

REPUBLIC OF SOUTH AFRICA

FURTHER EDUCATION AND TRAINING COLLEGES AMENDMENT BILL

*(As amended by the Select Committee on Education and Recreation
(National Council of Provinces))
(English text is the official text of the Bill)*

(MINISTER OF HIGHER EDUCATION AND TRAINING)

[B 13D—2011]

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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 assign functions previously assigned to the Member of the Executive Council to the Minister; to remove all references to “Head of Department” and replace them with “Director-General”; to regulate the conduct of members of the council, members of a committee of the council and staff of a public further education and training college engaging in business with the relevant public college; to provide afresh for the appointment of staff; and to provide for transitional arrangements; 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, as amended by section 1 of Act 25 of 2010

1. Section 1 of the Further Education and Training Colleges Act, 2006 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the deletion of the definition of “Head of Department”;
 - (b) by the deletion of the definition of “Member of the Executive Council”;
 - (c) by the deletion of paragraph (b) of the definition of “policy”; and
 - (d) by the substitution for the definition of “SAQA” of the following definition: 10
 - “ ‘**SAQA**’ means the South African Qualifications Authority, established by section [3] 10 of the [**South African Qualifications Authority Act, 1995 (Act No. 58 of 1995)**] National Qualifications Framework Act, 2008 (Act No. 67 of 2008).”. 10

Amendment of section 3 of Act 16 of 2006

2. Section 3 of the principal Act is hereby amended— 15
- (a) by the substitution for subsection (1) of the following subsection:
 - “(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.”;
 - (b) by the substitution for subsection (3) of the following subsection: 20
 - “(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.”;

- (c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“The **[Member of the Executive Council]** Minister—”; and

- (d) by the substitution for subsection (5) of the following subsection:

“(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—

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

“(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.”;

- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The **[Member of the Executive Council]** Minister may act in terms of subsection (1) only—”; and

- (c) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(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 department of education]** Department; or
(iii) with the concurrence of the owner and the **[relevant Member of the Executive Council responsible for finance]** Minister of 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, respectively:

“(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—

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

“(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”;

- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“Before merging two or more public colleges the **[Member of the Executive Council]** Minister must—”; and

- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“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)—”; and

- (d) by the substitution for subsection (7) of the following subsection:
 “(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

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6. Section 7 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “The **[Member of the Executive Council] Minister** may determine that the governance of two or more colleges must vest in a single council if—”; 10
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “The **[Member of the Executive Council] Minister** may not act in terms of subsection (1) unless he or she has—”; and 15
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “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—”. 20

Amendment of section 8 of Act 16 of 2006

7. Section 8 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The **[Member of the Executive Council] Minister** may, by notice in the *Gazette*, close a public college.”; 25
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “The **[Member of the Executive Council] Minister** may not act in terms of subsection (1) unless he or she has—”; 30
- (c) by the deletion in subsection (2) of paragraph (a); and 30
- (d) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs, respectively:
 “(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 35
 (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—

- (a) by the substitution in subsection (2)(a) for subparagraph (iv) of the following subparagraph: 40
 “(iv) be approved by the **[Member of the Executive Council] Minister**”;;
- (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 45
 “(b) determine the language policy of the public college, subject to the approval of the **[Member of the Executive Council] Minister**; and”;
- (c) by the substitution in subsection (4) for paragraph (b) of the following paragraph: 50
 “(b) five external persons appointed by the **[Member of the Executive Council] Minister**”;;
- (d) by the substitution for subsection (6) of the following subsection: 55
 “(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) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:
 “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—”;
- (f) by the substitution in subsection (8) for paragraph (b) of the following paragraph:
 “(b) employed by the **[Member of the Executive Council] Minister**.”;
- (g) by the substitution for subsection (9) of the following subsection:
 “(9) **[The members]** A member of a council or an interim council—
 (a) must be **[persons]** a person with knowledge and experience relevant to the objects and governance of the public college in question; **[and]**
 (b) must participate in the deliberations of the council or interim council in the best interest of the public college in question;
 (c) must, before he or she assumes office, declare any business, commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest with the public college in question;
 (d) may not place himself or herself under any financial or other obligation to any individual or organisation that might seek to influence the performance of any function of the council;
 (e) (i) may not have a conflict of interest with the public college in question;
 (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 with the public college in question; and
 (iii) must, before the meeting and in writing, inform the chairperson of that meeting of the conflict or possible conflict of interest.”;
- (h) by the insertion after subsection (9) of the following subsections:
 “(9A) Any person may, in writing, inform the chairperson of a meeting, before the meeting, of a conflict or possible conflict of interest of a member of the council of the public college in question of which such person may be aware.
 (9B) A member referred to in subsections (9)(e) and (9A) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.
 (9C) A committee of the council with delegated functions in terms of section 50(1) may not take a decision on a matter considered by it if any member of the committee has a conflict of interest contemplated in this section.
 (9D) A member of the council or a member of a committee of the council who contravenes subsection (9), (9A) or (9B), after the council has followed a due process, may be—
 (a) suspended from attending a meeting; or
 (b) disqualified as a member of the council or a member of a committee of the council.
 (9E) The council must—
 (a) having regard to the provisions of subsections 9, (9A) and (9B) adopt a code of conduct to which all members of the council, all members of committees of the council and all persons who exercise functions of the council in terms of delegated authority must subscribe; and
 (b) determine rules and procedures for an annual declaration—
 (i) by each member of the council, each member of council committees and each person who exercises functions of the council in terms of delegated authority;
 (ii) of his or her financial interests and fiduciary roles, the latter to include but not be limited to offices, directorships of

- companies, memberships of close corporations and trusteeships held; and
- (iii) of the financial interests and fiduciary roles of the members of his or her immediate family.”; and
- (i) by the substitution in subsection (10) for the words preceding paragraph (a) of the following words: 5
- “The [Member of the Executive Council] Minister must—”.
- (j) by the addition of the following subsection: 10
- “(11) For the purpose of this section, ‘immediate family’, in relation to a member, means his or her parent, sibling, child, including an adopted child or a step-child, or spouse (whether by statutory, customary or religious law), and including a life partner who is a person living with that member as if they were married to each other.”.

Substitution of section 14 of Act 16 of 2006

9. The following section is hereby substituted for section 14 of the principal Act: 15

“Student representative council

14. 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.”. 20

Amendment of section 17 of Act 16 of 2006

10. Section 17 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 25
- “(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.”; and
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 30
- “The council may, subject to applicable policy, the approval of the [Head of Department] Director-General and after consultation with the academic board—”.

Repeal of section 19 of Act 16 of 2006

11. Section 19 of the principal Act is hereby repealed. 35

Substitution of section 20 of Act 16 of 2006

12. The following section is hereby substituted for section 20 of the principal Act:

“Appointment of staff

20. (1) The staff of public colleges consists of persons appointed by—
- (a) the Minister in terms of the Public Service Act in posts established on the organisational structure of the Department and identified as posts to the respective colleges; and 40
- (b) the council in posts established in addition to posts contemplated in paragraph (a).
- (2) Subject to the Public Service Act and any other applicable law, the Minister must— 45
- (a) establish the posts contemplated in subsection (1)(a);
- (b) appoint staff in the identified posts; and
- (c) remunerate staff from the funds allocated to the respective colleges in accordance with the norms and standards contemplated in section 23. 50
- (3) The staff contemplated in subsection (1)(a) must—

- (a) report to the council in respect of matters and functions allocated to them by the council in terms of this Act; and
- (b) report to the Minister as the employer for all employment purposes.
- (4) 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—
 - (a) may establish posts contemplated in subsection (1)(b) for staff other than the management staff, which posts are additional to the posts contemplated in subsection (2)(a);
 - (b) may appoint staff in those posts;
 - (c) must remunerate staff from the funds received by the public college in question from other sources than the money received in terms of section 22;
 - (d) must determine the functions, conditions of service and privileges of the staff contemplated in paragraph (a); and
 - (e) must pay remuneration to the staff contemplated in paragraph (a) that may not be less than the remuneration paid to a comparable appointment made in terms of the Public Service Act contemplated in subsection (1)(a).
- (5) When presenting the annual financial reports contemplated in section 25 the council must provide sufficient details of any posts envisaged in terms of subsection (4)(a), including the estimated cost relating to the employment of staff in those posts and the manner in which it is proposed that the cost will be met.
- (6) The staff contemplated in subsections (2) and (4) 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 representation.
- (7) A member of staff must in writing—
 - (a) before he or she is appointed, declare any business that may raise a conflict or a possible conflict of interest with the further education and training college concerned; and
 - (b) notify the further education and training college concerned of any conflict or possible conflict of interest before such further education and training college procures any goods or services from such member of staff or an organisation within which such member holds an interest.
- (8) A member of staff may not conduct business directly or indirectly with the further education and training college at which he or she is employed that entails or may entail a conflict of interest with the further education and training college unless the council of such further education and training college is of the opinion that—
 - (a) such goods, products or services are unique;
 - (b) the supplier is a sole provider; and
 - (c) it is in the best interest of the institution.
- (9) A member of staff of a further education and training college may not, on behalf of that further education and training college, contract with himself or herself or any entity in which he or she has a direct or indirect financial or personal interest.
- (10) Contracting referred in subsection (9) relates to conduct that is aimed at receiving any direct or indirect personal gain that does not form part of the employment relationship contemplated in subsection (1).

Amendment of section 21 of Act 16 of 2006

- 13.** Section 21 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “If a dispute arises about the payment or employment conditions of a **[lecturer or a]** member of the **[support]** staff, employed in terms of section 20(4), any party to the dispute may refer the dispute in writing to—”.

Substitution of section 22 of Act 16 of 2006

14. The following section is hereby substituted for section 22 of the principal Act:

“Responsibility of State

22. (1) The [**Member of the Executive Council**] Minister must from money appropriated for this purpose by [**the provincial legislature**] Parliament fund public colleges on a fair, equitable and transparent basis. 5

(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 10

(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.

(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. 15

(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.”. 20

Substitution of section 23 of Act 16 of 2006

15. The following section is hereby substituted for section 23 of the principal Act:

“Norms and standards for funding of public colleges

23. 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.”. 25

Amendment of section 24 of Act 16 of 2006

16. Section 24 of the principal Act is hereby amended— 30

(a) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) money raised by means of loans, subject to the approval of the [**Member of the Executive Council**] Minister;”;

(b) by the substitution for subsection (2) of the following subsection: 35

“(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.”; and

(c) by the substitution for 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.”. 40

Amendment of section 25 of Act 16 of 2006

17. Section 25 of the principal Act is hereby amended— 45

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The council of a public college must, in the manner determined by the [**Member of the Executive Council**] Minister—”;

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 50

“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—”; and

(c) by the substitution for subsection (4) of the following subsection: 5

“(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.”.

Substitution of section 26 of Act 16 of 2006

18. The following section is hereby substituted for section 26 of the principal Act: 10

“Failure of council to comply with Act or certain conditions

26. (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] Parliament** 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. 15

(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] Parliament** in respect of the public college concerned. 20

(3) Before taking action under subsection (2), the **[Member of the Executive Council] Minister** must— 25

(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. 30

(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] Parliament by the Minister** as soon as reasonably practical after the action.”. 35

Amendment of section 28 of Act 16 of 2006

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

“(a) **[registered]** incorporated or recognised as a **[juristic person]** company in terms of the Companies Act, **[1973 (Act 61 of 1973)] 2008 (Act No. 71 of 2008)**; and”.

Amendment of section 31 of Act 16 of 2006

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

Amendment of section 41B of Act 16 of 2006, as inserted by section 10 of Act 25 of 2010 45

21. Section 41B of the principal Act is hereby amended by the deletion of subsections (2) and (3).

Amendment of section 41D of Act 16 of 2006, as inserted by section 10 of Act 25 of 2010

22. Section 41D of the principal Act is hereby amended by 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].**”.

Repeal of section 41E of Act 16 of 2006

23. Section 41E of the principal Act is hereby repealed.

Amendment of section 41G of Act 16 of 2006, as inserted by section 10 of Act 25 of 2010

24. Section 41G of the principal Act is hereby amended—

(a) by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(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).**]

(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.**].”;

(b) by the substitution for subsection (5) of the following subsection:

“(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].**”;

(c) by the deletion of subsection (6); and

(d) by the substitution for subsection (7) of the following subsection:

“(7) A plan **[required by the Minister in terms of subsection (6)]** in compliance with the Public Finance Management Act, 1999 (Act No.1 of 1999), 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.”.

Repeal of sections 41H, 41I, 41J and 41K of Act 16 of 2006

25. Sections 41H, 41I, 41J and 41K of the principal Act are hereby repealed.

Amendment of section 42 of Act 16 of 2006, as amended by section 11 of Act 25 of 2010

26. Section 42 of the principal Act is hereby amended by the deletion of subsection (2).

Substitution of section 44 of Act 16 of 2006

27. The following section is hereby substituted for section 44 of the principal Act:

“Strategic plan and annual report

44. (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.

(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.

(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 the substitution for subsections (2) and (3) of the following subsections, respectively:

“(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]**.”.

(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—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“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—”;

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“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—**”;

(c) by the substitution in subsection (2)(b) for subparagraph (i) of the following subparagraph:

“(i) report in writing to the **[Member of the Executive Council] Minister** the findings of his or her investigation; and”;

(d) by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:

“(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.

(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.

(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.”.

Substitution of section 47 of Act 16 of 2006

30. The following section is hereby substituted for section 47 of the principal Act:

“Name change of public college

47. (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. 5

(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 in subsection (3) for paragraph (c) of the following paragraph: 10

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

Amendment of section 50 of Act 16 of 2006

32. Section 50 of the principal Act is hereby amended— 15

(a) by the substitution in subsection (1) for paragraph (b) the following paragraph:

“(b) any **[organ of state] public college**.”; and

(b) by the deletion of subsection (2).

Amendment of Schedule 1 to Act 16 of 2006 20

33. Schedule 1 to the principal Act is hereby amended—

(a) by the substitution in item 1 for the definition of “Department” of the following definition:

“**‘Department’** means the **[government department responsible for education at national level] Department** of Higher Education and Training;”;

(b) by the deletion in item 1 of the definition of “Head of Department”;

(c) by the deletion of the definition of “lecturer”;

(d) by the deletion in item 1 of the definition of “MEC”;

(e) by the substitution in item 1 for the definition of “Minister” of the following definition: 30

“**‘Minister’** means the Minister of Higher Education and Training;”;

(f) by the substitution in item 1 for the definition of “National Qualifications Framework” of the following definition:

“**‘National Qualifications Framework’** means the National Qualifications Framework **[as defined]** contemplated in the **[South African Qualification Authority Act, 1995 (Act 58 of 1995)] National Qualifications Framework Act, 2008 (Act No. 67 of 2008)**;”;

(g) by the deletion in item 1 of the definition of “NBFET”;

(h) by the substitution in item 1 for the definition of “policy” of the following definition: 40

“**‘policy’** means [—

(a) policy determined by the Minister in terms of **[the National Education Policy Act, 1996 (Act No. 27 of 1996)]**; or

(b) **policy determined by the Member of the Executive Council in terms of a provincial law]** this Act;”;

(i) by the substitution in item 1 for the definition of “SAQA” of the following definition:

“**‘SAQA’** means the South African Qualifications Authority established by section **[3] 10** of the **[South African Qualifications Authority Act, 1995 (Act No. 58 of 1995)] National Qualifications Framework Act, 2008 (Act No. 67 of 2008)**;”;

(j) by the deletion in item 1 of the definition of “school”;

(k) by the deletion in item 1 of the definition of “South African Schools Act”;

- (l) by the substitution in item 4(1) for paragraph (c) of the following paragraph:
“(c) the **[management]** staff;”;
- (m) by the deletion in item 4(1) of paragraph (e);
- (n) by the substitution in item 5(2) for paragraph (d) of the following paragraph:
“(d) subject to applicable policy and the approval of the **[Head of Department]** Director-General, determines the student admission policy of the college, after consultation with the academic board;”;
- (o) by the substitution in item 5(2) for paragraph (f) of the following paragraph:
“(f) subject to the approval of the **[Head of Department]** Director-General, determines the language policy of the college, after consultation with the academic board;”;
- (p) by the substitution in item 5(2) for paragraph (i) of the following paragraph:
“(i) may conclude a loan or overdraft agreement, with the approval of the **[MEC]** Minister.”;
- (q) by the substitution in item 6(1) for paragraph (b) of the following paragraph:
“(b) five external persons appointed by the **[MEC]** Minister.”;
- (r) by the substitution in item 6(1) for paragraph (h) of the following paragraph:
“(h) four members contemplated in section 10(6) of the Act with a broad spectrum of competencies in the fields of education, business, finance, law, marketing, information technology and human resource management appointed by the council in consultation with the **[MEC]** Minister.”;
- (s) by the substitution in item 6 for subitem (2) of the following subitem:
“(2) At least 60 per cent of the members of the council must be external persons who are not employed by the **[MEC]** Minister or council, or are not students of the college.”;
- (t) by the substitution in item 7(1) for paragraph (b) of the following paragraph:
“(b) the **[MEC]** Minister or entity who appointed or elected the member to the council terminates the membership in writing.”;
- (u) by the substitution in item 30 for subitem (1) of the following subitem:
“(1) Management consists of the principal, vice-principal or vice-principals of the college[, **as contemplated in section 19 (1) of the Act**].”;
- (v) by the substitution in item 31 for subitems (3) and (4) of the following subitems, respectively:
“(3) **[Subject to section 19(1) and (4) the]** The council may assign additional functions and grant additional powers to the principal.
(4) When the principal is absent or unable to carry out his or her duties, the vice-principal must act as principal, or the **[Member of the Executive Council]** Minister may appoint an acting principal.”;
- (w) by the substitution for item 33 of the following item:

“Appointment of [lecturers, support] staff [and financial officers] employed by college

33. The advertising of the post, the invitation for nomination of candidates, the search for suitable candidates, the criteria for the short-listing of candidates and the interviewing and appointment processes for **[lecturers, support] staff [and financial officers]** must be in the manner determined by the council.”;

- (x) by the substitution for item 34 of the following item:

“Conditions of employment

34. The council must approve conditions of employment, including the determination and review of salaries of **[lecturers and support] staff employed in terms of section 20(4)(a)** and all other forms of remuneration in accordance with the rules.”;

(y) by the substitution for item 35 of the following item:

“Evaluation

35. (1) The management of the college **[are]** is subject to evaluation by the **[MEC] Minister** in the performance of **[their]** its duties.

(2) The **[lecturers and support]** staff **[are]** is subject to continuous evaluation in the performance of **[their]** its duties.”; and

(z) by the substitution for item 36 of the following item:

“Disciplinary code of [lecturers and support] staff

36. (1) **[Every lecturer and]** A member of [the support] staff employed in terms of section 20(4)(a) is subject to a code of conduct and disciplinary procedures, as approved by the council and determined in the rules, which serve as an integral part of their conditions of service.

(2) Every member of staff employed in terms of the Public Service Act is subject to a code of conduct of public servants and disciplinary procedures provided for in terms of the Public Service Act and its Regulations.”.

Transitional provisions

34. (1) For the purposes of this section, any word or expression to which a meaning has been ascribed in the principal Act bears the meaning so ascribed, and **“norms and standards”** means the minimum norms and standards for the funding of public colleges contemplated in section 23 of the principal Act as amended by this Act.

(2) Any principal or vice-principal employed in terms of the Public Service Act immediately before section 11 of this Act takes effect, remain so employed.

(3) Any lecturer or member of the support staff employed by a public college immediately before section 12 of this Act takes effect and who occupies a post other than a post contemplated in subsection (4), remains so employed and must be regarded as staff appointed in terms of section 20(4) of the principal Act as amended by this Act.

(4) Any lecturer or member of the support staff employed by a public college in a post that is fully funded in terms of the norms and standards on 1 January 2012, must be verified by the Minister as fully funded posts, and the Minister must, subject to section 197 of the Labour Relations Act, transfer those posts to the organisational structure of the Department in accordance with the Public Service Act.

(5) Subject to section 197 of the Labour Relations Act, staff who, immediately before section 12 of this Act takes effect, renders support services to public colleges situated in provinces, both at district and head office, even if such a staff member is appointed as an educator in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), must be transferred to the organisational structure of the Department of Higher Education and Training in accordance with the Public Service Act.

(6) If any discrepancy exists between a condition of service relating to an educator’s post and the public service post to which he or she is transferred, the conditions of service in terms of the Public Service Act prevail.

(7) During the translation of the post in terms of this section, any condition attached to a lecturer’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 equivalent to that post is similar or better.

(8) Any disciplinary measure relating to employment of a staff member contemplated in subsection (4) which is pending when section 12 of this Act takes effect, must be finalised in terms of the law that authorised the commencement of that measure.

(9) The General Public Service Sector Bargaining Council or the PSCBC, as the case may be, continues to be the bargaining council to determine salaries and conditions of employment of staff employed by a public college in accordance with section 20(2)(b) of the principal Act as amended by this Act until the parties agree to establish a new structure relevant to public colleges.

(10) The Education Labour Relations Council, through its Further Education and Training Colleges Bargaining Unit, continues to be the Bargaining Council to determine salaries and conditions of employment of lecturers employed by a public college in accordance with section 20(4)(b) of the principal Act as amended by this Act until the

parties agree to establish a new structure relevant to staff of public colleges employed under that section.

(11) The General Public Service Sector Bargaining Council or the PSCBC, as the case may be, continues to be the bargaining council to determine salaries and conditions of employment of support staff employed by a public college in accordance with section 20(4)(b) of the principal Act as amended by this Act until the parties agree to establish a new structure relevant to support staff of public colleges employed under that section. 5

Short title and commencement

35. (1) This Act is called the Further Education and Training Colleges Amendment Act, 2011, and comes into operation on a date to be determined by the Minister by notice in the *Gazette*. 10

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

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

1. MAIN OBJECT OF BILL

The administration and powers and functions entrusted by the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006) (the Act), was transferred in terms of section 97 of the Constitution of the Republic of South Africa, 1996, to the Minister of Higher Education and Training by Proclamation No. 44 of 2009, published in *Government Gazette* No. 32367 of 1 July 2009. The Act was amended in 2010 in order to align it with this transfer. The Bill seeks to amend the Act in order to remove all references to provincial authority and at the same time to propose certain related and other amendments. The amendments proposed in the Bill must be seen in conjunction with the Constitution Eighteenth Amendment Bill [B 8—2011], which seeks to amend Schedule 4 to the Constitution of the Republic of South Africa, 1996. The effect of the proposed amendment to the Constitution is that Further Education and Training Colleges will become an exclusive national competency in stead of a concurrent competency between the national and provincial education departments. The Bill was drafted after the Council of Education Ministers agreed that the Act should be amended to transfer the powers, functions, duties and responsibilities from the provincial authorities to the national authorities in order to align the Act with the proposed amendment to the Constitution. The amendments proposed by the Bill will only come into operation after the amendment to Schedule 4 to the Constitution takes effect.

2. MAIN FEATURES OF BILL

2.1 Clauses 1 to 10 and 14 to 33

The Bill seeks to amend the Act so as to remove all references to provincial authority; to assign functions previously assigned to the Member of the Executive Council to the Minister; to remove all references to “Head of Department” and substitute them with “Director-General”. These amendments therefore repeal the structure of cooperation between national and provincial government contemplated in Schedule 4 of the Constitution.

2.2 Clauses 11 to 13

Lecturers and support staff that were funded by the State were, prior to the enactment of the Act, employed as educators. The Further Education and Training summit held during 2010 resulted in a recommendation that the Act should be amended to transfer staff, remunerated by the State through norms and standards contemplated in section 23 of the Act, back to the public service, which recommendation the Minister accepted. It is imperative to read clauses 11 to 13 with clause 34, which clause makes allowance for compliance with section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), when implementing those transfers.

2.3 Clause 34

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. The rights of current employees are protected in that the Bill requires compliance with section 197 of the Labour Relations Act, 1995. It further regulates how the staff in provincial education departments affected by the transfer of the function to the national authorities will be dealt with.

3. CONSULTATION

The Bill was published for public comment in Government Notice No. 228 in *Gazette* No. 34222 of 15 April 2011. All interested parties and the public were invited to comment. An extension Notice was published in the media whereby the closing date for

comments was extended with another week. Several comments were received and were accommodated in the Bill. The following stakeholders submitted comment:

- Association of Private Providers of Education, Training and Development;
- Capricorn College;
- Centre for Further Education Policy Development;
- College of Cape Town;
- Eduskills Rainbow;
- National Professional Teachers' Organization of South Africa;
- South African College Principals Organization;
- South African Democratic Teachers' Union; and
- South African Qualifications Authority.

4. FINANCIAL IMPLICATIONS

Costs follow functions, and therefore current budgets earmarked for Further Education and Training Colleges and reflected in provincial budgets will follow the functions to the national Department of Higher Education and Training. Those funds will therefore revert to the national budget. Allocation to Further Education and Training Colleges are already entrenched in the Division of Revenue Act and distributed in terms of national norms and standards.

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 of the Republic of South Africa, 1996, since it falls within a functional area listed in Schedule 4 to the Constitution, namely "Education at all levels, excluding tertiary education".

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.