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## GENERAL NOTICE

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### NOTICE 181 OF 2012

#### DEPARTMENT OF HIGHER EDUCATION AND TRAINING

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

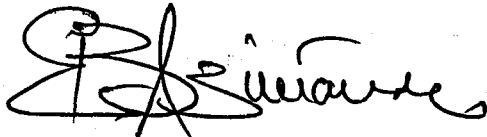
I, Bonginkosi Emmanuel Nzimande, Minister of Higher Education and Training, consultation hereby publish the Further Education and Training Colleges Amendment Bill, 2012 and the Higher Education Laws Amendment Bill, 2012, for comment.

All interested persons and organisations are invited to comment on the draft Bills in writing, and to direct their comments to –

The Director-General, Private Bag X174, Pretoria, 0001, for attention: Mr VL Rikhotso, email [Rikhotso.v@dhet.gov.za](mailto:Rikhotso.v@dhet.gov.za).

Kindly provide the name, address, telephone number, fax number and email address of the person or organisation submitting the comments.

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



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

**HIGHER EDUCATION AND TRAINING LAWS AMENDMENT BILL, 2012****(Section 75 Bill)****GENERAL EXPLANATORY NOTE:**

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

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

**BILL**

To amend the Higher Education Act, 1997, so as to provide for the removal of references to Mpumalanga and Northern Cape in relation to National Institute for Higher Education; to extend the functions of the National Institute for Higher Education to include the provisioning of specialised area of higher education delivery; to provide for the appointment of an administrator for the National Institute for Higher Education; to provide for the closure of a National Institute for Higher Education; to amend the National Qualifications Framework Act, 2008 so as to provide for the change of the the submission date of the annual report by 31 July each year 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 101 of 1997**

1. Section 1 of the Higher Education Act, 1997, is hereby amended by:-

- (a) the insertion after the definition of "academic employee" of the following definition:

“and” means, if used as an affix, in a subsection, or paragraph or subparagraph in this Act, means a collective of all the respective options contained in the specific subsection or paragraph or subparagraph.”

- (b) the insertion after the definition of “National Qualifications Framework Act” of the following definition:

“or” means, if used as an affix, in a subsection or paragraph or subparagraph in this Act any of the respective options individually or in any combinations of the individual options”.

#### **Amendment of section 38A of Act 101 of 1997**

2. Section 38A of the Higher Education Act, 1997, is hereby amended by the substitution for subsection (1) of the following subsection:-

“(1) The Minister may, after consultation with the Council of Higher Education, establish a national institute for higher education and publish the establishment and specific scope or application in an Government Gazette with a specific scope or application as a juristic person **[in Mpumalanga and in the Northern Cape].**”

#### **Amendment of section 38B of Act 101 of 1997**

3. Section 38B of the Higher Education Act, 1997, is hereby amended:-

- (a) by the substitution for paragraph (a) of the following paragraph:

“(a) coordinate the national or regional provision of higher education;”.

- (b) by the substitution for paragraph (b) of the following paragraph:

“(b) ensure the coherent provision of higher education through programme collaboration between National Institutes of Higher Education operating in the **[province]** specific scope or application in question;”.

(c) by the substitution of paragraph © of the following paragraph:

“(c) advise the Minister on matters relating to the coordination of the provision of higher education in national and the region in question.”.

**Insertion of sections 38J, 38K, 38L, 38M, 38N and 38O in Act 101 of 1997**

4. The following new sections are hereby inserted in the Higher Education and Training Act, 1997, after section 38I:-

**“Intervention by Minister**

**38J. (1) The Minister may issue a directive to the board to take such action specified by the Minister if the National Institute of Higher Education-**

- (a) is in financial difficulty or is being otherwise mismanaged;**
- (b) is unable to perform its functions effectively due to dissension among board members;**
- (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under this Act;**
- (d) has failed to comply with any law;**
- (e) has failed to comply with any directive given by the Minister under this Act; or**
- (f) has obstructed the Minister or a person authorized by the Minister in performing a function in terms of this Act.**

**(2) A directive contemplated in subsection (1) must state-**

- (a) the nature of the deficiency;**
- (b) the steps which must be taken to remedy the situation; and**
- (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.**

(3) Before making a decision under subsection (1), the Minister must subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2002)-

- (a) give notice to the board of the intention to issue a directive;
- (b) give the board a reasonable opportunity to make representations; and
- (c) consider such representations.

(4) (a) If the board fails to comply with the directive within the stated period, the Minister must dissolve the board and appoint an administrator to take over the functions of the board.

- (b) For the purposes of paragraph (a), sections 38K, 38L and 38M apply with the changes required by the context.

(5) If the Minister appoints an administrator in terms of subsection (4), the administrator may perform all the functions of the board and an employee of the National Institute for Higher Education must comply with a directive given by the administrator.

(6) The costs associated with the appointment of an administrator shall be for the account of the National Institute for Higher Education.

### Appointment of administrator

38K. (1) Notwithstanding any other provision of this Act, the Minister may, after consultation with the board if practicable, appoint a person as administrator to take over the management, governance and administration of a National Institute of Higher Education and to perform the functions of the National Institute of Higher Education if –

- (a) an audit of the financial records of National Institute for Higher Education; or a report by a Ministerial Committee reveals financial or other maladministration of a serious nature; or serious undermining of the effective functioning of the National Institute of Higher Education;

- (b) any other circumstances arise that reveals financial or other maladministration of a serious undermining of the effective functioning of the National Institute of Higher Education; or
- (c) the board requests such appointment.

(2) The Minister may only act in terms of subsection (1)(a) or (b) if the appointment of an administrator is in the interest of the National Institute of Higher Education and higher education and training in an open and democratic society.

- (3) (a) The Minister appoints an administrator for such period as may be determined by the Minister but such period may not exceed two years.
- (b) The Minister may extend the period contemplated in paragraph (a) once for a period not exceeding six months.

#### **Assistance to administrator**

38L An administrator appointed under section 38K may, with the concurrence of the Minister, appoint any other person with suitable knowledge and experience to assist him or her in the performance of his or her functions.

#### **Remuneration and allowances**

38M The Minister, with the approval of the Minister of Finance, may determine the remuneration and allowances to be paid to the administrator and to any other person appointed under section 38L.

#### **Dissolution of board**

38N The board is dissolved from the date the Minister appoints the administrator in terms of section 38J or 38K.

**Closure of National Institute for Higher Education**

**38O (1) The Minister may, after consulting the Council of Higher Education and by notice in the Gazette, close a National Institute of Higher Education.**

**Amendment of section 13 of Act 67 of 2008**

5. Section 13 of the National Qualifications Framework Act, 2008 is hereby amended by the substitution for subsection (2) of the following subsection:-

“(2) The SAQA must submit, on or before 31 July [**30 June**] in each year, to the Minister an annual report which includes the financial statement and audit reports.

**Short title**

6. This Act is the Higher Education and Training Laws Amendment Act, 2012.

**MEMORANDUM ON THE OBJECTS OF THE HIGHER EDUCATION AND TRAINING LAWS AMENDMENT BILL, 2012****1. MAIN OBJECT OF BILL**

1.1 The main object of this Bill is to amend the Higher Education Act, 1997 by providing the powers to the Minister to establish an Institute which Institute will be established for a specific scope or application. This amendment also provides the power for the Minister to intervene when the Institute is financially mismanaged or unable to perform its functions in accordance with the Act. It provides for the appointment of an Administrator to take over the functions if needed and to dissolve the Board of the Institute if such an Administrator is appointed. It further provides for the closure of a national Institute if needed.

1.2 This Bill further seeks to amend the National Qualifications Framework Act, 2008 by amending the date by which the financial statements must be submitted to the Minister. This date will be the 31 of July each year and will therefore be in line with the prescripts of the Public Finance Management Act, 1999.

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