

LOCAL GOVERNMENT PROJECT



Chairperson: Portfolio Committee on
Finance
ATT: Mr A Hermans
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Cape Town

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Bellville, 14 March 2002

Dear Ms Hogan,

**RE: ADDENDUM SUBMISSION LOCAL GOVERNMENT: MUNICIPAL
FINANCE MANAGEMENT BILL 1 OF 2002**

During our oral submission to your committee on 12 March 2002 we were requested to forward information on those matters that were not mentioned in the written submission.

Financial emergencies

Apart from the constitutional difficulties with the chapter on financial emergencies, the system put forward in Chapter 11 is internally inconsistent.

The main problem is that the powers of the financial recovery specialist are not defined. Clause 99(3) says that the financial recovery plan must identify the powers of the financial recovery specialist. It is unclear what powers the financial recovery specialist can have in respect of financial matters. From the outset, it appears as if the only clear power accorded to him or her is the access to information on the basis of section 100(1).

Section 99(5) states that councillors and officials must co-operate with the implementation of the financial recovery plan. At the same time, section 100(2) says that the council must decide *whether or not to approve* the financial recovery plan. It is unclear what the situation is when council does not approve the financial recovery plan. Is the financial recovery plan dependent on the

council's approval or not? It is also unclear whether or not a council decision to reject the financial recovery plan influences the councillors' responsibility to cooperate with its implementation. Experience with section 139 interventions show that the relationship between the council and the administrator (who fulfilled similar functions as the financial recovery specialist) is one of the most difficult aspects of an intervention. Their respective powers should therefore be spelt out clearly.

Overlap with Systems Act

Clause 23 of the Bill puts forward a framework for assignment of additional functions that overlaps with section 9 and 10 of the Municipal Systems Act. It is submitted that one framework for assignments be developed in one of the two pieces of legislation.

Clause 66 (and further) of the Bill deal with the annual reports of municipalities. Some of its provisions contradict section 46 of the Systems Act. For example, the Systems Act allows representatives of the MEC and the Auditor-General to attend the council meeting where the annual report is tabled (s 46(3)(b)). The Bill extends the invitation to the provincial and national treasuries. This is likely to cause confusion.

Clause 68(5) of the Bill says that these provisions must be read with section 48 of the Systems Act. Section 48 of the Systems Act deals with the obligation on the Minister for Local Government to compile a report on the performance of municipalities on the general key performance indicators. The link with the annual report is unclear.

We trust that our comments have been useful and we keep ourselves available should you require further input.

Kind Regards,

Prof Nico Steytler
Jaap de Visser
14 March 2002