

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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No. 3) ' \$,

THE PRESIDENCY

No. H í

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It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

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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.

(English text signed by the President)
(Assented to 25 April 2012)

ACT

To amend the Further Education and Training Colleges Act, 2006, so as to remove all references to provincial authority; to assign functions previously assigned to the Member of the Executive Council to the Minister; to remove all references to "Head of Department" and replace them with "Director-General"; to regulate the conduct of members of the council, members of a committee of the council and staff of a public further education and training college engaging in business with the relevant public college; to provide afresh for the appointment of staff; and to provide for transitional arrangements; 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 16 of 2006, as amended by section 1 of Act 25 of 2010

1. Section 1 of the Further Education and Training Colleges Act, 2006 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the deletion of the definition of "Head of Department";
 - (b) by the deletion of the definition of "Member of the Executive Council";
 - (c) by the deletion of paragraph (b) of the definition of "policy"; and
 - (d) by the substitution for the definition of "SAQA" of the following definition: 10
- " 'SAQA' means the South African Qualifications Authority, established by section [3] 10 of the [South African Qualifications Authority Act, 1995 (Act No. 58 of 1995)] National Qualifications Framework Act, 2008 (Act No. 67 of 2008)."

Amendment of section 3 of Act 16 of 2006

2. Section 3 of the principal Act is hereby amended— 15
- (a) by the substitution for subsection (1) of the following subsection:

"(1) The [Member of the Executive Council] Minister may, by notice in the *Gazette* and from money appropriated for this purpose [by the provincial legislature], establish a public college."

- (b) by the substitution for subsection (3) of the following subsection:
“(3) Despite subsection (2) but subject to subsection (4), a public college may not, without the concurrence of the **[Member of the Executive Council] Minister**, dispose of or alienate in any manner any movable or immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon.”; 5
- (c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
“The **[Member of the Executive Council] Minister**—”; and 10
- (d) by the substitution for subsection (5) of the following subsection:
“(5) The **[Head of Department] Director-General** may inspect, and must compile an inventory of all, the assets of a public college.”.

Amendment of section 4 of Act 16 of 2006

3. Section 4 of the principal Act is hereby amended— 15
- (a) by the substitution for subsection (1) of the following subsection:
“(1) The **[Member of the Executive Council] Minister** may, by notice in the *Gazette*, declare any institution providing further education and training as a public college.”;
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 20
“The **[Member of the Executive Council] Minister** may act in terms of subsection (1) only—”; and
- (c) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 25
“(a) (i) after consulting **[the Minister and]** the council of the institution, if it is a public institution;
(ii) with the concurrence of the responsible Minister[, **Member of the Executive Council]** or authority of the institution, if the institution is administered, controlled or funded by an organ of State other than the **[provincial department of education] Department**; or 30
(iii) with the concurrence of the owner and the **[relevant Member of the Executive Council responsible for finance] Minister of Finance**, if it is a private institution; and”.

Amendment of section 5 of Act 16 of 2006

4. Section 5 of the principal Act is hereby amended by the substitution for subsections (6) and (7) of the following subsections, respectively:
- “(6) The **[Member of the Executive Council] Minister** must in the notice contemplated in section 3(1) establish an interim council for the public college for a period not exceeding six months to perform the functions relating to the governance of the college until a council is established in terms of section 9(1). 40
- (7) The **[Member of the Executive Council] Minister** may extend the period referred to in subsection (6) once or for a further period not exceeding six months.”. 45

Amendment of section 6 of Act 16 of 2006

5. Section 6 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
“(1) Subject to subsection (2), the **[Member of the Executive Council] Minister** may, **[in consultation with the Minister and]** by notice in the *Gazette*, merge two or more public colleges into a single college”; 50
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“Before merging two or more public colleges the **[Member of the Executive Council] Minister** must—”; 55

- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
“The **[Member of the Executive Council] Minister** must, after consultation with the councils of the public colleges that are to be merged, determine by notice contemplated in subsection (1)—”; and 5
- (d) by the substitution for subsection (7) of the following subsection:
“(7) The **[Member of the Executive Council] Minister** may extend the period referred to in subsection (6) once for a further period not exceeding six months.”.

Amendment of section 7 of Act 16 of 2006 10

6. Section 7 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“The **[Member of the Executive Council] Minister** may determine that the governance of two or more colleges must vest in a single council if—”; 15
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“The **[Member of the Executive Council] Minister** may not act in terms of subsection (1) unless he or she has—”; and 20
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
“The **[Member of the Executive Council] Minister** must, by notice in the *Gazette*, determine the composition of the single council in a manner that ensures that—”. 25

Amendment of section 8 of Act 16 of 2006

7. Section 8 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
“(1) The **[Member of the Executive Council] Minister** may, by notice in the *Gazette*, close a public college.”; 30
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“The **[Member of the Executive Council] Minister** may not act in terms of subsection (1) unless he or she has—”; 35
- (c) by the deletion in subsection (2) of paragraph (a); and
- (d) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs, respectively:
“(a) all assets and liabilities of such college must, after such closure, be dealt with according to law by the **[Member of the Executive Council] Minister**; and 40
(b) any assets remaining after payment of all liabilities vest in the **[Member of the Executive Council] Minister**.”.

Amendment of section 10 of Act 16 of 2006

8. Section 10 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2)(a) for subparagraph (iv) of the following subparagraph: 45
“(iv) be approved by the **[Member of the Executive Council] Minister**”; 50
- (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
“(b) determine the language policy of the public college, subject to the approval of the **[Member of the Executive Council] Minister**; and”; 55
- (c) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
“(b) five external persons appointed by the **[Member of the Executive Council] Minister**”; 60
- (d) by the substitution for subsection (6) of the following subsection:
“(6) The council must, in consultation with the **[Member of the Executive Council] Minister**, appoint four additional external persons

- with financial, human resources and legal skills as members of the council.”;
- (e) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:
- “The manner in which the members of the council contemplated in subsection (4)(c) to (g) are to be elected, must, where applicable, be determined by the **[Member of the Executive Council] Minister** by notice in the *Gazette* **[or in terms of a provincial law]** and must, in so far as it is practically possible, ensure that—”;
- (f) by the substitution in subsection (8) for paragraph (b) of the following paragraph:
- “(b) employed by the **[Member of the Executive Council] Minister**.”;
- (g) by the substitution for subsection (9) of the following subsection:
- “(9) **[The members]** A member of a council or an interim council—
- (a) must be **[persons]** a person with knowledge and experience relevant to the objects and governance of the public college in question; **[and]**
- (b) must participate in the deliberations of the council or interim council in the best interest of the public college in question;
- (c) must, before he or she assumes office, declare any business, commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest with the public college in question;
- (d) may not place himself or herself under any financial or other obligation to any individual or organisation that might seek to influence the performance of any function of the council;
- (e) (i) may not have a conflict of interest with the public college in question;
- (ii) may not have a direct or indirect financial, personal or other interest in any matter to be discussed at a meeting and which entails or may entail a conflict or possible conflict of interest with the public college in question; and
- (iii) must, before the meeting and in writing, inform the chairperson of that meeting of the conflict or possible conflict of interest.”;
- (h) by the insertion after subsection (9) of the following subsections:
- “(9A) Any person may, in writing, inform the chairperson of a meeting, before the meeting, of a conflict or possible conflict of interest of a member of the council of the public college in question of which such person may be aware.
- (9B) A member referred to in subsections (9)(e) and (9A) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.
- (9C) A committee of the council with delegated functions in terms of section 50(1) may not take a decision on a matter considered by it if any member of the committee has a conflict of interest contemplated in this section.
- (9D) A member of the council or a member of a committee of the council who contravenes subsection (9), (9A) or (9B), after the council has followed a due process, may be—
- (a) suspended from attending a meeting; or
- (b) disqualified as a member of the council or a member of a committee of the council.
- (9E) The council must—
- (a) having regard to the provisions of subsections 9, (9A) and (9B) adopt a code of conduct to which all members of the council, all members of committees of the council and all persons who exercise functions of the council in terms of delegated authority must subscribe; and
- (b) determine rules and procedures for an annual declaration—
- (i) by each member of the council, each member of council committees and each person who exercises functions of the council in terms of delegated authority;