

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE PROPOSED AMENDMENTS**

**TO**

**CLIMATE CHANGE BILL**

**[B 9 — 2022]**

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*(Portfolio Committee on Forestry, Fisheries and Environment)*

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**[B 9A — 2022]**

**PROPOSED AMENDMENTS TO**

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**CLIMATE CHANGE BILL**[B 9 — 2022]

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**CLAUSE 1**

1. On page 6, after line 4, to insert the following definition:

" **'national greenhouse gas emissions profile'** means the latest trends in national greenhouse gas emission totals with and without sinks;"

2. On page 6, after line 26, to insert the following definition:

" **'Public Finance Management Act'** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);"

3. On page 6, after line 28, to insert the following definition:

" **'Resilience'** means the capacity of social, economic and environmental systems to cope with a hazardous event or trend or disturbance, responding of re-organising in ways that maintain their essential function, identity and structure, while also maintaining the capacity for adaptation, learning and transformation;"

**CLAUSE 3**

1. On page 7, in line 35, to omit "the physically challenged" and to substitute "persons with disabilities".

**CLAUSE 4**

1. On page 8, after line 8, to add the following subsections:

"(3) The Executive Director of the Presidential Climate Commission must submit to the Minister—

- (a)* at the end of every quarter, a report on the Presidential Climate Commission's activities, the performance of its functions and expenditure, including the implementation of its approved strategic plan; and
- (b)* annually, within six months after the end of each financial year, the Presidential Climate Commission's financial statements and the audit report on such financial statements.

(4) The Minister must table, in the National Assembly, the reports and financial statements submitted in terms of subsections (3)—

- (a)* within 15 business days after receiving the reports and financial statements from the Executive Director of the Presidential Climate Commission; or

- (b) if the National Assembly is not then sitting, within 15 business days after the commencement of the next sitting."

#### **CLAUSE 7**

1. On page 8, in line 23, after "policies" to insert ", laws," and to omit "and".
2. On page 8, in line 29, after "society" to insert a comma and to omit "and" and to insert ", traditional leaders and other relevant stakeholders" after "business".

#### **CLAUSE 10**

1. On page 9, from line 18, to omit section 10 and to substitute the following section:
  - "10. (1) The Presidential Climate Commission which existed immediately before the commencement of this Act continues to exist.
  - (2) The Presidential Climate Commission will, upon being listed as a public entity in Schedule 3 to the Public Finance Management Act, be a national public entity for purposes of the Public Finance Management Act and will be subject to the provisions of the said Act.
  - (3) The Presidential Climate Commission is independent, impartial and will have the full legal capacity of a juristic person once it is listed as a national public entity in Schedule 3 to the Public Finance Management Act.

(4) (a) The President must appoint not more than 25 members who will serve as commissioners of the Presidential Climate Commission, comprising representatives of, including but not limited to, government, organised labour, civil society, traditional leaders and business, to advise on the Republic's climate change response, the mitigation of climate change impacts and adaptation to the effects of climate change towards the attainment of the just transition to a low-carbon and climate-resilient economy and society.

(b) A member of Parliament may not be appointed as a commissioner of the Presidential Climate Commission.

(5) Ministers, whose portfolios are affected by the work of the Presidential Climate Commission, must be invited to attend the meetings of the Presidential Climate Commission.

(6) The commissioners of the Presidential Climate Commission are appointed for a period of five years, renewable once for a further final period of five years.

(7) The Presidential Climate Commission is chaired by the President.

(8) The President must appoint a deputy chairperson.

(9) In the absence of the chairperson, the deputy chairperson must perform all functions of the chairperson.

(10) The Presidential Climate Commission may—

(a) determine its own procedures to be followed at its meetings;

- (b) adopt a code of conduct for the commissioners of the Presidential Climate Commission; and
- (c) adopt rules which list the circumstances under which a commissioner may be removed, as well as the process for such removal."

## CLAUSE 11

1. On page 9, in line 32, after "11." to insert "(1)".
2. On page 9, from line 39, to omit paragraph (c) and to substitute the following paragraph:

"(c) advise government on any socio-economic matter related to the just transition."
3. On page 9, after line 40, to add the following subsections:

"(2) The Presidential Climate Commission may establish committees to assist it in the performance of its functions and may delegate or assign such functions to such committees.

(3) The committees established in terms of subsection (2) must be composed of persons suitably qualified in environmental management, climate change mitigation, finance, law and related fields."

**CLAUSE 12**

1. On page 9, from line 42, to omit subsection (1) and to substitute the following subsection:

"(1) Before appointing the commissioners in terms of section 10(4), the President must—

- (a) invite nominations by notice in the *Gazette* and in at least two nationally circulated newspapers; and
- (b) in the notice referred to in paragraph (a), specify the period within which nominations must be submitted and stipulate the procedure to be adopted regarding such nominations."

2. On page 9, after line 48, to add the following subsections:

"(3) The role of a commissioner is to provide advice to the Presidential Climate Commission on the Republic's climate change response, the mitigation of climate change impacts and adaptation to the effects of climate change towards the attainment of the just transition to a low-carbon and climate-resilient economy and society.

(4) No person shall be appointed as a commissioner unless he or she is a South African citizen.

(5) Commissioners who are not in the employment of the state are eligible for remuneration.

(6) The remuneration of commissioners must be determined by the Minister in consultation with the Minister of Finance."

## NEW CLAUSES

1. On page 9, after line 48, to insert the following new clauses:

### **"Appointment of Executive Director**

**12A.** (1) The Minister must appoint a person with appropriate qualifications, experience and expertise as the Executive Director of the Presidential Climate Commission following a competitive recruitment process.

(2) The Executive Director is the accounting authority who must perform the functions of office in accordance with this Act.

(3) A person appointed as Executive Director holds office—

(a) for an agreed term not exceeding five years, but which is renewable for one further period of no longer than five years; and

(b) on terms and conditions determined by the Minister, which must include salary, allowances, benefits and performance standards after taking into consideration the recommendations of the Minister of Finance.

**Financial administration**

**12B.** (1) The Presidential Climate Commission must comply with the provisions of the Public Finance Management Act.

(2) The Presidential Climate Commission must be funded from moneys—

(a) appropriated by Parliament for that purpose through its respective departmental vote in terms of the Public Finance Management Act; and

(b) received by way of grants, donations or inheritance from any of the social partners or any source, whether inside or outside the Republic, in accordance with a fundraising strategy to be adopted by the Presidential Climate Commission from time to time.

(3) Monies appropriated by Parliament for this purpose—

(a) constitutes earmarked funds on the Minister's departmental vote; and

(b) may not be used by the Presidential Climate Commission for any other purpose without the approval of Parliament.

(4) The fundraising strategy contemplated in subsection (2)(b) shall provide that such funding, amongst others—

(a) must be unconditional other than that it will be used towards the fulfilment of the functions of the Presidential Climate Commission; and

- (b) will not result in a conflict of interests for the Presidential Climate Commission or any commissioner; and
- (c) must be disclosed in full in accordance with this Act and any other applicable legislation.

(5) All grants, donations and inheritances must be disclosed in the annual report of the Presidential Climate Commission and all material grants, donations and inheritance must be itemised."

### **CLAUSE 13**

1. On page 9, from line 50, to omit section 13 and to substitute the following section:

**"13.** (1) The Presidential Climate Commission must submit its reports, studies, strategies, recommendations and related information to the National Assembly and to the Ministers whose Portfolios may be affected, for information purposes, within 30 days of the finalisation thereof.

(2) The Presidential Climate Commission must furnish the National Assembly with such additional information and particulars as the National Assembly may from time to time require in writing in connection with the activities or functions of the Presidential Climate Commission.

(3) The National Assembly may require the Presidential Climate Commission to provide a report on any advice and guidance it has provided to government in terms of section 11.

(4) The reports of the Presidential Climate Commission must be made available to the public by publication on the Presidential Climate Commission's website."

#### **CLAUSE 14**

1. On page 10, from line 2, to omit section 14 and to substitute the following section:

"14. (1) The Executive Director must appoint the secretariat of the Presidential Climate Commission in consultation with National Treasury.

(2) The secretariat is responsible for the management of the administrative affairs of the Presidential Climate Commission, the preparation of meetings and the running of the day-to-day operations, communications and research of the Presidential Climate Commission."

#### **CLAUSE 15**

1. On page 10, in line 14, before "within" to insert "at least".

2. On page 10, in line 21, after "amend" to insert "and publish in the *Gazette*".

3. On page 10, in line 23, before "within" to insert "at least".

4. On page 10, in line 24, after "develop" to insert a comma and to omit "and" and after "implement" to insert "and publish in the *Gazette*".
5. On page 10, in line 28, after "amend" to insert "and publish in the *Gazette*".

#### **NEW CLAUSE**

1. On page 11, after line 4, to insert the following new clause:

##### **"Finance mechanism**

**15A.** The Minister must prescribe a mechanism to support and finance the Republic's climate change response, planning and implementation by national, provincial and local government in consultation with the Minister of Finance."

#### **CLAUSE 16**

1. On page 11, in line 18, to omit "may" and to substitute "must".

#### **CLAUSE 17**

1. On page 11, in line 26, to omit "a systematic observation of" and to substitute "climate monitoring infrastructure for".

2. On page 11, in line 33, to omit "may" and to substitute "must".

### **CLAUSE 18**

1. On page 11, in line 42, to omit "may" and to substitute "must".
2. On page 11, in line 53, to omit "to" and to substitute "from".

### **CLAUSE 19**

1. On page 12, in line 22, before "within" to insert "at least".
2. On page 12, in line 24, after "conduct" to insert "and publish in the *Gazette*".
3. On page 12, in line 31, before "within" to insert "at least".
4. On page 12, in line 36, before "every" to insert "at least".
5. On page 12, in line 43, before "within" to insert "must at least".

**CLAUSE 20**

1. On page 12, in line 51, to omit "National Climate Change Response White Paper" and to substitute "fulfilment of the objectives of this Act".

**CLAUSE 21**

1. On page 13, in line 10, to omit "and up to date" and to substitute "evidence-based and latest".
2. On page 13, from line 15, to omit "the trajectory in Schedule 3 serves as the national greenhouse gas emissions trajectory for the Republic" and to substitute "the latest updated Nationally Determined Contribution serves as the trajectory".

**CLAUSE 22**

1. On page 13, in line 30, before "The" to insert "(a)".
2. On page 13, after line 32, to insert the following paragraph:

"(b) The list contemplated in paragraph (a) must appropriately reflect the national greenhouse gas emissions profile."

3. On page 13, in line 34, after "targets" to insert "guided by the national greenhouse gas emissions profile".
4. On page 13, from line 43, to omit paragraph *(b)* and to substitute the following paragraph:

*"(b)* be aligned with the national greenhouse gas emissions trajectory, noting that the cumulative amount of greenhouse gas emission reductions which the sectoral emissions targets represent, ensures that the national greenhouse gas emissions profile are kept within the national greenhouse gas emissions trajectory; and".

#### **CLAUSE 23**

1. On page 14, in line 44, after "emit" to insert ", or has the potential to emit,".
2. On page 14, from line 45, to omit "and which the Minister reasonably believes cause or are likely to cause or exacerbate climate change".

#### **CLAUSE 24**

1. On page 16, in line 12, after "the" to insert "carbon".

2. On page 16, in line 12, to omit "prescribed" and after "circumstances" to insert "to be prescribed in the regulations contemplated in section 27(2)(a)(i)".

### **CLAUSE 27**

1. On page 17, in line 48, after "of" to insert "the Presidential Climate Commission or".
2. On page 18, after line 16, to add the following subsection:

"(4) Any regulations made in terms of section 15A must, 30 days prior to the publication of the regulations in the *Gazette*, be tabled in Parliament.

### **CLAUSE 32**

1. On page 19, from line 16, to omit section 32 and to substitute the following section:

**"32.** (1) A person commits an offence if that person—

  - (a) fails to provide data, information, documents, samples or materials to the Minister in terms of section 20(1);
  - (b) provides false and misleading data, information, documents, samples or materials to the Minister in terms of section 20(1);
  - (c) fails to prepare and submit a greenhouse gas mitigation plan to the Minister in terms of section 24(4);

(d) fails to comply with or contravenes the notice of the Minister in terms of section 25(1); and

(e) fails to comply with the measures contemplated in section 25(3)(b).

(2) A person convicted of an offence in terms of subsection (1) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment."

#### **CLAUSE 34**

1. On page 19, in line 38, to omit "4" and to substitute "3".

#### **SCHEDULE 2**

1. On page 20, after "Agriculture" to insert "Education", "Cooperative Governance" and "Traditional Affairs".
2. On page 20, after "Technology" to insert "Tourism".

### **SCHEDULE 3**

1. Schedule deleted.

### **ARRANGEMENT OF SECTIONS**

1. On page 3, after line 19, to insert:  
"12A. Appointment of Executive Director  
12B. Financial administration".

2. On page 3, after line 24, to insert:  
"15A. Finance mechanism".

3. On page 4, from line 26, to omit:

"SCHEDULE 3

Interim National Greenhouse Gas Emissions Trajectory".

4. On page 4, in line 28, to omit "4" and to substitute "3".