

20 June 2022

Mrs BP Mbinqo-Gigaba
Chairperson of the Portfolio Committee on Basic Education

Email: belabill02@parliament.gov.za
lbrown@parliament.gov.za

Dear Mrs BP Mbingo-Gigaba

RE: BASIC EDUCATION LAWS AMENDMENT (BELA) BILL

1. The South African Institute of Chartered Accountants (SAICA) welcomes the opportunity to make submissions to the BELA Bill.
2. SAICA is South Africa's pre-eminent accountancy body which is widely recognised as one of the world's leading accounting institutes. The Institute provides a wide range of support services to more than 52 000 members who are chartered accountants [CAs(SA)] and associates [AGAs(SA)] who hold positions as chief executive officers, managing directors, board members, business owners, chief financial officers, auditors, and leaders in their spheres of business operation.
3. Our work in the public sector goes beyond member support but also includes a significant focus on advocacy and capacity building to support and encourage an improvement in public finance management. Our members also play a critical role in the preparation and audit of financial statements for public schools.
4. SAICA's comments to the BELA Bill are included in the annexures to this comment letter as follows:
 - (a) **Annexure A:** Comments on proposed amendments
 - (b) **Annexure B:** Other Comments
5. Please contact me at natashias@saica.co.za if you have any queries relating to the content of this submission. We further welcome the opportunity to present our submission to the portfolio committee.

Regards,

Milton Segal
Executive Director: Standards

Natashia Soopal
Executive: Ethics and Public Sector



ANNEXURE A – COMMENTS ON PROPOSED AMENDMENTS

Comment 1- Definitions

'benefit in kind' means any benefit offered or afforded to an employee employed in terms of the Employment of Educators Act, 1998 (Act No.76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 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 cell phone;*
- (d) free holiday;*
- (e) groceries to the benefit of the employee; or*
- (f) garden services*

6. SAICA supports the inclusion of the definition of “benefit in kind” and the examples included as it provides clarity, gives more information, and reduces the chances that the Act may be interpreted incorrectly in real-life situations.

Comment 2 - Clause 16: Amendment of section 21

Amendment of section 21 of Act 84 of 1996, as amended by section 10 of Act 48 of 1999

Section 21 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (3) of the following subsection:

“(3A) Notwithstanding the provisions of subsections (1)(c) and (3) and section 22, the Head of Department may, in consultation with the governing body, centrally procure identified learning and teaching support material for public schools on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards.”.

7. SAICA supports the amendment to procure centrally identified learning and teaching support material for public schools based on effective efficient, effective and economic utilisation of public funds. Centralised procurement will assist the Department to achieve greater cost savings due to larger orders, which equals higher discounts and lower delivery charges.
8. However, we also caution against centralised procurement of learning and teaching support material for public schools because, if it is not properly managed, it may pose a challenge. For example, difficulties with timely replacement of defective materials and high probability of delays as learning and teaching support material may have to be sent to schools in distant areas which may become a problem if not properly managed.



9. We recommend that guidance and/or policy should be developed to support the centralised procurement of learning and teaching support material to ensure that there is successful implementation of the process and it does not affect the start of the school year.

Comment 3 Clause 25: Amendment of section 29

25. Section 29 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

*“(2) (a) Only a parent member of a governing body who is not employed at the public school may serve as the chairperson of the governing body.
(b) 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.”*

10. SAICA supports the amendment of section 29, however we further recommend that the paragraph be amended to require, where practically possible, for the chairperson or another member of the finance committee to have the necessary finance skills and expertise to ensure proper oversight and be able to adequately execute their responsibilities on the financial management of a public school. In circumstances where this is not practically possible, the finance committee should co-opt a finance expert to support the committee as allowed by Section 30(1)(b) of SASA.

Comment 4 - Clause 33: Substitution of section 42

*42. The governing body of a public school must—
(a) keep records of all investments, donations and funds received and spent by the public school and of its assets, liabilities and financial transactions; [and]
(b) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements reflecting all the investments, donations and funds received and spent by the public school in accordance with the guidelines determined by the Member of the Executive Council;
(c) present the financial records and statements to a general meeting of parents; and
(d) inform the parents that the financial records and statements will be available for inspection at the school at least 14 days prior to the meeting referred to in paragraph (c).”*

11. SAICA does not agree with the proposed amendments to section 42(a) and (b) as this may result in inconsistency in financial reporting between the required disclosure as per section 42(b) on investments, donations and funds received, and the guidelines



determined by the Member of the Executive Council (MEC). The guidelines determined by the MEC may not contain disclosure information on investments, donations and funds received.

12. SAICA has noted that MECs within some provinces have not adopted a financial reporting guideline which poses a challenge for preparers and auditors of public-school financial statements. This results in inconsistencies with financial reporting between public schools. We recommend that guidance is provided to provinces where no financial reporting guidance has been adopted by the MEC.
13. We recommend that the Act be amended to require that the National Department of Education determines the financial statements preparation guidelines to be applied by all public schools. This will ensure that uniform guidelines are used by all schools in all provinces and that there is consistency in the reporting.
14. We further recommend that a public school's annual financial statements should be made available to parents by the governing body by means of the existing communication channels of the school, at least 14 days prior to the meeting referred to in paragraph (c) in addition to being presented at the general meeting of parents, as proposed in section 42(c), and in addition to being made available for inspection at the school, as proposed in section 42(d).

Comment 5 - Amendment of section 43 of Act 84 of 1996, as amended by section 10 of Act 31 of 2007

34. Section 43 of the South African Schools Act, 1996, is hereby amended by the substitution for subsections (4) and (5) of the following subsections, respectively:
“(4) If the [Member of the Executive Council] Head of Department deems it necessary, on just cause shown, he or she may—
(a) authorise suitably qualified officers to conduct an investigation into the financial affairs of a public school and, where necessary, after consultation with the governing body, access documents relevant for the purposes of the investigation;
(b) request the Auditor-General to undertake an audit of the records and financial statements of a public school; or
(c) appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a public school.
(5) A governing body must submit to the Head of Department[,]— (a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure in accordance with directives issued by the Head of Department; and (b) within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.”.



15. We do not support the proposal in proposed section 43(5)(a) as this may not be practical and possible within many public schools based on the lack of resources and/or financial skills possessed by many public schools. We suggest that it should be reconsidered, taking into account the administrative, and possible financial burden that it would put on both the public school and the Head of Department. It should be further noted that these quarterly reports would not have been audited or examined, and the reliability and usefulness thereof may thus be questionable.



ANNEXURE B – OTHER COMMENTS

COMMENTS ON SECTION 43 (2) OF THE SASA:

16. The Bill does not propose any changes to section 43(2) of the SASA which permits the governing body of a public school to appoint a person to examine and report on the records and financial statements referred to in section 42 if the audit referred to in section 43(1) is not reasonably practicable. The public school should further document reasons for an audit not being reasonably practicable.
17. The SASA does not explain what an “examination” of financial statements entails. An “examination” of financial statements is also not envisaged by the standards of the International Auditing and Assurance Standards Board (IAASB), which are the standards that Chartered Accountants (SA) and Registered Auditors (as defined in the Auditing Profession Act, 2005) apply in the performance of professional services. The absence of a definition of an “examination” of financial statements may lead to inconsistency in practice.
18. We propose that section 43(2) should be amended to require a “review” of the financial statements, to be performed in terms of the relevant standard of the IAASB if the audit of the financial statements is not reasonably practicable. This proposal may also necessitate a reconsideration of the persons that are qualified to perform such a review, as currently set out in section 43(2)(a).
19. Furthermore, we recommend that where a governing body of a public school has deemed an audit to be “not reasonably practicable”, this decision should be ratified at a general meeting of parents.