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GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 258

2003

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 16 of 2003: Petroleum Products and Energy Amendment Act, 2003.

Act No. 16, 2003 **PETROLEUM PRODUCTS AND ENERGY AMENDMENT ACT,**
2003

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions
in existing provisions.

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

ACT

To amend the Petroleum Products and Energy Act, 1990 (Act No. 13 of 1990), so as to further define certain words and expressions; to empower the Minister to make regulations regarding the National Energy Council, National Energy Fund and approved agencies; to make provision for certain moneys to be paid into and to be expended from the National Energy Fund and the manner in which moneys in the Fund shall be dealt with; to provide for accounting records to be kept and for budgeting of the National Energy Fund; to provide for annual reporting on the National Energy Fund; to extend the functions of the National Energy Council; to further regulate the payment of remuneration and allowances of members of the National Energy Council and committees of that Council; to provide for the disclosure of interest by members of the National Energy Council and committees of that Council; to provide for the appointment of a Manager: National Energy Council and designation of staff members; to make provision for levies on different energy sources and for the funding of approved agencies; to exclude personal liability of persons involved in the performance of functions under the Petroleum Products and Energy Act, 1990; to amend the long title of the Petroleum Products and Energy Act; and to provide for matters incidental thereto.

(Signed by the President on 21 December 2003)

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

Amendment of section 1 of Act No. 13 of 1990, as amended by section 1 of Act No. 3 of 2000

1. Section 1 of the Petroleum Products and Energy Act, 1990 (hereafter referred to as the principal Act), is amended -

(a) by the insertion before the definition of "council" of the following definition:

" 'approved agency' means any institution of State, body or person including any body corporate or association of persons, approved by the Minister under section 19A(1);"

(b) by the insertion after the definition of "council" of the following definition:

" 'financial year' means the financial year of the fund referred to in section 11(4);"

(c) by the insertion after the definition of "inspector" of the following definition:

" 'Manager' means the Manager: National Energy Fund appointed under section 18B;"

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(d) by the insertion after the definition of “service” of the following definition:

“ ‘staff member’ means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);”;

(e) by the substitution for the definition of “this Act” of the following definition:

“ ‘this Act’ includes any condition imposed, directive or notice issued and regulation [or notice issued or given in terms of] made under this Act.”.

Amendment of section 2A of Act No. 13 of 1990, as inserted by section 2 of Act No. 3 of 2000

2. Section 2A of the principal Act is amended by the insertion after paragraph (k) of subsection (1) of the following paragraph:

“(kA) any matter which the Minister considers necessary or expedient -

- (i) to be considered for the purpose of imposing a levy under section 19; or
- (ii) for the effective performance by the council of its functions in terms of this Act.”.

Amendment of section 11 of Act No. 13 of 1990

3. Section 11 of the principal Act is amended -

(a) by the substitution for subsections (1) and (2) of the following subsections:

“(1) There is hereby established a fund to be known as the National Energy Fund, into which shall be paid -

- (a) money collected in respect of levies imposed under section 19 and interest on late payments of the levy;
- (b) money payable to the State by suppliers of petroleum products in accordance with the slate-account;
- (c) money paid to the fund in terms of section 20;
- (d) interest received on investments made in terms of subsection (6);
- (e) capital repayments and interest received in respect of funding made under section 19A in a form which is repayable in accordance with the conditions attached to the funding;
- (f) with the prior written approval of the Minister, granted with the concurrence of the Minister of Finance -
 - (i) money received by way of donations or grants made for the benefit of the fund; and
 - (ii) money accruing to the fund from any other source.

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- (2) Money available in the fund shall be utilized -
- (a) for the payment of such amounts of money which may become payable by the State to suppliers of petroleum products in accordance with the slate-account;
 - (b) for providing funding in terms of section 19A;
 - (c) to provide funding, as determined by the Minister, to any statutory body which has functions relating to the energy sector;
 - (d) to defray the administrative expenses of the council and committees of the council constituted under section 16(1), including the payment of remuneration and allowances in terms of section 17;
 - (e) for any other purpose which the Minister, with the concurrence of the Minister of Finance, may direct or approve.”; and

(b) by the addition of the following subsections:

- “(8) (a) Separate books and records of account shall be kept in respect each energy source contemplated in section 19(1) from or for which money is received for the benefit of the fund in accordance with subsection (1), and any money received which cannot be linked to a specific energy source, shall be accounted for in a general account.
- (b) Interest received on investments made under subsection (6), shall be accounted for in the general account referred to in paragraph (a).
- (c) Except for -
- (i) money in the general account, which may be applied for any energy purpose; and
 - (ii) administrative expenses referred to in subsection (2)(d), which shall be deducted proportionately from the different accounts referred to in paragraph (a),
- money in an account standing to the benefit of a specific energy source may only be applied for the benefit of that energy source, unless the Minister, after consultation with the council, directs otherwise.
- (9) No money shall be withdrawn from the fund except in accordance with an approved budget referred to in section 11A.”.

Insertion of sections 11A and 11B in Act No. 13 of 1990

4. The following sections are inserted in the principal Act after section 11:

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“Budgeting of fund

11A. (1) The Permanent Secretary shall annually, after consultation with the council, submit a budget for the next ensuing financial year of the fund to the Minister for approval.

(2) Every annual budget referred to in subsection (1) shall contain particulars of -

- (a) the income estimated to accrue to the fund during the financial year;
- (b) the estimated expenditure of each project or activity to be continued from the previous financial year;
- (c) the estimated amount to be spent or to be made available in respect of each new project or activity to be undertaken and funded from the fund, including particulars of any approved agency involved in such project or activity;
- (d) the estimated administrative expenses referred to in section 11(2)(d); and
- (e) such additional information as the Minister may require.

(3) The Permanent Secretary, after consultation with the council, may at any time during a financial year submit to the Minister for approval such supplementary estimates of income and expenditure for that financial year as may be considered necessary.

(4) The annual budget of the fund and any supplementary budget referred to in subsection (3) shall be submitted to the Minister for approval at least two months before the commencement of the financial year or that part of the financial year to which the budget relates.

Annual report

11B. (1) Within six months after the end of each financial year the Permanent Secretary shall submit to the Minister -

- (a) an annual report, prepared in consultation with the council, on the activities of the fund and the council during the financial year in question; and
 - (b) the annual financial statements of the fund in respect of that financial year, duly audited, together with the report of the auditor relating to those statements.
- (2) The annual report referred to in subsection (1)(a) shall contain -
- (a) particulars of projects and activities funded from the fund during the financial year in question, including the particulars of the approved agencies involved in such projects and activities, if any;
 - (b) particulars regarding the activities of the council during that financial year; and

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- (c) such other matters as the Minister may require.
- (3) The annual financial statements referred to in subsection (1)(b) shall contain -
- (a) detailed particulars of moneys received and expenditure incurred by the fund during the financial year in question, and of the assets and liabilities of the fund as at the end of that financial year; and
- (b) such additional particulars as the Minister may determine.
- (4) The Minister shall table copies of the annual report and audited financial statements in the National Assembly received in terms of subsection (1), within 30 days from the date of their receipt, if the National Assembly is in ordinary session or if it is not then in ordinary session, within 14 days after the commencement of its next ordinary session.”.

Substitution of section 13 of Act No. 13 of 1990

5. The following section is substituted for section 13 of the principal Act:

“Functions of council

13. (1) The functions of the council are -
- (a) to make recommendations to the Minister regarding the effective and efficient administration of the fund;
- (b) to make recommendations to the Minister regarding the approval of funding to approved agencies;
- (c) to advise the Minister with regard to investment policies of the fund;
- (d) to make recommendations to the Permanent Secretary in respect of the annual budget of the fund;
- (e) to make recommendation to the Minister in respect of any amendment of this Act or any regulation to be made under this Act; and
- (f) to take action or steps which are conducive to the exercise of its powers or the performance of its functions under this Act.
- (2) In performing its functions, the council shall -
- (a) enquire into and evaluate the energy supply situation in Namibia;
- (b) keep abreast of international developments and trends in the field of energy supply;
- (c) enquire into and evaluate the application and effectiveness of the laws governing energy matters in Namibia; and
- (d) carry out or cause to be carried out, with the approval of the Minister, such research in connection with energy supply or energy resources as the council may deem to be in the best interest of the country.”.

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Substitution of section 17 of Act No. 13 of 1990

6. The following section is substituted for section 17 of the principal Act:

“Remuneration of members of council and committees

17. (1) A member of the council or a member of a committee of the council, who is not in the full-time employment of the State, shall be paid such remuneration and allowances as the Minister, with the concurrence of the Minister responsible for Finance, may determine **[on the recommendation of the Public Service Commission]**.

(2) Notwithstanding subsection (1), a member of the council or a member of a committee of the council, appointed prior to the commencement of this provision, shall continue to receive such remuneration and allowances as determined at the date of such member’s appointment, or as amended after such date, for the remaining term of the member’s office.”.

Amendment of section 18 of Act No. 13 of 1990

7. Section 18 of the principal Act is amended by the insertion of the following subsection after subsection (4):

“(4A) No decision of the council or an act performed by authority of the council shall be invalid by reason only of the existence of a vacancy on the council, or of the fact that a person who was not entitled to sit as a member of the council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members who were present at the time and entitled to sit as members.”.

Insertion of sections 18A and 18B in Act No. 13 of 1990

8. The following sections are inserted in the principal Act after section 18:

“Disclosure of interest by council and committee members

18A. (1) A member of the council or a committee of the council shall not participate in the deliberations or vote on any matter which is the subject of consideration at a meeting of the council or the committee if, in relation to such matter, such member has any interest, whether direct or indirect, which precludes that member from performing the functions of a member in a fair, unbiased and proper manner.

(2) If at any stage during a meeting of the council or a committee of the council it appears that a member has or may have an interest which may cause a conflict of interest to arise, that member shall forthwith and fully disclose the nature of such interest and leave the meeting so as to enable the remaining members to discuss such disclosure and determine whether that member is precluded from participating in such meeting by reason of a conflict of interest.

(3) A disclosure by a member in accordance with subsection (2), and the decision taken by the remaining members in connection therewith, shall be recorded in the minutes of that meeting.

Appointment of Manager: National Energy Fund and designation of staff members

18B. (1) The Minister shall, subject to the laws governing the Public Service, appoint a competent person to be known as Manager: National Energy Fund.

(2) The Manager shall be responsible -

- (a) for the execution of the administrative work of the fund; and
- (b) to direct, organise, plan and execute the activities of the fund subject to the control of the Permanent Secretary.

(3) The Manager shall be assisted by such other staff members as may be designated by the Permanent Secretary for such purpose.”.

Substitution of section 19 of Act No. 13 of 1990

9. The following section is substituted for section 19 of the principal Act:

“Levies on energy sources

19. (1) Subject to subsection (4), the Minister, after consultation with the council, may by notice in the *Gazette* or by notice served on any person, whether personally or by post, impose a levy for the benefit of the fund, on -

- (a) any petroleum product;
- (b) electricity;
- (c) natural gas or liquefied natural gas;
- (d) hydropower or windpower;
- (e) nuclear;
- (f) geothermal;
- (g) bio mass;
- (h) any other energy source,

which is manufactured, generated, transmitted, distributed or sold at any point in Namibia, or is imported into Namibia.

(2) A levy imposed under subsection (1) may differ according to the purpose for which the energy source in question is used or the place where, or method by which, that energy source is manufactured, generated, transmitted or sold.

(3) A notice referred to in subsection (1) -

- (a) shall state -
 - (i) the amount of the levy;

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- (ii) the date on which the levy becomes of effect;
 - (iii) the person who shall be liable for the payment thereof;
 - (iv) the energy source in respect of which the levy is payable;
 - (v) the person who shall be responsible for the collection thereof;
and
 - (vi) the times when, the manner in which, and the person to whom
the levy shall be paid;
- (b) may state that interest shall be payable, at the rate determined in such notice, on any levy received after the date on which it became payable;
- (c) may exempt, if there are good reasons therefor, in part or in full, any person from any provision thereof;
- (d) may contain a directive that the amount of the levy or the proceeds of the levy, where the levy is not imposed by notice in the *Gazette*, shall not be disclosed by any person to any unauthorised person, or the notice in the *Gazette* may contain any appropriate condition.
- (4) In imposing a levy under subsection (1), the Minister shall –
- (a) consult with such persons or bodies as the Minister deems representative of the energy source in question;
 - (b) in order to maintain a reasonable stability, in real terms, in energy levies, avoid in so far as possible, substantial increases in levies or the introduction of new levies in any period of 12 months; and
 - (c) consider any other matter as may be prescribed by regulation or as the Minister deems relevant.
- (5) The Minister may withdraw or amend any levy imposed under this section and the provisions of this section, in as far as they are applicable, apply in the same manner, with the necessary changes, to such withdrawal or amendment.”.

Insertion of sections 19A and 19B in Act No. 13 of 1990

10. The following sections are inserted in the principal Act after section 19:

“Funding of approved agencies

19A. (1) The Minister may, in the manner prescribed by regulation, on his or her own initiative, or upon application made to him or her, approve any institution of State, body or person including any body corporate or association of persons, as being eligible for funding from the fund, including the form and amount of such funding, with regard to any project or activity for or relating to -

- (a) the purchase, acquisition, distribution, sale, saving, development, conservation, storage or utilization of any energy source;
- (b) research in connection with any energy source; or
- (c) such other purpose in connection with energy as may be prescribed by regulation.

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(2) The Minister shall consult with, and obtain a recommendation from the council before granting approval under subsection (1).

(3) The Minister, after consultation with the council, may by regulation prescribe in relation to funding contemplated in subsection (1) -

- (a) the procedure for an application for approval of an institution body or person including any body corporate or association of persons, for the purposes of subsection (1);
- (b) the criteria for the assessment of projects or activities;
- (c) the conditions attached to any such funding;
- (d) the form in which funding may be made;
- (e) in respect of funding made in a form which is repayable in accordance with the conditions attached to the funding, the procedures applicable in the event of default on payments and the interest applicable in respect of late payments;
- (f) such other matters regarding funding as the Minister may deem necessary.

Personal liability

19B. A member of the council or a committee of the council or the Manager, a staff member referred to in section 18B(3), or any other person to whom any power or duty has been delegated or assigned by the Minister, the Permanent Secretary, the council or the Manager, shall not be personally liable for any loss or damage arising out of, or in connection with, the performance of his or her functions under this Act, unless the loss or damage is due to anything done by him or her in bad faith or due to negligence, dishonesty or fraud on his or her part.”.

Substitution of long title

11. The following long title is substituted for the long title:

“To provide measures for the saving of petroleum products and an economy in the cost of the distribution thereof, and for the maintenance of a price therefore; for control of the furnishing of certain information regarding petroleum products; and for the rendering of services of a particular kind, or services of a particular standard, in connection with motor vehicles; for the establishment of the National Energy Fund and for the utilization thereof; for the establishment of the National Energy Council and the functions thereof; for the imposition of levies on [fuel] energy sources; and to provide for matters incidental thereto.”.

Short title and commencement

12. (1) This Act is called the Petroleum Products and Energy Amendment Act, 2003, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.
