



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA



English

# The Basic Education Laws Amendment Bill (BELA) - [B2-2022]

# The Basic Education Laws Amendment Bill (BELA)

Parliament of South Africa is inviting inputs from the public on the Basic Education Laws Amendment Bill [B2-2022]. The National Assembly's Portfolio Committee on Basic Education acting under section 59 (1) of the Constitution, seeks to facilitate public involvement in respect of this Bill and is accordingly inviting comments and inputs from interested stakeholders.

## Why the BELA Bill?

The BELA Bill seeks to amend the South African Schools Act, 1996 (SASA) and the Employment Educators Act, 1998 (EEA)

## What is the purpose of the amendments to the principal Acts?



Align both Acts (SASA and EEA) with developments in the education landscape.



Further ensure that systems of learning and excellence in education are put in place in a manner which respects, protects, promotes and fulfils the right to basic education enshrined in section 29(1)(a) of the Constitution, 1996.

## The Bill aims to:



Advance the implementation of court judgements that protect and give effect to the Bill of Rights; for example,

Centre for Child Law and Others v Minister of Basic Education and Others (2840/2017) [2019] ZAECHGHC 126 concludes that the DBE and the Provincial Department are acting unconstitutionally in not permitting children to continue receiving education in public schools purely by reason of the fact that they lack identification documents.

Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo and Another [2010(2) SA 415 (CC)] which provided that even though the function of determining a school's language policy is a devolved function (or responsibility), in terms of section 6(2) of the SASA, it is not the exclusive preserve of an SGB.

Head of 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], which made it necessary to incorporate further checks and balances above and beyond those that are currently in the SASA in respect of the language and admission policies of schools.



Provide for compulsory attendance of Grade R, increased penalties for prohibiting learners from attending school, further regulates drugs and alcohol at schools, responsibility of the principal in respect of absenteeism, the status of sign language as a language at schools, and related matters;



Provide for financial and public accountability frameworks for Provincial Departments and School Governing Bodies;



Activate systems improvement in terms of admissions, particularly when it comes to undocumented learners;



 Provide for additional regulatory powers of the Minister, and enhance decision making and oversight powers of the Members of Executive Council (MECs) and Head of Departments (HODs); and

 Address provincial contextual needs such as central procurement, home education, mergers and closures of schools, lease agreements, subsidies to independent schools, and dispute resolution, amongst others.

## Why is it important to participate?

Public participation is a democratic process that ensures lawmakers listen to the voices of the people when they consider/pass laws.

## Why is Parliament inviting public input?

Parliament is mandated by the Constitution to ensure that the public is involved in all its processes, including law-making. To satisfy this mandate, the Portfolio Committee on Basic Education is inviting all interested and affected parties to participate in the BELA Bill.

## Who must participate and how?

All affected and interested parties, individuals and organised formations are invited to participate in the upcoming public hearings by making an oral submission to the Portfolio Committee on Basic Education. Stakeholders impacted by the Bill are School Governing Body Associations, School Management Teams, Teacher Unions, Parents/Guardians, Teachers and Learners, Student Teachers, Teacher Educators, Teacher Education Providers, Home Education/School Providers and Learners, Lobby Groups, NGO's, CBO's, FBO's, and all Citizens and Organisations with an interest in the Basic Education System of South Africa.

All provincial education departments were consulted on the draft Bill, which was also presented to the Heads of Education Departments Committee and the Council of Education Ministers. All of the above structures approved the draft Bill for publication in the Government Gazette for public comment.

## What happens after you have submitted your inputs to the committee?

The committee will consider all public inputs on the amendments of the principal Acts for the National Assembly to pass the Bill. The Bill will then be referred to the National Council of Provinces for further deliberation and concurrence. Thereafter, the Bill will be sent to the President for assent and signing into an Act of Parliament.

For copies of the Bill and any further information you can contact the secretary of the Portfolio Committee on Basic Education

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Or visit parliament website at:

[www.parliament.gov.za](http://www.parliament.gov.za)

To date approximately 18,000 written submissions focusing on the BELA Bill were received via email, Google forms and WhatsApp from the public before the closing date on 15 August 2022


## Did You Know?

 Parliament is made up of two Houses, namely; the National Assembly(NA) and the National Council of Provinces(NCOP).

 Parliament is the national law-making body of South Africa.

 Bills are mainly introduced to Parliament by the Minister of a specific department.

 For a Bill to be passed into law, the President needs to sign it.

 Parliament is obliged by the Constitution to get the views of the people before passing any Bill into an act or law.



# The 56 clauses of the Basic Education Laws Amendment (BELA) Bill - [B2-2022]

The BELA Bill [B2-2022] proposes to amend the South African Schools Act (SASA), 1996 (Act No. 84 of 1996), and the Employment of Educators Act (EEA), 1998 (Act No. 76 of 1998). The table below is presented to offer a quick overview of how the BELA Bill proposes to amend both the SASA and EEA.

START

Clause	What is entailed?
1	Provides for the amendment to the definition section.
2	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; to increase the penalty provision in section 3(6) of the SASA from six months to 12 months.
3	Provides for the monitoring of school attendance by educators, principals and the school governing body.
4	Seeks to amend section 5 of the SASA. It 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, enroll a child at a school to start attending grade R at a younger age. It provides that the governing body of a public school must submit the admission policy of the school, to the Head of Department for approval. It also provides for a mechanism for undocumented learners to obtain documents.
5	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.
6	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.
7	Seeks to amend section 8 of the SASA by providing, in clause 7(a), that not only any applicable provincial law, but also the Constitution of the RSA and the SASA must be taken into account when a public school adopts a code of conduct.
8	Seeks to extend the provisions of section 8A of the SASA by providing for conditions under which liquor (see paragraph 2.2.8) may be possessed, consumed or sold on school premises or during school activities, and to make consequential amendments to the section in this regard and in regard to the new definition of "drug"
9	Seeks to amend section 9 of the SASA by providing a list of acts of serious misconduct and to clarify what constitute an act of serious misconduct by learners.

10	Seeks to amend section 10 of the SASA. It provides that corporal punishment is abolished and no person may inflict or impose corporal punishment to a learner at a school, during a school activity, or in a hostel accommodating learners of a school.
11	Seeks to amend section 10A of the SASA to prohibit initiation practices in a hostel accommodating learners, and "during a school activity.
12	Seeks to amend section 12 of the SASA. It provides that the SGB of a public school may apply to the MEC to be designated as a public school with a specialised focus on talent. The Head of Department (HoD) may also identify a public school to be so designated and may make a recommendation to the MEC in this regard.
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.
14	Seeks to amend section 18A of the SASA to ensure that members of a governing body like other public officials disclose on an annual basis, their financial interests and the financial interests of their spouse, partner and immediate family members.
15	Seeks to amend section 20 of the SASA. It provides that the governing body of a public school must, at the request of the HoD, allow the reasonable use, under fair conditions of the facilities of the school for education-related activities, without the charging of a fee or tariff.
16	Seeks to amend section 21 of the SASA to empower the HoD to centrally procure identified learning and teaching support material for 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.
17	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.
18	Seeks to amend section 23 of the SASA to empower the governing body to co-opt persons from outside the community, with the relevant expertise, to assist in discharging its function.
19	Seeks to amend section 24 of the SASA to empower the Minister to determine in a National Gazette the numbers of SGB members, manner of election or appointment in public school for learners with special educational needs.

20	Seeks to insert section 24A to regulate membership of a governing body of a public school with a specialised focus on talent. This area is currently unregulated.
21	Seeks to amend section 25 of the SASA to empower the HoD to dissolve an SGB that has ceased to perform functions allocated to it in terms of the Act, if the HoD has reasonable grounds to do so. The MEC is the appeal authority in this process.
22	Expands on the provisions of section 26 of the SASA to provide for the declaration of a direct or indirect personal interest that an SGB member or any of his or her family members or close friends or business partners has and, under such circumstances, the recusal of SGB members.
23	Seeks to amend section 27 of the SASA to provide that no member of a governing body may be remunerated in any way for the performance of his or her duties or for the attendance of meetings and school activities.
24	Seeks to amend section 28 of the SASA to empower the Minister to determine the election of members of governing body. Our current law has entrusted this authority to MEC's. The object of this amendment is to norm the election of SGB's and to bring consistency in the sector.
25	Seeks to amend section 29 of the SASA. It provides that where reasonably practicable, only a parent member of a governing body who is not employed at the public school may serve as the chairperson of the finance committee of that public school.
26	Seeks to amend section 32 of the SASA. It regulates the status of learners who are members of the governing body of a public school. It further prohibit these learners to take part in the process to employ educators and enter into a contract on behalf of a school.
27	Seeks to amend section 33 of the SASA, which deals with the closure of public schools. The MEC must embark on a comprehensive consultation process before closing a school.
28	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 overdrafts which are already provided for in the said section.
29	Seeks to infuse technical amendment to section 37 of the SASA.
30	Seeks to amend section 38 of the SASA to provide that a document explaining the budget of a school, together with the budget itself, must be made available to parents before the budget is presented to a general meeting of parents for consideration.

31	Seeks to amend section 38A of the SASA to extend its application to a state employee who is paid any additional remuneration or any other financial benefit or benefit in kind.
32	Seeks to amend section 41 of the SASA to regulate the exemption of a single parent to provide the governing body with necessary document when making an application for exemption from payment of school fees.
33	Seeks to substitute section 42 of the SASA to provide that the SGB of a public school must keep detailed records on prescribed aspects of its financial affairs; draw up annual financial statements within a specified time and in a specified manner; and present the financial records and statements to a general meeting of parents.
34	Seeks to amend section 43 of the SASA to empower the HoD, if he or she deems it necessary, on just cause shown, to authorize an investigation into the financial affairs of a public school; to request the Auditor-General to undertake an audit of the records and financial statements of a public school; or appoint forensic auditors or forensic investigators.
35	Seeks to amend section 46 of the SASA. The object of the amendment is to increase the penalty provision for any person who operates an unregistered independent school.
36	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.
37	Seeks to substitute section 51 of the SASA to provide clarity in regard to home education. The amendment (read with the amendments to section 3 of the SASA) makes it clear that learners may be educated at home only if they are registered for such education.
38	Seeks to amend section 59 of the SASA. It provides for an offence and penalty against a parent or any person who submits false, misleading or forged documents when making an application for admission of a learner or exemption from payment of school fees.
39	Inserts a new section 59A into the SASA to provide for dispute resolution mechanisms in the event of any dispute between an SGB and the HoD or the MEC. It is anticipated that this amendment will save costs for all concerned and will enable the parties involved to resolve disputes amicably.

40	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.
41	Seeks to amend section 61 of the SASA to empower the Minister to promulgate regulations.
42	Seeks to amend the Preamble of the SASA.
43 & 44	Amend section 1 and 5 of the EEA. The object is to effect technical amendments to the EEA in order to align the basic education legislation with current developments. To also delete all absolute provisions and definitions such as further education and training institution and adult basic education centre which are currently under the domain of the Department of Higher Education, Science and Innovation.
45	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 that an appointment to a promotional post can be made on probation.
46, 47 & 48	Seek to effect technical amendments to sections 8, 9 and 11 of the EEA to bring it in line with current developments in the sector.
49	Amends section 17 of the EEA by inserting a phrase that expands the list of acts of serious misconduct.
50	Seeks to effect technical amendments to section 18 of the EEA.
51	Inserts a new section 19 into 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 an educator contravene the abovementioned provision.
52	Seeks to amend section 35 of the EEA to empower the Minister to promulgate regulations on norms and standards for district staffing.
53	Seeks to repeal section 38 of the EEA.
54 & 55	Seek to effect technical amendments to section 18 and schedule 2 of the EEA.
56	Provides for a short title

END

# Submission guideline

ENGLISH

Head your submission with the full title of the topic or Bill.

Date:	
Topic or Bill:	
Name of Committee:	

State whom the submission is from

First and Surname	
State whether you have been nominated to represent an organisation	
Name of organisation (if nominated to represent an organisation)	
Your position in the organisation	
Aims of the organisation	
How many people belong to the organization?	

Provide contact details (Include a contact address, daytime telephone number and ID number. If for private reasons you do not wish these details to be made public, state this in your covering letter and leave it off the submission itself)

Postal Address:	
Street Address:	
Province:	
Tel No:	
Cell No:	
E-Mail:	

State whether you wish to appear before the Committee

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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Do you wish others to appear with you before the committee?

If yes, please provide their full name(s) and surname(s) and their role(s)

Name(s) and Surname(s)	Role(s)

State your concerns on the Bill or topic. Please support your views by examples.

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Provide recommendations/suggestions.

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Sum up or list the main points of your recommendations.

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Who else supports you?

Name(s) and Surname(s)	Role

Please take note that the information you are submitting will be processed as set out above and that by submitting this information, you consent to the processing of this information as required by the Protection of Personal Information Act No. 4 of 2013.