

REPUBLIC OF SOUTH AFRICA

USE OF OFFICIAL LANGUAGES BILL

*(As amended by the Portfolio Committee on Arts and Culture (National Assembly))
(Introduced as South African Languages Bill (B 23—2011))
(The English text is the official text of the Bill)*

(MINISTER OF ARTS AND CULTURE)

[B 23B—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 a language policy by a national department, national public entity and national public enterprise; to provide for the establishment and functions of a National Language Unit; to provide for the establishment and functions of language units by a national department, national public entity and national public enterprise; to provide for monitoring of and reporting on use of official languages by national government; to facilitate intergovernmental coordination of language units; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the use of the Republic's official languages must be promoted and pursued in accordance with the Constitution of the Republic of South Africa, 1996;

AND WHEREAS section 6 of the Constitution of the Republic of South Africa, 1996 provides for 11 official languages of South Africa; recognises the diminished use and status of indigenous languages and requires the State to take practical and positive measures to elevate the status and advance the use of indigenous languages;

AND WHEREAS the Constitution of the Republic of South Africa, 1996 requires all official languages to enjoy parity of esteem and be treated equitably;

AND WHEREAS section 6(4) of the Constitution of the Republic of South Africa, 1996 provides that national government must regulate and monitor its use of official languages by legislative and other measures,

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

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Definitions 5

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;
 - “**Minister**” means the Minister responsible for language matters; 10
 - “**national department**” means a department listed in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), but excluding the Offices of Premier;
 - “**national government**” means national departments, national public entities and national public enterprises; 15
 - “**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); 20
 - “**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; 25
 - “**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 prescribe by regulations; and
 - “**this Act**” includes any regulations made in terms of this Act.

Objects of Act 30

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

Application of Act 40

3. (1) This Act applies to—
 - (a) national departments;
 - (b) national public entities; and
 - (c) national public enterprises.
 (2) This Act takes precedence over any inconsistent provision of any other law on the use of official languages by national government. 45

Language policy

4. (1) Every national department, national public entity and national public enterprise must adopt a language policy regarding its use of official languages for government purposes within 18 months of the commencement of this Act or such further period as the Minister may prescribe, provided that such prescribed period may not exceed six months. 50
 - (2) A language policy adopted in terms of subsection (1) must—
 - (a) comply with the provisions of section 6(3)(a) of the Constitution;

- (b) identify at least three official languages that the national department, national public entity or national public enterprise will use for government purposes;
- (c) stipulate how official languages will be used, amongst other things, in effectively communicating with the public, official notices, government publications and inter- and intra-government communications; 5
- (d) describe how the national department, national public entity or national public enterprise will effectively communicate with members of the public whose language of choice is:
 - (i) not an official language contemplated in paragraph (b); or
 - (ii) South African sign language. 10
- (e) describe how members of the public can access the language policy;
- (f) provide a complaints mechanism to enable members of the public to lodge complaints regarding the use of official languages by a national department, national public entity or national public enterprise;
- (g) provide for any other matter that the Minister may prescribe; and 15
- (h) be published in the Gazette as soon as reasonably practicable, but within 90 days of its adoption.

(3) In identifying at least three official languages as contemplated in subsection (2)(b), every national department, national public entity and national public enterprise must take into account its obligation to take practical and positive measures to elevate the status and advance the use of indigenous languages of historically diminished use and status in accordance with section 6(2) of the Constitution. 20

(4) 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 its offices; and 25
- (b) display at all its offices a summary of its language policy in such manner and place that it can be read by the public.

Establishment of National Language Unit

5. The Minister must— 30
- (a) establish a National Language Unit in the Department; and
 - (b) ensure that the National Language Unit is provided with human resources, administrative resources and other resources necessary for its effective functioning.

Functions of National Language Unit 35

6. (1) The National Language Unit must—
- (a) advise the Minister on policy and strategy—
 - (i) to regulate and monitor the use of official languages by national government for government purposes;
 - (ii) to promote parity of esteem and equitable treatment of the official languages of the Republic and facilitate equitable access to the services and information of national departments, national public entities and national public enterprises; 40
 - (iii) to promote good language management within national departments, national public entities and national public enterprises; and 45
 - (iv) on the functions of language units contemplated in section 8;
 - (b) liaise with and promote the general co-ordination of language units contemplated in section 7;
 - (c) perform the functions provided for in section 8 for the Department; and
 - (d) perform any other function that the Minister may prescribe. 50

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

7. Every national department, national public entity and national public enterprise must—
- (a) establish a language unit; and 55
 - (b) ensure that the language unit is provided with human resources, administrative resources and other resources necessary for its effective functioning.

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

- 8.** Every language unit must—
- (a) advise the responsible accounting officer or accounting authority on the development, adoption and implementation of the language policy for the national department, national public entity or national public enterprise concerned; 5
 - (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; 10
 - (d) compile and submit a report to the Minister and to the Pan South African Language Board in terms of section 9;
 - (e) promote parity of esteem and equitable treatment of official languages of the Republic and facilitate equitable access to services and information of the national department, national public entity or national public enterprise concerned; 15
 - (f) promote good language management by the national department, national public entity or national public enterprise concerned; and
 - (g) perform any other functions that the Minister may prescribe. 20

Monitoring of and reporting on use of official languages

- 9.** (1) The Minister is responsible for monitoring the use of official languages by the national government for government purposes.
- (2) Every national department, national public entity and national public enterprise must submit a report to the Minister and to the Pan South African Language Board annually on— 25
- (a) the activities of its language unit;
 - (b) the implementation of its language policy;
 - (c) any complaints received regarding its use of official languages and the manner in which these complaints were dealt with; and 30
 - (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.
- (4) Notwithstanding the provisions of subsections (2) and (3), the Minister may at any time require any national department, national public entity or national public enterprise to submit a report to the Minister on its use of official languages, within a time period determined by the Minister. 35
- (5) The Minister may instruct a national department, national public entity or national public enterprise that has failed to comply with any provision of this Act to comply with the Act within a time period determined by the Minister. 40

Annual report to National Assembly

- 10.** The Minister must, on an annual basis, table a report in the National Assembly on the status and use of official languages by national government for government purposes and on any exemption granted to national public entity and a national public enterprise in terms of section 12. 45

Intergovernmental forums on use of official languages

- 11.** The Minister may—
- (a) establish one or more intergovernmental forums—
 - (i) to promote general coordination, cooperation and consultation between national departments, national public entities and national public enterprises on the use of official languages for government purposes; 50
 - (ii) to coordinate, align and monitor the implementation of language policies; and
 - (iii) to perform any other function that the Minister may prescribe. 55

- (b) in respect of such forums—
- (i) determine their composition;
 - (ii) determine their terms of reference;
 - (iii) convene their meetings; and
 - (iv) determine any other matter necessary for their effective functioning. 5

Exemptions from application of section 7

12. (1) The Minister may, on application by a national public entity or national public enterprise listed in the Schedule 3 Parts A or B to the Public Finance Management Act, 1999 (Act No. 1 of 1999) exempt, wholly or in part, such national public entity or national public enterprise from the application of section 7. 10

(2) The Minister may, on his or her own accord and on such terms and conditions as the Minister may determine, by notice in the *Gazette*, exempt a national public entity or national public enterprise listed in Schedule 3 Parts A or B to the Public Finance Management Act, 1999 (Act No. 1 of 1999) from the application of section 7.

(3) The application for an exemption must be in the form and manner prescribed by the Minister. 15

(4) If the Minister exempts a national public entity or national public enterprise from the application of section 7 the national public entity or national public enterprise must assign a senior employee to perform the functions of a language unit.

Regulations 20

13. (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 a language policy;
- (b) timeframes for establishing a language unit;
- (c) the form and content of a report contemplated in section 9; 25
- (d) the manner, form and timeframes for submitting an application for exemption in terms of section 12;
- (e) any matter which in terms of this Act is required, or permitted, to be prescribed; and
- (f) any matter which the Minister deems it necessary or expedient to make regulations in order to achieve the objects of this Act. 30

(2) Before making regulations in terms of 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 the proposed regulations; and 35
- (c) consider any such written representations received.

Short title and commencement date

14. This Act is called the Use of Official Languages Act, 2011, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE USE OF OFFICIAL 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.

2.2 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.

2.3 The Bill seeks to provide for the adoption of language policies, and to establish a National Language Unit within the Department itself. The Bill also seeks to provide for the establishment of language units in national departments, national public entities and national public enterprises. The Bill also seeks to empower the Minister to exempt any national public entity or national public enterprise 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 a national department, national public entity and national public enterprise must adopt a language policy within 18 months from the commencement of the Act or such further period as the Minister may prescribe.

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 three 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 and 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 National Language Unit 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 8.

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 human resources, administrative resources 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 and to the Pan South African Language Board. 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 Minister and to the Pan South African Language Board, 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.

3.15 The Minister may require a report in terms of a time period set by the Minister.

CLAUSE 10

3.16 Clause 10 provides that the relevant Minister must table in the National Assembly a report for his or her own department on the status of the use of languages by the national government for government purposes.

CLAUSE 11

3.17 Clause 11 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 12

3.18 Clause 12 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.