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STATE PRESIDENT'S OFFICE

No. 2469. 29 December 1993

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

No. 179 of 1993: Public Service Amendment Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 2469. 29 Desember 1993

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

No. 179 van 1993: Staatsdienswysigingswet, 1993.

GENERAL EXPLANATORY NOTE:

[**]** Words in bold type in square brackets indicate omissions from existing enactments.

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

ACT

To amend the Public Service Act, 1984, so as to authorize the Commission for Administration to establish a training fund; to further regulate the procedure pertaining to the discharge of officers on account of misconduct; to provide that a head of department may delegate the authority to appoint presiding officers in cases of misconduct and to make it possible that judicial officers may still be appointed as presiding officers; to prevent an officer who has been charged with misconduct from retaining a satisfactory service record by resigning; to extend a right of appeal to all officers; and to authorize the State President to make regulations regarding the requirements with which presiding officers must comply and regarding the establishment and management of and control over a training fund for the public service; and to provide for incidental matters.

*(English text signed by the Acting State President.)
(Assented to 14 December 1993.)*

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

Amendment of section 3 of Act 111 of 1984, as amended by section 2 of Act 120 of 1990 and section 2 of Act 47 of 1993

1. Section 3 of the Public Service Act, 1984 (hereinafter referred to as the principal Act), is hereby amended by the substitution in subsection (4) for subparagraph (iii) of paragraph (a) of the following subparagraph: 5

“(iii) shall, when it deems it necessary, provide training or cause training to be provided or conduct examinations or tests or cause examinations or tests to be conducted, as it may direct or as may be prescribed as a qualification for the appointment, promotion or transfer of persons in or to the public service, and may, on such conditions as the Treasury may approve, establish a training fund, financed by donations and grants, to promote such training.” 10

Amendment of section 16 of Act 111 of 1984, as amended by section 3 of Act 67 of 1985, section 3 of Act 22 of 1986, section 5 of Act 47 of 1993 and section 27 of Act 102 of 1993 15

2. Section 16 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) Subject to the provisions of **[paragraph]** paragraphs (aA) and (b) and subsection (6) of this section and section 19(11) of the Public Service Labour Relations Act, 1993 (Act No. 102 of 1993), the power to discharge an 20

ALGEMENE VERDUIDELIKENDE NOTA:

- [** **]** Woorde in vet druk tussen vierkantige hake dui skrapings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Staatsdienswet, 1984, ten einde die Kommissie vir Administrasie te magtig om 'n opleidingsfonds in te stel; die prosedure met betrekking tot die ontslag van beamptes weens wangedrag verder te reël; voorsiening te maak dat 'n departementshoof die bevoegdheid om voorsittende beamptes by wangedragsake aan te stel, kan delegeer en dit moontlik te maak dat regterlike amptenare steeds as voorsittende beamptes aangestel kan word; te verhoed dat 'n beampte teen wie 'n klag van wangedrag ingebring is, deur te bedank 'n bevredigende werkrekord behou; 'n reg tot appèl tot alle beamptes uit te brei; en die Staatspresident te magtig om regulasies uit te vaardig oor die vereistes waaraan voorsittende beamptes moet voldoen en oor die instelling en bestuur van en beheer oor 'n opleidingsfonds vir die staatsdiens; en om vir bykomstige aangeleenthede voorsiening te maak.

*(Engelse teks deur die Waarnemende Staatspresident geteken.)
(Goedgekeur op 14 Desember 1993.)*

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

Wysiging van artikel 3 van Wet 111 van 1984, soos gewysig deur artikel 2 van Wet 120 van 1990 en artikel 2 van Wet 47 van 1993

- 5 1. Artikel 3 van die Staatsdienswet, 1984 (hieronder die Hoofwet genoem), word hierby gewysig deur in subartikel (4) subparagraaf (iii) van paragraaf (a) deur die volgende subparagraaf te vervang:
- 10 “(iii) moet, wanneer hy dit nodig ag, opleiding verskaf of laat verskaf of eksamens of toetse afneem of laat afneem, soos hy gelas of soos voorgeskryf word as 'n kwalifikasie vir die aanstelling, bevordering of oorplasing van persone in of na die staatsdiens, en kan, op die voorwaardes wat die Tesourie goedkeur, 'n opleidingsfonds instel, wat gefinansier word uit donasies en skenkings, om sodanige opleiding te bevorder;”.
- 15 **Wysiging van artikel 16 van Wet 111 van 1984, soos gewysig deur artikel 3 van Wet 67 van 1985, artikel 3 van Wet 22 van 1986, artikel 5 van Wet 47 van 1993 en artikel 27 van Wet 102 van 1993**
- 20 2. Artikel 16 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:
- “(1) (a) Behoudens die bepalinge van [paragraaf] paragrafe (aA) en (b) en subartikel (6) van hierdie artikel en artikel 19(11) van die Wet op Arbeidsverhoudinge vir die Staatsdiens, 1993 (Wet No. 102 van 1993), berus

officer or employee is vested in the Minister or Administrator, who may delegate that power to an officer.

(aA) Notwithstanding the provisions of paragraph (a), the power to discharge an officer, excluding a head of department, in terms of subsection (2)(e), is vested in the head of department.

(b) In the case of an officer holding a post in the A division, except where it is contemplated to discharge him in terms of subsection (2)(e) or to terminate his services in terms of section 19(11)(c) of the Public Service Labour Relations Act, 1993, the Commission shall first make a recommendation for his discharge [except in the case of a termination of service under section 19(11)(c) of the Public Service Labour Relations Act]."

Amendment of section 20A of Act 111 of 1984, as inserted by section 7 of Act 47 of 1993

3. Section 20A of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) If the officer charged in terms of subsection (1) or (2)—

(a) denies the charge; or

(b) fails to comply with the direction contemplated in subsection (4), the head of department or the officer to whom the head of department has delegated this power shall appoint **[an officer]** a person (in this section and sections 20B, 20C and 20E referred to as the presiding officer) to hear the charge."

Amendment of section 20D of Act 111 of 1984, as inserted by section 7 of Act 47 of 1993

4. Section 20D of the principal Act is hereby amended by the addition of the following subsection:

"(4) If an officer who has been charged under section 20A(1) or (2) or who has been suspended from duty under section 20A(7)—

(a) resigns from the public service; or

(b) assumes other employment (not being remunerative work contemplated in section 24(b)),

before the proceedings with regard to the charge of misconduct have been finalized in accordance with section 20C or, in the case of an appeal, in accordance with section 20E, he shall be deemed to have been discharged on account of misconduct."

Amendment of section 20E of Act 111 of 1984, as inserted by section 7 of Act 47 of 1993

5. Section 20E of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) An officer charged in terms of section 20A**[(1)]** shall have the right to appeal to the Commission against a finding of guilty of the presiding officer or the decision of the head of department, or both, within 21 days after the head of department notified him of his decision in accordance with section 20C(3)."

Amendment of section 35 of Act 111 of 1984, as amended by section 27 of Act 102 of 1993

6. Section 35 of the principal Act is hereby amended—

(a) by the substitution for paragraph (i) of subsection (1) of the following paragraph:

"(i) the manner of charging an officer with misconduct, the requirements with which a presiding officer must comply, the circumstances under which, the conditions on which, the manner in which, and the time when, an officer may be

die bevoegdheid om 'n beampte of werknemer te ontslaan by die Minister of Administrateur, wat dié bevoegdheid aan 'n beampte kan delegeer.

(aA) Ondanks die bepaling van paragraaf (a) berus die bevoegdheid om 'n beampte, uitgesonderd 'n departementshoof, kragtens subartikel (2)(e) te ontslaan, by die departementshoof.

(b) In die geval van 'n beampte wat 'n pos in die A-afdeling beklee, behalwe waar beoog word om hom kragtens subartikel (2)(e) te ontslaan of sy dienste kragtens artikel 19(11)(c) van die Wet op Arbeidsverhoudinge vir die Staatsdiens, 1993, te beëindig, moet die Kommissie eers sy ontslag aanbeveel [behalwe in die geval van 'n beëindiging van diens kragtens artikel 19(11)(c) van die Wet op Arbeidsverhoudinge vir die Staatsdiens].”

Wysiging van artikel 20A van Wet 111 van 1984, soos ingevoeg deur artikel 7 van Wet 47 van 1993

3. Artikel 20A van die Hoofwet word hierby gewysig deur subartikel (6) deur die volgende subartikel te vervang:

“(6) Indien die beampte wat ingevolge subartikel (1) of (2) aangekla is—

(a) die aanklag ontken; of
(b) versuim om te voldoen aan die aanseggings in subartikel (4) beoog, stel die departementshoof of die beampte aan wie die departementshoof hierdie bevoegdheid gedelegeer het 'n [beampte] persoon aan (in hierdie artikel en artikels 20B, 20C en 20E die voorsittende beampte genoem) om die aanklag te verhoor.”

Wysiging van artikel 20D van Wet 111 van 1984, soos ingevoeg deur artikel 7 van Wet 47 van 1993

4. Artikel 20D van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

“(4) Indien 'n beampte wat kragtens artikel 20A(1) of (2) aangekla is of kragtens artikel 20A(7) in sy diens geskors is—
(a) uit die staatsdiens bedank; of
(b) 'n ander werk (wat nie besoldigde werk beoog in artikel 24(b) is nie) aanvaar, voordat die verrigtinge in verband met die aanklag van wangedrag ooreenkomstig artikel 20C of, in die geval van 'n appèl, ooreenkomstig artikel 20E afgehandel is, word hy geag weens wangedrag ontslaan te wees.”

Wysiging van artikel 20E van Wet 111 van 1984, soos ingevoeg deur artikel 7 van Wet 47 van 1993

5. Artikel 20E van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) 'n Beampte aangekla ingevolge artikel 20A[(1)] het die reg om binne 21 dae nadat die departementshoof hom ooreenkomstig artikel 20C(3) van sy beslissing in kennis gestel het, by die Kommissie teen 'n skuldigbevinding van die voorsittende beampte of die beslissing van die departementshoof, of albei, te appelleer.”

Wysiging van artikel 35 van Wet 111 van 1984, soos gewysig deur artikel 27 van Wet 102 van 1993

6. Artikel 35 van die Hoofwet word hierby gewysig—

(a) deur paragraaf (i) van subartikel (1) deur die volgende paragraaf te vervang:

“(i) die wyse waarop 'n beampte van wangedrag aangekla moet word, die vereistes waaraan 'n voorsittende beampte moet voldoen, die omstandighede waarin, die voorwaardes en wyse waarop en tyd wanneer 'n beampte in sy diens geskors kan

- suspended from service, the manner in which a finding of guilty of misconduct and the contemplated action, may be appealed against, and the hearing of such an appeal;"; and
- (b) by the insertion in subsection (1) after paragraph (n) of the following paragraph: 5
- "(nA) (i) the establishment and management of and control over a training fund for the public service;
- (ii) in general, all matters reasonably necessary for the regulation and operation of such a fund;".

Short title

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7. This Act shall be called the Public Service Amendment Act, 1993.

word, die wyse waarop teen 'n skuldigbevinding aan wangedrag en die beoogde optrede geappelleer kan word, en die verhoor van so 'n appèl;"; en

5 (b) deur in subartikel (1) na paragraaf (n) die volgende paragraaf in te voeg:

“(nA) (i) die instelling en bestuur van en beheer oor 'n opleidingsfonds vir die staatsdiens;

(ii) in die algemeen, alle aangeleenthede wat redelikerwys nodig is vir die reëling en werking van so 'n fonds;”.

10 Kort titel

7. Hierdie Wet heet die Staatsdienswysigingswet, 1993.

