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GENERAL NOTICE

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General Notice

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GENERAL NOTICE

NOTICE 553 OF 2007**DEPARTMENT OF EDUCATION****CALL FOR COMMENT ON THE EDUCATION LAWS AMENDMENT BILL, 2007**

I, Grace Naledi Mandisa Pandor, Minister of Education, after consultation with the Council of Education Ministers, hereby publish the Education Laws Amendment Bill, 2007, for comment.

All interested persons and organisations are invited to comment on the draft Bill in writing and to direct their comments to:

The Director-General, Private Bag X895, Pretoria, 0001 for attention: Mr VL Rikhotso, fax 012 312 5902, tel. no. 012 312 5930 or email Rikhotso.v@doe.gov.za.

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

The comments should reach the Department by 28 May 2007.

The Bill may also be obtained on www.education.gov.za.

GRACE NALEDI MANDISA PANDOR, MP
MINISTER OF EDUCATION

EDUCATION LAWS AMENDMENT BILL, 2007

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 National Education Policy Act, 1996, so as to amend the provision for the establishment of consultative bodies; to amend the South African Schools Act, 1996, so as to provide for minimum norms and standards for infrastructure and capacity in public schools; to provide for the functions and responsibilities of a principal; to provide for random search and seizure at schools; to provide for the substitution of "Auditing Profession Act, 2005" for "Public Accountants' and Auditors' Act, 1991"; to amend the National Student Financial Aid Scheme Act, 1999, so as 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 make technical adjustments that result from the repeal of the Further Education and Training Act, 1998; 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

1. Section 5 of the National Education Policy Act, 1996, is hereby amended by -

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

“(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,~~” and

(b) the deletion of paragraphs (a) to (f).

Amendment of section 11 of Act 27 of 1996

2. 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 **[, subject to any applicable law,]** by regulation establish **[such bodes as may be necessary]** a body to be known as the National Education and Training Council (NETC) or other bodies to advise him or her on **[matters]** any matter contemplated in section 3~~[:]~~ or any matter identified by the Minister **[Provided that the Minister shall establish-].**”;

(b) the deletion of paragraphs (a) and (b) of subsection (1);

(c) 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(i)(c), shall be invited to nominate representatives to any such consultation 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

3. 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 definitions:

“‘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 these regulations,
- unless such objects are used for educational purposes;”;

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

“‘illegal drug’ means any unlawful intoxicating or stupefying substance;”;

- (c) the insertion after the definition of "public school" of the following definition:

"random' means the identification of a learner or a randomly selected group or a particular grade of learners who are reasonably suspected of illegal conduct as contemplated in section 8A,"; and

- (d) the insertion after the definition of "school" of the following definition:

"school activity' means any official educational, cultural, sporting or social activity of the school within or outside the school premises;".

Insertion of section 5A in Act 84 of 1996

4. 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 must prescribe by regulation determine minimum national norms and standards for –

- (a) school infrastructure;
- (b) capacity regarding the number of learners a school can admit; and
- (c) 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)(i) the availability of classrooms;
- (ii) electricity;
- (iii) water;
- (iv) sanitation;
- (v) library and laboratory; and

- (vi) electronic connectivity at a school; and
 - (b)(i) stationery and supplies;
 - (ii) learning support material, school furniture and equipment;
 - (iii) teaching support material and equipment; and
 - (iv) digital support to a school.
- (3) The minimum and maximum capacity of a school must relate to –
- (a) teacher provisioning and class size;
 - (b) quality of performance of a school; and
 - (c) curriculum and extracurricular choices.
- (4) A governing body must comply with the norms and standards contemplated in subsection (1) when it declares policy in terms of sections 5(5) and 6(2).”.

Insertion of section 8A in Act 84 of 1996

5. 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) No person may bring a dangerous object or illegal drug into school premises or have such object or drug in his or her possession in school premises or during any school activity within or outside school premises.

(2) The principal or his or her delegate may, at random, search any learner or property of the learner for dangerous objects and illegal drugs, after taking into account all relevant factors, including –

- (a) the best interest of the learner or any other learner at the school;

- (b) the safety and health of the learner or any other learner at the school;
 - (c) reasonable evidence of illegal activity;
 - (d) all relevant evidence received; and
 - (e) the fact that it must be conducted in a manner that is reasonable and proportional to the suspected illegal activity.
- (3) A learner may be subjected to a random body search only if –
- (a) it is conducted by –
 - (i) the principal, if he or she is of the same gender as the learner; or
 - (ii) the principal's delegate, who must be of the same gender as the learner;
 - (b) it is done in a private area, and not in the view of another learner; and
 - (c) one witness, who is a person of the same gender as the learner, is present.
- (4) Any dangerous object or illegal drug that has been seized must be –
- (a) clearly and correctly labeled with the full particulars of the learner in whose possession it was found; and
 - (b) handed over to the police immediately.
- (5) If the police cannot collect the dangerous object or illegal drug from the school immediately, the principal must –
- (a) record the dangerous object or illegal drug in the school record book;
 - (b) take the dangerous object or illegal drug to the nearest police station; and
 - (c) hand the dangerous object or illegal drug over to the police.

- (6) The police officer who takes receipt of the dangerous object or illegal drug must issue an official receipt to the principal, or to his or her delegate, for any dangerous object or illegal drug handed over to him or her.
- (7) The principal or his or her delegate may at random administer a urine test to a learner who is reasonably suspected of using illegal drugs, after taking into account all relevant factors, contemplated in subsection (2).
- (8) A learner may be subjected to a urine 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 room, and not in the view of another learner;
 - (c) one witness, of the same gender as the learner, is present;
 - (d) the urine sample is clearly and correctly labeled with full particulars of the learner involved in the sample; and
 - (e) the device contemplated in subsection (10) is used.
- (9) The principal must -
- (a) within one day, inform the parents that a random test or search and seizure was done in respect of their children; and
 - (b) in cases where the urine tested positive, inform the learner and his or her parents of the result within a reasonable time.
- (10) The Minister must identify the device with which the urine test contemplated in subsection (7) will be done, and must publish the name of this device, and any other relevant information about it, in the *Government Gazette*.

- (11) Without derogation from the provisions of any other Act, a learner may be subjected to a disciplinary hearing if –
- (a) a dangerous object or illegal drug is found in his or her possession; or
 - (b) his or her urine sample tested positive for illegal drugs.
- (12) Any disciplinary hearing in respect of a learner must be conducted in terms of the code of conduct contemplated in section 8.
- (13) The code of conduct must also provide for support measures or structures for counseling a learner."

Amendment of section 20 of Act 84 of 1996

6. The South African Schools Act, 1996, is hereby amended by the insertion after paragraph (e) of subsection (1) of section 20 of the following paragraph:

“(eA) adhere to in any actions or decisions taken by the Head of Department in terms of section 16 as read with item 2.2 of Schedule 1 of the Employment of Educators Act, 1998 (Act No. 76 of 1998) to address the incapacity of a principal or educator to carry out duties effectively.

(b) by the insertion after paragraph (j) of subsection (3) of the following paragraph:

“(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).”

Insertion of section 21A in Act 84 of 1996

7. The South African Schools Act, 1996, is hereby amended by the insertion after section 21 of the following section:

“21A Functions and Responsibilities of Principal

- (1) (a) The principal represents the Head of Department in the governing body 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 the school in relation to minimum outcomes and standards and procedures for assessment determined by the Minister as contemplated in section 6A; and
 - (ii) the use of available resources.
- (c) The principal of a school identified by the Minister as contemplated in section 58B must prepare an academic performance improvement plan annually which must be tabled in a governing body meeting annually at the beginning of the year which must be –
- (i) presented for approval to the Head of Department; and
 - (ii) tabled in a governing body meeting.
- (d) The principal must report to the Head of Department and governing body annually by 30 June on progress made in the implementation of the plan as contemplated in paragraph (c).
- (2) The principal must –
- (a) subject to section 62(3) and on behalf of the Head of Department, conduct the professional management of the

school, which includes, but is not limited to, the management of –

- (i) all the educational programmes and curriculum activities at the school;
 - (ii) all the educators and learning support material at the school, to ensure that the Head of Department delivers quality education at the school;
 - (iii) the functions delegated to him or her by the Head of Department in terms of the Act;
 - (iv) the safekeeping of the financial records of the school;
 - (v) the implementation of policy and legislation at the school; and
 - (vi) all support staff of the school;
- (b) attend and participate in all meetings of the governing body;
 - (c) provide the governing body with information about the professional management related to the school;
 - (d) assist the governing body in handling disciplinary matters pertaining to learners at the school;
 - (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.

(3) The principal may assist the governing body in the performance of its functions and responsibilities, but such assistance or participation may not be in conflict with any –

- (a) instructions of the Head of Department;
- (b) legislation or policy;

- (c) obligation that he or she has towards the Head of Department, the Member of the Executive Council or the Minister where any one of them is, or may be, cited in any legal proceedings; or
- (d) provisions of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Personnel Administration Measures determined in terms thereof.
- (4) A principal may not, on behalf of the governing body, give evidence against the Minister, Member of the Executive Council or Head of Department in any court case where the Minister, Member of the Executive Council or Head of Department is cited as a party to the case.”

Amendment of section 43 of Act 84 of 1996

8. Section 43 of the South African Schools Act 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 80 of 1991)]** Auditing Profession Act, 2005 (Act 26 of 2005), to audit the records and financial statements referred to in section 42.”.

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

58B Identification of Under-performed schools

- (1) The Head of Department must identify schools that are underperforming from the reports contemplated in section 21A(1)(b) and issue a written warning notice to those schools that are underperforming.

- (2) The Head of Department may give a written warning notice to the governing body of a public school where he or she is satisfied -
 - (a) that the standard of performance of learners at the public school are unacceptably low, and are likely to remain so unless the Head of Department exercise his or her power in terms of this Act;
 - (b) that there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance; or
 - (c) that the safety of learners or staff of the public school is threatened.
- (3) The Head of Department must notify the Minister and the Member of the Executive Council of the notice issued to the public school as contemplated in subsection (2).
- (4) The Minister in consultation with the Member of the Executive Council must consider the notice and the report contemplated in section 21A(1)(b) pertaining to the specific school.
- (5) The Minister must within 14 days approve or reject the notice as contemplated in subsection (2).
- (6) If the Minister approve the notice he or she must publish in the Government Gazette the names of those schools identified by the Head of Department.

58C Implementation of Norms and Standards

- (1) The MEC must ensure the implementation of -
 - (a) norms and standards determined in terms of the Act;
 - (b) minimum outcome and standards in terms of this Act; and
 - (c) performance standards contemplated in Item 2(2) of Schedule 1 of the Employment of Educators Act, 76 of 1998 are implemented;

-
- (2) The MEC must report annually to the Minister the extent to which the norms contemplated in subsection (1) have been implemented and if not measures taken to implement them.
 - (3) The Head of Department must implement all norms and standards contemplated in subsection (1) within a specific school year by -
 - (a) identify resources to implement such norms;
 - (b) identify the risk areas for implementation;
 - (c) develop an implementation plan for the province where all norms and standards must be reflected and the extent of implementation in schools;
 - (d) develop protocols with schools on how to implement norms and standards and manage the risk areas;
 - (e) report before 30 September of each year to MEC on state of implementation and measures contemplated in paragraphs (a) to (d).
 - (4) The Head of Department must –
 - (i) determine the minimum and maximum capacity, contemplated in section 5A, of a school in relation to the availability of classrooms and teachers, as well as the curriculum programme of the school; and
 - (ii) as from a date to be determined, in respect of each 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.
 - (5) The Head of Department must investigate the public schools listed by the Minister as contemplated in section 58B(6) to determine what are the reasons for the under performance of the school.
 - (6) The Head of Department must take all reasonable steps to correct the under performance of the school.

- (7) The Head of Department without limiting the nature and extend of the steps contemplated in subsection (6) must consider -
- (a) to implement the Incapacity Code and Procedure for Poor Work Performance as prescribed by section 16 and Schedule 1 of the Employment of Educators Act, No. 76 of 1998;
 - (b) the withdrawal of the functions of the governing body as contemplated in section 22; or
 - (c) appoint an curator on governance in accordance with section 25.
- (8) The counselling of the principal as contemplated in Item (5)(b)(ii) of Schedule 1 of the Employment of Educators Act, No. 76 of 1998, may include the appointment of an academic mentor to take over the responsibility and functions of the principal for the timeframe determined by the Head of Department.

Amendment of the Long Title of Act 56 of 1999

10. The Long Title of the National Student Financial Aid Scheme Act, 1999, is hereby amended by the substitution for the Long Title of the following Long Title:

“To establish the National Student Financial Aid Scheme[**(NSFAS)**]; to provide for the management, governance and administration of the scheme[**NSFAS**]; to provide for the granting of loans and bursaries to eligible students at public FET Colleges and public higher education institutions[**and for**]; to provide 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.”.

Amendment of section 1 of Act 56 of 1999

11. Section 1 of the National Student Financial Aid Scheme, 1999, is hereby amended by –

- (a) the substitution for the definition of “designated higher education institution” of the following definition:
“designated FET college or designated higher education institution’ means an FET 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 “employer” of the following definition:
“FET College’ means a public college as defined in the Further Education and Training Colleges Act, 2006 (Act 16 of 2006);”;
and
- (c) the substitution for the definition of “student” of the following definition:
“‘student’ means any person registered as a student at an FET College or at a higher education institution;”.

Amendment of section 2 of Act 56 of 1999

12. Section 2 of the Student National Financial Aid Scheme Act, 1999, is hereby amended by –

- (a) the substitution for subsection (1) of the following subsection:
“(1) The purpose of this Act is to establish a financial aid scheme for students at FET Colleges or at higher education institutions.”; and
- (b) the substitution for subsection (2) of the following subsection:
“(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

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

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

“(b) the membership taken as a whole –

- (i) is broadly representative of the FET 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 FET and higher education systems in reconstruction and development; and
- (v) has known and attested commitment to the interests of further education and training and higher education; and”;

(b) the substitution for paragraph (c)(vi) of subsection (3) of the following paragraph:

“(vi) higher education and FET College principals”.

Amendment of section 20 of Act 56 of 1999

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

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

“Designated FET College and designated higher education institution”

(1) The board may enter into an agreement with an FET College or a higher education institution which agrees to become a designated FET College or a designated higher education institution for purposes of administering loans and bursaries to students of that institution on behalf of the NSFAS.”; and

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

“3. A designated FET College or a designated higher education institution must –

(a) at such intervals as are agreed on by the institutions 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

15. Section 25 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by –

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

“(1) Every science, research and professional council, every FET 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;”; and

- (b) the substitution for subsection (2) of the following subsection:
- “(2) The NSFAS must on request provide such information as may be reasonably required by the science, research and professional councils, the FET Colleges and higher education institutions, and any other person[s] or bod[ies]y who grants loans or bursaries to students.”.

Amendment of section 1 of Act 31 of 2000

16. 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”.

Amendment of section 3 of Act 31 of 2000

17. 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

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 76 of 1998);
 - (b) in terms of the South African Schools Act, 1996 (Act 84 of 1998);
 - (c) at an independent school;
 - (d) in terms of the Further Education and Training Colleges Act, **[1998] 2006** (Act [98 of 1998]16 of 2006);
 - (e) in terms of the Public Service Act, 1994 (Proclamation 103 of 1994); or
 - [f] at an adult learning centre.”.

Amendment of section 6 of Act 31 of 2000

18. Section 6 of the South African Council for Educators, 2000, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“Composition of Council

- 6(1) The council consists of the following members, appointed by the Minister with due consideration to representation in respect of race, gender, disability and geographic distribution:

- (a) The chairperson, subject to section 7;
 - (b) 18 educators or lecturers collectively nominated by the organised profession;
 - (c) five persons nominated by the Department of Education;
 - (d) two persons nominated by the national associations representing school governing bodies contemplated in section 20[](3) of the South African Schools Act, 1996 (Act 84 of 1996);
 - (e) one person nominated by the Council on Higher Education established by section 4 of the Higher Education Act, 1997 (Act 101 of 1997);
 - (f) one person nominated by the councils of further education and training institutions contemplated in section 9 of the Further Education Training Colleges Act, **[1998]2006** (Act **[98 of 1998]16 of 2006**);
 - (g) one person nominated by national bodies representing independent or private institutions recognised by the Minister; and
 - (h) the chief executive officer of the council, subject to section 17.
- (2) The members referred to in subsection (1)(b) must consist of educators, including principals, employed at or in each of the following institutions or sectors:

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

Amendment of section 1 of Act 52 of 2000

19. Section 1 of the Adult Basic Education and Training Act, 2000, is hereby amended by the substitution for the definition of “auditor” of the following definition:

“‘auditor’ means any person registered in terms of the **[Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991)]**Auditing Profession Act, 2005 (Act 26 of 2005);”.

Amendment of section 8 of Act 52 of 2000

20. 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)]**21(1)(d) of the South African Schools Act, 1996 (Act 84 of 1996)[, **or section 9 of the Further Education and Training Act, 1998 (Act 98 of 1998)]**.”.

Amendment of section 24 of Act 52 of 2000

21. Section 24 of the Adult Basic Education and Training Act, 2002, is hereby amended by the substitution for subsection (5) of the following subsection:

“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 80 of 1991)]**Auditing Profession Act, 2005 (Act 26 of 2005), to audit the records and financial statements referred to in subsection (1).”.

Amendment of section 2 of Act 58 of 2001

22. Section 2 of the General and Further Education and Training Quality Assurance Act, 2001, is hereby amended by the substitution for section 2 of the following section:

“Application of Act

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

- (a) South African Schools Act, 1996 (Act 84 of 1996);
- (b) Further Education and Training Colleges Act, [1998 (Act 98 of 1998)]2006 (Act 16 of 2006); or
- (c) Adult Basic Education and Training Act, 2000 (Act 52 of 2000).”.

Amendment of section 15 of Act 58 of 2001

23. 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 80 of 1991)]**Auditing Profession Act, 2005 (Act 26 of 2005), and appointed by the Council with the approval of the Auditor-General.”.

Short Title

24 This Act may be cited as the Education Laws Amendment Act, 2007.

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

1. MAIN OBJECT OF THE BILL

The Bill seeks to amend the following Acts:

- 1.1 National Education Policy Act, No. 27 of 1996 (the NEPA);
- 1.2 South African Schools Act, No. 84 of 1996 (the SASA);
- 1.3 National Student Financial Aid Scheme Act, No. 59 of 1999 (the NSFASA);
- 1.4 South African Council for Educators Act, No. 31 of 2000;
- 1.5 Adult Basic Education and Training Act, No. 52 of 2000; and
- 1.6 General and Further Education and Training Quality Assurance Act, No. 58 of 2001.

2. MAIN FEATURES OF THE BILL

2.1 Technical amendments

Given that the Further Education and Training Act, No. 98 of 1998, was repealed by section 58 of the Further Education and Training Colleges Act, No. 16 of 2006, it was necessary to delete all references to the former Act in other legislation. Similarly, the Public Accountants' and Auditors' Act, No. 80 of 1991, was repealed by the Auditing Profession Act, No. 26 of 2005. Hence, clauses 15, 16, 17, 18, 19, 20, 21 and 22 provide for the substitution of the new Act for the repealed one.

2.2 Substantive amendments

Clause 1

This clause amends section 5 so as to avoid overlapping with section 11. Teacher unions will be represented in the NETC established in terms of section 11. Therefore there is no need for the Minister to consult the unions as a separate body.

Clause 2

This clause amends section 11 of the NEPA, which provides for the establishment of the National Education and Training Council, a body that must advise the Minister on policy matters. The amendments table clearly the procedure to be followed whenever the minister considers the advice provided by the NETC. It also requires the NETC to advise the Minister on any aspect of school education on its own initiative.

The NETC will focus on school education given that there are other bodies in other education sectors that advise the Minister on policy and other matters. For instance, the Council on Higher Education (CHE) advises the Minister on matters relating to higher education sector, the National Board for Further Education and Training advises the Minister on matters relating to the college sector and the National Advisory Board for Adult Basic Education and Training advises the Minister on literacy matters.

Clause 3

The Bill introduces new definitions to SASA, such as “dangerous objects”, “illegal drug” and “search and seizure”. This will assist in the interpretation of clause 5 of the Bill.

Clause 4

The SASA provides for, amongst others, norms and standards for school funding. However, it does not provide for norms and standards for school infrastructure, capacity, and learning and teaching support material. Consequently, there are some schools that do not have toilets, electricity, water and libraries, to mention only a few. The Act is amended to require the Minister to determine the minimum norms and standards in respect of schools' infrastructure and capacity and matters such as learning and teaching support materials.

Clause 5

The Regulations for Safety Measures at Public Schools did not adequately address the mischief that they were designed to remedy – that is, to stop the proliferation of dangerous objects and drugs at schools. It was therefore necessary to strengthen these Regulations by way of allowing random search and seizure and drug testing at schools. This clause also provides for checks and balances, seeing that, if not properly implemented, these measures could be abused.

The new provisions provide clear guidelines about the circumstances under which random search and seizure and drug testing should be conducted. For instance, the following should be taken into account:

- (a) The best interest of the learner;
- (b) the safety and health of the learner; and
- (c) all relevant evidence received.

Furthermore, the principal or his or her delegate must conduct searches in the presence of a witness, in a private area, and not in view of other learners.

This clause of the Bill assists in the alignment of the Regulations for Safety Measures at Public Schools with the SASA.

Clause 6

This amendment is aimed at aligning the SASA with the Employment of Educators Act where the Head of Department will take action against the principal of a school which consistently under-performed in regard to academic performance. Item 2.2 of Schedule 1 to the Employment of Educators Act provides the Head of Department with actions that he or she can take against such a principal which include counseling and training.

Clause 7

The SASA provides that the school principal is responsible for the professional management of the school and that the school principal is an *ex-officio* member of the school governing body (SGB).

The SASA expressly lists the functions and obligations of the SGB, but does not do so in the case of the school principal. To remedy this shortcoming, clause 21A clearly spells out the functions and responsibilities of the school principal. For instance, the management function has been explained to include the management of educational programmes, educators, non-educators, functions assigned by the Head of Department and communication with the SGB on policy and legislative obligations.

This new clause will create legal certainty as to what exactly the functions and responsibilities of the school principal are *vis-à-vis* those of the SGB.

The 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) – namely, that any assistance that the school principal gives the SGB must not be in conflict with the EEA and the PAM.

Clause 8

The SASA still provides for the Public Accountants' and Auditors Act in section 43(1). The title of this Act was amended to "Auditing Profession Act, 2005 (Act 26 of 2005)", and section 43(1) has accordingly been amended.

Clauses 9 to 14

The NSFASA was designed to provide bursaries and loans to students studying at tertiary institutions only. The Act has been amended so as to extend the functions of the Board, which will now also cater for students who have been admitted at FET colleges.

It is therefore reasonable for one Board to serve both categories of students, as this will save costs.

3. OTHER DEPARTMENTS OR BODIES CONSULTED

After publication for comment, the Bill will be referred to the National Treasury, the Department of Social Development, and the Department of Safety and Security. The Department will also supply stakeholders with copies of the Bill so that they may comment on it.

4. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill merely provides for amendments to existing legislation and, therefore, no additional costs are foreseen.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Education's Legal Section are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution, since it falls within the functional area listed in Schedule 4 of the Constitution.

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, No. 41 of 2003, seeing that it does not contain provisions pertaining to customary law or to the customs of traditional communities.

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