

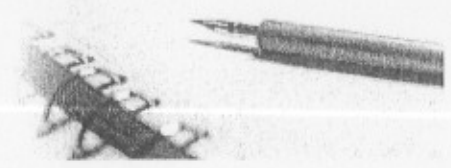
**DEPARTMENT OF BASIC EDUCATION
DIRECTORATE: LEGISLATIVE SERVICES
BASIC EDUCATION LAWS AMENDMENT
(BELA) BILL**

**A PRESENTATION TO THE SELECT COMMITTEE
ON EDUCATION AND RECREATION**

23 MARCH 2011



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INTRODUCTION

The BELA Bill amends specific provisions of the following legislation:

- South African Schools Act, 1996 (SASA),
- the National Education Policy Act, 1996 (the NEPA),
- the Employment of Educators Act, 1998 (the EEA),
- the South African Council for Educators Act, 2000 (the SACE Act), and
- the General and Further Education and Training Quality Assurance Act, 2001 (the GENFETQA Act).


The Bill, which contains both technical and substantive amendments, aims to align the above legislative framework with the new education dispensation that came about in 2009 when the Department of Education was split into two distinctive, independent yet interrelated departments.



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The BELA Bill was published in *Government Gazette* No. 32790 of 9 December 2009 to invite public comment.

The Bill addresses technical and other substantive issues in order to provide greater clarity with regard to existing provisions in the legislation.

It further provides statutory authority for practices currently in existence at public schools.

The closing date for the submission of public comments was 8 February 2010.

However, owing to the small number of comments received, the closing date was extended to 28 February 2010.

The 15 comments received from individuals and stakeholders were evaluated and incorporated into the Bill on merit. This process was repeated by the Portfolio Committee on Education wherein oral submissions were also made by various stakeholders, including teacher unions and governing bodies associations.

The BELA Bill was presented to the Cabinet Committee meeting of 27 July 2010, voted by the Portfolio Committee on 3 March 2011 and the National Assembly 15 March 2011.



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CLAUSE -BY-CLAUSE EXPOSITION OF THE BILL

Clauses 1-3

These clause deals with technical amendments in National Education Policy Act, in which the creation of the new Department of Basic Education necessitated redefinition of certain concepts.

Therefore, the definitions of "Director-General" (now, "Director-General: Basic Education"), "education institution" (now refers only to schools) and "Minister" (now, "Minister of Basic Education") are being amended.

It also deals with the deletion of the concept "student" and substituting it with the concept a "learner".

Clause 4

Section 1 of SASA also contains technical amendments to the following definitions: "Minister" (now, "Minister of Basic Education").



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The definition of "parent" is also being amended to include both a "biological and an adoptive" parent.

Furthermore, the definition of "loan" has been inserted in order to deal with contracts entered into by schools and to ensure that the salaries of staff appointed by the governing body would not be construed as financial obligations as contemplated in the definition of loan.

Clause 5

This clause amends section 5A(1) of SASA to provide for a process in which the Minister of Basic Education consults with the Minister of Finance before prescribing regulations on minimum norms and standards for school infrastructure.

The aim of this amendment is to ensure compliance with the requirements of the Public Finances Management Act.



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Clause 6

Following the judgement: **Nkosi v Vermark NO and Another (77/2007) [2008] ZAKZHC 83 (30 September 2008)**, section 6B has been inserted to ensure that there is no discrimination in respect of official languages at schools.

In this matter the Durban high school offered Afrikaans and Isizulu as first additional languages. However Afrikaans was offered at level LLC2 and Isizulu at a level LLC3.

The finding of the court was that by offering Isizulu at a lower level the school was unfairly discriminating against Isizulu learners. School governing bodies have the democratic right to choose their schools' language curriculum options, but this right must not be used to entrench unfair discrimination.

Clause 7

The amendment of section 9 by the insertion of subsection (11) aims at empowering the MEC to ensure that a suitable sanction is imposed against a learner after an appeal has been upheld in terms of section 9(4).



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The rationale behind this provision is to further strengthen the powers of the MEC and to bring legal certainty to this process.

Clause 8

Section 12 is being amended in order to provide for a third and distinct category of a public school. The new category will provide education with a specialised focus on talent including performing art, sport and creative art.

The Minister must determine the Norms and Standards for funding and norms and standards for governance and educator provisioning in this category of schools.

Clause 9


The principal as delegated by the HoD is given extended financial responsibility to take part in both financial and executive committees, and this serves to protect school money and property against abuse of power by governing bodies.



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The principal should report any financial mismanagement to the HoD. The fact that the Bill provides for additional responsibility of the principal does not erode the decision-making power of the governing body. The principal would play an advisory role and the governing body decides whether to take the advice or not.

Clause 10

The Bill also deals with the identification of governing body association or other appropriate training authority for the purpose of training governing bodies and building their capacity.

The identification process may also be dealt with by way of an open tender so that there can be no risk of advantaging one training organisation at the expense of the others.

Clause 11

Section 33A is being inserted to guard against political activities that interfere with school time.



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The use of school time and premises for party political activity is prohibited.

Clause 12

Section 36 is being amended to allow the governing body to enter into a loan or overdraft agreement with the written approval of the MEC.

These concepts already appear in the Act, but were never clearly defined.

Only by requiring the approval of the MEC before a school can enter into such an agreement will it be possible to ensure that schools do not enter into financial obligations that bind current and future parents and the State.

In the absence of this new definition, the possibility exists that, should litigation arise, a court might apply a narrow interpretation to the concept of 'loan', which might cause uncertainty, seeing that not all financial obligations may be seen as loans or overdrafts.



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Clause 13

The Bill extends the scope of section 39 to accommodate the following:

- The identification of additional no-fee schools by the MEC.
- The fact that these schools have to be the poorest of the schools that have not yet been declared no-fee schools in that province. Provinces are already doing this, but without the required statutory authority. This clause was necessary to give legal effect to the practice.

Clause 14

Section 60 is being amended to clarify the concept of contractual and delictual liability in respect of the State following **Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School (207/07) [2008] ZASCA 70; [2008] 4 All SA 117 (SCA); 2008 (5) SA 1 (SCA) (30 May 2008)** so that the State may be liable where loss or damage caused by the school is concerned.



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Seeing that the right of learners to receive education must be protected, there is a need to ensure that any financial obligation against a school is managed by preventing the sale in execution or the attachment of assets belonging to the school.

The current legislation protects the State by requiring that, before an agreement which entails any financial obligation is entered into, the approval of the MEC must be obtained.

This gives the MEC an opportunity for early intervention to protect the rights of current and future parents and to ensure that the learners will have the benefit of such financial obligation.

Clauses 15 to 18

The Bill also effects some technical amendments to certain provisions of the EEA and the GENFETQA Act. The definition of institution only refers to a school and the Minister is defined as the Minister of Basic Education.



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Clauses 19 & 20

These clauses deal with the amendment of SACE Act. It provide that SACE must manage within its available resources the Continuing Professional Teacher Development system.

Clauses 21

This deals with the technical amendment of GENFETQA Act to adjust the concepts "Department of Education" , "Director-General" and "Minister".

Clause 22

This is the saving provision to ensure that current legal position as identified in item 1.7 of the Schedule to Proclamation No. 44 of 2009, published in *Government Gazette* No. 32367 of 1 July 2009, is not limited, amended or repealed by this Bill.



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