

IN THE FOURTH SESSION OF THE SEVENTH
PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA

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REPORT OF THE COMMITTEE ON CONSTITUTIONAL,
LEGAL AND PARLIAMENTARY AFFAIRS

ON THE

COUNCIL OF STATE BILL, 2020

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**IN THE THIRD MEETING OF THE FOURTH SESSION OF THE SEVENTH
PARLIAMENT OF THE FOURTH REPUBLIC**

**REPORT OF THE COMMITTEE ON CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS ON COUNCIL OF STATE BILL, 2020**

1.0 INTRODUCTION

- 1.1 The Council of State Bill, 2020 was laid in Parliament on Tuesday, 6th October, 2020 by the Hon. Attorney-General and Minister for Justice, Miss. Gloria Afua Akuffo in accordance with Article 106 of the Constitution.
- 1.2 Consequently, the Bill was referred to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report pursuant to Order 179 of the Standing Orders of the House.

2.0 DELIBERATIONS

The Committee met with the Hon. Attorney-General and Minister for Justice, Miss Gloria Afua Akuffo and Officials of the Office of the Attorney-General and Ministry of Justice to consider the Bill.

The Committee expresses its profound gratitude to the Hon. Attorney-General and the Officials for assisting the Committee in its deliberations.

3.0 REFERENCE DOCUMENTS

The Committee referred to the following documents during the deliberations;

- i. The Constitution of the Republic, 1992;
- ii. The Standing Orders of Parliament, 2000;
- iii. The Right to Information Act, 2019 (Act 989); and
- iv. The Data Protection Act, 2012 (Act 843).

4.0 BACKGROUND INFORMATION

- 4.1 The Council of State (the Council) was established and composed under Article 89 of the 1992 Constitution. The membership of the Council comprises a former Chief Justice, a former Chief of Defence Staff, a former

Inspector-General of Police, the President of the National House of Chiefs, one representative from each Region of Ghana and eleven members appointed by the President.

- 4.2 The Council performs crucial role in the governance of the country, paramount amongst them is the constitutional duty to counsel the President in the performance of his or her. The Council also considers Bills which have been published in the Gazette or passed by Parliament if requested by the President under Article 90 of the Constitution.
- 4.3 The Council further advises the President on a number of appointments made by him under the Constitution or any other law. Furthermore, the Council of State may also on request or on its own initiative, consider and make recommendations on any matter being considered or dealt with by the President, a Minister of State, Parliament or any other authority established by this Constitution.
- 4.4 Unlike many governance institutions in the country, the Council of State does not have any administrative structure which provides administrative and professional services. This is because neither the Constitution nor any other law provides for any administrative structure to support the Council in the performance of its constitutional functions. Right from its inception Council has been relying on the administrative services provided by few Officials seconded from other institutions.
- 4.5 It has therefore become imperative to enact a law to establish the necessary structures to provide for the establishment of a Secretariat to provide professional and administrative support for the effective and efficient delivery on the mandate of the Council of State.

5.0 OBJECT OF THE BILL

The object of the Bill is therefore to provide for the establishment of relevant structures for the achievement of the mandate of the Council of State and for related matters.

6.0 SUMMARY OF PROVISIONS

- 6.1 The Bill contains twenty (20) Clauses and a Schedule.
- 6.2 Clauses 1 to 3 of the Bill provide for the functions of the Council of State which include counselling the President in the performance of his or her functions, consideration of Bills and advising President on certain key appointments by the President.
- 6.3 Clauses 4 to 9 provide for the governance of the Council of State. Key provisions relate to re-enactment of the composition of the Council, tenure of office of members of the Council, meetings and appointment of Committees.
- 6.4 Matters relative to the administration of the Council of State including appointment of Executive Secretary and other staff provided for under Clauses 10 to 13 of the Bill.
- 6.5 Funds for the Council of State, keeping of books of accounts, preparation of annual reports among other financial provisions are covered by Clauses 14 to 17 of the Bill.
- 6.6 Miscellaneous provisions including power to obtain information, Regulations and interpretation are set out under Clauses 18 to 20 of the Bill.

7.0 OBSERVATIONS

The Committee made the following observations during the deliberations:

7.1 Administrative Structure for the Council of State

The Committee noted that despite the crucial mandate of the Council of State within the governance system of the Country, the Council is bereft of the necessary administrative structure to propel the smooth execution of its mandate. The Council has, since its establishment, relied on the services of few seconded officials from other public institutions. This has severely hampered the smooth functioning of the Council as the withdrawal of seconded staff deprives the Council the institutional memory and continuity required for effective performance of its functions.

It is however gratifying to find that a provision has been made in the Bill for the appointment of an Executive Secretary and other staff to be

responsible for the day-to-day administration of the Secretariat of the Council of State and to ensure the implementation of the decisions of the Council of State. Further provision has been made in the Bill to provide for the conditions of service of Staff of the Council through the promulgation of a legislative instrument to be made by the Minister responsible for Justice on the recommendation of the Council. To further improve this provision, the Committee has proposed that a Secretariat be established to provide the basis for such appointments to be made.

7.2 Funding for the Council of State

The Committee also noted that Bill makes provision for the funding of the activities of the Council of State. As proposed, the funds of the Council shall include moneys approved by Parliament, grants and donations, bequests and other moneys approved by the Minister responsible for Finance. However, the Committee is of the view that, the Council of State is not a legal entity with the power to receive personal bequests and donations from both public and individual sources. Moreover, the Committee opines that, the Council should be insulated from such sources of funding to prevent possible external manipulation of its mandate. An amendment has been proposed to that effect.

7.3 Power to Access Information

In view of the utmost importance of information to the effective discharge of its constitutional mandate, the Committee noted the power granted to the Council of State to request information from Ministers of State, the Parliament of Ghana and any other authority established by the Constitution. In order to expand the exercise of this power to assist the work of the Council, the Committee proposes an amendment, that would allow the Council to seek information also from authorities established by Acts of Parliament. The exercise of the Council's power to obtain information would, however, be subject to the Right to Information Act, 2019 (Act 989) and the Data protection Act, 2012 (Act 843).

8.0 PROPOSED AMENDMENTS

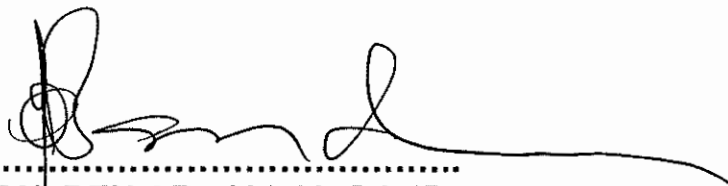
As indicated earlier, the Committee has proposed a number of amendments to further strengthen the provisions of the Bill. The proposed amendments are contained in the attached Annexure.

9. CONCLUSION AND RECOMMENDATION

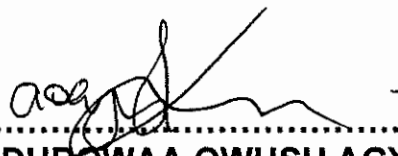
The Council of State performs critical role within the country's governance system. Accordingly, the Council requires requisite administrative and logistical support to discharge its constitutional mandate. The Committee fervently believes that the Bill makes ample arrangements to meet these critical requirements.

In that regard, the Committee recommends to the House to adopt this Report and to pass the Council of State Bill, 2020 in accordance with the provisions of the Constitution.

Respectfully submitted.



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HON. BEN ABDALLAH BANDA
CHAIRMAN, COMMITTEE ON
CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS



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AKUA DUROWAA OWUSU AGYEKUM (MRS)
CLERK TO THE COMMITTEE

ANNEXURE

PROPOSED AMENDMENTS TO COUNCIL OF STATE BILL, 2020

- i. **Clause 1** - **Amendment proposed** – *Delete* and *insert* “The Council of State established in accordance with article 89 of the Constitution shall counsel the President in the performance of the functions of the President”.
- ii. **Clause 5** - **Amendment proposed** – Subclause (3), line 1, *delete* “revoke” and *insert* “terminate”.
- iii. **Clause 6** - **Amendment proposed** – Subclause (3), line 1, *delete* “sixteen members” and insert “one half of the members of the Council of State”.
- iv. **Clause 7** - **Amendment proposed** – Subclause (2), line 2, *delete* “revoke” and *insert* “terminate”.
- v. **Clause 7** - **Amendment proposed** – Subclause (3), line 4, *delete* “revocation” and *insert* “termination”.
- vi. **Clause 8** - **Amendment proposed** – Subclause (2), line 2, *insert* “the” before “Council”.
- vii. **New Clause** - **Amendment proposed** – Insert a new Clause before clause 10 as follows:
“Establishment of Secretariat for the Council of State
(...) There is established by this Act a Secretariat for the Council of State”.
- viii. **Clause 10** - **Amendment proposed** – Subclause (1), line 2, *delete* “for the Council of State” and *insert* “who shall be the head of Secretariat.”.
- ix. **Clause 11** - **Amendment proposed** – Subclause (1), paragraph (a), line 2, *delete* “Council of State” and *insert*. “Secretariat.”.
- x. **Clause 11** - **Amendment proposed** – Subclause (3), line 1, after “officer” *insert* “appointed under section 12”.
- xi. **Clause 18** - **Amendment proposed** – Line 3, *delete* “for”.