

PROVINCE OF THE WESTERN CAPE

**WESTERN CAPE MONITORING
AND SUPPORT OF
MUNICIPALITIES BILL**

(As amended by the Standing Committee on Local Government)

(MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING)

[B 10B—2013]

PROVINSIE WES-KAAP

**WES-KAAPSE WETSONTWERP OP
MONTERING EN
ONDERSTEUNING VAN
MUNISIPALITEITE**

(Soos gewysig deur die Staande Komitee oor Plaaslike Regering)

(MINISTER VAN PLAASLIKE REGERING, OMGEWINGSAKE EN ONTWIKKELINGSBEPLANNING)

[W 10B—2013]

IPHONDO LENTSHONA KOLONI

**UMTHETHO OSAYILWAYO
WOBKO-LISO NENKXASO
YOOMASIPALA WENTSHONA
KOLONI**

(Njengoko ulungisiwe yiKomiti eSisigxina kuRhulumente woMmandla)

UMPHATHISWA woRHULUMENTE woMMANDLA, iMICIMBI YEZOKUSIINGQONGILEYO noCWANGCISO
LOPHUHLISO)

[B 10B—2013]

BILL

To give effect to sections 154(1) and 155(6) of the Constitution of the Republic of South Africa, 1996, by making further provision for measures to support municipalities, to develop and strengthen the capacity of municipalities and to improve their performance; to give effect to section 106(1) of the Local Government: Municipal Systems Act, 2000, by providing in greater detail for the monitoring of suspected non-performance and maladministration in municipalities; and to provide for incidental matters.

BE IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**Constitution**” means the Constitution of the Republic of South Africa, 1996; 5
 - “**Department**” means the provincial department responsible for local government;
 - “**investigator**”, in relation to any matter, means the person or persons designated by the Provincial Minister in terms of section 7(1)(a) to investigate that matter;
 - “**Municipal Finance Management Act**” means the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003); 10
 - “**municipal manager**” means a person appointed in terms of section 54A of the Municipal Systems Act;
 - “**Municipal Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000); 15
 - “**municipality**” means a municipality as defined in section 1 of the Municipal Systems Act;
 - “**practice note**” means a practice note issued in terms of section 4;
 - “**prescribe**” means prescribe by regulation;
 - “**Province**” means the province of the Western Cape; 20
 - “**Provincial Government**” means the government of the Province;
 - “**Provincial Minister**” means the provincial minister responsible for local government affairs in the Province;
 - “**regulation**” means a regulation made under section 10;
 - “**this Act**” includes any regulation. 25

Sharing information and knowledge regarding municipal powers and functions

2. In order to strengthen the capacity and improve the performance of municipalities, the Provincial Minister—
 - (a) must create opportunities for direct contact between municipalities and officials of the Department; and 30
 - (b) may at regular intervals convene meetings, workshops and information sessions where information, knowledge and views relating to the exercise of municipal powers and the performance of municipal functions can be shared.

Requests by municipalities for assistance

3. (1) A municipality may request the Provincial Minister or the head of any provincial department to assist the municipality in performing its functions generally or to deal with a specific matter.
- (2) When such a request is made— 5
- (a) the Department or the other relevant provincial department must cooperate with the municipality and, as far as is reasonably possible, provide the assistance requested; and
 - (b) the Department, or the other relevant provincial department, and the municipality must coordinate their actions. 10
- (3) The municipality is not absolved from its responsibility to manage its own affairs and perform its functions when it makes a request for assistance.

Practice notes

4. (1) The Provincial Minister may issue practice notes to any category or type of municipality as a mechanism to develop capacity in, and provide support to, 15 municipalities.
- (2) A practice note must pertain to—
- (a) systems, processes, procedures or activities in general; or
 - (b) best-practice standards, as determined by the Provincial Minister having regard to successful systems, processes, procedures and activities that have 20 been adopted and implemented in municipalities.
- (3) The Provincial Minister must disseminate all practice notes to all municipalities in the Province and may publish the practice notes in the *Provincial Gazette*.
- (4) Practice notes have the status of non-binding guidelines.

Assessment before invoking section 106(1) of Municipal Systems Act 25

5. The Provincial Minister must, before taking action under section 106(1) of the Municipal Systems Act—
- (a) inform the municipality concerned in writing of relevant information received by the Provincial Minister and invite the municipality to furnish the Provincial Minister with written comment by a date determined by the Provincial 30 Minister; and
 - (b) objectively assess all relevant information at the Provincial Minister's disposal, taking into account, among other matters—
 - (i) the manner in which the information was received;
 - (ii) the comments, if any, received from the municipality; 35
 - (iii) whether the information indicates that the municipality cannot or does not fulfil a statutory obligation binding on the municipality, and if so, whether or not it is due to incapacity;
 - (iv) whether the information indicates that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the 40 municipality;
 - (v) the areas of performance of the municipality that may be affected if action is not taken in accordance with section 106(1) of the Municipal Systems Act;
 - (vi) whether the municipality previously requested assistance from the 45 Provincial Minister, or the head of any provincial department, to deal with the matter concerned or a related matter;
 - (vii) whether the Provincial Minister, the Department or another provincial department has previously provided assistance to the municipality; and
 - (viii) if applicable, the extent to which the municipality implements relevant 50 practice notes and complies with the essential national standards and minimum standards established in terms of section 108(1) of the Municipal Systems Act.

Invoking section 106(1) of Municipal Systems Act

6. (1) If the Provincial Minister has reason to believe, based on the assessment 55 contemplated in section 5(b), that a municipality cannot or does not fulfil a statutory

obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, the Provincial Minister must in writing inform the municipality of his or her view and the reasons for that view and, in accordance with section 106(1) of the Municipal Systems Act-

- (a) by written notice to the municipality, request the municipal council or municipal manager concerned to provide the Provincial Minister with the information required in the notice; or 5
- (b) if the Provincial Minister considers it necessary, cause the matter to be investigated as contemplated in section 7.

(2) (a) If the Provincial Minister, after considering any information received in response to a notice referred to in subsection (1)(a), is satisfied that the municipality cannot fulfil a statutory obligation as a result of incapacity, the Provincial Minister must determine appropriate steps, in cooperation with the municipality, to develop the capacity of the municipality and to ensure that the municipality implements applicable practice notes and other best-practice standards. 10 15

(b) The Provincial Minister is not precluded by paragraph (a) from designating, if considered necessary, a person or persons to investigate the matter as contemplated in section 7.

(3) If the statutory obligation, maladministration, fraud, corruption or other serious malpractice referred to in subsection (1) relates to a matter entrusted to a member of the Provincial Cabinet other than the Provincial Minister, the functions assigned to the Provincial Minister by subsections (1) and (2) and section 7 must be performed by the Provincial Minister after consultation with that member of the Provincial Cabinet. 20

Investigation of municipality

7. (1) For the purposes of an investigation contemplated in section 6(1)(b), the Provincial Minister may— 25

- (a) designate one or more officials of the Provincial Government or independent persons to investigate the matter concerned; or
- (b) recommend to the Premier that a commission of inquiry be established in terms of the Western Cape Provincial Commissions Act, 1998 (Act 10 of 1998), to investigate the matter. 30

(2) The Provincial Minister must consider the seriousness of the matter and the availability of the requisite expertise in order to determine which of the investigation options referred to in subsection (1) is to be exercised.

(3) The Provincial Minister must as soon as practicable notify the municipality in writing of his or her decision in terms of subsection (1). 35

(4) (a) If the Provincial Minister decides to designate an investigator in terms of subsection (1)(a), the Provincial Minister must in writing determine the scope of the matter to be investigated and the other terms of reference of the investigator.

(b) The investigator may— 40

- (i) determine the format and procedure to be followed in conducting the investigation with due regard to the circumstances of the matter;
- (ii) determine who may be present and who may not be present at any proceedings pertaining to the investigation, having regard to the nature of the investigation; 45
- (iii) direct any person to produce any document in the possession of that person or under his or her control which has a bearing on the matter being investigated; and
- (iv) request an explanation from any person whom the investigator reasonably suspects of having information that has a bearing on the matter being investigated. 50

(c) The municipality and any person referred to in subparagraph (iii) or (iv) of paragraph (b) must cooperate with the investigator and provide all reasonable assistance requested by the investigator for the purposes of the investigation.

(d) If it appears to the investigator during the course of the investigation that any person is being implicated in the matter being investigated and that such implication may be detrimental to that person or that an adverse recommendation pertaining to that person may result, the investigator must afford that person an opportunity to be heard. 55

(e) No person may without the permission of the investigator disclose to an unauthorised person the contents of any document pertaining to an investigation 60

submitted to, or in the possession of, the investigator or the record of any proceedings of the investigation.

(f) The investigator must, in writing and within the period determined by the Provincial Minister, provide the Provincial Minister with—

- (i) a report on the findings of the investigation, including the reasons for those findings; and 5
- (ii) the investigator's recommendations relating to the matter.

(g) The Provincial Minister must as soon as practicable provide a copy of the report and recommendations of the investigator to the municipality concerned.

(h) If the investigator's report indicates that the municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in the municipality, the Provincial Minister must— 10

- (i) assess the seriousness of the situation and the municipality's response to the situation; 15
- (ii) determine whether the situation justifies or requires an intervention in terms of section 139 of the Constitution;
- (iii) determine whether the situation requires steps to be taken to monitor and support the municipality or to promote the development of the municipality's capacity to enable it to perform its functions, as the case may be; and 20
- (iv) if satisfied that the municipality cannot fulfil a statutory obligation as a result of incapacity, determine appropriate steps, in cooperation with the municipality, to develop the capacity of the municipality and to ensure that the municipality implements applicable practice notes and other best-practice standards. 25

Powers under section 139 of Constitution and Chapter 13 of Municipal Finance Management Act

8. This Act does not derogate from the powers of—

- (a) the provincial executive under section 139 of the Constitution; or
- (b) the Provincial Minister, and the provincial minister responsible for finance, under Chapter 13 of the Municipal Finance Management Act. 30

Reporting

9. (1) If action is taken in terms of section 6(1)(a) or (b), the Provincial Minister must within 14 days—

- (a) submit a written statement to the National Council of Provinces motivating the action; and 35
- (b) forward a copy of that statement to the national minister responsible for local government, the national minister responsible for finance and the South African Local Government Association.

(2) The Provincial Minister must as soon as practicable submit a copy of the investigator's report referred to in section 7(4)(f) to the National Council of Provinces, the national minister responsible for local government, the national minister responsible for finance and the South African Local Government Association. 40

Regulations

10. The Provincial Minister may make regulations regarding any ancillary or incidental matter which the Provincial Minister thinks necessary or expedient to prescribe for the proper implementation or administration of this Act. 45

Offences and penalties**11.** A person who—

- (a) fails or refuses to produce any document in his or her possession or under his or her control when directed to do so by an investigator in terms of section 7(4)(b)(iii); 5
- (b) prevents any person from producing any document in that person's possession or under that person's control when that person is directed to do so by an investigator in terms of section 7(4)(b)(iii);
- (c) contravenes section 7(4)(e); or
- (d) with the intention of hindering or obstructing the investigation of a matter by the investigator, destroys or conceals any document, or object, that to his or her knowledge may be of assistance to an investigator, 10

commits an offence and is liable on conviction to a fine or to imprisonment not exceeding 12 months.

Short title and commencement

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12. This Act is called the Western Cape Monitoring and Support of Municipalities Act, 2014, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE MONITORING AND SUPPORT OF MUNICIPALITIES BILL, 2013

1. BACKGROUND

Section 154(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution), provides 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 155(6) of the Constitution provides that each provincial government must by legislative or other measures provide for the monitoring and support of local government in the province, and promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.

Section 106(1) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) (Municipal Systems Act), relates to non-performance and maladministration by municipalities and provides that if a provincial minister has reason to believe that a municipality in the province cannot or does not fulfil a statutory obligation binding on that municipality or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the province, the provincial minister must—

- (a) by written notice to the municipality, request the municipal council or municipal manager to provide the provincial minister with information required in the notice; or
- (b) if the provincial minister considers it necessary, designate a person or persons to investigate the matter.

Subsection (2) further provides that in the absence of applicable provincial legislation certain provisions of the Commissions Act, 1947 (Act 8 of 1947), apply to such an investigation.

2. PURPOSE OF BILL

The Western Cape Monitoring and Support of Municipalities Bill, 2013 (the Bill), gives effect to sections 154(1) and 155(6) of the Constitution by making further provision for the support of municipalities in the Province, and for measures to develop and strengthen the capacity of municipalities and to improve their performance. Furthermore, the Bill gives effect to section 106(1) of the Municipal Systems Act by providing in greater detail for monitoring and the investigation of suspected non-performance and maladministration in municipalities.

3. CONTENTS OF BILL

Clause 1 provides for the definitions.

Clause 2 provides for the provincial minister responsible for local government affairs (the Provincial Minister) to create opportunities for information and knowledge sharing in order to strengthen the capacity and improve the performance of municipalities.

Clause 3 deals with requests by municipalities to the Department for assistance in performing their functions.

Clause 4 empowers the Provincial Minister to issue practice notes to municipalities as a mechanism to develop capacity in, and to provide support to, municipalities.

Clause 5 provides for an assessment that the Provincial Minister must perform before invoking section 106(1) of the Municipal Systems Act. This clause provides for, among other matters, the relevant information that the Provincial Minister must take into account when he or she objectively assesses the matter at hand.

Clause 6 provides for the procedure to be followed by the Provincial Minister if, based on the assessment contemplated in clause 5, he or she has reason to believe that a municipality cannot or does not fulfil a statutory obligation or that maladministration, fraud, corruption or another serious malpractice has occurred or is occurring in a municipality. This clause provides for the additional steps that the Provincial Minister must take in the case of a failure by a municipality to fulfil a statutory obligation due to incapacity, and the circumstances in which the Provincial Minister must consult with another member of the Provincial Cabinet before invoking section 106(1) of the Municipal Systems Act.

Clause 7 provides for the investigation of a municipality by the Provincial Minister, the designation of an investigator and the powers and duties of the investigator.

Clause 8 provides that the Bill does not derogate from the powers of the provincial executive under section 139 of the Constitution, or from the powers of the Provincial Minister, or the provincial minister responsible for finance, under Chapter 13 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).

Clause 9 provides for reporting obligations of the Provincial Minister.

Clause 10 provides for the Provincial Minister to make regulations.

Clause 11 provides for offences and penalties.

Clause 12 provides for the short title and commencement of the law.

4. OTHER DEPARTMENTS AND INSTITUTIONS CONSULTED

Chief Directorate: Legal Services, Department of the Premier

Provincial Legislative and Constitutional Task Team on Local Government

The South African Local Government Association

5. FINANCIAL IMPLICATIONS

None

6. LEGISLATIVE COMPETENCE

The Provincial Minister is satisfied that all the provisions in the Bill fall within the legislative competence of the Province.

WETSONTWERP

Ten einde gevolg te gee aan artikels 154(1) en 155(6) van die Grondwet van die Republiek van Suid-Afrika, 1996, deur verder voorsiening te maak vir maatreëls om munisipaliteite te steun, om die vermoë van munisipaliteite te ontwikkel en te versterk en hul verrigting te verbeter; om gevolg te gee aan artikel 106(1) van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000, deur in meer besonderhede voorsiening te maak vir die monitering van vermoedelike nieverrigting en wanadministrasie in munisipaliteite; en om vir bykomstige aangeleenthede voorsiening te maak. 5

DAAR WORD BEPAAL deur die Provinsiale Parlement van die Provinsie Wes-Kaap, soos volg:—

Woordoms krywing

1. In hierdie Wet, tensy dit uit die samehang anders blyk, beteken—
 - “**Departement**” die provinsiale departement verantwoordelik vir plaaslike regering; 5
 - “**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;
 - “**hierdie Wet**” ook enige regulasie;
 - “**munisipale bestuurder**” ’n persoon aangestel ingevolge artikel 54A van die Wet op Munisipale Stelsels; 10
 - “**munisipaliteit**” ’n munisipaliteit soos omskryf in artikel 1 van die Wet op Munisipale Stelsels;
 - “**ondersoeker**”, in verband met enige aangeleentheid, die persoon of persone aangewys ingevolge artikel 1(1)(a) deur die Provinsiale Minister om daardie aangeleentheid te ondersoek; 15
 - “**praktyknota**” ’n praktyknota uitgereik ingevolge artikel 4;
 - “**Provinsiale Minister**” die provinsiale minister verantwoordelik vir plaaslikeregeringsake in die Provinsie;
 - “**Provinsiale Regering**” die regering van die Provinsie; 20
 - “**Provinsie**” die provinsie van die Wes-Kaap;
 - “**regulasie**” ’n regulasie gemaak kragtens artikel 10;
 - “**voorskryf**” voorskryf by regulasie;
 - “**Wet op Munisipale Finansiële Bestuur**” die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, 2003 (Wet 56 van 2003);
 - “**Wet op Munisipale Stelsels**” die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000). 25

Deel van inligting en kennis rakende munisipale bevoegdhede en funksies

2. Ten einde die vermoë van munisipaliteite te versterk en die verrigting van munisipaliteite te verbeter—
 - (a) moet die Provinsiale Minister geleentheid vir regstreekse kontak tussen munisipaliteite en beamptes van die Departement skep; en 30
 - (b) kan die Provinsiale Minister met gereelde tussenposes vergaderings, werkswinkels en inligtingssessies byeenroep waar inligting, kennis en menings

gedeel kan word wat met die uitoefening van munisipale bevoegdhe en die verrigting van munisipale funksies verband hou.

Verseoe deur munisipaliteit om bystand

3. (1) 'n Munisipaliteit kan die Provinsiale Minister of die hoof van enige provinsiale departement versoek om die munisipaliteit in die verrigting van sy funksies in die algemeen by te staan of om met 'n spesifieke aangeleentheid te handel. 5

(2) Wanneer so 'n versoek gemaak word—

(a) moet die Departement of die ander tersaaklike provinsiale departement met die munisipaliteit saamwerk en, so ver as wat redelik moontlik is, die bystand wat versoek is, verleen; en 10

(b) moet die Departement, of die ander tersaaklike provinsiale departement, en die munisipaliteit hul handelinge koördineer.

(3) Die munisipaliteit word nie van sy verantwoordelikheid om sy eie sake te bestuur en sy funksies te verrig, onthef wanneer hy 'n versoek om bystand maak nie.

Praktyknotas 15

4. (1) Die Provinsiale Minister kan praktyknotas aan enige kategorie of soort munisipaliteit uitreik as 'n meganisme om vermoë in munisipaliteite te ontwikkel en ondersteuning aan munisipaliteite te verleen.

(2) 'n Praktyknota moet betrekking hê op—

(a) stelsels, prosesse, prosedures of aktiwiteite in die algemeen; of 20

(b) bestepraktyk-standaarde, wat die Provinsiale Minister bepaal met inagneming van suksesvolle stelsels, prosesse, prosedures en aktiwiteite wat in munisipaliteite aangeneem en geïmplementeer is.

(3) Die Provinsiale Minister moet alle praktyknotas onder alle munisipaliteite in die Provinsie versprei en kan die praktyknotas in die *Provinsiale Koerant* publiseer. 25

(4) Praktyknotas het die status van niebindende riglyne.

Evaluering voor beroep op artikel 106(1) van Wet op Munisipale Stelsels

5. Die Provinsiale Minister moet, voordat hy of sy kragtens artikel 106(1) van die Wet op Munisipale Stelsels optree—

(a) die betrokke munisipaliteit skriftelik verwittig van tersaaklike inligting wat die Provinsiale Minister ontvang het en die munisipaliteit uitnooi om die Provinsiale Minister teen 'n datum bepaal deur die Provinsiale Minister van skriftelike kommentaar te voorsien; en 30

(b) alle tersaaklike inligting tot die Provinsiale Minister se beskikking objektief evalueer, met inagneming van onder meer— 35

(i) die wyse waarop die inligting ontvang is;

(ii) die kommentaar, indien enige, ontvang van die munisipaliteit;

(iii) of die inligting aandui dat die munisipaliteit 'n statutêre verpligting wat bindend is op die munisipaliteit nie kan uitvoer nie of nie uitvoer nie, en indien dit so is, of dit weens onvermoë is al dan nie; 40

(iv) of die inligting aandui dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk plaasgevind het of plaasvind in die munisipaliteit;

(v) die gebiede van verrigting van die munisipaliteit wat geraak kan word indien daar nie ooreenkomstig artikel 106(1) van die Wet op Munisipale Stelsels opgetree word nie; 45

(vi) of die munisipaliteit voorheen bystand van die Provinsiale Minister of die hoof van enige provinsiale departement versoek het om met die betrokke aangeleentheid of 'n verwante aangeleentheid te handel;

(vii) of die Provinsiale Minister, die Departement of 'n ander provinsiale departement voorheen bystand aan die munisipaliteit verleen het; en 50

(viii) indien van toepassing, die mate waarin die munisipaliteit tersaaklike praktyknotas implementeer en aan die noodsaaklike nasionale standaarde en minimum standaarde ingestel ingevolge artikel 108(1) van die Wet op Munisipale Stelsels voldoen. 55

Beroep op artikel 106(1) van Wet op Munisipale Stelsels

6. (1) Indien die Provinsiale Minister rede het om te glo, gegrond op die evaluering beoog in artikel 5(b), dat 'n munisipaliteit nie 'n statutêre verpligting kan uitvoer of uitvoer nie, of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk plaasgevind het of plaasvind in die munisipaliteit, moet die Provinsiale Minister die munisipaliteit skriftelik verwittig van sy of haar mening en die redes vir daardie mening en, ooreenkomstig artikel 106(1) van die Wet op Munisipale Stelsels—
- (a) deur middel van skriftelike kennisgewing aan die munisipaliteit, die betrokke munisipale raad of munisipale bestuurder versoek om die Provinsiale Minister van die inligting wat in die kennisgewing verlang word, te voorsien; of
 - (b) indien die Provinsiale Minister dit nodig ag, die aangeleentheid laat ondersoek soos beoog in artikel 7.
- (2) (a) Indien die Provinsiale Minister, na oorweging van enige inligting ontvang as antwoord op 'n kennisgewing bedoel in subartikel (1)(a), tevrede is dat die munisipaliteit as gevolg van onvermoë nie 'n statutêre verpligting kan uitvoer nie, moet die Provinsiale Minister geskikte stappe bepaal, in samewerking met die munisipaliteit, om die vermoë van die munisipaliteit te ontwikkel en toe te sien dat die munisipaliteit toepaslike praktyknotas en ander bestepraktyk-standaarde implementeer.
- (b) Die Provinsiale Minister word nie by paragraaf (a) verhoed om, indien dit nodig geag word, 'n persoon of persone aan te wys om die aangeleentheid te ondersoek soos beoog in artikel 7 nie.
- (3) Indien die statutêre verpligting, wanadministrasie, bedrog, korrupsie of ander ernstige wanpraktyk bedoel in subartikel (1) verband hou met 'n aangeleentheid wat aan 'n lid van die Provinsiale Kabinet buiten die Provinsiale Minister toevertrou is, moet die funksies wat by subartikels (1) en (2) en artikel 7 aan die Provinsiale Minister opgedra is, na oorlegpleging met daardie lid van die Provinsiale Kabinet deur die Provinsiale Minister verrig word.

Ondersoek van munisipaliteit

7. (1) Vir die doeleindes van 'n ondersoek beoog in artikel 6(1)(b), kan die Provinsiale Minister—
- (a) een of meer beamptes van die Provinsiale Regering of onafhanklike persone aanwys om die betrokke aangeleentheid te ondersoek; of
 - (b) die Premier aanbeveel dat 'n kommissie van ondersoek ingevolge die Wes-Kaapse Provinsiale Kommissiewet, 1998 (Wet 10 van 1998), ingestel word om die aangeleentheid te ondersoek.
- (2) Die Provinsiale Minister moet die erns van die aangeleentheid en die beskikbaarheid van die vereiste kundigheid oorweeg ten einde te bepaal welke van die ondersoek-opsies bedoel in subartikel (1) uitgeoefen moet word.
- (3) Die Provinsiale Minister moet so gou doenlik die munisipaliteit skriftelik in kennis stel van sy of haar besluit ingevolge subartikel (1).
- (4) (a) Indien die Provinsiale Minister besluit om 'n ondersoeker ingevolge subartikel (1)(a) aan te wys, moet die Provinsiale Minister die bestek van die aangeleentheid wat ondersoek moet word en die ander opdragte aan die ondersoeker skriftelik bepaal.
- (b) Die ondersoeker kan—
- (i) die formaat en prosedure wat gevolg moet word by die uitvoering van die ondersoek bepaal met behoorlike inagneming van die omstandighede van die aangeleentheid;
 - (ii) bepaal wie teenwoordig kan wees en wie nie teenwoordig mag wees nie by enige verrigtinge wat betrekking het op die ondersoek, met inagneming van die aard van die ondersoek;
 - (iii) enige persoon beveel om enige dokument in die besit van daardie persoon of onder sy of haar beheer wat betrekking het op die aangeleentheid wat ondersoek word, te verskaf; en
 - (iv) 'n verduideliking van enige persoon wat die ondersoeker redelikerwys vermoed inligting het wat verband hou met die aangeleentheid wat ondersoek word, versoek.
- (c) Die munisipaliteit en enige persoon bedoel in subparagraaf (iii) of (iv) van paragraaf (b) moet met die ondersoeker saamwerk en alle redelike bystand verleen wat die ondersoeker vir die doeleindes van die ondersoek versoek.

- (d) Indien dit gedurende die verloop van die ondersoek vir die ondersoeker blyk dat enige persoon by die aangeleentheid wat ondersoek word betrokke is en dat so 'n betrokkenheid vir daardie persoon nadelig kan wees of dat 'n ongunstige aanbeveling met betrekking tot daardie persoon die gevolg kan wees, moet die ondersoeker daardie persoon die geleentheid gee om sy of haar saak te stel. 5
- (e) Geen persoon mag sonder die toestemming van die ondersoeker die inhoud van enige dokument wat betrekking het op 'n ondersoek en wat aan die ondersoeker voorgelê is of in die ondersoeker se besit is, of die rekord van enige verrigtinge van die ondersoek, aan 'n ongemagtigde persoon openbaar nie. 10
- (f) Die ondersoeker moet, skriftelik en binne die tydperk bepaal deur die Provinsiale Minister, die Provinsiale Minister voorsien van—
- (i) 'n verslag van die bevindinge van die ondersoek, met inbegrip van die redes vir daardie bevindinge; en
 - (ii) die ondersoeker se aanbevelings in verband met die aangeleentheid.
- (g) Die Provinsiale Minister moet so gou doenlik 'n afskrif van die verslag en aanbevelings van die ondersoeker aan die betrokke munisipaliteit verskaf. 15
- (h) Indien die ondersoeker se verslag aandui dat die munisipaliteit nie 'n statutêre verpligting kan uitvoer of dit nie uitvoer nie of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk in die munisipaliteit plaasgevind het of plaasvind, moet die Provinsiale Minister— 20
- (i) die erns van die situasie en die munisipaliteit se respons op die situasie evalueer;
 - (ii) bepaal of die situasie 'n ingryping ingevolge artikel 139 van die Grondwet regverdig of vereis;
 - (iii) bepaal of die situasie vereis dat stappe gedoen word om die munisipaliteit te monitor en steun of om die ontwikkeling van die munisipaliteit se vermoë te bevorder om hom in staat te stel om sy funksies te verrig, na gelang van die geval; en 25
 - (iv) indien tevrede dat die munisipaliteit as gevolg van onvermoë nie 'n statutêre verpligting kan uitvoer nie, geskikte stappe bepaal, in samewerking met die munisipaliteit, ten einde die vermoë van die munisipaliteit te ontwikkel en toe te sien dat die munisipaliteit toepaslike praktyknotas en ander bestepaktyk-standaarde implementeer. 30

Bevoegdheids kragtens artikel 139 van Grondwet en Hoofstuk 13 van Wet op Munisipale Finansiële Bestuur 35

8. Hierdie Wet doen nie afbreuk aan die bevoegdheids van—
- (a) die provinsiale uitvoerende gesag kragtens artikel 139 van die Grondwet nie; of
 - (b) die Provinsiale Minister, en die provinsiale minister verantwoordelik vir finansies, kragtens Hoofstuk 13 van die Wet op Munisipale Finansiële Bestuur nie. 40

Verslagdoening

9. (1) Indien daar ingevolge artikel 6(1)(a) of (b) opgetree word, moet die Provinsiale Minister binne 14 dae—
- (a) 'n skriftelike verklaring wat die optrede motiveer aan die Nasionale Raad van Provinsies voorlê; en 45
 - (b) 'n afskrif van daardie verklaring aan die nasionale minister verantwoordelik vir plaaslike regering, die nasionale minister verantwoordelik vir finansies en die Suid-Afrikaanse Vereniging vir Plaaslike Regering aanstuur.
- (2) Die Provinsiale Minister moet so gou doenlik 'n afskrif van die ondersoeker se verslag bedoel in artikel 7(4)(f) aan die Nasionale Raad van Provinsies, die nasionale minister verantwoordelik vir plaaslike regering, die nasionale minister verantwoordelik vir finansies en die Suid-Afrikaanse Vereniging vir Plaaslike Regering voorlê. 50

Regulasies

10. Die Provinsiale Minister kan regulasies ten opsigte van enige aanvullende of bykomstige aangeleentheid wat die Provinsiale Minister nodig of dienstig ag om voor te skryf vir die behoorlike implementering of administrasie van hierdie Wet maak. 55

Misdrywe en strawwe**11. 'n Persoon wat—**

- (a) versuim of weier om enige dokument in sy of haar besit of onder sy of haar beheer te verskaf wanneer die persoon ingevolge artikel 7(4)(b)(iii) deur die ondersoeker beveel word om dit te doen; 5
 - (b) enige persoon verhinder om enige dokument in daardie persoon se besit of onder daardie persoon se beheer te verskaf wanneer daardie persoon ingevolge artikel 7(4)(b)(iii) deur die ondersoeker beveel word om dit te doen;
 - (c) artikel 7(4)(e) oortree; of 10
 - (d) enige dokument, of voorwerp, wat na sy of haar wete van hulp kan wees vir die ondersoeker vernietig of versteek met die doel om die ondersoek van 'n aangeleentheid deur die ondersoeker te dwarsboom of verhinder,
- pleeg 'n misdryf en is by skuldigbevinding onderhewig aan 'n boete of gevangenisstraf van nie meer as 12 maande nie. 15

Kort titel en inwerkingtreeding

12. Hierdie Wet heet die Wes-Kaapse Wet op Monitering en Ondersteuning van Munisipaliteite, 2014, en tree in werking op 'n datum bepaal deur die Premier by proklamasie in die *Provinsiale Koerant*.

MEMORANDUM OOR DIE OOGMERKE VAN DIE WES-KAAPSE WETSONTWERP OP MONITERING EN ONDERSTEUNING VAN MUNISIPALITEITE, 2013

1. AGTERGROND

Artikel 154(1) van die Grondwet van die Republiek van Suid-Afrika, 1996 (die Grondwet), bepaal dat die nasionale regering en provinsiale regerings deur wetgewende en ander maatreëls die vermoë van munisipaliteite om hul eie sake te bestuur, hul bevoegdhede uit te oefen en hul funksies te verrig, moet steun en versterk.

Artikel 155(6) van die Grondwet bepaal dat elke provinsiale regering deur wetgewende en ander maatreëls voorsiening moet maak vir die monitering en steun van plaaslike regering in die provinsie en die ontwikkeling van plaaslikeregeringsvermoë moet bevorder om munisipaliteite in staat te stel om hul funksies te verrig en hul eie sake te bestuur.

Artikel 106(1) van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000) (Wet op Munisipale Stelsels), hou verband met nieverrigting en wanadministrasie deur munisipaliteite en bepaal dat indien 'n provinsiale minister rede het om te glo dat 'n munisipaliteit in die provinsie nie 'n statutêre verpligting wat op daardie munisipaliteit bindend is kan uitvoer nie of nie uitvoer nie of dat wanadministrasie, bedrog, korrupsie of enige ander ernstige wanpraktyk in 'n munisipaliteit in die provinsie plaasgevind het of plaasvind, die provinsiale minister—

- (a) deur middel van skriftelike kennisgewing aan die munisipaliteit, die munisipale raad of munisipale bestuurder moet versoek om die provinsiale minister van die inligting wat in die kennisgewing verlang word, te voorsien; of
- (b) indien die provinsiale minister dit nodig ag, 'n persoon of persone moet aanwys om die aangeleentheid te ondersoek.

Subartikel (2) bepaal verder dat in die afwesigheid van toepaslike provinsiale wetgewing sekere bepalings van die Kommissiewet, 1947 (Wet 8 van 1947), van toepassing is op so 'n ondersoek.

2. OOGMERK VAN WETSONTWERP

Die Wes-Kaapse Wetsontwerp op Monitering en Ondersteuning van Munisipaliteite, 2013 (die Wetsontwerp), gee gevolg aan artikels 154(1) en 155(6) van die Grondwet deur verder voorsiening te maak vir die ondersteuning van munisipaliteite in die Provinsie, en vir maatreëls om die vermoë van munisipaliteite te ontwikkel en te versterk en hul verrigting te verbeter. Hierbenewens gee die Wetsontwerp gevolg aan artikel 106(1) van die Wet op Munisipale Stelsels deur in meer besonderhede vir monitering en die ondersoek van vermoedelike nieverrigting en wanadministrasie in munisipaliteite voorsiening te maak.

3. INHOUD VAN WETSONTWERP

Klousule 1 maak voorsiening vir woordomskeywing.

Klousule 2 maak voorsiening vir die provinsiale minister verantwoordelik vir plaaslikeregeringsake (die Provinsiale Minister) om geleenthede te skep vir die deel van inligting en kennis ten einde die vermoë van munisipaliteite te versterk en die verrigting van munisipaliteite te verbeter.

Klousule 3 handel met versoeke deur munisipaliteite aan die Departement om bystand in die verrigting van hul funksies.

Klousule 4 verleen aan die Provinsiale Minister die bevoegdheid om praktyknotas aan munisipaliteite uit te reik as 'n meganisme om vermoë in, en steun aan, munisipaliteite te ontwikkel.

Klousule 5 maak voorsiening vir 'n evaluering wat die Provinsiale Minister moet uitvoer voor 'n beroep op artikel 106(1) van die Wet op Munisipale Stelsels gemaak word. Hierdie klousule maak onder meer voorsiening vir die tersaaklike inligting wat die Provinsiale Minister in ag moet neem wanneer hy of sy die betrokke aangeleentheid objektief evalueer.

Klousule 6 maak voorsiening vir die prosedure wat gevolg moet word deur die Provinsiale Minister indien, gegrond op die evaluering beoog in klousule 5, hy of sy rede het om te glo dat 'n munisipaliteit nie 'n statutêre verpligting kan uitvoer of uitvoer nie of dat wanadministrasie, bedrog, korrupsie of 'n ander ernstige wanpraktyk in 'n munisipaliteit plaasgevind het of plaasvind. Hierdie klousule maak voorsiening vir die bykomende stappe wat die Provinsiale Minister moet doen in die geval van 'n versuim weens onvermoë van 'n munisipaliteit om 'n statutêre verpligting uit te voer, en die omstandighede waarin die Provinsiale Minister met 'n ander lid van die Provinsiale Kabinet moet oorleg pleeg voordat die Provinsiale Minister hom of haar op artikel 106(1) van die Wet op Munisipale Stelsels beroep.

Klousule 7 maak voorsiening vir die ondersoek van 'n munisipaliteit deur die Provinsiale Minister, die aanwysing van 'n ondersoeker en die bevoegdhede en pligte van die ondersoeker.

Klousule 8 bepaal dat die Wetsontwerp nie afbreuk doen aan die bevoegdhede van die provinsiale uitvoerende gesag kragtens artikel 139 van die Grondwet, of die bevoegdhede van die Provinsiale Minister, of die provinsiale minister verantwoordelik vir finansies, kragtens Hoofstuk 13 van die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, 2003 (Wet 56 van 2003), nie.

Klousule 9 maak voorsiening vir verslagdoeningsverpligtinge van die Provinsiale Minister.

Klousule 10 maak voorsiening vir die Provinsiale Minister om regulasies te maak.

Klousule 11 maak voorsiening vir misdrywe en strawwe.

Klousule 12 maak voorsiening vir die kort titel en inwerkingtrede van die Wet.

4. OORLEGPLEGING MET ANDER DEPARTEMENTE EN INSTELLINGS

Hoofdirekoraat: Regsdienste, Departement van die Premier

Provinsiale Wetgewende en Grondwetlike Taakspan oor Plaaslike Regering

Die Suid-Afrikaanse Vereniging vir Plaaslike Regering

5. FINANSIËLE IMPLIKASIES

Geen

6. WETGEWENDE BEVOEGDHEID

Die Provinsiale Minister is tevrede dat al die bepalings in die Wetsontwerp binne die wetgewende bevoegdheid van die Provinsie ressorteer.

UMTHETHO OSAYILWAYO

Ojoliswe ekufezekiseni amacandelo 154(1) nele-155(6) oMgaqo-siseko weRiphabliki yoMzantsi Afrika, 1996, ngokunikezela ngakumbi ngeendlela zokunika inkxaso koomasipala, ukuze kuphuhliswe kwaye kuqinise izakhono zoomasipala kunye nendlela abasebenza ngayo; ukufezekisa icandelo 106(1) lomthetho oyi*Local Government: Municipal Systems Act, 2000*, ngokuthi unike iinkcukacha ezithe vetshe ngokuphathelele kubeko-liso kokungasebenzi kunye nokungalawulwa ngendlela eyiyo koomasipala; nakuyo nayiphi na eminye imiba ephathelele kule. 5

NGOKO KE KUWISWA UMTHETHO yiPalamente yePhondo leNtshona Koloni, ngolu hlobo lulandelayo:—

Iinkcazo-magama

1. Kulo Mthetho, ngaphandle kwalapho indlela elisetyenziswe ngayo igama ilinika enye intsingiselo— 5
 - “**UMgaqo-siseko**” uthetha uMgaqo-siseko weRiphabliki yoMzantsi Afrika, 1996;
 - “**iSebe**” lithetha iSebe lephondo elongamele ulawulo loorhulumente bemimandla;
 - “**umphandi**”, ngokuphathelele kuwo nawuphi na umba, uthetha umntu okanye abantu abatyunjwe nguMphathiswa wePhondo phantsi kwemiqathango yecandelo 8(10) ukuba baphande ngaloo mba; 10
 - “**umasipala**” uthetha umasipala, njengoko echazwa kwicandelo 1 lomthetho oyiMunicipal Systems Act;
 - “**UMthetho woLawulo lweeMali zooMasipala**” uthetha umthetho oyiLocal Government: Municipal Finance Management Act, 2003 (uMthetho 56 ka-2003); 15
 - “**imanejala kamasipala**” ithetha umntu onyulwe ngokwemiqathango yecandelo 54A lomthetho oyiMunicipal Systems Act, 2000 (uMthetho 32 ka- 2000);
 - “**iMunicipal Systems Act**” ithetha umthetho oyiLocal Government: Municipal Systems Act, 2000 (uMthetho 32 ka-2000);
 - “**ingcaciswana yenkqubo**” ithetha ingcaciswana yenkqubo ekhutshwe 20 ngokwemiqathango yecandelo 4;
 - “**ukumisela**” kuthetha ukumisela ngokomgaqo;
 - “**iPhondo**” lithetha iphondo leNtshona Koloni;
 - “**uRhulumente wePhondo**” uthetha urhulumente wePhondo;
 - “**uMphathiswa wePhondo**” uthetha uMphathiswa wePhondo owongamele 25 imicimbi yoorhulumente bemimandla kweli Phondo;
 - “**umgaqo**” uthetha umgaqo omiselwe phantsi kwecandelo 10;
 - “**lo Mthetho**” ubandakanya nawo nawuphi na umgaqo.

Ukwabelana ngeenkukacha nolwazi malunga namagunya nemisebenzi yoomasipala

2. Ukuze kuqinisewe izakhono zoomasipala, kuphuculwe nendlela abasebenza ngayo, uMphathiswa wePhondo—
- (a) kufuneka adale amathuba oqhagamshelwano oluthe ngqo phakathi koomasipala namagosa eSebe eli; kananjalo 5
 - (b) usenokuthi amane ebiza iintlanganiso, iindibano zocweyo neendibano zokwabelana ngeenkukacha, ulwazi nangezimvo ngokuphathelele ekusetyenzisweni kwamagunya oomasipala nasekuqhutyweni kwemisebenzi yabo. 10

Izicelo zoomasipala zokunikwa uncedo

3. (1) Umasipala usenokuthi enze isicelo ngqo kuMphathiswa wePhondo okanye kwiNtloko yeSebe yePhondo sokuba ancediswe ekwenzeni imisebenzi yakhe ngokubanzi okanye ngokuphathelele kumba othile.
- (2) Xa ke kuthe kwenziwa isicelo esilolu hlobo— 15
- (a) iSebe eli okanye elinye iSebe lePhondo elifanelekileyo kufuneka libenzisane nomasipala lowo, kwaye limnike uncedo olo lucelwayo kangangoko linokukwazi ukukwenza oko; kwaye
 - (b) iSebe eli okanye elinye iSebe lePhondo elifanelekileyo, kunye nomasipala lowo kufuneka bazinxibelelanise izinto abazenzayo. 20
- (3) Umasipala akakhululwa kuxanduva lwakhe lokulawula imicimbi yakhe nokwenza imisebenzi yakhe, xa esenza isicelo sokunikwa uncedo.

Iingcaciswana zenkqubo

4. (1) UMphathiswa wePhondo usenokuthi akhuphele umasipala walo naliphi na inqanaba iingcaciswana zenkqubo njengendlela yokuphuhlisa izakhono zoomasipala nokubanika inkxaso. 25
- (2) Iingcaciswana yenkqubo kufuneka iphathelele—
- (a) kwiinkqubo, kwiindlela zokusebenza okanye kwizinto ezenziwayo ngokubanzi; okanye
 - (b) kwimigangatho yokusebenza eyeyona icikizekileyo njengoko ibekwa nguMphathiswa wePhondo, ethathele ingqalelo iinkqubo ezinempumelelo neendlela zokusebenza kwakunye nezinto ezenziwayo ezithe zalandelwa zasetyenziswa ngempumelelo. 30
- (3) UMphathiswa wePhondo kufuneka ukuba iingcaciswana zenkqubo azihambise kubo bonke oomasipala kwiPhondo eli, kwaye usenokuthi azipapashe ezi ngcaciswana zenkqubo kwi*Gazethi yePhondo*. 35
- (4) Iingcaciswana zenkqubo zikwizinga lesikhokelo esingenazimbophelelo.

Amanyathelo phambi kokusebenzisa icandelo 106(1) lomthetho oyiMunicipal Systems Act

5. UMphathiswa wePhondo kufuneka, phambi kokuba athabathe naliphi na inyathelo phantsi kwecandelo 106(1) lomthetho oyiMunicipal Systems Act— 40
- (a) ngesaziso esibhaliweyo amazise umasipala lowo uchaphazelekayo ngeenkukacha ezithe zafunyanwa nguMphathiswa wePhondo, amcele umasipala lowo ukuba angenisele uMphathiswa wePhondo impendulo yakhe ebhaliweyo ngosuku olubekwe nguMphathiswa wePhondo; kananjalo 45
 - (b) aziphengulule ngaphandle kwexanasi zonke iinkukacha ezithe zafikelela kuye uMphathiswa wePhondo, kwaye kwizinto azithathela ingqalelo abandakanye—
 - (i) indlela ezithe zafumaneka ngayo ezo nkukacha;
 - (ii) impendulo, ukuba ikhona, athe wayifumana kumasipala lowo; 50
 - (iii) ngaba iinkukacha ezo ziyabonakalisa na ukuba akakwazi ukuwenza okanye akawenzi umsebenzi wakhe oluxanduva alubekelwa ngumthetho umasipala lowo, nokuba ngaba oko kwenziwa kukunqongophala kwezakhono kusini na;
 - (iv) nokuba ngaba iinkukacha ezo ziyabonakalisa ukuba kukho ubugwenxa kulawulo, ubuqhetseba, urhwaphilizo okanye ukuba kukho naso nasiphi 55

- na esinye isigqitho esimandla esithe senzeka okanye esenzekayo kumasipala lowo;
- (v) iinkalo zomsebenzi kamasipala ezinokuthi zichaphazeleke xa kungenakubakho manyathelo athathwayo ngokwecandelo 106(1) lomthetho oyi *Municipal Systems Act*; 5
 - (vi) nokuba ngaba umasipala lowo wayekhe walucela na uncedo kuMphathiswa wePhondo okanye kwiNtloko yalo naliphi na iSebe lePhondo, ngokuphathelele kulo mba uchaphazelekayo okanye komnye nje onxulumene nawo; kananjalo
 - (vii) nokuba ngaba uMphathiswa wePhondo, iSebe okanye isebe lephondo elingelinye lalike lanikela ngoncedo kumasipala lowo; kwaye 10
 - (viii) ukuba kufanelekile, nokuba umasipala lowo uzisebenzisa kangakanani na iingcaciswa zenkqubo ezifanelekileyo nokuba uyayithobela na imigangatho yesizwe nobuncinane bemigangatho obubekiweyo phantsi kwecandelo 108(1) lomthetho oyi *Municipal Systems Act*. 15

Ukungenziwa komsebenzi ngokwecandelo 106(1) le *Municipal Systems Act*

6. (1) Ukuba uMphathiswa wePhondo unayo imihlaba yokukholelwa ukuba, ngokovandlakanyo olukhankanywa kwicandelo 5(b), umasipala akakwazi ukulufezekisa okanye akalufezekisi uxanduva alubekelwa ngumthetho, okanye bukhona ubugwenxa, ubuqhetseba, urhwaphilizo okanye nasiphi na esinye isigqitho esimandla esenzekileyo okanye esenzekayo kumasipala, uMphathiswa wePhondo kufuneka ukuba athi ngento ebhaliweyo amazise umasipala lowo ngezimvo zakhe nangezizathu ezisekeleke kuzo ezo zimvo zakhe, ngokwecandelo 106(1) le *Municipal Systems Act*— 20

- (a) athi ngesaziso esibhaliweyo esiya kuloo masipala, acele ibhunga likamasipala okanye imanejala kamasipala lowo ukuba imnike ezo nkukacha azifunayo uMphathiswa wePhondo kweso saziyo; okanye 25
- (b) ukuba uMphathiswa wePhondo ubona kuyimfuneko, ayalele ukuba umcimbi lowo mawuphandwe njengoko kuchazwa kwicandelo 7.

(2) (a) Ukuba uMphathiswa wePhondo, emva kokuba ethe waziqwalasela ezo nkukacha ebezicelile ngokwecandelwana (1)(a), uyaneliseka ukuba lo masipala akakwazi ukulufezekisa uxanduva alubekelweyo ngumthetho ngenxa yonqongophalo lwezakhono, kufuneka ukuba uMphathiswa wePhondo athathe amanyathelo afanelekileyo, ngentsebenziswano nomasipala lowo, okuphuhlisa izakhono zaloo masipala, aqinisekise kananjalo ukuba umasipala lowo uyazilandela iingcaciswa zenkqubo kwakunye neminye imigangatho yokusebenza eyeyona icikizekileyo. (b) Umhlathi (a) akamthinteli uMphathiswa wePhondo ekubeni athi xa ebona kuyimfuneko, atyumbe nawuphi na umntu okanye nabaphi na abantu ukuba baphande ngomcimbi lowo, njengoko kukhankanywa kwicandelo 7. 30

(3) Ukuba imbophelelo karhulumente, ulawulo olugwenxa, urhwaphilizo, ubuqhetseba okanye nayiphi na indlela yokusebenza egwenxa echazwe kwicandelwana (1) ngokuphathelele kumba othwaliswe ilungu leKhabhinethi yePhondo ngaphandle koMphathiswa wePhondo, imisebenzi emiselwe uMphathiswa wePhondo licandelwana (1) nalicandelwana (2) nalicandelo 7 mayenziwe nguMphathiswa wePhondo emva kokuba ethethene nelo lungu leKhabhinethi yePhondo lichaphazelekayo. 45

Ukuphandwa kukamasipala

7. (1) Ngokuphathelele kolu phando lukhankanywe kwicandelo 6(1)(b), uMphathiswa wePhondo usenokuthi—

- (a) atyumbe igosa leSebe elinye okanye nangaphezulu kuRhulumente wePhondo okanye abantu abazimeleyo ukuba baphande ngalo mcimbi uchaphazelekayo; okanye 50
- (b) enze isindululo kwiNkulumbuso sokuba makusekwe ikhomishini yophando ngokwemiqathango yomthetho oyi *Western Cape Provincial Commissions Act*, 1998 (uMthetho 10 ka-1998), yokuba iphande ngalo mcimbi.

(2) UMphathiswa wePhondo kufuneka ukuba abuzalasele ubunzulu bomcimbi lowo nobukho bobungcali obufunekayo khona ukuze akwazi ukugqiba ngokuba yeyiphi na indlela yophando enokusetyenziswa kweziya zidweliswe kwicandelwana (1). 55

(3) UMphathiswa wePhondo kufuneka ukuba ngokukhawuleza kangangoko amazise umasipala lowo ngento ebhaliweyo ngesi sigqibo sakhe asenze phantsi kwecandelwana (1).

(4) (a) Ukuba uMphathiswa wePhondo ugqiba ekubeni atyumbe umphandi ngokwemiqathango yecandelwana (1)(a), kufuneka ukuba athi, yena Mphathiswa wePhondo, ngento ebhaliweyo anike umxholo womba omawuphandwe kwakunye neminye imiqathango yomphandi lowo. 5

(b) Umphandi usenokuthi—

(i) asibeke isikhokelo okanye inkqubo eza kulandelwa ekuqhutyweni kophando, ezithathele ingqalelo efanelekileyo iimeko zomcimbi lowo; 10

(ii) agqibe ngokuba ngubani na osenokubakho kwiingxoxo eziphathelele kolu phando, ingubani na ongafanelanga kubakho, eluthathele ingqalelo efanelekileyo uhlobo lophando olo;

(iii) ayalele nawuphi na umntu ukuba akhuphe naluphi na uxwebhu olukuye loo mntu okanye oluphantsi kolawulo lwakhe nolunoxulumano nalo mcimbi uphandwayo; kanaanjalo 15

(iv) usenokucela inkcazo kuye nawuphi na umntu amkrokrelayo yena mphandi, ukuba anganazo iinkcukacha ezinxulumanayo nalo mcimbi uphandwayo.

(c) Umasipala kwakunye nawuphi na omnye umntu ekusingiswe kuye kumhlathana (iii) okanye (iv) womhlathi (b) kufuneka asebenzisane nomphandi kwaye anike naluphi na uncedo olufanelekileyo anothi umphandi alucele ngezizathu zophando olo. 20

(d) Ukuba, ngeli xesha lokuqhutywa kophando, kubonakala kumphandi ukuba kukho nawuphi na umntu ochaphazelekayo kulo mcimbi uphandwayo nokuba olo chaphazeleko lunganefuthe elibi kuloo mntu okanye kusenokubakho izindululo ezenziwayo ngaloo mntu ezinokumdlela indlala, umphandi kufuneka ukuba amnike ithuba loo mntu lokuba avakalise elakhe icala. 25

(e) Akukho mntu unokuthi ngaphandle kwemvume yomphandi adize kuye nawuphi na omnye umntu ongagunyaziselwanga oko iziqulatho zalo naluphi na uxwebhu olunxumene nophando olo noluthle lwangeniswa kumphandi okanye olukumphandi okanye irekhodi lazo naziphi iingxoxo zophando olo. 30

(f) Umphandi kufuneka ukuba sithi singadlulanga eso sithuba sibekwe nguMphathiswa wePhondo, angenisele kuMphathiswa wePhondo into ebhaliweyo—

(i) ingxelo ngeziphumo zophando olo, abandakanye nezizathu zezo ziphumo; kunye

(ii) nezindululo zakhe yena mphandi malunga nomcimbi lowo. 35

(g) UMphathiswa wePhondo kufuneka athi ngokukhawuleza kangangoko anike loo masipala uchaphazelekayo ikopi yale ngxelo yomphandi nezindululo zakhe.

(h) Ukuba ingxelo yomphandi ibonisa ukuba umasipala akanako okanye akawufezekisi umsebenzi wakhe okanye kukho ulawulo olugwenxa, urhwaphilizo, ubuqhetseba okanye nayiphi na enye indlela egwenxa yokusebenza eyenzekileyo okanye eyenzekayo kumasipala lowo, uMphathiswa wePhondo kufuneka— 40

(i) aqwalasele ubuzaza balo meko kwakunye nempendulo kumasipala kulo meko;

(ii) ajonge ukuba ingaba imeko leyo ifunisa ukuba kuthatyathwe amanyathelo ongenelelo ngokwecandelo 139 loMgaqo-siseko na; 45

(iii) ajonge ukuba ingaba imeko leyo ifunisa ukuba kuthatyathwe amanyathelo obeko-liso nenkxaso kumasipala okanye okuphuhlisa umasipala ngezakhono ukuze abenako ukwenza imisebenzi yakhe, ngokwemeko leyo; kwaye

(iv) ukuba wonelisekile ukuba umasipala akanako ukufezekisa uxanduva lwakhe ngenxa yokunqongophala kwezixhobo, kufuneka amise amanyathelo afanelekileyo, esebenzisana nomasipala lowo, okuphuhlisa umasipala kwaye aqinisekise ukuba umasipala lowo usebenzisa iingcaciswana zenkqubo ezifanelekileyo kwakunye neminye imigqaliselo eqwesileyo. 50

Amagunya ngokwecandelo 139 loMgaqo-siseko neSahluko 13 seMunicipal Finance Management Act 55

8. Lo Mthetho akawahluthi amagunya—

(a) esigqeba solawulo sephondo aphantsi kwecandelo 139 loMgaqo-siseko; okanye

(b) oMphathiswa wePhondo, kwakunye nawomphathiswa wephondo onoxanduva lezemali, 60

aphantsi kwecandelo 13 leMunicipal Finance Management Act.

Uniko-ngxelo

9. (1) Ukuba amanyathelo athatyathwe ngokwecandelo 6(a) okanye (b), uMphathiswa wePhondo kufuneka kwiintsuku ezili-14—
- (a) afake inkcazo ebhaliweyo kwiBhunga laMaphondo leSizwe echaza ngamanyathelo lawo; 5
 - (b) athumele ikopi yenkcazo kumphathiswa wesizwe onoxanduva loorhulumente bommandla, kumphathiswa wesizwe onoxanduva lezemali nakumbutho woorhulumente bommandla i*South African Local Government Association*.
- (2) UMphathiswa wePhondo kufuneka athi ngokukhawuleza afake ikopi yengxelo yomphandi echazwe kwicandelo 7(4)(f) kwiBhunga lamaPhondo leSizwe, 10 kumphathiswa wesizwe onoxanduva loorhulumente bommandla, umphathiswa wesizwe onoxanduva lezemali nakumbutho woorhulumente bommandla i*South African Local Government Association*.

Imigaqo

10. UMphathiswa wePhondo usenokuthi enze imigaqo ephathelele kuwo nawuphi na umba onxulumeneyo okanye ochaphazelekayo abona kuyimfuneko okanye kufanelekile yena Mphathiswa wePhondo, ukuba ayimisele ukuze lo Mthetho usetyenziswe okanye ulawulwe ngokufanelekileyo. 15

Izigqitho nezohlwayo

11. Umntu othi— 20
- (a) asilele okanye ale ukukhupha naluphi na uxwebhu olukuye okanye oluphantsi kolawulo lwakhe xa ethe wayalelwa ukuba makenze njalo ngumphandi phantsi kwemiqathango yecandelo 7(4)(b)(iii);
 - (b) othintele nabani na ukuba anike naluphi na uxwebu olukuye okanye olukulawulo lwakhe xa loo mntu eyalelwe ukuba enze njalo ngumphandi ngokwecandelo 7(4)(b)(iii); 25
 - (c) otyeshela icandelo 7(4)(e); okanye
 - (d) oneenjongo zokuthintela okanye zokuphazamisana nophando lombha ophandwayo ngumphandi, otshabalalisa okanye ofihla naluphi na uxwebhu, okanye into, ngokolwazi lwakhe enokuba luncedo kumphandi, 30
- wenza isigqitho kwaye usenokuthi akufunyaniswa enetyala agwetywe intlawulo (ifayini) okanye avalelwe entolongweni isithuba esingadlulanga kwiinyanga ezili-12.

Isihloko esifutshane nomhla wokuqalisa

12. Lo Mthetho ubizwa ngokuba nguMthetho woBeko-liso neNkxaso kooMasipala weNtshona Koloni, 2014, kwaye uya kuqalisa ukusebenza ngaloo mhla ubekwe yiNkulumbuso yePhondo ngompoposho okhutshwe kwi*Gazethi yePhondo*. 35

**IMEMORANDAM YEENJONGO ZOMTHETHO OSAYILWAYO
WOBeko-LISO NENKXASO KOOMASIPALA WENTSHONA
KOLONI, 2013**

1. INTSUKAPHI

Icandelo 154(1) loMgaqo-siseko weRiphabliki yoMzantsi Afrika ka-1996 (uMgaqo-siseko), linesibonelelo esithi urhulumente wesizwe noorhulumente bamaphondo kufuneka ukuba, ngemithetho ewisiweyo nangamanye amanyathelo, baxhase baqinise izakhono zoomasipala ekulawuleni kwabo imicimbi yabo, ekusebenziseni kwabo amagunya abo nasekwenzeni kwabo imisebenzi yabo.

Icandelo 155(6) loMgaqo-siseko linesibonelelo esithi urhulumente wephondo ngamnye, kufuneka ukuba, ngemithetho ewisiweyo nangamanye amanyathelo, abonelele ngobeko-liso nangenkxaso koorhulumente bommandla kwiphondo elo, akhuthaze uphuhliso lwezakhono koorhulumente bommandla ngenjongo yokwenza ukuba oomasipala bakwazi ukwenza imisebenzi yabo nokulawula imicimbi yabo.

Icandelo 106(1) loMthetho oyi*Local Government: Municipal Systems Act, 2000* (uMthetho 32 ka-2000) (i*Municipal Systems Act*), limalunga nokungasebenzi kakuhle nokusilela kolawulo koomasipala kwaye linesibonelelo esithi ukuba uMphathiswa wePhondo unaso isizathu sokukholelwa ukuba umasipala okwiphondo elo akakwazi ukulufezekisa okanye akalufezekisi uxanduva olumbophelelayo nalunikwa ngumthetho okanye kwenzeka okanye kwenzeka usilelo kulawulo, ubuqhetseba, urhwaphilizo okanye nasiphi na esinye isigqitho esimandla kufuneka ukuba uMphathiswa wePhondo—

- (a) ngesaziso esibhaliweyo esiya kumasipala lowo, acele ibhunga likamasipala okanye imanejala kamasipala lowo ukuba imnike ezo nkukukacha azifunayo uMphathiswa wePhondo kweso saziyo; okanye
- (b) ukuba uMphathiswa wePhondo ubona kuyimfuneko, atyumbe umntu okanye abantu bokuba baphande ngalo mcimbi uchaphazelekayo;

Icandelwana (2) kananjalo linesibonelelo esithi, ukuba ngaba akukho mthetho okanye mithetho yephondo inxulumene nomcimbi lowo, izibonelelo eziqulathwe kumthetho oyi*Commissions Act, 1947* (uMthetho 8 ka-1947), ziyasebenza kuphando olulolo hlobo.

2. INJONGO YALO MTHETHO USAYILWAYO

Mthetho osayilwayo woBeko-liso neNkxaso kooMasipala weNtshona Koloni ka-2013 (uMthetho osayilwayo), ufezekisa amacandelo 154(1) nele-155(6) oMgaqo-siseko ngokuthi ubeke amanyathelo okubekwa iliso nokunikwa inkxaso koomasipala kwiPhondo eli nawokuphuhliswa nokuqiniswa kwezakhono zoomasipala nawokuphucula indlela owenziwa ngayo umsebenzi ngoomasipala. Ngaphezu koko, loMthetho uSayilwayo lufezekisa icandelo 106(1) lomthetho oyi*Municipal Systems Act* ngokuthi lunike iinkukukacha ezithe vetshe ngokubekwa iliso nokuphandwa koomasipala apho kukrokreleka ukungenziwa komsebenzi nolawulo olugwenxa.

3. IZIQLATHO ZALO MTHETHO USAYILWAYO

Umhlathi 1 unika iinkcazo-magama.

Umhlathi 2 uchaza uxanduva loMphathiswa wePhondo lokudala amathuba okuphefumlelana ngeenkukukacha nangolwazi ngenjongo yokuqinisa izakhono nokuphucula indlela yokusebenza koomasipala.

Umhlathi 3 uphatelele kwizicelo ezenziwa ngoomasipala kwiSebe eli zokuncediswa kwimisebenzi yabo.

Umhlathi 4 ugunyazisa uMphathiswa wePhondo ukuba akhuphele oomasipala iingcaciswana zenkqubo njengendlela yokuphuhlisa izakhono koomasipala nokubanika inkxaso.

Umhlathi 5 unesilungiselelo sovandlakanyo afanele ukulwenza uMphathiswa wePhondo phambi kokuba asebenzise icandelo 106 lomthetho oyi*Municipal Systems Act*. Lo mhlathi, kwezinye zezinto ozilungiselelayo, ulungiselela neenkukacha ezifanelekileyo afanele kuzithathela ingqalelo uMphathiswa wePhondo xa evandlakanya umcimbi ophethweyo ngaphandle kwexanasi.

Umhlathi 6 ucacisa iinkqubo ezifanele kulandelwa nguMphathiswa wePhondo, ukuba ngaba ngokolu vandlakanyo lukhankanywa kumhlathi 5, unaso isizathu sokuba akholelwe ukuba umasipala akakwazi ukulufezekisa okanye akalufezekisi uxanduva alubekelwa ngumthetho umasipala lowo okanye kukho usilelo kulawulo, ubuqhetseba, urhwaphilizo okanye ukuba kukho naso nasiphi na esinye isigqitho esimandla esithe senzeka okanye esenzekayo kumasipala, amanye amanyathelo ekufuneka uMphathiswa wePhondo awathathe kwimeko apho umasipala esilela ekufezekiseni uxanduva alunikwa ngumthetho ngenxa yokunqongophala kwezakhono, kunye neemeko apho uMphathiswa wePhondo kufuneka edlene iindlebe nelinye ilungu leKhabhinethi yePhondo phambi kokuba asebenzise icandelo 106(1) lomthetho oyi*Municipal Systems Act*.

Umhlathi 7 ucacisa ngokwenziwa kophando kumasipala nguMphathiswa wePhondo, ukutyunjwa komphandi, amagunya nemisebenzi yomphandi lowo.

Umhlathi 8 ucacisa ukuba uMthetho osaYilwayo lo akuwathathi amagunya ekhabhinethi yephondo phantsi kwecandelo 139 loMgaqo-siseko ka-1996, okanye amagunya oMphathiswa wePhondo owongamele oorhulumente bommandla okanye uMphathiswa wePhondo owongamele ezemali phantsi kwesahluko 13 somthetho oyi*Local Government: Municipal Finance Management Act, 2003* (uMthetho 56 ka-2003).

Umhlathi 9 ucacisa uxanduva loMphathiswa wePhondo lokuba enze ingxelo.

Umhlathi 10 unesibonelelo soMphathiswa wePhondo sokuba amisele imigaqo.

Umhlathi 11 ucacisa izigqitho nezohlwayo.

Umhlathi 12 ucacisa isihlokwana esifutshane salo mthetho nokuqalisa kwawo.

4. AMANYE AMASEBE NAMAZIKO EKUTHETHENWE NAWO

ICandelo loMlawuli oyiNtloko: iiNkonzo zezoMthetho, iSebe leNkulumbuso yePhondo.

IQela eliSebenzayo loWisomthetho noMgaqo-siseko lePhondo lemiba yooRhulumente boMmandla.

uMbutho wooRhulumente boMmandla woMzantsi Afrika (South African Local Government Association).

5. IMIBA YEZEMALI

Ayikho

6. IGUNYA LOKUWISA IMITHETHO

UMphathiswa wePhondo owongamele oorhulumente bommandla wanelekisekile ukuba yonke imiqathango kuMthetho osaYilwayo iyahambelana negunya lephondo eli lokuwisa umthetho.

