
GENERAL NOTICE

NOTICE 828 OF 2001

DEPARTMENT OF EDUCATION

INVITATION FOR COMMENT ON THE DRAFT BILLS, 2001

The Minister of Education hereby publishes the following Bills for comment:

- (a) Education Laws Amendment Bill, 2001
- (b) General and Further Education and Training Quality Assurance Bill, 2001
- (c) Higher Education Amendment Bill, 2001

All interested parties and organisations are invited to comment in writing on the draft Bills and to direct the comments to:

The Director-General, Department of Education, Private Bag X895, Pretoria, 0001, for attention: Ms M Locke, Fax No. (012) 326-9128 or by e-mail: locke.m@educ.pwv.gov.za.

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

The comments should reach the department not later than 7 May 2001.

PROFESSOR KADER ASMAL, MP

MINISTER OF EDUCATION

DATE:

EDUCATION LAWS AMENDMENT BILL, 2001

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.

BILL

To amend the South African Schools Act, 1996 so as to provide for the representative council of learners as the only recognised student body at a school; to make further provisions on the failure of a governing body to perform its functions; to provide for the prohibition of public school from raising money by means of loans or overdraft or paying moneys into a trust; to provide for technical adjustment to existing provisions; to amend the Employment of Educators Act, 1998 so as to substitute a definition and to provide for technical adjustment to existing provisions; to amend the Further Education and Training Act, 1998 so as to provide for further provisions on loans and overdrafts; and to provide for matters connected therewith.

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

Amendment of section 11 of Act 84 of 1996, as amended by section 3 of Act 100 of 1997

1. Section 11 of the South African Schools Act, 1996, is hereby amended-

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

“(1) A representative council of learners at the school must be established at every public school enrolling learners in the eight grade or higher, and this council must be the only recognised student body at the school.”.

- (b) by the substitution for subsection (2) of the following subsection:
- “(2) a Member of the Executive Council may, by notice in the Provincial Gazette, determine **[guidelines]** the establishment, election and functions of representative council of learners.”.

Amendment of Section 15 of Act 84 of 1996

2. The South African Schools Act, 1996, is hereby amended by the substitution for section 15 of the following section:

“Status of public schools

15. Every public school is a juristic person [, **with legal capacity to perform**] only for the purpose of performing its functions as prescribed by the [in terms of this] Act.”.

Amendment of section 20 of Act 84 of 1996

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

- “(i) recommend to the Head of Department the appointment of educators at the school, subject to the **[Educators Employment Act, 1994 (Proclamation 138 of 1994)]** Employment of Educators Act, 1998, (Act No. 76 of 1998), and the Labour Relations Act, 1995 (Act No. 66 of 1995);”.

Amendment of section 25 of Act 84 of 1996

4. Section 25 of the South African Schools Act, 1996, is hereby amended-

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

- “(1) If a governing body has ceased to perform all of its functions or fails to perform any of its functions in terms of this Act, the Head of Department **[must]** may appoint sufficient persons to perform **[those]** all the functions or

a specific function of the governing body for a period not exceeding three months.”.

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

“(3) If a governing body has ceased to perform all of its functions, [The] the Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).”.

- (c) by the insertion after subsection (3) of the following subsection:

“(4) If a governing body fails to perform any of its functions, the persons contemplated in subsection (1) must build the necessary capacity within the period of their appointment to ensure that the governing body will perform its functions.”.

Substitution of section 36 of Act 84 of 1996

5. The following section is hereby substituted for section 36 of the South African Schools Act, 1996:

“Responsibility of governing body

“**36(1)** A governing body of a public school must take all reasonable measures within its means to supplement the resources supplied by the State in order to improve the quality of education provided by the school to all learners at the school.

(2) Despite subsection (1), the governing body may not enter into any loan or overdraft agreement so as to supplement the school fund.”.

(3) If a person lends money or grants an overdraft to a public school, the State or the public school may not be bound by the contract of lending money or an overdraft agreement.”.

Amendment of section 37 of Act 84 of 1996

6. Section 37 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (4) of the following subsections:

“(4A) No moneys from school fund of a public school may be paid into a trust or be used to establish a trust.

(4B) Any trust established from moneys of school fund of a public school or where such moneys were paid into a trust prior to 1 January 2002, such trust or payment is invalid and the moneys so paid must be paid back into the school fund.

(4C) No governing body of a public school may collect any monies or contributions from parents to establish or fund a trust, and if any money or contribution of parents were paid into a trust prior to 1 January 2002, such monies or contributions must be paid by the trust into the school fund.”.

Amendment of section 38 of Act 84 of 1996

7. Section 38 of the South African Schools Act, 1996, is hereby amended by the substitution of subsection (1) of the following subsection:

“(1) A governing body of a public school must prepare a budget each year, according to **[guidelines]** prescriptions determined by the Member of the Executive Council in a Provincial Gazette, which shows the estimated income and expenditure of the school for the following financial year.”.

Amendment of section 1 of Act 76 of 1998

8. Section 1 of the Employment of Educators Act, 1998, is hereby amended 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 **[support]**, including professional therapy and education psychological services, at any public school, further education and training institution, departmental office or adult basic education centre and who is appointed in a post of any educator establishment under this Act;”.

Amendment of item 2 of Schedule 2 to Act 76 of 1998

9. Item 2 of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for subparagraph (iv) of paragraph (d) of the following subparagraph:

“(iv) have the right to appeal against **[any]** a finding or sanction contemplated in section 25(2);”.

Amendment of item 4 of Schedule 2 to Act 76 of 1998

10. Item 4 of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended-

(a) by the substitution for subparagraph (f) of subitem (4) of the following subparagraph:

“(f) If, during the six-month period, the educator is subject to disciplinary action, the written warning and the written objection or additional information by the educator, if applicable, may be taken into account in deciding on an appropriate sanction;”.

(b) by the substitution for subparagraph (f) of subitem (5) of the following subparagraph:

“(f) If, during the six-month period, the educator is subject to disciplinary action, the final written warning and the written objection or additional information by the educator, if applicable, may be taken into account in deciding on an appropriate sanction;”.

Amendment of item 5 of Schedule 2 to Act 76 of 1998

11. Item 5 of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for paragraph (e) of subitem (2) of the following paragraph:

“(e) information on the rights of the educator to representation by a legal representative, if the **[employer]** presiding officer so directs; and”.

Amendment of Form A of Schedule 2 to Act 76 of 1998

12. Form A of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for Form A of the following Form:

FORM A

WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, this written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

If you object to the warning or wish to furnish additional information, you may lodge a written objection or addition which will be filed together with this warning.

The nature of the misconduct is:

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER
DATE

SIGNATURE OF EMPLOYEE
DATE

SIGNATURE OF WITNESS (if applicable)
DATE

Amendment of Form B of Schedule 2 to Act 76 of 1998

13. Form B of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for Form B of the following Form:

FORM B

FINAL WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a final written warning in terms of the disciplinary procedure. Should you engage in further **[transgressions]**, misconduct it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

Should you wish to do so, you may lodge a written objection to this final warning, or provide additional information which will be filed together with this final warning.

The nature of the misconduct is:

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER
DATE

SIGNATURE OF EMPLOYEE
DATE

SIGNATURE OF WITNESS (if applicable)
DATE

Amendment of Form B of Schedule 2 to Act 76 of 1998

13. Form B of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for Form B of the following Form:

FORM B

FINAL WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a final written warning in terms of the disciplinary procedure. Should you engage in further **[transgressions]**, misconduct it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

Should you wish to do so, you may lodge a written objection to this final warning, or provide additional information which will be filed together with this final warning.

The nature of the misconduct is:

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER

DATE

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

Amendment of Form C of Schedule 2 to Act 76 of 1998

14. Form C of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for Form C of the following Form:

FORM C

NOTICE OF DISCIPLINARY MEETING

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

You are hereby given notice to attend a disciplinary hearing in terms of item 6 of the Disciplinary Code.

The alleged misconduct **[and the available evidence]** is based on the following evidence:

[A DETAILED DESCRIPTION OF THE ALLEGED MISCONDUCT MAY BE ATTACHED.]

The hearing will be held at _____ [PLACE] on _____ [DATE] at _____ [TIME]. If you do not attend and cannot provide reasonable grounds for failing to attend, the hearing will be held in your absence.

A fellow employee or a representative of a recognised union may represent you at the hearing. If the presiding officer so directs, you may also be represented by a legal representative.

You may give evidence at the hearing and adduce evidence in the form of documents or through witnesses. You are entitled to question any witness called by the employer.

If the presiding officer finds that you are guilty of misconduct, you may present any relevant circumstances which you wish to be taken into account by the presiding officer in determining the sanction.

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER
DATE

ACKNOWLEDGEMENT OF RECEIPT BY EMPLOYEE
DATE

SIGNATURE OF WITNESS (if applicable)
DATE

Amendment of Form D of Schedule 2 to Act 76 of 1998

15. Form D of Schedule 2 to the Employment of Educators Act, 1998, is hereby amended by the substitution for Form D of the following Form:

FORM D

SUMMONS TO APPEAR AT DISCIPLINARY HEARING

DATE:

TO: _____
(Name and residential address of person summoned)

You are hereby summoned to appear personally on the _____ day of _____ 20__ at _____ (time) at _____ (place) before the presiding officer of a disciplinary hearing in terms of Schedule 2 to the

Employment of Educators Act, 1998 (Act No. 76 of 1998), for the purpose of giving evidence regarding the following misconduct:

_____ and to submit the following book, document or object in your possession, custody or control, which may have a bearing on the matter;

(specify the book, document or object)

SIGNATURE OF REPRESENTATIVE [OR] OF THE EMPLOYER

Substitution of section 20 of Act 98 of 1998

16. The following section is hereby substituted for section 20 of the Further Education and Training Act, 1998:

"Funds of a public further education and training institutions

- "20(1) The funds of a public further education and training institution consists of-
- (a) funds allocated by the State;
 - (b) any donations or contributions received by the institution;
 - (c) money raised by the institution;
 - (d) money raised by means of loans subject to the approval of the Member of the Executive Council;
 - (e) income derived from investments;
 - (f) money received for services rendered to any other institution or person;
 - (g) money payable by students for further education and training programmes proved by the institution;
 - (h) money received from students or employees of the institution for accommodation or other services provided by the institution; and
 - (i) other funds from any other source.

EXPLANATORY MEMORANDUM ON THE EDUCATION LAWS AMENDMENT BILL, 2001

1. INTRODUCTION

The Bill provides for the amendment of the South African Schools Act, 1996; the Employment of Educators Act, 1998; and the Further Education and Training Act, 1998.

2. BACKGROUND

The Acts were amended as so to make the necessary technical adjustments and to close loopholes apparent in the Acts. The Minister of Education has indicated in parliament that regulations concerning representivity in governing bodies of public schools will be drafted. These regulations will be published after a further process of consultations with the relevant role players. These proposed regulations are not part of this Bill.

3. DISCUSSION

3.1 The South African Schools Act, 1996

3.1.1 Section 11 is amended as so to make the representative council of learners the only recognized student body at public schools and to omit the word "guidelines" because it makes room for alternatives.

3.1.2 Section 15 is amended to bring legal certainty by ensuring that the governing body of a public school may only perform the specific functions as prescribed by the Act.

3.1.3 Section 20 is amended for technical adjustment. It refers to Educators Employment Act, 1994, an Act which has been repealed by the Employment of Educators Act, 1998.

3.1.4 Section 25 has been amended so as to allow the intervention of the Head of Department not only in cases where the governing body is unable to perform all its functions, but also in cases where it is unable to perform any of its functions. Furthermore, persons who are appointed to perform all the functions or any of the functions of the governing body are also required to build the necessary capacity to ensure that the governing body is able to perform its functions. The intention of the Public Finance Management Act, 1999, is that all statutory bodies must perform their functions within their budgets and that there can be no deficit balances in such budgets.

It is further to be noted that if a public school can not comply with its obligations or liabilities, the State will be liable to compensate claims against the public school.

3.1.5 Section 36 is amended so as to prohibit the governing body from applying for overdrafts or to raise money by means of loans.

3.1.6 Section 37 is amended so as to prohibit the governing body from establishing a trust from school funds or to pay school fees into a trust. The intention of the South African Schools Act, 1996, by establishing a public school as a juristic entity with a protected school fund, was to create an entity similar to that of a trust. A tendency has developed where public schools establish trusts which falls outside the ambit of the South African Schools Act, 1996. This has the potential of diverting away potential compulsory school fees into that trust.

As a trust deed can be amended by the trustees at any stage, including the beneficiary, such trusts can lead to abuses.

3.1.7 Section 38 is amended so as to omit the word “guidelines” because guidelines may be followed with some adjustments, which are not contemplated in the Act. It is crucial that the budget of a public school must conform to the standards set by the State to all public schools. This amendment seeks to ensure that there is uniformity of standards of a budget in a province.

3.2 The Employment of Educators Act, 1998

3.2.1 Section 1 is amended so as to make technical adjustments to the definition of “educator”. The definition now includes persons who provide professional support, such as departmental officers.

3.2.2 Item 2 of Schedule 2 is amended because an educator does not have the right to appeal to any decision but only to a finding or sanction made by a presiding officer in a disciplinary hearing. There is no right for appeal against any finding and sanction in the informal disciplinary process. This amendment addresses the ambiguity apparent in the current legislation.

3.2.3 Item 4 of Schedule 2 is amended so as to allow the presiding officer to consider a written objection or additional information by the educator to the written warning or final written warning by the supervisor of the educator.

3.2.4 Item 5 of Schedule 2 is amended to make technical adjustment because it is the presiding officer who must decide whether or not the accused educator should have a legal representative and not the employer. This is consistent with the provisions of the Promotion of Administrative Justice Act, 2000.

3.2.5 Forms A to D have been amended so as to indicate the authority that must sign the forms.

3.3 The Further Education and Training Act, 1998

3.3.1 Section 20 is amended so as to prohibit public institutions from raising overdrafts or loans without the approval of the Member of the Executive Council. If a person grants such an overdraft or loan without the set approval, the institution or State will not be bound by the agreement.

3.3.2 Section 49 is amended so as to prohibit existing public institutions such as technical colleges from raising money by means of loans or overdrafts without the approval of the Member of the Executive Council.

4. FINANCIAL IMPLICATIONS

None.

5. PARLIAMENTARY PROCEDURE

The Department of Education is of the opinion that the procedures contemplated in sections 73 and 76 of the Constitution should be followed.