

REPUBLIC OF SOUTH AFRICA

BROADCASTING AMENDMENT BILL

*(As amended by the Portfolio Committee on Communications (National Assembly))
(The English text is the official text of the Bill)*

(PORTFOLIO COMMITTEE ON COMMUNICATIONS)

[B 72D—2008]

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[] Words between brackets, in bold print, indicate omissions from current provisions.

To amend the Broadcasting Act, 1999, so as to delete “frequency planning” as one of the fields of qualifications, expertise and experience which the members of the Board of the South African Broadcasting Corporation Limited must have when viewed collectively; to provide for the removal of a member of the Board from office and for the resignation of a member; to make provision for a resolution of the National Assembly calling for the removal of a member and for the dissolution of the Board; to provide for the appointment of an interim board; and to provide for matters connected therewith.

Amendment of section 13 of Act 4 of 1999, as amended by section 14 of Act 64 of 2002

“(a) be persons who are suited to serve on the Board by virtue of their qualifications, expertise and experience in the fields of broadcasting policy and technology, broadcasting regulation, media law, **[frequency planning]** business practice and finance, marketing, journalism, entertainment and education, social and labour issues.”.

2. The following section is hereby substituted for section 15 of the Broadcasting Act, 1999:

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15. (1) The appointing body—
(a) may remove a member from **[the]** office on account of misconduct or inability to perform his or her duties efficiently after due inquiry and upon recommendation by the Board; or

(b) must remove a member from office after a finding to that effect by a committee of the National Assembly and the adoption by the National Assembly of a resolution calling for that member's removal from office in terms of section 15A.

(2) A non-executive member of the Board may resign by three months' written notice addressed to the appointing body, provided that the appointing body may on good cause shown allow a shorter period."

Insertion of section 15A in Act 4 of 1999

3. The following section is hereby inserted in the Broadcasting Act, 1999, after section 15:

"Resolution for removal of member, dissolution of Board and appointment of interim Board

15A. (1) (a) The National Assembly may, after due inquiry and by the adoption of a resolution, recommend the removal of a member from office on account of any or all of the following:

- (i) Misconduct;
- (ii) inability to perform the duties of his or her office efficiently;
- (iii) absence from three consecutive meetings of the Board without the permission of the Board, except on good cause shown;
- (iv) failure to disclose an interest in terms of section 17 or voting or attendance at, or participation in, proceedings of the Board while having an interest contemplated in section 17; and
- (v) his or her becoming disqualified as contemplated in section 16.

(b) The National Assembly may, after due inquiry and by the adoption of a resolution, recommend the dissolution of the Board if it fails in any or all of the following:

- (i) Discharging its fiduciary duties;
- (ii) adhering to the Charter; and
- (iii) carrying out its duties as contemplated in section 13(11).

(2) The appointing body—

- (a) may suspend a member from office at any time after the start of the proceedings of the National Assembly for the removal of that member;
- (b) must act in accordance with a recommendation contemplated in subsection (1) within 30 days;
- (c) must dissolve the Board if the resolution recommends the removal of all the members of the Board.

(3) (a) Upon the dissolution of the Board contemplated in subsection (2)(c), the appointing body must appoint an interim Board consisting of the persons referred to in section 12(b) and five other persons recommended by the National Assembly.

(b) The interim Board must be appointed within 10 days of receiving such recommendations and is appointed for a period not exceeding six months.

(4) The appointing body, on the recommendation of the National Assembly, must designate one of the members of the interim Board as the chairperson and another member as the deputy chairperson, both of whom must be non-executive members of the interim Board.

(5) A quorum for any meeting of the interim Board is six members."

Short title

4. This Act is called the Broadcasting Amendment Act, 2009.

MEMORANDUM ON THE OBJECTS OF THE BROADCASTING AMENDMENT BILL, 2008

OBJECTS OF BILL

The Broadcasting Amendment Bill seeks to effect certain amendments to the Broadcasting Act, 1999 (Act No. 4 of 1999) (the Act), which can be summarised as follows:

In section 13(4) of the Act, “frequency planning” is mentioned as one of the fields of qualifications, expertise and experience the members of the Board of the South African Broadcasting Corporation Limited must have when viewed collectively. Since frequency planning is not a function of the SABC Board, clause 1 of the Bill seeks to delete those words.

Clause 2 of the Bill seeks to provide for the compulsory removal of a member of the Board where the National Assembly adopts a resolution to that effect. The clause furthermore seeks to provide for the period a member of the Board must give notice should that member wish to resign.

Clause 3 seeks to insert a new section 15A in the Act. The proposed section provides the grounds on which the National Assembly may adopt a resolution calling for the removal of a member of the Board. The section also provides for the compulsory dissolution of the Board, should the National Assembly adopt a resolution to that effect. Provision is also made for an interim board, should the Board be dissolved.

Towards the end of 2008 the Bill was referred to the President for assent. Acting in terms of section 79(1) of the Constitution of the Republic of South Africa, 1996, the President expressed his reservations about the constitutionality of clause 3 of the Bill. His reservations were based on the fact that clause 2 of the Bill (which seeks to substitute section 15 of the Act) makes provision for a “due inquiry” by a committee of the National Assembly when the removal of an individual Board member is considered, but that the Bill is silent on the process to be followed with regard to the removal of the entire Board (proposed section 15A of the Act). Section 15(1)(a) and (b) proposed in the current version of the Bill [B72D—2008] now contains a reference to due inquiry.

CONSULTATION

Department of Communications

The Bill was published in the *Government Gazette* for comment and various submissions were received and considered by the Portfolio Committee on Communications.

FINANCIAL IMPLICATIONS FOR THE STATE

There are no financial implications for the State.

PARLIAMENTARY PROCEDURE

The Parliamentary Legal Advisers are of the opinion that this Bill must be dealt with in accordance with the procedures established by section 75 of the Constitution.