

REPUBLIC OF SOUTH AFRICA

**PUBLIC SERVICE
AMENDMENT BILL**

*(As amended by the Portfolio Committee on Public Service and Administration
(National Assembly))*

(MINISTER FOR THE PUBLIC SERVICE AND ADMINISTRATION)

[B 20B—99]

REPUBLIEK VAN SUID-AFRIKA

**STAATSDIENS-
WYSIGINGSWETSONTWERP**

*(Soos gewysig deur die Portefeuljekomitee oor Staatsdiens en Administrasie
(Nasionale Vergadering))*

(MINISTER VIR DIE STAATSDIENS EN ADMINISTRASIE)

[W 20B—99]

ISBN 0 621 29022 X

GENERAL EXPLANATORY NOTE:

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

BILL

To amend the Public Service Act, 1994, so as to regulate anew the handling of the appointment and other career incidents of heads of departments; and to provide for incidental matters.

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

Insertion of section 3B in Act promulgated by Proclamation 103 of 1994

1. The following section is hereby inserted in the Public Service Act, 1994, after section 3A:

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“Handling of appointment and other career incidents of heads of department

3B. (1) Notwithstanding anything to the contrary contained in this Act, the appointment and other career incidents of the heads of department shall be dealt with by, in the case of—

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- (a) a head of a national department or organisational component, the President; and
- (b) a head of a provincial administration, department or office, the relevant Premier.

(2) Any person appointed as head of department may before or at the expiry of his or her term of office, or extended term of office, be deployed with his or her consent by the relevant executing authority referred to in paragraph (a) or (b) of subsection (1) in the case of—

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- (a) a head of a national department or organisational component, to perform functions in a similar or any other capacity in any national department or organisational component in a post or against a post of equal, higher or lower grading, or additional to the establishment, as the executing authority deems fit; and
- (b) a head of a provincial administration, department or office, to perform functions in a similar or any other capacity in the administration, department or office of the relevant province in a post or against a post of equal, higher or lower grading or additional to the establishment, as the executing authority deems fit.

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(3) Any person appointed as head of department who thereafter is deployed in accordance with subsection (2), shall—

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- (a) for the unexpired portion of his or her term of office, or extended term of office, be appointed at the same salary and conditions of service; and

(b) at the expiry of his or her term of office or extended term of office, be appointed at the salary and conditions of service attaching to the post or capacity in which he or she is appointed.

(4) The executing authority referred to in paragraph (a) or (b) of subsection (1) may delegate or assign any power or duty to appoint the head referred to in that paragraph, as well as any power or duty regarding the other career incidents of that head, in the case of—

(a) the President, to the Deputy President or a Minister; or

(b) the Premier of a province, to a Member of the relevant Executive Council.”

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Short title and commencement

2. This Act is called the Public Service Amendment Act, 1999, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE PUBLIC SERVICE
AMENDMENT BILL, 1999**

1. According to the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), a head of department is appointed by the relevant executing authority (Minister, Member of the Executive Council, etc.) who is also responsible for dealing with other career incidents. In practice this creates problems, especially if the person holding the office of executing authority vacates that office during the term of office of the relevant head of department (normally a 5 year term of office applies to the latter). In many cases the terms of office of heads of department and the relevant political office-bearers also differ. The present employment practice is also not conducive to the redeployment and utilisation of heads of department throughout the public service. Consequently, it is being proposed that—

- * heads of national departments and organisational components be appointed by the President (including dealing with such persons' other career incidents, such as transfer and discharge); and
- * heads of provincial administrations, departments and offices be appointed by the relevant Premiers (including dealing with such persons' other career incidents, such as transfer and discharge).

2. The above-mentioned proposal will in practice mean that the President will exercise his or her power of employment together with the other members of Cabinet (section 84(2)(e) of the Constitution, read with section 85(2)(e) of the Constitution). In the provincial sphere of government it will also mean that the relevant Premier will exercise his or her power of employment together with the other members of the Executive Council (section 127(1) of the Constitution, read with section 125(2) of the Constitution). This will promote inclusiveness, co-ordination, better utilisation of scarce human resources and better management of possible conflict situations between heads of departments and political office-bearers.

3. The national departments, provincial administrations and employee organisations were consulted on the Bill.

4. In the opinion of the Department and the State Law Adviser, the Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution.