

Local Government Law BULLETIN

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MUNICIPAL SYSTEMS BILL

Erecting the third pillar

On 6 August 1999, Minister Mufamadi published the Local Government: Municipal Systems Bill, 1999, for public comment. The Bill, after due consideration of any comments, should enter the parliamentary process by the end of October 1999 at which stage the public will be given a further opportunity, in the form of public hearings, to make representations.

Background

The Bill can be described as one of the three pillars on which the new legal regime of local government is being built, the other two being the Municipal Demarcation Act 27 of 1998 and the Municipal Structures Act 117 of 1998. These pieces of legislation will complete the process of reviewing and reforming the overall regulatory system for local government and will enable government to repeal virtually the entire body of legislation and provincial ordinances inherited from the apartheid era. It is anticipated that such a repeal process will be done in the form of a single Bill to be presented to Cabinet early in the year 2000. The Systems Bill itself stands to be complemented by and is aligned with finance legislation dealing with issues of financial management, budgeting, borrowing and treasury control as well as legislation reforming the property rating and taxation system.

Municipal systems

The focus of the Bill is mainly on the internal systems and administration of the municipality and it establishes the basic principles and mechanisms to give

effect to the vision of developmental local government as espoused by the Local Government White Paper. The provisions of the Bill are rightly described as being "broadly enabling" as it establishes a regulatory framework wherein municipalities have to perform their functions and exercise their executive authority. However, there are certain mandatory provisions of the Bill where it relates to the extent that the fundamental elements of public sector reform, socio-economic development, delivery of basic services, and public reporting and accountability need to be uniformly applied on a country-wide basis. The Bill contains processes and elements that provide the foundation for a developmental system of local government as envisaged by the White Paper. These include participatory governance, integrated development planning, performance management and reporting, resource allocation and organisational change. The overview of the Bill that follows describes in brief terms the different chapters of the Bill.

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Editorial Board:

Johann Mettler (CLC)
Nico Steytler (CLC)
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Thabo Mokwena (SALGA)

Editors:

Johann Mettler
Nico Steytler

Reporter:

Jaap de Visser

Contact

Johann Mettler/Nico Steytler
Local Government Project
Community Law Centre
University of the Western Cape
Private Bag X17
Bellville
7535
Tel: (021) 959 2950
Fax: (021) 959 2411
E-mail: jmettler@uwc.ac.za or
nsteyt@uwc.ac.za

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The new municipality

The legal nature of a municipality is established by determining that it is a juristic entity with separate legal personality. A municipality shall consist of its governing structures and administration and the residents and communities within its boundaries. This is intended to lay the foundation for the affairs of the municipality to be run in partnership between councillors and officials, on the one hand, and the community, on the other. The Bill also sets out, in broad terms, the rights and duties of the partners in local governance, but in the light of the general nature thereof, provides that the specifics thereof may be spelt out later in the same Act or in other legislation.

Public participation

Although the theme of participatory governance runs through the entire Bill, there is a chapter formally devoted to the topic. It is broadly enabling in character and establishes certain basic requirements for public accountability and participation that are considered essential for the long-term sustainability of the municipality. Not only must a municipality create formal structures and processes through which the public may participate, it must also facilitate such participation by simplifying the manner in which it does business, by making its rules and laws accessible to the public and keeping its constituency informed about its main activities. A further dimension of accessibility is the extent to which the special needs of illiterate persons, disabled persons and other disabled groups are taken into account by the municipality. In general, the public is entitled to attend council and committee meetings unless the meeting had, for good reason, been closed to the public.

Functions and powers of the municipality

Besides restating the constitutional powers and functions of municipalities, the Bill manages the process of decentralising functions to municipalities to ensure proper co-ordination of the decentralisation process and the prevention of unfunded mandates. The Bill clarifies the nature of the executive authority of municipalities and includes therein the approval of budgets, the imposition of rates, taxes, levies, duties and fees, and

setting policies on tariffs, rates and taxes. These particular aspects should, however, fall under the exercise of a municipality's legislative, and not executive authority. There are extensive provisions on legislative procedures including the publication of proposed by-laws in a manner that allows the public to comment thereon. Provision is made for the drafting of standard by-laws by either the Minister or the MEC that a municipality may adopt. All by-laws that are passed must be published in the *Provincial Gazette*. A municipality must compile and maintain all its by-laws, regulations and other legislative instruments and this compilation, known as the 'municipal code', must be kept at its head office.

Integrated development planning

The system of municipal planning is rationalised into a single comprehensive five-year cycle, subject to annual monitoring and review, in which Integrated Development Plans (IDPs) are adopted by municipal councils as their core planning and management instrument. IDPs must be aligned with, and complement the development plans and strategies of adjacent municipalities, the province within which it is located, and national organs of state. Each municipal council must, in the first 12 months of its elected term, adopt an IDP which:

- links, integrates and co-ordinates plans for the development of the municipality;
- aligns the resources and capacity of the municipality for the implementation of the plan;
- forms the policy framework and basis on which annual budgets must be based;
- is compatible with national and provincial development planning requirements binding on the municipality; and
- complies with the provisions of the Bill.

The IDP must have certain core components and, in that regard, must reflect:

- the council's vision for the long term development of the municipality;
- an assessment of the existing level of development in the municipality;
- its development priorities and objectives;
- its development strategies;
- a spatial development framework for

- the municipality;
- its operational strategies; and
- a financial plan.

Each municipal council must, within the first two months of its elected term, adopt a process to guide the planning, drafting, adoption and review of its IDP. Among other things, the process must determine methods and procedures to consult communities, residents and other stake holders on their development needs and priorities, providing for their participation in the drafting process and in the review of the IDP.

No municipal planning and development can take place outside of the IDP and the plan is binding on all persons within the municipality.

Performance management

Each municipality must establish a performance management system in order to give effect to its IDP and with the purpose of administering its affairs in an economical, effective, efficient and accountable manner. The system must be monitored in an ongoing manner and must be reviewed when necessary. The system must oblige the municipal council to:

- set appropriate performance indicators in the areas of responsibility of the structures and functionaries identified as key role players;
- set performance targets in those areas of responsibility;
- measure performance in those areas against the indicators and targets;
- evaluate performance in those areas of responsibility;
- take steps to improve performance; and
- establish a process of regular internal reporting to the council and external reporting to the public and appropriate national and provincial organs of state.

Administration and staff matters

The Bill sets out the basic values and principles governing local public administration and sets out in some detail the values that must underlie the interaction of municipal staff with residents. The administration of a municipality must be organised in such a manner that it, among other things, is responsive to the needs of residents, facilitates a culture of public service among staff, creates a collective sense of responsibility for performance. Further, it must delegate and

devolve responsibility to the most effective level within the administration, allow managers and staff to clearly relate their roles and responsibilities to the priorities and objectives of the IDP and enable the municipal manager to be held accountable for the overall performance of the administration.

The role and function of the municipal manager (CEO) is set out in some detail and includes, among other things, the management of the administration in accordance with the Bill, the implementation and monitoring of the IDP, the management of the provision of services to communities, the control and management of all staff matters, advising the council and structures, implementing national and provincial legislation applicable to the municipality and acting as accounting officer of the municipality.

Employment contracts for municipal managers and managers directly responsible to the municipal manager must be for a fixed period of five years with the option of renewal and must include performance objectives and targets, evaluation and consequences of sub-standard performance.

A municipal council must adopt a staff code providing for efficient, effective and transparent staff administration which must provide for matters such as recruitment, selection and appointment, service benefits and obligations of staff, the monitoring, measuring and evaluation of staff performance, promotion and demotion, transfer, grievance procedures, investigations of misconduct and complaints, dismissal and retrenchment and other prescribed matters.

A municipality must develop and implement programmes for the education, training and development of its staff to enable them to perform their functions efficiently and effectively.

The Code of Conduct contained in Schedule 1 applies to all staff members and the municipal manager must ensure that every staff member receives a copy thereof.

Services

The Bill provides a regulatory framework for municipal service partnerships, particularly processes such as competitive bidding, dealing with unsolicited proposals, and contract monitoring and compliance. It makes provision for municipal service districts, including

multi-jurisdictional service districts in which municipalities combine their regulatory powers in order to manage service provision on a more functional basis.

The Bill further sets forth a set of principles and guidelines to guide the setting of tariffs for municipal services. The tariffs must ensure the long-term sustainability of service delivery and must be implemented in such a manner that it assists indigent households to gain access to at least the basic services. A municipal council must adopt by-laws to give effect to its tariff policy, its implementation and enforcement. Such by-laws may differentiate between different categories of users, customers, debtors, services, service standards and other matters.

Credit control and debt collection

Municipalities are empowered to implement effective credit control and debt collection strategies, in order to deal with non-payment of services, while making sure that the truly indigent receive targeted relief. Consequently, a credit control and debt collection policy may differentiate between different categories of taxpayers, customers, debtors, taxes, services, service standards and other matters. A municipal council must adopt by-laws to give effect to its credit control and debt collection policy, its implementation and enforcement. Unsatisfactory levels within a particular ward, may be brought to the attention of the relevant councillor who may convene a public meeting for discussion and advice.

Provincial and national supervision

The Bill provides a framework to guide provincial monitoring and capacity building in terms of the Constitution, which avoids duplication of existing monitoring systems and aims to build an effective integrated performance orientated service delivery system.

Conclusion

The Municipal Systems Bill is intended to provide a regulatory framework wherein municipalities will exercise their executive authority and perform their functions. Soon the public will be invited to comment thereon as the Bill makes it passage through Parliament. *LGL Bulletin* will, in the following editions, focus more specifically on certain aspects of the Bill.

Johann Mettler
Local Government Project,
Community Law Centre, UWC

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