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## GENERAL NOTICES • ALGEMENE KENNISGEWINGS

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### DEPARTMENT OF BASIC EDUCATION

#### GENERAL NOTICE 705 OF 2021

#### **PUBLICATION OF EXPLANATORY SUMMARY OF BASIC EDUCATION LAWS AMENDMENT BILL, 2021**

1. Notice is hereby given in terms of Rule 276(1)(b) of the Rules of the National Assembly that the Minister of Basic Education intends to introduce the Basic Education Laws Amendment Bill, 2021 ("the Bill"), in the National Assembly shortly.

2. The explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly.

3. The Bill, proposes to amend the South African Schools Act, 1996 (Act No. 84 of 1996), and the Employment of Educators Act, 1998 (Act No. 76 of 1998). Furthermore, the amendments are a response to court judgments that protect and give effect to the Bill of Rights. The Bill provides for system improvements in terms of admission of learners particularly admission of undocumented learners. It also provides for financial and public accountability frameworks for governing bodies and provincial departments. The Bill further provides for additional Regulatory powers of the Minister, and enhancing decision making and oversight powers of Heads of Departments and Members of the Executive Councils. The Bill addresses provincial contextual needs relating to central procurement, home education, dispute resolution amongst other. The Bill proposes technical and substantive adjustments, clarify certain existing provisions, insert provisions which are not provided for in existing legislation and strengthen enforcement mechanisms for offences and penalties.

The Bill seeks to amend—

- (1) the South African Schools Act, 1996;
- (a) to insert and amend certain definitions;
- (b) to provide that attendance of grade R is compulsory;
- (c) to amend the penalty provision in the case where the parent of a learner, or any other person, without just cause, prevents a learner who is subject to compulsory attendance from attending school;
- (d) to create an offence in respect of the interruption, disruption or hindrance of school activities;

- (e) to provide that the educators, principals and school governing bodies are accountable and responsible for the learners in their care;
- (f) to enhance the authority of the Head of Department in relation to the admission of a learner to a public school, after consultation with the governing body of the school; to provide that the governing body of a public school must submit the admission and language policies of the public school to the Head of Department for approval;
- (g) to provide that the South African Sign Language has the status of an official language for purposes of learning at a public school;
- (h) that the Head of Department may direct a public school to adopt more than one language of instruction, where it is practicable to do so, and that, if the Head of Department issues such a directive, he or she must take all necessary steps to ensure that the public school receives the necessary resources to enable it to provide adequate tuition in the additional language of instruction;
- (i) to provide the Minister with the authority to appoint a person, an organisation or a group of persons to advise on curriculum and assessment related matters;
- (j) to provide that the code of conduct of a public school must take into account the diverse cultural beliefs, religious observances and medical circumstances of learners at the school; and to provide for the inclusion of an exemption clause in the code of conduct and for disciplinary proceedings to be dealt with in an age appropriate manner and in the best interests of the learner;
- (k) to refine the provisions relating to the possession of drugs on school premises or during school activities and to provide for conditions under which liquor may be possessed, sold or consumed on school premises or during school activities;
- (l) to refine the provisions relating to suspension and expulsion from public school by inserting a definition of serious misconduct;
- (m) to prohibit corporal punishment and initiation practices during school activities and at hostels accommodating learners of a school;
- (n) to provide for the designation of a public school as a public school with a specialised focus on talent;
- (o) to further regulate the merger of public schools;
- (p) to provide for the reasonable use of the facilities of a school for education-related activities without the charging of a fee or tariff;
- (q) to provide for centralised procurement of identified learning and teaching support material for public schools;
- (r) to further regulate the withdrawal of the functions of governing bodies; to provide that it is the Minister, and not the Member of the Executive Council, who must make

certain determinations in regard to the composition, and related matters, of governing bodies of schools for learners with special needs;

(s) to provide for the membership of a governing body of a public school that provides education with a specialised focus on talent, sports and performing or creative arts;

(t) to provide that the Head of Department may, on reasonable grounds, dissolve a governing body that has ceased to perform its functions;

(u) to provide that a member of a governing body to disclose their personal interest and to declare a direct or indirect personal interest that he or she or his or her family member may have in the recruitment or employment of staff at a public school, or in the procurement of goods and services for a public school, and that the member of the governing body must recuse himself or herself from a meeting of the governing body under such circumstances;

(v) to provide further clarity regarding the prohibition of the remuneration of members of governing bodies;

(w) to provide that it is the Minister, and not the Member of the Executive Council, who must make certain determinations in regard to the election of members of governing bodies of public schools;

(x) to provide that, where reasonably practicable, only a parent member of a governing body who is not employed by the public school may serve as chairperson of the finance committee;

(y) to make a technical amendment in regard to the status of learners serving on governing bodies of public schools;

(z) to extend and refine the provisions relating to the closure of a public school;

(Aa) to provide that lease agreements relating to a school's immovable property must be submitted to the Member of the Executive Council for approval and that, in the case of a lease for a period not exceeding 12 months, the approval of the Member of the Executive Council is not required;

(Ab) to further regulate and refine matters relating to the budget of a public school;

(Ac) to further regulate the circumstances under which a governing body may pay additional remuneration, or give any other financial benefit or benefit in kind, to a state employee;

(Ad) to provide that, where the parent of a learner applies for exemption from the payment of school fees and information cannot be obtained from the other parent of the learner, the parent may submit documentary evidence in the form of an affidavit or court order in relation to the other parent;

(Ae) to provide for financial record keeping by the governing body of a public school, for the drawing up of financial statements, and for the presentation of these to a general meeting of parents; to extend the powers of the Head of Department to conduct an investigation into the financial affairs of a public school and to provide that the governing body of a public school must submit quarterly reports on all income and expenditure to the Head of Department;

(Af) to increase the penalty provision in the case where a person establishes or maintains an independent school and fails to register it;

(Ag) to empower the Member of the Executive Council to determine conditions when granting a subsidy to an independent school and to provide for financial reporting, by such subsidised independent schools;

(Ah) to further regulate home education;

(Ai) to create an offence where a parent supplies a public school with false or misleading information or forged documents when applying for the admission of a learner or for exemption from the payment of school fees;

(Aj) to provide for a dispute resolution mechanism in the event of a dispute between the Head of Department or the Member of the Executive Council and a governing body;

(Ak) to further regulate the liability of the State for delictual or contractual damages;

(Al) to extend the power of the Minister to make regulations and to provide for offences to be created in regulations made by the Minister;

(Am) to amend the Preamble; and

(An) to provide for matters incidental thereto; and

(2) the Employment of Educators Act, 1998, so as to amend

(a) certain definitions;

(b) to exclude further education and training centres, adult basic education centres and institutions, from the ambit of the Act;

(c) to prohibit an educator from conducting business with the State and to create an offence in relation thereto; and

(d) to extend the powers of the Minister to make regulations; and to provide for matters incidental thereto.

4. Copies of the Bill can be found on the websites of the Department and Parliamentary Monitoring Group at <https://www.education.gov.za> and

<http://www.pmg.org.za> and may also be obtained, after introduction, from the Government Printers: Cape Town (Telephone number: 021 – 465 7531).

5. For further enquiries contact: Ms Noluvuyo Gela at [Gela.N@dbe.gov.za](mailto:Gela.N@dbe.gov.za); or Adv Charles Ledwaba at [Ledwaba.C@dbe.gov.za](mailto:Ledwaba.C@dbe.gov.za).