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## GENERAL NOTICE

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NOTICE 2478 OF 2011

**GAUTENG PROVINCIAL GOVERNMENT**

**DEPARTMENT OF EDUCATION**

**CALL FOR COMMENTS ON THE DRAFT BILL ON GAUTENG  
EDUCATION LAWS AMENDMENT BILL, 2011**

I, Barbara Creecy, member of the Executive Council responsible for education, hereby publish for comments, the draft Gauteng Education Laws Amendment Bill, 2011 contained in the Schedule below.

Interested persons or organizations are hereby invited to submit written comments on the draft Bill by the 29 September 2011. Comments may be forwarded to Mr. Dan Legoete; Director: Strategic Policy Development Monitoring and Evaluation by:

**(a) post to:**

The Department of Education  
P O Box 7710,  
Johannesburg  
2000;

**(b) hand to:**

The Department of Education  
Directorate: Strategic Policy Development Monitoring and  
Evaluation  
111 Commissioner Street



JOHANNESBURG


2001;

**(c) fax to:**

(011) 355 0495; and

**(d) by email to:**

dan.legoete@gauteng.gov.za



**B. CREECY**

**MEC FOR EDUCATION**

**GAUTENG PROVINCIAL GOVERNMENT**



## SCHEDULE

### 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

### EDUCATION LAWS AMENDMENT BILL (GAUTENG), 2011

To amend the School Education Act (Gauteng), 1995, so as to align it with national legislation on school education; to amend the Education Policy Act (Gauteng), 1998, so as to align it with national legislation on school education; to repeal the Gauteng College Education and Training Act, 1998; Examination and Assessment Act, 7 of 1997 and to provide for matters connected therewith.

**BE IT ENACTED** by the Provincial Legislature of Gauteng as follows:-

### **AMENDMENTS TO THE SCHOOL EDUCATION ACT (GAUTENG), 1995 (ACT 6 OF 1995)**

#### **Amendment of section 1 of Act 6 of 1995**

1. Section 1 of the School Education Act (Gauteng), 1995, is amended by

-

- (a) the substitution for the definition of "**centres of learning**" of the following definition:

**"centres of learning"** means technical schools, schools for focused learning, centres for the development and promotion of particular aptitudes of learners, and centres at which part-time classes are provided for education [includes **centres for the development and promotion of particular aptitudes of learners, and centres at which part-time classes are provided for education**];

- (b) the substitution for the definition of "**Constitution**" of the following definition:

**"Constitution"** means the Constitution of the Republic of South Africa, **[1993 (Act 200 of 1993)]** 1996 (Act 108 of 1996), as amended;

- (c) the deletion of the definition of "**Council**";
- (d) the deletion of the definition of "**district council**";
- (e) the substitution for the definition of "**educator**" of the following definition:

**"educator"** means **[a principal or any person who teaches, educates or trains learners or provides professional therapy at any school or centre of learning]** any person, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a school excluding a person who is appointed to exclusively perform extra-curricular duties;

- (f) the deletion of the definition of "**farm school**";
- (g) the substitution for the definition of "**financial head**" of the following definition:

**“financial head”** means the [m]Member of the Executive Council **[of the Province who is responsible for financial affairs];**

- (h) the substitution of the definition of **“first level”** of the following definition:

**“first [level] grade”** means that level which may be completed in the first year of compulsory school attendance contemplated in section 12(1);

- (i) the substitution for the definition of **“Head of Department”** of the following definition:

**“Head of Department”** means the [most senior official in the department] head of the education department;”

- (j) the substitution for the definition of **“learner”** of the following definition:

**“learner”** means any person receiving education [in a school] or obliged to receive education in terms of this Act;”

- (k) the substitution for the definition of **“level”** of the following definition and its insertion after the definition of **“government department”**:

**“[level] grade”** means that part of an educational programme [in a school, or of any other educational programme which the Member of the Executive Council may deem to be equivalent, which a learner may complete in one school year] which a learner may complete in one school year, or any other educational programme which the Member of the Executive Council may deem to be equivalent thereto;

- (l) the insertion after the definition of "**Member of the Executive Council**" of the following definition:

"Minister" means the Minister responsible for the administration of the South African Schools Act, 1996 (Act 84 of 1996);

- (m) the deletion of the definition of "**model C school**";
- (n) the deletion of the definition of "**negotiating forum**";
- (o) the substitution for the definition of "**parent**" of the following definition:

**"parent" [includes guardian] means –**

- (i) the parent, guardian or caregiver of a learner,
- (ii) the person legally entitled to custody of the learner; or
- (iii) the person who undertakes to fulfill the obligations of a person referred to in paragraphs (i) and (ii) towards the learner's education at school;"

- (k) the substitution for the definition of "**principal**" of the following definition:

**"principal" means [the person appointed to the post of principal at a school, or a person acting in that post] an educator appointed or acting as the head of a school;"**

- (p) the substitution for the definition of "**private school**" of the following definition and its insertion after the definition of "**Head of Department**":

**"[private] independent school" means a school [other than a public school] registered or deemed to be registered in terms of section 66 of this Act;"**



- (q) the substitution for the definition of "**provincial legislature**" of the following definition:

**"provincial legislature"** means the **[Provincial Legislature of the Province]** provincial legislature contemplated in section 125 of the Constitution;

- (m) the insertion after the definition of "**provincial legislature**" of the following definition:

**"province"** means the province of Gauteng established by section 103(1)(c) of the Constitution;

- (r) the substitution of the definition of "**public school**" of the following definition:

**"public school"** means **[a state school, a state-aided school, a school contemplated in section 101 or a farm school]** a school contemplated in Chapter 6 of the Act;

- (s) the substitution for the definition of "**school**" of the following definition:

**"school"** means **[any institution for the education of learners]** a public school or an independent school which enrolls learners in one or more grades from grade R (Reception) to grade twelve;

- (t) the deletion of the definition of "**school attendance officer**"

- (u) the insertion of the following definition of "**school fees**" after the definition of "**school attendance officer**":

**"school fees"** means school fees contemplated in section 39 of the South African Schools Act, 1996 (Act 84 of 1996) and includes any form of contribution of a monetary value made

or paid by a person or body in relation to the attendance or participation by a learner in any programme of a public school;

- (v) the deletion of the definition of "**state school**"; and
- (w) the deletion of the definition of "**state-aided school**".

### **Amendment of section 2 of Act 6 of 1995**

2. Section 2 of the School Education Act (Gauteng), 1995, is substituted with the following –

- "(1) **[Subject to the Constitution,] I[t]his Act [shall apply in relation to] applies to school education in the Province.**
- (2) The Member of the Executive Council and the Head of Department must exercise any power conferred upon them by or under this Act, after taking full account of the South African Schools Act, 1996 (Act 12 of 1998), the applicable policy in terms of the Gauteng Education Policy Act, 1998 and the National Education Policy Act, 1996 (Act 27 of 1996).
- (3) Nothing in this Act prevents the Provincial Legislature from enacting legislation for school education in the province in accordance with the Constitution."

### **Amendment of section 3 of Act 6 of 1995**

3. Section 3 of the School Education Act (Gauteng), 1995, is substituted with the following –

#### **"Control of school education in the Province**

The Member of the Executive Council shall exercise control over school education in the province subject to this Act, the Constitution, 1996 (Act 108 of 1996) , the National Education Policy Act, 1996 (Act 27 of

1996), the South African Schools Act, 1996 (Act 84 of 1996) and the Gauteng Education Policy Act, 1998 (Act 12 of 1998)."

**Amendment of section 6 of Act 6 of 1995**

4. Section 6 of the School Education Act (Gauteng), 1995, is amended by

–

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

"In order to further the objects of this Act, the Member of the Executive Council may enter into agreements with other government departments and with non-governmental organizations [**, but no agreement placing financial obligations on the department shall be entered into without the concurrence of the financial head**].

(b) the deletion of subsections (c) to (f).

**Amendment of section 7 of Act 6 of 1995**

5. Section 7 of the School Education Act (Gauteng), 1995, is substituted with the following section –

**"7 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 under subsection (1) unless he or she has –

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

(b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such an action;

- (c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions; and
  - (d) given due consideration to any such representations received.
- (3) If a public school is closed in terms of subsection (1) all assets and liabilities of such school must, subject to the conditions of any donation, devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school.”

#### **Amendment of section 9 of Act 6 of 1995**

6. Section 9 of the School Education Act (Gauteng), 1995, is amended by

—

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

“(d) if he or she has reason to believe that any person is able to produce any evidence, including any article, document, book, video or audio recording or anything relevant to the inquiry, order that person to deliver to him or her that evidence [article, document, book, video or audio recording or thing];

- (b) the substitution in subsection (3) of the following subsection:

“(3) A person appointed under subsection (1) who is not in the fulltime employment of the State may be paid, out of money appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the

**[financial head] Member of the Executive Council**  
responsible for finance, determine."

- (c) the substitution in subsection (4) for paragraph (e) of the following paragraph:
- (e) fails to produce any evidence, including any article document, book, video or audio recording or anything as ordered under subsection (2)(d);"

### **Amendment of section 12 of Act 6 of 1995**

7. Section 12 of the School Education Act (Gauteng), 1995, is amended by –

- (a) the substitution of subsection (1)(b)(ii) of the following subparagraph:
- (ii) the day on which he or she completes the ninth **[level]** grade, whichever is the earlier."
- (b) the substitution of subsections (2) to (4) of the following subsections:

"(2) The Member of the Executive Council must ensure that there are enough school places so that every child who lives in the province can attend school as required by subsection (1).

(3) If a Member of the Executive Council cannot comply with subsection (2) because of lack of capacity existing at the date of the commencement of this Act, he or she must take steps to remedy any such lack of capacity as soon as possible and must make an annual report to the Minister on the progress achieved in doing so.

- (4) If a learner who is subject to compulsory attendance in terms of subsection (1) is not enrolled at or fails to attend a school, the Head of Department may –
- (a) investigate the circumstances of the learner's absence from school;
  - (b) take appropriate measures to remedy the situation;
  - (c) failing such remedy, issue a written notice to the parent of the learner requiring compliance with subsection (1)."
- (c) the addition of the following subsections:
- (5) If a parent of any person who is subject to compulsory school attendance in terms of section 12(1) fails, without reasonable cause and after a written warning by the Head of Department, to cause such a person to attend an appropriate school regularly, he or she shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months.
  - (6) The Head of Department may exempt a learner entirely, partially or conditionally, from compulsory school attendance if it is in the best interests of the learner.
  - (7) The Head of Department must maintain a register of all learners exempted from compulsory school attendance."

**Amendment of section 13 of Act 6 of 1995**

8. Section 13 of the School Education Act (Gauteng), 1995, is hereby deleted.

**Amendment of section 14 of Act 6 of 1995**

9. Section 14 of the School Education Act (Gauteng), 1995, is hereby deleted.

**Amendment of section 16 of Act 6 of 1995**

10. Section 16 of the School Education Act (Gauteng), 1995, is hereby amended

**Amendment of section 17 of Act 6 of 1995**

11. Section 17 of the School Education Act (Gauteng), 1995, is substituted with the following section –

**“17. Prohibition against discrimination and victimization of learners whose parents have not paid school fees**

A learner may not be deprived of his or her right to participate in all aspects of the programme of a public school despite the non-payment of school fees by his or her parent and may not be victimized in any manner, including but not limited to the following conduct:

- (a) suspension from classes;
- (b) verbal or non-verbal abuse;
- (c) denial of access to –
  - (i) cultural, sporting or social activities of the school; or
  - (ii) the nutrition programme of the school for those learners who qualify in terms of the applicable policy;
- (d) denial of a school report or transfer certificate;”
- (e) denial of the right to write tests or examinations.

**Amendment of section 18 of Act 6 of 1995**

12. Section 18 of the School Education Act (Gauteng), 1995, is amended by –

(a) the substitution for subsections (1) to (3) of the following subsections:

- (1) The governing body of a public school must determine the language policy of the school subject to the Constitution, the South African Schools Act, 1996 (Act 84 of 1996), this Act and any norms and standards for language policy in public schools in consultation with the department.
- (2) The governing body of a public school must submit a copy of the school's language policy to the Member of the Executive Council for approval and certification."
- (3) If, at any time, the Member of the Executive Council has reason to believe that the Language Policy of a public school does not comply with the principles set out in sub-section (1) above or the requirement of the constitution, the Member of the Executive Council, after consultation with the governing body of the school concerned, direct that the Language Policy of the school be formulated in accordance with sub-section (1).

(b) the deletion of subsections (4) to (8).



**Amendment of section 19 of Act 6 of 1995**

13. Section 19 of the School Education Act (Gauteng), 1995, is amended by the substitution for section (2) of the following subsection –

- (2) Learners at a public school shall be encouraged to make use of a range of official languages subject to the language policy determined by the governing body of the school.

**Insertion of section 21 of Act 6 of 1995**

14. Section 21 of the School Education Act (Gauteng), 1995, is amended -

(a) By insertion of subsections (1) (2) and (3) of the following subsections:

- (1) The governing body of a public school must determine the religious policy of the school subject to the Constitution, the South African Schools Act, 1996 (Act 84 of 1996), and this Act in consultation with the Department.
- (2) The Religious Policy of a public school shall be developed within the framework of the following principles:
- (a) The education process should aim at the development of a national, democratic respect of our country's diverse cultural and religious traditions.
- (b) Freedom of conscience and of religion shall be respected at all public schools.
- (3) The governing body of a public school must submit a copy of the school's religious policy of the school to the

Member of the Executive Council for approval and certification,

- (4) If, at any time, the Member of the Executive Council has reason to believe that the Religious Policy of a public school does not comply with the principles set out in sub-section (2) above or the requirement of the constitution, the Member of the Executive Council, after consultation with the governing body of the school concerned, direct that the Religious Policy of the school be formulated in accordance with sub-section (1) and (2).

#### **Amendment of section 23 of Act 6 of 1995**

15. Section 23 of the School Education Act (Gauteng), 1995, is amended by the substitution for subsections (1) and (2) of the following subsections:

- (1) No person shall administer corporal punishment to a learner at any public or **[private]** independent school.”
- (2) **[Subject to subsection (1),]** **[t]** The [control] management of expulsion, suspension and punishment of learners at public schools and hostels shall be **[as prescribed]** in accordance with this Act and any other applicable law.”

#### **Deletion of section 24 of Act 6 of 1995**

16. Section 24 of the School Education Act (Gauteng), 1995, is hereby deleted.

**Amendment of section 25 of Act 6 of 1995**

17. The heading of section 25 of the School Education Act (Gauteng), 1995, is substituted with the following heading –

**25 [Duties of parents and learners] Liability for damage to or loss of school or department property****Amendment of section 26 of Act 6 of 1995**

18. Section 26 of the School Education Act (Gauteng), 1995, is amended by the substitution for subsections (2) and (3) of the following subsections –

- (2) Despite subsection (1) –
- (a) the Member of the Executive Council may determine that the governance of two or more public schools must vest in a single governing body if it is in the interests of education at the schools in question; and
  - (b) the Member of the Executive Council may place the hostel of a public school under the supervision of the governing body of another school if it is in the interests of education at the school in question.
- (3) The Member of the Executive Council may not act under subsection (2) unless he or she has –
- (a) given notice in the *Provincial Gazette* of his or her intention so to act;
  - (b) given Interested parties an opportunity to make written submissions within a period of not less than 30 days; and
  - (c) considered all such submissions.”

**Amendment of section 27 of Act 6 of 1995**

19. Section 27 of the School Education Act (Gauteng), 1995, is amended by –

- (a) the substitution for subsection (2) of the following section:
  - (2) The number of parent members of a governing body of a public school must comprise one more than the combined total of other members of a governing body who have voting rights.
- (b) the substitution for subsection (4) of the following subsection:
  - (4) Learners may be represented only on the governing body of a public school, which provides education at a grade [level] higher than the seventh grade [level].

**Delete section 28 of Act 6 of 1995**

20. Section 28 of the School Education Act (Gauteng) is hereby deleted.

**Amendment of section 29 of Act 6 of 1995**

21. Section 29 of the School Education Act (Gauteng), 1995, is substituted with the following section –

**29 Enhancement of capacity of governing bodies**

- (1) Out of funds appropriated for this purpose by the provincial legislature, the Head of Department establish a programme to –
  - (a) provide introductory training for newly elected governing bodies to enable them to perform their functions; and

- (b) provide continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.
- (2) The Head of Department may ensure that principals and other officers of the education department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act."

### **Amendment of section 30 of Act 6 of 1995**

22. Section 30 of the School Education Act (Gauteng), 1995, is substituted with the following section —

#### **30 Failure by governing body to perform functions**

- (1) If the Head of Department determines on reasonable grounds that a governing body has ceased to perform functions allocated to it in terms of this Act or has failed to perform one or more of such functions, or has acted in a manner that undermines the purpose, roles and responsibilities of the governing body, or has acted in a manner that disrupts the educational programmes of the school, he or she must appoint sufficient persons to perform all such functions or one or more of such functions, as the case may be, for a period not exceeding three months.
- (2) The Head of Department may extend the period referred to in subsection (1), by further periods not exceeding three months each, but the total period may not exceed one year.
- (3) If the governing body has ceased to perform its functions, the Head of Department must ensure that a governing body is elected in terms of this Act within a

year after the appointment of persons contemplated in subsection (1).

- (4) If a governing body fails to perform any of its functions, the persons contemplated in subsection (1) must build the necessary capacity within the period of their appointment to ensure that the governing body performs its functions.

#### **Amendment of sections 32 to 46 of Act 6 of 1995**

23. Sections 32 to 46 of the School Education Act (Gauteng), 1995 are hereby deleted.

#### **Amendment of section 44 of Act 6 of 1995**

24. Section 44 of the School Education Act (Gauteng), 1995 is amended by –

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

(1) The Member of the Executive Council may [**, after consultation with the Council,**] establish specialist advisory councils to advise him or her on matters within specified terms of reference.”

- (b) the substitution for subsection (5) of the following subsection:

(5) A member of a specialist council who is not in the full-time employment of the State may be paid, out of money appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may [**, with the concurrence of the financial head,**] determine.

**Amendment of the heading of Chapter 6**

25. The heading of Chapter 6 is substituted for the following:

**[STATE] PUBLIC SCHOOLS"**

**Amendment of section 47 of Act 6 of 1995**

Section 47 of the School Education Act of 1995 is amended by the substitution of the following sections and deletion of subparagraph (5) to (8):

- (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 under subsection (1) unless he or she has -
  - (a) Requested Head of Department to:
    - (i) inform the governing body of the school of his or her intention so to act and his or her reasons thereof;
    - (ii) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;
    - (iii) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions; and
    - (iv) given due consideration to any such representations received;
    - (v) present the final recommendations to the Member of the Executive Council;
    - (vi) give notice to the governing body of a public school of the intention to close the school; and

- (vii) The governing of a public school which is aggrieved by the decision of the Head of the Department may within thirty days after receipt of the recommendations appeal to the Member of the Executive Council.
- (3) If a public school is closed in terms of subsection (1) 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.

#### **Insertion of section 47A in Act 6 of 1995**

26. The School Education Act (Gauteng), 1995 is amended by the insertion after section 47 of the following section –

#### **“47A. Merger of public schools**

- (1) The Member of the Executive Council may, by notice in the *Provincial Gazette*, merge two or more public schools.
- (2) The Member of the Executive Council may not act under subsection (1) unless he or she has -
- (a) Requested Head of Department to:
- (i) give written notice to the schools in question of the intention to merge them;
- (ii) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated;
- (iii) give the governing bodies of the schools in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (ii);



- (iv) consider such representations; and
  - (v) be satisfied that the employers of staff at the public schools have complied with their obligations in terms of applicable labour law.
  - (vi) present the final recommendations to the Member of the Executive Council;
  - (vii) give notice to the governing body of a public school of the intention to merge the schools;
- (3) If one or more of the schools that are to be merged in terms of subsection (1) are public schools on private property, the Head of Department must also –
- (a) notify the owner of the private property of his or her intention to merge the schools in question;
  - (b) consider his or her contractual obligations in terms of the agreement concluded with the private owner;
  - (c) renegotiate his or her obligations in terms of the existing agreement if necessary; and
  - (d) negotiate a new agreement if the single school contemplated in subsection (1) is to be situated on private property.
- (4) The single school contemplated in subsection (1) must be regarded as a public school.
- (5) All assets and liabilities, rights and obligations of the schools that are merged, must, subject to the conditions of any donation, bequest or trust, vest in the single school.
- (6) The governing bodies of the schools that are merged must have a meeting before the merger to constitute a single governing body comprising of all members of the governing bodies concerned.
- (7) The interim governing body must decide on the budget and differences in codes of conduct and school fees, as well as any

issue that it relevant to the merger or which is prescribed, until a new governing body is constituted in terms of this Act.

- (8) The governing of a public school which is aggrieved by the decision of the Head of the Department may within thirty days after receipt of the recommendations appeal to the Member of the Executive Council.

#### **Deletion of section 48 of Act 6 of 1995**

27. Section 48 of the School Education Act (Gauteng), 1995 is hereby deleted.

#### **Amendment of section 49 of Act 6 of 1995**

28. Section 49 of the School Education Act (Gauteng), 1995 is amended by the substitution for section 49 of the following section —

#### **49 School funds and assets of public schools**

- (1) The governing body of a public school must establish a school fund and administer it in accordance with the directions issued by the Head of Department.
- (2) Subject to subsection (3), all money received by a public school including school fees and voluntary contributions must be paid into the school fund.
- (3) The governing body of a public school must open and maintain one banking account, but a governing body of a public school may, with the approval of the Member of the Executive Council, invest surplus money in another account.
- (4) Money or other goods donated or bequeathed to or received in trust by a public school must be applied in

- accordance with the conditions of such donation, bequest or trust.
- (5) All assets acquired by a public school on or after the commencement of this Act are the property of the school.
- (6) The school fund, all proceeds thereof and any other assets of the public school must be used only for –
- (a) educational purposes, at or in connection with such school;
  - (b) educational purposes, at or in connection with such other public school and with the consent of the Head of Department;
  - (c) the performance of the functions of the governing body; or
  - (d) another educational purpose agreed between the governing body and the Head of Department.
- (7) Money from the school fund of a public school may not be paid into a trust or be used to establish a trust.
- (8) If a trust was established from a school fund of a public school or if such money was paid into a trust prior to 1 January 2002, such trust or payment is invalid and the money must be paid back into the school fund.
- (9) A governing body of a public school may not collect any money or contributions from parents to circumvent or manipulate the payment of compulsory school fees and to use money or contributions to establish a trust, and if such money or contributions of parents were paid into a trust prior to 1 January 2002, the trust must pay such money or contributions into the school fund.”

**Insertion of section 49A in Act 6 of 1995**

29. The School Education Act (Gauteng), 1995 is amended by the insertion after section 49 of the following section –

**49A. Public schools on private property**

- (1) Subject to the Constitution and an expropriation in terms of section 104 of land or a real right to use property on which the public school is situated, a public school may be provided on private property only in terms of an agreement between the Member of the Executive Council and the owner of the private property.
- (2) An agreement contemplated in subsection (1) must be consistent with this Act and in particular must provide for :
  - (a) the provision of education and the performance of the normal functions of a public school;
  - (b) governance of the school, including the relationship between the governing body of the school and the owner;
  - (c) access by all interested parties to the property on which the school stands;
  - (d) security of occupation and use of property by the school;
  - (e) maintenance and improvement of the school buildings and the property on which the school stands and the supply of the necessary services;
  - (f) protection of the owner's rights in respect of the property occupied, affected or used by the school.

- (3) The provisions of the Deeds Registries Act, 1937 (Act 47 of 1937), do not apply to a real right, excluding ownership, acquired by the State, a public school, or another party in terms of an agreement contemplated in this section.
- (4) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.
- (5) Despite subsection (3), a 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 of Deeds receives –
  - (a) an application for such endorsement by the owner of the property, or to the Member of the Executive Council or any other holder of a right contemplated in subsection (3), together with the title deed of the property; and
  - (b) affidavits by the owner of the property and the Member of the Executive Council stating that an agreement contemplated in this section has been concluded.
- (6) 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 this Act.
- (7) Any transfer duty, stamp duty, fees or costs payable in respect of the registration of a right in terms of subsection (3) may be paid in full or part from funds appropriated by the provincial legislature for that purpose, but the public school contemplated in subsection (1) is not responsible for such duties, fees or costs.

**Deletion of sections 50 to 65 of Act 6 of 1995**

30. Sections 50 to 65 of the School Education Act (Gauteng), 1995 are hereby deleted.

**Amendment of the heading of Chapter 8**

31. The heading of Chapter 8 is substituted for the following:

**[PRIVATE] INDEPENDENT SCHOOLS**

**Amendment of section 66 of Act 6 of 1995**

32. Section 66 of the School Education Act (Gauteng), 1995 is amended by —

- (a) the substitution for subsections (1) to (4) of the following subsections:

**66 Registration of [private] independent schools**

- (1) No person shall establish, conduct or maintain [a private] an independent school unless that [private] independent school is registered in terms of this Act.
- (2) No [private] independent school shall be registered unless it complies with the prescribed requirements.
- (3) Any person may apply in writing, in the prescribed form, to the Head of Department for the registration of [a private] an independent school which she or he intends to establish, conduct or maintain.
- (4) An applicant for the registration of [a private] an independent school shall furnish such particulars in connection with his or her application as the Head of Department may require.

- (b) the substitution for subsection (6) of the following subsection:
- (6) If the Head of Department grants such an application, he or she shall register the **[private]** independent school in question and issue to the applicant a registration certificate in such form as he or she may determine.
- (c) the substitution for subsection (11) of the following subsection:
- (11) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[one year]** three months.
- (d) the insertion after subsection (11) of the following subsections:
- (11) The owner of an independent school whose application was granted under subsection (5) must establish the independent school within 18 months from the date on which the application was granted by the Head of Department.
- (12) If the owner of an independent fails to establish the school within the period referred to in subsection (12), the registration shall lapse."

### **Amendment of section 67 of Act 6 of 1995**

33. Section 67 of the School Education Act (Gauteng), 1995 is amended by the substitution for subsections (1) to (4) of the following subsections –

#### **67 Lapsing or withdrawal of registration of **[private]** independent schools**

- (1) The registration of **[a private]** an independent school shall lapse under the prescribed circumstances.

- (2) The registration of [a private] an independent school may be withdrawn by the Head of Department under the prescribed circumstances.
- (3) No withdrawal of the registration of [a] [private] an independent school shall be valid unless –
- (a) the owner of such [private] independent school has been granted an opportunity to make written representations to the Head of Department giving reasons why the registration of the [private] independent school should not be withdrawn prior to any decision to withdraw the registration of the [private] independent school;
  - (b) the owner of such [private] independent school has been furnished by the Head of Department with a notice of such withdrawal together with written reasons for his or her decision to withdraw the registration of the [private] independent school; and
  - (c) an appeal under subsection (4) has been dismissed or no such appeal has been lodged within the 30 days provided for.
- (4) The owner of [a private] an independent school who is aggrieved by the withdrawal of registration of his or her [private] independent school under subsection (2) may, within 30 days after receiving notice of such withdrawal, appeal to the Member of the Executive Council in writing, setting out the grounds of appeal against the withdrawal.”

#### **Amendment of section 68 of Act 6 of 1995**

34. Section 68 of the School Education Act (Gauteng), 1995 is amended by the substitution for section 68 of the following section –

#### **68 Discrimination at [private] independent schools**



Admission requirements for **[private]** independent schools shall not directly or indirectly discriminate unfairly on **[grounds of race]** one or more grounds set out in section 9 of the Constitution, or on one or more grounds set out in Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000).”

**Amendment of section 69 of Act 6 of 1995**

35. Section 69 of the School Education Act (Gauteng), 1995 is amended by –

- (a) the substitution for subsections (1) and (2) of the following subsections:

**68 Subsidies to registered **[private]** independent schools**

- (1) A registered **[private]** independent school may annually, on or prior to the prescribed date, apply to the Head of Department in writing for the prescribed subsidy.
- (2) The Head of Department may grant or refuse an application referred to in subsection (1) but no subsidy shall be granted to **[a private]** an independent school –
  - (a) which does not comply with the prescribed conditions for receiving a subsidy; or
  - (b) that is operated for profit unless the Member of the Executive Council has consented to the grant of such subsidy.

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

- (4) The Head of Department shall not terminate or reduce a subsidy under subsection (3) unless he or she has granted

the owner of the **[private]** independent school concerned an opportunity to make written representations to him or her giving reasons why the subsidy should not be reduced or terminate, as the case may be.”

#### **Amendment of section 70 of Act 6 of 1995**

36. Section 70 of the School Education Act (Gauteng), 1995 is amended by the substitution for subsections (1) and (2) of the following subsections –

#### **70 Financial statements of **[private]** independent schools**

- (1) The financial year of **[a private]** an independent school shall end on the last day of December of each year.
- (2) The provisions of sections 49(3) to (6) shall apply *mutatis mutandis* to all **[private]** independent schools, and in such application any reference to –
  - (a) a **[state]** public school shall be construed as a reference to **[a private]** an independent school; and
  - (b) a governing body shall be construed as a reference to the owner of **[a private]** an independent school.

#### **Amendment of section 71 of Act 6 of 1995**

37. Section 71 of the School Education Act (Gauteng), 1995 is amended by the substitution for subsections (1) and (2) of the following subsections –

#### **71 Declaration of **[private]** independent schools as **[state]** public schools**

- (1) The Member of the Executive Council may, after considering budget availability, enter into an agreement with the owner of **[a private]** an independent school in

terms of which the school concerned is declared to be a **[state] public** school.

- (2) If an agreement has been entered into under subsection (1), the Member of the Executive Council may by notice in the Provincial Gazette declare the **[private] independent** school to be a **[state] public** school with effect from a date mentioned in the notice.

### **Amendment of section 72 of Act 6 of 1995**

38. Section 72 of the School Education Act (Gauteng), 1995 is amended by —

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

#### **72. Consequences of declaration as **[state] public** school**

(1) As from the date mentioned in the notice contemplated in section 71(2) —

- (a) the school concerned shall be deemed to be a **[state] public** school established under section 47(1);

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

- (4) The declaration of **[a private] an independent** school to be a **[state] public** school shall not affect anything legally done by the owner concerned prior to the declaration.

**Amendment of section 73 of Act 6 of 1995**

39. Section 73 of the School Education Act (Gauteng), 1995 is amended by the substitution for section 73 of the following section –

**73. Regulations relating to registered [private] independent schools**

- (1) The Member of the Executive Council must make regulations as to –
  - (a) the admission of learners of a registered [**a private**] an independent school to examinations conducted by or under the supervision of the department;
  - (b) the keeping of registers or other documents by a registered [**private**] independent school; and
  - (c) any other matter relating to registered [**private**] independent schools which shall or may be prescribed in terms of this Act.
- (2) Different regulations may be made under subsection (1) in respect of different registered [**private**] independent schools.

**Amendment of section 78 of Act 6 of 1995**

40. Section 78 of the School Education Act (Gauteng), 1995 is amended by the substitution for subsection (1) of the following subsection –

**78. Placement of learners with specialised education needs**

- (1) Unless –
  - (a) the parent of a learner found to have specialized education needs in terms of section 76, within the period determined by the Head of Department, takes such steps as the Head of Department, after consultation with the parent, determines as adequate

to ensure that the learner receives suitable education or treatment; or

- (b) the Head of Department at any time after that period is of the opinion that the learner is not receiving suitable education or treatment, the Head of Department may after consultation with the parent designate a school for specialized education, or any ordinary school capable of accommodating the learner's specialized education needs, at which the learner shall be placed.

#### **Deletion of sections 82 to 87 of Act 6 of 1995**

41. Sections 82 to 87 of the School Education Act (Gauteng), 1995 are hereby deleted.

#### **Deletion of section 89 to 94 of Act 6 of 1995**

42. Sections 89 to 94 of the School Education Act (Gauteng), 1995 are hereby deleted.

#### **Amendment of section 95 of Act 6 of 1995**

43. Section 95 of the School Education Act (Gauteng), 1995 is amended by the substitution for section 95 of the following subsection –

95 **Transitional provisions relating to centres of learning and accessories**

Any centre of learning, hostel, [**clinic,**] educators' quarters or other accessory in connection with schools established, or deemed to have been established, under the provisions of an Act repealed under this Act, and which existed immediately prior to the commencement date, shall be deemed to have been established in terms of section 6(a).

**Deletion of section 96 of Act 6 of 1995**

44. Section 96 of the School Education Act (Gauteng), 1995 is deleted.

**Amendment of section 97 of Act 6 of 1995**

45. Section 97 of the School Education Act (Gauteng), 1995 is amended by –

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

(1) Any governing body, management council [**board of management, local or domestic council, committee, board or other body for the control or management of a public school or hostel**] or similar authority of a public school, [**established or deemed to have been established under the provisions of an Act repealed by this Act, and**] which existed immediately prior to the commencement of this Act, [**shall be deemed to be a governing body established in terms of section 26**] continues to function until the day before the date on which the relevant governing body is elected and must perform all the functions it performed prior to the commencement of this Act which a governing body can lawfully perform in terms of this Act.

- (b) the substitution for subsection (5) of the following subsection:

(5) The rights, powers and functions contemplated in subsection (3) may be altered by law [**after negotiations contemplated in section 102 over such alterations have taken place**].

**Deletion of sections 100 to 104 of Act 6 of 1995**

46. Sections 100 to 104 of the School Education Act (Gauteng), 1995 are hereby deleted.

**Amendment of section 106 of Act 6 of 1995**

47. Section 106 of the School Education Act (Gauteng), 1995 is amended by the deletion of sub- sections (2), (3) and (4)

**AMENDMENTS TO THE EDUCATION POLICY ACT, 1998 (ACT 12 OF 1998)****Amendment of section 1 of 12 of 1998**

48. Section 1 of the Education Policy Act (Gauteng), 1998, is amended by –
- (a) the deletion of the definition of '**education institution**' by replacing it with 'Schools' definition as contained in the School Education Act (Gauteng), 1995 (Act 6 of 1995);
  - (c) the substitution for the definition "**principal**" for the following definition:  
**"Principal"** means [the person responsible for administering an education institution and serving as its head] an educator appointed or acting as the head of the education institution;
  - (d) the insertion after the definition of "**head of department**" of the following definition:

"Learner" means any person receiving education or obliged to received education in terms of the School Education Act (Gauteng), 1995 (Act 6 of 1995);

- (e) the insertion after the definition of "**Member of the Executive Council**" of the following definition:

"parent" means -

- (a) the parent, guardian or caregiver of a learner;
- (b) the person legally entitled to custody of the learner; or
- (c) the person who undertakes to fulfill the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education at school;"

- (f) the insertion after the definition of "**province**" of the following definition:

"stakeholder" means an organization or body with a direct and continuing interest in the education institution, programme, phase or sector in question;

#### **Amendment of section 3 of Act 12 of 1998**

49. Section 3 of the Education Policy Act (Gauteng, 1998, is amended by -

- (a) the substitution for subsections (1) to (3) of the following subsections:

**Responsibility for [making] determining and implementing education policy**

- (1) Subject to this Act or any other law, the Member of the Executive Council is responsible for [making] determining education policy [on any education-related matter for the province].



- (2) **[Any policy made by the Member of the Executive Council in terms of this Act becomes effective only upon entry of the policy document in the register contemplated in section 16(1).]**
- (3) Subject to this Act, any other law or applicable national and provincial education policy, the governing body **[of any education institution]** may **[make]** determine education policy for its school.
- (b) the deletion of subsections (2), (4) and (5); and
- (c) **[the substitution for subsection (6) of the following subsection:**
- (6) The principal of an education institution administered under the auspices of the provincial department must**
- 
- (a) co-ordinate the implementation of education policy in the education institution; and**
- (b) submit –**
- (i) quarterly or such other reports as may be reasonably requested the School Governing Body,” and**
- (ii) an annual report to the governing body]**

#### **Deletion of section 4 of Act 12 of 1998**

50. Section 4 of the Education Policy Act (Gauteng), 1998, is hereby deleted.

**Amendment of section 5 of Act 12 of 1998**

51. Section 5 of the Education Policy Act (Gauteng), 1998, is amended by the substitution in subsection (1)(b)(viii) of the following subparagraph –

- (viii) ensuring that, on completion of the ninth **[level]** grade of learning, learners have acquired satisfactory levels of competence in at least two official languages;

**Deletion of section 6 to 9 of Act 12 of 1998**

52. Section 6 to 9 of the Education Policy Act (Gauteng), 1998, is hereby deleted.

**Amendment of section 10 of Act 12 of 1998**

53. Section 10 of the Education Policy Act (Gauteng), 1998, is amended by the substitution for section 10 of the following section-

**(10) Establishment of [Specialist] Advisory Councils**

The Member of the Executive Council may, **[after consultation with the Gauteng Education and Training Council]** establish **[Specialist]** Advisory Councils.

**Amendment of section 11 of Act 12 of 1998**

54. Section 11 of the Education Policy Act (Gauteng), 1998, is amended by the substitution for section 11 of the following section –

**11. Functions of [Specialist] Advisory Council**

- (1) A Specialist Advisory Council **[must]** may –  
(a) **[on its own initiative or]** at the request of the Member of the Executive Council, investigate and

consider matters relating to education that fall within its terms of reference and report on its findings to the member;

- (b) consider and make recommendations concerning all legislation that falls within its terms of reference; and
- (c) perform any other function assigned or delegated to it in terms of this Act or any other law

#### **Amendment of section 12 of Act 12 of 1998**

55. Section 12 of the Education Policy Act (Gauteng), 1998, is amended by the deletion of subsection (4).

#### **Deletion of section 14 of Act 12 of 1998**

56. Section 14 of the Education Policy Act (Gauteng), 1998, is deleted.

#### **Deletion of Section 15 and 16 of Act 12 of 1998**

57. Section 15 and 16 of the Education Policy Act (Gauteng), 1998, are hereby deleted.

#### **Amendment of Section 18 of Act 12 of 1998**

Section 18 of the Education Policy Act (Gauteng), 1998, is hereby amended by the deletion of subsections (2) and (3).

#### **Amendment of Section 19 of Act 12 of 1998**

Section 19 of the Education Policy Act (Gauteng), 1998, is hereby amended by the substitution for the following section -

**Repeal of laws**

58. The laws indicated in the second column of the Schedule are repealed to the extent indicated in the third column of that Schedule.

**Short title**

59. This Act is called the Gauteng Education Laws Amendment Act, 2011.

**SCHEDULE****LAWS REPEALED****(SECTION 56)**

<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No.13 of 1998	Gauteng College Education and Training Act	The whole
ACT NO. 7 of 1997	Examinations and Assessment Act	The whole