

## DEPARTMENT OF BASIC EDUCATION

NO. 1101

13 OCTOBER 2017

**Invitation to comment on the draft Basic Education Laws Amendment Bill**

The Department of Basic Education invites all interested parties to submit written comments on the draft Basic Education Laws Amendment Bill (the draft Bill) published in the Schedule hereto.

Comments should be directed to –

The Director-General, Private Bag X895, Pretoria, 0001, for attention: Adv. TD Rudman, tel. 012 357 3856, email [rudman.d@dbe.gov.za](mailto:rudman.d@dbe.gov.za), fax 012 323 9430.

Kindly provide the name, address, telephone number, fax number and email address of the person or organisation submitting the comments.

The comments must reach the Department by 10 November 2017.

**Background notes**

- (a) The draft Bill has been approved by Cabinet for publication thereof in the *Government Gazette* for public comment.
- (b) The draft Bill proposes to amend the South African Schools Act, 1996 (Act No. 84 of 1996), and the Employment of Educators Act, 1998 (Act No. 76 of 1998) (the SASA and the EEA, respectively), so as to align them with developments in the education landscape and to ensure that systems of learning and excellence in education are put in place in a manner which respects, protects, promotes and fulfils the right to basic education enshrined in section 29(1) of the Constitution of the Republic of South Africa, 1996.

Certain technical and substantive adjustments are also made to the SASA and the EEA to clarify certain existing provisions and to insert certain provisions to cover matters which are not provided for in the existing legislation.

- (c) All the provincial education departments were consulted on the draft Bill, which was also presented to the Heads of Education Departments Committee and the Council of Education Ministers. All of these approved the draft Bill for publication in the *Government Gazette* for public comment. The Department also briefed numerous organisations, such as school governing body associations and unions involved in the education sector, on the content of the draft Bill. Some of the organisations and provincial education departments provided the Department with written comments. As indicated above, Cabinet has granted approval for the draft Bill to be published for public comment. It was decided that all the comments received thus far would be considered together with the comments that the Department expects to receive after the publication of the draft Bill for public comment. However, any person who, or organisation that, has already submitted comments is at liberty to submit further comments.
- (d) The draft Bill and the Memorandum on the Objects of the Bill, which provides the motivation for the various amendments contained in the draft Bill, appear in the Schedule.

For any further enquiries, please feel free to contact Adv. TD Rudman at tel. 012 357 3856 or [rudman.d@dbe.gov.za](mailto:rudman.d@dbe.gov.za).

  
ANGELINA MATSIE MOTSHEKGA, MP  
MINISTER OF BASIC EDUCATION  
DATE: 02. 10. 2017

## MEMORANDUM ON THE OBJECTS OF THE BASIC EDUCATION LAWS AMENDMENT BILL, 2015

### 1. BACKGROUND

- 1.1 The Minister of Basic Education has identified the review of all basic education legislation as a strategic priority for the Department of Basic Education.
- 1.2 The Draft Basic Education Laws Amendment Bill, 2014 (the Draft Amendment Bill), proposes to amend the South African Schools Act, 1996 (Act No. 84 of 1996), and the Employment of Educators Act, 1998 (Act No. 76 of 1998) (the SASA and the EEA, respectively), so as to align them with developments in the education landscape and to ensure that systems of learning and excellence in education are put in place in a manner which respects, protects, promotes and fulfils the right to basic education enshrined in section 29(1) of the Constitution of the Republic of South Africa, 1996. The Draft Amendment Bill seeks to amend the SASA and the EEA so as to make certain technical and substantive adjustments, to clarify certain existing provisions and to insert certain provisions to cover matters which are not provided for in the existing legislation.

### 2. CLAUSE-BY-CLAUSE ANALYSIS

#### South African Schools Act (paragraphs 2.1 to 2.28 – clauses 1 to 28)

- 2.1 **Clause 1** provides for the insertion of a number of definitions and seeks to amend certain other definitions.
- 2.1.1 Definitions of "benefit in kind" (clause 1(a)) and "other financial benefit" (clause 1(h)) are included in the Bill in order to create clarity regarding the provisions of section 38A of the SASA. Section 38A of the SASA prohibits the payment of unauthorised remuneration and the giving of financial benefit or benefit in kind to certain employees.
- 2.1.2 It proposes the inclusion of definitions of "competent assessor" (clause 1(b)) and "home education" (clause 1(e)) in order to provide more certainty in the home education environment. (See clause 25.)
- 2.1.3 The definition of "Constitution" is amended (clause 1(c)) to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005).
- 2.1.4 A definition of "Department of Basic Education" is included (clause 1(d)) in order to reflect the new education dispensation.
- 2.1.5 Definitions of "liquor" (clause 1(f)) and "prohibited substance" (clause 1(i)) are included in support of the proposed amendment to section 8A of the SASA. (See clause 7.)

**2.1.6** Clause 1 also proposes the insertion of an amended definition of “loan” (clause 1(g)) to allow public schools to deal with the day-to-day business of the school without obtaining the written approval of the Member of the Executive Council. See also clause 19 of the Bill.

**2.2** **Clause 2** of the Bill seeks to amend section 3(6) of the SASA to increase the penalty provision from six months to six years in the case where the parent of a learner, or any other person, prevents a learner who is subject to compulsory school attendance from attending school. The clause also makes it an offence for any person to wilfully interrupt or disrupt any school activity or to wilfully hinder or obstruct any school in the performance of the school's activities, and a penalty clause is provided for.

This is necessitated by recent incidents, in several provinces, in which communities, or portions of communities, prevented learners from attending school in an attempt at making a political or other point.

**2.3** **Clause 3** of the Bill seeks to amend section 5 of the SASA. It provides that the Head of Department has the final authority to admit a learner to a public school. It provides that the governing body of a public school must submit the admission policy of the school, and any amendment thereof, to the Head of Department for approval. The Head of Department must take into account certain prescribed factors when considering the policy or any amendment thereof. In the event that the Head of Department does not approve the policy, or any amendment thereof, he or she must return it to the governing body with such recommendations as may be deemed necessary. The policy needs to be reviewed every three years or whenever the prescribed factors have changed, when circumstances so require, or at the request of the Head of Department. Furthermore, it provides for time periods within which a learner, or the parent of a learner, who has been refused admission to a public school may appeal against the decision to the Member of the Executive Council and within which the Member of the Executive Council must respond.

These amendments have become necessary as a result of the confusion that arose as to where the locus of authority lies in respect of admissions to public schools. In terms of section 5(5) of the SASA, the admission policy of a public school is determined by the governing body of such a school. Section 5(7) of the SASA states that an application for admission of a learner to a public school must be made to the education department in the manner determined by the Head of Department. These two provisions create confusion as to who has the final say on admissions. This issue was the subject of litigation in the case of *MEC For Education Gauteng Province and Another v Governing Body of Rivonia Primary School and Others 2013(6) SA 582(CC)*. The finding of the Court was that the Department maintains ultimate control over the implementation of the admissions decision (paragraph 52 of the judgment). The Head of Department is not rigidly bound by a school's admission policy when

exercising the authority to admit learners. The policy serves as a guide that cannot bind the Head of Department inflexibly (see paragraph 54). The general position is that admission policies must be applied in a flexible manner (see paragraph 56). This amendment, therefore, confirms the decision of the Court.

Furthermore, the admission policy of the Department of Basic Education provides that the admission policy of a school must be consistent with the former, and therefore, the Head of Department should have an opportunity to study the admission policy of a school to ensure that it is in fact consistent with the national policy.

**2.4 Clause 4** of the Bill seeks to amend section 6 of the SASA to provide for the governing body to submit the language policy of a public school, and any amendment thereof, to the Head of Department for approval. The Head of Department may approve the policy, or any amendment thereof, or he or she may return it to the governing body with recommendations. The Head of Department must take into account certain prescribed factors when considering the policy or any amendment thereof. The governing body must review the language policy every three years, or whenever the prescribed factors have changed, when circumstances so require, or at the request of the Head of Department. The clause also seeks to empower the Head of Department to direct a public school to adopt more than one language of instruction, after taking certain prescribed factors into account, and after the prescribed procedures have been followed. The Head of Department must inform the governing body of the public school of his or her intention so to act and his or her reasons therefor, grant the governing body a reasonable opportunity to make representations, conduct a public hearing to enable the community to make representations, and give due consideration to the representations received. In deciding the matter, the Head of Department must take into account, inter alia, the best interests of the child, with emphasis on equality, as provided for in section 9 of the Constitution, and equity; the dwindling number of learners who speak the language of learning and teaching at the public school; the need for effective utilisation of resources; and the language needs, in general, of the broader community in which the public school is located. The Head of Department must inform the governing body of his or her decision and must make his or her decision known to the community in a suitable manner.

This amendment is necessitated by, amongst others, the need for fair and equitable administrative processes as provided for in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and the need for effective utilisation of classroom space and resources. In the case of *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo and Another 2010(2) SA 415(CC)* (the Ermelo judgment), paragraph 57 provided guidance in regard to the approval of a school's language policy.

Determining a school's language policy is a devolved function (or responsibility), in terms of section 6(2) of the SASA. However, even though it is a devolved function, it is not the exclusive preserve of the school governing body – paragraph 58 of the Ermelo judgment makes this clear. The devolution of power does not mean that the school governing body's right to decide the language policy is absolute. This power is subject to the Constitution, the SASA and any applicable provincial law. As stated in paragraph 81 of the judgment, the governing body's extensive powers and duties do not mean that the Head of Department is precluded from intervening, on reasonable grounds, to ensure that the admission and language policy of a school pays adequate heed to section 29(2) of the Constitution.

Moreover, paragraph 77 of the Ermelo judgment, and the judgments in the Harmony and Welkom matters\*, made it necessary to build into the draft Bill checks and balances above and beyond those that are currently in the Act. (\**Head of Department, Department of Education, Free State Province v Welkom High School and Another*; *Head of Department, Department of Education, Free State Province v Harmony High School and Another* (CCT 103/12) [2013] ZACC 25; 2013 (9) BCLR 989 (CC); 2014 (2) SA 228 (CC) (10 July 2013))

As stated in paragraph 80 of the Ermelo judgment, cognisance has to be taken of the interest of the broader community in which the school is located. It is not only the interests of the learners and governing body at the school in question that have to be taken into account, but also the interests of the broader community.

- 2.5 Clause 5** seeks to amend section 6A of the SASA to empower the Minister to appoint outside agencies or persons to advise the Minister on matters relating to a national curriculum statement and a national process and procedures for the assessment of learner achievement. This allows the Minister to obtain inputs from a broader spectrum of people.
- 2.6 Clause 6** seeks to amend section 8 of the SASA by providing that the code of conduct of a public school must take into account the diverse cultural beliefs and religious observances of the learners at the school and makes provision for an exemption clause, making it possible to exempt learners, upon application, from complying with the code of conduct or certain provisions thereof, on just cause shown. If an application for exemption is refused, the learner or the parent of the learner may appeal to the Head of Department against the decision of the governing body. The clause also provides for an informal process when dealing with disciplinary matters, and stipulates that the proceedings should adhere to the principles of justice, fairness and reasonableness prescribed by the Constitution.

This amendment is informed by the Convention on the Rights of the Child and the judgment in the Pillay case\*. The need for this amendment has arisen as a result of the latest jurisprudence on this issue, as expressed in the Pillay case and other cases. The amendment seeks to bring the SASA in line with such jurisprudence. (*\*MEC for Education: Kwazulu-Natal and Others v Pillay (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007) [100%] (From South Africa: Constitutional Court; 5 October 2007; 328 KB)*)

- 2.7 Clause 7** seeks to extend the provisions of section 8A of the SASA by providing for the prohibition of liquor and prohibited substances (see paragraph 2.1.5 above) on school premises, and to make consequential amendments to the section. It also makes it clear that a school has the right to search, not only a group of learners, but also an individual learner; and consequential amendments in this regard are made to the section. This amendment is necessitated by the fact that learners have increasingly been found in possession of, or abusing, liquor and performance-enhancing substances, and there are many cases of learners being expelled because of such abuses.
- 2.8 Clause 8** seeks to amend section 12A of the SASA to provide that, in instances where two or more schools are merged, a new public school shall be established. The date of the establishment, the name and the physical location and official address of the new school are to be determined by the Member of the Executive Council after consultation with the governing bodies concerned. The interim governing body must elect office bearers; decide on contractual obligations and the utilisation and disposal of movable assets; and make recommendations to the Head of Department on personnel matters. The clause furthermore seeks to provide for transitional arrangements in regard to the liability of any person to be disciplined or prosecuted for any misconduct, crime or offence, the rationalisation of the workforce of the new public school, the academic programmes, and governance arrangements. This amendment is proposed for the sake of clarity and uniformity in the way in which this matter is dealt with.
- 2.9 Clause 9** seeks to amend section 17 of the SASA to empower the Member of the Executive Council who is responsible for education in that province to reverse or suspend a decision regarding a determination that the governance of two or more public schools must vest in a single governing body. This is a technical amendment, which merely gives the Member of the Executive Council the option to reverse his or her decision, should circumstances so require.
- 2.10 Clause 10** seeks to amend section 20 of the SASA by limiting the powers of a governing body in regard to recommending candidates for appointment. If the amendment is accepted, a governing body will be

able to recommend to the Head of Department the appointment of post level 1 educators only, which will have the effect that the selection and appointment of educators on post levels 2 to 4 will be the sole responsibility of the Head of Department. The clause also allows the reasonable use, under fair conditions determined by the Head of Department, of facilities of a public school for education-related activities, without the charging of a fee or tariff.

This proposed amendment is necessitated by the requirements of transformation and by the realisation of how important the leadership and management team is for turning a school around and making it successful. The National Development Plan also played a role in the decision to propose the amendment. At page 309, it emphasises the importance of attracting competent persons to become school principals.

The current system of appointment of educators, as set out in section 6 of the EEA, relies to a large extent on the existence of a functional governing body at a public school, with governing body members who have the necessary skills or who have access to persons with the necessary skills that can conduct the interviewing process.

There are more than 24 000 public schools in the country. There could, therefore, theoretically be the same number of interview committees. Many public schools, especially in deep rural areas, do not have functional governing bodies and persons with the necessary skills to conduct interview processes. The interview process requires persons with knowledge of curriculum statements and management processes, and content knowledge of subjects. In many instances, the interview committees do not have the necessary knowledge to know what is required of a principal, a deputy principal or a head of department.

Another weakness in the current system of appointment of educators on post levels 2 to 4 is that the Head of Department is restricted in terms of whom he or she may appoint. Although section 6 of the EEA grants the Head of Department a discretion in regard to whom to appoint, such appointment can be challenged by governing bodies, especially if the Head of Department does not appoint the preferred candidate of the governing body. The Head of Department will have to justify his or her decision to deviate from the recommendation of the governing body and will have to provide very good reasons that could stand up to legal scrutiny in the courts.

The reason for this is that the appointment process is seen as an administrative action in terms of the Promotion of Administrative Justice Act, 2000. In terms of that Act, the person exercising the discretion or taking the administrative action would have to do so in terms of the

principles as set out in that Act. Administrative action can be taken on review if it is viewed as unjust or unreasonable.

Cases where the decision of the Head of Department to appoint a candidate that was not the governing body's preferred candidate was challenged include *Head of the Western Cape Education Department and others v Governing Body of the Point High School and Others 2008 (5) SA 18 (SCA)* (Point High School case) and *Jan Kriel School v Minister of Education Western Cape 21132/2008 (unreported judgment)* (Jan Kriel case). In the Point High School case, the Head of Department appointed the second candidate on the governing body's preferred list of candidates on the basis that the appointment of this candidate would advance employment equity. This candidate was a white male, who happened to be the Deputy Principal of Point High School. This candidate had received a lower score than the first candidate and was not the governing body's preferred candidate. The Head of Department's rationale for appointing this person was that, if he were promoted to the principal's post, it would open up other posts lower in the ranking order that could be filled by historically disadvantaged individuals. The court found the Head of Department's reasoning to be irrational and set aside his decision to appoint the second candidate. In the Jan Kriel case, the Head of Department also appointed the second candidate (a brown male) on the governing body's list and justified the decision on the basis of employment equity. This candidate had received a lower score than the first candidate. The decision of the Head of Department was set aside as irrational.

Another weakness in the current system is that educators, as members of the governing body (see chapter B paragraph 3.3 of the Personnel Administrative Measures), form part of the interview committee of a governing body. It is therefore conceivable that an educator would be in a position to recommend the appointment of his or her supervisor.

Furthermore, the Head of Department, as the employer of educators, does not have a say in the shortlisting of his or her employees.

**2.11 Clause 11** seeks to amend section 21 of the SASA to empower the Head of Department to centrally procure identified learning support material for public schools, after consultation with the governing body and on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.

This amendment is proposed in order to bring about economies of scale.

**2.12 Clause 12** amends section 22 of the SASA to empower the Head of Department to withdraw "one or more functions" of a governing body and not only "a function", as the section currently reads.

This is a technical amendment.

- 2.13 Clause 13** seeks to amend section 25 of the SASA to empower the Head of Department to dissolve a governing body that has ceased to perform functions allocated to it in terms of the Act, if the Head of Department has reasonable grounds to do so. It also provides that persons must be appointed to perform the functions of the governing body, with exclusive voting rights and decision-making powers on any function that they have been appointed to perform. The Bill contains similar provisions where a governing body has failed to perform one or more of its functions. This amendment is proposed in order to create legal certainty.
- 2.14 Clause 14** expands on the provisions of section 26 of the SASA to provide for the declaration of a direct or indirect personal interest that a governing body member or any of his or her family members has and, under such circumstances, the recusal of governing body members in the procurement of goods and services on behalf of the public school. It provides that a governing body may not take a decision on a matter if it has knowledge that a member who is present has a personal interest in that matter, until that member has withdrawn. It also provides for the imposition of a sanction, after due process, where a governing body member contravenes the provisions of the section. The amendment also applies to a committee of a governing body and to committee members. A definition of "family member" has also been inserted into the clause. This amendment is proposed in order to prevent corruption and promote good governance.
- 2.15 Clause 15** seeks to clarify section 27 of the SASA, which provides that governing body members are not entitled to be remunerated for the performance of their duties by adding the words "or attendance of meetings and any school activity". This amendment is proposed merely to clarify the matter of remuneration (vs reimbursement for legitimate expenses).
- 2.16 Clause 16** amends section 29 of the SASA to provide that only a parent member of a governing body who is not employed at the school may serve as the chairperson of the finance committee of that public school. This amendment seeks to promote good governance.
- 2.17 Clause 17** amends section 32 of the SASA to provide for technical amendments that are required as a result of the provisions of the Children's Act, 2005 (Act No. 38 of 2005), that amended the age of majority from 21 to 18 years. This will ensure that learners 18 years and older are not a party to litigation by virtue of their membership of the governing body. This is merely a technical amendment.
- 2.18 Clause 18** seeks to amend section 33 of the SASA, which deals with the closure of public schools, to provide that a governing body and a community must receive feedback on the outcome of their

representations when a public school is to be closed. The amendment also empowers the Member of the Executive Council to close a public school in his or her sole discretion if there are no learners registered at that public school, and to close a public school if there are 135 or fewer than 135 learners registered at that school. In the latter case, he or she may do so only after written notice has been given to the school and the parents, after a notice of his or her intention to close the school has been published in a local newspaper (or notice of the intended closure has been communicated to the affected community by any other acceptable means), after he or she has consulted with the parents of the learners of the school and afforded them an opportunity to make representations, after he or she has considered such representations and, where applicable, made arrangements for the learners to attend another school, and after he or she has made arrangements for the transport of the learners to that school, where appropriate. This clause also brings about technical amendments.

The purpose of this amendment is to simplify the procedure and to make the process of dealing with the closure of a small school less onerous.

- 2.19 Clause 19** seeks to amend section 36 of the SASA to provide that the governing body must also seek the approval of the Member of the Executive Council to enter into lease agreements, for any purpose, including loans and overdrafts which are already provided for in the said section.

In regard to lease agreements, the amendment seeks to ensure good governance, economies of scale, wise spending of money, and a reduction in the risk that the State will be held responsible for acts or omissions on the part of schools.

See also paragraph 2.1.6 above.

- 2.20 Clause 20** contains a correction to section 37 of the SASA. This is a technical amendment.

- 2.21 Clause 21** seeks to amend section 38 of the SASA to provide for the presentation of any significant or substantial deviation to the initial approved budget to a general meeting of parents for consideration. The changed budget must be made available for inspection and approved by a quorum of 15% of the parents. The proposed new section provides that, if a quorum cannot be achieved at the first meeting, a second meeting must be arranged, at which no quorum would be required. A copy of the notice of the second meeting must be distributed to every learner at the school with an instruction to hand the notice to the parents. This amendment relates to governance issues and fairness.

- 2.22 Clause 22** seeks to amend section 41 of the SASA to clarify what documentation the governing body may or should consider when deciding on an application by the parent of a learner for exemption from the payment of school fees. It also provides for the submission of

additional documentary evidence in the form of an affidavit by a parent in instances where information cannot be obtained from the other parent of the learner.

This amendment also deals with governance issues, and seeks to create clarity in regard to the documentation that has to accompany an application for school-fee exemption. It aims to relieve the administrative burden that some schools have been placing on parents by setting application conditions that are too stringent and demanding unnecessary documentation (such as bank statements, or title deeds of homes) in support of the application.

**2.23 Clause 23** seeks to amend section 43 of the SASA to empower the Head of Department to –

(a) authorise officers (as defined in the SASA) to conduct an investigation into the financial affairs of a public school and, where necessary, to access documents relevant to the investigation, after consultation with the governing body;

(b) request the Auditor-General to undertake an audit of the records and financial statements of a public school; or

(c) appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a public school.

It also places a responsibility on the governing body to provide the Head of Department with quarterly reports on all income and expenditure in accordance with directives issued by the Head of Department. The provision that the governing body must submit a copy of the annual financial statements within six months after the end of each financial year to the Head of Department remains unchanged.

This amendment expands on the existing provision by creating more options for the Head of Department if he or she needs to have the financial matters of a school investigated after, for example, receiving allegations of corruption, fraud and the like.

The new section 43(5) seeks to create certainty in regard to reporting and to promote open and transparent accounting and financial accountability, bearing in mind that public funds and parents' money are at stake.

**2.24 Clause 24** seeks to amend section 48 of the SASA to provide that the subsidy granted to an independent school can be made subject to conditions determined by the Member of the Executive Council. The amendment also provides that an independent school must submit quarterly reports to the Head of Department on all income and expenditure relating to the subsidy, and a copy of the audited financial statements relating to the subsidy, within six months after the end of each financial year.

This amendment seeks to create certainty in regard to reporting and to promote open and transparent accounting for the sake of financial accountability when dealing with public funds.

**2.25 Clause 25** seeks to substitute section 51 of the SASA to provide for the application and process for registration of learners for home education. Home education is a relatively new form of education in South Africa and does have a number of benefits for learners —

- (a) with specific learning difficulties, physical or mental;
- (b) whose parents, through their work, have to travel extensively;
- (c) who are professional athletes;
- (d) far away from suitable schools; or
- (e) whose parents believe in the philosophy of home schooling, to name but a few.

The amendments create clarity in regard to the powers and responsibilities of the Head of Department as well as the responsibilities of the parents of the learner. Currently, the legislation is silent on what is required of parents where they wish to home school learners in Grades 10 to 12. The amendment makes provision for the parent of a learner who wishes to continue with home education after completing Grade 9 by making use of the services of a private or independent service provider to register for the National Senior Certificate with an independent or private assessment body.

The private or independent accredited service provider will ensure that the study material used for education at home will be of the required standard and at the correct level. It is the intention of this amendment to guide and assist parents and learners to prepare for the National Senior Certificate – a process that begins at the start of Grade 10.

The effect of the amendment is that such private or independent accredited service providers will be required to provide written proof that the qualification for which the learner will register is registered with the National Qualifications Framework. The private or independent accredited service provider will be registered with the provincial education department to offer specific national qualifications and will have approval or accreditation from Umalusi to offer the qualification. The examination that the learner will write through these providers at the end of Grade 12 will be set by the Department of Basic Education or the Independent Examination Board, and will be certified by Umalusi.

These steps will protect parents who want to educate their children at home in the Further Education and Training Phase (Grade 10 to 12), will ensure that the final qualification obtained is registered, and will allow the learner opportunities of further study at institutions of higher education locally or in other countries, as the case may be. The steps will also protect learners.

Furthermore, the Head of Department is authorised to cancel the learner's registration for home education under certain circumstances and after due process has been followed. A learner or the parent of a learner may appeal to the Member of the Executive Council against the decision of the Head of Department. The Minister is also empowered to make regulations relating to the registration and administration of home education.

- 2.26 Clause 26** seeks to amend section 59 of the SASA to create an offence where the parent of a learner submits false or misleading information, or submits a forged document or one which purports to be a true copy of the original but is not, in the application for admission to a public school or for exemption from the payment of school fees.

This amendment seeks to eliminate the risks associated with the provision of false information.

- 2.27 Clause 27** inserts a new provision in the SASA to provide for dispute resolution mechanisms in the event of any dispute between the Head of Department and a governing body. It provides that the parties must meaningfully engage each other to resolve the dispute. If the dispute cannot be resolved through the initial engagement, each party must nominate a representative who must meet with a view to resolving the dispute. If the parties cannot reach agreement, the dispute may be referred for mediation to a person agreed upon by the parties.

It is hoped that this amendment will save costs for all concerned and will enable the parties involved to resolve disputes amicably.

- 2.28 Clause 28** seeks to amend section 60 of the SASA. This section deals with the liability of the State for any delictual or contractual damages caused as a result of any school activity conducted by a public school for which the public school would have been liable. The proposed amendment to section 60 excludes the liability of the State if the provisions of section 36(2) of the SASA have not been complied with. (See paragraph 2.19 above.)

This amendment seeks to protect the interests of the State in the case where a school does not comply with the provisions of the Act.

- 2.29 Clause 29** seeks to amend section 61 of the SASA to extend the powers of the Minister to make regulations on the management of learner pregnancy, on the admission of learners to public schools, on the prohibition of the payment of unauthorised remuneration or the giving of financial benefit or payment in kind to employees, on minimum norms and standards for provincial teacher development institutes and district teacher development centres, on the organisation, roles and responsibilities of education districts, and on a national education information system. The clause also provides for the possibility of creating offences in the regulations made by Minister.

Although there are a variety of policies that deal with education-related matters, policies do not have any legal force and effect. This amendment will empower the Minister to make regulations that will be enforceable in a court of law.

#### Employment of Educators Act (paragraphs 2.29 to 2.39 – clauses 29 to 39)

- 2.30 Clause 30** amends section 1 of the EEA to delete obsolete provisions in order to align the Act with the new education dispensation. The clause deletes the reference to “adult basic education centre” and “further education and training Institution”.
- 2.31 Clause 31** seeks to amend section 5 of the EEA to delete obsolete provisions in order to align the Act with the new education dispensation. The clause deletes the reference to “further education and training institution”, “adult basic education centre”, “institution” and “centre”.
- 2.32 Clause 32** seeks to amend section 6 of the EEA to provide for a limitation on the post levels for which the governing body may recommend candidates to the Head of Department. Any appointment, promotion or transfer to any promotional post on post levels 2 to 4 on the educator establishment of a public school is to be made from amongst candidates identified by the Head of Department, and educators on these post levels will be appointed directly by the Head of Department. (See paragraph 2.10 above.) However, this will be done in the manner prescribed by regulation by the Minister.
- 2.33 Clause 33** contains consequential amendments to section 6A of the EEA. (See paragraphs 2.10 and 2.32 above.)
- 2.34 Clause 34** seeks to amend section 7 of the EEA to extend the application thereof to promotions on any educator establishment and to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005). The clause further provides for the possibility of the appointment to a promotional post to be made on probation.
- 2.35 Clause 35** seeks to amend section 8 of the EEA to support the amendments proposed to section 20 of the SASA (clause 10) and section 6 of the EEA (clause 32). (See paragraphs 2.10 and 2.32 above.) The clause also deletes the obsolete references to “council” and “adult education and training centre”.
- 2.36 Clause 36** seeks to amend section 9 of the EEA to provide for the secondment of educators to another department.
- 2.37 Clause 37** seeks to delete obsolete references to “institutions” and “centres” in section 11 of the EEA.

- 2.38 Clause 38** seeks to extend the provisions of section 14 of the EEA, which deals with circumstances under which an educator is deemed to be discharged, to include all educators employed in terms of the EEA – that is, those appointed in a permanent capacity as well as temporary and substitute educators.
- 2.39 Clause 39** seeks to delete the obsolete references to “adult learning centre” in section 18 (dealing with issues of misconduct) of the EEA and includes a provincial department of education within the ambit of the section.
- 2.40 Clause 40** inserts a new provision in the EEA, prohibiting educators from conducting business with the State or from being a director of a public or private company conducting business with the State, and creates an offence should the educator contravene the above-mentioned provision. Such contravention will also constitute serious misconduct, which may result in the termination of the educator's employment by the employer. This amendment aims to promote good governance, to protect the financial interests of the State, and to prevent corruption.
- 2.41 Clause 41** inserts a new provision in the EEA, requiring educators to disclose to the Head of Department their financial interests as well as the financial interests of their spouses or of persons living with such educators as if they were married to each other. Failure by an educator to do so constitutes misconduct. This amendment aims to promote good governance and to prevent corruption.
- 2.42 Clause 42** seeks to amend section 35 of the EEA to extend the powers of the Minister to make regulations on norms and standards for district staffing, which will have the force of law.
- 2.43 Clause 43** repeals section 38 of the EEA, which has become obsolete.
- 2.44 Clause 44** seeks to delete the obsolete references to “public further education and training institution or public adult learning centre” in Schedule 1 of the EEA.
- 2.45 Clause 45** seeks to delete the obsolete references to “public further education and training institution or public adult learning centre” in Schedule 2 of the EEA.
- 2.46 Clause 46** contains the short title and provides that the Act comes into operation on a date fixed by the President by proclamation in the *Government Gazette*.

REPUBLIC OF SOUTH AFRICA

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**BASIC EDUCATION LAWS AMENDMENT BILL**

(.....)

(MINISTER OF BASIC EDUCATION)

[B — 2015]

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.  
\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

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**BILL**

To amend—

- the South African Schools Act, 1996 (Act No. 84 of 1996), so as to amend certain definitions and insert new definitions; to increase the penalty in the case where the parent of a learner, or any other person, prevents a learner who is subject to compulsory school attendance from attending school, and to create an offence in respect of the interruption or disruption of school activities; to enhance the authority of the Head of Department in relation to the admission of a learner to a public school; to provide that the governing body of a public school must submit the admission policy and the language policy of the public school to the Head of Department for approval and that, in considering the policies, the Head of Department must be satisfied that the policies take into account, inter alia, the needs, in general, of the broader community in which the public school is located, and that the policies must be reviewed at certain

intervals, and that the Head of Department may, under certain circumstances, direct a public school to adopt more than one language of instruction; to provide the Minister with the authority to appoint a person or organisation to advise on curriculum- and assessment-related matters; to provide for the inclusion of an exemption clause in the code of conduct of a public school adopted by the governing body and for disciplinary proceedings to be dealt with in an informal manner; to provide for the prohibition of liquor and prohibited substances on school premises; to further regulate the merger of public schools; to limit the post levels in regard to which the governing body may make recommendations for appointment to the Head of Department; to provide for the use of the facilities of schools for education-related activities without the charging of a fee or tariff; to provide for centralised procurement, under certain circumstances, of learning support material; to further provide for action to be taken in the event that a governing body ceases or fails to perform its functions and to grant additional powers to persons appointed by the Head of Department where the governing body has failed to perform its functions; to provide that a member of the governing body must declare personal interests in the procurement of goods and services for public schools, or interests that his or her family members may have, and that a member of the governing body must recuse himself or herself in such a case; to prohibit the remuneration of members of the governing body for the performance of their functions as governing body members in relation to any school activity; to provide for a parent member to serve as chairperson of the finance committee; to provide for additional procedures in relation to the closure of public schools, to allow the Member of the Executive Council to close a public school if there are no learners registered at that school and to allow the Member of the Executive Council to close a public school, after complying with certain requirements, if there are 135 or fewer than 135 learners registered at that school; to provide that lease agreements have to be submitted to the Member of the Executive Council for approval; to further regulate the approval and adoption of the annual budget of a public school and amendments thereto; to provide for the consideration of specified documents by the governing body in an application for school fee exemption and the submission of additional documentary evidence by a parent in relation to the other parent; to extend the powers of the Head of Department to conduct an investigation into the financial affairs of a public school and to provide that a governing body must submit quarterly reports on all income and expenditure to the Head of Department; to provide for financial reporting by subsidised independent schools; to further provide for the registration of learners for home education; to create an offence where a parent supplies a public school with false or misleading information or forged documents; to provide for a dispute resolution mechanism in the event of a dispute between the Head of Department and a governing body; to further regulate the liability of the State for contractual damages; to extend the powers of the Minister to make regulations; to provide for offences to be created in regulations made by the Minister; and to provide for matters incidental thereto; and

- the Employment of Educators Act, 1998 (Act No. 76 of 1998), so as to amend certain definitions; to provide for the exclusion of adult basic education and further education and training centres and institutions from the ambit of the Act; to limit the post levels in regard to which the governing body may make recommendations for appointment to the Head of Department and to extend the powers of the Head of Department in relation to the appointment, promotion or transfer of certain post levels; to extend the provisions in regard to educators deemed to be discharged to include temporary and substitute educators; to prohibit an educator from conducting business with the State and to create an offence in relation thereto; to provide for the disclosure of financial interest of educators; to extend the powers of the Minister to make regulations; and to provide for matters incidental thereto.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 84 of 1996, as amended by sections 1 of Act 100 of 1997, Act 48 of 1999, Act 53 of 2000, Act 57 of 2001, Act 50 of 2002, Act 1 of 2004, Act 24 of 2005, Act 31 of 2007 and Act 15 of 2011**

1. Section 1 of the South African Schools Act, 1996, is hereby amended—
  - (a) by the insertion before the definition of “**Constitution**” of the following definition:
 

“**‘benefit in kind’** means any benefit offered or afforded to the employee which is not a monetary benefit, including, but not limited to—

    - (a) exclusive private usage or ownership of a vehicle;
    - (b) free accommodation;
    - (c) free phone, including cellphone;
    - (d) free holiday;
    - (e) groceries to the benefit of the employee; or
    - (f) garden services;”;
  - (b) by the insertion after the definition of “**benefit in kind**” of the following definition:
 

“**‘competent assessor’** means a qualified *educator* registered with the South African Council for Educators as defined in the South African Council for Educators Act, 2000 (Act No. 31 of 2000), or a person or body registered with the South African Qualifications Authority as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);”;
  - (c) by the deletion in the definition of “**Constitution**” of the expression “(Act No. 108 of 1996);”;
  - (d) by the insertion after the definition of “**dangerous object**” of the following definition:
 

“**‘Department of Basic Education’** means the department established in terms of section 7(2), read with Schedule 1, of the Public Service Act, 1994 (Proclamation No. 103 of 1994), responsible for basic education;”;
  - (e) by the insertion after the definition of “**Head of Department**” of the following definition:
 

“**‘home education’** means a purposeful programme of education for a *learner*, alternative to school attendance, which—

    - (a) is provided under the direction of the learner’s parent primarily in the environment of the learner’s home;
    - (b) may include tutorial or other educational support services secured by the parent; and
    - (c) meets the requirements for registration of a learner for home education contemplated in section 51(2);”;
  - (f) by the insertion after the definition of “**learner**” of the following definition:
 

“**‘liquor’** means liquor as defined in section 1 of the Liquor Act, 2003 (Act No. 59 of 2003);”;
  - (g) by the substitution for the definition of “**loan**” of the following definition:
 

“**‘loan’** means any financial obligation based on agreement, which obligation renders a *public school* liable for making payment, in one or more instalments, in favour of any person, but does not include the payment of staff appointed by the *governing body* in terms of section 20(4) or (5) and the day-to-day operational costs of a *public school* which include, but are not limited to, the purchasing of stationery, and the payment of telephone accounts, internet accounts and municipal services;”;
  - (h) by the insertion after the definition of “**officer**” of the following definition:
 

“**‘other financial benefit’** means any benefit of a monetary nature, including, but not limited to—

    - (a) exemption from the payment of school fees to the school in respect of the child of an employee, but excluding exemption in terms of the provisions of sections 39 to 41 of the Act;
    - (b) a credit card linked to an employee for his or her personal use;

- (c) a petrol card linked to an employee for his or her personal use not related to any school activity;; and
- (i) by the insertion after the definition of “**principal**” of the following definition:  
“‘prohibited substance’ means any substance contemplated in the South African Institute for Drug-Free Sport Act, 1997 (Act No. 14 of 1997).”.

**Amendment of section 3 of Act 84 of 1996, as amended by Act 100 of 1997**

2. Section 3 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (6) of the following subsection:  
 “(6) Subject to *this Act* and any other applicable law—
- (a) any *parent* who, without just cause and after a written notice from the *Head of Department*, fails to comply with subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six **[months]** years, or to both such fine and such imprisonment; or
- (b) any other person who, without just cause, prevents a *learner* who is subject to compulsory attendance from attending a *school*, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six **[months]** years, or to both such fine and such imprisonment.”; and
- (b) by the insertion after subsection (6) of the following subsection:  
 “(7) Any person who wilfully interrupts or disrupts any school activity or who wilfully hinders or obstructs any school in the performance of the school’s activities shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six years or to both such fine and such imprisonment.”.

**Amendment of section 5 of Act 84 of 1996, as amended by section 2 of Act 50 of 2002**

3. Section 5 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (5) of the following subsection:  
 “(5) Subject to *this Act* and any applicable provincial law, the admission policy of a *public school* is determined by the *governing body* of such school: Provided that—
- (a) the *Head of Department* has the final authority, subject to subsection (9), to admit a learner to a *public school*;
- (b) the *governing body* must submit the admission policy of a *public school* and any amendment thereof to the *Head of Department* for approval;
- (c) the *Head of Department* may approve the admission policy of a *public school* or any amendment thereof or he or she may return it to the *governing body* with such recommendations as may be necessary in the circumstances;
- (d) the *Head of Department*, when considering the admission policy or any amendment thereof for approval, must be satisfied that the policy or the amendment thereof takes into account the needs, in general, of the broader community in which the public school is located, and must take into account the following factors, but not limited to:
- (i) The best interests of the child, with emphasis on equality, as provided for in section 9 of the Constitution, and equity;
- (ii) accessibility to a school within the community by learners;
- (iii) the available resources of the school; and
- (iv) the space available at the school for learners; and
- (e) the *governing body* must review the admission policy determined in terms of this section every three years or whenever the factors referred to in paragraph (d) have changed, when circumstances so require, or at the request of the *Head of Department*.”.
- (b) by the substitution for subsection (9) of the following subsection:

“(9) Any learner or parent of a learner who has been refused admission to a *public school* may appeal against the decision to the *Member of the Executive Council* within 14 days of receiving the notification of the refusal of admission to a *public school*.”; and

(c) by the insertion after subsection (9) of the following subsection:

“(10) If an appeal contemplated in subsection (9) has been received, the *Member of the Executive Council* must respond within 21 days of receiving such an appeal.”.

#### Amendment of section 6 of Act 84 of 1996

4. Section 6 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The governing body of a public school may, subject to subsection (5), determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law.”; and

(b) by the insertion after subsection (4) of the following subsections:

“(5) The governing body must submit the language policy of a *public school* and any amendment thereof to the *Head of Department* for approval.

(6) The *Head of Department* may approve the language policy of a *public school* or any amendment thereof or he or she may return it to the governing body with such recommendations as may be necessary in the circumstances.

(7) The *Head of Department*, when considering the language policy or any amendment thereof for approval, must be satisfied that the policy or the amendment thereof takes into account the language needs, in general, of the broader community in which the public school is located, and must take into account the following factors, but not limited to:

(a) The best interests of the child, with emphasis on equality, as provided for in section 9 of the Constitution, and equity;

(b) the dwindling number of learners who speak the language of learning and teaching at the public school; and

(c) the need for effective use of classroom space and resources of the public school.

(8) The governing body must review the language policy determined in terms of this section every three years or whenever the factors referred to in subsection (7) have changed, when circumstances so require, or at the request of the *Head of Department*.

(9) Notwithstanding the provisions of subsection (2), the *Head of Department* may direct a *public school* to adopt more than one language of instruction, where it is practicable to do so.

(10) The *Head of Department*, in determining whether it is practicable for a *public school* to have more than one language of instruction, must take into account the following factors, but not limited to—

(a) the best interests of the child, with emphasis on equality, as provided for in section 9 of the Constitution, and equity;

(b) the dwindling number of learners who speak the language of learning and teaching at the *public school*;

(c) the need for effective use of classroom space and resources of the *public school*; and

(d) the language needs, in general, of the broader community in which the *public school* is located.

(11) The *Head of Department* may not act in terms of subsection (9) unless he or she has—

(a) informed the governing body of the *public school* of his or her intention so to act and his or her reasons therefor;

- (b) granted the governing body of the public school a reasonable opportunity to make representations to him or her in relation to such action;
- (c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such action; and
- (d) given due consideration to any such representations received.”.

(12) The Head of Department must inform the governing body of his or her decision and must make his or her decision known to the community in a suitable manner.

**Amendment of section 6A of Act 84 of 1996, as inserted by section 3 of Act 50 of 2002**

5. Section 6A of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (2) of the following subsection:

“(3) The Minister may, either generally or in a specific case, appoint in writing, a person, an organisation or group of persons to advise him or her in regard to the determination contemplated in subsection (1).”.

**Amendment of section 8 of Act 84 of 1996, as amended by section 4 of Act 50 of 2002 and section 6 of Act 31 of 2007**

6. Section 8 of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

“(2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process, taking into account the diverse cultural beliefs and religious observances of the learners at the school.”;

- (b) by the substitution for subsection (4) of the following subsection:

“(4) (a) The code of conduct must contain an exemption provision, in order for learners or the parent of a learner to make application to the governing body requesting an exemption of that learner from complying with the code of conduct or certain provisions thereof, on just cause shown.

(b) A learner or the parent of a learner who has been refused exemption as contemplated in paragraph (a) may appeal against the decision of the governing body to the Head of Department within 14 days of receiving the notice of the decision.”; and

- (c) by the insertion in subsection (5) after paragraph (b) of the following paragraph:

“(c) The disciplinary proceedings referred to in this subsection must not be rigid and should adhere to the principles of justice, fairness and reasonableness prescribed by the Constitution.”.

**Amendment of section 8A of Act 84 of 1996, as inserted by section 7 of Act 31 of 2007**

7. Section 8A of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) Unless authorised by the principal for legitimate educational purposes, no person may bring liquor, a dangerous object [or], an illegal drug or a prohibited substance onto school premises or have such liquor, dangerous object [or], illegal drug or prohibited substance in his or her possession on school premises or during any school activity.”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) Subject to subsection (3), the *principal* or his or her delegate may, at random, search a learner or any group of learners, or the property of a learner or group of learners, for any liquor, dangerous object [or], illegal drug or prohibited substance, if a fair and reasonable suspicion has been established—

- (a) that liquor, a dangerous object [or], an illegal drug or a prohibited substance may be found on *school* premises or during a *school activity*; or
- (b) that one or more *learners* on *school* premises or [**during**] at a *school activity* are in possession of liquor, dangerous objects [or], illegal drugs or prohibited substances.”;
- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:  
“(5) Any liquor, dangerous object [or], illegal drug or prohibited substance that has been seized must be—”;
- (d) by the substitution for subsection (6) of the following subsection:  
“(6) If the police cannot collect the liquor, dangerous object [or], illegal drug or prohibited substance from the *school* immediately, the *principal* or his or her delegate must—  
(a) take the liquor, dangerous object [or], illegal drug or prohibited substance to the nearest police station; and  
(b) hand the liquor, dangerous object [or], illegal drug or prohibited substance over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).”;
- (e) by the substitution for subsection (7) of the following subsection:  
“(7) The police officer who receives the liquor, dangerous object [or], illegal drug or prohibited substance must issue an official receipt for it to the *principal* or to his or her delegate.”;
- (f) by the substitution for subsection (8) of the following subsection:  
“(8) The *principal* or his or her delegate may at random administer a urine or other non-invasive test to any *learner* or group of learners that is on fair and reasonable grounds suspected of using liquor, illegal drugs or prohibited substances, after taking into account all relevant factors contemplated in subsection (3).”;
- (g) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:  
“(9) A learner contemplated in subsection (8) may be subjected to a urine or other non-invasive test for liquor, illegal drugs or prohibited substances only if—”;
- (h) by the substitution for subsection (12) of the following subsection:  
“(12) A learner may be subjected to disciplinary proceedings if—  
(a) liquor, a dangerous object [or], an illegal drug or a prohibited substance is found in his or her possession; or  
(b) his or her sample tested positive for liquor, an illegal drug or a prohibited substance.”;
- (i) by the substitution in subsection (14) for paragraph (a) of the following paragraph:  
“(a) a search contemplated in subsection (2) was conducted and liquor, a dangerous object [or], an illegal drug or a prohibited substance was found; or”.

#### **Amendment of section 12A of Act 84 of 1996, as amended by section 8 of Act 48 of 1999**

8. Section 12A of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (4) of the following subsection:  
“(4) (a) The Member of the Executive Council must, after consultation with the governing bodies of the public schools that are to be merged, determine by notice contemplated in subsection (1)—  
(i) the date of establishment of the public school;  
(ii) the name of the public school; and  
(iii) the physical location and official address of the public school.

- (b) (b) The single school contemplated in subsection (1) must be regarded as a new public school.”;
- (b) by the substitution for subsection (6) of the following subsection:
- “(6) (a) The governing bodies of the schools that are merged must have a meeting before the merger to constitute a single interim governing body comprising of all the members of the governing bodies concerned for a period not exceeding three months.
- (b) The interim governing body must elect office bearers, decide on the budget [and], differences in codes of conduct [and], school fees, and, if applicable, contractual obligations, utilisation and disposal of movable assets and recommend to the Head of Department on personnel matters, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of sections 23 and 28.
- (c) The Member of the Executive Council may extend the period referred to in paragraph (a) once for a further period not exceeding three months.”; and
- (c) by the insertion after subsection (7) of the following subsections:
- “(8) A merger contemplated in subsection (1) does not affect the liability of any person to be disciplined or prosecuted for any misconduct, crime or offence.
- (9) A learner is subject to the code of conduct applicable to the new single public school as from the date of the merger contemplated in subsection (1), but if any proceedings in respect of a charge of misconduct had been instituted or commenced before the date of the merger, such proceedings must continue in terms of the code of conduct relevant to the public school immediately before the merger.
- (10) The new single public school or the Head of Department, as the case may be, undertake rationalisation of its workforce according to operational requirements in accordance with sections 189 and 189A of the Labour Relations Act, 1995 (Act No. 66 of 1995), and the Employment of Educators Act, 1998 (Act No. 76 of 1998).
- (11) If two or more public schools are merged into a single public school in terms of subsection (1), the new single public school continues with all academic programmes offered by the former public schools under the programmes applicable to the respective public schools immediately before the date of the merger, until such programmes are amended or restructured by the governing body or education department, where applicable.”.

#### Amendment of section 17 of Act 84 of 1996

9. Section 17 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (2) of the following subsection:

“(3) The Member of the Executive Council may for sufficient reasons reverse or suspend his or her determination in terms of subsection (1).”.

#### Amendment of section 20 of Act 84 of 1996, as amended by section 6 of Act 100 of 1997, section 4 of Act 53 of 2000, section 3 of Act 57 of 2001 and section 9 of Act 30 of 2007

10. Section 20 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (i) of the following paragraph:
- “(i) recommend to the Head of Department the appointment of post level 1 educators at the school, subject to the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Labour Relations Act, 1995 (Act No. 66 of 1995);”;
- (b) by the substitution in subsection (1) for paragraph (k) of the following paragraph:

“(k) at the request of the *Head of Department*, allow the reasonable use under fair conditions determined by the *Head of Department* of the facilities of the school for **[educational programmes]** education-related activities [not conducted by the school], without the charging of a fee or tariff.”

#### **Amendment of section 21 of Act 84 of 1996, as amended by section 10 of Act 48 of 1999**

11. Section 21 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (3) of the following subsection:

“(3A) Notwithstanding the provisions of subsections (1)(c) and (3) and section 22, the *Head of Department* may, after consultation with the governing body, centrally procure identified learning support material for public schools on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.”

#### **Amendment of section 22 of Act 84 of 1996**

12. Section 22 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The *Head of Department* may, on reasonable grounds, withdraw **[a] one or more [function] functions** of a governing body.”

#### **Amendment of section 25 of Act 84 of 1996, as amended by section 4 of Act 57 of 2001**

13. Section 25 of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for the heading of the following heading:  
**“Cessation or failure by governing body to perform functions”;**
- (b) by the substitution for subsection (1) of the following subsection:  
 “(1) (a) If the *Head of Department* determines on reasonable grounds **[that] to dissolve a governing body that has ceased to perform functions [allocated to it] as prescribed in terms of this Act, [or has failed to perform one or more of such functions,]** he or she must appoint sufficient persons to perform all such functions **[or one or more of such functions, as the case may be,]** for a period not exceeding three months.  
 (b) If the *Head of Department* determines on reasonable grounds that a governing body has failed to perform one or more of such functions, as prescribed in terms of this Act, he or she must appoint sufficient persons to perform one or more of such functions, as the case may be, for a period not exceeding three months.”;
- (c) by the substitution for subsection (2) of the following subsection:  
 “(2) The *Head of Department* may extend the period referred to in subsection (1)(a) and (b), by further periods not exceeding three months each, but the total period may not exceed one year.”;
- (d) by the substitution for subsection (4) of the following subsection:  
 “(4) If a governing body fails to perform any of its functions, the persons contemplated in subsection (1)(b) must build the necessary capacity within the period of their appointment to ensure that the governing body performs its functions in terms of the Act that it failed to perform.”; and
- (e) by the addition after subsection (4) of the following subsection:  
 “(5) The persons contemplated in subsection (1) shall have exclusive voting rights and decision making powers on any function that they have been appointed to perform.”

#### **Substitution of section 26 of Act 84 of 1996**

14. The following section is hereby substituted for section 26 of the South African Schools Act, 1996:

**“Recusal by members of governing body**

26. (1) A governing body member must declare a direct or indirect personal interest that the member or any of his or her family members has in the procurement of goods and services for the public school, including—

(a) a personal interest of the governing body member or any of his or her family members—

(i) in an entity conducting business with the school; or

(ii) in a business or a commercial or financial activity undertaken by the governing body or the school;

(b) a financial or other obligation of the governing body member to an entity conducting business with the school; and

(c) a gift, hospitality, sponsorship or other benefit received by the governing body member from an entity conducting business with the school.

(2) Any person may in writing inform the chairperson of a governing body or the principal of a school of a possible conflict of interest concerning a governing body member.

(3) A governing body member must withdraw and recuse himself or herself from a meeting of the governing body for the duration of the discussion and decision-making on an issue in which the member has a personal interest.

(4) A governing body may not take a decision on a matter if it has knowledge that a governing body member who is present has a personal interest in that matter, until the member has withdrawn as contemplated in subsection (3).

(5) A governing body member who contravenes the provisions of this section, and after due process, as contemplated in the code of conduct for the members of the governing body, may —

(a) be suspended; or

(b) have his or her membership of a governing body terminated.

(6) This section applies, with the necessary changes, to committees of a governing body and committee members.

(7) For the purposes of this section, “family member” means a parent, a sister, a brother, a child or a spouse of a member of the governing body, and includes—

(a) a person living with that member as if they were married to each other, namely a life partner;

(b) a relative who resides permanently with that member; and

(c) any other relative who is dependent on such member.”.

**Amendment of section 27 of Act 84 of 1996**

15. Section 27 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No member of a governing body may be remunerated in any way for the performance of his or her duties or attendance of meetings and any school activity.”.

**Amendment of section 29 of Act 84 of 1996, as amended by section 12 of Act 48 of 1999**

16. Section 29 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Only a parent member of a governing body who is not employed at the public school may serve as the chairperson of the governing body or as the chairperson of the finance committee of that public school.”.

**Amendment of section 32 of Act 84 of 1996**

17. Section 32 of the South African Schools Act, 1996, is hereby amended by the substitution in the heading of the section for the word “minors” of the word “learners” and in subsections (1), (2) and (3) for the word “minor” of the word “learner”, wherever it appears.

#### **Amendment of section 33 of Act 84 of 1996**

18. Section 33 of the South African Schools Act, 1996 is hereby amended—
- (a) by the deletion in subsection (2) of the word “and” at the end of paragraph (c);
  - (b) by the insertion in subsection (2) of the word “and” at the end of paragraph (d);
  - (c) by the insertion in subsection (2) after paragraph (d) of the following paragraph:
    - “(e) informed the governing body of the school and the community of the outcome of the considerations of their representations.”;
  - (d) by the insertion of the following subsections after subsection (2):
    - “(2A) Notwithstanding the provisions of subsection (2) the Member of the Executive Council may, by notice in the Provincial Gazette, in his or her sole discretion, close a public school if there are no learners registered at that school.
    - “(2B) Notwithstanding the provisions of subsection (2) and subject to the provisions of subsection (2C), the Member of the Executive Council may, by notice in the Provincial Gazette, close a public school if there are 135 or fewer than 135 learners registered at that school.
    - “(2C) The Member of the Executive Council may not act under subsection (2B) unless he or she has—
      - (a) given written notice to the school and the parents of the learners of that school;
      - (b) published a notice in one or more newspapers circulating in the area where the school is situated or by means of any other acceptable form of communication, giving notice of his or her intention to close the school;
      - (c) consulted with the parents of the learners of the school and affording them an opportunity to make representations within a period of not less than 30 days from the date of the notice or communication referred to in paragraph (b);
      - (d) considered such representations; and
      - (e) where applicable, made alternative arrangements for the learners of the school to attend another school that is able to accommodate those learners and, where appropriate, made arrangements for the transport of the learners to that school.”; and
  - (e) by the substitution for subsection (3) of the following subsection:
    - “(3) If a public school is closed in terms of subsection (1), (2A) or (2B) all assets and liabilities of such school must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school.”.

#### **Amendment of section 36 of Act 84 of 1996, as amended by section 5 of Act 57 of 2001 and section 12 of Act 15 of 2011**

19. Section 36 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Despite subsection (1), a governing body may not enter into any loan, lease or overdraft agreement [so as to supplement the school fund] for any purpose, without the written approval of the Member of the Executive Council.”.

#### **Amendment of section 37 of Act 84 of 1996, as amended by section 6 of Act 57 of 2001**

20. Section 37 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The *governing body* of a *public school* must establish a *school fund* and administer it in accordance with [~~directions~~] directives issued by the *Head of Department*.”.

**Amendment of section 38 of Act 84 of 1996, as amended by section 7 of Act 57 of 2001 and section 7 of Act 50 of 2002**

21. Section 38 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (3) of the following subsections:

“(4) Any significant or substantial deviation from the initial approved budget must be presented to a general meeting of *parents* convened specifically for that purpose, on at least 30 days’ notice, for consideration and approval by a majority of *parents* present and voting.

(5) The notice contemplated in subsection (4) must also inform the *parents* that the change to the initial approved budget will be available for inspection at the school at least 14 days prior to the meeting.

(6) A quorum of 15% of *parents* is required for the general meetings of *parents* contemplated in subsections (2) and (4).

(7) If the quorum contemplated in subsection (6) is not reached at the general meeting of *parents*—

(a) the chairperson shall determine the date, time and place for the second meeting of the general meeting and notify *parents* 14 days prior to such meeting ;

(b) the principal shall at least seven days prior to the date of the second general meeting distribute the copy of the notice to every learner at the *school* with an instruction to hand the notice to the *parents*; and

(c) there shall be no quorum required at the second general meeting.”.

**Amendment of section 41 of Act 84 of 1996, as amended by section 5 of Act 24 of 2005**

22. Section 41 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The exemption from payment of *school fees* must be calculated according to the regulations contemplated in section 39(4) and the *governing body* may consider only the following documentation when deciding on the application:

(a) A salary advice of both *parents*, where applicable;

(b) statements of profits received from investments or other forms of business;

(c) a divorce agreement or court order, where applicable;

(d) an affidavit where the *parent* is unemployed; and

(e) proof of all children registered at a *public school*.”; and

(b) by the insertion after subsection (2) of the following subsection:

“(2A) Notwithstanding subsection (2), a *parent* may submit to the governing body documentary evidence in the form of an affidavit supported by a confirmatory affidavit from a social worker or another competent authority, or a court order, which constitutes sufficient proof that the other *parent* of the learner—

(a) is untraceable;

(b) is unwilling to provide the first-mentioned *parent* with particulars of his or her total annual gross income;

(c) has failed to provide the first-mentioned *parent* with particulars of his or her total annual gross income despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned *parent* that he or she do so; or

(d) has provided the first-mentioned *parent* with incomplete or inaccurate particulars about his or her total annual gross income and has refused to

rectify the deficiency or has failed to do so despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned parent that he or she do so.”.

#### **Amendment of section 43 of Act 84 of 1996**

23. Section 43 of the South African Schools Act, 1996, is hereby amended by the substitution for subsections (4) and (5) of the following subsections:

- “(4) If the Head of Department deems it necessary, he or she may—
- (a) authorise officers to conduct an investigation into the financial affairs of a public school, and, where necessary, after consultation with the governing body, access documents relevant for the purposes of the investigation;
  - (b) request the Auditor-General to undertake an audit of the records and financial statements of a public school; or
  - (c) appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a public school.
- (5) A governing body must submit to the Head of Department —
- (a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure in accordance with directives issued by the Head of Department; and
  - (b) within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.”.

#### **Amendment of section 48 of Act 84 of 1996**

24. Section 48 of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
 

“(2) The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to an independent school, subject to conditions determined by the Member of the Executive Council.”; and
- (b) by the insertion after subsection (5) of the following subsection:
 

“(6) An independent school must submit to the Head of Department—

  - (a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure relating to the subsidy contemplated in subsection (2), in accordance with directives issued by the Head of Department; and
  - (b) within six months after the end of each financial year, a copy of the audited or examined annual financial statements relating to the subsidy contemplated in subsection (2).”.

#### **Substitution of section 51 of Act 84 of 1996**

25. The following section is hereby substituted for section 51 of the South African Schools Act, 1996:

##### **Registration of learners for home education**

51. (1) A parent of a learner who is of compulsory school going age may apply to the Head of Department for the registration of the learner to receive home education.
- (2) The Head of Department must approve the application and register the learner as contemplated in subsection (1) if he or she is satisfied that—
- (a) education at home and registration as such is in the interests of the learner;
  - (b) the parent understands, accepts and is equipped to fulfil the responsibility of home education for the learner;

(c) the proposed home education programme is suitable for the learner's age, grade level, ability and covers the acquisition of content and skills at least comparable to the relevant national curriculum determined by the Minister; and

(d) the parent undertakes to—

(i) make suitable educational resources available to support the learner's learning;

(ii) monitor the learner's learning;

(iii) arrange for the learner's educational attainment to be assessed annually by a competent assessor, approved by the Head of Department, at the parent's own expense who will apply a standard that is not inferior to the standard expected in a public school according to the learner's age, grade level and ability; and

(iv) provide the Head of Department with the learner's assessment report signed by the competent assessor.

(3) The Head of Department may attach any reasonable conditions to a learner's registration for home education consistent with subsection (2) that takes into account—

(a) the circumstances of the learner or parent;

(b) the character of home education as an alternative to compulsory school attendance; and

(c) the capacity of the education department to support and monitor the home education of a learner.

(4) A learner who is registered for home education is exempted from school attendance in terms of the Act.

(5) A parent may, after a learner has completed grade 9, enrol the learner at a public school or independent school for the completion of grades 10 to 12.

(6) A parent of a learner who wishes to continue with home education after the learner has completed grade 9, must make use of the services of a private or independent service provider, accredited by Umalusi, established in terms of section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001), to register for the Senior Certificate Examination through an independent or private assessment body.

(7) The Head of Department must cancel a learner's registration for home education if, after enquiry, the Head of Department is satisfied that home education is no longer in the educational interest of the learner.

(8) The Head of Department may not cancel the registration of a learner for home education before—

(a) informing the parent of his or her intention so to act and the reasons therefor;

(b) granting the parent a reasonable opportunity to make representations to him or her relating to such intention; and

(c) giving due consideration to any such representations received.

(9) A learner or the parent of a learner may appeal to the Member of the Executive Council, within 14 days of receiving notice, if a Head of Department—

(a) declines the application to register for home education; or

(b) cancels a learner's registration for home education.

(10) The Minister may make regulations relating to the registration and administration of home education.”.

#### **Amendment of section 59 of Act 84 of 1996, as amended by section 10 of Act 100 of 1997**

26. Section 59 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for the heading of the following heading:

**“Duty [of schools] to provide information”;**

(b) by the substitution for subsection (2) of the following subsection:

“(2) Every school must provide such information about the school as is reasonably required by the Head of Department or the Director General of the

[national] Department of Basic Education in consultation with the Head of Department.”; and

(c) by the insertion after subsection (2) of the following subsection:

“(3) A parent of a learner or any person who, in an application for admission to a public school or for the exemption of the payment of school fees, submits or provides information which he or she knows to be false or misleading, or submits a forged document or one which purports to be but is not a true copy of the original is guilty of an offence and upon conviction liable to a fine or to imprisonment for a period of six months.”.

#### Insertion of section 59A of Act 84 of 1996

27. The following section is hereby inserted in the South African Schools Act, 1996, after section 59:

##### “Dispute Resolution

**59A.** (1) In the event of any dispute between the Head of Department and a governing body, the parties must meaningfully engage each other to resolve the dispute.

(2) In attempting to resolve a dispute, the following steps must be taken:

(a) The aggrieved party must give the other party written notice of the dispute; and  
(b) such notice must include a description of the issues involved in the dispute and a proposed resolution thereof.

(3) If the dispute has not been resolved within 14 days after the issuing of the written notice contemplated in subsection (2), each party must nominate a representative, and those representatives must meet within 14 days after their nomination in order to resolve the dispute.

(4) If the parties cannot reach agreement, the dispute may be referred for mediation to a person agreed upon by the parties.”.

#### Amendment of section 60 of Act 84 of 1996, as amended by section 14 of Act 48 of 1999, section 12 of Act 31 of 2007 and section 14 of Act 15 of 2011

28. Section 60 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Despite the provisions of subsection (1), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a public school for purposes of supplementing the resources of the school as contemplated in section 36, including the offering of practical educational activities relating to that enterprise or business or if the provisions of section 36(2) have not been complied with.”.

#### Amendment of section 61 of Act 84 of 1996, as substituted by section 5 of Act 53 of 2000 and section 9 of Act 50 of 2002

29. Section 61 of the South African Schools Act, 1996, is hereby amended—

(a) by the insertion before the words “The Minister may make regulations” of the expression “(1)”;

(b) by the insertion in subsection (1) of the following paragraphs:

“(aA) on the management of learner pregnancy;

(aB) on the admission of learners to public schools;

(aC) on the prohibition of the payment of unauthorised remuneration or the giving of financial benefit or payment in kind to certain employees;

(aD) on the minimum norms and standards for provincial educator development institutes and district educator development centres;

- (aE) on the organisation, roles and responsibilities of education districts; and  
 (aF) on a national education information system;”; and  
 (c) by the insertion after subsection (1) of the following subsection:  
 “(2) The regulations contemplated in subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding 6 months.”.

**Amendment of section 1 of Act 76 of 1998, as amended by section 6 of Act 53 of 2000, section 58 of Act 16 of 2006 and section 15 of Act 15 of 2011**

30. Section 1 of the Employment of Educators Act, 1998, is hereby amended—  
 (a) by the deletion of the definition of “**adult basic education centre**”;  
 (b) by the substitution for the definition of “**educator**” of the following definition:  
 “**‘educator’** means any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at any public school[,], or departmental office [**or adult basic education centre**] and who is appointed in a post on any educator establishment under this Act;”;  
 (c) by the deletion of the definition of “**further education and training institution**”; and  
 (d) by the substitution for the definition of “**provincial department of education**” of the following definition:  
 “**‘provincial department of education’** means a department responsible for education in a province and includes all public schools[,], **further education and training institutions,** and departmental offices [**and basic adult education centres**] in such province;”.

**Amendment of section 5 of Act 76 of 1998**

31. Section 5 of the Employment of Educators Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The educator establishment of any public school[,], **further education and training institution,** or departmental office [**or adult basic education centre**] under the control of a provincial department of education shall, subject to the norms prescribed for the provisioning of posts, consist of the posts allocated to the said school[,], **institution,** or office [**or centre**] by the Head of Department from the educator establishment of that department.”.

**Amendment of section 6 of Act 76 of 1998, as amended by section 58 of Act 16 of 2006**

32. Section 6 of the Employment of Educators Act, 1998, is hereby amended—  
 (a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:  
 “(a) (i) Subject to paragraph (m), any appointment[,], **promotion**] or transfer to any post level 1 post on the *educator* establishment of a public school may only be made on the recommendation of the governing body of the public school and, if there are post level 1 educators in the *provincial department of education* concerned who are in excess of the educator establishment of a public school due to operational requirements, that recommendation may only be made from candidates identified by the Head of Department, who are in excess and suitable for the post concerned.”;  
 (b) by the insertion in subsection (3) after paragraph (a)(i) of the following subparagraph:  
 “(ii) Subject to paragraph (m), any appointment, promotion or transfer to any promotional posts on post levels 2 to 4 on the *educator* establishment of a public school shall be determined from candidates identified by the Head of Department, in the manner prescribed by regulation by the Minister.”;

(c) by the substitution in subsection (3) for the words in paragraph (b) preceding subparagraph (i) of the following words:

“(b) In considering the applications, the governing body or [the council] the Head of Department, as the case may be, must ensure that the principles of equity, redress and representivity are complied with and the governing body or [council] the Head of Department, as the case may be, must adhere to—”;

(d) by the substitution in subsection (3) for paragraph (f) of the following paragraph:

“(f) Despite the order of preference in paragraph (c) and subject to paragraph (d), the Head of Department may appoint any suitable post level 1 candidate on the list.”;

(e) by the substitution in subsection (3) for paragraph (m) of the following paragraph:

“(m) Until the relevant governing body is established, the appointment, promotion or transfer in a temporary capacity to any post on the *educator* establishment, must be made by the Head of Department where a new public school is established in terms of the South African Schools Act, 1996, and any applicable provincial law.”;

(f) by the insertion after subsection (3) of the following subsection:

“(4) Notwithstanding the provisions of subsection (3), educators on post levels 2 to 4, will be appointed directly by the Head of Department.”.

#### **Amendment of section 6A of Act 76 of 1998, as inserted by section 10 of Act 50 of 2002**

33. Section 6A of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

“(a) consulted the relevant governing body on the specific post level 1 post and the requirements thereof;

(b) ensured that the applicant to be appointed matches the requirements of the post level 1 post; and”.

#### **Amendment of section 7 of Act 76 of 1998**

34. Section 7 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) In the making of any appointment, promotion or the filling of any post on any educator establishment under this Act due regard shall be had to equality, equity and the other democratic values and principles which are contemplated in section 195 (1) of the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)], and which include the following factors, namely—”;

and

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) in a permanent capacity or in a promotional post, whether on probation or not;”.

#### **Amendment of section 8 of Act 76 of 1998, as amended by section 16 of Act 48 of 1999, section 11 of Act 50 of 2002 and section 58 of Act 16 of 2006**

35. Section 8 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) Subject to subsections (4) and (5), no transfer to any post level 1 post on the *educator* establishment of a public school shall be made unless the recommendation of the governing body of the public school has been obtained.”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) A recommendation contemplated in subsection (2) shall be made within two months from the date on which a governing body [or council] was requested to make a recommendation, failing which the Head of Department may make a transfer without such recommendation.”; and

(c) by the substitution for subsection (7) of the following subsection:

“(7) Despite section 6(3)(a) and subsection (2), in the case of an educator who has been awarded a bursary by the employer to follow a course approved by the employer, the employer may transfer such an *educator*, with his or her consent, to any suitable post on the educator establishment of a public school [or an adult education and training centre].”.

#### Amendment of section 9 of Act 76 of 1998

36. Section 9 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) another department of education or another department.”.

#### Amendment of section 11 of Act 76 of 1998

37. Section 11 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:

“(b) on account of the abolition of the educator’s post or any reduction in, or reorganisation or re-adjustment of the post establishments of, departments, schools[, institutions,] or offices [or centres];

(c) if, for reasons other than the educator’s own unfitness or incapacity, the educator’s discharge will promote efficiency or economy in the department, school[, institution,] or office [or centre] in which the educator is employed, or will otherwise be in the interest of the State;”.

#### Amendment of section 14 of Act 76 of 1998

38. Section 14 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) An educator [appointed in a permanent capacity] who —”.

#### Amendment of section 18 of Act 76 of 1998

39. Section 18 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) wilfully or negligently mismanages the finances of the State[, or a school [or an adult learning centre];”;

(b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) without permission possesses or wrongfully uses the property of the State, a school, [an adult learning centre,] another employee or a visitor;”;

(c) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) wilfully, intentionally or negligently damages or causes loss to the property of the State[, or a school [or an adult learning centre];”;

(d) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) unjustifiably prejudices the administration, discipline or efficiency of the Department of Basic Education, a provincial department of education, an office of the State or a school [or adult learning centre];”;

(e) by the substitution in subsection (1) for paragraph (g) of the following paragraph:

“(g) misuses his or her position in the Department of Basic Education, a provincial department of education or a school [or adult learning centre] to promote or to prejudice the interests of any person;”.

**The insertion of section 19 in Act 76 of 1998**

40. The Employment of Educators Act, 1998, is hereby amended by the insertion after section 18 of the following section:

**“Conducting business with State**

- 19.** (1) An educator may not—  
 (a) conduct business with the State; or  
 (b) be a director of a public or private company conducting business with the State.  
 (2) A contravention of subsection (1)—  
 (a) is an offence, and any person found guilty of the offence is liable to a fine or to imprisonment for a period not exceeding 5 years or both such fine and imprisonment;  
and  
 (b) constitutes serious misconduct which may result in the termination of employment by the employer.”

**The insertion of section 20 in Act 76 of 1998**

41. The Employment of Educators Act, 1998, is hereby amended by the insertion after section 19 of the following section:

**“Disclosure of financial interest**

- 20.** (1) An educator must, in the prescribed manner, disclose to the relevant Head of Department all his or her financial interests and the financial interests of his or her spouse and a person living with that person as if they were married to each other, including all—  
 (a) shares and other financial interests in an entity;  
 (b) sponsorships;  
 (c) gifts above the prescribed value, other than gifts received from a family member;  
 (d) benefits; and  
 (e) immovable property.  
 (2) Failure by an educator to comply with the obligation referred to in subsection (1) constitutes misconduct.”

**Amendment of section 35 of Act 76 of 1998**

42. Section 35 of the Employment of Educators Act, 1998, is hereby amended by the insertion after paragraph (c) of the following paragraph:

- “(cA) norms and standards for district staffing;”

**Repeal of section 38 of Act 76 of 1998**

43. Section 38 of the Employment of Educators Act, 1998, is hereby repealed.

**Amendment of Schedule 2 of Act 76 of 1998**

44. Schedule 1 of the Employment of Educators Act, 1998, is hereby amended by the substitution for paragraph (a) of subitem 1(2) of the following paragraph:

- “(a) the extent to which the incapacity impacts on the work of the Department of Basic Education, the [or] provincial department of education, or the public school[, public further education and training institution or public adult learning centre];”

**Amendment of Schedule 1 of Act 76 of 1998**

45. Schedule 2 of the Employment of Educators Act, 1998, is hereby amended by the substitution for paragraph (a) of subitem 3(3) of the following paragraph:

“(a) the extent to which the misconduct impacts on the work of the Department of Basic Education, the [or] provincial department of education, or the public school[, **public further education and training institution or public adult learning centre**]”.

**Short title**

46. This Act is called the Basic Education Laws Amendment Act, 2015, and comes into operation on a date fixed by the President by proclamation in the *Government Gazette*.