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GOVERNMENT NOTICE NO .24814 OF 2003

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:

(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

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.