

REPUBLIC OF SOUTH AFRICA

**EDUCATION LAWS
AMENDMENT BILL**

(As introduced)

(MINISTER OF EDUCATION)

[B 85—97]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
ONDERWYSWETTE**

(Soos ingedien)

(MINISTER VAN ONDERWYS)

[W 85—97]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the South African Schools Act, 1996, so as to insert a definition and substitute others; to allow public schools to appoint educators and non-educator staff additional to the approved establishment; to make certain technical adjustments; to amend the National Education Policy Act, 1996, so as to delete an obsolete provision; to amend the Educators' Employment Act, 1994, so as to delete obsolete provisions; and to repeal the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 84 of 1996

1. Section 1 of the South African Schools Act 1996, is hereby amended—
- (a) by the insertion after the definition of “public school” of the following definition: 5
 “**Registrar of deeds**” means the *registrar of deeds* referred to in section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);”;
 - (b) by the substitution for the definition of “Constitution” of the following definition: 10
 “**Constitution**” means the *Constitution* of the Republic of South Africa, [1993 (Act No. 200 of 1993)] 1996 (Act No. 108 of 1996);”;
 - (c) by the substitution for the definition of “school” of the following definition: 15
 “**school**” means a *public school* or an *independent school* which enrolls learners in one or more grades [between] from grade zero [and] to grade twelve;”.

Amendment of section 2 of Act 84 of 1996

2. Section 2 of the South African Schools Act, 1996, is hereby amended by the addition to subsection (3) of the following words: 20
 “and this Act.”.

Amendment of section 11 of Act 84 of 1996

3. Section 11 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A representative council of *learners* at the *school* must be established at every *public school* enrolling *learners* in the eighth grade **[and]** or higher.”. 5

Amendment of section 13 of Act 84 of 1996

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

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

“(7) The **[registrar of any deeds registry]** *Registrar of deeds* may not execute, attest to or register a transfer deed in respect of the immovable property in question unless the owner has provided the **[registrar]** *Registrar of deeds* with proof of the agreement contemplated in subsection (6).”;

(b) by the substitution in the Afrikaans text for subsection (8) of the following subsection: 15

“(8) Die bepalings van die **[Wet op die]** Registrasie van Aktes *Wet*, 1937 (Wet No. 47 van 1937), is nie van toepassing op die reg beoog in subartikel (2) nie.”;

(c) by the addition of the following subsection: 20

“(9) On application by the owner and on production of the owner’s copy of the title deed, the *Registrar of deeds* must endorse on the title deed and in his or her records the fact that a *public school* has been established on the land in terms of *this Act*.”.

Amendment of section 14 of Act 84 of 1996

5. Section 14 of the South African Schools Act, 1996, is hereby amended— 25

(a) by the substitution in subsection (5), for the words preceding paragraph (a) of the following words:

“Despite subsection (3), a **[registrar of a deeds registry]** *Registrar of deeds* must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the **[registrar]** *Registrar of deeds* receives—”;

(b) by the insertion after subsection (6) of the following subsection, the existing subsection (7) becoming subsection (8):

“(7) The *Registrar of deeds* may cancel any endorsement made in accordance with subsection (5) if the owner of the property submits an affidavit from the *Member of the Executive Council* of the province in which the *public school* is situated to the effect that such *public school* has been closed in terms of section 33.”. 35

Amendment of section 20 of Act 84 of 1996

6. Section 20 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections: 40

“(4) Subject to *this Act* and any other applicable law, the *governing body* of a *public school* may establish posts for *educators* and employ *educators* additional to the establishment determined by the *Member of the Executive Council* in terms of section 3(1) of the *Educators’ Employment Act*, 1994. 45

(5) Subject to *this Act* and any other applicable law, the *governing body* of a *public school* may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the *Public Service Act*, 1994.

(6) An *educator* and a non-educator employed in a post established in terms of subsection (4) or (5) must comply with the requirements set for employment in *public schools* in terms of *this Act*, other applicable laws, and policy pertaining to the provision of education to such *school*. 50

(7) A *public school* may only employ an *educator* in a post established in terms of subsection (4) if such *educator* is registered as an *educator* with the South African Council of *Educators*.”. 55

Amendment of section 24 of Act 84 of 1996

7. Section 24 of the South African Schools Act, 1996, is hereby amended by the addition to subsection (1) of the following paragraph:

“(j) the *principal* in his or her official capacity.”.

Amendment of section 39 of Act 84 of 1996

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8. Section 39 of the South African Schools Act, 1996, is hereby amended by the substitution in the Afrikaans text for paragraph (b) of subsection (2), of the following paragraph:

“(b) billike maatstawwe en prosedures vir die algehele, gedeeltelike of voorwaardelike vrystelling [**deur die beheerliggaam**] van *ouers* wat nie in staat is om skoolgeld te betaal nie.”. 10

Amendment of section 55 of Act 84 of 1996

9. Section 55 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

“(11) The *Registrar of deeds* in the office where the immovable property of a *school* is registered, must, on submission of the title deed in question, make such endorsement on the title deed and such entry in the register as may be required to register the transfer of the immovable property. 15

(12) Any immovable property belonging to the State which was used by a *school* and not transferred or endorsed into the name of the *school* contemplated in subsection (1) remains the property of the State. 20

(13) Any immovable property which was transferred into the name of a *school* contemplated in subsection (1) must, if such *school* is subsequently closed in terms of *this Act* or any other applicable law, devolve upon the State.”. 25

Amendment of section 60 of Act 84 of 1996

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

“(3) Notwithstanding subsection (1) the *public school* is liable for any damage or loss as a result of any act or omission contemplated in that subsection in connection with any educational activity conducted by *educator* or non-educator staff appointed in terms of subsection 20(4) or (5). 30

(4) Before a *school* appoints any employee contemplated in section 20(4) or (5), such *school* must take out sufficient insurance to cover any liability for the acts or omissions of such employee.”. 35

Amendment of section 3 of Act 27 of 1996

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

“Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, [**staffing**] co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the education system and, without derogating from the generality of this section, may determine national policy for—”. 40

Amendment of section 3 of Proclamation 138 of 1994, as amended by item 2 of Schedule 2 to Act 84 of 1996

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12. Section 3 of the Educators' Employment Act, 1994, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary contained in any other law, but subject to this Act [**and the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984 (Act No. 76 of 1984)**], the educator establishment at an educational institution in a province shall consist of the posts which the Member of the Executive Council creates and the educator establishment of the Department of Education shall consist of the posts which the Minister creates.”. 50

Amendment of section 5 of Proclamation 138 of 1994, as amended by item 5 of Schedule 2 to Act 84 of 1996

13. Section 5 of the Educators' Employment Act, 1994, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Notwithstanding anything to the contrary contained in any other law, but subject to the provisions of [**the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984 (Act No. 76 of 1984), and**] the Labour Relations Act—”.

Repeal of Act 76 of 1984

14. The National Policy on the Salaries and Conditions of Employment of Educators Act, 1984 (Act No. 76 of 1984), is hereby repealed.

Transitional provision

15. Any educator who has been appointed in an unsubsidised post contemplated in section 3A of the Educators' Employment Act, 1994 (Proclamation No. 138 of 1994), must, as long as his or her contractual arrangements are still in force, be regarded as being employed in terms of section 20(4) of the South African Schools Act, 1996 (Act No. 84 of 1996).

Short title and commencement

16. This Act must be called the Education Laws Amendment Act, 1997, and takes effect on 1 January 1998.

MEMORANDUM ON THE OBJECTS OF THE EDUCATION LAWS AMENDMENT BILL, 1997

1. AMENDMENT OF SOUTH AFRICAN SCHOOLS ACT, 1996

During the parliamentary processes when the South African Schools Act, 1996, was tabled in Parliament, the Minister undertook to address an outstanding issue namely the ability of public schools to employ educators and non-educator staff additional to the approved establishment of such schools. The employment of such educators and non-educator staff will be the responsibility of the governing body and such employees must be compensated out of the school funds raised by parents of the school for this purpose.

The South African Schools Act came into effect on 1 January 1997. During the implementation of the Act a few shortcomings were identified which were mostly of a technical nature. The Bill seeks to address these shortcomings.

The Bill seeks to insert a definition of "Registrar of deeds" and to amend the definitions of "Constitution" and "school". Amendments are proposed to facilitate endorsements on the title deeds of certain properties and the cancellation of such endorsements. The main amendment proposed is the amendment of section 20 where the powers of governing bodies are extended to allow them to employ educators and non-educator staff additional to the staff employed and paid by the State. Section 24 is sought to be amended by the inclusion of the principal in the composition of the governing body of a public school for special education needs. This amendment will bring such governing bodies into line with those of ordinary public schools.

Section 55 is sought to be amended by providing that an endorsement must be effected on the title deeds of the immovable property of ex-model C schools which reverts back to the State. The Bill also seeks to make provision for immovable property which was never transferred into the name of a former Model C school, to remain the property of the State.

2. AMENDMENT OF OTHER EDUCATION LAWS

Confusion might exist when the Minister acts in his capacity as employer in terms of the Labour Relations Act, 1995 (LRA), and the Educators' Employment Act, 1994 (EEA), in relation to his or her responsibilities in determining policy in terms of the National Education Policy Act, 1996 (NEPA), and the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984. In order to avoid such confusion, amendments must be effected to the NEPA in order to keep staffing matters within the scope of the LRA and the EEA. The National Policy on the Salaries and Conditions of Employment of Educators Act, 1984, has become superfluous in view of Chapter 10 of the Constitution, and the Bill seeks to repeal it.

3. PERSONS AND ASSOCIATIONS CONSULTED

The various options for the employment of additional educators and non-educator staff and the Bill were discussed with a delegation of the ANC Study Group, all the national bodies of the organised educator profession (SADTU, NAPTOSA and SAOU), and the national and regional associations of public school governing bodies (FEDSAS and CPPSA). The Department of Education also had discussions with the Department of Finance, the Department of Public Service and Administration and the Chief Registrar of Deeds. The Heads of Education Departments Committee and the Council of Education Ministers have approved the proposed amendments of the South African Schools Act.

4. PARLIAMENTARY PROCEDURE

In the view of the Department of Education and the State Law Advisers the procedure established by section 76 of the Constitution should be followed with regard to this Bill.