

REPUBLIC OF SOUTH AFRICA

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**PORTFOLIO COMMITTEE AMENDMENTS  
AGREED**

**TO**

**PUBLIC SERVICE  
COMMISSION BILL**

**[B 30—2023]**

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*(Portfolio Committee on Public Service and Administration)*

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**[B 30A—2023]**

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## PORTFOLIO COMMITTEE AMENDMENTS AGREED TO

### PUBLIC SERVICE COMMISSION BILL [B30—2023]

#### CLAUSE 1

1. On page 4, in line 3, to omit “(Commission)”.
2. On page 4, after line 10, to insert the following definition:
 

“ **“Departmental Bargaining Forum”** means a majority trade union in the Secretariat that is recognised and registered in the bargaining council registered under the Labour Relations Act, 1995, with jurisdiction in the Public Administration or any portion thereof;”.
3. On page 4, in line 9, to omit “commission” and to substitute “Secretariat”.
4. On page 4, in line 10, to omit “16(7)” and to substitute “16(8)”.
5. On page 4, in line 35, to omit “section 1 of”.
6. On page 4, from line 49 to omit the definition of “Departmental Bargaining Forum”.
7. On page 4, from line 54, after “;” to insert “and”.

#### CLAUSE 4

1. On page 5, in line 12, after “Constitution” to insert “and this Act”.
2. On page 5, in line 17, after “Constitution” to insert “and this Act”.
3. On page 5, in line 18, after “the” to insert “relevant provincial”.
4. On page 5, from line 36, in paragraph (a) to omit the words preceding subparagraph (1) and to substitute the following:
 

“In relation to his or her qualifications, he or she has a National Qualifications Framework (NQF) level 8 qualification or equivalent qualification as recognised by the South African Qualifications Authority in at least one of the following fields:”.
5. On page 5, in line 56, after “entity” to insert “: Provided that he or she has not served in such capacity for a period of two years immediately prior to the date of the notice referred to in section 4(3)”.
6. On page 5, in line 53, to omit “to 10”.
7. On page 5, in line 54, to omit “to 10”.
8. On page 5, in line 58 to omit “to 10”.

9. On page 5, from line 56, to omit subparagraph (iv) and to substitute the following subparagraph:
 

“(iv) has specialized knowledge of, of at least eight years cumulative experience in, a field referred to in paragraph (a);”
10. On page 6, in line 1, to omit “to 10”.
11. On page 6, in line 4, after “(v)” to insert “, for a cumulative period of at least eight years”.
12. On page 6, after line 4, to add the following new subsection:
 

“(5) The Speaker of the National Assembly or the Speaker of the relevant provincial legislature must notify the President of the approval as contemplated in section 196(8) of the Constitution, after which the President must effect the appoint of the commissioner within 45 days.”
13. On page 6, in line 5, to renumber the existing subsection (5) as subsection (6).
14. On page 6, from line 5, to omit “make and subscribe to” and to substitute “take”.

#### CLAUSE 5

1. On page 6, to omit lines 9 to 24 and to substitute the following:
 

**“Disqualification from appointment as commissioner**

**5.** Notwithstanding the provisions of section 4, a person is not a fit and proper person, if he or she—

  - (a) is not a South African citizen;
  - (b) is an unrehabilitated insolvent;
  - (c) has been declared to be of unsound mind by a court of law in the Republic;
  - (d) has at any time been removed from a position of trust by reason of improper conduct;
  - (e) has shown a lack of integrity, reliability or honesty;
  - (f) is a member of Parliament, any provincial legislature or municipal council or an office bearer of any political party in the Republic;
  - (g) is a person who was at any time convicted of theft, fraud, forgery and uttering a forged document, perjury, any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty; or
  - (h) has been convicted of any other offence and sentenced to more than 12 months imprisonment without the option of a fine.”

#### CLAUSE 6

1. In paragraph 9 on page 4 in (b) delete “provincially” and substitute “provincial” so it reads “provincial based commissioner”.
2. On page 6, in line 30, after “the” to insert “prior”.

3. On page 6, from line 33, to omit subsection (2) and to substitute the following subsection:
 

“(2) For the purposes of subsection (1)(b), the President must consider whether the remunerative or compensated work could reasonably be expected to interfere with or impede the effective or efficient performance of the Commission’s functions or be in breach of the prescribed ethical conduct of a commissioner.”
4. On page 6, from line 37, to omit subsection (3) and to substitute the following subsection:
 

“(3) The President may, upon receipt of a report from the Commission recommending the renewal of a commissioner’s term of office, which renewal is supported by that commissioner, in the prescribed manner and at least 120 days prior to the expiration of the commissioner’s first term of office, renew the term of that commissioner, within 90 days before the expiry of the term, for one additional term only—

  - (a) in the case of a commissioner who had been approved by the National Assembly, on the recommendation of the National Assembly; and
  - (b) in the case of a commissioner approved by the relevant provincial legislature, on the recommendation of the provincial legislature concerned.”
5. On page 6, from line 47, to omit subsection (4) and to substitute the following subsection:
 

“(4) The President may renew the term of office of a commissioner if the commissioner—

  - (a) remains a fit and proper person as required by section 196(10) of the Constitution and this Act; and
  - (b) has maintained a satisfactory level of performance in relation to his or her duties.”
6. On page 7, in line 2, after “give” to insert “written”.
7. On page 7, in line 2, after “the” to insert “Speaker of the”.
8. On page 7, in line 3, after “the” to insert “Premier of the relevant province and the Speaker of the”.
9. On page 7, in line 7, to omit “In consideration of” and to substitute “In accordance with”.
10. On page 7, from line 10, to omit paragraphs (b) to (d) and to substitute the following paragraphs:
  - “(b) the allegation of misconduct, incapacity or incompetence having being lodged in writing by the complainant with the Speaker of the relevant provincial legislature in the case of a provincially based commissioner or with the Speaker of the National Assembly in the case of a national based commissioner, in accordance with the rules of the National Assembly or the provincial legislature concerned;
  - (c) the veracity of the allegations filed having first been tested in accordance with the rules of the National Assembly or the rules of the relevant provincial legislature concerned: Provided that the commissioner is given an opportunity to respond to the allegations in writing;

- (d) a finding by the committee of the relevant provincial legislature in the case of a provincial based commissioner or the National Assembly in the case of a national based commissioner, that the commissioner has misconducted him or herself or is incapacitated or incompetent;”
11. On page 7, in line 19, to omit “Provincial Legislature” and to substitute “relevant provincial legislature”.
  12. On page 7, in line 21, to omit “Provincial Legislature” and to substitute “relevant provincial legislature”.
  13. On page 7, from line 23, to omit “Provincial Legislature” and to substitute “relevant provincial legislature”.
  14. On page 7, in line 25, to omit “Office” and to substitute “office”.
  15. On page 7, in line 27, to omit “Provincial Legislature” and to substitute “relevant provincial legislature”.
  16. On page 7, in line 30, to omit “investigated” and to substitute “considered”.
  17. On page 7, in line 31, to omit “(8)” and to substitute “(9)”.
  18. On page 7, in line 32, to omit “condition” and to substitute “conditions”.
  19. On page 7, in line 32, to omit the second “the”.
  20. On page 7 from line 34, to omit subsection (11) and to substitute:
 

“(11) The President must remove a commissioner from office upon receipt from the Speaker of the relevant provincial legislature or the Speaker of the National Assembly, of a notice of the resolution adopted by the relevant provincial legislature or the National Assembly, calling for that commissioner’s removal.”
  21. On page 7 from line 37, to omit subsection (12) and to substitute the following subsection:
 

“(12) If a vacancy occurs in the Commission, the President must appoint another person as a commissioner in terms of section 4.”

#### CLAUSE 8

1. On page 7, in line 54 to omit “under” and to substitute “in terms of”.
2. On page 8, from line 7, to omit subsection (5) and to substitute the following subsection:
 

“(5) The President may determine different remuneration scales and conditions of appointment in respect of the Chairperson, the Deputy Chairperson and other commissioners of the Commission.”

#### CLAUSE 9

1. On page 8, in line 13, after “**inspections**” to insert “**and inquiries**”.
2. On page 8, in line 14, to omit **(9.)** and to substitute “**9. (1)**”.

3. On page 8, in line 15, to omit “has access to such official documents” and to substitute “may access such records”.
4. On page 8, in line 17, to omit “officers” and to substitute “employees”.
5. On page 8, from line 19, to omit “or any other law relating to local government or any public entity” and to insert “, this Act, or any other law”.
6. On page 8 after line 20 to add the following new subsection:

“(2) The Commission may conduct an inquiry into any matter in respect of which it is authorised by the Constitution, this Act or any other law to exercise any of its powers or to perform any of its functions.”

#### CLAUSE 10

1. On page 8, from line 23, to omit “official documents” and to substitute “records”.
2. On page 8, in line 25, to omit “officers” and to substitute “employees”.
3. On page 8, from line 27, to omit “or any other law relating to local government or any public entity” and to insert “, this Act, or any other law”.
4. On page 8, from line 37, to omit “written communication conveying”.
5. On page 8, in line 38, after “receipt” to insert “, or such other date as may be determined in the direction”.
6. On page 8, in line 41, to omit “that” and to substitute “their”.
7. On page 8, in line 50, to omit “and” and to substitute “or”.

#### CLAUSE 11

1. On page 9, to omit lines 1 to 48 and to substitute the following:

##### **“Summoning of witnesses**

**11.** (1) The Commission may call upon or, summons any person to appear before it to give evidence on oath or affirmation, or to produce any record or object as may be necessary for the exercise of its powers or the performance of its functions under the Constitution, the Public Service Act, this Act or any other law.

(2) A summons must be—

- (a) in the prescribed form;
- (b) signed by the Chairperson, a commissioner designated by the Chairperson or any other person designated by the Chairperson; and
- (c) served in the prescribed manner.

(3) Any person who—

- (a) has been duly summoned under this section and who fails, without sufficient cause—
  - (i) to attend at the time and place specified in the summons; or
  - (ii) to remain in attendance until excused by the Commission from further attendance;

- (b) has been called upon in terms of subsection (1) and who refuses to be sworn in or to affirm as a witness; or
- (c) fails, without sufficient cause—

- (i) to answer fully and satisfactorily any question lawfully put to them; or
- (ii) to produce any record or object in their possession or custody or under their control which they were required to produce in terms of subsection (1),

is guilty of an offence and liable on conviction to a fine not exceeding R50 000.00 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(4) Disciplinary action must be taken against an employee guilty of conduct contemplated in subsection (3) once such conduct is formally reported by the Commission to the relevant institution.

(5) The law relating to privilege, as applicable to a witness summonsed to give evidence or to produce any record or object before a court of law, applies in connection with the examination of any person by, or the production of any record or object before, the Commission in terms of this section.”

#### CLAUSE 12

1. On page 9, from line 57, to omit subsection (3) and to substitute with a new subsection:

“(3) The Commission must, subject to section 34(2) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), refuse access to a report referred to in subsection (1) or (2) if providing access would involve unreasonable disclosure of personal information of a third party, unless —

- (a) the interested person has obtained permission of the third party, or
- (b) the part of the report which the interested person wishes to access can reasonably be severed from any part that contains the personal information of the third party.”

#### CLAUSE 13

1. On page 10, from line 7, to omit subsection (1) and to substitute the following subsection:

“(1) If the Commission has taken any decision consequent upon any of its powers or functions in terms of section 196(4) of the Constitution, the relevant executive authority or other person to whom such decision was directed must report, not later than 60 days as from the date on which such decision was so directed or such other period as the Commission may determine or allow, as the circumstances may require, to the Commission on the manner in which any such decision was implemented or otherwise dealt with.”

2. On page 10, in line 22, after “case” to insert “of”.
3. On page 10, in line 25, to omit “that” and to substitute “the”.
4. On page 10, in line 26, after “definition” to insert “of “executive authority””.
5. On page 10, from line 35, to omit subsection(3) and to substitute the following:

“(3) A person to whom a direction is issued must implement such direction within the period determined in terms of the relevant law or such period as may be determined by the Commission in the direction.”

6. On page 10, in line 39, to omit “of the Commission”.

#### CLAUSE 14

1. On page 10, in line 43 to omit “as well as a member of staff contemplated in section 16” and to substitute “and any person employed in the Secretariat in terms of section 16(3)”.
2. On page 10, in line 44, to omit “his or her” and to substitute “their”.
3. On page 10, from line 49, to omit subsection (2) and to substitute the following subsection:

“(2) A commissioner or any person employed in the Secretariat in terms of section 16(3) must recuse themselves with regard to any matter in which they have any pecuniary interest or any other interest, which might preclude them from performing their functions in a fair, unbiased or proper manner.”

#### CLAUSE 16

1. On page 11, from line 20, after “and” to omit “the provision for”.
2. On page 11, from line 25, to omit paragraph (a) and to substitute:  
“(a) a suitably qualified and experienced person appointed by the Commission as Chief Executive Officer for a term not exceeding five years which term may be renewed for one additional term not exceeding five years;”.
3. On page 11, in line 27, after “appointed” to insert “by the Commission”.
4. On page 11, in line 27, after “Officer” to insert “or as Chief Financial Officer”.
5. On page 11, after line 32, to insert a new clause as follows and to renumber the existing clauses:

“(4) A person who has served as Chief Executive Officer in terms of subsection (3)(a) is not precluded from applying for the position of Chief Executive Officer after expiry of the renewal period.”

6. On page 11, in line 40, to omit subsection (5) and to substitute:  
“(6) The Commission must consult with the Cabinet member responsible for finance on issues relating to the remuneration of persons appointed in terms of subsection (3) and prior to submitting its budget and adjustments budget to the National Treasury.”
7. On page 11, in line 50, to omit “(7)” and to substitute “(8)”.
8. On page 12, in line 2, to omit “his or her” and to substitute “their”.
9. On page 12, in line 10, after “the” to insert “procurement of the”.



# CLAUSE 17

1. On page 12, to omit lines 15 to 25, and to substitute the following:

“**17.** (1) The Commission may delegate to one or more commissioners, or to any committee of the Commission any power conferred upon or function entrusted to the Commission by or under this Act, the Public Service Act, or any other law, excluding the power to delegate referred to in this subsection or a power referred to in section 20, on such conditions as the Commission may determine.

(2) The Chairperson may delegate any power referred to in section 16(2) to the Chief Executive Officer on such conditions as the Chairperson may determine.

(3) Any delegation under subsection (1) or (2) may at any time be amended or revoked by the Commission or the Chairperson, as the case may be, subject to any rights that may have become vested as a consequence of a decision made in terms of such delegation.

(4) The Commission or Chairperson is not divested of any power or function delegated under subsection (1) or (2) and the Commission or Chairperson, as the case may be, may amend or withdraw any decision made in the exercise of such delegated power or the performance of such delegated function.”

# CLAUSE 18

1. On page 12, in line 35, after the second “the” to insert “independence and”.
2. On page 12, in line 36, after “the” to omit “Public Service”.
3. On page 12, in line 39, to omit “by a Rule”.
4. On page 12, in line 47, to omit “him or her” and substitute “the Chief Executive Officer”.

# CLAUSE 19

1. On page 13, in line 9, to omit “the Commission or”.

# CLAUSE 20

1. On page 13, to omit lines 16 to 33 and to substitute the following:

“**20.** (1) The Commission may by notice in the Gazette make rules which are not inconsistent with this Act or the Constitution as to—

- (a) the manner in which and the circumstances under which—
  - (i) grievances by heads of departments, or employees, in the public service must be lodged with, or referred to, executive authorities or the Commission; and
  - (ii) the manner in which any complaint by any person must be lodged with the Commission;
- (b) the procedure, including a process of mediation, to be followed by the Commission in investigating any grievances or complaints;
- (c) the form and manner in which a summons must be served on persons in terms of section 11;
- (d) the code of conduct for commissioners and employees;

- (e) any matter relating to the terms and conditions of service of employees appointed in terms of section 16(3) (a) to (c), including matters relating to remuneration, grievances and complaints and duties;
  - (f) the manner in which it will carry out services, including any management fees payable in respect of such services rendered by the Commission in terms of section 18(1)(c);
  - (g) the conduct of its business including the appointment of caretaker commissioners, the manner in which the meetings of the Commission will be convened, the procedure to be followed at these meetings, the quorum at those meetings, and the manner in which minutes of those meetings will be kept; and
  - (h) any matter required or permitted to be prescribed by rule under this Act or which is necessary or expedient for the effective carrying out or furtherance of the provisions and objects of this Act.
- (2) The Commission must, within a period of 12 months of the date of commencement of this Act, ensure that the rules referred in subsection (1) (a) to (d) are prescribed.”

#### CLAUSE 22

1. On page 13, in line 45, after “virtue’ to insert “of”
2. On page 14, from line 48 to omit paragraph (g) and to substitute the following paragraph:
 

“(g) The implementation of the Commission mandate in relation to municipalities and public entities must be executed on a progressive scale, which period may not exceed three years from the period contemplated in paragraph (f), subject to availability of resources.”.

#### SCHEDULE 2 LAWS REPEALED OR AMENDED

1. On page 16, in line 9 of the table, to omit “Public” and to substitute “Public Finance”.

#### PREAMBLE

1. On page 2, to omit lines 1 to 3 and to substitute:
 

“**WHEREAS** section 196 of the Constitution of the Republic of South Africa, 1996 provides for a single, independent and impartial Public Service Commission;”
  2. On page 2, in line 11, after “Constitution” to insert “, throughout the public service”. 3.
- On page 2, in line 17, to omit “aforesaid”.
- On page 2, in line 17, after “principles” to insert “set out in section 195 of the Constitution”.
- On page 2, in line 20, after “195” to insert “of the Constitution”.
- On page 2, to omit line 2 and to substitute:
- “either of its own accord or on receipt of a complaint —”.

7. On page 2, in line 25, after “service” to insert “concerning official acts or omissions”.
8. On page 2, in line 30, after “service” to insert “including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service”.

#### ARRANGEMENT OF SECTIONS

2. On page 3, in line 18 after “Inspections” to insert “and inquiries”.
3. On page 3, in line 20 to omit “Inquiries by Commission” and to substitute “Summoning of witnesses”.