



# Limpopo Legislature

## OFFICE OF THE SECRETARY

**Physical Address:**

Lebowakgomo  
Government Complex

**Postal Address:**

Private Bag X9309  
Polokwane  
0700

### NEGOTIATING MANDATE

**To** : The Chairperson: SC on Cooperative Governance and Traditional Affairs

**Name of Bill** : The Public Administration Management Bill

**Number of the Bill** : [B55 - 2013]

**Date of Deliberation** : 07 February 2013

**Vote of the Legislature** : Provincial NODP Permanent Delegates to negotiate in favour of the Bill, taking into consideration the inputs mentioned in the Report.

HON. G. MASHAMBA  
COMMITTEE CHAIRPERSON

10/02/2013

DATE

## REPORT OF THE PORTFOLIO COMMITTEE ON PUBLIC ADMINISTRATION ON NEGOTIATING MANDATE ON PUBLIC ADMINISTRATION MANAGEMENT BILL B55-2013

### 1. INTRODUCTION

The Public Administration Management Bill [B55- 2013] was introduced in the august House from the National Council of Provinces (NCOP) and the Bill was subsequently referred to the Portfolio Committee on Public Administration for consideration and inputs.

### 2. OBJECTS OF THE 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.

### 3. CONSIDERATION OF THE BILL

The Committee was briefed by the National Council of Province permanent delegate Hon. Humbrey Mokeobi together with the Department of Public Service and Administration (DPSA) and Legal Services of the Limpopo Provincial Legislature on 22 January 2013 to receive a detailed briefing on the principles and objects of the Bill. It was in this meeting that the committee resolved to conduct public hearings in all five district municipalities in Limpopo Province. The Public hearings were held on 31 January 2014 in Tivumbini Multi-Purpose Center, Tzaneen Municipality, Mopani district and Matsiela Boxing Gym, Thulamela Municipality, Vhembe district, concurrently. The second Public Hearings were held on 03 February 2014 in Bela Community Hall, Bela Bela Local Municipality, Waterberg district, Fetakgomo Civic Center, Fetakgomo Local Municipality, Sekhukhune district and Bolivia Lodge, Potokwane Local Municipality, Capricorn district, concurrently. The Public Hearings were successfully attended by more than 1200 stakeholders in general.

#### 4. STAKEHOLDER'S INPUTS RECEIVED DURING PUBLIC HEARINGS:

During the public hearings in all the districts the following inputs were made:

##### Interpretation, application and objects of act

1. The Bill must clearly stipulate sections of the Public Service Act that are affected and must be amended so that it is clear what is being amended.
2. The public representatives should be included in the bill since they are the one mostly corrupt.

##### Definitions

3. On definitions, an employee is not comprehensive enough and should therefore include an employee as "a person employed in terms of the PSA and Municipal Systems Act.
4. The definition of Family members is too broad and should include only spouse. However the definition should include friends in order to avoid favouritism.

##### Employment in public administration

5. There must be an independent body in every department to regulate transfers and secondments. This will ensure that the process is fair and impartial to avoid any possibility of ulterior motives but to advance the interests of the state.
6. The problem identified was that the public service and the municipalities in particular are over populated by people without skills. Some of the unskilled employee are even not trainable and cannot be capacitated to meet the needed skills or qualifications. It was felt that the Bill must come up with measures to replace the unskilled with skilled people in a way that will not cause disputes from the labour unions.

Transfers

7. There must be a dispute resolution mechanism related to transfers and secondments. There must be an appeal process where a transfer did not satisfy either party.
8. Employees must first agree with the transfer before it is implemented.
9. Employees must also be allowed to initiate a transfer
10. Conditions of service and legislation governing establishment of public service and municipalities are not the same. The Bill must take into account such a challenge when transferring employees from departments to municipalities and vice versa.
11. The Bill must ensure that transfer and secondment of employees do not result in the abuse of employees or used to avoid employee promotion or as a means to conduct nepotism and biasness.
12. transfer should not happen during disciplinary hearings
13. Transfers should be done after two years in public service and not in less than six months to avoid manipulation of the system.
14. in Clause 6 the individual transferred should "possess necessary skills" and be "suitably qualified"

Secondments

15. There must be a conducive working environment and assisting devices be provided in the new working environment where the employee is to be seconded for improved performance, especially for people with disabilities.
16. The Bill must provide for incentives or remunerative means to compensate a transferred employee since his/her personal life will be affected, especially where the costs associated with working around their place of residence where less unlike in the new environment where the employee need to travel thereby increasing transport costs.
17. Secondments must be negotiated and mutually agreed upon between an employee and employer, otherwise it may lead to under-performance on the part of an employee to be seconded.

18. Transfers and secondment in government should be done with integrity.
19. Would it apply in all spheres of government? The clarity provided was that all spheres of government would be possible for secondments.
20. secondments should be fair

#### Conducting business with State

21. Doing business with government should be limited to low income employees to complement their income. Senior management team should thus be excluded from doing business with government.
22. On conducting business with government/state, the clause limit the right of other citizens (as set out in section 36 of the constitution). If an employee doesn't have undue influence in other provinces or other departments why should they be limited. In essence, the rights of individuals are unfairly treated and they should therefore not be limited. This Bill should therefore confine itself to where there is conflict of interest.
23. This Bill seems to be overlooking this notion whereby political office bearers are allowed to do business to the exclusion of employees. It must be clear that all people in government including politicians should be prohibited from doing business with state.
24. A suggestion was made that section 8 of this Bill should be deleted.
25. Section 8 of the Bill dealing with conducting business with state seem to contradict with Public Service Act (PSA) section 30(b) and Educators Employment Act (EEA) section 33(1)(b). In line with the above, it was felt that amendments should be made to curb the contradictions and to bring about harmony with existing Acts.
26. "a fine" contemplated in section 8(3)(a) must be explicit in order to determine the amount of a fine as most Acts determine the amount of fine.
27. It was also indicated that the Bill must indicate how the law enforcement mechanisms and cooling period will be implemented.
28. It was indicated that the cause for the five departments to be under administration in Limpopo Provincial Government was due to employees conducting business with government resulting in self enrichment. These also resulted in fraud and corruption.

causing government to lose lots of money. As a result the public hearing commended the Bill for coming up with measure aimed at addressing these unwanted biased practices.

29. Section 8(3) of the constitution and section 9(2) of the Bill of Rights should be carefully looked into against this Bill. There was identified contradictions with other legislations that have been noted. Section 24 of the constitution.

30. It was raised whether a non director of company could do business with the state? It was clarified that as long as you are an employee you should not conduct business with the state.

#### Disclosure of financial interest

31. Disclosure of financial interest should be done every five years rather than any time that authorities see it fit.

32. The Bill must seek mechanism to deal with the issue of business fronting.

33. Financial interest of the spouse should be deleted and equally, the definition of a person living with you should be deleted. On the other hand, disclosure of spousal properties can be challenging because it will touch on the deepest aspects of marriage, i.e. in cases of marriages out of community of property or antenuptial contracts that could be very challenging.

34. Would the disclosure include stipends? The clarity provided was that stipends would be disclosed if it happens continuously and during that particular financial year.

35. Would disclosure stop corruption? The clarity provided was that it was the aim of the Bill to provide effective and ethical public service.

#### Capacity development and training

36. It has been noted that some transfers are forceful and not done within legislation. On that note, senior management must be taken for training and workshops like subordinate staff on public service legislation to ensure that things are done correctly and according to law.

37. The Bill was well received because government wants to restore clean administration system which was undermined in the past and to ensure that public service and administration operates in line with the Constitution, Public Finance Management Act and that clean audit opinions are received. It was emphasized that this Bill if well

implemented could go a long way in appointing people with relevant skills and expertise and curb nepotism and corruption in the public service.

#### National School of Government

38. Some employees joined the public service as a result of political deployment. In most cases such employees are not well capacitated and therefore not equal to the demands of the posts they occupy. It is therefore highly recommended that the National School of Government take into consideration such employees for the sake of service delivery.
39. On establishment of school of government, stakeholders asked whether this does not render institutions of higher learning (given the fact that government controls such institutions) useless. This was viewed as an expensive exercise as at some time it would require that they be instituted in all provinces.
40. Given the numerous academic institutions available, the public wanted to know whether the new school implies that government doesn't have confidence in the current institution or not.
41. The Bill should have a definition of National School of Government.

#### Norms and standards

42. It was suggested that employees should be trained on norms and standards or have the institutions embracing the curriculum of norms and standards in their syllabuses.
43. Given the fact that Intergovernmental relations is a contested terrain, whereby there is over assertion of authority by DPSA on other departments, it would be proper that elements of this Bill should address this terrain if it is indeed meant to set common standards in the public sector.
44. Section 8(3) of the constitution and section 9(2) of the Bill of Rights should be carefully looked into against this Bill. There were identified contradictions with other legislations that have been noted. Section 24 of the constitution Transfers and secondment in government should be done with integrity.
45. Section 30 of the PSA states that for those doing business, approval should be granted by the executive authority. The public was concerned as to whether this Bill was re-align the aforementioned subsection or wher.
46. The Bill should have a definition of National School of Government.
47. A suggestion was made that section 8 of this Bill should be deleted.

48. A definition of business should be included and it should mean "business of an employee".
49. Given the fact that Intergovernmental relations is a contested terrain, whereby there is over assertion of authority by DP&A on other departments, it would be proper that elements of this Bill should address this terrain if it is indeed meant to set common standards in the public sector.

#### 5. NEGOTIATING MANDATE

The Committee, having considered the provisions of the Bill and inputs received from the general public and the stakeholders the Committee support the Bill.



HON. G. MASHAMBA  
CHAIRPERSON  
PORTFOLIO COMMITTEE ON PUBLIC ADMINISTRATION  
LIMPOPO PROVINCIAL LEGISLATURE