

PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

FRIDAY, 8 MARCH 2024

COMMITTEE REPORT

***(Negotiating mandate stage)* Report of the Standing Committee on Local Government on the Independent Municipal Authority Demarcation Bill [B 14B–2022], dated 6 March 2023, as follows:**

The Standing Committee on Local Government, having considered the subject of the Independent Municipal Authority Demarcation Bill [B 14B–2022] referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape’s delegation in the NCOP the authority to not support the Bill and propose the following amendments:

Procedural comment

The Western Cape Provincial Parliament’s Standing Committee on Local Government wishes to express its grave concern about the fact that inadequate timelines effectively deny the provinces and their residents their constitutional right to meaningful participation in the legislative process.

Due to prior parliamentary commitments and the fact that the briefing to the NCOP Select Committee only took place on 7 February 2024, the Committee could only be briefed on the Bill on 13 February 2024, with the deadline for negotiating mandates initially scheduled for 27 February 2023.

The Committee wrote to stakeholders and made use of social media to solicit public comments on the Bill. However, to ensure proper public participation, the Bill should have been advertised for at least two to three weeks before proceeding with the public hearings.

As the Bill has a direct impact on municipalities and given the nature, scope and possible impact of the Bill, it would most likely have required the Committee to hold public hearings in at least each municipal district of the Western Cape.

The NCOP is aware that the legislatures’ committees are already processing several bills in addition to their own provincial work. The Committee is concerned that some legislatures may

not have the capacity to process the bills under these strict timelines, which does not provide much room for public participation.

In this context, the Committee requested that the Select Committee extend the timeline for provinces' negotiating mandates to the end of April 2024 or, alternatively, to let this legislation stand over for the next administration.

General comments on the Bill

That the Bill maintains the longstanding proposal for a 10-year interval for municipal boundary re-demarcation. This will assist address the governance and financial sustainability challenges resulting from frequent changes.

That the Bill addresses the impact of the lack of a presence of a provincial authority of the Independent Municipal Demarcation Authority. Alternatively, the Bill provides for provincial commissioners and provincial staffing, at least.

That the Bill eases up the appeals load by providing for provincial appeals authorities (decentralise activities of the board to ensure the minimising of the costs of re-demarcation outcomes), provides swift responses to aggrieved persons and ensures that the newly provided-for dispute resolution mechanisms and appeals process are involved and effective and timely. In that demarcation issues are always heavily contested and, at times, violent and destructive to public property and public order.

That the Bill provides for the creation of a transitional grant funding regime for the financial impact of IMDA decisions and the resultant systems and change management processes.

That what the Bill proposes on strengthening communication and consultations is sufficient and grounded in practical and meaningful interactions. The authority must be at the forefront of the public meetings and respond to questions from attendees.

Clause 1

To insert a definition for "President":

"President": There is currently no definition of President in clause 1 of the Bill, whereas reference is made to the term "President" in various clauses within the Bill, i.e. clause 7(1) (composition of the Board); clause 10(1)(b) (Minister's consultation with the President, with the establishment of a selection panel); clause 10(7) (appointment of the members of the Board); clause 10(8)(a) (recommendation to the President to fill a vacancy), among other references to "President" throughout the Bill.

For the purposes of providing a definitive meaning to "President", there should be a definition of "President" contained in clause 1 of the Bill as defined in section 83(a) of the Constitution, "The President is the Head of State and head of the national executive."

Clause 7(2)

Whereas the clause provides that "the composition of the Board must broadly reflect the composition of the South African society and collectively represent a pool of knowledge concerning issues relevant to demarcation", there should be more emphasis placed on gender and the Bill should clearly require that there must be a fair composition of Board members in terms of gender.

Clause 8

With the perilous state of some of the SOEs, the governance challenges with regard to the fiduciary responsibilities of the Board should not be underestimated.

It is recommended to include the following in clause 8(2):

- (e) act independently at all times with unfettered discretion;
- (f) exercise independent judgement; and
- (g) take decisions according to the best interest of the institution.

Clause 9(2)(e)

It is recommended that clause 9(2)(e) should be amended to include persons that hold positions in a party-political office.

To amend clause 9(2)(e) as follows:

“9(2)(e) a person holding a political office or a position in a party-political office; or”

Clause 10(1)(b)

The composition of the selection panel presents potential political influence. In accordance with clause 10(1)(b) the following positions of the selection panel all present opportunities for political interference:

- (ii) A person with specific knowledge of demarcation designated by the Minister after consultation with the MECs for local government;
- (v) The Chairperson of the Portfolio Committee in the National Assembly responsible for local government, or a member of the Portfolio Committee designated by such Chairperson;
- (vi) The Chairperson of the Select Committee in the National Council of Provinces responsible for local government matters, or a member of the 40 Select Committee designated by such Chairperson;
- (vii) The Chairperson of the National House, or a member of the National House designated by such Chairperson.

The collective inclusion of these positions on the selection panel indicates a potential for political interference in the compiling of a list of suitably qualified persons. This may result in the final list of recommended suitably qualified individuals being filled with people who lean in a given political direction.

It is recommended that an alternative selection process for the Board may be followed, which could include a parliamentary selection process where nominated persons are interviewed by a multi-party committee of the National Assembly with the incorporation of public participation opportunities. It could also be mandated that the positions of the Board be occupied by specific categories of persons who hold specific qualifications as prerequisite requirements.

Clause 10(3)

It is a concern that the selection panel may determine its own procedures.

Clause 10(8)(a)

It is a concern that the default position for filling a vacancy on the Board is to require the President to fill the vacancy from the additional names that were submitted to the President in terms of subsection (5).

It is recommended that any vacancy on the Board be readvertised and that the process outlined in this section be followed.

Clause 11(4)

“Members of the Board are appointed on a part-time basis, except for the Chairperson, whose appointment may either be full-time or part-time.”

By virtue of clause 13(1), the Chairperson is a member of the Board and, therefore, in terms of the former part of clause 11(4), he or she will be part-time; hence, there is no need to repeat that the Chairperson may be part-time. The language construction of clause 11(4) should be revised for the sake of redundancy.

Clause 16(2)(a)

It is a concern that there is no limitation on how many committees the Board can appoint to assist with its performance of its functions. When committees are appointed, careful consideration must be given to budget constraints and available resources.

It is recommended to amend clause 16(2)(a) as follows:

“16(2)(a) To insert before “establish” the following: “subject to budget and available resources”.

Clause 16(3)(c)

The criteria and qualifications for the co-opted members are not specified.

It is recommended that the co-opted members should fulfil the requirements set out in clause 9(1).

Clause 16(4)

With no limits provided upfront for the co-option of members, would this not be open to creating a board within a board.

It is recommended to provide limitations on the number of members that can be co-opted.

Clause 19(3)(b)

The clause refers to “seconded”; however, there is no reference to the legal authorisation of such secondment. The Public Administration Management Act is an example. A definition can be incorporated under clause 1 of the Bill.

Clause 24

The factors set out in clause 24 are supported, but they may need more careful identification and elaboration. In this context consideration should be given to the inclusion of bulk service provisions in clause 24, particularly water catchment and service areas, which includes waste management. Consideration should be given to the inclusion of more measurable indicators or factors.

The term to describe the factors in determining the establishment of a single Category A municipality is too broad, eg “(a) a conurbation featuring (ii) an intense movement of people, goods and services;”. This formulation raises a number of questions, such as: how does one quantify this?

It may be recommended to use quantified factors, such as those contained in the South African Functional Town Typology work undertaken by the Council for Scientific and Industrial Research (CSIR), eg high economic output for a town.

The typology is a mechanism to identify, calculate and analyse a set of development information and trends pertaining to the range of towns and cities across South Africa.

Clause 26(1)

The clause provides that “the Board may only determine or redetermine a municipal boundary regarding the categorisation, amalgamation or any boundary change which affects the movement of more than one whole ward in a municipality, every 10 years”.

Although the proviso attached to the time frame is associated with “the movement of more than one whole ward in a municipality”, it is not clear how the period of 10 (ten) years was determined.

Furthermore, if the factors listed in clause 24 have been considered and they point to the need to undertake such demarcations, it is unclear why the Board must wait 10 years to do so.

The time frame raises questions, especially in the context of the fact that many municipalities are experiencing challenges to meet their constitutional delegations, which results in poor or no service delivery to their local communities, about a ten-year period to determine or redetermine a municipal boundary regarding amalgamation. This is an extremely long time.

Clause 32(4)(c)

To omit the following words after “may”: “in exceptional cases, including those referred to in section 87 of the Municipal Structures Act,”.

Clause 29(8):

At the public consultative meeting for redetermination of municipal boundaries, as envisaged in clause 29(8) of the Bill, there should be a provision for an interpreter to address the vernacular needs of the public in the region. This is a need identified in past MDB consultative meetings with the public.

Clause 36(1)

The clause provides for public consultation in the delimitation of wards to be conducted by the Authority (established in terms of clause 3).

It would be recommended, for the purposes of clarifying responsibilities in fulfilling this mandate, that there are clear provisions that relate to the costs associated with these public consultations, e.g. venue hire, interpreting services and audio-visual equipment, and that they are borne by the Authority.

Clause 38(2)

It is suggested that the current appointment process of the Appeals Authority is inadequate. At present, the Minister is empowered to draw up a list of names for the President to appoint from in response to a public call for nominations.

It is recommended that a more comprehensive appointment and interview procedure is preferable.

Clause 51(1) and (3)

It would not be possible to perform any functions or give any effect to the Municipal Demarcation Act, 1998 (Act 27 of 1998), as the intention of the Bill is to repeal the Municipal Demarcation Act, as contained in the Schedule to the Bill.

Therefore, the transitional arrangements, as they currently stand, should be revised so as to make enforceable the current actions of the Board when the Bill takes effect.