

SUMMARY

BASIC EDUCATION LAWS AMENDMENT BILL, 2022 [B2B-2022]

1. INTRODUCTION

1.1 The primary purpose of this summary is to give a plain and simple language as well as a clearer understanding of the Basic Education Laws Amendment Bill, (**'the Bill'**) in order to assist the public and relevant stakeholders in providing informed comments on the Bill and to facilitate their participation in the law-making process.

1.2 This Bill has been introduced into Parliament by the Minister of Basic Education. The Bill has been introduced and tagged as a section 76 Bill (a Bill affecting provinces).

1.3 The Bill has already been passed by the National Assembly. However, by law it must also obtain the concurrence of the other House of Parliament (the National Council of Provinces).

1.4 The National Council of Provinces (**'the NCOP'**) has duly referred this Bill to the Eastern Cape Provincial Legislature to consult the public; formulate a stance; and mandate the Eastern Cape delegation to the NCOP to support/not support or add to/delete from this Bill certain words or provisions.

2. BACKGROUND AND OBJECTIVES OF THE BILL

2.1 In 2009, the then Department of Education was split into two new departments, the Department of Basic Education and the Department of Higher Education and Training, this was done in terms of the Proclamation No. 44 of 2009 and it was signed by the President and published in *Gazette* No. 32367 on 01 July 2009.

2.2 In 2013, the Minister of Basic Education (**'Minister'**) established a task team to review the basic education legislation as a strategic priority for the Department. The task team identified the South African Schools Act, 1996 (Act No. 84 of 1996) (**'SASA'**) and the Employment of Educators Act, 1998 (Act No 76 of 1998) (**'EEA'**) as requiring amendments.

2.3 Therefore, the objective of this Bill is to effect amendments to both the SASA and the EEA.

3. CLAUSES OF THE BILL

AMENDMENTS TO THE SASA

3.1 Clause 1

3.1.1 This clause provides for the insertion of new definitions and seeks to amend certain existing definitions. Some of the new definitions and amended definitions include, *inter alia*:

3.1.2 'Basic Education' includes grade R to grade 12, as evidenced in National Curriculum Statement.

3.1.3 'Benefit in kind' means any benefit offered or afforded to an employee employed in terms of the Employment of Educators Act 1998 or the Public Service Act 1994, which is not a monetary benefit, including but not limited to –

- a. Exclusive private usage or ownership of a vehicle;

- b. Free accommodation;
- c. Free phone, including a cellphone;
- d. Free holiday;
- e. Groceries to the benefit of the employee; or
- f. Garden services.

3.1.4 'Corporal punishment' means any deliberate act against a child that inflicts pain or physical discomfort, however light, to punish or contain the child, which includes (a variety of actions).

3.1.5 'Grade R' is inserted in order to clarify that grade R is a reception grade that must be completed before grade 1.

3.1.6 'Required documents' in order to provide clarity in respect of the documents which must be submitted for the purposes of admission of learners to schools.

3.2 Clause 2

3.2.1 This clause seeks to amend section 3 (1) of the SASA to provide that school attendance is compulsory from grade R and no longer only from grade 1. The clause further proposes to increase the penalty provision in section 3 (6) of the SASA from six to 12 months in the case where the parent of a learner, without just cause, fails to ensure a learner, who is subject to compulsory attendance, attend school, or where any other person, without just cause, prevents such a learner from attending school.

3.2.2 The clause proposes the addition of subsection (7) which provides that it is an offence where any person unlawfully and intentionally interrupts, disturbs or hinders any official educational activity of a school, or hinders or obstructs any school in the performance of the schools' official educational activities. The latter amendment is necessitated by 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.

3.3 Clause 3

3.3.1 Clause 3 inserts section 4A into the SASA to ensure that the educators, principals and School Governing Bodies ('**SGB**') are accountable and responsible for the learners in their care. The clause seeks to ensure regular and punctual attendance at schools. This will assist in mitigating the high learner dropout rate.

3.3.2 The clause further provides that educators, the principal and the SGB as *parentis in loco* (in the place of a parent), must take responsibility and accountability for learners that are within their school community by ascertaining the whereabouts of a learner who absents himself or herself from school for a period of more than three days without valid reason.

3.3.3 The principal, upon receiving a report from the educator that the learner is absent without valid reason, must within 24 hours investigate the matter by making reasonable effort to contact the parents to ascertain the reason as to why the learner is not present at school.

3.4 Clause 4

3.4.1 Clause 4 seeks to amend section 5 of the SASA. Section 5 (1) is amended to provide that a public school must admit and provide education to learners and must serve their educational requirements for the duration of their school attendance without unfairly discriminating in any way. In

order to ensure that no learner is discriminated against in any way, the clause proposes the insertion of subsections (1A) and (1B) which provides that any learner whose parent or guardian has not provided the required documents will nonetheless be allowed to attend school and that the principal of the school must advise the parent or guardian to secure the required documents.

3.4.2 Clause 4 substitute section 5 (4) (a) and provides that despite the age at which school attendance is compulsory, as stipulated in section 3 (1), a parent may, if he or she so wishes and subject to a few conditions, enrol a child at school to start attending grade R at a younger age.

3.4.3 This clause proposes the amendment of subsection (5) which provides that the Head of Department ('HoD'), after consultation with the SGB, has the final authority to admit a learner to a public school. The clause provides that the SGB of a public school must submit the admission policy of the school, and any amendment thereof, to the HoD for approval.

3.4.4 The clause further proposes the amendment of subsection (5) which provides that the HoD, after consultation with the SGB, has the final authority to admit a learner to a public school. The clause provides that the SGB of a public school must submit the admission policy of the school and any amendment thereof, to the HoD for approval.

3.4.5 The clause proposes the insertions of subsections (5A) to (5D) which provides that should the HoD not respond to the SGB within 60 days after receiving the admission policy for approval, the admission policy will be regarded as having been approved. Where the SGB submits an amendment to its admission policy to the HoD for approval and he/she fails to respond within 30 days after receiving such amendment, the amendment to the admission policy will be regarded as having been approved by the HoD.

3.4.6 The clause also provides for time-frames within which a learner or parent of a learner who has been refused admission to a school may appeal to the MEC against the decision. The clause requires the MEC to respond to such appeal within 14 days after receipt thereof. The clause also provides for an appeal by the SGB to the MEC if it is not satisfied with the HoD's decision in terms of subsection 5 (c).

3.4.7 The amendments in this clause were necessitated by the confusion created by section 5 (5) and 5 (7) of the SASA in respect of the admission of learners to public schools and who has the final authority to admit a learner to a school. When exercising the authority to admit learners, the HoD is not rigidly bound by a school's admission policy.

3.5 Clause 5

3.5.1 Clause 5 seeks to amend section 6 of the SASA to provide that South African Sign Language has the status of an official language for purposes of learning at a public school. The clause also provides that the SGB must submit the language policy of a public school, and any amendment thereof, to the HoD for approval.

3.5.2 The clause further empowers the HoD to direct a public school to adopt more than one language of instruction, after taking into account certain factors and following certain prescribed procedures. When a school is directed to adopt more than one language of instruction, the HoD must before his or her directive is implemented, take all the necessary steps to ensure that the public school receives the necessary resources to enable that public school to provide adequate tuition in the additional language of instruction.

3.5.3 This clause makes provision for an SGB which is not satisfied with the HoD's direction to a school to adopt an additional language of instruction, to appeal against the HoD's direction to the

MEC.

3.6 Clause 6

3.6.1 Clause 6 amends section 6A of the SASA to empower the Minister to appoint a person, organisation or group of 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.

3.7 Clause 7

3.7.1 This clause seeks to amend section 8 of the SASA by providing that the SGB of a public school must adopt a code of conduct for the learners subject to the constitution, the SASA and any applicable provincial law.

3.7.2 The clause also provides that the code of conduct of a public school must take into account the diverse cultural beliefs, religious observances and medical circumstances of the learners at the school. The code of conduct shall also provide for the exemption processes and appeal processes.

3.7.3 This clause provides that disciplinary proceedings must be age-appropriate, and should be conducted in the best interest of the learner and must adhere to the principles of justice, fairness and reasonableness.

3.8 Clause 8

3.8.1 This clause makes it clear that a school has the right to search an individual learner and not a group of learners.

3.9 Clause 9

3.9.1 This clause seeks to amend section 9 of the SASA by proposing the insertion of a detailed definition of serious misconduct by a learner in order to provide greater clarity in this regard.

3.10 Clause 10

3.10.1 This clause seeks to amend section 10 of the SASA by extending the prohibition of corporal punishment being administered to learners to include 'during a school activity or in a hostel accommodating learners of a school'.

3.11 Clause 11

3.11.1 Clause 11 seeks to amend section 10A of the SASA by extending the prohibition of initiation practices to include 'during a school activity'.

3.12 Clause 12

3.12.1 This clause seeks to amend section 12 of the SASA to allow for the designation of a public school with a specialised focus on talent. The application can be made by the SGB to the MEC. The HoD may also identify and recommend to the MEC a public school to be so designated. The MEC may designate a public school with a specialised focus on talent if it is in the best interest of education in the province.

3.13 Clause 13

3.13.1 Clause 13 seeks to amend section 12A of the SASA to provide that, in instances where two or more schools are merged, a new public school will be established. The clause also sets out methods of communicating with interested parties in respect of such a merger.

3.13.2 The clause further provides that a merger will not affect the liability of any person to be disciplined or prosecuted for any misconduct, crime or offence and further provides for the rationalisation or redeployment of the workforce of the new public school.

3.14 Clause 14

3.14.1 Clause 14 seeks to amend section 21 of the SASA to empower the HoD to centrally procure identified learning and teaching support material to public schools, in consultation with the SGB and on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.

3.15 Clause 15

3.15.1 Clause 15 seeks to amend section 22 of the SASA to empower the HoD to withdraw, on reasonable grounds and after complying with prescribed requirements, 'one or more functions' of an SGB and not only 'a function', as the section currently reads. When the HoD exercise these powers, due processes shall be followed. The clause provides for the appointment of sufficiently qualified persons to perform the withdrawn function or functions for a specified period. The appointed person must build capacity to ensure that the SGB is able to perform the withdrawn function or functions in the future.

3.16 Clause 16

3.16.1 Clause 16 amends section 23 of the SASA by allowing SGB representatives to co-opt members from within the community, as well as from outside the community, to assist the SGB in discharging its functions. This will enable the SGB to co-opt experts in relevant fields where such experts may not be found within community.

3.17 Clause 17

3.17.1 Clause 17 deals with the election of members of an SGB of a public school for learners with special education needs. This amendment seeks to bring uniformity in the election of members of a SGB of a public school for learners with special education needs.

3.18 Clause 18

3.18.1 Clause 18 proposes the insertion of section 24A into the SASA to provide that the provisions of section 23 of the SASA, excluding subsection (5), which deals with the membership of SGB's of ordinary public schools, will apply to a public school with a specialised focus on talent. The clause also provides for the SGB's of public school with specialised focus on talent to have powers to co-opt members including experts in relevant fields.

3.19 Clause 19

3.19.1 Clause 19 proposes to substitute section 25 of the SASA in order to empower the HoD to dissolve an SGB that has ceased to perform the functions allocated to it in terms of the Act, if the HoD has reasonable grounds to do so. The clause makes it clear that due processes shall be followed when the HoD is exercising these powers.

3.20 Clause 20

3.20.1 Clause 20 deals with the conflict of interest by members of the SGB. The clause provides for the declaration of a direct or indirect personal and financial interest that an SGB member, or any of his/her family members, close friends or business partners has and where such a personal interest exists, the SGB member must recuse himself or herself and withdraw from a meeting of the SGB for the duration of the discussion and decision-making on an issue in which such member has a personal interest.

3.21 Clause 21

3.21.1 This clause seeks to amend section 27 of the SASA which provides that SGB members are not entitled to be remunerated for the performance of their duties, by adding the words 'or for the attendance of meetings and school activities'.

3.22 Clause 22

3.22.1 Clause 22 confers the responsibility for the arrangements of the election of an SGB of a public school to the Minister by substituting 'Member of the Executive Council' with 'Minister'.

3.23 Clause 23

3.23.1 Clause 23 provides that where it is reasonably practicable, only a parent member of an SGB, who is not employed at the school, may serve as the chairperson of the finance committee of that public school.

3.24 Clause 24

3.24.1 Clause 24 seeks to amend section 23 of the SASA to insert a new provision to ensure that learners who are SGB members are not involved in the appointment of educators.

3.25 Clause 25

3.25.1 The clause empowers the MEC to close a public school in his or her sole discretion if there are no learners registered at that public school. The amendment also empowers the MEC to close a public school after following a prescribed consultation process if, in the case of a primary school, 135 or fewer than 135 learners are registered at that school, and, in the case of a secondary school, 200 or fewer than 200 learners are registered at the school. This clause places emphasis on consultation.

3.26 Clause 26

3.26.1 Clause 26 seeks to amend section 36 of the SASA to provide that the SGB must also seek the approval of the MEC to enter into lease agreements, for any purpose, including loans and overdraft which are already provided for in the said section. This clause also provides that the approval of the MEC is not required in relation to the lease of immovable property of the school if the lease is for a period not exceeding 12 months.

3.27 Clause 27

3.27.1 Clause 27 amends section 37 of the SASA by substituting the word 'directions' with the word 'directives'. The proposed amendment is a technical correction.

3.28 Clause 28

3.28.1 Clause 28 deals with the budget of the school. The clause provides that a document explaining the budget of a school, together with the budget must be made available to parents before the budget is presented to a general meeting of parents for consideration. The clause also sets out the procedure to be followed in the event that the SGB proposes a deviation from the initial budget by 10% or more or if there is a proposed reallocation of funds for a purpose that is different from the purpose set out in the original budget.

3.29 Clause 29

3.29.1 Clause 29 places a duty on SGB's to provide full details of the nature and extent of any additional remuneration or any other financial benefit or benefit in kind paid to state employee who rendered a service to the school.

3.30 Clause 30

3.30.1 Clause 30 seeks to amend section 41 of the SASA by inserting a new subsection 2A to provide that when a parent applies for exemption from the payment of school fees, such parent may submit additional documentary evidence in the form of an affidavit in instances where information cannot be obtained from the other parent of the learner.

3.31 Clause 31

3.31.1 Clause 31 expands the provisions contained in section 42 of the SASA. Clause

31 provides that the SGB of a public school must keep detailed records on prescribed aspects of its financial affairs, draw up financial statements, present the financial records and statements to a general meeting of parents.

3.32 Clause 32

3.32.1 Clause 32 seeks to amend section 43 of the SASA to empower the HoD, if he or she deem it necessary, on just cause shown, to authorise an investigation into the financial affairs of a public schools and to appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a public school.

3.33 Clause 33

3.33.1 Clause 33 seeks to amend section 46 of the SASA by increasing the penalty provision from 06 to 12 months in case where a person establishes or maintains an independent school that is not registered by the HoD.

3.34 Clause 34

3.34.1 This clause 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 MEC. The amendment also provides that an independent school must submit quarterly report to the HoD on all income and expenditure relating to the subsidy, and must, within six months after the end of each financial year, provide the HoD with a copy of the audited financial statements relating to the subsidy.

3.35 Clause 35

3.35.1 Clause 35 seeks to substitute section 51 of the SASA to regulate home schooling/education. The amendment provides that learners may be educated at home only if they are registered for such education. The clause provides that the HoD, may, when considering the application, require a delegated official to conduct a pre-registration consultation with the parents and the learner to verify the information supplied in the application documentation and to provide support with the application process. The clause further provides that the HoD may decline to register a learner for home education if the requirements are not met or home education is not in the best interest of the learner. The clause also provides for an appeal process.

3.36 Clause 36

3.36.1 Clause 36 provides that where a parent, or any other person, applies for the admission of a learner to a public school, or applies for exemption from the payment of school fees, and submits a false or misleading information, or submits a forged document or a document he or she claims to be a true copy of the original but it is not, is guilty of an offence.

3.37 Clause 37

3.37.1 This clause provides for the dispute resolution mechanism in the event of any dispute between the SGB and the HoD, or any dispute between an SGB and an MEC.

3.38 Clause 38

3.38.1 Clause 38 proposes an amendment to section 60 of the SASA to exclude liability of the state for any delictual or contractual damages caused as a result of any school activity conducted by a public school if the provisions of section 36 (2) of the SASA are not complied with.

3.39 Clause 39

3.39.1 This clause proposes an amendment of 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 other financial benefits or benefits in kind to the employees, on minimum norms and standards for provincial teacher development institutes and district teacher development centres.

3.40 Clause 40

3.40.1 Clause 40 insert into the preamble of the SASA the phrase 'to facilitate the education of children through the promotion and protection of the right to basic education'.

AMENDMENTS TO THE EEA

3.41 Clauses 42, 44, 46, 48, 51, 52 and 53

3.41.1 The proposed amendments in these clauses are deleting obsolete provisions in order to align the Act with the new education dispensation. In particular, these amendments delete references to 'further education and training institution', 'adult basic education centre', 'institution' and 'centre'.

3.42 Clause 43

3.42.1 This clause seeks to amend section 7 of the EEA to extend the application thereof to promotions on any educator establishment. The clause further provides for the possibility that an appointment to a promotional post can be made on probation.

3.43 Clause 45

3.43.1 This clause seeks to amend section 9 of the EEA to provide for the secondment of educators to another department.

3.44 Clause 47

3.44.1 Clause 47 proposes to amend section 17 of the EEA by inserting a phrase that expand the list of acts of serious misconduct. The new insertion is phrased as 'committing any other act which, in any other law that applies to the educator in so far as his or her employment is concerned, is classified as serious misconduct'.

3.45 Clause 49

3.45.1 Clause 49 proposes the insertion of a new section 19 into the EEA, which prohibits educators from conducting business with the state or from being a director of a public or private company conducting business with the state and provides that a contravention of the afore-mentioned provision is an offence. Such contravention will also constitute serious misconduct, which shall result in termination of the educator's employment by the employer.

3.46 Clause 50

3.46.1 Clause 50 seeks to amend section 35 of the EEA to extend the powers of the Minister to make regulations on norms and standards for district staffing.

3.47 Clause 54

3.47.1 Clause 54 provides the short title of the envisaged Act and provides that the envisaged Act comes into operation on a date fixed by the President by proclamation in Gazette.

4. CONCLUSION

Members of the public are urged to comment on the Bill before the Bill is passed into law. Copies of the Bill may be obtained at any of the following websites:

www.eclegislature.gov.za www.parliament.gov.za

Written comments on the Bill may be submitted to the Coordinator **Ms. Mandisa Daniels- Mana, the Committee Coordinator for Education** who may be contacted at 040 609 1542/0824481205 or email at mdaniels@ecleg.gov.za.

Written comments on the Bill may be emailed to the above-mentioned email address.