

REPUBLIC OF SOUTH AFRICA

ESKOM AMENDMENT BILL

(As amended by the Portfolio Committee on Public Enterprises (National Assembly))

(MINISTER FOR PUBLIC ENTERPRISES)

[B 6B—98 (Reprint)]

REPUBLIEK VAN SUID-AFRIKA

ESKOMWYSIGINGSWETSONTWERP

(Soos gewysig deur die Portefeuljekomitee oor Openbare Ondernemings (Nasionale Vergadering))

(MINISTER VR OPENBARE ONDERNEMINGS)

[W 6B—98 (Herdruk)]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Eskom Act, 1987, so as to vest the ownership of Eskom's owner's equity in the State and to remove the exemption of Eskom from the payment of income tax, stamp duty, levies or fees; and to provide for matters connected therewith.

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

Insertion of section 2A in Act 40 of 1987

1. The following section is hereby inserted in the Eskom Act, 1987 (hereinafter referred to as the principal Act), after section 2:

“Ownership of Eskom's equity

2A. (1) The ownership of Eskom's owner's equity shall vest in the State.

(2) For the purposes of subsection (1), Eskom **shall** be deemed to be a company and its 'owner's equity' shall be the claim **which** the shareholders of a company have on its assets as **contemplated in** the Companies Act, 1973 (Act No. 61 of 1973).

(3) The Minister shall take the necessary action to incorporate Eskom as a limited liability company with a share capital **as** contemplated in the Companies Act, 1973 (Act No. 61 of 1973).

(4) The State shall, upon the incorporation of the Company, be the only member and shareholder of the Company.”.

Amendment of section 4 of Act 40 of 1987

2. Section 4 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Minister may from time to time after consultation with the Minister of Minerals and Energy reserve matters, including matters relating to—
(a) national policy in connection with the generating and supply of electricity in the Republic; and

(b) the funding of electrification by Eskom in the Republic,
and in respect of such matters issue directives to be followed by the Electricity Council.”.

Repeal of section 24 of Act 40 of 1987

3. (1) Subject to subsections (2) and (3), section 24 of the principal Act is hereby repealed.

(2) The Minister of Finance, after consultation with the Minister and the Minister of Minerals and Energy, shall determine the tax values of Eskom's capital assets for the purpose of calculating **attributable** wear and tear allowances as contemplated in the Income Tax Act, 1962 (Act No. 58 of 1962). 5

(3) (a) In granting any special tax allowances to Eskom, the Commissioner for the South African Revenue Service shall obtain the prior approval of the Minister of Finance. 10

(b) The Minister of Finance shall only grant such approval after consultation with the Minister and the Minister of Minerals and Energy.

Laws amended

4. The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column thereof. 15

Short title

5. This Act is called the Eskom Amendment Act, 1998

SCHEDULE**LAWS AMENDED**

(Section 4)

No. and year of law	Short title	Extent of amendment
Act No. 32 of 1948	Marketable Securities Act. 1948	The amendment of paragraph <i>(c)</i> of subsection (3) by the deletion of sub-paragraph (vii).
Act No. 40 of 1949	Transfer Duty Act, 1949	The amendment of subsection (1) by the deletion of paragraph <i>(bA)</i> .
Act No 77 of 1968	Stamp Duties Act. 1968	The amendment of paragraph <i>(b)</i> of subsection (1) by the deletion of sub-paragraph <i>(iv)</i> .

MEMORANDUM ON THE OBJECTS OF THE ESKOM AMENDMENT BILL

1. Pursuant to its programme of restructuring of state-owned enterprises, the Government has adopted a Protocol on Corporate Governance in the Public Sector (hereinafter referred to as “the Protocol”). In order to begin the process of the external restructuring of Eskom, Eskom’s governance structures must be transformed in line with provisions of the Protocol.

2. Whilst the Protocol assumes the existence of shareholders, Eskom has no shareholders and the Eskom Act, 1987, does not make any provision for the ownership of Eskom’s owner’s equity by the State. Clause 1 of the Bill is intended to bring legal certainty to the question of who can lay claim to the reserves and other assets of Eskom in the event of a claim brought against the State challenging its sole shareholder status in respect of Eskom. The Protocol envisages an Eskom that is registered as a company in terms of the Companies Act, 1973. Therefore the issue of ownership will be the deciding factor in the determination of what allocation of the registered share capital of the new company should be issued to the State.

3. The Protocol requires all state-owned enterprises to be registered for income tax purposes and to fully comply with the provisions of the Income Tax Act, 1962, as amended. Clause 3 of the Bill is intended to bring Eskom in line with this requirement. The Restructuring Guidelines adopted by the Government require that individual state-owned enterprises should be competitive in both the domestic and international markets. In order to prepare Eskom to operate in a competitive environment it is necessary that it should be subjected to the payment of tax and dividends.

PARLIAMENTARY PROCEDURE

The State Law Advisers are of the view that this Bill must be dealt within 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.