

REPUBLIC OF SOUTH AFRICA

SKILLS DEVELOPMENT AMENDMENT BILL

*(As amended by the Portfolio Committee on Higher Education and Training
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF HIGHER EDUCATION AND TRAINING)

[B 16B—2011 (Reprint)]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

To amend the Skills Development Act, 1998, so as to define certain words or expressions and to delete certain obsolete definitions; to amend provisions relating to the establishment, amalgamation and dissolution of SETAs; to provide for the incorporation of a subsector of one SETA into another SETA; to provide for the composition of an Accounting Authority for each SETA; to regulate the eligibility to become a member of an Accounting Authority; to provide for a constitution for every SETA; to regulate the conduct of a member of an Accounting Authority, or of a member of the staff, of a SETA when engaging in business with the SETA; to require members of Accounting Authorities to disclose any conflict of interest with the relevant SETA; and to repeal or amend certain provisions which became obsolete as a result of the transfer of the administration of the said Act to the Minister of Higher Education and Training; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999, section 1 of Act 31 of 2003, section 1 of Act 37 of 2008 and section 4 of Act 26 of 2010

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1. Section 1 of the Skills Development Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of “apprenticeship” of the following definition:

“**Accounting Authority**’ means the Accounting Authority of a SETA contemplated in section 11;”

(b) by the insertion after the definition of “artisan” of the following definition:

“**Chairperson**’ means the Chairperson of the Accounting Authority;”

(c) by the deletion of the definition “employment services”;

(d) by the substitution for the definition of “National Qualifications Framework” of the following definition:

“**National Qualifications Framework**’ means the National Qualifications Framework contemplated by the [**National Qualifications Framework Act, 2008**] NQF Act;”

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- (e) by the insertion after the definition of “NEDLAC” of the following definition:
 “**‘NQF Act’** means the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);”;
- (f) by the insertion after the definition of “Occupational Qualifications Framework” of the following definition: 5
 “**‘organised employers’**—
 (a) means any employers’ organisation in the sector in question that is registered in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other association of employers in that sector that represents the interests of its members as employers; and 10
 (b) includes a State Department referred to in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), as an employer in that sector;”;
- (g) by the insertion after the definition of “SETA” of the following definition: 15
 “**‘SIC Code’** means a code contained in the Standard Industrial Classification of all Economic Activities published by Statistics South Africa;”;
- (h) by the substitution for the definition of “South African Qualifications Authority” of the following definition: 20
 “**‘South African Qualifications Authority’** means the South African Qualifications Authority [established by section 3 of the South African Qualifications Authority Act] referred to in section 10 of the NQF Act;”;
- (i) by the deletion of the definition of “South African Qualifications Authority Act”. 25

Amendment of section 2 of Act 97 of 1998, as amended by section 23 of Act 9 of 1999 and section 2 of Act 37 of 2008

2. Section 2 of the principal Act is hereby amended— 30
 (a) by the deletion in subsection (1) of paragraphs (g) and (h);
 (b) by the deletion in subsection (2)(a) of subparagraphs (v) and (vi); and
 (c) by the insertion in subsection (2)(a) of the word “and” at the end of subparagraph (x), the deletion in that subsection of the word “and” at the end of subparagraph (xi) and the deletion in that subsection of subparagraph (xii).

Amendment of section 3 of Act 97 of 1998 35

3. Section 3 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:
 “(b) the objects of the [South African Qualifications Authority Act] NQF Act.”.

Amendment of section 5 of Act 97 of 1998, as amended by section 2 of Act 31 of 2003 and section 3 of Act 37 of 2008 40

4. Section 5 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:
 “(4) Subsection (1)(a)(iv) does not apply to regulations in respect of which the Minister is required to consult with the QCTO [or Productivity South Africa].”.

Amendment of section 9 of Act 97 1998, as amended by section 4 of Act 31 of 2004 45

5. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
 “(1) (a) The Minister may, [in the prescribed manner] by notice in the *Gazette* and for a period specified in the notice, establish a sector education and training authority with a constitution contemplated in section 13 for any national economic sector, having regard to any relevant SIC Code. 50
 (b) The Minister may in the manner contemplated in paragraph (a) re-establish the sector education and training authority contemplated in that paragraph when the period contemplated in that paragraph has lapsed.”.

Amendment of section 9A of Act 97 of 1998, as inserted by section 5 of Act 31 of 2005

6. Section 9A of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The Minister must **[approve]** provide a constitution contem- 5
plated in section 13 for the amalgamated SETA.”; and

(b) by the addition of the following subsections:

“(9) Subject to sections 197 and 197A of the Labour Relations Act, 1995 (Act No. 66 of 1995), the contracts of employment between the SETAs (herein referred to as ‘the old employer’) and its employees are automatically transferred to the amalgamated single SETA (herein referred to as ‘the new employer’) as from the date of the amalgamation contemplated in subsection (1), but any redeployment of an employee as a consequence of the amalgamation or dissolution is subject to applicable labour legislation. 10 15

(10) If two or more SETAs are amalgamated into a single SETA in terms of subsection (1), all the rights and obligations between the old employers and each employee at the time of the amalgamation continue in force as if they were rights and obligations between the new employer and each employee and anything done before the amalgamation by or in relation to the old employers must be regarded as having been done by or in relation to the new employer. 20

(11) An amalgamation contemplated in subsection (1) does not interrupt the employee’s continuity of employment.

(12) The provisions of subsections (1) to (6) do not affect the liability of any person to be disciplined for, prosecuted for, convicted of and sentenced for any offence or misconduct. 25

(13) An employee is subject to the disciplinary codes and rules applicable to the new single amalgamated SETA as from the date of the amalgamation contemplated in subsection (1), but if any enquiry into incapacity or any proceedings in respect of a charge of misconduct had been instituted or commenced against any employee before the date of the amalgamation, such enquiry or proceedings continue in terms of the codes and rules applicable to the relevant SETA immediately prior to the amalgamation. 30 35

(14) Notwithstanding subsection (13), until the new single SETA has made disciplinary codes or rules, the disciplinary codes and rules of the respective old SETAs are applicable to employees.

(15) Notwithstanding subsection (1), the old employer may undertake rationalisation of its workforce according to operational requirements in accordance with section 189 of the Labour Relations Act, 1995 (Act No. 66 of 1995), prior to the date of the amalgamation contemplated in subsection (1).” 40

Insertion of section 9B in Act 97 of 1998

7. The following section is hereby inserted in the principal Act after section 9A: 45

“Incorporation of subsector into SETA

9B. (1) Subject to sections 197 and 197A of the Labour Relations Act, 1995 (Act No. 66 of 1995), the Minister may, after consultation with the National Skills Authority and by notice in the *Gazette*, incorporate a SIC Code of one SETA into another SETA. 50

(2) The assets, liabilities, rights and obligations of the SETA in respect of a subsector relating to the SIC Code in question devolve upon the SETA into which the SIC Code has been incorporated—

(a) in a manner agreed to by the Accounting Authorities of the SETAs concerned; or 55

(b) if no agreement can be reached, in the manner determined by the Minister.”

Amendment of section 10A of Act 97 of 1998, as inserted by section 7 of Act 31 of 2003

8. Section 10A of the principal Act is hereby amended by the deletion in subsection (1) of the word “and” at the end of paragraph (b), the insertion in that subsection of the word “and” at the end of paragraph (c) and the addition of the following paragraph: 5

“(d) any assistance that the SETA is to provide in terms of this Act to assist the Minister in complying with his or her responsibility in accordance with the policy determined by the President of the Republic relating to service delivery and relating to the functions of the relevant SETA.”.

Substitution of section 11 of Act 97 of 1998 10

9. The following section is hereby substituted for section 11 of the principal Act:

“Composition of Accounting Authority of SETA

11. (1) (a) Subject to paragraph (b), the Minister must appoint the Chairperson of the Accounting Authority of a SETA after consultation with the National Skills Authority. 15

(b) The Minister must by notice in the *Gazette* invite nominations for the position of Chairperson of an Accounting Authority from interested parties in the relevant sector.

(2) (a) Subject to paragraph (b) and section 13(2), the Minister must appoint 14 persons as members of the Accounting Authority of a SETA. 20

(b) The members referred to in paragraph (a) may not include more than—

- (i) six persons who must be nominated by organised labour;
- (ii) six persons who must be nominated by organised employers; and 25
- (iii) two persons who must be nominated by—

(aa) any government department that has an interest in the relevant sector and that is not an organised employer;

(bb) any interested professional body;

(cc) any bargaining council with jurisdiction in the sector in question; or 30

(dd) any organisation in a community that has an identifiable interest in skills development in the sector in question.

(3) (a) The members referred to in subsection (2) have full voting rights and, subject to paragraph (b), the Chairperson has no voting rights.

(b) In the case of an equality of votes, the chairperson has a casting vote. 35

(4) In appointing the members of contemplated in subsection (2), the Minister must ensure, in so far as is practicably possible, that the membership of the Accounting Authority in question—

(a) represents the interest identified in the national skills development strategy contemplated in section 5(1)(a)(ii); 40

(b) taken as a whole, achieves—

(i) gender representation;

(ii) demographic representation;

(iii) representation of disadvantaged persons or communities which have been prejudiced by past racial and gender discrimination in relation to access to skills development programmes; and 45

(iv) a blend of knowledge, skills and experience required for the effective functioning of the SETA in question; and

(c) is drawn from the ranks of senior officials in the organisations in question. 50

(5) The Minister must at least three months before the end of the period contemplated in section 9(1)(a) request the Chief Executive Officer of the relevant SETA contemplated in section 13B to invite nominations from organised labour, organised employers, government departments, professional bodies, bargaining councils and organisations contemplated in subsection (2) and listed in the constitution of the relevant SETA.”. 55

Insertion of sections 11A and 11B in Act 97 of 1998

10. The following sections are hereby inserted in the principal Act after section 11:

“Eligibility to become member of Accounting Authority

- 11A.** A person does not qualify for appointment to an Accounting Authority—
- (a) unless he or she is a citizen of and is permanently residing in the Republic;
 - (b) if he or she is subject to an order of a competent court declaring such person to be mentally ill or disordered;
 - (c) if he or she is an employee of the SETA in question;
 - (d) if he or she is convicted, after the commencement of the Skills Development Amendment Act, 2011, whether in the Republic or elsewhere, of any offence for which such person is sentenced to imprisonment without the option of a fine;
 - (e) if he or she, at any time prior to the commencement of the Skills Development Amendment Act, 2011, was convicted, or at any time after such commencement, is convicted—
 - (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
 - (ii) elsewhere, of any offence corresponding materially with any offence contemplated in subparagraph (i); and
 - (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or
 - (f) if he or she has been convicted of an offence under this Act.

Vacation of office by members of Accounting Authority

- 11B.** (1) A member of the Accounting Authority vacates office if that member—
- (a) resigns by written notice, addressed to the Accounting Authority and the Minister;
 - (b) no longer satisfies the eligibility requirements contemplated in section 11A; or
 - (c) is removed from office in the manner contemplated in the constitution referred to in section 13(1).

Disclosure of conflict of interests

- 11C.** (1) A person may not be appointed on an Accounting Authority, unless the necessary disclosure has been made that such person—
- (a) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the SETA in question; or
 - (b) his or her spouse, partner or associate holds an office in or is employed by any SETA, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (a).
- (2) If at any stage during the course of any proceedings before the Accounting Authority it appears that any Accounting Authority member has or may have an interest which may cause such conflict of interest to arise on his or her part—
- (a) such Accounting Authority member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Accounting Authority members to discuss the matter and determine whether such Accounting Authority member is precluded

- from participating in such meeting by reason of a conflict of interest;
and
- (b) such disclosure, and the decision taken by the remaining Accounting Authority members regarding such determination, must be recorded in the minutes of the meeting in question. 5
- (3) If any Accounting Authority member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Accounting Authority is held or in any manner whatsoever participates in the proceedings of the Accounting Authority, the relevant proceedings of the Accounting Authority shall be null and void.”. 10

Substitution of section 13 in Act 97 of 1998, as amended by section 8 of Act 31 of 2003

11. The following section is hereby substituted for section 13 of the principal Act:

“Constitution of SETA 15

- 13.** (1) The Minister must provide a constitution for every SETA which, subject to this Act, must be in line with a standard constitution prescribed by the Minister.
- (2) Subject to this Act, the standard constitution referred to in subsection (1) must at least contain the following matters: 20
- (a) The responsibilities of the Accounting Authority of the SETA;
- (b) The identification of the SETA by—
- (i) name;
 - (ii) setting out its scope of coverage;
 - (iii) setting out its constituencies in the relevant sector; and 25
 - (iv) setting out its legal status;
- (c) The general objectives of the SETA and its objectives in respect of—
- (i) employers in the relevant sector; and
 - (ii) employees in the relevant sector;
- (d) The functions of the SETA; 30
- (e) The framework, procedure and process for the development of a strategic plan for the SETA relating to this Act and in accordance with the Public Finance Management Act;
- (f) The Accounting Authority of the SETA in respect of— 35
- (i) its composition of members in accordance with the number of members per constituency;
 - (ii) its powers and duties, and delegation of functions;
 - (iii) its size;
 - (iv) its capacity;
 - (v) the nomination and appointment of members; 40
 - (vi) consultation on proportional representation;
 - (vii) alternates for members;
 - (viii) the term of office of members;
 - (ix) the induction and capacity building of members and alternates;
 - (x) the first meeting at each new term of office of members; 45
 - (xi) the suspension of members;
 - (xii) the removal of members from office;
 - (xiii) the filling of vacancies in the Accounting Authority; and
 - (xiv) the application to the Accounting Authority for listing as new organisations; 50
- (g) The establishment of—
- (i) an Executive Committee, including its composition, term of office and functions;
 - (ii) an Audit Committee, including its composition, accountability and functions; 55
 - (iii) a Finance Committee, including its composition, accountability and functions;
 - (iv) a Remuneration Committee, including its composition, accountability and functions; and

- (v) a Governance and Strategy Committee, including its composition, accountability and functions;
- (h) The Chairperson of the Accounting Authority regarding his or her—
- (i) appointment;
 - (ii) term of office;
 - (iii) functions;
 - (iv) temporary absence or incapacity; and
 - (v) vacation of office;
- (i) Meetings, special meetings and meeting procedures of the Accounting Authority, Executive Committee, chambers and other committees;
- (j) The appointment of the Chief Executive Officer and other employees and the duties of the Chief Executive Officer;
- (k) The finances of the SETA, in respect of—
- (i) sources of finance;
 - (ii) investments;
 - (iii) purposes for which funds may be used;
 - (iv) financial records of the SETA;
 - (v) the audit of the SETA;
 - (vi) the financial responsibility of the Executive Committee of the SETA; and
 - (vii) signatories to accounts;
- (l) A code of conduct for the SETA;
- (m) A dispute resolution system;
- (n) The indemnification of members of the Accounting Authority of the SETA, members of committees and employees of the Accounting Authority;
- (o) The amalgamation with other SETAs and the dissolution of the SETA;
- (p) The taking over of the administration of the SETA; and
- (q) The amendment of the constitution of the SETA.
- (3) A SETA may apply to the Minister in writing for a deviation from the standard constitution referred to in subsection (1).
- (4) The application contemplated in subsection (3) must set out the extent of the deviation requested and must be accompanied by a detailed motivation to justify the requested deviation.
- (5) The Minister may approve the deviation contemplated in subsection (3) if the deviation—
- (a) is unique to the functions and operation of the SETA in question;
 - (b) is justified within the framework of the national skills development strategy; and
 - (c) is recommended by the National Skills Authority as a deviation required by the operational needs of the SETA in question.

Insertion of sections 13A and 13B in Act 97 of 1998

12. The following sections are hereby inserted in the principal Act after section 13:

“Conduct of Accounting Authority member or staff member

- 13A.** (1) Any member of an Accounting Authority, or any member of the staff, of a SETA—
- (a) (i) must, before he or she assumes office, declare any business, commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest with the SETA in question;
 - (ii) may not conduct business, directly or indirectly, with the SETA which constitutes a conflict of interest with the SETA;
 - (b) (i) may not have a conflict of interest with the SETA in question;
 - (ii) may not have a direct or indirect financial, personal or other interest in any matter to be discussed at a meeting and which entails or may entail a conflict or possible conflict of interest with the SETA in question;

(iii) must, before the meeting and in writing, inform the chairperson of that meeting of that conflict or possible conflict of interest.

(2) The business referred to in subsection (1)(a) relates to conduct that is aimed at receiving any direct or indirect financial personal gain that does not form part of the employment relationship.

(3) (a) Any person may, in writing, inform the chairperson of a meeting, before the meeting, of a conflict or possible conflict of interest of a member contemplated in subsection (1) with the SETA in question of which such person may be aware.

(b) A member referred to in paragraph (a) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.

(4) A committee or chamber of the Accounting Authority with delegated functions in terms of this Act may not take a decision on a matter considered by it if any member has a conflict of interest contemplated in this section.

(5) A member of the Accounting Authority, or a member of a committee or chamber of the Accounting Authority contemplated in subsection (4), who contravenes section 11C(2) and (3) or this section may, after the Accounting Authority has followed a due process, be—

- (a) suspended from attending a meeting; or
- (b) disqualified as a member of the Accounting Authority or a member of a committee or chamber of the Accounting Authority, as the case may be.

Appointment of Chief Executive Officer

13B. (1) The members of an Accounting Authority must within six months of their appointment, after following a transparent process, submit a list of names of three persons who have experience in accounting, financial and senior management matters to the Minister.

(2) The Minister must appoint one of the persons contemplated in subsection (1) as Chief Executive Officer of the SETA in question.

(3) The Chief Executive Officer must be appointed for a term of office that corresponds with the terms of office of the members of the Accounting Authority concerned, but may stay in office for a period of six months if the SETA in question has been re-established in terms of section 9(1)(b).

(4) The Minister must, after consultation with the National Skills Authority, make regulations regarding—

- (a) the process that an Accounting Authority must follow for the purposes of subsection (1), including regarding—
 - (i) the advertising of the post;
 - (ii) the criteria and method of recruitment; and
 - (iii) the shortlisting and selection;
- (b) the salary level of the Chief Executive Officer; and
- (c) the criteria and process to enable an Accounting Authority to determine other conditions of service of the Chief Executive Officer.

(5) The Minister may make regulations regarding the performance by a Chief Executive Officer of his or her functions in terms of this Act in order to ensure that the SETA performs its functions contemplated in section 10A(1)(a) effectively.”.

Amendment of section 20 of Act 97 of 1998, as amended by section 14 of Act 31 of 2003

13. Section 20 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) when completed, will constitute a credit towards a qualification registered in terms of the National Qualifications Framework [as defined in section 1 of the South African Qualifications Authority Act] contemplated in Chapter 2 of the NQF Act;”.

Substitution of heading to Chapter 6 of Act 97 of 1998, as substituted by section 8 of Act 37 of 2008

14. The following heading is hereby substituted for the heading to Chapter 6 in the principal Act:

“Administration Act”. 5

Amendment of section 22 of Act 97 of 1998, as substituted by section 9 of Act 37 of 2008

15. Section 22 of the principal Act is hereby amended by the deletion of subsection (1).

Substitution of section 23 of Act 97 of 1998 10

16. The following section is hereby substituted for section 23 of the principal Act:

“Functions of provincial offices

23. The functions of the provincial offices of the Department in respect of this Act are—

- | | |
|--|----|
| <ul style="list-style-type: none"> (a) to establish a skills development forum as prescribed; (b) to maintain a data-base of skills development providers within their jurisdiction; and (c) to perform any other prescribed or delegated function.”. | 15 |
|--|----|

Repeal of section 24 of Act 97 of 1998

17. Section 24 of the principal Act is hereby repealed. 20

Repeal of section 25 of Act 97 of 1998

18. Section 25 of the principal Act is hereby repealed.

Repeal of section 26 of Act 97 of 1998

19. Section 26 of the principal Act is hereby repealed.

Amendment of section 26H of Act 97 of 1998, as inserted by section 11 of Act 37 of 2008 25

20. Section 26H of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The QCTO must perform its functions in terms of this Act and the [National Qualifications Framework Act, 2008] NQF Act.”. 30

Repeal of section 26K of Act 97 of 1998

21. Section 26K of the principal Act is hereby repealed.

Repeal of section 26L of Act 97 of 1998

22. Section 26L of the principal Act is hereby repealed.

Repeal of section 26M of Act 97 of 1998 35

23. Section 26M of the principal Act is hereby repealed.

Repeal of section 26N of Act 97 of 1998

24. Section 26N of the principal Act is hereby repealed.

Amendment of section 32 of Act 97 of 1998, as substituted by section 22 of Act 31 of 2003

25. Section 32 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 36 of Act 97 of 1998, as substituted by section 24 of Act 31 of 2004 and amended by section 14 of Act 37 of 2008 5

26. Section 36 of the principal Act is hereby amended by the deletion of paragraphs (o), (p) and (q).

Amendment of Schedule 2A to Act 97 of 1998

27. Schedule 2A to the principal Act is hereby amended— 10

(a) by the substitution in item 1 for the definition of “ETQA” of the following definition:

“**‘ETQA’** means an Education and Training Quality Assurance Body accredited in terms of section 5(1)(a)(ii) of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), responsible for 15 monitoring and auditing achievements in terms of national standards or qualifications, and to which specific functions relating to the monitoring and auditing of national standards or qualifications have been assigned in terms of section 5(1)(b)(i) of that Act;” and

(b) by the substitution in item 6(1) for paragraphs (b) and (c) of the following 20 paragraphs, respectively:

“(b) continue to perform all ETQA functions prescribed by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); and

(c) have any matter concerning the performance of ETQA functions by 25 a SETA dealt with in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).”.

Repeal of Schedule 4 to Act 97 of 1998

28. Schedule 4 to the principal Act is hereby repealed.

Amendment of long title of Act 97 of 1998, as amended by section 23 of Act 9 of 1999 30

29. The long title of the principal Act is hereby amended by the substitution for the expression “South African Qualifications Authority Act, 1995” of the expression “National Qualifications Framework Act, 2008”.

Transitional provisions

30. (1) Any person appointed as a member of the Accounting Authority of a SETA in 35 accordance with its constitution, remains so appointed if—

(a) that constitution was approved by the Minister and the constitution was effective immediately before section 12 of this Act takes effect; and

(b) the number of members according to the respective categories of membership 40 are consistent with section 11 of the principal Act, as amended by this Act.

(2) The members contemplated in subsection (1) must be regarded as having been appointed in terms of section 11 of the principal Act, as amended by this Act.

(3) If the constitution of a SETA was effective immediately before section 12 of this Act takes effect, and if the constitution is not in line with the standard constitution referred to in section 13(1) of the principal Act, as amended by this Act, the Minister 45 must consider a deviation from the standard constitution in terms of section 13(3) of the principal Act, as amended by this Act.

(4) If the Minister—

(a) approves a deviation in terms of the said section 13(3), the Minister must 50 inform the SETA in question accordingly in writing; or

(b) cannot approve a deviation in terms of the said section 13(3), the Minister must provide the SETA in question with a constitution in line with the

standard constitution contemplated in section 13(1) of the principal Act, as amended by this Act.

(5) The Minister must notify the SETA in question in writing of his or her direction in terms of subsection (4)(b), and must instruct the SETA to invite nominations from the categories of roleplayers referred to in section 11 of the principal Act, as amended by this Act, within the timeframes set by the Minister in the notice. 5

(6) The Minister must provide the constitution of the SETA contemplated in subsection (4) in terms of section 13(1) of the principal Act, as amended by this Act, within six months of the date of the notice referred to in subsection (4).

Short title and commencement 10

31. (1) This Act is called the Skills Development Amendment Act, 2011, and takes effect on a date determined by the Minister by notice in the *Gazette*.

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

(3) Notwithstanding subsection (1), the Minister may not determine a date on which sections 1(c), 2, 4, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26 and 28 take effect, unless the Minister of Labour has approved such determination. 15

MEMORANDUM ON THE OBJECTS OF THE SKILLS DEVELOPMENT AMENDMENT BILL, 2011

1. MAIN OBJECT OF BILL

The Bill seeks to amend the Skills Development Act, 1998 (Act No. 97 of 1998) (the Act).

2. MAIN FEATURES OF BILL

2.1 Clause 1

This clause seeks to amend section 1 of the Act by the insertion of new definitions that are necessitated by amendments proposed to the Act and by the deletion or amendment of definitions in order to delete redundant references to repealed legislation and the replacement of the references with references to the current and applicable legislation.

2.2 Clauses 2, 4, 14 to 18, 20 to 25 and 27

These clauses seek to repeal provisions that were assigned by the President by way of Presidential Proclamation No. 56 of 2009 to the Minister of Labour and mainly deal with employment services and Productivity South Africa. In terms of the commencement provision proposed in clause 30 these clauses may not be put in operation unless the Minister of Labour has agreed thereto.

2.3 Clauses 3, 13, 19, 26 and 29

These clauses propose the replacement of references to redundant legislation with references to current applicable legislation.

2.4 Clauses 5 to 12, 27 and 28

These clauses propose amendments to sections in the Act that make provision for—

- the establishment and amalgamation of SETAs¹;
- the incorporation of a subsectors of one SETA into another SETA;
- service level agreements between the Director-General and SETAs;
- the composition of the Accounting Authority of a SETA;
- the eligibility of person to become members to an Accounting Authority of a SETA;
- the introduction of a standard constitution for a SETA;
- the conduct of a member of the Accounting Authority, or a member of the staff, of a SETA with regard to engagement in business with the relevant SETA;
- transitional provisions to facilitate a smooth transition if the provisions Bill takes effect.

The need to amend the provisions in question was identified in order to strengthen the relationship between the SETAs and the Minister and to explicitly spell out the responsibilities of the Minister in this regard in order to enhance the effectiveness of the SETAs in the performance of their functions.

2.5 Clause 30 contains the proposed transitional provisions.

3. DEPARTMENTS AND BODIES CONSULTED

3.1 The Bill was published for comment and all interested parties and the public were invited to submit comment.

3.2 During the developmental stages of the Bill, consultation took place by way of a National Skills Summit with NEDLAC², the National Skills Authority and roleplayers

1. In terms of section 1 of the Act, “ ‘SETA’ means a sector education and training authority established in terms of section 9(1);”.

2. In terms of section 1 of the Act, “ ‘NEDLAC’ means the National Economic Development and Labour Council established by section 2 of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);”.

in Skills Development. The Minister's efforts to enhance service delivery by SETAs were supported and all parties who attended the National Skills Summit supported the amendment of existing legislation in order to provide for more effective oversight in both the composition of the Accounting Authority and the constitution of the SETAs.

3.3 The Minister engaged Business United South Africa in a meeting where the principles underpinning the need for the amendments to the Act were deliberated.

3.4 The Bill was referred to the Minister of Labour for comments and to seek her approval on the repeal of sections in the Act relating to employment services and Productivity South Africa and to take cognizance of the fact that the repeal of those provisions is subject to her approval.

4. FINANCIAL IMPLICATIONS FOR STATE

Apart from publication costs, no additional costs are foreseen.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Higher Education and Training are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, No. 41 of 2003, seeing that it does not contain provisions pertaining to customary law or to the customs of traditional communities.

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