



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

PUBLIC-PRIVATE PARTNERSHIP (AMENDMENT) BILL, N.A.B. NO. 4 OF 2021

FOR THE

FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS ON THE PUBLIC-PRIVATE PARTNERSHIP (AMENDMENT) BILL, N.A.B. NO. 4 OF 2021 FOR THE FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Dr S Musokotwane, MP (Chairperson); Ms M Miti MP, (Vice-Chairperson); Mr G G Nkombo, MP; Mr E M Mwila, MP; Mr C Chali, MP; Mr D Chisopa, MP; Dr S C Kopulande, MP; Mr D Livune, MP; Mr E Kamondo, MP; and Mr M Mubika, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

The Committee has the honour to present its Report on the consideration of the Public-Private Partnership (Amendment) Bill, N.A.B. No. 4 of 2021.

2.0 MEETINGS OF THE COMMITTEE

The Committee held ten meetings to consider the Public-Private Partnership (Amendment) Bill, N.A.B. No. 4 of 2021.

3.0 PROCEDURE ADOPTED BY THE COMMITTEE

The Committee requested written submissions from various stakeholders. The stakeholders were further requested to appear virtually before the Committee to orally brief it on the contents of their written memoranda, and to clarify issues that arose from the presentations. The witnesses who appeared before the Committee are listed at Appendix II of this Report.

4.0 BACKGROUND OF THE BILL

The Public-Private Partnership Bill, 2021 seeks to amend the *Public-Private Partnership Act No. 9 of 2009* so as to revise the composition of Technical Committee of the Public Private Partnership Council. It had been noted that the appointment of a Permanent Secretary on the Council compromised good governance principles as Permanent Secretaries who participated and made decisions at Council or Committee level also provided policy direction to the Councils on behalf of Government. This posed a conflict of interest in the execution of the Permanent Secretaries' role. Therefore, there was need to amend the provision providing for the appointment of Permanent Secretaries on the Technical Committee of the Public Private Partnership Council.

5.0 OBJECT OF THE BILL

The object of this Bill was to amend the *Public-Private Partnership Act, 2009*, so as to revise the composition of the Public-Private Partnership Technical Committee.

6.0 SALIENT PROVISIONS OF THE BILL

Clause 1 – Short title and Commencement

This clause sought to provide for the short title of the Bill.

Clause 2 – Amendment of section 9

This clause sought to amend section 9 of the principal Act so as to revise the composition of the Council by replacing the appointment of the Permanent Secretary, Ministry of Finance with the Director responsible for Public-Private Partnership.

Clause 3 – Amendment of section 10

This clause sought to amend section 10 of the principal Act so as to revise the composition of the Public-Private Partnership Technical Committee by replacing the Secretary to the Treasury and Permanent Secretaries with representatives from their respective Ministries.

7.0 CONCERNS BY STAKEHOLDERS

All the stakeholders who appeared before the Committee supported the Bill and stated that amending the *Public-Private Partnership Act No. 9 of 2009* would enhance good governance and transparency in the provision of technical know-how in PPP project procurement processes. Further, they submitted that this would also reduce conflicts in the execution of roles, considering that the Permanent Secretaries formed part of policy oversight as well as executors by virtue of being part of the technical committee. However, the stakeholders expressed concerns as outlined below.

Clause 3 – Amendment of section 10

- i. Stakeholders expressed concern that the amendment did not expressly provide for who the Chairperson of the Committee would be. In this regard, they were of the view that the provision should expressly provide whether the representative of the Secretary to the Treasury would continue as Chairperson or whether the committee shall elect the Chairperson so as to prevent any ambiguity.
- ii. Some stakeholders were of the strong opinion that the clause should clearly spell out that the representative of the Secretary to the Treasury should be at the level of a Permanent Secretary in order to maintain Government's representation at high level. Further, the qualifications of the representative should be spelt out in the Act in order to ensure that the Technical Committee could benefit from the contributions of experts who should sit on the Committee.
- iii. Stakeholders expressed concern that while supporting the amendment to the composition of the Technical Committee, there was need to have a more holistic approach in addressing the challenges facing public private partnerships.

8.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

Following the interaction with stakeholders, the Committee fully supports the Bill and makes its observations and recommendations as outlined below.

Clause 3 – Amendment of section 10

- i. The Committee fully supports the amendment, considering that Permanent Secretaries oversee the operations of agencies of the Government that fall under their ministries and therefore, should not be members of the governing bodies of the agencies. Being members of these governing bodies this may compromise their role in efficiently and effectively holding accountable, supervising or directing the governing bodies if they are part of those bodies and participate in their decision-making.
- ii. Further, the Committee is concerned that the proposed amendment does not explicitly provide for who the Chairperson will be as is the case in the current *Public-Private Partnership Act No. 9 of 2009*. The Committee, therefore, recommends that the provision should explicitly provide whether the representative of the Secretary to the Treasury will continue as Chairperson or the committee members shall elect the Chairperson from amongst themselves. This will avoid ambiguity.
- iii. The Committee recommends that the clause should be amended to specifically provide for the representative of the Secretary to the Treasury to be at the level of Permanent Secretary in order to maintain Government's participation at high level on the Board in order to enhance the effectiveness of the Board.
- iv. The Committee notes that whereas the amendment of the Bill is specific to the composition of the Board and the Technical Committee, it is of the view that there is urgent need to comprehensively review the entire piece of legislation given the various concerns raised by different stakeholders. In this vein, the Committee urges the Executive to ensure that the *Public-Private Partnership Act No. 9 of 2009* is comprehensively reviewed before the dissolution of the House.

9.0 CONCLUSION

The Public-Private Partnership (Amendment) Bill, N.A.B. 4 of 2021, once enacted, will revise the composition of the Public-Private Partnership Technical Committee. This is part of the reforms being undertaken by the Government to remove Permanent Secretaries from being members of governing bodies of government agencies in order to improve their efficiency and effectiveness, and adhere to the tenets of good corporate governance such as accountability. The Bill is, therefore, progressive.

The Committee expresses its gratitude to all stakeholders for their oral and written submissions on the Bill. The Committee further thanks the Office of the Speaker and the Clerk of the National Assembly for the guidance and services rendered to it during the consideration of the Bill.

Dr S Musokotwane, MP;
(Chairperson)

Ms M Miti, MP;
(Vice - Chairperson)

Mr G G Nkombo,MP;
(Member)

Mr D Livune, MP;
(Member)

Mr E M Mwila, MP;
(Member)

Dr S C Kopulande, MP;
(Member)

Mr C Chali, MP;
(Member)

Mr E Kamondo, MP;
(Member)

Mr D Chisopa,MP; and
(Member)

Mr M Mubika, MP.
(Member)

February, 2021
LUSAKA

APPENDIX I - National Assembly Officials

Ms C Musonda, Principal Clerk of Committees

Mr H Mulenga, Deputy Principal Clerk of Committees (FC)

Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)

Mrs C K Mumba, Senior Committee Clerk (FC)

Mrs D C Mukwanka, Committee Clerk

Mrs E K Zgambo, Committee Clerk

Mr S C Samuwika, Committee Clerk

Mrs V B Tembo, Typist

Mr M Chikome, Committee Assistant

Mr S Kantumoya, Parliamentary Messenger

Appendix II – Witnesses

The Minister of Finance
Ministry of Finance
Ministry of Justice
Centre for Trade Policy and Development
Industrial Development Cooperation
National Economic Advisory Council
Zambia Development Agency