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PUBLISHED BY AUTHORITY

THE TRAINING AWARDS BILL, 1986

(Bill No. 5 of 1986)

(To be presented by the Minister for Education)

MEMORANDUM OF OBJECTS AND REASONS

The purpose of this Bill is to provide for a system for the grant of scholarships by establishing a Scholarships Selection Board, the criteria and other matters for the award of scholarships awarded by or through the Government. The Bill also seeks to repeal the Study Loan and Scholarship Agreement Order, 1977.

D.P. MAKANZA
Attorney-General

A BILL
entitled

An Act to repeal and replace the Study Loan and Scholarship Agreement Order, 1977, to provide for the award of scholarships by or through Government, the establishment of a Scholarships Selection Board and for other matters connected therewith.

ENACTED by the Regent and the Parliament of Swaziland.

PART I — PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Training Awards Act, 1986, and shall come into force on such date as the Minister may by notice in the Gazette appoint.

Interpretation.

2. In this Act, unless the context otherwise requires: —

“Board” means the Scholarships Selection Board established by Section 3;

“Minister” means the Minister for Education;

“parastatal body” means any body, whether corporate or unincorporate in which the Government, the Ngwenyama in trust for the Swazi Nation or the Swazi National Council holds any financial or monetary interest and includes any other body in which such parastatal body holds a financial or monetary interest;

“public service” has the same meaning as in section 144(1) of the repealed Constitution;

“scholarship” means a scholarship granted under this Act and includes a grant made or study loan advanced under the Study Loan and Scholarship Agreement Order, 1977;

“serious and wilful misconduct” shall include:

- (a) drunkenness;
- (b) a wilful contravention of any law, regulation, rule, term or condition governing scholarship awards generally or specially;

- (c) any other act or omission which the Board, having regard to all the circumstances of the case, may determine to be serious and wilful misconduct; "specified service" means service in the public service, a parastatal body, a statutory body or such other service as the Board may specify either generally or in any particular case; "statutory body" means any body, whether corporate or unincorporate, established by or under any law.

PART II — ESTABLISHMENT AND FUNCTIONS OF THE SCHOLARSHIPS SELECTION BOARD

Establishment and composition of Scholarships Selection Board.

3. (1) There is hereby established a body to be known as the Scholarships Selection Board which shall consist of the following members:-

- (a) the Minister who shall be the Chairman;
- (b) three persons not being public officers appointed by the Minister on such terms and conditions as he may determine;
- (c) the Principal Secretary, Ministry of Education;
- (d) the Principal Secretary, Ministry responsible for Public Service;
- (e) the Principal Secretary, Ministry responsible for economic planning; and
- (f) the Vice-Chancellor of the University of Swaziland.

(2) A member of the Board appointed under sub-section (1)(b) shall hold office for such period not exceeding three years as may be specified in his instrument of appointment and shall be eligible for reappointment.

Functions of the Board.

4. (1) The functions of the Board shall be:-

- (a) to select and recommend to the Minister for his approval suitable candidates for the award of scholarships granted by or through the Government in the following fields:-
 - (i) pre-service training intended to produce personnel with appropriate qualifications for employment in a specified service;
 - (ii) the training of personnel employed in the specified service which is intended to provide such personnel with higher professional qualifications or experience or both, which would be beneficial to the development of Swaziland;
- (b) to advise the Minister on the suitability for and other matters relating to scholarships; and
- (c) to perform such other functions as may be determined by the Minister.

(2) In making its selection of and recommendation on candidates for scholarships the Board shall, as much as practicable, take into consideration the personnel requirements and priorities determined by the Minister responsible for personnel planning.

(3) Notwithstanding anything in this section, the Minister may give to the Board directions of a general nature in the performance of its functions, and it shall be the duty of the Board to comply with any such directions.

Proceedings of the Board.

5. (1) The quorum for any meeting of the Board shall be the Chairman, the Principal Secretary, Ministry of Education and one of the members referred to in paragraphs (b), (d), (e) or (f) of Section 3(1).

(2) In the absence of the Chairman a person other than a public officer appointed by the Minister to act in his place shall be the Chairman.

(3) All decisions of the Board shall be made by a Majority of the members present and where there is an equality of votes the Chairman for that meeting shall have a casting vote in addition to his deliberative vote.

(4) Subject to sub-sections (1) and (2) and any Regulations made under this Act, the Board may regulate its own procedure.

Annual Report.

6. (1) The Board shall, not later than three months after the end of each financial year, submit a report on its activities during that year to the Minister.

(2) The financial year shall be the period from the first of April in one year to the thirty-first of March in the following year or in respect of the first report a period whether shorter or longer than twelve months as the Minister may determine.

PART III — OBLIGATIONS OF RECIPIENTS OF SCHOLARSHIPS*Terms and conditions of scholarships.*

7. (1) The Board may require a person to whom a scholarship is to be or has been awarded to comply with such terms and conditions as it may determine in relation to the award and tenure of such scholarship, including:-

- (a) the repayment other than under subsection (4) hereof of such scholarship amount awarded as may be determined by the Board, either in whole or in part;
- (b) the return to Swaziland by a person on or before his completion of the training for which the Scholarship was awarded;
- (c) whether such person shall, after or before the completion of the training, take up or, if he was already employed prior to such award, resume, employment in the specified service;
- (d) the period during which such person shall remain in the employment determined under paragraph (c):

Provided that such period shall not be longer than the period for which a scholarship has been awarded to such person.

- (e) the prescribing and extending for good cause the time for compliance with the terms and conditions determined under this subsection:

Provided that where the Government or any other person fails, within such period as may be determined by the Board, to offer employment or to continue to employ a person awarded a scholarship such latter person shall not after the said period be bound to be employed in the specified service.

(2) Nothing in this Act shall, solely by virtue of the award of a scholarship or the tenure thereof, be construed as imposing an obligation upon the Government or any other person to employ or to continue to employ a person awarded a scholarship.

(3) The Board may, at any time in writing exempt any person from the terms and conditions imposed under sub-section (1) or modify such terms and conditions and where such terms and conditions are modified, they shall be binding as between the Government and the person awarded a scholarship as an enforceable agreement so far as such modification does not conflict with the provisions of this Act and the Regulations made under Section 11.

(4) Notwithstanding any other law or the express or implied terms and conditions of any agreement and whether the person awarded a scholarship is a minor unassisted by his guardian or a married woman unassisted by her husband the following terms and conditions shall be deemed to form part of any scholarship agreement entered into on or after 4th March, 1977 and, notwithstanding the absence of any scholarship agreement on or after the said date, shall be binding as between the Government and the person awarded a scholarship and shall be given effect as if they had been incorporated into an enforceable agreement, namely:-

- (a) the terms and conditions determined under subsection (1) in respect of a scholarship award so far as such terms and conditions do not conflict with the provisions of this Act and the Regulations made under section 11;
- (b) whether or not he is required to serve the period referred to in subsection (1)(d) and (e), any person awarded a scholarship (hereinafter called "the recipient") shall, having completed or failed to complete the course of study for which the scholarship was awarded, within the period determined by the Board, repay to the Government fifty per cent of the scholarship amount spent on the course together with interest on the said amount at the rate of five per cent per annum calculated from the date when the amount or any part thereof was first paid:

Provided that if the none-completion of the course is without the consent of the Board or is, in the opinion of the Board, due to serious and wilful misconduct, recklessness or serious negligence on the part of the recipient, the recipient shall, within the period determined by the Board, repay to the Government the whole scholarship amount spent on the course less such amount of the fifty per cent as the recipient may have repaid together with such interest on the former amount as the Board may determine, not being less than five per cent per annum calculated from the date when the amount or any part thereof was first paid;

- (c) the recipient having completed the course of study in or outside Swaziland in respect of which the award was made shall be obliged to remain in or to return to Swaziland and undertake employment in the specified service for such period as the Board may determine under subsection (1)(d) and (e);
- (d) in the event of the recipient failing to undertake the employment referred to in paragraph (b) without the written consent of the Board or in the event of his leaving the said employment without such consent, the recipient shall, within the period determined by the Board, repay to the Government the whole scholarship amount spent on the course less such amount as the recipient may have repaid pursuant to the provisions of paragraph (b) together with such interest on the former amount or on the balance as the Board may determine, not being less than five per cent per annum or more than eleven per cent per annum calculated from the date when the amount or any part thereof was first paid.

Periodic review of scholarships.

8. (1) The Board shall, at least once a year, review all scholarships so as to ensure that the terms and conditions applicable to each scholarship are complied with.

(2) No person who has been awarded a scholarship shall, save with the written consent of the Minister be awarded another scholarship, if he has been in breach of the terms and conditions of a scholarship previously awarded to him.

PART IV — OFFENCES, PENALTIES AND REGULATIONS*Offences.*

9. (1) Without prejudice to any other law, any person who:-

- (a) otherwise than in the course of his official duty improperly, whether directly or indirectly by himself or by any other person and in any manner whatsoever, influences or attempts to influence any decision of the Board; or
- (b) in connection with the exercise by the Board of its functions or duties wilfully gives to the Board any information which he knows to be false or does not believe to be true or which he knows to be false by reason of the omission of any material particular, shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand Emalangeni or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment:

Provided that nothing in paragraph (a) shall be construed as prohibiting any person from giving a certificate or testimonial to any applicant or candidate for any public office or from providing information or assistance upon a request made by the Board.

(2) For the purposes of subsection (1), the term "Board" includes any member of the Board, the Secretary and any person or body of persons exercising any of the functions of the Board.

(3) Any person who fails on the due date to repay the amount due to be repaid under this Act shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred Emalangeni or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(4) A conviction for an offence under this Act shall not exempt the person convicted from payment of the amount due to be repaid.

Compounding offences.

10. (1) If any person:-

- (a) has in the opinion of the Board committed an offence under this Act; and
- (b) agrees in writing to abide by the Board's decision; and
- (c) deposits with the Board such sum as the latter may require of him, but not exceeding five hundred Emalangeni or makes such arrangements or complies with such conditions with regard to securing the payment of such sum as the Board may require, the Board may determine the matter summarily and may without further proceedings, order forfeiture to the Government by way of penalty, of the whole, or any part, of the amount so deposited or secured.

(2) Where any person is aggrieved by any decision made by the Board under subsection (1) he may appeal against such order to the Minister who shall appoint a committee of three persons to decide the matter:-

Provided that -

- (a) such appeal shall be made within ninety days from the date of the decision;
- (b) no such appeal shall be made when the penalty imposed does not exceed two hundred Emalangeni; and
- (c) the committee's decision on any such appeal shall be final.

(3) The imposition of a penalty under this section shall not—

- (a) be construed as a conviction for a criminal offence and no prosecution shall be instituted for an offence which has been compounded; or
- (b) exempt the person upon whom a penalty has been imposed from payment of the amount to be repaid.

Regulations.

11. The Minister may make Regulations for the purposes of this Act.

PART V — REPEAL AND CONSEQUENTIAL PROVISIONS

Repeal and savings.

12. The Study Loan and Scholarship Agreement Order, 1977, is hereby repealed provided that the repeal shall not affect any right, privilege, obligation, liability or remedy in respect thereof acquired, accrued or incurred under the Order.

Continuation of existing agreements.

13. On and after the date of coming into operation of this Act, and notwithstanding any other law, the provisions of this Act shall apply to all existing scholarship agreements and all such agreements shall continue to have force and effect as if the terms and conditions thereof were imposed under this Act:

Provided that where such terms and conditions are in conflict with the said provisions or with a determination by the Board under section 7 of this Act, the said provisions or determination shall prevail.