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GENERAL NOTICE

Education, Department of

General Notice

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GENERAL NOTICE

NOTICE 603 OF 2006

DEPARTMENT OF EDUCATION

CALL FOR COMMENT ON THE FURTHER EDUCATION AND TRAINING COLLEGES BILL, 2006

The Further Education and Training Colleges Bill, 2006, is hereby published for comment.

All interested persons and organisations are invited to comment on the Bill in writing and to direct their comments to:

The Director-General, Private Bag X895 Pretoria, 0001

For attention: **Mr VL Rikhotso, fax no. (012) 312-5902, Tel: (012) 312-5930**

E-mail: rikhotso.v@doe.gov.za

Kindly provide the name, address, telephone and fax numbers and email address of the person or organisation submitting the comments.

The comments must reach the Department of Education by **26 June 2006**.

The Bill may also be obtained on www.education.gov.za

GRACE NALEDI MANDISA PANDOR, MP
MINISTER OF EDUCATION

FURTHER EDUCATION AND TRAINING COLLEGES BILL, 2006**BILL**

To provide for the regulation of further education and training; to provide for the establishment, governance and funding of public further education and training colleges; to provide for the employment of staff at public further education and training colleges; to provide for the registration of private further education and training colleges; to provide for quality assurance and quality promotion in further education and training; to provide for transitional arrangements and the repeal of laws; and to provide for matters connected therewith.

Preamble

WHEREAS it is desirable to-

ESTABLISH a national co-ordinated further education and training system which promotes co-operative governance and provides for programme-based further education and training;

RESTRUCTURE AND TRANSFORM programmes and colleges to respond better to the human resources, economic and development needs of the Republic;

REDRESS past discrimination and ensure representivity and equal access;

ENSURE access to further education and training and the workplace by persons who have been marginalized in the past such as women, the disabled and the disadvantaged;

PROVIDE optimal opportunities for learning, the creation of knowledge and the development of intermediate to high-level skills in keeping with international standards of academic and technical quality;

PROMOTE the values which underlie an open and democratic society based on human dignity, equality and freedom;

ADVANCE strategic priorities determined by national policy objectives at all levels of governance and management within the further education and training sector;

RESPECT and encourage democracy and foster a collegial culture which promotes fundamental human rights and creates an appropriate environment for teaching and learning;

PURSUE excellence, promote the full realisation of the potential of every student and member of staff, tolerance of ideas and appreciation of diversity;

RESPOND to the needs of the Republic, the labour market and of the communities served by the colleges;

COMPLEMENT the Skills Development Strategy in co-operation with the Department of Labour;

AND WHEREAS IT IS DESIRABLE for further education and training colleges to perform specific functions within the context of public accountability and the national need for intermediate to high level skills and knowledge and to provide access to work and higher education;

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

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SCHEDULE 1

Standard College Statute

APPLICATION**1 Definitions**

In this Act, unless the context shows that another meaning is intended-

'academic board' means the body contemplated in sections 11 and 12;

'applicant' means any person who makes an application contemplated in section 29;

'auditor' means any person registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991);

'college' means a public or private further education and training institution which -

- (a) is established, declared or registered under this Act; and
- (b) excludes schools offering further education and training programmes under the South African Schools Act or a college under the authority of a State Department other than the Department of Education;

'college statute' means policy, code of ethics and any other rules developed by the council in consistency with this Act;

'council' means the governing structure of a public further education and training college;

'Department' means the Government department responsible for education at national level;

'Director-General' means the Director-General of Education;

'financial year' in respect of a public further education and training college means a year commencing on the first day of January and ending on the 31st day of December of the same year;

'foreign juristic person' means a person-

- (i) registered or established as a juristic person in terms of a law of a foreign country; and
- (ii) recognised or registered as an external company in terms of the Companies Act, 1973 (Act 61 of 1973);

'further education and training' means all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act 58 of 1995), which levels are above general education but below higher education;

'further education and training college' means any college that provides further education and training on a full-time, part-time or distance basis and which is-

- (a) established or regarded as having been established as a public further education and training college under this Act;
- (b) declared as a public further education and training college under this Act;
- or
- (c) registered or provisionally registered as a private further education and training college under this Act;

'general education' means the compulsory school attendance phase as referred to in section 3 of the South African Schools Act;

'grade' means a grade as defined in section 1 of the South African Schools Act;

'Head of Department' means the head of a provincial department of education;

'higher education' means higher education as defined in the Higher Education Act, 1997 (Act 101 of 1997);

'Labour Relations Act' means the Labour Relations Act, 1995 (Act 66 of 1995);

'lecturer' means any person who teaches, educates or trains other persons or who provides professional educational services at any further education and training college or departmental office and who is appointed in a post on any lecturer establishment under this Act;

'local juristic person' means a person established as a juristic person in South Africa in terms of the Companies Act, 1973 (Act 61 of 1973);

'management staff' means the principal, vice-principal and chief financial officer of a public further education and training college;

'Member of the Executive Council' means the Member of the Executive Council of a province who is responsible for education in that province;

'Minister' means the Minister of Education;

'NBFET' means the National Board for Further Education and Training, established by regulations in terms of section 11 of the National Education Policy Act, 1996 (Act 27 of 1996);

'organ of State' means an organ of State as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

'policy' means-

- (a) policy determined by the Minister in terms of the National Education Policy Act, 1996 (Act 27 of 1996); or

- (b) policy determined by the Member of the Executive Council in terms of a provincial law;

'prescribed' means prescribed by regulation;

'principal' means the chief executive and accounting officer of a public further education and training college and includes a rector;

'private further education and training college' means any college registered or provisionally registered as a private further education and training college in terms of this Act;

'programme' means a planned combination of fundamental and vocational subjects approved and promulgated by the Minister in the *Government Gazette*;

'public further education and training college' means any further education and training college that is established, deemed to be established or declared as a public further education and training college under this Act;

'Public Service Act' means the Public Service Act, 1994 (Proclamation 103 of 1994);

'registrar' means the registrar referred to in section 27;

'SAQA' means the South African Qualifications Authority, established by section 3 of the South African Qualifications Authority Act, 1995 (Act 58 of 1995);

'school' means a school as defined in the South African Schools Act;

'South African Schools Act' means the South African Schools Act, 1996 (Act 84 of 1996);

'staff' means persons employed at a public further education and training college;

'student' means any person registered as a student at a further education and training college;

'this Act' includes the regulations made under this Act;

'to provide further education and training' means-

- (a) the registering of students for all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995 (Act 58 of 1995), which levels are above general education but below higher education; and
- (b) the taking of responsibility for the registration of students, the provision and delivery of the curriculum and assessment of students;

'Umalusi' means the Council for General and Further Education and Training Quality Assurance;

'vice-principal' includes a vice-rector.

2 Application

This Act applies to all education institutions which have been established or declared as public colleges or registered as a private college in terms of this Act.

CHAPTER 2

PUBLIC COLLEGE

3 Establishment of public college

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

(2) Every public college is a juristic person.

(3) The Head of Department has the right to compile or inspect an inventory of all the assets of a public college.

(4) Notwithstanding subsection (2), a public college may not, without the concurrence of the Member of the Executive Council, dispose of or alienate in any manner, any immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon.

(5) Notwithstanding subsection (4), the Member of the Executive Council may-

(a) determine that certain categories of assets below a certain value may be alienated without his or her concurrence; and

(b) determine and publish the value contemplated in paragraph (a) by notice in the provincial Gazette.

(6) The assets of a public college may not be attached as a result of any legal action taken against the college.

4 Declaration of institution as a public college

(1) The Member of the Executive Council may, by notice in the Provincial Gazette, declare any institution providing further education and training as a public college.

(2) The notice contemplated in subsection (1) must determine-

- (a) the date on which the institution becomes a public college;
- (b) the name of the public college; and
- (c) the physical location and the official address of the public college.

(3) The Member of the Executive Council may act in terms of subsection (1) only-

- (a) after consulting the Council of the institution, if it is a public institution; or
- (b) with the concurrence of the responsible Minister, Member of the Executive Council or authority of the institution, if the institution is administered, controlled or funded by an organ of State other than the provincial department of education;
- (c) after having-
 - (i) published a notice in one or more newspapers circulating in the area in which the institution provides further education and training, containing the reasons for the declaration referred to in subsection (1);
 - (ii) given any interested person an opportunity to make representations; and
 - (iii) considered such representations; and
- (d) with the concurrence of the owner, if it is a private institution and the relevant Member of the Executive Council responsible for finance.

5 Consequences of declaration as public college

(1) From the date determined in terms of section 4 (2) (a)-

- (a) the college is regarded as being a public college established under this Act;
- (b) the assets, liabilities, rights and obligations of the college vest in the public college; and
- (c) any agreement lawfully entered into by or on behalf of the college is regarded as having been concluded by the public college.

(2) Immovable property vesting in the public college in terms of subsection (1) (b) must, subject to the concurrence of the Minister of Finance, be transferred into its name without payment by it of transfer duty, stamp duty or any other duty or costs due to the State, but subject to any existing right, encumbrance or trust on or over that property.

(3) The officer in charge of a deeds office or other office where the immovable property contemplated in subsection (2) is registered must, on submission of the title deed and on application by the public college, make such endorsements on that title deed and such entries in the registers as may be required to register the transfer in question.

(4) The declaration of an institution as a public college under section 4 (1) does not affect anything lawfully done by the institution prior to the declaration.

(5) All funds which, immediately prior to the date determined in terms of section 4 (2) (a), were vested in the institution by virtue of a trust, donation or bequest must be applied by the public institution in accordance with the trust, donation or bequest, as the case may be.

(6) Notwithstanding subsection (2), any fees charged by the Registrar of Deeds resulting from such transfer must be paid in full or in part from funds appropriated by the provincial legislature for that purpose.

(7) The Member of the Executive Council must in the notice contemplated in section 3(1) establish an interim council for a period not exceeding six months, to perform the functions relating to the governance of the college until a council is constituted as contemplated in section 9(1).

(8) The Member of the Executive Council may extend the period referred to in subsection (7) once for a further period not exceeding six months.

(9) The composition of the interim council must be in accordance with the provisions of subsections 10(4) and (7).

(10) The interim council must co-opt three members of the interim management contemplated in subsection (11)(a) and these co-opted members have no voting powers.

(11) Apart from the functions contemplated in subsection (7), the interim council must in particular-

- (a) appoint an interim body to manage the day-to-day activities of the college;
- (b) ensure that such other structures as may be determined in terms of this Act are constituted.

(12) Any decision of the interim council which may affect the right of any structure of the public college, may only be taken after consultation with such structure.

6 Merger of public colleges

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

(2) Before merging two or more public colleges the Member of the Executive Council must-

- (a) give written notice to the colleges in question of the intention to merge them;
- (b) publish a notice giving the reasons for the proposed merger in one or two newspapers circulating in the area in which the colleges in question are situated;
- (c) give the councils of the colleges in question and any other interested persons an opportunity to make representations within at least 90 days from the date of the notice referred to in paragraph (b);
- (d) consider such representations; and
- (e) be satisfied that the employers of staff at the public colleges in question have complied with their obligations in terms of the applicable labour law.

(3) The single college contemplated in subsection (1) is regarded as a public college established under this Act.

(4) Paragraph (b) of section 5 (1) and subsections (2) to (6) of section 5 apply with the necessary changes required by the context, to a merger referred to in subsection (1).

(5) The councils of the colleges that are merged must have a meeting before the merger to constitute a single interim council comprising of all members of the councils concerned for a period not exceeding six months.

(6) The Member of the Executive Council may extend the period referred to in subsection (5) once for a further period not exceeding six months.

(7) Notwithstanding sections 197 and 197A of the Labour Relations Act, 1995 (Act 66 of 1995), the contracts of employment between the public college and its employees are transferred automatically to the merged single public college as from the date of the merger contemplated in subsection (1), but any redeployment of an employee as a consequence of the merger is subject to applicable labour legislation.

(8) If two or more public colleges are merged into a single public college as contemplated in subsection (1), all the rights and obligations between the former employers and each employee at the time of the merger continue in force as if they were rights and obligations between the new employer and each employee and anything done before the merger by or in relation to the former employers is considered to have been done by or in relation to the new employer.

(9) A merger referred to in subsection (1) does not interrupt the employee's continuity of employment.

(10) The provisions of subsections (10) to (15) do not affect the liability of any person to be disciplined for, prosecuted for, convicted of and sentenced for any offence or misconduct.

(11) An employee or a student is subject to the disciplinary codes and rules applicable to the new single public college as from the date of the merger contemplated in subsection (1), but if any enquiry into incapacity or any proceedings in respect of a charge of misconduct had been instituted or commenced against any employee or student before the date of the merger, such enquiry or proceedings continue in terms of the codes and rules applicable to the relevant public college immediately prior to the merger.

(12) Until the new single public college has made disciplinary codes or rules, the disciplinary codes and rules of the respective old public college are applicable to the respective employees and students.

(13) Notwithstanding subsection (10), the former employer may undertake rationalisation of its workforce according to operational requirements in accordance with section 189 of the Labour Relations Act, 1995 (Act 66 of 1995), prior to the date of the merger contemplated in subsection (1).

(14) If two or more public colleges are merged into a single public college as contemplated in subsection (1), the new single public college continues with all academic programmes offered by the former colleges under the rules applicable to the respective colleges immediately before the date of the merger, until such programmes and rules are amended or restructured by the new council.

(15) The Member of the Executive Council must, after consultation with the councils of the public colleges that are to be merged, determine by notice contemplated in section 6(1)-

- (i) the date of establishment of the college;
- (ii) the type and name of the college; and

(iii) the physical location and official address of the college.

7 Single council for two or more public colleges

(1) The Member of the Executive Council may determine that the governance of two or more public colleges must vest in a single council if-

- (a) it is in the best interests of education and the colleges;
- (b) it is in the public interest; or
- (c) he or she was so requested by the councils of such colleges.

(2) The Member of the Executive Council may not act in terms of subsection (1) unless he or she has-

- (a) given written notice to the colleges in question of the intention to merge them;
- (b) given notice in the Provincial Gazette of his or her intention so to act;
- (c) given the councils of the colleges in question and interested parties an opportunity to make written submissions within a period of not less than 90 days;
- (a) considered all such submissions; and
- (b) satisfied himself or herself that the employers of staff at the public colleges have complied with their obligations in terms of the applicable labour law.

(3) The Member of the Executive Council must, by notice in the Provincial Gazette, determine the composition of the single council in a manner that ensures that-

- (a) each public college is equitably represented; and
- (b) it complies with section 11 (6), (7) and (9).

(4) Any council which is the subject of a notice in terms of subsection (2) continues to exist until the first meeting of the council constituted in terms of this section.

8 Closure of public college

(1) The Member of the Executive Council may, by notice in the Provincial Gazette, close a public college,

(2) If a public college is closed under subsection (1)-

- (a) all assets and liabilities of such college must, after such closure, be dealt with according to law by the Member of the Executive Council; and

(b) any assets remaining after payment of all liabilities vest in the Member of the Executive Council.

(3) Subsections (2) to (6) of section 5 and section 6 (2) apply with the necessary changes required by the context, to a closure referred to in subsection (1).

CHAPTER 3 GOVERNANCE OF PUBLIC COLLEGES

9 Public college governance structures

(1) Every public college must establish a council, an academic board, a student representative council and such other structures as may be determined by the council subject to the approval of the Member of the Executive Council.

(2) The structures referred to in subsection (1) must elect a chairperson, vice-chairperson and other office bearers from among its members in the manner determined by the Member of the Executive Council by notice in the Provincial Gazette or in terms of a provincial law.

(3) The chairperson, vice-chairperson or other office bearers of the council may not be students or members of the staff of the college, but the secretary may be a member of staff.

(4) The Member of the Executive Council must, by notice in the Provincial Gazette or in terms of a provincial law, determine in respect of members in any of the structures referred to in subsection (1)-

- (a) the terms of office;
- (b) procedures for the disqualification or removal;
- (c) procedures for the filling of vacancies; and
- (d) any other matter necessary for the election, appointment or assumption of office.

10 Council of public college

(1) The council of a public college must perform all the functions, including the development of a college statute, which are necessary to govern the public college, subject to this Act and any applicable national or provincial law.

- (2) The council must, with the concurrence of the academic board-
- (a) develop a strategic plan for the college which must-

- (i) incorporate the mission, vision, goals and planning for funding of the college;
 - (ii) address past imbalances and gender and disability matters; and
 - (iii) be approved by the Member of the Executive Council;
 - (b) determine the language policy of a public college, subject to the approval of the Head of Department; and
 - (c) ensure that the public college is accredited to provide learning programmes in terms of standards and qualifications as registered on the National Qualifications Framework.
- (3) The council, after consultation with the student representative council, must provide for a suitable structure to advise on policy for student support services within the public college.
- (4) The council of a public college must consist of-
- (a) the principal;
 - (b) five persons appointed by the Member of the Executive Council;
 - (c) one member of the academic board elected by the academic board;
 - (d) one member from a donor;
 - (e) one member of the lecturer staff of the public college, elected by such staff;
 - (f) two students of the public college, elected by its student representative council;
 - (g) one staff member other than lecturer staff, elected by such staff of the public college.
- (5) The council must appoint four additional persons with financial, human resources and legal skills in consultation with the Member of the Executive Council, in addition to the members contemplated in subsection (4).
- (6) The number of persons contemplated in subsection (4) (c) to (g) and the manner in which they are elected, where applicable, must be determined by the Member of the Executive Council by notice in the Provincial Gazette or in terms of a provincial law.
- (7) At least 60 per cent of the members of a council must be persons who are not-
- (c) students of the public college;
 - (d) employed by the Member of the Executive Council; and
 - (e) employed by the council.

(8) The members of a council or interim council-

- (a) must be persons with knowledge and experience relevant to the objects and governance of the public college in question; and
- (b) must participate in the deliberations of the council or interim council in the best interest of the public college in question.

(9) The selection of the members contemplated in subsection (4) (c) and (h) must be undertaken in such a manner as to ensure, in so far as it is practically possible, that-

- (a) the functions of the council or interim council are performed according to the highest professional standards;
- (b) the council or interim council is broadly representative of the further education and training system and related interests;
- (c) the members have a thorough knowledge and understanding of the further education and training sector;
- (d) such members appreciate the role of further education and training in reconstruction and development; and
- (e) the council is broadly representative of the community served by the public college in respect of race, gender and disability.

(10) The Member of the Executive Council must, by notice in the Provincial Gazette, or by any other reasonably practicable means, invite nominations for the members contemplated in subsection (4) (b) and (5) from-

- (a) the public;
- (b) organised business; and
- (c) organised labour.

(11) The Member of the Executive Council must consider the nominations received and from the persons so nominated must appoint the number of members as determined in terms of subsection (5).

11 Academic board of public college

(1) The academic board of a public college is accountable to the council for-

- (a) the academic functions of the public college and the promotion of the participation of women and the disabled in the learning programmes;
- (b) establishing internal academic monitoring and quality promotions;

- (c) ensuring that the requirements of accreditation to provide learning against standards and qualifications registered on the National Qualifications Framework are met; and
- (d) performing such other functions as may be delegated or assigned to it by the council.

(2) Subject to the approval of the council and to policy, the academic board must determine the learning programmes provided by the public college.

(3) The academic board of a public college must consist of-

- (a) the principal;
- (b) the vice-principal or vice-principals;
- (c) members of the lecturer staff of the college;
- (d) members of the council;
- (e) members of the student representative council; and
- (f) such additional persons as may be determined by the council.

(4) The number of persons contemplated in subsection (3) (c), (d), (e) and (f) and the manner in which they are appointed or elected, as the case may be, must be determined by the council.

(5) The majority of members of the academic board must be members of the lecturer staff of the public college in question.

12 Committees of council and academic board

(1) The council and the academic board of a public college may each establish committees to perform any of their functions and may appoint persons who are not members of the council or the academic board, as the case may be, as members of such committees.

(2) The chairperson of a committee must be a member of the council or academic board, as the case may be.

(3) The council and the academic board are not divested of responsibility for the performance of any function delegated or assigned to a committee.

(4) The council and the academic board of a public college may jointly establish committees to perform functions which are common to the council and the academic board.

- (5) The council or the academic board as the case may be, must determine the-
- (a) composition of the committee;

- (b) functions of the committee;
 - (c) procedure at meetings; and
 - (d) dissolution of a committee.
- (6) The provisions in subsection (5) will also apply to a joint committee.

13 **Principal of public college**

The principal of a public college is responsible for the management and administration of the college.

14 **Student representative council**

The establishment, composition, manner of election, term of office, functions and privileges of the student representative council of a public college must be determined by the council after consultation with the students and lecturers of the college, subject to provincial policy.

15 **Disciplinary measures**

(1) Every student at a public college is subject to a code of conduct, disciplinary measures and procedures which are determined by the council subject to provincial policy.

(2) The code of conduct, disciplinary measures and procedures may only be made after consultation with the academic board and the student representative council of the public college concerned.

(3) The policy contemplated in subsection (1) must in particular deal with measures to curb racism, sexual violence and sexual harassment, or any other form of violence and harassment.

16 **Prohibition of corporal punishment and initiation practices at colleges**

(1) A person may not administer corporal punishment to a student at a college.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which may be imposed for assault.

(3) A person may not conduct or participate in initiation practices at colleges.

(4) Any person who contravenes subsection (3) is guilty of misconduct and disciplinary action must be instituted against such a person.

(5) In addition to subsection (4), a person may institute civil action against a person or a group who manipulated and forced that person to conduct or participate in any initiation practices.

(6) For the purposes of this Act, 'initiation practices' means any act which in the process of initiation, admission into, or affiliation with, or as condition for continued membership of, a college, group intramural or extramural activities, inter-college sports teams, or organisation-

- (a) endangers the mental or physical health or safety of a person;
- (b) undermines the intrinsic worth of human beings by treating some as inferior to others;
- (c) subjects individuals to humiliating or violent acts which undermine the constitutional guarantee to dignity in the Bill of Rights;
- (d) undermines the fundamental rights and values that underpin the Constitution;
- (e) impedes the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern; or
- f) destroys public or private property.

(7) In considering whether the conduct or participation of a person in any initiation practices falls within the definition of subsection (6), the relevant disciplinary authority referred to in subsection (4) must take into account the right of the student not to be subjected to such practices.

17 Admission to public colleges

(1) Subject to the approval of the Head of Department, the council of a public college determines the admission policy of the college after consulting the academic board of the college.

(2) The admission policy of a public college may not unfairly discriminate in any way and must provide appropriate measures for the redress of past inequalities.

(3) The council may, subject to approval of the Head of Department and after consultation with the academic board-

- (a) determine admission requirements in respect of particular further education and training programmes;

- (b) determine the number of students who may be admitted for a particular further education and training programme and the manner of their selection;
- (c) determine the minimum requirements for readmission to study at the public college concerned; and
- (d) refuse readmission of a student who fails to satisfy such minimum requirements for readmission.

(4) The council of a public college must ensure that the college is accessible to disabled students where reasonably practicable.

18 Standard college statute

A public college that has not drafted a college statute in terms of section 10(1), must make use of the standard college statute in schedule 1.

CHAPTER 4**APPOINTMENT OF MANAGEMENT STAFF, LECTURERS AND NON-LECTURERS IN PUBLIC COLLEGES****19 Appointment of management staff**

(1) The Member of the Executive Council must appoint management staff, in terms of the Public Service Act.

(2) The management staff must report to and be accountable to the council in respect of matters of governance and functions allocated to it by the council in terms of this Act.

(3) The council is the employer of all lecturers and non lecturers.

(4) Despite subsection (1), the principal must comply with the decisions of the council in respect of matters of governance and report to the Head of Department in terms of his or her performance agreement.

(5) Public colleges must establish a bargaining council to negotiate conditions of employment.

(6) The council must adopt a Code of Conduct for lecturers and non-lecturers.

20 Appointment of lecturers and non-lecturers

(1) Subject to this Act, the Labour Relations Act, Basic Conditions of Employment Act, subsection (2) and any other applicable law, the college must establish posts for lecturers and non-lecturers.

(2) The council must appoint staff from the funds allocated in terms of national norms and standards and other income received by the college from other sources.

(3) The college must determine-

(a) the functions and duties of lecturers and non-lecturers, conditions of service and privileges of the lecturers and non-lecturers which must not be inferior to those provided in terms of the Public Service Act.

(4) The lecturers and non-lecturers must be accountable to the principal.

(5) When presenting the annual budget contemplated in section 25 the Council must provide sufficient details of any posts envisaged in terms of subsection (1), including the estimated cost relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met.

(6) The staff contemplated in subsection (1) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and factors to be taken into account when making appointments include but are not limited to-

- (a) the ability of the candidates;
- (b) the principle of equity;
- (c) the need to redress past injustices; and
- (d) the need for representivity.

21 Dispute resolution between the college, lecturers and non-lecturers

(1) If a dispute arises about the payment or employment conditions of a lecturer as contemplated in section 20, any party to the dispute may refer the dispute in writing to –

- (a) a bargaining council established in terms of the Labour Relations Act if the employer or employee parties to the dispute fall within the registered scope of a bargaining council; or
- (b) the Commission for Conciliation, Mediation and Arbitration as established by section 12 of the Labour Relations Act if no bargaining council has jurisdiction.

(2) The party referring the dispute must satisfy the bargaining council or the Commission for Conciliation, Mediation and Arbitration that a copy of the referral has been served on the other party.

(3) The bargaining council or the Commission for Conciliation, Mediation and Arbitration must attempt to resolve the dispute through conciliation.

(4) If the bargaining council or the Commission for Conciliation, Mediation and Arbitration is satisfied that the dispute remains unresolved, a party may refer the dispute to the Labour Court as established in terms of section 151 of the Labour Relations Act for adjudication.

CHAPTER 5

FUNDING OF PUBLIC COLLEGES

22 Responsibility of the State

(1) The Member of the Executive Council must from money appropriated for this purpose by the provincial legislature fund public colleges on a fair, equitable and transparent basis, apart from further education and training programmes offered in a school which is governed and funded in terms of the South African Schools Act.

(2) The Member of the Executive Council may, subject to the norms and standards determined in terms of section 23, impose-

- (a) any reasonable condition in respect of an allocation of funding contemplated in subsection (1); and
- (b) different conditions in respect of different public colleges, different further education and training programmes or different allocations, if there is a reasonable basis for such differentiation.

(3) Further to the requirements in the norms and standards contemplated in section 23, the Member of the Executive Council must, after consultation with the appropriate advisory body in a province, determine further appropriate measures for the redress of past inequalities.

(4) The Member of the Executive Council must, on an annual basis, provide sufficient information to public colleges regarding the funding referred to in subsection (1) to enable the colleges to prepare their budgets for the next financial year.

23 Norms and standards for funding of public colleges

Subject to the Constitution and this Act, the Minister must determine minimum norms and standards for the funding of public colleges, after consultation with the Council of Education Ministers and the Minister of Finance.

24 Funds of public colleges

- (1) The funds of a public college consist of-
- (a) funds allocated by the State;
 - (b) any donations or contributions received by the public college;
 - (c) money raised by the public college;

- (d) money raised by means of loans subject to the approval of the Member of the Executive Council;
- (e) income derived from investments;
- (f) money received from services rendered to any other public college or person;
- (g) money payable by students for further education and training programmes provided by the public college;
- (h) money received from students or employees of the public college for accommodation or other services provided by the public college; and
- (i) other funds from any other source.

(2) Public colleges may not raise money by means of loans or overdraft without the approval of the Member of the Executive Council.

(3) If a person lends money or grants an overdraft to a public college without the approval of the Member of the Executive Council, the State and the college is not bound by the contract of lending money or an overdraft agreement.

25 Financial records and statements of public colleges

(1) The council of a public college must, in the manner determined by the Member of the Executive Council-

- (a) keep records of all its proceedings; and
- (b) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public college as a whole, of its substructures and of other bodies operating under its auspices.

(2) The Council of a public college must appoint an auditor to audit the records and financial statements referred to in this section.

(3) The council of a public college must, in respect of the preceding financial year and by a date or dates and in the manner determined by the Member of the Executive Council provide the Member of the Executive Council with-

- (a) a report on the overall governance of the college;
- (b) a duly audited statement of income and expenditure; and
- (c) a balance sheet and cash flow statement.

(4) The council of a public college must provide the Member of the Executive with such additional information as the Member of the Executive Council may reasonably require.

26 Action on failure of council to comply with Act or certain conditions

(1) If the council of a public college fails to comply with any provision of this Act under which an allocation from money appropriated by the provincial legislature is paid to the college, or with any condition subject to which any allocation is paid to the public college, the Member of the Executive Council may call upon the council to comply with the provision or condition within a specified period.

CHAPTER 6

PRIVATE FURTHER EDUCATION AND TRAINING COLLEGES

27 Designation of registrar

(1) The Director-General is the registrar of private colleges.

(2) The Minister may designate any other employee of the Department of Education to assist the registrar in the performance of his or her functions in terms of this chapter.

(3) The registrar may delegate any of his or her functions in terms of this Act to an employee contemplated in subsection (2).

28 Registration of private further education and training college

(1) No person other than a public college or an organ of state may provide further education and training unless that person is-

(a) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act 61 of 1973); and

(b) registered or provisionally registered as a private college in terms of this Act.

(2) The juristic person contemplated in subsection (1)(a), may not be a public company or a holding company as defined in the Companies Act 61 of 1973.

29 Application for registration

An application for registration as a private college must be made to the registrar in the manner determined by the registrar and must be accompanied by the prescribed fee.

30 Requirements for registration

(1) The registrar must register an applicant as a private college if the registrar has reason to believe that the applicant-

- (a) is financially capable of satisfying its obligations to prospective students;
- (b) with regard to all its further education and training programmes-
 - (i) will maintain acceptable standards that are not inferior to standards at comparable public colleges;
 - (ii) will comply with the requirements of the General and Further Education and Training Quality Assurance Council; and
 - (iii) complies with any other reasonable requirement prescribed by the Minister; and
- (c) does not discriminate on the basis of race.

(2) The registrar may require further information, particulars and documents in support of any application for registration.

31 Determination of application for registration

(1) The registrar-

- (a) must consider any application for registration as a private college and any further information, particulars or documents provided by the applicant;
- (b) may, when considering the application, differentiate between a foreign juristic person and local juristic person with regard to matters such as its scope and range of operations, its size and its collegial configuration; and
- (c) may register the applicant as a private college if the requirements for registration contemplated in section 30 are fulfilled.

(2) (a) If the registrar decides to grant the application, the registrar must-

- (i) enter the applicant's name in the appropriate register of private colleges;
- (ii) issue a certificate of registration, stating the terms of such registration;
- (iii) furnish the certificate to the applicant; and

(iv) as soon as practicable after the decision, publish the name of the applicant so registered, in the *Gazette*.

(b) The registrar must notify the relevant Head of Department of the registration of a private college in that province.

(c) If the registrar decides not to grant the application, the registrar must advise the applicant in writing of the decision and furnish the applicant with written reasons for the decision.

(3) Notwithstanding subsection (1), the registrar may provisionally register an applicant, other than a foreign juristic person, who does not fulfil the requirements for registration contemplated in section 30, if the registrar believes that the applicant will be able to fulfil the relevant requirements within a reasonable period.

(4) If the registrar provisionally registers an applicant under subsection (3), the registrar must-

(a) determine the period within which the applicant must satisfy the requirements for registration;

(b) enter the applicant's name in the appropriate register of private colleges;

(c) issue a certificate of provisional registration, stating the terms and the duration of such registration;

(d) provide the certificate of provisional registration to the applicant; and

(e) as soon as practicable after the decision, publish the name of the applicant so provisionally registered, in the *Gazette*.

(5) The registrar may, on good cause shown, extend the period referred to in subsection (4) (a).

(6) (a) If, on the expiry of the period referred to in subsection (4) (a) or any extension thereof, the applicant satisfies the requirements for registration specified by the registrar, the registrar must register the applicant in accordance with subsection (2) (a).

(b) If, by the expiry of the period, the applicant fails to satisfy the requirements for registration specified by the registrar, the applicant's provisional registration lapses.

32 Certificate of registration

(1) A private college must conspicuously display-

- (a) its certificate of registration or provisional registration or a certified copy thereof on its premises; and
- (b) its registration number and an indication that it is registered or provisionally registered on all its official documents.

(2) If the registrar has cancelled the registration or provisional registration of a private college in terms of section 39, the private college must return the original certificate of registration or provisional registration to the registrar within 14 days of such cancellation.

33 Access to information

(1) Any person may inspect the register of private colleges and the auditor's report contemplated in section 34(2)(b).

(2) The registrar must furnish a certified copy of, or extract from, any of the documents referred to in subsection (1) to any person who has paid the prescribed fee.

34 Records and audits

(1) Every private college must, in accordance with generally accepted accounting practice, principles and procedures-

- (a) keep books and records of income, expenditure, assets and liabilities; and
- (b) prepare financial statements within three months after the end of its financial year including at least-
 - (i) a statement of income and expenditure for the previous year;
 - (ii) a balance sheet as at the end of the previous year; and
 - (iii) such other information as the registrar may reasonably require.

(2) Every private college must, within the period determined by the registrar-

- (a) ensure that an annual audit of its books, records of account and financial statements is carried out by an auditor, who must conduct the audit in accordance with generally accepted auditing standards;
- (b) furnish the registrar with a certified copy of the auditor's report in respect of the financial statements referred to in subsection (1); and
- (c) furnish the registrar with any additional information, particulars or documents in the manner determined by the registrar.

35 Amendment of registration and provisional registration

A private college may apply to the registrar to amend its registration or provisional registration-

- (a) in the manner determined by the registrar; and
- (b) by paying the prescribed fee.

36 Requirements for amendment of registration or provisional registration and determination of application

(1) The registrar may not amend the registration or provisional registration of a private college unless he or she is satisfied that such amendment is in the interests of further education and training and is compatible with the provisions of this Act.

(2) The registrar may require further information, particulars or documents in support of any application for such amendment.

- (3) (a) If the registrar decides to grant the application, he or she must-
 - (i) amend the certificate of registration or provisional registration accordingly;
 - (ii) furnish a copy of the amended certificate to the applicant; and
 - (iii) as soon as reasonably practicable after the decision, publish the name of the applicant whose certificate has been amended, in the Gazette.
- (b) If the registrar decides not to grant the application, he or she must advise the applicant in writing of the decision and furnish the applicant with written reasons for the decision.

37 Conditions for registration

(1) The registrar may impose any reasonable condition on a private college in respect of-

- (a) its registration;
- (b) its provisional registration; or
- (c) any amendment of its registration or provisional registration.

(2) The registrar may impose different conditions under subsection (1) in respect of different private colleges, if there is a reasonable basis for such differentiation.

38 Amendment or cancellation of conditions

Subject to section 40, the registrar may, on reasonable grounds, amend or cancel any condition imposed under section 37 or impose new conditions under that section.

39 Cancellation of registration

(1) Subject to section 40, the registrar may, on reasonable grounds, cancel any registration or provisional registration in terms of this Act.

(2) If the accreditation of any further education and training programme offered by a private college is withdrawn, the registrar must review the registration of such college.

40 Steps before amendment or cancellation

The registrar may not act under section 38 or 39 unless he or she-

- (a) has informed the private college of the intention so to act and the reasons therefore;
- (b) has granted the private college and other interested persons an opportunity to make written representations in relation to such action, within 30 working days of the notice of the Registrar; and
- (c) has considered such representations.

41 Appeal to Minister

(1) Any interested party may appeal to the Minister against any decision of the registrar in terms of this Chapter.

(2) An appeal referred to in subsection (1) must be lodged with the Minister within 60 days of the date of the decision of the registrar.

(3) The Minister may, on good cause shown, extend the period within which an appeal may be noted against the decision of the registrar.

CHAPTER 7**QUALITY ASSURANCE AND PROMOTION****42 Quality assurance and promotion in further education and training**

Subject to the norms and standards set by the Minister in terms of section 3 of the National Education Policy Act, 1996 (Act 27 of 1996), and by SAQA, the Director-General must-

- (a) promote quality assurance in further education and training; and

- (b) assess and report on the quality of education and training provided at colleges.

43 Learning and training programmes

(1) A college must provide learning and training programmes leading to a qualification for levels applicable to colleges as determined by the South African Qualifications Authority in terms of the South African Qualifications Authority Act, 1995 (Act 58 of 1995).

(2) Quality assurance must be conducted by Umalusi in terms of the General and Further Education and Training Quality Assurance Act 58 of 2001.

(3) A public college may only provide higher education programmes under the authority of a higher education institution.

(4) A public college providing the higher education programmes contemplated in subsection (3) may only offer such programmes after obtaining permission from the Minister as contemplated in subsection (5).

(5) Public colleges which are offering the programmes under the authority of a public higher education institution -

- (a) must apply to the Minister after the commencement of this Act, for permission to offer such programmes; and
- (b) may only offer such programmes if they are published by the Minister in the Government Gazette.

(6) The Minister may prescribe minimum norms and standards on the scope and range of the programmes contemplated in subsection (3).

CHAPTER 8 GENERAL

44 Public colleges must prepare an annual report in respect of-

- (1) their performance;
- (2) strategic plans; and
- (3) use of resources in delivering quality education.

45 **Duty of colleges to provide information**

(1) A college must make information available for inspection by any person, in so far as such information is required for the exercise and protection of the rights of such person.

(2) Every college must provide such information about the college as is reasonably required by the Head of Department or the Director-General in consultation with the Head of Department.

(3) The Head of Department, Director-General and any college must provide such information about the college or the quality of the further education and training as is reasonably required by the NBFET.

46 **Investigation at public college**

(1) The Member of the Executive Council may appoint a person to conduct an investigation at a public college if-

- (a) the council of the college requests the appointment of such a person; or
- (b) circumstances arise at the college that-
 - (i) involve financial or other maladministration of a serious nature; or
 - (ii) seriously undermine the effective functioning of the college; and
- (c) the council of the college has failed to resolve such circumstances; and
- (d) the appointment is in the interests of further education and training in an open and democratic society.

(2) The person appointed in terms of subsection (1) must, on the terms of reference specified by the Member of the Executive Council-

- (a) within 30 days after appointment, conduct an investigation at the public college concerned;

- (a) within 60 days after appointment must-
 - (i) report in writing to the Member of the Executive Council on the findings of his or her investigation; and
 - (ii) suggest appropriate measures to resolve the matter.

(3) The Member of the Executive Council must as soon as practicable furnish a copy of the report referred to in subsection (2) to the council concerned.

47 Name change of public college

(1) The council of a public college may, with the approval of the Member of the Executive Council change the name of such public college.

(2) The Member of the Executive Council must, by notice in the Provincial Gazette, publish the change of name of such college.

48 Offences

(1) Any person other than a college, organ of state or a school, who, without the authority of a college-

- (a) offers or pretends to offer any further education and training programme;
- (b) confers a qualification which purports to have been granted by a college, or in collaboration with a college; or
- (c) purports to perform an act on behalf of a college;

is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(2) Any person who pretends that a qualification has been awarded to him or her by a college, whereas in fact no such qualification has been so awarded, is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(3) Any person who contravenes section 28 is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding five years or to both such fine and imprisonment.

(4) Any private college which does not comply with section 32 is guilty of an offence and is liable on conviction to a fine not exceeding R20 000.

(5) Any person who misrepresents that he or she is offering programmes that are accredited under the National Qualifications Framework is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

49 Limitation of liability

(1) Neither the State, the NBFET nor any person appointed in terms of this Act is liable for any loss or damage suffered by any person as a result of any act performed or omitted in good faith in the course of performing any function for which that person was appointed in terms of this Act.

(2) The state is not liable for any act or omission by the public college relating to its contractual responsibility as the employer in respect of staff employed in terms of section 20(2).

(3) (a) The state is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public college and for which such public college would have been liable but for the provisions of this section.

(b) The provisions of the State Liability Act, 1957 (Act 20 of 1957), apply to any claim under paragraph (a).

(c) Any claim for damage or loss contemplated in paragraph (a) must be instituted against the Member of the Executive Council concerned.

(d) Despite the provisions of paragraph (a), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a public college for purposes of supplementing the resources of the college including the offering of practical educational activities relating to that enterprise or business.

(e) Any legal proceedings against a public college for any damage or loss contemplated in paragraph (d), or in respect of any act or omission relating to its contractual responsibility as employer may only be instituted after written notice of the intention to institute proceedings against the college has been given to the Head of Department for his or her information.

50 Delegation of powers

(1) The Minister may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act, except the power to make regulations, to-

(a) the NBFET;

- (b) any employee of the Department; or
- (c) any organ of State.

(2) The Member of the Executive Council may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act, to-

- (a) any employee in a provincial department responsible for education and training; or
- (b) any organ of State.

(3) The Director-General may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act to any employee in the Department.

(4) The council of a public college may, on such conditions as it may determine, delegate the exercise of any of its powers under this Act to other internal structures, or members of staff of such college.

51 **Regulations**

The Minister may make regulations consistent with this Act on-

- (a) safety measures at public and private colleges;
- (b) a national process and procedures for the assessment of student achievement for public and private colleges;
- (c) a national process for the assessment, monitoring and evaluation of education in public and private colleges;
- (d) initiation practices at public and private colleges;
- (e) any matter which the Minister is empowered or required to prescribe by regulation in terms of this Act; or
- (f) any other matter in respect of which regulations are necessary or expedient in order to achieve the purpose of this Act.

52 **Conflict with other laws**

This Act prevails over any legislation, if there is a conflict between any provisions dealing with further education and training.

CHAPTER 9
TRANSITIONAL AND OTHER ARRANGEMENTS

53 Existing public further education and training institutions, structures and bodies

(1) The public further education and training institutions in Schedule 2 continue to exist and are deemed to be public colleges.

(2) Members of the council, academic board, Student Representative Council continue to hold office until they are replaced in terms of this Act.

54 Staff

The principal, vice-principal, educators and non-educators employed by the state continue to be so employed until appointed in terms of this Act as read with section 197(1) of the Labour Relations Act 66 of 1995.

55 Application for registration by private colleges

Application for registration by private colleges made in terms of the Further Education and Training Act 98 of 1998 before the commencement of this Act must be deemed to be applications made in terms of this Act.

56 NBFET

NBFET continues to exist until replaced by an advisory body in terms of the National Education Policy Act 27 of 1996.

57 Advice by advisory body

(1) The advisory body must advise the Minister on quality promotion and assurance.

(2) The Minister must-

(a) consider any advice given by the advisory body; and

(b) provide reasons in writing to the advisory body if the Minister does not accept the advice.

(3) The Minister may act without the advice of the advisory body if-

(a) the matter is urgent; or

- (b) the advisory body has failed to provide the advice within a reasonable time.
- (4) If the Minister acts as contemplated in subsection (3) the Minister must-
 - (a) notify the advisory body of such action; and
 - (b) provide reasons in writing to the advisory body for such action.

58 **Report on quality assurance**

An annual report on the quality of further education and training must be made within a reasonable time after the end of the academic year-

- (a) in respect of the country as a whole-
 - (i) by the Director-General; and
 - (ii) by the advisory body; and
- (b) in respect of a province, by the Head of Department.

59 **Disciplinary measures**

The existing code of conduct, disciplinary measures and procedures of colleges must continue to operate until new measures are determined in terms of this Act.

60 **Repeal of Laws**

- (1) The Further Education and Training Act 98 of 1998 is hereby repealed.
- (2) Any regulations made or anything done under any provisions of any law repealed by this Act must be regarded as having been made or done under the corresponding provisions of this Act.

61 **Short Title**

This Act shall be cited as the Further Education and Training Colleges Act, 2006.

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DEFINITIONS AND APPLICATION**Definitions**

1 In this Statute, unless the context indicates otherwise -

'academic board' means the body contemplated in section 12;

'applicant' means any person who makes an application contemplated in section 34;

'auditor' means any person registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991);

'college' means a public or private further education and training institution;

'council' means the governing structure of a public further education and training college;

'Department' means the Government department responsible for education at national level;

'Director-General' means the Director-General of Education;

'financial year' in respect of a public further education and training college means a year commencing on the first day of January and ending on the 31st day of December of the same year;

'foreign juristic person' means a person-

- (i) registered or established as a juristic person in terms of a law of a foreign country; and
- (ii) recognised or registered as an external company in terms of the Companies Act, 1973 (Act 61 of 1973);

'further education and training' means all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act 58 of 1995), which levels are above general education but below higher education;

'further education and training college' means any college that provides further education and training on a full-time, part-time or distance basis and which is-

- (a) established or regarded as having been established as a public further education and training college under this Act;
 - (c) declared as a public further education and training college under this Act;
- or
- (c) registered or provisionally registered as a private further education and training college under this Act;

'**general education**' means the compulsory school attendance phase as referred to in section 3 of the South African Schools Act;

'**grade**' means a grade as defined in section 1 of the South African Schools Act;

'**Head of Department**' means the head of a provincial department of education;

'**higher education**' means higher education as defined in the Higher Education Act, 1997 (Act 101 of 1997);

'**institutional statute**' means policy, code of ethics and any other rules developed by the council in consistency with this Act;

'**Labour Relations Act**' means the Labour Relations Act, 1995 (Act 66 of 1995);

'**lecturer**' means any person who teaches, educates or trains other persons or who provides professional educational services at any further education and training college or departmental office and who is appointed in a post on any lecturer establishment under this Act;

'**local juristic person**' means a person established as a juristic person in South Africa in terms of the Companies Act, 1973 (Act 61 of 1973);

'**management staff**' means the principal, vice-principal and chief financial officer of a public further education and training college;

'**MEC**' means the Member of the Executive Council of a province who is responsible for education in that province;

'**Minister**' means the Minister of Education;

'**NBFET**' means the National Board for Further Education and Training, established by regulations in terms of section 11 of the National Education Policy Act, 1996 (Act 27 of 1996);

'**organ of State**' means an organ of State as defined in section 239 of the Constitution;

'**policy**' means-

- (a) policy determined by the Minister in terms of the National Education Policy Act, 1996 (Act 27 of 1996); or
- (b) policy determined by the Member of the Executive Council in terms of a provincial law;

'**prescribed**' means prescribed by regulation;

'**principal**' means the chief executive and accounting officer of a public further education and training college and includes a rector;

'private further education and training college' means any college registered or conditionally registered as a private further education and training college in terms of this Act;

'programmes' means a list of educational programmes approved and promulgated by the Minister in the *Government Gazette*;

'public further education and training college' means any further education and training college that is established, deemed to be established or declared as a public further education and training college under this Act;

'Public Service Act' means the Public Service Act, 1994 (Proclamation 103 of 1994);

'registrar' means the registrar referred to in section 32;

'SAQA' means the South African Qualifications Authority, established by section 3 of the South African Qualifications Authority Act, 1995 (Act 58 of 1995);

'school' means a school as defined in the South African Schools Act;

'South African Schools Act' means the South African Schools Act, 1996 (Act 84 of 1996);

'staff' means persons employed at a public further education and training college;

'student' means any person registered as a student at a further education and training college;

'SRC' means the student representative council;

the Act' means the Further Education and Training Colleges Act;

'to provide further education and training' means-

- (a) the registering of students for all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995 (Act 58 of 1995), which levels are above general education but below higher education; and
- (b) the taking of responsibility for the registration of students, the provision and delivery of the curriculum and assessment of students;

'vice-principal' includes a vice-rector.

Application

2 The Standard College Statute applies to every public college that has not developed a College Statute and until such time as the council of such public college makes its own College Statute under section 10 of the Further Education and Training Colleges Act.

INSTITUTION**3 Name, seat and powers –**

(1) The name of the college is _____

(2) The seat of the college is at _____

(3) Every public college is a juristic person with legal capacity to perform its functions in terms of this Statute and the Act.

(4)

Constitution of college**4 (1) The college consists of –**

- (a) the council;
- (b) the Academic Board;
- (c) the management staff;
- (d) the SRC;
- (e) the lecturers and non-lecturers of the college;
- (f) the students of the college; and
- (g) such other offices, bodies or structures as may be established by the council.

(2) No vacancy in any of the offices contemplated in subsection (1) of the Statute nor any deficiency in the numbers or defect in the composition of the bodies or structures contemplated in subsection (1) of the Statute impairs or affects the existence of the college as a juristic person or any function conferred by the Act or this Statute upon the college.

COUNCIL**5 Functions of council**

(1) Subject to the Act and this Statute the council governs the college.

(2) Without derogating from the generality of subsection (1) of the Statute, the council -

- (a) makes Rules for the college;
- (b) establishes the council committees and determines the composition and functions of each committee;

- (c) establishes, in consultation with the academic board, joint committees of the council and the academic board to perform functions which are common to the council and the academic board;
 - (d) appoints all lecturers and non-lecturers of the public college;
 - (e) subject to the approval of the Head of Department, determines the student admission policy of the public college, after consultation with the academic board;
 - (f) determines and provides student support services after consultation with the SRC.
- (3) Without derogating from the generality of subsection (1) of the Statute, the council -
- (a) appoints lecturers and non-lecturers as contemplated in section 20 of the Act;
 - (b) determines conditions of service, the disciplinary provisions and the privileges and functions of its employees, and may, in the manner set out in the disciplinary Rules, suspend or dismiss such employees of the public college;
 - (c) may order its employee whom it has suspended to refrain from being on any premises under the control of the public college and to refrain from participating in any of the activities of the college or issue such other conditions as it may deem necessary;
 - (d) subject to the approval of the Head of Department, determines the language policy of the college, after consultation with the academic Board;
 - (e) determines, after consultation with the Academic Board, which academic structures are required and the functions of each structure, in order to ensure efficient governance;
 - (f) determines tuition fees, accommodation fees and any other fees payable by students as well as accommodation fees payable by employees;
 - (g) approves the annual budget of the college; and
 - (h) may conclude a loan or overdraft agreement, subject to the approval of the MEC.

6 Composition of council

- (1) The council, as contemplated in section 10(4) of the Act, consists of -

- (a) the principal;
- (b) five persons appointed by the MEC;
- (c) one member of the academic board elected by the academic board;
- (d) one member of the lecturing staff of the public college elected by the lecturing staff;
- (e) two students of the public college elected by the SRC;
- (f) one non-lecturer elected by the non-lecturers;
- (g) one member from a donor
- (h) four members with a broad spectrum of competencies in the fields of education, business, finance, law, marketing, information technology and human resource management appointed by the interim council;

(2) At least 60 per cent of the members of the council must be persons who are not employed by the MEC or council, or students of the public college.

(3) The council members must have knowledge and experience relevant to the objects and governance of the college.

7 Termination of membership and filling of vacancies

(1) A member of the council's term of office terminates if -

- (a) he or she tenders a written resignation;
- (b) the MEC, or entity who appointed or elected the member to the council terminates the membership in writing;
- (c) he or she is absent from three consecutive meetings without leave of the council;
- (d) he or she is declared insolvent;
- (e) he or she is removed from an office of trust by a court of law or is convicted of an offence for which the sentence is imprisonment without the option of a fine; or
- (f) he or she is incapacitated.

(2) The council has power to suspend, take disciplinary action against a member.

(3) If 75 per cent or more of the members of the Council resign, the council is deemed to have resigned.

(4) If the council resigns as contemplated in subsection (3) of the Statute a new council must be constituted in terms of this Statute and the Act.

8 Election of chairperson and vice- chairperson of council and term of office

(1) The chairperson, vice-chairperson and the secretary of the council must not be elected from members contemplated in subsection 6(1)(a) and (e) of the Statute.

(2) The chairperson, vice-chairperson and secretary of the council are elected for a period of two years.

(3) The chairperson, vice-chairperson and secretary are eligible for re-election.

(4) Nominations for the office of the chairperson, vice-chairperson and secretary of the council must be in writing and be directed to the electoral officer.

(5) If more than one candidate is nominated, voting is by secret ballot.

(6) Each member of the council has only one vote during a ballot and no proxy is allowed.

(7) Whenever a vacancy occurs in the office of the chairperson, vice-chairperson or secretary, the provisions of subsections (4) to (6) of the Statute apply with the necessary changes to the filling of such vacancy.

(8) A person who fills a vacancy in terms of subsection (7) of the Statute holds office until the end of the term of his or her predecessor.

9 Meetings of council

(1) The council has at least four ordinary meetings during each academic year.

(2) Notice of any motion for consideration at the next ordinary meeting must be in writing and must be lodged with the secretary at least 21 days before the date determined by the council for such meeting, provided that any matter of an urgent nature may, without prior notice, by consent of the chairperson and a majority of the members present, be considered at such meeting.

(3) At least 14 days prior to the date of an ordinary meeting, the secretary gives due notice to each member of all the matters to be dealt with at such meeting and states the time and place of such meeting.

(4) A special meeting may be called at any time by the chairperson.

(5) A special meeting must be called by the chairperson at the request in writing of at least five members, the objective of such meeting clearly stated in the request, provided that at least seven days notice of a special meeting is given.

(6) No business other than that which the special meeting was called for may be transacted at such meeting.

(7) An emergency meeting may be called by the chairperson, or in his or her absence, by the principal at any time.

(8) Notice of an emergency meeting may be given in any manner convenient under the circumstances.

(9) The object of an emergency meeting must be stated to members and no business other than that stated may be transacted at such meeting.

10 Council meeting procedures

(1) The council members must participate in the deliberations of the council in the best interest of the public college.

(2) Except where otherwise provided in this Statute, all acts or matters authorised or required to be done or decided by the council or its committees and all questions that may come before it are done or decided by the majority of the members present at any meeting, provided that the number present at any meeting is at least half plus one of the total number of members of the council or its committees holding office on the date of such meeting.

(3) In the absence of the chairperson and the vice-chairperson of the council, the members present elect one of their members to preside at such meeting.

(4) The first act of an ordinary meeting, after being constituted, is to read and confirm by the signature of the chairperson the minutes of the last preceding ordinary meeting and of any special meeting subsequently held, provided that the meeting may consider the minutes as read if a copy thereof was previously sent to every member of the council, provided further that objections to the minutes of a meeting are raised and decided before confirmation of the minutes.

(5) A member of the council may not, without the consent of the meeting, speak more than once to a motion or to any amendment and the mover of any motion or any amendment has the right of reply.

(6) Every motion or an amendment must be seconded and, if so directed by the chairperson, must be in writing.

(7) A motion or an amendment seconded as contemplated in subparagraph (6), may not be withdrawn except with the consent of the meeting.

(8) The chairperson has, on any matter, a deliberative vote and, in the event of an equality of votes, also a casting vote.

(9) If so decided by the meeting, the number of members voting for or against any motion must be recorded in the minutes, or at the request of any member, the chairperson must direct that such votes be recorded.

(10) When a majority of the members of the council reaches agreement on a matter referred to them by letter or electronic means by the chairperson, without convening a meeting, and conveys such resolution by letter or electronic means, such resolution is equivalent to a resolution of the council and must be recorded in the minutes of the next succeeding ordinary meeting.

(11) The views of a member of the council who is unable to attend a meeting may be submitted to the meeting in writing but may not count as a vote of such member.

(12) The ruling of the chairperson on a point of order or procedure is binding unless immediately challenged by a member, in which event such ruling must be submitted without discussion to the meeting whose decision is final.

11 Conflict of interest of council members

(1) A member of council may not have a conflict of interest with the public college.

(2) A member of council who has a direct or indirect financial, personal or other interest in any matter to be discussed at a meeting and which entails or may entail a conflict or possible conflict of interest must, before or during such meeting, declare the interest.

(3) Any person may, in writing, inform the chairperson of a meeting, before a meeting, of a conflict or possible conflict of interest of a council member of which such person may be aware.

(4) The member is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.

12 Committees of council

(1) The council appoints -

- (a) an executive committee;
- (b) an audit committee;
- (c) a finance committee;
- (d) an employment conditions committee;
- (e) a planning and resource committee; and
- (f) such other committees as may be required.

(2) The composition and functions of the committees are determined by the council.

(3) At least 50 per cent of the members of a committee must be persons who are not employees or students of the college.

(4) The chairperson of a committee must be a member of the Council.

13 Minutes of council and committee meetings

(1) The secretary to the council keeps the minutes of each meeting of the council and includes such minutes in the agenda of the next council meeting when the agenda is sent out in terms of section 9(3) of the Statute.

(2) The minutes of all committee meetings must be included in the agenda of the next ordinary meeting of the council following the respective committee meetings.

(3) The members of the Council must be provided with copies of such minutes.

14 Drafting, amending or rescinding Statute

No motion to draft, amend or rescind a statute or a rule is of force and effect unless adopted by at least 75 per cent of all members present at the meeting, provided that such meeting is constituted by at least half plus one of the total number of members.

ACADEMIC BOARD

15 Functions of the academic board

(1) Subject to the Act, the academic board is accountable to the council for --

- (a) all the teaching, learning, research and academic functions of the public college;
- (b) the academic functions of the public college and the promotion of the participation of women and the disabled in the learning programmes;
- (c) establishing internal academic monitoring and quality promotions;
- (d) ensuring that the requirements of accreditation to provide learning against standards and qualifications registered on the National Qualifications Framework are met; and
- (e) performing such other functions as may be delegated or assigned to it by the council.
- (f) advise the council on disciplinary measures and Rules concerning students;

- (g) determines, in accordance with any relevant deed or gift, and after consultation with the principal, the conditions applicable to any scholarships and other academic prizes;
- (h) determines the persons to whom scholarships and academic prizes are awarded;
- (i) may establish committees to perform any of its functions, and may for this purpose deem a single person to be a committee;
- (j) determines the functions of its committees as well as the procedure of meetings of these committees;
- (k) may make standing orders on procedures and delegation of powers;
- (l) may delegate its functions; and
- (m) must take note of any action taken by a committee in exercising its delegated powers or functions when such committee reports its actions to the next meeting of the academic board.

(2) Without derogating from the generality of subsection (1) the organisation and superintendence of instruction and examinations, and of lectures and classes, vest in the Academic Board.

(3) The Academic Board submits to the council -

- (a) such reports upon its work as may be required by the council;
- (b) recommendations on matters referred to it by the council; and
- (c) recommendations on any other matter affecting the public college as the Academic Board considers useful.

16 Termination of Membership from the academic board

(1) Members of the Academic Board must participate in the deliberations of the Academic Board in the best interest of the public college.

(2) Failure to act in the best interest of the public college or behaviour that brings the public college into disrepute may result in the removal of a member from the Academic Board by the council following due process.

17 Composition of the Academic Board

(1) The Academic Board of a public college must consist of-

- (a) the principal;
- (b) the vice-principal or vice-principals;

- (c) members of the lecturer staff of the college;
- (d) members of the council;
- (e) members of the student representative council; and
- (f) such additional persons as may be determined by the council.

(2) The majority of members of the academic board must be academic employees.

(3) The manner of election and appointment of members must be determined by Council.

(4) The number of persons contemplated in section 20(c) to (f) of the Statute must be determined by the council.

18 Term of office of members of the academic board

(1) Members appointed in terms of subsections 17(a), (b) and (c) of the Statute hold office for as long as they are employed by the college in that capacity.

(2) The term of office for student members automatically lapses when a student ceases to be a registered student or member of the SRC.

19 Chairperson, vice-chairperson and secretary to the academic board

(1) The principal is the chairperson of the academic board.

(2) The vice-chairperson of the academic board is the vice-principal.

(3) The secretary of the academic board is determined by the academic board by secret ballot.

(4) The chairperson presides at the meetings of the academic board and the meetings of the sub-committees of the academic board if the academic board considers it appropriate for him or her to do so.

(5) The chairperson performs such other functions as the academic board may determine.

(6) In the absence of the chairperson, the provisions of subsection (4) of the Statute apply to the vice-chairperson.

(7) The vice-chairperson performs such other functions as the academic board may determine.

(8) The secretary performs those functions assigned to him or her by the academic board.

(9) If both the chairperson and the vice-chairperson are absent, the academic board elects from among its members, a chairperson for the meeting concerned.

20 Academic board meeting procedure

The procedure applicable to the council meetings is applicable with the necessary changes to the meetings of the academic board.

21 Committees of the academic board

(1) The academic board appoints -

(a) an executive committee; and

(b) such other committees as may be required.

(2) The composition and functions of the committees are determined by the academic board.

22 Joint committees of council and academic board

The council, in consultation with the academic board, appoints such joint committees of the council and the academic board as may be necessary for the performance of particular tasks.

STUDENT REPRESENTATIVE COUNCIL

23 Functions of SRC

(1) The students of the public college are represented by the SRC in all matters that may affect them.

(2) The matters contemplated in subsection (1) of the Statute include -

(a) liaison with the management, the general public, other colleges, students' representative councils of other colleges, national or international student organisations, unions and news media;

(b) being the umbrella organisation for all student committees, clubs, councils and societies, granting or withdrawing recognition of such student committees, clubs, councils and societies as it deems appropriate;

(c) the co-ordination and supervision of the use of students' facilities and all matters pertaining thereto, in conjunction with the college management;

(d) the convening and conducting of all authorised meetings of the student body and to be the managing body in all general referenda and petitions organised by the students within the Rules;

(e) the election of office-bearers and establishing committees as it deems necessary;

(f) the organisation and promotion of extramural activities among students;

(g) keeping account of all moneys paid over to it by the council and any other moneys which may accrue to it in its capacity as representative of the students;

(h) to allocate or disburse such funds for use by students, and to make grants to approved student clubs, committees, societies and councils;

(i) the responsibility for the preservation of order at student functions, and the ensuring of good conduct at other approved meetings of students;

(j) the co-ordination of student involvement in all community projects initiated by it;

(k) the responsibility for all student publications;

(l) the final decision making in all matters falling within its jurisdiction; and

(m) such additional functions and privileges as may be specifically conferred upon it by the council.

24 Composition of SRC

(1) Only registered students are eligible to serve on the SRC.

(2) The SRC must be representative of the student body.

(3) The election of SRC members must be democratic and transparent;

(4) The SRC of the colleges that are merged must have a meeting before the merger to constitute a single interim SRC comprising of all members of the SRC concerned for a period not exceeding six months.

25 Office-bearers of SRC

(1) The SRC elects from among its members a president to act as chairperson and a deputy president to act as deputy chairperson.

(2) The functions of other office bearers and the election of such office-bearers are determined by the SRC.

26 Term of office of SRC members

The term of office of the members of the SRC is determined by the council after consultation with the students and lecturers of the college, subject to provincial policy.

27 Privileges

The privileges of members of the SRC are determined by the council, after consultation with the SRC.

28 Meetings of SRC

The number of meetings, the quorum at a meeting and the meeting procedures are determined by the constitution of the SRC as approved by the council.

29 SRC committees

(1) The SRC must establish a disciplinary committee responsible for the discipline of any members of the SRC and members of the student structures affiliated to the SRC.

(2) The SRC may establish such other committees as may be required.

30 General meeting

(1) The SRC must convene at least one general meeting of students per semester.

(2) A general meeting may also be requested by a majority of students signing a petition to the SRC.

(3) Meetings may not disrupt academic activities unless the principal has granted prior permission.

MANAGEMENT STAFF**31 Management Staff**

(1) Management staff consists of the principal, vice-principal and Chief Financial Officer of the public college.

(2) The principal is the chief executive officer of the college.

32 Functions of principal

(1) The principal is responsible for the day-to-day management and administration of the college and has all the powers necessary to perform these functions.

(2) The principal reports to and is accountable to the council in respect of matters of governance.

(3) By way of his or her office the principal is a member of all the committees of the council and the senate.

(4) The council may assign additional functions, and grant additional powers and privileges to the principal.

(5) When the principal is absent or unable to carry the duties, the vice-principal takes over or the Member of the Executive Council may appoint an acting principal.

33 Vice-principal and Chief Financial Officer

The vice-principal or the vice-principals and the chief financial officer are responsible for assisting the principal in the management and administration of the college.

34 Appointment of lecturers and non-lecturers

The advertising of the post, the invitation for nomination of candidates, the search for suitable candidates, the criteria for the short-listing of candidates and the interviewing and appointment processes are in the manner determined by the council.

35 Conditions of employment

The conditions of employment, including the determination and review of salaries of lecturers and non-lecturers and all other forms of remuneration is approved by the council according to the college's policy as determined in the Rules which may be amended from time to time by the council.

36 Evaluation

(1) The management staff is subject to continuous evaluation in the performance of its duties by the MEC.

(2) The lecturers and non-lecturers are subject to continuous evaluation in the performance of their duties.

37 Disciplinary Code of lecturers and non-lecturers

Every lecturer and non-lecturer is subject to a disciplinary code and disciplinary procedures, as approved by the council and determined in the Rules, which serve as an integral part of conditions of service.

38 Representative organisation of employees

Agreements with representative organisations of employees may, with reference to salary and related negotiations and according to the relevant labour legislation, be entered into by the representative of lecturers and non-lecturers and recommended to the council for approval.

STUDENTS

39 Admission and registration of students

A person may be permitted by the council to register as a student only if he or she satisfies the legal requirements for admission to study at the college and, further, satisfies any other requirements for admission that may be determined by the council and laid down in the Rules.

40 Student Disciplinary Code

The disciplinary measures and disciplinary provisions applicable to the students are set out in the disciplinary code determined by the council after consultation with the SRC.

DONORS

41 Donors

(1) The college may receive moneys and equipment of any sort from donors to assist the college in providing quality education.

(2) The college may recognise and register certain donors as determined in the Rules.

TRANSITIONAL PROVISIONS

42 Transitional provisions

A public college that has not drafted a college statute in terms of section 10(1) of the Act must make use of this Standard College Statute.
