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Department:
Provincial and Local Government
REPUBLIC OF SOUTH AFRICA

Local Government Laws Amendment Bill

**Presentation to Select Committee
on Local Government & Administration,
NCOP, Cape Town
Thursday, 15th November 2007**

Outline

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1. BACKGROUND

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Background

- The Bill stems from monitoring the implementation of key pieces of local government legislation and urgent amendments
- To refine and align policy provisions reflected in recent legislation, strengthen enforcement measures and improve technical/ legal presentations
- The affected pieces of legislation are the Demarcation Act (1998), Municipal Structures Act (1998), Municipal Systems Act (2000), Municipal Finance Management Act (2003) and Municipal Property Rates Act (2004)

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Background

- Previously submitted and presented to the G&A Cabinet Committee on 27 March 2007
- Cabinet Committee Members requested that the following Departments must be consulted further before the Bill is forwarded to Cabinet: Public Service & Administration, Public Works, Education, Housing, Minerals & Energy, Agriculture and Sport & Recreation
- Amendments were effected to the Bill as a result of the consultation with Departments and the Bill was submitted to Cabinet on 30 May 2007 for approval for publication. The Bill was published for comment on 4 June 2007

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2. CONTENT OF THE BILL

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2.1. Amendments to the Demarcation Act and Municipal Structures Act

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2.1 Amendments: Municipal Demarcation Act & Municipal Structures Act

Problem Area:

Improving planning and budgeting for service delivery

Amendment to address the problem:

(Clauses 1,2,3,8 and 9) The amendments deal with *fiscal alignment* with boundary redeterminations, with authorizations to perform certain functions and adjustments of powers and functions between municipalities.

Such redeterminations, authorizations and adjustments must take effect on the commencement date of the *municipal financial year* following the date of publication of the notice effecting such redetermination, authorization or adjustment.

This would ensure that there is improved fiscal alignment and sufficient time for *planning* in this regard.

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2.1 Amendments: Municipal Demarcation Act & Municipal Structures Act

Problem Area:

Improving alignment with the Constitution and implementation of policy to strengthen the role of ward committees

Amendment to address the problem:

(Clauses 4 and 5) **The amendments deal with alignment with amendments pertaining to section 139 interventions effected to the Constitution in 2003. These amendments will result in the processes pertaining to dissolving a municipal council now being aligned with dissolving a municipal council in terms of section 139 of the Constitution.**

(Clauses 6 & 7) These amendments relate to the provision of out of pocket expenses for members of ward committees, and the provision for making allocations to a ward committee for undertaking development. These amendments will facilitate the strengthening of the role of ward committees.

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2.2. Amendments to the Municipal Systems Act

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2.2 Amendments: Municipal Systems Act

Problem Area:

Enhancing the performance management system in primary legislation

Amendment to address the problem

- (Clause 11) Provision is made for the specificity regarding the contract *term* of Municipal Managers (at least 5 years) and provision for uniformity throughout the system.
- (Clause 14) The previous ambiguity regarding the Minister's *authority* to issue regulations under section 72 is removed. Also provision for consultation with the Minister for Public Service and Administration in issuing regulations.
- (Clause 22) The Code of Conduct for Municipal Staff Members is amended to include the *declaration of interests* by senior municipal officials. This will then create synergy with the Performance Regulations and align with code of conduct for councillors.

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Amendments: Municipal Systems Act

Problem Area:

The duty of Provinces to conduct investigations on cases/ instances of non-performance and maladministration of municipalities.

Amendment to address the problem:

(Clause 17) Subsection (4) is inserted to empower the Minister to advise the MEC to *conduct an investigation* and to provide the Minister and Minister of Finance with a *report* detailing the outcome thereof.

(Clause 20) also strengthens the role of provinces in conducting investigations.

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Amendments: Municipal Systems Act

Problem Area:

The old schedules of the MSA are outdated and lenient in addressing potential corruption in procurement processes.

Amendments to address the problem:

(Clause 19 & 21) The amendments to item 6 of Schedule 1 and item 4 of Schedule 2 are aimed at *aligning the MSA to the MFMA* and its Regulations, leading to a prohibition of awarding a contract by a municipal council to a person who is in the service of the state or is an advisor contracted to the municipality.

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Amendments: Municipal Systems Act

Problem Area:

Ambiguity with regard to the participation of municipal officials in elections for the national assembly, provincial legislatures and municipal councils.

Amendment to address the problem: (Clause 13)

Section 71A provides for a staff member

who becomes a candidate for election to the *NA or any provincial legislature* must resign not later than the date on which he/she is issued with a certificate in terms of the Electoral Act;

who is nominated as a permanent delegate to the *NCOP* must resign not later than the date on which he/she is nominated as a permanent delegate to the *NCOP*; and

who becomes a candidate for election to a *Municipal Council* must resign not later than the date on which he/she is issued with a certificate in terms of the Municipal Electoral Act.

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Amendments: Municipal Systems Act

Problem Area:

Municipalities require advance payments before issuing such a certificate, which places a heavy financial burden on *consumers*.

In the *Mkontwana* judgement, the Constitutional Court ruled on the need for municipalities to provide owners of properties with *copies of electricity and water accounts sent to tenants*

Amendment to address the problem:

(Clause 18) To *lessen this financial burden*, it is proposed that the period be shortened from 120 to 60 days.

(Clause 16) Section 102 is amended in this regard.

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Amendments: Municipal Systems Act

Technical corrections:

- Definition of political office bearer is amended to include the currently omitted deputy executive mayor (clause 10)
- An amendment to section 86H to include an omitted subsection providing that by-laws pertaining to the establishment of municipal entities must be consistent with the MFMA (clause 15)
- A correction to the Afrikaans text of section 106 (clause 17).

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2.3. Amendments to the Municipal Property Rates Act

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2.3 Amendments: Municipal Property Rates Act

Technical corrections:

- Section 1 (clause 23): Technical amendments to definitions providing for full legal citation and terminological clarity.
- Section 3 (clause 24): An amendment to align with the Income Tax Act and to provide for improved synergy between legislation.
- Section 9 (clause 26): Technical amendments to remove uncertainty pertaining to the expression "permitted use" as it is already defined in the Act.
- Section 17 (clause 28): A technical amendment to the citation of the relevant Act as the full citation was not available when the Act was adopted.
- Section 86 (clause 33): Technical correction of incorrect reference to another section.

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Amendments: Municipal Property Rates Act

Problem Area:

Alignment of rates policies to municipal budgets

In the first instance, the development of a Rates Policy is important but separate to the other phases of implementation.

In the second instance, the phase of drawing a budget and tabling it for public comment must include quantification, as determined by the valuation roll.

Amendment to address the problem:

Section 3 (clause 24) proposes to allow for a rates *policy* not to reflect the quantification in terms of cost (i.e. revenue foregone) to the municipality. This quantification must be reflected in the *budget*.

Section 15 (clause 27) is therefore amended to give effect to the provisions of clause 21 above

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Amendments: Municipal Property Rates Act

Problem Area:

The need to remove the burden of undertaking evaluation, especially where there is no intention to levy rates (public service infrastructure)

Amendment to address the problem:

Section 7 (clause 25): The proposed amendment to section 7(2)(a)(ii) allows for municipalities *not to be compelled to value public service infrastructure where there is no intention to levy rates* on such infrastructure.

Should this amendment not be effected there is a strong possibility that municipalities' valuation roll may be set aside through litigation.

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Amendments: Municipal Property Rates Act

Problem Area:

Differential rating

Amendment to address the problem issue:

Section 19 (clause 29): A technical amendment pertaining to a correct citation. *A further amendment provides for the use of different ratios* (e.g. as it relates to different property categories such as agriculture, commerce and industry) given that the Act allows for differential rating and the amendment *aims to clarify different legal interpretations in this regard.*

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Amendments: Municipal Property Rates Act

Problem Area:

Since the implementation of the Act, it has become apparent for National Government (Ministries of Finance & PLG) to protect ratepayers through setting the limits of rates revenues

Amendment to address the problem:

Section 20 (clause 30): The proposed amendment allows for *the curbing of rates revenues* either as a basket or per category of properties.

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2.4 Repeal of Legislation

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2.4 Repeal of Legislation

- The Bill contains a Schedule of redundant legislation pertaining to local government that must be repealed.
- These provisions are not in line with the current local government dispensation, for example:
 - **Jan Kempdorp Act (1964)**: This Act dealt with the administration of this town between the former Transvaal and the Cape. This Act became redundant with the establishment of wall-to-wall municipalities.
 - The old **Promotion of Local Government Affairs Act (1983)**

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3. Consultations

- As a result of the consultation process and the comments considered, the following key amendments were made to the Bill:
- Process of the consultation process and the interventions in the Bill, which led to sections 34 and 35 of the Municipal Structures Act aligning with amendments pertaining to section 132 interventions effected to the Constitution in 2003.
- Compulsory establishment of ward committees: Amendments to sections 73, 74 and 75 of the Municipal Structures Act relating to compulsory establishment of ward committees in municipalities of the ward participatory type.

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**3.1 Comments Received
On the first version of the Bill**

- The Bill was published for comments on 4 June 2007 with a closing date of 18 June 2007
- A consultative meeting with provincial departments responsible for local government and the South African Local Government Association was held on 15 June 2007
- Comments received from the public were considered in the finalisation of the Bill

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Comments Received on the first version of the Bill

- As a result of the consultation process and the comments considered, the following key amendments were made to the Bill:
- Processes regarding provincial government intervention in municipalities: Amendments to sections 34 and 35 of the Municipal Structures Act aligning with amendments pertaining to section 139 interventions effected to the Constitution in 2003.
- Compulsory establishment of ward committees: Amendments to sections 72, 73 and 74 of the Municipal Structures Act relating to compulsory establishment of ward committees in municipalities of the ward participatory type.

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Comments Received on the first version of the Bill

- Other amendments relate to redrafting of the amendment pertaining to item 14 of Schedule 1 of the Systems Act to provide more clarity, amending the declaration of interests by senior municipal managers pertaining to any change of interests quarterly and citation corrections.
- Other comments that were received which will be dealt with in further work by the **dplg** on the refinement of local government legislation include:
- Technical matters such as provisions on council whips;
- Powers and functions of municipalities;
- Contractual and service delivery arrangements between municipalities and RED's;
- Conditions of employment of section 57 managers;
- Issues pertaining to pension funds and the Minister's regulatory powers; and
- Rates amnesties for RED's.

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Comments Received on the first version of the Bill

Therefore, these further consultations have strengthened the following provisions in the first version of the Bill:

- Clause 4 and 5: Amendments to sections 34 and 35 of the Municipal Structures Act aligning with amendments pertaining to section 139 interventions effected to the Constitution in 2003.
- Clauses 6,7 and 8: Amendments to sections 72, 73 and 74 of the Municipal Structures Act relating to compulsory establishment of ward committees in municipalities of the ward participatory type.
- Clause 22: Redrafting of the amendment pertaining to item 14 of Schedule 1 of the Systems Act to provide more clarity.
- Clause 24: Amending the declaration of interests by senior municipal managers pertaining to any change of interests quarterly.

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4. Amendments made to the first version of the Bill by the PC on Local Government

Amendments made to the first version of the Bill by the PC on Local Government

The following amendments were made to the first version of the Bill by the PC on Local Government

Clause 6: Rejected on advise of the State Law Advisors.

- Clauses 7: Amended as follows

On page 4, from line 24, to omit subsection (5) and to substitute:

"(5) (a) Out of pocket expenses referred to in paragraph (c) must be paid from the budget of the municipality in question.

(b) A metro or local council must determine the criteria for and calculation of out of pocket expenses referred to in paragraph (c).

(c) A metro or local council may make arrangements for the payment of out of pocket expenses to members of ward committees in respect of participation by ward committee members in the activities of the ward committees.

(d) A municipal council may allocate funds and resources to enable ward committees to perform their functions, exercise their powers and undertake development in their wards within the framework of the law."

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Amendments made to the first version of the Bill by the PC on Local Government

The following amendments were made to the first version of the Bill by the PC on Local Government

- Clause 13: On page 5, from line 37, to omit "of the municipality"
- Clause 15: On page 6, after line 43, to insert the following paragraph:

(i) notwithstanding section 67(1)(h), the Minister may make regulations to provide for a disciplinary code and procedures for municipal managers and managers directly accountable to the municipal managers;

- Clause 20: Rejected
- Clause 23: On page 8, in line 24, to omit "or" and to substitute "and"

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