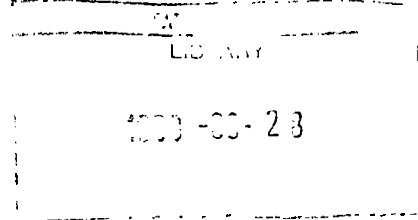


REPUBLIC OF SOUTH AFRICA

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# EDUCATION LAWS AMENDMENT BILL



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*(As introduced in the Notional Assembly as a section 76(1) Bill; explanatory summary of Bill published in Government Gazette No. 20449 of 8 September 1999) (The English text is the official text of the Bill)*

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(MINISTER OF EDUCATION)

[B 44—99]

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REPUBLIEK VAN SUID-AFRIKA

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# WYSIGINGSWETSONTWERP OP ONDERWYSWETTE

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*(Soos ingedien in die Nasionale Vergadering as 'n artikel 76(1)-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No. 20449 van 8 September 1999 gepubliseer) (Die Afrikaans teks is die amptelike vertaling van die Wetsontwerp)*

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(MINISTER VAN ONDERWYS)

[w 44—99]

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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.
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## BILL

To amend the South African Certification Council Act, 1986, so as to substitute certain definitions, to delete others and to insert new definitions; to provide anew for the functions of an examining body, the Director-General and the council, with regard to examinations; to allow the council to prescribe fees for the issue or endorsement of a certificate; and to remove obsolete references from the long title; to amend the National Education Policy Act, 1996, so as to make certain technical adjustments; to amend the South African Schools Act, 1996, so as to substitute certain definitions; to provide for the merger of two or more public schools and to regulate the consequences of such merger; to make provision for the temporary closure of a public school in the case of an emergency; to provide for an additional function of a governing body; to make further provision regarding co-opted members of governing bodies; to make **certain** technical adjustments; and to make further provision regarding claims for damages; to amend the Employment of Educators Act, 1998, so as to make provision for a timeframe within which a governing body or council must make its recommendations when an educator is appointed; to dispense with the necessity for a recommendation by a governing body or council in the case of temporary transfers; and to repeal the provisions dealing with misconduct and incapacity; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 85 of 1986, as amended by section 1 of Act 89 of 1992

1. Section 1 of the South African Certification Council Act, 1986, is hereby amended—

(a) by the substitution for the definition of “certificate” of the following definition:

“ ‘certificate’ means a certificate contemplated in section [9(1)] 9B(1)(c);”;

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

“ ‘Director-General’ means the Director-General of [National Education] the government department responsible for education at national level;”;

- (c) b) the substitution for the definition of “education department.. of the following definition:  
 “ ‘education department’ means a department [of State] responsible for [general or own] education [matters including a provincial education department] at national level or a department responsible for education in a province;”;
- (d) by the substitution for the definition of “examining body” of the following definition:  
 “ ‘examining body’ means an education department or any other body registered with the council as a body responsible for conducting external examinations [at a point of **withdrawal**];”;
- (e) by the insertion after the definition of “executive officer” of the following definition:  
 “ ‘external examination’ means an examination at a point of withdrawal written by the candidates of an examining body;”;
- (f) by the deletion of the definition of “formal education”;
- (g) by the substitution for the definition of “Minister” of the following definition:  
 “ ‘Minister’ means the Minister of [National] Education;”;
- (h) by the deletion of the definition of “non-formal education”;
- (i) by the substitution for the definition of “point of withdrawal” of the following definition:  
 “ ‘point of withdrawal’ means a stage in school [or technical college] education or [non-formal education] further education and training at which a candidate is required to sit for an examination with a view to obtaining documentary proof of proficiency;”;
- (j) by the insertion after the definition of “prescribe”. of the following definition:  
 “ ‘raw marks’ means the actual marks obtained by a candidate in a subject in an external examination before any adjustment of the marks is made by the council.”; and
- (k) by the deletion of the definition of “school or technical college education”.

Substitution of section 9 of Act 85 of 1986. as amended by section 2 of Act 89 of 1992

2. The following sections are hereby substituted for section 9 of the South African Certification Council Act, 1986:

“Functions of examining body with regard to external examination

9. In respect of an external examination to be conducted, an examining body, subject to policy determined in terms of section 3(4) of the National Education Policy Act. 1996 [Act No. 27 of 1996)—

- (a) shall take adequate measures, including measures to combat irregularities in the examination venue and security measures for ensuring the confidentiality of examination papers, to ensure the integrity of the examinations;
- (b) shall ensure that each paper is representative of the prescribed subject matter;
- (c) shall ensure that each paper is moderated by at least one competent internal moderator;
- (d) shall submit a paper and memorandum to an external moderator for confirmation that they conform to the required standards;
- (e) shall ensure that a sample of the examination scripts is moderated by an external moderator;
- (f) shall schedule a particular paper for a stipulated date and time on the examination time-table;
- (g) shall supply the council on or before a date and in the form determined by the council, with a mark for each subject in which a candidate sat for examination;

- (h) shall without delay and in writing supply the council and the Director-General with full details of any irregularities that occurred in respect of such examination as well as the steps taken with regard to such irregularities;
- (i) shall publish the results of the examination after obtaining the approval of the council: and 5
- (j) may recommend to the council during the standardisation process that raw marks be adjusted.

#### Functions of Director-General with regard to external examination

##### 9A. With regard to external examination the Director-General— 10

- (a) shall promote the integrity of the examination system;
- (b) shall monitor the conduct of the council and the examining body in upholding the minimum norms and standards set by the South African Qualifications Authority, established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or determined by policy: and 15
- (c) may institute an investigation into any irregularities which may occur.

#### Functions of council with regard to external examination

##### 9B. (1) Subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996), the council, with regard to external examination— 20

- (a) shall perform the external moderation of examination papers, memoranda and samples of examination scripts of all examining bodies;
- (b) shall, in consultation with the Director-General and the examining body, approve the publication of the results of candidates if the council is satisfied that the examining body— 25
- (i) conducted the examination free from any irregularity;
  - (ii) complied with the requirements prescribed by the council for conducting examinations;
  - (iii) applied the norms and standards prescribed by the council and the South African Qualifications Authority, established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), and with which a candidate is required to comply in those examinations in order to obtain a certificate; and 30
  - (iv) complied with every other condition determined by the council: 35
- (c) shall issue certificates in the form prescribed by the council to candidates who, in one or more subjects at a point of withdrawal— 40
- (i) have met the requirements set by the council for a certificate; and
  - (ii) have complied with every other condition determined by the council: and 40
- (d) may adjust raw marks during the standardisation process in consultation with the Director-General.

(2) Subject to the approval of the Minister, the council may register an examining body other than a department of education in accordance with criteria determined by the council. 45

(3) Subject to section 74 of the Higher Education Act, 1997 (Act No. 101 of 1997), the council may with the approval of a body authorised to determine the requirements for admission to study at a higher education institution, endorse a certificate of a candidate who has complied with the minimum requirements for admission to study at a higher education institution accordingly. 50

## Fees payable to council

**9C.** The council may prescribe the fees payable to the council in respect of—

- (a) the issue of a certificate as contemplated in section 9B(1)(c) or of a duplicate certificate; and
- (b) the endorsement of a certificate as contemplated in section 9B(3) or of a duplicate certificate.”.

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## Substitution of long title of Act 85 of 1986

3. The South African Certification Council Act, 1986, is hereby amended by the substitution for the long title of the following long title:

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“To provide for control over the norms and standards of subject matter and examination, and for the issuing of certificates, at the different points of withdrawal in school education and [technical college education] further education and training [and non-formal education]; and for that purpose to establish the South African Certification Council; and to provide for the conducting of [common] examinations; and to provide for matters connected therewith.”.

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## Amendment of section 3 of Act 27 of 1996, as amended by section 11 of Act 100 of 1997

4. Section 3 of the National Education Policy Act, 1996, is hereby amended by the substitution for subsection (3) of the following subsection:

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“(3) [Whenever the Minister wishes a particular] Subject to the Constitution, national policy [to prevail] shall prevail over the whole or a part of any provincial [law] policy on education [the Minister shall inform the provincial political heads of education accordingly, and make a specific declaration in the policy instrument to that effect] if there is a conflict between the national and provincial policies.”.

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## Amendment of section 5 of Act 27 of 1996

5. Section 5 of the National Education Policy Act, 1996, is hereby amended by the substitution in subsection (1) for paragraphs (b), (c) and (d) of the following paragraphs:

- (b) such national organisations representing [college rectors] principals of institutions providing further education and training as defined in section 1 of the Further Education and Training Act, 1998 (Act No. 98 of 1998), as the Minister may recognise for this purpose;
- (c) the [organised teaching profession] trade unions represented in the Education Labour Relations Council referred to in section 37(3)(b) of the Labour Relations Act, 1995 (Act No. 66 of 1995), read with paragraph 3(2) of Schedule 1 to that Act;
- (d) such national organisations representing [parents] governing bodies of schools as the Minister may recognise for this purpose;”.

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## Amendment of section 1 of Act 84 of 1996, as amended by section 1 of Act 100 of 1997

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

- (a) by the substitution for the definition of “educator” of the following definition:

“ ‘educator’ means [an educator as defined in the Educators Employment Act, 1994 (Proclamation No. 138 of 1994)] any person who teaches, educates or trains other persons or who provides professional educational services at a school;”;

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- (b) by the substitution for the definition of “school” of the following definition:

“ ‘school, means a *public school* or an independent *school* which enrolls *learners* in one or more *grades* from *grade* [zero] R (Reception) to *grade* twelve;”.

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## Amendment of section 9 of Act 84 of 1996

7. Section 9 of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) in consultation with the *Head of Department*, pending a decision as to whether the learner is to be expelled from the *school* by the *Head of Department* . . . . 5

## Insertion of section 12A in Act 84 of 1996

8. The South African Schools Act, 1996, is hereby amended by the insertion after section 12 of the following section:

## “Merger of public schools

**12A. (1)** Subject to subsection (2), the *Member of the Executive Council* 10 may, by notice in the *Provincial Gazette*, ~~merge two or more public schools~~ into a single *school*.

(2) Before merging two or more *public schools* the *Member of the Executive Council* must—

- (a) give written notice to the schools in question of the intention to merge them; 15
- (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the *schools* in question are situated;
- (c) give the *governing bodies* of the *schools* in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (b); 20
- (d) consider such representations; and
- (e) be satisfied that the employers of staff at the *public schools* have complied with their obligations in terms of the applicable labour law. 25

(3) If one or more of the *schools* that are to be merged in terms of subsection (1) are *public schools* on private property, the *Member of the Executive Council* must also—

- (a) notify the owner of the private property of his or her intention to merge the schools in question; 30
- (b) consider his or her contractual obligations in terms of the agreement contemplated in section 14;
- (c) renegotiate his or her obligations in terms of the existing agreement if necessary; and
- (d) negotiate a new agreement in terms of section 14 if the single *school* contemplated in subsection (1) is to be situated on private property. 35

(4) The single school contemplated in subsection (1) must be regarded as a *public school*.

(5) All assets, liabilities, rights and obligations of the schools that are merged, must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), vest in the single *school*. 40

(6) (a) The *governing bodies* of the schools that are merged must have a meeting before the merger to constitute a single interim *governing body* comprising of all the members of the *governing bodies* concerned.

(b) The interim *governing body* must decide on the budget and differences in codes of conduct and school fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing *body* is constituted in terms of sections 23 and 28.”. 45

## Amendment of section 16 of Act 84 of 1996

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9. Section 16 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

“(4) The Head of Department may close a public school temporarily in the case of an emergency if he or she believes on reasonable grounds that the lives of learners and staff are endangered or that there is a real danger of bodily injury to them or of damage to property.

(5) When the *Head of Department* decides that the *school* should be reopened, he or she must inform the *governing body* and the *principal* of the date on which the *school* must reopen.

(6) The *principal* must inform the *educators* and *parents* of the date contemplated in subsection (5).’.

Amendment of section 21 of Act 84 of 1996

10. Section 21 of the South African Schools Act, 1996, is hereby amended—

(a) by the deletion in subsection (1) of the word “or” at the end of paragraph (d); and

(b) by the insertion in subsection (1) after paragraph (d) of the following paragraph:

“(dA) to provide an adult basic education and training class or centre subject to any applicable law: or”.

Amendment of section 23 of Act 84 of 1996

11. Section 23 of the South African Schools Act, 1996, is hereby amended—

(a) by the substitution for subsection (8) of the following subsection:

“(8) [Co-opted] Subject to subsection (1 O), co-opted members do not have voting rights on the governing body.”; and

(b) by the addition of the following subsections:

“(10) If the number of parents at any stage is not more than the combined total of other members with voting rights, the governing body must temporarily co-opt parents with voting rights.

(11) If a *parent* is co-opted with voting rights as contemplated in subsection (10), the co-option ceases when the vacancy has been filled according to a procedure determined in terms of section 28(d).

(12) If a person elected as a member of a *governing body* as contemplated in subsection (2) ceases to fall within the category referred to in that subsection in respect of which he or she was elected as a member, he or she ceases to be a member of the *governing body*.”.

Amendment of section 29 of Act 84 of 1996

12. Section 29 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsection:

“(3) In the case of a public school for learners with special education needs any member of the governing body may serve as the chairperson of that governing body.”.

Amendment of section 55 of Act 84 of 1996, as amended by section 9 of Act 100 of 40 1997

13. Section 55 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (11) of the following subsection:

“(11) The [Registrar of deeds in the office] officer in charge of the deeds office or other office where the immovable property of a school is registered, must, on submission of the title deed in question, make such endorsement on the title deed and such entry in the register as may be required to register the transfer of the immovable property.”.

Amendment of section 60 of Act 84 of 1996

14. Section 60 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

“(3) Any claim for damage or loss contemplated in subsection ( 1 ) must be instituted against the *Member of the Executive Council* concerned.

(4) Despite the provisions of subsection ( 1), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a *public school* for purposes of supplementing the resources of the *school* as contemplated in section 36, including the offering of practical educational activities relating to that enterprise or business.

(5) Any legal proceedings against a *public school* for any damage or loss contemplated in subsection (4), or in respect of any act or omission relating to its contractual responsibility as employer as contemplated in section 20( 10), may only be instituted after written notice of the intention to institute proceedings against the *school* has been given to the *Head of Department* for his or her information . . . .

**Amendment of section 6 of Act 76 of 1998**

**15.** Section 6 of the Employment of Educators Act, 1998, is hereby amended— 15

(a) by the substitution in subsection (3)(a) for the word “Any” of the expression “Subject to paragraph (d), any”; and

(b) by the addition to subsection (3) of the following paragraph:

“(d) A recommendation contemplated in paragraph (a) shall be made within two months from the date on which a governing body or council was requested to make a recommendation, failing which the Head of Department may make an appointment without such recommendation.”.

**Amendment of section 8 of Act 76 of 1998**

**16.** Section 8 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution in subsection (2) for the word “No” of the expression “Subject to subsection (4), no”.; and 25

(b) by the addition of the following subsections:

“(4) A recommendation contemplated in subsection (2) shall be made within two months from the date on which a governing body or council was requested to make a recommendation, failing which the Head of Department may make a transfer without such recommendation.

(5) The Head of Department may, without a recommendation contemplated in subsection (2), transfer an educator temporarily for a stated period from a post at a public school or public further education and training institution, to a post at another public school or public further education and training institution. 35

(6) An educator referred to in subsection (5) shall return to his or her previous post at the end of the period contemplated in that subsection . . . .

**Repeal of Chapter 5 of Act 76 of 1998**

**17.** ( 1 ) Chapter 5 of the Employment of Educators Act, 1998, is hereby repealed. 40

(2) Notwithstanding the provisions of subsection (1)—

(a) any inquiry into incapacity and any proceedings in respect of a charge of misconduct instituted or commenced under that Act before the commencement of this section, must be continued and concluded as if subsection ( 1 ) had not been enacted: and 45

(b) the provisions relating to incapacity and misconduct contained in sections 16 to 26 of the said Chapter 5, have the effect and status of a collective agreement concluded in the Education Labour Relations Council, referred to in section 37(3)(b) of the Labour Relations Act, 1995 (Act No. 66 of 1995), read with paragraph 3(2) of Schedule 1 to that Act. 50



Short title

18. This Act is the Education Laws Amendment Act, 1999.

**MEMORANDUM ON THE OBJECTS OF THE EDUCATION LAWS  
AMENDMENT BILL, 1999**

This Bill amends the South African Certification Council Act, 1986 (Act No. 85 of 1986), the National Education Policy Act, 1996 (Act No. 27 of 1996), the South African Schools Act, 1996 (Act No. 84 of 1996), and the Employment of Educators Act, 1998 (Act No. 76 of 1998).

**South African Certification Council Act, 1986**

A need has been identified to amend and supplement the Act by the adjustment of certain definitions and the substitution of four new sections for section 9. This amendment endeavors to identify the functions of the examining body, the certification council and the national Department of Education, with regard to external examinations and to co-ordinate the relationship between these authorities.

**National Education Policy Act, 1996**

An amendment to section 3 is necessary to simplify the language used in the Act and to ensure that policy declared by the Minister prevails over provincial policy on education.

The amendment to section 5 of the Act replaces "college rectors" with "principals of institutions providing further education and training as defined in the Further Education and Training Act, 1998", the "organised teaching profession" with "trade unions" and "parents" with "governing bodies.",

**South African Schools Act, 1996**

The Act is amended by substituting the definition of an educator. The existing definition is obsolete, as it refers to an educator employed in terms of the repealed Educators Employment Act, 1994. The definition of a school is also amended to refer to the reception year as "grade R(Reception)".

Section 9 of the Act is amended to ensure that the Head of Department is part of the decision-making process when a learner is suspended pending a decision to expel. The Head of Department is responsible for ensuring that the learner exercises his or her right to education, but the current wording makes him or her responsible for education without being part of the decision-making process when a learner is suspended.

A new section is inserted as section 12A to cater for the merger of public schools, and to provide for a process and to deal with the consequences of such a merger.

Section 16 of the Act is amended to empower the Head of Department to close a school temporarily in the case of an emergency, when learners and staff members are endangered or in the case of a real threat of damage to property. The discretion to reopen the school rests with the Head of Department. This amendment is necessary to ensure the safety of learners and staff members, as well as school property, which is not provided for in the current Act.

The amendment to section 21 of the Act empowers a school governing body or council, on application to the Head of Department, to provide for an adult basic education class or centre.

The amendment to section 23 of the Act provides for voting rights for co-opted members in the event of the number of parents in a governing body or council not exceeding the combined total number of other members with voting rights.

Section 29 of the Act is amended to provide that in the case of public schools for learners with special education needs, any member of the governing body may serve as a chairperson, not only, as is the case with public schools, a parent member who is not employed at the public school.

Section 55 of the Act is amended to empower any officer in charge of a deeds office to endorse the title deed regarding the transfer of immovable property to the state, as in the case of schools situated on property with mining rights, the process of registration and the registration authority differ from normal procedures.

Section 60 of the Act is amended to provide clarity on the authority against which a claim for damage or loss at a public school is instituted. The amendment indemnifies the State from liability for any damage or loss caused by contractual liability between the public school and any enterprise or business operated at the school.

#### **Employment of Educators Act, 1998**

Section 6 of the Act is amended, as it is required that a specific time frame be identified within which a governing body or council must exercise its right to make recommendations on the appointment and the redeployment of educators. If a governing body or council does not exercise its right within the specific time frame, the employer may appoint an educator without taking into account a recommendation from the governing body or council.

Section 8 of the Act is amended to provide for the temporary transfer of an educator within a province and between two different schools by the Head of Department without the recommendation of a governing body or council. This amendment will ensure that budgets are utilised effectively and that an educator who is in excess to the establishment is redeployed to a post where there is a need for a teacher. It will drastically reduce wastage pertaining to personnel expenditure.

Chapter 5 of the Act is also repealed to bring it into line with the approach in the Public Service, where misconduct and incapacity are dealt with through collective agreements.

#### **PARLIAMENTARY PROCEDURE**

The Department of Education and the State Law Advisers are of the opinion that the procedure determined by sections 73 and 76 of the Constitution should be followed with regard to this Bill. This is an amendment Bill to legislation which falls within the general and further education sector (further education being the higher grades). Schedule 4 to the Constitution prescribes that education other than tertiary education falls within the functional area of concurrent national and provincial legislative competency.

#### **FINANCIAL IMPLICATIONS FOR STATE**

No additional financial implication is foreseen as a result of this amendment Bill.

#### **DEPARTMENTS/BODIES CONSULTED**

The South African Certification Council.

The Bill was sent to all trade unions registered to the Education Labour Relations Council and to the governing body organisations for comment.

The Bill was published in the *Government Gazette* for public comment.

#### **OFFICIAL TEXT**

The English text of this Bill is the official text and the translated Afrikaans version thereof is attached hereto.