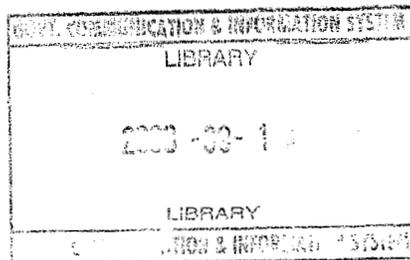


REPUBLIC OF SOUTH AFRICA

FINANCIAL AND FISCAL COMMISSION AMENDMENT BILL

*(As amended by the Select Committee on Finance (National Council of Provinces))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)



[B 21D—2003]

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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.
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BILL

To amend the Financial and Fiscal Commission Act, 1997, so as to extend the functions of the Financial and Fiscal Commission; to bring the number, and appointment procedure, of members of the Commission into line with section 221 of the Constitution; and to alter certain procedures in respect of financial matters in order to bring the said Act into line with the Public Finance Management Act, 1999; and to provide for matters connected therewith.

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

Amendment of section 3 of Act 99 of 1997

1. Section 3 of the Financial and Fiscal Commission Act, 1997 (hereinafter referred to as the principal Act), is hereby amended by—

(a) the insertion after subsection (2) of the following subsections:

“(2A) (a) An organ of state in one sphere of government which seeks to assign a power or function to an organ of state in another sphere of government in terms of a law must first, before assigning the power or function—

(i) notify the Commission of the fiscal and financial implications of such assignment on—

(aa) the future division of revenue raised nationally between the spheres of government as required by section 214 of the Constitution;

(bb) in the case of an assignment to a provincial or local organ of state, the fiscal power, fiscal capacity and efficiency of the relevant province or municipality; and

(cc) any transfer of employees, assets and liabilities, if any; and

(ii) request the recommendation or advice of the Commission regarding such assignment.

(b) The Commission must, not later than 180 days from the date of its receipt of the notification and request contemplated in paragraph (a) or such other period agreed with the relevant organ of state, make such recommendation or give such advice on the intended assignment as may be appropriate.

(c) An assignment contemplated in paragraph (a) has no legal force unless the organ of state making such assignment has given consider-

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ation to the Commission's recommendation or advice contemplated in paragraph (b).

(d) The organ of state assigning any power or function to another organ of state must indicate to the Commission, the organ of state to which a power or function is being assigned, the National Treasury and any other functionary responsible for authorising such assignment, the extent to which it has considered the Commission's recommendation or advice.

(e) Despite paragraph (c), if the Commission does not make a recommendation or give advice within the period contemplated in paragraph (b), the relevant organ of state may, after consultation with the National Treasury, proceed to assign a power or function to another organ of state if such assignment takes into account the measures referred to in subsection (2A)(a)(i).

(2B) An organ of state must notify the Commission or request the Commission to perform a function in the form prescribed by the Commission.

(2C) If the Commission fails to comply with subsection (2A)(b), the Commission must submit written reasons for such failure to Parliament, and if appropriate, also to the relevant provincial legislature.

(2D) Before requesting the recommendation or advice of the Commission, the organ of state seeking to assign the power or function must, in the case—

(a) of a national organ of state, obtain the written approval of the National Treasury; or

(b) of a provincial organ of state, obtain the written approval of the provincial treasury.”; and

(b) the substitution for subsection (5) of the following subsection:

“(5) All organs of state [, **when appropriate,**] must assist the Commission to perform its functions effectively.”.

Substitution of section 5 of Act 99 of 1997

2. The following section is hereby substituted for section 5 of the principal Act:

“Composition

5. (1) In terms of section 221(1) of the Constitution, the Commission consists of the following women and men appointed by the President:

(a) A chairperson and a deputy chairperson;

(b) **[nine persons, each of whom is nominated by the Executive Council of a province, with each province nominating only one person after nominations have been invited in the provincial gazette and in at least two newspapers circulating in the province]** three persons selected, after consulting the Premiers, from a list compiled in accordance with the process set out in subsection (2);

(c) two persons [nominated by] selected, after consulting organised local government, [in accordance with] from a list compiled in accordance with the process set out in section 5 of the Organised Local Government Act, 1997 (Act No. 52 of 1997); and

(d) **[nine]** two other persons.

(2) (a) Whenever there is a vacancy on the Commission in respect of the members contemplated in subsection (1)(b) the Minister, within 14 days of receiving the Commission's written notification of the vacancy, must notify each Premier accordingly and each Premier may nominate one person for appointment to the Commission.

(b) The Minister must compile a list of the nominees and must circulate the list to each Premier.

(c) The Premiers must endeavour to reach consensus on a short-list of nominees, comprising at least one name more than the number of vacancies that must be filled.

(d) If the Premiers reach consensus on a short-list, that short-list is the list contemplated in subsection (1)(b).

(e) If the Premiers cannot reach consensus, the list of nominees circulated in terms of paragraph (b) must be regarded as being the list contemplated in subsection (1)(b).

(3) An appointment to any vacancy on the Commission must be made not later than 90 days from the date when such vacancy occurs.”

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Amendment of section 11 of Act 99 of 1997

3. Section 11 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The President must consult—

- (a) the [Premier of a province] Premiers before removing from office a member [nominated by that province in terms of] contemplated in section [5(b)] 5(1)(b); or
- (b) organised local government before removing from office a member [nominated in terms of] contemplated in section [5(c)] 5(1)(c).”

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Amendment of section 24 of Act 99 of 1997

4. Section 24 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) within [three] two months after the end of each financial year, prepare annual financial statements [in accordance with generally accepted accounting practice] as required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).”

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Amendment of section 26 of Act 99 of 1997

5. Section 26 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) audited financial statements reflecting the Commission’s financial affairs during the year, [consisting of at least—

- (i) a balance sheet;
- (ii) an income statement;
- (iii) a cash flow statement; and
- (iv) a report of the auditors]

as required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).”

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Amendment of law

6. The law mentioned in the Schedule is hereby amended to the extent indicated in the third column of that Schedule.

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Transitional arrangements

7. (1) Members of the Financial and Fiscal Commission contemplated in section 5 of the principal Act who held office immediately before the commencement of this Act continue to hold office until the expiry of their terms of office.

(2) Any member of the Financial and Fiscal Commission contemplated in section 5(1)(b) or (c) of the principal Act and who held office immediately before the commencement of this Act must be regarded as having been appointed in terms of section 5 of the principal Act as amended by this Act.

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Short title

8. This Act is called the Financial and Fiscal Commission Amendment Act, 2003.

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SCHEDULE

AMENDMENT OF LAW

(Section 6)

No and year of law	Short title	Extent of amendment
Act No. 52 of 1997	Organised Local Government Act, 1997	<p>The substitution for section 5 of the following section:</p> <p>“Nomination of persons to Financial and Fiscal Commission</p> <p><u>5. (1) Whenever there is a vacancy on the Financial and Fiscal Commission in respect of members contemplated in section 5(1)(c) of the Financial and Fiscal Commission Act, 1997 (Act No. 99 of 1997), the Minister, within 14 days of receiving the Commission’s notification of the vacancy, must notify the national organisation to request each provincial organisation to nominate one person in writing within 45 days to the national organisation.</u></p> <p><u>(2) (a) If there is one vacancy, the executive committee of the national organisation must compile a list consisting of no more than four nominees from the nominees contemplated in subsection (1).</u></p> <p><u>(b) If there are two vacancies, the executive committee of the national organisation must compile a list consisting of no more than six nominees from the nominees contemplated in subsection (1).</u></p> <p><u>(3) The executive committee of the national organisation must submit the list to the Minister of Finance within 76 days after receiving notification from the Minister about the vacancy.”</u></p>

MEMORANDUM ON THE OBJECTS OF THE FINANCIAL AND FISCAL COMMISSION AMENDMENT BILL, 2003

1. The main purpose of the Bill is to amend the Financial and Fiscal Commission Act, 1997 (Act No. 99 of 1997) ("the Act"), in order to bring the Act into line with the Constitution as amended by the Constitution of the Republic of South Africa Second Amendment Act, 2001 (Act No. 61 of 2001). The last-mentioned Act reduced the number of members of the Financial and Fiscal Commission from 22 members to nine members and changed the appointment procedure for such members.

2. The Bill also seeks to amend section 3 of the Act by proposing the insertion of a provision which would require any organ of state which intends assigning any power or function to an organ of state in another sphere of government to request the Financial and Fiscal Commission's advice on any financial implications of the said assignment. In terms of the proposed amendment, an assignment has no legal force until the organ of state assigning has indicated to the Commission the extent to which it has given consideration to the Commission's advice. The reason for the proposal is that any such assignment inevitably has a financial and fiscal impact, which may, at times, result in unfunded mandates for provincial or local governments.

3. The proposed amendments to sections 24 and 26 of the Act are to bring the Act into line with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

4. The Bill also proposes an amendment to section 5 of the Organised Local Government Act, 1997 (Act No. 52 of 1997), in order to provide for a process whereby organised local government participates in the compilation of a list from which the President will make two appointments in terms of section 5 of the Act to the Financial and Fiscal Commission. This amendment also stems from the amendment of the Constitution referred to in paragraph 1.

5. Lastly, the Bill seeks to effect certain consequential amendments and to provide transitional arrangements.

6. DEPARTMENTS AND BODIES CONSULTED

- * Department of Provincial and Local Government
- * The Financial and Fiscal Commission
- * The Provincial Treasuries
- * South African Local Government Association

7. FINANCIAL IMPLICATIONS FOR STATE

None.

8. PARLIAMENTARY PROCEDURE

The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) of the Constitution since it provides for legislation envisaged in section 220(3) of the Constitution.