

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN LANGUAGES BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 34675 of 12 October 2011)
(The English text is the official text of the Bill)*

(MINISTER OF ARTS AND CULTURE)

[B 23—2011]

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BILL

To provide for the regulation and monitoring of the use of official languages by national government for government purposes; to require the adoption of language policies by national departments, national public entities and national public enterprises; to provide for the establishment and functions of a National Language Unit; to provide for the establishment and functions of language units by national departments, national public entities and national public enterprises; to provide for monitoring of and reporting on official language use by the national government; to facilitate intergovernmental coordination of language policies; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 6 of the Constitution of the Republic of South Africa, 1996, provides for the use of 11 official languages of South Africa and for all official languages to enjoy parity of esteem and to be treated equitably;

AND WHEREAS section 6(4) of the Constitution provides that national government must regulate and monitor the use of official languages by legislative and other means,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. In this Act, unless the context indicates otherwise—
 - “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
 - “**Department**” means the national Department of Arts and Culture;
 - “**language unit**” means a language unit established in terms of section 7; 5
 - “**Minister**” means the Minister responsible for language matters;
 - “**national department**” means a department listed in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), excluding the Offices of Premier;
 - “**national government**” means national departments, national public entities and national public enterprises; 10
 - “**National Language Unit**” means the National Language Unit established in terms of section 5;
 - “**national public enterprise**” means a national government business enterprise defined in section 1 and listed in schedule 3 part B of the Public Finance Management Act, 1999 (Act No.1 of 1999); 15
 - “**national public entity**” means a national public entity defined in section 1 and listed in Schedules 2 and 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - “**official language**” means an official language contemplated in section 6(1) of the Constitution; 20
 - “**Pan South African Language Board**” means the Board established in terms of section 2 of the Pan South African Language Board Act, 1995 (Act No. 59 of 1995);
 - “**prescribe**” means prescribed by regulations;
 - “**this Act**” includes any regulations made in terms of section 14. 25

Objects of Act

2. The objects of this Act are—
 - (a) to regulate and monitor the use of official languages by the national government for government purposes;
 - (b) to promote parity of esteem and equitable treatment of the official languages of the Republic; 30
 - (c) to facilitate equitable access to the services and information of the national government; and
 - (d) to promote good language management by the national government for efficient public service administration and to meet the needs of the public. 35

Application of Act

3. (1) This Act applies to—
 - (a) national departments;
 - (b) national public entities; and
 - (c) national public enterprises. 40
 (2) This Act takes precedence over any inconsistent provision of any other Act regulating the use of official languages by the national government.

Language policy

4. (1) Within 18 months of the commencement of this Act or such further period as the Minister may prescribe, the national government must adopt a language policy 45 regarding its use of official languages for government purposes.
 - (2) A language policy adopted in terms of subsection (1) must—
 - (a) comply with the provisions of section 6(3) of the Constitution and this Act;
 - (b) identify at least two official languages that a national department, national public entity or national public enterprise will use for government purposes; 50
 - (c) stipulate how official languages will be used, amongst other things, in communicating with the public, official notices, government publications and inter- and intra-government communications;
 - (d) describe how a national department, national public entity or national public enterprise will communicate with the public where the language of choice of the public is not an official language contemplated in paragraph (b); 55

- (e) describe how members of the public can access the language policy;
 - (f) provide for a complaints mechanism whereby the public may file a complaint regarding the use of official languages by the national government;
 - (g) provide for any other matter that the Minister may prescribe; and
 - (h) be published in the *Gazette* as soon as reasonably practicable, but not later than 90 days after its adoption. 5
- (3) Every national department, national public entity and national public enterprise must—
- (a) ensure that a copy of its language policy is available on request to members of the public at all their offices; and 10
 - (b) display at all their offices a summary of their language policy in such manner and place that it can be read by the public.

Establishment of National Language Unit

5. The Minister must—
- (a) establish a National Language Unit in the Department; and 15
 - (b) ensure that the National Language Unit is provided with the personnel, administrative and other resources necessary for its effective functioning.

Functions of National Language Unit

6. (1) The National Language Unit must—
- (a) advise the Minister on— 20
 - (i) policy and strategy to regulate and monitor the use of official languages by the national government for government purposes;
 - (ii) policy and strategy to promote all official languages to enjoy parity of esteem and equitable treatment by the national government;
 - (iii) facilitation of equitable access by the public, through the language policy, to services rendered by and information of a national department, national public entity or national public enterprise; 25
 - (iv) promotion of good language management within a national department, national public entity or national public enterprise; and
 - (v) the functions of language units contemplated in section 7; 30
 - (b) liaise with the language units contemplated in section 7 to promote the general coordination;
 - (c) perform any other function that the Minister may prescribe;
 - (d) receive annual reports from language units contemplated in section 7;
 - (e) complete an annual report on its functions for submission to the Minister. 35
- (2) The national language unit must, through the Minister and after consultation with other relevant ministers, request national departments, national public entities and national public enterprises to submit annual reports on—
- (a) the activities of their language units;
 - (b) the implementation of the language policy; 40
 - (c) any complaints received regarding the use of official languages and the manner in which the complaints were dealt with.

Establishment of language units in national departments, national public entities and national enterprises

7. Every national department, national public entity and national public enterprise must— 45
- (a) establish a language unit; and
 - (b) ensure that the language unit is provided with the personnel, administrative and other resources necessary for its effective functioning.

Functions of language units in national departments, national public entities and national enterprises 50

8. Every language unit must—
- (a) advise the responsible accounting officer or accounting authority on the development, adoption and implementation of the language policy in respect

- of the national department, national public entity or national public enterprise concerned;
- (b) monitor and assess the use of official languages by the national department, national public entity or national public enterprise concerned;
 - (c) monitor and assess compliance with the language policy of the national department, national public entity or national public enterprise concerned; 5
 - (d) compile reports to be submitted to the national language unit in terms of section 6(2);
 - (e) promote all official languages to enjoy parity of esteem and equitable treatment by the national government; 10
 - (f) facilitate equitable access by the public to the services and information of the national department, national public entity or national public enterprise concerned; and
 - (g) promote good language management by the national department, national public entity or national public enterprise concerned. 15

Monitoring of and reporting on official language use

- 9.** (1) The Minister is responsible for monitoring the use of official languages by the national government for government purposes.
- (2) The national language unit must submit its annual report to the Minister on—
- (a) the activities of the national language unit and any other language units set up in national departments, national public enterprises and national public entities; 20
 - (b) the implementation of the language policy in national departments, national public enterprises and national public entities;
 - (c) any complaints received regarding the use of official languages in the national government and the manner in which these complaints were dealt with; and 25
 - (d) any other matter that the Minister may prescribe.
- (3) The Minister may prescribe the form and content of the reports to be submitted and the timeframes for submitting such reports.

Compliance by national departments, national public enterprises and national public entities 30

10. The National Language Unit may request Cabinet, through the Minister, to intervene in cases where a particular national department, national public enterprise or national public entity does not comply with the provisions of this Act.

Annual report to Parliament 35

11. The Minister must, on an annual basis, table in Parliament a report on the status of the use of official languages by the national government for government purposes.

Intergovernmental forums on official language use

- 12.** (1) The Minister may establish one or more intergovernmental forums—
- (a) to promote general coordination, cooperation and consultation between national departments, national public entities and national enterprises on the use of official languages for government purposes; 40
 - (b) to coordinate, align and monitor the implementation of language policies; and
 - (c) to perform any other functions that the Minister may prescribe.
- (2) The Minister must, in respect of the forums contemplated in subsection (1)— 45
- (a) determine their composition;
 - (b) determine their terms of reference;
 - (c) convene their meetings; and
 - (d) determine any other matter necessary for their effective functioning.

Exemptions from application of section 7

13. (1) The Minister may, on application by a national public enterprise or national public entity listed in the Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999) exempt such a national public enterprise or national public entity from the application of section 7(1). 5

(2) The Minister may, on good cause shown and on such terms and conditions as the Minister may determine, by notice in the *Gazette* exempt a national public enterprise or national public entity from the application of section 7(1).

(3) The application for an exemption contemplated in subsection (1) must be in the form and manner prescribed by the Minister. 10

Regulations

14. (1) The Minister may, after consultation with the Pan South African Language Board, make regulations, not inconsistent with the provisions of this Act, regarding—

- (a) the form and content of language policies; 15
- (b) timeframes for establishing language units;
- (c) the form and content of reports required in terms of section 9;
- (d) the manner, form and timeframes for submitting applications for exemption contemplated in terms of section 12;
- (e) any matter which in terms of this Act is required, or permitted, to be prescribed; and 20
- (f) any matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) Before making regulations under this Act, the Minister must—

- (a) publish the proposed regulations in the *Gazette* for public comment;
- (b) grant a period of at least 30 days for written representations to the Minister on 25 the proposed regulations; and
- (c) consider any such written representations received.

Short title and commencement date

15. This Act is called the South African Languages Act, 2011, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 30

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN LANGUAGES BILL, 2011

1. BACKGROUND

1.1 The National Language Policy was launched by the Minister of Arts and Culture (“the Minister”) after extensive consultation that began in 1995 with the appointment of the Language Task Group (LTG). The Department of Arts and Culture (“the Department”) adopted the implementation plan, which provides for the strategies that will be used in implementing language policy, structures that will be the key in implementing language policy and a strategy that will be employed to accelerate the development and promotion of African Languages.

1.2 The Department adopted the National Language Policy, having regard to the challenges faced by national departments, national public entities and national public enterprises in respect of the management of linguistic diversity.

2. OBJECTS OF BILL

2.1 The Bill seeks to promote equitable use of official languages of South Africa taking into consideration section 6(2) of the Constitution, 1996 (“the Constitution”), which recognises the diminished historic use of indigenous languages.

The Bill seeks to do so by taking practical and positive measures to regulate and monitor the use of official languages, promoting parity of esteem and equitable treatment of official languages, facilitating equitable access to services and information and promoting good language management by national departments, national public entities and national public enterprises to meet the needs of the public.

2.2 The Bill seeks to provide for the adoption of language policies, and to establish national language units within the Department itself, national departments, national public entities and national public enterprises. The Bill also seeks to provide for the establishment of a National Language Unit in the Department and other language units to be established in national departments, national public entities and national public enterprises. The Bill also seeks to empower the Minister to exempt any national public enterprise or national public entity from the application of this Bill. The Bill provides for the establishment of intergovernmental forums to deal with issues of official language use.

3. DISCUSSION OF BILL

CLAUSE 3

3.1 Clause 3 provides that the Act will apply to the national government.

CLAUSE 4

3.2 Clause 4 provides that the Minister may, within 18 months of the commencement of the Act, make regulations for the adoption of a language policy regarding the use of official languages for government purposes by the various national departments, national public entities and national public enterprises.

3.3 Clause 4 stipulates the manner in which official languages will be used in communicating with the public, and in official notices, government publications and inter- and intra-governmental communications. The clause provides for the identification of at least two official languages for government purposes, the manner in which the official language must be used in communicating with the public and the manner in which the national government will communicate with the public where the language of choice of the public is not the one that has been identified as an official language of choice for government purposes by that particular national department, national public entity or national public enterprises, as provided in subsection (2)(b).

3.4 Clause 4 provides for a complaints mechanism to be used by the public regarding use of official languages, and also makes provision for the procedure to be followed by the national government to communicate with the public when the public’s choice of language is not one of the official languages identified by the national government.

3.5 Clause 4 of the Bill also provides that every national department, national public entity and national public enterprise must ensure that a copy of their language policy is

available on request by any member of the public, and that a summary of the language policy must be displayed at all the offices of the national government in such a manner and place that it can be read by members of the public. Clause 4 also provides powers for the Minister to make regulations.

CLAUSE 5

3.6 Clause 5 seeks to empower the Minister to establish a National Language Unit within the Department.

CLAUSE 6

3.7 Clause 6 provides for the functions of the National Language Unit that is to be established within the Department. The National Language Unit advises the Minister on policy, strategy, regulation and monitoring of the use of official language by the national government in promoting equitable treatment of official languages and facilitation of equitable access to services rendered and information of national departments, national public entities and national public enterprises concerned.

3.8 Clause 6 also provides that the National Language Unit within the Department must advise the Minister on the promotion of good language management by the national department, national public entity or national public enterprise concerned. The language unit in the Department must advise the Minister on the functions of the various language units of national departments, national public entities and national public enterprises contemplated in clause 7.

CLAUSE 7

3.9 Clause 7 provides for the establishment of language units in national departments, national public entities and national public enterprises, and to ensure that these language units are provided with the personnel, administrative and other resources necessary for their effective functioning.

CLAUSE 8

3.10 Clause 8 provides for the functions of the language units in national departments, national public entities and national public enterprises. The clause provides that every language unit must advise the responsible accounting officer or accounting authority on the development, adoption and implementation of the language policy for the national departments, national public entities or national public enterprises concerned.

3.11 Clause 8 also provides that the language units of the national departments, national public entities and national public enterprises must monitor the use and compliance of language policy and compile a report to be submitted to the Minister in terms of clause 6(2). The clause further provides for the promotion of equitable treatment and good management of official languages by the language units, and performs any function that may be prescribed in terms of the Act.

CLAUSE 9

3.12 Clause 9 provides that the Minister will be responsible for monitoring the use of official languages by the national government for government purposes.

3.13 Clause 9 also provides that every national department, national public entity and national public enterprise must submit annual reports to the national language unit, containing details of the activities of its language unit, implementation of its language policy, any complaint received regarding its use of official languages and the manner in which such complaint was dealt with.

3.14 Clause 9 further provides that the Minister may prescribe the form and content of the reports to be submitted to the Minister.

CLAUSE 10

Clause 10 provides for measures to be taken by the National Language Unit in the event where the national department, national public enterprise and national public entity fail to comply with the provisions of the Bill.

CLAUSE 11

3.15 Clause 11 provides that the relevant Minister must table in Parliament the annual report for his or her own department on the status of the use of languages by the national government for government purposes.

CLAUSE 12

3.16 Clause 12 provides for Intergovernmental Forums to be established by the Minister to promote general coordination, cooperation and consultation between national departments on the use of official languages. The Minister must determine their composition and terms of reference, and convene their meetings.

CLAUSE 13

3.17 Clause 13 provides for the exemption of certain national public enterprises or national public entities listed in Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999), from the application of this Act.

4. FINANCIAL IMPLICATIONS

None.

5. IMPLICATIONS FOR PROVINCES

5.1 All government structures (national, provincial and local government), as well as institutions exercising a public power or performing a public function in terms of legislation will be bound by this Bill, when enacted.

6. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Department has consulted the following stakeholders:

- Officials and staff involved with the language sector (institutions of higher learning: universities and technikons)
- Pan South African Languages Board and all its provincial structures (Provincial Language Committees, National Language Bodies for all official languages and all National Lexicography Units)
- National Treasury
- Department of Public Service and Administration
- Department of Justice and Constitutional Development
- Department of Basic Education
- Department of Higher Education and Training
- All public enterprises and public entities listed in terms of Schedules to the Public Finance Management Act, 1999 (Act No.1 of 1999)
- National Language Forum (all government language units)
- South African Local Government Association (SALGA)

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Arts and Culture are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act (Act No. 41 of 2003), since language rights are cross-cutting and impact on customary law or customs of traditional communities of traditional communities.