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GENERAL NOTICE

NOTICE 1611 OF 2009

DEPARTMENT OF EDUCATION

BASIC EDUCATION LAWS AMENDMENT BILL, 2009

CALL FOR COMMENTS ON THE BASIC EDUCATION LAWS AMENDMENT BILL, 2009

I, Angelina Matsie Motshekga, Minister of Basic Education, after consultation with the Council of Education Ministers hereby publish the Basic Education Laws Amendment Bill, 2009, for comment.

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

The Director-General, Private Bag X895, Pretoria, 0001, for attention: Mr C Ledwaba, tel. 012 312 6314, email ledwaba.c@doe.gov.za, fax 012 312 6058.

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

The comments should reach the Department within 30 days of the date of this publication.


ANGELINA MATSIE MOTSHEKGA, MP
MINISTER OF BASIC EDUCATION

DATE: 20 November 2009

ANNEXURE B**Summary of the draft Bill**

Clause 1 amends certain definitions of the National Education Policy Act, 1996. It amends the definitions of “Director-General” “education institution” and “Minister” to reflect the creation of the Department of Basic Education.

Clause 2 to 12 amends certain sections of the South African Schools Act, 1996.

Clause 2 amends Section 1 in the definitions of “loan” and “parent”. It further amends the definition of “Minister” to reflect the creation of the Department of Basic Education that will be responsible for the administration of this Act.

Clause 3 amends Section 5A by inserting a provision requiring consultation with the Minister of Finance before the Minister by regulation prescribes norms and standards for school infrastructure, school capacity and learning and teacher support material.

Clause 4 inserts Section 6B into the Act. It places an obligation on governing bodies to ensure that there is no unfair discrimination against official languages in schools.

Clause 5 amends Section 9 by inserting subsection 11 which provides for a suitable sanction to be imposed on a learner whose appeal against expulsion from a public school to the MEC is upheld.

Clause 6 amends Section 12 by inserting subsection 3A which distinguish between special schools for learners with barriers to learning and special schools which provide education with a specialized focus.

Clause 7 amends Section 16A by inserting further paragraphs that require the principal to-

- assist the governing body with the administration of school funds;
- take reasonable steps to prevent any financial maladministration;
- take part in any committee or delegation which deals with any matter that has financial implications for the school; and
- report any mismanagement or maladministration of financial matters to the governing body of the school and the Head of Department.

Clause 8 amends Section 19 by inserting provisions which provide for a recognised governing body association to provide training to governing body members of schools and the agreements and contents thereof intended to regulate such training.

Clause 9 inserts Section 33A which prohibits non-educational activities such as political and related activities during school time.

Clause 10 amends Section 36 by inserting provisions which enable the governing body to enter into a loan or overdraft agreement with the written approval of the MEC in concurrence with the MEC responsible for finance in the province.

Clause 11 amends Section 39 by inserting subsections which allow for –

- the determination of additional no fee schools by the MEC;
- the requirement that these schools have to be the next poorest schools, which were not declared as no fee schools in that province; and
- the conditions under which the MEC may exercise these powers.

Clause 12 amends Section 60 by determining that the state is liable for delictual or contractual damages or loss caused as a result of any act of omission in connection with any school activity conducted by a public school for which such a public school would have been liable.

Clause 13, 14 and 15 amend the Employment of Educators Act, 1998.

Clause 13 amends Section 1 in the definitions of “departmental office”; “Department of Education”; “Director-General”; “employer” and “Minister” to reflect the creation of the Department of Basic Education.

Clause 14 amends Section 2 by the deletion of the applicability of the provisions of this Act to adult basic education centres.

Clause 15 amends Section 3 by amending the references in this section to the department to that of the Department of Basic Education.

Clause 16 to 19 amends the South African Council for Educators Act, 2000.

Clause 16 amends Section 1 in the definition of “institution” to delete from it any reference to a further education and training institution or adult learning centre. It further amends the definition of “Minister” to reflect the creation of the Department of Basic Education that will be responsible for the administration of this Act.

Clause 17 amends Section 5 of the Act to allow for the council to conduct in-service training of educators at the request of an employer.

Clause 18 amends Section 19 by inserting an additional paragraph to provide for payments for services rendered to form part of the funds of the council.

Clause 19 inserts Section 25A into the Act to provide for payment by the employer for in-service training provided to educators.

Clause 20 amends certain definitions of the General and Further Education and Training Quality Assurance Act, 2001. It amends the definitions of “department of education”; “Director-General” and “Minister” to reflect the creation of the Department of Basic Education and the Department of Higher Education and Training and to indicate that both

will be responsible for the implementation of this Act insofar as it relates to each one's functions.

Clause 21 provides for a savings clause in that to those functions identified in item 1.7 of the Schedule to Proclamation 44 of 1 July 2009 as specific functions assigned to the Minister of Higher Education and Training in relation to the FET Colleges and ABET Centres are not amended by this Act.

Clause 22 provides for the Short Title of the Act which is The Basic Education Laws Amendment Act, 2009.

BASIC EDUCATION LAWS AMENDMENT BILL, 2009**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 in the definitions of Director-General, educational institution and Minister so as to reflect the creation of the Ministry and Department of Basic Education; to amend the South African Schools Act, 1996, so as to similarly amend the definition of Minister and to amend the definitions of parent and loan; to provide for consultation with the Minister of Finance before uniform minimum norms and standards are determined; to ensure that there is no discrimination within language choices of the curriculum; to ensure that the Member of Executive Council provides for a sanction after an appeal by the learner was upheld; to provide for various types of special schools; to provide for additional functions of a principal; to ensure that the training of governing bodies are assigned to recognised governing body associations; to provide for the prohibition of non-educational activities during school time; to provide for the approval of the Member of the Executive Council and the Member of the Executive Council responsible for Finance before a governing body may enter into any loan or overdraft agreement to supplement the school fund; to provide for the determination of additional quintiles by Member of the Executive Council; to ensure that the Department's liability is applicable to both delictual and contractual claims; to amend the Employment of Educators Act, 1998 so as to amend the definitions of departmental office, Department of Education, Director-General, employer and Minister; to delete any reference to adult basic education centre or further education and training centre; to provide that the Director-General: Basic Education is the employer of educators in the service of that department; to amend the South African Council for Educators Act, 2000, so as to ensure that this council can conduct in-service training of educators; to provide for additional source of funding for this council; to ensure that the employer of educators is responsible for the payment of services rendered by this council; to amend the General and further Education and Training Quality Assurance Act, 2001 in the definitions of department, Director-General and Minister to reflect the creation of the Department of Basic Education 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 27 of 1996

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

- (a) the substitution of the definition of “**Director-General**” of the following definition-
“**Director-General**’ means the Director-General of the Department of Basic Education,”
- (b) the substitution of the definition of “education institution” of the following definition-
“‘education institution’ means any [institution] school contemplated in the South African Schools Act, 1996, providing education whether early childhood education, primary or secondary[, **further or higher education, other than university or technikon, and also an institution providing specialised, vocational, adult, distance or community education**];
- (c) the substitution of the definition of “**Minister**” of the following definition-
“**Minister**’ means the Minister of Basic Education”;
- (d) the deletion of the definition of “student”
[‘student’ means any person enrolled in an education institution;]

Amendment of section 1 of Act 84 of 1996

2. Section 1 of the South African Schools Act, 1996, is hereby amended by –

- (a) the insertion after the definition of “learner” of the following definition:
“‘loan’ means any financial obligation based on agreement that creates a liability by a school in favour of any person that must be paid in one in or more instalments but does not include payment of staff appointed by the governing body in terms of section 20(4) and (5);”;
- (b) the substitution of the definition of “**Minister**” of the following definition:
“**Minister**” means the Minister of Basic Education”;
- (c) the substitution of paragraph (a) of the definition of “parent” by the following definition:

“‘parent’ means

- (a) the biological parent or legal guardian of a learner;
- (b) ...”;

Amendment of section 5A of Act 84 of 1996

3. Section 5A of the South African Schools Act, 1996, is hereby amended by the substitution of subsection (1) of the following subsection:

(1) The Minister may, after consultation with the Minister of Finance and the Council of Education Ministers, by regulations 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.

Insertion of section 6B of Act 84 of 1996

4. The South African Schools Act, 1996, is hereby amended by insertion after section 6A of the following section:

“6B Non discrimination between official languages

A governing body must ensure that-

- (a) there is no unfair discrimination between the official languages within the choice of language curriculum options as contemplated in section 21(1)(b); and
- (b) the level, at which the first additional language and any other official language are offered, as provided in the curriculum, is of equivalent status.”.

Amendment of section 9 of Act 84 of 1996

5. Section 9 of the South African Schools Act, 1996, is hereby amended by insertion after subsection (10) of the following subsection:

“(11) If an appeal as contemplated in subsection (4) by a learner who has been expelled from a public school is upheld by the Member of the Executive Council, he or she must ensure that a suitable sanction is then imposed on the learner and the provision of subsection (8) and (9) are applicable subject to the necessary alterations.”.

Amendment of section 12 of Act 84 of 1996

6. Section 12 of the South African Schools Act 84 of 1996, is hereby amended by the insertion after subsection (3) of the following subsection:

“(3A) A public school for learners with special education needs as contemplated in subsection (3) may consist of –

- (a) a special school to provide education to learners with barriers to learning; or
- (b) a special school which provides education with a specialised focus.”.

Amendment of section 16A of Act 84 of 1996

7. “Section 16A of the South African Schools Act, 1996, is hereby amended by –

- (a) the substitution for paragraphs (f) and (g) of subsection (2) by the following paragraphs:

“(f) inform the governing body about policy and legislation”; **[and]**

(g) provide accurate data to the Head of Department when requested to do so [.] and.”;

- (b) the insertion after paragraph (g) of subsection (2) of the following paragraphs

“(h) assist the governing body with the management of the school funds which include:

- (i) information relating to any conditions or directions on all financial matters of the school provided by the Minister, the Member of the Executive Council or Head of Department;
- (ii) advising the governing body on the legality or otherwise of its decisions relating to financial matters of the school;
- (i) must take all reasonable steps to prevent any financial maladministration and mismanagement by any staff or school governing body;
- (j) take part or be included in any committee or delegation of specific members of the governing body to manage any matter which has financial implication; and
- (k) report any mismanagement or maladministration of financial matters to the governing body of that school and the Head of Department.”

Amendment of section 19 of Act 84 of 1996

8. Section 19 of the South African Schools Act, 1996, is hereby amended by –

- (a) the insertion after subsection (2) of the following subsections:

“(3) The Head of Department may request a recognised governing body association to train, as contemplated in subsection (1) or section 21(7) and 25, members of a governing body of a particular school or group of schools and -

- (a) must enter into an agreement with the governing body association;
 - (b) must specify, in the agreement contemplated in paragraph (a), the nature, content, extent, duration and financial implication for the training; and
 - (c) may include, in the agreement contemplated in paragraph (a), the training of members of a governing body of a particular school which school may not be a member of the governing body concerned.
- (4) The Minister must determine norms and standards for school funding in terms of section 35 to include -
-

- (a) the criteria for recognising a governing body association to perform the functions contemplated in subsection (3);
- (b) the criteria relating to any financial implications that would be incurred or costs that would be paid by the Head of Department to perform the function contemplated in subsection (3);
- (c) the guidance relating to the nature, content, extent and duration of the function contemplated in subsection (3); and
- (d) the criteria on norms and standards to grant an allocation for contribution towards membership of a recognised governing body association.”.

Insertion of section 33A in Act 84 of 1996

9. Section 33A of the South African Schools Act, 1996, is hereby amended by insertion after section 33 of the following section:

“Prohibition of non-educational activities during school time

- 33A.** (1) School time may only be used for educational activities.
- (2) No party political activities may be conducted during school time, including-
- (i) campaigning
 - (ii) conducting rallies
 - (iii) distribution of pamphlets and fliers
 - (iv) hanging of posters
- (3) A member of a political party may not for party political activities encroach on school time as determined by a governing body as contemplated in section 20(1)(f).
- (4) Schools may not allow the display of material of political nature within the premises of the school.”.

Amendment of section 36 in Act 84 of 1996

10. Section 36 of the South African Schools Act, 1996, is hereby amended by -

- (a) the substitution of subsection (2) of the following subsection –

“(2) Despite subsection (1), a governing body may not enter into any loan or overdraft agreement so as to supplement the school fund, without the written approval of the Member of the Executive Council granted after obtaining the concurrence of the Member of the Executive Council responsible for finance in a province.”

(b) the insertion after subsection (3) of the following subsection -

“(4) Despite subsection (1), a governing body may not –

- (i) lease, burden, convert or alter school property other than to accommodate the educational activities of that school;
- (ii) subject school property to a lease which exceeds a period of twelve months;
- (iii) avail school property for use as business premises other than for a school tuck shop; and
- (iv) allow any person to conduct business or activity that is potentially dangerous, hazardous or disruptive to learners or prohibited by this Act or any regulation.”.

Amendment of section 39 of Act 84 of 1996

11. Section 39 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (12) of the following subsections:

“(13) Subject to subsection (7) the Member of the Executive Council may annually by notice in the Provincial Gazette determine additional public schools within his or her province, which have not been included in the list of schools as contemplated in subsection(10)(c), which may not charge school fees.

(14) The schools identified in subsection (13) must be the schools that has been ranked as the poorest schools in that province falling outside the list of schools contemplated in subsection (10)(c).

(15) The Member of the Executive Council may make determination in terms of subsection (13) only if sufficient funding not less than the no fee threshold has been secured in the Province to fund learners in the school affected by the determination.”.

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 paragraph (a) of subsection (1) of the following paragraph -

- “(a) Subject to paragraph (b), the State is liable for any delictual or contractual damages or loss caused as a result of any act or omission in connection with any school activity conducted by a public school and for which such public school would have been liable but for the provision of this section.”.

Amendment of Section 1 of Act 76 of 1998

13. Section 1 of the Employment of Educators Act, 1998, is hereby amended by -

- (a) the substitution of the definition of ‘departmental office’ of the following definition –
“‘departmental office’ means any office or institution controlled or administered by the Department of Basic Education or any provincial department of education, but does not include a public school **[or adult basic education centre]**.”
- (b) the amendment of the definition of ‘Department of Education’ by the following –
“‘Department of Education’ means the department established in terms of section 7(2) read with Schedule 1 of the Public Service Act, 1994 (Proclamation 103 of 1994), responsible for basic education at a national level.”
- (c) the amendment of the definition of ‘Director-General’ by the insertion the following –
“‘Director General’ means the Director General: Basic Education”;
- (d) the amendment of the paragraph (a) of the definition of “employer” by the insertion of the following –

“‘employer’ in relation to any provision of Chapter 4, 5 or 7 which applies to, or is connected with-

(a) an educator in the service of the Department of Basic Education, means the Director-General,”

(e) the amendment of the definition of ‘Minister’ by the insertion the following-
“‘Minister’ means the Minister of Basic Education,”

Amendment of Section 2 of Act 76 of 1998

14. Section 2 of the Employment of Educators Act, 1998, is hereby amended by the deletion of paragraph (d) -

2. The provisions of this Act shall apply in respect of the employment of educators at-

- (a) public schools[;] and
- (b) ...
- (c) departmental offices[; and]
- (d) **[adult basic education centres.]**

Amendment of Section 3 of Act 76 of 1998

15. Section 3 of the Employment of Educators Act, 1998, is hereby amended by the substitution of paragraph (a) of subsection (3) of the following -

“(3) For the purpose of creating posts-

- (a) on the educator establishment of the Department of Basic Education, the Minister shall be the employer of educators in the service of the said Department, and ...”

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 –

- (a) The deletion from the definition of “institution” of the following words –
“‘institution’ means any school[, **further education and training institution or adult learning centre**];”;
- (b) the substitution of the definition of “**Minister**” of the following definition:
“**Minister**” means the Minister of Basic Education”;

Amendment of Section 5 of Act 31 of 2000

17. Section 5 of the South African Council for Educators Act, 2000, is hereby amended by the substitution of subparagraph (iv) of paragraph (b) of subsection (1) of the following subparagraph -

- “(iv) must promote in-service training and conduct any other training of **[all]** educators at the request of an employer as contemplated in section 3 of Act 76 of 1998.”.

Amendment of Section 19 of Act 31 of 2000

18. Section 19 of the South African Council for Educators Act, 2000, is hereby amended by insertion after paragraph (c) of subsection (1) of the following paragraph -

- “(d) payments for services rendered to the employer of educators as contemplated in section 5 (b)(iv).

Insertion of section 25A in Act 31 of 2000

19. The South African Council for Educators Act, 2000, is hereby amended with the insertion after section 25 of the following section:

“Payment for services rendered

25A. The specific employer of educators as contemplated in section 3 of the Employment of Educators Act 76 of 1998 will be responsible for the payment of the services requested in accordance with section 5(b)(iv).”

Amendment of section 1 of Act 58 of 2001

20. Section 1 of the General and Further Education and Training Quality Assurance Act, 2001, is hereby amended by -

- (a) the amendment of the definition of ‘department of education’ by the insertion the following –

“‘department of education’ means the Department of Basic Education responsible for school education at national level, a department responsible for school education in a province or the Department of Higher Education and Training responsible for further education and training colleges and adult basic education and training centres at national level.”
- (b) the amendment of the definition of ‘Director-General’ by the insertion the following –

“‘Director General’ means the Director-General of the D[d]epartment of Basic E[e]ducation at national level insofar as the powers and functions relate to school education or the Director-General of the Department of Higher Education and Training at national level insofar as the powers and functions relate to further education and training colleges and adult basic education and training centres.”;
- (c) the amendment of the definition of ‘Minister’ by the insertion the following–

“‘Minister’ means the Minister of Basic Education insofar as the powers and functions relate to school education or the Minister of Higher Education and Training insofar as the powers and functions relate to further education and training colleges and adult basic education and training centres.”

Savings

21. The legislation and functions identified in item 1.7 of the Schedule to Proclamation 44 of 2009, published in Government Gazette No. 32367 of 1 July 2009 is not amended by this Act insofar as the specific statutory functions assigned to the Minister of Higher Education and Training in relation to Further Education and Training Colleges and Adult Basic Education and Training Centres are concerned.

Short title

22. This Act is called the Basic Education Laws Amendment Act, 2009.