

NOTICE 3284 OF 2011
OFFICE OF THE PREMIER

It is hereby notified that the Premier has assented to the following Act that is hereby published for general information:

No. 5 of 2011: Gauteng Education Laws Amendment Act, 2011

GAUTENG PROVINCIAL LEGISLATURE

GAUTENG EDUCATION LAWS AMENDMENT ACT, 2011

No 5, 2011

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from from the Bill.

_____ Words in bold and underlined with a solid line indicate insertions in the Bill.

ACT

To amend the Gauteng School Education Act, 1995 so as to align it with national legislation on school education; to amend the Gauteng Education Policy Act, 1998 so as to align it with national legislation on school education; to repeal the Examinations and Assessment Act, 1997 and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of Gauteng as follows:-

AMENDMENTS TO THE GAUTENG SCHOOL EDUCATION ACT, 1995 (ACT NO. 6 OF 1995)

1. Amendment of arrangement of sections of Act 6 of 1995.—The arrangement of sections of the Gauteng School Education Act, 1995 is hereby deleted.

2. Amendment of section J of Act 6 of 1995.—Section 1 of the Gauteng School Education Act, 1993 is hereby amended by the:

(a) deletion of the definitions of " 'Council'; 'district council'; 'farm school'; 'financial head'; 'model C school'; 'negotiating forum'; 'school attendance officer'; 'specialist council'; 'state school'; and 'state-aided school';";

(b) substitution for the definition of "centres of learning" of the following definition:

"centres of learning' means technical schools, schools for focused learning, centres for the development and promotion of particular aptitudes of learners, and centres at which part-time classes are provided for education [includes centres for the development and promotion of particular aptitudes of learners, and centres at which part-time classes are provided for education];"

(c) substitution for the definition of "**Constitution**" of the following definition:

" 'Constitution' means the Constitution of the Republic of South Africa, [1993.(Act 200 of 1993)] 1996;"

(d) substitution for the definition of "educator" of the following definition:

" 'educator' means [a principal or any person who teaches, educates or trains learners or provides professional therapy at any school or centre of learning] any person, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a school excluding a person who is appointed to exclusively perform extra-curricular duties;"

(e) substitution for the definition of "first level" of the following definition:

" **'first [level] grade'** means that level which may be completed in the first year of compulsory school attendance contemplated in section 12(1);";

(f) substitution for the definition of "**Head of Department**" of the following definition:

" **'Head of Department'** means the **[most senior official in the department]** Head of the Department responsible for education in the Province;";

(g) substitution for the definition of "**learner**" of the following definition:

" **'learner'** means any person receiving education **[in a school]** or obliged to receive education in terms of this Act;";

(h) substitution for the definition of "**level**" of the following definition and its insertion after the definition of "**government department**":

" **'[level] grade'** means that part of an educational programme **[In a school, or of any other educational programme which the Member of the Executive Council may deem to be equivalent, which a learner may complete in one school year]** which a learner may complete in one school year, or any other educational programme which the Member of the Executive Council may deem to be equivalent thereto;";

(i) insertion after the definition of "**Member of the Executive Council**" of the following definition:

" **'Minister'** means the Minister responsible for the administration of the South African Schools Act, 1996 (Act 84 of 1996);";

(j) substitution for the definition of "**parent**" of the following definition: "

'parent' means—

(a) the biological or adoptive parent or legal guardian of a learner;

(b) person legally entitled to custody of a learner; or

(c) the person who undertakes to fulfill the obligations of a person referred to in paragraphs (a) or (b) towards the learners education at school;";

(k) substitution for the definition of "**principal**" of the following definition:

" **'principal'** means an educator appointed or acting as the head of the school;";

(l) substitution for the definition of "**private school**" of the following definition and its insertion after the definition of "**Head of Department**":

" **'[private] independent school'** means a school **[other than a public school]** registered or deemed to be registered in terms of section 66 of this Act;";

(m) insertion after the definition of "**principal**" of the following definition:

" **'province'** means the province of Gauteng established by section 103(1)(c) of the Constitution;";

(n) substitution for the definition of "**provincial legislature**" of the following definition:

" **'Provincial Legislature'** means the **(Provincial Legislature of the Province)** Provincial Legislature as contemplated in section 104 of the Constitution;";

(o) substitution for the definition of "**public school**" of the following definition:

"A public school may be—

(i) an ordinary public school or

(ii) a public school for learners with special education needs, or

(iii) a public school that provides education with a specialised focus talent, including sport, performing arts or creative arts, or

(iv) Schools for the development and promotion of particular aptitudes of learners and technical schools"

(p) substitution for the definition of "**school**" of the following definition:

" '**school**' means **[any institution for the education of learners]** a public school or an independent school which enrolls learners in one or more grades from grade R (Reception) to grade twelve"; and

(q) insertion of the following definition of "**school fees**" after the definition of "school attendance officer":

" '**school fees**' means school fees contemplated in section 39 of the South African Schools Act, 1996 (Act 84 of 1996) and includes any form of contribution of a monetary value made or paid by a person or body in relation to the attendance or participation by a learner in any programme of a public school;"-

3. Substitution of section 2 of Act 6 of 1995.—The following section is hereby substituted for section 2 of the Gauteng School Education Act, 1995:

"2. Application of the Act.—(1) **[Subject to the Constitution t]** This Act **[shall apply in relation to]** applies to school education in the Province.

(2) The Member of the Executive Council and the Head of Department must exercise any power conferred upon them by or under this Act, after taking full account of the South African Schools Act, 1996 (Act 84 of 1996), the Gauteng Education Policy Act, 1998 (Act 12 of 1998) and the National Education Policy Act, 1996 (Act 27 of 1996).

(3) Nothing in this Act prevents the Provincial Legislature from enacting legislation for school education in the Province in accordance with the Constitution and this Act."

4. Substitution of section 3 of Act 6 of 1995.—The following section is hereby substituted for section 3 of the Gauteng School Education Act, 1995:

"3. Control of school education to the Province.—The Member of the Executive Council must exercise control over school education in the province subject to this Act; the Constitution, the National Education Policy Act, 1996 (Act 27 of 1996);the South African Schools Act, 1996 (Act 84 of 1996) and the Gauteng Education Policy Act, 1998 (Act 12 of 1998)."

5. Amendment of section 6 of Act 6 of 1995.—Section 6 of the Gauteng School Education Act, 1995 is hereby amended by the:

(a) substitution for paragraph (b) of the following paragraph:

"(b) In order to further the objects of this Act, the Member of the Executive Council may enter into agreements with other government departments and with non-governmental organizations **[but no agreement placing financial obligations on the department shall be entered into without the concurrence of the financial head]**."; and

(b) deletion of subsections (c) to (f).

6. Substitution of section 7 of Act 6 of 1995.—The following section is hereby substituted for section 7 or the Gauteng School Education Act, 1995:

"7. Temporary closure of public schools in case of emergency.—(1) The Head of Department may close a public school in the case of an emergency if he or she believes on

reasonable grounds that the lives of learners and staff are endangered or that there is a real danger of bodily injury to them or of damage to property.

(2) When the Head of Department decides that the school should be reopened, he or she must inform the school governing body and the principal of the date on which the school must reopen.

7. Amendment of section 9 of Act 6 of 1995.—Section 9 of the Gauteng School Education Act, 1995 is hereby amended by the:

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

"(d) if he or she has reason to believe that any person is able to produce any evidence, including any article, document, book, video or audio recording Or anything relevant to the inquiry, order that person to deliver to him or her that evidence [article, document, book, video or audio recording or thing].";

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

"(3) A person appointed under subsection (1) who is not in the fulltime employment of the State may be paid, out of money appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may **[, with the concurrence of the financial head] determine**"; and

(c) substitution for paragraph (e) of subsection (4) of the following paragraph:

"(e) fails to produce any evidence, including any article document, book, video or audio recording or anything as ordered under subsection (2)(d)."

8. Amendment of section 12 of Act 6 of 1995.—Section 12 of the Gauteng School Education Act, 1995 is hereby amended by me:

(a) substitution for subparagraph (ii) of subsection (1)(b) of the following subparagraph:

"(ii) the day on which he or she reaches the age of fifteen years or completes the ninth level, whichever occurs first [is the earlier].";

(b) substitution for subsections (2) to (4) of the following subsections:

"(2) The Member of the Executive Council must ensure that there are enough school places so that every child who lives in the province can attend school as required by subsection (1).

(3) If a Member of the Executive Council cannot comply with subsection (2) because of lack of capacity existing at the date of the commencement of this Act, he or she must take steps to remedy any such lack of capacity as soon as possible and must make an annual report to the Minister on the progress achieved in doing so.

(4) If a learner who is subject to compulsory attendance in terms of subsection (1) is not enrolled at or fails to attend a school, the Head of Department may—

(a) investigate the circumstances of the learner's absence from school;

(b) take appropriate measures to remedy the situation; and

(c) failing such remedy, issue a written notice to the parent of the learner requiring compliance with subsection (1)."; and

(c) the addition of the following subsections:

(5) If a parent of any person who is subject to compulsory school attendance in terms of section 12(1) fails, without reasonable cause and after a written warning by the Head of Department, to cause such a person to attend an appropriate school regularly, he or she shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months.

(6) The Head of Department may exempt a learner entirely, partially or conditionally, from compulsory school attendance if it is in the best interests of the learner.

(7) The Head of Department must maintain a register of all learners exempted from compulsory school attendance."

9. Repeal of section 13 and 14 of Act 6 of 1995.—Sections 13 and 14 of the Gauteng School Education Act, 1995 are hereby repealed.

10. Amendment of section 15 of Act 6 of 1995.—Section 15 of the Gauteng School Education Act, 1995, is hereby amended by—

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

"(1) If a parent of any **[person] learner** who is subject to compulsory school attendance in terms of section 12(1), without reasonable cause and after a written warning by the Head of Department, to cause such **[person] learner** to attend an appropriate school regularly, he or she shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a minimum period of **[not exceeding]** three months."; and

(b) the substitution of subsection (3) of the following subsection;

"(3) Any person who hinders or obstructs **[school attendance officer]** any official of the department in the performance of his or her functions **[under section 13]** in terms of this Act or any other applicable law shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months."

11. Repeal of section 16 of Act 6 of 1995.—Section 16 of the Gauteng School Education Act, 1995 is hereby repealed.

12. Substitution of section 17 of Act 6 of 1995.—The following section is hereby substituted for section 17 of the Gauteng School Education Act, 1995:

"17. Prohibition against discrimination and victimization of learners whose parents have not paid school fees.—A learner may not be deprived of his or her right to participate in all aspects of the programme of a public school despite the non-payment of school fees by his or her parent and may not be victimized in any manner, including but not limited to the following conduct:

(a) suspension from classes;

(b) verbal or non-verbal abuse;

(c) denial of access to—

(i) cultural, sporting or social activities of the school; or

(ii) the nutrition programme of the school for those learners who qualify in terms of the applicable policy; and

(d) denial of a school report or transfer certificate;

(e) denial of the right to write test or examinations."

13. Insertion of section 18A of Act 6" of 1995.—The following section is hereby inserted in the Gauteng School Education Act, 1995 after the repealed section 18:

"18A. Language policy of public schools.—(1) The governing body of B public school must determine the language policy of the school subject to the Constitution, the South African Schools Act, 1996 (Act 84 of 1996), this Act and any norms and standards for language policy in public

schools as determined by the Minister in consultation with the Department.

(2) The governing body of a public school must submit a copy of the school's language policy to the Member of the Executive Council for vetting and noting within 90 days of coming into office and as may be required.

(3) If, at any time, the Member of the Executive Council has reason to believe that the language policy of a public school does not comply with the principles set out in subsection (1) above or the requirement of the constitution, the Member of the Executive Council, after consultation with the governing body of the school concerned, direct that the language policy of the school be formulated in accordance with subsection (1)."

14. Amendment of section 19 of Act 6 of 1995.—Section 19 of the Gauteng School Education Act, 1995 is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Learners at a public school shall be encouraged to make use of a range of official languages subject to the language policy determined by the governing body of the school."

15. Insertion of section 21A of Act 6 of 1995.—The following section is hereby inserted in the Gauteng School Education Act, 1995 after the repealed section 21:

"**21A. Religious policy of public schools.**—(1) The governing body of a public school must determine the religious policy of the school subject to the Constitution, the South African Schools Act, 1996 (Act 84 of 1996), and this Act in consultation with the Department.

(2) The religious policy of a public school shall be developed within the framework of the following principles:

- (a) The education process should aim at the development of a national, democratic respect of our country's diverse cultural and religious traditions.
- (b) Freedom of conscience and of religion shall be respected at all public schools.

(3) The governing body of a public school must submit a copy of the school's religious policy to the Member of the Executive Council for vetting and noting within 90 days of coming into office, and as may be required.

(4) if, at any time, the Member of the Executive Council has reason to believe that the Religious Policy of a public school does not comply with the principles set out in sub-section (2) above or the requirement of the constitution, the Member of the Executive Council, after consultation with the governing body of the school concerned, direct that the Religious Policy of the school be formulated in accordance with sub-section (1) and (2)."

16. Amendment of section 23 of Act 6 of 1995.—Section 23 of the Gauteng School Education Act, 1995 is hereby amended by:

- (a) the substitution for the heading of the following heading:

"[Control] Management of expulsion, suspension and discipline of learners": and

- (b) the substitution for subsections (2) and (3) of the following subsections:

"(2) [Subject to subsection (1), t] The [control] management of expulsion, suspension and punishment of learners at public schools and hostels shall be **[as prescribed]** in accordance with this Act and any other applicable law."; and

"(3) Any person who intentionally or negligently contravenes subsection (1) shall be guilty of an offence and liable on conviction to [fine or to imprisonment for a period not exceeding six months] a sentence which could be imposed for assault".

(4) The governing body of a school shall comply with the prescripts of the relevant laws,

pertaining to the suspension, punishment and expulsion of learners from public schools.

17. Repeal of section 24 of Act 6 of 1995.—Section 24 of the Gauteng School Education Act, 1995 is hereby repealed.

18. Amendment of section 25 of Act 6 of 1995.—The heading of section 25 of the Gauteng School Education Act, 1995 is hereby substituted for the following heading—

"25 [Duties of parents and learners] Liability for damage to or loss of school or department properly".

19. Amendment of section 26 of Act 6 of 1995.—Section 26 of the Gauteng School Education Act, 1995 is hereby amended by the substitution for subsections (2) to (3) of the following subsections—

"(2) Despite subsection (1):

- (a) the Member of the Executive Council may determine that the governance of two or more public schools must vest in a single governing body if it is in the interests of education at the schools in question; and
- (b) the Member of the Executive Council may place the hostel of a public school under the supervision of the governing body of another school if it is in the interests of education at the school in question.

(3) The Member of the Executive Council may not act under subsection (2) unless he or she has:

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- (a) given notice in the *Provincial Gazette* of his or her intention so to act;
- (b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and
- (c) considered all such submissions."

20. Amendment of section 27 of Act 6 of 1995.—Section 27 of the Gauteng School Education Act, 1995 is amended by—

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

"(2) The number of parent members of a governing body of a public school must comprise one more than the combined total of other members of a governing body who have voting rights."

(b) the substitution for subsection (4) of the following subsection;

"(4) Learners [may] must be represented only on the governing body of a public school, which provides education at a level higher than the seventh level."

21. Repeal section 28 of Act 6 of 1995.—Section 28 of the Gauteng School Education Act, 1995 is hereby repealed.

22. Substitution of section 29 of Act 6 of 1995.—The following section is hereby substituted for section 29 of the Gauteng School Education Act, 1995:

"29. Enhancement of capacity of governing bodies.—(1) Out of funds appropriated for this

purpose by the provincial legislature, the Head of Department [may] must establish a programme to
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- (a) provide introductory training for newly elected governing bodies to enable them to perform their functions; and
- (b) provide continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.

(2) The Head of Department [may] must ensure that principals and other officers of the department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act."

23. Substitution of section 30 of Act 6 of 1995.—The following section is hereby substituted for section 30 of the Gauteng School Education Act, 1995:

"30. Failure by governing body to perform its functions.—(1) If the Head of Department determines on reasonable grounds that a governing body has:

- (a) ceased to perform functions allocated to it in terms of this Act;
- (b) has failed to perform one or more of such functions;
- (c) has acted in a manner that undermines the purpose, roles and responsibilities of the governing body; or
- (d) has acted in a manner that disrupts the educational programmes of the school

he or she must appoint sufficient persons to perform all such functions or one or more of such functions, as the case may be, for a period not exceeding three months.

(2) The Head of Department may extend the period referred to in subsection (1), by further periods not exceeding three months each, but the total period may not exceed one year.

(3) If the governing body has ceased to perform its functions, the Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).

(4) If a governing body fails to perform any of its functions, the persons contemplated in subsection (1) must build the necessary capacity within the period of their appointment to ensure that the governing body performs its functions."

24. Substitution of section 47 of Act 6 of 1995.—The following section is hereby substituted for section 47 of the Gauteng School Education Act, 1995:

"47. Closure of public schools.—(1) The Member of the Executive Council may, by notice in the *Provincial Gazette*, close a public school.

(2) The Member of the Executive Council may not act under subsection (1) unless he or she has—

- (a) informed the governing body of the school of his or her intention so to act and his or her reasons thereof;
- (b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;
- (c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions;
- (d) given due consideration to any such representations received;
- (e) given notice to the governing body of a public school of the intention to close the school.

(3) The notice contemplated in subsection (1) must set out reasons of the Member of the

Executive Council for deciding to close the [state] public school.

(4) The governing body of a public school which is aggrieved by the decision of the Member of the Executive Council may within thirty days after receipt of the recommendations appeal to the Minister.

[(3)] (5) If a public school is closed in terms of subsection (1) all assets and liabilities of such school must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4) of the South African Schools Act, 1996 (Act No.84 of 1996), devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school."

25. Insertion of section 47A of Act 6 of 1995.—The following section is hereby inserted in the Gauteng School Education Act, 1995 after section 47:

"47A. Merger of public schools.—(1) Subject to subsection (2), the Member of the Executive Council may, by notice in the Provincial Gazette, merge two or more public schools into a single school.

(2) Before merging two or more public schools the Member of the Executive Council must—

- (a) give written notice to the schools in question of the intention to merge them;
- (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated;
- (c) give the governing bodies of the schools in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (b);
- (d) consider such representations;
- (e) be satisfied that the employers of staff at the public schools have complied with their obligations in terms of applicable labour law;
- (f) give notice to the governing body of a public school of the intention to merge the schools.

(3) If one or more of the [school] schools that are to be merged in terms of subsection (1) are public schools on private property, the Member of the Executive Council must also—

- (a) notify the owner of the private property of his or her intention to merge the schools in question;
- (b) consider his or her contractual obligations in terms of the agreement concluded with the private owner,
- (c) renegotiate his or her obligations in terms of the existing agreement if necessary; and
- (d) negotiate a new agreement if the single school contemplated in subsection (1) is to be situated on private property.'

(4) The single school contemplated in subsection (1) must be regarded as a public school.

(5) All assets and liabilities, rights and obligations of the schools that are merged, must, subject to the conditions of any donation, bequest or trust, vest in the single school.

(6) The governing bodies of the schools that are merged must have a meeting before the merger to constitute a single governing body comprising of all members of the governing bodies concerned.

(7) The interim governing body must decide on the budget and differences in codes of conduct and school fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of this Act.

(8) The governing [body] bodies of a public [school] schools which [is] are aggrieved by the decision of the Member of the Executive Council regarding the merger may appeal to the Minister against the decision as contemplated in subsection (1)."

26. Repeal of section 48 of Act 6 of 1995.—Section 48 of the School Education Act (Gauteng), 1995 is hereby repealed.

27. Substitution of section 49 of Act 6 of 1995.—The following section is hereby substituted for section 49 of the Gauteng School Education Act, 1995:

"49. School funds and assets of public schools.—(1) The governing body of a public school must establish a school fund and administer it in accordance with the directions issued by the Head of Department.

(2) Subject to subsection (3), all money received by a public school including school fees and voluntary contributions must be paid into the school fund.

(3) The governing body of a public school must open and maintain one banking account, but a governing body of a public school may, with the approval of the Member of the Executive Council, invest surplus money in another account.

(4) Money or other goods donated or bequeathed to or received in trust by a public school must be applied in accordance with the conditions of such donation, bequest or trust.

(5) All assets acquired by a public school on or after the commencement of this Act are the property of the school.

(6) The school fund, all proceeds thereof and any other assets of the public school must be used only for—

- (a) educational purposes, at or in connection with such school;
- (b) educational purposes, at or in connection with [such other] another public school and with the consent of the Head of Department;
- (c) the performance of the functions of the governing body; or
- (d) another educational purpose agreed between the governing body and the Head of Department.

(7) Money from the school fund of a public school may not be paid into a trust or be used to establish a trust.

(8) If a trust was established from a school fund of a public school or if such money was paid into a trust prior to 1 January 2002, such trust or payment is invalid and the money must be paid back into the school fund.

(9) A governing body of a public school may not collect any money or contributions from parents to circumvent or manipulate the payment of compulsory school fees and to use moneys or contributions to establish or fund a trust, and if such money or contributions of parents were paid into a trust prior to 1 January 2002, the trust must pay such money or contributions into the school fund."

28. Insertion of section 49A of Act 6 of 1995.—The following section is hereby inserted in the Gauteng School Education Act, 1995 after section 49:

"49A. Public schools on private property.—(1) Subject to the Constitution and expropriation of land in terms of section 104 or a real right to use the property on which the public school is situated, a public school may be provided on private property only in terms of an agreement between the Member of the Executive Council and the owner of the private property.

(2) An agreement contemplated in subsection (1) must be consistent with this Act and in particular must provide for—

- (a) the provision of education and the performance of the normal functions of a public

school;

- (b) governance of the school, including the relationship between the governing body of the school and the owner;
- (c) access by all interested parties to the property on which the school stands;
- (d) security of occupation and use of the property by the school;
- (e) maintenance and improvement of school buildings and the property on which the school stands and the supply of the necessary services;
- (f) protection of the owner's rights in respect of the property occupied, affected or used by the school.

(3) The provisions of the Deeds Registries Act, 1937 (Act 47 of 1937) do not apply to a real right, excluding ownership, acquired by the State, a public school or another party in terms of an agreement contemplated in this section.

(4) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.

(5) Despite subsection (3), a Registrar of Deeds must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the Registrar of Deeds receives—

- (a) an application for such endorsement by the owner of the property, or the Member of the Executive Council or any other holder of a right contemplated in subsection (3), together with the title deed of the property; and
- (b) affidavits by the owner of the property and the Member of the Executive Council stating that an agreement contemplated in this section has been concluded.

(6) The Registrar of Deeds may cancel any endorsement made in accordance with subsection (5) if the owner of the property submits an affidavit from the Member of the Executive Council of the province in which the public school is situated to the effect that such public school has been closed in terms section 47.

(7) Any transfer duty, stamp duty, fees or costs payable in respect of the registration of a right in terms of subsection (3) may be paid in full or in part from funds appropriated by the provincial legislature for that purpose, but the public school contemplated in subsection (1) is not responsible for such duties, fees or costs."

29. Repeal of sections 50 to 65 of Act 6 of 1995.—Sections 50 to 65 of the Gauteng School Education Act, 1995 are hereby repealed.

30. Amendment of section 66 of Act 6 of 1995.—Section 66 of the Gauteng School Education Act, 1995 is hereby amended by the:

- (a) substitution for subsection (11) of the following subsection:

"(11) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[one year] three months.**"; and

- (b) addition after subsection (11) of the following subsections:

"(12) The owner of an independent school whose application was granted under subsection (5) must establish the independent school within 18 months from the date on which the application was granted by the Head of Department.

(13) If the owner of an independent fails to establish the school within the period referred to in subsection (12), the registration shall lapse."

31. Amendment of section 68 of Act 6 of 1995.—Section 68 of the Gauteng School Education Act, 1995 is hereby amended by the substitution for section 68 of the following section:

"68. Discrimination at Independent schools.—Admission requirements for independent schools shall not directly or indirectly discriminate unfairly on **[grounds of race] one or more grounds set out in section 9 of the Constitution, or on one or more grounds set out in Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (Act No.4 of 2000).**".

32. Amendment of section 71 of Act 6 of 1995.—Section 71 of the Gauteng School Education Act, 1995 is hereby amended by the substitution for subsection (1) of the following subsection—

"71. Declaration of [private] independent schools as [state] public schools.—(1) The Member of the Executive Council may **[, with the concurrence of the financial head,]** enter into an agreement with the owner of **[a private] an independent** school in terms of which the school concerned is declared to be a **[state] public** school."

33. Amendment of section 78 of Act 6 of 1995.—Section 78 of the Gauteng School Education Act, 1995 is amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(1) Unless—

- (b) the Head of Department at any time after that period is of the opinion that the learner is not receiving suitable education or treatment,

the Head of Department may after consultation with the parent designate a school for specialized education, or any ordinary school capable of accommodating the learner's specialized education needs, at which the learner shall be placed."

34. Repeal of sections 82 to 87 of Act 6 of 1995.—Sections 82 to 87 of the Gauteng School Education Act, 1995 are hereby repealed.

35. Repeal of Chapter 11 of Act 6 of 1995.—Chapter 11 of Act 6 of 1995 is hereby repealed.

36. Amendment of section 95 of Act 6 of 1995.—Section 95 of the Gauteng School Education Act, 1995 is hereby amended by the substitution for section 95 of the following subsection—

"95. Transitional provisions relating to centres of learning and accessories.—Any centre of learning, hostel, **[clinic,]** educators' quarters or other accessory in connection with schools established, or deemed to have been established, under the provisions of an Act repealed under this Act, and which existed immediately prior to the commencement date, shall be deemed to have been established in terms of section 6(a)".

37. Repeal of section 96 of Act 6 of 1995.—Section 96 of the Gauteng School Education Act, 1995 is hereby repealed.

38. Amendment of section 97 of Act 6 of 1995.—Section 97 of the Gauteng School Education Act, 1995 is amended by—

(a) the substitution for subsections (1) and (5) of the following subsections:

"(1) Any governing body, management council [board of management, local or domestic council, committee, board or other body for the control or management of a public school or hostel] or similar authority of a public school, [established or deemed to have been established under the provisions of an Act repealed by this Act, and] which existed immediately prior to the commencement [date] of this Act, [shall be deemed to be a governing body established in terms of section 26] continues to function until the day before the date on which the relevant governing body is elected and must perform all the functions it performed prior to the commencement of this Act which a governing body can lawfully perform in terms of this Act."; and

"(5) The rights, powers and functions contemplated in subsection (3) may be altered by law **[after negotiations contemplated in section 102 over such alterations have taken place]."**

39. Repeal of sections 100 to 104 of Act 6 of 1995.—Sections 100 to 104 of the Gauteng School Education Act, 1995 are hereby repealed.

40. Amendment of section 106 of Act 6 of 1995.—Section 106 of the Gauteng School Education Act, 1995 is amended by the deletion of subsections (2), (3) and (4).

41. Amendment of section 108 of Act 6 of 1995.—Section 108 of the Gauteng School Education Act, 1995 is hereby amended by the substitution for the short title of the following short title:

"This Act is called the Gauteng School Education Act, 1995 and comes into operation on a date to be fixed by the Premier by Proclamation in the Provincial Gazette".

42. General Provision of Act 6 of 1995.—The Gauteng School Education Act, 1995 is hereby amended by the:

- (a) substitution for the word "private school" in the Act of the word "independent school";
- (b) substitution for the word "state school" in the Act of the word "public school"; and
- (c) substitution for the word "level" in the Act of the word "grade".

AMENDMENTS TO THE GAUTENG EDUCATION POLICY ACT, 1998 (ACT NO. 12 OF 1998)

43. Amendment of the arrangement of sections of Act 12 of 1998.—The arrangement of sections of the Gauteng Education Policy Act, 1998 is hereby deleted.

44. Amendment of section 1 of Act 12 of 1998.—Section 1 of the Gauteng Education Policy Act, 1998 is hereby amended by the:

- (a) deletion of the definition of "**education institution**";
- (b) substitution for the definition of "**principal**" of the following definition:

" '**principal**' means **[the person responsible for administering an education institution and serving as its head]** an educator appointed or acting as the head of the education institution;";

- (c) the insertion after the definition of "**head of department**" of the following definition:

" '**learner**' means any person receiving education or obliged to received education in terms of

the Gauteng School Education Act, 1995 (Act 6 of 1995);"

- (d) the insertion after the definition of "**Member of the Executive Council**" of the following definition:

" **'parent'** means-

(a) the biological or adoptive parent or legal guardian of a learner;

(b) person legally entitled to custody of a learner; or

(c) the person who undertakes to fulfill the obligations of a person referred to in paragraphs (a) or (b) towards the learners education at school;"; and

- (e) the insertion after the definition of "**province**" of the following definitions;

" **'school'** means a public school or an independent school which enrolls learners in one or more grades from grade R (Reception) to grade twelve; stakeholder means an organization or body with a direct and continuing interest in the education institution, programme, phase or sector in question;".

45. Amendment of section 3 of Act 12 of 1998.—Section 3 of the Gauteng Education Policy Act, 1998 is hereby amended by the:

- (a) substitution for subsections (1) and (3) of the following subsections;

"3. Responsibility for determining and implementing education policy.—(1) Subject to this Act or any other law, the Member of the Executive Council is responsible for [making] determining education policy [on any education-related matter for the province]."

(3) Subject to this Act, any other law or applicable national or provincial education policy, the governing body [of any education Institution] may [make] determine education policy for its [institution] school."

- (b) deletion of subsections (2), (4) and (5); and

- (c) substitution for subsection (6) of the following subsection:

"(6) The principal of [an education institution] a school administered under the auspices of the provincial department must:

(a) co-ordinate the implementation of education policy in the [education institution] school; and

(b) submit—

(i) quarterly or such other reports as may be reasonably requested by the School Governing Body; and

(ii) an annual report to the governing body,"

46. Repeal of section 4 of Act 12 of 1998.—Section 4 of the Gauteng Education Policy Act, 1998 is hereby repealed.

47. Amendment of section 5 of Act 12 of 1998.—Section 5 of the Gauteng Education Policy Act, 1998 is hereby amended by the substitution for sub paragraph (viii) of subsection (1)(b) of the following subparagraph:

"(viii) ensuring that, on completion of the ninth **[level] grade** of learning, learners have acquired satisfactory levels of competence in at least two official languages:".

48. Repeal of sections 6 to 9 of Act 12 of 1998.—Sections 6 to 9 of the Gauteng Education Policy Act, 1998 are hereby repealed.

49. Amendment of section 10 of Act 12 of 1998.—The Gauteng Education Policy Act, 1998 is hereby amended by the substitution for section 10 of the following subsection:

"10. Establishment of Advisory Councils.—(1) The Member of the Executive Council may establish Advisory Councils.

(2) A member of an Advisory Council who is not in the full time employment of the State may be paid, out of funds appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may determine."

50. Amendment of section 11 of Act 12 of 1998.—Section 11 of the Gauteng Education Policy Act, 1998 is hereby amended by the:

(a) substitution for paragraph (a) of section 11 of the following paragraph:

"11. Functions of [Specialist] Advisory Councils.—(1) An [Specialist] Advisory Council [must] may—

(a) **[on its own Initiative or]** at the request of the Member of the Executive Council, investigate and consider matters relating to education that fall within its terms of reference and report on its findings to the member."; and

(b) by the insertion of the following subsection:

(2) The head of department shall be responsible for the establishment of a secretariat for the Advisory Councils."

51. Amendment of section 12 of Act 12 of 1998.—Section 12 of the Gauteng Education Policy Act, 1998 is amended by the deletion of subsection (4).

52. Repeal of section 13; 14; 15 and 16 of Act 12 of 1998.—Sections 13 to 16 of the Gauteng Education Policy Act, 1998 are hereby repealed.

53. Amendment of Section 18 of Act 12 of 1998.—Section 18 of the Gauteng Education Policy Act, 1998 is hereby amended by the deletion of subsections (2) and (3).

54. Amendment of Section 19 of Act 12 of 1998.—Section 19 of the Gauteng Education Policy Act, 1998 is hereby amended by the substitution for subsection (1) of the following subsection:

"Subject to the provisions of this Act or any other law, the Member of the Executive Council may assign or delegate any powers or functions conferred on him or her in terms of this Act, except those contemplated in sections 3(1), 8, 10, 12(1), **[15(9)]**, 17(8) and 18(1) to—

(a) any person in the employ of the provincial administration; or

(b) any council, committee, sub-committee, board or body established in terms of this Act or any other law."

55. Amendment of section 20 of Act 12 of 1998.—Section 20 of the Gauteng Education Policy Act, 1998 is amended by the deletion of subsection (3).

56. Amendment of section 21 of Act 12 of 1998.—Section 21 of the Gauteng Education Policy, 1998 is hereby amended by the substitution for the short title of the following short title:

"This Act is called the Gauteng Education Policy Act, 1998 and comes into operation on a date to be fixed by the Premier by Proclamation in the Provincial Gazette."

AMENDMENTS TO THE EXAMINATIONS AND ASSESSMENT ACT, 1997 (ACT NO. 7 OF 1997)

57. Repeal of the Examinations and Assessment Act, 1997 (Act No. 7 of 1997).—The Examinations and Assessment Act, 1997 (Act No. 7 of 1997) as amended by the Examinations and Assessment Amendment Act, 1998 (Act No. 7 of 1998) is hereby repealed.

58. Short title.—This Act is called the Gauteng Education Laws Amendment Act, 2011.