

NOTICE 981 OF 2014**NATIONAL TREASURY****PUBLICATION OF EXPLANATORY SUMMARY OF FINANCIAL AND FISCAL COMMISSION
AMENDMENT BILL, 2014**

The Minister of Finance intends introducing the Financial and Fiscal Commission Amendment Bill in Parliament. The explanatory summary of the Bill is hereby published in accordance with Rule 241(1)(c) of the Rules of the National Assembly.

BACKGROUND

A Financial and Fiscal Commission ("the Commission") was established by section 220(1) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"). The Commission's function is to make recommendations envisaged in Chapter 13 thereof, or in national legislation, to Parliament, provincial legislatures and any other authorities determined by national legislation (section 220(1)). The Commission is independent and subject only to the Constitution and the law, and must be impartial (section 220(2)). Section 220(3) of the Constitution stipulates that the Commission must function in terms of an Act of Parliament. The Financial and Fiscal Commission Act, 1997 (Act No. 99 of 1997 – "the Act"), was passed to give effect to section 220(3) of the Constitution.

OBJECTS OF BILL

- The main objects of the Bill are to propose amendments to the Act to enhance the institutional and other governance arrangements and functioning of the Commission and to fully align it with the Constitution and the Public Finance Management Act, 1999 (Act No. 1 of 1999). These objects are proposed to be achieved by—
 - ✓ shifting the chief executive and accounting officer functions of its Chairperson to a chief executive officer occupying a newly created administrative position and not being a member of the Commission. The chief executive officer must also fulfil the function of secretary to the Commission. This shift will remove the anomaly of the Chairperson of the Commission also being the chief executive and accounting officer while the Commission should act as an executive authority exercising oversight with respect to the chief executive and accounting officer. It is also provided that the chief executive officer be appointed for a renewable period not exceeding 5 years at a time;
 - ✓ affecting changes to the provisions dealing with the functions of the Commission to ensure that the terminology used and consideration of the Commission's recommendations are aligned to the Constitution and other legislation;
 - ✓ referring, in the provision on the legal force of an assignment of a power or function by an organ of state from one sphere of government to an organ of state in another sphere of government, to the requirement to request the recommendation of the Commission on the assignment;
 - ✓ specifying how an organ of state from one sphere of government that assigns a power or function to an organ of state in another sphere must reflect on a recommendation of the Commission;
 - ✓ providing that the Commission is responsible for its strategic management and direction;
 - ✓ stipulating that vacancies on the Commission must be filled within a reasonable period instead of a period of 90 days after the vacancy arose;
 - ✓ providing for the appointment basis of members of the Commission;
 - ✓ providing that a member of the Commission, who may serve a term of up to five years at a time, may not hold office for more than 10 consecutive years;

- ✓ giving effect to section 219(5) of the Constitution, by introducing procedures for the determination of the remuneration and other conditions of service of members of the Commission in align with the Determination of Remuneration of Office-bearers of Independent Constitutional Institutions Laws Amendment Act, 2014 (Act No. 22 of 2014). Though the Commission is a constitutional institution, that Act does not apply to the Commission;
 - ✓ replacing the Ministerial power to make regulations with a rule-making power for the Commission to accord with its direct reporting to Parliament and provincial legislatures (section 222 of the Constitution). Rules may be made regarding requests by organs of state for the Commission to make recommendations, its governance, the conduct of its employees, the summoning of witnesses to testify or produce any object and related matters necessary for the proper functioning of the Commission;
 - ✓ enabling the chief executive officer to delegate functions;
 - ✓ regulating the conduct of members of the Commission;
 - ✓ aligning the annual reporting provisions of the Act to that of the Public Finance Management Act; and
 - ✓ enabling the Commission to obtain information from any person.
- The ancillary objects of the Bill are to propose amendments to the Act among others to update obsolete terminology, to refer to the constitutional mandate of the Commission and to repeal repetitive provisions relating to the appointment of the chairperson and deputy chairperson of the Commission and obsolete transitional arrangements.

A copy of the Bill will be obtainable from the website of National Treasury at <http://www.treasury.gov.za> after the introduction of the Bill, and also by contacting:

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