EDUCATION LAWS AMENDMENT BILL

(As introduced in the National Assembly (proposed section 76): explanatory summary of Bill published in Government Gazette No. 30107 of 20 July 2007)
(The English text is the official text of the Bill)

(Minister of Education)

[B 33—2007]
GENERAL EXPLANATORY NOTE:

Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Education Policy Act, 1996, so as to substitute the provision relating to consultation on the national education policy; and to amend the provision for the establishment of consultative bodies; to amend the South African Schools Act, 1996, so as to insert certain definitions; to provide for minimum norms and standards for infrastructure and capacity in public schools; to provide for random search and seizure and drug testing at schools; to provide for the functions and responsibilities of a principal; to substitute a reference to obsolete legislation; and to regulate the identification of underperforming schools; to amend the National Student Financial Aid Scheme Act, 1999, so as to effect certain technical adjustments; and to extend the functions of the board to over-eligible students at public further education and training colleges; to amend the South African Council of Educators Act, 2000, the Adult Basic Education and Training Act, 2000, and the General and Further Education and Training Quality Assurance Act, 2001, so as to effect certain technical adjustments; and to provide for matters connected therewith.

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

Amendment of section 5 of Act 27 of 1996, as amended by section 5 of Act 48 of 1999

1. Section 5 of the National Education Policy Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Policy contemplated in section 3 shall be determined by the Minister after consultation with such appropriate consultative bodies as have been established for that purpose in terms of section 11, or any other applicable law, and with the Council.""

Amendment of section 6 of Act 27 of 1996

2. Section 6 of the National Education Policy Act, 1996, is hereby amended by the substitution for paragraph (b) of the following paragraph:

"(b) all the parties in the Education Labour Relations Council established by [section 6 of the Education Labour Relations Act, 1993 (Act No. 14 of 1993)] section 4(b) of the Labour Relations Act, 1995 (Act No. 66 of 1995), in respect of any matter falling within the objectives of that Act.""
Amendment of section 11 of Act 27 of 1996

3. Section 11 of the National Education Policy Act, 1996, is hereby amended by—

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

“(1) The Minister may by regulation establish a body to be known as the National Education and Training Council (NFTC) and other bodies to advise him or her on any matter contemplated in section 3 or any matter identified by the Minister,” and

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

“(2) The composition, qualifications for membership, duties, powers and functions of a body established in terms of subsection (1), and the term of office of its members, shall be as prescribed by regulation: Provided that the bodies referred to in section 5(1)(c), shall be invited to nominate representatives to any such consultative body within their respective spheres of interest].”

Amendment of section 1 of Act 84 of 1996 as amended by section 1 of Act 100 of 1997, section 6 of Act 48 of 1999, section 1 of Act 50 of 2002 and section 1 of Act 24 of 2005

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

(a) the insertion after the definition of “Council of Education Ministers” of the following definition:

“dangerous object” means—

(a) any explosive material or device;
(b) any firearm or gas weapon;
(c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralyzed or unconscious; or
(d) any object that the Minister may, by notice in the Gazette, declare to be a dangerous object for the purpose of this Act;”;

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

“illegal drug” means—

(a) any unlawful substance that has a psychological or physiological effect; or
(b) any substance having such effect that is possessed unlawfully;”;

and

(c) the insertion after the definition of “school” of the following definition:

“school activity” means any official educational, cultural, recreational or social activity of the school within or outside the school premises;”.

Insertion of section 5A in Act 84 of 1996

5. The South African Schools Act, 1996, is hereby amended by the insertion after section 5 of the following section:

“Norms and standards for basic infrastructure and capacity in public schools

5A. (1) The Minister may, by regulation, prescribe minimum uniform norms and standards for—

(a) school infrastructure;
(b) capacity of a school in respect of the number of learners a school can admit; and
(c) the provision of learning and teaching support material.

(2) The norms and standards contemplated in subsection (1) must provide for, but not be limited to, the following:

(i) classrooms;
(ii) electricity;
(iii) water;
(iv) sanitation;
(v) a library;
Amendment of section 8 of Act 84 of 1996 as amended by section 4 of Act No. 50 of 2002

6. Section 8 of the South African Schools Act, 1996, is hereby amended by the
substitution for subsection (5) of the following subsection:

"(5)(a) A code of conduct must contain provisions for the protection of the learner and any other party involved in disciplinary proceedings.

(b) The code of conduct must also provide for support measures or structures for counseling a learner involved in disciplinary proceedings."

Insertion of section 8A in Act 84 of 1996

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

"Random search and seizure and drug testing at schools

8A. (1) Unless authorized by the principal for legitimate educational purposes, no person may bring a dangerous object or illegal drug onto school premises or have such object or drug in his or her possession on school premises or during any school activity.

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

(3)(a) What a dangerous object or an illegal drug may be found on school premises or during a school activity are in possession of dangerous objects or illegal drugs.

(b) that one or more learners on school premises or during a school activity are in possession of dangerous objects or illegal drugs.

(c) A search contemplated in subsection (2) may only be conducted after taking into account all relevant factors, including —

(i) the best interest of the learners in question or of any other learner at the school;

(ii) the safety and health of the learners in question or of any other learner at the school;

(iii) reasonable evidence of illegal activity and..."
all relevant evidence received. 

(b) When conducting a search contemplated in subsection (2), the principal or his or her delegate must do so in a manner that is reasonable and proportionate to the suspected illegal activity.

Where a search contemplated in subsection (2) entails a body search of the learners in question, such search may only—

(a) be conducted by—

(i) the principal, if he or she is of the same gender as the learner; or 

(ii) by the principal’s delegate, who must be of the same gender as the learner;

(b) be done in a private area, and not in view of another learner; and 

(c) be done if one witness, of the same gender as the learner, is present.

(5) Any dangerous object or illegal drug that has been seized must be—

(a) clearly and correctly labelled with full particulars, including—

(i) the name of learner in whose possession it was found; 

(ii) the time and date of search and seizure; 

(iii) an incident reference number; 

(iv) the name of person who searched the learner; 

(v) the name of the witness; and 

(vi) any other details that may be necessary to identify the item and incident;

(b) recorded in the school record book; and 

(c) handed over to the police immediately to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(6) If the police cannot collect the dangerous object or illegal drug from the school immediately, the principal or his or her delegate must—

(a) take the dangerous object or illegal drug to the nearest police station; and 

(b) hand the dangerous object or illegal drug over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(7) The police officer who receives the dangerous object or illegal drug must issue an official receipt for it to the principal or to his or her delegate.

(8) The principal or his or her delegate may at random administer a urine or other non-invasive test to a learner who is on fair and reasonable grounds suspected of using illegal drugs, after taking into account all relevant factors contemplated in subsection (3).

(9) A learner contemplated in subsection (1) may be subjected to a urine or other non-invasive test for illegal drugs only if—

(a) the test is conducted by a person of the same gender; 

(b) it is done in a private area and not in view of another learner; 

(c) one witness, of the same gender as the learner, is present but not in view of the learner; 

(d) the sample is clearly and correctly labelled with full particulars as contemplated in subsection (5), with the necessary changes; and 

(e) a device contemplated in subsection (11) is used.

(10) The principal or his or her delegate must—

(a) within one day, inform the parent that a random test or search and seizure was done in respect of his or her child; and 

(b) inform the learner and his or her parent of the result of the test immediately after it becomes available.

(11) The Minister must—

(a) identify the device with which the test contemplated in subsection (8) is to be done and the procedure to be followed; and 

(b) publish the name of this device, and any other relevant information about it, in the Gazette.

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

(a) a dangerous object or illegal drug is found in his or her possession, or 

(b) he or her sample tested positive for an illegal drug.

(13) Any disciplinary proceedings in respect of a learner must be conducted in terms of the code of conduct contemplated in section 8.
(14) No criminal proceedings may be instituted by the school against a learner in respect of whom—
(a) a search contemplated in subsection (2) was conducted and a dangerous object or illegal drug was found; or
(b) a test contemplated in subsection (8) was conducted, which proved to be positive.

Insertion of section 16A is Act 84 of 1996

8. The South African Schools Act, 1996, is hereby amended by the insertion after section 16 of the following section:

"Functions and responsibilities of principal of public school

16A. (1) (a) The principal of a public school represents the Head of Department in the governing body, when acting in an official capacity as contemplated in sections 23(1)(b) and 24(1)(j).
(b) The principal must prepare and submit to the Head of Department an annual report in respect of—
(i) the academic performance of that school in relation to minimum outcomes and standards and procedures for assessment determined by the Minister in terms of section 6A; and
(ii) the effective use of available resources.
(c) (i) The principal of a public school identified by the Head of Department in terms of section 58(4) must annually, at the beginning of the year, prepare a plan setting out how academic performance at the school will be improved.
(ii) The principal must—
(a) present the plan to the Head of Department; and
(b) table it at a governing body meeting.
(iii) The Head of Department may approve the academic performance improvement plan or return it to the principal with such recommendations as may be necessary in the circumstances.
(iv) If the Head of Department approves the academic performance improvement plan the principal must, by 30 June, report to the Head of Department and the governing body on progress made in implementing that plan.

(2) The principal must—
(a) in undertaking the professional management of a public school as contemplated in section 16A(1), carry out duties which include, but are not limited to—
(i) the implementation of all the educational programmes and curriculum activities;
(ii) the management of all educators and support staff;
(iii) the management of the use of learning support material and other equipment;
(iv) the performance of functions delegated to him or her by the Head of Department in terms of this Act;
(v) the safeguarding of all school records, and
(vi) the implementation of policy and legislation;
(b) attend and participate in all meetings of the governing body;
(c) provide the governing body with a report about the professional management relating to the public school;
(d) assist the governing body in handling disciplinary matters pertaining to learners;
(e) assist the Head of Department in handling disciplinary matters pertaining to educators and support staff employed by the Head of Department;
(f) inform the governing body about policy and legislation; and
(g) provide accurate data to the Head of Department when requested to do so."

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(3) The principal must assist the governing body in the performance of its functions and responsibilities, but such assistance or participation may not be in conflict with any—
(a) instructions of the Head of Department;
(b) legislation or policy;
(c) obligation that he or she has towards the Head of Department, the Member of the Executive Council or the Minister where any one of them is, or may be, cited in any legal proceedings; or
(d) provision of the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Personnel Administration Measures determined in terms thereof.

(4) Unless a court of law directs otherwise, a principal may not, on behalf of the governing body, give evidence against the Minister, Member of the Executive Council or Head of Department in any court case where the Minister, Member of the Executive Council or Head of Department is cited as a party to the case.”.

Amendment of section 20 of Act 84 of 1996

9. Section 20 of the South African Schools Act, 1996, is hereby amended by—
(a) the insertion in subsection (1) after paragraph (e) of the following paragraph:
"(fa) adhere to any actions taken by the Head of Department in terms of
section 16 of the Employment of Educators Act, 1998 (Act No. 76
of 1998), to address the incapacity of a principal or educator to
carry out his or her duties effectively;",
(b) the substitution in subsection (1) for paragraph (g) of the following paragraph:
"(g) administer and control the school’s property, and buildings and
grounds occupied by the school, including school hostels, [if
applicable]; but the exercise of this power must not in any
manner interfere with or otherwise hamper the implementation of
a decision made by the Member of the Executive Council or Head
of Department in terms of any law or policy;”;
(c) the insertion in subsection (1) after paragraph (j) of the following paragraph:
"(jA) make the recommendation contemplated in paragraph (i) within
the time frame contemplated in section 6(3)(c) of the Employ-
ment of Educators Act, 1998 (Act No. 76 of 1998).”.

Amendment of section 43 of Act 84 of 1996

10. Section 43 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 appoint a person registered as
an [accountant and] auditor in terms of the [Public Accountants and Auditors
Act, 1991 (Act No. 80 of 1991)] Auditing Profession Act, 2005 (Act No. 26 of
2005), to audit the records and financial statements referred to in section 42.”.

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

II. The South African Schools Act, 1996 is hereby amended by the insertion after
section 58A of the following sections:

"Identification of underperforming public schools

58B. (1) The Head of Department must, annually, from the report
contemplated in section 16(1)(d) and from other relevant reports, identify
any public school that is underperforming in relation to any matter referred to
in subsection (2)(a), (b) or (c).
(2) The Head of Department must issue a written notice to the school
contemplated in subsection (1), if he or she is satisfied that—
(a) the standard of performance of learners is below the standards
prescribed by the National Curriculum Statement and is likely to
remain so unless the Head of Department exercises his or her power in
terms of this Act;"
(b) there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, the standards of performance; or

(c) the safety of learners or staff is threatened.

(3) The written notice contemplated in subsection (2) must inform the school that it must—

(a) within 14 days after delivery of the notice, respond to the notice; and

(b) as soon as possible after that response, provide the Head of Department with a plan for correcting the situation.

(4) The Head of Department must take all reasonable steps to assist a school identified in terms of subsection (1) in addressing the underperformance.

(5) Without limiting the nature and extent of the steps contemplated in subsection (4), the Head of Department must consider—

(a) implementing the incapacity code and procedures for poor pupil performance referred to in section 16 of the Employment of Educators Act, 1996 (Act No. 76 of 1996);

(b) withdrawing the functions of the governing body in terms of section 22, or

(c) appointing persons in terms of section 25 to perform the functions or specified functions of the governing body.

(b) withdrawing the functions of the governing body in terms of section 25, or

(6) The counselling of the principal as contemplated in item 2(2)(B)(vi) of Schedule 1 to the Employment of Educators Act, 1998 (Act No. 76 of 1998), may include the appointment of an academic mentor to take over the duties and responsibilities of the principal for the period determined by the Head of Department.

(7) In order to assist the Minister in carrying out his or her duties referred to in section 8 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Member of the Executive Council must report to the Minister within three months after the end of a school year on the action taken by the Head of Department in regard to an underperforming public school.

**Compliance with norms and standards**

SNL, (c) The Member of the Executive Council must, in accordance with an implementation protocol contemplated in section 35 of the Intergovernmental Relations Framework Act 2005 (Act No. 13 of 2005), ensure compliance with—

(a) norms and standards determined in terms of sections 5(1), 20(1), 35 and 48(1);

(b) minimum outcomes and standards set in terms of section 6A; and

(c) performance standards contemplated in item 2(2) of Schedule 1 to the Employment of Educators Act, 1998 (Act No. 76 of 1998), in this section jointly referred to as ‘norms and standards’.

(d) The Member of the Executive Council must ensure that the policy determined by a governing body in terms of sections 5(5) and 6(2) complies with the norms and standards.

(1) The Member of the Executive Council must, annually, report to the Minister the extent to which the norms and standards have been complied with or, if they have not been complied with, indicate the measures that will be taken to comply.

(1) Any dispute between the Minister and a Member of the Executive Council in respect of non-compliance with the norms and standards contemplated in subsection (1) must—

(a) be dealt with in accordance with the principles of co-operative governance referred to in section 14(1) of the Constitution and the provisions of the Intergovernmental Relations Framework Act 2005 (Act No. 13 of 2005); and

(b) whenever necessary, be settled in accordance with Chapter 4 of the Intergovernmental Relations Framework Act, 2005.

(5) The Head of Department must comply with all norms and standards contemplated in subsection (1) within a specific public school year by—
(a) identifying resources with which to comply with such norms and standards;
(b) identifying the risk areas for compliance;
(c) developing a compliance plan for the province, in which all norms and standards and the extent of compliance must be reflected;
(d) developing protocols with the schools on how to comply with norms and standards and manage the risk areas; and
(e) reporting to the Member of the Executive Council on the state of compliance and on the measures contemplated in paragraphs (a) to (d), before 30 September of each year.

(6) The Head of Department must—
(a) in accordance with the norms and standards contemplated in section 5A determine the minimum and maximum capacity of a public school in relation to the availability of classrooms and educators, as well as the curriculum programme of such school; and
(b) in respect of each public school in the province, communicate such determination to the chairperson of the governing body and the principal, in writing, by not later than 30 September of each year.”.

Amendment of section 60 of Act 84 of 1996

12. Section 60 of the South African Schools Act, 1996, is hereby amended by the substitution of subsection (1) of the following subsection:

“(1) (a) [The] Subject to paragraph (b), the State is liable for any damage or loss caused as a result of any act or omission in connection with any [educational] school activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.

(b) Where a public school has taken out insurance and the school activity is an eventuality covered by the insurance policy, the liability of the State is limited to the extent that the damage or loss has not been compensated in terms of the policy.”.

Amendment of section 1 of Act 56 of 1999

13. Section 1 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by—

(a) the substitution for the definition of “designated higher education institution” of the following definition:

“designated public college or designated higher education institution” means a public college or a higher education institution with which the NSFA S has entered into an agreement in terms of section 20;”;

(b) the insertion after the definition of “financial year” of the following definition:

“[further education and training] has the meaning assigned to it in the Further Education and Training Colleges Act, 2003 (Act No. 16 of 2006);”;

(c) the substitution for the definition of “loan” of the following definition:

“loan” means a loan granted to a person by the NSFA S in order to enable the person to defray the costs connected with his or her education at a designated public college or designated higher education institution, and those connected with the board and lodging of that person for purposes of attending the institution;”;

(d) the insertion after the definition of “NSFA S” of the following definition:

“public college” means a public college as defined in the Further Education and Training Colleges Act, 2003 (Act No. 16 of 2006);”;

(e) the substitution for the definition of “student” of the following definition:

“student” means any person registered as a student at a public college or at a higher education institution;”.

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Amendment of section 2 of Act 56 of 1999

14. The following section is hereby substituted for section 2 of the National Student Financial Aid Scheme Act, 1999:

"Purpose of Act

(1) The purpose of this Act is to establish a financial aid scheme for students at public colleges or at higher education institutions.

(2) The aim of the NSFAS is to provide financial aid to eligible students who meet the criteria for admission to a further education and training programme or to a higher education programme."

Amendment of section 5 of Act 56 of 1999

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

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

"(e) has knowledge and understanding of further education and training and higher education;"

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

"(vi) further education and training and higher education college principals;"

Amendment of section 20 of Act 56 of 1999

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

(a) the substitution for the heading to that section of the following heading:

"Designated public college and designated higher education institution"

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

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

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

"(3) A designated public college or designated higher education institution must—

(a) at such intervals as are agreed on by the college or institution and the board, report to the board on the progress made by a borrower or a bursar with regard to the course of study followed by him or her and

(b) immediately notify the board if a borrower or bursar discontinues his or her studies;"

Amendment of section 25 of Act 56 of 1999

17. Section 25 of the National Student Financial Aid Scheme Act, 1999, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

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“(1) Every science, research and professional council, every public college and
higher education institution, and any other person or body who grants loans or
bursaries to students must provide the NSFAS with such information to the NSFAS
may reasonably require for the performance of its functions in terms of this Act;
(2) The NSFAS must on request provide such information as may be reasonably
required by the science, research and professional councils, public colleges and
higher education institutions and any other persons or bodies who grant loans or
bursaries to students.”.

Substitution of long title of Act 56 of 1999

18. The following long title is hereby substituted for the long title of the National
Student Financial Aid Scheme Act, 1999:

“To establish the National Student Financial Aid Scheme (NSFAS); to provide
for the management, governance and administration of the [NSFAS] scheme; to
provide for the granting of loans and bursaries to eligible students at public colleges
and public higher education institutions and for the administration of such loans
and bursaries; to provide for the recovery of loans; to provide for the revaluation of
the Provision of Special Funds for Tertiary Education and Training Act, 1993; and to
provide for matters connected therewith.”.

Amendment of section 1 of Act 31 of 2000

15. Section 1 of the South African Council for Educators Act, 2000, is hereby
amended by the deletion of the definition of “further education and training
institution”.

Amendment of section 3 of Act 31 of 2000

20. Section 3 of the South African Council for Educators Act, 2000, is hereby
amended by the substitution for section 3 of the following section:

“Application of Act

3. This Act applies to all educators, lecturers and management staff of
colleges appointed—

(a) in terms of the Employment of Educators Act, 1998 (Act No. 76 of
1998);
(b) in terms of the South African Schools Act, 1996 (Act No. 84 of 1996);
(c) [at an independent school] in terms of the Further Education and
Training Colleges Act, 2006 (Act No. 16 of 2006);
(d) [in terms of the Further Education and Training Act, 1998 (Act
No. 98 of 1998)] in terms of the Public Service Act, 1994 (Proclamation 103 of 1994);
(e) [at a further education and training institution] at an independent
school; or
(f) at an adult learning centre.”.

Amendment of section 6 of Act 31 of 2000

21. Section 6 of the South African Council for Educators Act, 2000, is hereby
amended by—

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

“(b) [18] [4 educators and 4 lecturers collectively nominated by the
organised profession];”;
(b) the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) one person nominated by the councils [of further education and
training institutions] contemplated in [section 8] section 9 of the
Further Education and Training Colleges Act, 2006 (Act No. 16 of
2006);”;
and

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

“(2) The members referred to in subsection (1)(b) must consist of educators, learners, [including] and principals employed at or in [each of] the following institutions or sectors:

(a) A public ordinary school;

(b) An independent school;

(c) A public further education and training [institu…)}

Amendment of section 1 of Act 52 of 2000

22. Section 1 of the Adult Basic Education and Training Act, 2000, is hereby amended by the deletion of the definition of “auditor”.

Amendment of section 8 of Act 52 of 2000

23. Section 8 of the Adult Basic Education and Training Act, 2000, is hereby amended by the substitution for subsection (1)(a) of the following subsection:


Amendment of section 24 of Act 52 of 2000

24. Section 24 of the Adult Basic Education and Training Act, 2000, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) The governing body of a public centre must appoint a person registered as an [accountant] and auditor in terms of the [Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)] Auditing Profession Act, 2005 (Act No. 26 of 2005) to audit the records and financial statements referred to in subsection (1).”

Substitution of section 2 of Act 58 of 2001

25. The following section is hereby substituted for section 2 of the General and Further Education and Training Quality Assurance Act, 2001:

“Application of Act

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

(a) South African Schools Act, 1996 (Act No. 84 of 1996);

(b) [Further Education and Training Act, 1998 (Act No. 98 of 1998)] Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006); or

(c) Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000).”

Amendment of section 15 of Act 58 of 2001

26. Section 15 of the General and Further Education and Training Quality Assurance Act, 2001, is hereby amended by the substitution for subsection (1)(a) of the following subsection:

“(a) The statements of account and balance sheet of the College must be audited at the end of each financial year by a person registered as an [accountant] and auditor in terms of the [Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)] Auditing Profession Act, 2005 (Act No. 26 of 2005), and appointed by the College with the approval of the Auditor-General.”

Short Title

27. This Act is called the Education Laws Amendment Act, 2007.
MEMORANDUM ON THE OBJECTS OF THE EDUCATION LAWS
AMENDMENT BILL, 2007

1. MAIN OBJECT OF BILL

The Bill seeks to amend the following Acts:
1.1 National Education Policy Act, 1996 (Act No. 27 of 1996) (the NEPA);
1.2 South African Schools Act, 1996 (Act No. 84 of 1996) (the SASA);
1.3 National Student Financial Aid Scheme Act, 1999 (Act No. 56 of 1999) (the
NSFAS);;
1.4 South African Council for Educators Act, 2000 (Act No. 31 of 2000);
1.5 Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000); and
1.6 General and Further Education and Training Quality Assurance Act, 2001
(Act No. 8 of 2001).

2. MAIN FEATURES OF BILL

2.1 Technical amendments

The Further Education and Training Act, 1998 (Act No. 98 of 1998), was repealed by
section 58 of the Further Education and Training Colleges Act, 2006 (Act No. 16 of
2006), thus all references to the former Act in other legislation need to be deleted.
Similarly, the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), was
repealed by the Auditing Profession Act, 2005 (Act No. 26 of 2005).

2.2 Substantive amendments

Minister’s consultative function

The Bill seeks to amend section 5 of the NEPA so as to avoid a measure of
overlapping with section 11 of the NEPA. The effect of the amendment would be that
paragraph (a) to (f) would be deleted. Those paragraphs refer to bodies that have to be
consulted when policy is determined. Trade unions and representatives from the national
governing body association engage with the Minister in other forums, such as the
Education Labour Relations Council and the Forum for National Governing Body
Associations. Trade unions also meet the Minister on request to discuss policy on labour
issues. In addition, the Department always provides the unions and the national
governing associations with policy and legislation for comment before these documents
are finalised.

Norms and standards

The Bill seeks to provide for the Minister to prescribe national minimum norms and
standards regarding school infrastructure, capacity and matters such as learning and
teaching support materials. This will ensure not only that schools provide quality
education, but also that there is uniformity throughout the country.

Dangerous objects and illegal drugs

The Regulations for Safety Measures at Schools did not adequately address the
mischief that they were designed to remedy—that is, to stop the proliferation of
dangerous objects and illegal drugs at schools. It was therefore necessary to strengthen
these Regulations by way of allowing random search and seizure and drug testing at
schools. The new provisions provide clear guidelines about circumstances under which
searches and drug testing should be conducted.

Principal’s functions

The SASA expressly lists the functions and obligations of the school governing body,
but fails to do so in the case of the principal. To remedy this shortcoming, the proposed
section 16A clearly spells out the functions and responsibilities of the principal of a
public school. This is intended to create legal certainty regarding the functions and
responsibilities of the principal vis-à-vis those of the governing body.
These functions and responsibilities have also been linked to the Employment of Educators Act, No. 76 of 1998 (the EEA), and the Personnel Administration Measures of 1999 (the PAM), to make it clear that the principal is officially representing the Head of Department when he or she is acting as a member of the governing body.

Governing body

The Bill also seeks to require governing bodies of public schools to support the Head of Department when dealing with a principal who lacks capacity for performing his or her duties effectively.

In terms of section 20(1)(g) the governing body of a public school administers and controls school property. Section 58A of the SASSA authorises the Head of Department to make an inventory of all the assets of a public school. This section also prohibits the alienation of school assets without the approval of a Minister of the Executive Council of a province. The proposed amendment to section 20(1)(g) is intended to avoid a dead-lock between the governing body on the one hand, and the Head of Department and MEC on the other, were a decision of the Head of Department on the MEC has to be implemented.

Underperforming schools

Proposed section 58B seeks to authorise the Head of Department to identify an underperforming school. It also seeks to set out the steps the Head of Department must take after he or she has identified such a school. These steps include, amongst others, the sending of a written notice to the school and, if necessary, the appointment of a person to perform the functions of the governing body and a person to serve as mentor for the principal so as to improve the performance of the school.

Compliance with norms and standards

Proposed section 58C seeks to require the MEC and the Head of Department to ensure compliance with and to implement norms and standards relating to schools prescribed by the Minister. It also provides that the MEC must annually report to the Minister on the progress made in complying with such norms and standards.

Financial assistance to certain students

The NSFA/SASSA was designed to provide bursaries and loans to students studying at tertiary institutions only. The Act is amended so as to extend the functions of the Board to cater for students who have been admitted to further education and training colleges also. The proposed amendment would extend financial aid to more students.

3. OTHER DEPARTMENTS AND BODIES CONSULTED

The Bill was published for public comment in Government Gazette No. 29868 of 4 May, 2007, with the closing date 26 May 2007. However, comments were received and accepted up until 31 May 2007. The Department received 37 comments from various categories of stakeholders. These comments were incorporated into the Bill as merit.

The categories of stakeholders include the following:
- Other departments
- Teacher Unions
- Schools
- Individuals
- National Governing Body Associations
- the Commissioner for Gender Equality
- the Independent Schools Association of South Africa
- the South City, Institute for Health and Development Communication
- the South African Principals’ Association
- the Office of the Chief of Police, Ekurhuleni Metropolitan Police Department
4. FINANCIAL IMPLICATIONS

There will be minimal financial implications, such as buying the testing device or other non-invasive testing equipment. These will be covered by provincial school budget allocations.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Education are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(2) of the Constitution, since it falls within a 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 181(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.