

# **REPORT OF THE PORTFOLIO COMMITTEE ON PREMIER'S OFFICE; FINANCE; ECONOMIC DEVELOPMENT AND TOURISM ON THE FINANCIAL AND FISCAL COMMISSION AMENDMENT BILL [B1B-2015]**

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## **1. INTRODUCTION**

The Speaker referred the **Financial and Fiscal Commission Amendment Bill [B1B-2015]** (the Bill) to the **Portfolio Committee on Premier's Office; Finance; Economic Development and Tourism** (the Committee) for consideration and report back to the House in accordance with Rule 201 of the Rules and Orders of the Mpumalanga Provincial Legislature (Legislature).

In terms of Section 118(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution), the Legislature has a mandate to facilitate public involvement in the Legislative and other processes of the Legislature and its Committees. Therefore, the Committee was required to conduct a public hearing to solicit inputs or views of the public on the above-mentioned Section 76 Bill and to report back to the House.

## **2. OBJECTIVES OF THE BILL**

The objectives of the Bill are:

- To amend the Financial and Fiscal Commission Act, 1997 ("the principal Act"), so as to insert, substitute and delete certain definitions;
- To effect changes to the provisions dealing with the functions of the Commission to ensure that the terminology used and consideration of the Commission's recommendations are aligned with the Constitution of the Republic of South Africa, 1996 ("the Constitution"), and other legislation;
- To strengthen the requirements for organs of state concerning the Commission's recommendations on the assignment of a power or function by an organ of state in one sphere of government to an organ of state in another sphere of government;
- To adjust the period for filling of vacancies in the Commission and to repeal a duplicate provision on the same matter;
- To provide for the appointment basis of members of the Commission;

- To provide that a person may not hold office as a member of the Commission for more than 10 consecutive years;
- To give effect to section 219(5) of the Constitution by introducing measures for the determination of the remuneration, allowance and other service benefits of the members of the Commission similar to the other constitutional institutions as provided for in the Determination of Remuneration of Office-bearers of Independent Constitutional Institutions Laws Amendment Act, 2014;
- To provide for the appointment of a person to the newly created administrative position of the chief executive officer, shift the chief executive officer's and accounting officer's responsibilities from the Chairperson to the person appointed as the chief executive officer of the Commission, who must also function as the Secretary to the Commission; to enable delegations and instructions by the chief executive officer;
- To insert new provisions regulating the conduct of members of the Commission and to delete a specific provision on conduct since it will be replaced by those new provisions;
- To align terminology used in the principal Act with that of the Public Service Act, 1994, in respect of employees seconded from the public service to the Commission;
- To align the date for the submission of the Commission's audited financial statements and annual report to Parliament with the provisions in the Public Finance Management Act, 1999; to substitute the reference to the Central Statistical Service for the Statistics South Africa;
- To enable the Commission to obtain information from any person; to replace the Minister's power to make regulations with a power for the Commission to make rules regarding its functioning including the distinct roles of, and the relationship between, the Chairperson of the Commission and the chief executive officer;
- To repeal transitional arrangements; and
- To provide for matters connected therewith.

### **3. METHOD OF WORK**

The Committee interacted with the Bill as follows:

- a. The Speaker, Honourable BT Shongwe, referred the Bill on 11 May 2015 to the Committee for consideration and report back to the House.
- b. The Committee met on 20 May 2015 for a briefing session on the Bill. Hon F Essack, Permanent Delegate from the National Council of Provinces, briefed the Committee on

the Bill. Ms T Chitsiku, Director: Intergovernmental and Fiscal Legislation (National Treasury), made the main presentation on the Bill.

- c. The Committee resolved, in terms of Section 118 (1) of the Constitution, to solicit public inputs on the Bill. A public hearing was conducted on 27 May 2015 in the precincts of the Mpumalanga Provincial Legislature at the Govan Mbeki Foyer.
- d. The Committee met via a tele-conference 27 May 2015 to consider the Negotiating Mandate on the Bill that was scheduled to be considered at the NCOP on 03 June 2015.
- e. The Committee met on 09 June 2015 to consider the draft Committee report on the Bill and to consider the Final Mandate that was scheduled to be considered at the NCOP on 10 June 2015.

#### **4. BRIEFING ON THE BILL**

##### **4.1. Presentation by the NCOP Permanent Delegate, Hon F Essack**

The NCOP Permanent Delegate made, in summary, the following remarks:

- Over the past few years the Financial and Fiscal Commission (the Commission) functioned under the leadership of the Deputy Chairperson, who assumed both the capacity of being the acting Chairperson and the Chief Executive Officer. This was in conflict with the principles of good governance.
- There is also a vacant position of the Chairperson; which became vacant in 2010 and was never filled.
- The amendments seek to enhance institutional and other governance arrangements and the functioning of the Commission. The Commission has been functioning with an individual being the acting Chairperson and the Chief Executive Officer which has been happening for a couple of years. The amendments are aimed at addressing the aforementioned abnormalities in the Commission.
- Some of the proposed amendments are that the Chairperson of the Commission must be employed on a full-time basis. This proposal is based on the fact that the practise from most of the institutions supporting democracy / constitutional bodies has appointed their Chairpersons on a full-time basis. The amendments further propose the creation of the positions of the Chief Executive Officer and the Secretary to the Commission. The

position of the Chief Executive Officer is proposed to be a renewable contract not exceeding a five year term. Furthermore, that any member of the Commission may be appointed as Chief Executive Officer; and, if so, is regarded as having resigned as member from the date of assumption of duty as Chief Executive Officer.

- Currently, remuneration packages for the Commission members are not aligned to the Constitution. To remedy the situation, the proposed amendments give effect to section 219(5) of the Constitution by introducing procedures for determining remuneration of Commission members.
- The Determination of Remuneration of Office-Bearers of Independent Constitutional Institutions Laws Amendment Act 22 of 2014 (the 2014 Act) provides for uniform procedures for determining salaries, allowances and benefits of Chapter 9 Institutions and ICASA. The proposed amendment, when it comes to the remuneration of the Commissioners, entails that the amendments be determined in the same manner as other institutions subject to the 2014 Act as mentioned.

#### **4.2. Presentation by National Treasury**

Ms T Chitsiku, Director: Intergovernmental and Fiscal Legislation from National Treasury provided a comprehensive overview of the Bill and the reasons for the amendments.

#### **In the presentation made to the Committee the following were highlighted**

The reasons for the proposed amendments are inter alia:

- To enhance the institutional and other governance arrangements and functioning of the Commission.
- To fully align the existing Financial and Fiscal Act No 99 of 1997 with the Constitution and the Public Management Finance Act of 1999 (PFMA).
- To give effect to section 219(5) of the Constitution by introducing procedures for determining remuneration of Commission members.

**The following were highlighted relative to the main amendments as proposed in the Bill:**

### **a. New Chief Executive Officer position**

Currently the Chairperson assumes the duties of Chief Executive Officer and Accounting Officer. The Bill proposes the creation of a new administrative position of Chief Executive Officer. The Chief Executive Officer will have the functions of Accounting Officer and it will also be the Secretary to the Commission.

This amendment will remove the anomaly of the Chairperson being the Chief Executive Officer and Accounting Officer. The Chief Executive Officer will have a renewable contract of not exceeding five years.

### **b. Role of the Commission**

The Bill seeks to align the Commission's functions to the Constitution and other legislation; namely to provide that the Commission only makes recommendations, and does not, as currently provided, act as a consultative body or give advice (section 3(1), (2A) and 2D of the principal Act).

The Bill also seeks to strengthen the Commission's role in making recommendations on assignments of functions from one sphere of government to another (clause 2 of the Bill).

### **c. Membership Arrangements**

On membership of the Commission the Bill provides that:

- Vacancies must be filled within six months (currently in the Act it must be filled within 90 days or as soon as practical (section 5(3) and 12 of the principal Act).
- The Chairperson is appointed on a full-time basis and other members on a part-time basis. The current Act is silent on this matter.
- Members may not serve more than 10 consecutive years; whilst there is no limitation in the current Act.
- For the protection of current full-time members until their term expire.

#### **d. Remuneration of Members**

The Remuneration of Office-Bearers of Independent Constitutional Institutions Laws Amendment Act 22 of 2014 (2014 Act) provides for uniform procedures for determining salaries, allowances and benefits of Chapter 9 Institutions and ICASA. In terms of the Bill the Commission will be included in the 2014 Act.

The current status is that the President of South Africa determines the Commission's remuneration, taking into account various matters such as the remuneration of other constitutional institutions and the relevant recommendations of the Remuneration Commission (section 9 of the principal Act).

The proposal in the Bill is that remuneration be determined in the same manner as for Institutions subject to the 2014 Act.

#### **e. Members' Conduct**

The principal Act only provides for disclosure of interests and withdrawal from proceedings (section 14(3) of the principal Act). Whilst the Bill proposes more extensive provisions on the conduct of members, namely to:

- Perform functions with good faith and without fear, favour or prejudice.
- Disclose of personal / private business interests
- May not use positions for private gain or to benefit any third party improperly
- May not otherwise compromise credibility / impartiality / independence / integrity of the Commission
- Comply with other rules of conduct as determined by the Minister of Finance (clause 9 and 11 of the Bill)

#### **f. Regulation / Rule-making powers**

The current status is that the Minister of Finance makes any regulations on procedures to facilitate the performance of the Commissions functions (section 30 of the principal Act). Furthermore, the Commission currently determines its rules of procedure (section 16(a) of the principal Act).

In order to harmonize with the Commission's constitutional status it is proposed to replace the Minister's regulation-making power with rule-making power for the Commission on requests by organs of state for Commission's recommendations, the summoning of witnesses and other administrative / procedural matters necessary for its proper functioning (clause 10(c) and 16 of the Bill). But, that the Commission must consult the Minister of Finance before making these rules.

It is proposed in the Bill to expand the current rule-making power of the Commission without ministerial consultation, to:

- Make rules regarding the effective corporate governance of the Commission.
- The distinct roles of, and relationship between, the Chairperson and the Chief Executive Officer.
- Conduct of the employees of the Commission.

**g. Alignment to the PFMA and obtaining information (clause 19b) and 16 of the Bill)**

The principal Act will be aligned to the PFMA in terms of annual reporting to Parliament. Furthermore, it will enable the Commission to obtain information from any organ of State of person required for performance of its functions (clause 17 of the Bill).

## **5. PUBLIC CONSULTATION PROCESS**

### **5.1. Public Mobilisation**

The Public Participation and Petitions Section (PPPS) of the Legislature facilitated public attendance from all three districts in the Province; namely, Ehlanzeni District, Nkangala District and Gert Sibande District. The following communities were targeted:

- a. Ehlanzeni District: Thaba Chweu, Mbombela and Nkomazi Local Municipalities
- b. Nkangala District: Emakhazeni and Emalahleni Local Municipalities
- c. Gert Sibande District: Chief Albert Luthuli and Pixley Ka Isaka Seme Local Municipalities

An open invitation to the public hearing and a call for public comments on the Bill was published in national and provincial printed media. Interested and affected stakeholders were invited to submit written comments on the Bill before end of business 28 May 2015.

## **5.2 Public Hearing**

The public hearing on the Bill took place on 27 May 2015 at 13:00 at the precincts of the Mpumalanga Provincial Legislature in the Govan Mbeki Foyer.

In addition to stakeholders invited via national and provincial printed media to the public hearing, namely the Daily Sun (25 May 2015) and the Lowvelder (26 May 2015), invitations to the public hearing were also sent to targeted stakeholders that included provincial organised labour, the Auditor-General in Mpumalanga, the Commission for Gender Equality in Mpumalanga, the Public Protector in Mpumalanga and the SA Human Rights Commission in Mpumalanga and the Public Service Commission (the PSC).

While the Bill was widely accepted and supported by the public; the following matters were recorded:

- (i) The public present raised a concern on the limited time-frame available to consider the Bill.
- (ii) The Chairperson of the Financial and Fiscal Commission should not be a political appointee; but a neutral person.
- (iii) The public wanted clarity on how the Financial and Fiscal Commission benefit the people and the communities.

The public unanimously supported the Bill and believed that it must be adopted, taking into consideration the matters raised above.

## **5.3. Written comments on the Bill**

No written comments were received.

## 6. CONSIDERATION OF THE FINAL MANDATE

The Committee met on 09 June 2015 to consider feedback from the NCOP regarding the outcome of the Negotiating Mandate as submitted to the Select Committee on Finance at the NCOP. Since there was no feedback on the recommendation by National Treasury at that stage; and since the Bill was not amended, the Committee resolved to confer the delegation representing the Province of Mpumalanga in the NCOP with a mandate to vote in favour of the Bill.

## 7. OBSERVATIONS BY THE COMMITTEE

The Committee facilitated the involvement of the public in considering the Bill through a public hearing, as well as publishing a call for written comments on the Bill in national and provincial newspapers. After considering all the inputs, the Committee resolved to support the Bill.

## 8. RECOMMENDATIONS

The Committee resolves that the following be effected in the Bill:

**The delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) is conferred with authority and mandated to negotiate in favour of the Financial and Fiscal Commission Amendment Bill, 2015 [B1B-2015], taking into account the inputs, observations and amendments proposed below:**

8.1. On page 4, clause 6 to be amended to read as follows:

### **Term of office**

**[8(4) A person may not hold office as a member of the Commission for a period of more than 10 consecutive years.]**

8(4) Members of the Commission are appointed for a term of five years which is renewable for one additional term only, and must be a man or a woman who is –

- (a) a South African citizen; and
- (b) a fit and proper person to hold the office as a member of the commission.

**The Committee recommends that the House adopt the report of the Portfolio Committee on the Financial and Fiscal Commission Amendment Bill, 2015 [B1B-2015],**

## **9. CONCLUSION**

The Chairperson extends the Committee's appreciation to all invited stakeholders who took the time to meet with the Committee to interact on matters pertaining to the Bill. A word of appreciation is extended to the Committee Members who actively participated in the public hearing to ensure that the objective of the hearing was achieved.

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**HON PS NGOMANA (MPL)**  
**CHAIRPERSON**

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**DATE**

**PORTFOLIO COMMITTEE:**  
**PREMIER'S OFFICE; FINANCE; ECONOMIC DEVELOPMENT AND TOURISM**