

**REPUBLIC OF NAMIBIA**

**NATIONAL ASSEMBLY**

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**PUBLIC ENTERPRISES  
GOVERNANCE AMENDMENT BILL**

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*(As read a First Time)*

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*(Introduced by the Minister of Public Enterprises)*

[B. 6 - 2015]

**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.

**BILL**

To **amend the State-owned Enterprises Governance Act, 2006 so as to replace the State-owned Enterprises Governance Council with the Minister responsible for public enterprises; and to provide for incidental matters.**

**BE IT ENACTED** as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

**Substitution of word “Minister” for words “Council” and “Prime Minister” in Act No. 2 of 2006**

1. The State-owned Enterprises Governance Act, 2006 (in this Act referred to as the “principal Act”) is amended by the substitution for the words “Council” and “Prime Minister” wherever they appear in the Act of the word “Minister”.

**Amendment of section 1 of Act No. 2 of 2006**

2. Section 1 of the principal Act is amended:
- (a) by the deletion of the definition of “Council”;
- (b) by the insertion of the following definitions after the definition of “executive member”:
- “Minister” means the Minister responsible for public enterprises; and
- “Ministry” means the Ministry administering public enterprises;”;
- (c) by the insertion after the definition of “prescribe” of the following definition:
- “public enterprise” means a State-owned enterprise or State-owned company;;
- (d) by the deletion of the definition of “secretariat”; and
- (e) by the insertion after the definition of “secretariat” 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);”.

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**Substitution of heading of Part II of Act No. 2 of 2006**

3. The principal Act is amended by the substitution for the heading of Part II of the following heading:

“GOVERNANCE OF PUBLIC ENTERPRISES”

**Deletion of sections 2, 3, 5, 6 and 7 of Act No. 2 of 2006**

4. The principal Act is amended by the deletion of sections 2, 3, 5, 6 and 7.

**Amendment of section 8 of Act No. 2 of 2006**

5. Section 8 of the principal Act is amended:

(a) by the substitution for the heading “**Confidentiality in relation to functions of Council**” of the following heading:

“**Confidentiality of information**”; and

(b) by the substitution for the introductory sentence of subsection (1) of the following introductory sentence:

“(1) A [**member of the Council or of a committee of the Council,**] staff member and any other person required or permitted to be present at a meeting of the [**Council or such a committee,**] Ministry must not publish or communicate or in any other way disclose any information relating to the affairs of any [**State-owned**] public enterprise or a member of the board of a [**State-owned**] public enterprise or a person being considered or recommended as a candidate for appointment as such a member, that has come to such person’s knowledge -”.

**Substitution of heading of Part III of Act No. 2 of 2006**

6. The principal Act is amended by the substitution for the heading “SECRETARIAT” of Part III of the following heading:

“ADMINISTRATION”

**Substitution of section 9 of Act No. 2 of 2006**

7. The principal Act is amended by the substitution for section 9 of the following section:

“**Administrative personnel**

9. (1) The work incidental to the performance of the functions of the [**Council must be**] Minister are performed by [**a secretariat**] staff members consisting of administrative personnel as the [**Council**] Minister may consider necessary.

(2) The staff members **[of the secretariat]** referred to in subsection (1) may -

- (a) be staff members in the Public Service designated for the purpose by the **[Council] Minister**; or
- (b) be persons other than such staff members appointed by the **[Council] Minister** on such conditions of service and at such remuneration and service benefits as the **[Council] Minister** may determine, **[after consultation]** with the concurrence of the Public Service Commission and **[with the concurrence of]** the Minister responsible for finance.

(3) The staff members **[of the secretariat]** designated or appointed under this section must perform the functions assigned to them by this Act or by the **[Council] Minister**.”.

#### **Deletion of sections 10 and 11 of Act No. 2 of 2006**

8. The principal Act is amended by the deletion of sections 10 and 11.

#### **Substitution of section 12 of Act No. 2 of 2006**

9. The principal Act is amended by the substitution for section 12 of the following section:

##### **“Preservation of secrecy**

12. (1) A staff member of the **[secretariat of the Council] Ministry** or any consultant engaged by the **[Council] Ministry** must not publish or communicate or in any other way disclose any information relating to the affairs of any State-owned enterprise or a member of the board of a State-owned enterprise or a person being considered or recommended as a candidate for appointment as such a member, that has come to such person’s knowledge -

- (a) in the performance of any function in connection with the functions of the **[Council] Minister**; or
- (b) as a result of such person’s attendance at a meeting of the **[Council] Ministry [or a committee of the Council]**.

(2) Subsection (1) does not apply to information disclosed -

- (a) for the purpose of the proper administration or enforcement of this Act or the performance of the functions of the **[Council] Minister**;
- (b) for the proper administration of justice; or
- (c) at the request of any staff member of the **[Council] Ministry** or any other person authorised in writing by **[a member of the Council] the Minister**.

(3) A staff member or person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment.”.

#### **Amendment of section 25 of Act No. 2 of 2006**

10. Section 25 of the principal Act is amended by the substitution for paragraph (b) of the following paragraph:

“(b) declare and pay such dividends as is agreed to between the board and the [Council] Minister subject to approval by Cabinet or as is directed by Cabinet or, failing agreement, as the [Council] Minister directs in writing.”.

#### **Amendment of section 30 of Act No. 2 of 2006**

11. Section 30 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The [Council] Minister may appoint a staff member or, one or more persons as special investigators, on such terms and conditions as are determined and specified by the [Council] Minister in the instrument of appointment or as varied by a later instrument, to conduct an investigation referred to in section 29.”.

#### **Substitution of section 50 of Act No. 2 of 2006**

12. The principal Act is amended by the substitution for section 50 of the following section:

##### **“Short title and commencement**

50. This Act is called the [State-owned Enterprises] Public Enterprises Governance Act, 2006 and commences on a date [to be] determined by the President by proclamation in the *Gazette*.”.

#### **Amendment of laws**

13. Schedule 2 to the principal Act and other laws are amended by the substitution for the reference to the “State-owned Enterprises Governance Act, 2006” of the following reference:

“Public Enterprises Governance Act, 2006”

#### **Short title**

14. This Act is called the Public Enterprises Governance Amendment Act, 2015.

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