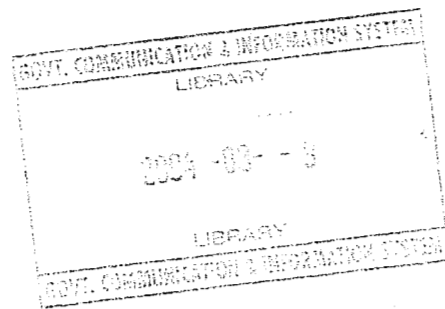


REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN SOCIAL SECURITY AGENCY BILL

(As amended by the Select Committee on Social Services (National Council of Provinces))



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BILL

To provide for the establishment of the South African Social Security Agency as an agent for the administration and payment of social assistance; to provide for the prospective administration and payment of social security by the Agency and the provision of services related thereto; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides that everyone has the right to have access to social security, including the right to social assistance, if they are unable to support themselves and their dependants;

AND WHEREAS the Constitution obliges the State to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights;

AND WHEREAS the effective provision of social security services requires uniform norms and standards, standardised delivery mechanisms and a national policy for the efficient, economic and effective use of the limited resources available to the State for social security;

AND WHEREAS a national social security economic policy is required to prevent the proliferation of laws and policies relating to social security from prejudicing the beneficiaries of social security, prejudicing the economic interests of the Republic or its provinces or impeding the implementation of such national social security economic policy;

AND in order to assist in securing the well-being of the people of the Republic and to provide effective, transparent, accountable and coherent governance in respect of social security for the Republic as a whole,

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

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS

5

1. Definitions

CHAPTER 2

SOUTH AFRICAN SOCIAL SECURITY AGENCY

2. Establishment of Agency
3. Objects of Agency
4. Functions of Agency

10

CHAPTER 3

CHIEF EXECUTIVE OFFICER AND OTHER STAFF OF AGENCY

- | | | |
|----|--------------------------------------|---|
| 5. | Chief Executive Officer | |
| 6. | Functions of Chief Executive Officer | |
| 7. | Staff of Agency | 5 |
| 8. | Conflict of interest | |

CHAPTER 4

FUNDS AND BUSINESS OF AGENCY

- | | | |
|-----|----------------------------------|----|
| 9. | Funds of Agency | |
| 10. | Financial management | 10 |
| 11. | Reporting and audit | |
| 12. | Immovable property | |
| 13. | General operations | |
| 14. | Legal proceedings against Agency | |
| 15. | Limitation of liability | 15 |

CHAPTER 5

GENERAL PROVISIONS

- | | | |
|-----|---|----|
| 16. | Security of confidential information held by Agency | |
| 17. | Dissolution of Agency | |
| 18. | Use of name of Agency | 20 |
| 19. | General offences | |
| 20. | Penalties | |
| 21. | Regulations | |

CHAPTER 6

TRANSITIONAL PROVISIONS 25

- | | | |
|-----|--|--|
| 22. | Transfer of staff | |
| 23. | Assets, liabilities and funds | |
| 24. | Transfer of social assistance administration to Agency | |
| 25. | Short title and commencement | |

CHAPTER 1 30

DEFINITIONS

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**Agency**” means the South African Social Security Agency established by section 2; 35
 - “**Chief Executive Officer**” means the Chief Executive Officer of the Agency appointed in terms of section 5(1);
 - “**designated institution**” means—
 - (a) a national or provincial department as contemplated in section 7 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); 40
 - (b) an institution, other than the Agency, established for a public purpose by or under an Act of Parliament;
 - (c) any other juristic person in respect of which the Minister has authorised the Agency to enter into an agreement for the rendering of services by the Agency to that person; 45
 - “**financial year**” means the period from 1 April in any year to 31 March of the following year;
 - “**Minister**” means the Minister of Social Development;

- “**prescribed**” means prescribed by regulation;
 “**public service**” means the public service contemplated in section 8 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
 “**social assistance**” means social assistance as defined in section 1 of the Social Assistance Act, 2004; 5
 “**social insurance**” means contribution based benefit payments aimed at income maintenance;
 “**social security**” includes both social assistance and social insurance;
 “**this Act**” includes the regulations.

CHAPTER 2 10

SOUTH AFRICAN SOCIAL SECURITY AGENCY

Establishment of Agency

2. (1) The South African Social Security Agency is hereby established as a juristic person.
 (2) The Agency is subject to the Public Finance Management Act, 1999 (Act No. 1 of 15 1999).

Objects of Agency

3. The objects of the Agency are to—
- (a) act, eventually, as the sole agent that will ensure the efficient and effective management, administration and payment of social assistance; 20
 - (b) serve as an agent for the prospective administration and payment of social security; and
 - (c) render services relating to such payments.

Functions of Agency

4. (1) The Agency must— 25
- (a) administer social assistance in terms of Chapter 3 of the Social Assistance Act, 2004, and perform any function delegated to it under that Act;
 - (b) collect, collate, maintain and administer such information as is necessary for the payment of social security, as well as for the central reconciliation and management of payment of transfer funds, in a national data base of all applicants for and beneficiaries of social assistance; 30
 - (c) establish a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained; and
 - (d) render any service in accordance with an agreement or a provision of any applicable law as contemplated in subsection (4). 35
- (2) The Agency may—
- (a) with the concurrence of the Minister enter into an agreement with any person to ensure effective payments to beneficiaries, and such an agreement must include provisions contemplated in subsection (3).
 - (b) do anything necessary for the realisation of the Agency’s objects. 40
- (3) The agreement contemplated in subsection 2(a) must include provisions to ensure—
- (a) the effective, efficient and economical use of funds designated for payment to beneficiaries of social security;
 - (b) the promotion and protection of the human dignity of applicants for and beneficiaries of social security; 45
 - (c) the protection of confidential information held by the Agency other than as is contemplated in section 16;
 - (d) honest, impartial, fair and equitable service delivery;
 - (e) mechanisms to regulate community participation and consultation; and 50
 - (f) financial penalties for non-compliance with the provisions of the agreement.
- (4) The Agency may in terms of any applicable law or any agreement between itself and any other relevant authority responsible for the provision of forms of social security, other than social assistance, administer, evaluate and verify any application for such forms of social security and effect payment in respect thereof. 55

CHAPTER 3

CHIEF EXECUTIVE OFFICER AND OTHER STAFF OF AGENCY

Chief Executive Officer

5. (1) The Minister must appoint a fit and proper and suitably qualified South African citizen as the Chief Executive Officer of the Agency. 5
- (2) The Chief Executive Officer is appointed for a term of five years and may be reappointed for one additional term of five years.
- (3) (a) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the Minister.
- (b) The Minister and the Chief Executive Officer may, in writing and by agreement, 10 amend the performance agreement.
- (4) The Minister may terminate the Chief Executive Officer's employment in accordance with applicable labour law.
- (5) The Chief Executive Officer is entitled to the pension and retirement benefits calculated on the same basis as those of a head of a department in the public service. 15
- (6) Section 8 applies to the Chief Executive Officer, except that he or she must disclose his or her interests or any conflict of interest to the Minister.

Functions of Chief Executive Officer

6. (1) The Chief Executive Officer is responsible for—
- (a) the management of the Agency, subject to the direction of the Minister; 20
- (b) the compilation of a business and financial plan and reports in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for approval by the Minister;
- (c) the appointment of members of staff contemplated in section 7(1); and
- (d) control of, and maintenance of discipline over, members of staff of the 25 Agency.
- (2) The Chief Executive Officer is accountable to the Minister and must report to him or her on the activities of the Agency.
- (3) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the Minister must, in writing, appoint another person as Acting Chief 30 Executive Officer until the Chief Executive Officer is able to resume those functions.
- (4) (a) The Chief Executive Officer may, in writing and on such conditions as he or she may determine, delegate any power or duty of the Chief Executive Officer to a senior member of the Agency, unless the Minister prohibits a specific delegation.
- (b) The power of the Chief Executive Officer to delegate includes the power to 35 subdelegate.
- (5) A delegation made under subsection (4) does not—
- (a) divest the Chief Executive Officer of the responsibility or accountability concerning the performance of the function in question;
- (b) prohibit the performance of the function in question by the Chief Executive 40 Officer.
- (6) A delegation made under subsection (4) may be repealed, withdrawn or amended, but the repeal, withdrawal or amendment does not affect any right which may have accrued to a person as a result of the function performed before the delegation was 45 repealed, withdrawn or amended.
- (7) The Minister may override any decision taken by the Chief Executive Officer.

Staff of Agency

7. (1) The Chief Executive Officer must, subject to subsection (2), employ members of staff of the Agency.
- (2) The Minister for the Public Service and Administration in consultation with the 50 Minister and the Minister of Finance—
- (a) must determine a human resources policy for the Agency;
- (b) must determine the remuneration and conditions of service of the Chief Executive Officer and the other members of staff of the Agency;
- (c) may determine non-pensionable allowances for the Chief Executive Officer 55 and the other members of staff of the Agency.

- (3) The Minister must after consultation with the Chief Executive Officer determine a code of conduct, applicable to all members of staff of the Agency and justiciable for purposes of disciplinary proceedings, to ensure—
- (a) compliance with applicable law;
 - (b) the effective, efficient and economical use of the Agency's resources; 5
 - (c) the effective, efficient and economical use of funds designated for payment to beneficiaries of social security;
 - (d) the promotion and protection of the human dignity of applicants for and beneficiaries of social security;
 - (e) the promotion and maintenance of a high standard of professional ethics; 10
 - (f) the prevention of conflicts of interest other than those contemplated in section 8;
 - (g) the protection of confidential information held by the Agency other than as is contemplated in section 16; and
 - (h) honest, impartial, fair and equitable service. 15
- (4) A person employed by the Agency becomes a member of the Government Employees' Pension Fund mentioned in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), and is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service. 20
- (5) The Agency may utilise persons seconded or, subject to section 22, transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

Conflict of interest

- 8.** (1) A member of staff of the Agency must, on appointment, submit to the Agency a written statement in which it is declared whether or not that member has any direct or indirect interest, financially or otherwise, which— 25
- (a) may constitute a conflict of interest in respect of his or her functions as a member of staff of the Agency; or
 - (b) could reasonably be expected to compromise the Agency in the performance of its functions. 30
- (2) If any member of staff of the Agency acquires an interest contemplated in subsection (1), he or she must immediately in writing declare that fact to the Chief Executive Officer of the Agency or his or her representative.
- (3) A member of staff of the Agency may not be present at, or take part in, the discussion of or the taking of a decision on any matter before the Agency in which that member has an interest contemplated in subsection (1). 35
- (4) A member of staff of the Agency may not use his or her position or privileges, or confidential information obtained as a member of staff of the Agency, for personal gain or to improperly benefit another person. 40
- (5) A member of staff of the Agency who fails or refuses to comply with subsection (1), (2), (3) or (4) is subject to disciplinary measures contemplated in applicable employment and labour law, and the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (6) The Agency must keep a register of the interests of members of staff disclosed in terms of subsection (1) and must update that register from time to time. 45

CHAPTER 4

FUNDS AND BUSINESS OF AGENCY

Funds of Agency

- 9.** (1) The funds of the Agency consist of— 50
- (a) money appropriated by Parliament;
 - (b) grants made to the Agency by a designated institution;
 - (c) donations or contributions received by the Agency with the approval of the Minister, subject to subsection (3);
 - (d) fees for services rendered to any designated institution in terms of a service agreement. 55

(2) The Agency must utilise its funds to defray expenses incurred by it in the performance of its functions.

(3) The Agency must utilise the donations and contributions referred to in subsection (1)(c) in accordance with the conditions, if any, imposed by the donor or contributor concerned, but those conditions may not be inconsistent with the objects of the Agency as contained in this Act or any other law. 5

(4) The Chief Executive Officer must, with the concurrence of the Minister and the Minister of Finance—

- (a) open an account in the name of the Agency with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and 10
- (b) deposit therein all money received in terms of subsection (1).

Financial management

10. (1) The Chief Executive Officer must cause full and proper books of account and all the necessary records in relation thereto to be kept.

(2) The Chief Executive Officer must ensure that the Agency's annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999). 15

Reporting and audit

11. (1) (a) The Agency must in each financial year, on or before a date determined by the Minister, submit an annual report on its activities and a statement of its income and estimated expenditure for the following financial year to the Minister for approval. 20

(b) Notwithstanding subsection (1), the Agency must submit in addition to its reports such further reports as the Minister may require.

(2) The books, records of account and financial statements of the Agency must be audited annually by the Auditor-General. 25

Immovable property

12. (1) The Agency may, with the approval of the Minister, acquire, hold or dispose of immovable property in the course of its business.

(2) The Minister must determine the policy and procedure of the Agency with regard to the acquisition and disposal of immovable property. 30

General operations

13. (1) (a) Subject to such conditions as the Minister may determine, the Agency may, at the request of the Minister or of any of the designated institutions, provide such services as it may reasonably be able to render on an agency basis. 35

(b) The rendering of services contemplated in paragraph (a) may not prevent the Agency from effectively and efficiently performing its functions in accordance with this Act.

(2) The Agency may, on such conditions as the Minister may determine, act as adviser to a designated institution in respect of matters falling within the scope of the functions of the Agency. 40

Legal proceedings against Agency

14. (a) Any legal proceedings against the Agency must be instituted in accordance with the Institution of Legal Proceedings against Certain Organs of State Act, 2002 (Act No. 40 of 2002). 45

(b) The Agency is, for purposes of paragraph (a), deemed to be an organ of state contemplated in paragraph (c) of the definition thereof in section 1 of the above Act.

Limitation of liability

15. Neither the Minister nor any member of staff of the Agency is liable for anything done in good faith in the performance of a function in terms of this Act. 50

CHAPTER 5

GENERAL PROVISIONS

Security of confidential information held by Agency

16. (1) Subject to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information submitted in connection with any application or instruction for or in respect of a grant, payment, benefit or assistance made available by the Agency, unless he or she is ordered to do so by a court of law or unless the person who made such application consents thereto in writing. 5

(2) (a) No person may disclose any information kept in the register contemplated in section 8(6) unless such disclosure is— 10

- (i) in terms of any law that compels or authorises such disclosure;
- (ii) materially necessary for the proper functioning of the Agency; or
- (iii) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Agency; 15

(b) Where a disclosure contemplated in paragraph (a) is to be made, the person concerned must be informed thereof timeously.

(3) Any person who contravenes subsection (1) or (2)(a) is guilty of an offence.

Dissolution of Agency

17. The Agency may not be dissolved except in terms of an Act of Parliament. 20

Use of name of Agency

18. (1) Unless authorised in writing by the Agency to do so, no person may in any way represent or make use of logos, designs or advertising material used or owned by the Agency.

(2) No person may falsely claim to be acting on behalf of the Agency. 25

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

General offences

19. (1) A member of staff, adviser, agent or other person employed by or acting on behalf of the Agency is guilty of an offence if he or she directly or indirectly accepts any unauthorised fee or reward from any person in respect of or in connection with any service rendered or anything done or offered by the Agency. 30

(2) Any person is guilty of an offence if he or she, in respect of or in connection with any service rendered or anything done or offered by the Agency, bribes or attempts to bribe, or corruptly influences or attempts to corruptly influence, any member of staff or any adviser, agent or other person employed by or acting on behalf of the Agency. 35

(3) Any person who falsely claims that he or she is authorised to charge or collect fees on behalf of or by direction of the Agency, is guilty of an offence.

Penalties

20. Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding 15 years. 40

Regulations

21. The Minister must make regulations regarding any matter that must be prescribed in terms of this Act and may make regulations regarding—

- (a) any matter that may be prescribed in terms of this Act;
- (b) the establishment and operations of the compliance and fraud mechanism contemplated in section 4(1)(c); 45
- (c) any matter which it is necessary to prescribe for the effective carrying out or furtherance of the provisions or objects of this Act.

CHAPTER 6

TRANSITIONAL PROVISIONS

Transfer of staff

22. (1) The transfer of staff of designated institutions to the Agency must be effected in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995), and any applicable collective bargaining agreement with organised labour. 5

(2) (a) A person transferred to the Agency as contemplated in subsection (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the transfer date to the extent that they remain applicable.

(b) Any proceedings against such person which were pending immediately before the transfer date must be disposed of as if that person had not been transferred. 10

(3) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when employment is taken up at the Agency by a person contemplated in subsection (1).

Assets, liabilities and funds 15

23. (1) Whenever the Minister acts under section 24, the Minister must, in conjunction with the executive authority of the designated institution concerned and with the approval of the Minister of Finance, enter into an agreement to ensure that the assets, rights, obligations and liabilities, including the unexpended balance of appropriations, authorisations, allocations and other funds employed, held or used in connection with the management, administration and payment of social security, are transferred to the Agency. 20

(2) The Registrar of Deeds must make the necessary entries or endorsements for the transfer of any property in terms of subsection (1), and no office fee or other charge is payable in respect of that entry or endorsement. 25

(3) Any litigation resulting from any cause of action in relation to the assets, rights, obligations or liabilities transferred to the Agency in terms of subsection (1) which arose—

(a) before the transfer date, must be conducted by or against the designated institution concerned; and 30

(b) on or after the transfer date must be conducted by or against the Agency.

Transfer of social assistance administration to Agency

24. The Minister must, after consultation with the Minister of Finance and the Minister for the Public Service and Administration, and in the spirit of co-operative government envisaged in Chapter 3 of the Constitution, enter into memoranda of understanding with the respective Members of Executive Councils of provinces responsible for the administration of social assistance in terms of the Social Assistance Act, 1992, insofar as it has been assigned to the provincial sphere of government, in order to ensure that— 35

(a) the payment of social assistance contemplated in the Social Assistance Act, 2004, is in future exclusively performed by the Agency; 40

(b) the right to social assistance to recipients thereof in terms of the Social Assistance Act, 1992, is not in any way interrupted, discontinued or decreased;

(c) the transfer of the social assistance function to the Agency contemplated in paragraph (a) does not in any way cause discomfort, stress or an interruption of payments to recipients thereof; 45

(d) the transfer of the function does not negatively impact on the effective, efficient and economical use of resources at both national and provincial level;

(e) the matters contemplated in sections 22 and 23 are adequately provided for at administrative level; 50

(f) adequate and appropriate capacity and mechanisms exist to effect an effortless transfer of the social assistance administration and ancillary matters to the Agency;

(g) adequate provision has been made in respect of budgetary matters affecting the transfer of the social assistance administration to the Agency. 55

Short title and commencement

25. This Act is called the South African Social Security Agency Act, 2004, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN SOCIAL SECURITY AGENCY BILL

1. BACKGROUND

The delivery of social security service to improve the lives of the poorest of the poor is one of the duties of the State. Social assistance services, which form part of the overall social security environment, are currently rendered to close on six million citizens. Certain weaknesses in the administration and payments occur, resulting in some persons not timeously receiving assistance. Government has prioritised the improvement of service delivery in this area and has therefore decided to establish a focused, specialised delivery mechanism to achieve this goal. This Bill consequently proposes to create the South African Social Security Agency, an institution designed to significantly enhance service delivery.

2. CONTENTS OF BILL

Chapter 2 seeks to establish the Agency as a legal person and to provide for the objects and functions of the Agency. It also aims to authorise the Minister of Social Development (“the Minister”) to conclude agreements with other institutions in terms of which the Agency acts as an agent to administer, evaluate and verify applications for social assistance and to effect payment in respect of such applications. Authorisation for the Agency to conclude agreements with other institutions in order to ensure the effective payment of social benefits is also provided for.

Chapter 3 of the Bill contains provisions relating to the Chief Executive Officer and other employees of the Agency. The CEO is to be appointed by the Minister, subject to the conclusion of a performance contract. This Chapter also contains provisions aimed at preventing a conflict of interest in the performance of functions in terms of the proposed Act.

Chapter 4 makes provision for the funding of the Agency (*inter alia* by funds appropriated by Parliament), the financial management of the Agency and the auditing of its books by the Auditor-General. It seeks to authorise the Agency to conclude joint ventures, to acquire immovable property and to provide for the manner in which legal proceedings may be instituted against the Agency.

Chapter 5 contains some general provisions relating to the confidentiality of information obtained by the Agency and the unauthorised use of the Agency’s name. It also seeks to create certain offences (one of which is aimed at preventing bribery and corruption) and to authorise the Minister to make regulations.

Chapter 6 is aimed at providing for transitional measures where employees are transferred to the Agency and where the Agency takes over the functions of another institution.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

Department of Public Service and Administration
Financial and Fiscal Commission
National Treasury
Office of the Chief State Law Adviser
Provincial departments of social development

4. IMPLICATIONS FOR PROVINCES

The Bill provides that the Agency will be able to render services to provinces should this be required.

5. FINANCIAL IMPLICATIONS FOR STATE

After the transfer of current administrative costs from the provincial departments of social development amounting to a projected R1,8 billion in 2003/04, additional amounts of approximately R157 million, R124 million and R137 million will be required in the first, second and third years of operation, respectively. This will be an ongoing cost. These indicative figures assume full functioning of the Agency within a given financial year.

6. PARLIAMENTARY PROCEDURE

The Department of Social Development and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, to wit "Welfare services".