**Report of the Portfolio Committee on Public Service and Administration on the Public Administration Laws General Amendment Bill [B 16 ‑ 2021] Dated, 21 September 2022**

1. **INTRODUCTION AND REFERRAL OF THE BILL**

The Portfolio Committee on Public Service and Administration (“the Committee”) having considered the Public Administration Laws General Amendment Bill (National Assembly – section 75), referred to it and classified by the Joint Tagging Mechanism (JTM) as a section 76 Bill, reports as follows:

On 19th August 2021, the Speaker through ATC No 107—2021 introduced and referred the Public Administration Laws General Amendment Bill [B 16 ‑ 2021] to the Portfolio Committee on Public Service and Administration of the National Assembly, as well as referral to the Joint Tagging Mechanism (JTM) for classification in terms of Joint Rule 160. The Bill has been introduced in the National Assembly, proposed as a section 76 and was published in the Government Gazette 44383 of 1 April 2021. The Bill was sponsored by Honourable Member, Dr Leon Schreiber.

1. **ATTENDACE REGISTER**

**The following Members were present: ANC (**Mr James, TH, Ms Mgweba, T, Ms Ntuli, MM, Ms Kibi, MT, Ms Malomane, Ms VP, Ms Maneli, ST, Dr Nothnagel, J), **DA (**Dr Gondwe, M, Dr Schreiber, LA, Mr Mbhele, Z, Mr McGluwa, J) **EFF (**Ms Komane, RN, Ms Motsepe, CCS) **IFP (**Inkosi Cebekhulu, RN)

1. **OBJECTS OF THE BILL**

The objects of the Bill are to:

1. Prohibit political office-bearers from employment in the public service;
2. Prohibit special service benefits for Directors-General (DGs) and Heads of Department (HODs) who get dismissed from public service;
3. Enhance financial independence of the Public Service Commission (PSC);
4. Enhance administrative independence of the Public Service Commission;
5. Mandate the PSC to enforce merit-based appointments free from political interference; and
6. Empower the PSC to take remedial action where applicable and necessary.
7. **PRESENTATION BY THE INITIATOR OF THE BILL, DR LA SCHREIBER**
	1. In light of the abovementioned objective regarding the prohibition of political office-bearers from employment in the public service, Dr Schreiber has emphasised the importance of the objective to be in alignment with the Municipal Systems Amendment Bill, which was recently adopted by the National Assembly House for the President to assent. The object of the Bill seeks to prohibit “an employee [that they] may not hold political office in a political party or political organisation, whether in a permanent, temporary or acting capacity”.
	2. The provision of the Bill further seeks to build on the uniformity across all spheres of government with the main intention of strengthening government’s call for a “Single Public Service” as encapsulated in the Public Administration Management Act of 2014. The provision of the Bill will address discrepancies between what is applicable in the municipalities, but not implemented in the public service through the Public Service Act of 1994.
	3. With regard to the objective on the prohibition of special service benefits for DGs/HODs who are dismissed from public service, section 12 of the Public Service Act of 1994 needs to be amended to remove provision for dismissed officials to receive benefits. Accounting Officers who are dismissed for whatever form of wrongdoing must not be entitled to certain benefits such as bonuses.
	4. Concerning the objective to enhance financial independence of the Public Service Commission, the Kader Asmal Report on Chapter 9 &10 Institutions made reference to and recommendations on the financial independence of the PSC. Over the past years, the PSC has been dependent on the budget allocations through budget transfer from the Departmental Vote. However, the National Treasury has reviewed budget allocation system, per numerous recommendations made by the Committee on Public Service and Administration, to allocate the budget directly to the Public Service Commission since the beginning of the sixth administration. Budget allocation through a budget vote from the Executive compromised the Public Service Commission’s independence, which has to exercise its function without fear, favour and prejudice.

Therefore, the Bill seeks to enhance financial independence of the PSC from organs of State, which it has to conduct oversight over. Moreover, the Bill seeks to correct an error made during the amendment of the Public Financial Management Act of 1999 of not gazetting the Public Service Commission under Schedule 1 of the PFMA. The Office of the PSC will therefore be removed under the purview of the Department of Public Service and Administration and it is presently a fully-fletched vote of Parliament. This will ultimately lead to the PSC receiving its full status and ensuring that the Office of the Public Service Commission (OPSC) is headed by the Chief Executive Officer who is appointed by the Executive of the Office of the Commission rather than their appointment recommended by the Ministerial Committee (Panel) to the President. Restoring such powers will enhance accountability within the PSC to ensure that the institution is held accountable and to conduct its business without fear, favour and prejudice.

* 1. The fifth objective mandates the PSC to enforce merit-based appointments free from political interference. Section 197 (3) of the Constitution stipulates that “no employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause”. The Bill proposes insertion of Section 8A to the Public Service Commission Act, 1997 to mandate the PSC to issue directions to ensure any decision related to recruitment, transfer and promotion is based on:
1. ability, demonstrated by proficiency, including training or other qualification, and skills that is required for the relevant area in which the recruitment, transfer or promotion is being done.
2. The directions contemplated in subsection (1) must, in order to ensure that employment and personnel management practices are based on objectivity and fairness, include a prohibition on any recruitment, transfer, promotion or dismissal being effected based on, in part or in whole, a particular person’s support of, or opposition to, a particular political party or cause.
	1. The last objective of the Bill seeks to empower the PSC to take remedial action by inserting Section 10A to the Public Service Commission Act, 1997 to ensure measures, directions and recommendations issued by the PSC become legally binding. The Bill further seeks to ensure such measures, directions and recommendations are implemented within 60 days by the relevant authority and failure to implement must be reported to the provincial or national legislature.

In his conclusion, Dr Schreiber has highlighted that the Bill will assist South Africa towards depoliticising the public service and building a capable, ethical and professional public administration from any political interference. Meritocratic public service helps to bring high-quality staff, confers prestige in the civil service positions and this can also ameliorate individual performance to provide quality services to all citizens. Meritocracy provides talented and hard-working people from all walks of life with a means of advancement and the opportunity to contribute to the well-being of larger society.

1. **WRITTEN AND ORAL SUBMISSIONS ON THE BILL**

Written and oral submissions on the Bill are presented as follows:

* 1. **Institute of Race Relations**

Institute of Race Relations supports the Public Administration Laws General Amendment Bill. The Institute argued that public service placement became so politicised, incumbents too often spent their time garnering political favour and looking for their next position. The Institute supports the Bill as it seeks to strengthen existing loopholes in the recruitment system by introducing criminal sanctions for political interference in appointments. The Institute supports the Bill since it proposes important reforms that will be of the benefit of South Africa’s developmental ambitions.

* 1. **Hugenote Kollege**

Hugenote Kollege argument was more on the cadre deployment as employment of a special kind and it disregard the constitutional requirement of section 195 (1)(i) which state that“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.” In contrast to this desired state foreseen by the Constitution, cadre deployment destroys this required and desirable representivity with a false application where the population of public administration is more representative of a sample of loyal incompetent cadres from a factional or sectional political group than of the exemplary diverse South African population. Hugenote Kollege supports the Bill and further state that “it is highly essential, important, urgent, relevant and necessary.”

* 1. **University of South Africa: Institute for Global Dialogue**

The Institute for Global Dialogue argues that there is a growing consensus across party lines emerging of the need for a professional public service. It is important that this be translated into meaningful and far-reaching actions, especially in an increasingly competitive political environment nationally, provincially, and at the level of local government. The Institute for Global Dialogue supports the Bill.

* 1. **University of Witwatersrand: Public Affairs Research Institute**

The Public Affairs Research Institute (PARI) is an academic research institute that is non-partisan aimed to provide technical advice and undertakes social scientific research on the issues of relevant to state capacity, accountability and the public administration. PARI argues that Section 197 (3) provides that “no employee of the public service may be favoured or prejudiced only because that person supports a particular political party.” The Institute further highlights that Section 12 of the Public Service Act to regulate appointment of persons on grounds of policy consideration. Section 12(a) provides no statutory provision for political criteria to enter into appointment and removal decisions. The High Court has set precedent in these terms: e.g. Mlokoti v Amathole District Municipality. The Zondo Commission has concurred, adding that practices of political appointment and removal were key to state capture.

PARI was of the view that the main problem therefore lies not so much with the policy of any specific party, as with the statutory framework governing the public administration in South Africa. The Institute submit that it does not want bottlenecks in appointment and prefer the Public Service Commission to take charge of the senior management (highest level) appointments and lower appointments, heads of department will take on a more substantial role. The Bill tightens, strengthens and elaborates the Public Service Commission’s powers of monitoring and enforcement of compliance of personnel practices in the public service. The Public Affairs Research Institute supports the Public Administration Laws General Amendment Bill.

1. **PRESENTATION BY THE OFFICE OF THE PRESIDENCY**
	1. The Socio-Economic Impact Assessment Unit in the Presidency provided its inputs on the Public Administration Laws General Amendment Bill by emphasising that the current administration has placed “Building a Capable, Ethical and Developmental State” as a top priority in advancing delivery of quality services to citizens. Government undertook a comprehensive approach to address capacity of the State and in line with the National Development Plan by putting efforts to stabilise political-administrative interface, and to ensure that senior appointments are purely based on meritocracy including Local Government and capacitating the public service.
	2. The following are reforms introduced by government towards building a capable, ethical and developmental State, which are as follows:
* The designation of the Director-General in The Presidency as Head of Public Administration as proposed in the National Development Plan (NDP), towards building a professional and capable public service;
* Finalising Framework for the Professionalisation of the Public Service;
* Conducting lifestyle audits;
* Process on reforms of the State Owned Enterprises to restore governance;
* Strengthening law enforcement institutions and ensuring various mechanisms are put in place to fight fraud and corruption;
* Rolling out of courses and training programmes for government officials from entry level to senior management and the Executive through the National School of Government (NSG);
* Legislative reviews: Amendments to the Public Service Act, Public Administration Management Act, Public Service Commission Act and Municipal Systems Amendment Bill (passed by Parliament on 03 May 2022).
	1. Based on the abovementioned background concerning progress made, the Socio-Economic Impact Assessment (SEIA) Unit was of the view that the Bill coheres with some of the work under planning developmental phase by Government. However, the Bill does not holistically address the priority of building a capable, ethical and developmental State. The Bill parallels other important legislative amendment bills i.e. Public Service Amendment Bill, Public Administration Management Amendment Bill and Public Service Commission Amendment Bill which were initiated and published for comments in 2021.
	2. SEIA’s submission on the content of the Bill highlights the following with regard to the object concerning the independence and impartiality of the PSC:
* The proposed amendments on its institutional setup in the Bill are made without business case support that should have being informed by the views of affected staff members and Labour Unions of the Office of the PSC.
* It is not clear on how the proposed institutional arrangements will contribute towards the independence and impartiality of the Commission.
* The modality for funding to asserts PSC independence should be sought. The Bill appears to be a duplication to existing legislation regarding holding the Executive accountable.
	1. With regard to the depoliticization of the public service, SEIA indicated that the Public Service Regulations’ (2016) approach is not to criminalise those with political ambitions, but to protect the integrity of the public service in serving the public in an unbiased and impartial manner. The focus of the Bill is largely on the independent bureaucracy rather than investing in a professional public service which Government is attending to through the Framework on Professionalisation of Public Service. Government interventions emphasise that the Public Service should be insulated from political interference/influence or manipulation, of which the role of PSC becomes important. Appointments are to be based on meritocratic criteria that include qualifications, experience, expertise, integrity and values and not on political patronage.
	2. The SEIA Unit in the Presidency have requested the Committee to afford government with an opportunity to continue with its initiatives and expedite the finalisation of enabling legislation - the amendments of Public Service Act, Public Administration Management Act, Public Service Commission Act and Municipal System Act as well as the finalisation of the Framework for the Professionalisation of the Public Service and its implementation thereof.
1. **PRESENTATION BY THE DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION**

The Department of Public Service and Administration provided inputs and an update regarding the amendments of the Public Service Act and Public Administration Management Act. The Department was of the view that the Bill before the Committee coheres with amendments currently published for public comments. The Bill’s main emphasis is on the meritocratic appointments in the public service, in which government is currently strengthening recruitment systems such as development of framework for the Professionalisation of the Public Service. The framework promotes meritocratic process in the public service. The Department conceded that the Public Service Act needs to be aligned with Municipal Systems Bill for prohibiting heads of department and public servants from holding political positions in their respective political parties.

1. **PRESENTATION BY THE PUBLIC SERVICE COMMISSION**

The Public Service Commission is at an advance stage of finalising the Public Service Commission Amendment Bill. The aim of the amendment is to repeal the Public Service Commission Act of 1997, which will enable the Commission to operate as an independent and impartial constitutional body with its own secretariat. Furthermore, the new Bill will provide the Commission with an extended mandate to oversee municipalities and public entities.

1. **COMMITTEE DELIBERATIONS ON THE BILL**

The Portfolio Committee has deliberated and decided on the desirability of the Public Administration Laws General Amendment Bill:

* 1. The Committee commended Dr Schreiber for initiating and tabling a Private Member’s Bill (the Public Administration Laws General Amendment Bill) in the National Assembly. The Committee further commended organisations that submitted the written and oral propositions on the Bill. Dr Schreiber has consistently demonstrated his passion for ensuring capable, ethical and professionalization of the public service. This can only be achieved through embracing meritocratic recruitment system that brings about high-quality staff in the public service with the aim of enhancing performance and provision of quality service delivery.
	2. There must be uniformity in the legislative prescripts between the public service and local government. The Department of Public Service and Administration has to ensure alignment of the Municipal Systems Act No 3 of 2022 with the Public Service Act of 1994 regarding provision which states that “an employee may not hold political office in a political party or political organisation, whether in a permanent, temporary or acting capacity”.
	3. Government through the Department of Public Service and Administration is currently working on plethora of policies to enforce the merit-based appointments free from political interference this include among the draft Framework on the Professionalisation of the Public Service and legislative reviews to be tabled in Parliament in due course. The Public Service Amendment Bill, currently with the Department of Public Service and Administration focuses on strengthening the recruitment process which will embrace meritocratic appointments in the public service.
	4. The Public Service Commission is at an advanced stage of finalising the Public Service Commission Amendment Bill which will be tabled before the 2022/23 financial year in Parliament. The aim of the amendment is to repeal the Public Service Commission Act of 1997 which will enable the Commission to operate as an independent and impartial constitutional body with its own Secretariat.
	5. Financial, administration, governance and independence of the Public Service Commission remain a paramount priority of the Committee. The Department of Public Service and Administration together with the Public Service Commission must ensure that the Public Service Commission Amendment Bill is tabled before end of 2022/23 financial year. This Bill has taken too long to be tabled.
	6. All legislative and policy reforms undertaken by the Department of Public Service and Administration, the National School of Government and the Public Service Commission cohere and compliment the Public Administration Laws General Amendment Bill. However, there are aspects in the Public Administration Laws General Amendment Bill that are not covered in the Public Service Amendments Bill, Public Administration Management Amendments Bill and the Public Service Commission Amendments Bill.
	7. Therefore, the view of the Committee is that legislative amendments that are not covered by or are not strengthened in the proposed Bills may be borrowed from Hon Schreiber’s proposals and be incorporated into the upcoming amendment Bills, where appropriate.

1. **MOTION OF DESIRABILITY**

Having extensively deliberated on the Public Administration Laws General Amendment Bill, the Committee appreciated the efforts made by Dr Leon Schreiber (MP) for drafting and introducing the Private Members Bill to the National Assembly. The Committee further appreciated institutions and members of the society who have participated in the process through written and oral submission.

However, the Committee resolved that the Bill is undesirable based on the above stated deliberations.

Report to be considered