

REPUBLIC OF SOUTH AFRICA

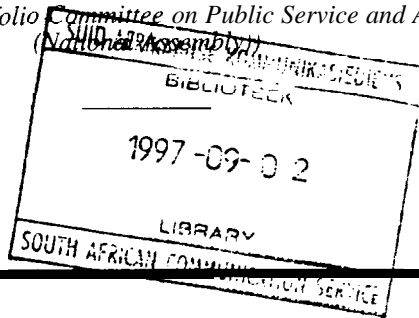
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**PORTFOLIO COMMITTEE AMENDMENTS  
TO  
PUBLIC SERVICE LAWS  
AMENDMENT BILL**

[B 32—97]

*(As agreed to by the Portfolio Committee on Public Service and Administration  
(National Assembly))*

[B 32A—97]



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REPUBLIEK VAN SUID-AFRIKA

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**PORTEFEULJEKOMITEE-AMENDEMENTE  
OP  
WYSIGINGSWETSONTWERP  
OP STAATSDIENSWETGEWING**

[W 32—97]

*(Soos goedgekeur deur die Portefeuljekomitee oor Staatsdiens en Administrasie  
(Nasionale Vergadering))*

[W 32A—97]

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## AMENDMENTS AGREED TO

### PUBLIC SERVICE LAWS AMENDMENT BILL [B 32-97]

#### CLAUSE 1

1. On page 4, in line 38, after “(e)” to insert “ a provincial administration or “.

#### CLAUSE 2

Clause rejected.

#### NEW CLAUSE

1. That the following be a new Clause to follow Clause 1:

**Amendment of section 2 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994**

2. Section 2 of the principal Act is hereby amended—
  - (a) by the deletion of subsection (4);
  - (b) by the substitution for paragraph (b) of subsection (5) of the following paragraph:
 

“(b) All persons who immediately before the commencement of this Act were, by virtue of a law repealed by this Act, officers or employees in an institution referred to in section 236( 1) of the Interim Constitution, shall remain in employment and shall from [**that**] such commencement be deemed, without break in service, to be officers or employees, as the case may be. and the provisions of this Act shall apply to or in respect of those officers or employees.”: and
  - (c) by the deletion of subsection (6).

#### CLAUSE 3

1. On page 6, in line 30, after the first “information” to insert “management”.
2. On page 6, in line 40, after “regarding” to insert:
 

the allocation of functions to, or the abolition of the functions of, any department or
3. On page 8, in line 26, to omit “evaluation” and to substitute “performance management”.

#### CLAUSE 8

Clause rejected.

**NEW CLAUSE**

1. That the following be a new Clause to follow Clause 7:

**Substitution of section 11 of Act promulgated under Proclamation 103 of 1994**

8. The following section is hereby substituted for section 11 of the principal Act:

**“Appointments and filling of posts**

**11. (1)** In the making of appointments and the filling of posts in the public service due regard shall be had to equality and the other democratic values and principles enshrined in the Constitution.

(2) In the making of any appointment or the filling of any post in the public service—

(a) all persons who qualify for the appointment, transfer or promotion concerned shall be considered; and

(b) the evaluation of persons shall be based on training, skills, competence, knowledge and the need to redress the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender and disability.

(3) Notwithstanding the provisions of subsection (2), the relevant executing authority may, subject to the prescribed conditions, approve the appointment, transfer or promotion of persons to promote the basic values and principles referred to in section 195(1) of the Constitution.”.

**CLAUSE 9**

Clause rejected.

**NEW CLAUSE**

1. That the following be a new Clause to follow Clause 8:

**Substitution of section 12 of Act promulgated under Proclamation 103 of 1994, as amended by section 32 of Act 38 of 1994 and section 2 of Act 13 of 1996**

9. The following section is hereby substituted for section 12 of the principal Act:

**“Appointment of heads of department**

**12. (1)** Any person who immediately prior to the commencement of the Public Service Laws Amendment Act, 1997—

(a) was appointed in the office of head of department or was promoted or transferred to that office; or

(b) was promoted or transferred from the office of head of department referred to in paragraph (a) to another office of head of department,

shall occupy, subject to the provisions of Chapters V and VI—

- (i) in the case of a person referred to in paragraph (a), that office for a period of five years from the date of his or her appointment, promotion or transfer, or the shorter period approved by the relevant executing authority, and if the term of office was extended at the expiry thereof, for the extended period approved by that executing authority;
  - (ii) in the case of a person referred to in paragraph (b), the latter office for the remainder of the term of office which applies to him or her in terms of paragraph (i) in respect of the former office, and if the term of office was extended at the expiry thereof, for the extended period approved by the relevant executing authority.
- (2) As from the date of commencement of the Public Service Laws Amendment Act, 1997—
- (a) a person shall be appointed in the office of head of department in the prescribed manner, on the prescribed conditions and in terms of the prescribed contract between the relevant executing authority and such a person for a period of five years from the date of his or her appointment, or such shorter period as that executing authority may approve;
  - (b) the term of office as head of department of such a person may be extended at the expiry thereof in accordance with the terms and conditions of the contract or a further contract, as the case may be, concluded between that executing authority and such a person for a period or successive periods of not less than twelve months and not more than five years, as that executing authority may approve;
  - (c) the term of office as head of department of any person referred to in subsection (1), or any extended term thereof, may be extended at the expiry of the term of office or extended term, as the case may be, in the prescribed manner for a period of not less than twelve months and not more than five years, as the relevant executing authority may approve, provided the said person concludes the prescribed contract with that executing authority, whereupon any further extension of his or her term of office shall, subject to the provisions of paragraph (b), take place in accordance with the terms and conditions of that contract or a further contract, as the case may be.
- (3) Notwithstanding the provisions of subsection (2), a contract contemplated in that subsection may include any term and condition agreed upon between the relevant executing authority and the person concerned as to—
- (a) any particular duties of the head of department;
  - (b) the specific performance criteria for evaluating the performance of the head of department;
  - (c) the grounds upon, and the procedures according to which, the services of the head of department may be terminated before the expiry of his or her term of office or extended term of office, as the case may be; and
  - (d) any other matter which may be prescribed.”.

#### CLAUSE 10

1. On page 18, in line 11, after “forthwith” to insert:

, but subject to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995)

#### CLAUSE 17

1. On page 28, after line 25, to add the following paragraph:

(c) by the deletion of paragraph (s).

#### CLAUSE 18

1. On page 28, from line 51, 'to omit subsection (3) and to substitute:

(3) The provisions of subsections (1) and (2) shall not apply to a case contemplated in section [19(11)] ~~68(5)~~ of the [Public Service] Labour Relations Act, [1993 (Act No. 102 of 1993)] 1995 (Act No. 66 of 1995).

#### CLAUSE 28

1. On page 38, from line 39, to omit subsection (1) and to substitute:

(1) For the purposes of asserting his or her right to have his or her complaint or grievance concerning an official act or omission investigated and considered by the Commission, an officer or employee may lodge that complaint or grievance with the relevant executing authority under the prescribed circumstances, on the prescribed conditions and in the prescribed manner, and if that complaint or grievance is not resolved to the satisfaction of such an officer or employee, that executing authority shall submit the complaint or grievance to the Commission in the prescribed manner and at the prescribed time or within the prescribed period.

2. On page 38, after line 48, to add the following subsection:

(3) For the purposes of subsection (1), the powers conferred upon the Commission by section 11 of the Commission Act shall be deemed to include the power to make rules which are not inconsistent with the provisions of this section as to the investigation of complaints or grievances concerning official acts or omissions, and 'prescribed' means prescribed by the Commission by rule under the Commission Act.

#### CLAUSE 30

1. On page 40, in line 18, after "organisation" to insert ", rationalisation, restructuring".

2. On page 40, in line 52, after "(ii)" to insert;

the management of matters regarding conduct, including

3. On page 42, after line 3, to insert the following subparagraph:

(vii) the health and safety of officers and employees in the workplace;

4. On page 42, in line 12, to omit subparagraph (iv) and to substitute:

(iv) the management of information and the utilisation of information technology;