

Further Education and Training Colleges Amendment Bill, 2011



SADTU SUBMISSIONS

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Background

The primary objective of the Further Education and Training Colleges Amendment Bill¹ is to amend the Further Education and Training Amendment Act 16 of 2006² so as to:

- (a) remove all references to provincial authority, that is substitute functions previously assigned to MEC's with the Minister;
- (b) remove all references to the HOD and substitute with DG;
- (c) provide for the prohibition of members of council (FETC Council) and members or staff of the College from doing business, directly or indirectly with the College, which is in conflict of interest with the College; and
- (d) To provide for transitional arrangements with regards to Public Service posts and educator posts, staff, disciplinary measures and policy made by the MEC under the Act or any provincial law.

Our submission deals with the areas of concern on the Amendment Bill, more specifically with the appointment of staff³ and the transitional provisions⁴. On areas of concern the submission also proposes solutions to overcome the identified challenges.

Section 20 of the Act is substituted with the following:

“Appointment of staff

20(1) The staff of public colleges consists of persons appointed by-

- (a) the Minister in terms of the Public Service Act in posts established on the organisational structure of the Department and identified as posts to the respective colleges; and
- (b) the council in posts establish in addition to posts contemplated in paragraph (a).

¹ Herein after referred to as ‘the Bill’

² Herein after referred to as the ‘Act’

³ Section 20 of the Act

⁴ Section 34

(2) Subject to the Public Service Act and any other applicable law, the minister must-

(a) establish the posts contemplated in subsection (1)(a);

(b) appoint staff in the identified posts; and

(c) remunerate staff from the funds allocated to the respective colleges in accordance with the norms and standards contemplated in section 23.”

Challenges

The Amendment Bill has two categories of employees, the ones who are appointed by the Minister in terms of Public Service Act and the ones who are appointed by the council.

In terms of section 3 of the Employment of Educators Act⁵ the Director-General is the employer of educators in the service of the Department of Education. The Department of Higher Education is national and therefore it is our submission that the Director-General should be the sole employer of the Further Education and Training College employees. It is submitted further that the Minister of Higher Education and Training must be the sole employer in respect of determining conditions of service and salaries of the FET Colleges’ employees. In order to achieve this, the Constitution of the Education Labour Relations Council will need to be amended to provide for the Minister of Higher Education and Training as another employer party in the ELRC.

Although it is stated in section 20 of the Bill that staff of public colleges consists of persons appointed by the Minister in terms of the Public Service Act. The Public Service Act does not include public colleges’ employees in its definition, application and composition. The definition of an educator in Public Service Act does not include FET Colleges’ employees. An ‘educator’ is defined as a teacher or other person performing education function at a state educational institution. FET Colleges employees are not teachers although they are performing education

⁵ 76 of 1998 (herein after referred to as the (EEA))

functions but they are not performing those functions at a state institution as required by the definition.

FET Colleges employees are not included in the definition of “the service” in section 1 of the Public Service Act. The definition includes Permanent Force of the National Defence, the South African Police Service and the Department of Correctional Services only.

It is submitted that if employees of FET Colleges are appointed in terms of the Public Service Act the definition of “the services” in section 1 of the Public Service Act needs to be amended to include Further Education and Training Colleges in the definition of “the services”.

It is submitted further that the inclusion of FET Colleges in the definition of “the services” will not be the end of the enquiry as there are many challenges that the FET Colleges employees may face if they would be appointed under the Public Service Act without amending its provisions.

Section 34 of the Bill

Section 34(4) gives powers to the Minister to transfer posts which are fully funded by the state in accordance with the Public Service Act. This section refers to the transfer of posts not the incumbents who are appointed in those posts. It is submitted that if the Minister have powers to transfer posts from private sector to public sector, the Minister must also transfer the incumbents who are appointed in those posts.

Section 34 (9), (10) and (11) provides for the different bargaining councils for lectures employed by public colleges in accordance with section 20(2)(b) and 20(4)(b). The conditions of service of the former employees will be determined under General Public Service Sector Bargaining Council⁶ and the salaries and

⁶ GPSSBC

conditions of service of the latter employees will be determined by the Education Labour Relations Council.⁷

Public colleges employees will be the minority in the GPSSBC and unlike the ELRC the council does not specialise in Education, therefore they would not understand the conditions of service of Lectures. FET Colleges will have two sets of bargaining councils, some Lectures will fall under GPSSBC and others will fall under ELRC whereas they will be performing the same function, which is to educate. This problem will also affect the representation of cases such as unfair dismissal and unfair labour practices. Commissioners in the ELRC understand conditions of service of educators as they are dealing with them on a daily basis, whereas Commissioners in the GPSSBC will not understand conditions of service of educators as they do not deal with the educators in their bargaining council.

Another problem is that given the current number of employees in FET Colleges a new bargaining council for FET Colleges' employees only may not be sustainable.

We submit that the most appropriate action of dealing with this problem will be to amend the Public Service Act to give the Minister of Higher Education and Training powers to determine conditions of service of all FET Colleges employees. Salaries and the conditions of service of all FET Colleges employees will be determined by the FET Bargaining Unit for the FET Sector in the ELRC. The Constitution of the ELRC will also need to be amended to include Minister of High Education as another employer party in the council.

Conclusion

Public Service Act will need to be amended to insert a provision which will allow FET employees to be appointed under FETC Act. The FET Colleges Act will have to be amended and make Director General to be the Employer of all employees in FET

⁷ ELRC

Colleges and Minister of High Education and Training to be the Employer of all FET College employees. This will be in line with section 3 and 4 of Employment of Educators Act. Since salaries and conditions of service will be determine by the Minister of High Education and Training, all FET College employees' salaries and conditions of service will be determine at the ELRC.

Alternatively, the appointment of all FET Colleges employees will be made under the Public Service Act. However, the employer of the FET Colleges employees must be the Director-General notwithstanding that they are appointed under the Public Service Act. The Public Service Act will also have a proviso which will give sole powers to the Minister of High Education and Training to determine salaries and conditions of service of FET Colleges Employees. FET Colleges salaries and conditions of service will be determined under FET Bargaining unit at ELRC.

We submit that section 20 of the Act must be amended so that all FET Colleges Employees be employed by the Director-General and the Minister of High Education and Training as submitted above. It is submitted that having two categories of employees in FET Colleges, some appointed by the council and others appointed by the Minister will create confusion and the situation will not be manageable.

In terms of the Bill although section 20(4)(b) employees will be appointed by the council and the ELRC is said to be the bargaining council to determine their salaries and conditions of service, the ELRC will not be effective as what is agreed upon at the GPSSBC will be extended to employees under ELRC bargaining council.

Notwithstanding the provisions of the Public Service Act, salaries and conditions of service of FET Colleges employees must be determined under the FETC Act in the ELRC until the Public Service Act is amended in order to give powers to the Minister of High Education to determine salaries and conditions of service of FET Colleges employees.

