

REPUBLIC OF SOUTH AFRICA

BASIC EDUCATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 45601 of
6 December 2021)
(The English text is the official text of the Bill)*

(MINISTER OF BASIC EDUCATION)

[B 2—2022]

ISBN 978-1-4850-0769-2

No. of copies printed150

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, to insert and amend certain 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 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 and language policies of the public school to the Head of Department for approval; to provide that the 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 direct a public school to adopt more than one language of instruction, where it is practicable to do so, and that, 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 refine the provisions relating to the possession of drugs on school premises or during school activities and to provide for conditions under which liquor may be possessed, sold or consumed on school premises or during school activities; to refine the provisions relating to suspension and expulsion from public school by inserting a definition of serious misconduct; to provide for the prohibition of corporal punishment at school activities and at hostels accommodating learners of a school; to prohibit initiation practices during school activities; to provide for the designation of a public school as a public school with a specialised focus on talent; to further regulate the merger of public schools; to provide for the reasonable use of the facilities of a school for education-related activities without the charging of a fee or tariff; to provide for centralised procurement of identified learning and teaching support material for public schools; to further regulate the withdrawal of the functions of governing bodies; 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, sports and performing or creative arts; to provide that the Head of Department may, on reasonable grounds, dissolve a governing body that has ceased to perform its functions; to provide that a member of a 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 at a public school, 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 from a meeting of the governing body under such circumstances; to provide further clarity regarding the prohibition of the remuneration of members of governing bodies; 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 and refine the provisions relating to the closure of a public school; to provide that lease agreements relating to a school's immovable property must be submitted to the Member of the Executive Council for approval and that, in the case of a lease for a period not exceeding 12 months, the approval of the Member of the Executive Council is not required; to further regulate and refine matters relating to the budget of a public school; to further regulate the circumstances under which a governing body may pay additional remuneration, or give any other financial benefit or benefit in kind, to a state employee; to provide that, where the parent of a learner applies for exemption from the payment of school fees and information cannot be obtained from the other parent of the learner, the parent may submit documentary evidence in the form of an affidavit or court order in relation to the other parent; to provide for financial record-keeping by the governing body of a public school, for the drawing up of financial statements, and for 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 the 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; to further regulate 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 or the Member of the Executive Council and a governing body; to further regulate the liability of the State for delictual or contractual damages; to extend the power of the Minister to make regulations and to provide for offences to be created in regulations made by the Minister; to amend the Preamble; and to provide for matters incidental thereto; and
- the Employment of Educators Act, 1998, so as to amend certain definitions; to exclude further education and training centres, adult basic education centres and institutions, 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 section 1 of Act 84 of 1996, as amended by section 1 of Act 100 of 1997, section 6 of Act 48 of 1999, section 1 of Act 50 of 2002, section 1 of Act 24 of 2005, section 4 of Act 31 of 2007 and section 4 of Act 15 of 2011

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

- (a) by the insertion in subsection (1) before the definition of “*Constitution*” of the following definitions:

“***basic education***” means *grade R* to grade 12, as evidenced in the National Curriculum Statement;

“***benefit in kind***” means any benefit offered or afforded to an employee employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 1994), 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 a cell phone;
- (d) free holiday;
- (e) groceries to the benefit of the employee; or
- (f) garden services;

“***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);”;

- (b) by the substitution in subsection (1) for the definition of “*Constitution*” of the following definition:

“***Constitution***” means the Constitution of the Republic of South Africa, 1996 [(Act 108 of 1996)];”;

- (c) by the insertion in subsection (1) after the definition of “*Constitution*” of the following definition:

“***corporal punishment***” means any deliberate act against a child that inflicts pain or physical discomfort, however light, to punish or contain the child, which includes, but is not limited to—

- (a) hitting, smacking, slapping, pinching or scratching with the hand or any object;
- (b) kicking, shaking, throwing, throwing objects at, burning, scalding, biting, pulling hair, boxing ears, pulling or pushing children; and
- (c) forcing children to stay in uncomfortable positions, forced ingestion, washing children’s mouths out with soap, denying meals, heat and shelter, forcing a child to do exercise or denying or restricting a child’s use of the toilet;”;

- (d) by the insertion in subsection (1) after the definition of “*dangerous object*” of the following definitions:

“***Department of Basic Education***” means the national 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*;

“***drug***” means any—

- (a) intoxicating or stupefying substance that has a psychological or physiological effect;
- (b) substance that has the effect contemplated in paragraph (a) and that is possessed contrary to the code of conduct of a *school* or contrary to the laws of the Republic;
- (c) substance, the possession or use of which, or the dealing in which, is prohibited without a medical prescription or legal authorisation; or
- (d) performance-enhancing drug, prohibited performance-enhancing substance, dependence-producing substance, dangerous dependence-producing substance, undesirable dependence-producing

- substance, unlawful substance, prohibited substance, illicit substance, illicit drug, or scheduled substance,
contemplated in any South African legislation that deals with the control of medicines and related substances, with drug trafficking, substance abuse in general, and with substance abuse in sport and in any programmes or policies aimed at curtailing social and sport-related substance abuse, and in any international instruments that deal with such matters and to which South Africa subscribes or is a party;”;
- (e) by the insertion in subsection (1) after the definition of “*education department*” of the following definition: 5
 “**‘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 in subsection (1) after the definition of “*grade*” of the following definition: 10
 “**‘grade R’** means the Reception grade;”;
- (g) by the insertion in subsection (1) after the definition of “*Head of Department*” of the following definition: 15
 “**‘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 *home education* contemplated in section 51 of *this Act*;”;
- (h) by the deletion in subsection (1) of the definition of “*illegal drug*”;
- (i) by the insertion in subsection (1) after the definition of “*learner*” of the following definition: 20
 “**‘liquor’** means liquor as defined in section 1 of the Liquor Act, 2003 (Act No. 59 of 2003);”;
- (j) by the substitution in subsection (1) for the definition of “*loan*” of the following definition: 25
 “**‘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 employees appointed by the *governing body* in terms of section 20(4) or (5), or operational costs as determined in the annual budget contemplated in section 38;”;
- (k) by the insertion in subsection (1) after the definition of “*officer*” of the following definition: 30
 “**‘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;
 (b) a credit card linked to an employee for his or her personal use; or
 (c) a petrol card linked to an employee for his or her personal use not related to any *school* activity;”;
- (l) by the substitution in subsection (1) in the definition of “*parent*” for paragraph (c) of the following paragraph: 35
 “(c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the *learner’s* education [at *school*];”;
- (m) by the insertion in subsection (1) after the definition of “*registrar of deeds*” of the following definition: 40
 “**‘required documents’** for learners shall have the following meaning in relation to the following categories of learners:
 (a) Where at least one or both biological or adoptive *parents* of a learner are South African citizens, the following documents: 45
 50
 55
 60