

EDUCATION LAWS AMENDMENT BILL

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

(MINISTER OF EDUCATION)

[B 33B—2007]

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[] 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 National Education Policy Act, 1996, so as to substitute the provision relating to consultation on the national education policy; and to amend the provision for the establishment of consultative bodies; to amend the South African Schools Act, 1996, so as to insert certain definitions; to provide for minimum norms and standards for infrastructure and capacity in public schools; to provide for random search and seizure and drug testing at schools; to provide for the functions and responsibilities of a principal; to substitute a reference to obsolete legislation; and to regulate the identification of underperforming schools; to amend the National Student Financial Aid Scheme Act, 1999, so as to effect certain technical adjustments; and to extend the functions of the board to cover eligible students at public further education and training colleges; to amend the South African Council of Educators Act, 2000, the Adult Basic Education and Training Act, 2000, and the General and Further Education and Training Quality Assurance Act, 2001, so as to effect certain technical adjustments; and to provide for matters connected therewith.

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

Amendment of section 5 of Act 27 of 1996, as amended by section 5 of Act 48 of 1999

1. Section 5 of the National Education Policy Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection: 5

“(1) Policy contemplated in section 3 shall be determined by the Minister after consultation with such appropriate consultative bodies as have been established for that purpose in terms of section 11 or any other applicable law, and with the Council.”.

Amendment of section 6 of Act 27 of 1996 10

2. Section 6 of the National Education Policy Act, 1996, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) all the parties in the Education Labour Relations Council established by [section 6 of the Education Labour Relations Act, 1993 (Act No. 146 of 1993)] section 40 of the Labour Relations Act, 1995 (Act No. 66 of 1995), in 15
respect of any matter falling within the objectives of that Act.”.

Amendment of section 11 of Act 27 of 1996

3. Section 11 of the National Education Policy Act, 1996, is hereby amended by—

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

“(1) The Minister may by regulation establish a body to be known as the National Education and Training Council (NETC) and other bodies to advise him or her on any matter contemplated in section 3 or any matter identified by the Minister.”; and

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

“(2) The composition, qualifications for membership, duties, powers and functions of a body established in terms of subsection (1), and the term of office of its members, shall be as prescribed by regulation[: **Provided that the bodies referred to in section 5(1)(c), shall be invited to nominate representatives to any such consultative body within their respective spheres of interest**].”.

Amendment of section 1 of Act 84 of 1996 as amended by section 1 of Act 100 of 1997, section 6 of Act 48 of 1999, section 1 of Act 50 of 2002 and section 1 of Act 24 of 2005

4. Section 1 of the South African Schools Act, 1996, is hereby amended by—

(a) the insertion after the definition of “**Council of Education Ministers**” of the following definition:

“**‘dangerous object’** means—

- (a) any explosive material or device;
- (b) any firearm or gas weapon;
- (c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or
- (d) any object that the *Minister* may, by notice in the *Gazette*, declare to be a dangerous object for the purpose of this Act;”;

(b) the insertion after the definition of “**Head of Department**” of the following definition:

“**‘illegal drug’** means—

- (a) any unlawful substance that has a psychological or physiological effect; or
- (b) any substance having such effect that is possessed unlawfully;”;

(c) the insertion after the definition of “**school**” of the following definition:

“**‘school activity’** means any official educational, cultural, recreational or social activity of the *school* within or outside the *school* premises;”.

Insertion of section 5A in Act 84 of 1996

5. The South African Schools Act, 1996, is hereby amended by the insertion after section 5 of the following section:

“Norms and standards for basic infrastructure and capacity in public schools

5A. (1) The *Minister* may, by regulation, prescribe minimum uniform norms and standards for—

- (a) *school* infrastructure;
- (b) capacity of a *school* in respect of the number of *learners* a *school* can admit; and
- (c) the provision of learning and teaching support material.

(2) The norms and standards contemplated in subsection (1) must provide for, but not be limited to, the following:

- (a) In respect of *school* infrastructure, the availability of—
 - (i) classrooms;
 - (ii) electricity;
 - (iii) water;
 - (iv) sanitation;

- (v) a library;
- (vi) laboratories for science, technology, mathematics and life sciences;
- (vii) recreational facilities;
- (viii) electronic connectivity at a *school*; and
- (ix) perimeter security;
- (b) in respect of the capacity of a *school*—
 - (i) the number of teachers and the class size;
 - (ii) quality of performance of a *school*;
 - (iii) curriculum and extra-curricular choices;
 - (iv) classroom size; and
 - (v) utilisation of available classrooms of a *school*;
- (c) in respect of provision of learning and teaching support material, the availability of—
 - (i) stationery and supplies;
 - (ii) learning material;
 - (iii) teaching material and equipment;
 - (iv) science, technology, mathematics and life sciences apparatus;
 - (v) electronic equipment; and
 - (vi) *school* furniture and other *school* equipment.
- (3) When determining policy in terms of sections 5(5) and 6(2) a *governing body* must comply with the norms and standards contemplated in subsection (1).
- (4) A *governing body* must, within a period of 12 months after the *Minister* has prescribed the norms and standards contemplated in subsection (1), review any policy that it has determined in terms of sections 5(5) and 6(2) to ensure that such policy complies with the norms and standards.”.

Amendment of section 8 of Act 84 of 1996 as amended by section 4 of Act No. 50 of 2002

6. Section 8 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) (a) A code of conduct must contain provisions of due process safe-guarding the interests of the *learner* and any other party involved in disciplinary proceedings.

(b) The code of conduct must also provide for support measures or structures for counselling a *learner* involved in disciplinary proceedings.”.

Insertion of section 8A in Act 84 of 1996

7. The South African Schools Act, 1996, is hereby amended by the insertion after section 8 of the following section:

“Random search and seizure and drug testing at schools

8A. (1) Unless authorised by the *principal* for legitimate educational purposes, no person may bring a *dangerous object* or *illegal drug* onto *school* premises or have such object or drug in his or her possession on *school* premises or during any *school activity*.

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

(a) that a *dangerous object* or an *illegal drug* may be found on *school* premises or during a *school activity*; or

(b) that one or more *learners* on *school* premises or during a *school activity* are in possession of *dangerous objects* or *illegal drugs*.

(3) (a) A search contemplated in subsection (2) may only be conducted after taking into account all relevant factors, including —

(i) the best interest of the *learners* in question or of any other *learner* at the *school*;

- (ii) the safety and health of the *learners* in question or of any other *learner* at the *school*;
- (iii) reasonable evidence of illegal activity; and
- (iv) all relevant evidence received.
- (b) When conducting a search contemplated in subsection (2), the *principal* or his or her delegate must do so in a manner that is reasonable and proportional to the suspected illegal activity.
- (4) Where a search contemplated in subsection (2) entails a body search of the learners in question, such search may only—
- (a) be conducted by—
 - (i) the *principal*, if he or she is of the same gender as the *learner*; or
 - (ii) by the *principal's* delegate, who must be of the same gender as the *learner*;
- (b) be done in a private area, and not in view of another *learner*;
- (c) be done if one adult witness, of the same gender as the learner, is present; and
- (d) be done if it does not extend to a search of a body cavity of the learner.
- (5) Any *dangerous object* or *illegal drug* that has been seized must be—
- (a) clearly and correctly labelled with full particulars, including—
 - (i) the name of *learner* in whose possession it was found;
 - (ii) the time and date of search and seizure;
 - (iii) an incident reference number;
 - (iv) the name of person who searched the *learner*;
 - (v) the name of the witness; and
 - (vi) any other details that may be necessary to identify the item and incident;
- (b) recorded in the school record book; and
- (c) handed over to the police immediately to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (6) If the police cannot collect the *dangerous object* or *illegal drug* from the *school* immediately, the *principal* or his or her delegate must—
- (a) take the *dangerous object* or *illegal drug* to the nearest police station; and
- (b) hand the *dangerous object* or *illegal drug* over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (7) The police officer who receives the *dangerous object* or *illegal drug* must issue an official receipt for it to the *principal* or to his or her delegate.
- (8) The *principal* or his or her delegate may at *random* administer a urine or other non-invasive test to a *learner* who is on fair and reasonable grounds suspected of using *illegal drugs*, after taking into account all relevant factors contemplated in subsection (3).
- (9) A *learner* contemplated in subsection (8) may be subjected to a urine or other non-invasive test for *illegal drugs* only if—
 - (a) the test is conducted by a person of the same gender;
 - (b) it is done in a private area and not in view of another *learner*;
 - (c) one adult witness, of the same gender as the *learner*, is present;
 - (d) the sample is clearly and correctly labelled with full particulars as contemplated in subsection (5), with the necessary changes; and
 - (e) a device contemplated in subsection (11) is used.
- (10) The *principal* or his or her delegate must—
 - (a) within one working day, if practicable, inform the *parent* that a random test or search and seizure was done in respect of his or her child; and
 - (b) inform the *learner* and his or her *parent* of the result of the test immediately after it becomes available.
- (11) The *Minister* must—
 - (a) identify the device with which the test contemplated in subsection (8) is to be done and the procedure to be followed; and
 - (b) publish the name of this device, and any other relevant information about it, in the *Gazette*.
- (12) A *learner* may be subjected to disciplinary proceedings if—
 - (a) a *dangerous object* or *illegal drug* is found in his or her possession; or

- (b) his or her sample tested positive for an *illegal drug*.
- (13) Any disciplinary proceedings in respect of a *learner* must be conducted in terms of the code of conduct contemplated in section 8.
- (14) No criminal proceedings may be instituted by the *school* against a *learner* in respect of whom—
- (a) a search contemplated in subsection (2) was conducted and a *dangerous object* or *illegal drug* was found; or
- (b) a test contemplated in subsection (8) was conducted, which proved to be positive.”.

Insertion of section 16A in Act 84 of 1996

8. The South African Schools Act, 1996, is hereby amended by the insertion after section 16 of the following section:

“Functions and responsibilities of *principal of public school*

- 16A.** (1) (a) The *principal* of a *public school* represents the *Head of Department* in the *governing body* when acting in an official capacity as contemplated in sections 23(1)(b) and 24(1)(j).
- (b) The *principal* must prepare and submit to the *Head of Department* an annual report in respect of—
- (i) the academic performance of that *school* in relation to minimum outcomes and standards and procedures for assessment determined by the *Minister* in terms of section 6A; and
- (ii) the effective use of available resources.
- (c) (i) The *principal* of a *public school* identified by the *Head of Department* in terms of section 58B must annually, at the beginning of the year, prepare a plan setting out how academic performance at the *school* will be improved.
- (ii) The academic performance improvement plan must be—
- (aa) presented to the *Head of Department* on a date determined by him or her; and
- (bb) tabled at a *governing body* meeting.
- (iii) The *Head of Department* may approve the academic performance improvement plan or return it to the *principal* with such recommendations as may be necessary in the circumstances.
- (iv) If the *Head of Department* approves the academic performance improvement plan the *principal* must, by 30 June, report to the *Head of Department* and the *governing body* on progress made in implementing that plan.
- (v) The *Head of Department* may extend the date contemplated subparagraph (iv) on good cause shown.
- (2) The *principal* must—
- (a) in undertaking the professional management of a *public school* as contemplated in section 16(3), carry out duties which include, but are not limited to—
- (i) the implementation of all the educational programmes and curriculum activities;
- (ii) the management of all *educators* and support staff;
- (iii) the management of the use of learning support material and other equipment;
- (iv) the performance of functions delegated to him or her by the *Head of Department* in terms of this Act;
- (v) the safekeeping of all *school* records; and
- (vi) the implementation of policy and legislation;
- (b) attend and participate in all meetings of the *governing body*;
- (c) provide the *governing body* with a report about the professional management relating to the *public school*;
- (d) assist the *governing body* in handling disciplinary matters pertaining to *learners*;

- (e) assist the *Head of Department* in handling disciplinary matters pertaining to *educators* and support staff employed by the *Head of Department*;
 - (f) inform the *governing body* about policy and legislation; and
 - (g) provide accurate data to the *Head of Department* when requested to do so. 5
- (3) The *principal* must assist the *governing body* in the performance of its functions and responsibilities, but such assistance or participation may not be in conflict with—
- (a) instructions of the *Head of Department*; 10
 - (b) legislation or policy;
 - (c) an obligation that he or she has towards the *Head of Department*, the *Member of the Executive Council* or the *Minister*; or
 - (d) a provision of the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Personnel Administration Measures determined in terms thereof. 15
- (4) A *principal* may not, on behalf of the *governing body*, give evidence against the *Minister*, the *Member of the Executive Council* or *Head of Department*, unless—
- (a) a court of law directs otherwise; or 20
 - (b) the *principal* is not required to be a witness on behalf of the *Minister*, *Member of the Executive Council* or *Head of Department*.

Amendment of section 20 of Act 84 of 1996

9. Section 20 of the South African Schools Act, 1996, is hereby amended by—
- (a) the insertion in subsection (1) after paragraph (e) of the following paragraph: 25

“(eA) adhere to any actions taken by the Head of Department in terms of section 16 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), to address the incapacity of a principal or educator to carry out his or her duties effectively;”;
 - (b) the substitution in subsection (1) for paragraph (g) of the following paragraph: 30

“(g) administer and control the *school's* property, and buildings and grounds occupied by the *school*, including *school* hostels, **[if applicable;]** but the exercise of this power must not in any manner interfere with or otherwise hamper the implementation of a decision made by the Member of the Executive Council or Head of Department in terms of any law or policy;”;
 - (c) the insertion in subsection (1) after paragraph (j) of the following paragraph: 35

“(jA) make the recommendation contemplated in paragraph (j) within the time frames contemplated in section 6(3)(l) of the Employment of Educators Act, 1998 (Act No. 76 of 1998).” 40

Amendment of section 43 of Act 84 of 1996

10. Section 43 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 appoint a person registered as an **[accountant and]** auditor in terms of the **[Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991)] Auditing Profession Act, 2005 (Act No. 26 of 2005)**, to audit the records and financial statements referred to in section 42.”. 45

Insertion of sections 58B and 58C in Act 84 of 1996

11. The South African Schools Act, 1996 is hereby amended by the insertion after section 58A of the following sections: 50

“Identification of underperforming public schools

- 58B.** (1) The *Head of Department* must, annually, from the report contemplated in section 16A(1)(b) and from other relevant reports, identify any *public school* that is underperforming in relation to any matter referred to in subsection (2)(a), (b) or (c). 55

(2) The *Head of Department* must issue a written notice to the *school* contemplated in subsection (1), if he or she is satisfied that—

- (a) the standard of performance of *learners* is below the standards prescribed by the National Curriculum Statement and is likely to remain so unless the *Head of Department* exercises his or her power in terms of *this Act*; 5
- (b) there has been a serious breakdown in the way the *school* is managed or governed which is prejudicing, or likely to prejudice, the standards of performance; or
- (c) the safety of *learners* or staff is threatened. 10

(3) The written notice contemplated in subsection (2) must inform the *school* that it must—

- (a) within 14 days after delivery of the notice, respond to the notice; and
- (b) as soon as possible after that response, provide the *Head of Department* with a plan for correcting the situation. 15

(4) The *Head of Department* must take all reasonable steps to assist a *school* identified in terms of subsection (1) in addressing the underperformance.

(5) Without limiting the nature and extent of the steps contemplated in subsection (4), the *Head of Department* must consider— 20

- (a) implementing the incapacity code and procedures for poor work performance referred to in section 16 of the Employment of Educators Act, 1998 (Act No. 76 of 1998);
- (b) withdrawing the functions of the *governing body* in terms of section 22; or 25
- (c) appointing persons in terms of section 25 to perform the functions or specified functions of the *governing body*.

(6) The counselling of the *principal* as contemplated in Item 2(5)(b)(ii) of Schedule 1 to the Employment of Educators Act, 1998 (Act No. 76 of 1998), may include the appointment of an academic mentor to take over the functions and responsibilities of the *principal* for the period determined by the *Head of Department*. 30

(7) In order to assist the *Minister* in carrying out his or her duties referred to in section 8 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the *Member of the Executive Council* must report to the *Minister* within three months after the end of a *school* year on the action taken by the *Head of Department* in regard to an underperforming *public school*. 35

Compliance with norms and standards

58C. (1) The *Member of the Executive Council* must, in accordance with an implementation protocol contemplated in section 35 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), ensure compliance with— 40

- (a) norms and standards determined in terms of sections 5A, 6(1), 20(11), 35 and 48(1);
- (b) minimum outcomes and standards set in terms of section 6A; and 45
- (c) performance standards contemplated in Item 2(2) of Schedule 1 to the Employment of Educators Act, 1998 (Act No. 76 of 1998), (in this section jointly referred to as 'norms and standards').

(2) The *Member of the Executive Council* must ensure that the policy determined by a *governing body* in terms of sections 5(5) and 6(2) complies with the norms and standards. 50

(3) The *Member of the Executive Council* must, annually, report to the *Minister* the extent to which the norms and standards have been complied with or, if they have not been complied with, indicate the measures that will be taken to comply. 55

(4) Any dispute between the *Minister* and a *Member of the Executive Council* in respect of non-compliance with the norms and standards contemplated in subsection (1) must—

- (a) be dealt with in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution and the 60

- provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005); and
- (b) whenever necessary, be settled in accordance with Chapter 4 of the Intergovernmental Relations Framework Act, 2005.
- (5) The *Head of Department* must comply with all norms and standards contemplated in subsection (1) within a specific *public school* year by—
- (a) identifying resources with which to comply with such norms and standards;
- (b) identifying the risk areas for compliance;
- (c) developing a compliance plan for the province, in which all norms and standards and the extent of compliance must be reflected;
- (d) developing protocols with the *schools* on how to comply with norms and standards and manage the risk areas; and
- (e) reporting to the *Member of the Executive Council* on the state of compliance and on the measures contemplated in paragraphs (a) to (d), before 30 September of each year.
- (6) The *Head of Department* must—
- (a) in accordance with the norms and standards contemplated in section 5A determine the minimum and maximum capacity of a *public school* in relation to the availability of classrooms and *educators*, as well as the curriculum programme of such *school*; and
- (b) in respect of each *public school* in the province, communicate such determination to the chairperson of the *governing body* and the *principal*, in writing, by not later than 30 September of each year.”.

Amendment of section 60 of Act 84 of 1996

12. Section 60 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) (a) [The] Subject to paragraph (b), the State is liable for any damage or loss caused as a result of any act or omission in connection with any [educational] school activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.
- (b) Where a public school has taken out insurance and the school activity is an eventuality covered by the insurance policy, the liability of the State is limited to the extent that the damage or loss has not been compensated in terms of the policy.”.

Amendment of section 1 of Act 56 of 1999

13. Section 1 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by—

- (a) the substitution for the definition of “**designated higher education institution**” of the following definition:
- “**‘designated public college or designated higher education institution’** means a public college or a higher education institution with which the NSFAS has entered into an agreement in terms of section 20;”;
- (b) the insertion after the definition of “**financial year**” of the following definition:
- “**‘further education and training’** has the meaning assigned to it in the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);”;
- (c) the substitution for the definition of “**loan**” of the following definition:
- “**‘loan’** means a loan granted to a person by the NSFAS in order to enable the person to defray the costs connected with his or her education at a designated public college or designated higher education institution, and those connected with the board and lodging of that person for purposes of attending the institution;”;
- (d) the insertion after the definition of “**NSFAS**” of the following definition:
- “**‘public college’** means a public college as defined in the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);”;

- (e) the substitution for the definition of “student” of the following definition:
 “ ‘**student**’ means any person registered as a student at a public college
or at a higher education institution;”.

Amendment of section 2 of Act 56 of 1999

14. The following section is hereby substituted for section 2 of the National Student Financial Aid Scheme Act, 1999:

“Purpose of Act

- 2.** (1) The purpose of this Act is to establish a financial aid scheme for students at public colleges or at higher education institutions.
 (2) The aim of the NSFAS is to provide financial aid to eligible students who meet the criteria for admission to a further education and training programme or to a higher education programme.”.

Amendment of section 5 of Act 56 of 1999

15. Section 5 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by—

- (a) the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(b) the membership taken as a whole—
 (i) is broadly representative of the further education and training system, the higher education system and related interests;
 (ii) has deep knowledge and understanding of further education and training and higher education;
 (iii) has financial expertise and experience;
 (iv) appreciates the role of the further education and training and higher education [system] systems in reconstruction and development; and
 (v) has known and attested commitment to the interests of further education and training and higher education; and”; and
 (b) the substitution in subsection (3)(c) for subparagraphs (v) and (vi) of the following subparagraphs:
 “(v) **[technikon]** university of technology principals;
 (vi) **[higher education]** further education and training college principals;”.

Amendment of section 20 of Act 56 of 1999

16. Section 20 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by—

- (a) the substitution for the heading to that section of the following heading:
“Designated public college and designated higher education institution”;
 (b) the substitution for subsection (1) of the following subsection:
 “(1) The board may enter into an agreement with a public college or a higher education institution which agrees to become a designated public college or designated higher education institution for purposes of administering loans and bursaries to students of that institution on behalf of the NSFAS.”; and
 (c) the substitution for subsection (3) of the following subsection:
 “(3) A designated public college or designated higher education institution must—
 (a) at such intervals as are agreed on by the college or institution and the board, report to the board on the progress made by a borrower or a bursar with regard to the course of study followed by him or her; and
 (b) immediately notify the board if a borrower or bursar discontinues his or her studies.”.

Amendment of section 25 of Act 56 of 1999

17. Section 25 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

- “(1) Every science, research and professional council, every public college and higher education institution, and any other person or body who grants loans or bursaries to students must provide the NSFAS with such information as the NSFAS may reasonably require for the performance of its functions in terms of this Act; 5
- (2) The NSFAS must on request provide such information as may be reasonably required by the science, research and professional councils, public colleges and higher education institutions and any other persons or bodies who grant loans or bursaries to students.”. 10

Substitution of long title of Act 56 of 1999

18. The following long title is hereby substituted for the long title of the National Student Financial Aid Scheme Act, 1999: 15

“To establish the National Student Financial Aid Scheme [(NSFAS)]; to provide for the management, governance and administration of the [NSFAS] scheme; to provide for the granting of loans and bursaries to eligible students at public colleges and public higher education institutions and for the administration of such loans and bursaries; to provide for the recovery of loans; to provide for the repeal of the Provision of Special Funds for Tertiary Education and Training Act, 1993; and to provide for matters connected therewith.”. 20

Amendment of section 1 of Act 31 of 2000

19. Section 1 of the South African Council for Educators Act, 2000, is hereby amended by the deletion of the definition of “**further education and training institution**”. 25

Amendment of section 3 of Act 31 of 2000

20. Section 3 of the South African Council for Educators Act, 2000, is hereby amended by the substitution for section 3 of the following section:

“Application of Act” 30

3. This Act applies to all educators, lecturers and management staff of colleges appointed—

- (a) in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998);
- (b) in terms of the South African Schools Act, 1996 (Act No. 84 of 1996); 35
- (c) **[at an independent school]** in terms of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);
- (d) **[in terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998)]** in terms of the Public Service Act, 1994 (Proclamation 103 of 1994); 40
- (e) **[at a further education and training institution;]** at an independent school; or
- (f) at an adult learning centre.”.

Amendment of section 6 of Act 31 of 2000

21. Section 6 of the South African Council for Educators Act, 2000, is hereby amended by— 45

- (a) the substitution in subsection (1) for paragraph (b) of the following paragraph: 50
- “(b) **[18]** 14 educators and 4 lecturers collectively nominated by the organised profession;”;
- (b) the substitution in subsection (1) for paragraph (f) of the following paragraph: 55
- “(f) one person nominated by the councils **[of further education and training institutions]** contemplated in **[section 8]** section 9 of the **[Further Education and Training Act, 1998 (Act No. 98 of 1998)]** Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006);”;

(c) the substitution for subsection (2) of the following subsection:

“(2) The members referred to in subsection (1)(b) must **[consist of]** be educators, lecturers, **[including]** and principals[,] employed at or in **[each of]** the following institutions or sectors:

- (a) A public ordinary school; 5
- (b) an independent school;
- (c) a public further education and training **[institution]** college;
- (d) a private further education and training **[institution]** college;
- (e) early childhood development sector;
- (f) an adult learning centre; or 10
- (g) the learners with special education needs sector.”.

Amendment of section 1 of Act 52 of 2000

22. Section 1 of the Adult Basic Education and Training Act, 2000, is hereby amended by the deletion of the definition of “**auditor**”.

Amendment of section 8 of Act 52 of 2000 15

23. Section 8 of the Adult Basic Education and Training Act, 2000, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every public centre **[must establish a governing body]**, except a public centre contemplated in section 21(1)(d) of the South African Schools Act, 1996 (Act No. 84 of 1996),**[for section 9 of the Further Education and Training Act, 1998 (Act No. 98 of 1998)]** must establish a governing body.” 20

Amendment of section 24 of Act 52 of 2000

24. Section 24 of the Adult Basic Education and Training Act, 2000, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The governing body of a public centre must appoint a person registered as an **[accountant and]** auditor in terms of the **[Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)]** Auditing Profession Act, 2005 (Act No. 26 of 2005), to audit the records and financial statements referred to in subsection (1).” 25

Substitution of section 2 of Act 58 of 2001

25. The following section is hereby substituted for section 2 of the General and Further Education and Training Quality Assurance Act, 2001: 30

“Application of Act

2. This Act applies to all education institutions which have been established, declared or registered under the—

- (a) South African Schools Act, 1996 (Act No. 84 of 1996); 35
- (b) **[Further Education and Training Act, 1998 (Act No. 98 of 1998)]** Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006); or
- (c) Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000).”.

Amendment of section 15 of Act 58 of 2001 40

26. Section 15 of the General and Further Education and Training Quality Assurance Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The statements of account and balance sheet of the Council must be audited at the end of each financial year by a person registered as an **[accountant and]** auditor in terms of the **[Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)]** Auditing Profession Act, 2005 (Act No. 26 of 2005), and appointed by the Council with the approval of the Auditor-General.” 45

Short Title

27. This Act is called the Education Laws Amendment Act, 2007. 50

MEMORANDUM ON THE OBJECTS OF THE EDUCATION LAWS AMENDMENT BILL, 2007

1. MAIN OBJECT OF BILL

The Bill seeks to amend the following Acts:

- 1.1 National Education Policy Act, 1996 (Act No. 27 of 1996) (the NEPA);
- 1.2 South African Schools Act, 1996 (Act No. 84 of 1996) (the SASA);
- 1.3 National Student Financial Aid Scheme Act, 1999 (Act No. 56 of 1999) (the NSFASA);
- 1.4 South African Council for Educators Act, 2000 (Act No. 31 of 2000);
- 1.5 Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000); and
- 1.6 General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001).

2. MAIN FEATURES OF BILL

2.1 Technical amendments

The Further Education and Training Act, 1998 (Act No. 98 of 1998), was repealed by section 58 of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), thus all references to the former Act in other legislation need to be deleted. Similarly, the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), was repealed by the Auditing Profession Act, 2005 (Act No. 26 of 2005).

2.2 Substantive amendments

Minister's consultative function

The Bill seeks to amend section 5 of the NEPA so as to avoid a measure of overlapping with section 11 of the NEPA. The effect of the amendment would be that paragraph (a) to (f) would be deleted. Those paragraphs refer to bodies that have to be consulted when policy is determined. Trade unions and representatives from the national governing body association engage with the Minister in other forums, such as the Education Labour Relations Council and the Forum for National Governing Body Associations. Trade unions also meet the Minister on request to discuss policy on labour issues. In addition, the Department always provides the unions and the national governing associations with policy and legislation for comment before these documents are finalised.

Norms and standards

The Bill seeks to provide for the Minister to prescribe national minimum norms and standards regarding school infrastructure, capacity and matters such as learning and teaching support materials. This will ensure not only that schools provide quality education, but also that there is uniformity throughout the country.

Dangerous objects and illegal drugs

The Regulations for Safety Measures at Schools did not adequately address the mischief that they were designed to remedy—that is, to stop the proliferation of dangerous objects and illegal drugs at schools. It was therefore necessary to strengthen these Regulations by way of allowing random search and seizure and drug testing at schools. The new provisions provide clear guidelines about circumstances under which searches and drug testing should be conducted.

Principal's functions

The SASA expressly lists the functions and obligations of the school governing body, but fails to do so in the case of the principal. To remedy this shortcoming, the proposed section 16A clearly spells out the functions and responsibilities of the principal of a public school. This is intended to create legal certainty regarding the functions and responsibilities of the principal vis-à-vis those of the governing body.

These functions and responsibilities have also been linked to the Employment of Educators Act, No. 76 of 1998 (the EEA), and the Personnel Administration Measures of 1999 (the PAM), to make it clear that the principal is officially representing the Head of Department when he or she is acting as a member of the governing body.

Governing body

The Bill also seeks to require governing bodies of public schools to support the Head of Department when dealing with a principal who lacks capacity for performing his or her duties effectively.

In terms of section 20(1)(g) the governing body of a public school administers and controls school property. Section 58A of the SASA authorises the Head of Department to make an inventory of all the assets of a public school. That section also prohibits the alienation of school assets without the approval of a Member of the Executive Council of a province. The proposed amendment to section 20(1)(g) is intended to avoid a dead-lock between the governing body on the one hand, and the Head of Department and MEC on the other, where a decision of the Head of Department on the MEC has to be implemented.

Underperforming schools

Proposed section 58B seeks to authorise the Head of Department to identify an underperforming school. It also seeks to set out the steps the Head of Department must take after he or she has identified such school. These steps include, amongst others, the sending of a written notice to the school and, if necessary, the appointment of a person to perform the functions of the governing body and a person to serve as mentor for the principal so as to improve the performance of the school.

Compliance with norms and standards

Proposed section 58C seeks to require the MEC and the Head of Department to ensure compliance with and to implement norms and standards relating to schools prescribed by the Minister. It also provides that the MEC must annually report to the Minister on the progress made in complying with such norms and standards.

Financial assistance to certain students

The NSFASA was designed to provide bursaries and loans to students studying at tertiary institutions only. The Act is being amended so as to extend the functions of the Board to cater for students who have been admitted at further education and training colleges also. The proposed amendment would extend financial aid to more students.

3. OTHER DEPARTMENTS AND BODIES CONSULTED

The Bill was published for public comment in Government Gazette No. 29868 of 4 May, with the closing date 28 May 2007. However, comments were received and accepted up until 31 May 2007. The Department received 37 comments from various categories of stakeholders. These comments were incorporated into the Bill on merit.

The categories of stakeholders include the following:

- Other departments
- Teacher Unions
- Schools
- Individuals
- National Governing Body Associations
- the Commission for Gender Equality
- The Independent Schools Association of South Africa
- Soul City, Institute for Health and Development Communication
- The South African Principals' Association
- The Office of the Chief of Police: Tshwane Metropolitan Police Department

4. FINANCIAL IMPLICATIONS

There will be minimal financial implications, such as buying the testing device or other non-invasive testing equipment. These will be covered by provincial school budget allocations.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Education are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(2) of the Constitution, since it falls within a functional area listed in Schedule 4 of the Constitution, namely “Education at all levels, excluding tertiary education”.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain any provisions pertaining to customary law or to the customs of traditional communities.