

REPUBLIC OF SOUTH AFRICA

**PUBLIC SERVICE COMMISSION
AMENDMENT BILL**

*(As amended by the Select Committee on Cooperative Governance and Traditional Affairs)
(The English text is the official text of the Bill)*

(MINISTER OF PUBLIC SERVICE AND ADMINISTRATION)

[B 21D—2015]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Public Service Commission Act, 1997, so as to clarify the procedure with regard to the renewal of term of office of a commissioner; to provide for a commissioner to act as the chairperson when both the chairperson and deputy chairperson are absent or for any reason unable to act as chairperson, and to provide for matters connected therewith.

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

Amendment of section 4 of Act 46 of 1997

1. Section 4 of the Public Service Commission Act, 1997 (Act No. 46 of 1997) (hereinafter referred to as the principal Act), is hereby amended by the addition of the following subsections: 5

- “(5) The President may, as contemplated in section 196(10) of the Constitution and within 90 days before the expiry of the first term of office of a commissioner, renew the term of that commissioner 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 who was nominated by the Premier of a province, on the recommendation of the provincial legislature concerned.
- (6) Subsection (4) does not apply to the renewal of term of office of a commissioner in accordance with subsection (5). 15
- (7) The renewal of term of a commissioner must be based on the commissioner—
- (a) remaining a fit and proper person as required by section 196(10) of the Constitution; and
 - (b) having maintained a satisfactory level of performance in relation to his or her duties.”. 20

Amendment of section 5 of Act 46 of 1997

2. Section 5 of the principal Act is hereby amended by the addition of the following subsection: 25

“(3) If both the chairperson and the deputy chairperson are absent, or for any reason unable to act as chairperson, the President shall designate one commissioner to act as the chairperson of the Commission for a period not exceeding 30 days.”.

Short title

3. This Act is called the Public Service Commission Amendment Act, 2015.

**MEMORANDUM ON THE OBJECTS OF THE PUBLIC SERVICE
COMMISSION AMENDMENT BILL, 2015**

1. INTRODUCTION

- 1.1 The Public Service Commission (“PSC”) is an independent body established in terms of Chapter 10 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”). The Constitution links the PSC’s independence firmly with its impartiality and provides that no organ of state may interfere with the functioning of the PSC.
- 1.2 The PSC derives its mandate from sections 195 and 196 of the Constitution, which vest it with the custodian oversight responsibilities in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service.
- 1.3 Section 196(2) of the Constitution provides that the PSC must be regulated by national legislation.
- 1.4 Section 196(9) of the Constitution provides that an Act of Parliament must regulate the procedure for the appointment of commissioners.
- 1.5 Section 196(10) of the Constitution provides that a commissioner is appointed for a term of five years, which is renewable for one additional term only, and must be a woman or a man who is—
 - (a) a South African citizen; and
 - (b) a fit and proper person with knowledge of, or experience in, administration, management or the provision of public services.
- 1.6 The Public Service Commission Act, 1997 (Act No. 46 of 1997) (“the Act”), regulates the PSC and the procedure for the appointment of its commissioners. However, it has become necessary to address a deficiency identified in the Act relating to lack of clarity with regard to the procedure for the renewal of term of office of commissioners of the PSC.”.

2. OBJECTS OF THE BILL

- 2.1 The Bill seeks to amend the Act in order to ensure efficiency and certainty with regard to the process of renewal of term of office of a commissioner and designation of an acting chairperson for the PSC. The provisions of the Bill seek to provide for continuity in the PSC with respect to retention of commissioners with experience and with regard to the execution of the PSC’s mandate.
- 2.2 In this regard, the Bill clarifies the process to be followed by the President whenever the President renews the term of office of a commissioner as contemplated in section 196(10) of the Constitution.
- 2.3 It further makes provision for the designation of a commissioner to act as chairperson of the PSC whenever both the chairperson and the deputy chairperson are absent or for any reason unable to act as chairperson.

3. CONTENTS OF THE BILL

3.1 Clause 1

Clause 1 of the Bill seeks to amend section 4 of the Act to provide for the President to renew the term of office of a commissioner, as contemplated in section 196(10) of the Constitution, on the recommendation of the National Assembly or the relevant provincial legislature when the period for which the commissioner was appointed is due to expire.

The clause further seeks amend section 4 of the Act to provide that the renewal must be based on criteria approved by the National Assembly or the provincial legislature, as the case may be.

3.2 Clause 2

Clause 2 of the Bill seeks to amend section 5 of the Act by empowering the President to designate an acting chairperson whenever both the chairperson and the deputy chairperson are absent or for any reason unable to act as chairperson. ”.

3.3 Clause 3

Clause 3 of the Bill provides for the short title of the Bill.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

It is not anticipated that there will be additional organisational and personnel implications for the PSC.

5. FINANCIAL IMPLICATIONS FOR THE STATE

None.

6. DEPARTMENTS, BODIES, OR PERSONS CONSULTED

The Bill was published for public comments. Comments were received from one province and were considered to be in line with the State Law Advisers’ advice and have been accommodated in the Bill.

7. CONSTITUTIONAL IMPLICATIONS

None.

8. PARLIAMENTARY PROCEDURE

8.1 Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a) to (f) of the Constitution and second, whether the provisions of the Bill in substantial measure fall within a concurrent provincial legislative competence.

8.2 Section 76(3)(e) of the Constitution provides that any legislation contemplated in section 196 of the Constitution must be passed in accordance with the procedure in section 76.

8.3 The Department of Public Service and Administration and the State Law Advisers are therefore of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution as provided for in section 76(3) of the Constitution, being legislation envisaged in section 196 of the Constitution.

8.4 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.