

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN SPORTS COMMISSION BILL

(As introduced in the National Assembly)

(MINISTER OF SPORT AND RECREATION)

[B 89—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE SUID-AFRIKAANSE SPORTKOMMISSIE

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN SPORT EN ONTSPANNING)

[W 89—98]

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BILL

To provide for the establishment of South African Sports Commission; to provide for the Commission's powers with regard to sports administration and development as well as the enhancement of recreation; to provide for recognition of a macro sport organisation; and to provide for matters connected therewith.

PREAMBLE

NOTING that the history of South African sport is checkered and that the sporting movements had voluntarily organised themselves into formidable forces as a result of the policy of racial discrimination which operated during the apartheid era and which was detrimental and prejudicial to sports persons and sport both locally and internationally;

ACKNOWLEDGING the meaningful role played by the non-racial organisations in attempting to promote democracy, non-racialism, gender equality, development and unity for all sports people;

REALISING the dire need to create and sustain a conducive environment of promoting the ideals of democracy, equal opportunities and freedom of association in order to ensure an indivisible and non racial sporting environment;

RECOGNISING a non-racial society in which all people are equal before the law and which steadfastly upholds the fundamental principles of human rights, democracy, accountability and consultation and the unique relationship that exists between Government and sport;

CONFIRMING the philosophy and ideals espoused above and the need to nurture and sustain the existing relationship between Government and sport; and

RESOLVING to establish the South African Sports Commission to oversee matters pertaining to the administration and promotion of sport in the Republic of South Africa under the direction and with support of the Minister,

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

Definitions

1. In this Act, unless the context otherwise indicates—
 - (i) “**Auditor-General**” means the person appointed as such in terms of section 2(1) of the Auditor-General Act, 1995 (Act No.12 of 1995); (viii) 5
 - (ii) “**Chairperson**” means the Chairperson of the Commission; (x)
 - (iii) “**Chief Executive Officer**” means the Chief Executive Officer of the Commission; (iii)
 - (iv) “**Commission**” means the South African Sports Commission, established by this Act; (iv) 10
 - (v) “**Deputy Chairperson**” means the Deputy Chairperson of the Commission; (i)
 - (vi) “**Macro Sports Organisation**” means a voluntary confederation of all National Sports Federations affiliated to the International Federations 15

governing sports included in the programme of the Olympic Games, and including such National Sports Federations or sports organisations governing sports not included in the Olympic programme; (v)

- (vii) “**Minister**” means the Minister of Sport and Recreation; (vi)
- (viii) “**National Sports Federation**” means a national governing body of a code of sport in the Republic of South Africa, recognised as such by the relevant international controlling body and as the only authority for the administration and control of the relevant code of sport; (vii) 5
- (ix) “**prescribe**” means prescribe by regulation; (xi)
- (x) “**provincial department of sport and recreation**” means the provincial authority responsible for sport and recreation in any province; (ix) 10
- (xi) “**this Act**” includes any regulation made under this Act. (ii)

Administration of sport and recreation and functions of Commission

2. The Commission must fulfil all its functions as contemplated in this Act under the guidance of the Minister. 15

Establishment of the South African Sports Commission

3. A juristic person to be known as the South African Sports Commission is established.

Composition of Commission

4. (1) The initial Commission will consist of— 20
- (a) the Chairperson;
 - (b) the Deputy Chairperson;
 - (c) seven members elected by the National Sports Council (NSC);
 - (d) seven members elected by National Olympic Committee of South Africa (NOCSA); 25
 - (e) five members appointed by the Minister on the ground of their knowledge, skill or experience in sport;
 - (f) two members elected by the South African National Recreation Council (SANREC);
 - (g) two members elected by Women and Sport in South Africa (WASSA); 30
 - (h) one member from each provincial department of sport and recreation who, *ex-officio*, will be members of the Commission.
- (2) (a) The Chairperson and the Deputy Chairperson must be appointed by the Minister in consultation with the Macro Sports Organisation and will serve on a full time basis. 35
- (b) All other members of the Commission will serve on a part-time basis.
- (3) Upon the expiry of the initial term of office the members referred to in paragraphs (c) and (d) of subsection (1) will be elected from the Macro Sports Organisation.

Term of office

5. The members of the Commission will serve for a period not exceeding three years. 40

Remuneration, allowances and other benefits

6. (1) The members of the Commission will be paid such remuneration and allowances as determined by the Minister in consultation with the Minister of Finance.
- (2) The terms of employment including the remuneration of a member of the Commission may not be adversely altered during the term of office. 45

Resignation

7. A member of the Commission may resign by giving written notice of at least three months to the Chairperson, but the Chairperson may accept a shorter notice period.

Removal from office

- 8.** (1) The Minister may remove a member of the Commission from office, only on the ground of misconduct, incapacity or incompetence.
- (2) A decision to remove a member of the Commission from office must be based on a finding of an independent tribunal appointed by the Minister. 5
- (3) The Minister may suspend a member of the Commission from office pending the finding of the tribunal referred to in subsection (2).

Leave of absence

- 9.** (1) A full-time member of the Commission has such vacation leave as prescribed in the regulations. 10
- (2) The Minister may grant to the Chairperson leave of absence, other than vacation leave, on such terms and conditions as the Minister determines.
- (3) The Chairperson may—
- (a) grant to the Deputy Chairperson leave of absence, other than vacation leave, on such terms and conditions as the Chairperson determines; and 15
 - (b) grant to a part-time member of the Commission, leave to be absent from a meeting or meetings of the Commission.

Remunerated employment outside office of member prohibited

- 10.** (1) A member of the Commission appointed on a full-time basis will not, except with the written approval of the Minister, engage in paid employment outside of the office of the member. 20
- (2) A member of the Commission appointed on a part-time basis will not engage in any paid employment that, in the opinion of the Minister, conflicts with the proper performance of the functions of the member.

Vacancies

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- 11.** (1) A vacancy in the Commission will occur—
- (a) when a member's term of office expires;
 - (b) on the death of the member;
 - (c) on the resignation of a member;
 - (d) on removal of a member from office in terms of section 8 (1). 30
- (2) A vacancy must as soon as it may be reasonably possible be filled in accordance with the provisions of section 4.
- (3) The performance of the functions or the exercise of the powers of the Commission will not be affected by reason of there being a vacancy or vacancies in the membership of the Commission. 35
- (4) A member of the Commission holds office on such terms and conditions, if any, in respect of matters not provided for in this Act, as are determined in writing by the Minister.

Objects of the Commission

- 12.** (1) The objects of the Commission are to— 40
- (a) advise the Minister regarding sport and recreation matters;
 - (b) co-ordinate the provision of facilities and community centres in disadvantaged areas in consultation with the relevant national, provincial, local authority and other sports and recreational organisations;
 - (c) support, facilitate and develop various programmes, relating to human resources, administration, health consciousness, mass participation, women in sport and specific sport academy programmes; 45
 - (d) promote and foster development and participation in sport and recreation at all levels;

- (e) consult and cooperate with the provincial departments of sport and recreation, local authorities, institutions and other persons involved in sport;
- (f) facilitate and ensure an adequate allocation of funds and resources to national and provincial sports organisations as well as recreational organisations and their affiliated bodies in the Republic; 5
- (g) monitor and take measures to ensure the proper use of funds allocated by the Commission to sports organisations as well as recreational organisations in the Republic;
- (h) respect the autonomy of sports organisations as well as recreational organisations in the administration of sport as well as recreation; 10
- (i) assist in the promotion, encouragement and development of scientific and medical disciplines relating to sports activities;
- (j) assist in the promotion and development of education of coaching in sport within the Republic; and
- (k) promote equal opportunities and to achieve non-discrimination in sport and to ensure that sports structures are unified and democratised at all levels. 15

Powers and duties of Commission

- 13.** (1) The Commission may, after consultation with the Minister and the Macro Sports Organisation—
- (a) render financial support to National Sports Federations and other institutions involved in sport; 20
 - (b) set a policy on how funding and resources should be channelled;
 - (c) investigate and determine the need of supporting any person, organisation or institution involved in sport.
- (2) The Commission must— 25
- (a) advise the Minister on matters concerning the policy of sports and recreation;
 - (b) publish information on its objects and functions;
 - (c) perform such other functions as may be assigned to it in terms of any other Act.
- (3) The Commission may— 30
- (a) establish, compile and maintain a database, including, but not limited to a database of persons, sport and recreation organisations, institutions, equipment and facilities connected to sport and recreation;
 - (b) liaise with the responsible organisations or institutions in order to promote sport and recreation more effectively throughout the Republic and to ensure co-ordination in the distribution of funds at national and provincial level; 35
 - (c) nationally facilitate and promote liaison between individuals and institutions in respect of sport;
 - (d) enter into agreements with any person, organisation or institution, upon such conditions as may be agreed upon, but the Commission may not, except with the written approval of the Minister— 40
 - (i) enter into a contract involving the payment or receipt by the Commission of an amount exceeding R1 million; or
 - (ii) enter into a lease of land for a period of not more than 10 years;
 - (e) purchase or otherwise acquire, possess, hire, alienate, let, pledge or otherwise encumber movable property and, with the written approval of the Minister, granted with the concurrence of the Minister of Finance, immovable property; 45
 - (f) with the written approval of the Minister, granted with the concurrence of the Minister of Finance, on such terms and against such security as may be agreed upon, raise money by way of loans from any source; and 50
 - (g) generally, do everything which is necessary to achieve its objects.
- (4) The Commission must not directly or indirectly establish, acquire or operate any organisation or institution connected with sports organisations, but may pursue its objects and initiate projects in collaboration with existing organisations or institutions.

Meetings of Commission

- 14.** (1) The Chairperson decides where and when the Commission meets.
- (2) The Commission must hold at least four meetings in a year.
- (3) The Chairperson or, in his or her absence, the Deputy Chairperson presides at meetings of the Commission, but if both are absent, the members present must elect a member to preside at that meeting. 5
- (4) A member who has a personal or financial interest in any matter before the Commission, must disclose that interest and withdraw from the proceedings of the Commission when that matter is considered.
- (5) (a) A decision of the majority of the members of the Commission present at any meeting will be binding on the Commission. 10
- (b) In the event of an equality of votes the person presiding at that meeting will have a casting vote in addition to the deliberative vote.
- (6) The Minister may, upon giving notice, direct the Chairperson to convene a meeting of the Commission to discuss a matter which the Minister considers to be of urgency or of importance. 15
- (7) The Minister is entitled to attend and participate in all the meetings of the Commission.
- (8) The Commission must— 20
- (a) determine rules of procedure for the conduct of its business; and
- (b) keep minutes of its proceedings and decisions.
- (9) The quorum for any meeting of the Commission must be fifty percent of the total members of the Commission plus one.

Committees

- 15.** (1) The Commission may appoint one or more committees to assist it in the performance of any of its functions or the exercise of its powers, and may dissolve a committee at any time. 25
- (2) A committee consists of at least two members of the Commission and such other members as the Commission deems fit.
- (3) The Commission must— 30
- (a) determine the functions of a committee;
- (b) appoint the chairperson and members of a committee, but only a member of the Commission may be appointed as chairperson;
- (c) determine, after consulting the Minister, the remuneration, allowances and other benefits of the members of a committee who are not members or employees of the Commission. 35
- (4) The Commission may—
- (a) dismiss a member of any committee at any time;
- (b) determine a committee's procedure.

Delegation of powers and duties 40

- 16.** (1) The Commission may in writing—
- (a) delegate any of its powers to a member of the Commission, or to any of its employees or committees; or
- (b) direct any member of the Commission, or any of its employees or committees, to perform any of its duties. 45
- (2) A delegation or instruction in terms of subsection (1)—
- (a) is subject to any condition which the Commission may impose; and
- (b) does not absolve the Commission of the responsibility concerning the exercise of its powers or performance of its duties.
- (3) The Commission may confirm, vary or revoke any decision taken by a member of the Commission, committee or employee in consequence of a delegation or instruction. 50

Chief Executive Officer

- 17.** (1) The Commission must appoint a suitably qualified person as its Chief Executive Officer on such terms and conditions as it considers appropriate.
- (2) The Chief Executive Officer is the accounting officer of the Commission. 55

- (3) The Chief Executive Officer is, subject to the directions and in accordance with the policy of the Commission, responsible for—
- (a) the formation and development of an efficient administration;
 - (b) the organisation, control, management and discipline of the staff;
 - (c) the implementation of the decisions of the Commission. 5
- (4) As accounting officer the Chief Executive Officer is responsible for—
- (a) all income and expenditure of the Commission;
 - (b) all assets and the discharging of all liabilities of the Commission; and
 - (c) the proper and diligent implementation of the operational plans of the Commission. 10

Delegation by Chief Executive Officer

18. (1) The Chief Executive Officer may in writing delegate to a person employed in terms of this Act all or any of his or her powers under this Act.
- (2) The delegate will, in the exercise of a power delegated under subsection (1), be subject to any directions given by the Chief Executive Officer. 15

Acting Chief Executive Officer

19. (1) The Commission may, as a result of a vacancy in the office of the Chief Executive Officer, appoint any person as Acting Chief Executive Officer who will not serve for a period exceeding six months.
- (2) The Chief Executive Officer must be appointed not later than six months after the appointment of the Acting Chief Executive Officer. 20

Employees of Commission

20. (1) (a) The Commission may in consultation with the Minister and the Minister responsible for the Public Service Commission, request officers of the Public Service to be seconded to it in terms of any law regulating such secondment. 25
- (b) Persons in the Public Service seconded to the Commission perform their duties subject to the control and discipline of the Chief Executive Officer.
- (2) The Commission may with the approval of the Minister and the Minister of Finance appoint other persons in its service.

Consultants 30

21. (1) The Commission may employ persons having suitable qualifications and experience as consultants to the Commission.
- (2) The terms and conditions of the employment will be determined by the Commission in accordance with the State Tender Board prescripts.

Funding 35

22. (1) The Commission is entitled to money appropriated annually by Parliament to enable it to perform its functions effectively.
- (2) For the purpose of subsection (1) the Chief Executive Officer—
- (a) must submit to the Minister during each financial year, but before a date set by the Minister, estimates of the Commission's income and expenditure for the next financial year; and 40
 - (b) may submit to the Minister at any time during a financial year estimates of the Commission's income and expenditure supplementary to those mentioned in paragraph (a).
- (3) The Chief Executive Officer must disclose full particulars of any income which has accrued, or is expected to accrue, to the Commission from a source other than an appropriation by Parliament. 45

Financial statements

- 23.** (1) The end of the financial year of the Commission is 31 March of each year.
- (2) The Commission will cause proper records to be kept of all moneys received or expended by it, of all its assets and liabilities and of all financial transactions entered into by it and must as soon as possible but not later than six months after the end of each financial year, cause statements of account and a balance sheet to be prepared showing, with all appropriate particulars, the moneys received and the expenditure incurred by it during, and its assets and liabilities as at the end of, that financial year. 5
- (3) The Commission must comply with the Reporting of Public Entities Act, 1997 (Act No. 93 of 1997), and submit financial statements as prescribed in sections 5 and 6 of that Act. 10
- (4) The financial statements referred to in subsection (2) will exclude receipts by the Commission of funds held in trust or expenditure thereof.
- (5) The Chief Executive Officer must as soon as possible but not later than six months after the end of the financial year submit audited financial statements to the Minister for tabling by him or her in Parliament, if necessary. 15

Application and investment of funds

- 24.** (1) The funds of the Commission must be applied only—
- (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Commission in the performance of its functions and the exercise of its powers; 20
- (b) in payment of remuneration and allowances lawfully payable to any office bearer, employee, agent, mandatory or representative of the Commission; and
- (c) towards the promotion, furtherance and attainment of the objects of the Commission and no portion thereof will be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit, to the members of the Commission, but the provisions of this paragraph will not prevent the reimbursement of expenses reasonably incurred by such members in the performance of their duties. 25
- (2) The money of the Commission may, subject to the provisions of this Act, be invested— 30
- (a) with a registered financial institution; and
- (b) in any other manner approved in writing by the Commission.

Accountability

- 25.** The Chief Executive Officer will— 35
- (a) subject to the Exchequer Act, 1975 (Act No. 66 of 1975), be charged with the responsibility of accounting for money received from whatever source or paid out by or on account of the Commission;
- (b) cause the necessary accounting and other related records to be kept; and
- (c) perform the functions assigned to him or her by the Commission from time to time and will, in respect thereof, be accountable to the Commission. 40

Auditing

- 26.** The accounts and financial records of the Commission must be audited by a registered firm of auditors and the Auditor-General.

Reporting

- 27.** The Commission must within four months after the end of each financial year submit a full report to the Minister, on its activities during that financial year, and the Minister will table that report in Parliament. 45

Trust money

28. (1) The Chief Executive Officer must ensure that reasonable precaution is taken in connection with the receipt, custody and expending of, and accounting for monies held, in trust in accordance with the provisions of the Auditor-General Act, 1995 (Act No. 12 of 1995). 5

(2) Monies or other properties held by the Commission in trust must be applied or dealt with only in accordance with the powers and duties of the Commission as trustee.

(3) Monies held by the Commission in trust may be invested only in a manner in which the Commission is authorised to invest.

Annual operational plan 10

29. (1) The Chief Executive Officer must prepare and develop in writing, for each financial year ending after the commencement of this Act, an operational plan setting out particulars of—

- (a) the programmes which the Commission proposes to carry out; and
- (b) the resources the Commission proposes to allocate to each such programme. 15

(2) If the Commission is of the opinion that an operational plan is inconsistent with the objects and provisions of this Act, the Commission may request the Chief Executive Officer to revise the operational plan.

(3) The Commission must submit an operational plan to the Minister.

(4) The Commission must perform its functions and exercise its powers in a manner that is consistent with, and is designed to give effect to, any operational plan that is in force. 20

Regulations

30. (1) The Minister may, in consultation with the Commission, make regulations as to— 25

- (a) any matter which in terms of this Act is required or permitted to be prescribed;
- (b) the implementation of the various programmes for sport and recreation;
- (c) providing for the physical resources for sport and recreation;
- (d) providing for sport support services;
- (e) providing for recreation support services; 30
- (f) the funding of sport and recreation;
- (g) the provision for incentives for exceptional achievers in sport;
- (h) remuneration of members of the Commission, and such other persons as may be engaged by the Commission on a part-time basis; and
- (i) generally, any other matter in respect of which the Minister, after consultation with the Commission, may deem necessary or expedient to make regulations in order to achieve the objects of this Act. 35

Short title and commencement

31. This Act is called the South African Sports Commission Act, 1998, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*. 40

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN SPORTS COMMISSION BILL, 1998

PART 1

BACKGROUND

The South African Sports Commission Bill provides for the establishment of a South African Sports Commission and for the Commission's powers with regard to sports administration and development as well as enhancing recreation. It also provides for the recognition of a macro sport organisation.

In order to achieve the aims as stated in the Bill, provision is made for the Commission under guidance of the Minister of Sport and Recreation, to administer sport and recreation in South Africa (Clause 2). Clauses 3, 4 and 5 provide for the establishment and composition of the Commission which will be clothed with corporate personality.

Provision has also been made for the conditions of service of officers of the Commission. Clauses 6, 7, 8, 9 and 10 deal with the remuneration, allowances and other benefits and the removal, resignation and terms of office of members of the Commission as well as leave of absence and outside employment. The occurrence and filling of vacancies in the Commission have also been addressed (clause 11).

The Bill also makes provision for the objects, powers and duties of the Commission (clauses 12 and 13) as well as for the procedures to be followed at meetings of the Commission (clause 14). In order to assist the Commission in the performance of its functions or the exercise of its powers, provision has also been made for the appointment of committees by the Commission (clause 15).

The powers and duties of the Commission may be delegated in terms of clause 16. To provide for the efficient management of the Commission, a suitable person must be appointed as the Chief Executive Officer (CEO) of the Commission (clause 17) who may delegate his or her powers to another person employed in terms of this Bill (clause 18). Clause 19 makes provision for the appointment of an acting CEO for a period not exceeding six months. Clauses 20 and 21 provide for the appointment of staff and consultants of the Commission, respectively. The Commission may employ its personnel or utilise officers of the Public Service seconded to it.

The Commission is entitled to money appropriated annually by Parliament (clause 22), must cause proper records to be kept of all moneys received or expended by it and must submit its financial statements annually (clause 23). The funds of the Commission may only be applied as directed in the Bill (clause 24) and the CEO of the Commission will be accountable for all moneys received or paid out by it (clause 25). The accounts and financial records of the Commission must be audited by a registered firm of auditors and the Auditor-General (clause 26). Clause 27 makes provision for the Commission to submit a report on its activities to the Minister who must table it in Parliament. Trust money will be held by the Commission in accordance with the Auditor-General Act, 1995 (clause 28) and the CEO must prepare and develop all operational plans for each financial year (clause 29).

The Minister may, in consultation with the Commission, make regulations as determined by clause 30.

The proposed Act will come into operation on a date fixed by the President by proclamation in the *Gazette* (clause 31).

PART 2

IMPLICATIONS FOR PROVINCES

Each provincial department of sport and recreation will be represented on the Commission by one person who will be a member of the Commission, as indicated in the composition of the Commission referred to in clause 4 of the Bill. In terms of Schedule 5 of the Constitution, provincial sport and recreation fall within competence of

the provincial legislatures which implies that the latter may pass legislation for its provincial sport commissions to administer sport and recreation in their respective provinces.

PART 3

IMPLICATIONS FOR LOCAL GOVERNMENT

In terms of the said Schedule 5 local sports facilities fall within the exclusive legislative competence of the provincial legislatures. This implies that the said provincial departments are also competent to include local sports facilities in their legislation.

PART 4

OTHER BODIES CONSULTED

- * The provincial departments of Sport and Recreation
- * The National Sports Council (NSC)
- * The National Olympic Committee of South Africa (NOCSA)
- * The South African National Recreation Council (SANREC)
- * Women and Sport South Africa (WASSA)
- * The Departments of—
 - * Finance; and
 - * Public Service and Administration

PART 5

PARLIAMENTARY PROCEDURE

The Department and the State Law Adviser are of the opinion that this Bill should be dealt with in terms of section 76 of the Constitution.