

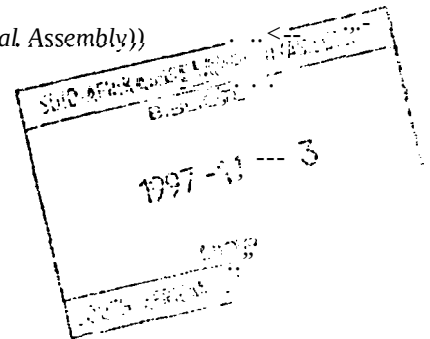
REPUBLIC OF SOUTH AFRICA

EDUCATION LAWS AMENDMENT BILL

(As amended by the Portfolio Committee on Education (National Assembly))

(MINISTER OF EDUCATION)

[B 85B—97]



REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP ONDERWYSWETTE

(Soos gewysig deur die Portefeuljekomitee oor Onderwys (Nasionale Vergadering))

(MINISTER VAN ONDERWYS)

[W 85B—97]

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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 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.

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

Amendment of section 1 of Act 84 of 1996

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

“Registrar of deeds” means the *registrar of deeds* referred to in section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);”;
 - (b) by the substitution for the definition of “Constitution” of the following definition:

“Constitution” means the *Constitution* of the Republic of South Africa, [1993 (Act No. 200 of 1993)] 1996 (Act No. 108 of 1996);”;
 - (c) by the substitution for the definition of “school” of the following definition:

“school” means a *public school* or an *independent school* which enrolls learners in one or more grades [between] from grade zero [and] to 15 grade twelve;”.

Amendment of section 2 of Act 84 of 1996

2. Section 2 of the South African Schools Act, 1996, is hereby amended by the addition to subsection (3) of the following words:

“and this Act.”.

Amendment of section 11 of Act 84 of 1996

3. Section 11 of the South African Schools Act, 1996, is hereby amended 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 eighth grade [and] *or* higher.”.

Amendment of section 13 of Act 84 of 1996

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

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

“(7) The [registrar of any deeds registry] *Registrar of deeds* may not execute, attest to or register a transfer deed in respect of the immovable property in question unless the owner has provided the [registrar] *Registrar of deeds* with proof of the agreement contemplated in subsection (6).”;

(b) by the substitution in the Afrikaans text for subsection (8) of the following subsection:

“(8) Die *bepalings* van die [Wet op die] Registrasie van Aktes *Wet*, 1937 (Wet No. 47 van 1937), is nie van toepassing op die *reg* beoog in subartikel (2) nie.”;

(c) by the addition of the following subsection:

“(9) On application by the owner and on production of the owner’s copy of the title deed, the *Registrar of deeds* must endorse on the title deed and in his or her records the fact that a *public school* has been established on the land in terms of *this Act*.”.

Amendment of section 14 of Act 84 of 1996

5. Section 14 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution in subsection (5), for the words preceding paragraph (a) of the following words:

“Despite subsection (3), a [registrar of a deeds registry] *Registrar of deeds* must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the [registrar] *Registrar of deeds* receives—”;

(b) by the insertion after subsection (6) of the following subsection, the existing subsection (7) becoming subsection (8):

“(7) *The Registrar of deeds may cancel any endorsement made in accordance with subsection (5) if the owner of the property submits an affidavit from the Member of the Executive Council of the province in which the public school is situated to the effect that such public school has been closed in terms of section 33.*”.

Amendment of section 20 of Act 84 of 1996

6. Section 20 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

“(4) Subject to *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a *public school* may establish posts for *educators* and employ *educators* additional to the establishment determined by the *Member of the Executive Council* in terms of section 3(1) of the Educators’ Employment Act, 1994.

(5) Subject to *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a *public school* may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(6) An *educator* and a non-educator employed in a post established in terms of subsection (4) or (5) must comply with the requirements set for employment in *public schools* in terms of *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law.

(7) A *public school* may only employ an *educator* in a post established in terms of subsection (4) **if such educator is registered as an educator** with the South African Council of Educators.

(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 actor 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.”.

Amendment of section 24 of Act 84 of 1996

7. Section 24 of the South African Schools Act, 1996, is hereby amended by the addition to subsection (1) of the following paragraph:

“(j) the *principal* in his or her official capacity.”.

Amendment of section 39 of Act 84 of 1996

8. Section 39 of the South African Schools Act, 1996, is hereby amended by the substitution in the Afrikaans text for paragraph (b) of subsection (2), of the following paragraph:

“(b) billike maatstawwe en procedures vir die algehele, gedeeltelike of voorwaardelike vrystelling [deur die beheerliggaam] van *ouers* wat nie in staat is om skoolgeld te betaal nie.”.

Amendment of section 55 of Act 84 of 1996

9. Section 55 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

“(1 1) The *Registrar of deeds* in the office where the immovable property of a school is registered, must, on submission of the title deed in question, make such endorsement on the title deed and such entry in the register as may be required to register the transfer of the immovable property.

(12) Any immovable property belonging to the State which was used by a *school* and not transferred or endorsed into the name of the *school* contemplated in subsection (1) remains the property of the State.

(13) Any immovable property which was transferred into the name of a *school* contemplated in subsection (1) must, if such *school* is subsequently closed in terms of this Act or any other applicable law, devolve upon the State.”.

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*.”.

Amendment of section 3 of Act 27 of 1996

11. 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, [stafEng,] co-ordination, management, governance, programmes, 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

12. 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-”.

Amendment of section 9 of Act 27 of 1996

13. 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

14. Section 1 of the Educators’ Employment Act, 1994, is hereby amended by the deletion, in the definition of “employer”, of paragraph (d).

Amendment of section 3 of Proclamation 138 of 1994, as amended by item 2 of Schedule 2 to Act 84 of 1996

15. Section 3 of the Educators’ Employment Act, 1994, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary contained in any other law, but subject to this Act [and the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984 (Act No. 76 of 1984)], the educator establishment at an educational institution in a province shall consist of the posts which the Member of the Executive Council creates and the educator establishment of the Department of Education shall consist of the posts which the Minister creates..’.

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

16. 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

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

- (a) by the substitution for subsection (1) of the following subsection: 5
 “(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: 10
 “(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) and (4) [is exercised] on the recommendation of [a] that public school, as represented by its governing body, and the employer may only deviate from such recommendation if—:-
- (a) 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 15
- (c) sufficient proof exists that the recommendation made by the school was based on improper influence;”;
- (c) by the insertion after subsection (3) of the following subsection, the existing 20
 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 1995).”; and 25
- (d) by the substitution for subsection (5) of the following subsection: 30
 “(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; 35
- (c) the need to redress past injustices; and
- (d) the need for representivity. ”.

Amendment of section 5 of Proclamation 138 of 1994, as amended by item 5 of Schedule 2 to Act 84 of 1996

18. Section 5 of the Educators' Employment Act, 1994, is hereby amended by the 40
 substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Notwithstanding anything to the contrary contained in any other law, but subject to the provisions of [the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984 (**Act No. 76 of 1984**), and] the Labour 45
 Relations Act—”.

Amendment of section 15 of Proclamation No. 138 of 1994

19. 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 50

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 55
 into the charge.”.

Amendment of section 18 of Proclamation No. 138 of 1994

20. 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 5 employee member concerned fails to nominate such a member within a reasonable time, the Member of the Executive Council shall appoint the member.”.

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Repeal of Act 76 of 1984

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21. The National Policy on the Salaries and Conditions of Employment of Educators 10 Act, 1984 (Act No. 76 of 1984), is hereby repealed.

Transitional provision

22. Any educator who has been appointed in an unsubsidised post contemplated in section 3A of the Educators' Employment Act, 1994 (Proclamation No. 138 of 1994), must, as long as his or her contractual arrangements are still in force, be regarded as 15 being employed in terms of section 20(4) of the South African Schools Act, 1996 (Act No. 84 of 1996).

Short title

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

MEMORANDUM ON THE OBJECTS OF THE EDUCATION LAWS AMENDMENT BILL, 1997

1. AMENDMENT OF SOUTH AFRICAN SCHOOLS ACT, 1996 ..

During the parliamentary processes when the South African Schools Act, 1996, was tabled in Parliament, the Minister undertook to address an outstanding issue namely the ability of public schools to employ educators and non-educator staff additional to the approved establishment of such schools. The employment of such educators and non-educator staff will be the responsibility of the governing body and such employees must be compensated out of the school funds raised by parents of the school for this purpose.

The South African Schools Act came into effect on 1 January 1997. During the implementation of the Act a few shortcomings were identified which were mostly of a technical nature. The Bill seeks to address these shortcomings.

The Bill seeks to insert a definition of "Registrar of deeds" and to amend the definitions of "Constitution" and "school". Amendments are proposed to facilitate endorsements on the title deeds of certain properties and the cancellation of such endorsements. The main amendment proposed is the amendment of section 20 where the powers of governing bodies are extended to allow them to employ educators and non-educator staff additional to the staff employed and paid by the State. Section 24 is sought to be amended by the inclusion of the principal in the composition of the governing body of a public school for special education needs. This amendment will bring such governing bodies into line with those of ordinary public schools.

Section 55 is sought to be amended by providing that an endorsement must be effected on the title deeds of the immovable property of ex-model C schools which reverts back to the State. The Bill also seeks to make provision for immovable property which was never transferred into the name of a former Model C school, to remain the property of the State.

2. AMENDMENT OF OTHER EDUCATION LAWS

Confusion might exist when the Minister acts in his capacity as employer in terms of the Labour Relations Act, 1995 (LRA), and the Educators' Employment Act, 1994 (EEA), in relation to his or her responsibilities in determining policy in terms of the National Education Policy Act, 1996 (NEPA), and the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984. In order to avoid such confusion, amendments must be effected to the NEPA in order to keep staffing matters within the scope of the LRA and the EEA. The National Policy on the Salaries and Conditions of Employment of Educators Act, 1984, has become superfluous in view of Chapter 10 of the Constitution, and the Bill seeks to repeal it.

3. PERSONS AND ASSOCIATIONS CONSULTED

The various options for the employment of additional educators and non-educator staff and the Bill were discussed with a delegation of the ANC Study Group, all the national bodies of the organised educator profession (SADTU, NAPTOSA and SAOU), and the national and regional associations of public school governing bodies (FEDSAS and CPPSA). The Department of Education also had discussions with the Department of Finance, the Department of Public Service and Administration and the Chief Registrar of Deeds. The Heads of Education Departments Committee and the Council of Education Ministers have approved the proposed amendments of the South African Schools Act.

4. PARLIAMENTARY PROCEDURE

In the view of the Department of Education and the State Law Advisers the procedure established by section 76 of the Constitution should be followed with regard to this Bill.