

**ANNEXURE A : MATRIX OF SUBMISSIONS MADE ON THE BASIC EDUCATION AMENDMENT BILL**

The purpose of the document is to provide an overview of:

- Public submissions made on the Basic Education Amendment Bill, consolidated from public comments,
- Written Submissions, and Provincial public hearings
- Department of Basic Education Responses

**BASIC EDUCATION LAWS AMENDMENT BILL**

<b>Clause</b>	<b>EXPLANATION FOR PROPOSED AMENDMENTS</b>	<b>Submitters, Comments on PROPOSED AMENDMENTS</b>	<b>RECOMMENDATIONS</b>	<b>DBE RESPONSE</b>	<b>ARTICULATION IN LAW (RETAIN, AMEND NEW CLAUSE)</b>
<b>Clause 1</b> Amendment to Definition Section		<p>The SASA does not define a meeting, so there is uncertainty over whether meetings can still be conducted online.</p> <p>“competent assessor” Objects to the proposed definition because such person will never be competent to assess home educated children using traditional home education methods and with their extremely varied learning approaches and flexible learning frame</p>	<p>Proposes that the term “meeting” must be properly defined to allow for online meetings.</p> <p>Basic education should end at grade 9.</p>		

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		The definition in Section 1(c) (c) pertaining to “corporal punishment”	Proposes that amendment state that “forcing a child to do exercise” should rather read: “forcing a child to do exercise other than normal exercise as per curriculum requirements”.		
<b>Clause 2</b>	School Attendance Compulsory from grade R Increase of the penalty	The proposed amendments is supported, compulsory Grade R attendance for children, however, notes that the proposed provision for compulsory age of entry into Grade R is unclear and needs to be	Compulsory Grade R should be accompanied by measurable improvement, appropriate resourcing and learning support and qualified	The admission age and the compulsory school going age will be defined	

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	provision in section 3(6) of the SASA from six months to 12 months	amended to ensure clarity of the position that the Bill seeks to introduce. Gr 4 to 5 years children must remain in the pre-school level, they are still small and still need a serious attendance and also need to be monitored more often, especially when going to the bathroom ,and some are still using the pit toilet and is very much dangerous for the children of that age to mingle with the intermediate kids	teachers who can implement play-based learning programs. Norms and standards be amended to include reference to age-appropriate play material and equipment, which is guided by Occupational Therapy in foundational gross motor, fine motor across kinaesthetic, 3D and 2D dimensions preparing the learners for		

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		<p>Some submitters do not support support children at the age of 4 years turning 5 years old to be compulsory at school but they must be in the ECD centres</p> <p>Rejects the proposed amendments to increase the penalty provision in section 3(6) of the SASA from six months to 12 months</p>	<p>perceptual skills required in reading, writing and mathematics.</p> <p>The Department of Basic Education to develop clear plans and a timeline for the resourcing and phasing in of Grade RR provisioning.</p> <p>Proposes a holistic social intervention and support approach is required that identifies the causes of the parent's non-</p>		

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			<p>compliance and introduces a series of interventions to help and assist that parent to comply.</p> <p>Proposes that the intended amendment Section 3 of the Act be amended and expanded upon to make provision for a child to be retained in Grade R even though he/she already reached the age of seven, when a</p>		

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			professional, educational evaluation report is made available. Proposes that the unlawful and intentional disturbance must be defined more clearly as there are certain examples of where it would be acceptable to interrupt or disturb school activity, for example where learners in good team spirit decide to		

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			embark on a mass fun bunking, they, according to the strict definition act unlawful and intentionally interrupt and disturb school activity and may incur a fine or a twelve-month imprisonment.  Alternatively, if a political party, for example, disrupts school activity, which is not per se a lawful picketing, such may be interpreted as a		

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			disturbance or hindrance and therefore liable for imprisonment.		
<b>Clause 3</b>	Monitoring of Learner Attendance	The amendment is commended Parents should be involved	Proposes expansion of the Clause to make provision for the principal or his delegate to “within 24 hours or any reasonable time thereafter”, as the 24 hours may not fall on a working day and must when reasonably possible be extended.		

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			Also recommend for definition of “further intervention,” as suggested by the amendment.		
<b>Clause 4:</b>	Admission of learners and the power of the HoD	The Bill seeks to limit the governing body’s power to determine the school’s admission policy. The first substantive change is that the proposed section 5(5)(a) of the Schools Act states that the Provincial Head of Department (‘HoD’), after consultation with the governing body, has the “final	The SGB must be in the position to decide on an admission policy, because it is crucial that parents can decide on the format of their children's schools  There must be some mandatory obligation	The requirement to submit the admission policy is withdrawn  The requirement for SGBs to submit the language policy will be removed.	

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		<p>authority” to admit a learner to a public school. The referral to “final authority” conflicts with the scheme of the Schools Act and applicable court judgements which envisions a cooperative partnership between the governing body, the HoD and the Minister.</p> <p>The notion of a cooperative partnership between the Minister, the provincial department, and the school governing bodies, as envisioned and prescribed in section 41(h) of the Constitution is</p>	<p>towards the head of department to ensure that the steps taken are in fact executed and that the language change will only be affected after such steps have been taken</p> <p>A school’s feeder zone need not be geographically adjacent to the school and this principle should continue to be recognised.</p>	<p>The argument offered in defending the admission policy applies to the HoDs power to approve the language policy. The HoD does not have unfettered powers to amend the language policy of a</p>	

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		<p>undermined by giving the HOD the “final authority”.</p> <p>The governing body of a school is the most appropriate stakeholder to determine the school’s admission policy, including whether a learner meets the requirements for admission. This is because the governing body can consider a range of interconnected factors relating to the planning and governance of the school as a whole.</p>	<p>The language needs of the communities in the school’s feeder zones should also be taken into consideration.</p> <p>Care should be taken to avoid the SGB becoming a functional extension of the Department who is required to perform certain action under the direction and control of the Department.</p>	<p>school. Clauses 6 (14) and (15) includes a very detailed procedure that must be followed when such a decision is made. This includes public consultation. The procedure complies with the PAJA. Should the</p>	

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		<p>By giving the HOD the “final authority” to determine a learner’s admission, the governing body’s role in the partnership, and its accountability to the community that it serves, is substantively diminished.</p> <p>The proposed amendment provides that the governing body must submit the admission policy of the school, and any amendment thereof, to the HOD for approval.</p> <p>The H.O.D. must take into account certain prescribed factors when</p>	<p>The national and provincial education departments and SGB’s work together to address and resolve the issue of capacity.</p> <p>A set of objective criteria should guide the determination of school capacity, taking into account the Minimum Uniform Norms and Standards for Public Schools.</p>	<p>SGB not be satisfied with the decision of the HOD after the completion of the entire procedure, the Bill caters for an appeal mechanism to the MEC.</p>	

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		<p>considering the policy or any amendment thereof.                      In the event that the HOD does not approve the policy he or she must return it to the governing body with such recommendations as may be deemed necessary.                      Provinces do not have the capacity to deal with ordinary day-to-day submissions and correspondence. With just under 24 000 public schools, and with</p>	<p>Strong community involvement should be encouraged as schools that show high levels of community involvement have proven themselves to be highly effective due to the vested interest the parents have in their children’s education.                      Care should be taken to avoid the SGB becoming a functional extension of the Department who is</p>		

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		<p>provinces struggling to deliver on existing legislative obligations, we have difficulty in seeing how they will be able to respond to all the submitted policies.</p> <p>No mention is made of the obligation on and right of a governing body to determine the capacity of a school and the obligation of consultation imposed on the Head of Department if there</p>	<p>required to perform certain action under the direction and control of the Department.</p> <p>The national and provincial education departments and SGB's work together to address and resolve the issue of capacity.</p> <p>A set of objective criteria should guide the determination of school capacity, taking into</p>		

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		<p>is a conflict between the HOD and the SGB.                      The HOD can therefore declare a school full without any input from the governing body.                      In the Rivonia<sup>1</sup> case, the Constitutional court having regard to section 5A (3) of the Schools Act, determined that a governing body's admission policy may include a determination as to capacity                      The right of children to go to their closest school and study in their own language should be respected.</p>	<p>account the Minimum Uniform Norms and Standards for Public Schools.                      Children must be able to be taught in their own language and therefore SGB's must be allowed to decide on the language policy of the school.                      A school's feeder zone need not be geographically adjacent to the school and this</p>		

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			principle should continue to be recognised. Allowing the SGB to retain their administrative duties will lead to improved education outcomes and better serve the interests of learners  It is recommended professionals who understand whole child		

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			<p>The SGB are the elected representatives of our school community and are best placed to determine the language and admission policies of our school.</p> <p>There must be some mandatory obligation towards the head of department to ensure that the steps taken are in fact executed and that the language change will only</p>		

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			be affected after such steps have been taken A culture of mutual trust and good faith between the SGB as representatives of school community and the national and provincial departments of education should rather be nurtured and maintained, and a relegation of administrative duties as proposed will only result in		

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			undue delay, unnecessary administrative burdens as well as conflict to operate on instruction only where such is not practically feasible for a school A school's feeder zone need not be geographically adjacent to the school and this principle should continue to be recognised. The language needs of the		

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			communities in the school's feeder zones should also be taken into consideration.		
<b>Clause 5:</b>	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	They submit that the MEC for Education in Gauteng Province and Others v Governing Body Rivonia Primary and Others CCT 135 12 [Par 40]. The power to determine a school's language policy vests in the SGB, in terms of section 6(2) of the Schools Act. Clause 5(c) of the Bill proposes	Children must be able to be taught in their own language and therefore SGB's must be allowed to decide on the language policy of the school. A school's feeder zone need not be	The requirement for SGBs to submit the language policy will be removed. The argument offered in defending the	

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	thereof, to the Head of Department for approval.	amending section 6 of the Schools Act by adding subsections (5) to (20), which seek to limit the governing body's power to determine the school's language policy. The first substantive change introduced, is the requirement that the SGB submit the admission policy, and any amendments thereto, to the HOD for "approval". As stated above, the requirement of the HOD's "approval" of a school's policy conflicts with the scheme of the Schools Act which envisages a	geographically adjacent to the school and this principle should continue to be recognised. Allowing the SGB to retain their administrative duties will lead to improved education outcomes and better serve the interests of learners	admission policy applies to the HODs power to approve the language policy. The HOD does not have unfettered powers to amend the language policy of a school. Clauses 6 (14) and (15)	

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		<p>cooperative partnership between the governing body and the HOD.                      The requirement of the HOD's "approval" of the language policy creates the same difficulties as the proposed change to section 5(5) requiring the HOD's "approval" of the admission policy – in both instances, the delicate balance of power giving effect to cooperative governance is disturbed in favour of granting power to the HOD.                      Clause 5 also seeks to empower the HOD to direct a public school to</p>	<p>It is recommended professionals who understand whole child                      The SGB are the elected representatives of our school community and are best placed to determine the language and admission policies of our school.                      There must be some mandatory obligation towards the head of</p>	<p>includes a very detailed procedure that must be followed when such a decision is made. This includes public consultation. The procedure complies with the PAJA. Should the SGB not be</p>	

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		<p>adopt more than one language of instruction, after taking certain prescribed factors into account. The proposed amendments signify an intention to increase authoritarianism and a reluctance to respect, protect, promote and fulfil the values and provisions of the Constitution.</p> <p>This proposed amendment diminishes the role and function of the SGB to admit learners to public schools.</p>	<p>department to ensure that the steps taken are in fact executed and that the language change will only be affected after such steps have been taken</p> <p>A culture of mutual trust and good faith between the SGB as representatives of school community and the national and provincial departments of education</p>	<p>satisfied with the decision of the HOD after the completion of the entire procedure, the Bill caters for an appeal mechanism to the MEC.</p>	

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		<p>This amendment undermines the constitutional principles of cooperative partnership between the school as public institution and the State.</p> <p>The SGB has the right and responsibility to determine the admission policy – including the capacity – of the school.</p> <p>The proposed amendments threaten the success and optimal functioning of public schools to provide quality education to learners.</p>	<p>should rather be nurtured and maintained, and a relegation of administrative duties as proposed will only result in undue delay, unnecessary administrative burdens as well as conflict to operate on instruction only where such is not practically feasible for a school</p> <p>A school’s feeder zone need not be</p>		

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		<p>Many schools have been successful through great and additional expense by the parents to maintain the public infrastructure of such public schools and appoint additional educators from own financial resources to improve the educator / learner capacity, in the interest of quality basic education</p> <p>This amendment is particularly applicable to Afrikaans medium schools.</p> <p>Language policy substantively affects the functioning of all aspects</p>	<p>geographically adjacent to the school and this principle should continue to be recognised. The language needs of the communities in the school's feeder zones should also be taken into consideration.</p>		

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		<p>of a school. By targeting the existence of schools as cultural institutions, the Afrikaans cultural community is under threat, going against section 29(2) and 31(1) of the Constitution.</p> <p>This amendment conflicts with the SGB's vested power to determine a school's language policy, as per section 6(2) of the SASA. SGB's have the right to determine and affect language policy, and not have it centralised into the hands of state officials</p>			

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		<p>In simple terms, this is a subversion of regulations on language policies of schools as well as the guaranteed protection of language preferences of learners. Section 29(2) of the Constitution of South Africa gives everyone the right <i>“to receive education in the official language or languages of their choice, where reasonably practicable.”</i></p> <p>As the SGB, they are the elected representatives of our school community and are best placed to determine the language and</p>			

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		<p>admission policies of our school. Requiring that language and admission policies are first sent to the HOD of the relevant provincial department of education is an undue centralisation of power that will unquestionably adversely affect the ability of schools to provide proper education.</p> <p>This proposed amendment diminishes the role and function of the SGB to admit learners to public schools.</p>			

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		<p>This amendment undermines the constitutional principles of cooperative partnership between the school as public institution and the State.</p> <p>The SGB has the right and responsibility to determine the admission policy – including the capacity – of the school.</p> <p>one language of instruction in the proposed section 6(13) is undemocratic and dictatorial.</p> <p>everyone the right “to receive education in the official language or</p>			

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		<p><i>languages of their choice, where reasonably so .”</i>                      As the SGB, they are the elected representatives of our school community and are best placed to determine the language and admission policies of our school.                      The requirement that the SGB submit the language- and admission policy, and any amendments thereto, to the HOD for “approval”, is unacceptable.</p>			

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<b>Clause 6</b>	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.	Not contested			

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<b>Clause 7:</b>	Seeks to amend section 8 of the SASA by providing, in clause 7(a), on the adoption of Code of Conduct.	It noted that the exemption “Clause” on amending the code of conduct based on accommodating different cultural and religious background of learners is also commended as schools deny learners access to education based on cultural and religious differences under the “schools’ code of conduct” policy therefore was discriminatory for many learners. Schools’ codes of conduct are not accommodating to cultural, traditional and religious differences.	Bullying is rife in schools and the Department should develop and implement mechanisms to address it. The SGB’s participation in the appeal process envisaged by the proposed amendments should not only be invited, but provision must be made to require it in order to assist the MEC to make informed decisions which	The intention of the amendment is to ensure that the school learner code of conduct respects the rights enshrined in the Bill of Rights. This amendment is informed by the United Nations Convention on	

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		<p>There is a concern with regards to the power of the governing body to exempt learners from complying with the school code of conduct.</p> <p>Just cause” is simply too wide a concept and may lead to frivolous applications for exemption. It means that governing bodies must meet to consider and deliberate on all these applications, react to them in a reasoned manner and come to a rational decision.</p>	<p>can also create a platform for mediation between the learner and the school</p> <p>It is proposed here that in keeping with whole child/learner development that the aim of a Code of Conduct is made clear in the Bill for example “to enhance character development through dialogue on fair principles and sound ethics which aims to</p>	<p>the Rights of the Child, 1989 and the latest jurisprudence on this issue, as expressed in the Constitutional Court judgment of <i>MEC for Education: Kwazulu-Natal and Others v Pillay</i> [CCT 51/06 [2007]</p>	

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		<p>A procedure to follow the decision of the SGB is not included in the proposed amendments.</p> <p>The proposed amendment is unacceptable. A code of conduct cannot contain certain portions for exemption as this will create a grey area for execution of disciplinary measures</p>	<p>strengthen the welfare of the learner, parent and school, in turn the wellbeing of the community and society”</p> <p>Recommends for a governance and compliance independent structure for ordinary schools consisting of compliance, audit and governance skills to oversee unethical and illegal scenarios that</p>	<p>ZACC 21] and other cases. The amendment seeks to bring the SASA in line with such jurisprudence.</p>	

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			could derail the majority of education and learning time and which could be a useful training resource and conduit for SGBs and Executive Structures. There should be no exempt		
<b>Clause 8:</b>	Conditions under which liquor may be	Schools in some areas do not have the capacity to control the exceptions as prescribed in the Bill	Recommends that Subsection (1)(c)(i), whereby the head of	The amendment will be withdrawn	

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	possessed, consumed or sold on school premises	and that learners will have access to alcohol. Concerns about the message we are sending to learners. The flip side of this discussion is that parents are already consuming alcohol in the presence of their children. They already have access to alcohol in their homes. The majority of the commentators, SGB members, School principals, Community Members, SADTU and Faith based organisations are of the	department must receive an application from the governing body to supplement the resources, must be expanded to state that the application must be submitted to the department and if there is no reply within 14 days of the submission, it will be deemed as an acceptance by the Department, as the		

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		<p>view that alcohol has no place in schools.</p> <p>They strongly objected to the inclusion of this clause and believe that if alcohol is brought onto school premises, the future of our children, especially those in township schools will be permanently destroyed.</p> <p>Alcohol cannot be sold 500 m from a school</p> <p>The proposed amendment is unacceptable.</p>	<p>Department is notorious for not reacting to requests timeously.</p>		

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<b>Clause 9:)</b>	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.	Often, the HOD fails to respond within the specified time frame or does not respond at all. As a result, the learner's then return to school, which leaves the victims vulnerable. As a result, maintaining discipline in schools becomes a major challenge. It is submitted that a learner who has been expelled from a public school has the right to appeal against the HOD's decision to the MEC. However, the SGB is not granted this right and must resort to	The proposed amendment to section 9 (1)(a) of the BELA Bill does not prescribe any time frame in respect of the suspension period to learners who are suspended from school due to having committed a serious misconduct Proposes that as opposed to returning the learner to school, the default position should be	The time frames are provided for in terms of section 9(1A) of the South African Schools Act, 1996. (SASA).	

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		the High Court if it wishes to contest the decision of the HOD.	that the matter be dealt with within prescribed timeline. It is our opinion that the same right should be accorded to the SGB and that this section should be amended to establish a right of appeal for the SGB as well. Proposes that the Act be expanded to make provision for a temporary suspension for certain		

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			acts until such time as a formal hearing can take place. Proposes that as opposed to returning the learner to school, the default position should be that the learner will be deemed expelled if the HOD fails to respond within the prescribed timeline.		
<b>Clause 10</b>	Seeks to amend section 10 of the SASA. It	The submitters welcomed the abolishment of corporal punishment. However, they are concerned about	It was recommended that the definition of corporal punishment be reviewed	Guidelines on alternatives to corporal	

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	provides that corporal punishment is abolished and no person may inflict or impose corporal punishment to a learner.	the Department not providing educators with alternatives to corporal punishment. Teachers wanted an assurance that doing physical education with learners will not be regarded as corporal punishment Fully supported and wishes to emphasize the psychosocial issues that underpin behavioural problems in a school. This must become part of the whole learner approach which cannot occur without qualified professionals who are committed	to include emotional elements of learner abuse.	punishment are being developed	

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		and skilled to ensure that the learner receives fit to purpose interventions both timeously and for as long as required.			
<b>Clause 11</b>	Seeks to amend section 10A of the SASA to prohibit initiation practices	Not opposed			
<b>Clause 12</b>	Seeks to amend section 12 of the SASA. It provides that the SGB of a public	Not contested	Proposes an insertion to section 12 compelling the MEC to provide sufficient schools, educators and non-educators for public		

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	school may apply to the MEC to be designated as a public school with a specialised focus on talent. recommendation to the MEC in this regard.		schools and funds and other resources sufficient for the provision of an education of progressively high quality for all learners.		
<b>Clause 14</b>	Seeks to amend section 18A	The participants argued that the disclosure of financial interest will promote accountability and	Proposes that section 18A(4A) be removed as it introduces excessive	The amendment will be removed	

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	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	transparency. It also strengthens governance and prevents misuse of school funds. Some SGB members do not support this clause. They are of the view that it is an invasion of their privacy. Furthermore, that it is a voluntary position for which they are not paid. The SGB Associations are of the view that SGB members should not be forced to disclose their financial interest as they are not employees of the State.	requirements without there being a compelling rationale that justifies the onerous obligation being imposed.		

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	interests of their spouse, partner and immediate family members.	<p>This clause is excessive and over regulating SGBs.</p> <p>The SGB's are merely volunteers and if this provision is approved, this will deter many parents from taking part in SGB elections.</p> <p>It is submitted that the proposed amendment is unacceptable given that members of the governing body are private individuals, their spouses and their immediate family members should not be required to declare their financial interests.</p>			

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		<p>This would amount to an infringement of their constitutional right to privacy. The purpose and the rationale behind the proposed amendment is unclear.</p> <p>It will constitute an unreasonable invasion of privacy of both the SGB members and their families.</p> <p>Neither the companies Act nor the PFMA require such extensive and detailed disclosures of interests by a member of an accounting authority.</p> <p>Supports the introduction of the new section 26 which extensively and</p>			

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		adequately addresses the issue of declaration and management of interests of SGB members, which is fully aligned with generally accepted good governance practices.			
<b>Clause 15</b>	Seeks to amend section 20 of the SASA. It provides that the governing body of a public school	This clause takes away the SGB's right to charge fees on the hiring of school facilities.  In majority of schools, especially those in the townships and villages, hiring of school facilities is the only form of raising school funds.  The proposed amendment will therefore deprive such schools and			The amendment will be removed

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	must, at the request of the HoD, allow the reasonable use, under fair conditions of the facilities of the school	make it difficult for them to raise school funds.			
<b>Clause 16</b>	Seeks to amend section 21 of the SASA to	The SGB Associations are of the view that SGB's should be the ones that have the power to procure LTSM.	Proposes that that the proposed subsection should be deleted.	Central procurement can only be implemented by	

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	empower the HoD to centrally procure identified learning and teaching support material for public schools, in consultation with the SGB	They have pointed out to the dismal failure of provincial education departments to procure on time and cost effectively. This is restricting the Constitutional rights and powers of the SGB. It is submitted that the proposed amendment is problematic for it provides a means for summarily circumventing the carefully balanced allocation of functions between the SGBs and HODs for the purpose of procurement.	No changes are required to section 21 as an appropriate mechanism already exists to allow well-functioning SGBs to perform these functions, which lessens the burden on the Department, and to support struggling SGBs with these functions to be more efficient and effective in the utilisation of public funds.	the Head of Department “in consultation” with the governing body. The term “in consultation” means with the concurrence of the person with whom a delegating authority must consult before	

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		<p>This amendment also seeks to enable the HOD to arbitrarily withdraw this function from the SGB without any due process or a clear indication as to what would establish sufficient grounds/when will it be more efficient and effective for the HOD to be entitled to intervene as envisaged by this amendment.</p> <p>The implications of this amendment will be that the Department will centrally procure LTSM for schools. Given certain provincial departments' record of incapability to</p>		exercising a delegated or sub- delegated power. This means that the HOD is required to consult before arriving at a decision and arrives at the decision after securing the agreement or consent of the	

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		<p>deliver books to schools, there is a real concern that the provincial departments will not have the capacity to deliver quality material on time.</p> <p>In practice, this amendment can hinder SGBs who are functioning effectively and transparently to deliver high quality education to the learners in its schools.</p> <p>Section 21 already provides for an application process through which SGBs must apply to the HOD to be allocated the above functions. In</p>		<p>person so consulted. Should an HOD proceed to centrally procure without the concurrence or consent or agreement of the SGB he or she will be acting <i>ultra vires</i> or outside the four corners of the law. It</p>	

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		<p>terms of Section 21(2), if the SGB does not have the capacity to perform these functions effectively, the HOD is empowered to refuse the application and require that the relevant SGB participate in the procurement function retained by the Department.</p> <p>In light of the above, it is submitted that no changes are required to Section 21 as an appropriate mechanism already exists to allow well-functioning SGBs to perform these functions, which lessens the</p>		does not take away the powers of the SGBs.	

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		burden on the Department, and to support struggling SGBs with these functions to be more efficient and effective in the utilisation of public funds.			
<b>Clause 17</b>	Seeks to amend section 22 of the SASA to empower the HoD to withdraw on reasonable grounds and after complying with prescribed	Some supported the clause to allow the HOD to remove non-functional and corrupt SGB members including the disbandment of SGBs that have ceased to function.	Suggest that the provision should be clear on how the temporary/interim SGB should be compiled so as to ensure that the school and the school community shall be adequately represented.	The clause provides for a procedure that the HOD must follow. Should an HOD exceed his power and withdraw the functions	

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	requirements "one or more functions" of an SGB.	Some commentators are of the view that giving such powers to the HOD may lead to abuse and cause functioning schools to become dysfunctional should the HOD abuse his power  The granting of "exclusive" decision making powers arguably ousts the powers of the remaining members of the SGB, HOD and Minister, thereby undermining the carefully crafted checks, balances, and accountability mechanisms in the SASA.		capriciously without a solid rationale, the SGB can appeal against such decision to the MEC. The MEC must respond within 30 days. This is necessary for dealing with ineffective SGBs in the sector	

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		The amendment fails to explain how, in relation to parent/teacher representation ratio, any imbalances should be addressed and how the school's management will be represented after an imbalance in representation might have been caused on the SGB by the exercising of the powers afforded to the HOD in terms of these amendments.			
<b>Clause 18</b>	Seeks to amend section 23 of the SASA to empower the	Not contested			

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	governing body to co-opt persons from outside the community, with the relevant expertise, to assist in discharging its function.				
<b>Clause 19</b>	Seeks to amend section 24 of the SASA to empower the	The Minister should not have the power to decide how the SGB members should be elected at these schools.		Currently each province deals with the elections of special school	

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	Minister to determine the numbers of SGB members, manner of elections in school for learners with special needs	This decision should be left entirely to such schools. No explanation has been provided as to why the function was taken away from the MEC and given to the Minister. The clause is supported		SGB members in its own preferred way. There is no uniformity on how special school SGB members must be elected. The proposed amendment seeks to bring about uniformity across the provinces with	

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				regards to election of special school SGB members. LSEN is not being marginalized but enjoy the benefits created for them and is based on the principle of inclusivity.	

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<b>Clause 20</b>	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.	Not contested			

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<b>Clause 21</b>	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	This is problematic due to the power granted to the temporary/interim SGB in section 24(4)  The amendment fails to explain how, in relation to parent/teacher representation ratio, any imbalances should be addressed and how the school's management will be represented after an imbalance in representation might have been caused on the SGB by the exercising of the powers afforded to the HOD in terms of these amendments	Proposes that it be amended to make provision for functional and well-functioning SGBs to apply for further functions and more autonomy.		

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		Supported to improve SGB functionality			
<b>Clause 22</b>	Expands on the provisions of section 26 of the SASA to provide for the declaration of a direct or indirect personal interest and recusal of SGB members.	Not contested		A declaration form will be made available	

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<b>Clause 23</b> Expands on the provisions of section 26 of the SASA to	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.	There were many calls for SGBs members to be remunerated It is submitted that members of the governing body should be reimbursed for reasonable expenses incurred for the attendance of meetings and school activities	Recommends that as per the current amendment, it is stated that there may be no remuneration, but reference must be made to the reimbursement of expenses incurred by members, in the fulfilment of their duties.	This will go against the spirit of volunteerism and is unaffordable. The practice may attract wrong elements into the SGB for financial gains.	

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<b>Clause 24</b>	Seeks to amend section 28 of the SASA to empower the Minister to determine the election of members of governing body.	Supported, especially by SGB associations			
<b>Clause 25</b>	Seeks to amend section 29 of the SASA. It provides that where	Supported	Proposes that it should, not only when reasonably practical, but always be a parent member, as the decisions made by the		

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	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.		chairperson of a finance committee have a huge financial impact on the school and should not be left in the hands of an educator.		

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<b>Clause 26</b>	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.	Supported			
<b>Clause 27</b>	Seeks to amend section 33 of the SASA, which deals with the	Already covered in the amendment of section 12			

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	closure of public schools.				
<b>Clause 28</b>	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	The clause was supported It is submitted that the proposed amendment is impractical. All schools, from time to time, take out leases on for example photocopiers. Therefore, if a school wishes to take out a lease on a photocopier, such school will have to first obtain written approval from the MEC. Objects to the proposed clause on the basis that the SGB, as a legal entity should be able to participate in	Proposes that for practical purposes permission should be granted for certain loans or leases. A limitation on an amount may be suggested Provincial Education Department should only have to approve facility		

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		<p>the business of keeping a school viable in the interest of the community it serves, free and unfettered as enshrined in the Constitution.</p> <p>The intended amendments will only serve to curtail the school’s ability to execute its mandate in terms of Section 36 (1) to do everything within its powers to supplement the resources received from the State and to freely participate in the economy by not allowing it to make full use of the transactional benefits</p>	<p>lease agreements longer than three years.</p> <p>Proposes that in light of various other legislation regulating this aspect of contracting, the term lease agreements be left in the discretion of schools unless compelling reasons arise to limit this discretion.</p> <p>Further proposes that the reference to “lease” and the related provisions in</p>		

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		<p>which accompanies longer term agreements, escalation clauses, duties of lessees to maintain the infrastructure and other community improvements that can be negotiated.</p> <p>The proposed amendments also fail to specify how long the MEC, whose office is already inundated with normal day to day enquiries, will take to provide the approval.</p> <p>It would be more difficult to rent school facilities, which would put at risk thousands of churches who</p>	<p>the proposed sections 36(2) and 36(4)(a)(i) be removed.</p>		

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		share school halls on Sundays as well as independent schools that rent sports facilities.  Renting out school facilities at unused times is a win-win for schools and the community			
<b>Clause 29</b>	Seeks to infuse technical amendment to section 37 of the SASA.	Not contested			

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<b>Clause 30</b>	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	<p>This will unnecessarily encumber the SGB to make necessary and possibly urgent payments and/or to reallocate funds for different purposes.</p> <p>Such measurements are deemed as completely impractical as government body will be in a position to manage a school's finances effectively.</p> <p>It is submitted that the proposed amendment shall have a hindering effect on the proper and effective management of the school and</p>	N/A		

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	general meeting of parents for consideration	curtail the school’s mandate in terms of Section 36(1) of the SASA as alluded to earlier herein.  The criteria in terms of the SASA is already clear in this regard, which is that funds should be applied to improve the quality of education for all learners and the SGB is already obliged to report to parents on expenditure and income during the AGM.  Supports the inclusion of provisions in the Act which will require the SGB to inform parents of deviations and	<ul style="list-style-type: none"> <li>• Proposes that the status quo of submission of annual statements be maintained.</li> </ul> Consideration be given for an amendment in the Bela whereby effective schools and their governing bodies, after having been evaluated and found as such by the Department, should be rewarded, given more self-		

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		reallocations that occurred during a financial year for consideration at the AGM.	governing powers and wider autonomy, which would enable the Department to invest more time and effort to uplift dysfunctional schools  Proposes that these intended amendments be done away with and that the Department work to improve financial governance and administration by		

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			<p>publishing guidelines dealing with deviations and reallocation of funds which SGBs could use as reference when preparing their financial policies and procedures.</p> <p>The provisions can then also include a mechanism for parents to object to certain deviations/reallocations to the Department who can then investigate and</p>		

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			impose restrictions as envisaged by Clause 30		
<b>Clause 31</b>	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	Not contested			

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	or benefit in kind.				
<b>Clause 32</b>	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	Not contested			

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	exemption from payment of school fees.				
<b>Clause 33</b>	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;	Not support this proposed amendment, noting that the submission of quarterly reports, apart from the annual audited financial statements, that an SGB must submit, will place a tremendous financial and administrative burden on not only the SGB and the school's resources, but also on that of the Department.	Proposes that the provision, if retained, must be individualised to instances where sufficient reasons exist for requiring such additional reports. Schools already submit annual audited financial statements.	The amendment seeks to create certainty with regard to reporting and to promote open and transparent accounting and financial accountability, bearing in mind	

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	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.	It is submitted that although they support measures to ensure transparency and facilitate proper financial control and reporting, they do not support this proposed amendment.  The clause was supported for control purposes to curb financial mismanagement		that public funds and parents' money are at stake. Currently, fraud and misappropriation of funds are only detected when the audited annual report is submitted. By then it is too late to intervene. This amendment will	

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				assist the HoD to act on time on any financial misconduct committed by SGB's. Having these quarterly reports, the HoD may immediately find ways to mitigate the risk of financial misconduct. Moreover, the	

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				quarterly financial statements/reports that are now required are not audited reports therefore there will be no financial implications incurred by the schools. Only the annual report	

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				needs to be audited.	
<b>Clause 34</b>	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	Supported	Proposes that the provision, if retained, must be individualised to instances where sufficient reasons exist for requiring such additional reports Consideration be given for an amendment in the Bela Act whereby effective schools and their governing bodies, after		

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	into the financial affairs of a public school		having been evaluated and found as such by the Department, should be rewarded, given more self-governing powers and wider autonomy, which would enable the Department to invest more time and effort to uplift dysfunctional schools.		
<b>Clause 35</b>	Seeks to amend section 46 of the SASA. The	Not contested			

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	object of the amendment is to increase the penalty provision for any person who operates an unregistered independent school.				
Clause 36	Seeks to amend section 48 of the SASA to provide that the subsidy	Not contested			

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	granted to an independent school can be made subject to conditions determined by the MEC.				
<b>Clause 37</b>	Seeks to substitute section 51 of the SASA to provide clarity in regard to home education. The	Speakers who supported the clause on home schooling wanted home education to be regulated. They spoke of the country's requirement to know and account for every child and to confirm the child is receiving education.	That proposed section 51 in the BELA Bill be deleted. That the current section 51 in the SASA be replaced with a section	The home education sector was adequately consulted. They were offered the opportunity to make written	

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	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.	They were opposed to parents' provision of education to their children unchecked. They were of the view that home schooling divides the society, instead of uniting it. It encourages racism in South Africa and stated that the aim was to build and not to divide the country. The 4 areas that are contested here are: -Registration of home education; -Approval of the HOD;	which includes the following: A simple notification process which allows the HOD to keep track of children who are receiving education elsewhere than in Department of Education duties stipulate "monitor the standards of the provision, delivery and performance of education" True monitoring will have	comments, which they participated in. Minister afforded them the courtesy of inviting the representatives of home education to a special meeting in January 2020 after the public comments	

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		<p>-Competent assessors (Infringement of privacy); and</p> <p>-CAPS aligned curriculum.</p> <p>Many parents of learners who are home educated are of the view that registration is too onerous and prefer notification instead.</p> <p>They are of the view that the PEDs do not have the capacity to process registrations.</p> <p>Further they contend that the issue of competent assessors will be too</p>	<p>presented that the rural areas don't receive proper education with the many unqualified teachers receiving government salaries</p> <p>Proposes that parents should only be given the opportunity to notify the Department of Education that they will home school their children and there should be no need to approve or decline the</p>	<p>received were finalised. At this meeting a compromise on some of the clauses was reached and based on this agreement the clause on home education was finalised and processed as it appears in the</p>	

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		<p>expensive and an invasion of their privacy. (See response in Slide)</p> <p>Many commentators raised the concern that the home education sector was not <b>consulted</b> during the drafting process.</p> <p>Many parents also rejected the idea that they need to <b>apply</b> for registration for home education as they felt that this is a parental duty. Most of the parents prefer that the HOD be notified rather than parents apply for registration.</p>	<p>decision that is already made by the parents.</p>	<p>Bill. In addition to this process followed on the BELA Bill, the DBE organised a round table where discussions on home education were held.</p> <p>DBE has a constitutional duty to ensure that all learners</p>	

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		<p>They also challenged the authority of the HOD to <b>approve</b> registration. The organisations voiced their concerns on their infringement to <b>privacy</b>.</p> <p>The organisations are of the view that the requirement for competent assessors will infringe on their right to privacy as they will be forced to open up their private spaces to strangers.</p> <p>They also were not satisfied with the consultation on this matter. They feel that home education should be</p>		<p>of compulsory school going age are receiving education and therefore registration is required. Also, it is important for the DBE to ensure that the best interest of the child is upheld and that they receive</p>	

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		<p>regulated by the Children’s Act. They also expressed a concern that they will now have to follow <b>CAPS</b>.                      The nature and character of home education is different from school education and cannot be properly regulated under the same law as school education                      The Children’s Act already sufficiently regulates home education, and no additional regulation is needed in the SASA or elsewhere.</p>		<p>education of a standard that is not lower than that offered in a public school.                       This is a constitutional obligation of the State to ensure that every child of compulsory school going age</p>	

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		<p>Section 18(2)(a) of the Children’s Act, read with the definition of “care” in the same Act, gives all children the right to have their education “guided, directed and secured” by their family or parents.</p> <p>All the necessary principles, guidance, procedures and structures to regulate parental care (including education) are also provided in the Act. No additional regulation is therefore needed.</p>		<p>receives basic education. Therefore, it is imperative for the learner’s to be registered with the relevant PED for home education. The HOD is required to approve the registration application. There are</p>	

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		<p>The SASA provides no principles, guidance, procedures or structures to facilitate decisions on the best interest of the child</p> <p>In terms of sections 4 and 5.1 of the SASA, the Act does not include any principles, guidelines, procedures, or structure to enable the HOD or MEC to make an appropriate decision.</p> <p>It's the right of the parents to choose what is correct for their children, not government.</p>		<p>conditions that parents must comply with when registering the learner for home education. Compliance with such requirements is mandatory in order to protect the best interest of the child. Even Independent</p>	

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		<p>Parents have a right to home school and how their kids should be taught should be their decision.</p> <p>Supports the registration of home schoolers to know the number of learners, but not for control.</p> <p>Government can advise, but not make things absolute law. The decision to vaccinate should be the parent's</p> <p>To educate your child via on line schooling is the right to choose of the parent and as long as a certified home school is involved then this</p>		<p>schools are required to register with the State and the same principle applies to home education. The condition of a pre-registration site visit is not mandatory but is discretionary where the HOD is of the view</p>	

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		<p>should ensure the child’s adequate education</p> <p>HOD Approval: Section 51(1)</p> <p>It is submitted that every child has the right to an Education and as parents we have the responsibility to provide our child with that right.</p> <p>It should stay the parents’ decision how to school their children, because an official cannot approve or decline the parents right to home education based on an application form.</p>		<p>that such site visit and will therefore be removed. There is a separate provision in sub-paragraph 51(2)(b)(iii) that a parent may arrange for the learner’s educational attainment to be assessed by a</p>	

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		<p>Official cannot make an informed decision based on a few supporting documents.</p> <p>It is submitted that the BILL will have an impact of the educational curriculum which might have a negative impact and bring community some restrictions on how some parents prefer to home school their children.</p> <p>The BILL put too much control over the way how it controls the curriculum provided by certified institutions.</p>		<p>competent assessor, to be changed to every phase and not annually and against a standard that is not inferior to the standard determined in the National Curriculum Statement. A parent cannot be</p>	

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		<p>Freedom of choice is the right of all and any citizen and parent and child. Government does not have the authority nor the mandate to take away our freedom of choice</p> <p>Every child has a right to education (stipulated everywhere in world) Whether this education takes the form of home/private/e-learning are based on the decisions of the Parents (PRIME caretakers) by accessing type of schooling, mobility and interest of their children.</p>		<p>a player and referee in determining the child's education attainment.</p> <p>There is a perception that the competent assessor will invade the privacy of parents.</p> <p>There is no imposition of a</p>	

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		<p>Why would you want to force children to learn at the appalling low standards of SA Bad Education?</p> <p>Home schooling or public schooling should also be the parents' choice</p> <p>Home schooling should be allowed and no one should tell you how to educate your child or what is best for them.</p> <p>Our Almighty God gave me children to care for them and love them and only mé will decide what is best for</p>		curriculum and assessment by the department	

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		<p>my children!!!! That is not what you are paid for!!!</p> <p>Like with the apartheid government whose main concern was control, this Bill is clearly to ensure the state owns your child and his/her mind. The education system has failed all learners and yet a stubborn insistence persist to remove all power from the parent to choose the education that's best suited for their children</p> <p>Curriculum choice for home schoolers would be narrower - but</p>			

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		many parents choose home education because they want to follow a different curriculum and educational approach.			
<b>Clause 38</b>	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	Not contested			

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	forged documents when making an application for admission				
<b>Clause 39</b>	Inserts a new section 59A into the SASA to provide for dispute resolution mechanisms in the event	Not contested			

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	of any dispute between an SGB and the HoD or the MEC.				
<b>Clause 40</b>	Seeks to amend section 60 of the SASA. This section deals with the liability of the State for	Supported			

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	any delictual, or contractual damages				
<b>Clause 41</b>	Seeks to amend section 61 of the SASA to empower the Minister to promulgate regulations on learner pregnancy.	Teachers, in the main supported the clause because it would help them manage pregnant girls better since they were not medical practitioners. They argued that the future of learners will be destroyed if they were not allowed to attend school when they fall pregnant.  Faith Based Organisations are of the view that these regulations will			

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		be promoting sexual education in schools and encouraging pregnant learners as young as 12 years to obtain abortions.			
<b>Clause 42</b>	Seeks to amend the Preamble of the SASA.	Not contested			
<b>Clause 43</b>	Deletion of the definition of “adult Basic Education Centre”	Not contested			

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<b>Clause 44</b>	Amend section 1 and 5 of the EEA to delete definitions such as further education and training institution and adult basic education centre which are currently under the domain of the DHET	Not contested			

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<b>Clause 45</b>	Seeks to amend section 7 of the EEA to extend the application thereof to promotions on any educator establishment	Not contested			
<b>Clause 46</b>	Seek to effect technical amendments to sections 8, 9 and 11 of the EEA to bring it in line	Not contested			

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**BASIC EDUCATION LAWS AMENDMENT BILL**

<b>Clause</b>	<b>EXPLANATION FOR PROPOSED AMENDMENTS</b>	<b>Submitters, Comments on PROPOSED AMENDMENTS</b>	<b>RECOMMENDATIONS</b>	<b>DBE RESPONSE</b>	<b>ARTICULATION IN LAW (RETAIN, AMEND NEW CLAUSE)</b>
	with current developments in the sector.				
Clause 47	To amend section 9 of EEA to include another department	Not contested			
Clause 48	To amend section 11 of EEA to include "on account of abolishing of the educator's post	Not contested			

**ANNEXURE A : MATRIX OF SUBMISSIONS MADE ON THE BASIC EDUCATION AMENDMENT BILL**

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<b>Clause 49</b>	Amends section 17 of the EEA by inserting a phrase that expands the list of acts of serious misconduct.	Not contested			
<b>Clause 50</b>	Seeks to effect technical amendments to section 18 of the EEA.	Not contested			
<b>Clause 51</b>	Inserts a new section 19 into	Not contested			

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	the EEA, prohibiting educators from conducting business with the State				
Clause 52	Seeks to amend section 35 of the EEA to empower the Minister to promulgate regulations on norms and	Not contested			

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	standards for district staffing.				
Clause 53	Seeks to repeal section 38 of the EEA.	Not contested			
<b>Clause 54</b>	Seek to effect technical amendments to section 18 and schedule 2 of the EEA.	Not contested			

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<b>Clause 55</b>	To amend schedule 2 of EEA	Not contested			
<b>Clause 56</b>	Provides for a short title Basic Education Laws Amendment Act	Not contested			

