

REPUBLIC OF SOUTH AFRICA

REMUNERATION OF PUBLIC OFFICE BEARERS AMENDMENT BILL

(As introduced in the National Assembly as a section 76(1) Bill)
(The English text is the official text of the Bill)

(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

[B 11—2000]

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

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

To amend the Remuneration of Public Office Bearers Act, 1998, so as to correct a cross-reference in respect of a definition; to make fresh provision regarding the date from which a member of the National Assembly or of a provincial legislature is entitled to a salary and allowances, the date from which a permanent delegate is entitled to a salary and allowances, the payment of salaries and allowances of traditional leaders holding more than one public office simultaneously, the payment of allowances to traditional leaders and the payment of salaries and allowances of a Premier and a member of the Executive Council by provincial legislatures; to exempt the Minister from consulting with the pension funds and medical aid schemes concerned when the upper limits of the contributions to the pension funds and medical aid schemes are determined; to provide that a Municipal Council determines the amount of the contribution to a pension fund and medical aid scheme to which its members belong; and to make certain textual alterations; and to provide for matters connected therewith.

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

1. Section 1 of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998) (hereinafter referred to as the principal Act), is amended by the substitution for the definition of “traditional leader” of the following definition:

“‘traditional leader’ means any person identified in terms of section 5[(4)] (5).”.

2. Section 3 of the principal Act is amended—

(a) by the substitution in subsection (6)(a) for subparagraph (i) of the following 10
subparagraph:

“(i) designated in terms of item 16 of Schedule 2 to the Constitution of
the Republic of South Africa, 1993 (Act No. 200 of 1993), as
amended by Annexure A to Schedule 6 to the Constitution, from the
[date of the publication of the lists of names of representatives 15
as contemplated in subitem (3) of that item] first polling day of
the election in question;”; and

- (b) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

“(b) in the case of a permanent delegate **[from the date of his or her appointment] appointed—**
 (i) in terms of section 61(2)(b) of the Constitution, from the first sitting day of the provincial legislature concerned after its election; or
 (ii) in terms of section 2(3) of the National Council of Provinces (Permanent Delegates Vacancies) Act, 1997 (Act No. 17 of 1997), [as the case may be] from the date of his or her appointment.”.

Amendment of section 5 of Act 20 of 1998

3. Section 5 of the principal Act is amended—

- (a) by the substitution for subsection (2) of the following subsection:

“(2) Despite the provisions of subsection (1), a traditional leader, a member of a provincial House of Traditional Leaders or a member of the National House of Traditional Leaders who holds different public offices simultaneously, is only entitled to the salary, allowances and benefits of the public office for which he or she earns the highest income, but—
 (a) this subsection shall not preclude the payment of out of pocket expenses for the performance of functions other than those for which such office bearer receives such highest income; and
 (b) where only an allowance has been determined in terms of subsection (1) in respect of a traditional leader’s membership of a provincial House of Traditional Leaders or the National House of Traditional Leaders, such a traditional leader shall be entitled to such an allowance in addition to his or her salary, allowances and benefits as a traditional leader.”; and

- (b) by the substitution in subsection (4) for the words “salaries and allowances” of the words “salaries, allowances and benefits”.

Amendment of section 6 of Act 20 of 1998

4. Section 6 of the principal Act is amended—

- (a) by the substitution for subsection (7) of the following subsection:

“(7) (a) Subject to subsection (6), the Secretary to the provincial legislature concerned shall pay in monthly instalments to **[the Premier, each member of the Executive Council and]** each member of the Provincial Legislature, excluding members of the Executive Council of that province, who swears or affirms faithfulness to the Republic as contemplated in **[has begun to perform his or her functions, in terms of]** section 107 of the Constitution, the salary and allowances to which such **[office bearer] member** is entitled **[in terms of this section, the first month to be reckoned—]**.

[(a)] (b) For the purposes of paragraph (a) the first month shall be reckoned, in the case of a member of the provincial legislature—

- (i) designated in terms of item 16 of Schedule 2 to the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), as amended by Annexure A to Schedule 6 to the Constitution, from the **[date of the publication of the lists of names of representatives as contemplated in subitem (3) of that item]** first polling day of the election in question; and
 (ii) nominated in terms of item 23(1) of the said Schedule 2 to fill a vacancy, from the date on which the previous member vacated his or her seat in the provincial legislature concerned or the date of receipt of the nomination by the Speaker of the provincial legislature, whichever is the later date.

- [(b) in the case of a Premier and a member of the Executive Council, from the date on which such office bearer begins to perform his or her functions as contemplated in sections 129 and 132(2) of the Constitution, respectively; and
- (c) in the case of a former senator who was not appointed as a permanent delegate to the National Council of Provinces, from the date on which he or she elected to become a member of the provincial legislature as contemplated in item 8 of Schedule 6 to the Constitution.]”;

(b) by the insertion after subsection (7) of the following subsection: 10

“(7A) A Premier and a member of the Executive Council concerned shall be paid the salary and allowances to which such office bearer is entitled in monthly instalments, the first month to be reckoned from the date on which such office bearer swears or affirms faithfulness to the Republic as contemplated in sections 129 and 135 of the Constitution, respectively.”; and 15

(c) by the substitution for subsection (8) of the following subsection:

“(8) The amount payable in respect of salaries and allowances shall—

- (a) in respect of a Premier or a member of the Executive Council be paid from monies appropriated by the provincial legislature concerned for that purpose; and 20
- (b) in respect of other members of the provincial legislature annually form a direct charge against the Provincial Revenue Fund concerned as provided for by section 117(3) of the Constitution.”. 25

Amendment of section 7 of Act 20 of 1998 25

5. The English text of section 7 of the principal Act is amended by the substitution in subsection (2) for the words “Subject to” of the word “Despite”.

Amendment of section 8 of Act 20 of 1998

6. Section 8 of the principal Act is amended by the substitution for subsection (5) of the following subsection: 30

“(5) (a) The upper limit of the contribution to be made to the pension fund of which a member of a Municipal Council is a member, shall be determined by the Minister **[after consultation with the pension fund concerned and]** after taking into consideration the recommendations of the Commission.

(b) The **[Minister]** Municipal Council, after consultation with the pension fund concerned, shall determine the amount of the contribution and such amount shall annually form a charge against and be paid from the budget of the municipality concerned.”. 35

Amendment of section 9 of Act 20 of 1998

7. Section 9 of the principal Act is amended by the substitution for subsection (5) of the following subsection: 40

“(5) (a) The upper limit of the contribution to be made to the medical aid scheme of which a member of a Municipal Council is a member, shall be determined by the Minister **[after consultation with the medical aid scheme concerned and]** after taking into consideration the recommendations of the Commission. 45

(b) The **[Minister]** Municipal Council, after consultation with the medical aid scheme concerned, shall determine the amount of the contribution and such amount shall annually form a charge against and be paid from the budget of the municipality concerned.”. 50

Substitution of expression in Act 20 of 1998 50

8. The principal Act is amended by the substitution for the expression “Council of Traditional Leaders”, wherever it occurs, of the expression “National House of Traditional Leaders”.

Short title

9. This Act shall be called the Remuneration of Public Office Bearers Amendment Act, 2000.

MEMORANDUM ON THE OBJECTS OF THE REMUNERATION OF PUBLIC OFFICE BEARERS AMENDMENT BILL, 2000

1.1 Section 3 of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998) (hereinafter referred to as “the Remuneration Act”) establishes a framework for the determination of salaries and allowances of members of the National Assembly and permanent delegates to the National Council of Provinces. In terms of section 3(6) of the Remuneration Act, a member of the National Assembly is to be paid with effect from the date of the publication of the lists of names of representatives, while a permanent delegate is to be paid with effect from the date of his or her appointment. In order to provide for the remuneration of these office bearers during the period between the election date and the date of the publication of lists of representatives in respect of a member of the National Assembly, and the date of appointment in respect of a permanent delegate, respectively, it has become necessary to amend section 3(6) so as to provide for continuity in the payment of salaries, allowances and benefits. This continuity is attained by providing, in respect of members of the National Assembly, for the polling day of an election to be the date from which such a member is entitled to remuneration, and, in respect of a permanent delegate, for the first sitting day of the provincial legislature concerned to be the day from which a permanent delegate is so entitled.

1.2 Section 5 of the Remuneration Act establishes a framework for determining the salaries, allowances and benefits of traditional leaders, members of the provincial Houses of Traditional Leaders and members of the National House of Traditional Leaders. Although section 5(1) of the Remuneration Act allows the President to determine salaries and allowances in respect of the above-mentioned office bearers, section 5(2) only allows an allowance to be determined in respect of a traditional leader’s membership of a provincial House of Traditional Leaders or the National House of Traditional Leaders. In view of the Cabinet decision that certain members of the National House of Traditional Leaders are to be remunerated as full-time members of that House, it is necessary to allow salaries to be determined in respect of a traditional leader’s membership of a House of Traditional Leaders or a Municipal Council, which in turn requires the introduction of a measure that will prevent the public office bearer concerned from receiving more than one salary.

1.3 Section 6 of the Remuneration Act provides a framework for determining the upper limit of salaries and allowances of Premiers, members of Executive Councils and members of provincial legislatures. Section 6(7) does not reflect the current financial and accounting practice that draws a distinction between salaries of Premiers and members of Executive Councils, which must be appropriated by provincial legislatures by way of an appropriation Act, and salaries and allowances of other members of provincial legislatures, which form a direct charge against the Provincial Revenue Fund of each province. It has therefore become necessary to effect an amendment to reflect the existing practice of providing for the salaries of members of the Executive Councils through their departmental budgets.

In order to attain the same continuity referred to in paragraph 1.1 above in respect of the members of provincial legislatures, provision is also made for the first polling day of an election to be the day from which a member of the provincial legislature is entitled to remuneration.

1.4 In terms of sections 8 and 9 of the Remuneration Act, respectively, the Minister may only determine the upper limit of the contributions to be made to pension funds and medical aid schemes of which municipal councillors are members, after the Minister has consulted every pension fund and medical aid scheme concerned. It has been practically impossible for the Minister to engage in such consultations due to the number of pension funds and medical aid schemes, and the number of councillors. This has necessitated the amendments to these sections to provide for the consultations to be done by the Municipal Councils concerned, and not by the Minister. The effect being that the Minister only needs to take the recommendations of the Independent Commission for the Remuneration of Public Office-bearers into account in determining the upper limits of contributions to pension funds and medical aid schemes, whilst the respective Municipal Councils have to consult the relevant pension funds and medical aid schemes when the actual contributions are determined.

1.5 Irreconcilable differences between the two official texts of the Remuneration Act, as well as incorrect cross-references, are corrected.

Bodies/organisations consulted

National House of Traditional Leaders
MINMEC on Traditional Affairs
Department of Finance
Parliament

Implications for provinces

The effects of the proposed amendments on the provinces would be that each province would have to provide for salaries and allowances of its Premier and members of Executive Councils by way of an appropriation Act.

Implications for municipalities

Municipal Councils will have to consult with the relevant pension funds and medical aid schemes before determining the actual amount of the contributions to be made to pension funds and medical aid schemes to which the councillors concerned belong.

Parliamentary procedure

The Department of Provincial and Local Government and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 76(1) of the Constitution. In terms of section 76(4)(b) of the Constitution, legislation “envisaged in Chapter 13 of the Constitution and which affects the financial interests of the provincial sphere of government” must be dealt with in accordance with the procedure established by section 76(1).