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INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION
[AFFILIATED TO FEDUSA]
Social transformation through sustainable Local Government

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The Director General
CoGTA
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By electronic mail: jackeym@cogta.gov.za

Dear Sir/ Madam

COMMENTS ON AMENDMENTS TO MUNICIPAL SYSTEMS ACT 32 OF 2000

The above mentioned matter and the invitation to interested parties to submit comments on the proposed amendments to the Municipal Systems Act 32 of 2000 before 14 June 2010 refer.

Please find attached hereto IMATU's comments in respect of the proposed amendments. IMATU will for the purposes of brevity only comment on the contentious aspects of the amendment bill. IMATU's failure to comment on any aspect of the bill should be construed as being an agreement from IMATU to the proposed amendment

Section 54 (2) Act 32 of 2000 APPOINTMENT OF MUNICIPAL MANAGERS

IMATU support the amendment relating to certain minimum competencies, skills and experience of municipal managers and managers directly accountable to municipal managers.

The regulations needs to provide and take into account the fact that there are vast differences between metropolitan and rural municipalities. The regulations will therefore need to be adjusted to meet the needs of the different categories of municipalities. The competencies, skills and experience of a municipal manager in a metropolitan municipality may be different than that of a municipal manager in a rural municipality.

Section 54 (7) to (9) Act 32 of 2000

IMATU support the power vested in the MEC and / or Minister to intervene if the appointment of municipal managers and managers directly accountable to municipal managers are not affected in terms of the requirements of these sections.

IMATU is however concerned that the municipality is required to report on the appointment process. The problem lies therein that the post of municipal manager is vacant at the time of the appointment process. Who will therefore be required to report in the absence of the municipal manager? Will it be the mayor, mayoral committee, the municipal council or other officials or office bearers? IMATU is of the opinion that the body responsible for reporting to the MEC / Minister should be more clearly defined.

Section 56 Act 32 of 2000

IMATU support the concept that the position of municipal manager must at all material times be filled by an acting municipal manager.

IMATU is of the opinion that this process should not be abused in that the person acting as municipal manager should by regulation not act for a longer period of six months. In this six month period a permanent municipal manager should be appointed.

IMATU is of the opinion that CoGTA should develop a pool of acting municipal managers which possesses the necessary skills, experience and competencies. CoGTA should therefore deploy an acting municipal manager if the position of municipal manager becomes vacant in any municipality.

IMATU is of the opinion that managers reporting directly to municipal managers can only be appointed, remunerated and offered conditions of service developed in the South African Local Government Bargaining Council, taking into account the category of the particular municipality. The municipality and municipal council should not be allowed to appoint any manager directly reporting to a municipal manager outside the parameters of employment determined by the South African Local Government Bargaining Council. IMATU supports the concept that managers reporting directly to municipal managers should possess the necessary, competencies, skills, qualifications and experience which will be determined by regulation.

Section 56 (A) Act 32 of 2000

Municipal managers and managers reporting directly to municipal managers should, in IMATU's view, not hold any political office at the time of submission of his application for employment at any municipality.

Section 57 Act 32 of 2000

Municipal managers and managers reporting to municipal managers should only be entitled to a thirteenth cheque like most municipal employees. No other incentives, performance bonuses and / or other payments should be paid to such persons.

Section 57 (A) Act 32 of 2000

IMATU is of the opinion that CoGTA should develop a record centre whereby all municipalities should be obliged to enter records of all cases of misconduct where a disciplinary tribunal was established and where the employee was found guilty of such misconduct. Any prospective employee's job application in any municipality should be submitted to the proposed record centre to verify the disciplinary record of the prospective employee. If the record centre report positively on the misconduct of any prospective employee, and where he or she may not be re-employed for the prescribed period determined by regulation, then and in that event, the application for employment should be excluded from any recruitment, selection and appointment processes.

IMATU is however of the opinion that the prohibition of employment for a certain period may be a double jeopardy system of workplace disciplinary management. IMATU is of the opinion that municipal managers and managers reporting directly to municipal managers should be completely barred from any future employment by any municipality if the conviction for misconduct related to any element of theft, fraud, embezzlement, corruption and or any other element of financial mismanagement and / or non compliance with financial regulations as contained and set out in the Municipal Finance Management Act 56 of 2003.

IMATU supports the concept that no municipal employee may be employed by any other municipality whilst misconduct is pending in another municipality.

Section 59 (A) Act 32 of 2000

IMATU is of the opinion that the remuneration, benefits and other conditions of service of municipal managers and managers reporting to municipal managers should rather be developed in the South African Local Government Bargaining Council with the view to conclude a collective agreement.

This system should take into account the categories of municipalities in determining the upper and lower levels of remuneration and other benefits of municipal managers and managers reporting directly to municipal managers.

Section 66 Act 32 of 2000

IMATU is of the opinion that the staff establishment of all municipalities should not be approved by the municipal council but rather by the relevant MEC and Minister in the light of the serious service delivery imperatives facing local government and the republic.

If the authority to approve a staff establishment is vested in the municipal council the prevailing and illegal practice of making unauthorised appointments will prevail. It would also not root out the corruption which IMATU as part of organised labour is determined to quash from all municipalities.

IMATU supports the concept that any unauthorised appointments should be deemed null and void. Officials and office bearers making unauthorised appointments should be charged for misconduct. Such a charge should be included in the applicable disciplinary code collective agreement. The sanction for such misconduct should be dismissal in terms of the disciplinary code collective agreement.

IMATU is of the opinion that municipal councils and all political office bearers should be legally compelled *not* to interfere with any recruitment, selection and appointment processes in any municipality. This should be the exclusive domain of the municipal administration.

Section 67 Act 32 of 2000

IMATU is concerned that the ability of the Minister to issue regulations to ensure effective, fair, efficient and transparent personnel administration will undermine existing collective bargaining processes undertaken in the South African Local Government Bargaining Council.

Section 71 Act 32 of 2000

IMATU is concerned that the ability of the Minister to issue regulations to provide a framework for human resource management will undermine existing collective bargaining processes undertaken in the South African Local Government Bargaining Council.

Section 72 1 (g) Act 32 of 2000

The ability of the Minister to issue regulations after consulting the relevant bargaining council which will regulate remuneration, medical, pension and other benefits of municipal employees is of serious concern to IMATU.

It is unclear what consultation with the relevant bargaining council implies and what role organised labour will play during the intended consultation process. What will the power of the Minister be if there is a deadlock on any particular issue in the South African Local Government Bargaining Council?

Medical and pension issues are currently the sole competency of the central council of the South African Local Government Bargaining Council. The parties to the South African Local Government Bargaining Council concluded various collective agreements which regulated inter alia the accreditation of medical schemes, the employer and employee contribution rates, and the maximum contribution payable by the employer party. The rationalisation of the retirement

fund landscape is well under way in the central council of the South African Local Government Bargaining Council.

IMATU is of the opinion that these issues should remain within the ambit of the South African Local Government Bargaining Council, and not be the subject of ministerial regulation. The ability of the minister to issue regulations will undermine the provisions of the South African Constitution which entitles citizens to be subjected to fair labour practices and participate in lawful industrial action. It will also undermine certain national legislation such as the Labour Relations Act, which give effect to the right of parties to collectively bargain mutual interest issues and / or to resort to industrial action if there are a deadlock on certain issues.

CONCLUSION

IMATU is of the opinion that the objectives which the bill aims to achieve are commendable in that it addresses the serious problems of corruption and incompetency of municipal officials in all municipalities.

The concern of IMATU lies therein that the minister will have the ability to regulate various aspects of the current municipal landscape. This in turn undermines the distinction in the South African Constitution between the three spheres of government as being independent and separate spheres of government.

IMATU is also concerned with the ability of the minister to circumvent collective bargaining processes through the issuing of regulations. This, in turn, will undermine the role of organised labour in the local government sector to collectively bargain issues of mutual concern on behalf of its members.

IMATU is therefore of the opinion that the ability of the minister to issue regulations in respect of the human resource landscape, personnel administration, remuneration, medical benefits, retirement benefits and any other conditions of service should be severely curtailed and restricted. IMATU is of the opinion that these issues need to be determined in the current collective bargaining processes in the South African Local Government Bargaining Council.

IMATU is willing to amplify any of our submissions in the event of any interested party requiring such clarification. Please contact Mr. Craig Adams at the IMATU National Office, the full address of which is reflected herein if you require any additional assistance and /or information.

Yours faithfully



Johan Koen
General Secretary