

INPUT

THE BASIC EDUCATION LAWS AMENDMENT BILL

13 OCTOBER 2017

CLAUSE	CHALLENGES	RECOMMENDATION
<p>Clause 1 provides for the insertion of a number of definitions and seeks to amend certain other definitions.</p> <p>2.1.1 Definitions of “benefit in kind” (clause 1(a)) and “other financial benefit” (clause 1(h)) are included in the Bill in order to create clarity regarding the provisions of section 38A of the SASA. Section 38A of the SASA prohibits the payment of unauthorised remuneration and the giving of financial benefit or benefit in kind to certain employees.</p> <p>2.1.2 It proposes the inclusion of definitions of “competent assessor” (clause 1(b)) and “home education” (clause 1(e)) in order to provide more certainty in the home education environment. (See clause 25.)</p> <p>2.1.3 The definition of “Constitution” is amended (clause 1(c)) to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005).</p>	<p>Seems as if the act wants to eradicate underhand or corrupt dealings whereby certain benefits will be provided to employees to secure certain favours that may be deemed irregular or corrupt.</p> <p>Acceptable.</p> <p>Acceptable.</p>	<p>The Clause must be explicit so that ambiguity and unnecessary interpretations are avoided.</p>

<p>2.1.4 A definition of “Department of Basic Education” is included (clause 1(d)) in order to reflect the new education dispensation.</p> <p>2.1.5 Definitions of “liquor” (clause 1(f)) and “prohibited substance” (clause 1(i)) are included in support of the proposed amendment to section 8A of the SASA. (See clause 7.)</p> <p>2.1.6 Clause 1 also proposes the insertion of an amended definition of “loan” (clause 1(g)) to allow public schools to deal with the day-to-day business of the school without obtaining the written approval of the Member of the Executive Council. See also clause 19 of the Bill.</p>	<p>Acceptable.</p> <p>Acceptable.</p> <p>Cause for concern. How often and for how long will a school operate on the basis of “loans” before it gets its act together? When continuous need for loans exist at a school it may indicate improper financial management at the school or insufficient funding of the school by the Education Department.</p>	<p>The Provincial Education Department should institute due diligence procedures when it detects the continuous need or use of loans at (a) the school.</p>
<p>Clause 2 of the Bill seeks to amend section 3(6) of the SASA to increase the penalty provision from six months to six years in the case where the parent of a learner, or any other person, prevents a learner who is subject to compulsory school attendance from attending school.</p> <p><u>The clause also makes it an offence for any person to wilfully interrupt or disrupt any school activity or to wilfully hinder</u></p>	<p>Legal Strikes or teacher activism may also come under problematic scrutiny.</p> <p>What is contained in current education act and or in the criminal justice act in terms of preventing learners from attending school.</p>	<p>Departmental interaction with the erring parent/ person be should take place to determine the reasons for such wrongful behaviour before instituting criminal proceedings.</p> <p>Clarify the position regarding legal strikes within the definition of “ wilfully interrupt or disrupt any school activity or</p>

<p>or obstruct any school in the performance of the school's activities, and a penalty clause is provided for. This is necessitated by recent incidents, in several provinces, in which communities, or portions of communities, prevented learners from attending school in an attempt at making a political or other point.</p>		<p>to wilfully hinder or obstruct any school in the performance of the school's activities”</p> <p>Clause 2 must make provision for educators and/or members of a union during a protected strike. The clause must therefore indicate explicitly that it does not apply to educators and/or union members on school premises during a protected strike.</p> <p>The clause must be brought in line with the relevant provisions of the Labour Relations Act in particular Section 4 of the LRA which protects union members rights to engage in the lawful activities of the union.</p>
<p>Clause 4 of the Bill seeks to amend section 6 of the SASA to provide for the governing body to submit the language policy of a public school, and any amendment thereof, to the Head of Department for approval. The Head of Department may approve the policy, or any amendment thereof, or he or she may return it to the governing body with recommendations. The Head of Department must take into account certain prescribed factors when considering the policy or any amendment thereof. The governing body</p>	<p>It is the role of the Head of Education to ensure that the provisions of the Constitutions are upheld. The head need to always act in the interest of the child as prescribed by the courts. We have noted many school denying learners access through their admission policies.</p>	<p>Provision should be made to unlock stalemates between the HOD and the SGB with regard to the language policy of the school.</p> <p>In instances, whereby a community within which a school is located raises complains about the SGB using the language for discriminatory purposes, the</p>

<p>must review the language policy every three years, or whenever the prescribed factors have changed, when circumstances so require, or at the request of the Head of Department. The clause also seeks to empower the Head of Department to direct a public school to adopt more than one language of instruction, after taking certain prescribed factors into account, and after the prescribed procedures have been followed. The Head of Department must inform the governing body of the public school of his or her intention so to act and his or her reasons therefor, grant the governing body a reasonable opportunity to make representations, conduct a public hearing to enable the community to make representations, and give due consideration to the representations received. In deciding the matter, the Head of Department must take into account, inter alia, the best interests of the child, with emphasis on equality, as provided for in section 9 of the Constitution, and equity; the dwindling number of learners who speak the language of learning and teaching at the public school; the need for effective utilisation of resources; and the language needs, in general, of the broader community in which the public school is located. The Head of Department must inform the governing body of his or her decision and must make his or her decision known to the community in a suitable manner.</p> <p>This amendment is necessitated by, amongst others, the need for fair and equitable administrative processes as</p>		<p>HOD must then intervene and compel the SGB to adopt a parallel language model to accommodate those that might be excluded on the basis of language.</p> <p>The main crux of the amendment is to vest the final authority for the language policy in the Head of Department.</p> <p>The amendment however goes nowhere near dealing with the thorny issue of mother tongue instruction with its adverse implications on the learning process for the majority of the learners. This in our view is a major transformation issue and must somewhat be addressed even partially at this stage.</p> <p>It is our view that clear provisions to regulate the language policy be inserted in the Bill again to facilitate access and uniformity across the system.</p> <p>The school and the governing bodies must remain responsible for the administration.</p>
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provided for in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and the need for effective utilisation of classroom space and resources. In the case of *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo and Another 2010(2) SA 415(CC)* (the Ermelo judgment), paragraph 57 provided guidance in regard to the approval of a school's language policy.

Determining a school's language policy is a devolved function (or responsibility), in terms of section 6(2) of the SASA. However, even though it is a devolved function, it is not the exclusive preserve of the school governing body – paragraph 58 of the Ermelo judgment makes this clear. The devolution of power does not mean that the school governing body's right to decide the language policy is absolute. This power is subject to the Constitution, the SASA and any applicable provincial law. As stated in paragraph 81 of the judgment, the governing body's extensive powers and duties do not mean that the Head of Department is precluded from intervening, on reasonable grounds, to ensure that the admission and language policy of a school pays adequate heed to section 29(2) of the Constitution.

Moreover, paragraph 77 of the Ermelo judgment, and the judgments in the Harmony and Welkom matters*, made it necessary to build into the SASA checks and balances above and beyond those that are currently in the SASA. (**Head of*

<p><i>Department, Department of Education, Free State Province v Welkom High School and Another; Head of Department, Department of Education, Free State Province v Harmony High School and Another (CCT 103/12) [2013] ZACC 25; 2013 (9) BCLR 989 (CC); 2014 (2) SA 228 (CC) (10 July 2013))</i></p> <p>As stated in paragraph 80 of the Ermelo judgment, cognisance has to be taken of the interest of the broader community in which the school is located. It is not only the interests of the learners and governing body at the school in question that have to be taken into account, but also the interests of the broader community.</p>		
<p>Clause 5 seeks to amend section 6A of the SASA to empower the Minister to appoint outside agencies or persons to advise the Minister on matters relating to a national curriculum statement and a national process and procedures for the assessment of learner achievement. This allows the Minister to obtain inputs from a broader spectrum of people.</p>	<p>This amendment may open the door for those who want to commodify and privatise education. Question: does the minister not have powers to appoint advisors?</p> <p>Is there a need to legislate the appointment of agencies?</p>	<p>Appointment of advisors should in no way undermine/ disregard the broader stakeholder consultations</p> <p>Although it is normal practice that the Minister may appoint people to advise on curriculum matters, it appears that the process becomes too technical and critical stakeholders only play the role of being consulted. Often following the consultations, the decision making may simply ignore the input of those critical stakeholders and important considerations are ignored such as the impact on education staff.</p>

		<p>It is proposed that provision be made for stakeholders to be represented in any advisory body established by the Minister. This does not in any way present a conflict of interests even if the representatives of the critical stakeholders make representations to any such advisory body.</p> <p>It is in our view important that critical stakeholders not only become spectators but participate more meaningfully in the formulation of proposals to the Minister. This will enhance the credibility of the process and will institutionalise the fact that education is a societal issue.</p>
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<p>Clause 6 seeks to amend section 8 of the SASA by providing that the code of conduct of a public school must take into account the diverse cultural beliefs and religious observances of the learners at the school and makes provision for an exemption clause, making it possible to exempt learners, upon application, from complying with the code of conduct or certain provisions thereof, on just cause shown. If an application for exemption is refused, the learner or the parent of the learner may appeal to the Head of Department against the decision of the governing body. The clause also provides for an informal process when dealing with disciplinary matters, and stipulates that the proceedings should adhere to the principles of justice, fairness and reasonableness prescribed by the Constitution. This amendment is informed by the Convention on the Rights of the Child and the judgment in the Pillay case*. The need for this amendment has arisen as a result of the latest jurisprudence on this issue, as expressed in the Pillay case and other cases. The amendment seeks to bring the SASA in line with such jurisprudence. (*<u>MEC for Education: Kwazulu-Natal and Others v Pillay (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007) [100%] (From South Africa: Constitutional Court; 5 October 2007; 328 KB)</u>)</p>		<p>It is our view that there should be a complete prohibition to any dangerous objects, alcoholic drinks and illegal drugs on school premises. It is not clear how any of these can be used for legitimate educational purposes.</p> <p>We need to point it out that not only do these threaten the safety of learners but also education staff. Furthermore possession of illegal drugs, dangerous objects and alcohol is in certain instances an offence. A principal cannot have any authority to authorise the commission of an offence.</p> <p>An exception should only be made in case such items are required as part of demonstration purposes as part of an approved programme and where possession of such items has already been authorised by a competent authority and the items are handled under very controlled circumstances and a clear protocol for the handling of such in place.</p>
<p>Clause 7 seeks to extend the provisions of section 8A of the SASA by providing for the prohibition of liquor and</p>		<p>It is our view that there should be a complete prohibition to any dangerous</p>

<p>prohibited substances (see paragraph 2.1.5 above) on school premises, and to make consequential amendments to the section. It also makes it clear that a school has the right to search, not only a group of learners, but also an individual learner; and consequential amendments in this regard are made to the section.</p> <p>This amendment is necessitated by the fact that learners have increasingly been found in possession of, or abusing, liquor and performance-enhancing substances, and there are many cases of learners being expelled because of such abuses.</p>		<p>objects, alcoholic drinks and illegal drugs on school premises. It is not clear how any of these can be used for legitimate educational purposes. We need to point it out that not only do these threaten the safety of learners but also education staff. Furthermore, possession of illegal drugs, dangerous objects and alcohol is in certain instances an offence. A principal cannot have any authority to authorise the commission of an offence.</p> <p>An exception should only be made in case such items are required as part of demonstration purposes as part of an approved programme and where possession of such items has already been authorised by a competent authority and the items are handled under very controlled circumstances and a clear protocol for the handling of such in place.</p>
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<p>Clause 8 seeks to amend section 12A of the SASA to provide that, in instances where two or more schools are merged, a new public school shall be established. The date of the establishment, the name and the physical location and official address of the new school are to be determined by the Member of the Executive Council after consultation with the governing bodies concerned. The interim governing body must elect office bearers; decide on contractual obligations and the utilisation and disposal of movable assets; and make recommendations to the Head of Department on personnel matters. The clause furthermore seeks to provide for transitional arrangements in regard to the liability of any person to be disciplined or prosecuted for any misconduct, crime or offence, the rationalisation of the workforce of the new public school, the academic programmes, and governance arrangements.</p> <p>This amendment is proposed for the sake of clarity and uniformity in the way in which this matter is dealt with.</p>		<p>The merger of schools has both labour relations and employment relations implications for education staff. At the least, education staff or their representative union must be given adequate notice of any intention by the MEC to initiate a merger process.</p> <p>If the merged public school will continue with all academic programmes offered by the former schools until the programmes are restructured, then the staff must remain with the merged school until then. This is so as the rationalisation must be informed inter alia by the curriculum needs of the merged school.</p>
<p>Clause 9 seeks to amend section 17 of the SASA to empower the Member of the Executive Council who is responsible for education in that province to reverse or suspend a decision regarding a determination that the governance of two or more public schools must vest in a single governing body. This is a technical amendment, which merely gives the Member of the Executive Council the option to reverse his or her decision, should circumstances so require.</p>	<p>The amendment is supported</p>	<p>No recommendation</p>

<p>Clause 10 seeks to amend section 20 of the SASA by limiting the powers of a governing body in regard to recommending candidates for appointment. If the amendment is accepted, a governing body will be able to recommend to the Head of Department the appointment of post level 1 educators only, which will have the effect that the selection and appointment of educators on post levels 2 to 4 will be the sole responsibility of the Head of Department. The clause also allows the reasonable use, under fair conditions determined by the Head of Department, of facilities of a public school for education-related activities, without the charging of a fee or tariff.</p> <p>The first mentioned proposed amendment is necessitated by the requirements of transformation and by the realisation of how important the leadership and management team is for turning a school around and making it successful. The National Development Plan also played a role in the decision to propose the amendment. At</p>	<p>The constitution had always considered governance at the lowest level meaning the community. The is clearly espoused in the ANC Policy Framework for Education and Training . In chapter 5 p 12 on governance the principle explain is the following “Governance at all levels of the integrated national system of education and training will maximise democratic participation of stakeholders, including the broader community, and will be orientated towards equity, effectiveness, efficiency, accountability, and the sharing of responsibility.” The functioning of the School Governing bodies is an expression of this principle. The policy framework suggested the different level of</p>	<p>Clause 10 effectively subjects educators of different levels to different systems of appointment. It seeks to suggest that the appointment of Post Level 1 educators is either inconsequential or that the appointment of Post Level 2 and higher are more important.</p> <p>It is not clear what the scientific basis hereof is.</p> <p>It is important to reiterate that schools are part of communities and that School Governing Bodies are organs of mass participation in education. Taking away the powers of SGB’s to recommend Post Level 2 and higher and taking away the role of SGB’s in this process will alienate persons in these positions from the communities they serve.</p>

<p>page 309, it emphasises the importance of attracting competent persons to become school principals.</p> <p>The current system of appointment of educators, as set out in section 6 of the EEA, relies to a large extent on the existence of a functional governing body at a public school, with governing body members who have the necessary skills or who have access to persons with the necessary skills that can conduct the interviewing process.</p> <p>There are more than 24 000 public schools in the country. There could, therefore, theoretically be the same number of interview committees. Many public schools, especially in deep rural areas, do not have functional governing bodies and persons with the necessary skills to conduct interview processes. The interview process requires persons with knowledge of curriculum statements and management processes, and content knowledge of subjects. In many instances, the interview committees do not have the necessary knowledge to know what is required of a principal, a deputy principal or a head of department.</p> <p>Although section 6 of the EEA grants the Head of Department a discretion in regard to whom to appoint, such appointment can be challenged by governing bodies, especially if the Head of Department does not appoint the preferred candidate of the governing body.</p>	<p>governance which was ultimately found expression in legislation. This is There will be a single national education and training system with four levels of governance:</p> <ul style="list-style-type: none"> · National · Provincial · Local · Institutional <p>The school being the institutional governance.</p> <p>In relation to the appointment of the Senior Management Teams as schools, the following should be taken into consideration:</p> <p>The case of <i>Settlers Agricultural High School v. Head of Department of Education, Limpopo Province, 2002</i> show how education officials either do not adhere to the provisions of the Employment of Educators Act or disregarded the democratic authority</p>	<p>It is proposed that this clause rather introduce effective control measures in the appointment process for educators at schools.</p> <p>The motivation given for this proposed change ignores the failures of departments to build the capacity of SGB's and the adverse role played by officials in irregular appointments. There is no basis in fact or law to suggest that the envisaged proposed process will not have the same pitfalls having regard to the fact that interviews currently take place under the watch of the department.</p> <p>The current systems encourage transparency in the process which is one of the constitutional values. To take away this process takes away transparency.</p> <p>There is basis in law or in fact that SGB's willy nilly challenge decisions of Heads of Departments. The law requires Heads of Departments to act rationally when exercising their powers. The test is therefore not whether the SGB likes or</p>
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<p>In the above regard, it is also important to note that the <i>Ministerial Task Team Appointed by Minister Angie Motshekga to Investigate Allegations into the Selling of Posts of Educators by Members of Teacher Unions and Departmental Officials in Provincial Education Departments</i> (the Volmink Task Team) made the following recommendation in its report to the Minister:</p> <p>"Recommendation 6: That the powers of School Governing Bodies to make recommendations for the appointment of post level 2 and above be taken away and that the South African Schools Act and the Employment of Educators Act be amended to reflect this."</p> <p>The second mentioned proposed amendment must be seen in the context of the fact that public schools are assets of the state. Flowing from this, provincial education departments should be allowed to use the facilities of public schools free of charge, if such use is for educational purposes and is reasonable and under fair conditions determined by the Head of Department. In many towns and villages, the public school is the only venue that a provincial education department can use for educational purposes.</p>	<p>of the school governing bodies. Clase <i>et al.</i> (2007:248), reflected in the fact that SGBs legally have the power to establish the overall character and ethos of public schools. In my view, the character and ethos finds expression in who they choose to appoint or promote to advance the vision of the governing body.</p> <p>Collective bargaining is at the centre of labour peace in South African. This is guaranteed in the constitution. Section 23 (5) states the following;</p> <p>Every trade union, employers' organisation and employer has the right to engage in collective bargaining.</p> <p>It must be noted that the unions and the employers signed ELRC collective agreement 5/98 which regulates the filling of all post whether it's an appointment or promotion. This amendment undermines the spirit of section 23(5) of the constitution, which changes all procedures to fill all promotion post in the educator</p>	<p>does not like the decision of the HoD but whether his decision is rational. On the contrary taking away the involvement of SGB's will fuel suspicion and mistrust.</p> <p>It is unbelievable that the Department raises as ground the reviewability of the HoD's decision. Either way the exercise of all public power is subject to constitutional control. Taking away the involvement of the SGB does not in law take away the power to review the decision of the HoD. This ground is wholly invalid. In any event those who for any reason may want to challenge the decision of the HoD will use the right of access to information. This may create an administrative burden on HoD's</p> <p>Ultimately, SGBs must be trained to fulfil this job. Clear oversight mechanisms must be put in place to secure the fairness and legality of the appointment processes.</p> <p>Provincial Departments must devise equitable reimbursement policies around</p>
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	sector. It should be subjected to a process of collective bargaining.	the use of school facilities for educational purposes.
<p>Clause 11 seeks to amend section 21 of the SASA to empower the Head of Department to centrally procure identified learning support material for public schools, after consultation with the governing body and on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.</p> <p>This amendment is proposed in order to bring about economies of scale.</p>		<p>This proposed amendment is inconsistent with decentralisation and the recommendations of the NDP inter alia to give principals greater powers.</p> <p>There are already uniform norms and standards for the material to be procured and supplied to schools.</p> <p>Centralised procurement does not presuppose efficiency, effectiveness and economy. It is important to indicate that schools contribute to economic activity in the locality of the area of the school. In our view not only is this issue of centralised procurement of LTSM problematic in this sense but we would have expected the department to take measures to ensure that all school based programmes such the NSNP support local business.</p> <p>Schools are allocated funds based on the determined norms and standards allocation per learner inclusive of LTSM</p>

		<p>and this forms part of a school budget. Unless provision is made that any savings realised from centralised procurement accrue to the school or are used to support school based programmes such as libraries.</p> <p>It is proposed that provision must be made for the school to consent to any such process of centralised procurement and that local communities and the school must benefit from any such procurement.</p>
<p>Clause 12 amends section 22 of the SASA to empower the Head of Department to withdraw “one or more functions” of a governing body and not only “a function”, as the section currently reads.</p> <p>This is a technical amendment.</p>	The amendment is supported	No recommendation
<p>Clause 13 seeks to amend section 25 of the SASA to empower the Head of Department to dissolve a governing body that has ceased to perform functions allocated to it in terms of the Act, if the Head of Department has reasonable grounds to do so. It also provides that persons must be appointed to perform the functions of the governing body, with exclusive voting rights and decision-making powers on any function that they have been appointed to perform. The</p>	The amendment is supported	No recommendation

<p>Bill contains similar provisions where a governing body has failed to perform one or more of its functions. This amendment is proposed in order to create legal certainty.</p>		
<p>Clause 14 expands on the provisions of section 26 of the SASA to provide for the declaration of a direct or indirect personal interest that a governing body member or any of his or her family members has and, under such circumstances, the recusal of governing body members in the procurement of goods and services on behalf of the public school. It provides that a governing body may not take a decision on a matter if it has knowledge that a member who is present has a personal interest in that matter, until that member has withdrawn. It also provides for the imposition of a sanction, after due process, where a governing body member contravenes the provisions of the section. The amendment also applies to a committee of a governing body and to committee members. A definition of “family member” has also been inserted into the clause. This amendment is proposed in order to prevent corruption and promote good governance.</p>	<p>Good Governance</p>	
<p>Clause 15 seeks to clarify section 27 of the SASA, which provides that governing body members are not entitled to be remunerated for the performance of their duties by adding the words “or attendance of meetings and any school activity”.</p>		<p>Provision must be made for members from the teacher component as employees to be remunerated in accordance with the normal applicable employment rules for subsistence and</p>

<p>This amendment is proposed merely to clarify the matter of remuneration (vs reimbursement for legitimate expenses).</p>		<p>travel and such applicable remuneration for employees when attending to activities of the School Governing Body away from work or where they use their personal resources in the performance of such duties.</p>
<p>Clause 16 amends section 29 of the SASA to provide that only a parent member of a governing body who is not employed at the school may serve as the chairperson of the finance committee of that public school.</p> <p>This amendment seeks to promote good governance.</p>	<p>The school may lose the expertise of other members of the SGB.</p>	<p>Clause 16 should be used to also supplement the capacity of SGB's by providing for persons who are not parents of children at the school but who have technical capacity which can benefit the school to be elected subject to the number of such persons being limited. This would be one of the ways to build the capacity of SGB's and to encourage community members and other persons with technical capacity to avail their skills and capacity to schools.</p>
<p>Clause 17 amends section 32 of the SASA to provide for technical amendments that are required as a result of the provisions of the Children's Act, 2005 (Act No. 38 of 2005), that amended the age of majority from 21 to 18 years. This will ensure that learners 18 years and older are not a party to litigation by virtue of their membership of the governing body.</p>	<p>The amendment is supported</p>	<p>No recommendation</p>

<p>This is merely a technical amendment.</p>		
<p>Clause 18 seeks to amend section 33 of the SASA, which deals with the closure of public schools, to provide that a governing body and a community must receive feedback on the outcome of their representations when a public school is to be closed. The amendment also empowers the Member of the Executive Council to close a public school in his or her sole discretion if there are no learners registered at that public school, and to close a public school if there are 135 or fewer than 135 learners registered at that school. In the latter case, he or she may do so only after written notice has been given to the school and the parents, after a notice of his or her intention to close the school has been published in a local newspaper (or notice of the intended closure has been communicated to the affected community by any other acceptable means), after he or she has consulted with the parents of the learners of the school and afforded them an opportunity to make representations, after he or she has considered such representations and, where applicable, made arrangements for the learners to attend another school, and after he or she has made arrangements for the transport of the learners to that school, where appropriate. This clause also brings about technical amendments.</p>	<p>Amendment: after he or she has consulted with the parents of the learners and the broader community</p> <p>Delete where appropriate and insert within the prescribed policy</p>	<p>Although in certain instances it is inevitable that schools will close owing to low learner numbers, this appears in certain instances an effect of some other thing. It is in our view that it is important to distinguish between a natural drop in learner numbers and a drop actuated for instance by dysfunctionality or poor performance of a school. It is in this context that we hold a view that measures must be put in place to ensure the existence of adequate school infrastructure and proper functioning of schools prior to the closure process where learner numbers drop significantly not owing to natural reasons such as migration to other areas.</p> <p>It is also our view that from a planning point of view, legislation must strengthen planning by requiring the existence of area based education plans properly consulted with communities the schools serve. This is related to the service delivery improvement plan we referred to elsewhere in this discussion.</p>

<p>The purpose of this amendment is to simplify the procedure and to make the process of dealing with the closure of a small school less onerous.</p>		<p>Due to the fact that the closure of a school has implications for staff of the school, it is appropriate that they or their representative union also be given notice of any such intention by the MEC.</p>
<p>Clause 19 seeks to amend section 36 of the SASA to provide that the governing body must also seek the approval of the Member of the Executive Council to enter into lease agreements, for any purpose, including loans and overdrafts which are already provided for in the said section.</p> <p>In regard to lease agreements, the amendment seeks to ensure good governance, economies of scale, wise spending of money, and a reduction in the risk that the State will be held responsible for acts or omissions on the part of schools. See also paragraph 2.1.6 above.</p>	<p>The amendment is supported</p>	<p>No recommendation.</p>
<p>Clause 20 contains a correction to section 37 of the SASA. This is a technical amendment.</p>		
<p>Clause 21 seeks to amend section 38 of the SASA to provide for the presentation of any significant or substantial deviation to the initial approved budget to a general meeting of parents for consideration. The changed budget must be made available for inspection and approved by a quorum of 15% of the parents. The proposed new section provides that, if a quorum cannot be achieved at the first meeting, a second meeting must be arranged, at which no</p>	<p>The amendment is supported</p>	<p>No recommendation.</p>

<p>quorum would be required. A copy of the notice of the second meeting must be distributed to every learner at the school with an instruction to hand the notice to the parents. This amendment relates to governance issues and fairness.</p>		
<p>Clause 22 seeks to amend section 41 of the SASA to clarify what documentation the governing body may or should consider when deciding on an application by the parent of a learner for exemption from the payment of school fees. It also provides for the submission of additional documentary evidence in the form of an affidavit by a parent in instances where information cannot be obtained from the other parent of the learner.</p> <p>This amendment also deals with governance issues, and seeks to create clarity in regard to the documentation that has to accompany an application for school-fee exemption. It aims to relieve the administrative burden that some schools have been placing on parents by setting application conditions that are too stringent and demanding unnecessary documentation (such as bank statements, or title deeds of homes) in support of the application.</p>	<p>Acceptable.</p>	<p>No recommendation.</p>
<p>Clause 23 seeks to amend section 43 of the SASA to empower the Head of Department to –</p> <p>(a) authorise officers (as defined in the SASA) to conduct an investigation into the financial affairs of a public school and,</p>	<p>Acceptable.</p>	<p>No recommendation.</p>

<p>where necessary, to access documents relevant to the investigation, after consultation with the governing body;</p> <p>(b) request the Auditor-General to undertake an audit of the records and financial statements of a public school; or</p> <p>(c) appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a public school.</p> <p>It also places a responsibility on the governing body to provide the Head of Department with quarterly reports on all income and expenditure in accordance with directives issued by the Head of Department. The provision that the governing body must submit a copy of the annual financial statements within six months after the end of each financial year to the Head of Department remains unchanged.</p> <p>This amendment expands on the existing provision by creating more options for the Head of Department if he or she needs to have the financial matters of a school investigated after, for example, receiving allegations of corruption, fraud and the like.</p> <p>The new section 43(5) seeks to create certainty in regard to reporting and to promote open and transparent accounting and financial accountability, bearing in mind that public funds and parents' money are at stake.</p>		
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<p>Clause 24 seeks to amend section 48 of the SASA to provide that the subsidy granted to an independent school can be made subject to conditions determined by the Member of the Executive Council. The amendment also provides that an independent school must submit quarterly reports to the Head of Department on all income and expenditure relating to the subsidy, and a copy of the audited financial statements relating to the subsidy, within six months after the end of each financial year. This amendment seeks to create certainty in regard to reporting and to promote open and transparent accounting for the sake of financial accountability when dealing with public funds.</p>	<p>Acceptable.</p>	<p>No recommendation.</p>
<p>Clause 25 seeks to substitute section 51 of the SASA to provide for the application and process for registration of learners for home education. Home education is a relatively new form of education in South Africa and does have a number of benefits for learners –</p> <ul style="list-style-type: none"> (a) with specific learning difficulties, physical or mental; (b) whose parents, through their work, have to travel extensively; (c) who are professional athletes; (d) far away from suitable schools; or (e) whose parents believe in the philosophy of home schooling, to name but a few. 	<p>Acceptable with the proviso that proper credence is given to the registration and administration of home education.</p>	<p>Every Provincial Education Department, through their districts, must devise and implement a workable plan to oversee the proper management of home education in their respective districts.</p>

The amendments create clarity in regard to the powers and responsibilities of the Head of Department as well as the responsibilities of the parents of the learner. Currently, the legislation is silent on what is required of parents where they wish to home school learners in Grades 10 to 12. The amendment makes provision for the parent of a learner who wishes to continue with home education after completing Grade 9 by making use of the services of a private or independent service provider to register for the National Senior Certificate with an independent or private assessment body.

The private or independent accredited service provider will ensure that the study material used for education at home will be of the required standard and at the correct level. It is the intention of this amendment to guide and assist parents and learners to prepare for the National Senior Certificate – a process that begins at the start of Grade 10.

The effect of the amendment is that such private or independent accredited service providers will be required to provide written proof that the qualification for which the learner will register is registered with the National Qualifications Framework. The private or independent accredited service provider will be registered with the provincial education department to offer specific national qualifications and will have approval or accreditation from Umalusi to offer the qualification. The examination that the

<p>learner will write through these providers at the end of Grade 12 will be set by the Department of Basic Education or the Independent Examination Board, and will be certified by Umalusi.</p> <p>These steps will protect parents who want to educate their children at home in the Further Education and Training Phase (Grade 10 to 12), will ensure that the final qualification obtained is registered, and will allow the learner opportunities of further study at institutions of higher education locally or in other countries, as the case may be. The steps will also protect learners.</p> <p>Furthermore, the Head of Department is authorised to cancel the learner's registration for home education under certain circumstances and after due process has been followed. A learner or the parent of a learner may appeal to the Member of the Executive Council against the decision of the Head of Department. The Minister is also empowered to make regulations relating to the registration and administration of home education.</p>		
<p>Clause 26 seeks to amend section 59 of the SASA to create an offence where the parent of a learner submits false or misleading information, or submits a forged document or one which purports to be a true copy of the original but is not, in the application for admission to a public school or for exemption from the payment of school fees.</p>	<p>Acceptable.</p>	<p>No recommendation</p>

<p>This amendment seeks to eliminate the risks associated with the provision of false information.</p>		
<p>Clause 27 inserts a new provision in the SASA to provide for dispute resolution mechanisms in the event of any dispute between the Head of Department and a governing body. It provides that the parties must meaningfully engage each other to resolve the dispute. If the dispute cannot be resolved through the initial engagement, each party must nominate a representative who must meet with a view to resolving the dispute. If the parties cannot reach agreement, the dispute may be referred for mediation to a person agreed upon by the parties.</p> <p>It is hoped that this amendment will save costs for all concerned and will enable the parties involved to resolve disputes amicably.</p>	<p>Acceptable.</p>	<p>No recommendation.</p>
<p>Clause 28 seeks to amend section 60 of the SASA. This section deals with the liability of the State for any delictual or contractual damages caused as a result of any school activity conducted by a public school for which the public school would have been liable. The proposed amendment to section 60 excludes the liability of the State if the provisions of section 36(2) of the SASA have not been complied with. (See paragraph 2.19 above.)</p>	<p>Acceptable.</p>	<p>No recommendation.</p>

<p>This amendment seeks to protect the interests of the State in the case where a school does not comply with the provisions of the Act.</p>		
<p>Clause 29 seeks to amend section 61 of the SASA to extend the powers of the Minister to make regulations on the management of learner pregnancy, on the admission of learners to public schools, on the prohibition of the payment of unauthorised remuneration or the giving of financial benefit or payment in kind to employees, on minimum norms and standards for provincial teacher development institutes and district teacher development centres, on the organisation, roles and responsibilities of education districts, and on a national education information system. The clause also provides for the possibility of creating offences in the regulations made by Minister. Although there are a variety of policies that deal with education-related matters, policies do not have any legal force and effect. This amendment will empower the Minister to make regulations that will be enforceable in a court of law.</p>	<p>Acceptable.</p>	<p>No recommendation.</p>
<p>Clause 30 amends section 1 of the EEA to delete obsolete provisions in order to align the Act with the new education dispensation. The clause deletes the reference to “adult basic education centre” and “further education and training Institution”.</p>	<p>Technical of nature in new legislation</p>	<p>The amendment does not make provision for non-teaching support staff in administration to be included in the post establishment of a school. It is important that this be clarified as this is an</p>

		<p>important part of the staff required for the effective functioning of a school.</p> <p>The current situation presents major challenges for already overworked education staff who have to contend with already overcrowded classrooms and lack of adequate teaching personnel. Although the amendment seeks to include these persons under the definition of educator, no provision is made regarding their appointment and whether a post establishment must as a rule include this category. It is our view that this must be the case.</p> <p>The natural implications of what we say in paragraph 51 above necessitate a consideration of whether the PPN applies to this category. The department must provide clarity on this aspect as it is important that specific provision be made for this category and administrative staff in schools.</p>
<p>Clause 31 seeks to amend section 5 of the EEA to delete obsolete provisions in order to align the Act with the new education dispensation. The clause deletes the reference to “further education and training institution”, “adult basic education centre”, “institution” and “centre”.</p>	<p>Technical of nature in new legislation</p>	

<p>Clause 32 seeks to amend section 6 of the EEA to provide for a limitation on the post levels for which the governing body may recommend candidates to the Head of Department. Any appointment, promotion or transfer to any promotional post on post levels 2 to 4 on the educator establishment of a public school is to be made from amongst candidates identified by the Head of Department, and educators on these post levels will be appointed directly by the Head of Department. (See paragraph 2.10 above.) However, this will be done in the manner prescribed by regulation by the Minister.</p>	<p>Not agreement as indicated in clause 10.</p>	<p>These are some of the amendments that also deal with certain key labour relations and employment issues that are currently regulated by collective agreements.</p>
<p>Clause 33 contains consequential amendments to section 6A of the EEA. (See paragraphs 2.10 and 2.32 above.)</p> <p>Clause 34 seeks to amend section 7 of the EEA to extend the application thereof to promotions on any educator establishment and to bring it in line with the provisions of the Citation of Constitutional Laws Act, 2005 (Act No. 5 of 2005). The clause further provides for the possibility of the appointment to a promotional post to be made on probation.</p>		<p>The use of probation undermines the career progression nature of an educator career.</p> <p>It appears that the proposed amendment of subsection 3 limits the right of staff to apply for a transfer on their own to another school as a transfer can only happen on the recommendation of the School Governing Body.</p> <p>It also appears that the amendment does away with the process agreed in the Collective Agreement dealing with the management of excess educators. This does not appear consistent with the Labour Relations Act.</p>

		<p>The Employment Equity Act is the principal legislation regulating employment equity and requires employers to develop and implement employment equity plans. The amendment must rather specifically provide for the implementation of the employment equity plan in making appointments not only for post level 1 but for all posts.</p> <p>It is untenable that where a candidate has performed better than other candidates, the Head of Department may ignore such a candidate unless there are justifiable grounds such as employment equity. The amendment will lead to conflict and may promote corruption and result in unnecessary disputes. The purpose of the selection process is to identify the best candidate and that must be the candidate who is appointed.</p> <p>It is not clear why a transfer must be made on a temporary basis pending the establishment of a governing body. The implication is that the governing body once established may reverse the</p>
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		appointment, transfer or promotion. This will naturally be unfair on the person transferred, appointed or promoted. Any appointment, promotion or transfer meant to be permanent must be made permanent unless it is a pure temporary appointment or an acting appointment. A clear distinction must be made in this regard.
Clause 35 seeks to amend section 8 of the EEA to support the amendments proposed to section 20 of the SASA (clause 10) and section 6 of the EEA (clause 32). (See paragraphs 2.10 and 2.32 above.) The clause also deletes the obsolete references to “council” and “adult education and training centre”.		
Clause 36 seeks to amend section 9 of the EEA to provide for the secondment of educators to another department.		
Clause 37 seeks to delete obsolete references to “institutions” and “centres” in section 11 of the EEA.		
Clause 38 seeks to extend the provisions of section 14 of the EEA, which deals with circumstances under which an educator is deemed to be discharged, to include all educators employed in terms of the EEA – that is, those	We disagree with the extension to temporary and substitutes. This section of the EEA has been abused into many instances in where permanent educators are concerned.	We disagree with this amendment

<p>appointed in a permanent capacity as well as temporary and substitute educators.</p>	<p>The EEA gives the Head of Education absolute powers in the reinstatement of educators. We further note that only the labour court can hear such matters.</p>	
<p>CLAUSE 40 inserts a new provision in the EEA, prohibiting educators from conducting business with the State or from being a director of a public or private company conducting business with the State, and creates an offence should the educator contravene the above-mentioned provision. Such contravention will also constitute serious misconduct, which may result in the termination of the educator's employment by the employer. This amendment aims to promote good governance, to protect the financial interests of the State, and to prevent corruption.</p>		<p>This clause will be discriminatory against persons appointed in terms of the EEA if persons appointed in terms of the Public Service Act, the Correctional Services Act, the Police Act or the Defence Act do not have the same prohibition.</p>