



GOVERNMENT DIALOGUE

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IN CONVERSATION WITH THE PUBLIC EMPLOYEE



Serving the public – make that your only business

By Writer: Stephen Timm

Restrict public servants from holding more than 5% in any entity doing business with the state, or impose an outright ban?

That's the question facing members of Parliament and the Minister of Public Service and Administration Lindiwe Sisulu as they consider whether to debate a private members' bill expected to come before Parliament soon.

The Business Interests of Government Employees Bill or private member's bill, which the leader of the opposition Lindiwe Mazibuko plans to introduce to Parliament, proposes to limit public servants from holding more than a 5% stake in any entity doing business with government.

The bill – a version of which was passed into law in the Western Cape in 2010 – stands in contrast to the Public Administration and Management Bill which seeks an outright ban on public servants doing business with the state. It was published by the Department of Public

Service and Administration for public comment in June.

The Democratic Alliance's spokesperson on public service and administration, Kobus Marais said his party was looking to incorporate the private members bill with Section 35 of the Public Administration and Management Bill which imposes a ban on public servants doing business with the state.

His party wants its private members' bill debated by the National Assembly's Committee on Public Service and Administration, and is seeking approval from both Minister Sisulu and the committee's chairperson to allow the bill to come before the committee.

The 5% threshold described in the private members' bill includes any shares that a public servant together with immediate family members and their spouse may hold in any entity doing business with the state.

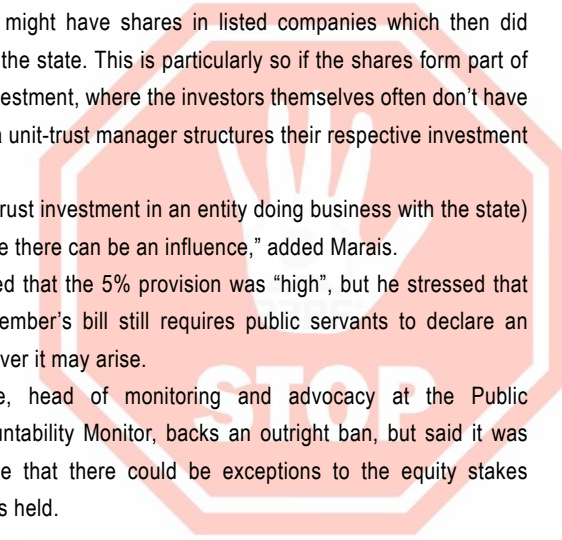
Marais pointed out that the 5% cap was necessary to allow for public

servants who might have shares in listed companies which then did business with the state. This is particularly so if the shares form part of a unit-trust investment, where the investors themselves often don't have a say in how a unit-trust manager structures their respective investment portfolio.

"That (unit trust investment in an entity doing business with the state) is hardly where there can be an influence," added Marais.

He conceded that the 5% provision was "high", but he stressed that the private member's bill still requires public servants to declare an interest wherever it may arise.

Jay Kruuse, head of monitoring and advocacy at the Public Service Accountability Monitor, backs an outright ban, but said it was understandable that there could be exceptions to the equity stakes public servants held.



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"I certainly understand if one has shares in Sanlam where one has little choice over who they do business with," he said.

The private member's bill does make provision for a respective cabinet member to grant permission for that employee or a number of employees to have a business interest or business interests of over 5% in an entity that conducts business with the Government.

Public servants speak out

One public servant, Nimrod Zalk, who is the industrial policy and strategy advisor for the Department of Trade and Industry and a former deputy director-general at the department, said pegging the limit at 5% made sense if it was a bid to accommodate shares in listed companies, for example those of retirement annuities, but stressed that an outright ban still made better sense.

He said there might be extremely rare and valid cases where exceptions may have to be made, but said the exception should never become the rule.

Another public servant, Tsholofelo Diale, programme manager of the Department of Basic Education's schools infrastructure programme, also supports a total ban. However she questioned whether the 5% limit would not alienate professionals who often did consulting on the side, particularly those with scarce skills like engineers. Despite this, Diale said those that wanted to do business with the state had to decide whether they wanted to be in government or not.

General manager of the Public Servants Association, Danny Adonis, cautioned that if the 5% cap prescribed in the private member's bill were implemented, it would mean that there would still have to be strong reliance on financial disclosures by public servants – which have not always been strictly observed to date.

He said many public servants, including directors-general, often only disclosed their interest in entities doing business with government, when they were under pressure. His concern is real. The Auditor-General

revealed in his 2011/12 state audit that about R600 million in state tenders was awarded to suppliers linked to the families or employees of the department awarding the tender. In 75% of these cases, the conflict of interest was not disclosed. This figure doesn't include officials who are employed by one department but do business with another.

The problem of government employees doing business with the state is extensive and even the private member's bill notes this. A memorandum attached to the bill outlines the extent of the problem. Among other things it reveals that in November last year Richard Levin, director-general of the Public Service Commission told the portfolio committee on public service and administration that going on the financial interest disclosure forms received from senior managers in at least five key government departments, more than a fifth of top civil servants had stakes in companies that were doing business with the state.

Results released last year following a probe into the Department of Health in the Eastern Cape by the Special Investigating Unit found that 1 000 civil servants were directors of companies that did business with the department and that 235 of them had benefited from health tenders worth R42,8 million.

The Department of Basic Education this year revealed how more than 3 000 of its employees – most of them teachers – had engaged in business with the state in 2010/2011 and 2011/2012. They earned a combined sum of R152 million.

In 2011, Eastern Cape premier Noxolo Kiviet promised to ban public servants in her province from doing business with the Government, but her bid to do so has stalled in the face of opposition from civil servants who are also political power brokers in the province.

An outright ban

Despite the private member's bill calling for a 5% cap, the Department of Public Service and Administration remains adamant that an outright ban is the only way to prevent any conflict of interest. "If you want to remove conflict of interest, you should have no stake at all," said department's

spokesperson Ndivhuwo Mabaya.

He believed even public servants that had shares of less than 5% in an entity tendering for a government contract may still be biased towards that entity because they would foresee a return on their investment if the firm clinched a state tender.

Minister Sisulu's bill proposes punishments that include a one-year jail sentence, fines and the cancellation of the tenders in question. An anti-corruption bureau will investigate non-compliance.

The public comment period for the Public Administration and Management Bill closed on 31 July. Mabaya said one comment received from a small business association had suggested that only directors and not shareholders be banned from holding equity in entities doing business with the state.

He argued however that an outright ban was still necessary to put an end to the large number of public servants doing business with the state. This affected performance and service delivery as officials were absent from the office or more focused on their business than serving government.

Another concern about the bill was raised by Corruption Watch, which has called for the extension of the ban on contracting with the state to include the immediate family members of the public official so that they won't be allowed to do business with government.

However, Mabaya said this might unfairly limit a large number of people from conducting business with the state simply on the basis that their spouse, sibling, children or parents were public servants.

Particularly problematic, he said, could be the situation in certain cultures where men had more than one wife and with children with each one.

Parliament's public accounts committee (Scopa) chairman and leader of the African People's Convention Themba Godi pointed out earlier this year that a similar prohibition on doing business with the state was not being considered for elected representatives such as MPs and municipal councillors.

If South Africa is to meet the National Development Plan vision of the country becoming a thriving nation, it needs a public service that is committed, focused and transparent.

