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REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE AMENDMENTS TO

EDUCATION LAWS AMENDMENT BILL

[B 85—97]

(As agreed to by the Portfolio Committee on Education (National Assembly))

[B 85A—97]

REPUBLIEK VAN SUID-AFRIKA

PORTEFEULJEKOMITEE-AMENDEMENTE OP

WYSIGINGSWETSONTWERP OP ONDERWYSWETTE

[w /?5-97]

(Soos goedgekeur deur die Porte ;feuljekomitee oor Onderwys (Nasionale Vergadering))

[W 85A—97]

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AMENDMENTS AGREED TO

EDUCATION LAWS AMENDMENT BILL
[B 85–97]

CLAUSE 6

1. On page *4,* in line 42, after *"Act"* to insert:

   , the Labour Relations Act, 1995 (Act No. 66 of 1995),

2. On page 4, 'in line 42, to omit "the *governing' body* of".

3. On page 4, in line 46, after *"Act"* to insert:

   , the Labour Relations Act, 1995 (Act No. 66 of 1995),

4. On page *4,* in line 46, to omit "the *governing body* of".

5. On page 4, in lines 51 and 52, to ornit "other applicable laws, and policy pertaining to the provision of education to such school" and to substitute:

   the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law

6. On page 4, after line 55, to insert the following subsections:

   (8) The staff contemplated in subsections (4) and (5) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and the factors to be taken into account when making appointments include, but are not limited to—
   (a) the ability of the candidate;
   (b) the principle of equity;
   (c) the need to redress past injustices; and
   (d) the need for representivity.

   (9) When presenting the annual budget contemplated in section 38, the governing body of a public school must provide sufficient details of any posts envisaged in terms of subsections (4) and (5), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met.

   (10) Despite section 60, the State is not liable for any act or omission by the public school relating to its contractual responsibility as the employer in respect of staff employed in terms of subsections (4) and (5).

   (11) After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Minister may determine norms and standards by notice in the *Gazette* regarding the funds used for the employment of staff referred to in subsections (4) and (5), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 9:

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Amendment of section 59 of Act 84 of 1996

10. Section 59 of the South African Schools Act, 1996, is hereby amended 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 Education in consultation with the Head of Department.".

CLAUSE 10

Clause rejected.

CLAUSE 11

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses to follow Clause 9:

Amendment of section 3 of Act 27 of 1996

10. Section 3 of the National Education Policy Act, 1996, is hereby amended—

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

"(2) In determining national policy for education at education institutions, the Minister shall take into account the competence of the provincial legislatures in terms of section [126] 146 of the Constitution, and the relevant provisions of any provincial law relating to education."; and

(b) by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words:

"Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, **[staffing,]** co-ordination, management, governance, programmed, monitoring, evaluation and well-being of the education system and, without derogating from the generality of this section, may determine national policy for—".

Amendment of section 4 of Act 27 of 1996

11. Section 4 of the National Education Policy Act, 1996, is hereby amended by the substitution in paragraph *(a)* for the words preceding subparagraph (i) of the following words:

"*(a)* the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter [3] 2 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right-".

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Amendment of section 9 of Act 27 of 1996

12. Section **9** of the National Education Policy Act, 1996, is hereby amended by the substitution in subsection (4) for paragraph *(a)* of the following paragraph:

"*(a)* promote a national education policy which takes full account of the policies of the government, the principles contained in section 4, the education interests and needs of the provinces, and the respective competence of Parliament and the provincial legislatures in terms of section [126] 146 of the Constitution;".

Amendment of section 1 of Proclamation No. 138 of 1994, as amended by item 1 of Schedule 2 to Act 84 of 1996

13. Section 1 of the Educators' Employment Act, 1994, is hereby amended by the deletion, in the definition of "employer", of paragraph *(d)*.

NEW CLAUSES

1. That the following be new Clauses to follow Clause 12:

Repeal of section 3A of Proclamation No. 138 of 1994, as amended by item 3 of Schedule 2 to Act 84 of 1996

13. Section 3A of the Educators' Employment Act, 1994, is hereby repealed.

Amendment of section 4 of Proclamation No. 138 of 1994, as amended by item 4 of Schedule 2 to Act 84 of 1996

14. Section 4 of the Educators' Employment Act, 1994, is hereby amended—

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

"(1) The [qualifications] requirements for appointment, transfer and promotion [as an educator] shall be determined by the Minister.";

(b) by the substitution for subsection (3) of the following subsection:

"(3) The [authority to] employer shall fill a post referred to in section 3(1) and (3) at a public school [in terms of subsection] subject to subsections (2) [is exercised] and (4) on the recommendation of [a] that public school, as represented by its governing body, and the employer may only deviate from such recommendation if—

(u) the candidate does not **[have the required qualifications]** comply with the requirements referred to in subsection (1);

(b) the candidate [has been found guilty of misconduct] is not registered or does not qualify for registration as an educator with the South African Council of Educators; or

(c) sufficient proof exists that the recommendation made by the school was based on improper influence;";

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(c) by the insertion after subsection (3) of the following subsection, the existing subsection (4) becoming subsection (5):

"(4) The public school shall make its recommendations in terms of subsection (3) from candidates identified by the employer if the number of posts on the establishment contemplated in section 3(1) and (3) is reduced by the employer due to operational requirements as contemplated in the Labour Relations Act, 1995 (Act No. 66 of 199$).";

"

and

(d) by the substitution for subsection (5) of the following subsection:

"(5) The requirements contemplated in subsection (1) must comply with the basic values and principles referred to in section 195 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and the factors to be taken into account in determining the requirements include, but are not limited to-

(a) the ability of the candidate;

(b) the principle of equity;

(c) the need to redress past injustices; and

(d) the need for representivity. ".

NEW CLAUSES

1. That the following be new Clauses to follow Clause 13:.

Amendment of section 15 of Proclamation No. 138 of 1994

14. Section 15 of the Educators' Employment Act, 1994, is hereby amended by the substitution for subsection (1) of the following subsection:

"Hearing by disciplinary tribunal

15. (1) If an educator charged in terms of section 14(1) denies the charge or fails to comply with the notice contemplated in section 14(3), the employer shall appoint a disciplinary tribunal consisting of a chairperson and two other persons, one of whom shall be nominated by the educator or the employee member of which such an educator is a member, to inquire into the charge.".

Amendment of section 18 of Proclamation No. 138 of 1994

15. Section 18 of the Educators' Employment Act, 1994, is hereby amended by the substitution in subsection (4) for paragraph (c)of the following paragraph:

"(c) one member nominated by the educator or employee member of which such educator is a member: Provided that if the educator or employee member concerned fails to nominate such a member within a reasonable time, the Member of the Executive Council shall appoint the member.".

CLAUSE 16

Clause rejected.

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NEW CLAUSE

1. That the following be a new Clause to follow Clause 15:

Short title

16. This is the Education Laws Amendment Act, 1997.

LONG TITLE

Long Title rejected.

NEW LONG TITLE

1. That the following be a new Long Title:

To amend the South African Schools Act, 1996, so as to insert a definition and substitute others; to enable public schools to appoint educator and non-educator staff additional to the approved establishment; and to make certain technical adjustments; to amend the National Education Policy Act, 1996, so as to make certain technical adjustments; and to delete an obsolete provision; to amend the Educators' Employment Act, 1994, so as to enable the Minister to determine requirements for appointment, transfer and promotion of educators; to provide for a process to enable public schools to make recommendations for the appointment, transfer or promotion of educators as a result of operational requirements of the employer; to make certain technical adjustments; and to delete obsolete provisions; to repeal the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984; and to provide for matters connected therewith.