



Office of the Executive Mayor

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Section/Unit: Office of the Executive Mayor

28 July 2023

The Portfolio Committee on Public Service and Administration
National Assembly
Parliament of South Africa
PO Box 15
Cape Town
8000

Per email: pamab@parliament.gov.za

Attention: Mr Masixole Zibeko
[REDACTED]

SUBMISSION OF COMMENTS IN RESPECT OF THE PUBLIC ADMINISTRATION MANAGEMENT AMENDMENT BILL [B10–2023]

The Public Administration Management Amendment Bill (“the Bill”) has been introduced by the Minister for the Public Service and Administration in the National Assembly. The Bill was published in Government Gazette 48449 on 21 April 2023 and interested parties have been invited to submit comments on the Bill. On behalf of the City of Tshwane Metropolitan Municipality (“City of Tshwane”), I wish to submit the following comments.

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The explanatory memorandum that accompanies the Bill provides as follows:

*“To give effect to the vision of the **Single Public Administration**, a Public Administration Management Bill was developed in 2008 to provide for the organisation, management, functioning and personnel related matters in the three spheres of government.*

...

*The main objects of the Bill are to improve service delivery through **the alignment of human resource, governance and related arrangements in the three spheres of government; to further provide for the transfer and secondment of employees**, to provide clarification regarding the prohibition against employees conducting business with an organ of state; to provide for the constitution of the National School of Government as a national department, to remove unjustifiable disparities across State institutions and to provide for the co-ordination of mandating processes for collective bargaining in the public administration.”*

(Emboldening and underlining added)

I must state clearly and unequivocally that the City of Tshwane is resolutely opposed to the notion of a “Single Public Administration” and it is on this basis that we register our strong opposition to the Bill. We believe that the introduction of this concept will be prejudicial to the autonomy of the local sphere of government and, furthermore, that the Bill is likely unconstitutional.

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Constitutional objections to the Bill

There are at least two grounds which support the assertion that the creation of a “Single Public Administration” is unconstitutional.

Firstly, the Bill undermines the autonomy of the local sphere of government. Section 156(1) and (2) of the Constitution provide as follows:

- “1. A municipality has executive authority in respect of, and has the right to administer*
 - a. the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and*
 - b. any other matter assigned to it by national or provincial legislation.*

- 2. A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.”*

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Furthermore, section 153 of the Constitution states that:

“A municipality must

- a. structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and*
- b. participate in national and provincial development programmes.”*

I believe that the above provisions are instructive that each municipality is fully empowered to administer its own affairs, and that the staffing of the administration of the municipality is a matter that falls squarely within this ambit. This is entirely logical as South Africa’s 257 local municipalities reflect the full breadth of diversity the country in respect of geography, economics and population. Accordingly, each municipality is best placed to make decisions on behalf of the residents which it serves – the same people who are responsible for electing councillors to lead the municipality in the first place.

Secondly, it is important to recognise the distinction that exists between the public administration and the public service. Section 197(1) and (4) of the Constitution provides as follows:

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“1. Within public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day.

...

4. 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.”

Accordingly, it is clear that the public service is a subset of the public administration, and that whilst the ambit of the public services encompasses national and provincial spheres of government it does not extend to the local sphere of government. Whilst local government is undoubtedly a constituent part of the public administration, the employees and administrators of local government are most certainly not part of the public service.

The Bill disregards this distinction and, in so doing, is not compatible with the architecture set out in the Constitution.

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Policy objections to the Bill

Besides the constitutional points raised above, I must express my strong opposition to this Bill on policy grounds. The local sphere of government in South Africa is in deep crisis and it is abundantly clear that the policies and leadership that brought us to this point are not sustainable. By far the most debilitating policy has been the decision by the African National Congress (ANC) to implement the practice of “cadre deployment” across all spheres of government and organs of state. The result has been deep dysfunction and the crippling of state capacity, as has been exhaustively documented by the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, better known as the “Zondo Commission” or “State Capture Commission”.

Unsurprisingly, the South African electorate has begun to change its voting behaviour and it is in light of this that the multi-party coalition government which I lead was elected to office in the City of Tshwane. The political mandate which we have been given is absolutely clear: to reverse the impact of cadre deployment and to rebuild state capacity. On this depends virtually every other aspect of our agenda for government.

The Bill presents a clear and unacceptable threat to our mission to reverse cadre deployment. The Bill seeks to place enormous power in the hands of the national government to “transfer” (or effectively “deploy”) employees around the country and across spheres of government and organs of state. Accordingly, any attempt by a municipality such as the City of Tshwane to root out incompetence and corruption or to build state capacity can easily be undermined the national sphere of government.

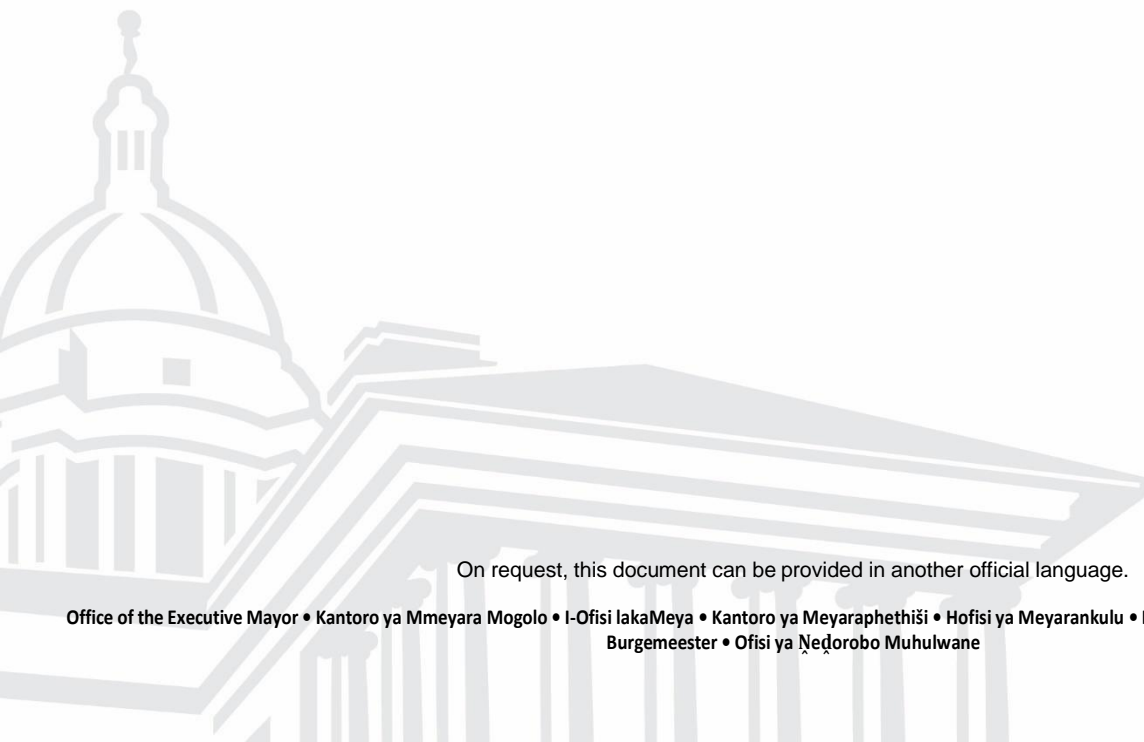
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This is unacceptable to the City of Tshwane and will be resisted in every possible forum, including using legal and constitutional means.

Conclusion

In short, any attempt to centralise the organisation of the public service and broader public administration under the auspices the national sphere of government will undermine the autonomy of local government in a way that cannot be reconciled with the prescripts of the Constitution. Furthermore, the creation of a “Single Public Administration” will make it impossible for local governments to develop distinct ways of governing that are responsive to the political preferences of their respective electorates.

I am confident that I am joined by my colleagues in the City of Cape Town (as well as by colleagues in dozens of other municipalities) in expressing my opposition to the Bill in the strongest possible terms. I do not believe that minor adjustments will remedy the defects in the Bill, the essential premise of which is fundamentally flawed.



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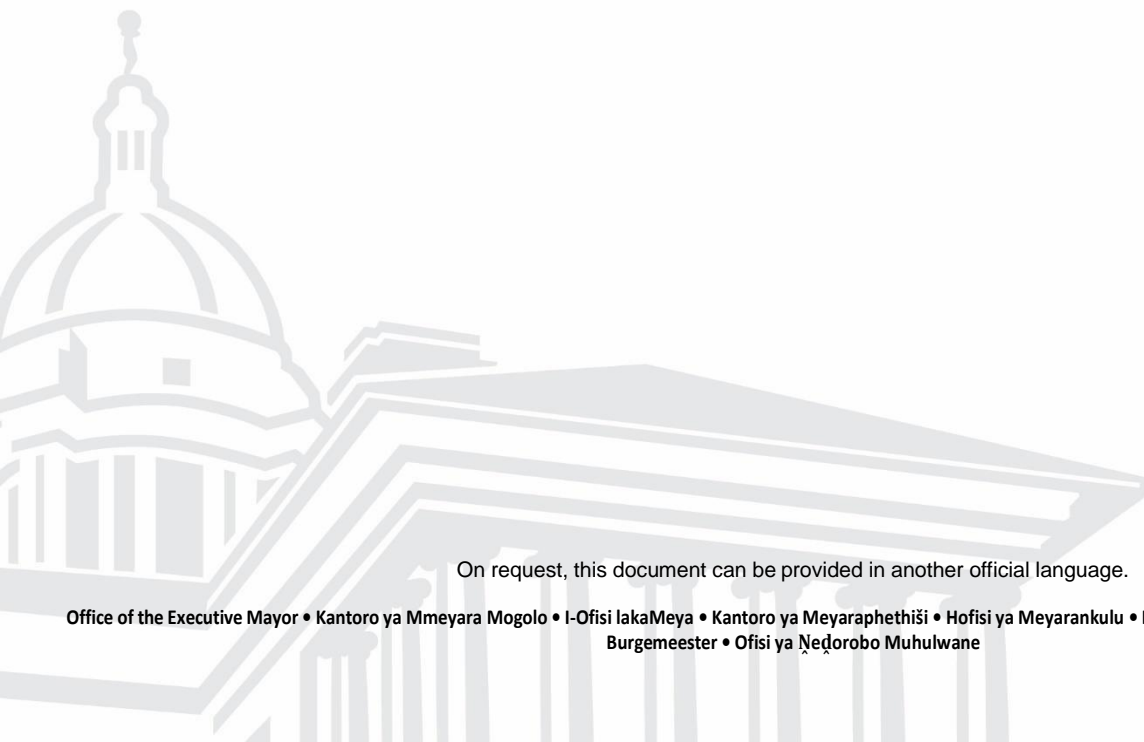
The enactment and implementation of the Bill will inevitably give rise to litigation. I am highly confident that this litigation will result in the Bill being declared unconstitutional by the Constitutional Court. Nevertheless, such a legal process will inevitably cause delay, confusion and significant expenses for numerous parties.

Accordingly, I urge the Minister for the Public Service and Administration to withdraw the Bill in its entirety.

Yours sincerely

[Electronically signed]

Cllr Cilliers Brink
EXECUTIVE MAYOR



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