

PARI WEBINAR - PROFESSIONALISATION OF LOCAL PUBLIC ADMINISTRATION AND HUMAN RESOURCES

MUNICIPAL SYSTEMS AMENDMENT BILL; 2019

27 OCTOBER 2020

BACK TO BASICS : SERVING OUR COMMUNITIES BETTER



cooperative governance

Department
Cooperative Governance
REPUBLIC OF SOUTH AFRICA



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1. PURPOSE

- ❑ To provide the legal context for local public administration and human resources reforms;
- ❑ To outline progress made with reforms towards professionalisation of local public administration; and
- ❑ To highlight the impact of the implementation of the Local Government: Municipal Systems Amendment Act, 2011 (Act No. 7 of 2011).

2. BACKGROUND AND LEGISLATIVE CONTEXT

Section 151 - The Constitution of the republic of South Africa, 1996 (“the Constitution”) –

- ❑ Establishes the local sphere of government consisting of **municipalities**, which must be established for the whole of the territory of the Republic.
- ❑ The **executive and legislative authority** of a municipality is **vested in its Municipal Council**.
- ❑ A municipality has the right to govern, on its own initiative, the local government affairs of its community, **subject to national and provincial legislation**, as provided for in the Constitution [s151(3)].
- ❑ National or provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions – **BUT only subject to national and provincial legislation**.

2. BACKGROUND AND LEGISLATIVE CONTEXT (Cont.)

- ❑ **S152** - The **objects of local government** are to –
 - provide **democratic and accountable government** for local communities;
 - ensure the **provision of services** to communities in a **sustainable manner**;
 - promote **social and economic development**;
 - promote **a safe and healthy environment**; and
 - encourage the **involvement of communities** and community organisations **in the matters of local government**.

- ❑ In addition, a municipality has the right to **administer the services as contained in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution**, including any other matter assigned to it by national or provincial legislation

2. BACKGROUND AND LEGISLATIVE CONTEXT (Cont.)

❑ Developmental duties of municipalities

- S153 - The Constitution obliges municipalities to –
 - structure and manage their administration, and budgeting and planning processes to give priority to the basic needs of communities, including those previously excluded from these services; and
 - promote the social and economic development of its communities.

❑ Municipalities in cooperative governance

- S154 – The Constitution empowers –
 - **national government** and provincial governments, by legislative and other measures, **must support and strengthen the capacity of municipalities to** manage their own affairs, to exercise their powers and to **perform their functions.**

2. BACKGROUND AND LEGISLATIVE CONTEXT (Cont.)

❑ Internal procedures

- **S160 – The Constitution empowers –**
 - A municipal council to **employ personnel (with the relevant skills and expertise)** that are necessary for the effective performance of its functions.

❑ White Paper on Local Government

- Provides a conceptual framework for the transformation of local public administration and human resource systems.

❑ Local Government: Municipal Systems Act, 2000

- S67 - Obliges **municipalities to develop and adopt appropriate policies, systems and procedures** (consistent with uniform norms and standards set by the Minister) to ensure fair, efficient, effective and transparent personnel administration; and
- Ss72 & 120 - Empowers the Minister responsible for local government **to make regulations or issue guidelines setting uniform standards for municipal staff systems and procedures, including** any other matter **concerning personnel administration.**

3. PROBLEM STATEMENT

- ❑ S82 of the Structures Act and s56 of the Systems Act empowers the municipal council to appoint a municipal manager (or acting municipal manager) or a manager directly accountable to the municipal manager who **must have the relevant skills and expertise** to perform the duties associated with that post.

- ❑ The Structures Act (s82) and the Systems Act (s56) **do not prescribe the relevant skills and expertise required for appointment of persons as municipal managers or managers directly accountable to municipal managers.**

- ❑ The absence of uniform standards contemplated in s72 of the Systems Act induced municipalities to adopt disparate, fragmented and incoherent policies, systems and procedures.

- ❑ This situation is further aggravated by the fact that the explicitly that collective bargaining agreements concluded in the bargaining council designated for municipalities are explicitly not applicable to senior managers.

3. PROBLEM STATEMENT (Cont.)

- A desktop study on the state of local government conducted in 2009 culminating in the adoption of the Local Government Turn Around Strategy (LGTAS) further revealed the following challenges faced by municipalities:
 - **Bloating of municipal administration** in non-core functions of municipalities
 - **Incoherent HR practices** resulting in the concentration of critical skills in affluent municipalities;
 - High incidence of **irregular and inappropriate appointments**;
 - **Ineffective skills development** programmes;
 - **Ineffective leadership** and institutional management;
 - **Poor planning, under-expenditure** by municipalities on capital budgets and **ineffective revenue collection** strategies resulting in the burgeoning municipal debt,
 - Weak financial controls resulting in **negative audit outcomes**;
 - **Ineffective performance management systems** and accountability;
 - **Prolonged labour disputes** from some municipalities with huge sums of money intended for service delivery spent on defending labour disputes; and
 - Huge **service delivery backlogs** culminating in “service delivery” protests.

4. THE TRANSFORMATION AGENDA

- ❑ Setting the agenda towards professionalisation of local government.
- ❑ Since the new transformation agenda of LG was adopted in 2000, the **system of local public administration and HR has undergone significant changes**. These, *inter alia*, include the following legislative reforms:
 - LG: **Performance Regulations** for Municipal Managers and Managers Directly Accountable to Municipal Managers, 2006
 - To set out uniform standards to facilitate a culture of performance and accountability, including consequences for substandard performance.
 - LG: MFMA: **Regulations on Minimum Competency Levels**, 2007
 - To regulate uniform financial competencies to improve financial management and viability of municipalities.
 - LG: **Regulations Regarding the Participation of Municipal Staff Members in Municipal Elections**, 2011
 - To regulate the participation of municipal staff in elections.
 - LG: **Disciplinary Regulations** for Senior Managers, 2011
 - To set uniform procedures for management of discipline for senior managers.
 - LG: **Regulations on appointment** and conditions of employment of municipal managers and managers directly accountable to municipal managers, 2014
 - To provide for procedures and competency criteria for appointment of municipal managers and managers directly accountable to municipal managers and consequences of appointments made in contravention of the MSA and its Regulations.

4. THE TRANSFORMATION AGENDA (Cont.)

- ❑ Despite such evidence of progress, it has been observed that there are **some municipalities that still struggle to execute their constitutional obligations** – to perform their functions.
- ❑ There have also been a number of **misinterpretations and misapplication of the Municipal Systems Act** and its Regulations due to unforeseen practical challenges in the application of the provisions.
- ❑ In some provinces, the **challenges in the application of the Municipal Systems Act**, has given rise to uncertainty and a spate of litigation within the local government sphere.
- ❑ **A need was identified to further clarify and outline processes** in respect of some of the provisions of the Municipal Systems Act due to the identified areas of uncertainty, in order to allow for stability and good governance in municipalities to prevail.
- ❑ The Municipal **Systems Act, 2000 was amended by the Municipal Systems Amendment Act, 2011** (“the Amendment Act”) following approval of the Bill by Parliament and ascension by the President on 5 July 2011.
- ❑ The Constitutional Court declared the **Amendment Act invalid on 9 March 2019** for want of compliance with the provisions of section 76 of the Constitution – legislation affecting the functioning of provinces.
- ❑ The **order of invalidity was suspended for a period of 24 months** to allow Parliament an opportunity to correct the procedural defect.
- ❑ The period of **suspension lapsed on 9 March 2019** before the procedural defect with regard to the tagging of the Bill was addressed.
- ❑ A **new Bill was introduced to Parliament in terms on 6 February 2019** following approval by Cabinet.
- ❑ The Bill lapsed at the end of the sitting of the Sixth Session of the Fifth Parliament and was revived by the Sixth Parliament in October 2019.

5. OBJECTS OF THE BILL

- ❑ The **Bill provides for legislation envisaged in section 195(3) of the Constitution** – values and principles governing public administration.
- ❑ The **Bill is central to the realisation of the ideals of the National Development Plan, 2030**, namely:
 - Building a resilient, capable and developmental local government;
 - Strengthening HR governance by setting uniform staff procedures and systems;
 - Creating a career local public administration government immersed with the necessary technical and specialist professional skills and expertise;
 - Developing institutional capacity in municipalities technical and specialist professional skills to conceptualise and implement projects; and
 - Strengthening the ability of provincial and national governments to exercise their oversight role.
- ❑ The objects of the Bill are to:
 - The Bill inserts a new clause to **regulate the appointment of municipal managers and acting municipal managers**. The proposed amendment will enable the Minister to determine, by regulation or through guidelines, **a minimum level of skills, expertise, competencies and qualifications** for municipal managers appointed from the date on which section 54A takes effect.
 - The intention of the proposed amendment is that an **appointment should be declared null and void if the person appointed as municipal manager or acting municipal manager does not have the prescribed skills, expertise, competencies or qualifications**.
 - The Bill proposes to **insert an appointment procedure** to ensure that a vacant post of municipal manager is advertised nationally to attract a wide as possible pool of candidates.
 - In order to address practical challenges that may arise in the application of this section, provision has also been made in the amendments for the **Minister to waive the requirements upon good cause shown**.

5. OBJECTS OF THE BILL (Cont.)

- A person may be **selected for appointment as municipal manager only from this pool of candidates**. If the pool of candidates is insufficient, the municipal council may re-advertise the post.
- Provision is, however, made for the **Minister to exempt a municipal council from these strict appointment requirements if the municipal council is unable to attract a suitable candidate**, which may happen especially in the rural areas.
- In order to strengthen oversight by national and provincial government, the **municipal council will also be required to inform to the MEC for local government and the Minister by way of a report on the appointment process, as well as its outcome**, whilst the MEC will be tasked to ensure that municipal councils comply with this section.
- Section 56 of the Systems Act dealing with the **appointment of managers directly accountable to municipal managers provides corresponding provisions** as those of the municipal managers.
- The Bill further substitutes section 56A of the Systems Act to **prevent municipal managers and managers directly accountable to municipal managers to hold political office in a political party**, whether in a permanent, temporary or acting capacity.
- The Bill defines "Political office" as the position of **chairperson, deputy chairperson, secretary, deputy secretary or treasurer** of a political party nationally or in any province, region or other area in which the party operates.
- **Other political rights of senior managers are unaffected** by the amendment and they remain entitled to enjoy and exercise these rights freely.
- The limitation of **political rights will not apply to municipal managers and managers directly accountable to municipal managers holding office at the time when section 56A takes effect**.

5. OBJECTS OF THE BILL (Cont.)

- The Bill provides for an **appointment of a manager to lapse if the person appointed does not sign a performance agreement within 60 days.**
- There is also a need to ensure **consistency in respect of both the terms of these employment contracts relating to duties, remuneration, benefits and other conditions of employment**, and the terms of performance contracts relating to standards of performance evaluation and intervals for evaluation.
- The Bill empower the **Minister to make regulations relating to these matters and to provide for such regulations to be regarded as forming part of the employment contracts and performance agreements** of these managers.
- The Bill proposes a new clause providing that **a staff member of any municipality who has been dismissed for misconduct may only be re-employed in any municipality after the expiry of a prescribed period.**
- The proposed substitution further provides that **a staff member dismissed for financial misconduct contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), corruption or fraud, may not be re-employed** for a period of ten (10) years.
- The Bill proposes **the introduction of a system** whereby municipalities would be required to **maintain a record regarding the disciplinary proceedings of staff members dismissed for misconduct and forward it to the MEC for local government, who in turn must forward it to the Minister to keep and make available to municipalities as prescribed.**
- The Bill **confer the authority to approve the staff establishments of a municipalities to municipal councils** and **bars the employment of a person in a municipality if the post to which he or she is appointed is not provided for in the staff establishment** of that municipality.

5. OBJECTS OF THE BILL (Cont.)

- Section 67 of the **Systems Act enjoins municipalities to develop and adopt systems and procedures to ensure fair, efficient, effective and transparent personnel administration**. Leaving human resource development entirely to municipalities has, however, proved to be unsuccessful as some municipalities are experiencing difficulties in developing their own human resource policies.
- To ensure stability and consistency in the local government workforce the **Bill proposes the amendment of section 67 to ensure that these systems and procedures are consistent with uniform standards prescribed by the Minister**.
- The Bill proposes an amendment to section 71 of the Systems Act, making it **mandatory for organised local government to consult the Minister and any other parties before embarking on any negotiations with parties in the bargaining council** designated for municipalities, as may be prescribed.
- This is to ensure that the Minister is at all times aware of the issues that will be bargained on, as well as the framework within which such bargaining will take place.
- The amendment also confers some additional powers on the Minister, such as to **regulate the performance by municipal staff members of remunerative work outside the municipality** and to make regulations in relation to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers.
- Section 106 of the Systems Act is amended to enable the **Minister to conduct an investigation into maladministration, fraud, corruption or any other serious malpractice in a municipality, if the MEC fails** to conduct such investigation.

5. OBJECTS OF THE BILL (Cont.)

- **Section 120 of the Systems Act is amended to include** issues regarding the appointment of municipal managers (section 54A) and managers directly accountable to municipal managers (section 56) in the **list of matters on which the Minister may make regulations** or issue guidelines, only after consultation with organised local government representing local government nationally.
- The Bill proposes to amend the Disciplinary Code for Municipal Councillors contained in Schedule 1 to the Systems Act by adding a provision to **prevent councillors from voting in favour of resolutions before the council or a committee of the council where such resolutions are in conflict with legislation** applicable to local government.

5. PROPOSED AMENDMENTS (Cont.)

Question: How can the Municipal Systems Amendment Bill be further strengthened to ensure transparency and compliance with minimum competency regulations in the appointment of competent and qualified municipal senior managers?

We will achieve this by:

- 1) Making uniform norms and standards public;
- 2) Strengthening oversight by all stakeholders such as councils, trade unions, MECs and Minister; and
- 3) Strengthening mechanisms by the MECs and Minister to monitor recruitment and selection outcomes - Clause 2(7) for municipal managers and – Clause 3(4A) for managers directly accountable to MMs;
- 4) Invoking declaratory orders where a need arise;
- 5) Holding councillors accountable; and
- 6) Implementing consequence management.

6. IMPACT AND SUCCESSES OF THE AMENDMENT ACT AND ITS REGULATIONS

- ❑ A total of **1218** out of **1549** critical senior manager positions have been filled suitably qualified and competent senior managers.
- ❑ The Department working in collaboration with the Provincial CoGTAs and SALGA are supporting municipalities, especially municipalities identified in the Minister's Budget Speech as distressed, to fill the remaining 331 vacancies.
- ❑ The **introduction of the competency tests has built confidence in recruitment and selection processes** of local senior managers.
- ❑ The **competency framework incorporated in the Regulations has laid the basis for skills audit and skills development programmes.**
- ❑ All **senior manager participate in the overall performance management system** of the municipality in order to maximise the ability of municipalities to achieve their objectives.
- ❑ Provide **evaluation of performance and consequence management for sub-standard performance** of senior managers.
- ❑ **Strengthened checks and balances** by ensuring that municipalities comply with the minimum competency requirements.
- ❑ **Immensely contributed to** the realisation of the ideals of **the National Development Plan** (building a capable state) and B2B Programme.

6. IMPACT AND SUCCESSES OF THE AMENDMENT ACT AND ITS REGULATIONS

- ❑ Provide for the **consequences of appointments made in contradiction of procedures and criteria as set out in the Amendment Act** including the invocation of declaratory orders where the appointees do not meet the prescribed minimum requirements.
- ❑ **Prohibits the employment of staff found guilty of serious misconduct** for period ranging between 2 -10 years record of disciplinary proceedings.
- ❑ the **Minister has established a register of all staff members that have been dismissed for misconduct** or resigned prior to the finalisation of disciplinary proceedings, a total of one thousand six hundred and fifty-three (1653) were dismissed for misconduct and one hundred and thirty (130) resigned prior to finalisation of disciplinary proceedings.
- ❑ **Prohibit the employment** of any person in a municipality **against non-existing posts**.

6. IMPACT AND SUCCESSES OF THE AMENDMENT ACT AND ITS REGULATIONS

Question: What implications does the unconstitutionality of the Municipal Systems Amendment Bill have on the agenda of professionalising and depoliticising local government administration?

- 1) The invalidation of the Systems Amendment Act, 2011 reverses all the gains highlighted above.
- 2) Advertise vacant senior manager posts nationally to attract high caliber candidates;
- 3) The selection panel must do shortlisting to ensure objectivity;
- 4) MECs and Minister must enforce compliance with the prescribed relevant norms and standards such as appropriateness and thresholds for selection panels, etc.;
- 5) Municipalities must screen candidates to check previous record before conducting interviews;
- 6) Only candidates who meet the minimum prescribed/ advertised requirements must be shortlisted, interviewed and subjected to competency assessment and appointed;
- 7) Appointments made in contravention of the prescribed requirements will be nullified.

Thank You!

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