

REPUBLIC OF SOUTH AFRICA

**MEDIA DEVELOPMENT
AND DIVERSITY
AGENCY BILL**

*(As amended by the Portfolio Committee on Communications (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER IN THE PRESIDENCY)

[B 2B—2002]

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BILL

To establish the Media Development and Diversity Agency; to provide for its objective and functions; to provide for the constitution of the Board and the management of the Agency by the Board; to provide for the chief executive officer and other staff of the Agency; to provide for the finances of the Agency; to provide for the support of projects aimed at promoting media development and diversity; and to provide for matters connected therewith.

Preamble

WHEREAS IT IS DESIRABLE TO—

ESTABLISH the Media Development and Diversity Agency to help create an enabling environment for media development and diversity that is conducive to public discourse and which reflects the needs and aspirations of all South Africans;

REDRESS exclusion and marginalisation of disadvantaged communities and persons from access to the media and the media industry;

PROMOTE media development and diversity by providing support primarily to community and small commercial media projects,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
 - (i) “Agency” means the Media Development and Diversity Agency established by section 2; 5
 - (ii) “Board” means the Board referred to in section 4;
 - (iii) “community” means a geographically founded community or any group of persons or sector of the public having a specific ascertainable common interest; 10
 - (iv) “community media” means any media project that is owned and controlled by a community where any financial surplus generated is reinvested in the media project;
 - (v) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); 15
 - (vi) “diversity” with regard to media, means access to the widest range of sources of information and opinion, as well as equitable representation within the media in general;
 - (vii) “GCIS” means the Government Communication and Information System;
 - (viii) “media” means all forms of mass communication, including printed publications, radio, television and new electronic platforms for delivering content; 20
 - (ix) “media development” means the development of the media environment and infrastructure so that historically disadvantaged communities and persons

have access to the media as owners, managers, producers and consumers of media;

- (x) “member” means a member of the Board;
- (xi) “Minister” means the Minister responsible for GCIS;
- (xii) “Portfolio Committee” means the Portfolio Committee on Communications of the National Assembly; 5
- (xiii) “prescribe” means prescribe by regulation;
- (xiv) “projects” means projects referred to in section 19;
- (xv) “small commercial media” means independent media enterprises or initiatives that are run for personal gain as micro, very small or small businesses as classified in the National Small Business Act, 1996 (Act No. 102 of 1996); 10
- (xvi) “support” means support referred to in section 17;
- (xvii) “this Act” includes any regulation made thereunder.

Establishment of Agency

2. (1) A juristic person known as the Media Development and Diversity Agency is hereby established. 15

(2) The Agency acts only through the Board.

(3) The Agency must act in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(4) The Agency is independent and must be impartial and exercise its powers and perform its duties without fear, favour or prejudice, and without any political or commercial interference. 20

(5) The Agency must not interfere in the editorial content of the media.

Objective of Agency

3. The objective of the Agency is to promote development and diversity in the South African media throughout the country, consistent with the right to freedom of expression as entrenched in section 16 (1) of the Constitution, in particular— 25

- (a) freedom of the press and other media; and
- (b) freedom to receive and impart information or ideas,

and for that purpose to— 30

- (i) encourage ownership and control of, and access to, media by historically disadvantaged communities as well as by historically diminished indigenous language and cultural groups;
- (ii) encourage the development of human resources and training, and capacity building, within the media industry, especially amongst historically disadvantaged groups; 35
- (iii) encourage the channelling of resources to the community media and small commercial media sectors;
- (iv) raise public awareness with regard to media development and diversity issues;
- (v) support initiatives which promote literacy and a culture of reading; 40
- (vi) encourage research regarding media development and diversity; and
- (vii) liaise with other statutory bodies such as the Independent Communications Authority of South Africa and the Universal Service Agency.

Constitution of and appointment of members of Board

4. (1) (a) The Board consists of nine members. 45

(b) Six members of the Board must be appointed by the President on the recommendation of the National Assembly, according to the following principles:

- (i) Participation by the public in the nomination process;
- (ii) transparency and openness; and
- (iii) the publication of a shortlist of candidates for appointment with due regard to subsection (4) and section 5. 50

(c) Three members must be appointed by the President, taking into consideration section 15, of whom one must be from the commercial print media and another from the commercial broadcast media.

(2) The President must appoint one of the members as chairperson of the Board. 55

(3) Members are appointed on a non-executive basis.

(4) Persons appointed to the Board must be persons who are—

- (a) committed to fairness, freedom of expression, openness and accountability on the part of those entrusted with the governance of the public service;
 - (b) when viewed collectively—
 - (i) are representative of a broad cross section of the population of the Republic; and
 - (ii) possess suitable qualifications, expertise and experience in fields such as community media, social, labour and development issues, media economics, financial management and funding, advertising and marketing, journalism and broadcast programming, media research, media training, literacy and education, media law, information and communication technology policy.
- (5) A member must, before performing his or her functions, take an oath or affirmation that he or she is committed to—
- (a) fairness, freedom of expression, openness and accountability; and
 - (b) upholding and protecting the Constitution and the other laws of the Republic.

Disqualification

5. A person may not be appointed as a member if he or she—
- (a) is not a South African citizen and ordinarily resident in the Republic;
 - (b) is an unrehabilitated insolvent;
 - (c) is a member of Parliament, any provincial legislature or any municipal council;
 - (d) is an office-bearer or employee of any party, movement or organisation of a party-political nature;
 - (e) has, notwithstanding paragraph (f), at any time been convicted of theft, fraud, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any other offence involving dishonesty;
 - (f) has been convicted after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) of a crime specified in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and has been sentenced to a period of imprisonment of not less than one year without the option of a fine;
 - (g) has, as a result of improper conduct, been removed from an office of trust; or
 - (h) has been declared by a court to be mentally ill or disordered.

Removal from office

6. (1) Subject to subsection (2), a member ceases to be a member of the Board and must vacate his or her office if—
- (a) he or she becomes disqualified in terms of section 5, from being appointed as a member;
 - (b) he or she submits his or her resignation in writing to the President;
 - (c) he or she has, without the leave of the Board, been absent from more than two consecutive meetings of the Board;
 - (d) he or she is found to be incompetent or unfit to fulfill his or her duties;
 - (e) he or she is found guilty of misconduct; or
 - (f) he or she is found guilty of an offence under section 11(4).
- (2) A member may be removed from office only on—
- (a) a finding to that effect by the National Assembly; and
 - (b) the adoption by the National Assembly of a resolution calling for that member's removal from office.
- (3) The President—
- (a) may suspend a member from office at any time after the start of the proceedings of the National Assembly for the removal of that member;
 - (b) must remove a member from office upon adoption by the National Assembly of the resolution calling for that member's removal.

Vacancies

7. (1) (a) If a member contemplated in section 4(1)(b) dies or vacates his or her office in terms of section 6, the President may appoint a suitably qualified person, from the

nominees referred to in section 4(1)(b), from which such member was appointed, to fill the vacancy for the unexpired term of office.

(b) If an appointment cannot be made in terms of paragraph (a)—

- (i) the National Assembly must, as soon as possible, request nominations in terms of section 4(1)(b);
- (ii) the National Assembly must compile a shortlist in terms of section 4(1)(b)(iii) and must make recommendations in terms of section 4(1)(b); and
- (iii) the President must appoint a member from the recommendations referred to in subparagraph (ii).

(2) If a member contemplated in section 4(1)(c) dies or vacates his or her office in terms of section 6, the President must appoint another member in terms of section 4(1)(c) to fill the vacancy for the unexpired term of office.

Term of office of members

8. (1) The chairperson holds office for a period of five years.

(2) Subject to subsection (3), the term of office of members is three years.

(3) Fifty per cent of the members of the first Board who were nominated through a public process must hold office for a period of five years.

(4) Members referred to in subsection (3) must be determined by lot in accordance with the Schedule.

(5) No member may be appointed for more than two consecutive terms of office.

Remuneration of Board members

9. The Minister must, in consultation with the Minister of Finance, determine the remuneration of the members.

Meetings of Board

10. (1) The first meeting of the Board must be held at a time and place determined by the Minister, and thereafter meetings must be held at such times and places as the Board may determine.

(2) The Board must meet four times a year.

(3) The chairperson of the Board may at any time, and must at the request in writing of not fewer than four members, convene a special meeting of the Board, to be held at such time and place as the chairperson may determine.

(4) There may not be more than eight special meetings per year.

(5) A quorum for a meeting of the Board is the majority of its members.

(6) The chairperson must give 14 days' prior written notice of every meeting of the Board to all members.

(7) A decision of the majority of the members present at any meeting constitutes a decision of the Board and, in the event of an equality of votes, the chairperson must have a casting vote in addition to his or her deliberative vote.

(8) In the absence of the chairperson the remaining members must from their number elect an acting chairperson who, while he or she so acts, performs all the functions of the chairperson.

(9) Subject to section 11(3), a decision taken by the Board or an act performed under that decision is not invalid merely by reason of—

(a) any irregularity in the appointment of a member;

(b) a vacancy on the Board; or

(c) the fact that any person not entitled to sit as a member sat as such at the time when the decision was taken:

Provided such decision was taken by a majority of the Board members present at the time and entitled to sit, and those members at the time constituted a quorum.

(10) Minutes of proceedings of every meeting of the Board must be recorded and entered in a book kept for that purpose.

(11) Minutes of the proceedings of each meeting must be submitted at the next meeting of the Board and, if passed as correct, must be confirmed by the signature of the chairperson and must, when so confirmed, be evidence in a court of law of the proceedings of the first-mentioned meeting.

(12) The Board must require the chief executive officer to attend any of the Board's meetings, but the chief executive officer is not entitled to vote.

Conflicting interests

- 11.** (1) A member may not vote at, attend or in any other manner participate in, any meeting of the Board, nor be present at the place where the meeting is held, if—
- (a) in relation to an application for support, he or she or his or her family member is a director, member or business partner or associate of, or has an interest in, the business of the applicant or of any person who made representations in relation to the application; or 5
 - (b) in relation to any matter before the Board, he or she has any interest which might preclude him or her from performing his or her functions as a member in a fair, unbiased and proper manner. 10
- (2) (a) If, during the course of any meetings of the Board, there is reason to believe that a member has any interest contemplated in subsection (1), that member must immediately fully disclose the nature of his or her interest and leave the meeting in question so as to enable the remaining members to discuss the matter and determine whether or not that member should be allowed to participate in the meeting. 15
- (b) The disclosure, and the decision taken by the remaining members, must be recorded in the minutes of the meetings in question.
- (3) If any member fails to disclose any interest as required by subsection (2) or, subject to that subsection, if he or she is present at the place where a meeting of the Board is held or in any manner participates in the meeting of the Board, the relevant meeting of the Board is null and void. 20
- (4) A member is guilty of an offence and liable on conviction to a fine not exceeding R250 000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment, if he or she—
- (a) contravenes subsection (1); or 25
 - (b) fails to disclose any interest or fails to leave the meeting or hearing as required by subsection (2).

Staff

- 12.** (1) The Board must appoint a person qualified and experienced in accounting and financial matters, and who is, as far as possible, qualified or experienced in the fields set out in section 4(4)(b)(ii), as chief executive officer of the Agency. 30
- (2) A person is disqualified from being appointed or remaining a chief executive officer if he or she is a Board member or subject to any of the disqualifications mentioned in section 5.
- (3) A chief executive officer holds office for a period not exceeding five years and may not be appointed for more than three consecutive terms of office. 35
- (4) The Board may at any time terminate the appointment of the chief executive officer—
- (a) if that chief executive officer failed to perform the duties of his or her office efficiently; 40
 - (b) if, due to any physical or mental illness or disability, that chief executive officer has become incapable of performing his or her functions or performing them efficiently; or
 - (c) for misconduct.
- (5) The chief executive officer and staff must be appointed in accordance with procedures applicable to the appointment of public servants in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994). 45
- (6) The terms and conditions of service of the chief executive officer and other staff of the Agency, including their remuneration, allowances, pensions and other service benefits, are determined by the Board. 50
- (7) The remuneration, allowances, pension and other service benefits referred to in subsection (6) must be determined in accordance with a system approved by the Minister with the concurrence of the Minister of Finance.

Functions of chief executive officer

- 13.** (1) Subject to the written directions of the Board and section 15(2)(b), the chief executive officer may appoint such other staff for the Agency as are necessary to perform the work arising from or connected with the functions of the Board or the Agency. 55
- (2) The chief executive officer must—

- (a) ensure that the instructions of the Board are carried out;
 - (b) report to the Board on the activities of the Agency; and
 - (c) compile an annual report on the activities of the Agency and submit the report to the Board for approval.
- (3) The report referred to in subsection (2)(c) must include— 5
- (a) audited financial statements;
 - (b) a list of all beneficiaries;
 - (c) an evaluation of how the Agency’s mandate has been achieved; and
 - (d) a projection of forthcoming activities.

General functions of Board 10

14. (1) The Board must, in the promotion of media development and diversity—
- (a) identify historically disadvantaged communities and persons that are not adequately served by the media;
 - (b) select projects in accordance with the criteria prescribed in terms of section 19(3) to receive support; 15
 - (c) ensure that the Agency’s objectives, achievements and activities are made known to the public; and
 - (d) negotiate with public utilities, organisations and financial institutions to acquire indirect support for projects, including support in the form of—
 - (i) discounts or subsidies in print and signal distribution, postal rates and telephone tariffs; and
 - (ii) low-interest rate loans.
- (2) The Board may delegate any of the functions mentioned in this section, except the function specified in subsection (1)(b), to the chief executive officer. 20

Finances of Agency 25

15. (1) Funds of the Agency consist of—
- (a) money appropriated by Parliament;
 - (b) money received in terms of agreements contemplated in section 21;
 - (c) domestic and foreign grants;
 - (d) interest derived from any investments; or 30
 - (e) money lawfully accruing from any other source.
- (2) The money referred to in subsection (1) must be utilised to—
- (a) fund projects and activities connected therewith, including project evaluation, feasibility studies, needs analyses, research and training; and
 - (b) defray expenses, including expenses regarding remuneration, allowances, pensions and other service benefits referred to in section 12(6), incurred by the Agency in the performance of its functions under this Act as long as such expenses do not exceed the prescribed percentage of the funds referred to in subsection (1). 35
- (3) The Auditor-General must audit the financial statements of the Agency. 40

Annual Report

16. (1) The Board must submit the approved report referred to in section 13(2)(c), to the Minister within three months of the end of the relevant financial year.
- (2) The Minister must table a copy of the annual report in Parliament within 30 days after it has been received by him or her if Parliament is then sitting and, if Parliament is not in sitting, within 14 days after the next ensuing sitting of Parliament. 45

Nature of support provided by Agency

17. The nature of support provided or facilitated by the Agency may be in the form of—
- (a) financial support by— 50
 - (i) direct subsidies that are cash grants;
 - (ii) emergency funding aimed at strengthening and ensuring the survival of media projects;
 - (b) training opportunities and capacity development in all areas of media production and distribution; 55

- (c) conducting feasibility studies for new projects;
- (d) media research;
- (e) any indirect support referred to in section 14(1)(d); and
- (f) identifying, gathering and distributing resources for media development through agreements with strategic partners. 5

Allocation of support

- 18.** (1) Direct subsidies referred to in section 17(a)(i) may be granted to community media projects.
- (2) Community media projects may also receive any other support contemplated in the Act. 10
- (3) Small commercial media projects primarily receive low interest rate loans referred to in section 14(1)(d)(ii) and may receive, subject to subsection (1), any other support contemplated in this Act.

Projects

- 19.** (1) All projects must be aimed at achieving the objectives of the Agency as contemplated in section 3. 15
- (2) The Board must, when selecting projects, take into consideration the communities and persons identified in terms of section 14(1)(a).
- (3) The Board must, prescribe— 20
- (a) detailed criteria for selecting—
 - (i) community media projects;
 - (ii) small commercial media projects; and
 - (iii) research projects;
 - (b) the manner in which an application for support for projects must be made; and
 - (c) the information that must accompany the application. 25
- (4) The Board must prescribe the percentages of the money referred to in section 15(2)(a), to be utilised for—
- (a) community media projects;
 - (b) small commercial media projects; and
 - (c) research projects. 30
- (5) The information referred to in subsection (3)(c) must include information regarding—
- (a) the objectives and goals of the project;
 - (b) business plans containing measures for future sustainability; and
 - (c) the proposed budget. 35

Evaluation of projects receiving support

- 20.** (1) The Board must evaluate all projects receiving support so as to—
- (a) assess the progress of such projects; and
 - (b) ensure that such projects are achieving their agreed goals.
- (2) If the Board is of the opinion that a project concerned is not achieving its goals, the Board may— 40
- (a) instruct the person in control of the project, in writing, to rectify the problem identified by it;
 - (b) if the instruction contemplated in paragraph (a) is not complied with, suspend or terminate the support provided to the project concerned. 45

Agreements

- 21.** (1) The Board may enter into agreements with any organisation in terms of which financial or non-financial assistance is given to the Agency for the furtherance of the objectives of this Act.

Regulations 50

- 22.** (1) The Minister may, in consultation with the Board, make regulations regarding any matter that is required or permitted to be prescribed in terms of this Act.

(2) The Board must, not less than two months before any regulation is made, cause the text of such regulation to be published in the *Gazette*, together with a notice declaring the Minister's intention to make that regulation and inviting interested persons to furnish the Board with comments thereon or representations in regard thereto.

Short title and commencement

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23. This Act is called the Media Development and Diversity Agency Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule**DETERMINATION BY LOT FOR PURPOSES OF SECTION 8(4)**

1. Upon having appointed the members of the Board in terms of section 4 of this Act, the Board must forthwith proceed, in an open and transparent manner, to determine by lot, as required by section 8 of this Act which three of such six members must hold their offices for a period of five years after their appointment. The chairperson of the Board must conduct the lot (hereinafter referred to as the designated person).

2. The designated person must thereupon ensure that the name of each one of the six members is written on a separate piece of paper of equal size in identical shape and colour.

3. The designated person must thereafter display the six pieces of paper contemplated in item 2 to every person who is present at the place where the lot is being conducted who is desirous of inspecting any such piece of paper.

4. The designated person must thereafter fold every such piece of paper in such a manner that the name thereon is not visible, and place all such pieces of paper in an empty container.

5. The designated person must thereupon appoint an impartial person (hereinafter referred to as the drawer) to draw three pieces of paper from the said container.

6. The designated person must thereafter shake the container in such a manner as to thoroughly mix the pieces of paper therein, and must hold such container in such a position that the drawer is unable to see the pieces of paper inside.

7. The drawer must thereafter draw three pieces of paper from such container and hand them to the designated person without unfolding any of them.

8. The designated person must then unfold each of the three pieces of paper handed to him or her as contemplated in item 7, read out the names written thereon and display every such piece of paper to every person who is present at the place where the lot is being conducted and who is desirous of inspecting the same.

9. The three persons, whose names have been so drawn, must hold their offices for a period of five years after the date of their appointment as such.

**MEMORANDUM ON THE OBJECTS OF THE MEDIA
DEVELOPMENT AND DIVERSITY AGENCY BILL, 2002**

1. PURPOSE

The Media Development and Diversity Agency (MDDA) draft position paper was launched by the Minister in The Presidency on 29 November 2000 and was subsequently published for public comment. Submissions closed on 28 February 2001. Parallel to the review of submissions, the Government Communication and Information System (GCIS) was involved in ongoing stakeholder consultations and discussions. The proposed legislation has been drafted in the light of these submissions and consultations with stakeholders.

2. THE PROPOSED BILL SEEKS TO PROVIDE FOR:

- 2.1 The establishment of the Media Development and Diversity Agency (MDDA).
- 2.2 The establishment of the MDDA Board, to oversee the functions of the Agency.
- 2.3 The procedures for the appointment of the MDDA Chief Executive Officer and staff members.
- 2.4 The determination of projects to be supported and the types of support available to successful applicants to the Agency.
- 2.5 The determination of finances for the Agency.
- 2.6 The making of regulations regarding any matter that is required or permitted to be prescribed in terms of this Bill specifically with regard to funding criteria and how these are to be administered.

3. CONSULTATION

The following persons and bodies were consulted:

- 3.1 Submissions in response to the draft position paper were received on 28 February 2001 from the following organisations and individuals:
 - Association of Advertising Agencies
 - Association of Marketers
 - Caxton Publishers and Printers Limited
 - Development Bank of Southern Africa
 - Freedom of Expression Institute
 - Freedom of Commercial Speech Trust
 - Independent Communications Authority of South Africa
 - Johnnic Publishing
 - Marketing Industry Trust
 - Media Monitoring Project
 - Media 24 Limited (Subsidiary of Naspers)
 - M-Net
 - National Association of Broadcasters
 - National Community Radio Forum
 - National Electronic Media Institute of South Africa
 - Open Window Network
 - Primedia Broadcasting (Pty) Ltd
 - Print Media SA
 - SA National Editors' Forum
 - South African Advertising Research Foundation
 - Thornton & Morris Attorneys
 - Independent Media Development Trust

Submissions in personal capacity:

- Sean Jacobs
- GF Joubert
- Moeletsi Mbeki

- 3.2 On 27 March 2001 the parliamentary Portfolio Committee on Communications held public hearings on the MDDA.

Organisations and interested parties represented included:

Portfolio committee members
 Print Media SA
 National Association of Broadcasters
 Association of Marketers
 Association of Advertising Agencies
 Media 24
 Freedom of Expression Institute
 National Community Radio Forum
 Communications Workers Union
 South African Communist Party

- 3.3 Ongoing consultations have been conducted with the following organisations and departments:

Government departments consulted were:

Department of Communications
 Department of Justice (State Law Advisers)
 Department of Trade and Industry
 Department of Arts & Culture, Science & Technology

Other organisations consulted were:

Association of Marketers
 Competitions Commission
 Development Bank of SA
 Freedom of Expression Institute
 Independent Communications Authority of South Africa
 National Association of Broadcasters
 National Community Radio Forum
 Print Media SA

4. FINANCIAL IMPLICATIONS FOR STATE

It is anticipated that government's contribution to the MDDA will be covered by existing allocations to departments within the Medium Term Expenditure Framework (MTEF).

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the GCIS are of the opinion that this Bill must be dealt with in accordance with the procedure set out in section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.