

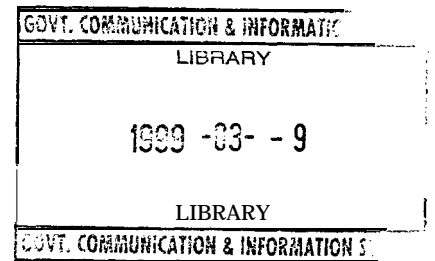
REPUBLIC OF SOUTH AFRICA

SKILLS DEVELOPMENT LEVIES BILL

(As introduced in the National Assembly as a Money Bill)

(MINISTER OF FINANCE)

[B 28—99]



IRIPABLIKI YASENINGIZIMU AFRIKA

UMTHETHOSIVIVINYWA WEZIBIZONTELA WOKUTHUTHUKISA AMAKHONO

(Njengoba uqaliswe kusiGungu sikaZwelonke njengeMthethos ivivinywa weMali)

(UNGQONGQOSHE WEZEZIMALI)

[B 28—99]

ISBN O 621290106

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 provide for the imposition of a skills development levy: and for matters connected therewith.

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

TABLE OF CONTENTS

CHAPTER 1

ADMINISTRATION, IMPOSITION AND RECOVERY OF LEVY 5

1. Definitions
2. Administration of Act
3. Imposition of levy
4. Exemptions
5. Registration for payment of levy 10
6. Payment of levy to Commissioner and refund
7. Payment of levy to SETA and refund
8. Distribution of levies paid to Commissioner
9. Distribution of levies paid to SETA
10. Collection costs 15
11. Interest on late payment
12. Penalties on default
13. Applicability of Income Tax Act

CHAPTER 2

RECOVERY OF LEVY BY SETA 20

14. Recovery of levy
15. Appointment of inspectors
16. Powers of entry of inspectors
17. Powers of inspector to question and inspect
18. Co-operation with inspectors 25
19. Undertakings and compliance orders

CHAPTER 3

GENERAL PROVISIONS

20.	Offences	
21.	Proof of accuracy of statement	
22.	Regulations	5
23.	Amendment of Skills Development Act	
24.	Short title and commencement	

SCHEDULE

AMENDMENT OF SKILLS DEVELOPMENT ACT

10

CHAPTER 1

ADMINISTRATION, IMPOSITION AND RECOVERY OF LEVY

Definitions

1. In this Act, unless the context otherwise indicates—
- “**approved body**” means the body approved by the Minister in terms of section 15 15
7(1)(b) to collect the levy on behalf of a SETA;
- “**Commissioner**” means the Commissioner for the South African Revenue Service, established by section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
- “**Director-General**” means the Director-General of Labour; 20
- “**employee**” includes an employee as defined in the Fourth Schedule to the Income Tax Act;
- “**employer**” includes an employer as defined in the Fourth Schedule to the Income Tax Act;
- “**Income Tax Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962); 25
- “**interest**” means any interest payable in terms of section 11;
- “**levy**” means the skills development levy referred to in section 3;
- “**Minister**” means the Minister of Labour;
- “**National Skills Authority**” means the National Skills Authority, established by section 4 of the Skills Development Act; 30
- “**National Skills Fund**” means the National Skills Fund, established by section 27(1) of the Skills Development Act;
- “**penalty**” means any penalty payable in terms of section 12;
- “**prescribed**” means prescribed by regulation in terms of section 22;
- “**sector**” means a sector as determined by the Minister in terms of section 9(2) of 35
the Skills Development Act;
- “**SETA**” means a sector education and training authority, established by section 9(1) of the Skills Development Act;
- “**Skills Development Act**” means the Skills Development Act, 1998 (Act No. 97 of 1998); 40
- “**this Act**” includes any regulation made in terms of section 22, but does not include the footnotes.

Administration of Act

2. (1) Subject to subsection (2), the Director-General must administer this Act.
- (2) The Commissioner must administer the provisions of the Act in so far as it relates 45
to the collection of the levy payable to the Commissioner in terms of this Act.
- (3) The Director-General may delegate any part of the administration of this Act, contemplated in subsection (1), to the executive officer of a SETA.
- (4) A delegation in terms of subsection (3)—

- (a) is subject to the conditions the Director-General determines;
- (b) must be in writing;
- (c) does not prevent the Director-General from performing the part of the administration so delegated: and
- (d) may at any time be withdrawn in writing. 5

Imposition of levy

3. (1) Every employer must pay a skills development levy from—

- (a) 1 April 2000, at a rate of 0,5 per cent of the leviable amount; and
- (b) 1 April 2001, at a rate of one per cent of the leviable amount.

(2) Despite subsection (1), the Minister may, in consultation with the Minister of Finance and the Minister for Provincial Affairs and Constitutional Development and by notice in the *Gazette*, impose a skills development levy on every municipality, as defined in section 10B of the Local Government Transitional Act, 1993 (Act No. 209 of 1993), or any group category or type of municipality, which must be determined on the leviable amount at a rate specified in that notice determined in accordance with subsection (3). 10 15

(3) The aggregate of the levies collected from a municipality by virtue of a notice in terms of subsection (2) and budgetary allocations for training purposes to that municipality, must from—

- (a) 1 April 2000, be less than 0,5 per cent of the leviable amount;
- (b) 1 April 2001, be less than one per cent of the leviable amount; and 20
- (c) 1 April 2002, not be less than one per cent of the leviable amount.

(4) For the purposes of subsections (1), (2) and (3), but subject to subsection (5), the leviable amount means the total amount of remuneration, paid or payable, or deemed to be paid or payable, by an employer to its employees during any month, as determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act for the purposes of determining the employers liability for any employees' tax in terms of that Schedule, whether or not such employer is liable to deduct or withhold such employees' tax.¹ 25

(5) The amount of remuneration referred to in subsection (4) does not include any amount— 30

- (a) paid or payable to any person contemplated in paragraphs (c) and (d) of the definition of 'employee' in paragraph 1 of the Fourth Schedule to the Income Tax Act, to whom a certificate of exemption has been issued in terms of paragraph 2(5)(a) of that Schedule;
- (b) paid or payable to any person by way of any pension, superannuation allowance or retiring allowance: 35
- (c) contemplated in paragraphs (a), (d), (e) or (eA) of the definition of "gross income", in section 1 of the Income Tax Act;
- (d) payable to a learner in terms of a contract of employment contemplated in section 18(3) of the Skills Development Act. 40

(6) Despite subsection (1), on the request of a SETA, the Minister may, in consultation with the Minister of Finance and by notice in the *Gazette*, determine from time to time a rate and basis for the calculation of a levy payable by employers within the jurisdiction or a part of the jurisdiction of a SETA, different from the rate and basis contemplated in subsection (1)(a) or (b), as the case may be, but subject to subsection (7). 45

(7) The rate and basis determined in a notice in terms of subsection (6) may not have the result that the amount of the levies collected by virtue of such notice is less than the amount of the levies which would have been collected, based on the rate and basis contemplated in subsection (1)(a) or (b), as the case may be.

1. This means that the remuneration paid to employees below the Income Tax threshold must be incorporated into the remuneration for determining the leviable amount in this Act.

(8) The Minister may, in consultation with the Minister of Finance, determine criteria for purposes of any determination contemplated in subsection (6).

(9) The notice referred to in subsection (6) must contain—

- (a) the rate and basis for the calculation of the levy;
- (b) the date on which the levy becomes payable;
- (c) a description of the employers falling within the jurisdiction of the SETA or part of the jurisdiction of the SETA in respect of which the levy is payable;
- (d) any other matter necessary to ensure the effective collection of the levy.

Exemptions

4. The levy is not payable by— 10
- (a) any public service employer in the national or provincial sphere of government: 10
 - (b) any employer where section 3(1)(a) or (b) applies and—
 - (i) during any month, there are reasonable grounds for believing that the total amount of remuneration, as determined in accordance with section 3(4), paid or payable by that employer to all its employees during the following 12 month period will not exceed R250 000, or such other amount as the Minister may determine by notice in the *Gazette*; and 15
 - (ii) that employer is not required to apply for registration as an employer in terms of paragraph 15(1) of the Fourth Schedule to the Income Tax Act; 20
 - (c) any religious or charitable institution contemplated in section 10(1)(f) of the Income Tax Act or any fund contemplated in section 10(1)(fA) of the Income Tax Act, established solely to provide funds to any such institution; or
 - (d) any national or provincial public entity, if 80 per cent or more of its expenditure is defrayed directly or indirectly from funds voted by Parliament. 25

Registration for payment of levy

5. (1) When an employer is liable to pay the levy, that employer must—
- (a) apply to the Commissioner in such manner as the Commissioner may determine, to be registered as an employer for the purposes of the levy and indicate in such application the jurisdiction of the SETA within which that employer must be classified (if any); and 30
 - (b) if the employer is affected by the establishment or amendment of a SETA as contemplated in subsection (4), indicate to the Commissioner the jurisdiction of the SETA within which that employer must be classified.
- (2) For the purposes of subsection(1), where an employer falls within the jurisdiction of more than one SETA, that employer must, having regard to— 35
- (a) the composition of its workforce;
 - (b) the amount of remuneration paid or payable to the different categories of employees; and
 - (c) the training needs of the different categories of employees. 40
- select one SETA within which it must be so classified for the purposes of this Act.
- (3) A selection by an employer in terms of subsection (2) is binding on the employer, unless the Commissioner having regard to the factors contemplated in subsection (2)(a), (b) and (c) otherwise directs.
- (4) If a SETA is established or its jurisdiction is amended after 1 April 2000, the Minister must, by notice in the *Gazette*— 45
- (a) inform employers of any change in respect of which SETA the levy is or becomes payable; and
 - (b) determine a date, more than 60 days after the date of the notice, from which employers will be affected by that establishment or amendment of jurisdiction. 50

(5) An employer that falls within the jurisdiction of a SETA specified in a notice referred to in section 7(1), must—

(a) apply to the SETA in such manner as the SETA determines, to be registered as an employer for the purposes of the payment of the levy;

(b) within 21 days from the date of such notice, submit a statement to the Commissioner confirming that such employer falls within the jurisdiction of that SETA and that payment of the levy will be made to that SETA. 5

(6) Any employer that is exempt from the payment of the levy as contemplated in section 4(a),(c) and (d), must register in terms of subsection (1).

Payment of levy to Commissioner and refund

10

6. (1) Subject to section 7, every employer must pay the levy to the Commissioner in the manner and within the period determined in this Act.

(2) An employer must, not later than seven days, or such longer period as the Commissioner determines, after the end of each month in respect of which the levy is payable, pay the levy to the Commissioner and together with such payment submit a statement— 15

(a) in such form as the Commissioner may require; and

(b) reflecting the amount of the levy due by that employer and containing such other information as the Commissioner may require.

(3) If the amount of any levy, interest or penalty paid by an employer to the Commissioner was not leviable or payable, or was in excess of the amount leviable or payable in terms of this Act, that amount must be refunded to that employer by the Commissioner, which refund is a drawback against the National Revenue Fund. 20

(4) If the Director-General has allocated in accordance with section 8 the full amount or any portion of the amount referred to in subsection (3), the Director-General must, when necessary, withhold the amount so allocated from future payments due to the SETA or National Skills Fund, as the case may be, in terms of this Act. 25

(5) The Commissioner must, before the seventh day of each month, notify the Director-General of—

(a) the names of employers in each SETA and the amount of levies, interest and penalties collected from and refunds made to those employers; and 30

(b) the names of employers which do not fall within the jurisdiction of any SETA and the amount of levies, interest and penalties collected from and refunds made to those employers,

during the previous month, 35

Payment of levy to SETA and refund

7. (1) Subject to subsection (2), the Minister may, in consultation with the Minister of Finance and by notice in the *Gazette*, determine that all employers that fall within the jurisdiction of any SETA specified in that notice, must pay the levy to—

(a) that SETA; or 40

(b) a body nominated by the SETA and approved by the Minister to collect the levy on behalf of that SETA.

(2) Before making a determination contemplated in subsection (1), the Minister and the Minister of Finance must be satisfied that—

(a) sufficient grounds exist for the SETA to collect the levy from the employers in its jurisdiction; 45

(b) the SETA, or the body nominated by the SETA to collect the levy on its behalf, has demonstrated the required competence to collect the levy; and

(c) the costs pertaining to such collection will not exceed two per cent of the total amount of the levies collected. 50

(3) The Minister may withdraw the notice contemplated in subsection(1) if he or she is satisfied that the SETA has not complied in the prescribed manner with section 10(1)(a), (b), (g)(iii) and (h)(ii) of the Skills Development Act.

(4) An employer must, not later than seven days after the end of each month in respect of which the levy is payable— 55

- (a) pay the levy; and
- (b) submit to the SETA or approved body and to the Commissioner a statement—
 - (i) in such form as the SETA or approved body, as the case may be, and the Commissioner, respectively, may require; and
 - (ii) reflecting the amount of the levy paid to the SETA or approved body and containing such other information as the SETA or approved body, as the case may be, and the Commissioner may require,

(5) If the amount of a levy, interest or penalty paid by an employer to the SETA or approved body was not leviable or payable, or was in excess of the amount leviable or payable, in terms of this Act, that amount must be refunded to the employer by the SETA or approved body from the funds of the SETA.

(6) If any portion of the amount refunded in terms of subsection (5), has been paid over to the National Skills Fund in terms of section 9(a), the SETA must withhold that portion from future payments to the Fund in terms of this Act.

Distribution of levies paid to Commissioner

8. (1) The levies, interest and penalties collected by the Commissioner, after deduction of refunds, must be paid into the National Revenue Fund.

(2) Subject to section 6(4), the total amount of levies, interest and penalties paid into the National Revenue Fund in terms of subsection (1), is a direct charge against the National Revenue Fund for the credit of—

- (a) the SETA to the amount contemplated in subsection (3)(b);
- (b) the National Skills Fund to the amount contemplated in subsection (3)(u) and (c).

(3) The Director-General must, within 14 days after receipt of a notice from the Commissioner in terms of section 6(5), allocate—

- (a) 20 per cent of the levies, interest and penalties collected in respect of a SETA to the National Skills Fund;
- (b) 80 per cent of the levies, interest and penalties collected in respect of a SETA to that SETA after he or she is satisfied that the SETA has complied in the prescribed manner with section 10(1)(a), (b), (g)(iii) and (h)(ii) of the Skills Development Act;
- (c) the levies, interest and penalties collected by the Commissioner from employers which do not fall within the jurisdiction of a SETA to the National Skills Fund.

(4) The levies, interest and penalties allocated to a SETA in terms of subsection (3)(b) must be dealt with in accordance with section 14 of the Skills Development Act.

Distribution of levies paid to SETA

9. Subject to section 10(3), the executive officer of a SETA or its approved body, as the case may be, must—

- (a) not later than the 15th day of each month, pay 20 per cent of the levies collected by that SETA in terms of section 7(1), and of any interest and penalties collected in respect thereof, to the National Skills Fund;
- (b) deal with the balance of the levies, interest and penalties so collected in accordance with section 14 of the Skills Development Act.

Collection costs

10. (1) Subject to subsection (2), the Director-General must, on a monthly basis as may be agreed between by the Commissioner and the Director-General, defray the costs of collection by the Commissioner from the levies paid into the National Skills Fund.

(2) The total amount of collection costs referred to in subsection (1), excluding the start-up capital costs, may not exceed two per cent of the total amount of the levies calculated at the rate referred to in section 3(1)(b).

(3) Subject to subsection (4), a SETA or its approved body may withhold from its payment to the National Skills Fund in accordance of section 9(a), the cost of collection of the SETA or approved body.

(4) The total amount of collection costs referred to in subsection (3) may not exceed two per cent of the total amount of the levies collected. 5

Interest on late payment

11. If an employer fails to pay a levy or any portion thereof on the last day for payment thereof, as contemplated in section 6(2) or 7(4), interest is payable on the outstanding amount at the rate contemplated in paragraph (b) of the definition of “prescribed rate” in section 1 of the Income Tax Act, calculated from that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be. 10

Penalties on default

12. (1) Subject to subsection (2), if any levy remains unpaid after the last day for payment thereof as contemplated in section 6(2) or 7(3), a penalty of 10 per cent of that unpaid amount is payable in addition to the interest contemplated in section 11. 15

(2) The Commissioner or the executive officer of the SETA or approved body, as the case may be, may, having due regard to the circumstances of the case, remit the penalty or any portion thereof imposed by subsection (1).

Applicability of Income Tax Act 20

13. The provisions of the Income Tax Act relating to—

- (a) the administration thereof as contained in Chapter I of the Income Tax Act;
- (b) returns, the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
- (c) assessments; 25
- (d) objections and appeals;
- (e) the payment and recovery of tax, interest and penalties;
- (f) refunds;
- (g) representative taxpayers as contained in the Fourth Schedule to the Income Tax Act; 30
- (h) transactions, operations or schemes for purposes of avoiding or postponing liability for taxes on income or reducing the amount of taxes on income; and
- (i) reporting of unprofessional conduct,

apply, with the changes required by the context, to the levy paid or payable to the Commissioner in terms of this Act in respect of— 35

- (i) the administration of this Act;
- (ii) statements, the production of information, documents or things, enquiries, searches and seizures and evidence on oath for the purpose of obtaining full information in respect of the calculation of the levy due and payable in terms of this Act; 40
- (iii) any assessment, objection and appeal and the payment recovery or refund of the levy, interest or penalty;
- (iv) representative taxpayers;
- (v) any transaction, operation or scheme entered into or carried out for the purposes of avoiding or postponing liability for the levy or reducing the amount of the levy and in the application of the provisions contemplated in paragraph (h), such provisions are regarded to include a reference to the levy; 45
- (vi) reporting of unprofessional conduct.

CHAPTER 2

RECOVERY OF LEVY BY SETA

Recovery of levy

14. (1) A levy payable by an employer in terms of section 7(1) to a SETA or its approved body is regarded to be a debt due to the SETA. 5

(2) If an employer—

(a) fails to submit a statement in respect of the amount of levies due as contemplated in section 7(4)(b); or

(b) submits a statement reflecting an amount which, in the opinion of the executive officer of the SETA or approved body, as the case may be, is less than the amount which is due in terms of this Act. 10

the executive officer of the SETA or approved body, as the case may be, may estimate the amount of the levy due and issue an assessment for the outstanding amount.

(3) If any amount of the levy payable by an employer to a SETA in accordance with section 7(1), or any interest or penalty in respect thereof, remains unpaid on the last day for payment thereof as contemplated in sections 7(4)(u), 11 and 12, respectively, the SETA or approved body, as the case may be, may, despite any law to the contrary, recover the outstanding amount by action in a magistrates court having jurisdiction in the area in which the person liable for the levy, interest or penalty carries on business. 15

Appointment of inspectors

20

15. (1) A labour inspector appointed in terms of section 63 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), is regarded to be an inspector for the purposes of this Act in so far as it relates to the collection of levies by a SETA or its approved body.

(2) The Director-General must, by a signed certificate, designate any person appointed in the prescribed manner and against the prescribed criteria as an agent of a SETA or its approved body as an inspector for the purposes of this Act in so far as it relates to the collection of levies by the SETA or approved body, as the case may be. 25

Powers of entry of inspectors

16. (1) In order to monitor and enforce compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body, an inspector may without warrant or notice at any reasonable time, enter any workplace or any other place where an employer carries on business or keeps any records, which is not a home. 30

(2) An inspector may enter a home or any place other than a place contemplated in subsection (1) only— 35

(a) with the consent of the owner or occupier; or

(b) if authorised by a warrant, in terms of subsection (3), to do so.

(3) A magistrate, or judge of a High Court, in chambers having jurisdiction may issue a warrant contemplated in subsection (2) only on written application by an inspector, referred to in section 15, and stating under oath or affirmation the reasons for the need to enter a place in order to monitor compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body. 40

Powers of inspector to question and inspect

17. (1) In order to monitor compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body, an inspector referred to in section 15 may— 45

(a) require a person to disclose information either orally or in writing, and either alone or in the presence of witnesses on any matter to which this Act so relates, and require that the disclosure be made under oath or affirmation;

- (b) inspect, and question a person about any document to which this Act so relates;
 - (c) copy that document, or remove that document to make copies of, or extracts from, that document;
 - (d) require a person to produce or deliver to a place specified by the inspector that document for inspection; and
 - (e) perform any other prescribed function necessary for monitoring or enforcing compliance with this Act in so far as it relates to the collection of levies by a SETA or its approved body.
- (2) The inspector may be accompanied by an interpreter and any other person reasonably required to assist in conducting the inspection. 10
- (3) The inspector must—
- (a) produce on request the certificate of appointment as inspector;
 - (b) provide a receipt for any document removed or delivered in terms of subsection (1)(c) or (d); and 15
 - (c) return anything so removed or delivered within a reasonable time.

Co-operation with inspectors

- 18. (1)** Any person who is questioned by an inspector referred to in section 15 must answer all relevant questions lawfully put to that person, truthfully and to the best of his or her ability. 20
- (2) An employer must provide any facility and assistance at his or her premises that is reasonably required by an inspector to perform his or her functions effectively.

Undertakings and compliance orders

- 19.** Sections 68 to 73 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), apply, with the changes required by the context, to— 25
- (a) the monitoring and enforcement of this Act in so far as it relates to the collection of levies by a SETA or its approved body; and
 - (b) any legal proceedings concerning a contravention of this Act, in so far as it relates to the collection of levies by a SETA or its approved body.

CHAPTER 3

30

GENERAL PROVISIONS

Offences

20. Any person who—
- (a) fails to apply for registration for purposes of the levy;
 - (b) fails to pay any levy on the date determined for payment thereof; 35
 - (c) furnishes any false information in a statement or other document required in terms of this Act, knowing the information to be false;
 - (d) fails to—
 - (i) submit or deliver any statement or other document or thing;
 - (ii) disclose any information; 40
 - (iii) reply to or answer truly and fully, any questions put to him or her; or
 - (iv) attend and give evidence, required in terms of this Act; or
 - (e) hinders or obstructs any person in carrying out his or her functions in terms of this Act, 45
- commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding one year.

Proof of accuracy of statement

21. In any proceedings concerning a contravention of this Act, it is for an employer to prove that the information supplied by that employer in a statement required to be submitted in terms of this Act is accurate.

Regulations

5

22. *The* Minister may, in consultation with the Minister of Finance and after consultation with the National Skills Authority, make regulations about any matter which—

(a) may or must be prescribed in terms of this Act; and

(b) is necessary for the effective administration of this Act.

10

Amendment of Skills Development Act

23. The Skills Development Act is amended as set out in the Schedule.

Short title and commencement

24. This Act is called the Skills Development Levies Act, 1999 and takes effect on a date to be determined by the President by proclamation in the Gazette.

15

SCHEDULE

AMENDMENT OF SKILLS DEVELOPMENT ACT

(Section 23)

Amendment of section 1 of Act 97 of 1998

1. Section 1 of the Skills Development Act is hereby amended by the substitution for the definitions of “Skills Development Levies Act” and “skills development levies” of the following definitions:

“**‘Skills Development Levies Act’ means the Skills Development Levies Act, 1999;**
‘skills development levies’ means a levy as defined in section 1 of the Skills Development Levies Act;”.

Amendment of section 2 of Act 97 of 1998

2. Section 2 of the Skills Development Act is hereby amended by the substitution in subsection (2)(a)(iii) for the expression “levy-grant” of the expression “levy-financing”.

Amendment of section 10 of Act 97 of 1998

3. Section 10 of the Skills Development Act is hereby amended—

(a) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

“(f) when required to do so as contemplated in section 7(1) of the Skills Development Levies Act, collect the skills development levies, and must disburse the levies, allocated to it in terms of sections 8(3)(b) and 9(b), in its sector;”;

(b) by the substitution for paragraph (k) of subsection (1) of the following paragraph:

“(k) perform any other duties imposed by this Act or the Skills Development Levies Act or consistent with the purposes of this Act.”;

(c) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) the other powers conferred on the SETA by this Act or the Skills Development Levies Act;”;

(d) by the substitution for subsection (3) of the following subsection:

“(3) A SETA must perform its functions in accordance with this Act. the Skills Development Levies Act and its constitution.”.

Amendment of section 14 of Act 97 of 1998

4. Section 14 of the Skills Development Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) 80 per cent of the skills development levies, interest and penalties collected in respect of the SETA, as allocated in terms of sections 8(3)(b) and 9(b) of the Skills Development Levies Act;”;

(b) by the deletion of paragraph (c) of subsection (2).

Amendment of section 27 of Act 97 of 1998

5. Section 27 of the Skills Development Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs:

“(a) 20 per cent of the skills development levies, interest and penalties collected in respect of every SETA, as required by sections 8(3)(a) and 9(a) of the Skills Development Levies Act;

(b) the skills development levies, interest and penalties collected by the Commissioner from employers which do not fall within the jurisdiction of a SETA, as required by section 8(3)(c) of the Skills Development Levies Act.”

Amendment of section 30 of Act 97 of 1998

6. Section 30 of the Skills Development Act is hereby amended by the substitution for paragraph (a) of subsection(1) of the following paragraph:

“(a) must budget for at least—
 (i) 0,5 per cent of its payroll with effect from 1 April 2000;
 (ii) one per cent of its payroll with effect from 1 April 2001, for the training and education of its employees; and”.

Insertion of section 30A in Act 97 of 1998

7. The following section is hereby inserted after section 30 of the Skills Development Act:

“Budget for training by national and provincial public entities

30A. If 80 per cent or more of the expenditure of a national or provincial public entity is defrayed directly or indirectly from funds voted by Parliament, that entity must budget for at least—

(a) 0,5 per cent of its payroll with effect from 1 April 2000;
 (b) one per cent of its payroll with effect from 1 April 2001, for the training and education of its employees.”.

Amendment of item 10 of Schedule 2 to Act 97 of 1998

8. Item 10 of Schedule 2 to the Skills Development Act is hereby amended by the deletion of paragraph (b) of subitem (2).

Amendment of item 14 of Schedule 2 to Act 97 of 1998

9. Item 14 of Schedule 2 to the Skills Development Act is hereby amended by the substitution for subitem (3) of the following subitem:

“(3) Subject to subitem 7(c), any levy imposed in terms of section 10 of the Local Government Training Act and in force immediately before the commencement of this Act, remains in force until 31 March 2000 **[unless withdrawn before that date by the Minister in terms of section 2(3) of the Skills Development Act]** as if the Local Government Training Act had not been repealed.”.

Amendment of long title of Act 97 of 1998

10. The long title of the Skills Development Act is hereby amended by the substitution for the expression “levy-grant” of the expression “levy-financing”.

**MEMORANDUM OF THE OBJECTS OF THE SKILLS
DEVELOPMENT LEVIES BILL, 1999**

1. Purpose of Bill

The Bill establishes a compulsory levy scheme for the purpose of funding education and training envisaged in the Skills Development Act, 1998 (Act No. 97 of 1998). The Bill introduces a levy—

- (a) with effect from 1 April 2000, equivalent to 0,5 per cent; and
- (b) with effect from 1 April 2001, equivalent to one per cent,

of employers' payroll per month. Employers must pay that levy to the Commissioner for the South African Revenue Service. However, where the Minister of Labour and Minister of Finance are satisfied that sufficient grounds exist and where certain criteria are met, they may grant permission for employers within the jurisdiction of a particular SETA to pay their levies directly to that particular SETA. Twenty per cent of the funds collected will be allocated to the National Skills Fund established by the Skills Development Act, 1998. Together with the money received from the fiscus, this money will be used to fund national skills priorities. The remaining eighty per cent of the levies must be paid into the bank accounts of the various SETAs to fund the performance of their functions and pay for their administration within the prescribed limit. Where there is no SETA, funds for that sector will be paid into the National Skills Fund. The Skills Development Act, 1998, requires national and provincial government departments to budget at least 0,5 per cent of personnel costs for skills development from 1 April 2000 and 1 per cent from 1 April 2001. The same applies to national and provincial public entities, where 80 per cent or more of their expenditure are defrayed directly or indirectly from funds voted by Parliament. All public service employers in the national and provincial spheres of government and the said national and provincial public entities are, therefore, exempted from the payment of the levy. Those employers not required to register for employees' tax purposes in terms of the Fourth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), and whose total annual wage bill is less than R250 000, are also exempted. The Bill also makes provision that the levy is not payable by—

- (a) any religious or charitable institution contemplated in section 10(1)(f) of the Income Tax Act, 1962, or any fund contemplated in section 10(1)(fA) of that Act, established to provide funds to any such institution;
- (b) any national or provincial public entity where 80 per cent or more of its expenditure is defrayed directly or indirectly from funds voted by Parliament.

2. Main elements of Bill

2.1 Chapter 1: Administration, imposition and recovery of levy

Clause 1 contains the definitions.

Clause 2 determines that the Director-General of Labour ("DG") must administer the Bill. It further determines that the DG may delegate any part of such administration to a SETA, subject to such conditions as he or she may impose. The Commissioner must administer the Bill in so far as it relates to the collection of the levy payable to the Commissioner.

Clause 3 imposes the obligation on all employers to pay the skills development levy at a rate of 0,5 per cent of the leviable amount with effect from 1 April 2000 and at a rate of one per cent with effect from 1 April 2001. *Subclause (4)* provides that the leviable amount means the amount of remuneration, as determined for employees' tax purposes in accordance with the Fourth Schedule of the Income Tax 1962, subject to a number of exclusions. A specific arrangement for local government is provided for in *subclause (2)*. In terms of *subclause (6)*, the Minister of Labour may, in consultation with the Minister of Finance determine an alternative rate and basis by way of notice in the *Gazette*. *Subclause (8)* provides that the Minister of Labour and Minister of Finance may lay down criteria for such a determination.

Clause 4 provides for exemptions from payment of the levy. Any public service employer in the national or provincial sphere of government is exempted. In addition any employer will be exempted from payment of the levy where—

- (a) there are reasonable grounds to believe that the total wage bill will be less than R250 000 per annum; and
- (b) such employer is not required to register for employees' tax purposes in terms of the Fourth Schedule to the Income Tax Act, 1962.

Religious or charitable institutions and funds established to fund them, as well as certain national and provincial public entities as set out in paragraph 1 above, are also exempted.

Clause 5 provides procedures for the registration of employers for purposes of payment of the levy. Every employer that becomes liable for the levy must register with the Commissioner and indicate within which SETA such employer must be classified. It may, however, happen that an employer falls within the jurisdiction of more than one SETA and, in such a case, such employer must select one SETA for purposes of payment of the levy and inform the Commissioner of its selection. Such a selection is binding on the employer, unless the Commissioner directs otherwise. When a new SETA is established or the jurisdiction of a SETA is amended and it affects an employer, such employer must also inform the Commissioner of the change of SETA.

An employer that falls within a SETA that collects its own levies, as provided for in *clause 7*, must also submit a statement to the Commissioner confirming that it falls within the jurisdiction of such SETA and that the levy will be paid to that SETA. *Subclause (5)* provides for registration procedures with the SETA in such a case. *Subclause (6)* provides that an employer that is exempt from the payment of the levy as contemplated in *clause 4(a),(c) and (d)* must nevertheless register with the Commissioner.

Clause 6 provides that all employers, other than employers that fall within the jurisdiction of a SETA that may in terms of *clause 7* collect its own levies, must pay the levy to the Commissioner. This *clause* also makes provision for refunds to employers in the event of overpayment of the levy, or where the levy paid was not due in terms of the Bill. *Subclause (5)* provides that the Commissioner must, before the seventh day of each month, provide the DG with the names of employers, broken down by SETA, and the amount of levies, interest and penalties collected and refunds made in respect of each SETA during the previous month.

Clause 7 provides that the Minister of Labour may, in consultation with the Minister of Finance, provide that the SETA may collect its own levies. The SETA must, however, demonstrate that there are sufficient grounds for a SETA to collect. In addition, it must demonstrate that it is competent to collect the funds and that the cost of collection will not exceed two percent of the total amount of the levies collected. This *clause*, furthermore, outlines the procedures to be followed when an employer makes payment of the levy to a SETA. Procedures for the payment of refunds to employers are also provided for in this *clause*.

Clause 8 provides for the procedures to be followed for the allocation of the levies collected by the Commissioner. In essence, the levies, interest and penalties are, after deduction of refunds made to employers, paid into the National Revenue Fund. The DG will be furnished with information from the Commissioner, as provided for in *clause 6(5)*, and will allocate the funds accordingly. The DG must allocate 20 per cent of the funds, collected in respect of SETAS, to the National Skills Fund and 80 per cent thereof to the SETAS. All the funds collected from employers that do not fall within the jurisdiction of a SETA must be paid over to the National Skills Fund. The allocation of the funds by the DG will be a direct charge against the National Revenue Fund. The distribution of the levies must take place within a prescribed time.

Clause 9 outlines the procedures to be followed where funds are collected directly by SETAS. SETAs must pay 20 per cent of the levies, interest and penalties collected to the National Skills Fund. The remainder must be dealt with in accordance with section 14 of the Skills Development Act, 1998.

Clause 10 stipulates that the cost of collection by the Commissioner must be defrayed from the levies paid to the National Skills Fund. Such costs may, however, not exceed two per cent of the total amount of the levies calculated at the rate referred to in *clause 3(1)(b)*. A SETA may withhold from the levies paid by it to that Fund in terms of *clause 9(a)*, its costs of collecting the levies. Such costs of the SETA may not exceed two percent of the total amount of the levies collected.

Clause 11 provides that an employer is liable to pay interest if the levy is not paid on the due date.

Clause 12 states that in addition to the interest contemplated in *clause 11*, an employer who fails to pay the levy on the due date is liable to pay a penalty of 10 per cent of the unpaid amount. The Commissioner or the SETA may remit the penalty or a part of it.

Clause 13 makes certain provisions of the Income Tax Act, 1962, applicable where the levy is collected by the Commissioner. These provisions include, amongst others, the administration of the Act, procedures relating to obtaining information, documents or things, objections and appeals and the recovery of tax.

2.2 Chapter 2: Recovery of Levy by SETA

Clause 14 provides that a levy is to be regarded as a debt due to the SETA. If an employer fails to submit a statement reflecting the amount of the levy due, or where the amount reflected in the statement is in the opinion of the executive officer of the SETA less than the amount due, the executive officer may estimate the amount of levy due and issue an assessment for the outstanding amount. If the levy or outstanding amount remains unpaid, the SETA may recover the outstanding amount by way of action in a magistrate's court.

Clause 15 provides that a labour inspector appointed in terms of section 63 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), is regarded to be an inspector for the purposes of this Chapter. However, in addition, regulations prescribing procedures will be made to enable a SETA to appoint its own agents. These agents will be regarded to be inspectors for the purposes of Chapter 2 of the Bill.

Clause 16 outlines the powers of entry of inspectors.

Clause 17 outlines the powers of an inspector to question and inspect a person or documents. The inspector is required to produce on request a certificate of appointment and a receipt for any document removed and to return such documents within a reasonable time.

Clause 18 obliges those questioned by an inspector to answer all relevant questions truthfully and to the best of their ability. Employers are obliged to provide any facility and assistance at their premises that is reasonably requested by an inspector.

Clause 19 indicates that sections 68 to 73 of the Basic Conditions of Employment Act, 1997, apply to the Bill in respect of the monitoring and enforcement of the Bill and to the legal proceedings concerning contravention of the Bill.

2.3 Chapter 3: General Provisions

Clause 20 sets out the offences and provides that any person who commits an offence is liable on conviction to a fine or imprisonment of a period not exceeding one year.

Clause 21 provides that in any proceedings concerning a contravention of the Bill, it is for an employer to prove that the information supplied is accurate.

Clause 22 provides that the Minister of Labour must consult with the Minister of Finance before issuing regulations. The Minister of Labour must also consult the National Skills Authority before issuing regulations which may or must be prescribed or which are necessary for the effective administration.

Clause 23 provides for certain amendments to the Skills Development Act, 1998, as set out in the Schedule.

Clause 24 provides that the Bill (if enacted) shall come into operation on 1 April 2000.

3. Parties consulted

The consultation process in respect of the Bill was part of the process surrounding the Skills Development Act, 1998. In paragraph 3 of the Memorandum on the Objects of the Bill, which resulted in the Skills Development Act, 1998, this process, as well as the parties consulted, are described as follows:

“The National Training Strategy Initiative constituted by the National Training Board (“NTB”) recommended that additional research was needed regarding the financing and governance of occupationally based education and training in the country. The Minister of Labour requested that these recommendations be effected. The NTB and NEDLAC commissioned consultants to carry out research in these areas from 1995 to 1996. The reports focused on international experience in the financing and governance of education and training systems, local experience as well as on the levels of expenditure on training by the private and public sectors in South Africa. These reports formed the basis of the Department of Labour’s further policy development work.

The NTB submitted, on the request of the Minister of Labour, a draft Human Resources Development Green Paper on 30 September 1996 to be used as a basis for the Green Paper.

The Department of Labour published the Skills Development Strategy for Economic and Employment Growth and Social Development Green Paper on 24 March 1996 and invited parties to submit comments. Where appropriate, comments were included in the draft Skills Development Bill published in the *Gazette* on 2 September 1997. A total of 134 organisations, trade unions, councils and other non-governmental bodies submitted supportive comments and some concerns. Where appropriate, comments were incorporated in a revised Skill Development Bill.

Consultative meetings were held with the following bodies or persons: NTB, government representatives for the Departments of Education, Public Service and Administration, Minerals and Energy, Constitutional Development, Finance, Trade and Industry, Telecommunications, Youth Commission and all Directors-General.

Presentations and workshops were conducted with all provinces, training boards, trade unions, the Portfolio Committee on Labour, industries and businesses on request and other non-governmental bodies. The consultative meetings and workshops assisted the Department of Labour in re-drafting the Bill.

The following NEDLAC members were also involved in the consultation process: organised business (Business South Africa), organised labour (Cosatu, Nactu and Fedusa); government departments (Labour, Finance, Constitutional Development, Trade and Industry, and Public Service and Administration) and the community development sector (SA Women’s Coalition, SA National Youth Council, Disabled People of SA and Rural Foundation). A report is available which covers in detail the NEDLAC negotiation process regarding the Bill.”

Subsequently, within government, discussions have taken place between the Ministers of Labour and of Finance. Officials from the South African Revenue Service and the Departments of State Expenditure, of Finance and of Labour have held extensive discussions in respect of the imposition of a skills development levy. The draft Bill prepared and finalised during these discussions was submitted to Cabinet and recently approved by it.

4. *Parliamentary procedure*

The State Law Advisers are of the opinion that the Bill is a money Bill since it imposes a levy and accordingly Parliament must consider the Bill in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996.