

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 the Preamble; to amend certain definitions and insert new definitions; to provide that attendance of grade R is compulsory; to amend the penalty provision in the case where the parent of a learner, or any other person, without just cause, prevents a learner who is subject to compulsory school attendance from attending school, and to create an offence in respect of the interruption, disruption or hindrance of school activities; to enhance the authority of the Head of Department in relation to the admission of a learner to a public school, after consultation with the governing body of the 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 the education district in which the public school is situated, that the policies must be reviewed at certain intervals, to provide that South African Sign Language has the status of an official language for purposes of learning at a public school, and that the Head of Department may, under certain circumstances and after following certain prescribed procedures, direct a public school to adopt more than one language of instruction, where it is practicable to do so, and, if the Head of Department issues such a directive, he or she must take all necessary steps to ensure that the public school receives the necessary resources to enable it to provide adequate tuition in the additional language of instruction; to provide the Minister with the authority to appoint a person, an organisation or a group of persons to advise on curriculum- and assessment-related matters; to provide that the code of conduct of a public school must take into account the diverse cultural beliefs, religious observances and medical circumstances of learners at the school and to provide for the inclusion of an exemption clause in the code of conduct and for disciplinary proceedings to be dealt with in an age-appropriate manner and in the best interests of the learner; to provide for the prohibition of prohibited substances on school premises and for conditions under which liquor may be consumed on school premises or

during school activities; to prohibit the administering of corporal punishment to a learner also during a school activity or in a hostel accommodating learners of a school; to prohibit initiation practices also during a school activity; to provide for a governing body to apply to the Member of the Executive Council for, and for the Head of Department to identify, a public school to be designated as a public school with a specialised focus on talent and for the Member of the Executive Council to designate a public school as such if it is in the interest of education in the province; to further regulate the merger of public schools; to provide for the reasonable use, under fair conditions determined by the Head of Department, of the facilities of a school for education-related activities, provided that the Head of Department must consult with the governing body regarding the payment of reasonable costs arising from the use of the facilities; to provide for centralised procurement, under certain circumstances, of identified learning and teaching support material for public schools, in consultation with the governing body; to provide that the Head of Department may, on reasonable grounds, withdraw one or more functions of a governing body that has ceased or failed to perform such functions, and for the process to be followed to do so and the process thereafter; to provide that it is the Minister, and not the Member of the Executive Council, who must make certain determinations in regard to the composition, and related matters, of governing bodies of schools for learners with special needs; to provide for the membership of a governing body of a public school that provides education with a specialised focus on talent; to provide that the Head of Department may, on reasonable grounds, dissolve a governing body that has ceased to perform its functions and for the process to be followed to do so and the process thereafter; to provide that a member of the governing body must declare a direct or indirect personal interest that he or she or his or her family member may have in the recruitment or employment of staff, or in the procurement of goods and services for a public school, and that the member of the governing body must recuse himself or herself under such circumstances; to prohibit the remuneration of members of the governing body in relation to the attendance of meetings and any school activity; to provide that it is the Minister, and not the Member of the Executive Council, who must make certain determinations in regard to the election of members of governing bodies of public schools; to provide that, where reasonably practicable, only a parent member of a governing body who is not employed by the public school may serve as chairperson of the finance committee; to make a technical amendment in regard to the status of learners serving on governing bodies of public schools; to extend the provisions relating to the consultation process that the Member of the Executive Council needs to follow if he or she decides to close a public school, to allow the Member of the Executive Council to close a public school, in his or her sole discretion, if no learners are registered at that school and after verifying, by means of a site inspection, that no learners are registered at that school, and, after following certain prescribed processes, to close a public school if, in the case of a primary school, 135 or fewer than 135 learners are registered at that school, and if, in the case of a secondary school, 200 or fewer than 200 learners are registered at that school; to provide that lease agreements have to be submitted to the Member of the Executive Council for approval and that only a lease of immovable property for a period longer than 12 months needs to be approved by the Member of the Executive Council; to provide that the budget of a public school must include a document explaining the budget and that such document and the budget must be made available to parents with a view to the general meeting of parents for consideration and approval, and to further regulate the process to be followed if the governing body finds it necessary to deviate from the initial, approved, budget or to reallocate funds; to further regulate the circumstances under which a governing body may additionally remunerate or give to a state employee any other financial benefit or benefit in kind and to place a cap on the monetary value of such remuneration, other financial benefit or benefit in kind; to provide for the submission of documentary evidence in the form of an affidavit or court order by a parent in relation to the other parent in an application for exemption from the payment of school

fees in instances where information cannot be obtained from the other parent of the learner; to provide for financial record-keeping by the governing body of a public school, for the drawing up of financial statements and the presentation of these to a general meeting of parents; 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 of a public school must submit quarterly reports on all income and expenditure to the Head of Department; to increase the penalty provision in the case where a person establishes or maintains an independent school and fails to register it; to empower the Member of the Executive Council to determine conditions when granting a subsidy to an independent school and to provide for financial reporting, by such subsidised independent schools, on all income and expenditure relating to the subsidy; 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 when applying for the admission of a learner or for exemption from the payment of school fees; to provide for a dispute resolution mechanism in the event of a dispute between the Head of Department and a governing body which cannot be resolved informally; to further regulate the liability of the State for contractual damages; to extend the powers of the Minister to make regulations and 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 centres, further education and training centres, institutions, adult education and training centres, adult learning centres, public further education and training institutions and public adult learning centres from the ambit of the Act; to prohibit an educator from conducting business with the State and to create an offence in relation thereto; 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 the Preamble of Act 84 of 1996

1. The Preamble of the South African Schools Act, 1996, is hereby amended by the insertion after the words "contribute to the eradication of poverty and the economic well-being of society," of the following words:

"encourage school enrolment of children through the promotion of the right to basic education."

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

2. 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 an *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 defined in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);”;
- (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 “education department” of the following definition:
“**education district**’ means a district in an area of a province which is demarcated by the Member of the Executive Council for administrative purposes;”;
- (f) 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, if necessary, secured by the *parent* on specific areas of the curriculum followed by the learner; and
(c) meets the requirements for registration of a *learner* for *home education* contemplated in section 51 of this Act;”;
- (g) 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);”;
- (h) by the substitution for the definition of “**loan**” of the following definition:
“**loan**’ means any financial obligation based on agreement, which obligation renders a *school* liable for making payment, in one or more instalments, in favour of any person, but does not include the payment of staff appointed by the *governing body* in terms of section 20(4) or (5) 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;”;
- (i) 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
- (j) 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

3. Section 3 of the South African Schools Act, 1996, is hereby amended—

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

“(1) Subject to this Act and any applicable provincial law, every parent must cause every learner for whom he or she is responsible to attend [a] school, starting with grade R on [from] the first school day of the year in which such learner [reaches the age of seven years] will turn six and not leaving school until the last school day of the year in which such learner [reaches the age of fifteen] turns 15 [years] or [the ninth] enrolls in grade 9, whichever occurs first; Provided that a learner who will turn six after 30 June must start attending grade R the following year.”;

(b) 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] 12 months, 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] 12 months, or to both such fine and such imprisonment.”; and

(c) by the insertion after subsection (6) of the following subsection:

“(7) Any person who, unlawfully and intentionally, interrupts, disturbs or hinders any school activity or 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 12 months, 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

4. Section 5 of the South African Schools Act, 1996, is hereby amended—

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

“(1) A public school must admit, and provide education to, learners and must serve their educational requirements for the duration of their school attendance without unfairly discriminating in any way.”;

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

“(a) The admission age of a learner to a public school to grade R is age four turning five by 30 June in the year of admission.”;

(c) 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, after consultation with the governing body of the school, 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, together with reasons for such recommendations;

(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 the education district in which the public school is situated, and must take into account factors including, 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) whether there are other schools in the community that are accessible to learners;

(iii) the available resources of the school and the efficient and effective use of state resources; 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.”;

(d) by the insertion after subsection (5) of the following subsections:

“(5A) The governing body of each *public school* must, within 30 days after the commencement of this section, submit the admission policy of that *public school* to the Head of Department for approval.

(5B) The Head of Department must respond to the governing body as contemplated in subsection (5)(b) and subsection (5A) within 60 days after receiving the admission policy, failing which, the admission policy will be regarded as having been approved by the Head of Department.

(5C) When a public school has, as contemplated in subsection (5)(b) and subsection (5A), submitted its admission policy to the Head of Department, such admission policy will be regarded as the valid admission policy of the school during the 60-day period referred to in subsection (5B), or, if the Head of Department responds to the school's request for approval of the admission policy before the end of the 60-day period, until the earlier date on which the Head of Department responds.

(5D) The governing body of each public school must, after the commencement of this section, submit any amendment to the admission policy to the Head of Department for approval, and the Head of Department must respond within 30 days after receiving the amendment, failing which, the amendment will be regarded as having been approved by the Head of Department.”.

(e) 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

(f) by the insertion after subsection (9) of the following subsections:

“(10) If an appeal contemplated in subsection (9) has been received, the *Member of the Executive Council* must, within 14 days after receiving such an appeal, consider and decide on the matter and inform the learner or the parent of the learner of the outcome of the appeal.

(11) If the governing body is not satisfied with the decision of the Head of Department as contemplated in subsection (5)(c), the governing body may appeal against the decision to the *Member of the Executive Council* within 14 days after receiving the decision of the Head of Department.

(12) If an appeal contemplated in subsection (11) has been received, the Member of the Executive Council must, within 14 days after receiving such appeal, consider and decide on the matter and inform the governing body of the outcome of the appeal.”.

Amendment of section 6 of Act 84 of 1996

5. 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 (13), determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law.”;

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

“(4) [A recognised] South African Sign Language has the status of an official language for purposes of learning at a public school.”; and

(c) 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, together with reasons for such recommendations.

(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 the education district in which the public school is situated, and must take into account factors including, 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 changing 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 enrolment trends 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) The governing body of each public school must, within 30 days after the commencement of this section, submit the language policy of that public school to the Head of Department for approval.

(10) The Head of Department must respond to the governing body as contemplated in subsection (5) and subsection (9) within 60 days after receiving the language policy, failing which, the language policy will be regarded as having been approved by the Head of Department.

(11) When a public school has, as contemplated in subsection (5) and subsection (9), submitted its language policy to the Head of Department, such language policy will be regarded as the valid language policy of the school during the 60-day period referred to in subsection (10), or, if the Head of Department responds to the school's request for approval of the language policy before the end of the 60-day period, until the earlier date on which the Head of Department responds.

(12) The governing body of each public school must, after the commencement of this section, submit any amendment to the language policy to the Head of Department for approval, and the Head of Department must respond within 30 days after receiving the amendment, failing which, the amendment will be regarded as having been approved by the Head of Department.

(13) 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.

(14) 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 factors including, 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 changing 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 the education district in which the public school is situated.

(15) The Head of Department may not act in terms of subsection (13) unless he or she has —

(a) in writing informed the school and the governing body of his or her intention to act as contemplated in subsection (13) and his or her reasons therefor; and

(b) notified the parents associated with the school, and the community in which the school is situated, of his or her intention so to act and the reasons therefor —

(i) by means of a notice in at least one newspaper circulating in the area where the school is situated, if any newspapers circulate in that area; and

(ii) by causing the principal of the school to —

(aa) hand to every learner a notice containing the relevant information; and

(bb) instruct the learners to hand the notice to their parents; and

(iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible;

(c) granted the school, the governing body, the parents associated with the school, and the community in which the school is situated a reasonable opportunity to make representations to him or her in relation to such action;

(d) conducted a public hearing, on reasonable notice, to enable the community to make representations to him or her in relation to such action; and

(e) given due consideration to any such representations received.

(16) The Head of Department must —

(a) inform the school and the governing body of his or her decision contemplated in subsection (13) and his or her reasons therefor; and

(b) by means of the methods listed in subsection (15)(b), notify the parents associated with the schools, and the communities in which the schools are situated, of the decision.

(17) If the Head of Department acts in terms of subsection (13), he or she must, before his or her directive is implemented, take all necessary steps to ensure that the public school concerned receives the necessary resources, including, but not limited to —

(a) educators; and

(b) learning and teaching support material.

to enable that public school to provide adequate tuition in the additional language of instruction.

(18) If the governing body is not satisfied with the decision of the Head of Department as contemplated in subsection (6) or with a directive contemplated in subsection (13), the governing body may appeal against the decision or the directive, as the case may be, to the Member of the Executive Council within 14 days after receiving the decision or the directive, as the case may be.

(19) If an appeal contemplated in subsection (18) has been received, the Member of the Executive Council must, within 30 days after receiving such appeal, consider and decide on the matter and inform the governing body of the outcome of the appeal.”.

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

6. 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, in writing, appoint 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

7. Section 8 of the South African Schools Act, 1996, is hereby amended—

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

“(1) Subject to the Constitution, this Act and any applicable provincial law, a governing body of a public school must adopt a code of conduct for the learners after consultation with the learners, parents and educators of the school.”;

(b) 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, religious observances and medical circumstances of the learners at the school.”;

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

“(4) (a) [Nothing contained in this Act exempts a learner from the obligation to comply with the code of conduct of the school attended by such learner.] 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 certain provisions of the code of conduct, on just cause shown.

(b) On receiving a request contemplated in paragraph (a), the school governing body must communicate its decision to the learner or the parent of the learner, as the case may be, within 14 days after receiving the request, and must, in the case of a refusal, provide written reasons for the refusal.

(c) A learner or the parent of a learner who has been refused exemption as contemplated in paragraph (a) may, within 14 days of receiving the notice of the decision, appeal to the Head of Department against the decision of the governing body, and the Head of Department must, after considering the reasons for the appeal and the reasons for the refusal by the governing body, communicate his or her decision to the learner or the parent of the learner, as the case may be, and to the governing body, within 14 days after receiving the appeal, and must provide written reasons for his or her decision.”; and

- (d) by the insertion in subsection (5) after paragraph (b) of the following paragraph:
“(c) The disciplinary proceedings referred to in this subsection must be age appropriate, should be conducted in the best interest of the learner, and should adhere to the principles of natural 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

8. Section 8A of the South African Schools Act, 1996, is hereby amended—

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

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

(b) No person may bring liquor onto school premises or have liquor in his or her possession or consume or sell liquor on school premises or during any school activity.

(c) Notwithstanding the prohibition contemplated in paragraph (b), the governing body of a public school may, upon application from any person and after consultation with the principal, permit the possession, consumption or sale of liquor during any school activity, whether it is held on or away from the school's premises, or during any private or church function held on the school's premises: Provided that such possession, consumption or sale may not take place during school hours: Provided, further, that the governing body of a public school, after consultation with the principal, may attach certain restrictions to the granting of such permission.

(d) The permission contemplated in paragraph (c) relates to —

- (i) fund-raising activities of the school;
- (ii) the letting of the school's premises to members of the community for private functions, church services and the like, in order to augment the school fund; and
- (iii) functions held for the staff of the school; and
- (iv) instances where educators live on school premises, in living quarters provided by the school: Provided that the possession and consumption of liquor in the living quarters of such educators may be subject to restrictions over and above those contemplated in paragraph (c).

(e) In deciding whether or not to grant permission as contemplated in paragraphs (c) and (d), and whether or not to attach restrictions as contemplated in paragraph (c), the governing body of a public school, after consultation with the principal, must take into account at least the following factors:

- (i) Whether the school will be able to provide an educator, a governing body member, or a person delegated by the principal or by the governing body, to monitor the function so as to ensure that liquor is not consumed irresponsibly and is not served to already intoxicated persons, and that the restrictions contemplated in this paragraph and in paragraphs (c) and (g)(ii) are adhered to.
- (ii) Whether children will be present at the function.
- (iii) If children will be present, whether the organisers are willing to give a written undertaking to ensure that liquor will not be available to children.

(f) In all decisions taken in terms of paragraphs (c), (d) and (e), the best interests of the child must remain paramount and the principle to be applied is that of protecting children from exposure to harmful practices such as the irresponsible consumption of liquor.

(g) The possession, consumption or sale of liquor as contemplated in this section is subject to —

- (i) the Liquor Act, 2003 (Act No. 59 of 2003), and any conditions imposed in terms of that Act; and
- (ii) any restrictions imposed by the governing body as contemplated in paragraph (e).”;

- (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.”;
- (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 10 of Act 84 of 1996

9. Section 10 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No person may administer corporal punishment [at a school] to a learner at a school, during a school activity, or in a hostel accommodating learners of a school.”.

Amendment of section 10A of Act 84 of 1996

10. Section 10A of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person may not conduct or participate in any initiation practices against a learner at a school, during a school activity, or in a hostel accommodating learners of a school.”.

Amendment of section 12 of Act 84 of 1996, as amended by section 8 of Act 15 of 2011

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

“(3A) A governing body may in writing apply to the Member of the Executive Council for a public school to be designated as a public school with a specialised focus on talent as contemplated in subsection (3)(a)(iii).

(3B) The Head of Department may identify a public school to be designated as a public school with a specialised focus on talent as contemplated in subsection (3)(a)(iii).

(3C) The Member of the Executive Council may, in writing, designate a public school as a school of specialised focus on talent as contemplated in subsection 3(a)(iii), if it is in the interest of education in the province and if the school complies with the norms and standards determined by the Minister in terms of subsection (3)(b).”.

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

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

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

“(2) Before merging two or more public schools, the Member of the Executive Council must –

(a) give written notice to the schools in question, and to their governing bodies, of the intention to merge them and of the reasons therefor;

(b) notify the parents associated with the schools, and the communities in which the schools are situated, of the intention to merge the schools and of the reasons therefor –

(i) by means of a notice in at least one newspaper circulating in the area where the schools in question are situated, if any newspapers circulate in that area; and

(ii) by causing the principals of the schools in question to –

(aa) hand to every learner at each school a notice containing the relevant information; and

(bb) instruct the learners to hand the notice to their parents; and

(iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible;

(c) give the schools in question, and their governing bodies, and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notices and communication referred to in paragraph (b);

(d) give due consideration to any such representations received; and

(e) be satisfied that the employers of staff at the public schools have complied with their obligations in terms of the applicable labour law.”;

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

“(2A) (a) The Member of the Executive Council must, within 30 days after receiving the representations referred to in subsection (2)(c), take a decision on whether or not to go ahead with the merger, and –

- (i) in writing, inform the schools in question, and their governing bodies, of the decision; and
- (ii) by means of the methods listed in subsection (2)(b), notify the parents associated with the schools, and the communities in which the schools are situated, of the decision.

(b) If the Member of the Executive Council fails to act in terms of paragraph (a), the contemplated merger will be deemed to have lapsed.

(c) If the decision of the Member of the Executive Council is to go ahead with the merger, he or she must ensure that the merger is proceeded with within 30 days after giving notice as contemplated in paragraph (a).”;

- (c) by the substitution for subsection (4) of the following subsection:

“(4) (a) If the Member of the Executive Council decides to merge the public schools in question, he or she 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) The single school contemplated in subsection (1) must be regarded as a new public school.”;

- (d) by the substitution for subsection (6) of the following subsection:

“(6) (a) Before the merger, the [The] governing bodies of the schools that are to be 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, which single interim governing body will govern the new school 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 in terms of this Act, 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.”; and

- (e) 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, may 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 20 of Act 84 of 1996, as amended by section 6 of Act 100 of 1 997, section 4 of Act 53 of 2000, section 3 of Act 57 of 2001 and section 9 of Act 30 of 2007

13. 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, 2 and 3 educators at the school, excluding principals and deputy principals and 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: Provided that, in determining the conditions, the Head of Department must consult with the governing body of the school, which consultation must include the matter of the payment of necessary and reasonable expenses arising from the use of the facilities;”.

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

14. 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, in consultation with the governing body, centrally procure identified learning and teaching support material for public schools on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.”.

Substitution of section 22 of Act 84 of 1996

15. The following section is hereby substituted for section 22 of the South African Schools Act, 1996:

“22. Withdrawal of functions of governing body. (1) The Head of Department may, on reasonable grounds, withdraw one or more functions of a governing body.

(2) The Head of Department may not take action in terms of subsection (1) unless he or she has –

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

(b) granted the governing body a reasonable opportunity to make representations to him or her relating to such intention;

(c) given due consideration to any such representations received; and

(d) informed the governing body of his or her final decision, in writing.

(3) In cases of urgency, the Head of Department may act in terms of subsection (1) without prior communication to such governing body, if the Head of Department immediately thereafter –

(a) furnishes the governing body with written reasons for his or her actions;

(b) grants the governing body a reasonable opportunity to make representations to him or her relating to such actions;

(c) duly considers any such representations received; and

(d) informs the governing body of his or her final decision, in writing.

(4) The Head of Department may for sufficient reasons reverse or suspend his or her action in terms of subsection (1) or (3).

(5) If the Head of Department acts in terms of subsection (1) or (3), he or she must appoint sufficient qualified persons to perform the withdrawn function or functions, as the case may be, for a period not exceeding three months.

(6) The Head of Department may extend the period referred to in subsection (5), by further periods not exceeding three months each, but the total period may not exceed one year.

(7) The persons contemplated in subsection (5) must, within the period of their appointment, build the necessary capacity to ensure that the governing body will thereafter be able to perform the functions that it previously failed to perform.

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

(9) Any person aggrieved by a decision of the Head of Department in terms of this section may appeal against the decision to the Member of the Executive Council, and the Member of the Executive Council must communicate his or her decision to the aggrieved person within 30 days after receiving the appeal and must provide written reasons for his or her decision.”.

Amendment of section 24 of Act 84 of 1996

16. Section 24 of the South African Schools Act, 1996, is hereby amended –

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

“(2) Subject to this Act, the [Member of the Executive Council] Minister must, by notice in the [Provincial Gazette] Government Gazette, determine the number of members in each category referred to in subsection (1) and the manner of election or appointment of such members at every public school for learners with special education needs [within his or her province].”; and

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

“(4) The [Member of the Executive Council] Minister must consider all such submissions, and thereafter may alter the notice contemplated in subsection (2).”.

Insertion of section 24A into Act 84 of 1996

17. The following section is hereby inserted into the South African Schools Act, 1996, after section 24:

“24A. Membership of a governing body of a public school with a specialised focus on talent, including sport, performing arts or creative arts. (1) The provisions of section 23 of this Act, excluding subsection (5), will apply to a governing body of a public school that provides education with a specialised focus on talent, including sport, performing arts or creative arts, as contemplated in section 12(3)(a)(iii).

(2) The authority to co-opt a member or members of the community as contemplated in section 23(6) of this Act includes the authority to co-opt relevant experts in the specialised focus of the public school, whether from inside or outside the community.”.

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

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

“25. Dissolution of governing body. (1) The Head of Department may, on reasonable grounds, dissolve a governing body that has ceased to perform its functions in terms of this Act or any provincial law.

(2) If the Head of Department acts in terms of subsection (1), he or she must appoint sufficient suitably qualified persons to perform all the functions of the governing body for a period not exceeding three months.

(3) The Head of Department may extend the period referred to in subsection (2), by further periods not exceeding three months each, but the total period may not exceed one year.

(4) The persons contemplated in subsection (2) shall have exclusive voting rights and decision making powers on all the functions of the governing body.

(5) The Head of Department may not take action in terms of subsection (1) unless he or she has –

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

(b) granted the governing body a reasonable opportunity to make representations to him or her relating to such intention;

(c) given due consideration to any such representations received; and

(d) informed the governing body of his or her final decision, in writing.

(6) If the Head of Department has dissolved a governing body as contemplated in subsection (1), he or she must ensure that a new governing body is elected in terms of this Act, within a year after the appointment of the persons contemplated in subsection (2).

(7) Any person aggrieved by a decision of the Head of Department in terms of this section may appeal against the decision to the Member of the Executive Council, and the Member of the Executive Council must communicate his or her decision to the aggrieved person within 14 days after receiving the appeal and must provide written reasons for his or her decision.”

Substitution of section 26 of Act 84 of 1996

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

“26. Recusal by members of governing body. (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 recruitment or employment of staff or 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) If a governing body has knowledge that a member who is present has a personal interest in a matter, the governing body may not take a decision on 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

20. 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 28 of Act 84 of 1996

21. Section 28 of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) Subject to this Act **[and any applicable provincial law, the Member of the Executive Council]**, the Minister must, by notice in the **[Provincial Gazette] Government Gazette**, determine —”.

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

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

“(2) (a) 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*.

(b) Where reasonably practicable, only a parent member of a *governing body* who is not employed at the *public school* may serve as the chairperson of the finance committee of that *public school*.”.

Substitution of section 32 of Act 84 of 1996

23. The following section is hereby substituted for section 32 of the South African Schools Act, 1996:

“**32. Status of [minors] learners on governing bodies of public schools.** (1) A member of a governing body who is a **[minor] learner** may not contract on behalf of a public school.

(2) A member of a governing body who is a **[minor] learner** may not vote on resolutions of a governing body which impose liabilities on third parties or on the school.

(3) A member of a governing body who is a **[minor] learner** incurs no personal liability for any consequence of his or her membership of the governing body.”.

Amendment of section 33 of Act 84 of 1996

24. The following section is hereby substituted for section 33 of the South African Schools Act, 1996:

“**33 Closure of public schools.** (1) The Member of the Executive Council may, by notice in the *Provincial Gazette*, close a public school.

(2) The Member of the Executive Council may not act in terms of subsection (1) unless he or she has -

- (a) in writing informed the school and the governing body of his or her intention so to act and his or her reasons therefor;
- (b) notified the parents associated with the school, and the community in which the school is situated, of his or her intention so to act and the reasons therefor –
- (i) by means of a notice in at least one newspaper circulating in the area where the school is situated, if any newspapers circulate in that area; and
- (ii) by causing the principal of the school to –
- (aa) hand to every learner a notice containing the relevant information; and
- (bb) instruct the learners to hand the notice to their parents; and
- (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible;
- (c) granted the school, the governing body, the parents associated with the school, and the community in which the school is situated a reasonable opportunity to make representations in relation to such action;
- (d) conducted a public hearing, on reasonable notice, to enable the community to make representations in relation to such action; and
- (e) given due consideration to any such representations received.
- (3) (a) Notwithstanding the provisions of subsection (2), the Member of the Executive Council may, by notice in the Provincial Gazette, close a public school in his or her sole discretion if no learners are registered at that school.
- (b) The Member of the Executive Council may not act in terms of paragraph (a) unless he or she has verified, by means of a site inspection by an official nominated by him or her, that no learners are registered at that school.
- (4) (a) The Member of the Executive Council may, by notice in the Provincial Gazette, close a public school if, in the case of a primary school, 135 or fewer than 135 learners are registered at that school, and, in the case of a secondary school, 200 or fewer than 200 learners are registered at that school: Provided that the provisions of this subsection do not apply where the Member of the Executive Council has, before the commencement of this subsection, acted in terms of subsection (2).
- (b) The Member of the Executive Council may not act in terms of paragraph (a) unless he or she has -
- (i) given written notice to the school and the parents of the learners of that school;
- (ii) by means of a notice in at least one newspaper circulating in the area where the school is situated, if any newspapers circulate in that area, and by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible, given notice of his or her intention to close the school and invited comment;
- (iii) consulted with the parents of the learners of the school and afforded 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 subparagraphs (i) and (ii); and
- (iv) considered any representations and any comments received after publication of the notice or communication referred to in subparagraphs (i) and (ii).
- (5) After the consultation contemplated in subsections (2) and (4)(b), the Member of the Executive Council must decide whether or not to go ahead with the closure of the school and must –
- (a) inform the school and the governing body of his or her decision; and
- (b) by means of the methods listed in subsection (2)(b), notify the parents associated with the school, and the community in which the school is situated, of the decision.
- (6) If the decision is to go ahead with the closure, the Member of the Executive Council must, where applicable and before the closure takes place, make alternative arrangements for the learners of the school to attend another school that is able to accommodate those learners and, where appropriate, make arrangements for the transport of qualifying learners to that school.
- (7) If a public school is closed in terms of this section, 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.

- (8) The Member of the Executive Council, in determining whether to act under subsection (1) or (4), must take into account the needs, in general, of the broader community in the education district in which the public school is situated, and must take into account factors including, 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) whether there are other schools in the community that are accessible to learners; and
 - (c) the efficient and effective use of state resources.”.

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

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

“(2) Despite subsection (1), a *governing body* may not, without the written approval of the Member of the Executive Council, enter into any loan, lease or overdraft agreement [so as to supplement the school fund, without the written approval of the Member of the Executive Council] for any purpose.”; and
 - (b) by the substitution for subparagraph (i) of subsection (4)(a) of the following subparagraph:

“(i) lease, for a period of longer than 12 months, burden, convert or alter immovable property of the school to provide for school activities or to supplement the school fund of that school; and”.

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

26. 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

27. Section 38 of the South African Schools Act, 1996, is hereby amended –
- (a) by the substitution for subsection (3) of the following subsection:

“(3) The notice contemplated in subsection (2) must include a document explaining the budget, and such document, together with the budget, must be made available to parents by means of the existing communication channels of the school and must also inform the parents that the document and the budget will be available for inspection at the school at least 14 days prior to the meeting.”; and
 - (b) by the insertion after subsection (3) of the following subsections:

“(4) If a governing body finds it necessary to –

 - (a) deviate from the initial budget that has been approved as contemplated in subsection (2), and the deviation will be 10%, or more, of the initial budget; or
 - (b) reallocate funds for use for a purpose different to that which was approved by the parents as contemplated in subsection (2),

the governing body must present such deviation or reallocation to a general meeting of parents convened specifically for that purpose, on at least 14 days' notice, for consideration and approval by a majority of parents present and voting.

“(5) The notice contemplated in subsection (4) must include a document explaining and providing reasons for the deviation or reallocation, and such document must be made available to parents by means of the existing communication channels of the school, and

must also inform the parents that the document will be available for inspection at the school at least 14 days prior to the meeting.

(6) A quorum of 10% 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 38A of Act 84 of 1996, as inserted by section 2 of Act 1 of 2004

28. Section 38A of the South African Schools Act, 1996, is hereby amended –

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

“(2) A governing body may apply to the employer contemplated in subsection (1) for approval to pay a state employee any [payment] remuneration, or to give to a state employee any other financial benefit, or benefit in kind, contemplated in subsection (1).”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) Such application must be lodged in writing in the office of the employer and must state—

(a) full details of the nature and extent of the [payment] remuneration, other financial benefit, or benefit in kind;

(b) the reasons for the remuneration, other financial benefit, or benefit in kind;

(c) if practicable, the monetary value of the remuneration, other financial benefit, or benefit in kind;

[b](d) the process and resources that will be used to compensate or remunerate the state employee; and

[c](e) the extent of compliance with section 20 (5) to (9).”;

(c) by the substitution for subsection (6) of the following subsection:

“(6) An employer [must] may not unreasonably refuse an application [contemplated] referred to in subsection (2), but must refuse an application if the monetary value of any remuneration, other financial benefit, or benefit in kind contemplated in subsection (1) will exceed 25% of the employee’s salary.”; and

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

“(8) The [payment] remuneration, other financial benefit, or benefit in kind contemplated in subsection (1) must be reflected in the school’s budget, as presented to the general meeting of parents as contemplated in section 38 (2) and any remuneration, other financial benefit, or benefit in kind must, if practicable, be accorded a monetary value.”.

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

29. Section 41 of the South African Schools Act, 1996, is hereby amended 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, 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 42 of Act 84 of 1996, as amended by section 10 of Act 31 of 2007

30. The following section is hereby substituted for section 42 of the South African Schools Act, 1996:

“42. Financial records and statements of public schools. – The governing body of a public school must –

- (a) keep records of all investments, donations and funds received and spent by the public school and of its assets, liabilities and financial transactions;
- (b) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements reflecting all the investments, donations and funds received and spent by the public school in accordance with the guidelines determined by the Member of the Executive Council;
- (c) present the financial records and statements to a general meeting of parents; and
- (d) inform the parents that the financial records and statements will be available for inspection at the school at least 14 days prior to the meeting referred to in paragraph (c).”.

Amendment of section 43 of Act 84 of 1996

31. The following subsections are hereby substituted for subsections (4) and (5) of section 43 of the South African Schools Act, 1996:

“(4) If the *Head of Department* deems it necessary, on just cause shown, he or she may—

- (a) authorise suitably qualified 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 46 of Act 84 of 1996

32. Section 46 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any person who contravenes subsection (1) is guilty of an offence and, upon conviction, liable to a fine or to imprisonment for a period [of three] not exceeding 12 months, or to both such fine and such imprisonment.”.

Amendment of section 48 of Act 84 of 1996

33. 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

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

“51. Home education. (1) If the parent of a learner who is subject to compulsory school attendance chooses home education for his or her child, such parent must apply to the Head of Department for the registration of the learner to receive home education for the following phases:

- (a) Foundation Phase (grades R to 3);
- (b) Intermediate Phase (grades 4 to 6); and
- (c) Senior Phase (grades 7 to 9).

(2) The Head of Department must approve the application and register the learner as contemplated in subsection (1)—

(a) if he or she is satisfied that—

(i) education at home and registration as such is in the best interests of the learner;

(ii) the parent understands home education and accepts full responsibility for the implementation of home education for his or her child; and

(iii) the proposed home education programme is suitable for the learner's age, grade level and ability and predominantly covers the acquisition of content and skills at least comparable to the relevant national curriculum determined by the Minister; and

(b) if the parent undertakes to—

(i) make suitable educational resources available to support the learner's learning;

(ii) monitor the learner's academic progress;

(iii) arrange for the learner's educational attainment to be assessed annually, up to the end of grade 9, by a competent assessor against a standard that is not inferior to the standard determined in the National Curriculum Statement as provided for in the Regulations Pertaining to the National Curriculum Statement Grades R to 12; and

(iv) provide the Head of Department with the learner's assessment report, signed by the competent assessor, as evidence at the end of each phase.

(3) In considering the application, the Head of Department may require a delegated official to conduct a pre-registration home education site visit and consultation

with the parents and learner to verify the information supplied in the application documentation and to provide support, where necessary, with the application process.

(4) If a parent home educates a learner, and that learner has not been registered as contemplated in this section, the parent must, within 30 days after the commencement of this section, apply to the *Head of Department* for the registration of the learner to receive home education.

(5) If the *Head of Department* does not respond within 60 days of receipt of an application for home education as contemplated in subsection (1) and subsection (4), the application shall be deemed to have been approved, on condition that the applicant must be able, on request, to produce proof that an application for registration to receive home education was submitted.

(6) A learner who is registered to receive *home education* is exempted from school attendance as contemplated in section 3 of the Act.

(7) A parent of a learner who wishes to continue with home education after the learner has reached the age of 15 years or has completed grade 9, whichever occurs first, is not required to apply for registration of the learner to receive home education.

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

(9) If a *parent* of a learner contemplated in subsection (7) —

(a) desires the learner to eventually write an exit examination other than the National Senior Certificate examination, such parent must, before the learner embarks on any studies following grade 9, determine the status of such an exit examination as it pertains to admission to higher education institutions of his or her choice; or

(b) desires the learner to eventually write the National Senior Certificate examination, such parent must, before the learner embarks on any studies following grade 9, ensure that the learner complies with the requirements, stipulated in regulation 7(4A) of the Regulations Pertaining to the Conduct, Administration and Management of the National Senior Certificate Examination, for a learner receiving home education.

(10) The *Head of Department* must cancel a learner's registration to receive *home education* if, after investigation, the *Head of Department* is satisfied that *home education* is no longer in the best interests of the learner.

(11) The *Head of Department* may not cancel the registration of a learner to receive *home education* before—

(a) informing the *parent*, in writing, 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, which opportunity must include discussions relating to such intention;

(c) giving due consideration to any such representations received; and

(d) providing the *parent* with written reasons for his or her decision.

(12) (a) A *parent* of a learner may appeal to the *Member of the Executive Council*, within 30 days of receiving notice —

(i) that the *Head of Department* has declined the application to register a learner to receive *home education*; or

(ii) that the *Head of Department* has cancelled a learner's registration to receive *home education*.

(b) If the *parent* of a learner is of the opinion that any decision of the *Head of Department* in relation to the home education of the learner in question is unreasonable, such *parent* may appeal to the *Member of the Executive Council* within 30 days of receiving notice of such decision.

(13) If an appeal contemplated in subsection (12) is received, the *Member of the Executive Council* must, within 30 days of receiving such appeal, consider and decide on the matter and, in writing, inform the *parent* of the learner of the outcome of the appeal.

(14) 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

35. 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 shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.”.

Insertion of section 59A into Act 84 of 1996

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

“59A. Dispute resolution.

(1) If a dispute arises between the *Head of Department* and a governing body, all attempts must be made by the parties to resolve the dispute informally.

(2) If the parties are unable to resolve a dispute informally as referred to in subsection (1), 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)(a), each party must nominate a representative within seven days, and those representatives must meet within 14 days after their nomination in order to resolve the dispute.

(4) If the parties cannot resolve the dispute as contemplated in subsection (1), (2) and (3), the governing body may appeal to the Member of the Executive Council against the decision that gave rise to the dispute.

(5) If an appeal contemplated in subsection (4) has been received, the Member of the Executive Council must, within 30 days after receiving such appeal, consider and decide on the matter and, in writing, inform the governing body of the outcome of the appeal.”.

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

37. 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

38. 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 other financial benefit or benefit 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 shall be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.”.

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

39. 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;” and
- (c) 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

40. 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

41. 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, 2 or 3 post on the *educator* establishment of a public school, excluding posts of principal and deputy principal, may [only] be made only on the recommendation of the governing body of the public school and[, if, in the *provincial department of education* concerned, there are post level 1, 2 or 3 educators who are in excess of the educator establishment of a public school] due owing to operational requirements, that recommendation may [only] be made only 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 a promotional post of principal or deputy principal on the *educator* establishment of a public school shall be made from candidates identified by the *Head of Department* in the manner determined in terms of the *Personnel Administrative Measures*.”;

(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 that the candidate has the necessary qualifications, experience and competence, and [the governing body or council, 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, 2 or 3 candidate on the list.”;

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

“(m) Where a new public school is established in terms of the *South African Schools Act, 1996*, and any applicable provincial law, the *Head of Department* must effect appointments, promotions or transfers in a temporary capacity to any posts on the *educator* establishment until the relevant governing body is established.”;

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

“(4) Principals and deputy principals will be appointed directly by the *Head of Department*.

(5) The shortlisting and interview committee for any appointment, promotion or transfer to a post of principal or deputy principal must comprise –

(a) three officials nominated by the *Head of Department*, one of whom shall be appointed as chairperson of the shortlisting and interview committee;

(b) the district director in whose area of jurisdiction the school is located or a competent official from his or her office, nominated by the district director;

(c) a post level 4 educator from the education district in which the vacancy is: Provided that such educator must not be at a lower level than the candidates being shortlisted and interviewed;

(d) the chairperson of the school governing body or his or her nominee, who must be a person representing the parents of the school; and

(e) one union representative for each of the unions that are a party to the provincial chamber of the Education Labour Relations Council, who will be observers.”.

Amendment of section 7 of Act 76 of 1998

42. 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, in any promotion, [or] and in 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 promotion 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

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

- (a) 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
- (b) 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

44. 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

45. 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 18 of Act 76 of 1998

46. 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;”.

Insertion of section 19 into Act 76 of 1998

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

“19. Conducting business with State. (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.”

Amendment of section 35 of Act 76 of 1998

48. 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

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

Amendment of Schedule 1 of Act 76 of 1998

50. 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 2 of Act 76 of 1998

51. Schedule 2 of the Employment of Educators Act, 1998, is hereby amended ==

(a) 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**];”; and

(b) by the substitution for the words preceding paragraph (a) of subitem 9(5) of the following words:
“(5) The Member of the Executive Council or the Minister, as the case may be, must, within 30 days after receiving the appeal, consider the appeal, and may –”.

Short title

52. This Act is called the Basic Education Laws Amendment Act, 20.., and comes into operation on a date fixed by the President by proclamation in the *Government Gazette*.