

NOTICE 907 OF 2011**DEPARTMENT OF BASIC EDUCATION****NATIONAL EDUCATION EVALUATION AND DEVELOPMENT UNIT BILL, 2011****CALL FOR COMMENTS ON NATIONAL EDUCATION EVALUATION AND
DEVELOPMENT UNIT BILL, 2011**

I, Angelina Matsie Motshekga, Minister of Basic Education, after consultation with the Council of Education Ministers, hereby publish the National Education Evaluation and Development Unit Bill, 2011, for comment.

All interested persons and organisations are invited to comment on the Bill, in writing, and to direct their comments to:

The Director-General, Private Bag X895, Pretoria, 0001, for attention: Adv. Moribishane Ramafoko, tel. 012 357 3720, email ramafoko.m@dbe.gov.za, fax 012 323 9430.

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

All comments must reach the Department by Friday, 17 February 2012.



Angelina Matsie Motshekga, MP

MINISTER

DATE: 06-12-2011

REPUBLIC OF SOUTH AFRICA

**NATIONAL EDUCATION EVALUATION AND
DEVELOPMENT UNIT ACT**

(As introduced ...)

(MINISTER of BASIC EDUCATION)

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BILL

To provide for the establishment, governing principles and functions of the National Education Evaluation and Development Unit (NEEDU); the governance of the NEEDU; general provisions; and matters connected therewith.

PREAMBLE

WHEREAS the Constitution requires the State to respect, protect, promote and fulfil the fundamental right of everyone to a basic education;

AND WHEREAS the State is committed to the achievement of equality and redressing the inequalities of the past;

AND WHEREAS the school system is meant to open the doors of learning and culture to all;

AND WHEREAS the South African public is entitled to reliable information on whether the school system is serving learners' educational needs;

AND WHEREAS an external agency is needed to conduct independent evaluations and to report on the state of school leadership, management, teaching and learning, and on the support provided to schools and educators by districts and provincial and national departments;

AND WHEREAS such evaluations and reports must take into account the historical and social contexts of school education in the country, since the conditions under which teaching and learning take place remain deeply unequal;

AND WHEREAS the Minister and the public need independent expert advice on developmental interventions to repair dysfunction in schools where it exists and to accelerate the achievement of a school system that equips all learners to become productive citizens of 21st-century South Africa;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

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CHAPTER 1

DEFINITIONS, OBJECT AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise –

“**board**” means the board contemplated in section 8 of this Act;

“**chief executive officer**” means the chief executive officer contemplated in section 13 of this Act;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Director-General**” means the Director-General responsible for basic education at national level;

“**educator**” means a person registered in terms of chapter 4 of the South African Council for Educators Act, 2000 (Act No. 31 of 2000);

“**Head of Department**” means the head of a department responsible for education in a province;

“**NEEDU**” means the National Education Evaluation and Development Unit;

“**Minister**” means the Minister of Basic Education;

“**national department**” means the Department of Basic Education established in terms of section 7(2)(a) of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“**professional management**” means the professional management of a public school as contemplated in section 16 of the South African Schools Act, 1996 (Act No. 84 of 1996), or its equivalent in an independent school;

“**provincial department**” means a department established by section 7(2)(b) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), which is responsible for education in a province;

“**school**” means a public or independent school as defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996);

“**school governing body**” means a school governing body contemplated in section 16 of the South African Schools Act, 1996 (Act No. 84 of 1996), or the equivalent body in an independent school;

“**this Act**” means the National Education Evaluation and Development Unit Act, 2012, and includes regulations made under the Act.

Object

2. The object of this Act is to provide for the establishment of a statutory body to be known as the National Education Evaluation and Development Unit.

Application

3. This Act applies to –

(a) public and independent schools contemplated in the South African Schools Act, 1996 (Act No. 84 of 1996);

- (b) provincial departments; and
- (c) the national department.

CHAPTER 2

ESTABLISHMENT, GOVERNING PRINCIPLES, FUNCTIONS, AND CONSIDERATION OF REPORTS

Establishment

4. The NEEDU is hereby established as a juristic person.

Governing principles

5. (1) The NEEDU must be impartial and must exercise its powers and perform its in the public interest.
- (2) No person or organ of State may interfere with the functioning of the NEEDU in terms of this Act.
- (3) The NEEDU must not appraise, or report on the performance of, an individual educator.
- (4) The NEEDU is accountable to the Minister for the performance of its functions in terms of this Act.
- (5) The NEEDU must recognise the disproportionate and unequal nature of the system of education in terms of infrastructure, resources and capacity and must identify methods and strategies for achieving equality and equity.

Functions

6. (1) The functions of the NEEDU are to –
- (a) identify, on a system-wide basis, the factors that inhibit or advance school improvement, including evidence of good practice;
 - (b) analyse and identify approaches and strategies necessary for achieving equality in the provision of quality education, with due regard to human and financial resources and other relevant institutional and governance structures;
 - (c) consider the influence of historical and social factors on the conditions under which school leadership, teaching and learning are practised;
 - (d) evaluate the monitoring and evaluation of schools by the provincial and national departments;
 - (e) evaluate the support provided to schools, school governing bodies, professional managements and educators by the districts and the provincial and national departments;
 - (f) evaluate the state of South African schools – in particular, the quality of school leadership, teaching and learning;
 - (g) make proposals for –

- (i) remedying shortcomings in educational practice;
 - (ii) eliminating barriers to quality education;
 - (iii) emulating examples of good practice;
 - (iv) developing the knowledge and professional capacity of educators;
and
 - (v) improving the support provided to school governing bodies, professional managements and educators by the provincial and national departments;
 - (h) publish reports on the state of the education system;
 - (i) undertake any task consistent with this Act at the request of the Minister; and
 - (j) do anything consistent with this Act which is necessary or expedient for the performance of its functions.
- (2) In the performance of its functions, the NEEDU has the authority to visit, after at least 14 days' notice has been given to the Head of Department, a school for the purpose of observing or assessing –
- (a) classroom teaching;
 - (b) educator knowledge;
 - (c) learner knowledge;
 - (d) professional management;
 - (e) the capacity, efficiency and effectiveness of a school governing body;
 - (f) the efficiency and effectiveness of support provided to schools, educators, professional managements and school governing bodies by a provincial or national department; or
 - (g) anything related to its functions that is consistent with this Act.
- (3) The NEEDU also has the authority to visit, after reasonable notice has been given, a district office or an office of a provincial or the national department for the purpose of assessing the efficiency and effectiveness of support provided to schools and educators.
- (4) The NEEDU's reports contemplated in subsection (1)(h) must include –
- (a) empirical findings;
 - (b) recommended actions for the improvement of school education; and
 - (c) subject to section 7, accounting measures for ensuring that the responsible parties deal with identified problems.
- (5) In order to perform its functions, the NEEDU must –
- (a) develop an appropriate theoretical foundation for its work on school improvement;
 - (b) determine an appropriate methodology or combination of methodologies;
 - (c) consider the historical, social and material contexts in which school education is offered;
 - (d) base its findings and proposals on the best available empirical evidence and, where required, statistical data or analysis;
 - (e) conduct its work in an open and transparent manner;
 - (f) conduct or commission such research as is necessary for the performance of its functions; and
 - (g) liaise with bodies having similar functions in the provinces and in other countries.

Reports

7. (1) The Minister must –
- (a) consider the reports and recommendations made by the NEEDU in terms of this Act and engage the NEEDU in regard to the content of such reports and recommendations; and
 - (b) table each NEEDU report at the following meeting of the Council of Education Ministers for consideration and action.
- (2) The Minister may, if considered necessary, apply the provisions of section 8 of the National Education Policy Act, 1996 (Act No. 27 of 1996), to a NEEDU report.

CHAPTER 3

NEEDU BOARD

Governance and composition

8. (1) The NEEDU is governed by a board comprising –
- (a) not less than seven and not more than nine persons appointed by the Minister on the basis of their expertise as contemplated in subsections (2) to (7); and
 - (b) the chief executive officer, who is an *ex officio* member of the board.
- (2) The Minister must, by notice in the *Government Gazette*, invite nominations for the appointment of members from –
- (a) persons involved in school education;
 - (b) organisations involved in school education; and
 - (c) members of the public.
- (3) The Minister must, from the nominations contemplated in subsection (2), appoint members in such a manner as to ensure, as far as is practicable, that the functions of the NEEDU are performed according to the highest professional standards.
- (4) The members appointed, taken as a whole, must –
- (a) be broadly representative of the school education sector and related interests;
 - (b) have thorough knowledge and understanding of school education;
 - (c) appreciate the role of school education in the reconstruction and development of the South African economy and society;
 - (d) have known and attested commitment to the interests of school education;
 - (e) have knowledge and understanding of school education evaluation and development matters; and
 - (f) be competent to undertake the governance and oversee the financial affairs of the NEEDU.
- (5) Particular attention must be given to the representivity of the board in terms of such factors as race, gender and disability.
- (6) A member –

- (a) holds office for a period not exceeding five years; and
 - (b) may be reappointed on the expiry of his or her term of office: Provided that no member may serve more than two consecutive terms of office.
- (7) The Minister must appoint one of the members as chairperson.
- (8) The members must elect a deputy chairperson from among their number.
- (9) The Director-General of the national department must nominate a representative of the department to attend meetings of the board for liaison purposes, but such representative is not a member of the board.

Vacation of office and filling of vacancies

9. (1) A member must vacate his or her office if he or she –
- (a) resigns by giving written notice to the chairperson or, in the case of the chairperson, to the Minister;
 - (b) has, without the permission of the chairperson, been absent from three consecutive meetings of the board;
 - (c) is declared insolvent, 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
 - (d) is declared unable to manage his or her personal affairs by a court of law.
- (2) The Minister may remove a member of the board at any time before the expiry of the member's term of office –
- (a) on the grounds of misconduct, incapacity or incompetence; or
 - (b) for any other reasonable, sound and compelling reason.
- (3) A vacancy on the board must be filled by appointment in accordance with section 8(2) – (6).
- (4) The Minister may dissolve the entire board –
- (a) if the board fails to perform in terms of this Act;
 - (b) if there is a total breakdown in the relationship between the board and the Minister; or
 - (c) on other reasonable and justifiable grounds.
- (5) If the board is dissolved as contemplated in subsection (4), the Minister must ensure that a new board is appointed in accordance with section 8 within 60 days.

Committees

10. (1) The board may establish one or more committees, which must perform such functions as the board may determine.
- (2) A committee may co-opt a person who is not a member, but the board must consider the criteria contemplated in section 8(3) – (5) when it appoints such a person to a committee.
- (3) The board must appoint one of its members as chairperson of the committee.
- (4) A member of a committee is appointed for such period as the board may determine.

Meetings

11. (1) The board must meet at least four times a year, at such times and places as the chairperson may determine by written notice to the members.
- (2) The chairperson must convene a meeting of the board –
- (a) within 14 days of receipt of a written request signed by at least one third of the members of the board; or
 - (b) if so requested by the Minister.
- (3) If both the chairperson and the deputy chairperson are absent from any meeting of the board, the members present must elect one of their number to preside at that meeting.
- (4) The board must make rules relating to the procedure at meetings of the board and its committees, including the quorum for such meetings and any other matter necessary or expedient for the performance of the functions of the board and its committees.
- (5) The proceedings at a meeting of the board or of one of its committees are not invalid by reason only of the fact that a vacancy exists on the board or committee, as the case may be, at the time of such meeting.
- (6) The board and its committees must keep minutes of their proceedings and decisions, which, when confirmed, must be open to scrutiny by an interested person.

Allowances and remuneration

12. A board member and a committee member not in the full-time service of the State may, in respect of services rendered by him or her in connection with the affairs of the board or committee, as the case may be, be paid by the NEEDU –
- (a) such allowances; and
 - (b) in the case of the chairperson of the board, such additional remuneration, as the Minister, after consultation with the Minister of Finance, may determine.

Appointment of chief executive officer and staff

13. (1) The board must appoint a chief executive officer for the NEEDU.
- (2) The board must appoint such number of employees as it considers necessary for the performance of the NEEDU's functions.
- (3) The board may delegate the appointment referred to in subsection (2) to the chief executive officer, subject to such conditions as are consistent with the relevant provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (4) The NEEDU is the employer of the chief executive officer and other staff.
- (5) The board must, subject to the approval of the Minister, granted with the concurrence of the Minister of Finance, determine the remuneration, allowances, subsidies and other conditions of service of the chief executive officer.

Functions of chief executive officer**14. The chief executive officer –**

- (a) is responsible to the board for executing the functions of the NEEDU in terms of this Act;
- (b) must assign responsibilities and supervise the employees of the NEEDU;
- (c) is the accounting officer charged with accounting for monies received, payments made and property purchased by the board; and
- (d) must ensure that minutes are kept of the proceedings and decisions of the NEEDU.

Funds**15. (1) The funds of the NEEDU consist of–**

- (a) money appropriated by Parliament;
- (b) donations and contributions received by the NEEDU;
- (c) interest received on investments; and
- (d) any other income received by the NEEDU.

(2) The NEEDU –

- (a) must keep a record of all funds received and spent and of all assets, liabilities and financial transactions;
 - (b) must, subject to Chapter 6 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and at such time and in such manner as the Minister may determine, in each financial year submit a budget for the ensuing financial year to the Minister for his or her approval;
 - (c) may in any financial year submit adjusted budgets to the Minister for his or her approval;
 - (d) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (b) and (c).
- (3) If the Minister does not approve the budget of the NEEDU, the Minister must require the NEEDU to submit a revised budget to him or her within a specified period.
- (4) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the funds contemplated in subsection (1) must be used in accordance with the approved budget.
- (5) Subject to subsection (4) and the Public Finance Management Act, 1999 (Act No. 1 of 1999), the NEEDU may invest surplus funds.

Alienation and encumbrance of property

- 16.** The board may not without the prior approval of the Minister, granted with the concurrence of the Minister of Finance, sell, exchange or otherwise alienate the immovable property of the NEEDU.

Financial statements, audit and annual report

- 17. (1)** The statements of account and balance sheet of the NEEDU must at the end of each financial year be audited by a person registered as an auditor in terms of the Auditing

Profession Act, 2005 (Act No. 26 of 2005), and appointed by the NEEDU with the approval of the Auditor-General.

- (2) The NEEDU must, not later than five months after the end of each financial year, submit to the Minister an annual report, in such form as the Minister may determine, on the performance of its functions during that financial year, including an audited balance sheet and a statement of income and expenditure.
- (3) The Minister must table the annual report, including the balance sheet and statement of income and expenditure referred to in subsection (2), in Parliament within one month after receipt thereof, if Parliament is then sitting, and if Parliament is not then sitting, within one month after the commencement of the next ordinary sitting.

CHAPTER 4

GENERAL PROVISIONS

Regulations

18. The Minister may make regulations regarding –
 - (a) allowances and remuneration of members of the board or a committee contemplated in section 5; and
 - (b) any matter that is necessary to prescribe for the proper implementation or administration of this Act.

Short title and commencement

19. This Act is called the National Education Evaluation and Development Unit Act, 2012, and comes into operation on a date determined by the Minister by notice in the *Government Gazette*.