

REPUBLIC OF SOUTH AFRICA

BASIC EDUCATION LAWS AMENDMENT BILL

(.....)

(MINISTER OF BASIC EDUCATION)

[B — 2015]

GENERAL EXPLANATORY NOTE:

Words in bold type in square brackets indicate omissions from existing enactments.
Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend—

- the South African Schools Act, 1996 (Act No. 84 of 1996), so as to amend certain definitions and insert new definitions; to increase the penalty in the case where the parent of a learner, or any other person, prevents a learner who is subject to compulsory school attendance from attending school, and to create an offence in respect of the interruption or disruption of school activities; to enhance the authority of the Head of Department in relation to the admission of a learner to a public school; to provide that the governing body of a public school must submit the admission policy and the language policy of the public school to the Head of Department for approval and that, in considering the policies, the Head of Department must be satisfied that the policies take into account, inter alia, the needs, in general, of the broader community in which the public school is located, and that the policies must be reviewed at certain

intervals, and that the Head of Department may, under certain circumstances, direct a public school to adopt more than one language of instruction; to provide the Minister with the authority to appoint a person or organisation to advise on curriculum- and assessment-related matters; to provide for the inclusion of an exemption clause in the code of conduct of a public school adopted by the governing body and for disciplinary proceedings to be dealt with in an informal manner; to provide for the prohibition of liquor and prohibited substances on school premises; to further regulate the merger of public schools; to limit the post levels in regard to which the governing body may make recommendations for appointment to the Head of Department; to provide for the use of the facilities of schools for education-related activities without the charging of a fee or tariff; to provide for centralised procurement, under certain circumstances, of learning support material; to further provide for action to be taken in the event that a governing body ceases or fails to perform its functions and to grant additional powers to persons appointed by the Head of Department where the governing body has failed to perform its functions; to provide that a member of the governing body must declare personal interests in the procurement of goods and services for public schools, or interests that his or her family members may have, and that a member of the governing body must recuse himself or herself in such a case; to prohibit the remuneration of members of the governing body for the performance of their functions as governing body members in relation to any school activity; to provide for a parent member to serve as chairperson of the finance committee; to provide for additional procedures in relation to the closure of public schools, to allow the Member of the Executive Council to close a public school if there are no learners registered at that school and to allow the Member of the Executive Council to close a public school, after complying with certain requirements, if there are 135 or fewer than 135 learners registered at that school; to provide that lease agreements have to be submitted to the Member of the Executive Council for approval; to further regulate the approval and adoption of the annual budget of a public school and amendments thereto; to provide for the consideration of specified documents by the governing body in an application for school fee exemption and the submission of additional documentary evidence by a parent in relation to the other parent; to extend the powers of the Head of Department to conduct an investigation into the financial affairs of a public school and to provide that a governing body must submit quarterly reports on all income and expenditure to the Head of Department; to provide for financial reporting by subsidised independent schools; to further provide for the registration of learners for home education; to create an offence where a parent supplies a public school with false or misleading information or forged documents; to provide for a dispute resolution mechanism in the event of a dispute between the Head of Department and a governing body; to further regulate the liability of the State for contractual damages; to extend the powers of the Minister to make regulations; to provide for offences to be created in regulations made by the Minister; and to provide for matters incidental thereto; and

- the Employment of Educators Act, 1998 (Act No. 76 of 1998), so as to amend certain definitions; to provide for the exclusion of adult basic education and further education and training centres and institutions from the ambit of the Act; to limit the post levels in regard to which the governing body may make recommendations for appointment to the Head of Department and to extend the powers of the Head of Department in relation to the appointment, promotion or transfer of certain post levels; to extend the provisions in regard to educators deemed to be discharged to include temporary and substitute educators; to prohibit an educator from conducting business with the State and to create an offence in relation thereto; to provide for the disclosure of financial interest of educators; to extend the powers of the Minister to make regulations; and to provide for matters incidental thereto.

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

Amendment of section 1 of Act 84 of 1996, as amended by sections 1 of Act 100 of 1997, Act 48 of 1999, Act 53 of 2000, Act 57 of 2001, Act 50 of 2002, Act 1 of 2004, Act 24 of 2005, Act 31 of 2007 and Act 15 of 2011

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

“**‘benefit in kind’** means any benefit offered or afforded to the employee which is not a monetary benefit, including, but not limited to—

 - (a) exclusive private usage or ownership of a vehicle;
 - (b) free accommodation;
 - (c) free phone, including cellphone;
 - (d) free holiday;
 - (e) groceries to the benefit of the employee; or
 - (f) garden services;”;
 - (b) by the insertion after the definition of “**benefit in kind**” of the following definition:

“**‘competent assessor’** means a qualified *educator* registered with the South African Council for Educators as defined in the South African Council for Educators Act, 2000 (Act No. 31 of 2000), or a person or body registered with the South African Qualifications Authority as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);”;
 - (c) by the deletion in the definition of “**Constitution**” of the expression “(Act No. 108 of 1996);”;
 - (d) by the insertion after the definition of “**dangerous object**” of the following definition:

“**‘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;”;
 - (e) by the insertion after the definition of “**Head of Department**” of the following definition:

“**‘home education’** means a purposeful programme of education for a *learner*, alternative to school attendance, which—

 - (a) is provided under the direction of the learner’s *parent* primarily in the environment of the *learner*’s home;
 - (b) may include tutorial or other educational support services secured by the *parent*; and
 - (c) meets the requirements for registration of a *learner* for home education contemplated in section 51(2);”;
 - (f) by the insertion after the definition of “**learner**” of the following definition:

“**‘liquor’** means liquor as defined in section 1 of the Liquor Act, 2003 (Act No. 59 of 2003);”;
 - (g) by the substitution for the definition of “**loan**” of the following definition:

“**‘loan’** means any financial obligation based on agreement, which obligation renders a *public 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) and the day-to-day operational costs of a *public school* which include, but are not limited to, the purchasing of stationery, and the payment of telephone accounts, internet accounts and municipal services;”;
 - (h) by the insertion after the definition of “**officer**” of the following definition:

“**‘other financial benefit’** means any benefit of a monetary nature, including, but not limited to—

 - (a) exemption from the payment of school fees to the school in respect of the child of an employee, but excluding exemption in terms of the provisions of sections 39 to 41 of the Act;
 - (b) a credit card linked to an employee for his or her personal use;

- (c) a petrol card linked to an employee for his or her personal use not related to any school activity; and
- (i) by the insertion after the definition of “**principal**” of the following definition:
“‘prohibited substance’ means any substance contemplated in the South African Institute for Drug-Free Sport Act, 1997 (Act No. 14 of 1997).”

Amendment of section 3 of Act 84 of 1996, as amended by Act 100 of 1997

2. Section 3 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (6) of the following subsection:
 “(6) Subject to *this Act* and any other applicable law—
- (a) any *parent* who, without just cause and after a written notice from the *Head of Department*, fails to comply with subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six **[months]** years, or to both such fine and such imprisonment; or
- (b) any other person who, without just cause, prevents a *learner* who is subject to compulsory attendance from attending a *school*, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six **[months]** years, or to both such fine and such imprisonment.”; and
- (b) by the insertion after subsection (6) of the following subsection:
 “(7) Any person who wilfully interrupts or disrupts any school activity or who wilfully hinders or obstructs any school in the performance of the school’s activities shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six years or to both such fine and such imprisonment.”.

Amendment of section 5 of Act 84 of 1996, as amended by section 2 of Act 50 of 2002

3. Section 5 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (5) of the following subsection:
 “(5) Subject to *this Act* and any applicable provincial law, the admission policy of a *public school* is determined by the *governing body* of such school: Provided that—
- (a) the *Head of Department* has the final authority, subject to subsection (9), to admit a learner to a *public school*;
- (b) the *governing body* must submit the admission policy of a *public school* and any amendment thereof to the *Head of Department* for approval;
- (c) the *Head of Department* may approve the admission policy of a *public school* or any amendment thereof or he or she may return it to the *governing body* with such recommendations as may be necessary in the circumstances;
- (d) the *Head of Department*, when considering the admission policy or any amendment thereof for approval, must be satisfied that the policy or the amendment thereof takes into account the needs, in general, of the broader community in which the public school is located, and must take into account the following factors, but not limited to:
- (i) The best interests of the child, with emphasis on equality, as provided for in section 9 of the Constitution, and equity;
- (ii) accessibility to a school within the community by learners;
- (iii) the available resources of the school; and
- (iv) the space available at the school for learners; and
- (e) the *governing body* must review the admission policy determined in terms of this section every three years or whenever the factors referred to in paragraph (d) have changed, when circumstances so require, or at the request of the *Head of Department*.”.
- (b) by the substitution for subsection (9) of the following subsection:

“(9) Any learner or parent of a learner who has been refused admission to a public school may appeal against the decision to the Member of the Executive Council within 14 days of receiving the notification of the refusal of admission to a public school.”; and

(c) by the insertion after subsection (9) of the following subsection:

“(10) If an appeal contemplated in subsection (9) has been received, the Member of the Executive Council must respond within 21 days of receiving such an appeal.”.

Amendment of section 6 of Act 84 of 1996

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

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

“(2) The governing body of a public school may, subject to subsection (5), determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law.”; and

(b) by the insertion after subsection (4) of the following subsections:

“(5) The governing body must submit the language policy of a public school and any amendment thereof to the Head of Department for approval.

(6) The Head of Department may approve the language policy of a public school or any amendment thereof or he or she may return it to the governing body with such recommendations as may be necessary in the circumstances.

(7) The Head of Department, when considering the language policy or any amendment thereof for approval, must be satisfied that the policy or the amendment thereof takes into account the language needs, in general, of the broader community in which the public school is located, and must take into account the following factors, but not limited to:

(a) The best interests of the child, with emphasis on equality, as provided for in section 9 of the Constitution, and equity;

(b) the dwindling number of learners who speak the language of learning and teaching at the public school; and

(c) the need for effective use of classroom space and resources of the public school.

(8) The governing body must review the language policy determined in terms of this section every three years or whenever the factors referred to in subsection (7) have changed, when circumstances so require, or at the request of the Head of Department.

(9) Notwithstanding the provisions of subsection (2), the Head of Department may direct a public school to adopt more than one language of instruction, where it is practicable to do so.

(10) The Head of Department, in determining whether it is practicable for a public school to have more than one language of instruction, must take into account the following factors, but not limited to—

(a) the best interests of the child, with emphasis on equality, as provided for in section 9 of the Constitution, and equity;

(b) the dwindling number of learners who speak the language of learning and teaching at the public school;

(c) the need for effective use of classroom space and resources of the public school; and

(d) the language needs, in general, of the broader community in which the public school is located.

(11) The Head of Department may not act in terms of subsection (9) unless he or she has—

(a) informed the governing body of the public school of his or her intention so to act and his or her reasons therefor;

- (b) granted the governing body of the public school a reasonable opportunity to make representations to him or her in relation to such action;
- (c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such action; and
- (d) given due consideration to any such representations received.”.

(12) The Head of Department must inform the governing body of his or her decision and must make his or her decision known to the community in a suitable manner.

Amendment of section 6A of Act 84 of 1996, as inserted by section 3 of Act 50 of 2002

5. Section 6A of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (2) of the following subsection:

“(3) The Minister may, either generally or in a specific case, appoint in writing, a person, an organisation or group of persons to advise him or her in regard to the determination contemplated in subsection (1).”.

Amendment of section 8 of Act 84 of 1996, as amended by section 4 of Act 50 of 2002 and section 6 of Act 31 of 2007

6. Section 8 of the South African Schools Act, 1996, is hereby amended—
(a) by the substitution for subsection (2) of the following subsection:

“(2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process, taking into account the diverse cultural beliefs and religious observances of the learners at the school.”;

(b) by the substitution for subsection (4) of the following subsection:

“(4) (a) The code of conduct must contain an exemption provision, in order for learners or the parent of a learner to make application to the governing body requesting an exemption of that learner from complying with the code of conduct or certain provisions thereof, on just cause shown.

(b) A learner or the parent of a learner who has been refused exemption as contemplated in paragraph (a) may appeal against the decision of the governing body to the Head of Department within 14 days of receiving the notice of the decision.”; and

(c) by the insertion in subsection (5) after paragraph (b) of the following paragraph:

“(c) The disciplinary proceedings referred to in this subsection must not be rigid and should adhere to the principles of justice, fairness and reasonableness prescribed by the Constitution.”.

Amendment of section 8A of Act 84 of 1996, as inserted by section 7 of Act 31 of 2007

7. Section 8A of the South African Schools Act, 1996, is hereby amended—
(a) by the substitution for subsection (1) of the following subsection:

“(1) Unless authorised by the principal for legitimate educational purposes, no person may bring liquor, a dangerous object [or], an illegal drug or a prohibited substance onto school premises or have such liquor, dangerous object [or], illegal drug or prohibited substance in his or her possession on school premises or during any school activity.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) Subject to subsection (3), the principal or his or her delegate may, at random, search a learner or any group of learners, or the property of a learner or group of learners, for any liquor, dangerous object [or], illegal drug or prohibited substance, if a fair and reasonable suspicion has been established—

- (a) that liquor, a dangerous object [or], an illegal drug or a prohibited substance may be found on school premises or during a school activity; or
- (b) that one or more learners on school premises or [during] at a school activity are in possession of liquor, dangerous objects [or], illegal drugs or prohibited substances.”;
- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“(5) Any liquor, dangerous object [or], illegal drug or prohibited substance that has been seized must be—”;
- (d) by the substitution for subsection (6) of the following subsection:

“(6) If the police cannot collect the liquor, dangerous object [or], illegal drug or prohibited substance from the school immediately, the principal or his or her delegate must—

 - (a) take the liquor, dangerous object [or], illegal drug or prohibited substance to the nearest police station; and
 - (b) hand the liquor, dangerous object [or], illegal drug or prohibited substance over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).”;
- (e) by the substitution for subsection (7) of the following subsection:

“(7) The police officer who receives the liquor, dangerous object [or], illegal drug or prohibited substance must issue an official receipt for it to the principal or to his or her delegate.”;
- (f) by the substitution for subsection (8) of the following subsection:

“(8) The principal or his or her delegate may at random administer a urine or other non-invasive test to any learner or group of learners that is on fair and reasonable grounds suspected of using liquor, illegal drugs or prohibited substances, after taking into account all relevant factors contemplated in subsection (3).”;
- (g) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:

“(9) A learner contemplated in subsection (8) may be subjected to a urine or other non-invasive test for liquor, illegal drugs or prohibited substances only if—”;
- (h) by the substitution for subsection (12) of the following subsection:

“(12) A learner may be subjected to disciplinary proceedings if—

 - (a) liquor, a dangerous object [or], an illegal drug or a prohibited substance is found in his or her possession; or
 - (b) his or her sample tested positive for liquor, an illegal drug or a prohibited substance.”; and
- (i) by the substitution in subsection (14) for paragraph (a) of the following paragraph:

“(a) a search contemplated in subsection (2) was conducted and liquor, a dangerous object [or], an illegal drug or a prohibited substance was found; or”.

Amendment of section 12A of Act 84 of 1996, as amended by section 8 of Act 48 of 1999

- 8.** Section 12A of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution for subsection (4) of the following subsection:

“(4) (a) The Member of the Executive Council must, after consultation with the governing bodies of the public schools that are to be merged, determine by notice contemplated in subsection (1)—

 - (i) the date of establishment of the public school;
 - (ii) the name of the public school; and
 - (iii) the physical location and official address of the public school.

- (b) by the substitution for subsection (6) of the following subsection:
- “(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 for a period not exceeding three months.
- (b) The interim *governing body* must elect office bearers, decide on the budget [and], differences in codes of conduct [and], school fees, and, if applicable, contractual obligations, utilisation and disposal of movable assets and recommend to the Head of Department on personnel matters, 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.
- (c) The Member of the Executive Council may extend the period referred to in paragraph (a) once for a further period not exceeding three months.”;
- (c) by the insertion after subsection (7) of the following subsections:
- “(8) A merger contemplated in subsection (1) does not affect the liability of any person to be disciplined or prosecuted for any misconduct, crime or offence.
- (9) A learner is subject to the code of conduct applicable to the new single public school as from the date of the merger contemplated in subsection (1), but if any proceedings in respect of a charge of misconduct had been instituted or commenced before the date of the merger, such proceedings must continue in terms of the code of conduct relevant to the public school immediately before the merger.
- (10) The new single public school or the Head of Department, as the case may be, undertake rationalisation of its workforce according to operational requirements in accordance with sections 189 and 189A of the Labour Relations Act, 1995 (Act No. 66 of 1995), and the Employment of Educators Act, 1998 (Act No. 76 of 1998).
- (11) If two or more public schools are merged into a single public school in terms of subsection (1), the new single public school continues with all academic programmes offered by the former public schools under the programmes applicable to the respective public schools immediately before the date of the merger, until such programmes are amended or restructured by the governing body or education department, where applicable.”.

Amendment of section 17 of Act 84 of 1996

9. Section 17 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (2) of the following subsection:

“(3) The Member of the Executive Council may for sufficient reasons reverse or suspend his or her determination in terms of subsection (1).”.

Amendment of section 20 of Act 84 of 1996, as amended by section 6 of Act 100 of 1997, section 4 of Act 53 of 2000, section 3 of Act 57 of 2001 and section 9 of Act 30 of 2007

10. Section 20 of the South African Schools Act, 1996, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (i) of the following paragraph:
- “(i) recommend to the Head of Department the appointment of post level 1 educators at the school, subject to the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Labour Relations Act, 1995 (Act No. 66 of 1995);”;
- (b) by the substitution in subsection (1) for paragraph (k) of the following paragraph:

- “(k) at the request of the *Head of Department*, allow the reasonable use under fair conditions determined by the *Head of Department* of the facilities of the school for **[educational programmes]** education-related activities **[not conducted by the school]**, without the charging of a fee or tariff.”

Amendment of section 21 of Act 84 of 1996, as amended by section 10 of Act 48 of 1999

11. Section 21 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (3) of the following subsection:

“(3A) Notwithstanding the provisions of subsections (1)(c) and (3) and section 22, the *Head of Department* may, after consultation with the governing body, centrally procure identified learning support material for public schools on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.”

Amendment of section 22 of Act 84 of 1996

12. Section 22 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The *Head of Department* may, on reasonable grounds, withdraw **[a] one or more [function] functions** of a governing body.”

Amendment of section 25 of Act 84 of 1996, as amended by section 4 of Act 57 of 2001

13. Section 25 of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for the heading of the following heading:

“**Cessation or failure by governing body to perform functions**”;
- (b) by the substitution for subsection (1) of the following subsection:

“(1) (a) If the *Head of Department* determines on reasonable grounds **[that] to dissolve a governing body that has ceased to perform functions [allocated to it] as prescribed in terms of this Act, [or has failed to perform one or more of such functions,]** he or she must appoint sufficient persons to perform all such functions **[or one or more of such functions, as the case may be,]** for a period not exceeding three months.

(b) If the *Head of Department* determines on reasonable grounds that a governing body has failed to perform one or more of such functions, as prescribed in terms of this Act, he or she must appoint sufficient persons to perform one or more of such functions, as the case may be, for a period not exceeding three months.”;
- (c) by the substitution for subsection (2) of the following subsection:

“(2) The *Head of Department* may extend the period referred to in subsection (1)(a) and (b), by further periods not exceeding three months each, but the total period may not exceed one year.”;
- (d) by the substitution for subsection (4) of the following subsection:

“(4) If a governing body fails to perform any of its functions, the persons contemplated in subsection (1)(b) must build the necessary capacity within the period of their appointment to ensure that the governing body performs its functions in terms of the Act that it failed to perform.”; and
- (e) by the addition after subsection (4) of the following subsection:

“(5) The persons contemplated in subsection (1) shall have exclusive voting rights and decision making powers on any function that they have been appointed to perform.”

Substitution of section 26 of Act 84 of 1996

14. The following section is hereby substituted for section 26 of the South African Schools Act, 1996:

“Recusal by members of governing body

26. (1) A governing body member must declare a direct or indirect personal interest that the member or any of his or her family members has in the procurement of goods and services for the public school, including—

(a) a personal interest of the governing body member or any of his or her family members—

(i) in an entity conducting business with the school; or

(ii) in a business or a commercial or financial activity undertaken by the governing body or the school;

(b) a financial or other obligation of the governing body member to an entity conducting business with the school; and

(c) a gift, hospitality, sponsorship or other benefit received by the governing body member from an entity conducting business with the school.

(2) Any person may in writing inform the chairperson of a governing body or the principal of a school of a possible conflict of interest concerning a governing body member.

(3) A governing body member must withdraw and recuse himself or herself from a meeting of the governing body for the duration of the discussion and decision-making on an issue in which the member has a personal interest.

(4) A governing body may not take a decision on a matter if it has knowledge that a governing body member who is present has a personal interest in that matter, until the member has withdrawn as contemplated in subsection (3).

(5) A governing body member who contravenes the provisions of this section, and after due process, as contemplated in the code of conduct for the members of the governing body, may —

(a) be suspended; or

(b) have his or her membership of a governing body terminated.

(6) This section applies, with the necessary changes, to committees of a governing body and committee members.

(7) For the purposes of this section, “family member” means a parent, a sister, a brother, a child or a spouse of a member of the governing body, and includes—

(a) a person living with that member as if they were married to each other, namely a life partner;

(b) a relative who resides permanently with that member; and

(c) any other relative who is dependent on such member.”.

Amendment of section 27 of Act 84 of 1996

15. Section 27 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No member of a governing body may be remunerated in any way for the performance of his or her duties or attendance of meetings and any school activity.”.

Amendment of section 29 of Act 84 of 1996, as amended by section 12 of Act 48 of 1999

16. Section 29 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Only a parent member of a governing body who is not employed at the public school may serve as the chairperson of the governing body or as the chairperson of the finance committee of that public school.”.

Amendment of section 32 of Act 84 of 1996

17. Section 32 of the South African Schools Act, 1996, is hereby amended by the substitution in the heading of the section for the word “minors” of the word “learners” and in subsections (1), (2) and (3) for the word “minor” of the word “learner”, wherever it appears.

Amendment of section 33 of Act 84 of 1996

18. Section 33 of the South African Schools Act, 1996 is hereby amended—
- (a) by the deletion in subsection (2) of the word “and” at the end of paragraph (c);
 - (b) by the insertion in subsection (2) of the word “and” at the end of paragraph (d);
 - (c) by the insertion in subsection (2) after paragraph (d) of the following paragraph:

“(e) informed the governing body of the school and the community of the outcome of the considerations of their representations.”;
 - (d) by the insertion of the following subsections after subsection (2):

“(2A) Notwithstanding the provisions of subsection (2) the Member of the Executive Council may, by notice in the Provincial Gazette, in his or her sole discretion, close a public school if there are no learners registered at that school.

“(2B) Notwithstanding the provisions of subsection (2) and subject to the provisions of subsection (2C), the Member of the Executive Council may, by notice in the Provincial Gazette, close a public school if there are 135 or fewer than 135 learners registered at that school.

“(2C) The Member of the Executive Council may not act under subsection (2B) unless he or she has—

 - (a) given written notice to the school and the parents of the learners of that school;
 - (b) published a notice in one or more newspapers circulating in the area where the school is situated or by means of any other acceptable form of communication, giving notice of his or her intention to close the school;
 - (c) consulted with the parents of the learners of the school and affording them an opportunity to make representations within a period of not less than 30 days from the date of the notice or communication referred to in paragraph (b);
 - (d) considered such representations; and
 - (e) where applicable, made alternative arrangements for the learners of the school to attend another school that is able to accommodate those learners and, where appropriate, made arrangements for the transport of the learners to that school.”; and
 - (e) by the substitution for subsection (3) of the following subsection:

“(3) If a public school is closed in terms of subsection (1), (2A) or (2B) all assets and liabilities of such school must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school.”.

Amendment of section 36 of Act 84 of 1996, as amended by section 5 of Act 57 of 2001 and section 12 of Act 15 of 2011

19. Section 36 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Despite subsection (1), a governing body may not enter into any loan, lease or overdraft agreement [so as to supplement the school fund] for any purpose, without the written approval of the Member of the Executive Council.”.

Amendment of section 37 of Act 84 of 1996, as amended by section 6 of Act 57 of 2001

20. Section 37 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The *governing body* of a *public school* must establish a *school fund* and administer it in accordance with **[directions]** directives issued by the *Head of Department*.”.

Amendment of section 38 of Act 84 of 1996, as amended by section 7 of Act 57 of 2001 and section 7 of Act 50 of 2002

21. Section 38 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (3) of the following subsections:

“(4) Any significant or substantial deviation from the initial approved budget must be presented to a general meeting of *parents* convened specifically for that purpose, on at least 30 days’ notice, for consideration and approval by a majority of *parents* present and voting.

(5) The notice contemplated in subsection (4) must also inform the *parents* that the change to the initial approved budget will be available for inspection at the school at least 14 days prior to the meeting.

(6) A quorum of 15% of *parents* is required for the general meetings of *parents* contemplated in subsections (2) and (4).

(7) If the quorum contemplated in subsection (6) is not reached at the general meeting of *parents*—

(a) the chairperson shall determine the date, time and place for the second meeting of the general meeting and notify *parents* 14 days prior to such meeting ;

(b) the principal shall at least seven days prior to the date of the second general meeting distribute the copy of the notice to every learner at the *school* with an instruction to hand the notice to the *parents*; and

(c) there shall be no quorum required at the second general meeting.”.

Amendment of section 41 of Act 84 of 1996, as amended by section 5 of Act 24 of 2005

22. Section 41 of the South African Schools Act, 1996, is hereby amended—
(a) by the substitution for subsection (2) of the following subsection:

“(2) The exemption from payment of *school fees* must be calculated according to the regulations contemplated in section 39(4) and the *governing body* may consider only the following documentation when deciding on the application:

(a) A salary advice of both *parents*, where applicable;

(b) statements of profits received from investments or other forms of business;

(c) a divorce agreement or court order, where applicable;

(d) an affidavit where the *parent* is unemployed; and

(e) proof of all children registered at a *public school*.”; and

(b) by the insertion after subsection (2) of the following subsection:

“(2A) Notwithstanding subsection (2), a parent may submit to the governing body documentary evidence in the form of an affidavit supported by a confirmatory affidavit from a social worker or another competent authority, or a court order, which constitutes sufficient proof that the other parent of the learner—

(a) is untraceable;

(b) is unwilling to provide the first-mentioned parent with particulars of his or her total annual gross income;

(c) has failed to provide the first-mentioned parent with particulars of his or her total annual gross income despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned parent that he or she do so; or

(d) has provided the first-mentioned parent with incomplete or inaccurate particulars about his or her total annual gross income and has refused to

rectify the deficiency or has failed to do so despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned parent that he or she do so.”.

Amendment of section 43 of Act 84 of 1996

23. Section 43 of the South African Schools Act, 1996, is hereby amended by the substitution for subsections (4) and (5) of the following subsections:

- “(4) If the Head of Department deems it necessary, he or she may—
- (a) authorise officers to conduct an investigation into the financial affairs of a public school, and, where necessary, after consultation with the governing body, access documents relevant for the purposes of the investigation;
 - (b) request the Auditor-General to undertake an audit of the records and financial statements of a public school; or
 - (c) appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a public school.
- (5) A governing body must submit to the Head of Department —
- (a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure in accordance with directives issued by the Head of Department; and
 - (b) within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.”.

Amendment of section 48 of Act 84 of 1996

24. Section 48 of the South African Schools Act, 1996, is hereby amended—

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

“(2) The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to an independent school, subject to conditions determined by the Member of the Executive Council.”; and

- (b) by the insertion after subsection (5) of the following subsection:

“(6) An independent school must submit to the Head of Department—

- (a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure relating to the subsidy contemplated in subsection (2), in accordance with directives issued by the Head of Department; and
- (b) within six months after the end of each financial year, a copy of the audited or examined annual financial statements relating to the subsidy contemplated in subsection (2).”.

Substitution of section 51 of Act 84 of 1996

25. The following section is hereby substituted for section 51 of the South African Schools Act, 1996:

“Registration of learners for home education

51. (1) A parent of a learner who is of compulsory school going age may apply to the Head of Department for the registration of the learner to receive home education.

(2) The Head of Department must approve the application and register the learner as contemplated in subsection (1) if he or she is satisfied that—

- (a) education at home and registration as such is in the interests of the learner;
- (b) the parent understands, accepts and is equipped to fulfil the responsibility of home education for the learner;

- (c) the proposed home education programme is suitable for the learner's age, grade level, ability and covers the acquisition of content and skills at least comparable to the relevant national curriculum determined by the Minister; and
- (d) the parent undertakes to—
- (i) make suitable educational resources available to support the learner's learning;
 - (ii) monitor the learner's learning;
 - (iii) arrange for the learner's educational attainment to be assessed annually by a competent assessor, approved by the Head of Department, at the parent's own expense who will apply a standard that is not inferior to the standard expected in a public school according to the learner's age, grade level and ability; and
 - (iv) provide the Head of Department with the learner's assessment report signed by the competent assessor.

(3) The Head of Department may attach any reasonable conditions to a learner's registration for home education consistent with subsection (2) that takes into account—

- (a) the circumstances of the learner or parent;
- (b) the character of home education as an alternative to compulsory school attendance; and
- (c) the capacity of the education department to support and monitor the home education of a learner.

(4) A learner who is registered for home education is exempted from school attendance in terms of the Act.

(5) A parent may, after a learner has completed grade 9, enrol the learner at a public school or independent school for the completion of grades 10 to 12.

(6) A parent of a learner who wishes to continue with home education after the learner has completed grade 9, must make use of the services of a private or independent service provider, accredited by Umalusi, established in terms of section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001), to register for the Senior Certificate Examination through an independent or private assessment body.

(7) The Head of Department must cancel a learner's registration for home education if, after enquiry, the Head of Department is satisfied that home education is no longer in the educational interest of the learner.

(8) The Head of Department may not cancel the registration of a learner for home education before—

- (a) informing the parent of his or her intention so to act and the reasons therefor;
- (b) granting the parent a reasonable opportunity to make representations to him or her relating to such intention; and
- (c) giving due consideration to any such representations received.

(9) A learner or the parent of a learner may appeal to the Member of the Executive Council, within 14 days of receiving notice, if a Head of Department—

- (a) declines the application to register for home education; or
- (b) cancels a learner's registration for home education.

(10) The Minister may make regulations relating to the registration and administration of home education.”.

Amendment of section 59 of Act 84 of 1996, as amended by section 10 of Act 100 of 1997

26. Section 59 of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for the heading of the following heading:

“Duty [of schools] to provide information”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) Every school must provide such information about the school as is reasonably required by the Head of Department or the Director General of the

[national] Department of Basic Education in consultation with the Head of Department.”; and

(c) by the insertion after subsection (2) of the following subsection:

“(3) A parent of a learner or any person who, in an application for admission to a public school or for the exemption of the payment of school fees, submits or provides information which he or she knows to be false or misleading, or submits a forged document or one which purports to be but is not a true copy of the original is guilty of an offence and upon conviction liable to a fine or to imprisonment for a period of six months.”.

Insertion of section 59A of Act 84 of 1996

27. The following section is hereby inserted in the South African Schools Act, 1996, after section 59:

“Dispute Resolution

59A. (1) In the event of any dispute between the Head of Department and a governing body, the parties must meaningfully engage each other to resolve the dispute.

(2) In attempting to resolve a dispute, the following steps must be taken:

(a) The aggrieved party must give the other party written notice of the dispute; and

(b) such notice must include a description of the issues involved in the dispute and a proposed resolution thereof.

(3) If the dispute has not been resolved within 14 days after the issuing of the written notice contemplated in subsection (2), each party must nominate a representative, and those representatives must meet within 14 days after their nomination in order to resolve the dispute.

(4) If the parties cannot reach agreement, the dispute may be referred for mediation to a person agreed upon by the parties.”.

Amendment of section 60 of Act 84 of 1996, as amended by section 14 of Act 48 of 1999, section 12 of Act 31 of 2007 and section 14 of Act 15 of 2011

28. Section 60 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (4) of the following subsection:

“(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 or if the provisions of section 36(2) have not been complied with.”.

Amendment of section 61 of Act 84 of 1996, as substituted by section 5 of Act 53 of 2000 and section 9 of Act 50 of 2002

29. Section 61 of the South African Schools Act, 1996, is hereby amended—

(a) by the insertion before the words “The Minister may make regulations” of the expression “(1)”;

(b) by the insertion in subsection (1) of the following paragraphs:

“(aA) on the management of learner pregnancy;

(aB) on the admission of learners to public schools;

(aC) on the prohibition of the payment of unauthorised remuneration or the giving of financial benefit or payment in kind to certain employees;

(aD) on the minimum norms and standards for provincial educator development institutes and district educator development centres;

- (aE) on the organisation, roles and responsibilities of education districts; and
 (aF) on a national education information system;”; and
 (c) by the insertion after subsection (1) of the following subsection:
 “(2) The regulations contemplated in subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding 6 months.”.

Amendment of section 1 of Act 76 of 1998, as amended by section 6 of Act 53 of 2000, section 58 of Act 16 of 2006 and section 15 of Act 15 of 2011

30. Section 1 of the Employment of Educators Act, 1998, is hereby amended—
 (a) by the deletion of the definition of “**adult basic education centre**”;
 (b) by the substitution for the definition of “**educator**” of the following definition:
 “**‘educator’** means any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at any public school[, or departmental office [**or adult basic education centre**] and who is appointed in a post on any educator establishment under this Act;”;
 (c) by the deletion of the definition of “**further education and training institution**”; and
 (d) by the substitution for the definition of “**provincial department of education**” of the following definition:
 “**‘provincial department of education’** means a department responsible for education in a province and includes all public schools[, **further education and training institutions,**] and departmental offices [**and basic adult education centres**] in such province;”.

Amendment of section 5 of Act 76 of 1998

31. Section 5 of the Employment of Educators Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The educator establishment of any public school[, **further education and training institution,**] or departmental office [**or adult basic education centre**] under the control of a provincial department of education shall, subject to the norms prescribed for the provisioning of posts, consist of the posts allocated to the said school[, **institution,**] or office [**or centre**] by the Head of Department from the educator establishment of that department.”.

Amendment of section 6 of Act 76 of 1998, as amended by section 58 of Act 16 of 2006

32. Section 6 of the Employment of Educators Act, 1998, is hereby amended—
 (a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 “(a) (i) Subject to paragraph (m), any appointment[, **promotion**] or transfer to any post level 1 post on the *educator* establishment of a public school may only be made on the recommendation of the governing body of the public school and, if there are post level 1 educators in the *provincial department of education* concerned who are in excess of the educator establishment of a public school due to operational requirements, that recommendation may only be made from candidates identified by the Head of Department, who are in excess and suitable for the post concerned.”;
 (b) by the insertion in subsection (3) after paragraph (a)(i) of the following subparagraph:
 “(ii) Subject to paragraph (m), any appointment, promotion or transfer to any promotional posts on post levels 2 to 4 on the *educator* establishment of a public school shall be determined from candidates identified by the Head of Department, in the manner prescribed by regulation by the Minister.”;

(c) by the substitution in subsection (3) for the words in paragraph (b) preceding subparagraph (i) of the following words:

“(b) In considering the applications, the governing body or [the council] the Head of Department, as the case may be, must ensure that the principles of equity, redress and representivity are complied with and the governing body or [council] the Head of Department, as the case may be, must adhere to—”;

(d) by the substitution in subsection (3) for paragraph (f) of the following paragraph:

“(f) Despite the order of preference in paragraph (c) and subject to paragraph (d), the Head of Department may appoint any suitable post level 1 candidate on the list.”;

(e) by the substitution in subsection (3) for paragraph (m) of the following paragraph:

“(m) Until the relevant governing body is established, the appointment, promotion or transfer in a temporary capacity to any post on the *educator* establishment, must be made by the Head of Department where a new public school is established in terms of the South African Schools Act, 1996, and any applicable provincial law.”;

(f) by the insertion after subsection (3) of the following subsection:

“(4) Notwithstanding the provisions of subsection (3), educators on post levels 2 to 4, will be appointed directly by the Head of Department.”.

Amendment of section 6A of Act 76 of 1998, as inserted by section 10 of Act 50 of 2002

33. Section 6A of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

“(a) consulted the relevant governing body on the specific post level 1 post and the requirements thereof;

(b) ensured that the applicant to be appointed matches the requirements of the post level 1 post; and”.

Amendment of section 7 of Act 76 of 1998

34. Section 7 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) In the making of any appointment, promotion or the filling of any post on any educator establishment under this Act due regard shall be had to equality, equity and the other democratic values and principles which are contemplated in section 195 (1) of the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)], and which include the following factors, namely—”;

and

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

“(a) in a permanent capacity or in a promotional post, whether on probation or not.”.

Amendment of section 8 of Act 76 of 1998, as amended by section 16 of Act 48 of 1999, section 11 of Act 50 of 2002 and section 58 of Act 16 of 2006

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

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

“(2) Subject to subsections (4) and (5), no transfer to any post level 1 post on the *educator* establishment of a public school shall be made unless the recommendation of the governing body of the public school has been obtained.”;

(b) by the substitution for subsection (4) of the following subsection:

“(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.”; and

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

“(7) Despite section 6(3)(a) and subsection (2), in the case of an educator who has been awarded a bursary by the employer to follow a course approved by the employer, the employer may transfer such an *educator*, with his or her consent, to any suitable post on the educator establishment of a public school **[or an adult education and training centre]**.”.

Amendment of section 9 of Act 76 of 1998

36. Section 9 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) another department of education or another department.”.

Amendment of section 11 of Act 76 of 1998

37. Section 11 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:

“(b) on account of the abolition of the educator’s post or any reduction in, or reorganisation or re-adjustment of the post establishments of, departments, schools[, **institutions,**] or offices **[or centres]**;

(c) if, for reasons other than the educator’s own unfitness or incapacity, the educator’s discharge will promote efficiency or economy in the department, school[, **institution,**] or office **[or centre]** in which the educator is employed, or will otherwise be in the interest of the State;”.

Amendment of section 14 of Act 76 of 1998

38. Section 14 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) An educator **[appointed in a permanent capacity]** who — ”.

Amendment of section 18 of Act 76 of 1998

39. Section 18 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) wilfully or negligently mismanages the finances of the State[, or a school **[or an adult learning centre]**];”;

(b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) without permission possesses or wrongfully uses the property of the State, a school, **[an adult learning centre,**] another employee or a visitor;”;

(c) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) wilfully, intentionally or negligently damages or causes loss to the property of the State[, or a school **[or an adult learning centre]**];”;

(d) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) unjustifiably prejudices the administration, discipline or efficiency of the *Department of Basic Education, a provincial department of education,* an office of the State or a school **[or adult learning centre]**;”;

(e) by the substitution in subsection (1) for paragraph (g) of the following paragraph:

“(g) misuses his or her position in the *Department of Basic Education, a provincial department of education* or a school **[or adult learning centre]** to promote or to prejudice the interests of any person;”.

The insertion of section 19 in Act 76 of 1998

40. The Employment of Educators Act, 1998, is hereby amended by the insertion after section 18 of the following section:

“Conducting business with State

- 19. (1) An educator may not—**
 (a) conduct business with the State; or
 (b) be a director of a public or private company conducting business with the State.
(2) A contravention of subsection (1)—
 (a) is an offence, and any person found guilty of the offence is liable to a fine or to imprisonment for a period not exceeding 5 years or both such fine and imprisonment; and
 (b) constitutes serious misconduct which may result in the termination of employment by the employer.”.

The insertion of section 20 in Act 76 of 1998

41. The Employment of Educators Act, 1998, is hereby amended by the insertion after section 19 of the following section:

“Disclosure of financial interest

- 20. (1) An educator must, in the prescribed manner, disclose to the relevant Head of Department all his or her financial interests and the financial interests of his or her spouse and a person living with that person as if they were married to each other, including all—**
 (a) shares and other financial interests in an entity;
 (b) sponsorships;
 (c) gifts above the prescribed value, other than gifts received from a family member;
 (d) benefits; and
 (e) immovable property.
(2) Failure by an educator to comply with the obligation referred to in subsection (1) constitutes misconduct.”.

Amendment of section 35 of Act 76 of 1998

42. Section 35 of the Employment of Educators Act, 1998, is hereby amended by the insertion after paragraph (c) of the following paragraph:

- “(cA) norms and standards for district staffing;”.**

Repeal of section 38 of Act 76 of 1998

43. Section 38 of the Employment of Educators Act, 1998, is hereby repealed.

Amendment of Schedule 2 of Act 76 of 1998

44. Schedule 1 of the Employment of Educators Act, 1998, is hereby amended by the substitution for paragraph (a) of subitem 1(2) of the following paragraph:

- “(a) the extent to which the incapacity impacts on the work of the Department of Basic Education, the [or] provincial department of education, or the public school[, public further education and training institution or public adult learning centre];”.**

Amendment of Schedule 1 of Act 76 of 1998

45. Schedule 2 of the Employment of Educators Act, 1998, is hereby amended by the substitution for paragraph (a) of subitem 3(3) of the following paragraph:

“(a) the extent to which the misconduct impacts on the work of the Department of Basic Education, the [or] provincial department of education, or the public school[, **public further education and training institution or public adult learning centre**];”.

Short title

46. This Act is called the Basic Education Laws Amendment Act, 2015, and comes into operation on a date fixed by the President by proclamation in the *Government Gazette*.