

REPUBLIC OF SOUTH AFRICA

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**FINANCIAL AND FISCAL  
COMMISSION BILL**

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*(As amended by the Portfolio Committee on Finance (National Assembly))*

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(MINISTER OF FINANCE)

[B 104B—97]

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REPUBLIEK VAN SUID-AFRIKA

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**WETSONTWERP OP DIE  
FINANSIËLE EN FISKALE  
KOMMISSIE**

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*(Soos gewysig deur die Portefeuljekomitee oor Finansies (Nasionale Vergadering))*

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(MINISTER VAN FINANSIES)

[W 104B—97]

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# BILL

To give effect to the constitutional requirements relating to the Financial and Fiscal Commission; and to provide for matters in connection therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**Definitions** 20

- In this Act, unless the context indicates otherwise—
  - “**Commission**” means the Financial and Fiscal Commission referred to in section 2;
  - “**employee**”, except in sections 20(1), 21 and 33, includes a member of the public service seconded to the Commission; 25
  - “**financial year**” means the financial year of the Commission, which is the same as that of state departments;
  - “**Minister**” means the Minister of Finance;
  - “**organ of state**” means the same as in section 239 of the Constitution;
  - “**President**” means the President acting as head of the national executive in terms of section 85 of the Constitution; 30
  - “**state department**” means a department, administration or office listed in Schedule 1 or 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
  - “**this Act**” includes any regulations made in terms of section 30.

**PART 1** 35**STATUS, FUNCTIONS AND POWERS OF COMMISSION****Status**

- The Financial and Fiscal Commission established by section 220 of the Constitution is a juristic person, independent and subject only to the Constitution, this Act and the law. 40

**Functions**

- (1) The Commission acts as a consultative body for, and makes recommendations and gives advice to, organs of state in the national, provincial and local spheres of government on financial and fiscal matters.
  - The Commission— 45
    - must perform the functions mentioned in subsection (1) to the extent that its performance of those functions are envisaged in the Constitution or required by national legislation; and

- (b) may perform those functions—
  - (i) on its own initiative; or
  - (ii) on request of an organ of state.
- (3) The Commission must be impartial.
- (4) No person or organ of state may interfere with the functioning of the Commission. 5
- (5) All organs of state, when appropriate, must assist the Commission to perform its functions effectively.
- (6) The Commission must submit for tabling copies of all its recommendations made in terms of a provision of the Constitution to both Houses of Parliament and to the provincial legislatures. 10

### **Powers**

- 4. (1) The Commission may do all that is necessary or expedient to perform its functions effectively, which includes the power to—
  - (a) determine its own staff establishment and appoint employees in posts on the staff establishment; 15
  - (b) obtain the services of any person, including any organ of state or institution to perform any specific act or function;
  - (c) confer with any person or organ of state;
  - (d) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister; 20
  - (e) open, and operate on, its own bank accounts;
  - (f) insure itself against any loss, damage, risk or liability;
  - (g) perform legal acts, or institute or defend any legal action in its own name;
  - (h) do research and publish reports; and
  - (i) do anything that is incidental to the exercise of any of its powers. 25
- (2) The Commission may not borrow money or overdraw its bank accounts.

## **PART 2**

### **MEMBERSHIP OF COMMISSION**

#### **Composition**

- 5. In terms of section 221(1) of the Constitution, the Commission consists of the following women and men appointed by the President: 30
  - (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; 35
  - (c) two persons nominated by organised local government in accordance with the Organised Local Government Act, 1997; and
  - (d) nine other persons.

#### **Chairpersons** 40

- 6. The Chairperson and Deputy Chairperson of the Commission are appointed in terms of section 221(1)(a) of the Constitution.

#### **Qualifications**

- 7. A member of the Commission must have appropriate expertise.

#### **Terms of office** 45

- 8. (1) The members of the Commission must be appointed for a term not exceeding five years.

(2) A member may be reappointed when that member's term expires.

### **Remuneration, allowances and benefits**

- 9.** (1) The remuneration, allowances and other benefits of members of the Commission must be determined by the President, taking into account—
- (a) the recommendations of the Minister; 5
  - (b) the remuneration, allowances and other benefits of members of other commissions established by the Constitution;
  - (c) the role, duties and responsibilities of a member of the Commission;
  - (d) affordability in relation to the responsibilities of the Commission;
  - (e) the level of expertise and experience required of a member of the Commission; and; 10
  - (f) any relevant recommendations of the independent commission referred to in section 219(2) of the Constitution.
- (2) The remuneration of a member may not be reduced during the term of the member.

### **Resignations** 15

**10.** A member of the Commission may resign by giving at least three months' written notice to the President, but the President may accept a shorter notice period in a specific case.

### **Removal from office**

- 11.** (1) The President may remove a member of the Commission from office, but only on the ground of misconduct, incapacity or incompetence. 20
- (2) A decision to remove a member on the ground of misconduct or incompetence must be based on a finding to that effect by a tribunal appointed by the President.
- (3) The President may suspend a member of the Commission from office while awaiting the finding of the tribunal concerning that member. 25
- (4) The President must consult—
- (a) the Premier of a province before removing from office a member nominated by that province in terms of section 5(b); or
  - (b) organised local government before removing from office a member nominated in terms of section 5(c). 30

### **Vacancies**

**12.** As soon as practical after a vacancy has occurred in the Commission, the President must appoint another person in accordance with section 5 to fill the vacancy.

### **Acting Chairperson**

**13.** If the Chairperson of the Commission is absent from office or otherwise unable to perform the functions of office, or during a vacancy in the office of Chairperson, the Deputy Chairperson acts as Chairperson. 35

## **PART 3**

### **OPERATING PROCEDURE OF COMMISSION**

### **Meetings** 40

- 14.** (1) The Commission decides when and where it meets, or may authorise the Chairperson to decide on its behalf.
- (2) At least four meetings must be held each year.
- (3) The Chairperson or the Deputy Chairperson presides at meetings of the Commission, but if both are absent from a meeting, the members present must elect another member to preside at that meeting. 45

(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.

### **Quorums**

**15.** (1) The majority of the members of the Commission constitutes a quorum for a meeting of the Commission. 5

(2) A question before the Commission is decided with a supporting vote of at least two thirds of the members present.

### **Rules of procedure**

**16.** The Commission must— 10

(a) determine rules of procedure for the conduct of its business; and

(b) keep minutes of its proceedings and decisions.

### **Committees**

**17.** (1) The Commission may— 15

(a) appoint one or more committees to assist the Commission in the performance of any of its functions or the exercise of any of its powers; or

(b) dissolve a committee at any time.

(2) A committee consists of—

(a) two or more Commission members; or

(b) at least one Commission member and at least one other person. 20

(3) The Commission—

(a) must determine the functions of a committee;

(b) must appoint the chairperson and members of a committee, but only a Commission member may be appointed as the chairperson;

(c) may dismiss a member of a committee at any time; 25

(d) may determine a committee's procedure; and

(e) must determine, after consulting the Minister, the remuneration, allowances and other benefits of office of members of a committee who are not Commission members or employees.

### **Assignment of powers and duties 30**

**18.** (1) The Commission may—

(a) delegate any of the Commission's powers to a Commission member, committee or employee; or

(b) instruct any Commission member, committee or employee to perform any of the Commission's duties. 35

(2) A delegation or instruction in terms of subsection (1)—

(a) is subject to any conditions the Commission may impose; and

(b) does not divest the Commission of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Commission may confirm, vary or revoke any decision taken by a Commission member, committee or employee in consequence of a delegation or instruction. 40

## **PART 4**

### **ADMINISTRATION AND STAFF MATTERS**

#### **Administrative responsibilities of Chairperson 45**

**19.** (1) The Chairperson of the Commission is the chief-executive officer and also the accounting officer of the Commission.

(2) As chief-executive officer the Chairperson is responsible for—

(a) the formation and development of an efficient administration;

(b) the organisation, control and management of the staff; 50

(c) the maintenance of discipline; and

- (d) the carrying out of the decisions of the Commission.
- (3) As accounting officer the Chairperson is responsible for—
- (a) all income and expenditure of the Commission;
  - (b) all assets and the discharge of all liabilities of the Commission; and
  - (c) the proper and diligent implementation of Part 5.
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### **Terms and conditions of employment**

- 20.** (1) An employee of the Commission is employed subject to the terms and conditions of employment determined by the Commission.
- (2) Persons in the public service seconded to the Commission perform their duties subject to the control and discipline of the Chairperson of the Commission.
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### **Pension benefits**

- 21.** (1) A person appointed as an employee of the Commission may become a member of the Government Employees' Pension Fund mentioned in section 2 of the Government Employees' Pension Law, 1996 (Proclamation No. 21 of 1996).
- (2) An employee of the Commission who becomes a member of that pension fund, is entitled to pension and retirement benefits as if that person is an official in the public service.
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### **Services of non-employees**

- 22.** If the Commission contracts for the services of any person, other than an employee, to perform any specific act or function, the Commission may remunerate that person, and may reimburse that person for expenses.
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## **PART 5**

### **FINANCES OF COMMISSION**

#### **Funding**

- 23.** (1) The Commission is entitled to money appropriated annually by Parliament to enable it to perform its functions effectively.
- (2) For the purposes of subsection (1) the Chairperson of the Commission—
- (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
  - (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) When submitting estimates the Chairperson 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.
- (4) The Commission must refund to the National Revenue Fund any money paid to the Commission in terms of subsection (1) that has not been used at the end of a financial year, unless the Minister agrees that the Commission may retain the money.
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#### **Accountability**

- 24.** As accounting officer of the Commission, the Chairperson must—
- (a) keep full and proper records of—
    - (i) all income and expenditure of the Commission; and
    - (ii) all the Commission's assets, liabilities and financial transactions;
  - (b) ensure that the Commission's available resources are properly safeguarded and used in the most efficient and effective way;
  - (c) ensure that all statutory measures applicable to the Commission are complied with; and
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- (d) within three months after the end of each financial year, prepare annual financial statements in accordance with generally accepted accounting practice.

### **Audits**

25. The Auditor-General must audit the accounts and financial records of the Commission. 5

## **PART 6**

### **MISCELLANEOUS**

#### **Annual report**

26. (1) The Commission must annually submit to both Houses of Parliament, to each provincial legislature and to the national organisation representing organised local government recognised in terms of the Organised Local Government Act, 1997, a report on the activities of the Commission during a financial year. 10

(2) The report must be submitted within six months after the end of the financial year to which it relates, and must include— 15

(a) a summary of all recommendations made by the Commission in terms of a requirement of the Constitution; and

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

(i) a balance sheet; 20

(ii) an income statement;

(iii) a cash flow statement; and

(iv) a report of the auditors.

#### **Information required by Commission**

27. (1) The Commission may obtain information it requires for the performance of its functions from the Central Statistical Service. 25

(2) Any information which the Commission requires for the performance of its functions and which is available to an organ of state or to any institution that derives any funds from the National Revenue Fund, a Provincial Revenue Fund or a municipality, must be supplied free of charge to the Commission, on the Commission's request, by that organ of state or institution. 30

#### **Liability of Commission**

28. (1) The State Liability Act, 1957 (Act No. 20 of 1957), applies, with the necessary changes, in respect of the Commission, and in such application a reference in that Act to the Minister of a department concerned must be construed as a reference to the Chairperson of the Commission. 35

(2) No person, including the Commission, is liable for anything done or omitted in good faith when performing a function or exercising a power in terms of this Act.

#### **Protection of confidential information**

29. (1) No person may disclose any information acquired on a confidential basis in the course of the application of this Act, except when— 40

(a) necessary for the purposes of this Act;

(b) required in terms of other legislation or the law;

(c) required in the course of legal proceedings; or

(d) a court so orders. 45

(2) A person who contravenes subsection (1) is guilty of an offence and on conviction liable to a fine or to imprisonment not exceeding one year or to a fine and imprisonment.

## Regulations

30. The Minister, with the concurrence of the Commission, may make regulations, not inconsistent with this Act or any other Act of Parliament, prescribing procedures to facilitate the performance by the Commission of its functions.

## PART 7

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### TRANSITIONAL ARRANGEMENTS

#### Definitions

31. In this Part—

“**new Commission**” means the Commission referred to in section 2;

“**previous Commission**” means the Financial and Fiscal Commission established by section 198 of the previous Constitution; 10

“**previous Constitution**” means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

#### Members of previous Commission

32. (1) A person who held office in the previous Commission immediately before this Act took effect— 15

(a) as the Chairperson or Deputy Chairperson, is regarded as having been appointed as the Chairperson or the Deputy Chairperson of the new Commission in terms of section 5(a) of this Act;

(b) as a member designated by a provincial Executive Council in terms of section 200(1)(b) of the previous Constitution, is regarded as having been nominated by that Council and appointed to the new Commission in terms of section 5(b) of this Act; and 20

(c) as a member appointed in terms of section 200(1)(c) of the previous Constitution, is regarded as having been appointed to the new Commission in terms of section 5(d) of this Act. 25

(2) The Chairperson and Deputy Chairperson are regarded as having been appointed to the new Commission for a term of five years as from the date this Act took effect.

(3) The members referred to in subsection (1)(b) and (c) are regarded as having been appointed to the new Commission for a term of four years as from the date this Act took effect. 30

#### Transfer of assets, liabilities, staff, etc.

33. When this Act takes effect—

(a) all assets, liabilities, rights and obligations of the previous Commission are vested in the new Commission; 35

(b) an employee of the previous Commission becomes an employee of the new Commission—

(i) subject to the terms and conditions of employment that were applicable to that person as an employee of the previous Commission, until altered in terms of section 20; and 40

(ii) with retention of all accrued pensionable service, leave and other benefits; and

(c) anything done by or on behalf of the previous Commission is regarded as having been done by or on behalf of the new Commission.

#### Financial and administrative records

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34. The new Commission is entitled to all financial, administrative and other records of the previous Commission.

**Short title and commencement**

**35.** This Act is called the Financial and Fiscal Commission Act, 1997, and takes effect on 1 January 1998.

## MEMORANDUM ON THE OBJECTS OF THE FINANCIAL AND FISCAL COMMISSION BILL, 1997

The Financial and Fiscal Commission is established by section 220 of the Constitution to perform certain important constitutional advisory functions relating to, *inter alia*, the annual division of revenue raised nationally between the national, provincial and local spheres of government. In terms of the Constitution, the Commission must also be consulted before certain legislation emanating from Chapter 13 of the Constitution may be enacted.

Section 220 (3) of the Constitution requires the Commission to function in terms of an Act of Parliament. This Bill will give effect to this constitutional requirement to the extent that it comprehensively regulates the affairs and day-to-day running of the Commission. The Bill provides for the following:

- \* **Part 1** of the Bill covers the status, functions and powers of the Commission. The status and functions of the Commission are drawn directly from the Constitution. It notes that the Commission is independent, a juristic person and that it must be impartial. The matters on which the Commission must make recommendations, are contained in various sections of the Constitution, viz
  - **Section 214**: Equitable division of revenue raised nationally, and additional allocations to provinces and local government from national government's share.
  - **Section 218**: Government guarantees on loans.
  - **Section 228**: Regulation of provincial taxes, levies and duties.
  - **Section 229**: Regulation of municipal fiscal powers.
  - **Section 230**: Provincial and municipal loans.
- \* **Part 2** of the Bill deals with the composition and membership of the Commission, its chairpersons, terms of office, remuneration, resignations, vacancies and procedures for removal of members from office.
- \* **Part 3** of the Bill covers the operating procedure of the Commission, including meeting procedures, quorums, committees, delegation, etc.
- \* **Part 4** of the Bill relates to administrative and staff matters. The Chairperson will be the chief executive officer and also the accounting officer of the Commission. The Commission will have the power to determine the terms and conditions of employment of its staff. Provision is also made for the secondment of members of the public service to the Commission.
- \* **Part 5** of the Bill regulates the finances of the Commission. As a constitutional institution it will receive its funds from appropriations by Parliament. The Auditor-General will annually audit the books and financial transactions of the Commission.
- \* **Part 6** of the Bill covers certain miscellaneous matters such as the Commission's annual report to Parliament and the provincial legislatures; the Commission's right to relevant information in the possession of the Central Statistical Service, organs of state and government-funded institutions; the Commission's legal liability; the protection of confidential information; and the Minister's power to make regulations on procedural matters.
- \* **Part 7** of the Bill provides for certain transitional arrangements. The Commission is essentially a continuation of the Financial and Fiscal Commission established in terms of the interim Constitution. The provisions in this Part will facilitate the transition from the previous to the new Commission.

### INSTITUTIONS CONSULTED

MECs for Finance  
Chairperson and Deputy Chairperson of the Financial and Fiscal Commission

**PARLIAMENTARY PROCEDURE**

The Department of Finance and the State Law Advisers are of the opinion that the procedure set out in section 76(1) of the Constitution should be followed with regard to this Bill. See section 76(4) (a) which requires the legislation envisaged in section 220(3) to be dealt with in accordance with section 76(1).