

## **Government Gazette**

**Vol. 420, No. 21214, 29 May 2000**

### **GENERAL NOTICE**

**Notice 2058 of 2000**

#### **DEPARTMENT OF PUBLIC ENTERPRISES**

##### **PUBLICATION FOR PUBLIC COMMENT: TRANSNET PENSION FUND AMENDMENT BILL**

Notice is hereby given that the Minister of Public Enterprises (Mr J. Radebe) intends to introduce the Transnet Pension Fund Amendment Bill in the National Parliament as published in this *Gazette*.

Any person or organisation wishing to comment on this proposed Legislation may lodge written comments or representations on or before **28 June 2000** by posting, faxing or handing them in at the following address:

Attention: D. Matjila/S. Mathobela  
Department of Public Enterprises  
Private Bag X15  
Hatfield  
Pretoria  
0028

Physical address:

Department of Public Enterprises  
401 Infotech Building, 1090 Arcadia Street  
Hatfield  
Pretoria.  
Tel. (012) 342-7111  
Fax (012) 342-7224/6

### **BILL**

#### **Amendment of section 1 of Act 62 of 1990 as amended by section 1 of Act 52 of 1991**

1. Section 1 of the Transnet Pension Funds Act, 1990 (hereinafter referred to as the principal Act) is hereby amended by the insertion after the definition of "Rules" of the following definition:

"Second Fund" means the Transnet Second Defined Benefit Fund established in terms of section 14B (1)."

#### **Amendment of section 5 of Act S2 of 1990**

2. Section 5 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

" (1) The control and management of the Fund, admission to and termination of membership, the amount and nature of contributions by members and contributions and other payments by the employer, and the benefits due to pensioners and other beneficiaries, the terms and conditions under which employee members may elect to have their rights ceded, and assets commensurate with such rights transferred, from the Fund to a fund established in terms of section 14A (1), and the manner in which the Rules may be amended, shall be governed by the Rules of the Fund."

#### **Amendment of section 5 of Act 62 of 1990**

3. Section 6 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) The employer shall guarantee the financial obligations of the Fund and the Second Fund established by section 14B.".

#### **Amendment of section 11 of Act 62 of 1990**

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

##### **"Recovery of amounts In respect of medical scheme**

11. The Fund [is] and the Second Fund are hereby empowered to recover money due by a pensioner to Transmed (the medical scheme referred to in section 10(2) of the Legal Succession to the South African Transport Services Act, 1989) in terms of the Transmed Rules and to pay such money to Transmed.".

#### **Amendment of section 12 of Act 62 of 1990**

5. The following section is hereby substituted for section 12 of the principal Act:

##### **"Guarantee**

12. The obligations of the Company and the State in respect of the New Fund and the Pension Fund in terms of section 3(2) and section 16 of the Legal Succession to the South African Transport Services Act, 1989, shall be deemed to be obligations towards the Fund and the Second Fund in such proportions as determined by the State Actuary consultations with the actuary appointed by the Fund and the actuary appointed the Company.".

#### **Amendment of section 14 of Act 02 of 1990 as substituted by Action 41 of Act 52 of 1991**

6. Section 14 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) any company formed in terms of section 32 of [this Act] the Legal Succession to the South African Transport Services Act, 1989.".

#### **Insertion of sections 14A and 14B in Act 02 of 1990**

7. The following sections are hereby inserted after section 14 of the principal Act:

##### **"Powers of Company to establish pension fund**

14A. (1) In this section, "pension fund" means the pension fund contemplated in subsection (2).

(2) Notwithstanding the establishment of the Transnet Pension Fund in terms of section 2(1), the Company may, subject to the approval of the Minister, acting with the concurrence of the Minister of Finance, by notice in the Gazette establish a pension fund.

(3) The pension fund shall be vested with legal personality and shall be capable of owning assets, incurring liabilities, suing or being sued in its own name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its particular rules.

(4) The control and management of the pension fund, admission to and termination of membership, the amount and nature of contributions by members and contributions and other payments by the employer and the benefits due to pensioners and the beneficiaries as well as the manner in which the rules of such pension fund may be amended, shall be governed by the particular rules of such pension fund.

(5) The rules of the pension fund shall, subject to the approval by the Minister, acting with the concurrence of the Minister of Finance, be published in the Gazette and shall have operative effect from the date of such publication.

(6) The rules of the pension fund, as amended from time to time, shall be binding on the employer, members, pensioners and beneficiaries of such pension fund as the case may be.

(7) The pension fund shall be deemed to be a pension fund as defined in paragraph (a) of the definition of pension fund" in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962).

(8) All the provisions of this Act, except section 12, shall apply with the necessary changes required by the context to the pension fund.

### **Establishment of the Second Fund**

14B (1) The Second Fund is hereby established.

(2) Pensioner members of the Fund are hereby transferred from the Fund to the Second Fund.

(3) All the assets, liabilities, rights and obligations pertaining to the members referred to in subsection (2) as determined by the State Actuary in consultation with an actuary appointed by the Fund and an actuary appointed by the Company shall vest in and devolve upon the Second Fund without any formal transfer or cession with effect from the date of publication of such determination in the Gazette.

(4) The Second Fund shall be vested with legal personality and shall be capable of suing or being sued in its own name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules.

(5) The control and management of the Transnet Second Defined Benefit Fund, the benefits due to pensioners and the beneficiaries shall be governed by the rules of the Transnet Second Defined Benefit Fund referred to in Schedule 1 to this Act."

### **Short title and commencement**

8. This Act shall be called the Transnet Pension Fund Amendment Act, 2000, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE TRANSNET PENSION FUND AMENDMENT BILL, 2000**

### **1. Objects of the bill**

1.1 The objects of the bill are to provide, by means of various amendments to the Transnet Pension Funds Act, 1990, for the establishment of two statutory pension funds.

1.2 Firstly, the bill provides for the powers to establish a defined contribution fund and the amendment of a rule of the Transnet Pension Fund that allows for employee members to transfer from the Transnet Pension Fund to the defined contribution fund; and

1.3 Secondly, the bill provides for the establishment of the Transnet Second Defined Benefit Fund and the transfer of pensioner members from the Transnet Pension Fund to the Transnet Second Defined Benefit

### **2. Content of the bill**

2.1 Clause 1 provides for the amendment of a definition.

2.2 Clause 2 provides for the amendment of a rule of the Transnet Pension Fund that allows for employee members to transfer from the Transnet Pension Fund to the defined contribution fund.

2.3 Clause 3 provides for the scope of the guarantee of the employer to include the

Transnet Second Defined Pension Fund.

2.4 Clause 4 provides for the scope of recoveries of amounts in respect of the Transmed Medical Scheme to include the Transnet Second Defined Benefit Fund.

2.5 Clause 5 provides for the guarantee of the employer and the State to be deemed to be obligations to the Transnet Pension Fund and the Transnet Second Defined Benefit Fund in proportions determined by the State Actuary.

2.6 Clause 6 provides for a sexual amendment.

2.7 Clause 7 provides for the power of Transnet to establish a pension fund, subject to the approval of the Minister of Public Enterprises acting with the concurrence of the Minister of Finance and the establishment of the Transnet Second Defined Benefit Fund as well as the transfer of existing pensioener members from the Transnet Pension Fund to the Transnet Second Defined Benefit Fund. This clause also provides for the rules of the Transnet Second Defined Benefit Fund contained in Schedule 1 to the principal Act.

2.8 Clause 8 provides for the short title of the Bill.