

ENQUIRIES : Lorette Tredoux  
TEL : (012) 369-8122  
FAX : (012) 369-8001  
E-MAIL : ltredoux@salga.org.za  
DATE : 10 September 2010

Mr Eddy Mathonsi  
The Secretary to Parliament of the Republic of South Africa  
PO Box 15  
Cape Town  
8000

**PUBLIC HEARINGS: SALGA'S SUBMISSION ON LOCAL GOVERNMENT: MUNICIPAL ELECTORAL AMENDMENT BILL, B27 OF 2010**

The general notice, published in the Mail and Guardian on 27<sup>th</sup> of August 2010, has reference.

Attached please find SALGA's preliminary comments on the draft Bill as circulated on the said date. Kindly note that, in terms of our governance framework, we still await the approval of our NEC for this submission and that, for the reasons set out below, we submit these comments under protest.

We wish to record our concern that despite the above-mentioned legislation having an impact on local government, SALGA, as the legally recognised institution representing the local government sphere as contemplated in section 163 of the Constitution of the Republic of South Africa, 1996, was not consulted on the said Bill.

Your attention is drawn to section 154(2) of the Constitution which provides as follows:

*Draft national and provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation.*

SALGA has not been provided with the opportunity to make inputs into the act prior to introduction thereof into parliament. In terms of our governance and mandating framework, SALGA is obliged to consult its members widely on all policy and legislation that we are required to comment on. We have accordingly not had the opportunity to do so. The Memorandum on the Objects of the Bill in fact states that no institutions have been consulted in the process of drafting the Bill, despite the fact that it directly relates to section 157 of the Constitution of the Republic of South Africa, 1996. Due to this reason it would be expected that SALGA, as the national organisation representing municipalities in accordance with section 163 of the Constitution, be consulted on matters affecting local government.

**In light of the above, we respectfully request that, in view of the importance of this legislation, it be withdrawn and a proper consultation process be embarked upon. It is unacceptable in our culture of cooperative governance that legislation can state that 'no institutions have been consulted in the process of drafting the Bill'. It defeats the entire essence of our system of cooperative governance.**



We trust that, in the spirit of our Constitution, our position will be considered and the appropriate action be taken to ensure that this Bill in fact assists in the successful running of the 2011 local government elections.

Yours in the service of developmental local government,



**XOLILE GEORGE  
CHIEF EXECUTIVE OFFICER  
SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION**



**Portfolio Committee on Home Affairs  
Public Hearings on Local Government: Municipal Electoral Amendment  
Bill, B27 of 2010**

**14 SEPTEMBER 2010**

**SALGA's preliminary comments on the Local Government: Municipal  
Electoral Amendment Bill, 2010**

This submission presents SALGA's views and comments on the Local Government: Municipal Electoral Amendment Bill 2010. This input is purely a technical one because we have not been provided with the opportunity to make inputs into the act prior to introduction thereof into parliament. In terms of our governance and mandating framework, SALGA is obliged to consult its members widely on all policy and legislation that we are required to comment on. We have accordingly not had the opportunity to do so and as indicated in the cover letter, submit these few preliminary comments under protest.

Notwithstanding, kindly note that SALGA has the following comments to render with regard to the Local Government: Municipal Electoral Amendment Bill, B27 of 2010.

**Context**

As municipalities are the level of government closest to the people, and directly accountable to its constituents, it is important that the caliber of candidates nominated as both ward councillors and on the list of political parties, are such that they have an understanding of the developmental role of local government and also be able to grasp the legislation applicable to and driving processes within a municipality and, therefore, this aspect needs to be addressed in the nomination process for candidates.

**Specific comments on sections (section here refers to the section of the bill)**

Kindly note that reference to sections refers to section of the Bill, and not the principal Act.

**Section 1**

It is proposed that the Bill be amended to provide a time frame within which the election timetable must be published after the date of an election has been announced, to ensure that all interested parties are aware of the relevant dates as soon as possible after the announcement of the date of the election, and in order for stakeholders to do the necessary planning.

## **Section 9**

The proposed amended section 64 provides as follows:

- 64.** (1) *On receipt of all the results of the count in respect of all ballots conducted at the voting stations within the municipality, the Commission must—*
- (a) determine the result of the election in the municipality;*
  - (b) record the result on a prescribed form; and*
  - (c) declare the result in public.*

However, section 26 of the Local Government: Municipal Structures Act, 1998, provides as follows:

- (2) A person assumes office as a councillor when declared elected or when appointed, as the case may be.*

Section 13 (Part 3) of Schedule 1 to the said act, which deals with Proportional representatives elections for metros and local municipalities, provides inter alia as follows:

- (5) The Electoral Commission must determine which party candidates are elected by selecting from the party's list, in accordance with the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled, beginning with the first candidate on the list and ending with the lowest ranking candidate.*

Section 7 (Part 1) of Schedule 2, dealing with proportional elections for district councils, provides inter alia as follows:

- (4) The chief electoral officer must determine which party candidates are elected by selecting from the party's list, in accordance with the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled, beginning with the first candidate on the list and ending with the lowest ranking candidate.*

Section 14 (Part 2) of Schedule 2, dealing with the allocation of representatives of local councils to district councils provides as follows:

*The section 23 (2) members of a district council must be-*

*(a)appointed by the councils of the local municipalities in the area of the district council from among their members;*

Section 16 (Part 2) of Schedule 2, provides inter alia as follows:

*(1) The chief electoral officer must manage the election of representatives of a local council to the district council.*

The argument raised by municipalities is that it is not clear when a councillor assumes office and becomes entitled to remuneration, as the declaration of the results does in terms of the legislation quoted above, does not co-inside with the declaration of results in terms of section 64. In addition, in certain instances the schedules refers to the Commission determining the elected representatives and certain instances the Chief Electoral Officer, which casts doubt on the process involved in the determination.

Section 64 should, therefore, indicate if the declaration of the results include the determination of seats in accordance with the proportional system.

## **Conclusion**

Kindly note that if the public hearings take place as scheduled, SALGA would also wish to make a verbal submission to the Portfolio Committee in this regard, and request to be allocated time to make such a verbal submission.

Your favourable consideration in this regard will be appreciated.

Yours in the service of developmental local government



**Xolile George**  
**Chief Executive Officer**  
**South African Local Government Association**

**10 September 2010**