



# **PUBLIC ADMINISTRATION MANAGEMENT BILL**

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## **PRESENTATION TO THE PORTFOLIO COMMITTEE ON PUBLIC SERVICE AND ADMINISTRATION**

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***06 MARCH 2014***



# BACKGROUND



# THE NCOP PROCESS

- The PAM Bill was introduced in the National Council of Provinces on the 14 November 2013 and referred to Provinces to obtain mandates in January 2014.
- The Provinces engaged on the mandating process which involved public participation between 22 January and 11 February 2014.
- Eight Provinces held a total of 18 public participation meetings and Gauteng chose to invite written submissions.
- Eight Provinces supported the bill in the first round of negotiations with proposed amendment and comments for consideration by the department. Western Cape did not support the bill.
- The DPSA considered the proposed amendments and comments and made recommendations to the Select Committee. These were considered on the 18 February 2014.



# THE NCOP PROCESS

- Only one technical amendment to clause 7 of the bill was accepted.
- The bill was revised and a B version was sent to the Provinces for a final mandate.
- The Select Committee considered the provincial final mandates and adopted the bill on the 26 February.
- The NCOP approved the Bill with seven provinces in support, one province against and one province abstaining.



## KEY ISSUES RAISED AT THE NCOP

- Constitutionality
- Secondment without consent of employees
- Limitation on the period of secondment
- Cost of secondments
- Secondment and transfer to be used as a vehicle for ANC Cadre development
- Powers of municipalities
- Multiple reporting by municipalities
- Disclosure of financial interest
- The role of Minister responsible for local government in the drafting of regulations
- Costing of the implementation of the bill



# CONSTITUTIONALITY



The Preamble states that the bill gives effect to section 195(3) of the Constitution bearing in mind that:

- section 197(4) of the Constitution provides that provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in their administrations within a framework of uniform norms and standards applying to the public service;
- sections 151(3) and 153 of the Constitution provide that a municipality has the right to govern, on its own initiative, the local government affairs of its community and to structure and manage its administration, subject to national and provincial legislation, as provided for in the Constitution;
- section 154(1) of the Constitution stipulates that the national government and provincial governments must, by legislative and other measures, support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions;
- section 164 of the Constitution provides that any matter concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation;



# CONSTITUTIONALITY

## **Clause 5(1)**

- Any employee of the transferring institution may, subject to sections 151(3), 153 and 197(4) of the Constitution, be transferred within an institution or transferred to another institution in a manner and on such conditions as prescribed

## **Clause 7**

- If a function is transferred or assigned from one institution, namely the old institution, to another institution, namely the new institution, as a result of an action envisaged in section 97, 99, 126 or 137 of the Constitution, the provisions of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), apply.

## **Clause 12(2)**

- Issuing of directives relating to education: Insofar as a directive under subsection (1) applies to municipalities, the Minister must act in consultation with the Minister responsible for local government and after consultation with organised local government.



# CONSTITUTIONALITY

## Clause 13(2)

- Compulsory education requirement for employment: The Minister must consult organised local government and obtain the concurrence of the Minister responsible for local government before seeking the approval of the cabinet contemplated in subsection (1) in respect of a directive to be applicable to municipalities.

## Clause 15(7)

- The Functions of the Unit: The Unit may perform its functions in subsection (4) in respect of—
  - (a) *a national department or national government component, in consultation with the executive authority of such department or component, or upon the request of the relevant executive authority;*



## Constitutionality – Clause 15(7) Cont...



- (b) an Office of the Premier, provincial department or provincial government component with the concurrence of the Premier, or upon the request of the relevant Premier; and*
- (c) a municipality with the concurrence of the Municipal Council or upon the request of the relevant Municipal Council, or upon the request of the relevant Member of the Executive Council in respect of an investigation contemplated in section 106(5) of the Municipal Systems Act, 2000 (Act No. 32 of 2000).*

### **Clause 16(2)**

- Norms and Standards: The Minister must prescribe minimum norms and standards in terms of subsection (1)(a) *in consultation with the relevant executive authority.*

# CONSTITUTIONALITY – Clause 18



## Clause 18 - Regulations

- (2) The Minister must make regulations insofar as they apply to municipalities in consultation with the Minister responsible for local government, Minister responsible for Finance and organised local government.
- (3) (a) *Different regulations may be made to suit the varying requirements of particular categories of institutions or of particular categories of employees.*
- (b) *When making regulations, the Minister must take into account the nature and functions of different institutions or categories of institutions, as envisaged in section 195(6) of the Constitution and any public comments contemplated in subsection (4).*

# KEY ISSUES RAISED AT THE NCOP



- Powers of municipalities – the remain intact in terms of the constitution as demonstrated in the constitutionality slides
- Multiple reporting by municipalities – This is an implementation issue that should be addressed through regulations.
- Disclosure of financial interest – issues raised will be addressed in the regulations. The bill says the disclosure will be in a prescribed manner.
- The role of Minister responsible for local government in the drafting of regulations – Clearly spelled out as explained in the constitutionality slides
- Costing of the implementation of the bill – the implementation of the bill have to be budgeted for within the MTEF budgeting process.



# WHAT CHALLENGES DO WE SEEK TO ADDRESS

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- Build a Framework Legislation for a seamless Public Administration.
- Address challenges raised by the Auditor-General and other State entities on the problems and challenges faced by government.
- Respond to the NDP by making provisions in the bill that are catalysts for building of a capable state.
- Ensure there is a streamlined set of values throughout all three spheres of Government.
- Take on board concerns raised by Members of Parliament e.g. concern of officials doing business with the State.
- Equitable distribution of resources across the three spheres of government.



# INTERGOVERNMENTAL INTERFACE

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- Addressing local government concerns:
  - The Bill does not undermine or interfere with the Constitutional mandate of local government. Rather it seeks to ensure compliance with the Constitution by complementing public administration that is integrated across the three spheres of government.
  - The Bill also does not undermine or interfere with the powers of the Provincial Governments.
  - The Bill ensures the realisation of the values and principles contained in section 195 (1) of the Constitution.
  - Each Clause in this Bill therefore seeks to address / solve a particular problem related to the management of public administration.



# **CONTENT OF THE BILL**

# DEFINITIONS



## DEFINITIONS (Clause 1)

- **"employee"** means a person appointed in the public administration, but excludes a person appointed as a special adviser in terms of section 12A of the Public Service Act and a person performing similar functions in a municipality
- **"family member"**, in relation to any person, means his or her parent, sister, brother, child or spouse—
  - (a) including a person living with that person as if they were married to each other, namely a spouse or life partner;
  - (b) whether such relationship results from birth, marriage or adoption;
  - (c) including any other relative who resides permanently with the member; and
  - (d) including any other relative who is of necessity dependent on such person.
- **"institution"** means a national department, a provincial department, a municipality or a national or provincial government component;
- **"public administration"** means the public service, municipalities and their employees

# SCOPE OF APPLICATION

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## APPLICATION OF BILL (Clause 2)

- The Bill applies to the public administration.
- Section 195(2) of the Constitution provides that the principles governing public administration applies to—
  - (a) administration in every sphere of government;
  - (b) organs of state; and
  - (c) public enterprises



# MOBILITY OF STAFF



## MOBILITY OF STAFF WITHIN PUBLIC ADMINISTRATION (Clauses 5-7)

- Greater mobility of staff and the transfer of functions from one sphere to another is desirable in certain instances to allow services to be delivered at the most appropriate sphere and to enable deployment of staff to where they are most needed in government.
- To enhance mobility within the public administration, the Bill provides for transfer of employees with their consent.
- Where there is skills shortage, employees with necessary skills and knowledge may be seconded, without their consent, if secondment is justified.
- The Bill also provides for transfer of employees upon transfer or assignment of function as provided in Section 97, 99, 126 and 137 of the Constitution.

# PROHIBITIONS & DISCLOSURES



## PROHIBITIONS ON CONDUCTING BUSINESS WITH STATE AND DISCLOSURE OF FINANCIAL INTEREST (Clauses 8-9)

- For purposes of these clauses "employee" includes persons contemplated in section 12A of Public Service Act and a person performing similar functions in a municipality.
- As part of promoting professional ethics and integrity by employees, Bill prohibits employees from conducting business with State or being a director of a public or private company conducting business with State.
- Failure to comply with this prohibition constitutes serious misconduct which may result in termination of employment.
- Employees are required to disclose their financial interest and the financial interest of their spouses and persons living with them as if they were married to each other
- Failure to comply with the obligation to disclose financial interest as required constitutes misconduct.

# CAPACITY DEVELOPMENT



## CAPACITY DEVELOPMENT AND TRAINING (Clauses 10-13)

- The Bill seeks to promote capacity development of employees by providing for establishment of National School of Government.
- School must, through education and training, promote progressive realisation of values and principles governing public administration and enhance quality, extent and impact of development of human resource capacity in institutions.
- The Bill requires head of institutions, through education and training of its employees, to develop human resource capacity in their institutions to level that enables institution to perform its functions in an efficient, quality, collaborative and accountable manner.



# INFORMATION AND COMMUNICATION TECHNOLOGY



## USE OF INFORMATION AND COMMUNICATION TECHNOLOGY IN PUBLIC ADMINISTRATION (Clause 14)

- The Bill requires a head of an institution to acquire and use information and communication technologies in a manner which-
  - leverages economies of scale to provide for cost effective service;
  - ensures the interoperability of its information systems with information systems of other institutions to enhance internal efficiency or service delivery;
  - eliminates unnecessary duplication of information and communication technologies in the public administration; and ensures security of its information systems.



# ETHICS & INTEGRITY

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## ETHICS, INTEGRITY AND DISCIPLINE (Clause 15)

- Building a public administration grounded by professional ethics, integrity and discipline is critical for realisation of values contained in section 195(1) of the Constitution.
- The Bill establishes the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit to provide, amongst others, technical assistance and support to institutions in all spheres of government regarding the management of ethics, integrity and disciplinary matters relating to misconduct within public administration.
- The Bill requires Minister to report to Parliament twice a year on activities of Unit.

# NORMS AND STANDARDS

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## MINIMUM NORMS AND STANDARDS (Clause 16)

- The Bill seeks to empower the Minister to prescribe minimum norms and standards on-
  - promotion of values and principles referred to in section 195(1) of Constitution;
  - capacity development and training;
  - information and communication technologies in public administration;
  - integrity, ethics, discipline including disclosure of financial interests;
  - measures to improve effectiveness and efficiency of institutions;
  - disclosure of disciplinary action; and any other matter necessary to give effect to administration or implementation of Bill.
- The Minister must prescribe minimum norms and standards promoting values and principles referred to in section 195(1) of Constitution, in consultation with relevant executive authority. This allows for a degree of uniformity in relation to norms and standards across public administration which should have a positive impact on service delivery

# OFFICE OF STANDARDS & COMPLIANCE

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## OFFICE OF STANDARDS AND COMPLIANCE (Clause 17)

- The Bill establishes within public administration the Office of Standards and Compliance whose objects are to promote and monitor compliance with minimum norms and standards set by Minister, taking into account that the three spheres of government are distinctive, inter-dependent and interrelated.



# REGULATIONS



## REGULATIONS (Clause 18)

- The Bill empowers the Minister to make regulations on, amongst others, matters required or permitted by Bill to be prescribed.
- The Minister must make regulations in so far as they apply to municipalities, in consultation with Ministers responsible for local government and Finance as well as organised local government.
- The Minister must publish proposed regulations for public comment for period of not less than 30 days in the *Gazette*.



# REPEAL & AMENDMENTS

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## REPEAL AND AMENDMENT OF LAWS (Clause 19 and the Schedule)

- The Bill repeals-
  - sections 4, 14 and 15 of Public Service Act, 1994 (Proclamation No. 103 of 1994), and
  - Transfer of Staff to Municipalities Act, 1998 (Act No.17 of 1998).

# THANK YOU

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## QUESTIONS?