



cooperative governance

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA

Private Bag X804, Pretoria, 0001 Tel: (012) 334 0600, Fax: (012) 334 0603
Cnr Hamilton and Johannes Ramokhoase Street, Arcadia, Pretoria

Ms Faith Muthambi
Chairperson for the Portfolio Committee of Cooperative Governance and Traditional Affairs
PO Box 15
Cape Town
8000
By E Mail: C/O scassiem@parliament.gov.za

Honourable Chairperson,

RE: Resubmission of the Socio-Economic Impact Assessment Systems (SEIAS) sign off Certificate as well as the Implications thereof.

1. Following the rescheduling of the portfolio committee meeting of 8 July. We wish to resubmit the Socio Economic Assessment Report and Certificate as received and processed by the Presidency. We also wish to herewith address some of the concerns raised by the Presidency.
2. We also wish to utilise this opportunity to highlight our own assessment of the possible policy, legislative, and implementation implications of the proposed Local Government: Municipal System Amendment Bill, with a view of proposing steps that we may have to embark on going forward.

3. Background

- 3.1. By way of background you may recall that after months of consideration and outcomes of several court cases, particularly the South African Municipal Workers' Union v Minister of Cooperative Governance & Traditional Affairs and Others [2017] ZACC 7, the department submitted the Local Government: Municipal System Amendment Bill anticipating a discussion on the evening of 26 June 2020.
- 3.2. As an outcome of that meeting the Portfolio Committee requested that the department obtain a Socio-Economic Impact Assessment Systems (SEIAS) Certificate, prior to the Committee considering the proposed Amendment Bill.
- 3.3. Consequently, during the weekend of 27 and 28 June the Presidency was contacted, and the compilation of information was undertaken between 29 and 30 June 2020. Following which the department submitted all the relevant information utilising the Presidency prescribed SEIAS Template, which we had also utilised in processing other previous Bills. The filled template was duly submitted on 1 July 2020, after which the Presidency sort clarity on certain aspects. The form was reamended and resubmitted.
- 3.4. On 2 July 2020 the Presidency accepted the amended form but requested that the Department rework on the problem statement and root causes that necessitated the amendment of the Bill. On the same date, the Department submitted the problem statement and root causes for the amendment Bill. Upon which, the presidency confirmed and certified that the Bill is aligned to building a capable and developmental state as articulated in the National Development Plan and the Seven National Priorities.

- 3.5. Please find attached the certificate and amended SEISA Template, which also elucidates the rationale and implications of the proposed Bill.

4. Rationale for the Bill

- 4.1. Although the template allows scope for motivation the nature of the form doesn't permit for detailed motivation. Whereas in the form we had highlighted the misalignment of the current policy and implementation regime with the Constitutional provisions that establish the local sphere of government.
- 4.2. We would wish to highlight in particular Section 152 of the Constitution which establishes municipalities with the objectives, amongst others:
"152. (1). (a) to provide democratic and accountable government to local communities
(b) to ensure the provision of services to communities in a sustainable manner
(c) to promote social and economic development"
- 4.3. We believe that throughout the years since the establishment of municipalities there has been an undue emphasis on basic service delivery without considering in entirety the anticipated role of local government which must include the promotion of social and economic development as well as accountable government. We therefore believe that this proposed Bill would align local government with these expectations.
- 4.4. Further, the White Paper on Local Government, 1998 (The White Paper) envisages that for municipalities to meet these and other obligations it would need to be capable, capacitated and developmental. This will require that the institutions of local government need to be "leading and learning" organisations. The White Paper on Local Government concludes that *"developmental local government requires that municipalities become more strategic, visionary and ultimately influential in the way they operate"*. To achieve its envisaged outcomes, the local government is encouraged, by the White Paper, to adopt "three interrelated approaches which can assist municipalities to become more developmental", these are "integrated development planning and budgeting; performance management [and] working together with local citizens and partners".
- 4.5. We believe that the employ of the proposals of the Bill also facilitate for the integration of these three interrelated approaches as by linking planning and budgeting as well as implementation to performance management we believe we can foster greater impact and foster for inclusive planning, implementation and monitoring.
- 4.6. Although the Municipal Systems Act, 2000 (the Systems Act) provides a framework for public participation, integrated development planning, municipal finance, performance management and reporting, including monitoring and support. We believe that the absence of national uniform standards for municipal human resource management systems and procedures as contemplated in the Systems Act has resulted in disparate human resource practices that do not promote a developmental local government.
- 4.7. These have not entirely been in line with the values and principles governing local public administration as contained in section 195 of the Constitution. These values and principles include impartial, transparent and development orientated public administrations. The section also envisages that the administration would employ "good human resource management and career development practices to maximise [and cultivate] human potential".
- 4.8. Our sincere belief is that the introduction of the Bill will maximise and cultivate the much needed human potential and capacities in our local governments, whilst strengthening local government systems and the developmental capacity at local government.

5. Unlocking the developmental capacity of local government

- 5.1. We believe that the Bill will ultimately facilitate for the local government to play its rightful developmental role by availing it appropriate and relevant capacities whilst soliciting the support of the other spheres through the Minister responsible for cooperative governance, who is

empowered by the proposed Bill to develop the necessary and relevant norms, standards and systems.

- 5.2. The proposed Bill also complements the intentions of the Systems Act for a fair, efficient, effective and transparent local public administration and human resource management. This system enjoins municipalities within their fiscal capacity to structure their administration in such a manner as to be responsive to the needs of communities and to employ personnel with the professional and technical skills necessary for the effective performance of their functions.
- 5.3. However, in implementing the Systems Act, far too much latitude was provided to municipalities to further develop norms, standards and systems in relation to human resource recruitment, development and management. This has resulted in varied practices which have led to uneven capacity in municipalities.
- 5.4. In some instances, this has led to high vacancy rates, delays in the filling critical vacant positions, and the appointment of persons lacking the skills and expertise to perform the duties associated with their posts. Ultimately the overall impact has been the exposing of the inadequacy of the accountability systems which has been the main cause of service delivery backlogs which have also attracted civil society protests.
- 5.5. This has become increasingly evident in the number of municipalities who have received adverse audit outcomes and have also found themselves in precarious financial and service delivery difficulties.
- 5.6. The proposed amendments will enable the Minister to determine the minimum level of skills, expertise, competencies and qualifications for municipal managers and managers directly accountable to municipal managers and to enforce compliance where unlawful appointments are made. The Amendment Bill deems an appointment of a municipal manager or manager directly accountable to the municipal manager if the person so appointed does not meet the prescribed minimum skills, expertise, competencies or qualifications.
- 5.7. Consequently, this Bill seeks to, inter alia, amend the principal Act so as to strengthen local and cooperative governance without "compromising or impeding a municipality's ability or right to exercise its powers or perform its functions", as envisaged by Chapter 7 of the Constitution. To this end, the White Paper calls on all spheres of government to collaborate to strengthen local government as the closest sphere to the people. Consequently, the proposed amendments seek to empower the executive authority responsible for local government and cooperative governance to strengthen the capacity of municipalities to perform their functions. This will be achieved by providing for the possibility to make regulations setting uniform standards for municipal staff establishment and job evaluation systems.
- 5.8. The suggested actions also include the development of standard procedures and competency criteria for appointments of municipal employees whilst also providing for consequences management in the event of appointments made in contravention of the appointment procedures. The suggested amendments also provide for the standard criterion for the evaluation of performance of municipal employees.
- 5.9. The current regime lacks uniform norms and standards in municipalities and also inhibits the ability of smaller municipalities to develop human resource policies and procedures.
- 5.10. Given the tensions as well as blurred accountability and political lines at a local level, the amendments propose the prohibition of municipal employees from holding political office in any political party. This is a matter that has also been ventilated by the Constitutional Court in *South African Municipal Workers' Union v Minister of Cooperative Governance & Traditional Affairs and Others* [2017] ZACC 7. Wherein those who currently hold office will be allowed to do so until the end of their respective terms.
- 5.11. The proposed amendments also bar the employment of municipal employees who have been dismissed for financial misconduct, fraud and corruption.

6. Aligning with strategic intents and priorities of the National Development Plan

- 6.1. The proposed amendments will enhance the state in meeting its developmental objectives and outcomes.
- 6.2. Economic transformation and job creation will be facilitated for as the proposed Bill will create municipalities and local state agencies who are more capable in coordinating local economic and social development as well as the provision of services.
- 6.3. The Amendment Bill will avail the necessary and requisite skills to local government thus unlocking the skills development, education, training and development potential of local communities whilst promoting their health and wellbeing by also improving the quality of basic municipal services.
- 6.4. By appointing qualified senior managers, the municipalities will be able to plan and avert other challenges (including environmental ones), from an infrastructure perspective with will facilitate for spatial integration whilst building cohesive, vibrant, safe and climate smart communities.
- 6.5. By strengthening capacity and the capabilities of local government a capable, ethical and developmental state can be realized thus ensuring that South Africa contributes to the aspirations of Agenda 2063: The Africa We Want and the Sustainable Developmental Goals.

7. Envisaged challenges in implementing the Bill

- 7.1. The implementation of the Bill will not be without challenges thus it is important to adopt a risk mitigation strategy, which has been proposed and approved by the Presidency.
- 7.2. Litigation is one such risk, especially as it relates to the proposed limitation of employees to hold public office as this could be interpreted to limit the freedom of association clause in the Constitution. This will require an aggressive stakeholder management and communications strategy which is being developed by the department, such as strategy will ensure ongoing and consultations with particularly the trade unions.
- 7.3. The employment practices and informal procedures adopted by the municipalities are deeply entrenched and are likely to challenge the implementation of the Bill. To this end the national and provincial departments' capacities to undertake real time monitoring and evaluation will be required. This will facilitate the strict adherence to recruitment and selection procedures. To this end the APP of the department has begun to factor in such strengthened capacities, which will be complemented by the implementation of the District Development Model, particularly as it relates to the national hub and the envisaged shared services model.
- 7.4. To complement this the current profiling of metros, districts and local municipalities will need a specific deep dive which will be customised with specific skills audit plans for each municipality for the medium and longer term, sequenced in five-year plans.

8. Action Plan

- 8.1. In seeking to ensure the passing and implementation of the Bill the following action plan and milestones have been adopted by the department:

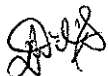
NO.	ACTION	TENTATIVE DATES	RESPONSIBILITY
1.	Initiation of the Draft Socio-Economic Impact Assessment System (SEIAS)	June 2020	DCOG
2.	Submission of the Draft Initial SEIAS to the Department of Development, Planning, Monitoring and Evaluation (DPME) for consideration	July 2020	DCOG
3.	Refinement of the Draft Initial SEIAS (if necessary after consideration of input received from the DPME)	July 2020	DCOG
4.	Obtain SEIAS Certification	July 2020	DCOG
5.	Presentation of the MSA Amendment Bill to Cabinet Committee on Governance and Administration for approval for public consultation	August 2020	DCOG
6.	Presentation to the Portfolio Committee on Cooperative Governance and Traditional Affairs for approval for public consultation	August 2020	DCOG
7.	Presentation of the MSA Amendment Bill to the National Council of Provinces for approval for publication for public comment	August 2020	DCOG
8.	Gazetting of the MSA Amendment Bill including referrals to the relevant Provincial Legislatures for public comment for 4 weeks (30 days)	August 2020	Parliament
9.	Consideration of the comments received through public consultation process	October 2020	Parliament
10.	Engage DPME for final SEIAS	October 2020	DCOG
11.	Obtain final SEIAS certification	November 2020	DCOG
12.	Present the MSA Amendment Bill to Cabinet for approval to submit the Amendment Bill to Parliament	December 2020	DCOG
13.	Final approval by Parliament (includes referral to Cabinet Committees)	February 2020	Parliament
14.	MSA Amendment Bill signed off into law and assented by the President	-	Parliament; Presidency

9. Conclusion

- 9.1. No doubt the proposed amendments will enhance the state in meeting its developmental objectives and outcomes.
- 9.2. The proposed amendments are aimed at empowering the Minister to, inter alia, regulate municipal staff establishment, competency criteria for the appointment of senior managers, competency assessment for senior managers, consequences of appointments made in contravention of the Act, conditions of employment of senior managers, limitation of the political rights of senior managers, timeframes for employment contracting and performance contracting, remuneration of senior managers, evaluation of performance and reward of senior managers, employment of staff dismissed for financial misconduct and corruption and fraud.
- 9.3. We have carefully considered the policy and implementation implications of our proposals and hope that we will find the support of the committee in approving and executing the intents of the Bill.

We wish to once again apologise for the delays we may have caused and hope that you will continue to offer us your highest considerations and reassure you of ours.

Yours Sincerely,



Ms Avril Williamson
Director General

Date: 8/07/2020