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GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 36 OF 2011

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

PUBLICATION OF BILL AMENDING CONSTITUTION

The Minister of Justice and Constitutional Development intends introducing the Constitution Amendment Bill of 2011, in the National Assembly. The Bill is hereby published for public comment in accordance with section 74(5)(a) of the Constitution of the Republic of South Africa, 1996. Any person wishing to comment on the proposed amendments is invited to submit written comments to the Minister of Justice and Constitutional Development. Comments should kindly be directed for the attention of Mrs. C van Vuuren, Private Bag X 81, Pretoria, 0001, by not later than 15 March 2011.

(Electronic mail address: cvanvuuren@justice.gov.za)

CONSTITUTION AMENDMENT BILL

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to transfer the provincial functions relating to further education and training and adult education and training to the national level of government; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts as follows: —

Amendment of Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996

1. Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996, is hereby amended by the substitution for the expression "Education at all levels, excluding tertiary education" of the expression "Education in schools".

Short title and commencement

2. This Act is called the Constitution Amendment Act of 2011, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION AMENDMENT BILL OF 2011
(Published in terms of Rule 258(3) of the Rules of the National Assembly)**

1. BACKGROUND

Presidential Minute No. 690 of 2009 created the Department of Higher Education and Training. The Department of Education was abolished and the Department of Basic Education was created. Following this re-organisation of government, Proclamation No. 44 of 2009, published in *Government Gazette* No. 32367 of 1 July 2009 transferred the administration of the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000), and the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), from the Minister of Basic Education to the Minister of Higher Education and Training. In terms of Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996 (the Constitution), education at all levels, excluding tertiary education, is a functional area of concurrent national and provincial legislative competence. The purpose of the Bill is to remove legislative competence in respect of further education and training and adult education and training from the functional areas of concurrent national and provincial competence.

2. OBJECTS OF BILL

2.1 Clause 1 seeks to amend Part A of Schedule 4 to the Constitution by replacing the expression "Education at all levels, excluding tertiary education" with the expression "Education in schools". If the amendment is passed, only education at school level will be a functional area of concurrent national and provincial legislative competence and all other levels of education will be an exclusive national legislative competence.

2.2 Clause 2 contains the short title and commencement provision of the Bill.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

3.1 The Department of Higher Education and Training was consulted, which, in turn, consulted the Council of Education Ministers. This forum consists of the National Minister of Higher Education and Training and Members of the Executive Councils of all the nine provinces responsible for education.

4. IMPLICATIONS FOR PROVINCES

The Bill will transfer the powers and functions relating to further education and training and adult education and training from the various provincial administrations to the national level of government.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of

the opinion that the Bill must be dealt with in accordance with the procedure established by section 74(3) of the Constitution, since –

- (a) it amends a provision of the Constitution other than section 1, section 74(1) or Chapter 2; and
- (b) the amendment relates to a matter that affects the National Council of Provinces.

KENNISGEWING 36 VAN 2011

DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

PUBLIKASIE VAN WETSONTWERP WAT GRONDWET WYSIG

Die Minister van Justisie en Staatkundige Ontwikkeling beoog om die Wysigingswetsontwerp op die Grondwet van 2011, by die Nasionale Vergadering in te dien. Die Wetsontwerp word ooreenkomstig artikel 74(5)(a) van die Grondwet van die Republiek van Suid-Afrika, 1996, hierby vir openbare kommentaar gepubliseer. Enige persoon wat wens om kommentaar op die voorgestelde wysigings te lewer, word uitgenooi om skriftelike kommentaar aan die Minister van Justisie en Staatkundige Ontwikkeling voor te lê. Kommentaar moet asseblief nie later nie as 15 Maart 2011 vir die aandag van mev C van Vuuren, Privaatsak X 81, Pretoria, 0001, gerig word (Elektroniese posadres: cvanvuuren@justice.gov.za)

WYSIGINGSWETSONTWERP OP DIE GRONDWET

(MINISTER VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

WETSONTWERP

Tot wysiging van die Grondwet van die Republiek van Suid Afrika, 1996, ten einde die provinsiale bevoegdhede rakende verdere onderwys en opleiding en onderwys en opleiding vir volwassenes aan die nasionale vlak van regering oor te dra; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

Die Parlement van die Republiek van Suid Afrika bepaal soos volg: —

Wysiging van Deel A van Bylae 4 by die Grondwet van die Republiek van Suid Afrika, 1996

1. Deel A van Bylae 4 by die Grondwet van die Republiek van Suid Afrika, 1996, word hierby gewysig deur die uitdrukking “Onderwys op alle vlakke, uitgesonderd tersiêre onderwys” met die uitdrukking “Onderwys in skole” te vervang.

Kort titel en inwerkingtreding

2. Hierdie Wet heet die Wysigingswet op die Grondwet van 2011, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

**MEMORANDUM OOR DIE OOGMERKE VAN DIE WYSIGINGSWETSONTWERP OP DIE GRONDWET VAN 2011
(Gepubliseer ingevolge Reël 258(3) van die Reëls van die Nasionale Vergadering)****1. AGTERGROND**

Presidensiële Minuut No. 690 van 2009 het die Departement van Hoër Onderwys en Opleiding geskep. Die Departement van Onderwys is afgeskaf en die Departement van Basiese Onderwys is geskep. In navolging van hierdie herorganisasie van die regering, het Proklamasie No. 44 van 2009, gepubliseer in *Staatskoerant* No. 32367 van 1 Julie 2009, die administrasie van die Wet op Basiese Onderwys en Opleiding vir Volwassenes, 2000, en die "Further Education and Training Colleges Act", 2006, van die Minister van Basiese Onderwys aan die Minister van Hoër Onderwys en Opleiding oorgedra. Ingevolge Deel A van Bylae 4 by die Grondwet van die Republiek van Suid Afrika, 1996 (die Grondwet) is onderwys, op alle vlakke, uitgesonderd tersiêre onderwys, 'n funksionele gebied van konkurrente nasionale en provinsiale wetgewende bevoegdheid. Die doel van die Wetsontwerp is om die wetgewende bevoegdheid ten opsigte van verdere onderwys en opleiding en onderwys en opleiding vir volwassenes van die funksionele gebied van konkurrente nasionale en provinsiale bevoegdheid te verwyder.

2. OOGMERKE VAN WETSONTWERP

2.1 Klousule 1 beoog om Deel A van Bylae 4 by die Grondwet te wysig deur die uitdrukking "Onderwys op alle vlakke, uitgesonderd tersiêre onderwys" met die uitdrukking "Onderwys in skole" te vervang. Indien die wysiging goedgekeur word, sal slegs onderwys op skoolvlak 'n funksionele gebied van konkurrente nasionale en provinsiale wetgewende bevoegdheid wees en alle ander vlakke van onderwys sal 'n uitsluitlike nasionale wetgewende bevoegdheid wees.

2.2 Klousule 2 bevat die kort titel en die inwerkingstredingsbepaling van die Wetsontwerp.

3. DEPARTEMENTE/LIGGAME/PERSONE GERAADPLEEG

3.1 Die Departement van Hoër Onderwys en Opleiding is geraadpleeg, wat op sy beurt die Raad van Onderwys-Ministers geraadpleeg het. Hierdie forum bestaan uit die Nasionale Minister van Hoër Onderwys en Opleiding en lede van die Uitvoerende Rade

van al die nege provinsies verantwoordelik vir onderwys.

4 IMPLIKASIES VIR PROVINSIES

Die Wetsontwerp sal die bevoegdhede en funksies rakende verdere onderwys en opleiding en onderwys en opleiding vir volwassenes van die provinsiale administrasies aan die nasionale vlak van regering oordra.

5 PARLEMENTÊRE PROSEDURE

Die Staatsregsadviseurs en die Departement van Justisie en Staatkundige Ontwikkeling is van mening dat die Wetsontwerp ooreenkomstig die prosedure geskep deur artikel 74(3) van die Grondwet hanteer moet word aangesien -

- (a) dit 'n bepaling van die Grondwet, anders as artikel 1, artikel 74(1) of Hoofstuk 2 wysig; en
- (b) die wysiging op 'n aangeleentheid betrekking het wat die Nasionale Raad van Provinsies raak.