

REPUBLIC OF SOUTH AFRICA

ORGANISED LOCAL GOVERNMENT BILL

(As amended by the Portfolio Committee on Constitutional Affairs (National Assembly))

(SELECT COMMITTEE ON CONSTITUTIONAL AFFAIRS AND PUBLIC ADMINISTRATION) ,

[B 61 D—97]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP GEORGANISEERDE PLAASLIKE REGERING

(Soos gewysig deur die Portefeuljekomitee oor Staatkundige Aangeleenthede (Nasionale Vergadering))

(GEROSE KOMITEE OOR STAATKUNDIGE AANGELEENTHEDEN EN PUBLIEKE ADMINISTRASIE)

[W 61 D—97]

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BILL

To provide for the recognition of national and provincial organisations representing the different categories of municipalities; to determine procedures by which local government may designate representatives to participate in the National Council of Provinces; to determine procedures by which local government may consult with national and provincial government; to determine procedures by which local government may nominate persons to the Financial and Fiscal Commission; and to provide for matters connected therewith.

PREAMBLE

SINCE the Constitution requires an Act of Parliament to provide for the recognition of national and provincial organisations representing municipalities;

AND SINCE the legislation must determine procedures by which local government may consult with national and provincial government, designate representatives to participate in the National Council of Provinces and nominate persons to the Financial and Fiscal Commission,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. (1) In this Act, unless the context indicates otherwise—
- (i) “Minister” means the Minister for Provincial Affairs and Constitutional Development; (i)
 - (ii) “national organisation” means the organisation recognised in terms of section 2(1)(a); (ii)
 - (iii) “provincial organisation” means an organisation recognised in terms of section 2(1)(b); (iii)
 - (iv) “responsible member” means the member of the Executive Council responsible for local government in the province in question. (iv)
- (2) For the purposes of this Act and for as long as item 26(1)(a) of Schedule 6 to the Constitution applies, the following are the categories of municipalities:
- (a) Municipalities established for a metropolitan area as defined in section 1 of 15 the Local Government Transition Act, 1993 (Act No. 209 of 1993);
 - (b) municipalities as contemplated in section 9A of the Local Government Transition Act, 1993 (Act No. 209 of 1993);
 - (c) any local council as defined in section 1013 of the Local Government Transition Act, 1993 (Act No. 209 of 1993). 20

Recognition of national and provincial organisations

2. (1) Subject to section 6, the Minister must, by notice in the *Gazette*—
- (a) recognise one national organisation representing the majority of the provincial organisations contemplated in paragraph (b); and

(b) with the concurrence of the responsible member, recognise one organisation in each province representing the majority of municipalities in the province in question: Provided that all the different categories of municipalities in the province in question are represented in the organisation in question.

(2)(a) The Minister may withdraw any recognition referred to in subsection (1) if— 5

(i) the organisation ceases to represent the organisations or municipalities as contemplated in subsection (1) or ceases to comply with any of the criteria contemplated in section 6; and

(ii) the Minister gives the organisation in question 30 days notice of the intended withdrawal. 10

(b) If the Minister withdraws the recognition of an organisation contemplated in subsection (1)(b), he or she must act with the concurrence of the responsible member.

Designation of representatives to participate in National Council of Provinces

3. (1) Each provincial organisation may nominate not more than six members of municipal councils in writing for designation as representatives to participate in the proceedings of the National Council of Provinces. 15

(2)(a) The national organisation must in accordance with criteria determined by it, when necessary, designate not more than 10 persons from the nominees contemplated in subsection (1) as representatives to participate in the proceedings of the National Council of Provinces. 20

(b) The national organisation may assign the duty to so designate representatives to the head of its administration.

(3) Every designation made in terms of subsection (2) must be communicated to the Secretary of the National Council of Provinces by the head of the administration of the national organisation. 25

(4) Such communication must be in writing, which may include electronically transmitted print, and must indicate the period or purpose for which the designation is made.

(5) Whenever a vacancy occurs in the number of persons contemplated in subsection (1), the provincial organisation concerned may nominate another person in writing to fill the vacancy, 30

Consultation procedure

4. (1) Consultation between the national organisation and the national and a provincial government takes place at a meeting convened by the Minister.

(2) The Minister may invite any of the provincial organisations to the meeting contemplated in subsection (1). 35

(3) Despite subsection (1), the national organisation may at any time approach any Minister to consult with the national government.

(4) A provincial organisation may only consult the national government after consultation with the national organisation. 40

(5) Consultation between a provincial organisation and the provincial government in question takes place at a meeting convened by the responsible member.

(6) The responsible member may invite the national organisation or any other provincial organisation to the meeting contemplated in subsection (5),

(7) Despite subsection (5), a provincial organisation may at any time approach any member of the Executive Council of the province in question to consult with the provincial government. 45

(8) This section does not preclude consultation by organised local government with any other organ of state as defined in the Constitution.

Nomination of persons to Financial and Fiscal Commission

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5. (1) The nomination of persons for appointment by the President as members of the Financial and Fiscal Commission must take place at a meeting of the executive committee of the national organisation.

(2) Each provincial organisation may designate one person in writing for the purposes of subsection (1).

(3) The two persons to be nominated for appointment must be determined by means of a secret ballot by the executive committee.

(4) Any vacancy which may occur, must be filled in accordance with subsections(1), 5 (2) and (3).

Regulations

6. (1) The Minister may, after consultation with the responsible members and having regard to principles of transparency and equity, make regulations determining criteria other than those contemplated in section 2, for the recognition of the organisation 10 referred to in section 2(1)(a) and the organisations referred to in section 2(1)(b).

(2) The Minister must, in determining the criteria contemplated in subsection (1), take into account all relevant factors, including—

(a) political inclusiveness;

(b) provincial representiveness;

(c) a balance between urban and rural municipalities.

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Repeal of law and saving

7. (1) Subject to subsection (2), section 10F of the Local Government Transition Act, 1993 (Act No. 209 of 1993), is hereby repealed.

(2) Any organisation recognised under section 10F of the Local Government 20 Transition Act, 1993 (Act No. 209 of 1993), immediately before the coming into operation of this Act, must be regarded as having been recognised in terms of section 2 of this Act.

Short title

8. This Act is called the Organised Local Government Act, 1997.

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MEMORANDUM ON THE OBJECTS OF THE ORGANISED LOCAL GOVERNMENT BILL, 1997

Section 163 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), determines that an Act of Parliament must provide for the recognition of a national organisation and provincial organisations representing municipalities, and must determine procedures by which organised local government may designate representatives to the National Council of Provinces (NCOP) and nominate persons to the Financial and Fiscal Commission (FFC).

In order to comply with the provisions of section 163 of the Constitution, clause 2 seeks to make provision for the recognition of a national organisation and nine provincial organisations to represent local government.

Clause 3 seeks to provide for the designation by the national organisation of representatives to participate in proceedings of the NCOP. Local government's participation in the NCOP is important as this will ensure that local government will for the first time participate in the law making process when local government issues are at stake.

Clause 4 seeks to provide for procedures by which the national organisation and provincial organisations may consult with the national and a provincial government.

Clause 5 proposes the nomination of two persons by the national organisation for appointment by the President as members of the FFC in terms of section 221 of the Constitution. Municipalities are dependent on sufficient funds to perform their functions. The participation of local government in the FFC is therefore of the utmost importance as the FFC is *inter alia* responsible for making recommendations to Parliament in respect of the equitable division of revenue raised nationally among the national, provincial and local spheres of government.

Clause 6 seeks to empower the Minister for Provincial Affairs and Constitutional Development to make regulations prescribing criteria which have to be taken into account when the national organisation and nine provincial organisations are to be recognised.

The Department of Constitutional Development and the State Law Advisers are of the opinion that the Bill must be dealt with in terms of the procedure set out in section 76 of the Constitution.

DEPARTMENTS AND BODIES CONSULTED

- * Local Government MINMEC, which consists of
 - The nine provincial members of the Executive Councils responsible for local government;
 - The Executive Committee of SALGA;
 - The chairpersons of the nine provincial municipal associations;
 - Representatives of the Department of Finance;
 - Representatives of the FFC; and
 - Representatives of the Portfolio Committee on Constitutional Affairs.
- * The Heads of the nine provincial Departments of Local Government.
- * The Bill was also published in the *Gazette* for public comment as a result of which 12 written submissions were received.