

REPUBLIC OF SOUTH AFRICA

CONSTITUTION EIGHTEENTH AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 74(3)(b)); Bill published in
Government Gazette No. 33945 of 21 January 2011)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 8—2011]

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BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to remove legislative competence in respect of further education and training and adult education and training from the functional areas of concurrent national and provincial legislative competence; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Amendment of Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996

1. Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996, is hereby amended by the substitution for the expression “Education at all levels, excluding tertiary education” of the expression “Education in schools”. 5

Short title and commencement

2. This Act is called the Constitution Eighteenth Amendment Act of 2011, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 10

**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION
EIGHTEENTH AMENDMENT BILL, 2011**

1. BACKGROUND AND PURPOSE OF BILL

Presidential Minute No. 690 of 2009 created the Department of Higher Education and Training. The Department of Education was abolished and the Department of Basic Education was created. Following this re-organisation of government, Proclamation No. 44 of 2009, published in *Gazette* No. 32367 of 1 July 2009, transferred the administration of the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000), and the Further Education and Training Colleges Act, 2006 (Act No.16 of 2006), from the Minister of Basic Education to the Minister of Higher Education and Training. In terms of Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996 (the Constitution), education at all levels, excluding tertiary education, is a functional area of concurrent national and provincial legislative competence. The purpose of the Bill is to remove legislative competence in respect of further education and training and adult education and training from the functional areas of concurrent national and provincial legislative competence.

2. OBJECTS OF BILL

2.1 Clause 1 seeks to amend Part A of Schedule 4 to the Constitution by replacing the expression “Education at all levels, excluding tertiary education” with the expression “Education in schools”. If the amendment is passed, only education at school level will be a functional area of concurrent national and provincial legislative competence and all other levels of education will be (an exclusive) national legislative competence.

2.2 Clause 2 contains the short title and commencement.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

3.1 The proposed amendment emanated from the Department of Higher Education and Training. The Department of Higher Education and Training also consulted the Council of Education Ministers. The Council consists of the National Minister of Higher Education and Training and members of the Executive Council from all the nine provinces responsible for education.

3.2 In terms of section 74(5) of the Constitution, the Bill was—
(a) published in the national *Gazette* for public comments; and
(b) submitted to the provincial legislatures for their views.

4. IMPLICATIONS FOR PROVINCES

The Bill will transfer the powers and functions relating to further education and training and adult education and training from provincial administrations to the national level of government.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The existing personnel in the provinces will be utilised to implement the Bill.

6. FINANCIAL IMPLICATIONS FOR STATE

No additional financial implications are foreseen. The funds associated with performing the functions relating to further education and training and adult education and training will be transferred from provincial budgets to the national budget in line with the principle that funds follow the function.

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 74(3)(b) of the Constitution, since—
- (a) it amends a provision of the Constitution other than section 1, section 74(1) or Chapter 2; and
 - (b) the amendment relates to a matter that affects the National Council of Provinces.
- 7.2 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.