



ISISHAYAMTHEHO SAKWAZULU-NATAL

KWAZULU-NATAL WETGEWER

KWAZULU-NATAL PROVINCIAL LEGISLATURE

NEGOTIATING MANDATE

TO: HON MW MAKGATE
 CHAIRPERSON: SELECT COMMITTEE ON EDUCATION AND
 RECREATION

NAME OF BILL: BASIC EDUCATION LAWS AMENDMENT BILL

NUMBER OF BILL: B36B-2010

DATE OF DELIBERATION: TUESDAY, 24 MAY 2011

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Education met today, Tuesday, the 24th of May 2011, to consider the Basic Education Laws Amendment Bill [B36B-2010].

The following comments and amendments were proposed and considered on the Bill:

1. In **clause 4(a)**, definition of *loan*:
 the definition is so broad that it could have unintended consequences of preventing SGB's from entering into any lease or hire purchase agreement covering educational items such as photocopiers and computers. It would appear that the intention is to ensure that schools pay cash for services which are out of touch with basic business practice of renting or leasing equipment to ensure that it can be maintained and updated in the future. There is no need to include in this definition of *loan* any reference to the payment of staff appointed by a SGB.

2. In **clause 4(c)**, definition of *parent*:

the inclusion of adoptive parents in the definition is welcomed; however, the reality is that there are situations that require a definition of a parent in which many learners find themselves and are not covered by this definition. For example:

- (a) A child looked after by a family member who is neither the biological or adoptive parent nor the legal guardian of the child. This may be temporary where the biological or adoptive parent is a migrant labourer or it may be permanent if both parents are deceased. Many grandparents in such a situation may not have the status of legal guardianship;
- (b) A child who is in temporary or permanent foster care where the foster parents are neither legally the adoptive parents nor the legal guardians;
- (c) A child in child-headed households where the older sibling may be taking responsibility for younger children without the status of adoptive parent or legal guardian and where such child might be too young to be appointed as the legal guardian;

In the existing SASA the meaning of parent needs to be clarified:

“(c) the person who undertakes to fulfil.... at school.” Various SGB’s indicate that this meaning is abused by individuals who want to be part of SGB for their personal agenda.

3. In clause 7,

- (a) the amendment is supported; however, no time frame has been set as to when the MEC must ensure that a suitable sanction is imposed once the appeal has been upheld:
“If an appeal in terms ofthe *Member of the Executive Council* must ensure that a suitable sanction is then imposed on the learner within 14 days”.
- (b) The Bill makes no provision for an SGB to appeal against the decision of the MEC not to uphold an expulsion.

4. In clause 11,

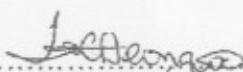
the amendment is supported. For purposes of emphasis, the following amendment is suggested in clause 11(4):

“A school may not allow the display of material of a party-political nature on its premises unless such party-political material is [related to the curriculum at the school] specifically being used for curriculum related teaching and learning”.

5. In clause 19,

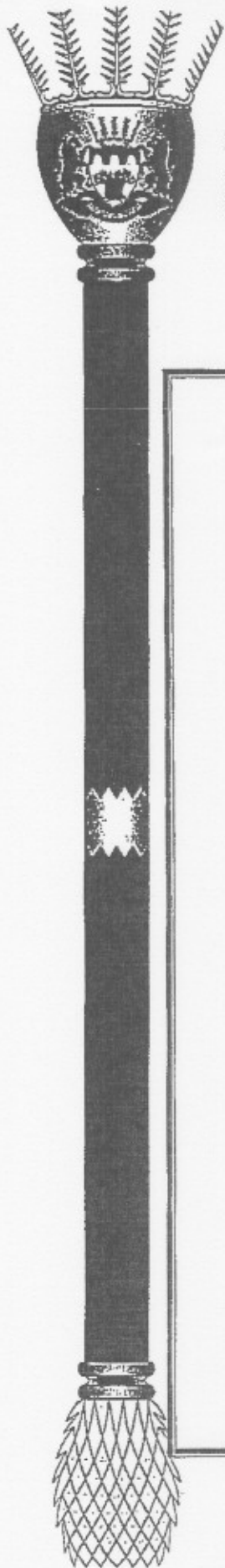
The promotion of in-service training would, in the normal course of events fall within the core business of SACE. It is therefore not clear why SACE should be paid by the Department of Basic Education to promote training.

The Committee agreed to mandate the KwaZulu-Natal delegation to the National Council of Provinces to support the Bill provided that the above comments and proposed amendments are considered and consolidated in the Bill.


.....
HON L HLONGWA
CHAIRPERSON OF EDUCATION
PORTFOLIO COMMITTEE

24.05.2011
.....
DATE

Limpopo Legislature



Physical Address:

Lebowakgomo
Government Complex

Postal Address:

Private Bag X9309
Polokwane
0700

NEGOTIATING MANDATE

To : Hon. Chairperson: SC on Education and Recreation

Name of the Bill : Education Laws Amendment Bill

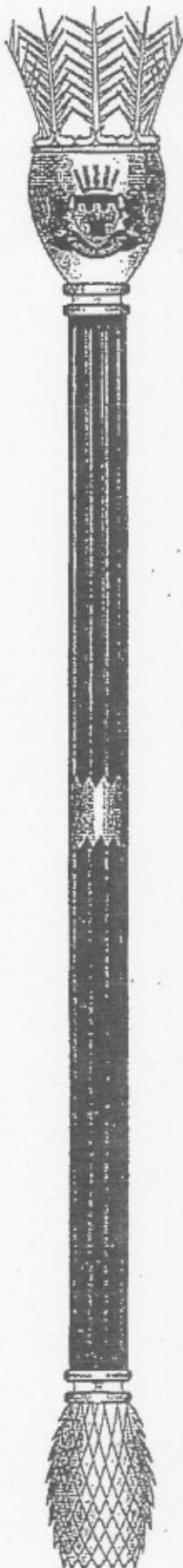
Number of the Bill : [B36B – 2010]

Date of Deliberation : 19 May 2011

Vote of the Legislature : The Portfolio Committee on Education Hereby confers a Negotiating Mandate To the Limpopo Provincial Permanent Delegation to the NCOP to support the Bill.

SIGNATURE: *G.G. Mashamba* DATE: *20/05/2011*

HON. G. MASHAMBA
CHAIRPERSON: PORTFOLIO COMMITTEE ON EDUCATION



Limpopo Legislature

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NEGOTIATING MANDATE ON BASIC EDUCATION LAWS AMENDMENT BILL (B36B-2010)

1. INTRODUCTION

The Basic Education Laws Amendment Bill (B36B-2010) was referred to the Legislature by the National Council of Provinces and the Legislature in turn referred the Bill to the Portfolio Committee on Education for consideration and to confer a negotiating mandate accordingly. The Committee, having considered the Bill begs to report as follows:

2. PURPOSE OF THE BILL

The Bill seeks to amend the National Education Policy Act, 1996, so as to amend or delete certain definitions; the South African Schools Act, 1996, so as to amend certain definitions and to define "loan"; to provide for consultation with the Minister of Finance before uniform minimum norms and standards are determined; to ensure that there is no unfair discrimination in respect of official languages; to provide for the imposition of a suitable sanction if an appeal by a learner who had been expelled from a public school has been upheld by the Member of the Executive Council; to provide for public schools that provide education with a specialised focus on talent; to provide for additional functions of a principal of a public school; to provide for the training of governing bodies by recognised governing body associations; to prohibit political activities during school time; to empower the Member of the Executive Council to identify additional schools that may not charge school fees; and to further regulate the liability of the State for certain damages; the Employment of Educators Act, 1998, so as to amend certain definitions; and to regulate afresh the application of the said Act; the South African Council for Educators Act, 2000, so as to amend certain definitions; and to empower the council to manage within its available resources the Continuing Professional Teacher Development system; and the General and Further Education and Training Quality Assurance Act, 2001, so as to amend certain definitions; and to provide for matters connected therewith.

3. BRIEFING BY THE NCOP DELEGATE

The Permanent Delegate from the National Council of Provinces and Officials from the National Department of Basic Education briefed Members of the Portfolio Committee on Education on the Bill on 01 April 2011.

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4. DELIBERATIONS BY THE COMMITTEE MEMBERS

The Committee deliberated on the Bill and raised concerns which were adequately responded to by the Official from the Basic Education and the NCOP delegate, Hon, Mashamaite. However due to time constraints and other commitments by Members of the Committee, public hearings were ^{NOT} conducted on the Bill.

4. NEGOTIATING MANDATE

The Committee having considered and supported the Bill hereby confers a negotiating mandate to our NCOP Delegates to support the Bill.



T.G.G. MASHAMBA

COMMITTEE CHAIRPERSON



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COMMITTEES

Enquiries: Ms R Matbabethé
Tel. No.: 013 - 766 1399

To: The Chairperson: Select Committee
on Education and Recreation

Name of the Bill: Basic Education Laws Amendment Bill

Number of the Bill: [B36B-2010]

Date of Deliberation: 24 May 2011

Mandate of the Legislature: The Portfolio Committee on Education; Culture, Sport and Recreation, after considering the Bill and inputs from members of the public, supports the Basic Education Laws Amendment Bill, 2010 ("the Bill") and confers on the Permanent Delegation representing the Province of Mpumalanga in the NCOP the mandate to negotiate in favour of the Bill, taking into consideration the views contained in the Committee Report attached hereto.



SIGNATURE

24/05/2011
DATE

**HON N C MAMABOLO
CHAIRPERSON TO THE PORTFOLIO COMMITTEE ON
EDUCATION; CULTURE, SPORT AND RECREATION**

Northern Cape
Provincial Legislature**NEGOTIATING MANDATE FOR THE BASIC EDUCATION LAWS
AMENDMENT BILL [B36B -2010]****(Section 76 Bill)****1. INTRODUCTION**

The Chairperson of the Portfolio Committee on Education, Sport, Arts & Culture, Hon B Mbinqo- Gqaba, tables the Committee's Negotiating Mandate on the *Basic Education Laws Amendment Bill, [B36B - 2010]* as adopted by the Portfolio Committee on **24 May 2011**.

2. PROCESS FOLLOWED

- 2.1 The Speaker of the Northern Cape Provincial Legislature, on receipt, referred the *Basic Education Laws Amendment Bill, [B36B - 2010]* to the Portfolio Committee on Education, Sport, Arts and Culture.
- 2.2 The Portfolio Committee received a briefing on the Bill by Hon WF Faber (Northern Cape Permanent Delegate to the NCOP) and an official from the National Department of Basic Education on **29 March 2011**.
- 2.3 The Portfolio Committee resolved at the meeting of **29 March 2011**, to hold public hearings on the referred Bill in the Pixley Ka Seme and Namaqua district, to solicit the views of communities and Stakeholders with regard to the *Basic Education Laws Amendment Bill, [B36B - 2010]*.
- 2.4 Public hearings was held on **18 April 2011**, in Phillipstown and **20 April 2011** in Springbok, as per Committee resolution and both written and oral submissions were called for. The public engaged with the Members of the Provincial Legislature and the Provincial representative of the Department of Education in respect of the Bill.
- 2.5 On **24 May 2011**, the Portfolio Committee on Education, Sport, Arts & Culture deliberated and considered the *Basic Education Laws Amendment Bill, [B36B - 2010]*.

3. PUBLIC INPUTS ON THE BILL

- The Department of Education through the Sector for Education & Training Authority (SETA) should ensure that School Governing Bodies (SGB's) receives the necessary training in terms of their roles and responsibilities, especially in areas where language discrimination is concerned,
- The Bill is not very specific on what constitutes party-political activities;
- The current legislation has more detail as oppose to the amended version of the Bill which seems to eliminate the detail;

- The Bills should give more explanation on definitions such as legal guardian, biological adoptive parent etc, especially in respect of adults taking care of learners who is not their legal guardian or adoptive parent;
- The expulsion of learners from a school is punishment enough, the Minister should investigate the conditions at the schools that lead to the learners expulsion, expulsion is not always the best option for discipline.
- The responsibility of the Principal and that of the SGB must be properly defined. Principals do give advise but not always accepted by the SGB's and whereas the Principal is still required to account.

The public hearings held by the Portfolio Committee was successful.

The majority of the people who attended the public hearings did not oppose the Bill.

4. WRITTEN INPUTS ON THE BILL

Written submissions were received and were duly considered, with the following proposals:

- Loan as defined in the Act, must also include Institutions;
- The suggestion on the amendment of Section 36 of Act 84 of 1996 is to insert the word legitimate before business, and also include disruptive conduct against staff members as a prohibition ;
- To include an indemnity clause for schools in case of injury whilst taking part in sports at school or while in the care of educators during school hours.

5. COMMITTEE INPUTS ON THE BILL

The committee supports the Bill.

The committee considered all the inputs received during the public hearings and made the following comments:

- Expulsion of learners should be the last resort.
- The Bill is not entirely clear on the status of student formations in a school environment with regard to their participation in party-political activities.

The committee further resolved to include the salient issues listed and calls on the Northern Cape Permanent Delegates to raise them during the negotiation stage.

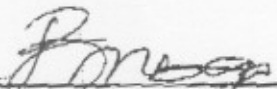
6. PORTFOLIO COMMITTEE POSITION ON THE BILL

After due deliberation and taking note of the public's input, and written submissions, the Portfolio Committee on Education, Sport, Arts and Culture supports the Bill.

7. COMMITTEE ADOPTION OF THE BILL

The Committee adopted this Negotiating Mandate duly signed by the Chairperson of the Committee.

The Committee recommends that the Permanent Delegates participate in deliberations at the negotiating stage and to support the Bill, taking note of the comments raised by the Committee as well as inputs from the public.



HON. B. MBINQO-GIGABA
CHAIRPERSON: PC ON EDUCATION
SPORT, ARTS AND CULTURE

Wes-Kaapse Provinsiale Parlement
Western Cape Provincial Parliament
IPalamente yePhondo leNtshona Koloni



NEGOTIATING MANDATE

To: Hon M W Makgate
Chairperson: Select Committee on Education and Recreation

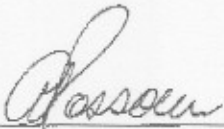
Name of Bill: *Basic Education Laws Amendment Bill*

Number of Bill: [B36 B - 2010]

Date of deliberation: 23 May 2011

Vote of Legislature: Support the bill with the following recommendations:
That on Clause 7, an amendment be effected to Section 9 of the *South African Schools Act, 1996* (Act 84 of 1996) recommending an insertion of Section 4A "a governing body may appeal against a decision of the HOD, not to expel a learner, to the MEC within 14 days of receiving the notice of expulsion". The intention of this addition is to allow a mechanism for SGBs to appeal against the decision of the HOD.

That on Clause 11, to insert an additional subsection 33A(5) "For the purposes of this section, 'school time' means the times of the school day determined by the governing body under section 20(1)(f), and any other time during which curricular or extra-curricular activities are taking place on the school premises.


Signature CHIEF WHIP
WCPP.

24.05.11

Date

Hon. C Labuschagne
Chairperson: Standing Committee on Education



GAUTENG
LEGISLATURE
EDUCATION COMMITTEE

NEGOTIATING MANDATE ON

BASIC EDUCATION LAWS AMENDMENT BILL [B36B-2010]

(Section 76)

1. INTRODUCTION

The Chairperson of the Education Committee, Hon. Patricia Chueu, tables the Committee's Negotiating Mandate on the Basic Education Laws Amendment Bill [B36B-2010], a Section 76 Bill as follows:

2. PROCESS FOLLOWED

The Speaker, Hon. Lindiwe Maseko formally referred the Basic Education Laws Amendment Bill [B36B-2010], a Section 76 Bill to the Portfolio Committee on Education, in terms of Rule 232 (1) (a) read with 235 (4), (6) and (7) for consideration and report on Thursday, 17 March 2011.

On Friday, 15 April 2011, the Portfolio Committee on Education was briefed by NCOP Delegate, Hon. Pinky Ncube and Mr Ramafoko from the National Department of Basic Education on the intentions of the Bill.

The Committee received a research analysis and legal opinion on the Basic Education Laws Amendment Bill [B36B-2010] at the meeting held on Wednesday, 11 May 2011. At the same meeting, the Committee received a presentation on the Bill from Mr Albert Chanee, a representative from the Gauteng Department of Education.

The Committee thereafter held a public hearing on Friday, 20 May 2011 at the Johannesburg City Hall, Johannesburg CBD. Mr Charles Ledwaba from the National Department of Basic Education presented the Bill to all attendees and thereafter the Committee received submissions from stakeholders and members of the Public.

On Tuesday, 24 May 2011, the Committee deliberated on the technical and substantive amendments and subsequently adopted the Negotiating Mandate on the Basic Education Laws Amendment Bill [B36B-2010].

3. PRINCIPAL AND DETAIL OF THE BILL

The Basic Education Laws Amendment Bill [B36B-2010] seeks to:

- Amend the National Education Policy Act, No. 27 of 1996 (the NEP Act);
- Amend the South African Schools Act, No. 84 of 1996 (the SAS Act);
- Amend the Employment of Educators Act, No. 76 of 1998 (the EE Act);
- Amend the South African Council for Educators Act, No. 31 of 2000 (the SACE Act); and
- Amend the General and Further Education and Training Quality Assurance Act, No.58 of 2001 (the GENFETQA Act).

The aim of the amendments is to align the existing laws with the new education dispensation that came about when the former Department of Education was split into two distinctive, independent yet interrelated departments.

The Bill also seeks to clarify certain existing provisions in some of the listed laws and to provide statutory authority for practices currently in existences in schools.

4. OVERVIEW OF PUBLIC HEARING AND SUBMISSIONS

As part of its functions and obligation, the Committee held a public hearing on the Basic Education Laws Amendment Bill [B36B-2010] on Friday, 20 May 2011. The Committee had received both verbal and written submissions from the various individuals and organisations that are listed hereunder:-

1. Governors' Alliance
2. South African Democratic Teachers' Union (SADTU)
3. National Association of School Governing Bodies (NASGB)
4. Gauteng Department of Education

4.1 Representative from Governors' Alliance indicated their support for the bill, however, made the following inputs and recommendations:

- 4.1.1 **Clause 1 –** It was recommended that the NEPA should be aligned with regards to definition of "school" as defined in the South African Schools Act.
- 4.1.2 **Clause 2 -** Section 3 of the National Education Policy Act should read "(n) control and discipline of learners at a school. Provided that no person shall administer corporal punishment, or subject a learner to psychological or physical abuse at any school."

- 4.1.3 **Clause 4 –** It was felt that the definition of “loan” is broad and Governors” Alliance questioned the necessity of stating that a ‘loan’ does not include the payment of school paid staff. It was suggested that definition of loan should read: “‘loan’ means any financial obligation based on an agreement that creates a liability for repayment by a school in favour of any person that must be paid in one or more installments.”
- 4.1.4 **Clause 5 -** It was suggested that Section 5A of the South African Schools Act should read “The Minister may, after consultation with the Minister of Finance, the Council of Education Ministers **and recognized School Governing Body Associations** by regulation...” The reason for the suggested amendment is that the regulations could have financial implications and obligations for the public School Governing Body.
- 4.1.5 **Clause 6 -** It was indicated that the proposed amendment is not supported until the full extent of the proposed amendment is known, consulted on, and the full impact of the proposed amendment for the school governing body is outlined.
- 4.1.6 **Clause 7 -** The concern was that Section 9 of the South African Schools Act makes no allowance of an appeal by the school governing body to the HOD and / or MEC. It was suggested that 9(11) should read “If an appeal in terms of subsection (4) by a learner who has been expelled from a public school is upheld by the Member of the Executive Council, the Member of the Executive Council must ensure that a suitable sanction is then imposed on the learner after consultation with the governing body.”
- 4.1.7 **Clause 8 -** A concern was raised around whether the inclusion of Section 12(3)(b) would be different to post provisioning of any ordinary public school or the governance thereof.
- 4.1.8 **Clause 9 -** It was suggested that Section 16A, subsection (j) should be deleted. It was further suggested that subsection (k) should read “report any maladministration or mismanagement of school fund to the *governing body* and to the *Head of Department*.” It was felt that the principal would be in a legally untenable position with regards to the additional functions he /she is now expected to perform.
- 4.1.9 **Clause 11 -** The concern was that ‘school time’ is not defined. It was recommended that in Section 33A (3), the phrase ‘school time’ be replaced with ‘school activity’.
- 4.1.10 **Clause 12 -** The concern was raised that the proposed amendment will have restrictions placed on the decision making powers of the governing body to supplement the school fund. The rationale behind the amendment placing restrictions on the period of a lease for “no longer than 12 months” was questioned. A further concern that ‘school property’ is not defined in the South African Schools Act was raised.
- 4.1.11 **Clause 13 -** With regards to Section 39 (13) of the South African Schools Act, it was suggested that the MEC should prior to June of the year consult with the SGB with a view of the school becoming a no fee school, as declaring a school as a no fee paying school has budget implications.

4.2 Representatives from the National Association of School Governing Bodies indicated their support for the Bill, however raised the following concerns:

4.2.1 Clause 4 - With regards to the definition of the word "parent", it was felt that the word adoptive is open to many interpretations and this may create an opportunity for this subsection to be manipulated. Currently, a deliberate misinterpretation of a parent is used by some Departmental officials and principals in cases where they want to get rid of some parents in order to manipulate selection of candidates to fill vacant promotional posts at public schools and also to engage in financial misappropriation.

4.2.2 Clause 9 - It was felt that while this amendment seeks to clarify the role of the principal in respect of the support he or she is expected to provide to the school governing body of a public school, the Bill should provide for instituting of disciplinary measures against a principal whose actions are in contravention of this section and similar sections in the South African Schools Act.

4.3 Representatives from the South African Democratic Teachers Union indicated their support for the Bill, however raised the following concerns:

4.3.1 Clause 4 - The word obligation should be removed from the definition of loan in the South Africans Schools Act. Reference to payment of staff should be a separate sentence.

4.3.2 Clause 9 - It was noted that the Bill proposes new responsibilities for the school principal. It was indicated that if the intention is to amend the existing job description, the matter should be dealt with at the relevant chamber i.e. the Education Labour Relations Council.

4.3.3 Clause 10 - The Bill does not state what would happen should the provision be contravened by the school, members of staff or any other person. It is crucial that this be clarified. SADTU acknowledged that the current phrasing clarifies the political activities and has removed the ambiguity as initially phrased.

4.3.4 Clause 18 - The definition of 'institution' excludes adult learning centres. It was felt that the effect of the proposed amendment is that on the enactment of the Bill, educators at adult learning centres will no longer be regulated by the SACE Act and will fall beyond the jurisdiction of SACE.

5. FINANCIAL IMPLICATIONS AND SOCIO ECONOMIC IMPACT ASSESSMENT OF THE BILL FOR THE PROVINCE

5.1. FINANCIAL IMPLICATIONS OF THE BILL

The Bill has no additional financial implications for the province.

5.2. SOCIAL IMPACT ASSESSMENT

The Basic Education Laws Amendment Bill [B36B-2010] is in line with provincial goals as well as some of the Gauteng Department of Education intervention strategies aimed at improving teaching and learning. The Bill will contribute to improving the quality of education and eventually have a positive impact on the economic development of the Province.

6. POSITION BY THE GAUTENG DEPARTMENT OF EDUCATION

The Gauteng Department of Education supported all the amendments in the Basic Education Laws Amendment Bill [B36B-2010] with the exception of **Clause 20**. It was recommended that the amendment to Section 19 of the South African Council for Educators Act should be worded as follows: "payment for services rendered to the *Department of Basic Education or any non-governmental organisation as employer of educators contemplated in section 5(b)(iv);*". This is intended to avoid ambiguity for the payment of costs.

7. COMMITTEE RECOMMENDATIONS

The Committee recommends the following:

7.1 Clause 5 - The Committee is of the view that the word 'may' suggests that the process is discretionary and not mandatory which then creates confusion with regard to the aim of the amendment (i.e. to comply with the requirements of the PFMA) as the Minister may decide not to consult with the Minister of Finance. It is therefore suggested that if the intention is for the Minister of Basic Education to reach agreement with the Minister of Finance on the process then the words "must" instead of "may" and also the words "in concurrence" be used instead of "after consultation" as "after consultation" can mean for information.

7.2 Clause 10 – The Committee recommends that for successful implementation, a consultative process amongst the stakeholders be followed when developing the norms and standards referred to in this clause.

7.3 Clause 20 – In order to avoid ambiguity for the payment of costs, it is recommended that the amendment to Clause 20 should be worded as follows: "payment for services rendered to the *Department of Basic Education or any non-governmental organisation as employer of educators contemplated in section 5(b)(iv);*".

8. NEGOTIATING POSITION ADOPTED BY COMMITTEE

The Education Portfolio Committee supports the principle and details on the Basic Education Laws Amendment Bill [B36B-2010] taking into consideration the recommendations proposed above.