



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 460

Cape Town,
Kaapstad, 17 October 2003

No. 25590

THE PRESIDENCY

No. 1504

17 October 2003

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 25 of 2003: Financial and Fiscal Commission Amendment Act, 2003.

DIE PRESIDENSIE

No. 1504

17 Oktober 2003

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 25 van 2003: Wysigingswet op die Finansiële en Fiskale Kommissie, 2003.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

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

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

(English text signed by the President.)
(Assented to 12 October 2003.)

ACT

To amend the Financial and Fiscal Commission Act, 1997, so as to extend the functions of the Financial and Fiscal Commission; to bring the number, and appointment procedure, of members of the Commission into line with section 221 of the Constitution; and to alter certain procedures in respect of financial matters in order to bring the said Act into line with the Public Finance Management Act, 1999; and to provide for matters connected therewith.

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

Amendment of section 3 of Act 99 of 1997

1. Section 3 of the Financial and Fiscal Commission Act, 1997 (hereinafter referred to as the principal Act), is hereby amended by—

- (a) the insertion after subsection (2) of the following subsections:

“(2A) (a) An organ of state in one sphere of government which seeks to assign a power or function to an organ of state in another sphere of government in terms of a law must first, before assigning the power or function—

(i) notify the Commission of the fiscal and financial implications of such assignment on—

(aa) the future division of revenue raised nationally between the spheres of government as required by section 214 of the Constitution;

(bb) in the case of an assignment to a provincial or local organ of state, the fiscal power, fiscal capacity and efficiency of the relevant province or municipality; and

(cc) any transfer of employees, assets and liabilities, if any; and

(ii) request the recommendation or advice of the Commission regarding such assignment.

(b) The Commission must, not later than 180 days from the date of its receipt of the notification and request contemplated in paragraph (a) or such other period agreed with the relevant organ of state, make such recommendation or give such advice on the intended assignment as may be appropriate.

(c) An assignment contemplated in paragraph (a) has no legal force unless the organ of state making such assignment has given consider-
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ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit
bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in
bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 12 Oktober 2003.)

WET

Tot wysiging van die Wet op die Finansiële en Fiskale Kommissie, 1997, ten einde die funksies van die Finansiële en Fiskale Kommissie uit te brei; die getal lede en aanstellingsprosedure van lede van die Kommissie in ooreenstemming te bring met artikel 221 van die Grondwet; en sekere prosedures ten opsigte van finansiële aangeleenthede te verander met die oog daarop om genoemde Wet in ooreenstemming te bring met die Wet op Openbare Finansiële Bestuur, 1999; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 3 van Wet 99 van 1997

1. Artikel 3 van die Wet op die Finansiële en Fiskale Kommissie, 1997 (hierna die Hoofwet genoem), word hierby gewysig deur—

(a) die volgende subartikels na subartikel (2) in te voeg:

“(2A) (a) ’n Staatsorgaan in een regeringsfeer wat verlang om, ooreenkomstig ’n wet, ’n bevoegdheid of funksie aan ’n staatsorgaan in ’n ander regeringsfeer op te dra, moet voor die bevoegdheid of funksie opgedra word—

(i) die Kommissie in kennis stel van die finansiële en fiskale implikasies van sodanige opdragting met betrekking tot—

(aa) die toekomstige verdeling van inkomste wat nasionaal gevorder word tussen die regeringsfere soos deur artikel 214 van die Grondwet vereis word;

(bb) in die geval van ’n opdragting aan ’n provinsiale of plaaslike staatsorgaan, die fiskale bevoegdheid, fiskale kapasiteit en doeltreffendheid van die provinsie of munisipaliteit; en

(cc) enige oorplasing van personeel, bates en laste, as daar is; en

(ii) die aanbeveling of advies van die Kommissie aangaande sodanige opdragting versoek.

(b) Die Kommissie moet, nie later nie as 180 dae vanaf die datum van die ontvangs deur hom van die kennisgewing en versoek in paragraaf (a) beoog, of binne die ander tydperk waaroor met die betrokke staatsorgaan ooreengekom is, die aanbeveling doen of die advies gee oor die voorgename opdragting wat gepas is.

(c) ’n Opdragting in paragraaf (a) beoog het geen regsrag nie tensy die staatsorgaan wat die opdragting uitvoer oorweging geskenk het aan die Kommissie se aanbeveling of advies in paragraaf (b) beoog.

ation to the Commission's recommendation or advice contemplated in paragraph (b).

(d) The organ of state assigning any power or function to another organ of state must indicate to the Commission, the organ of state to which a power or function is being assigned, the National Treasury and any other functionary responsible for authorising such assignment, the extent to which it has considered the Commission's recommendation or advice.

(e) Despite paragraph (c), if the Commission does not make a recommendation or give advice within the period contemplated in paragraph (b), the relevant organ of state may, after consultation with the National Treasury, proceed to assign a power or function to another organ of state if such assignment takes into account the measures referred to in subsection (2A)(a)(i).

(2B) An organ of state must notify the Commission or request the Commission to perform a function in the form prescribed by the Commission.

(2C) If the Commission fails to comply with subsection (2A)(b), the Commission must submit written reasons for such failure to Parliament, and if appropriate, also to the relevant provincial legislature.

(2D) Before requesting the recommendation or advice of the Commission, the organ of state seeking to assign the power or function must, in the case—

- (a) of a national organ of state, obtain the written approval of the National Treasury; or
- (b) of a provincial organ of state, obtain the written approval of the provincial treasury.”; and

(b) the substitution for subsection (5) of the following subsection:

“(5) All organs of state [, **when appropriate,**] must assist the Commission to perform its functions effectively.”.

Substitution of section 5 of Act 99 of 1997

2. The following section is hereby substituted for section 5 of the principal Act:

“Composition

5. (1) In terms of section 221(1) of the Constitution, the Commission consists of the following women and men appointed by the President:

- (a) A chairperson and a deputy chairperson;
- (b) **[nine persons, each of whom is nominated by the Executive Council of a province, with each province nominating only one person after nominations have been invited in the provincial gazette and in at least two newspapers circulating in the province]** three persons selected, after consulting the Premiers, from a list compiled in accordance with the process set out in subsection (2);
- (c) two persons [nominated by] selected, after consulting organised local government, [in accordance with] from a list compiled in accordance with the process set out in section 5 of the Organised Local Government Act, 1997 (Act No. 52 of 1997); and
- (d) **[nine]** two other persons.

(2) (a) Whenever there is a vacancy on the Commission in respect of the members contemplated in subsection (1)(b) the Minister, within 14 days of receiving the Commission's written notification of the vacancy, must notify each Premier accordingly and each Premier may nominate one person for appointment to the Commission.

(b) The Minister must compile a list of the nominees and must circulate the list to each Premier.

(c) The Premiers must endeavour to reach consensus on a short-list of nominees, comprising at least one name more than the number of vacancies that must be filled.

(d) If the Premiers reach consensus on a short-list, that short-list is the list contemplated in subsection (1)(b).

(d) Die staatsorgaan wat enige bevoegdheid of funksie aan 'n ander staatsorgaan opdra, moet die mate waarin hy oorweging geskenk het aan die Kommissie se aanbeveling of advies aandui vir die Kommissie, die staatsorgaan aan wie 'n bevoegdheid of funksie opgedra word, die Nasionale Tesourie en enige ander funksionaris wat vir die magtiging van sodanige opdragting verantwoordelik is. 5

(e) Ondanks paragraaf (c) kan die betrokke staatsorgaan, indien die Kommissie nie binne die tydperk in paragraaf (b) beoog 'n aanbeveling doen of advies gee nie, na oorleg met die Nasionale Tesourie, voortgaan met die opdragting van 'n bevoegdheid of funksie aan 'n ander staatsorgaan indien sodanige opdragting die maatreëls in subartikel (2A)(a)(i) bedoel in aanmerking neem. 10

(2B) 'n Staatsorgaan moet die Kommissie in kennis stel of die Kommissie versoek om 'n funksie uit te voer in die vorm deur die Kommissie voorgeskryf. 15

(2C) Indien die Kommissie versuim om aan subartikel (2A)(b) te voldoen, moet die Kommissie skriftelike redes vir sodanige versuim aan die Parlement en, indien toepaslik, ook aan die tersaaklike provinsiale wetgewer voorlê.

(2D) Voordat die staatsorgaan wat verlang om die bevoegdheid of funksie op te dra die aanbeveling of advies van die Kommissie versoek, moet die staatsorgaan, in die geval van— 20

(a) 'n nasionale staatsorgaan, die skriftelike goedkeuring van die Nasionale Tesourie verkry; of

(b) 'n provinsiale staatsorgaan, die skriftelike goedkeuring van die provinsiale tesourie verkry; en 25

(b) subartikel (5) deur die volgende subartikel te vervang:

“(5) Alle staatsorgane moet [**, wanneer dit gepas is,**] die Kommissie bystaan om sy funksies doeltreffend te verrig.”.

Vervanging van artikel 5 van Wet 99 van 1997 30

2. Artikel 5 van die Hoofwet word hierby deur die volgende artikel vervang:

“Samestelling

5. (1) Ingevolge artikel 221(1) van die Grondwet bestaan die Kommissie uit die volgende vroue en mans wat deur die President aangestel word: 35

(a) 'n Voorsitter en 'n adjunkvoorsitter;

(b) **[nege persone wat elkeen deur die Uitvoerende Raad van 'n provinsie benoem word, met slegs een persoon deur elke provinsie benoem nadat benoemings in die provinsiale koerant en in minstens twee koerante wat in die provinsie gesirkuleer word, aangevra is]** drie persone wat na oorlegpleging met die Premiers gekies word vanuit 'n lys wat saamgestel is ooreenkomstig die proses wat in subartikel (2) uiteengesit word; 40

(c) twee persone **[benoem deur]** wat, na oorlegpleging met georganiseerde plaaslike regering, gekies word vanuit 'n lys wat saamgestel is ooreenkomstig die proses wat in artikel 5 van die Wet op Georganiseerde Plaaslike Regering, 1997 (Wet No. 52 van 1997), uiteengesit word; en 45

(d) **[nege]** twee ander persone.

(2) (a) Wanneer daar ook al 'n vakature in die Kommissie is ten opsigte van die lede in subartikel (1)(b) beoog, moet die Minister, binne 14 dae nadat skriftelike kennis van die vakature van die Kommissie ontvang is, elke Premier dienooreenkomstig in kennis stel en elke Premier kan een persoon vir aanstelling in die Kommissie benoem. 50

(b) Die Minister moet 'n lys van die benoemdes saamstel en die lys na elke Premier aanstuur. 55

(c) Die Premiers moet poog om konsensus te bereik oor 'n kortlys van benoemdes, wat minstens een naam meer moet bevat as die getal vakatures wat gevul moet word.

(e) If the Premiers cannot reach consensus, the list of nominees circulated in terms of paragraph (b) must be regarded as being the list contemplated in subsection (1)(b).

(3) An appointment to any vacancy on the Commission must be made not later than 90 days from the date when such vacancy occurs.”.

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Amendment of section 11 of Act 99 of 1997

3. Section 11 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The President must consult—

- (a) the **[Premier of a province]** Premiers before removing from office a member **[nominated by that province in terms of]** contemplated in section [5(b)] 5(1)(b); or
- (b) organised local government before removing from office a member **[nominated in terms of]** contemplated in section [5(c)] 5(1)(c).”.

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Amendment of section 24 of Act 99 of 1997

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4. Section 24 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) within **[three]** two months after the end of each financial year, prepare annual financial statements **[in accordance with generally accepted accounting practice]** as required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).”.

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Amendment of section 26 of Act 99 of 1997

5. Section 26 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) audited financial statements reflecting the Commission’s financial affairs during the year, **[consisting of at least—**

- (i) **a balance sheet;**
- (ii) **an income statement;**
- (iii) **a cash flow statement; and**
- (iv) **a report of the auditors]**

as required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).”.

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Amendment of law

6. The law mentioned in the Schedule is hereby amended to the extent indicated in the third column of that Schedule.

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Transitional arrangements

7. (1) Members of the Financial and Fiscal Commission contemplated in section 5 of the principal Act who held office immediately before the commencement of this Act continue to hold office until the expiry of their terms of office.

(2) Any member of the Financial and Fiscal Commission contemplated in section 5(1)(b) or (c) of the principal Act and who held office immediately before the commencement of this Act must be regarded as having been appointed in terms of section 5 of the principal Act as amended by this Act.

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Short title

8. This Act is called the Financial and Fiscal Commission Amendment Act, 2003.

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WYSIGINGSWET OP DIE FINANSIËLE EN FISKALE
KOMMISSIE, 2003

Wet No. 25, 2003

(d) Indien die Premiers konsensus oor 'n kortlys bereik, is daardie kortlys die lys in subartikel (1)(b) beoog.

(e) Indien die Premiers nie konsensus kan bereik nie, moet die lys benoemdes wat ingevolge paragraaf (b) aangestuur is, geag word die lys te wees wat in subartikel (1)(b) beoog word.

(3) 'n Aanstelling in enige vakature in die Kommissie moet gedoen word nie later nie as 90 dae vanaf die datum waarop sodanige vakature ontstaan.”.

Wysiging van artikel 11 van Wet 99 van 1997

3. Artikel 11 van die Hoofwet word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Die President moet oorleg pleeg met—

(a) die [**Premier van 'n provinsie**] Premiers voordat 'n lid [**deur daardie provinsie ingevolge**] beoog in artikel [5(b)] 5(1)(b) [**benoem**], van die amp onthef word; of

(b) georganiseerde plaaslike regering voordat 'n lid [**ingevolge**] in artikel [5(c)] 5(1)(c) [**benoem, uit**] beoog, van die amp onthef word.”.

Wysiging van artikel 24 van Wet 99 van 1997

4. Artikel 24 van die Hoofwet word hierby gewysig deur paragraaf (d) deur die volgende paragraaf te vervang:

“(d) binne [**drie**] twee maande na die einde van elke finansiële jaar finansiële jaarstate voorberei [**ooreenkomstig algemeen aanvaarde rekeningkundige praktyk**] soos deur die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), vereis.”.

Wysiging van artikel 26 van Wet 99 van 1997

5. Artikel 26 van die Hoofwet word hierby gewysig deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:

“(b) geouditeerde finansiële state wat die Kommissie se finansiële sake gedurende die jaar aantoon, [**wat moet bestaan uit ten minste—**

(i) 'n balansstaat;

(ii) 'n inkomstestaat;

(iii) 'n kontantvloeistaat; en

(iv) 'n verslag van die ouditeure]

soos vereis deur die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).”.

Wysiging van wet

6. Die wet in die Bylae genoem word hierby gewysig in die mate in die derde kolom van daardie Bylae aangedui.

Oorgangsbepalings

7. (1) Lede van die Finansiële en Fiskale Kommissie in artikel 5 van die Hoofwet beoog wat onmiddellik voor die inwerkingtreding van hierdie Wet die amp beklee het, gaan voort om die amp te beklee totdat hulle ampstermyn verstryk.

(2) Enige lid van die Finansiële en Fiskale Kommissie in artikel 5(1)(b) of (c) van die Hoofwet beoog wat onmiddellik voor die inwerkingtreding van hierdie Wet die amp beklee het, word geag aangestel te wees ingevolge artikel 5 van die Hoofwet soos deur hierdie Wet gewysig.

Kort titel

8. Hierdie Wet heet die Wysigingswet op die Finansiële en Fiskale Kommissie, 2003.

Act No. 25, 2003

FINANCIAL AND FISCAL COMMISSION
AMENDMENT ACT, 2003

SCHEDULE

AMENDMENT OF LAW

(Section 6)

No and year of law	Short title	Extent of amendment
Act No. 52 of 1997	Organised Local Government Act, 1997	The substitution for section 5 of the following section: “Nomination of persons to Financial and Fiscal Commission 5. (1) Whenever there is a vacancy on the Financial and Fiscal Commission in respect of members contemplated in section 5(1)(c) of the Financial and Fiscal Commission Act, 1997 (Act No. 99 of 1997), the Minister, within 14 days of receiving the Commission’s notification of the vacancy, must notify the national organisation to request each provincial organisation to nominate one person in writing within 45 days to the national organisation. (2) (a) If there is one vacancy, the executive committee of the national organisation must compile a list consisting of no more than four nominees from the nominees contemplated in subsection (1). (b) If there are two vacancies, the executive committee of the national organisation must compile a list consisting of no more than six nominees from the nominees contemplated in subsection (1). (3) The executive committee of the national organisation must submit the list to the Minister of Finance within 76 days after receiving notification from the Minister about the vacancy.”.

WYSIGINGSWET OP DIE FINANSIËLE EN FISKALE
KOMMISSIE, 2003

Wet No. 25, 2003

BYLAE

WYSIGING VAN WET

(Artikel 6)

No en jaar van wet	Kort titel	Omvang van wysiging
Wet No. 52 van 1997	Wet op Georganiseerde Plaaslike Regering, 1997	Die vervanging van artikel 5 deur die volgende artikel: “Benoeming van persone in die Finansiële en Fiskale Kommissie <u>5. (1) Wanneer daar ook al ’n vakature in die Finansiële en Fiskale Kommissie is ten opsigte van lede in artikel 5(1)(c) van die Wet op die Finansiële en Fiskale Kommissie, 1997 (Wet No. 99 van 1997), beoog, moet die Minister, binne 14 dae nadat kennis van die Kommissie ontvang is oor die vakature, die nasionale organisasie in kennis stel om elke provinsiale organisasie te versoek om een persoon binne 45 dae skriftelik by die nasionale organisasie te benoem vir aanstelling in die Finansiële en Fiskale Kommissie.</u> <u>(2)(a) Indien daar een vakature is, moet die uitvoerende komitee van die nasionale organisasie ’n lys saamstel wat bestaan uit hoogstens vier benoemdes uit die benoemdes in subartikel (1) beoog.</u> <u>(b) Indien daar twee vakatures is, moet die uitvoerende komitee van die nasionale organisasie ’n lys saamstel wat bestaan uit hoogstens ses benoemdes uit die benoemdes in subartikel (1) beoog.</u> <u>(3) Die uitvoerende komitee van die nasionale organisasie moet die lys aan die Minister van Finansies voorlê binne 76 dae nadat kennis van die Minister ontvang is oor die vakature.”</u>



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GENERAL NOTICE

Independent Communications Authority of South Africa

General Notice

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GENERAL NOTICE

NOTICE 2602 OF 2003



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ("THE AUTHORITY") HEREBY GIVES NOTICE THAT THE APPLICATIONS RECEIVED FOR UNDER-SERVICED AREA LICENCES, PURSUANT TO GENERAL NOTICE 3458 OF 2002 PUBLISHED IN GOVERNMENT GAZETTE NUMBER 24204, ARE AVAILABLE FOR PUBLIC INSPECTION AND COMMENT, PURSUANT TO SECTION 34 (3)(a) OF THE TELECOMMUNICATIONS ACT NO. 103 OF 1996, AS AMENDED ("THE ACT").

The Authority hereby gives Notice that the applications that were received and gazetted in General Notice 2503 in Government Gazette number 25498 are available for inspection by the public **from the 14th of October 2003.**

In terms of section 34(3) (a) of the Act, the Authority hereby invites interested persons to lodge written representations in relation to each of the applications, with the Authority. The **closing date** for written representations shall be the **30th October 2003.**

The applications received by the Authority are available for inspection as follows:

- (a) Hard copies can be accessed at the ICASA library in block D, situated at 164 Katherine Street, Sandton, Gauteng during 10H00 until 16H00, on a week day ;
- (b) At the Municipal Library in each of the Licence areas, in each Province;
- (c) Soft copies can be accessed on the ICASA website which is www.icasa.org.za.

The hard copies of these applications may be photocopied at the fee of R0, 25 per page.

Interested persons are invited to submit written representations in relation to the contents of each application, to the Authority **by no later than 16h30 on 30th of October 2003.**

Written representations may be e-mailed, faxed, posted or hand-delivered for the attention of:

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