

REPUBLIC OF SOUTH AFRICA

BASIC EDUCATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 33666 of 22 October 2010)
(The English text is the official text of the Bill)*

(MINISTER OF BASIC EDUCATION)

[B 36—2010]

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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 National Education Policy Act, 1996, so as to amend or delete certain definitions;
 - * the South African Schools Act, 1996, so as to amend certain definitions and to define “loan”; to provide for consultation with the Minister of Finance before uniform minimum norms and standards are determined; to ensure that there is no unfair discrimination in respect of official languages; to provide for the imposition of a suitable sanction if an appeal by a learner who had been expelled from a public school has been upheld by the Member of the Executive Council; to provide for public schools that provide education with a specialised focus on talent; to provide for additional functions of a principal of a public school; to provide for the training of governing bodies by recognised governing body associations; to prohibit political activities during school time; to require 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 empower the Member of the Executive Council to identify additional schools that may not charge school fees; and to further regulate the liability of the State for certain damages;
 - * the Employment of Educators Act, 1998, so as to amend certain definitions; and to regulate afresh the application of the said Act;
 - * the South African Council for Educators Act, 2000, so as to amend certain definitions; and to empower the council to promote in-service training of educators upon the payment of an agreed fee; and
 - * the General and Further Education and Training Quality Assurance Act, 2001, so as to amend certain definitions;
- 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 for the definition of “**Director-General**” of the following definition:
 “**‘Director-General’** means the Director-General: Basic Education;”;
- (b) the substitution for the definition of “**education institution**” of the following definition: 5
 “**‘education institution’** means any [**institution**] school contemplated in the South African Schools Act, 1996 (Act No. 84 of 1996), providing education, whether early childhood education, primary[,] education or secondary[, further or higher education, other than a university or technikon, and also an institution providing specialised, vocational, adult, distance or community] education;” 10
- (c) the substitution for the definition of “**Minister**” of the following definition:
 “**‘Minister’** means the Minister of Basic Education;”;
- (d) the deletion of the definition of “**student**”.

Amendment of section 3 of Act 27 of 1996, as amendment by section 11 of Act 100 of 1997 and section 4 of Act 48 of 1999 15

2. Section 3 of the National Education Policy Act, 1996, is hereby amended by the substitution in subsection (4)(n) for the words preceding the proviso of the following words:

“control and discipline of [**students**] learners at education institutions”. 20

Amendment of section 4 of Act 27 of 1996, as amendment by section 12 of Act 100 of 1997

3. Section 4 of the National Education Policy Act, 1996, is hereby amended by—

- (a) the substitution in paragraph (a) for subparagraph (v) of the following subparagraph: 25
 “(v) of every [**student**] learner to be instructed in the language of his or her choice where this is reasonably practicable;”;
- (b) the substitution for paragraph (b) of the following paragraph:
 “(b) enabling the education system to contribute to the full personal development of each [**student**] learner, and to the moral, social, 30
 cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes;”.

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, section 1 of Act 24 of 2005 and section 4 of Act 31 of 2007 35

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

- (a) the insertion in subsection (1) after the definition of “**learner**” of the following definition:
 “**‘loan’** means any financial obligation based on agreement, which obligation renders a school liable for making payment, in one or more instalments, in favour of any person, but does not include the payment of staff appointed by the governing body in terms of section 20(4) or (5);”;
- (b) the substitution in subsection 1 for the definition of “**Minister**” of the following definition: 45
 “**‘Minister’** means the *Minister* of Basic Education;”;
- (c) the substitution in subsection (1) for paragraph (a) of the definition of “**parent**” of the following paragraph:
 “(a) the biological or adoptive parent or legal guardian of a learner;”.

Amendment of section 5A of Act 84 of 1996, as inserted by section 5 of Act 31 of 2007

5. Section 5A of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The *Minister* may, after consultation with the Minister of Finance and the Council of Education Ministers, by regulation prescribe minimum uniform norms and standards for—”.

Insertion of section 6B in Act 84 of 1996

6. The following section is hereby inserted in the South African Schools Act, 1996, 10 after section 6A:

“Non-discrimination in respect of official languages

6B. The *governing body* of a *public school* must ensure that—

- (a) there is no unfair discrimination in respect of any official languages that are offered as subject options contemplated in section 21(1)(b); and
- (b) the first additional language and any other official language offered, as provided for in the curriculum, are offered on the same level.”.

Amendment of section 9 of Act 84 of 1996, as amended by section 7 of Act 48 of 1999 and section 2 of Act 24 of 2005

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

“(11) (a) If an appeal in terms of subsection (4) by a *learner* who has been expelled from a *public school* is upheld by the *Member of the Executive Council*, the *Member of the Executive Council* must ensure that a suitable sanction is then imposed on the *learner*.

(b) For the purposes of the imposition of a suitable sanction contemplated in paragraph (a), the provisions of subsections (8) and (9) apply with the changes required by the context.”.

Amendment of section 12 of Act 84 of 1996

8. Section 12 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) (a) A *public school* may be—

- (i) an ordinary *public school* [or];
- (ii) a *public school* for *learners* with special education needs; or
- (iii) a *public school* that provides education with a specialised focus on talent, including sport, performing arts or creative arts.

(b) Subject to the relevant provisions of *this Act*, the *Minister* must determine norms and standards for funding and norms and standards for governance and educator provisioning for *public schools* contemplated in paragraph (a)(iii).”.

Amendment of section 16A of Act 84 of 1996, as inserted by section 8 of Act 31 of 2007

9. Section 16A of the South African Schools Act, 1996, is hereby amended by the deletion in subsection (2) of the word “and” at the end of paragraph (f), the insertion in that subsection of the word “and” at the end of paragraph (g) and the addition to that subsection of the following paragraphs:

“(h) assist the *governing body* with the management of the *school’s* funds, which assistance must include—

- (i) the provision of information relating to any conditions imposed or directions issued by the *Minister*, the *Member of the Executive Council* or the *Head of Department* in respect of all financial matters of the *school*; and

- (ii) the giving of advice to the *governing body* on the financial implications of decisions relating to the financial matters of the *school*;
- (i) take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the *governing body* of the *school*;
- (j) be a member of any committee or delegation of the *governing body* in order to manage any matter that has financial implications for the *school*; and
- (k) report any maladministration or mismanagement of financial matters to the *governing body* of the *school* and to the *Head of Department*.”

Amendment of section 19 of Act 84 of 1996

10. Section 19 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

- “(3) The *norms and standards for school funding* must include—
- (a) criteria for authorising a *governing body* association to perform the functions contemplated in subsection (4);
 - (b) criteria relating to any financial implications that would be incurred or costs that would have to be paid by the *Head of Department* in relation to the performance of the functions contemplated in subsection (4);
 - (c) guidelines relating to the nature, content, extent and duration of the functions contemplated in subsection (4); and
 - (d) criteria for granting a *governing body* an allocation for contribution towards membership of a recognised *governing body* association.
- (4) (a) The *Head of Department* may request a recognised *governing body* association or other appropriate training authority to train members of a *governing body* of a particular *school* or group of *schools* and to build the capacity contemplated in section 25(4).
- (b) For the purposes of paragraph (a), the *Head of Department*—
- (i) must enter into an agreement with the *governing body* association;
 - (ii) must specify the nature, content, extent, duration and financial implications of the training in the agreement contemplated in subparagraph (i); and
 - (iii) may include a request for the training of members of a *governing body* of a *school* that is not a member of the *governing body* association requested to conduct the training in the agreement contemplated in subparagraph (ii).”

Insertion of section 33A in Act 84 of 1996

11. The following section is hereby inserted in the South African Schools Act, 1996, after section 33:

“Prohibition of political activities during school time

33A. (1) No party-political activities may be conducted at a *school* during *school* time.

(2) The party-political activities contemplated in subsection (1) include, but are not limited to—

- (a) campaigning;
- (b) the conducting of rallies;
- (c) the distribution of pamphlets and fliers; and
- (d) the hanging or putting up of posters and banners.

(3) A member of a political party may not, for the purposes of conducting party-political activities, encroach on the *school* time determined by a *governing body* in terms of section 20(1)(f).

(4) A *school* may not allow the display of material of a party-political nature on its premises unless such party-political material is related to the *curriculum* at the *school*.”

Amendment of section 36 of Act 84 of 1996, as amended by section 5 of Act 57 of 2001

12. Section 36 of the South African Schools Act, 1996, is hereby amended by—

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

“(2) Despite subsection (1), a *governing body* must obtain the written approval of the *Member of the Executive Council*, given with the concurrence of the Member of the Executive Council responsible for finance in the relevant province, before entering into any loan or overdraft agreement in order to supplement the *school fund*.”; and

(b) the addition of the following subsections:

“(4) Despite subsection (1)—

(a) and subject to paragraph (b), a *governing body* may not lease, burden, convert or alter *school* immovable property other than to provide for the *school* activities of that *school*;

(b) and subject to section 20(1)(k), a *governing body* may allow the reasonable use of the facilities of the *school* contemplated in section 20(2) for a period of no longer than 12 months at a time, which period may be renewed from time to time;

(c) a *governing body* may not allow any person to conduct any business on *school* property, other than running a *school* shop or such other business activity as may be prescribed by regulation by the *Minister*; and

(d) a *governing body* may not allow any activity on *school* property that is potentially dangerous, hazardous or disruptive to *learners* or prohibited by *this Act*.

(5) For the purposes of subsection (4) ‘*school property*’ means immovable property owned by the State, including property contemplated in sections 13 and 55 and any immovable property bought by a *school* from the *school* funds or donations to the *school*.”.

Amendment of section 39 of Act 84 of 1996, as amended by section 4 of Act 24 of 2005

13. Section 39 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

“(13) Subject to subsection (7), the *Member of the Executive Council* may, after consultation with the relevant *governing bodies*, annually by notice in the Provincial Gazette identify additional *public schools* within his or her province that, although they have not been included in the list of *schools* contemplated in subsection (10)(c), may not charge *school fees*.”

(14) The *schools* contemplated in subsection (13) must be the schools that have 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 act in terms of subsection (13) only if sufficient funding has been secured in the province to fund *learners* in the *schools* affected by such action.

(16) For the purposes of subsection (15), ‘*sufficient funding*’ means funding that is not less than the *no fee threshold*.”.

Amendment of section 60 of Act 84 of 1996, as amended by section 14 of Act 48 of 1999 and section 12 of Act 31 of 2007

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

“(a) Subject to paragraph (b), the State is liable for any delictual or contractual damage 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 provisions of this section.”.

Amendment of section 1 of Act 76 of 1998, as amended by section 6 of Act 53 of 2000 and section 58 of Act 16 of 2006

15. Section 1 of the Employment of Educators Act, 1998, is hereby amended by—
- (a) the substitution for the definition of “**departmental office**” of the following definition: 5
 “**‘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 any public school [**or adult basic education centre**];”;
 - (b) the substitution for the definition of “**Department of Education**” of the following definition: 10
 “**‘Department of Basic Education’** means the department established in terms of section 7(2), read with Schedule 1, of the Public Service Act, 1994 (Proclamation No. 103 of 1994), responsible for basic education at national level;”;
 - (c) the substitution for the definition of “**Director-General**” of the following definition: 15
 “**‘Director-General’** means the Director-General: Basic Education;”;
 - (d) the substitution for paragraph (a) of the definition of “**employer**” of the following paragraph: 20
 “(a) an educator in the service of the Department of Basic Education, means the Director-General;”;
 - (e) the substitution for the definition of “**Minister**” of the following definition: 25
 “**‘Minister’** means the Minister of Basic Education;”.

Substitution of section 2 of Act 76 of 1998, as amended by section 58 of Act 16 of 2006 25

16. The following section is hereby substituted for section 2 of the Employment of Educators Act, 1998:

“**Application of Act**

2. This Act applies in respect of the employment of educators at— 30
- (a) public schools; and
 - (b) departmental offices.”.

Substitution of certain expressions in Act 76 of 1998

17. The Employment of Educators Act, 1998, is hereby amended by—
- (a) the substitution for the expression “Department of Education”, wherever it occurs, of the expression “Department of Basic Education”; and 35
 - (b) the substitution for the expression “adult basic education and training”, wherever it occurs, of the expression “adult education and training”.

Amendment of section 1 of Act 31 of 2000, as amended by section 19 of Act 31 of 2007 40

18. Section 1 of the South African Council for Educators Act, 2000, is hereby amended by—
- (a) the substitution for the definition of “**institution**” of the following definition: 45
 “**‘institution’** means any school[, **further education and training institution or adult learning centre**] contemplated in the South African Schools Act, 1996 (Act No. 84 of 1996);”;
 - (b) the substitution for the definition of “**Minister**” of the following definition:
 “**‘Minister’** means the Minister of Basic Education;”.

Amendment of section 5 of Act 31 of 2000

19. Section 5 of the South African Council for Educators Act, 2000, is hereby amended by the substitution in paragraph (b) for subparagraph (iv) of the following subparagraph:

- “(iv) must promote in-service training of **[all]** educators at the request of an employer contemplated in section 3 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), and upon payment by such employer of an agreed fee;”.

Amendment of section 19 of Act 31 of 2000

20. Section 19 of the South African Council for Educators Act, 2000, is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph:

- “(aA) payment for services rendered to the employer of educators contemplated in section 5(b)(iv);”.

Amendment of section 1 of Act 58 of 2001, as amended by section 8 of Act 1 of 2004 and section 2 of Act 50 of 2008

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

- (a) the substitution for the definition of “**department of education**” of the following definition:

“**‘department of education’** means—

- (a) the **[department]** Department of Basic Education, which is responsible for school education at national level [or];
 (b) a department responsible for school education in a province; or
 (c) the Department of Higher Education and Training, which is responsible for further education and training colleges and adult education and training centres at national level;”;

- (b) the substitution for the definition of “**Director-General**” of the following definition:

“**‘Director-General’**, in respect of functions relating to—

- (a) school education, means the Director-General [of the department responsible for education at national level]: Basic Education; and
 (b) further education and training colleges and adult education and training centres, means the Director-General: Higher Education and Training;”;

- (c) the substitution for the definition of “**Minister**” of the following definition:

“**‘Minister’**, in respect of functions relating to—

- (a) school education, means the Minister of Basic Education; and
 (b) further education and training colleges and adult education and training centres, means the Minister of Higher Education and Training;”.

Saving

22. The provisions of this Act must not be construed as limiting, amending, repealing or otherwise altering the administration and powers and functions entrusted by the legislation identified in item 1.7 of the Schedule to Proclamation No. 44 of 2009, published in *Government Gazette* No. 32367 of 1 July 2009, to the Minister of Higher Education and Training insofar as the administration and powers and functions pertain to further education and training colleges and adult education and training centres.

Short title

23. This Act is called the Basic Education Laws Amendment Act, 2010.

MEMORANDUM ON THE OBJECTS OF THE BASIC EDUCATION LAWS AMENDMENT BILL, 2010

1. MAIN OBJECT OF BILL

1.1 The main object of the Bill is to align the laws listed in subparagraph 1.2 with the new education dispensation that came about during 2009 when the former Department of Education was split into two distinctive, independent yet interrelated, departments. The Bill also seeks to clarify certain existing provisions in some of the listed laws and to provide statutory authority for practices currently in existence at schools.

1.2. The laws that the Bill seeks to align are—

- the National Education Policy Act, No. 27 of 1996 (the NEP Act);
- the South African Schools Act, No. 84 of 1996 (the SAS Act);
- the Employment of Educators Act, No. 76 of 1998 (the EE Act);
- the South African Council for Educators Act, No. 31 of 2000 (the SACE Act); and
- the General and Further Education and Training Quality Assurance Act, No. 58 of 2001 (the GENFETQA Act).

2. MAIN FEATURES OF BILL

2.1 NEP Act (clauses 1 to 3)

The creation of the new Department of Basic Education has necessitated a redefinition and deletion of certain words and expressions that occur in the NEP Act. The Bill seeks to amend the definitions of “Director-General”, “Minister” and “education institution” in order to reflect the new dispensation. For the same reason the Bill also proposes the deletion of the definition of “student” and the replacement of the word “student” in sections 3 and 4 of the NEP Act with the word “learner”.

2.2 SAS Act (clauses 4 to 14)

2.2.1 The Bill seeks to amend section 1 of the SAS Act to cater for new developments concerning the Department of Basic Education by proposing an amendment of the definition of “Minister”. The Bill also proposes the insertion of a new definition of “loan” in order to deal with financial contracts entered into by schools. An amendment to the definition of “parent” is also proposed in order to include both a biological and an adoptive parent.

2.2.2 The Bill proposes an amendment to section 5A(1) of the SAS Act in order to provide that the Minister of Basic Education must first consult the Minister of Finance before prescribing a regulation on minimum norms and standards for school infrastructure. The aim of this amendment is to comply with the requirements of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

2.2.3 The Bill seeks to insert a new section 6B in the SAS Act in order to ensure that governing bodies guard against unfair discrimination in respect of the official languages that are offered as subject options in the curriculum. The objective behind this amendment is to ensure that all official languages are treated equally and that schools cannot use language as a basis for discriminating against learners. The insertion of section 6B will also strengthen section 6(2) and (3) of the SAS Act.

2.2.4 The amendment proposed to section 9 of the SAS Act (addition of new subsection (11)) is intended to empower the Member of the Executive Council of a province who is responsible for education in that province to ensure that a suitable sanction is imposed on a learner after an appeal has been upheld by such Member. The rationale behind this provision is to further strengthen the powers of those Members and to bring legal certainty to the process regulated by that section.

2.2.5 The amendment proposed to section 12 of the SAS Act is aimed at introducing a new category of public school, namely a public school that provides education with a specialised focus on talent (for example focusing on sport, performing arts, creative arts, etc.).

2.2.6 The amendment proposed to section 16A of the SAS Act is aimed at extending the functions and responsibilities of a principal of a public school. The amendment seeks to give a principal greater accountability in respect of advising the governing body on

financial matters. It is envisaged that a principal should participate in both the executive and the financial committee.

2.2.7 The amendment proposed to section 19 of the SAS Act (addition of new subsections (3) and (4)) is to empower the Minister, when determining norms and standards and in order to enhance the capacity of governing bodies, to authorise a governing body association to perform certain functions to build the capacity of governing bodies.

2.2.8 The Bill seeks to insert a new section 33A in the SAS Act in order to ensure that school time is not interrupted by party-political activities during school time.

2.2.9 The amendment proposed to section 36 of the SAS Act is to ensure that the governing body first seeks the approval of the MEC before entering into a loan or overdraft agreement. The objective behind this proposal is to protect both the school and the State against unwarranted expenditure.

2.2.10 The amendment proposed to section 39 of the SAS Act is to empower the Member of the Executive Council of a province responsible for education to identify additional schools that may not charge school fees within his or her province that do not appear on the list of schools that may not charge school fees published by the Minister of Basic Education.

2.2.11 The amendment proposed to section 60 of the SAS Act is to ensure that liability against the State should be either delictual or contractual. This clause will bring certainty to the issue of the liability of the State in terms of this section.

2.3 EE Act (clauses 15 to 17)

2.3.1 The amendments proposed to various definitions in section 1 of the EE Act are necessitated by the creation of the new Department of Basic Education.

2.3.2 Section 2 of the EE Act currently provides that the Act applies in respect of the employment of educators at public schools, departmental offices and adult basic education centres. In order to align the Act with the new education dispensation, the Bill seeks to delete the reference to adult basic education centres.

2.3.3 The Bill seeks to replace the expression “Department of Education”, wherever it occurs in the EE Act, with the expression “Department of Basic Education” and the expression “adult basic education and training”, wherever it occurs in the EE Act, with the expression “adult education and training” in order to reflect the new education dispensation.

2.4 SACE Act (clauses 18 to 20)

2.4.1 The amendment proposed to section 1 of the SACE Act is to align the Act with the new education dispensation. The amendment proposed to the definition of “institution” is to omit references to institutions that do not fall under the new Department of Basic Education.

2.4.2 The amendment proposed to section 5 of the SACE Act is to ensure that the South African Council for Educators promotes in-service training of educators at the request of their employers upon the payment of an agreed fee by the employers of educators concerned.

2.4.3 The Bill seeks to amend section 19 of the SACE Act in order to reflect the fact that the funds of the South African Council for Educators include the money received from the employers for the in-service training of educators. The intention of this amendment is that the council should have the capacity to promote such training.

2.5 GENFETQA Act (clause 21)

2.5.1 The proposed amendment of section 1 of the GENFETQA Act is to draw a distinction between institutions administered by the Department of Higher Education and Training and those administered by the Department of Basic Education and to align the definitions of “Minister” and “Director-General” with the new education dispensation.

2.6 **Clause 22** is a savings clause and seeks to provide for the construction of the Bill taking into account the administration and powers and functions entrusted by the legislation identified in item 1.7 of Proclamation No. 44 of 2009 to the Minister of Higher Education and Training. The provisions of the Bill must not be construed as

limiting, amending, repealing or otherwise altering the administration or powers and functions entrusted by the legislation in question to the Minister of Higher Education and Training insofar as the administration or powers and functions pertain to further education and training and adult basic education and training.

3. OTHER DEPARTMENTS OR BODIES CONSULTED

3.1 The Bill was published for public comment in *Government Gazette* No. 32790 of 9 December 2009. The closing date for comments was 8 February 2010. However, comments were received and accepted up until 28 February 2010. The Department received comments from 14 stakeholders from a variety of categories. These comments were incorporated into the Bill on merit.

3.2 Comments were received from—

- Departments of state;
- Teacher unions;
- Schools;
- Individuals;
- National governing body associations; and
- The Independent Schools Association of South Africa.

4. FINANCIAL IMPLICATIONS FOR STATE

There are no financial implications for the State.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Basic Education 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, 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.

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