

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
TRANSNET PENSION FUND
AMENDMENT BILL**

[B 30—2006]

*(As agreed to by the Portfolio Committee on Public Enterprises
(National Assembly))*

[B 30A—2006]

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CLAUSE 1

1. On page 3, in line 8, to omit “definition” and substitute “definitions”
2. On page 3, after line 10, to insert:

‘alternative employer’ means—

- (a) the State;
- (b) a national public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (c) a company, the shares in which were transferred from Transnet to the State or to an entity contemplated in paragraph (b) or (d), or an entity in which such company owns one or more shares; or
- (d) any other company in which the State or an entity contemplated in paragraph (b) owns one or more shares:

Provided that after 11 November 2005—

- (i) the State or any entity contemplated in paragraph (b) or (d) acquired a business contemplated in section 197 of the Labour Relations Act, 1996 (Act No. 66 of 1995), from Transnet or acquired shares in a company from Transnet;
- (ii) at the date of such transaction, the business or company had in its employ a person who was a member of any fund established in terms of this Act; and
- (iii) the State or any entity contemplated in paragraph (b), (c) or (d), as the case may be, is accepted as an alternative employer for the purposes of this Act in terms of an agreement between Transnet and the Minister;

‘alternative group of employers’ means a principal employer other than Transnet and an alternative employer in which the principal employer holds shares: Provided that if more than one principal employer owns shares in an alternative employer, that alternative employer falls within the alternative group of employers of the principal employer that owns the most shares in that alternative employer;”;

3. On page 3, from line 14, to omit the definition of “dependent pensioner” and to substitute

“ ‘dependent pensioner’, in relation to the Transport Pension Fund, means a person who is entitled to a pension paid by that fund as a result of the membership of that fund of a deceased member or deceased pensioner;”;

4. On page 3, from line 20, to omit the definition of “employer” and to substitute:

“ ‘employer’ means [the Company or any other company of which an employee is a member of the Fund] an employer within the Transnet group of employers or an employer within an alternative group of employers;”;

5. On page 3, from line 26, to omit the definition of “general rules” and to substitute:

“ ‘general rules’ means the rules contemplated in section 4A(9) and excludes the special rules;”;

6. On page 3, from line 30, to omit the definition of “Minister” and to substitute:

‘Minister’ means the [**Minister of Mineral and Energy Affairs and Public Enterprises**] shareholder Minister responsible for Transnet;”;

7. On page 3, from line 35, to omit the definition of “pensioner” and to substitute:

“pensioner”, in relation to the Transport Pension Fund, means a person who is entitled to a pension paid by that fund resulting from his or her membership of that fund;

8. On page 3, in line 40, to omit “every SOE” and to substitute “an alternative”.
9. On page 3, from line 48, to omit the definition of “SOE employer”.
10. On page 4, from line 9, to omit the definition of “SOE group of employers”.
11. On page 4, from line 19, to omit paragraph (a) and to substitute:
- (a) to which members, pensioners, dependent pensioners, assets, rights and obligations are attributable in terms of sections 4A(1), (2) and (3); and
12. On page 4, from line 30, to omit the definition of “Transnet employer”.
13. On page 4, from line 33, to omit the definition of “Transnet group of employers” and to substitute:

‘Transnet group of employers’ means—

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| <p>(a) Transnet;</p> <p>(b) any company formed in terms of section 32 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), in which Transnet owns shares; and</p> <p>(c) any other company in which Transnet or any subsidiary of Transnet is a shareholder, excluding any company that falls <u>within an alternative group of employers;</u></p> |
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CLAUSE 3

1. On page 5, from line 24, to omit “beneficiaries” and to substitute “dependent pensioners”.

CLAUSE 5

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Insertion of section 4A in Act 62 of 1990

5. The following section is hereby inserted in the principal Act after section 4:

“Division of Transport Pension Fund into subfunds

4A. (1) (a) When the Transnet Pension Fund Amendment Act, 2006, comes into operation, all existing members, pensioners, dependent pensioners, liabilities, assets, rights and obligations of the Transport Pension Fund shall from then on be attributable to a subfund with Transnet as the principal employer.

(b) With effect from the date on which an alternative employer is accepted as a principal employer a subfund shall be established in the name of that principal employer.

(2) The following persons shall be assigned to the subfund contemplated in subsection (1)(b):

(a) every employee who—

- (i) was a member of the Transport Pension Fund as at 11 November 2005; and
- (ii) has not ceased to be a member of the Transport Pension Fund; and
- (iii) is employed by that principal employer or an employer in that principal employer’s alternative group of employers; and

(b) every pensioner, if—

- (i) the business in which the pensioner was employed at the time of his or her retirement was subsequently transferred to that principal employer or an employer in that principal employer’s alternative group of employers; or
- (ii) shares in the company by which the pensioner was employed at the time of his or her retirement were subsequently transferred to that principal employer or an employer in that principal employer’s alternative group of employers,

and the transferor and transferee to the transactions referred to in subparagraphs (i) and (ii) have agreed that the pensioner shall be assigned to that subfund; and

(c) every dependent pensioner, if—

- (i) the business in which the member was employed at the time of his or her retirement or death was subsequently transferred to that principal employer or an employer in that principal employer’s alternative group of employers; or
- (ii) shares in the company by which the member was employed at the time of his or her retirement or death were subsequently transferred to that principal employer or an employer in that principal employer’s alternative group of employers,

and the transferor and transferee to the transactions referred to in subparagraphs (i) and (ii) have agreed that the dependent pensioner shall be assigned to that subfund.

- (3) Upon establishment of a subfund—
- (a) the assets and rights of the Transport Pension Fund relating to the persons contemplated in subsection (2) as determined by agreement between—
 - (i) the subfund board from which the persons were reassigned and the subfund board to which they are now assigned, after consultation with the Transport Pension Fund's valuator; and
 - (ii) the principal employers of the subfunds concerned, shall be assigned to the subfund to which the persons referred to in subsection (2) are assigned; and
 - (b) any claim against the Transport Pension Fund by a person contemplated in subsection (2) shall be satisfied out of only the assets of the subfund to which he or she is now assigned.
- (4) If a member is reassigned from one subfund to another, the liabilities, assets, rights and obligations contemplated in subsection (3) in respect of that member shall be similarly reassigned.
- (5) The board of trustees of the Transport Pension Fund shall direct and oversee the operations of the Transport Pension Fund, subject to the Act and the Rules and without derogating from the powers of a subfund board.
- (6) With effect from the date upon which subfund is established in terms of subsection (1)—
- (a) a subfund board shall be appointed, the composition, powers and duties of which must be provided for in the Rules;
 - (b) special rules shall provide for, amongst other things—
 - (i) the rate at which members assigned to the subfund are required to contribute to the Transport Pension Fund;
 - (ii) the rate at which employers of members assigned to the subfund are required to contribute to the Transport Pension Fund;
 - (iii) the benefits payable by the Transport Pension Fund to the members assigned to the subfund and to the persons contemplated in subsection (2)(b) and (c);
 - (iv) matters incidental to the matters referred to in subparagraphs (i) to (iii); and
 - (c) special rules may provide for the transfer to an insurer registered as such in terms of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), of the liability of the Transport Pension Fund to pay a pension or any other benefit.
- (7) Notwithstanding anything to the contrary in the Rules, a subfund board shall—
- (a) exercise control over and manage the subfund;
 - (b) implement the investment policy and strategy as agreed with the principal employer;
 - (c) determine the allocation of benefits payable to dependent pensioners;
 - (d) determine whether a person who claims a benefit is entitled to that benefit;
 - (e) exercise such powers as the Minister may by regulation confer upon the subfund board; and
 - (f) exercise such powers as the board of trustees of the Transport Pension Fund may delegate to such board.
- (8) The board of trustees of the Transport Pension Fund shall allocate to one or more subfunds any benefit, cost, loss sustained or liability due to or incurred by the Transport Pension Fund as a whole which is attributable to such subfund or subfunds.

(9) The general rules of the Transport Pension Fund shall provide for, amongst other things—

- (a) the allocation to a subfund of costs incurred by the Transport Pension Fund;
- (b) the administration of the Transport Pension Fund;
- (c) the valuation of the Transport Pension Fund;
- (d) the audit of the Transport Pension Fund; and
- (e) all other matters related to the governance and management of the Transport Pension Fund.

(10) The administration of a subfund may, by agreement between the applicable principal employer and that subfund board, be conducted separately from any other subfund.

(11) The initial special rules of a subfund must provide for benefits and rates of contribution, as the case may be, applicable to its members, pensioners and dependent pensioners, which benefits and rates of contribution are the same as those which were applicable to them immediately before the establishment of the subfund.

(12) A principal employer is liable to the Transport Pension Fund for the payment of benefits due to members, pensioners and dependent pensioners of that subfund to the extent that the assets of the subfund are not sufficient to meet the benefits due.

(13) An employer's liabilities to the Transport Pension Fund are limited to those attributable to its members, pensioners and dependent pensioners assigned to its subfund."

CLAUSE 6

1. On page 8, from line 23, to omit "other beneficiaries" and to substitute "[**other beneficiaries**] dependent pensioners".
2. On page 8, from line 32, to omit paragraph (d) and to substitute:
 - (d) by the substitution for the subsection (3) of the following subsections:

“(3) [Prior to the date of registration of the Fund in terms of section 13 this Act, any amendment of the Rules shall be subject to] Any amendment of—

- (a) the general rules shall be made by the board of trustees of the Transport Pension Fund subject to the approval of all the principal employers or subject to the approval of a majority of the principal employers and of the Minister; and
- (b) the special rules applicable to a subfund shall be made by the applicable subfund board subject to the approval of the principal employer.

(3A) If, in the opinion of the valuator of the Transport Pension Fund, an amendment to either the general rules or the special rules may affect the financial condition of the Transport Pension Fund or any subfund such amendment shall only be made with the approval of the Minister, [acting with the] in concurrence [of] with the Minister of Finance.";

3. On page 8, from line 46, to omit subsection (4) and to substitute:

(4) (a) The general rules as amended from time to time shall be binding on each employer, member, pensioner, dependent pensioner and the Transport Pension Fund.

(b) The special rules of each subfund, as amended from time to time, shall be binding on the applicable employers, members, pensioners, dependent pensioners and, to the extent applicable, on the Transport Pension Fund.

CLAUSE 7

1. On page 8, in line 53, to omit “**evaluation**” and to substitute “[**evaluation**]
valuation”.
2. On page 9, in line 4, after “to” to insert “an”.
3. On page 9, in line 13, to omit “and”.
4. On page 9, in line 15, to omit “1956.” and to substitute “1956; and”.
5. On page 9, after line 15, to insert:

(d) each principal employer.”; and
6. On page 9, from line 16, to omit paragraph (e).
7. On page 9, in line 19, after “subsections” to insert “(3),”.

CLAUSE 9

1. On page 9, from line 45, to omit subsection (1) and to substitute:

“(1) If the estate of any [person in receipt of a pension from the Fund] member, pensioner or dependant pensioner (including the estate of any member, pensioner or dependent pensioner entitled to an annuity purchased by the Transport Pension Fund) is sequestrated or surrendered or assigned for the benefit of his or her creditors, [payment of the pension shall forthwith be discontinued, provided that in any such case all or any part of the pension shall be paid to or for the benefit of all or any of the following persons, namely, the pensioner, his wife or minor child or, failing a wife or minor child, to the mother of an illegitimate child or any child, whether legitimate or adopted or illegitimate, or other relative dependent on him, provided further that, if the payment is made to the pensioner, it shall be] any benefit payable to such person shall not form part of the assets in the insolvent estate of that person and shall be paid to that person for his or her own personal use or to his or her dependents for their own personal use, and may not in any way be attached or appropriated by the trustee of his or her insolvent estate or by his or her creditors, notwithstanding anything to the contrary in any law relating to insolvency.”.

CLAUSE 13

1. On page 11, in line 42, to omit “The” and to substitute:

[The] Subject to sections 4A (12) and (13), the

CLAUSE 15

1. On page 12, from line 22, to omit the heading and to substitute

“Membership of funds”.

2. On page 12, from line 37, to omit subsection (2) and to substitute

(2) **[Any employee of any of the companies which form part of the group of companies, may, subject to the Rules, become a member of the Fund]** Only persons who are employed by an employer in the Transnet group of employers after the commencement of the Transport Pension Fund Amendment Act, 2006, may become members of the Transnet Retirement Fund.”;

CLAUSE 16

1. On page 13, in line 38, to omit “5,”.

CLAUSE 17

1. On page 13, from line 43, to omit all the words following upon “hereby” up to and including “respectively” in line 44 and to substitute:

amended—

(a) by the substitution for subsections (2), (3), (4), (5) and (6) of the following subsections, respectively:

2. On page 14, after line 5 to insert:

“(6) The rules set out in the Schedule may be amended by the board of trustees of the Transnet Second Defined Benefit Fund with the approval of Transnet: Provided that an amendment that is likely to affect the financial condition of the Transnet Second Defined Benefit Fund shall be of no force or effect unless it has also been approved by the Minister acting with the concurrence of the Minister of Finance.”; and

- (b) by the addition of the following subsection:

“(7) The Minister may by notice in the *Gazette*, with the approval of Transnet and the approval of the board of trustees of the Transnet Second Defined Benefit Fund, determine that those persons or categories of persons receiving pensions and benefits from Transnet will become entitled, with effect from a date stipulated in the notice, to pensions and benefits from the Transnet Second Defined Benefit Fund, which shall be no less favourable than that which they presently receive whereupon the pensions and benefits from Transnet shall cease.”.

LONG TITLE

1. On page 2, in the ninth line, to omit “became employed by an SOE” and to substitute “become employed by an alternative”.

PREAMBLE

1. On page 2, in the seventh line, after “2000” to insert “as a defined contribution fund for Transnet employees”.
2. On page 3, in the third line, to omit “SOE” and to substitute “alternative”.