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**GENERAL NOTICE**

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**NOTICE 228 OF 2011****DEPARTMENT OF HIGHER EDUCATION AND TRAINING****CALL FOR COMMENTS ON THE FURTHER EDUCATION AND TRAINING COLLEGES AMENDMENT BILL, 2011; THE HIGHER EDUCATION LAWS AMENDMENT BILL, 2011; AND THE SKILLS DEVELOPMENT AMENDMENT BILL, 2011**

I, Bonginkosi Emmanuel Nzimande, Minister of Higher Education and Training, after consultation with the Council of Education Ministers in respect of the FETCA Bill, hereby publish the Further Education and Training Colleges Amendment Bill, 2011; the Higher Education Laws Amendment Bill, 2011; and the Skills Development Amendment Bill, 2011, for comment.

All interested persons and organisations are invited to comment on the draft Bills in writing, and to direct their comments to –

The Director-General, Private Bag X174, Pretoria, 0001, for attention: Mr VL Rikhotso, email [Rikhotso.v@dhet.gov.za](mailto:Rikhotso.v@dhet.gov.za)

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

The comments should reach the Department within 21 calendar days after publication of this notice.

**DR BONGINKOSI EMMANUEL NZIMANDE, MP  
MINISTER OF HIGHER EDUCATION AND TRAINING  
SIGNED 13 APRIL 2011**

**FURTHER EDUCATION AND TRAINING COLLEGES AMENDMENT  
BILL, 2011  
(Section 76 Bill)**

**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 Further Education and Training Colleges Act, 2006, so as to remove all references to provincial authority; to substitute functions previously assigned to the Member of the Executive Council with the Minister; to remove all references to the Head of Department and substitute with the Director-General; to provide for the prohibition of a member of Council or a member of staff to conduct business, directly or indirectly with the public further education and training college which business is in conflict of interest with the concerned public further education and training college; to provide for transitional arrangements with regard to public service posts and educator posts, staff, disciplinary measures; and policy made by the Member of the Executive Council under the principal Act or any provincial law, necessary for the effective governance, management and funding of public further education and training colleges; and to provide for matters connected therewith.

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

**Amendment of section 1 of Act 16 of 2006**

1. Section 1 of the Further Education and Training Colleges Act, 2006 (hereinafter referred to as the principal Act), is hereby amended by –

- (a) the deletion of the definition of "Head of Department":  
"**['Head of Department' means the head of a provincial department of education;]**";
- (b) the deletion of the definition of "Member of the Executive Council":  
"**['Member of the Executive Council' means the Member of the Executive Council of a province who is responsible for education in that province;]**"; and
- (c) the substitution for the definition of "policy" of the following definition:  
"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;]";

### **Amendment of section 3 of Act 16 of 2006**

2. Section 3 of the principal Act is hereby amended by the substitution for subsections 1), (3), (4) and (5) of the following subsections:

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

"(3) Despite subsection (2) but subject to subsection (4), a public college may not, without the concurrence of the **[Member of the Executive Council] Minister**, dispose of or alienate in any manner any movable or immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon."

“(4) The **[Member of the Executive Council] Minister** –

- (a) may determine that certain categories of assets below a certain value may be alienated without his or her concurrence; and
- (b) must publish the value contemplated in paragraph (a) by notice in the *Gazette*.”.

“(5) The **[Head of Department] Director-General** may inspect, and must compile an inventory of all **[,]** the assets of a public college.”.

#### **Amendment of section 4 of Act 16 of 2006**

3. Section 4 of the principal Act is hereby amended by the substitution for subsections (1) and (3) of the following subsections:

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

“(3) The **[Member of the Executive Council] Minister** may act in terms of subsection (1) only –

- (a) (i) after consulting the **[Minister and the]** council of the institution, if it is a public institution;
- (ii) 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] [d]Department [of education]**; or
- (iii) with the concurrence of the owner and the relevant Member of the Executive Council responsible for finance, if it is a private institution; and“.

**Amendment of section 5 of Act 16 of 2006**

4. Section 5 of the principal Act is hereby amended by the substitution for subsections (6) and (7) of the following subsections:

“(6) The **[Member of the Executive Council] Minister** must in the notice contemplated in section 3(1) establish an interim council for the public college for a period not exceeding six months to perform the functions relating to the governance of the college until a council is established in terms of section 9(1).”.

“(7) The **[Member of the Executive Council] Minister** may extend the period referred to in subsection (6) once or for a further period not exceeding six months.”.

**Amendment of section 6 of Act 16 of 2006**

5. Section 6 of the principal Act is hereby amended by the substitution for subsections (1), (2), (5) and (7) of the following subsections:

“(1) Subject to subsection (2), the **[Member of the Executive Council] Minister** may **[, in consultation with the Minister and]** by notice in the *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] Minister** 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); and
- (d) consider such representations.”.

“(5) The **[Member of the Executive Council] Minister** must, after consultation with the councils of the public colleges that are to be merged, determine by notice contemplated in subsection (1)–

- (a) the date of establishment of the college;
- (b) the name of the college; and
- (c) the physical location and official address of the college.”.

“(7) The **[Member of the Executive Council] Minister** may extend the period referred to in subsection (6) once for a further period not exceeding six months.”.

#### **Amendment of section 7 of Act 16 of 2006**

6. Section 7 of the principal Act is hereby amended by the substitution for subsections (1), (2), and (3) of the following subsections:

“(1) The **[Member of the Executive Council] Minister** may determine that the governance of two or more 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 those colleges.”.

“(2) The **[Member of the Executive Council] Minister** 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 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 to him or her within a period of not less than 90 days; and
- (d) considered all such submissions.”.

“(3) The **[Member of the Executive Council] Minister** must, by notice in the *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 10 (6), (7) and (9).”.

#### **Amendment of section 8 of Act 16 of 2006**

7. Section 8 of the principal Act is hereby amended by the substitution for subsections (1), (2), and (3) of the following subsections:

“(1) The **[Member of the Executive Council] Minister** may by notice in the *Gazette*, close a public college.”.

“(2) The **[Member of the Executive Council] Minister** may not act in terms of subsection (1) unless he or she has –

- (a) **[consulted with the Minister; (b)]** given written notice to the college in question of the intention to close it;
- [(c)](b)** given notice in the *Gazette* of his or her intention so to act;
- [(d)](c)** given the council of the college in question and interested parties an opportunity to make written representations within a period of not less than 90 days; and
- [(e)](d)** considered those representations.”.

“(3) 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] Minister**; and
- (b) any assets, remaining after payment of all liabilities, vest in the **[Member of the Executive Council] Minister**.”.

#### **Amendment of section 10 of Act 16 of 2006**

8. Section 10 of the principal Act is hereby amended by –

- (a) the substitution for subparagraph (iv) of paragraph (a) of subsection (2) of the following subparagraph:  
“(iv) be approved by the **[Member of the Executive Council] Minister**.”;
- (b) the substitution for paragraph (b) of subsection (2) of the following paragraph:  
“(b) determine the language policy of the public college, subject to the approval of the **[Member of the Executive Council] Minister**; and “;
- (c) the substitution of paragraph (b) of subsection (4) of the following paragraph:  
“(b) five external persons appointed by the **[Member of the Executive Council] Minister**.”;
- (d) the substitution for subsection (6) of the following subsection:  
“(6) The council must, in consultation with the **[Member of the Executive Council] Minister**, appoint four additional external persons with financial, human resources and legal skills as members of the council.”.
- (e) the substitution for subsection (7) of the following subsection:  
“(7) The manner in which the members of the council contemplated in subsection (4) (c) to (g) are to be elected, must, where applicable, be determined by the **[Member of the Executive Council] Minister** by notice in

the Gazette **[or in terms of a provincial law]** and must, in so far as it is practically possible, ensure 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) the 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.”.

- (f) the substitution for paragraph (b) of subsection (8) of the following paragraph:  
“(b) employed by the **[Member of the Executive Council] Minister;**”;
- (g) the substitution for subsection (9) of the following subsection:

“(9) **[The] A** member**[s]** of a council-

- (a) must be a person[s] with knowledge and experience relevant to the objects and governance of the public higher education institution concerned; [and ]
- (b) must participate in the deliberations of the council in the best interests of the public higher education institution concerned; and
- (c) must declare any business, commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest;
- (d) may not place him or her under any financial or other obligation to outside individual or organization that might seek to influence performance and function of the council;
- (e) (i) may not have a conflict of interest with the institution;

- (ii) may not have 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;
  - (iii) must 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;
  - (iv) is obliged to excuse him or herself from the meeting during the discussion of the matter and the voting thereof.”.
- (h) the substitution for subsection (10) of the following subsection:  
“(10) The **[Member of the Executive Council] Minister** must- “.
- (a) by notice by notice in the Gazette, or by any other reasonably practicable means, invite nominations for the appointment of the members contemplated in subsection (4) (b); and
  - (b) consider the nominations and appoint the members with due regard to the criteria contemplated in this section.”.

#### **Amendment of section 14 of Act 16 of 2006**

9. Section 14 of the principal Act is hereby amended by the substitution for the following section:

“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 of the college, subject to policy determined by the **[Member of the Executive Council] Minister**.”.

**Amendment of section 17 of Act 16 of 2006**

10. Section 17 of the principal Act is hereby amended by the substitution for subsections (1) and (3) of the following subsections:

“(1) Subject to applicable policy determined by the Minister, the council of a public college determines the admission policy of the college, after consulting the academic board and with the approval of the **[Member of the Executive Council] Minister**.”.

“(3) The council may, subject to applicable policy, the approval of the **[Head of Department] Director-General** 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 in question; and number of students who may be admitted for a particular further education and training programme and the manner of their selection; and
- (d) refuse the readmission of a student who fails to satisfy the minimum requirements for readmission.”.

**Amendment of section 19 of Act 16 of 2006**

11. Section 19 of the principal Act is hereby repealed.

**Amendment of section 20 of Act 16 of 2006**

12. Section 20 of the principal Act is hereby amended by the substitution for section 20 of the following section:

**[(1) The college is the employer of all lecturers and support staff.**

**(2) Subject to this Act, the Labour Relations Act, the Basic Conditions of Employment Act, the Employment Equity Act and any other applicable law, the council must establish posts for lecturers and support staff.**

**(3) The council must appoint and remunerate staff from the funds allocated in accordance with the norms and standards contemplated in section 23 and other income received by the college from other sources.**

**(4) Despite anything to the contrary in any other law but subject to this section, the Labour Relations Act or any other collective agreement concluded by a bargaining council that has jurisdiction in respect of employees of a public college, the council must determine the functions, conditions of service and privileges of lecturers and support staff.**

**(5) The lecturers and support staff are accountable to the principal.**

**(6) When presenting the annual budget contemplated in section 22 the council must provide sufficient details of any posts envisaged in terms of subsection (2), including the estimated cost relating to the employment of lecturers and support staff in such posts and the manner in which it is proposed that such costs will be met.**

**(7) The lecturers and support staff contemplated in subsection (1) must be employed in compliance with the basic values and principles**

referred to in section 195 of the Constitution of the Republic of South Africa, 1996, 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.

(8) The council must adopt a Disciplinary Code for lecturers and support staff in accordance with the college statute.]

#### **"20. Appointment of lecturers and support staff**

(1) (a) The lecturer establishment of a public college is determined by the allocation of posts by the Director-General from the Department of Higher Education and Training from the post establishment created by the Minister and lecturers appointed in such posts are employed in terms of this Act.

(b) The non-lecturer establishment of a public college is determined in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).

(2) Subject to this Act, the Labour Relations Act, 1995 (Act 66 of 1995), and any other applicable law, a public college may establish posts for lecturers and employ lecturers additional to the establishment referred to in subsection (1) (a).

(3) Subject to this Act, the Labour Relations Act, 1995 (Act 66 of 1995), and any other applicable law, a public college may establish posts for non-lecturers and employ non-lecturer staff additional to the establishment referred to in subsection (1) (b).

(4) (a) The Council must determine the functions, conditions of service and privileges of the staff contemplated in subsections (2) and (3), subject to the applicable labour law and paragraph (b).

(b) The salary payable to a lecturer contemplated in subsection (2) shall not be less than the salary paid to an educator-

(i) contemplated in subsection (1) (a); and

(ii) who performs the same or equivalent work as such lecturer, unless collectively agreed to in a bargaining council established in terms of the Labour Relations Act, 1995 (Act 66 of 1995).

(5) A member of staff may not conduct business directly or indirectly with the public further education and training college which business is in conflict of interest with the public further education and training college concerned.

(6) Business referred in subsection (5) relates to conduct that is aimed at receiving any direct or indirect financial personal gain that does not form part of the employment relationship contemplated in subsection (1).

(7) When presenting the annual budget contemplated in section 22(4) the council must provide sufficient details of any posts envisaged in terms of subsections (2) and (3), including the estimated cost relating to the employment of staff in such posts and the manner in which it is proposed that such cost will be met.

(8) The staff contemplated in subsections (2) and (3) 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 representation.”.

**Amendment of section 22 of Act 16 of 2006**

13. Section 22 of the principal Act is hereby amended by –

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

“(1) The **[Member of the Executive Council]** Minister must from money appropriated **[by the provincial legislature]** fund public colleges on a fair, equitable and transparent basis;”;

(b) the substitution for subsection (2) of the following subsection:

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

(a) any 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.”.

(c) the substitution for subsection (3) of the following subsection:

“(3) Subject to the requirements in the minimum norms and standards determined in terms of section 23, the **[Member of the Executive Council]** Minister must determine further appropriate measures for the redress of past inequalities.”.

(d) the substitution for subsection (4) of the following subsection:

“(4) The **[Member of the Executive Council]** Minister 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.”.

**Amendment of section 23 of Act 16 of 2006**

14. Section 23 of the principal Act is hereby amended by the substitution for the following section:

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

**Amendment of section 24 of Act 16 of 2006**

15. Section 24 of the principal Act is hereby amended by –

- (a) the substitution for paragraph (d) of subsection (1) of the following paragraph:  
“(d) money raised by means of loans, subject to the approval of the **[Member of the Executive Council] Minister**.”;
- (b) the substitution for subsection (2) of the following subsection:  
“(2) A public college may not raise money by means of a loan or overdraft without the approval of the **[Member of the Executive Council] Minister**.”;
- (c) the substitution of subsection (3) of the following subsection:  
“(3) If a person lends money or grants an overdraft to a public college without the approval of the **[Member of the Executive Council] Minister**, the State and the college are not bound by the contract of lending money or an overdraft agreement.”.

**Amendment of section 25 of Act 16 of 2006**

16. Section 25 of the principal Act is hereby amended by –

- (a) the substitution for subsection (1) of the following subsection:  
“(1) the council of a public college must, in a manner determined by the **[Member of the Executive Council] Minister** –
- (a) keep records of all its proceedings;
  - (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; and
  - (c) implement internal audit and risk management systems which are not inferior to the standards contained in the Public Finance Management Act, 1999 (Act 1 of 1999).
- (b) the substitution for subsection (3) of the following subsection:  
“(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] Minister**, provide the **[Member of the Executive Council] Minister** with –
- (a) a report on the overall management and governance of the college;
  - (b) a report on the overall performance of students on the programmes offered by the college;
  - (c) a duly audited statement of income and expenditure; and
  - (d) a balanced sheet and cash flow statement.”; and
- (c) the substitution for subsection (4) of the following subsection:  
“(4) The council of a public college must provide the **[Member of the Executive Council] Minister** with such additional information as the **[Member of the Executive Council] Minister** may require.”.

**Amendment of section 26 of Act 16 of 2006**

17. Section 26 of the principal Act is hereby amended by –

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

“(1) If the management staff or 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]** Minister may call upon the management staff or council to comply with the provision or condition within a specified period.”.

(b) the substitution for subsection (2) of the following subsection:

“(2) If the management staff or council thereafter fails to comply with the provision or condition timeously, the **[Member of the Executive Council]** Minister may withhold payment of any portion of any allocation **[appropriated by the provincial legislature]** in respect of the public college concerned.”.

(c) the substitution for subsection (3) of the following subsection:

“(3) Before taking action under subsection (2), the **[Member of the Executive Council]** Minister must-

- (a) give notice to the management staff or council of the public college concerned of the intention so to act;
- (b) give such management staff or council a reasonable opportunity to make representations; and
- (c) consider such representations.”; and

(d) the substitution for subsection (4) of the following subsection:

“(4) If the **[Member of the Executive Council]** Minister acts under subsection (2), a report regarding the action must be tabled **[in the provincial legislature by the Member of the Executive Council]** as soon as reasonably practical after the action.”.

#### **Amendment of section 28 of Act 16 of 2006**

18. Section 28 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act 61 of 1973) or the Companies Act, 2008 (Act 71 of 2008), upon enactment; and”.

#### **Amendment of section 31 of Act 16 of 2006**

19. Section 31 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (2):

“(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.”.

#### **Amendment of section 41B of Act 16 of 2006**

20. Section 41B of the principal Act is hereby amended by –

(a) the deletion of subsection (2) and (3):

“**[(2) In determining national policy for education and training at colleges, the Minister shall take into account the competence of the**

**provincial legislatures in terms of section 146 of the Constitution, and the relevant provisions of any provincial law relating to education.]**

**[(3) Subject to the Constitution, national policy shall prevail over the whole or a part of any provincial policy on further education and training if there is a conflict between the national and provincial policies.]”.**

#### **Amendment of section 41D of Act 16 of 2006**

21. Section 41D of the principal Act is hereby amended by –

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

**“(1) Policy contemplated in section 41B shall be determined by the Minister [after consultation with the Council of Education Ministers established by section 41H].**

#### **Amendment of section 41E of Act 16 of 2006**

22. Section 41E of the principal Act is hereby amended by –

(a) the deletion of paragraph (a) of section 41E:

**“(a) [the Council of Education Ministers established by section 41H, in respect of further education and training at colleges; and (b)].”.**

#### **Amendment of section 41G of Act 16 of 2006**

23. Section 41G of the principal Act is hereby amended by –

(a) the substitution for subsection (2) of the following subsection:

“(2) Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework[, **and shall be formulated after consultation with the Council of Education Ministers referred to in section 41D(1).**].”.

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

“(3) The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of further education and training management information systems, or by other suitable means[, **in co-operation with provincial departments of education**].”.

- (c) the deletion of subsection (5):

“(5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3) [**after providing an opportunity for the relevant provincial education department to comment, which comment shall be published with the report**].”.

- (d) the deletion of subsection (6):

“**[(6) If a report prepared in terms of subsection (5) indicates that the standards of further education and training provision, delivery and performance in a province do not comply with the Constitution or with the policy determined in terms of section 41B, the Minister shall inform the provincial political head of education concerned and require the submission, within 90 days, of a plan to remedy the situation.]**”.

- (e) the substitution for subsection (7) of the following subsection:

“(3) A plan in compliance with Public Finance Management Act, 1999 (Act 1 of 1999), [**required by the Minister in terms of subsection (6)**] shall be prepared by the [**provincial education department concerned, in consultation with the Department, and the**] Minister and the Minister shall

table the plan in Parliament. [with his or her comments within 21 days of receipt, if Parliament is then in session, or, if Parliament is in recess, within 21 days after the commencement of the first ensuing session of Parliament.]”.

#### **Amendment of section 41H of Act 16 of 2006**

24. Section 41H of the principal Act is hereby deleted:

**“[41H (1) There is hereby established a council, called the Council of Education Ministers, consisting of-**

- (a) the Minister, who is the chairperson; and**
- (b) every provincial political head of education.**

**(2) The Director-General shall attend meetings of the Council of Education Ministers in order to report on the proceedings of the Heads of Education Departments Committee established by section 411, and to advise on any other matter relating to the responsibilities of the Department.**

**(3) The chairpersons of the Portfolio Committee on Higher Education and Training of the National Assembly and of the Select Committee on Education and Recreation of the National Council of Provinces may attend meetings of the Council of Education Ministers.**

**(4) The functions of the Council of Education Ministers shall be to--**

- (a) promote national further education and training which take full account of the policies of the government;**
- (b) share information and views on all aspects of further education and training in the Republic; and**

(c) co-ordinate action on matters of mutual interest to the national and provincial governments.

(5) The Council of Education Ministers may draw up such rules regarding the convening of its meetings, the frequency of its meetings, the procedure at its meetings, including the quorum for its meetings, and any other administrative or procedural matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers.

(6) The proceedings of the Council of Education Ministers shall not be invalid merely by virtue of the fact that there is a vacancy in the Council.]”.

#### **Amendment of section 41I Act 16 of 2006**

25. Section 41I of the principal Act is hereby amended by –

(a) the substitution for paragraph (c) of subsection (2) for the following paragraph:

“(c) co-ordinate administrative action on matters of mutual interest to the [higher education and training d]Departments; and

(b) the deletion for paragraph (d) of subsection (2):

“[(d) advise the Department on any matter contemplated in sections 41B to 41G and 41J in respect of further education and training, or on any other matter relating to the proper functioning of the national further education and training system.]”.

**Amendment of section 42 of Act 16 of 2006**

26. Section 42 of the principal Act is hereby amended by the deletion of subsection (2) -
- “[(2) A provincial department of education or college must, on the request of the Director-General, provide him or her with any relevant information required to comply with subsection (1).]”.**

**Amendment of section 44 of Act 16 of 2006**

27. Section 44 of the principal Act is hereby amended by –
- (a) the substitution for subsection (1) of the following subsection:
- “(1) A public college must prepare a strategic plan contemplated in the norms and standards for each financial year, which must be approved by the council and submitted to the **[Member of the Executive Council] Minister** at least 30 days before the commencement of the financial year.”.
- (b) the substitution for subsection (2) of the following subsection:
- “(2) A public college must prepare and submit to the **[Member of the Executive Council] Minister** an annual report in respect of-
- (a) its performance; and
- (b) its use of available resources.”.
- (c) the substitution for subsection (3) of the following subsection:
- “(3) The Minister **[or Member of the Executive Council]** must publish the reports in a manner determined by the Minister **[or Member of the Executive Council]**.”.

**Amendment of section 45 of Act 16 of 2006**

28. Section 45 of the principal Act is hereby amended by –

- (a) the substitution for subsection (2) of the following subsection:  
“(2) Every college must provide such information about the college as is required by the **[Head of Department or the]** Director-General **[in consultation with the Head of Department]**.”.
- (b) the substitution for subsection (3) of the following subsection:  
“(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 required by the NBFET.

#### **Amendment of section 46 of Act 16 of 2006**

29. Section 46 of the principal Act is hereby amended by –

- (a) the substitution for subsection (1) of the following subsection:  
“(1) The **[Member of the Executive Council]** Minister may appoint a person to conduct an investigation at a public college if the council of the college requests the appointment of such a person or if-
- (a) circumstances arise at the colleges that-
    - (i) involve financial or other maladministration of a serious nature; or
    - (ii) seriously undermine the effective functioning of the college; and
  - (b) the council of the college has failed to resolve such circumstances; and
  - (c) the appointment is in the interests of further education and training in an open and democratic society.”; and
- (b) the substitution for subsection (2) of the following subsection:  
“(2) The person appointed in terms of subsection (1) must, in terms of the terms of reference specified by the **[Member of the Executive Council]** Minister-

- (a) within 30 days of his or her appointment, conduct an investigation at the public college in question; and
- (b) within 60 days after his or her appointment-
  - (i) report in writing to the **[Member of the Executive Council] Minister** the findings of his or her investigation; and”.
- (c) the substitution for subsection (3) of the following subsection:

“(3) The **[Member of the Executive Council] Minister** must as soon as practicable furnish a copy of the report referred to in subsection (2) to the council concerned.”.
- (d) the substitution for subsection (4) of the following subsection:

“(4) If an audit of the financial records of a public college, or an investigation by the person as contemplated in subsection (1), reveals financial or other maladministration of a serious nature at a public college or the serious undermining of the effective functioning of a public college, the **[Member of Executive Council may, after consultation with the] Minister** may after consultation with **[and]** the council of the public college concerned, if practicable, and despite any other provision of this Act, appoint a person as administrator to take over the authority of the council or the management of the college and such person may perform all the functions relating to governance or management on behalf of the college for a period determined by the **[Member of the Executive Council] Minister**, which period may not exceed two years.”.
- (e) the substitution for subsection (5) of the following subsection:

“(5) The **[Member of the Executive Council] Minister** may extend the period referred to in subsection (4) once for a further period not exceeding six months.

**Amendment of section 47 of Act 16 of 2006**

30. Section 47 of the principal Act is hereby amended by –

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

“(1) The council of a public college may, after consultation with interested parties and with the approval of the **[Member of the Executive Council] Minister**, change the name of the public college.

(b) the substitution for subsection (2) of the following subsection:

“(2) The **[Member of the Executive Council] Minister** must, by notice in the Gazette, publish the change of name of such college.”.

**Amendment of section 49 of Act 16 of 2006**

31. Section 49 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (3) of the following paragraph:

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

**Amendment of section 50 of Act 16 of 2006**

32. Section 50 of the principal Act is hereby amended by –

(a) the substitution for subsection (2) of the following subsection:

“(2) The **[Member of the Executive Council] Minister** may, on such conditions as he or she may determine, delegate the performance of any of his or her functions under this Act, to-

(a) any employee in a provincial department responsible for education and training; or

(b) any organ of state.”.

### **Amendment of section 54 of Act 16 of 2006**

33. Section 54 of the principal Act is hereby amended by –

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

“(1) The principal, vice-principal, lecturers and support staff employed by the [State]College on posts approved by the Minister as fully funded posts at 1 January 2012, continue to be so employed until appointed in terms of this Act. “.

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

“(3) The Education Labour Relations Council (ELRC) and the [PSCBC] GPSSBC continue to be the bargaining council to determine salaries and conditions of employment until the parties agree to establish a new structure relevant to public colleges.

### **Transitional arrangements**

34. The following transitional arrangements shall apply:

(1) The principal and vice-principals posts which are transferred from the Provincial Education Department to the Department of Higher Education and Training, in terms of section 14 of the Public Service Act, 1994 (Proc 103 of 1994) continue to exist.

(2) Personnel support services to colleges situated in provinces, both at district and head office, must be identified in accordance with section 14 of the Public Service Act, even if such a person is appointed as an educator in terms of the

Employment of Educators Act, 1998 (Act 76 of 1998) and must be transferred to the post establishment of the Department of Higher Education and Training.

(3) The Director-General of the Department of Higher Education and Training must identify the suitable office within provinces from which the support staff will function.

(4) The provincial offices contemplated in subsection (3) will provide-

(a) support to the further education and training colleges with regard to planning, coordination, monitoring and reporting of statutory responsibilities assigned to the Minister and adhere to and respect the statutory assignment of functions and responsibilities to the Further Education and Training Council; and

(b) perform any function delegated by the Minister or the Director-General, to the manager in the provincial office.

(5) Any disciplinary measures relating to employment of staff as contemplated in subsection (4) will continue under the framework that authorized the commencement of that procedure of the institution.

(6) The process will be transferred to be completed by the respective authority of the Department of Higher Education and Training.

(7) If any person occupying a lecturer's post as contemplated in section 54(1) of this Act, such post must be converted into an equivalent public service post and the incumbent will continue with employment in the converted post under the prescripts and conditions as set out in the Public Service Act, 1994 (Proc 103 of 1994).

(8) If any discrepancy exists between a condition of service relating to an educator's post and the public service post, then the conditions of the public service post will prevail.

(9) Notwithstanding subsection (8), during the translation of the post, any condition attached to an educator's post that is more beneficial to the incumbent continues to exist as a benefit personal to that incumbent, until the condition of the public service post are similar or better.

**Short title**

35. This Act is the Further Education and Training Colleges Amendment Act, 2011 and will come into operation on a date to be determined by the Minister and published in a *Government Gazette*.

## MEMORANDUM ON THE OBJECTS OF THE FURTHER EDUCATION AND TRAINING COLLEGES AMENDMENT BILL, 2011

### 1. MAIN OBJECT OF BILL

- 1.1 To amend the Further Education and Training Colleges Act, 2006, so as to remove all references to provincial authority; to substitute functions previously assigned to the Member of the Executive Council with the Minister; to remove all references to the Head of Department and substitute with the Director-General; to provide for the prohibition of a member of Council or a member of staff to conduct business, directly or indirectly with the public further education and training college which business is in conflict of interest with the concerned public further education and training college; to provide for transitional arrangements with regard to public service posts and educator posts, staff, disciplinary measures; and policy made by the Member of the Executive Council under the principal Act or any provincial law, necessary for the effective governance, management and funding of public further education and training colleges; and to provide for matters connected therewith.
- 1.2 The Further Education and Training Colleges Act, 2006 (Act 16 of 2006), (the FETC Act), is the principal Act that is amended by this Bill.

### 2. MAIN FEATURES OF BILL

#### 2.1 FETC Act (clauses 1 to 11; 13 and 26 to 33 )

- 2.2.1 The Bill seeks to amend the Act so as to remove all references to provincial authority; to substitute functions previously assigned to the Member of the Executive Council with the Minister; to remove all references to the Head of Department and substitute with the Director-General.

## **2.2 FETC Act (clauses 20 to 24 and 34 )**

**2.2.2** The Bill seeks to provide for transitional arrangements with regard to public service posts and educator posts, staff, disciplinary measures; and policy made by the Member of the Executive Council under the principal Act or any provincial law, necessary for the effective governance, management and funding of public further education and training colleges.

## **3. CONSULTATION**

The Bill will be published in the *Government Gazette* for public comment.

## **4. FINANCIAL IMPLICATOINS**

Costs follow functions, therefore current budgets earmarked for Further Education and Training Colleges and reflected on provincial budgets, will follow the functions to the national Department of Higher Education and Training. Such funds will therefore be reverted to the national budget; and costs for publication of this Bill.

## **5. PARLIAMENTARY PROCEDURE**

**5.1** The State Law Advisers and the Department of Higher Education and Training are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution, since it is still a concurrent legislative competency of the national and provincial governments. Once the proposed amendment to Schedule 4 to the Constitution, namely "Education at all levels, excluding tertiary education" has been amended, to substitute that for "school education" and comes into effect, this Bill will then only become a section 75 Bill.

- 5.2** The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain any provisions pertaining to customary law or to the customs of traditional communities.