ” means a limited free amount of electricity supply deemed necessary to support basic energy services of a typical poor household as determined from time to time;	45
	“ greenhouse gases ” mean gases present in the atmosphere, which reduce the loss of heat into space and thereby contributing to an increase in global temperatures through a process known as the greenhouse effect;	
	“ Integrated Energy Plan ” means the national energy plan contemplated in section 6, approved by Cabinet and published in the <i>Gazette</i> by the Minister;	50
	“ Minister ” means the Minister of Minerals and Energy;	
	“ organ of the state ” means an organ of state as defined in section 239 of the Constitution;	

- “**prescribed**” means prescribed by regulation;
- “**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); 5
- “**regulation**” means any regulation made in terms of this Act;
- “**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; and
- “**this Act**” includes regulations made in terms of this Act. 10

Objects of Act

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; 15
 - (d) promote energy research;
 - (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; 20
 - (g) 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;
 - (h) provide for certain safety, health and environment matters that pertain to energy; 25
 - (i) facilitate energy access for improvement of the quality of life of the people of Republic;
 - (j) commercialise energy related technologies;
 - (k) ensure effective planning for energy supply, transportation and consumption; 30 and
 - (l) contribute to sustainable development of South Africa’s economy.

CHAPTER 2

ENERGY SUPPLY, OPTIMISATION AND UTILISATION

Provision of data and access to data sources 35

3. (1) The Minister must establish mechanisms to ensure—
- (a) provision of any data and information reasonably required for the purposes of conducting analysis required for energy 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 40
 - (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. 45
- (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.
- (3) The information provided under this Act that is not already in the public domain 50 may only be supplied to persons outside of the Department subject to the provisions of the Promotion of Access to Information Act.
- (4) The Minister must establish mechanisms to—
- (a) collect, collate and analyse energy data and information;
 - (b) manage energy data and information; and 55
 - (c) avail, in a manner prescribed, energy statistics and energy information to the public.

- (5) The Minister must annually publish an analysis—
 - (a) reviewing energy demand and supply for previous year;
 - (b) forecasting energy supply and demand for no less than 20 years; and
 - (c) of plausible energy scenarios of how the future energy demand and supply landscape could look like under different demand and supply assumptions. 5
- (6) The Minister must publish—
 - (a) models used for data and information analysis;
 - (b) all the assumptions that are underpinning the models contemplated in subsection (a); and
 - (c) a list of categories of information or data that have been classified as confidential and the reasons thereof. 10

Safety, health and environment

4. The Minister may, after consultation with the Minister of Trade and Industry, the Minister of Labour and the Minister of Environmental Affairs and Tourism, adopt measures not contemplated in any other legislation, to minimise the negative safety, health and environmental impacts of energy carriers. 15

Energy access by households

- 5. (1) The Minister must adopt measures that provide for the universal access to appropriate forms of energy or energy services for all the people of the Republic at affordable prices. 20
- (2) The measures contemplated in subsection (1) must take into account—
 - (a) the safety, health and environmental suitability of such energy;
 - (b) the availability of energy resources;
 - (c) the optimisation of existing energy infrastructure;
 - (d) the need for new infrastructure; 25
 - (e) the provision of information and training regarding energy and its optimal utilisation;
 - (f) the sustainability of the energy provision;
 - (g) affordability;
 - (h) cost effectiveness; 30
 - (i) the State's commitment to provide free basic electricity to poor households; and
 - (j) appropriate governance procedures for government sponsored programmes as prescribed by the Public Finance Management Act.

CHAPTER 3 35

INTEGRATED ENERGY PLANNING

Integrated energy planning

- 6. (1) The Minister must develop and, on an annual basis, review and publish the Integrated Energy Plan in the *Gazette*.
- (2) The Integrated Energy Plan must deal with issues relating to the supply, transformation, transport, storage and demand of energy in a way that accounts for—
 - (a) security of supply;
 - (b) economically available energy resources;
 - (c) affordability;
 - (d) universal accessibility and free basic electricity; 45
 - (e) social equity;
 - (f) employment;
 - (g) the environment;
 - (h) international commitments;
 - (i) consumer protection; and 50
 - (j) contribution of energy supply to socio-economic development.
- (3) The Integrated Energy Plan must—
 - (a) take account of plans relating to transport, electricity, petroleum, water, trade, macro-economy energy infrastructure development, housing, air quality

- management, greenhouse gas mitigation within the energy sector and integrated development plans of local and provincial authorities;
- (b) inform and be informed by plans from all supply, production and demand sectors whose plans impact on or are impacted by the Integrated Energy Plan; and 5
- (c) be based on the results of the energy analysis envisaged in sections 3(4)(a) and 3(5).
- (4) The development of the Integrated Energy Plan must take into account—
 - (a) sustainable development;
 - (b) optimal use of indigenous and regional energy resources; 10
 - (c) balance between supply and demand;
 - (d) economic viability;
 - (e) environmental, health, safety and socio-economic impacts; and
 - (f) developmental requirements of the Southern African region.
- (5) The Integrated Energy Plan must have a planning horizon of no less than 20 years. 15
- (6) The Integrated Energy Plan must—
 - (a) serve as a guide for energy infrastructure investments;
 - (b) take into account all viable energy supply options; and
 - (c) guide the selection of the appropriate technology to meet energy demand.
- (7) Before finalising the Integrated Energy Plan, the Minister must— 20
 - (a) invite public comments; and
 - (b) duly consider such comments.

CHAPTER 4

SOUTH AFRICAN NATIONAL ENERGY DEVELOPMENT INSTITUTE

Establishment of South African National Energy Development Institute 25

- 7.** (1) The South African National Energy Development Institute is hereby established as a juristic person.
- (2) The functions of the South African National Energy Development Institute are to, in respect of—
- (a) energy efficiency— 30
 - (i) undertake energy efficiency measures as directed by the Minister;
 - (ii) increase energy efficiency throughout the economy;
 - (iii) increase the gross domestic product per unit of energy consumed; and
 - (iv) optimise the utilisation of finite energy resources;
 - (b) energy research and development— 35
 - (i) direct, monitor, conduct and implement energy research and technology development in all fields of energy, other than nuclear energy; and
 - (ii) promote energy research and technology innovation;
 - (iii) provide for—
 - (aa) training and development in the field of energy research and 40 technology development;
 - (bb) establishment and expansion of industries in the field of energy; and
 - (cc) commercialisation of energy technologies resulting from energy research and development programmes;
 - (iv) register patents and intellectual property in its name resulting from its 45 activities;
 - (v) issue licenses to other persons for the use of its patents and intellectual property;
 - (vi) publish information concerning its objects and functions;
 - (vii) establish facilities for the collection and dissemination of information in 50 connection with research, development and innovation;
 - (viii) undertake any other energy technology development related activity as directed by the Minister, with the concurrence of the Minister of Science and Technology;
 - (ix) promote relevant energy research through cooperation with any entity, 55 institution or person equipped with the relevant skills and expertise within and outside the Republic;
 - (x) make grants to educational and scientific institutions in aid of research by their staff or for the establishment of facilities for such research;

- (xi) promote the training of research workers by granting bursaries or grants-in-aid for research;
- (xii) undertake the investigations or research that the Minister, after consultation with the Minister of Science and Technology, may assign to it; and
- (xiii) advise the Minister and the Minister of Science and Technology on research in the field of energy technology. 5

Constitution of South African National Energy Development Institute

8. (1) Subject to this Act, the South African National Energy Development Institute is managed and controlled by a Board, which—
- (a) must determine the South African National Energy Development Institute's policies and procedures; 10
 - (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. 15
- (2) The Minister must, after 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; and 20
 - (d) two other suitably qualified persons.
- (3) The Chief Executive Officer appointed in terms of section 11, 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. 25
- (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, after consultation with the Minister of Science and Technology, has appointed a replacement for him or her. 30
- (5) The Chairperson or Deputy Chairperson presides at any meeting of the Board.
- (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) A member of the Board must vacate his or her office if he or she— 35
- (a) becomes of unsound mind;
 - (b) resigns by written notification to the Minister of at least one month;
 - (c) in the case of members appointed in terms of sub-section (2)(c), resigns from his or her respective department; or
 - (d) materially fails to perform any duty imposed on him or her in terms of this Act. 40
- (8) The members of the Board, with the exclusion of those members who are in the full-time employment of an organ of the 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 Science and Technology, determine. 45
- (9) 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.
- (10) Upon appointment, every member of the Board must disclose to the Minister and to the Board— 50
- (a) his or her pecuniary interest in any person, firm, association or company engaged in any of the functions of the South African National Energy Development Institute; and
 - (b) if his or her spouse, life partner, parent or child is in the employ of, or acts as a consultant to, or has any relationship with, any person, firm, association or company engaged in any of the functions of the South African National Energy Development Institute. 55
- (11) If a member of the Board acquires an interest contemplated in subsection 10(a) or (b), such member must immediately, in writing, declare that fact to the Minister and Board. 60

(12) 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.

(13) 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. 5

South African National Energy Development Institute sub-committees for specific purposes

9. (1) The Board may establish sub-committees and may appoint any of its members to join one or more of such sub-committees, which must, subject to the instructions of the Board, perform those functions of the Board as the Board may determine. 10

(2) (a) A sub-committee contemplated in subsection (1) consists of such number of persons, including at least one Board member and any employees of the South African National Energy Development Institute, as the Board deems necessary. 15

(b) The Board may at any time dissolve or reconstitute a sub-committee.

(3) If a sub-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 sub-committee referred to in subsection (1) who are— 20

(a) not in the full-time service of the State;

(b) not employees of the South African National Energy Development Institute; and

(c) not members of the Board,

the remuneration and allowances determined by the Minister, with the concurrence of the Minister of Finance. 25

(5) The Board shall not be discharged from their responsibility from any function performed in terms of this section by any sub-committee of the Board.

Meetings of the Board of South African National Energy Development Institute

10. (1) The meetings of the Board must be held at such times and places as determined by the Chairperson of the Board. 30

(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.

(3) The quorum for a meeting of the Board is the majority of its members. 35

(4) A decision of the Board is taken by resolution of the 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.

(5) No decision taken by or act performed under the authority of the Board shall be invalid by reason only of— 40

(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. 45

Chief Executive Officer of South African National Energy Development Institute

11. (1) The Board appoints the Chief Executive Officer of the South African National Energy Development Institute.

(2) The Chief Executive Officer— 50

(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.

(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 55

employee shall, while so acting, have all the powers and perform all the duties of the Chief Executive Officer.

(4) The Chief Executive Officer is appointed for a period of not more than five years, but may be reappointed 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 Science and Technology. 5

(5) The Chief Executive Officer must enter into an annual performance contract with the Board and the Board must assess his or her performance annually.

(6) Any dispute between the Board and the Chief Executive Officer which cannot be amicably resolved must be referred to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965). 10

South African National Energy Development Institute employees and conditions of service

12. (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. 15

(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. 20

(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). 25

(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— 30

- (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 35
- (b) such employee consents thereto.

Transitional provisions

13. (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); 40
- (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.; and
- (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. 45

(2) As from the date of commencement of this Act—

- (a) 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; and 50
- (b) 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.

Funding of South African National Energy Development Institute

14. (1) The funds of the South African National Energy Development Institute consist of—

- (a) money appropriated by Parliament;
 - (b) donations or contributions which the South African National Energy Development Institute may receive from any person, body, government or administration; and 5
 - (c) 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. 10
- (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.
- (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. 15
- (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. 20
- (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. 25

Accounting and auditing at South African National Energy Development Institute

15. (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.

(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. 30

(3) The accounting and compilation of annual financial statements of the South African National Energy Development Institute must be done in accordance with the provisions of the Public Finance Management Act. 35

Discoveries, inventions and improvements

16. (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 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 12(3); 40
- (b) persons assisting the South African National Energy Development Institute with any investigation or research; or 45
- (c) persons to whom contracts, including bursaries or grants-in-aid have been granted by 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. 50

(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 profit derived from such discovery, invention or improvement to such extent as the Minister may determine with the concurrence of the Minister of Finance. 55

(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.

(5) Unless it is otherwise agreed, the rights in a discovery, invention or improvement made by 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. 5

(6) The provisions of this section shall not apply in respect of a discovery or an invention or improvement referred to in subsection (1) which, in the opinion of the Minister, was made by the person concerned otherwise than— 10

- (a) in the course of his employment as an employee 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 South African National Energy Development Institute in terms of section 12(3); 15
- (c) in the course of any investigation or research while assisting the South African National Energy Development Institute; or
- (d) in the course of any research in respect of which he or she receives a bursary or grant-in-aid from the South African National Energy Development Institute, which is not connected with such employment, functions, investigation or research. 20

CHAPTER 5

SECURITY OF SUPPLY

Acquisition and maintenance of national strategic energy feedstocks and carriers 25

17. (1) The Minister may, in a prescribed manner, for the purposes of ensuring security of supply, direct any state-owned entity to acquire, maintain, monitor and manage national strategic energy feedstocks and carriers.

(2) The nominated state-owned entity must perform the functions contemplated in subsection (1) in accordance with the relevant published security of supply strategies or policies. 30

(3) The strategies or policies contemplated in subsection (2) may contain but not be limited to—

- (a) the minimum level of energy carrier or energy feedstock for the production of an energy carrier; 35
 - (b) the conditions under which—
 - i) the strategic energy feedstocks and carriers may be built; and
 - ii) withdrawals may be made from such strategic energy feedstocks and carriers;
 - (c) cost and benefit analysis; 40
 - (d) funding mechanism for such energy feedstock or carrier; and
 - (e) obligations to be imposed, on producers of energy feedstocks, to supply to the nominated state-owned entity the requisite energy feedstock, in a manner prescribed by regulation.
- (4) Before finalising the strategy or policy, the Minister must— 45
- (a) invite public comments on such strategy or policy; and
 - (b) duly consider such comments.

Investment in and maintenance of Energy Infrastructure

18. The Minister may, for the purposes of ensuring security of supply, direct any state-owned entity, in a prescribed manner, to— 50

- (a) undertake security of supply measures;
- (b) provide for adequate investment in energy infrastructure;
- (c) invest in critical energy infrastructure; and
- (d) ensure upkeep of all critical energy infrastructure.

CHAPTER 6

GENERAL PROVISIONS

Regulations

19. (1) The Minister may, after consultation with those 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— 5
- (a) the publication of energy statistics or information;
 - (b) the type, manner and form of energy data and information that must be provided by any person; 10
 - (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) the nature of the sources that may be used for renewable energy contributions to the national energy supply; 15
 - (f) measures and incentives designed to promote the production, consumption, investment, research and development of renewable energy;
 - (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; 20
 - (i) labelling for energy efficiency purposes of household appliances, devices and motor vehicles;
 - (j) prohibition of the manufacture, or importation or sale of electrical and electronic products and fuel burning appliances for reasons of poor energy efficiency; 25
 - (k) standards and specifications for energy carriers;
 - (l) energy efficiency standards for specific technologies, processes, appliances, devices, motor vehicles and buildings;
 - (m) holding of strategic energy feedstocks and carriers, including financing mechanisms for such stocks; 30
 - (n) energy conservation measures to be used during energy shortage, which may include but not limited to the amount of energy to be saved, the duration for such measures and penalties associated with non-compliance to such measures; 35
 - (o) measures to ensure adequate provision of energy-related infrastructure;
 - (p) measures to ensure operating reliability of all key energy infrastructure, to the minimum standards as may be determined by the Minister;
 - (q) measures to promote security of supply through access to common infrastructure by any party, where not provided for under any other legislation; 40
 - (r) the prohibition of disposal methods of certain fuels or post-combustion residues;
 - (s) the safe, healthy and sustainable use of energy, standards and specifications, not elsewhere legislated or regulated, for— 45
 - (i) the composition, colouring, labelling and form of energy carriers;
 - (ii) low-smoke fuels;
 - (iii) the prohibition of the sale or combustion of polluting fuels;
 - (iv) cooking, heating, lighting and other energy consuming household appliances;
 - (v) transport of energy carriers; 50
 - (vi) the storage and packaging of energy carriers; and
 - (vii) any other energy-consuming appliance in all sectors of the economy.
 - (t) 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 must— 55
- (a) invite public comments on such regulations; and
 - (b) duly consider such comments.

Offences and penalties

20. (1) A person who contravenes or fails to comply with any provision of this Act, shall be guilty of an offence and be liable on conviction to—

- (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.

5

(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.

Short title and commencement

21. (1) This Act is called the National Energy Act, 2008 and comes into operation on 10 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 to also 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 Department of Minerals and Energy where such data is not already collected by other government departments and/or other public entities.
- The adoption of measures 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, the Minister of Labour and the Minister of Environmental Affairs and Tourism, certain energy related standards that might not already exist.
- The adoption of measures to provide for universal access to appropriate forms of energy to households.
- The establishment of a mechanism to conduct analyses aimed at assisting with the development of an integrated energy plan 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 establishment of—
 - * an Energy Efficiency capability which will provide the Department of Minerals and Energy with a legal mandate for a budget and structure to undertake this function; and
 - * Energy Research and Development capability which will provide for sustainable energy supply through nationally directed research and development.
- The establishment of a mechanism to ensure the security of supply by enabling the Minister to direct any state-owned entity within his or her jurisdiction to—
 - * acquire, maintain, monitor and manage national strategic feed-stock and energy carrier for the purposes of ensuring security of supply; and

- * take measures in a prescribed manner to ensure adequate investments in and development and maintenance of critical energy infrastructure.
- Measures and incentives designed to promote the production, consumption, investment, research and development of renewable energy.

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 development entities. Where possible, these additional funds will be sourced through dedicated levies on each energy carrier.

3. 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

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.

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.