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GOVERNMENT NOTICE

DEPARTMENT OF EDUCATION

No. 593

29 April 2003

CALL FOR COMMENT ON THE EDUCATION LAWS AMENDMENT BILL 2003 AND HIGHER EDUCATION AMENDMENT BILL 2003

The Minister of Education hereby publishes the following draft Bills for comment:

- (1) Education Laws Amendment Bill, 2003; and**
- (2) Higher Education Amendment Bill, 2003.**

All interested persons and organizations are invited to comment in writing on the draft Bills and to direct the comments to:

The Director-General, Private Bag X895, Pretoria, 0001, for attention: Ms M Locke, Fax No. (012) 326-9128 or e-mail: Locke.M@doe.gov.za, telephone number (012) 312 5356.

Kindly provide the name, address, telephone number and fax number and e-mail address of the person or organization submitting the comments.

The comments should reach the Department not later than 21 May 2003.

PROFESSOR KADER ASMAL, MP
MINISTER OF EDUCATION

EDUCATION LAWS AMENDMENT BILL, 2003**GENERAL EXPLANATORY NOTE:**

[] Words in bold type in square brackets indicate omissions from existing enactments.

— Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the South African Qualifications Authority Act, 1995, so as to effect textual corrections; and to make provision for the increase of the number of members nominated by the organized teaching profession; to provide for the extension of term of office of members of the Authority; to amend the South African Schools Act, 1996, so as to provide for the prohibition of the payment of any remuneration to an educator employed in terms of the Employment of Educators Act, 1998, by a School Governing Body; to amend the Employment of Educators Act, 1998, so as to effect textual corrections; and to provide for an appeal by the employer against the finding of the presiding officer of a disciplinary hearing; to amend the General and Further Education and Training Quality Assurance Act, 2001, so as to extend the definition of the Council; and to provide for matters connected therewith.

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

Amendment of section 4 of Act 58 of 1995

1. Section 4 of the South African Qualifications Authority Act, 1995 (hereinafter referred to as the Qualifications Authority Act), is amended by-

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

“(1) The Authority shall consist of a chairperson who shall be appointed in terms of subsection (2), such members as shall be appointed in terms of subsections (3) and (4), and an executive officer who shall be appointed in terms of subsection [(7)] (8).”.

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

“(3)(n) [two] three members nominated by the organised teaching profession.”.

(c) the addition after subsection (8) of the following subsection:

“(9) Despite subsection (6), the Minister may extend the term of office of any member or members.”.

Insertion of section 38A in Act 84 of 1996

2. The South African Schools Act, 1996, is amended by the insertion after section 38 of the following section:

“Remuneration or financial benefit regarding educators employed in terms of the Employment of Educators Act 76 of 1998

38A(1) A school governing body may not pay, without prior approval from the employer, to the educator employed in terms of the Employment of Educators Act, 1998, any-

- a) benefit in kind;
- b) other financial benefits, or
- c) remuneration;

except for the payment of travel and subsistence expenses in amounts comparable to those paid for similar expenses incurred by public servants.

- (2) The travel and subsistence expenses contemplated in subsection (1) must be directly related to official school activities.
- (3) The payment contemplated in subsection (1) must be reflected in the school's budget.
- (4) If a school governing body or any other person without the authority of the school governing body pays any remuneration or gives any financial benefit contemplated in subsection (1) to an educator without prior approval of the employer, the amount of money paid must be recovered by the Head of Department on behalf of the school from:
 - (a) members of the school governing body who took that decision, excluding a member of the school governing body who is a minor; or
 - (b) any person who made such payment without the authorization of the school governing body."

Amendment of section 8 of Act 76 of 1998, as amended by section 11 of Act 50 of 2002

3. Section 8 of the Employment of Educators Act, 1998 (hereinafter referred to as the Educators Act), is amended by the substitution for subsection (7) of the following subsection :

- "(7) Despite [section] sections 6(3)(a) and 8(2) in the case of an educator who has been awarded a bursary by the employer to follow a course approved by the employer, the employer may transfer such an educator, with his or her consent, to any suitable post on the educator establishment of a public school, a further education and training institution or an adult basic education and training centre."

Amendment of section 25 of Act 76 of 1998

4. Section 25 of the Educators Act, 1998, is amended by the substitution for subsections (2) and (3) of the following subsections:

- “(2) An educator or an employer has a right to appeal to the Minister or the Member of the Executive Council, as the case may be, against the finding by the presiding officer of a disciplinary hearing, as contemplated in section 17 or 18, and against the sanction imposed in terms of section 18(3)(e) to (i).
- (3) In lodging an appeal, the educator or employer must comply with the procedure laid down in Schedule 2.”

Amendment of section 34 of Act 76 of 1998

5. Section 34 of the Educators Act, 1998, is amended by the substitution for section 34 of the following section:

“34 Offences and penalties

Any person who-

- (a) has been duly summoned under [section 21(3)(a)] item 7(12) of Schedule 2 and fails without sufficient cause-
 - (i) to attend at the time and place specified in the summons; or
 - (ii) to remain in attendance until excused by the disciplinary tribunal from further attendance;
- (b) has been called upon in terms of [section 21(3)(b)] item 7(12) of Schedule 2 and who refuses to be sworn or to affirm as a witness; or
- (c) fails without sufficient cause-

- (i) to answer fully and satisfactorily any question lawfully put to that person under **[section 21(3)(c)] item 7(12) of Schedule 2**; or
- (ii) to produce any book, document or object in that person's possession or custody or under that person's control which that person was required to produce in terms of the said **[section 21(3)(c)] item 7(12) of Schedule 2**;

Shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months or both such fine and such imprisonment'.

Amendment of item 9 of Schedule 2 to Act 76 of 1998

6. Item 9 of Schedule 2 of the Educators Act, 1998, is amended by the substitution for subitems (1), (2) and (4) of the following :

- “(1) An educator or an employer may appeal against a finding or sanction by making an application in accordance with Form E attached to this Schedule.
- (2) The educator or the employer must, within five working days of receiving notice of the final outcome of a disciplinary hearing, submit the appeal form to the Member of the Executive Council or the Minister, as the case may be.
- (4) If the Member of the Executive Council or the Minister, as the case may be, chooses to allow further representations by the educator, [or] his or her representative, or an employer, he or she must notify the educator or employer respectively of the date, time and place where such representation must be made.”.

Substitution of Form E of Schedule 2 to Act 76 of 1998

7. Schedule 2 to the Educators Act is amended by the substitution for Form E of the following form:

"FORM E**NOTICE OF APPEAL**

[DATE]

[NAME OF APPEAL AUTHORITY]

I, _____, [NAME OF EMPLOYEE OR EMPLOYER] hereby appeal against the FINDINGS and/or SANCTION that have been imposed in terms of the Disciplinary Code and Procedure on _____ [DATE] at _____ [PLACE].

I attach a copy of the final outcome of the disciplinary enquiry. [THE APPEAL REQUEST IS NOT VALID UNLESS THIS DOCUMENT IS ATTACHED]

My reasons for appeal are:

The desired outcome of the appeal is:

I wish/do not wish [CHOOSE ONE] to provide additional evidence not available at the time of the disciplinary proceedings.

SIGNATURE EMPLOYEE OR EMPLOYER

DATE

[PERSAL NO]

[PERSONAL DETAILS OF THE EMPLOYEE]

NB: Educators or employers may only appeal against the finding or sanction or both the finding and resultant sanction of-

1. suspension without pay for a period not exceeding three months;
2. demotion;
3. a fine;
4. a combination of the above sanctions together with warnings; or
5. dismissal."

Amendment of section 1 of Act 58 of 2001

8. Section 1 of the General and Further Education and Training Quality Assurance Act, 2001, is amended by the extension for the definition of "Council" of the following definition:

"'Council' means Umalusi, the Council for General and Further Education and Training Quality Assurance [**Council**], established by section 4;";

Amendment of section 4 of Act 58 of 2001

9. Section 4 of the General and Further Education and Training Quality Assurance Act, 2001, is amended by the substitution for section 4 of the following section:

"4. A juristic person to be known as Umalusi, the Council for General and Further Education and Training Quality Assurance [**Council**] is hereby established."

Short title and commencement

10. This Act is the Education Laws Amendment Act, 2003, and commences on the date of publication in the Government Gazette.

EXPLANATORY MEMORANDUM ON THE EDUCATION LAWS AMENDMENT BILL, 2003

1. INTRODUCTION

The Bill provides for the amendment of the following-

- (a) South African Qualifications Authority Act 58 of 1995;
- (b) South African Schools Act 84 of 1996
- (c) Employment of Educators Act 76 of 1998; and
- (d) General and Further Education and Training Quality Assurance Act 58 of 2001

2. BACKGROUND

The Acts are amended so as to make certain technical adjustments to clarify matters and to insert certain provisions to cover matters which are not provided for by the existing provisions of the Acts.

3. DISCUSSION

3.1 The South African Qualifications Authority Act 58 of 1995

3.1.1 The executive officer of the Authority is appointed in terms of subsection (8) of section 4 of the Act and not subsection (7). It is therefore necessary to effect such textual correction.

3.1.2 Given that there are three main teacher unions, section 4(3)(n) of the Act is amended so as to increase the number of the representatives of educators in the Authority from two to three.

3.1.3 Section 4(6) of the Act determines that a member of the Authority may be re-appointed only once. But sometimes it is necessary to keep a member due to his or her expertise and experience in matters relating to the functions of the Authority. To make room for such a member,

section 4 is amended to enable the Minister to extend the term of office of a member or members of the Authority.

3.2 The South African Schools Act 84 of 1996

During the investigation into the cost of education in public schools, requests were made to the Minister to regulate the additional remuneration to state employed educators by governing bodies. The school fund in most public schools consists mainly of compulsory contributions by parents of learners, but parents are kept uninformed about amounts paid to such educators and of the reasons for such additional remuneration.

In principle, all educators employed by the provincial departments, that is, state employed educators, must be compensated within the same salary ranges and on the same salary level for the same or similar duties. It is unfair and inappropriate for any state official, including educators who are being paid by their employer, to receive any additional remuneration or benefits in kind for work done in an official capacity, unless the employer gave prior approval to the official to receive such benefits.

The governing body of a school is not the employer of educators, except for those educators employed by the governing body in terms of section 20(4) of the South African Schools Act. If the school requires an educator to perform duties which do not fall within the educator's job description and working hours, such activities will require the governing body to create a specific post. The creation of a post by a governing body requires it to reflect the number of, and sufficient details of the posts when presenting its budget in accordance with section 38 of the Act. The budget must reflect the cost relating to the employment of staff in such posts, and the manner in which such costs will be met. Once a post is created by a governing body, it must be filled in an open and transparent manner and any person may compete for such a post, as prescribed by labour laws. If a state employed educator is the most suitable person for the job and it does not interfere with his or her normal duties or working hours at the school, prior approval must be obtained

from his or her employer by the governing body, and if approval is obtained, such an educator will be appointed to the post.

The main aim of the amendment is not to ban extra remuneration for educators employed by the State completely, but to curb the irresponsible manner in which it is done. The proper way of paying such remuneration is first and foremost to seek the approval of the Head of Department and secondly, the remuneration must be reflected in the annual budget of the school as contemplated in section 38 of the Act.

The current position is that educators who receive such remuneration are subject to disciplinary measures in terms of sections 33 and 18(1)(h) of the Employment of Educators Act, 1998 (Act No. 76 of 1998). These provisions of the Act prevent any educator employed by the Head of Department to receive any remuneration or any compensation in cash without the written approval of the Head of Department. It is not desirable to make many educators vulnerable to disciplinary action, since the additional remuneration is offered to them. This amendment seeks to address it in a systemic manner, by prohibiting governing bodies to make such illegal temptations to educators, and not necessarily to prosecute educators for receiving such illegal donations.

3.3 The Employment of Educators Act 76 of 1998

3.3.1 There was an omission when section 8 of the Act was amended by section 11 of the Education Laws Amendment Act 50 of 2002. Reference was made only to section 6(3)(a) instead of referring also to section 8(2) of the Act because both sections are dealing with recommendations for appointment of an educator by the governing body to the Head of Department.

3.3.2 The amendment of section 25 of the Act is designed to allow the employer to appeal either to the MEC or to the Minister, as the case may be, against the finding of the presiding officer. This is helpful in cases where the presiding officer did not apply his or her mind properly

to all the evidence before him or her and set the accused free despite the fact that evidence suggested otherwise. This applies to instances where the presiding officer decided on a sanction that does not match the misconduct committed by the accused.

3.4 General and Further Education and Training Quality Assurance Act 58 of 2001

The amendment of section 4 of the Act is proposed as a result of a request from the Council. The Council and the staff of the General and Further Education and Training Quality Assurance Council found it difficult to work with an institution with such a long and cumbersome name. The acronym, namely GENFETQAC, was also not satisfactory.

The Council has, with the help of professional word-smiths in the advertising world, adopted the name "UMALUSI" to be used to refer to the General and Further Education and Training Quality Assurance Council. The name is derived from the Nguni "uMalusi" meaning "shepherd" or, in the African context, "guardian of the family assets". UMALUSI is to take care of some of the nation's most valued possessions – general and further education and training. It will encourage and support, but also be firm on growth in quality through powerful and effective learning.

4. **FINANCIAL IMPLICATIONS**

No additional costs are foreseen as a result of the amendments.

5. **CONSULTATION**

The Bill is published to obtain comments from all role players.

6. **PARLIAMENTARY PROCEDURE**

The Department of Education and the Sate Law Adviser are of the opinion that the procedures contemplated in section 73 and 76 of the Constitution, Act 108 of 1996 should be followed since the Bill falls within the ambit of Schedule 4 of the Constitution.

HIGHER EDUCATION AMENDMENT BILL, 2003**GENERAL EXPLANATORY NOTE:**

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Higher Education Act, 1997, so as to provide for consequential matters arising out of incorporation of public higher education institutions in relation to labour and student matters; and to provide for matters connected therewith.

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

Amendment of section 24 of Act 101 of 1997

1. Section 24 of the Higher Education Act, 1997 (Act No. 101 of 1997) (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (3) of the following subsection -

“Sections 22(2) to (6) and 23(2), (2A) to (2H), with the changes required by the context apply to a incorporation referred to in subsection (1).”.

Short title

2. This Act is called the Higher Education Amendment Act, 2003.

EXPLANATORY MEMORANDUM OF THE HIGHER EDUCATION AMENDMENT BILL, 2003

1. INTRODUCTION

This Bill seeks to amend the Higher Education Act, 1997 (Act No. 101 of 1997).

2. REASONS FOR AND SUBSTANCE OF THE BILL

Clause 1: Consequential issues as a result of incorporation of public higher education institutions in relation to labour and student matters

This is necessary to clarify and bring legal certainty to issues that were introduced into the Act through the Higher Education Amendment Act, 2002 pertaining to mergers. These measures were erroneously not included in the Amendment Act, 2002 which creates an uncertainty pertaining to these matters when the incorporation takes place. These measures include –

- transitional arrangements relating to, for example, the academic programmes offered by institutions prior to a merger or declaration. Provision is made to enable these programmes to be offered by the new institution under the same rules applicable to the old institution until such programmes are amended by the council which incorporates the subdivision of another higher education institution;
- labour relations – there is potential legal uncertainty with regard to the applicability of section 197 of the Labour Relations Act, 1995 (LRA) in relation to the Higher Education Act. The amendment seeks to make it clear that all contracts of employment will be automatically transferred by operation of the law to the new institution. This approach is in line with section 197 of the LRA.

3. CONSULTATION

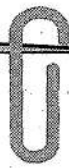
This Bill is published to obtain comments from all role players. Advice will be formally sought from the Council on Higher Education (CHE).

4. FINANCIAL IMPLICATIONS FOR THE STATE

No additional costs are foreseen as result of these amendments.

5. PARLIAMENTARY PROCEDURE

It is the view of the state law advisors and of the Department of Education that this Bill must be dealt with in accordance with the procedures established by section 75 of the Constitution.



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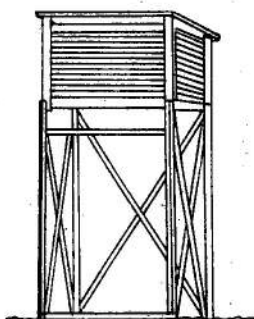
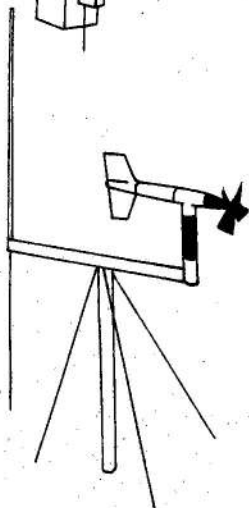
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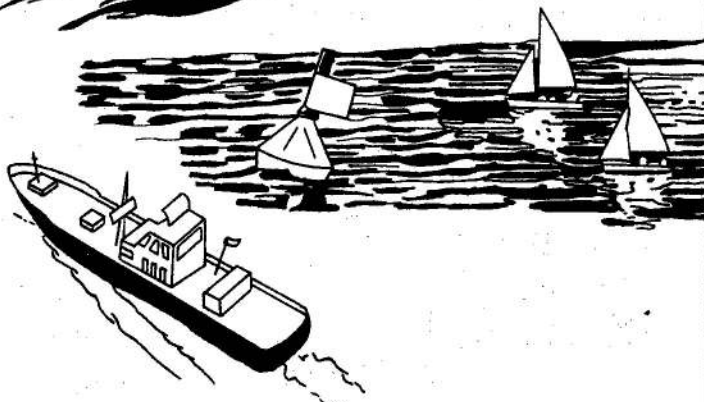
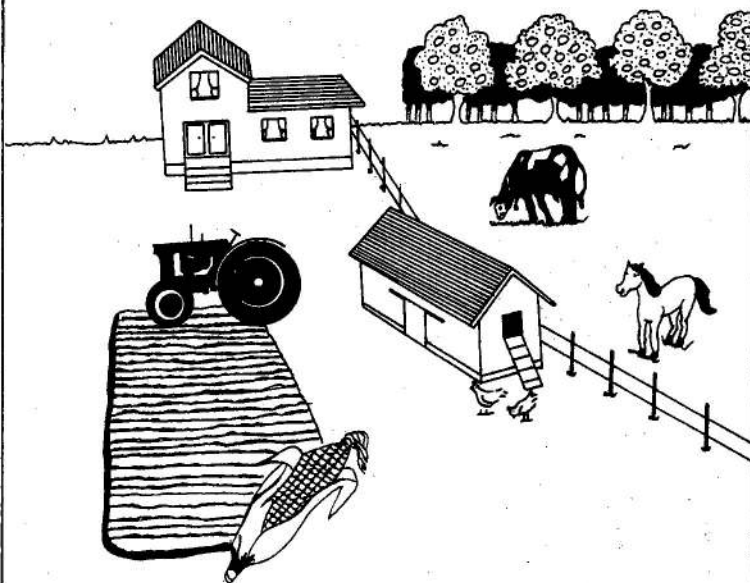
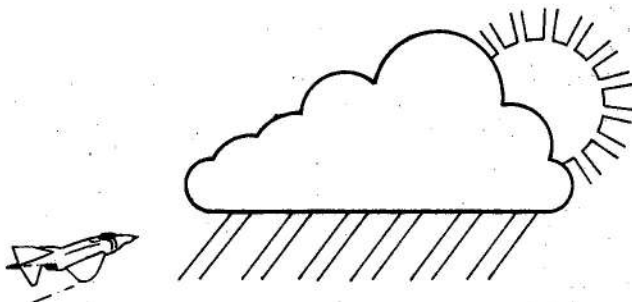
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