

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
CRITICAL INFRASTRUCTURE
PROTECTION BILL**

[B 22—2017]

*(As agreed to by the Portfolio Committee on Police)
(National Assembly)*

[B 22A—2017]

ISBN 978-1-4850-0462-2

No. of copies printed 400

AMENDMENTS AGREED TO

CRITICAL INFRASTRUCTURE PROTECTION BILL

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CLAUSE 1

1. On page 4, on line 28, after “section 20(4)” to insert “and includes a critical infrastructure complex where required by the context”.
2. On page 4, after line 38, to insert the following definition:

“ **“government infrastructure”** for the purposes of section 9(4) and section 19 means infrastructure controlled, owned, occupied or possessed by a government department in the national sphere and in respect of whose operation or administration that department is responsible;”
3. On page 5, on line 2, after “water” to insert “but excludes any information infrastructure as contemplated in any legislation on cybersecurity”
4. On page 5, after line 6, to insert the following definition:

“ **“national security”** has the meaning ascribed to it in section 198 of the Constitution;”
5. On page 5, on line 13, after “any other person” to insert “”, whether by way of a public-private partnership or similar agreement”.
6. On page 5, on line 20, after “post” to insert “”, and “**person in control of an infrastructure**” shall be construed accordingly”.
7. On page 5, after line 23, to insert:

“ **“PSIRA”** means the Private Security Industry Regulatory Authority established in terms of section 2(1) of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);”

CLAUSE 2

1. On page 5, on line 60, after “pertaining to” to insert “security measures applicable to”.
2. On page 6, from line 1, to omit “legislation” and to substitute “Act of Parliament”.

CLAUSE 4

1. On page 6, from line 39, to substitute for clause 4 the following clause 4:

“**4.** (1) A Critical Infrastructure Council is hereby established.
 (2) The Minister appoints members of the Critical Infrastructure Council which must consist of the following persons:
 (a) the Secretary for the Police Service;
 (b) an official at the level of at least Chief Director or an equivalent level, designated by each of the heads of the following institutions—

- (i) Department of Defence;
 - (ii) Department of Home Affairs;
 - (iii) Department of Public Works;
 - (iv) National Disaster Management Centre;
 - (v) South African Local Government Association;
 - (vi) South African Police Service; and
 - (vii) State Security Agency; and
- (c) five members appointed in terms of subsection (8) from the private sector and civil society who are—
- (i) not disqualified in terms of section 5; and
 - (ii) preferably appropriately qualified, knowledgeable and experienced in fields that include critical infrastructure protection, risk management, disaster management or basic public services.

(3) The members of the Council must, when viewed collectively, preferably be persons who are suited to serve in the Council by virtue of their qualifications, expertise and experience in fields that include infrastructure protection, engineering, disaster management or security policy.

(4) In the event that—

- (a) the functions or functioning of infrastructure that forms the subject of an application for declaration as critical infrastructure may affect or be affected by the functional area of responsibility of a government department or an organ of state not referred to in subsection (2)(b), the Chairperson may request the Head of that Government department or the head of that organ of state to designate an appropriately qualified official to assist with such application; or
- (b) the Council is of the opinion that any other person could assist in general or with a specific application for declaration as critical infrastructure, the Council may request the Minister to appoint such person on an *ad hoc* basis to advise or assist the Council.

(5) The Minister must appoint—

- (a) officials referred to in subsection (2)(b) after consultation with the Cabinet member responsible for the institution in question;
- (b) members referred to in subsection (2)(c) in terms of subsection (8); and
- (c) persons referred to in subsection (4)(b) on advice of the Council.

(6) In the event that it is necessary to appoint a member referred to in subsection 2(c), the Minister must request the National Assembly to submit a list of candidates for appointment.

(7) The Speaker must refer the matter to the relevant committee of the National Assembly to—

- (a) publish a notice in the Gazette and in at least two national newspapers circulating in the Republic, inviting applications from interested persons and members of the public to nominate persons;
- (b) compile a shortlist of not less than 20 persons who are not disqualified in terms of section 5(a), (c), (d), (e), or (f), from the applications and nominations referred to in paragraph (a) or persons serving on the Council who qualify for a further appointment in terms of subsection (10);
- (c) submit the list referred to in paragraph (b) to the State Security Agency for consideration and issuing of a top secret security clearance;
- (d) conduct interviews with the persons referred to in paragraph (b) who are not disqualified in terms of section 5(b) for purposes of compiling a list of 10 recommended candidates in order of preference;
- (e) submit the list of names referred to in paragraph (d) to the National Assembly for approval; and

(f) submit the approved list of names contemplated in paragraph (e) together with their résumés to the Minister.

(8) The Minister must appoint five members to the Council from the list referred to in subsection (7)(f) and publish the names of the members in the *Gazette*.

(9) Subject to subsection (12), a member of the Council appointed in terms of subsection (8) holds office for a period not exceeding five years.

(10) Upon the expiry of an appointed member's first term of office as contemplated in subsection (9), the member may be re-appointed for one further term only.

(11) The Secretary for the Police Service is the Chairperson of the Council and the Minister must designate, from the persons contemplated in subsection (2)(c), a member as deputy chairperson.

(12) A member of the Council appointed in terms of subsection (8) must vacate office if that member—

(a) resigns by giving at least 30 days written notice addressed to the Minister; or

(b) is removed from office by the Minister as contemplated in subsection (14).

(13) If a member of the Council appointed in terms subsection (8) resigns or vacates office before the expiry of his or her period of office, the Minister must request the National Assembly to follow the procedure in subsection (7). Provided that the Minister may appoint a new member from the list contemplated in subsection (7)(d) where candidates on that list are still available for appointment.

(14) The Minister may, after due process by the National Assembly, remove a member of the Council appointed in terms of subsection (8) from office on account of—

(a) absence from three consecutive meetings without good cause;

(b) misconduct, incapacity or incompetence;

(c) becoming disqualified as contemplated in section 5; or

(d) any other lawful reason.

(15) The Minister may suspend a member where there are reasonable grounds to do so, until the process contemplated in subsection (14) is finalised.

(16) The Minister may request the Cabinet member responsible for an institution which is represented on the Council, as contemplated in subsection (2)(b), to nominate another representative for appointment to substitute the institution's representative in the Council.

(17) Members of the Council who are appointed in terms of subsection (8) may be paid such remuneration and allowances as the Minister may, with the written concurrence of the Minister of Finance, determine.

(18) The deputy chairperson referred to in subsection (11) must, when the chairperson is absent or unable to perform his or her duties, act in his or her stead and when so acting, exercise or perform any function of the chairperson.”

CLAUSE 5

1. On page 8, from line 17, to omit “section 4(3)(c)” and to substitute “section 4(2)(b) and (c)”.
2. On page 8, from line 26, to omit paragraph (f) and to insert:

“(f) has been removed from a position or an office of trust; or
(g) is by virtue of any other law, disqualified from being appointed.”

CLAUSE 6

1. On page 8, from line 28, to substitute for clause 6 the following clause 6:

“6. The expenses incurred in connection with the exercise of the powers, the carrying out of the duties and the performance of the functions of the Critical Infrastructure Council, including the remuneration and expenses contemplated in section 4(17), must be defrayed from the budget allocation of the Civilian Secretariat for the Police Service established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, 2011 (Act No. 2 of 2011) as voted in terms of the annual Division of Revenue Act.”

CLAUSE 7

1. On page 8, from line 35, to substitute for clause 7, the following clause 7:

“7. (1) The functions of the Critical Infrastructure Council are to—

- (a) subject to subsection (2), consider any application for declaration of infrastructure as critical infrastructure referred to in Chapter 3 and make recommendations on such application to the Minister;
- (b) subject to subsection (3), approve guidelines regarding—
 - (i) the assessment of an application contemplated in sections 18 and 19;
 - (ii) the implementation of the prescribed system for categorisation of critical infrastructure in a low-risk, medium-risk or high-risk category referred to in section 20(7);
 - (iii) policies, protocols and standards regarding any matter necessary to achieve the purpose of this Act; and
 - (iv) the promotion of public-private sector cooperation in the protection of critical infrastructure; and
- (c) perform any other functions which may be assigned to the Council by the Minister.

(2) When making a recommendation to the Minister on an application referred to in subsection (1)(a), the Council must consider the following before making such a recommendation—

- (a) the requirements referred to in section 16(2)(a);
- (b) any factor contemplated in section 17;
- (c) any report or submission that must accompany such application;
- (d) an appropriate risk categorisation of the infrastructure in question in accordance with the prescribed system of categorisation referred to in section 20(7); and
- (e) any conditions for such declaration as contemplated in section 21(1)(c).

(3) When approving guidelines referred to in section (1)(b), the Council must consider the following:

- (a) any submission by the National Commissioner as contemplated in section 9(2);
- (b) any relevant submission by any other person having an interest in the protection of critical infrastructure;
- (c) any budgetary implications related to critical infrastructure protection;
- (d) any other matter that may promote the purpose of this Act or affect the implementation thereof.

(4) The guidelines referred to in subsection (1)(b) must include guidelines regarding—

- (a) the identification and management of risks relating to critical infrastructure;