

REPORT OF THE COMMITTEE ON ESTIMATES ON THE STATE AUDIT COMMISSION BILL, N.A.B NO. 22 OF 2016, FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY, APPOINTED ON 23RD SEPTEMBER, 2015

Consisting of:

Mr H H Hamududu, MP (Chairperson); Mr E M Sing'ombe, MP; Mrs I M Mphande, MP; Mr R L Mpundu, MP; Mr B M Ntundu, MP; Mr R P Mtolu, MP; Mr P Phiri, MP; and Dr G L Scott, MP.

The composition of the Committee changed following the appointment to your Committee of Mr G K Mwamba, MP. The composition further changed following the appointment to a ministerial position of Mr R L Mpundu, MP, who was subsequently replaced Mr J Shuma, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

Your Committee has the honour to present its Report on the *State Audit Commission, N.A.B No. 22 of 2016* for the Fifth Session of the Eleventh National Assembly referred to it by the House on Tuesday, 26th April, 2016.

Functions of the Committee

2.0 In addition to any other duties conferred upon it by the Honourable Mr Speaker, or any other order of the House, your Committee is mandated to consider any Bills that may be referred to it by the House.

Meetings of the Committee

3.0 Your Committee held five meetings to consider the *State Audit Commission Bill, N.A.B No. 22 of 2016*.

Procedure adopted by the Committee

4.0 In order to acquaint itself with the ramifications of the Bill, your Committee sought both written and oral submissions from stakeholders. The stakeholders who appeared before your Committee are listed at Appendix II.

Object of the Bill

5.0 The Bill seeks to provide for the membership, functions, operations and financial management of the State Audit Commission as established under Article 234 of the Constitution of the Republic of Zambia as amended.

Specific Clauses of the Bill

6.0 The salient provisions of the State Audit Commission Bill N.A.B No. 22 of 2016, are set out hereunder.

Clause 2- interpretation

This clause provides for the definitions of key words used in the Bill. The purpose of the definitions is to make the law easier to understand by the citizens and those tasked to implement the law.

Clause 3- Seal of the Commission

This clause provides for the seal of the Commission which shall be such device as may be determined by the Commission and kept by the Secretary. The Clause further provides for the persons who will authenticate the affixing of the seal.

Clause 4- Function of the Commission

This clause sets out the functions of the Commission which are in accordance with Article 234 of the Constitution and include: overseeing the undertaking of the functions by the National Audit Office; recruiting and promoting auditors and other staff of the National Audit Office; and investigating complaints against auditors.

Clause 5- Composition of the Commission

This clause sets out the composition of the Commission, whose members shall be part-time appointed by the President. The clause prescribes the requisite qualifications for the Chairperson of the Commission; and tenure of office of the members of the Commission. The Clause further provides for the circumstances that lead to a vacancy in the office of a member.

Clause 6- proceedings of the Commission

This clause empowers the Commission to regulate its own procedures. The clause further provides for the times when the Commission shall meet for the transaction of its business; the number of members that will form a quorum for a meeting of the Commission; and the manner in which a decision on a question before the Commission is to be decided. Additionally, the clause permits the Commission to invite a person to attend and to participate in the deliberations of the meeting of the Commission.

Clause 7 – Committees

This clause empowers the Commission to establish committees as it considers necessary for the purpose of performing its functions under the Act.

Clause 8 – Emoluments

This clause provides that a member of the Commission or any committee shall be paid such emoluments as the Emoluments Commission may determine.

Clause 9 – Secretary and other staff

This clause empowers the Commission to appoint the Secretary who shall be the Chief Executive Officer of the Commission; and other staff and officers of the Commission as are necessary for purposes of the Act.

Clause 10 – Disclosure of interest

This clause requires a disclosure of interest where a person or that person's relative or associate is directly interested in a private capacity in a matter that is the subject of consideration at a meeting of the Commission or any committee and that person is present at such meeting. The clause further prescribes the penalty for failure to disclose such interest.

Clause 11- Prohibition of publication or disclosure of information to un-authorized persons

This clause prohibits the publication or disclosure to unauthorised person, the contents of the document, communication or information which relate to or which has come to the knowledge of the person in the course of that person's duties under the Act. The Clause further prescribes the penalty for contravening the aforementioned provision.

Clause 12 – Oath on appointment

This clause requires a member and officers of the Commission to take an oath on appointment in accordance with the *Official Oaths Act*, Chapter 5 of the Laws of Zambia.

Clause 13- Immunity

This clause grants immunity to a member of the Commission, a member of a committee of the Commission and a member of staff of the Commission for or in respect of an act or thing done or omitted to be done in good faith in the exercise or performance of any of the powers, functions or duties conferred under the Act.

Clause 14 – Funds of Commission

This clause provides for the funds of the Commission which shall consist of monies as may be appropriated to the Commission by Parliament; be paid to the Commission by way of grants and donations; or otherwise vest in or accrue to the Commission. The clause further permits the Commission to accept monies by way of grants or donations from any source within or outside Zambia; and to raise by way of loans or otherwise such monies as it may require for the discharge of its functions. However, the clause requires the aforementioned to be done in consultation with the Minister and subject to the approval of the Minister, respectively.

The clause further seeks to set out what shall be paid from the funds of the Commission; and permits the Commission, with the approval of the President, to invest in such manner as it considers appropriate such funds of the Commission that it does not immediately require for the discharge of its functions.

Clause 15- Financial year

This clause sets out the financial year of the Commission which shall be a period of twelve months ending on 31st December in each year.

Clause 16 – Accounts and audit

This clause requires the Commission to keep proper books of accounts and other records relating to its accounts. The Clause further provides that the accounts of the Commission shall be audited annually by an external auditor appointed by the Auditor- General.

Clause 17 – Annual Report

This clause requires the Commission to submit to the President a report concerning its activities during the financial year as soon as practicable, but not later than ninety days after the end of the financial year. The clause further requires the Minister responsible for finance to prepare an annual statement of the income and expenditure of the Commission, to be laid before the National Assembly.

Clause 18 – privileged reports

This clause provides that certain reports, statements or other communications of the Commission shall be privileged and shall not be produced or compelled in any legal proceeding unless the Chairperson so directs in writing or a court so orders.

Clause 19 – General Offences

This clause sets out the general offences that a person may commit against the Commission and the applicable penalty.

Clause 20 – Regulations

This clause permits the Commission to make regulations for the better carrying out of the provisions of the Act.

Submissions from Stakeholders

7.0 Stakeholders generally supported the Bill. However, most of them had reservations on clause 4 which sets out the functions of the Commission. One of the functions stated in the clause is *overseeing the undertaking of the functions* by the National Audit Office. Stakeholders were concerned that the provision in its current form may be construed to mean that the Commission will supervise the functions of the National Audit Office. This will be in contradiction with Article 250 (2) of the Constitution which states that *‘the Office of Auditor-General shall not be subject to the direction or control of a person or authority in the performance of the functions of the office’*.

Committee’s Observations and Recommendations

8.0 After carefully studying the Bill and taking into account various concerns from witnesses, your Committee observes and recommends as set out hereunder.

i. Interpretation - Clause 2

The typographic error in line 10 on Auditor General should be corrected.

ii. Composition of Commission – Clause 5

Your Committee observes that members of the Commission are drawn from the: Zambia Institute of Chartered Accountants; Law Association of Zambia; Zambia Institute of Human Resource Management; and the Engineering Institution of Zambia (EIZ). Your Committee appreciates the inclusion of the EIZ especially that most of the performance audits that the Office of the Auditor-General undertakes were engineering related such as construction of infrastructure. Your

Committee, however, notes that performance audits did not only apply to the field of engineering, but might include other areas such as health, environment, information technology and many others as has been the case in the past.

In order for the representation to be more comprehensive, your Committee recommends that the composition should include cross-cutting areas such as economics and the environment. In this regard, your Committee recommends that the composition should be amended to include voluntary associations such as the Economics Association of Zambia.

iii. Appointment of Commissioners – Clause 5

Your Committee observes that clause 5 makes the appointment of commissioners by the President final. Your Committee is concerned with the provision because it will dilute the independence of the Office of the Auditor-General.

Your Committee recommends that Commissioners should be appointed by the President and ratified by Parliament in order to enhance the independence of the Office of the Auditor-General.

iv. Annual Report – Clause 17

Your Committee observes that the Ministry of Finance intends to migrate to Output-Based Budgeting and there is further pronouncement that the country will adopt a performance-based management system. In this regard, the annual report mentioned in Clause 17 (1) should be the one to be submitted to Parliament for oversight purposes as opposed to the income statement highlighted in Clause (17)(3). Moreover, the income statement is just a component of the annual report.

Your Committee, therefore, recommends that clause 17 should be amended so that the annual report is simultaneously submitted to the President and the National Assembly.

Conclusion

9.0 Your Committee pays tribute to all the stakeholders who appeared before it and tendered both oral and written submissions; and to thank you, Mr Speaker, for according it the opportunity to scrutinise the Bill. Your Committee also appreciates the services rendered by the office of the Clerk of the National Assembly, and the permanent witness - the Ministry of Justice.

We have the honour to be, Sir, your Committee on Estimates mandated to consider the State Audit Commission Bill, N.A.B No. 22 of 2016, for the Fifth Session of the Eleventh National Assembly.

Mr H H Hamududu, MP
Chairperson

Dr G L Scott, MP
Member

Mr R P Mtolo, MP
Member

Mr E M Sing'ombe, MP
Member

Mr J Shuma, MP
Member

Mr G K Mwamba, MP
Member

Mr P Phiri, MP
Member

Mr B M Ntundu, MP
Member

Mrs I M Mphande, MP
Member

May, 2016

APPENDIX I

LIST OF OFFICIALS

National Assembly

Mr S C Kawimbe, Principal Clerk of Committees
Ms M K Sampa, Deputy Principal Clerk of Committees
Mr M F Kateshi, Revenue and Expenditure Analyst
Mr S Mtambo, Budget Analyst (Macroeconomics)
Mr F Chikambwe, Assistant Committee Clerk
Mrs B C Chanda, Assistant Committee Clerk
Ms S Kayawa, Stenographer
Mr M Chikome, Committee Assistant

APPENDIX II

WITNESSES

Ministry of Justice - Permanent Witness

Ms M Sitali, Principal Parliamentary Counsel

Policy Monitoring and Research Centre (PMRC)

Mrs B Deka, Executive Director

Mrs A Mumba, Researcher

Mrs C Changu, Researcher

Mr M Mtawali, Researcher

Mr S Kaunda, Researcher

Office of the Auditor General

Mr R Mwambwa, Acting Auditor-General

Mr D Mendamenda, Deputy Auditor-General

Mr B Mpofu, Principal Auditor

Mr B Muyoba, Senior Auditor

Transparency International Zambia

Mr G Lungu, Director

Mr M Nsofwa, Human Resources Officer