

REPUBLIC OF SOUTH AFRICA

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# **PUBLIC ADMINISTRATION MANAGEMENT BILL**

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*(As introduced in the National Council of Provinces (proposed section 76),  
on request of the Minister for the Public Service and Administration;  
Bill published in Government Gazette No. 37029 of 14 November 2013)  
([B 48—2013] originally introduced in National Assembly and withdrawn on  
12 November 2013)  
(The English text is the official text of the Bill)*

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(SELECT COMMITTEE ON COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

**[B 55—2013]**

ISBN 978-1-77597-170-2

No. of copies printed ..... 1 800

# **BILL**

**To promote the basic values and principles governing the public administration referred to in section 195(1) of the Constitution; to provide for the transfer and secondment of employees in the public administration; to regulate conducting business with the State; to provide for capacity development and training; to provide for the establishment of the National School of Government; to provide for the use of information and communication technologies in the public administration; to establish the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit; to provide for the Minister to set minimum norms and standards for public administration; to establish the Office of Standards and Compliance to ensure compliance with minimum norms and standards; to empower the Minister to make regulations; and to provide for related matters.**

## **PREAMBLE**

We, the people of South Africa,

### **RECOGNISING THAT—**

- the Constitution provides that the Republic is one, sovereign, democratic state and that the government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated;
- administration in every sphere of government is governed by the values and principles governing public administration in section 195(1) of the Constitution;
- the Constitution requires all spheres of government to provide effective, efficient, transparent, accountable and coherent government for the Republic to secure the well-being of the people and the progressive realisation of their constitutional rights;
- one of the most pervasive challenges facing our country is the need for government to redress poverty, marginalisation of people and communities and other legacies of apartheid and discrimination;
- this challenge is best addressed by providing for administrations in the three spheres of government to be organised and to function in ways that ensure efficient, quality, collaborative and accountable service delivery to alleviate poverty and promote social and economic development for the people of the Republic;
- section 195(5) and (6) of the Constitution permits legislation regulating public administration to differentiate between different sectors, administrations and institutions by taking into account their nature and functions;
- section 197(1) and (2) of the Constitution provides for a public service within the public administration, which must function and be structured, in terms of national legislation, and the terms and conditions of employment of which must be regulated by national legislation;

### **THEREFORE, THIS ACT SEEKS TO GIVE EFFECT TO—**

- section 195(3) of the Constitution which requires national legislation to ensure the promotion of those values and principles;

**AND BEARING IN MIND THAT—**

- section 197(4) of the Constitution provides that provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in their administrations within a framework of uniform norms and standards applying to the public service;
- sections 151(3) and 153 of the Constitution provide that a municipality has the right to govern, on its own initiative, the local government affairs of its community and to structure and manage its administration, subject to national and provincial legislation, as provided for in the Constitution;
- section 154(1) of the Constitution stipulates that the national government and provincial governments must, by legislative and other measures, support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions;
- section 164 of the Constitution provides that any matter concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation;
- as required by section 163 of the Constitution, the Organised Local Government Act, 1997 (Act No. 52 of 1997), provides for the recognition of national and provincial organisations representing municipalities,

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

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***LAWS REPEALED OR AMENDED*****CHAPTER 1****INTERPRETATION, APPLICATION AND OBJECTS OF ACT****Definitions**

1. In this Act, unless the context otherwise indicates— 25
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**employee**” means a person appointed in the public administration, but excludes a person appointed as a special adviser in terms of section 12A of the Public Service Act and a person performing similar functions in a municipality;
- “**entity**” includes any sole proprietorship, partnership, trust, company or association, irrespective of whether the entity is incorporated or registered under any law; 30
- “**executive authority**”, in relation to—
- (a) The Presidency or a national government component within the President’s portfolio, means the President; 35
- (b) a national department or national government component within a Cabinet portfolio, means the Minister responsible for that portfolio;
- (c) the Public Service Commission, means the chairperson;
- (d) the Office of a Premier or a provincial government component within a Premier’s portfolio, means the Premier of that province; 40

- (e) a provincial department or a provincial government component within an Executive Council portfolio, means the member of that Council responsible for that portfolio; and
- (f) a municipality means the Municipal Council of that municipality;
- “family member”**, in relation to any person, means his or her parent, sister, brother, child or spouse—
- (a) including a person living with that person as if they were married to each other, namely a spouse or life partner;
- (b) whether such relationship results from birth, marriage or adoption;
- (c) including any other relative who resides permanently with that person; and
- (d) including any other relative who is of necessity dependent on such person;
- “Head of the School”** means the Head of the National School of Government contemplated in section 11(1);
- “information and communication technologies”** means all aspects of technology which are used to manage and support the efficient gathering, processing, storing and dissemination of information;
- “institution”** means a national department, a provincial department, a municipality or a national or provincial government component;
- “Minister”** means the Minister responsible for the public service and administration, unless otherwise stated in this Act;
- “Municipal Council”** means a Municipal Council referred to in section 157(1) of the Constitution;
- “municipality”** means a municipality as defined in section 1 of the Municipal Structures Act, 1998 (Act No. 117 of 1998);
- “national department”** means a national department listed in Schedule 1 to the Public Service Act;
- “Office”** means the Office of Standards and Compliance established in section 17(1);
- “prescribed”** means prescribed by regulations made by the Minister in terms of this Act;
- “public administration”** means the public service, municipalities and their employees;
- “public service”** means all—
- (a) national departments;
- (b) national government components listed in Part A of Schedule 3 to the Public Service Act;
- (c) provincial departments which means—
- (i) the Office of a Premier listed in Schedule 1 to the Public Service Act; and
- (ii) provincial departments listed in Schedule 2 to the Public Service Act; and
- (d) provincial government components listed in Part B of Schedule 3 to the Public Service Act, and their employees;
- “Public Service Act”** means the Public Service Act, 1994 (Proclamation No. 103 of 1994);
- “School”** means the National School of Government contemplated in section 11(1);
- “Skills Development Act”** means the Skills Development Act, 1998 (Act No. 97 of 1998);
- “Skills Development Levies Act”** means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);
- “this Act”** includes the regulations made in terms of this Act;
- “training institution”** means any training institution under the authority of—
- (a) the national or a provincial government; or
- (b) a Municipal Council; and
- “Unit”** means the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit contemplated in section 15(1).

### Application of Act

2. Unless otherwise provided, this Act applies to the public administration.

## Objects of Act

3. The objects of this Act are to—
- (a) promote and give effect to the values and principles in section 195(1) of the Constitution;
  - (b) provide for the transfer and secondment of employees; 5
  - (c) promote a high standard of professional ethics in the public administration;
  - (d) promote the use of information and communication technologies in the public administration;
  - (e) promote efficient service delivery in the public administration;
  - (f) facilitate the eradication and prevention of unethical practices in the public administration; and 10
  - (g) provide for the setting of minimum norms and standards to give effect to the values and principles of section 195(1) of the Constitution.

## CHAPTER 2

### BASIC VALUES AND PRINCIPLES 15

#### Basic values and principles governing public administration

4. Each institution must—
- (a) promote and maintain a high standard of professional ethics;
  - (b) promote efficient, economic and effective use of resources;
  - (c) be development oriented; 20
  - (d) provide such services impartially, fairly, equitably and without bias;
  - (e) respond to people's needs and encourage public participation in policy-making;
  - (f) be accountable to the public;
  - (g) foster transparency by providing the public with timely, accessible and accurate information; 25
  - (h) ensure good human resource management and career development practices to maximise human potential; and
  - (i) ensure broad representation of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation. 30

## CHAPTER 3

### EMPLOYMENT IN PUBLIC ADMINISTRATION

#### Individual transfers

5. (1) Any employee of the transferring institution may, subject to sections 151(3), 153 and 197(4) of the Constitution, be transferred within an institution or transferred to another institution in a manner and on such conditions as prescribed. 35
- (2) An employee may only be transferred—
- (a) where reasonable grounds exist;
  - (b) if the employee is suitably qualified, as envisaged in section 20(3) to (5) of the Employment Equity Act, 1998 (Act No. 55 of 1998), for the intended position upon transfer; 40
  - (c) if the employee requests or consents in writing to the transfer; and
  - (d) within that institution by the relevant authority, or to another institution with the concurrence of the relevant executive authorities of the transferring and recipient institutions. 45
- (3) If an employee is transferred within an institution, or from one national or provincial institution to another national or provincial institution the—
- (a) transfer does not interrupt the employee's continuity of employment; and
  - (b) employee may not upon the transfer suffer any reduction in remuneration and conditions of service, unless the employee consents. 50
- (4) (a) If an employee is transferred between a national or provincial institution and a municipal institution or from one provincial or municipal institution to another provincial or municipal institution, the remuneration and conditions of service of the

employee upon the transfer are as agreed between the executive authorities of the transferring and recipient institutions.

(b) If an employee is transferred in terms of paragraph (a) and unless the employee consents, the remuneration and conditions of service may not be less favourable than those on which the employee was employed immediately before the transfer. 5

### **Secondments**

6. (1) Any employee of an institution may be seconded to another institution or to any other organ of state in such manner, and on such terms and conditions as may be prescribed.

(2) An employee may be seconded in terms of subsection (1)— 10

(a) if the employee possesses the necessary skills and knowledge for the intended position at the time of the secondment; and

(b) if the employee requests or consents to the secondment; or

(c) in the absence of consent, after due consideration of any representations by the employee, if the secondment is justified. 15

(3) Any employee of an institution may only be seconded in terms of subsection (1) to—

(a) another institution in consultation with the relevant executive authorities of the seconding and recipient institutions; or

(b) an organ of state other than an institution, on request of the organ of state and in consultation with the relevant authority of the seconding institution. 20

(4) (a) If an employee is seconded between a national or provincial institution and a municipal institution or from one provincial or municipal institution to another provincial or municipal institution, the remuneration and conditions of service of the employee upon the secondment are as agreed between the executive authorities of the transferring and recipient institutions. 25

(b) If an employee is seconded in terms of subsection (1) and unless the employee consents, the remuneration and conditions of service may not be less favourable than those on which the employee was employed immediately before the secondment.

### **Transfer of employees upon transfer or assignment of function** 30

7. If a function is transferred or assigned from one institution, namely the old institution, to another institution, namely the new institution, as a result of an action envisaged in section 97 or 99 of the Constitution, the provisions of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), apply.

### **Conducting business with State** 35

8. (1) In this section and in section 9, “employee” includes persons contemplated in section 12A of the Public Service Act and a person performing similar functions in a municipality.

(2) An employee may not—

(a) conduct business with the State; or

(b) be a director of a public or private company conducting business with the State. 40

(3) A contravention of subsection (2)—

(a) is an offence, and any person found guilty of the offence is liable to a fine or imprisonment for a period not exceeding 5 years or both such fine and imprisonment; and 45

(b) constitute serious misconduct which may result in the termination of employment by the employer.

### **Disclosure of financial interest**

9. (1) An employee must, in the prescribed manner, disclose to the relevant head of the institution all his or her financial interests and the financial interests of his or her spouse and a person living with that person as if they were married to each other, including all— 50

(a) shares and other financial interests in an entity;

(b) sponsorships;

- (c) gifts above the prescribed value, other than gifts received from a family member;
  - (d) benefits; and
  - (e) immovable property.
- (2) Failure by an employee to comply with the obligation referred to in subsection (1) constitutes misconduct. 5

## CHAPTER 4

### CAPACITY DEVELOPMENT AND TRAINING

#### Capacity development by institutions

- 10.** (1) The head of an institution must— 10
- (a) through the education and training of its employees develop its human resource capacity to a level that enables it to perform its functions in an efficient, quality, collaborative and accountable manner; and
  - (b) for the purpose referred to in paragraph (a) comply with the Higher Education Act, 1997 (Act No. 101 of 1997), Skills Development Act and the Skills Development Levies Act. 15
- (2) In addition to the education and training budget requirements in terms of the Skills Development Act or provision for a training levy in terms of the Skills Development Levies Act, an institution—
- (a) must make appropriate provision within the available resources in its budget for the education and training of its employees; and 20
  - (b) may apply to any applicable sector education and training authority established in terms of the Skills Development Act for additional funds for training. 20

#### National School of Government 25

- 11.** (1) The National School of Government will, in consultation with the Minister responsible for higher education and training, be established as a higher education institution contemplated in the Higher Education Act, 1997 (Act No. 101 of 1997).
- (2) The School must, through education and training, promote the progressive realisation of the values and principles governing public administration and enhance the quality, extent and impact of the development of human resource capacity in institutions. 30
- (3) The School must give effect to subsection (2) by—
- (a) subject to the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), providing such education and training or causing such education and training to be provided or conducting or cause to be conducted such examinations or tests as the Head of the School determines; 35
  - (b) interacting with and fostering collaboration, in consultation with the Minister responsible for higher education and training, among training institutions, higher education institutions, further education and training institutions and private sector training providers in furtherance of such education and training; and 40
  - (c) performing any other function or exercising any other power as prescribed.
- (4) The provisions of this section do not affect institution or sector specific training.

#### Directive by Minister relating to education 45

- 12.** (1) The Minister, in consultation with the Minister responsible for higher education and training, may direct the School to provide qualifications, part-qualifications and non-formal education as recognised by the National Qualifications Framework or the South African Qualifications Authority.
- (2) Insofar as a directive under subsection (1) applies to municipalities, the Minister must act in consultation with the Minister responsible for local government and after consultation with organised local government. 50



### **Compulsory educational requirements for employment**

- 13.** (1) The Minister may, after approval by the Cabinet, direct that the successful completion of specified education, training, examinations or tests is—
- (a) a prerequisite for specified appointments or transfers; and
  - (b) compulsory in order to meet development needs of any category of employees. 5
- (2) The Minister must consult organised local government and obtain the concurrence of the Minister responsible for local government before seeking the approval of the Cabinet contemplated in subsection (1) in respect of a directive to be applicable to municipalities. 10

## **CHAPTER 5**

### **INFORMATION AND COMMUNICATION TECHNOLOGIES**

#### **Use of information and communication technologies in public administration**

- 14.** The head of an institution must—
- (a) acquire and use information and communication technologies in a manner which— 15
    - (i) leverages economies of scale to provide for cost effective service;
    - (ii) ensures the interoperability of its information systems with information systems of other institutions to enhance internal efficiency or service delivery; 20
    - (iii) eliminates unnecessary duplication of information and communication technologies in the public administration; and
    - (iv) ensures security of its information systems;
  - (b) use information and communication technologies to develop and enhance the delivery of its services in the public administration; 25
  - (c) align the use by staff of information and communication technologies to achieve optimal service delivery; and
  - (d) promote the access to public services through the use of information and communication technologies. 30

## **CHAPTER 6**

### **ETHICS, INTEGRITY AND DISCIPLINE**

#### **Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit**

- 15.** (1) The Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit is hereby established.
- (2) The organisational form of the Unit must be determined in terms of applicable legislation. 35
- (3) The head of the Unit and all its personnel must be appointed in terms of the Public Service Act.
- (4) The Unit has the following functions: 40
- (a) To provide technical assistance and support to institutions in all spheres of government regarding the management of ethics, integrity and disciplinary matters relating to misconduct in the public administration; 40
  - (b) to develop the norms and standards on integrity, ethics, conduct and discipline in the public administration;
  - (c) to build capacity within institutions to initiate and institute disciplinary proceedings into misconduct; 45
  - (d) to strengthen government oversight of ethics, integrity and discipline, and where necessary, in cases where systemic weaknesses are identified, to intervene;
  - (e) to promote and enhance good ethics and integrity within the public administration; and 50
  - (f) to cooperate with other institutions and organs of state to fulfill its functions under this section.

- (5) (a) When an institution discovers an act of corruption, such corruption must immediately be reported to the police for investigation in terms of any applicable law, including the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).
- (b) Issues of misconduct emanating from criminal investigations must be reported to the Unit and the relevant head of institution for initiation and institution of disciplinary proceedings. 5
- (6) (a) Notwithstanding subsection (5)(b), every institution has the responsibility to ensure that it deals with matters relating to misconduct without undue delay.
- (b) The head of the institution must report to the Unit on steps taken in respect of subsection (5)(b). 10
- (7) The Unit may perform its functions in subsection (4) in respect of—
- (a) a national department or national government component, in consultation with the executive authority of such department or component, or upon the request of the relevant executive authority; 15
- (b) an Office of the Premier, provincial department or provincial government component with the concurrence of the Premier, or upon the request of the relevant Premier; and
- (c) a municipality with the concurrence of the Municipal Council or upon the request of the relevant Municipal Council, or upon the request of the relevant Member of the Executive Council in respect of an investigation contemplated in section 106(5) of the Municipal Systems Act, 2000 (Act No. 32 of 2000). 20
- (8) The Minister must report to Parliament twice a year on the activities of the Unit.

## CHAPTER 7

### NORMS AND STANDARDS 25

#### Minimum norms and standards

16. (1) The Minister may prescribe minimum norms and standards regarding—
- (a) the promotion of values and principles referred to in section 195(1) of the Constitution;
- (b) capacity development and training; 30
- (c) information and communication technologies in the public administration;
- (d) integrity, ethics and discipline;
- (e) the disclosure of financial interests;
- (f) measures to improve the effectiveness and efficiency of institutions;
- (g) disclosure of information relating to pending disciplinary action and concluded disciplinary proceedings where the employee was found guilty; 35  
and
- (h) any other matter necessary to give effect to the administration or implementation of this Act.
- (2) The Minister must prescribe minimum norms and standards in terms of subsection (1)(a) in consultation with the relevant executive authority. 40

## CHAPTER 8

### COMPLIANCE WITH MINIMUM NORMS AND STANDARDS IN PUBLIC ADMINISTRATION

#### Office of Standards and Compliance 45

17. (1) The Office of Standards and Compliance is hereby established.
- (2) The organisational form of the Office must be determined in terms of applicable legislation.
- (3) The head of the Office and all its personnel must be appointed in terms of the Public Service Act. 50
- (4) The functions of the Office are to—
- (a) evaluate the appropriateness of norms and standards and their basis of measurement as determined by institutions in relation to public administration and management;

- (b) promote and monitor compliance with minimum norms and standards determined by the Minister in relation to public administration management;
  - (c) advise the Minister on the execution of his or her duties with regard to—
    - (i) the determination of minimum norms and standards contemplated in section 16; and
    - (ii) enforcing compliance with the minimum norms and standards;
  - (d) conduct capacity and functionality audits of skills, systems, processes and advise on capacity building initiatives;
  - (e) develop and implement an early warning system to detect public administration non-compliance; and
  - (f) report in writing—
    - (i) at least once every quarter to the Minister on the performance of the Office's functions; and
    - (ii) as directed by the Minister on the progress made in the investigation and finalisation of matters brought before the Office.
- (5) Every head of an institution must cooperate with the Office in the performance of its functions and ensure that the employees in the institution do so.
- (6) The objects of the Office are to ensure compliance with the minimum norms and standards set by the Minister in section 16, taking into account that the spheres of government are distinctive, inter-dependent and interrelated, by—
- (a) monitoring compliance by institutions with the minimum norms and standards in the public administration;
  - (b) submitting a report to the Minister and the relevant head of institution;
  - (c) directing in that report, if necessary, steps to be taken by the head of institution to comply with the applicable minimum norms and standards and assisting the institution in taking those steps;
  - (d) reporting to the Minister at least once a year or at the request of the Minister on the performance of the Office's functions, the effectiveness of the minimum norms and standards, or any other matter related to the Office's functions which may be requested by the Minister; and
  - (e) performing any other prescribed role in the promotion, monitoring and enforcement of the minimum norms and standards.
- (7) The Minister must prescribe the powers of the Office and its members including those necessary to achieve the objects referred to in subsection (6).

## CHAPTER 9

### GENERAL

#### Regulations

- 18.** (1) The Minister may make regulations regarding—
- (a) any matter required or permitted by this Act to be prescribed;
  - (b) a framework for the establishment, promotion and maintenance of service centres to enhance service delivery of services to the public; and
  - (c) any matter necessary to prescribe for the proper implementation or administration of this Act.
- (2) The Minister must make regulations insofar as they apply to municipalities in consultation with the Minister responsible for local government, Minister responsible for Finance and organised local government.
- (3) (a) Different regulations may be made to suit the varying requirements of particular categories of institutions or of particular categories of employees.
- (b) When making regulations, the Minister must take into account the nature and functions of different institutions or categories of institutions, as envisaged in section 195(6) of the Constitution and any public comments contemplated in subsection (4).
- (4) The Minister must publish a proposed regulation for public comment for a period of not less than 30 days in the *Gazette*.

#### Repeal and amendment of laws

- 19.** The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column thereof.

**Short title and commencement**

**20.** (1) This Act is called the Public Administration Management Act, 2013, and takes effect on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may be so determined in respect of different—

- (a) provisions of this Act; and
- (b) categories of institutions.

5

**SCHEDULE*****LAWS REPEALED OR AMENDED******(Section 19)***

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of repeal or amendment</b>
Proclamation No. 103 of 1994	Public Service Act, 1994	The repeal of sections 4, 14 and 15.
Act No. 17 of 1998	Transfer of Staff to Municipalities Act, 1998	The repeal of the Act.

## **MEMORANDUM ON THE OBJECTS OF THE PUBLIC ADMINISTRATION MANAGEMENT BILL, 2013**

### **1. BACKGROUND**

- 1.1 The Constitution of the Republic of South Africa, 1996 (“the Constitution”), requires cooperative and effective government while recognising that government in the national, provincial and local spheres are distinctive, interdependent and interrelated. Together the three spheres of government are required to provide effective, transparent, accountable and coherent government for the country. This requires that the spheres must respect each other’s territory, powers and functions while striving to work together in a meaningful way to maximise service delivery impact for the citizens.
- 1.2 The drive towards coordinated government has been at the heart of government’s transformation and reform programmes for a number of years. In 1998, the Presidential Review Commission advised that intergovernmental relations needed to be improved. As a result, Government reconfigured its Cabinet committees to facilitate coordination in particular sectors. These measures supported a horizontal integration among national departments.
- 1.3 To complement this horizontal integration, a system of vertical integration was developed which established forums to promote and facilitate intergovernmental relations between the President and Premiers, Premiers and Mayors, and Ministers and provincial Members of Executive Councils responsible for concurrent portfolios. The Bill seeks to promote efficient public service delivery.
- 1.4 In May 2013 Cabinet approved that the Public Administration Management Bill, 2013 (“the Bill”), be published for comment. The Bill was published for comment on 31 May 2013 with 28 June 2013 as the deadline for submission of comments to the department of Public Service and Administration. The deadline for submission of comments was subsequently extended to 31 July 2013.
- 1.5 The Bill was revised taking into account the written and oral submissions received after extensive consultations and information sharing sessions with different stakeholders.

### **2. BASIC VALUES AND PRINCIPLES GOVERNING PUBLIC ADMINISTRATION**

Section 195(1) of the Constitution provides the framework for intergovernmental relations and prescribes the following basic values and principles for public administration—

- (a) a high standard of professional ethics must be promoted and maintained;
- (b) efficient, economic and effective use of resources must be promoted;
- (c) public administration must be development-oriented;
- (d) services must be provided impartially, fairly, equitably and without bias;
- (e) people’s needs must be responded to, and the public must be encouraged to participate in policy-making;
- (f) public administration must be accountable;
- (g) transparency must be fostered by providing the public with timely, accessible and accurate information;
- (h) good human-resource management and career-development practices, to maximise human potential, must be cultivated; and
- (i) public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

### **3. APPLICATION OF BILL (Clause 2)**

The Bill applies to the public administration. Section 195(2) of the Constitution provides that the principles governing public administration applies to—

- (a) administration in every sphere of government;
- (b) organs of state; and
- (c) public enterprises.

### **4. OBJECTS OF BILL (Clause 3)**

The objects of the Bill are to promote and give effect to the values and principles in section 195(1) of the Constitution; provide for the transfer and secondment of employees; promote a high standard of professional ethics in the public administration; promote the use of information and communication technologies in the public administration; promote efficient service delivery in the public administration; facilitate the eradication and prevention of corrupt and unethical practices in the public administration; and provide for the setting of minimum norms and standards to give effect to the values and principles of section 195(1) of the Constitution.

### **5. BASIC VALUES AND PRINCIPLES (Clause 4)**

The Bill therefore requires each institution as defined in section 1 to—

- (a) promote and maintain a high standard of professional ethics;
- (b) promote efficient, economic and effective use of resources;
- (c) be development oriented;
- (d) provide such services impartially, fairly, equitably and without bias;
- (e) respond to people's needs and encourage public participation in policy-making;
- (f) be accountable to the public;
- (g) foster transparency by providing the public with timely, accessible and accurate information;
- (h) ensure good human resource management and career development practices to maximise human potential; and
- (i) ensure broad representation of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

### **6. MOBILITY OF STAFF WITH PUBLIC ADMINISTRATION (Clauses 5-7)**

Greater mobility of staff and the transfer of functions from one sphere to another is desirable in certain instances to allow services to be delivered at the most appropriate sphere and to enable the deployment of staff to where they are most needed in government. To enhance mobility within the public administration, the Bill provides for the transfer of employees with their consent. Where there is a skills shortage, employees with the necessary skills and knowledge may be seconded, without their consent, if the secondment is justified. The Bill also provides for transfer of employees upon the transfer or assignment of function.

### **7. PROHIBITIONS ON CONDUCTING BUSINESS WITH STATE AND DISCLOSURE OF FINANCIAL INTEREST (Clauses 8-9)**

As part of promoting professional ethics and integrity by employees, the Bill prohibits employees from conducting business with the State or being a director of a public or private company conducting business with the State. Failure to comply with this prohibition constitutes serious misconduct which may result in the termination of employment by the employer. Employees are required to disclose their financial interest and the financial interest of their spouses and persons living with them as if they were married to each other. Failure to comply with the obligation to disclose financial interest as required constitutes misconduct.

## **8. CAPACITY DEVELOPMENT AND TRAINING (Clauses 10-13)**

8.1 The Bill seeks to promote capacity development of employees by providing for the establishment of a National School of Government. This School must, through education and training, promote the progressive realisation of the values and principles governing public administration and enhance the quality, extent and impact of the development of human resources capacity in institutions.

8.2 The Bill requires the head of the institutions, through the education and training of its employees, to develop the human resource capacity in their institutions to a level that enables the institution to perform its functions in an efficient, quality, collaborative and accountable manner.

## **9. INFORMATION AND COMMUNICATION TECHNOLOGIES (Clause 14)**

The Bill requires a head of an institution to acquire and use information and communication technologies in a manner which leverages economies of scale to provide for cost effective service; ensures the interoperability of its information systems with information systems of other institutions to enhance internal efficiency or service delivery; eliminates unnecessary duplication of information and communication technologies in the public administration; and ensures security of its information systems.

## **10. ETHICS, INTEGRITY AND DISCIPLINE (Clause 15)**

Building a public administration grounded by professional ethics, integrity and discipline is critical for the realisation of the values contained in section 195(1) of the Constitution. The Bill establishes a Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit to provide, amongst others, technical assistance and support to institutions in all spheres of government regarding the management of ethics, integrity and disciplinary matters relating to misconduct within the public administration. The Bill requires the Minister to report to Parliament twice a year on the activities of the Unit.

## **11. MINIMUM NORMS AND STANDARDS (Clause 16)**

The Bill seeks to empower the Minister to prescribe minimum norms and standards on the promotion of values and principles referred to in section 195(1) of the Constitution; capacity development and training; information and communication technologies in the public administration; integrity, ethics, discipline including the disclosure of financial interests; measures to improve the effectiveness and efficiency of institutions; disclosure of disciplinary action; and any other matter necessary to give effect to the administration or implementation of the Act. The Minister must prescribe minimum norms and standards in consultation with the relevant executive authority. This allows for a degree of uniformity in relation to norms and standards across the public administration which should have a positive impact on service delivery.

## **12. OFFICE OF STANDARDS AND COMPLIANCE (Clause 17)**

The Bill establishes within the public administration an Office of Standards and Compliance whose objects are to promote and monitor compliance with the minimum norms and standards set by the Minister, taking into account that the three spheres of government are distinctive, inter-dependent and interrelated.

## **13. REGULATIONS (Clause 18)**

The Bill empowers the Minister to make regulations on, amongst others, matters required or permitted by the Bill to be prescribed. The Minister must make regulations in so far as they apply to municipalities in consultation with the Minister responsible for local government, the Minister responsible for Finance



and organised local government. The Minister must publish proposed regulations for public comment for a period of not less than 30 days in the *Gazette*.

#### **14. REPEAL AND AMENDMENT OF LAWS (Clause 19 and the Schedule)**

The Bill repeals sections 4, 14 and 15 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and repeals the Transfer of Staff to Municipalities Act, 1998 (Act No. 17 of 1998).

#### **15. COMMENCEMENT (Clause 20)**

Clause 20 allows for the provisions of the Bill to be brought into operation on different dates and also on different dates for different categories of institutions.

#### **16. PARLIAMENTARY PROCEDURE**

16.1 The State Law Advisers and the Department of Public Service and Administration are of the opinion that this Bill must be dealt with in accordance with the procedure established by either section 76(1) or 76(2) of the Constitution because it deals with the subject matter of matters listed in section 76(3) of the Constitution, namely “Public Administration” which is contained in section 195 of the Constitution.

16.2 The State Law Advisers are of the opinion that it is not necessary to refer this 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.





