

NATIONAL YOUTH DEVELOPMENT COUNCIL BILL 2020

Bill No. of 2020

(To be presented by the Minister of Sports, Culture and Youth Affairs)

MEMORANDUM OF OBJECTS AND REASONS

The objects of this Bill are to provide for-

- (a) the establishment of the National Youth Development Council responsible for creating promoting and coordinating youth development matters;
- (b) the functions of the Council;
- (c) the registration of youth associations and organisations; and
- (d) other incidental matters.

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A BILL
Entitled

AN ACT to provide for the establishment of the National Youth Development Council, the registration of youth associations and youth organisations and for incidental matters.

ENACTED by the King and the Parliament of ~~Swaziland~~Eswatini.

PART 1
PRELIMINARY

Short title.

1. (1) This Act may be cited as the National Youth Development Council Act 2020.
(2) This Act shall come into force on a date to be appointed by the Minister in the Gazette.

Interpretation.

2. In this Act unless the context otherwise requires –

“Council” means the National Youth Development Council;

“Chief Executive Officer” means Chief Executive Officer appointed in terms of Section 17 of this Act;

“Council” means the National Youth Development Council established in terms of this Act;

“Minister” means the Minister responsible for youth affairs or any other Minister to whom the King may from time to time assign the administration of this Act;

“Public Enterprises Act” means the Public Enterprises (Control and Monitoring) Act, 1989;

“Region” means any of the administrative regions of ~~Swaziland~~Eswatini;

“Standing Committee” means the Cabinet Standing Committee on Public Enterprises;

“youth” means any person within the age group specified by the National Youth Policy;

“youth association or youth association or organisation” includes any group of persons associated together for the purpose of fostering youth development, and this includes societies, organisations, corporate bodies, trusts, partnerships, groups or any other voluntary associations, incorporated for that purpose.

PART II
ESTABLISHMENT OF THE KINGDOM OF ESWATINI NATIONAL YOUTH
DEVELOPMENT COUNCIL

Establishment of the National Youth Development Council.

3. (1) There is hereby established the National Youth Development Council which shall be a body corporate having perpetual succession and a common seal, and shall under its name, be capable of suing and being sued.

(2) The Council shall not be a profit making oriented body and may on short term invest funds not immediately required for use.

Functions of the Council.

4. (1) The functions of the Council are to-

- (a) co-ordinate, supervise and foster activities of national youth associations and organisations;
- (b) ensure the proper administration of national youth associations and organisations;
- (c) participate in national and international youth activities;
- (d) advise the government on the needs of the youth; and
- (e) undertake projects designed to create employment for young people, including fund-raising, marketing and trading activities, subject to the approval of the Minister.

(2) For the better exercise of its functions the Council has, subject to the provisions of this Act, have power to do or cause to be done, either by itself or through its agents, all or any of the objectives specified in subsection(1) solely or jointly with others.

Powers of the Council.

5. The powers of the Council are to-

- (a) provide, for employees of the Council or their dependants, by means of insurance with an insurer registered in terms of the law relating to insurance business of a pension or provident fund or otherwise, pecuniary benefits upon leave, retirement, death or termination of service or in the event of distress, sickness or injury;
- (b) borrow or otherwise raise money for carrying out the functions of the Council in a manner and upon terms and conditions that the Council and the Minister may approve and, in particular, by the issue of debentures or debenture stock or stock certificates, perpetual or otherwise;
- (c) purchase or otherwise acquire any property, movable or immovable, and to take, accept and hold any property that may become vested in the Council by virtue of a purchase or exchange, hire, donation, gift grant, lease, testamentary disposition or otherwise;
- (d) enter into contracts in connection with the exercise of its functions;
- (e) sell, exchange, lease, donate dispose of any of its assets in a manner that it considers fit subject to approval by the Minister and the Minister for Finance;
- (f) make grants-in-aid or provide any other form of assistance which it considers appropriate to a registered youth association or organisation engaged in or concerned with the practice of developing the youth;
- (g) invest any funds of the Council not immediately required for other purposes.
- (h) do all such things that may be necessary, conducive or incidental to the performance of the functions imposed on the Council by or under the provisions of this Act.
- (i) render support, including, but not limited to, financial support, advice and information, to any person, organization or institution dealing with youth development;

- (j) investigate and determine the need for support of any person, organization or institution dealing with youth development;
- (k) conduct research into any field of youth development;
- (l) establish, compile and maintain databases, including, but not limited to, databases of persons, organisations, institutions, and facilities connected with youth development;
- (m) scout for bursaries available for students for local and overseas studies in youth development;
- (n) liaise with the responsible members in order to promote youth development more effectively throughout the country and to ensure co-ordination in the distribution of funds at national and regional level; and
- (o) facilitate and promote national and international liaison between individuals and institutions dealing with youth development;

PART III

APPOINTMENT OF THE YOUTH DEVELOPMENT COUNCIL

Appointment of members of the Council.

6. The Minister shall appoint members of the Council in terms of the Public Enterprises Act who shall control and manage the operations of the Council through the Chief Executive Officer and other employees of the Council.

Composition of the Council.

7. (1) The Council shall consist of not less than 5 and not more than 9 members appointed by the Minister as follows-

- (a) the Principal Secretary in the Ministry of finance or a representative of the Principal Secretary;
- (b) the Director for youth affairs;
- (c) two members nominated for appointment by the Council;
- (d) the Chief Executive Officer of the National Development Youth Council; and

(e) four members from each region with relevant experience and skills nominated from representatives of youth associations.

(2) Members of the Council shall recommend for appointment by the Minister a person, who in the opinion of members has experience in youth affairs as the Chairperson and the members shall elect the Vice-Chairperson from among their number.

(3) The Minister shall as soon as practicable, after the appointment of members of the Council, publish by notice in the Gazette the name of every member appointed, the date on which the appointment takes effect and the period of the appointment.

Tenure of Office.

8. (1) A member of the Council, other than the Chief Executive Officer, shall hold office for a period not exceeding 3 years from the date of appointment.

(2) A person shall not be appointed as a member of the Council for more than two consecutive terms of office.

(3) Upon expiry of a Council member's term of office, that member shall continue to hold office until the member is re-appointed or is replaced by a successor.

Disqualification from appointment as a Council Member.

9. (1) A person shall not qualify to be appointed as a member of the Council if that person is not a citizen of Kingdom of Eswatini and is not ordinarily resident in ~~Swaziland~~Eswatini.

(2) The Minister shall not appoint a person as a member and a person shall not continue to serve as a Council member if:-

a) in terms of a law in force in any country that person has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or

discharged or that person has made an assignment or composition with his creditors which has not been rescinded or set aside;

- b) within the period of five years immediately preceding the date of the proposed appointment, the person is convicted in Kingdom of Eswatini or in any other country of an offence involving fraud or dishonesty and sentenced to a term of imprisonment imposed without the option of a fine whether or not any portion of the sentence is suspended; or
- c) that person did not disclosed to the Minister any material interest in any operation of the Council as soon as that interest arises.

Seal of Council

10. (1) The seal of Council shall be a device that may be determined by the Council and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or the one other person authorized on that behalf by a resolution of the Council.

(3) Any document purporting to be a document executed under the seal of the Council shall be received in evidence and shall be deemed to be so executed or issued, without further proof, unless the contrary is proved.

Functions of the Council.

11. The functions of the Council shall include the following-

- (a) coordinating all youth development initiatives and activities;
- (b) nominating the Chief Executive Officer for appointment by the Minister responsible;
- (c) appointing the Chief Financial Officer in consultation with the Minister, Minister of finance, the Public Enterprises Unit and the Standing Committee;

- (d) establishing committees or sub committees to assist the Council in carrying out its functions;
- (e) advising the Minister on matters related to improving the Council, the Council's policies, other related requirements and standards;
- (f) determining conditions of employment of service for employees of the Council whether on short term contracts or on permanent terms; and
- (g) making rules regulating the conduct of the Council and for other incidental matters.

Vacation of office by a member.

12. (1) The office of a member shall become vacant and a member shall vacate office if that member-

- (a) is removed or the member's term of office expires;
- (b) becomes insolvent;
- (c) is convicted of theft, fraud , rape or any offence involving dishonesty;
- (d) fails to attend three consecutive meetings of Council without leave of the Chairperson;
- (e) becomes mentally or physically incapable of performing the member's duties;
- (f) gives at least one month's notice of that member's intention to resign in writing to the Minister;
- (g) ceases to hold qualifications or the office in respect of which that member was appointed; or
- (h) on the date that the member begins to serve a sentence of imprisonment that is not less than six months, whether or not any portion has been suspended, imposed without the option of a fine in any country.

(2) The Minister may at any time require a member of the Council to vacate office if the Minister is satisfied that the member -

- (a) has behaved in a manner that is unbecoming or is prejudicial to the interests or reputation of the Council; or
- (b) is mentally or physically incapable of performing duties as a member.

Meetings and proceedings of the Council.

13. (1) The Council shall regulate its own procedures and shall at least meet quarterly.
- (2) If at any meeting of the Council the Chairperson is absent, the members present shall elect one of their own members to be Chairperson of that meeting.
- (3) In the event of an equality of votes the Chairperson or any other member presiding at a meeting of the Council shall have a deliberative as well as a casting vote.
- (4) At least five Council members present in person shall constitute a quorum.
- (5) The decision of the Council shall be by the majority votes of members present and voting.
- (6) The Chief Executive Officer shall have no vote in meetings of the Council.
- (7) A member of the Council or member of a committee established under section 14 shall not be personally liable for any bona fide action taken in that capacity.

Committees of the Council.

14. (1) For the better exercise of its functions the Council may establish one or more committees in which may be vested with functions of the Council as Council may direct.
- (2) The vesting in a committee of any functions shall not divest the Council of those functions and the Council may amend or rescind any decision of a committee in the exercise of its functions.

Allowances of members of the Council and committees of the Council.

15. Members of the Council or any committee established under this Act shall be paid allowances to be determined by the Minister responsible in consultation with the Minister responsible for finance.

Execution of contracts or instruments.

16. An agreement, contract or instrument approved by the Council may be entered into or executed on behalf of the Council by any person or persons generally or specifically authorised by the Council for that purpose.

PART IV

APPOINTMENT AND FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER

Appointment of the Chief Executive Officer.

17. (1) There shall be a Chief Executive Officer who shall be a citizen of and ordinarily resident in Kingdom of Eswatini and shall be appointed by the Council on such terms and conditions that the Council may determine with the approval of the Minister.

(2) The Chief Executive Officer shall, subject to the direction and control of the Council, be responsible for the day to day administration of the Council.

(3) The Council may delegate to the Chief Executive Officer any of its functions as it may consider necessary.

(4) The Chief Executive Officer shall attend meetings of the Council and of any committee of the Council, but shall have no vote.

(5) The Council may appoint other staff of the Council as it considers necessary on such terms and conditions as it may determine.

Functions of the Chief Executive Officer.

18. (1) The Chief Executive Officer shall-

- (a) be secretary to the Council.
- (b) implement the policies of the Council as laid out in this Act or any document, or as specified or directed by the Council from time to time and shall include-
 - (i) ensuring that the day to day operations of the Council are carried out;
 - (ii) coordinating, managing, organizing and directing the regulation of the activities and operations of the Council and to prepare and present any reports required;
 - (iii) supervising and managing the Council's staff, activities, funds and property;
 - (iv) performing such other functions on behalf of the Council;
 - (v) being responsible for the registration and deregistration of youth development associations and organisations with the Council; and
 - (vi) investing the Council's funds and sourcing sponsorship for the Council's benefit in terms of the Council's directions and provisions of this Act.

(2) A delegation of functions by the Council to the Chief Executive Officer under this Act:-

- (a) may be made generally or specifically and subject to such conditions, restrictions, reservations and exceptions as the Council may determine;
- (b) may be revoked by the Council at any time; and
- (c) shall not preclude the Council from exercising the functions.

PART IV
REGISTRATION OF YOUTH DEVELOPMENT ASSOCIATIONS AND
ORGANISATIONS

Register.

19. The Chief Executive Officer shall keep a register for purposes of registering all youth development associations and organizations that meet the requirements of this Act.

Regional Offices.

20. The Council shall have an administrative office in each region which shall be the registration office for youth association and organizations for that region.

Requirements for registration.

21. (1) The following elements shall be essential prerequisites for any youth development associations or organization to be registered with the Council:-

- (a) a completed application in the prescribed form submitted to a regional youth coordinator or to the Chief Executive Officer.
- (c) a constitution outlining the form, objects and members of the association or organisation as well as the Council of the association or organization;
and
- (c) proof of Swazi nationality or residence permit for the organisation's members being national registration numbers to be submitted together with the application.

Registration of youth development associations and organisations.

22. (1) Upon receiving an application for registration under this Act, the regional office shall within one month send the organisation's application papers to the Chief Executive Officer for registration only if the requirements of section 21 are met.

(2) The Chief Executive Officer shall on receiving the application, be satisfied that the objects of the association or organisation are consistent with the objects of the Council and that the association or organisation is in all material respects fit and proper to be registered under this Act.

(3) **After consultation with the Ministry responsible for youth affairs** and if satisfied that the provisions of this Act have been complied with, the Chief Executive Officer shall register the association or organization and issue a certificate of registration through the regional office.

(4) The regional office or the Chief Executive Officer may refuse to register an association or organisation that fails to comply with this Act and shall register the association or organisation when the requirements of this Act have been complied with.

Subscription fees.

23. A registered organisation shall be required to pay to the Council a non – refundable annual subscription fee to be prescribed by the Council through Regulations made by the Minister under this Act.

Cancellation of registration.

24. (1) The Council shall cancel an association or organisation’s registration if -
- (a) in terms of its own constitution the organisation is improperly constituted and has ceased to operate in terms of its own objects;
 - (b) the association or organisation fails to adhere to the provisions of its own constitution;
 - (d) the association or organisation has materially changed its objects such that its existence is no longer consistent with this Act and the objects of the Council;

- (e) the association or organisation fails to pay its annual subscription fees two months after they are due and upon being given a month's notice by the Chief Executive Officer; or
- (f) there is misappropriation of funds however raised by the organisation or failure to produce proper books of accounts of the funds when ordered to do so by the Chief Executive Officer.

(2) The Council shall not cancel a youth development association or organisation's registration unless;

- (a) it gives the association or organization two weeks' notice in writing to show cause, within a month of that notice, why its registration should not be cancelled; and
- (b) it has afforded the association or organisation concerned a fair hearing.

(3) A youth development organisation whose registration has been cancelled in terms of this Act may on compliance with the requirements of this Act reapply for registration and may be admitted on the same terms as an organisation making a first – time application.

Appeal.

25. (1) A youth development association or organisation that is aggrieved by a decision of a head of the regional office in terms of this Act may appeal to the Chief Executive Officer within 21 days of receiving that decision.

(2) A youth development association or organisation that is aggrieved by a decision of the Chief Executive Officer in terms of this Act may appeal to the Council within 21 days of receiving that decision.

(3) A youth development association or organisation that is aggrieved by a decision of the Council in terms of this Act may appeal to the Minister within 21 days of receiving that decision.

Regulation of Meetings of Youth Development Associations and Organisations.

26. (1) Youth development associations and organisations shall meet at least every three months and shall prior to holding a meeting, submit the meeting's agenda to the office of the Chief Executive Officer.

(2) Minutes shall be taken at every meeting and shall be submitted to the office of the Chief Executive Officer at least two weeks after holding the meeting.

Code of Conduct

27. The code of conduct set out in the Schedule shall be legally binding on all youth development associations and organisations.

PART V

FINANCIAL ASPECTS OF THE COUNCIL

Funds of the council.

28. (1) The funds for the Council shall consist of-
- (a) levies and other payments made under this Act or under any Regulations made under this Act.
 - (b) moneys appropriated to it from the Consolidated Fund.
 - (c) entry fees to and miscellaneous takings at youth events organized and administered by the Council;
 - (e) grants, donations or bequests received and accepted by the Council with the approval of the Minister from lotteries or from individuals and organisations;
 - (f) loans raised with the approval of the Minister and the Minister responsible for finance;
 - (e) income accruing from any investment of the funds of the Council as well as from the commission that the Council may charge for services rendered; and

- (f) any other monies that may legally vest or accrue to the Council whether through its activities in carrying out its objects under of this Act or other laws of the country.

(2) The Council shall invest its funds in a manner approved by the Minister and the Minister responsible for finance.

Application of the Council's funds.

29. (1) Funds of the Council shall only be applied for purposes of meeting all costs reasonably incurred for the purposes of purchasing property and procuring services authorized by the Council.

(2) Notwithstanding the generality of subsection (1) above, costs reasonably incurred shall include-

- (a) advancing loans to youth associations or organization for purposes of financing projects approved by the Council after considering recommendations made by Committees formed in terms of this Act;
- (b) providing grants to youth associations or organizations for purposes of assisting deserving projects vetted by the Council ; and
- (c) meeting the administrative costs of the Council and those of the levy as well as meeting all other costs incidental to the provisions of this Act.

Financial reporting.

30. The Council shall keep proper accounts and other records relating to the Council in respect of all the operations, financial transactions, undertakings and property of the Council including particular accounts and any other records that the Minister may direct the Council to keep.

Appointment of an audit committee.

31. (1) The Council shall appoint as auditors one or more persons approved by the Minister responsible and the Minister responsible for finance who are registered as public auditors.

(2) The auditors appointed shall examine the Council's accounts and make a report to the Council and to the Minister responsible on the accounts and any aspect of the operations of the Council, stating whether or not in their opinion the statement of accounts gives a true and fair view of the Council's financial affairs.

(3) In addition to the report referred to in subsection (2), the Minister may require the Council to obtain from the auditors any other reports, statements or explanations in connection with the Council that the Minister may consider necessary.

(4) If in the opinion of the auditors appointed -

- a) they have not obtained information or an explanation required;
- b) certain accounts or records have not been properly kept by the Council;
or
- c) the Council has not complied with a provision of this Act;

the auditors shall in their report make a statement to that effect.

Powers of auditors.

32. (1) An auditor appointed under this Act may at all reasonable times require to be furnished with all accounts and other records and information relating to certain accounts which are kept by the Council or an employee or an agent of the Council which in the auditors opinion are necessary for the purpose of an audit.

(2) A member of the Council or an employee or an agent of the Council who fails without just cause to comply with a requirement of an auditor under subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand emalangeni or imprisonment for a period not exceeding two years or to both.

Immunity of members and staff.

33. No action or any other proceedings shall be instituted against a member of Council, a member of a committee of the Council or a member of staff of the Council for anything done in good faith in the exercise or purported exercise of the functions under this Act.

Prohibition of publication or disclosure of information to unauthorized persons.

34. (1) A person shall not, without the consent in writing given by or on behalf of the Council, publish or disclose to any person otherwise than in the course of the duties of that person, the content of any document, communication or information whatsoever which relates to, and which has come to the knowledge of that person in the course of the duties of that person under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five thousand Emalangeni or to imprisonment for a period not exceeding six months or to both.

(3) If any person having information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates any such information to any person, that person commits an offence and shall be liable, on conviction to a fine not exceeding five thousand Emalangeni or to imprisonment for a period not exceeding six months or to both.

PART VI
MISCELLANEOUS

Regulations.

35. (1) The Minister responsible may by notice in the Gazette make Regulations to give effect to the purposes and provisions of this Act.

(2) The Council may make recommendations to the Minister for purposes of initiating the making of Regulations in terms of this Act or for purposes of input to already existing Regulations under this Act.

Offences and penalties.

36. A person who -

- (a) contravenes a provision of this Act;
- (b) knowingly furnishes the Minister, the Council or any other designated person with information which is false in a material respect or is misleading or is meant to defeat the purpose of this Act; or
- (c) without just cause fails to furnish the Minister, Council or any other designated person with the information or statistics concerned

commits an offence and is liable on conviction to a fine not exceeding five thousand Emalangeneni or to imprisonment for a period not exceeding two years or to both.

Annual reports.

37. (1) The Council shall within four months after the end of each financial year submit to the Minister responsible a report on the affairs of the Council during that financial year in the forms as the Minister responsible may determine.

(2) The Minister shall, within 3 months of receiving the report from the Council, table the report in Parliament.

Special reports.

38. In addition to the annual report the Council -

- (a) may submit to the Minister any other reports that the Council considers advisable;
- (b) shall submit to the Minister other reports that the Minister may require with regard to the affairs of the Council.

Youth Development Associations and Organisations to keep proper accounts.

39. (1) A registered youth association or organisation shall ensure that the accounts and other records relating to that youth association or organisation are kept to the satisfaction of the Council and shall, within a prescribed period, furnish to the Chief Executive Officer, any reports and returns and any additional information that the Council may require.

(2) The accounts of a registered youth association or organisation shall be audited by a person who is not a member of its management committee or governing body and who is in no way responsible for the keeping of the accounts or the making of financial arrangements of the registered youth association or organization.

(3) The Chief Executive Officer shall reserve the right to appoint an auditor for purposes of subsection (2).

**PART VII
TRANSITIONAL PROVISIONS**

Transfer of National Youth Council asset, rights, obligations and liabilities.

40. On and after the coming into effect of this Act –

- (a) all the assets and liabilities which immediately before the coming into effect of this Act, were assets and liabilities of the National Youth Council shall pass by succession to the National Youth Development Council, which shall have all the powers, duties and obligations in relation to the assets and liabilities that are conferred by this Act;

- (b) all bonds, hypothecations, title deeds, documents, charges, agreements, contracts, notes, instrument and working arrangements subsisting immediately before the coming into effect of this Act, shall be of full force and effect against or in favor of the National Youth Development Council and enforceable as fully and effectively as if, instead of the Kingdom of Eswatini National Youth Council, the National Youth Development Council had been named in them and had been a party to them;
- (c) it shall not be necessary for the Registrar of deeds to make any endorsement on the title deeds or in the registers in respect of any immovable property or any rights or obligations under a mortgage, hypothecation, pledge, bond, note or charge vested in or imposed upon the National Youth Development Council under this section unless the Registrar of deeds is requested in writing by the Council to substitute the National Youth Council for National Youth Development Council on a particular title deed or other document.