

REPUBLIC OF SOUTH AFRICA

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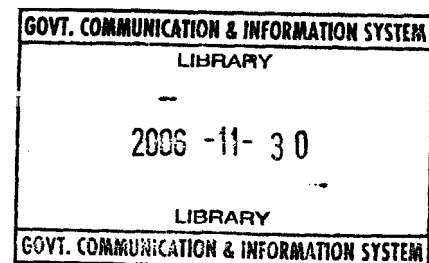
# FURTHER EDUCATION AND TRAINING COLLEGES BILL

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

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(SELECT COMMITTEE ON EDUCATION AND RECREATION)



[B 23B—2006]

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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.
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# BILL

To provide for the regulation of further education and training; to provide for the establishment, governance and funding of public further education and training colleges; to provide for the employment of staff at public further education and training colleges; to provide for the registration of private further education and training colleges; to provide for the promotion of quality in further education and training; to provide for transitional arrangements and the repeal or amendment of laws; and to provide for matters connected therewith.

## PREAMBLE

WHEREAS it is desirable to—

ESTABLISH a national co-ordinated further education and training system which promotes co-operative governance and provides for programme-based vocational and occupational training;

RESTRUCTURE AND TRANSFORM programmes and colleges to respond better to the human resources, economic and development needs of the Republic;

REDRESS past discrimination and ensure representivity and equal access;

ENSURE access to further education and training and the workplace by persons who have been marginalised in the past, such as women, the disabled and the disadvantaged;

PROVIDE optimal opportunities for learning, the creation of knowledge and the development of intermediate to high level skills in keeping with international standards of academic and technical quality;

PROMOTE the values which underlie an open and democratic society based on human dignity, equality and freedom;

ADVANCE strategic priorities determined by national policy objectives at all levels of governance and management within the further education and training sector;

RESPECT and encourage democracy and foster a collegial culture which promotes fundamental human rights and creates an appropriate environment for teaching and learning;

PURSUE excellence, and promote the full realisation of the potential of every student and member of staff, tolerance of ideas and appreciation of diversity;

**RESPOND** to the needs of the Republic, the labour market and the communities served by the colleges; and

**COMPLEMENT** the National Skills Development Strategy in co-operation with the Department of Labour;

**AND WHEREAS** it is desirable for further education and training colleges to perform specific functions within the context of public accountability and the national need for intermediate to high level skills and knowledge and to provide access to work and higher education,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER 1

## DEFINITIONS, PURPOSE AND APPLICATION OF ACT

## Definitions

1. In this Act, unless the context indicates otherwise —
  - “**academic board**” means the body contemplated in section 11; 5
  - “**applicant**” means a person who makes an application contemplated in section 29;
  - “**auditor**” means a person registered in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005);
  - “**Basic Conditions of Employment Act**” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); 10
  - “**college**” means a public or private further education and training institution that is established, declared or registered under this Act, but does not include—
    - (a) a school offering further education and training programmes under the South African Schools Act; or 15
    - (b) a college under the authority of a government department other than the Department of Education;
  - “**college statute**” means policy, code of conduct and any other rules developed by a council in accordance with this Act;
  - “**council**” means the governing structure of a public college; 20
  - “**Department**” means the government department responsible for education at national level;
  - “**Director-General**” means the Director-General of the Department;
  - “**Employment Equity Act**” means the Employment Equity Act, 1998 (Act No. 55 of 1998); 25
  - “**financial year**” in respect of a college means a year commencing on the first day of January and ending on the 31st day of December of the same year;
  - “**foreign juristic person**” means a person that is—
    - (a) registered or established as a juristic person in terms of a law of a foreign country; and 30
    - (b) recognised or registered as an external company in terms of the Companies Act, 1973 (Act No. 61 of 1973);
  - “**further education and training**” means all learning and training programmes leading to qualifications at levels 2 to 4 of the National Qualifications Framework or such further education and training levels determined by SAQA and 35 contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), which levels are above general education but below higher education;
  - “**general education**” means the compulsory school attendance phase contemplated in section 3 of the South African Schools Act;
  - “**Head of Department**” means the head of a provincial department of education; 40
  - “**higher education**” means higher education as defined in the Higher Education Act, 1997 (Act No. 101 of 1997);
  - “**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995);
  - “**lecturer**” means any person who teaches, educates or trains other persons or who 45 provides professional educational services at any college or departmental office, and who is appointed in a post on any lecturer establishment under this Act;
  - “**local juristic person**” means a person established as a juristic person in South Africa in terms of the Companies Act, 1973 (Act No. 61 of 1973);
  - “**management staff**” means the principal and vice-principal of a public college; 50
  - “**Member of the Executive Council**” means the Member of the Executive Council of a province who is responsible for education in that province;
  - “**Minister**” means the Minister of Education;
  - “**National Qualifications Framework**” means the National Qualifications Framework as defined in the South African Qualifications Authority Act, 1995 (Act 55 No. 58 of 1995);
  - “**NBFET**” means the National Board for Further Education and Training, established by regulation in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996);

**“organ of state”** means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

**“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;

**“prescribed”** means prescribed by regulation made in terms of section 51;

**“principal”** means the chief executive and accounting officer of a public college, and includes a rector of a public college;

**“private college”** means any college that provides further education and training on a full-time, part-time or distance basis and which is registered or provisionally registered as a private college under this Act;

**“PSCBC”** means the Public Service Coordinating Bargaining Council established in terms of the Labour Relations Act;

**“public college”** means any college that provides further education and training on a full-time, part-time or distance basis and which is—

- (a) established or regarded as having been established as a public college under this Act; or
- (b) declared as a public college under this Act;

**“Public Service Act”** means the Public Service Act, 1994 (Proclamation, No. 103 of 1994);

**“SAQA”** means the South African Qualifications Authority, established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

**“school”** means a school as defined in the South African Schools Act;

**“South African Schools Act”** means the South African Schools Act, 1996 (Act No. 84 of 1996);

**“staff”** means persons employed at a public college;

**“student”** means any person registered as a student at a college;

**“support staff”** includes staff who render—

- (a) academic support services;
- (b) student support services;
- (c) human resource management;
- (d) financial management;
- (e) administration;
- (f) maintenance of the buildings and gardens;
- (g) catering services; and
- (h) security services;

**“this Act”** includes any regulation made in terms of section 51;

**“to provide further education and training”** means —

- (a) to register students for all learning and training programmes leading to qualifications at levels 2 to 4 of the National Qualifications Framework or such further education and training levels determined by SAQA and contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), which levels are above general education but below higher education; and
- (b) to take responsibility for the registration of students, the provision and delivery of the curriculum and the assessment of students;

**“Umalusi”** means the council established by section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001);

**“vice-principal”** includes a vice-rector.

## Purpose and application of Act

2. (1) The purpose of this Act is to—

- (a) enable students to acquire—
  - (i) the necessary knowledge;
  - (ii) practical skills; and
  - (iii) applied vocational and occupational competence; and
- (b) provide students with the necessary attributes required for—
  - (i) employment;
  - (ii) entry to a particular vocation, occupation or trade; or
  - (iii) entry into a higher education institution.

(2) This Act applies to all education institutions which have been established or declared a public college or registered as a private college in terms of this Act.

## CHAPTER 2

### PUBLIC COLLEGES

#### Establishment of public college

5

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

(2) Every public college is a juristic person.

(3) Despite subsection (2) but subject to subsection (4), a public college may not, without the concurrence of the Member of the Executive Council, 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. 10

(4) The Member of the Executive Council—

(a) may determine that certain categories of assets below a certain value may be alienated without his or her concurrence; and 15

(b) must publish the value contemplated in paragraph (a) by notice in the *Gazette*.

(5) The Head of Department may inspect, and must compile an inventory of all, the assets of a public college.

(6) The assets of a public college may not be attached as a result of any legal action taken against the college. 20

#### Declaration of institution as public college

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

(2) The notice contemplated in subsection (1) must determine— 25

(a) the date on which the institution becomes a public college;

(b) the name of the public college; and

(c) the physical location and the official address of the public college.

(3) The Member of the Executive Council 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; 30

(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; or 35

(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

(b) after having—

(i) published a notice in one or more newspapers circulating in the area in which the institution provides further education and training, containing the reasons for the declaration referred to in subsection (1); 40

(ii) given any interested person an opportunity to make representations; and

(iii) considered such representations.

#### Consequences of declaration as public college

45

5. (1) From the date determined in terms of section 4(2)(a)—

(a) the institution in question is regarded as being a public college established under this Act;

(b) the assets, liabilities, rights and obligations of the institution vest in the public college; and 50

(c) any agreement lawfully entered into by or on behalf of the institution must be regarded as having been concluded by the public college.

(2) (a) Immovable property vesting in the public college in terms of subsection (1)(b) must, subject to the concurrence of the Minister of Finance, be transferred into its name without payment by it of any transfer duty, stamp duty or other duty or costs due to the State, but subject to any existing right, encumbrance or trust on or over that property.

(b) Any fees charged by the Registrar of Deeds resulting from a transfer contemplated in paragraph (a) must be paid in full or in part from funds appropriated by the provincial legislature for that purpose. 5

(3) The officer in charge of a deeds office or other office where the immovable property contemplated in subsection (2) is registered must, on submission of the title deed and on application by the public college, make such endorsements on that title deed and such entries in the registers as may be required to register the transfer in question. 10

(4) The declaration of an institution as a public college in terms of section 4(1) does not affect anything lawfully done by the institution before the declaration.

(5) All funds which, immediately before the date determined in terms of section 4(2)(a), were vested in the institution by virtue of a trust, donation or bequest must be applied by the public college in accordance with the trust, donation or bequest, as the case may be. 15

(6) The Member of the Executive Council 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). 20

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

(8) The composition of the interim council must be in accordance with section 10(4) and (7). 25

(9) The interim council must co-opt three members of the interim management contemplated in subsection (10)(a) and these co-opted members have no voting powers.

(10) Apart from the functions contemplated in subsection (6), the interim council must in particular—

(a) appoint an interim body to manage the day-to-day activities of the college; and 30

(b) ensure that such other structures as may be determined in terms of this Act are constituted.

(11) Any decision of the interim council which may affect the right of any structure of the public college, may only be taken after consultation with such structure. 35

(12) Despite sections 197 and 197A of the Labour Relations Act, contracts of employment between the institution and its employees are transferred automatically on declaration of an institution as a public college as from the date of the declaration contemplated in section 4, but any redeployment of an employee as a consequence of the declaration is subject to applicable labour legislation. 40

## Merger of public colleges

6. (1) Subject to subsection (2), the Member of the Executive Council 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 must— 45

(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; 50

(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.

(3) The single college contemplated in subsection (1) is regarded as a public college established under this Act. 55

(4) Section 5(1)(b), (2), (3), (4) and (5) apply with the necessary changes required by the context to a merger contemplated in subsection (1).

(5) The Member of the Executive Council must, after consultation with the councils of the public colleges that are to be merged, determine by notice contemplated in subsection (1)— 60



- (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.

(6) The councils of the colleges that are merged must have a meeting before the merger to constitute a single interim council comprising of all members of the councils concerned for a period not exceeding six months. 5

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

(8) Despite sections 197 and 197A of the Labour Relations Act, the contracts of employment between the institution and its employees are transferred automatically to the merged single public college as from the date of the merger contemplated in subsection (1), but any redeployment of an employee as a consequence of the merger is subject to applicable labour legislation. 10

(9) If two or more public colleges are merged into a single public college as contemplated in subsection (1), all the rights and obligations between the former employers and each employee at the time of the merger continue in force as if they were rights and obligations between the new employer and each employee and anything done before the merger by or in relation to the former employers is considered to have been done by or in relation to the new employer. 15

(10) A merger referred to in subsection (1) does not— 20

- (a) interrupt the employee's continuity of employment; and
- (b) affect the liability of any person to be disciplined for, prosecuted for, convicted of or sentenced for any misconduct, crime or offence.

(11) An employee or a student is subject to the code of conduct and rules applicable to the new single public college as from the date of the merger contemplated in subsection (1), but if any enquiry into incapacity or any proceedings in respect of a charge of misconduct had been instituted or commenced against any employee or student before the date of the merger, such enquiry or proceedings must continue in terms of the codes and rules applicable to the relevant public colleges immediately before the merger. 25 30

(12) Until the new single public college has made a code of conduct or rules, the disciplinary codes and rules of the respective old public colleges are applicable to the respective employees and students.

(13) Despite subsections (8) and (9), the former employer may undertake rationalisation of its workforce according to operational requirements in accordance with sections 189 and 189A of the Labour Relations Act before the date of the merger contemplated in subsection (1). 35

(14) If two or more public colleges are merged into a single public college in terms of subsection (1), the new single public college continues with all academic programmes offered by the former colleges under the rules applicable to the respective colleges immediately before the date of the merger, until such programmes and rules are amended or restructured by the new council. 40

### **Single council for two or more public colleges**

7. (1) The Member of the Executive Council may determine that the governance of two or more public colleges must vest in a single council if— 45

- (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 may not act in terms of subsection (1) unless he or she has— 50

- (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 55
- (d) considered all such submissions.

(3) The Member of the Executive Council 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). 60

(4) Any council that is the subject of a notice in terms of subsection (2) continues to exist until the first meeting of the single council constituted in terms of this section.

### **Closure of public college**

**8.** (1) The Member of the Executive Council may, by notice in the *Gazette*, close a public college. 5

(2) The Member of the Executive Council 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) given notice in the *Gazette* of his or her intention so to act; 10
- (d) 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) considered those representations.

(3) If a public college is closed under subsection (1)— 15

- (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; and
- (b) any assets remaining after payment of all liabilities vest in the Member of the Executive Council.

(4) Subsections (2) to (5) of section 5 and section 6(2) apply with the necessary changes required by the context to a closure referred to in subsection (1). 20

## **CHAPTER 3**

### **GOVERNANCE OF PUBLIC COLLEGES**

#### **Public college governance structures**

**9.** (1) Every public college must establish a council, an academic board and a student representative council. 25

(2) Every public college may establish such other structures as may be determined in the college statute.

(3) The structures referred to in subsection (1) must elect a chairperson, vice-chairperson and other office-bearers from among its members in accordance with the college statute. 30

(4) A member of a structure contemplated in subsection (1)—

- (a) holds office for a period of five years: Provided that such a member remains eligible to be a member of that structure; and
- (b) may not serve for more than two consecutive terms of office. 35

(5) The procedures for the disqualification, removal and filling of vacancies must be determined in the college statute.

(6) The council may not establish or create any juristic person in terms of any other legislation or common law.

#### **Council of public college** 40

**10.** (1) The council of a public college must perform all the functions, including the development of a college statute, which are necessary to govern the public college, subject to this Act and any applicable national or provincial law.

(2) The council must, with the concurrence of the academic board—

- (a) develop a strategic plan for the public college which must— 45
  - (i) incorporate the mission, vision, goals and planning for funding of the college;
  - (ii) address past imbalances and gender and disability matters;
  - (iii) include safety measures for a safe learning environment for students, lecturers and support staff and 50
  - (iv) be approved by the Member of the Executive Council;
- (b) determine the language policy of the public college, subject to the approval of the Member of the Executive Council; and

- (c) ensure that the public college complies with accreditation requirements necessary to provide learning programmes in terms of standards and qualifications as registered on the National Qualifications Framework.
- (3) The council, after consultation with the student representative council, must provide for a suitable structure to advise on policy for student support services within the public college. 5
- (4) The council of a public college consists of—
- (a) the principal;
  - (b) five external persons appointed by the Member of the Executive Council;
  - (c) one member of the academic board elected by the academic board; 10
  - (d) one external member representing donors;
  - (e) one lecturer of the public college, elected by the lecturers of the college;
  - (f) one member of the support staff of the public college, elected by the support staff and
  - (g) two students of the public college, elected by the student representative council of the public college. 15
- (5) The chairperson, vice-chairperson or other office-bearers of the council may not be students or members of the staff of the college, but the secretary may be a member of staff.
- (6) The council must, in consultation with the Member of the Executive Council, appoint four additional external persons with financial, human resources and legal skills as members of the council. 20
- (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 by notice in the *Gazette* or in terms of a provincial law and must, in so far as it is practically possible, ensure that— 25
- (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; 30
  - (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. 35
- (8) At least 60 per cent of the members of a council must be external persons who are not—
- (a) students or support staff of the public college;
  - (b) employed by the Member of the Executive Council; 40
  - (c) employed by the college.
- (9) The members of a council or an interim council—
- (a) must be persons 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. 45
- (10) The Member of the Executive Council must—
- (a) 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 50
  - (b) consider the nominations and appoint the members with due regard to the criteria contemplated in this section.

### Academic board of public college

11. (1) The academic board of a public college is accountable to the council for—
- (a) the academic functions of the public college and the promotion of the participation of women and the disabled in the learning programmes; 55
  - (b) establishing internal academic monitoring and quality promotion mechanism;
  - (c) ensuring that the requirements of accreditation to provide learning against standards and qualifications registered on the National Qualifications Framework are met; and 60

### **Prohibition of corporal punishment and initiation practices**

- 16.** (1) No person may administer corporal punishment to a student at a college.
- (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which may be imposed for assault.
- (3) No person may conduct or participate in initiation practices at a college. 5
- (4) Any person who contravenes subsection (3) is guilty of misconduct and disciplinary action must be instituted against such a person.
- (5) Despite subsection (4), a person may institute civil action against any person or group of persons who manipulated or forced the first-mentioned person to conduct or participate in initiation practices. 10
- (6) For the purposes of this section, “initiation practice” means any act that in the process of initiation, admission into or affiliation with, or as condition for continued membership of, a college, a group, intramural or extramural activities, a sports team or an organisation —
- (a) endangers the mental or physical health or safety of a person; 15
  - (b) undermines the intrinsic worth of human beings by treating some as inferior to others;
  - (c) subjects individuals to humiliating or violent acts that undermine the constitutional guarantee to dignity in the Bill of Rights;
  - (d) undermines the fundamental rights and values that underpin the Constitution; 20
  - (e) impedes the development of a culture that entitles an individual to be treated as worthy of respect and concern; or
  - (f) destroys public or private property.
- (7) In considering whether conduct or participation of a person in any initiation practice falls within the definition of “initiation practice”, the relevant disciplinary authority must take into account the right of the student not to be subjected to such practice. 25

### **Admission policy of public college**

- 17.** (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 Head of Department. 30
- (2) The admission policy of a public college may not unfairly discriminate in any way and must provide appropriate measures for the redress of past inequalities.
- (3) The council may, subject to applicable policy, the approval of the Head of Department and after consultation with the academic board— 35
- (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 40
  - (d) refuse the readmission of a student who fails to satisfy the minimum requirements for readmission.
- (4) The council of a public college must take the necessary steps within its available resources to ensure that the college is accessible to disabled students. 45

### **Standard college statute**

- 18.** A public college that has not developed a college statute in terms of section 10(1) must make use of the standard college statute set out in Schedule 1.

## CHAPTER 4

### APPOINTMENT OF MANAGEMENT STAFF, LECTURERS AND SUPPORT STAFF IN PUBLIC COLLEGES

#### Appointment of management staff

- 19.** (1) The Member of the Executive Council must appoint the members of the management staff of a public college in terms of the Public Service Act. 5
- (2) The management staff must report to and are accountable to the council in respect of matters and functions allocated to them by the council in terms of this Act.
- (3) The principal must report to the Head of Department in terms of his or her performance agreement. 10

#### Appointment of lecturers and support staff

- 20.** (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. 15
- (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. 20
- (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 – 30
- (a) the ability of the candidates;
  - (b) the principle of equity;
  - (c) the need to redress past injustices; and 35
  - (d) the need for representivity.
- (8) The council must adopt a Disciplinary Code for lecturers and support staff in accordance with the college statute.

#### Dispute resolution between college, lecturers and support staff

- 21.** (1) If a dispute arises about the payment or employment conditions of a lecturer or a member of the support staff, any party to the dispute may refer the dispute in writing to – 40
- (a) a bargaining council established in terms of the Labour Relations Act, if the employer or employee parties to the dispute fall within the registered scope of a bargaining council; or 45
  - (b) the Commission for Conciliation, Mediation and Arbitration established by section 12 of the Labour Relations Act, if no bargaining council has jurisdiction.
- (2) The party referring the dispute must satisfy the bargaining council or the Commission for Conciliation, Mediation and Arbitration that a copy of the referral has been served on the other party. 50
- (3) The bargaining council or the Commission for Conciliation, Mediation and Arbitration must attempt to resolve the dispute through conciliation.
- (4) If the bargaining council or the Commission for Conciliation, Mediation and Arbitration is satisfied that the dispute remains unresolved, a party may refer the dispute 55

for adjudication to the Labour Court established in terms of section 151 of the Labour Relations Act.

## **CHAPTER 5**

### **FUNDING OF PUBLIC COLLEGES**

#### **Responsibility of State**

5

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

(2) The Member of the Executive Council may, subject to the norms and standards determined in terms of section 23, impose—

10

(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.

15

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

(4) The Member of the Executive Council 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.

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#### **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

#### **Funds of public colleges**

**24.** (1) The funds of a public college consist of—

(a) funds allocated by the State;

(b) any donations or contributions received by the public college;

(c) money raised by the public college;

30

(d) money raised by means of loans, subject to the approval of the Member of the Executive Council;

(e) income derived from investments;

(f) money received from services rendered;

(g) money payable by students for further education and training programmes provided by the public college;

35

(h) money received from students or employees of the public college for accommodation or other services provided by the public college; and

(i) funds from any other source.

(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.

40

(3) If a person lends money or grants an overdraft to a public college without the approval of the Member of the Executive Council, the State and the college are not bound by the contract of lending money or an overdraft agreement.

#### **Financial records and statements of public colleges**

45

**25.** (1) The council of a public college must, in the manner determined by the Member of the Executive Council—

(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

50

- (c) implement internal audit and risk management systems which are not inferior to the standards contained in the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (2) The council of a public college must appoint an auditor to audit the records and financial statements referred to in this section. 5
- (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, provide the Member of the Executive Council 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; 10
  - (c) a duly audited statement of income and expenditure; and
  - (d) a balance sheet and cash flow statement.
- (4) The council of a public college must provide the Member of the Executive Council with such additional information as the Member of the Executive Council may require. 15

#### **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 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 may call upon the management staff or council to comply with the provision or condition within a specified period. 20
- (2) If the management staff or council thereafter fails to comply with the provision or condition timeously, the Member of the Executive Council may withhold payment of any portion of any allocation appropriated by the provincial legislature in respect of the public college concerned. 25
- (3) Before taking action under subsection (2), the Member of the Executive Council must—
- (a) give notice to the management staff or council of the public college concerned of the intention so to act; 30
  - (b) give such management staff or council a reasonable opportunity to make representations; and
  - (c) consider such representations.
- (4) If the Member of the Executive Council 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. 35

## **CHAPTER 6**

### **PRIVATE COLLEGES**

#### **Designation of registrar**

- 27.** (1) The Director-General is the registrar of private colleges. 40
- (2) The registrar may delegate any of his or her functions in terms of this Act to any employee in the Department.

#### **Registration of private college**

- 28.** No person other than a public college or an organ of state may provide further education and training unless that person is— 45
- (a) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act No. 61 of 1973); and
  - (b) registered or provisionally registered as a private college in terms of this Act.

#### **Application for registration**

- 29.** An application for registration as a private college must be made to the registrar in the manner determined by the registrar and must be accompanied by the prescribed fee. 50

### Requirements for registration

- 30.** (1) The registrar must register an applicant as a private college if the registrar has reason to believe that the applicant—
- (a) is financially capable of satisfying its obligations to prospective students; and
  - (b) with regard to all its further education and training programmes—
    - (i) will maintain acceptable standards that are not inferior to standards at comparable public colleges;
    - (ii) will comply with the requirements of Umalusi; and
    - (iii) complies with any other reasonable requirement prescribed by the Minister.
- (2) The registrar may require further information, particulars and documents in support of any application for registration.

### Determination of application for registration

- 31.** (1) The registrar—
- (u) must consider any application for registration as a private college and any further information, particulars or documents provided by the applicant;
  - (b) may, when considering the application, differentiate between a foreign juristic person and a local juristic person with regard to matters such as its scope and range of operations, its size and its collegial configuration; and
  - (c) may register the applicant as a private college if the requirements for registration contemplated in section 30 are fulfilled.
- (2) (a) If the registrar decides to grant the application, the registrar must—
- (i) enter the applicant's name in the appropriate register of private colleges;
  - (ii) issue a certificate of registration, stating the terms of such registration;
  - (iii) furnish the certificate to the applicant; and
  - (iv) as soon as practicable after the decision, publish the name of the applicant so registered and the title of the qualification offered by the applicant, in the *Gazette*.
- (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.
- (3) Despite subsection (1), the registrar may provisionally register an applicant other than a foreign juristic person who does not fulfil the requirements for registration contemplated in section 30 if the registrar believes that the applicant will be able to fulfil the relevant requirements within a reasonable period.
- (4) If the registrar provisionally registers an applicant under subsection (3), the registrar must—
- (a) determine the period within which the applicant must satisfy the requirements for registration;
  - (b) enter the applicant's name in the appropriate register of private colleges;
  - (c) issue a certificate of provisional registration, stating the terms and the duration of such registration;
  - (d) provide the certificate of provisional registration to the applicant; and
  - (e) as soon as practicable after the decision, publish the name of the applicant so provisionally registered and the title of the qualifications offered by the applicant in the *Gazette*.
- (5) The registrar may, on good cause shown, extend the period referred to in subsection (4)(a).
- (6) If, on the expiry of the period referred to in subsection (4)(a) or any extension thereof, the applicant—
- (a) satisfies the requirements for registration specified by the registrar, the registrar must register the applicant in accordance with subsection (2)(a); or
  - (b) fails to satisfy the requirements for registration specified by the registrar, the applicant's provisional registration lapses.



### **Certificate of registration**

**32.** (1) A private college must conspicuously display—

- (a) its certificate of registration or provisional registration or a certified copy thereof on its premises; and
- (b) its registration number and an indication that it is registered or provisionally registered on all its official documents. 5

(2) If the registrar has cancelled the registration or provisional registration of a private college in terms of section 39, the private college must return the original certificate of registration or provisional registration to the registrar within 14 days of such cancellation. 10

### **Inspection of register and auditor's report**

**33.** (1) Any person may inspect the register of private colleges and the auditor's report contemplated in section 34(2)(b).

(2) The registrar must furnish a certified copy of, or extract from, any of the documents referred to in subsection (1) to any person who has paid the prescribed fee. 15

### **Records and audits**

**34.** (1) Every private college must, in accordance with generally accepted accounting practice, principles and procedures—

- (a) keep books and records of income, expenditure, assets and liabilities; and
- (b) prepare financial statements within three months after the end of its financial year, including at least— 20
  - (i) a statement of income and expenditure for the previous year;
  - (ii) a balance sheet as at the end of the previous year; and
  - (iii) such other information as the registrar may require.

(2) Every private college must, within the period determined by the registrar — 25

- (a) ensure that an annual audit of its books, records of account and financial statements is carried out by an auditor, who must conduct the audit in accordance with generally accepted auditing standards;
- (b) furnish the registrar with a certified copy of the auditor's report in respect of the financial statements referred to in subsection (1); and 30
- (c) furnish the registrar with any additional information, particulars or documents in the manner determined by the registrar.

### **Amendment of registration and provisional registration**

**35.** A private college may apply to the registrar to amend its registration or provisional registration— 35

- (a) in the manner determined by the registrar; and
- (b) by paying the prescribed fee.

### **Requirements for amendment of registration or provisional registration and determination of application**

**36.** (1) The registrar may not amend the registration or provisional registration of a private college unless he or she is satisfied that such amendment is in the interests of further education and training and is compatible with this Act. 40

(2) The registrar may require further information, particulars or documents in support of any application for such amendment.

(3) (a) If the registrar decides to grant the application, he or she must — 45

- (i) amend the certificate of registration or provisional registration accordingly;
- (ii) furnish a copy of the amended certificate to the applicant; and
- (iii) as soon as reasonably practicable after the decision, publish the name of the applicant whose certificate has been amended in the *Gazette*.

(b) If the registrar decides not to grant the application, he or she must advise the applicant in writing of the decision and furnish the applicant with written reasons for the decision. 50

### Conditions for registration

- 37.** (1) The registrar may impose any condition on a private college in respect of—  
 (a) its registration;  
 (b) its provisional registration; or  
 (c) any amendment of its registration or provisional registration. 5  
 (2) The registrar may impose different conditions under subsection (1) in respect of different private colleges, if there is a reasonable basis for such differentiation.

### Amendment or cancellation of conditions

- 38.** Subject to section 40, the registrar may, on reasonable grounds, amend or cancel any condition imposed under section 37 or impose new conditions under that section. 10

### Cancellation of registration

- 39.** (1) Subject to section 40, the registrar may, on reasonable grounds, cancel any registration or provisional registration in terms of this Act.  
 (2) If the accreditation of any further education and training programme offered by a private college is withdrawn, the registrar must review the registration of such college. 15

### Steps before amendment or cancellation

- 40.** The registrar may not act under section 38 or 39 unless he or she—  
 (a) has informed the private college of the intention so to act and the reasons therefor;  
 (b) has granted the private college and other interested persons an opportunity to make written representations in relation to such action, within 30 working days of the notice of the Registrar; and 20  
 (c) has considered such representations.

### Appeal to Minister

- 41.** (1) Any interested party may appeal to the Minister against any decision of the registrar in terms of this Chapter, and the Minister may confirm or set aside, in whole or in part, or vary, the decision of the registrar. 25  
 (2) A decision of the Minister contemplated in subsection (1) may include an order setting aside any condition attached to a registration if the Minister is not satisfied that the condition is reasonable and justifiable. 30  
 (3) An appeal referred to in subsection (1) must be lodged with the Minister within 60 days of the date of the decision of the registrar.  
 (4) The Minister may, on good cause shown, extend the period within which an appeal may be noted against the decision of the registrar.

## CHAPTER 7

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### PROMOTION OF QUALITY

#### Promotion of quality in further education and training

- 42.** (1) Subject to the norms and standards set by the Minister in terms of section 3 of the National Education Policy Act, 1996 (Act No. 27 of 1996), and by SAQA, the Director-General must— 40  
 (a) promote quality in further education and training; and  
 (b) assess and report on the quality of education and training provided at colleges.  
 (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). 45

(3) The Member of the Executive Council 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 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, which period may not exceed two years.

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

(6) If an administrator is appointed in terms of subsection (4), the council is deemed to have resigned and the administrator must—

- (a) take over the authority of the council;
- (b) perform the council's functions relating to governance; and
- (c) ensure that a new council is constituted.

### **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, change the name of the public college.

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

### **Offences**

48. (1) Any person other than a college or organ of state who, without the authority of a college—

- (a) offers or pretends to offer any further education and training programme;
  - (b) confers a further education and training qualification that purports to have been granted by a college or in collaboration with a college; or
  - (c) purports to perform an act on behalf of a college,
- is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(2) Any person who pretends that a further education and training qualification has been awarded to him or her by a college whereas in fact no such qualification has been so awarded is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(3) Any person who contravenes section 28 is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(4) Any private college that contravenes or fails to comply with section 32 is guilty of an offence and is liable on conviction to a fine not exceeding R250 000.

(5) Any person who claims that he or she is offering a further education and training qualification that is registered with the National Qualifications Framework whereas such qualification is not so registered is guilty of an offence and is liable on conviction to any sentence that may be imposed for fraud.

### **Limitation of liability**

49. (1) Neither the State, the NBFET nor any person appointed in terms of this Act is liable for any loss or damage suffered by any person as a result of any act performed or omitted in good faith in the course of performing any function for which that person was appointed in terms of this Act.

(2) The State is not liable for any act or omission by a public college relating to its contractual responsibility as the employer in respect of staff employed in terms of section 20(3).

(3) (a) The State is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public college for which such public college would have been liable but for the provisions of this section.

(b) The State Liability Act, 1957 (Act No. 20 of 1957), applies to any claim under paragraph (a).

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

(d) Despite paragraph (a), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a public college for the purposes of supplementing the resources of the college, including the offering of practical educational activities relating to that enterprise or business. 5

(e) Any legal proceedings against a public college for any damage or loss contemplated in paragraph (d), or in respect of any act or omission relating to its contractual responsibility as employer, may only be instituted after written notice of the intention to institute proceedings against the college has been given to the Head of Department for his or her information. 10

### **Delegation of functions** 15

**50.** (1) The Minister may, on such conditions as he or she may determine, delegate the performance of any of his or her functions under this Act, except the power to make regulations, to—

- (a) any employee of the Department; or
- (b) any organ of state. 20

(2) The Member of the Executive Council 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. 25

(3) The Director-General may, on such conditions as he or she may determine, delegate the performance of any of his or her functions under this Act to any employee in the Department.

(4) The council of a public college may, on such conditions as it may determine, delegate the performance of any of its functions under this Act to any other internal structure, lecturer or support staff of such college. 30

### **Regulations**

**51.** The Minister may make regulations consistent with this Act on—

- (a) any matter which may or must be prescribed;
- (b) safety measures at public and private colleges; 35
- (c) a national process and procedures for the assessment of student achievement at public and private colleges;
- (d) a national process for the assessment, monitoring and evaluation of the quality of education in public and private colleges;
- (e) initiation practices at public and private colleges; and 40
- (f) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

### **Application of Act when in conflict with other laws**

**52.** This Act prevails over any other law dealing with further education and training other than the Constitution of the Republic of South Africa, 1996. 45

## CHAPTER 9

### TRANSITIONAL AND OTHER ARRANGEMENTS

#### **Existing public further education and training institutions, structures and bodies**

**53.** (1) The public further education and training institutions listed in Schedule 2 continue to exist and are deemed to be public colleges for the purposes of this Act. 5

(2) Members of the council, academic board and student representative council of the institutions referred to in subsection (1) continue to hold office until they are replaced in terms of this Act.

#### **Staff**

**54.** (1) The principal, vice-principal, lecturers and support staff employed by the State continue to be so employed until appointed in terms of this Act, read with section 197 of the Labour Relations Act. 10

(2) The Education Labour Relations Council and the PSCBC 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. 15

#### **Application for registration by private colleges**

**55.** Application for registration by private colleges made in terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998), before the commencement of this Act must be deemed to be applications made in terms of this Act.

#### **National Board for Further Education and Training (NBFET) 20**

**56.** The NBFET continues to exist until replaced by an advisory body in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996).

#### **Disciplinary measures**

**57.** The existing code of conduct, disciplinary measures and procedures of colleges referred to in section 53(1) must continue to operate until new measures are determined in terms of this Act. 25

#### **Repeal or amendment of laws**

**58.** (1) The Further Education and Training Act, 1998 (Act No. 98 of 1998), is hereby repealed.

(2) Any regulations made or anything done under any provision of any law repealed by this Act must be regarded as having been made or done under the corresponding provision of this Act. 30

(3) The Employment of Educators Act, 1998 (Act No. 76 of 1998), is hereby amended to the extent set out in Schedule 3.

#### **Short title 35**

**59.** This Act is called the Further Education and Training Colleges Act, 2006.

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## Further education and training programmes

- 43.** (1) The Minister may prescribe minimum norms and standards for further education and training programmes that are offered at colleges.
- (2) Quality assurance must be conducted by Umalusi in terms of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001). 5
- (3) A public college may only provide higher education programmes under the authority of a higher education institution.
- (4) A public college intending to offer the higher education programmes contemplated in subsection (3)—
- (a) must apply to the Minister for permission to offer such programmes after the commencement of this Act; and 10
  - (b) may offer such programmes only after the permission contemplated in paragraph (a) is published by the Minister in the *Gazette*.

## CHAPTER 8

### GENERAL 15

#### 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 at least 30 days before the commencement of the financial year. 20
- (2) A public college must prepare and submit to the Member of the Executive Council 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. 25

#### Duty of colleges to provide information

- 45.** (1) A college must make information available for inspection by any person in so far as such information is required for the exercise and protection of the rights of such person. 30
- (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. 35

#### Investigation at public college, and appointment of administrator

- 46.** (1) The Member of the Executive Council 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— 40
- (a) circumstances arise at the college 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. 45
- (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—
- (a) within 30 days of his or her appointment, conduct an investigation at the public college in question; and 50
  - (b) within 60 days after his or her appointment—
    - (i) report in writing to the Member of the Executive Council the findings of his or her investigation; and
    - (ii) suggest appropriate measures to resolve the matter.

(3) The Member of the Executive Council 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 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, which period may not exceed two years. 5 10

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

(6) If an administrator is appointed in terms of subsection (4), the council is deemed to have resigned and the administrator must — 15

- (a) take over the authority of the council;
- (b) perform the council's functions relating to governance; and
- (c) ensure that a new council is constituted.

#### **Name change of public college**

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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, change the name of the public college.

(2) The Member of the Executive Council must, by notice in the *Gazette*, publish the change of name of such college. 25

#### **Offences**

48. (1) Any person other than a college or organ of state who, without the authority of a college —

- (a) offers or pretends to offer any further education and training programme;
- (b) confers a further education and training qualification that purports to have been granted by a college or in collaboration with a college; or 30
- (c) purports to perform an act on behalf of a college,

is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.

(2) Any person who pretends that a further education and training qualification has been awarded to him or her by a college whereas in fact no such qualification has been so awarded is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud. 35

(3) Any person who contravenes section 28 is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. 40

(4) Any private college that contravenes or fails to comply with section 32 is guilty of an offence and is liable on conviction to a fine not exceeding R250 000.

(5) Any person who claims that he or she is offering a further education and training qualification that is registered with the National Qualifications Framework whereas such qualification is not so registered is guilty of an offence and is liable on conviction to any sentence that may be imposed for fraud. 45

#### **Limitation of liability**

49. (1) Neither the State, the NBFET nor any person appointed in terms of this Act is liable for any loss or damage suffered by any person as a result of any act performed or omitted in good faith in the course of performing any function for which that person was appointed in terms of this Act. 50

(2) The State is not liable for any act or omission by a public college relating to its contractual responsibility as the employer in respect of staff employed in terms of section 20(3). 55

(3) (a) The State is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public college for which such public college would have been liable but for the provisions of this section.



(b) The State Liability Act, 1957 (Act No. 20 of 1957), applies to any claim under paragraph (a).

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

(d) Despite paragraph (a), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a public college for the purposes of supplementing the resources of the college, including the offering of practical educational activities relating to that enterprise or business. 5

(e) Any legal proceedings against a public college for any damage or loss contemplated in paragraph (d), or in respect of any act or omission relating to its contractual responsibility as employer, may only be instituted after written notice of the intention to institute proceedings against the college has been given to the Head of Department for his or her information. 10

### **Delegation of functions**

15

**50.** (1) The Minister may, on such conditions as he or she may determine, delegate the performance of any of his or her functions under this Act, except the power to make regulations, to—

(a) any employee of the Department; or

(b) any organ of state. 20

(2) The Member of the Executive Council 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. 25

(3) The Director-General may, on such conditions as he or she may determine, delegate the performance of any of his or her functions under this Act to any employee in the Department.

(4) The council of a public college may, on such conditions as it may determine, delegate the performance of any of its functions under this Act to any other internal structure, lecturer or support staff of such college. 30

### **Regulations**

**51.** The Minister may make regulations consistent with this Act on—

(a) any matter which may or must be prescribed;

(b) safety measures at public and private colleges; 35

(c) a national process and procedures for the assessment of student achievement at public and private colleges;

(d) a national process for the assessment, monitoring and evaluation of the quality of education in public and private colleges;

(e) initiation practices at public and private colleges; and 40

(f) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

### **Application of Act when in conflict with other laws**

**52.** This Act prevails over any other law dealing with further education and training other than the Constitution of the Republic of South Africa, 1996. 45

## STUDENTS

- 38. Admission and registration of students
- 39. Student disciplinary code

## DONORS

- 40. Donors 5

## DEFINITIONS AND APPLICATION

### Definitions

1. In this Statute, unless the context indicates otherwise —
  - “**academic board**” means the body contemplated in section 11 of the Act;
  - “**auditor**” means any person registered in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005); 10
  - “**college**” means the college referred to in section 3;
  - “**council**” means the governing structure of the college;
  - “**Department**” means the government department responsible for education at national level; 15
  - “**Director-General**” means the Director-General of the Department;
  - “**external person**” means a person referred to in section 10(8) of the Act;
  - “**financial year**” in respect of the college means a year commencing on the first day of January and ending on the 31st day of December of the same year;
  - “**foreign juristic person**” means a person — 20
    - (i) registered or established as a juristic person in terms of a law of a foreign country; and
    - (ii) recognised or registered as an external company in terms of the Companies Act, 1973 (Act No. 61 of 1973);
  - “**further education and training**” means all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), which levels are above general education but below higher education; 25
  - “**further education and training college**” means any college that provides further education and training on a full-time, part-time or distance basis and which is — 30
    - (a) established or regarded as having been established as a public further education and training college under the Act;
    - (b) declared as a public further education and training college under the Act; or 35
    - (c) registered or provisionally registered as a private further education and training college under the Act;
  - “**general education**” means the compulsory school attendance phase referred to in section 3 of the South African Schools Act;
  - “**Head of Department**” means the head of a provincial department of education; 40
  - “**higher education**” means higher education as defined in the Higher Education Act, 1997 (Act No. 101 of 1997);
  - “**institutional statute**” means policy, a code of ethics and any rules developed by the council consistent with the Act;
  - “**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995); 45
  - “**lecturer**” means any person who teaches, educates or trains other persons or who provides professional educational services at the college and who is appointed in a post on a lecturer establishment under the Act;
  - “**local juristic person**” means a person established as a juristic person in South Africa in terms of the Companies Act, 1973 (Act No. 61 of 1973); 50
  - “**management**” means the principal and vice-principal of the college;
  - “**MEC**” means the Member of the Executive Council of a province who is responsible for education in that province;
  - “**Minister**” means the Minister of Education; 55

**“National Qualifications Framework”** means the National Qualifications Framework as defined in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

**“NBFET”** means the National Board for Further Education and Training, established by regulations in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996); 5

**“organ of state”** means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996;

**“policy”** means —

(a) policy determined by the Minister in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996); or 10

(b) policy determined by the Member of the Executive Council in terms of a provincial law;

**“prescribed”** means prescribed by regulation;

**“principal”** means the chief executive and accounting officer of the college, and includes a rector; 15

**“programmes”** means a list of education programmes approved and promulgated by the Minister in the *Gazette*;

**“public college”** means any further education and training college that is established, deemed to be established or declared as a public further education and training college under the Act; 20

**“Public Service Act”** means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**“rules”** means rules made by the council in terms of section 5(2)(a);

**“SAQA”** means the South African Qualifications Authority established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); 25

**“school”** means a school as defined in the South African Schools Act;

**“South African Schools Act”** means the South African Schools Act, 1996 (Act No. 84 of 1996);

**“staff”** means persons employed at a public college; 30

**“statute”** means the standard college statute, which includes policy, code of conduct and any other rules developed by the council which are consistent with the Act;

**“student”** means any person registered as a student at the college;

**“SRC”** means the student representative council of the college; 35

**“the Act”** means the Further Education and Training Colleges Act, 2006;

**“to provide further education and training”** means —

(a) to register students for all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework or such further education and training levels as determined by SAQA and contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), which levels are above general education but below higher education; and 40

(b) to take responsibility for the registration of students, the provision and delivery of the curriculum and the assessment of students; 45

**“vice-principal”** includes a vice-rector.

## Application

2. This statute applies to the college until a statute is developed in terms of section 10 of the Act.

## INSTITUTION

50

### Name, seat and powers

3. (1) The name of the college is \_\_\_\_\_  
 (2) The seat of the college is at \_\_\_\_\_  
 (3) Every public college is a juristic person with legal capacity to perform its functions in terms of this Statute and the Act. 55

## Constitution of college

- 4.** (1) The college consists of—
- (a) the council;
  - (b) the academic board;
  - (c) the management staff;
  - (d) the SRC;
  - (e) the lecturers and support staff of the college;
  - (f) the students of the college; and
  - (g) such other offices, bodies or structures as may be established by the council.
- (2) No vacancy in any of the offices contemplated in subsection (1) nor any deficiency in the numbers or defect in the composition of the bodies or structures contemplated in subsection (1) impairs or affects the existence of the college as a juristic person or any function conferred by the Act or this Statute upon the college.

## COUNCIL

### Functions of council

- 5.** (1) Subject to the Act and this statute the council governs the college.
- (2) Without derogating from the generality of subsection (1), the council—
- (a) makes rules for the college;
  - (b) establishes the council committees and determines the composition and functions of each committee;
  - (c) establishes, in consultation with the academic board, joint committees of the council and the academic board to perform functions which are common to the council and the academic board;
  - (d) subject to applicable policy and the approval of the Head of Department, determines the student admission policy of the college, after consultation with the academic board;
  - (e) determines and provides student support services after consultation with the SRC;
  - (f) subject to the approval of the Head of Department, determines the language policy of the college, after consultation with the academic board;
  - (g) determines tuition fees, accommodation fees and any other fees payable by students as well as accommodation fees payable by employees;
  - (h) approves the annual budget of the college; and
  - (i) may conclude a loan or overdraft agreement, with the approval of the MEC.
- (3) Without derogating from the generality of subsection (1), the council—
- (a) determines conditions of service, code of conduct and privileges and functions of its employees and may, in the manner set out in the code of conduct, suspend or dismiss employees of the college; and
  - (b) may order an employee of the college who has been suspended to refrain from being on any premises under the control of the college and to refrain from participating in any of the activities of the college, or issue such other conditions as it may consider necessary.

### Composition of council

- 6.** (1) The council, as contemplated in section 10(4) of the Act, consists of—
- (a) the principal;
  - (b) five external persons appointed by the MEC;
  - (c) one member of the academic board elected by the academic board;
  - (d) one lecturer elected by the lecturers at the college;
  - (e) two students of the college elected by the SRC;
  - (f) one member of the support staff elected by the support staff of the college;
  - (g) one external member representing donors; and
  - (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.
- (2) At least 60 per cent of the members of the council must be external persons who are not employed by the MEC or council, or are not students of the college.

(3) The council members contemplated in section 10(8) and (9) of the Act must have knowledge and experience relevant to the objects and governance of the college.

### **Termination of membership and filling of vacancies**

7. (1) A member of the council's term of office terminates if—
- (a) he or she tenders a written resignation; 5
  - (b) the MEC or entity who appointed or elected the member to the council terminates the membership in writing;
  - (c) he or she is absent from three consecutive meetings without leave of the council;
  - (d) he or she is declared insolvent; 10
  - (e) he or she is removed from an office of trust by a court of law or is convicted of **an** offence for which the sentence is imprisonment without the option of a fine; or
  - (f) he or she is incapacitated to perform his or her functions.
- (2) The council has the power to suspend and take disciplinary action against a 15 member.
- (3) If 75 per cent or more of the members of the council resign, the council is deemed to have resigned.
- (4) If the council resigns as contemplated in subsection (3) a new council must be constituted in terms of this statute and the Act. 20
- (5) Whenever any vacancy occurs, section 10 of the Act must apply with the necessary changes thereto.
- (6) Any member appointed in terms of subsection (5) must serve only the remainder of the term of office.

### **Election and term of office of chairperson, vice-chairperson and secretary of council** 25

8. (1) The chairperson and vice-chairperson of the council must not be elected from members contemplated in section 6(1)(a), (c), (d), (e) and (f) of the statute.
- (2) The chairperson, vice-chairperson and secretary of the council are elected for a period not exceeding two years. 30
- (3) The chairperson, vice-chairperson and secretary are eligible for re-election.
- (4) Nominations for the office of the chairperson, vice-chairperson and secretary of the council must be in writing and directed to the electoral officer.
- (5) If more than one candidate is nominated, voting is by secret ballot.
- (6) Each member of the council has only one vote during a ballot and no proxy is 35 allowed.
- (7) Whenever a vacancy occurs in the office of the chairperson, vice-chairperson or secretary, subsections (4) to (6) apply with the necessary changes to the filling of such vacancy.
- (8) A person who fills a vacancy in terms of subsection (7) holds office until the end 40 of the term of his or her predecessor.

### **Meetings of council**

9. (1) The council has at least four ordinary meetings during each academic year.
- (2) Notice of any motion for consideration at the next ordinary meeting must be in writing and must be lodged with the secretary at least 21 days before the date determined 45 by the council for such meeting, provided that any matter of an urgent nature may, without prior notice, by consent of the chairperson and a majority of the members present, be considered at such meeting.
- (3) At least 14 days prior to the date of an ordinary meeting, the secretary gives due notice to each member of all the matters to be dealt with at such meeting and states the 50 time and place of such meeting.
- (4) A special meeting may be called at any time by the chairperson.
- (5) A special meeting must be called by the chairperson at the request in writing of at least five members, if the objective of such meeting is clearly stated in the request, provided that at least seven days' notice of a special meeting is given. 55
- (6) No business other than that for which the special meeting was called may be transacted at such meeting.

(7) An emergency meeting may be called by the chairperson or, in his or her absence, by the principal at any time.

(8) Notice of an emergency meeting may be given in any manner convenient under the circumstances.

(9) The objective of an emergency meeting must be stated to members and no business other than that stated may be transacted at such meeting. 5

### **Council meeting procedures**

**10.** (1) The council members must participate in the deliberations of the council in the best interest of the college.

(2) Except where otherwise provided in this statute, all acts or matters authorised or required to be done or decided by the council or its committees and all questions that may come before it are done or decided by the majority of the members present at any meeting, provided that the number present at any meeting is at least half plus one of the total number of members of the council or its committees holding office on the date of such meeting. 10 15

(3) In the absence of the chairperson and the vice-chairperson of the council, the members present must elect one of their members to preside at such meeting.

(4) The first act of an ordinary meeting, after being constituted, is to read and confirm by the signature of the chairperson the minutes of the last preceding ordinary meeting and of any special meeting subsequently held, provided that the meeting may consider the minutes as read if a copy thereof was previously sent to every member of the council, provided further that objections to the minutes of a meeting are raised and decided before confirmation of the minutes. 20

(5) A member of the council may not, without the consent of the meeting, speak more than once to a motion or to any amendment and the mover of any motion or any amendment has the right of reply. 25

(6) Every motion or amendment must be seconded and, if so directed by the chairperson, must be in writing.

(7) A motion or an amendment seconded as contemplated in subsection (6) may not be withdrawn except with the consent of the meeting. 30

(8) The chairperson has a deliberative vote on any matter and, in the event of an equality of votes, also a casting vote.

(9) If so decided by the meeting, the number of members voting for or against any motion must be recorded in the minutes or, if so requested by any member, the chairperson must direct that such votes be recorded. 35

(10) When a majority of the members of the council reach agreement on a matter referred to them by the chairperson by letter or electronic means, without a meeting having been convened, and convey such resolution by letter or electronic means, such resolution is equivalent to a resolution of the council and must be recorded in the minutes of the next succeeding ordinary meeting. 40

(11) The views of a member of the council who is unable to attend a meeting may be submitted to the meeting in writing but may not count as a vote of such member.

(12) The ruling of the chairperson on a point of order or procedure is binding unless immediately challenged by a member, in which event such ruling must be submitted without discussion to the meeting whose decision is final. 45

### **Conflict of interest of council members**

**11.** (1) A member of the council may not have a conflict of interest with the college.

(2) A member of the council who has a direct or indirect financial, personal or other interest in any matter which is 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. 50

(3) Any person may, in writing, inform the chairperson of a meeting, before a meeting, of a conflict or possible conflict of interest of a member of the council of which such person may be aware.

(4) The council member referred to in subsections (2) and (3) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon. 55

## Committees of council

- 12.** (1) The council appoints—
- (a) an executive committee;
  - (b) an audit committee;
  - (c) a finance committee; 5
  - (d) a conditions of employment committee;
  - (e) a planning and resource committee; and
  - (f) such other committees as may be required.
- (2) The composition and functions of the committees are determined by the council.
- (3) At least 50 per cent of the members of a committee must be external persons who 10  
are members of the council.
- (4) The chairperson of a committee must be a member of the council.

## Minutes of council and committee meetings

- 13.** (1) The secretary of the council keeps the minutes of each meeting of the council 15  
and includes such minutes in the agenda of the next council meeting when the agenda is sent out in terms of section 9(3).
- (2) The minutes of all committee meetings must be included in the agenda of the next ordinary meeting of the council following the respective committee meetings.
- (3) The members of the council must be provided with copies of the minutes referred 20  
to in subsection (2).

## Drafting, amending or rescinding statute

- 14.** No motion to draft, amend or rescind a statute or a rule is of force and effect unless adopted by at least 75 per cent of all members of the council present at the meeting, provided that a quorum is present at such meeting.

## ACADEMIC BOARD

25

## Functions of academic board

- 15.** (1) Subject to the Act, the academic board of the college—
- (a) is accountable to the council for—
    - (i) all the teaching, learning, research and academic functions of the college;
    - (ii) the academic functions of the college and the promotion of the 30  
participation of women and the disabled in its learning programmes;
    - (iii) establishing internal academic monitoring and quality promotion mechanisms;
    - (iv) ensuring that the requirements of accreditation to provide learning against standards and qualifications registered in the National Qualifications Framework are met; and 35
    - (v) performing such other functions as may be delegated or assigned to it by the council;
  - (b) must—
    - (i) advise the council on a code of conduct and rules concerning students; 40
    - (ii) determine, in accordance with any relevant deed or gift and after consultation with the principal, the conditions applicable to any scholarships and other academic prizes;
    - (iii) determine the persons to whom scholarships and academic prizes are 45  
awarded;
    - (iv) determine the functions of its committees as well as the procedure of meetings of these committees; and
    - (v) take note of any action taken by a committee in exercising its delegated powers or functions when such committee reports its actions to the next meeting of the academic board; and 50
  - (c) may—
    - (i) establish committees to perform any of its functions, and may for this purpose deem a single person to be a committee;
    - (ii) make standing orders on procedures and delegation of powers; and
    - (iii) delegate its functions to a committee. 55

(2) Without derogating from the generality of subsection (1) the organisation and supervision of instruction and examinations, and of lectures and classes, vest in the academic board.

(3) The academic board submits to the council—

- (a) such reports upon its work as may be required by the council; 5
- (b) recommendations on matters referred to it by the council; and
- (c) recommendations on any other matter affecting the college that the academic board considers useful.

### **Termination of membership of academic board**

16. (1) Members of the academic board must participate in the deliberations of the academic board in the best interest of the college. 10

(2) Failure to act in the best interest of the college or behaviour that brings the college into disrepute may result in the removal of a member from the academic board by the council following due process.

### **Composition of academic board**

15

17. (1) The academic board of the college must consist of—

- (a) the principal;
- (b) the vice-principal or vice-principals;
- (c) lecturers at the college;
- (d) members of the council; 20
- (e) members of the SRC; and
- (f) such additional persons as may be determined by the council.

(2) The majority of members of the academic board must be lecturers.

(3) The manner of election and appointment of members must be determined by the council. 25

(4) The number of persons contemplated in subsection (1)(c) to (f) must be determined by the council.

### **Term of office of members of academic board**

18. (1) Members appointed in terms of section 17(1)(a), (b) and (c) may hold office for as long as they are employed by the college in that capacity. 30

(2) The term of office for student members automatically lapses when a student ceases to be a registered student or a member of the SRC.

### **Chairperson, vice-chairperson and secretary of academic board**

19. (1) The principal is the chairperson of the academic board and shall preside at meetings of the academic board. 35

(2) The vice-principal is the vice-chairperson of the academic board and shall preside at meetings of the academic board in the absence of the chairperson.

(3) The secretary of the academic board is elected by the academic board and he or she must perform functions as the board may decide.

(4) The chairperson presides at the meetings of the subcommittees of the academic board if the academic board considers it appropriate for him or her to do so. 40

(5) The chairperson and vice-chairperson shall perform such other functions as the academic board may determine.

(6) If both the chairperson and the vice-chairperson are absent, the academic board must elect from among its members a chairperson for the meeting concerned. 45

### **Meeting procedure of academic board**

20. The procedure applicable to council meetings is applicable with the necessary changes to meetings of the academic board.



### **Committees of the academic board**

- 21.** (1) The academic board appoints —  
     (a) an executive committee; and  
     (b) such other committees as may be required.  
 (2) The composition and functions of the committees are determined by the academic board. 5

### **Joint committees of council and academic board**

- 22.** The council, in consultation with the academic board, appoints such joint committees of the council and the academic board as may be necessary for the performance of particular tasks. 10

## **STUDENT REPRESENTATIVE COUNCIL**

### **Functions of SRC**

- 23.** (1) The students of the college are represented by the SRC in all matters that may affect them.  
 (2) The matters contemplated in subsection (1) include— 15  
     (a) liaison with management, the general public, other colleges, student representative councils of other colleges, national or international student organisations, unions and news media;  
     (b) being the umbrella organisation for all student committees, clubs, councils and societies, granting or withdrawing recognition of such student committees, clubs, councils and societies as it considers appropriate; 20  
     (c) coordination and supervision of the use of students' facilities and all matters pertaining thereto, in conjunction with management;  
     (d) convening and conducting of all authorised meetings of the student body and being the managing body in all general referenda and petitions organised by the students within the rules; 25  
     (e) the election of office-bearers and establishing committees as the SRC considers necessary;  
     (f) the organisation and promotion of extramural activities among students;  
     (g) keeping account of all moneys allocated to the SRC by the council and any other moneys which may accrue to the SRC in its capacity as representative of the students; 30  
     (h) allocating or disbursing such funds for use by students, and making grants to approved student clubs, committees, societies and councils;  
     (i) the responsibility for preserving order at student functions and ensuring good conduct at other approved meetings of students; 35  
     (j) coordination of student involvement in all community projects initiated by the SRC;  
     (k) responsibility for all student publications;  
     (l) final decision making in all matters falling within the jurisdiction of the SRC; 40  
     and  
     (m) such additional functions and privileges as may be specifically conferred upon the SRC in writing by the council.

### **Composition of SRC**

- 24.** (1) Only registered students are eligible to serve on the SRC. 45  
 (2) The SRC must be representative of the student body.  
 (3) The election of SRC members must be democratic and transparent.  
 (4) The SRCs of colleges that are to be merged must have a meeting before the merger to constitute a single interim SRC comprising all members of the SRC concerned for a period not exceeding six months. 50

### **Office-bearers of SRC**

- 25.** (1) The SRC elects from among its members a president to act as chairperson and a deputy president to act as deputy chairperson.

(2) The functions of other office-bearers and the election of such office-bearers are determined by the SRC.

#### **Term of office of SRC members**

- 26.** (1) The term of office of the members of the SRC must be one academic year.  
(2) A member of the SRC may serve more than one term of office. 5

#### **Meetings of SRC**

**27.** The number of meetings, the quorum at a meeting and the meeting procedures are determined by the constitution of the SRC as approved by the council, provided that four ordinary meetings are held during an academic year.

#### **SRC committees 10**

- 28.** (1) The SRC must establish a disciplinary committee responsible for the discipline of any members of the SRC and members of the student structures affiliated to the SRC.  
(2) The SRC may establish such other committees as may be required.

#### **General meeting**

- 29.** (1) The SRC must convene at least one general meeting of students per semester. 15  
(2) If a majority of students sign a petition to the SRC requesting a general meeting, the SRC must comply with such a request.  
(3) Meetings of the SRC may not disrupt academic activities.

### **MANAGEMENT**

#### **Management 20**

- 30.** (1) Management consists of the principal, vice-principal or vice-principals of the college, as contemplated in section 19(1) of the Act.  
(2) The principal is the chief executive and accounting officer of the college.

#### **Functions of principal**

- 31.** (1) The principal is responsible for the day-to-day management and administration of the college and has all the powers necessary to perform these functions. 25  
(2) By virtue of his or her office the principal is a member of all the committees of the council and the academic board.  
(3) Subject to section 19(1) and (4) the council may assign additional functions and grant additional powers to the principal. 30  
(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 may appoint an acting principal.

#### **Vice-principal and financial officer**

- 32.** (1) The vice-principal or vice-principals are responsible for assisting the principal in the management and administration of the college. 35  
(2) The council of a public college must appoint a financial officer.

#### **Appointment of lecturers, support staff and financial officers**

**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. 40

## **Conditions of employment**

**34.** The council must approve conditions of employment, including the determination and review of salaries of lecturers and support staff and all other forms of remuneration in accordance with the rules.

## **Evaluation**

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

(2) The lecturers and support staff are subject to continuous evaluation in the performance of their duties.

## **Disciplinary code of lecturers and support staff**

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**36.** Every lecturer and member of the support staff 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.

## **Representative organisation of employees**

**37.** Agreements with representative organisations of employees may, with reference to salary and related negotiations and according to the relevant labour legislation, be entered into by the representatives of lecturers and support staff and recommended to the council for approval.

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## **STUDENTS**

### **Admission and registration of students**

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**38.** A person may register as a student only if he or she satisfies the legal requirements for admission to study at the college and satisfies any other requirements for admission that may be determined by the council and laid down in the rules.

### **Student disciplinary code**

**39.** The disciplinary measures and disciplinary provisions applicable to students are set out in the disciplinary code determined by the council after consultation with the SRC.

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## **DONORS**

### **Donors**

**40.** (1) The college may receive moneys and equipment of any sort from donors to assist the college in providing quality education.

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(2) A donation of money or equipment may not be made or accepted subject to any conditions.

(3) The college may recognise and register certain donors as determined in the rules.

## SCHEDULE 2

## Existing public further education and training institutions, structures and bodies

## (Section 53)

Province	College Name	Campus Name	CONTACT DETAILS	
			Postal Address	Physical Address
Eastern Cape	Port Elizabeth FET College (A)	Central Office	Private Bag X6040, Port Elizabeth 6000	139 Russell Road Central Port Elizabeth
	East Cape Midlands FET College (B)	Central Office	Private Bag X35 Uitenhage 6230	High Street Uitenhage 6229
	Buffalo City FET College (C)	Central Office	Private Bag 9016 East London 5200	Lukin Road Selborne East London 5201
	Lovedale FET College (D)	Central Office	PO Box 2156 King Williams Town 5600	Amatola Row, King Williams Town 5600
	King Sabata Dalindyebo FET College (E)	Central Office	Private Bag X5011 Umtata	Engcobo Road c/n Cicira
	Ingwe FET College (F)	Central Office	PO Box 92491 Mt Frere 5090	3rd West Street Mt Frere Easter Cape 5090
	Ikhala FET College (G)	Central Office	Private Bag X7110 Queenstown 5320	Robinson c/n Zeiler Street Queenstown 5320
	King Hintsa FET College (H)	Central Office	Private Bag X3018 Butterworth 4960	Macibe Road Kentane Butterworth 4960
Free State	Goldfields FET College (A)	Central Office	Private Bag X95 Welkom 9460	14107 Ndaki Road Thabang 9463
	Motheo FET College (B)	Central Office	Private Bag X20509 Bloemfontein 9300	St George Street Bloemfontein 9300
	Maluti FET College (C)	Central Office	Private Bag X870 Mampoi Street Witsieshoek 9870	Mampoi Street Phuthaditjhaba Qwaqwa
	Flavius Mareka (D)	Central Office	Private Bag X22 Kroonstad 9500	Bukes Street Kroonstad 9499
Gauteng	Tshwane South FET College (A)	Central Office	Private Bag X1018 Lyttelton 0140	Lyttelton Tekbase College Street Centurion 0140
	Tshwane North FET College (B)	Central Office	PO Box 26193 Arcadia 0007	Cnr Potgieter & Pretorius Streets Pretoria 0001
	Ekurhuleni West College (C)	Central Office	Private Bag X1030 Germiston 1400	Driendek Street c/n Sol Road Germiston 1400
	Ekurhuleni East FET College (D)	Central Office	Private Bag X52 Springs 1560	Sam Ngema Road Kwa-Thema Springs 1560
	South West FET College (E)	Central Office	PO Box 164 Florida 1710	Koma c/n Molele Road Molapo Section Soweto
	Central Johannesburg (F)	Central Office	Private Bag X2336 Houghton 2041	5 Ubla Street Parktown 2041
	Western College FET (G)	Central Office	Private Bag X17 Randfontein 1760	Kiewiet Street Helikon Park Randfontein 1760
	Sedibeng FET College (H)	Central Office	Private Bag X020 Vereeniging 1930	37 Voortrekker Street 1930
KwaZulu-Natal	Mthashana FET College (A)	Central Office	PO Box 9424 Vryheid 3100	92 Hlobane Street Vryheid 3100
	Umfolozo FET College (B)	Central Office	Private Bag X5023 Richards Bay 3900	Via Richardia Naboomnek Richardsbay 3900
	Majuba FET College (C)	Central Office	Private Bag X5020 Newcastle 2940	Centre For People Development Police Station Road Section 2 Madadeni 2951
	Mnambithi FET College (D)	Central Office	Private Bag X9903 Ladysmith 3370	12 Walton Street Ladysmith 3370
	Sivananda FET College (E)	Central Office	Private Bag X13 Westville 3630	22 Westville Road Westville Durban 3630

Province	College Name	Campus Name	CONTACT DETAILS	
			Postal Address	Physical Address
	Coastal FET College (Mobeni) (F)	Central Office	P O Box 1795 Amanzimtoti 4125	No 50051 Old Main Road Kwamathutha 4125
	Thekwini FET College (G)	Central Office	Private Bag X06 Dormerton 4015	262 Daintree Avenue Asherville 4091
	Umgungu-ndlovu FET College (H)	Central Office	Private Bag X9060 Pietermaritzburg	4 Prince Alfred Street Pietermaritzburg
	Esayidi FET College (I)	Central Office	Private Bag X713 Port-Shepstone 4240	22 Veronica Gamalakhe 4249
Limpopo	Lephalale FET College (A)	Central Office	Private Bag X210 Lephalale 0555	Cnr Nelson Mandela & Ramathodi Streets Onverwacht 0557
	Capricorn FET College (B)	Central Office	Private Bag X367 Polokwane 0700	Cnr Dort & College Streets Polokwane 0700
	Waterberg FET College (C)	Central Office	Private Bag X2449 Mokopane 0600	20 Simmentaler Street Mokopane
	Vhembe FET College (D)	Central Office	Private Bag X2415 Makhado 0920	113 Burger Street Makhado 0920
	Mopani South East FET College (E)	Central Office	Private Bag X01024 Phalaborwa 1390	21 Wildevey Avenue Phalaborwa
	Letaba FET College (F)	Central Office	Private Bag X4017 Tzaneen 0850	Claude Whaetly Street, Tzaneen
	Sekhu-khune FET College (G)	Central Office	Private Bag X8660 Grobelaarsdal 0470	Stand No 676 Motetema 0473
Mpumalanga	Ehlanzeni FET College (A)	Central Office	Private Bag X11297 Nelspruit 1200	Louis Trichardt Street Nelspruit Sanlam Building 7th Floor
	Nkangala FET College (B)	Central Office	PO Box 2282 Witbank 1035	Cnr Haig & Northey Streets Witbank 1035
	Gert Sibande FET College (C)	Central Office	Private Bag X3475 Standerton 2430	18A Piet Retief Street Standerton 2430
Northern Cape	Northern Cape Urban FET College (A)	Central Office	Private Bag X5031 Kimberley 8300	Jan Smuts Ave Kimberley
	Northern Cape Rural FET College (B)		PO Box X1834 Steve Naude Street Upington 8800	Steve Naude Street Upington
North West	Taletso FET College (A)	Central Office	Private Bag X128 Mmabatho 2735	13 Andesiet Drive Riviera Park Mafikeng 2745
	Vuselela FET College (B)	Central Office	PO Box 10107 Klerksdorp 2570	133 Church Street Klerksdorp
	Orbit FET College (C)	Central Office	Private Bag X82096 Rustenburg 0300	Bosch c/n Fatima Bhayat Street Rustenburg
Western Cape	West Coast FET College (A)	Central Office	PO Box 935 Malmesbury 7300	Rainier c/n Kerk Street Clicks Building 2nd Floor Voortrekker Road Malmesbury 7300
	Boland FET College (B)	Central Office	Private Bag 5068, Stellenbosch 7599	85 Bird Street Stellenbosch 7600
	South Cape FET College (C)	Central Office	P O Box 10400 GEORGE 6530	Tommy Joubert Building (South) Cnr Courtenay & Cradock Streets George 6529
	NorthLink FET College (D)	Central Office	Private Bag X1 Panorama 7506	Detijger Office Park Unit 1 Corner Haneslow & McTyre Streets Parow
	College of Cape Town FET College (E)	Central Office	PO Box 1054 Cape Town 8000	Bytes Technology CS Holdings Bldg, 2nd Floor Golf Park, Raapenberg Road Pinelands, 7405
	False Bay FET College (F)	Central Office	Private Bag X25 Tokai 7988	False Bay College Tokai on Main Tokai 7988

## SCHEDULE 3

AMENDMENT OF EMPLOYMENT OF EDUCATORS ACT, 1998  
(ACT NO. 76 OF 1998)

(Section 58(3))

**Amendment of section 1 of Act 76 of 1998, as amended by section 6 of Act 53 of 2000  
and section 1 of Act 24 of 2005** 5

1. Section 1 of the Employment of Educators Act, 1998 (in this Schedule referred to as the Educators Act), is hereby amended —

- (a) by the substitution for the definition of “departmental office” of the following definition: 10
- “**‘departmental office’** means any office or institution controlled or administered by the Department of Education or any provincial department of education, but does not include any public school[, **further education and training institution**] or adult basic education centre;”;
- (b) by the substitution for the definition of “educator” of the following definition: 15
- “**‘educator’** means any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at any public school, [**further education and training institution,**] departmental 20
- office or adult basic education centre and who is appointed in a post on any educator establishment under this Act;”;
- (c) by the deletion of the definition of “further education and training institution”.

**Amendment of section 2 of Act 76 of 1998** 25

2. Section 2 of the Educators Act is hereby amended by the deletion of paragraph (b).

**Amendment of section 3 of Act 76 of 1998**

3. Section 3 of the Educators Act is hereby amended by the deletion of subsection (5).

**Amendment of section 6 of Act 76 of 1998, as amended by section 6 of Act 48 of 1999, section 7 of Act 53 of 2000 and section 7 of Act 24 of 2005** 30

4. Section 6 of the Educators Act is hereby amended —

- (a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
- “(a) Subject to paragraph (m), any appointment, promotion or transfer to any post on the educator establishment of a public school [**or a further education and training institution,**] may only be made on the recommendation of the governing body of the public school [**or the council of the further education and training institution, as the case may be,**] and, if there are educators in the provincial department of education concerned who are in excess of the educator establishment of a public school [**or further education and training institution**] due to operational requirements, that recommendation may only be made from candidates identified by the Head of Department, who are in excess and suitable for the post concerned.”;
- (b) by the substitution in subsection (3)(b) for subparagraph (v) of the following subparagraph: 45
- “(v) procedures that would ensure that the recommendation is not obtained through undue influence on the members of the governing body [**or the council, as the case may be.**]”;
- (c) by the substitution in subsection (3)(c) for the words preceding subparagraph (i) of the following words: 50
- “The governing body [**or the council, as the case may be,**] must submit, in order of preference to the Head of Department, a list of —”;

- (d) by the substitution in subsection (3) for paragraphs (d) and (e) of the following paragraphs, respectively:

“(d) When the Head of Department considers the recommendation contemplated in paragraph (c), he or she must, before making an appointment, ensure that the governing body [or council, as the case may,] has met the requirements in paragraph (b).” 5

“(e) If the governing body [or council, as the case may be,] has not met the requirements in paragraph (b), the Head of Department must decline the recommendation.”;

- (e) by the substitution in subsection (3) for paragraph (h) of the following paragraph: 10

“(h) The governing body [or the council, as the case may be,] may appeal to the Member of the Executive Council against the decision of the Head of Department regarding the temporary appointment contemplated in paragraph (g).”;

- (f) by the substitution in subsection (3) for paragraph (l) of the following paragraph: 15

“(l) A recommendation contemplated in paragraph (a) shall be made within two months from the date on which a governing body [or council, as the case may be,] was requested to make a recommendation, failing which the Head of Department may, subject to paragraph (g), make an appointment without such recommendation.”;

- (g) by the substitution in subsection (3)(m) for the words preceding subparagraph (i) of the following words: 20

“Until the relevant governing body [or council, as the case may be,] is established, the appointment, promotion or transfer in a temporary capacity to any post on the educator establishment must be made by the Head of Department where a—”;

- (h) by the repeal in subsection (3)(m) of subparagraph (ii). 25

Substitution of section 6B of Act 76 of 1998, as inserted by section 8 of Act 24 of 2005 30

**5.** The following section is hereby substituted for section 6B of the Educators Act:

“Conversion of temporary employment to permanent employment

**6B.** The Head of Department may, after consultation with the governing body of a public school, [or the council of a further education and training institution, as the case may be,] convert the temporary appointment of an educator appointed to a post on the educator establishment of the public school [or the further education and training institution] into a permanent appointment in that post without the recommendation of the governing body [or the council, as the case may be].”.

Amendment of section 8 of Act 76 of 1998, as amended by section 16 of Act 48 of 1999 and section 3 of Act 1 of 2004

**6.** Section 8 of the Educators Act is hereby amended —

- (a) by the substitution for subsection (2) of the following subsection: 45

“(2) Subject to subsections (4) and (5), no transfer to any post on the educator establishment of a public school [or a further education and training institution] shall be made unless the recommendation of the governing body of the public school [or the council of the further education and training institution, as the case may be,] has been obtained.”;

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

“(5) The Head of Department may, without a recommendation contemplated in subsection (2), transfer an educator temporarily for a stated period from a post at a public school [or public further education and training institution,] to a post at another public school [or public further education and training institution].”;

- (c) by the substitution for subsection (7) of the following subsection: 55

“(7) Despite section 6(3)(a) and subsection (2), in the case of an educator who has been awarded a bursary by the employer to follow a course approved by the employer, the employer may transfer such an educator, with his or her consent, to any suitable post on the educator establishment of a public school[, **a further education and training institution**] or an adult basic education and training centre.”. 5

**Amendment of section 18 of Act 76 of 1998, as substituted by section 11 of Act 53 of 2000**

7. Section 18 of the Educators Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (b), (c) and (d) of the following paragraphs, respectively: 10

“(b) wilfully or negligently mismanages the finances of the State, a school[, **a further education and training institution**] or an adult learning centre; 15

(c) without permission possesses or wrongfully uses the property of the State, a school, [**a further education and training institution,**] an adult learning centre, another employee or a visitor; 15

(d) wilfully, intentionally or negligently damages or causes loss to the property of the State, a school [, **a further education and training institution**] or an adult learning centre;”; and 20

(b) by the substitution in subsection (1) for paragraphs (f) and (g) of the following paragraphs, respectively:

“(f) unjustifiably prejudices the administration, discipline or efficiency of the Department of Education, an office of the State or a school[, **further education and training institution**] or adult learning centre; 25

(g) misuses his or her position in the Department of Education or a school[, **further education and training institution**] or adult learning centre to promote or to prejudice the interests of any person;”. 30



## **MEMORANDUM ON THE OBJECTS OF THE FURTHER EDUCATION AND TRAINING COLLEGES BILL, 2006**

### **1. MAIN OBJECT**

The Bill seeks to repeal the Further Education and Training Act, 1998 (Act No. 98 of 1998) (the FET Act), and to ensure that all issues relating to further education and training colleges (FET colleges), such as the establishment, governance and funding of public colleges and the employment of staff are dealt with in one Act of Parliament.

### **2. MAIN FEATURES OF BILL THAT DIFFER FROM THE FET ACT**

2.1 The FET Act provides for further education and training institutions (FET institutions). However, in order to differentiate between FET institutions and schools that offer FET programmes, the Bill now provides for public and private FET colleges. To this end the Bill defines a college as a public or private further education and training institution that is established, declared or registered under the proposed Act, but excluding a school offering further education and training programmes under the South African Schools Act, 1996 (Act No. 84 of 1996), or a college under the authority of a government department other than the Department of Education.

2.2 The FET Act did not provide for the employment of staff at public FET institutions, because such staff members were provided for in the Employment of Educators Act, 1998 (Act No. 76 of 1998).

2.3.1 Chapter 4 of the Bill provides for three categories of staff at a public college, namely management, lecturers and support staff. The management staff consists of the principal and vice-principal. The management staff is appointed by the Member of the Executive Council (MEC) responsible for education in a province. The principal, as the Chief Executive Officer of the college, must be accountable to both the Head of Department and the MEC.

2.3.2 The lecturers and support staff are appointed by the college. The reason for this is to enable the college to adopt the doctrine of responsiveness. That is, the college must respond to the needs of the society. For instance, if a factory approaches a college with a view of asking it to provide the factory with, say, electricians, the college must immediately appoint an experienced electrician, either on temporary contract or on a permanent basis, depending on the circumstances, to train electricians at the college. However, these staff members will be appointed by the college from the funds allocated by the State in accordance with norms and standards determined by the Minister of Education and other income received by the college from other sources.

2.3.3 In the light of the above, speculations that colleges would raise their student fees so as to cover payment for lecturers and support staff have no legal basis since the funds will be provided by the State. Similarly, speculations that lecturers and support staff will forfeit their privileges such as pension fund, housing subsidies and capped leave are unfounded. These are covered by section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995). This section provides that if employees are transferred from one employer to another employer, they are deemed to be transferred with all the privileges they enjoyed from the previous employer. To this end, clause 54 of the Bill provides as follows:

Subject to section 197 of the Labour Relations Act, "... the principal, vice-principal, lecturers and support staff employed by the State continue to be so employed until appointed in terms of this Act. ...".

2.3.4 There are other checks and balances contained in the Bill, such as those in clause 20(2) and (7), which provides as follows:

“(2) Subject to this Act, the Labour Relations Act, the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), the Employment Equity Act, 1998 (Act No. 55 of 1998), and any other applicable law, the college must establish posts for lecturers and support staff.

(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, 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.”; and clause 54(2), which provides as follows:

“(2) The Education Labour Relations Council and the PSCBC 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.”.

The PSCBC is the Public Service Coordinating Bargaining Council.

2.3.5 The above-mentioned checks and balances should provide adequate protection for the rights and privileges of lecturers and support staff.

2.4 The Bill authorises public colleges to draft their own college statutes. If a public college does not have its own Statute yet, it must use the standard college statute contained in Schedule 1 to the Bill. This ensures that public colleges always have access to a college statute to assist in their governance.

2.5 The FET Act provides that the MEC may merge two or more FET institutions. The Bill goes further and provides for the protection of the employment of the employees. In terms of the Bill the existing rights and obligations between the employees and employers continue to exist between the employees and the new employer on the merger of two or more public colleges, and are subject to labour legislation.

2.6 The Bill also makes room for transitional arrangements so as to allow for a smooth transformation from an FET institution to a college.

### **3. FINANCIAL IMPLICATIONS**

Seeing that the Bill is merely the refinement of the current FET Act, no additional costs are foreseen.

### **4. PARLIAMENTARY PROCEDURE**

4.1 The State Law Advisers and the Department of Education are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(2) of the Constitution, since it falls within a functional area listed in Schedule 4 of the Constitution, namely “Education at all levels, excluding tertiary education”.

4.2 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 provisions pertaining to customary law or customs of traditional communities.