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IMPORTANT NOTICE

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GENERAL NOTICE

NOTICE 2748 OF 2011

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

GAUTENG EDUCATION LAWS AMENDMENT BILL, 2011

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

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

AMENDMENTS TO THE GAUTENG SCHOOL EDUCATION ACT, 1995 (ACT NO. 6 OF 1995)

Amendment of arrangement of sections of Act 6 of 1995

1. The arrangement of sections of the Gauteng School Education Act, 1995 is hereby deleted.

Amendment of section 1 of Act 6 of 1995

2. Section 1 of the Gauteng School Education Act, 1995 is hereby amended by the:

(a) deletion of the definitions of "Council"; 'district council'; 'farm school'; 'financial head'; 'model C school'; 'negotiating forum'; 'school attendance officer'; 'specialist council'; 'state school'; and 'state-aided school';";

(b) 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];"

(c) 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;"

(d) 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;"

(e) substitution for 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);";

(f) 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 Department responsible for education in the Province;";

(g) 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;";

(h) 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;";

(i) 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);”;

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

“**parent**”-means

(a) the biological or adoptive parent or legal guardian of a learner;

(b) person legally entitled to custody of a learner; or

(c) the person who undertakes to fulfill the obligations of a person referred to in paragraphs (a) or (b) towards the learners education at school;”;

- (k) 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;”;

- (l) 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;”;

- (m) insertion after the definition of “**principal**” of the following definition:

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

(n) substitution for the definition of **“provincial legislature”** of the following definition:

“Provincial Legislature’ means the **[Provincial Legislature of the Province]** Provincial Legislature as contemplated in section 104 of the Constitution;”;

(o) substitution for 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;”;

(p) 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;” and

(q) 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;”.

Substitution of section 2 of Act 6 of 1995

3. The following section is hereby substituted for section 2 of the Gauteng School Education Act, 1995:

"2 Application of the Act

(1) **[Subject to the Constitution t] This 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 84 of 1996), the Gauteng Education Policy Act, 1998 (Act 12 of 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 and this Act."

Substitution of section 3 of Act 6 of 1995

4. The following section is hereby substituted for section 3 of the Gauteng School Education Act, 1995:

"3 Control of school education in the Province

The Member of the Executive Council must exercise control over school education in the province subject to this Act; the Constitution, 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

5. Section 6 of the Gauteng School Education Act, 1995 is hereby amended by the:

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

“(b) 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].**”; and

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

Substitution of section 7 of Act 6 of 1995

6. The following section is hereby substituted for section 7 of the Gauteng School Education Act, 1995:

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 therefore;

(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

7. Section 9 of the Gauteng School Education Act, 1995 is hereby amended by the:

(a) substitution for paragraph (d) of subsection (2) 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) substitution for paragraph (a) of subsection (3) of the following paragraph:

“(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**] determine."; and

(c) substitution for paragraph (e) of subsection (4) 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

8. Section 12 of the Gauteng School Education Act, 1995 is hereby amended by the:

(a) substitution for subparagraph (ii) of subsection (1)(b) of the following subparagraph:

"(ii) the day on which he or she reaches the age of fifteen years or completes the ninth level, whichever occurs first [is the earlier].";

(b) substitution for 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; and

(c) failing such remedy, issue a written notice to the parent of the learner requiring compliance with subsection (1)."; and

(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."

Repeal of section 13 and 14 of Act 6 of 1995

9. Sections 13 and 14 of the Gauteng School Education Act, 1995 are hereby repealed.

Amendment of section 15 of Act 6 of 1995

10. Section 15 of the Gauteng School Education Act, 1995, is hereby amended by –

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

“(1) If a parent of any person who is subject to compulsory school attendance in terms of section 12(1), without reasonable cause and after a written warning by the Head of Department, to cause such person to attend an appropriate school regularly, he or she shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a minimum period of **[not exceeding]** three months.”; and

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

“(3) Any person who hinders or obstructs **[school attendance officer]** any official of the department in the performance of his or her functions **[under section 13]** in terms of this Act or any other applicable law shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.”

Repeal of section 16 of Act 6 of 1995

11. Section 16 of the Gauteng School Education Act, 1995 is hereby repealed.

Substitution of section 17 of Act 6 of 1995

12. The following section is hereby substituted for section 17 of the Gauteng School Education Act, 1995:

"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; and
- (d) denial of a school report or transfer certificate;
- (e) denial of the right to write test or examinations."

Insertion of section 18A of Act 6 of 1995

13. The following section is hereby inserted in the Gauteng School Education Act, 1995 after the repealed section 18: –

"18A Language policy of public schools

- (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 as determined by the Minister 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 vetting and noting.

(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 subsection (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 subsection (1)."

Amendment of section 19 of Act 6 of 1995

14. Section 19 of the Gauteng School Education Act, 1995 is hereby amended by the substitution for subsection (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 21A of Act 6 of 1995

15. The following section is hereby inserted in the Gauteng School Education Act, 1995 after the repealed section 21:

"21A Religious policy of public schools

(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 to the Member of the Executive Council for vetting and noting.

(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

16. Section 23 of the Gauteng School Education Act, 1995 is hereby amended by:

(a) the substitution for the heading of the following heading:

“[Control] Management of expulsion, suspension and discipline of learners”; and

(b) the substitution for subsections (2) and (3) of the following subsections:

“(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.”; and

“(3). Any person who intentionally or negligently contravenes subsection (1) shall be guilty of an offence and liable on conviction to [fine or to imprisonment for a period not exceeding six months] a sentence which could be imposed for assault.”.

Repeal of section 24 of Act 6 of 1995

17. Section 24 of the Gauteng School Education Act, 1995 is hereby repealed.

Amendment of section 25 of Act 6 of 1995

18. The heading of section 25 of the Gauteng School Education Act, 1995 is hereby substituted for 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

19. Section 26 of the Gauteng School Education Act, 1995 is hereby amended by the substitution for subsections (2) to (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

20. Section 27 of the Gauteng School Education Act, 1995 is amended by-

- (a) the substitution for subsection (2) of the following subsection:
"(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**] must be represented only on the governing body of a public school, which provides education at a level higher than the seventh level.

Repeal section 28 of Act 6 of 1995

21. Section 28 of the Gauteng School Education Act, 1995 is hereby repealed.

Substitution of section 29 of Act 6 of 1995

22. The following section is hereby substituted for section 29 of the Gauteng School Education Act, 1995:

“29 Enhancement of capacity of governing bodies

(1) Out of funds appropriated for this purpose by the provincial legislature, the Head of Department may 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 department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act.”.

Substitution of section 30 of Act 6 of 1995

23. The following section is hereby substituted for section 30 of the Gauteng School Education Act, 1995:

“30 Failure by governing body to perform its functions

(1) If the Head of Department determines on reasonable grounds that a governing body has:

(a) ceased to perform functions allocated to it in terms of this Act;

(b) has failed to perform one or more of such functions;

(c) has acted in a manner that undermines the purpose, roles and responsibilities of the governing body; or

(d) 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."

Substitution of section 47 of Act 6 of 1995

24. The following section is hereby substituted for section 47 of the Gauteng School Education Act, 1995:

"47 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 thereof;

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

(d) given due consideration to any such representations received;

(e) given notice to the governing body of a public school of the intention to close the school.

(3) The notice contemplated in subsection (1) must set out reasons of the Member of the Executive Council for deciding to close the state school.

(4) The governing body of a public school which is aggrieved by the decision of the Member of the Executive Council may within thirty days after receipt of the recommendations appeal to the Minister.

(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) of the South African Schools Act, 1996 (Act

No.84 of 1996), 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 of Act 6 of 1995

25. The following section is hereby inserted in the Gauteng School Education Act, 1995 after section 47:

“47A Merger of public schools

(1) Subject to subsection (2), the Member of the Executive Council may, by notice in the Provincial Gazette, merge two or more public schools into a single school.

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

(a) give written notice to the schools in question of the intention to merge them;

(b) 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;

(c) 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 (b);

(d) consider such representations;

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

(f) 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 Member of the Executive Council 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 is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of this Act.

(8) The governing body of a public school which is aggrieved by the decision of the Member of the Executive Council regarding the merger may appeal to the Minister against the decision as contemplated in subsection (1)."

Repeal of section 48 of Act 6 of 1995

26. Section 48 of the School Education Act (Gauteng), 1995 is hereby repealed.

Substitution of section 49 of Act 6 of 1995

27. The following section is hereby substituted for section 49 of the Gauteng School Education Act, 1995:

"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 or fund 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 of Act 6 of 1995

28. The following section is hereby inserted in the Gauteng School Education Act, 1995 after section 49:

“49A Public schools on private property

- (1) Subject to the Constitution and expropriation of land in terms of section 104 or a real right to use the 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 the property by the school;

(e) maintenance and improvement of 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 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 section 47.

(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 in 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."

Repeal of sections 50 to 65 of Act 6 of 1995

29. Sections 50 to 65 of the Gauteng School Education Act, 1995 are hereby repealed.

Amendment of section 66 of Act 6 of 1995

30. Section 66 of the Gauteng School Education Act, 1995 is hereby amended by the:

(a) 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.”; and

(b) addition after subsection (11) of the following subsections:

“(12) 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.

“(13) 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 68 of Act 6 of 1995

31. Section 68 of the Gauteng School Education Act, 1995 is hereby amended by the substitution for section 68 of the following section:

“68. Admission requirements for 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 71 of Act 6 of 1995

32. Section 71 of the Gauteng School Education Act, 1995 is hereby amended by the substitution for subsection (1) of the following subsection—

“71 Declaration of [private] independent schools as [state] public schools

(1) The Member of the Executive Council may [, **with the concurrence of the financial head,**] 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.”.

Amendment of section 78 of Act 6 of 1995

33. Section 78 of the Gauteng School Education Act, 1995 is amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(1) Unless —

(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.”.

Repeal of sections 82 to 87 of Act 6 of 1995

34. Sections 82 to 87 of the Gauteng School Education Act, 1995 are hereby repealed.

Repeal of Chapter 11 of Act 6 of 1995

35. Chapter 11 of Act 6 of 1995 is hereby repealed.

Amendment of section 95 of Act 6 of 1995

36. Section 95 of the Gauteng School Education Act, 1995 is hereby 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).”.

Repeal of section 96 of Act 6 of 1995

37. Section 96 of the Gauteng School Education Act, 1995 is hereby repealed.

Amendment of section 97 of Act 6 of 1995

38. Section 97 of the Gauteng School Education Act, 1995 is amended by —

- (a) the substitution for subsections (1) and (5) of the following subsections:

“(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 [**date**] 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.”; and

“(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**].”.

Repeal of sections 100 to 104 of Act 6 of 1995

39. Sections 100 to 104 of the Gauteng School Education Act, 1995 are hereby repealed.

Amendment of section 106 of Act 6 of 1995

40. Section 106 of the Gauteng School Education Act, 1995 is amended by the deletion of subsections (2), (3) and (4).

Amendment of section 108 of Act 6 of 1995

41. Section 108 of the Gauteng School Education Act, 1995 is hereby amended by the substitution for the short title of the following short title:

“This Act is called the Gauteng School Education Act, 1995 and comes into operation on a date to be fixed by the Premier by Proclamation in the Provincial Gazette.”.

General Provision of Act 6 of 1995

42. The Gauteng School Education Act, 1995 is hereby amended by the:

- (a) substitution for the word “private school” in the Act of the word “independent school”;
- (b) substitution for the word “state school” in the Act of the word “public school”; and

- (c) substitution for the word "level" in the Act of the word "grade".

**AMENDMENTS TO THE GAUTENG EDUCATION POLICY ACT, 1998
(ACT NO. 12 OF 1998)**

Amendment of the arrangement of sections of Act 12 of 1998

43. The arrangement of sections of the Gauteng Education Policy Act, 1998 is hereby deleted.

Amendment of section 42 of Act 12 of 1998

44. Section 1 of the Gauteng Education Policy Act, 1998 is hereby amended by the:

- (a) deletion of the definition of "**education institution**";
- (b) substitution for the definition of "**principal**" of 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;";

- (c) 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 Gauteng School Education Act, 1995 (Act 6 of 1995);";

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

"parent' means-

(a) the biological or adoptive parent or legal guardian of a learner;

(b) person legally entitled to custody of a learner; or

(c) the person who undertakes to fulfill the obligations of a person referred to in paragraphs (a) or (b) towards the learners education at school;"; and

(e) the insertion after the definition of "**province**" of the following definitions:

"school' means a public school or an independent school which enrolls learners in one or more grades from grade R (Reception) to grade twelve;

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

45. Section 3 of the Gauteng Education Policy Act, 1998 is hereby amended by the:

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

"3 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]."**;

(3) Subject to this Act, any other law or applicable national or provincial education policy, the governing body **[of any education institution]** may **[make]** determine education policy for its **[institution]** school."

(b) deletion of subsections (2), (4) and (5); and

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

"(6) The principal of **[an education institution]** a school administered under the auspices of the provincial department must:

(a) co-ordinate the implementation of education policy in the **[education institution]** school; and

(b) submit –

(i) quarterly or such other reports as may be reasonably requested by the School Governing Body; and

(ii) an annual report to the governing body."

Repeal of section 4 of Act 12 of 1998

46. Section 4 of the Gauteng Education Policy Act, 1998 is hereby repealed.

Amendment of section 5 of Act 12 of 1998

47. Section 5 of the Gauteng Education Policy Act, 1998 is hereby amended by the substitution for sub paragraph (viii) of subsection (1)(b) 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;”.

Repeal of sections 6 to 9 of Act 12 of 1998

48. Sections 6 to 9 of the Gauteng Education Policy Act, 1998 are hereby repealed.

Amendment of section 10 of Act 12 of 1998

49. The Gauteng Education Policy Act, 1998 is hereby amended by the substitution for section 10 of the following subsection:

“10 Establishment of Advisory Councils

(1) The Member of the Executive Council may establish Advisory Councils.

(2) A member of an Advisory Council who is not in the full time employment of the State may be paid, out of funds appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may determine.”.

Amendment of section 11 of Act 12 of 1998

50. Section 11 of the Gauteng Education Policy Act, 1998 is hereby amended by the:

(a) substitution for paragraph (a) of section 11 of the following paragraph:

"11 Functions of [Specialist] Advisory Councils

(1) An **[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."; and

(b) by the insertion of the following subsection:

(2)The head of department shall be responsible for the establishment of a secretariat for the Advisory Councils."

Amendment of section 12 of Act 12 of 1998

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

Repeal of section 13; 14; 15 and 16 of Act 12 of 1998

52. Sections 13 to 16 of the Gauteng Education Policy Act, 1998 are hereby repealed.

Amendment of Section 18 of Act 12 of 1998

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

Amendment of Section 19 of Act 12 of 1998

54. Section 19 of the Gauteng Education Policy Act, 1998 is hereby amended by the substitution for subsection (1) of the following subsection:

“Subject to the provisions of this Act or any other law, the Member of the Executive Council may assign or delegate any powers or functions conferred on him or her in terms of this Act, except those contemplated in sections 3(1), 8, 10, 12(1), **[15(9)]**, 17(8) and 18(1) to-

- (a) any person in the employ of the provincial administration; or
- (b) any council, committee, sub-committee, board or body established in terms of this Act or any other law.”.

Amendment of section 20 of Act 12 of 1998

55. Section 20 of the Gauteng Education Policy Act, 1998 is amended by the deletion of subsection (3).

Amendment of section 21 of Act 12 of 1998

56. Section 21 of the Gauteng Education Policy, 1998 is hereby amended by the substitution for the short title of the following short title:

“This Act is called the Gauteng Education Policy Act, 1998 and comes into operation on a date to be fixed by the Premier by Proclamation in the Provincial Gazette.”.

**AMENDMENTS TO THE EXAMINATIONS AND ASSESSMENT ACT,
1997 (ACT NO. 7 OF 1997)**

**Repeal of the Examinations and Assessment Act, 1997 (Act No. 7
of 1997)**

57. The Examinations and Assessment Act, 1997 (Act No. 7 of 1997) as amended by the Examinations and Assessment Amendment Act, 1998 (Act No. 7 of 1998) is hereby repealed.

Short title

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

MEMORANDUM ON THE OBJECTS OF THE GAUTENG EDUCATION LAWS AMENDMENT BILL (BILL)

1. SUMMARY

The Gauteng Department of Education has promulgated the Gauteng Schools Education Act, 1995 (Act No. 6 of 1995) and the Gauteng Education Policy Act, 1998 (Act No.12 of 1998). In 1996, the National Education Policy Act (Act No. 27 of 1996) (NEPA) and the South African Schools Act (Act No. 84 of 1996) (SASA) were promulgated by the National Department of Education. Both the Gauteng Schools Education Act and the Gauteng Education Policy Act have not been reviewed since their promulgation. In the meantime material changes to the provisions of SASA have occurred through numerous amendments that were effected from 1997 to 2007 through the promulgation of the respective Education Laws Amendment Acts.

The promulgation of the National Regulations for the Conduct, Administration and Management of Assessment for the Senior Certificate, 2005 and the related policy addendums have rendered the Examination and Assessment Act, 1997 (Act No.7 of 1997) redundant.

In order to align the Provincial legislation to the National legislation, the Department has undertaken amendments to the SASA, NEPA and the Examination and Assessment Act, 1997 (Act No.7 of 1997).

2. PURPOSE OF THE BILL

The Bill is meant to amend the Gauteng School Education Act, 1995 (Act No. 6 of 1995) to align it with the SASA, to amend the Gauteng Education Policy Act, 1998 (Act No. 12 of 1998) to align it with NEPA and to repeal the Examinations and Assessment Act No. 7 of 1997. The Gauteng School Education Act, 1995 (Act No.6 of 1995) provides for the provision and control of education in schools. The Gauteng Education Policy Act, 1998 (Act No. 12 of 1998) provides for the determination, monitoring and evaluation of provincial education policy.

3. DISCUSSION

The Gauteng School Education Act was passed by the Provincial Legislature in 1995 to provide for a unified system of school education in the Province and to promote the values and principles of the fundamental rights contained in the then Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (the Interim Constitution). In 1996, the National Department of Education, promulgated the SASA. The Gauteng Provincial Government subsequently promulgated the Education Policy Act, 1998 (Act No. 12 of 1998).

The enactment of SASA and the amendments affected by the promulgation of the NEPA resulted in extensive redundancies in the Gauteng School Education Act. These redundancies relate primarily to defined terms and the new public schooling model established by SASA which eliminated the historical distinction between state and the state-aided schools as contemplated in the School Education Act. The Gauteng Education Policy Act also uses terminology which is not consistent with National Legislation.

Since 1997 a number of amendments to National Legislation, including SASA, have been promulgated resulting in elements of inconsistencies and

contradictions emerging in provincial legislation that was not amended to align them accordingly. As a result the lag in effecting changes in provincial legislation has resulted in confusion in terms of implementation and interpretation of education legislation, and thus impacts negatively on the enforcement of legislative compliance.

The promulgation of the National Regulations for the Conduct, Administration and Management of Assessment for the Senior Certificate, 2005 and the related policy addendums have rendered Examination and Assessment Act No.7 of 1997 redundant.

3.1 GAUTENG SCHOOL EDUCATION ACT, 1995 (ACT NO. 6 OF 1995) (GSEA)

Some of the definitions used in the Gauteng School Education Act (GSEA) are old and need to be updated to those used by National Legislation to promote alignment and remove confusion.

The Gauteng Schools Education Act does not deal adequately with the issue of application taking into account the powers of the Member of the Executive Council and the Head of Department and the powers of the provincial legislature to enact school legislation in the Province. The amendments to the GSEA will communicate this matter directly to all stakeholders.

Current provisions in GSEA gives powers to the MEC to certify and withdraw the certification of syllabi and admission to education and training programmes at any institution, determine the school calendar and accredit institutions providing the courses and training programmes for educators or withdraw accreditation from institutions. These powers are actually located with the Minister of Basic Education and the Minister of Higher Education and Training.

The GSEA imposes sanctions on any person who commits an offence without necessarily following due process. The amendment requires due process to be followed before a sanction is imposed.

The current provision on school fees, in GSEA, focuses on learners not being discriminated against if their parents cannot pay school fees. The amendment takes it further to ensure that the learner is not discriminated against in all aspects of the school programme, including excursions, extra-curricular activities, etc.

The GSEA makes the MEC responsible for the capacity building of governing bodies and the withdrawal of functions. The proposed amendment will place this responsibility with the Head of Department and so align to the provisions of the South African Schools Act.

Current provisions in GSEA allow for the closure of schools only and require the SGB to appeal to the Executive Council if they are not happy with the decision of the MEC. Proposed amendments will align with the process of closure as set out in SASA, include the merging of schools which was not previously catered for and allow for appeals to be made to the Minister of Education.

The Provisions in GSEA dealing with state –aided schools differ materially from the provisions in SASA applicable to public schools. The proposed repeal of this section dealing with state – aided school will remove this redundant section, thus aligning to SASA.

The GSEA does not provide a timeframe for independent schools to be established after receiving approval and discrimination is restricted to race only. The proposed amendment will put in place a timeframe within which an independent school must be established or they will forfeit the approval and need

to reapply and intends to ensure that no discrimination takes place at independent schools.

Current provisions of the GSEA provides for the appointment, remuneration, political rights, duties and responsibilities of educators and principals. These matters should not be included here and is covered by the Employment of Educators Act, 1998(Act 76 of 1998). The duties of the Principal are covered in great detail in Section 16A of SASA and will strengthen what is mentioned in Section 87 of GSEA.

The GSEA caters for the existence of negotiating forums which constitute governing body members; governing body associations are now in place to perform this function. The proposed amendment will not recognise negotiating forums.

Current provisions in GSEA allow for the expropriation of land and compensation but do not set out a process of how this may best be achieved. The proposed amendment sets out a process that is aligned to SASA, through which expropriation may be achieved amicably.

3.2 GAUTENG EDUCATION POLICY ACT, 1998 (ACT NO.12 OF 1998)

Some of the definitions used in Gauteng Education Policy Act, 1998 (Act No. 12 of 1998) (GEPA) are out dated and need to be updated to those used by National Legislation to promote alignment and remove confusion.

Current provisions in GEPA incorrectly allude to the MEC as a person that is responsible for drafting of the policy and limits the scope of policy determination. Proposed amendments will put the determination of policy in the province as a

competence of the MEC without limitation, which is more fitting for a political head.

Certain provisions of GEPA compel the Head of Department and District Director to submit reports to statutory bodies. The proposed amendment will remove the compulsion as reports become public once they are tabled at legislature.

Provisions of GEPA make it compulsory for the establishment of bodies such as the Gauteng Education and Training Body and the District Education and Training Council. There are provisions that make the MEC accountable to the GETC. The compulsion at the time when the regulations were drawn up was necessary to ensure that consultation takes place through a single body. This restricted consultation to the structures that were established by this legislation and were also costly for the Department to maintain. The proposed amendment will remove the compulsion for the establishment of the structures, thus forming the structures in a needs based manner.

GEPA also compels the MEC to review GEPA within six months of coming into office. The period does not allow the MEC sufficient time to review the implementation of the Act. The proposed legislation allows the MEC more time.

3.4 EXAMINATION AND ASSESSMENT ACT, 1997 (ACT NO.7 OF 1997)

The Examination and Assessment Act, 1997 (Act No.7 Of 1997) has been made redundant by the promulgation of the National Regulations for the Conduct, Administration and Management of Assessment for the Senior Certificate, 2005 and the related policy addendums. The examinations and assessment is co – ordinated by structures set up by the National Department of Education and the moderation of Grade 12 examinations is conducted by Umalusi as an independent, external body.

4. JOB CREATION IMPLICATIONS

There are no job creation implications.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The drafting of the Bill will not have any organizational and personnel implications, due to the fact that necessary systems and infrastructure have already been established.

6. FINANCIAL IMPLICATIONS

The drafting of the Bill does not impose any additional financial commitments for the Department. The necessary resources have already been earmarked for this particular process.

7. COMMUNICATION IMPLICATIONS

The draft Bill will be published for public comments, (this includes stakeholders serving in the advisory structures to the MEC) once the approval has been granted and also pre-certified by the State Law Advisors.

8. CONSTITUTIONAL AND LEGAL IMPLICATIONS

The Bill is consistent with the Constitution and the existing educational legislations. Schedule 4 of the Constitution provides functional areas of concurrent national and provincial legislative competence. Education at all levels excluding tertiary education is a function area in terms of which Province and

National has legislative competence. The Bill is aligned to the South African Schools Act, 1996 (Act No.84 of 1996), and other educational legislations.

9. OTHER DEPARTMENTS/BODIES CONSULTED

For the drafting of the Bill and its approval the proposed amendments will be put on route to the Governance and Legislation Technical Committee meeting and Governance and Legislation Sub Committee meeting before it is tabled at the Executive Council meeting.

10. CLAUSE BY CLAUSE EXPLANATION OF THE BILL

AMENDMENTS TO THE SCHOOL EDUCATION ACT, 1995 (ACT NO. 6 OF 1995)

Clause 1 provides for the arrangement of sections of Act 6 of 1995.

Clause 2 provides for the amendment of section 1 of Act 6 of 1995.

Clause 3 provides for the substitution of section 2 of Act 6 of 1995.

Clause 4 provides for the substitution of section 3 of Act 6 of 1995.

Clause 5 provides for the amendment of section 6 of Act 6 of 1995.

Clause 6 provides for the substitution of section 7 of Act 6 of 1995.

Clause 7 provides for the amendment of section 9 of Act 6 of 1995.

Clause 8 provides for the amendment of section 12 of Act 6 of 1995.

Clause 9 provides for the repeal of sections 13 and 14 of Act 6 of 1995.

Clause 10 provides for the amendment of section 15 of Act 6 of 1995.

Clause 11 provides for the repeal of section 16 of Act 6 of 1995

Clause 12 provides for the substitution of section 17 of Act 6 of 1995

Clause 13 provides for the insertion of section 18A of Act 6 of 1995

Clause 14 provides for the amendment of section 19 of Act 6 of 1995

Clause 15 provides for the insertion of section 21A of Act 6 of 1995

Clauses 16 provides for the amendment of section 23 of Act 6 of 1995

Clause 17 provides for the repeal of section 24 of Act 6 of 1995.

Clause 18 provides for the amendment of section 25 of Act 6 of 1995

Clause 19 provides for the amendment of section 26 of Act 6 of 1995
Clause 20 provided for the amendment of section 27 of Act 6 of 1995
Clause 21 provides for the repeal section 28 of Act 6 of 1995
Clause 22 provides for the substitution of section 29 of Act 6 of 1995
Clause 23 provided for the substitution of section 30 of Act 6 of 1995
Clause 24 provides for the substitution of section 47 of Act 6 of 1995
Clause 25 provides for the insertion of section 47A of Act 6 of 1995
Clause 26 provides for the repeal of section 48 of Act 6 of 1995
Clause 27 provides for the substitution of section 49 of Act 6 of 1995
Clauses 28 provides for the insertion of section 49A of Act 6 of 1995
Clause 29 provides for the repeal of sections 50 to 65 of Act 6 of 1995
Clause 30 provides for the amendment of section 66 of Act 6 of 1995
Clause 31 provides for amendment of section 68 of Act 6 of 1995
Clause 32 provides for amendment of section 71 of Act 6 of 1995
Clause 33 provides for the amendment of section 78 of Act 6 of 1995
Clause 34 provides for the repeal of sections 82 to 87 of Act 6 of 1995
Clauses 35 provides for the repeal of Chapter 11 of Act 6 of 1995
Clause 36 provides for the amendment of section 95 of Act 6 of 1995
Clause 37 provides for the repeal of section 96 of Act 6 of 1995
Clause 38 provides for the amendment of section 97 of Act 6 of 1995
Clause 39 provides for repeal of sections 100 to 104 of Act 6 of 1995
Clause 40 provides amendment of section 106 of Act 6 of 1995
Clause 41 provides for amendment of section 108 of Act 6 of 1995
Clause 42 provides for general provision of Act 6 of 1995

AMENDMENTS TO THE GAUTENG EDUCATION POLICY ACT, 1998 (ACT NO. 12 OF 1998)

Clause 43 provides for amendment of the arrangement of sections of Act 12 of 1998
Clause 44 provides for amendment of section 1 of Act 12 of 1998
Clause 45 provides for amendment of section 3 of Act 12 of 1998
Clause 46 provides for repeal of section 4 of Act 12 of 1998

Clause 47 provides for amendment of section 5 of Act 12 of 1998

Clause 48 provides for repeal of sections 6 to 9 of Act 12 of 1998

Clause 49 provides for amendment of section 10 of Act 12 of 1998

Clause 50 provides for amendment of section 11 of Act 12 of 1998

Clause 51 provides for amendment of section 12 of Act 12 of 1998

Clause 52 provides for repeal of sections 13 to 16 of Act 12 of 1998

Clause 53 provides for amendment of section 18 of Act 12 of 1998

Clause 54 provides for amendment of section 19 of Act 12 of 1998

Clause 55 provides for amendment of section 20 of Act 12 of 1998

Clause 56 provides for amendment of section 21 of Act 12 of 1998

AMENDMENT TO THE EXAMINATIONS AND ASSESSMENT ACT, 1997 (ACT NO. 7 OF 1997)

Clause 57 provides for repeal of the Examinations and Assessment Act, 1997 (Act No. 7 of 1997)

Clause 58 provides for Short title of the Act.