

REPUBLIC OF SOUTH AFRICA

ESKOM AMENDMENT BILL

(As introduced in the National Assembly)

(MINISTER FOR PUBLIC ENTERPRISES)

[B 6—98]

REPUBLIEK VAN SUID-AFRIKA

ESKOMWYSIGINGSWETSONTWERP

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VIR OPENBARE ONDERNEMINGS)

[W 6—98]

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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 reserves and other assets 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 inserted in the Eskom Act, 1987, after section 2:

“Ownership of Eskom's reserves and other assets” 5

2A. The ownership of Eskom's reserves and other assets shall vest in the State.”

Repeal of section 24 of Act 40 of 1987

2. Section 24 of the principal Act is repealed.

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3. This Act is called the Eskom Amendment Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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 reserves and other assets 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 2 of the Bill is intended to bring Eskom in line with this requirement. The National Framework Agreement requires 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 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.