

REPUBLIC OF SOUTH AFRICA

INTERGOVERNMENTAL RELATIONS FRAMEWORK BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 27031 of 26 November 2004)
(The English text is the official text of the Bill)*

(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

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BILL

To establish a framework for the national government, provincial governments and local governments to promote and facilitate intergovernmental relations; to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes; and to provide for matters connected therewith.

PREAMBLE

WHEREAS government in the Republic is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated;

AND WHEREAS all spheres of government must provide effective, efficient, transparent, accountable and coherent government for the Republic to secure the well-being of the people and the progressive realisation of their constitutional rights;

AND WHEREAS one of the most pervasive challenges facing our people is the need for government to redress poverty, underdevelopment, marginalisation of people and communities and other legacies of apartheid and discrimination;

AND WHEREAS this challenge is best addressed through a concerted effort by government in all spheres to work together in the provision of services, the alleviation of poverty and the development of our people and our country;

AND WHEREAS co-operation in government depends on a stable and effective system of governance for regulating the conduct of relations and the settlement of disputes between the national government, provincial governments and local governments;

AND WHEREAS section 41(2) of the Constitution requires an Act of Parliament—

- (a) to establish or provide for structures and institutions to promote and facilitate intergovernmental relations; and
- (b) to provide for appropriate mechanisms and procedures to facilitate the settlement of intergovernmental disputes;

AND WHEREAS various Acts of Parliament already give expression to section 41(2) in some sectors of government;

AND WHEREAS it is necessary to complement those Acts of Parliament by establishing a general legislative framework applicable to all spheres and in all sectors of government to ensure the conduct of intergovernmental relations in the spirit of the Constitution;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,
as follows:—

TABLE OF CONTENTS

CHAPTER 1

INTERPRETATION, APPLICATION AND OBJECT OF ACT 5

1. Interpretation
2. Application of Act
3. Object of Act
4. Promoting object of Act

CHAPTER 2 10

INTERGOVERNMENTAL STRUCTURES

Part 1

President's Co-ordinating Council

5. Composition
6. Role 15
7. Meetings

Part 2

National intergovernmental forums

8. Establishment
9. Composition 20
10. Role
11. Reports and referrals to President's Co-ordinating Council
12. Referrals to Budget Council and Budget Forum
13. Meetings
14. Joint meetings 25

Part 3

Provincial intergovernmental forums

15. Establishment of Premier's intergovernmental forum
16. Composition of Premier's intergovernmental forum
17. Role of Premier's intergovernmental forum 30
18. Meetings of Premier's intergovernmental forum
19. Reports to President's Co-ordinating Council
20. Other provincial intergovernmental forums
21. Interprovincial forums

Part 4 35

Municipal intergovernmental forums

22. Establishment of district intergovernmental forums
23. Composition of district intergovernmental forums
24. Role of district intergovernmental forums
25. Meetings of district intergovernmental forums 40
26. Intermunicipality forums

*Part 5**General*

- | | | |
|-----|-----------------------------------------------------|---|
| 27. | Intergovernmental technical support structures | |
| 28. | Consultation with organised local government | |
| 29. | Status of intergovernmental structures | 5 |
| 30. | Internal procedures of intergovernmental structures | |
| 31. | Standard internal rules | |

CHAPTER 3**CONDUCT OF INTERGOVERNMENTAL RELATIONS**

- | | | |
|-----|-----------------------------------------------------------------------------------------|----|
| 32. | Implementation protocols | 10 |
| 33. | Provincial policies and legislation affecting local government | |
| 34. | Responsibility for co-ordinating intergovernmental relations of provinces | |
| 35. | Responsibility for co-ordinating intergovernmental relations of district municipalities | |

CHAPTER 4

15

SETTLEMENT OF INTERGOVERNMENTAL DISPUTES

- | | | |
|-----|-------------------------------------------------------------|----|
| 36. | Application of Chapter | |
| 37. | Duty to avoid intergovernmental disputes | |
| 38. | Declaring disputes as formal intergovernmental disputes | |
| 39. | Consequences of declaring formal intergovernmental disputes | 20 |
| 40. | Role of facilitator | |
| 41. | Assistance by Minister or MEC for local government | |
| 42. | Judicial proceedings | |

CHAPTER 5**MISCELLANEOUS**

25

- | | | |
|-----|----------------------------|--|
| 43. | Reports to Parliament | |
| 44. | Regulations and guidelines | |
| 45. | Short title | |

CHAPTER 1**INTERPRETATION, APPLICATION AND OBJECT OF ACT**

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Interpretation

1. (1) In this Act, unless the context indicates otherwise—
- “**consultation**” means a process whereby the views of another on a specific matter are solicited, either orally or in writing, and considered;
- “**Council**” means the President’s Co-ordinating Council established by section 5; 35
- “**district**” means the area of jurisdiction of a district municipality;
- “**government**” means—
- | | | |
|-----|-----------------------------|----|
| (a) | the national government; | |
| (b) | a provincial government; or | |
| (c) | a local government; | 40 |
- “**implementation protocol**” means an agreement between organs of state in terms of section 32;
- “**intergovernmental dispute**” means a dispute between different governments or between organs of state from different governments concerning a matter—
- | | | |
|-----|----------------------------------------------------------------------------------------------------------|----|
| (a) | arising from— | 45 |
| | (i) a statutory power or function assigned to any of the parties; or | |
| | (ii) an agreement between the parties regarding the implementation of a statutory power or function; and | |

- (b) which is justiciable in a court of law, and includes any dispute between the parties regarding a related matter;
- “intergovernmental forum”** means—
- (a) the President’s Co-ordinating Council;
- (b) a national intergovernmental forum established or regarded as having been established in terms of section 8; 5
- (c) a Premier’s intergovernmental forum established by section 15;
- (d) any other provincial intergovernmental forum established in terms of section 20;
- (e) an interprovincial forum established in terms of section 21; 10
- (f) a district intergovernmental forum established by section 22; or
- (g) an intermunicipality forum established in terms of section 26;
- “intergovernmental relations”** means relationships that arise between different governments or between organs of state from different governments in the conduct of their affairs; 15
- “intergovernmental structure”** means—
- (a) an intergovernmental forum; or
- (b) an intergovernmental technical support structure;
- “intergovernmental technical support structure”** means a structure established in terms of section 27; 20
- “local government”** means a municipality, and includes—
- (a) all municipal entities under the sole or shared control of the municipality within the meaning of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003); and
- (b) all organs of state in that municipality or such municipal entity; 25
- “MEC for local government”** means the MEC responsible for local government matters in a province;
- “Minister”** means the Cabinet member responsible for Provincial and Local Government;
- “Minmec”** means a standing intergovernmental body consisting of at least a Cabinet member and members of the provincial Executive Councils responsible for functional areas similar to those of the Cabinet member; 30
- “municipal entity”** has the meaning assigned to it in section 1 of the Municipal Systems Act, and includes any corporate body regarded as a municipal entity in terms of section 31(2) of the Local Government: Municipal Systems Amendment Act, 2003 (Act No. 44 of 2003); 35
- “municipality”**—
- (a) when referred to as a corporate body, means a municipality as described in section 2 of the Municipal Systems Act; or
- (b) when referred to as a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998); 40
- “municipal organ of state”** means an organ of state in a municipality or a municipal entity;
- “Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); 45
- “national government”** means the national executive established by Chapter 5 of the Constitution, and includes all national organs of state;
- “national organ of state”** means an organ of state in the national sphere of government;
- “organised local government”**— 50
- (a) means the national organisation recognised by the Minister in terms of the Organised Local Government Act, 1997 (Act No. 52 of 1997); or
- (b) in relation to a provincial intergovernmental forum, means a provincial organisation recognised by the Minister in terms of that Act for the relevant province; 55
- “organ of state”** means an organ of state as defined in section 239 of the Constitution, excluding—
- (a) Parliament;
- (b) provincial legislatures;
- (c) an institution established by Chapter 9 of the Constitution; and 60
- (d) any other institution that does not fall within a sphere of government.

“provincial government” means the provincial executive established by Chapter 6 of the Constitution for each province, and includes all provincial organs of state in that province;

“provincial organ of state” means an organ of state in the provincial sphere of government; 5

“statutory function” means a function assigned by—

- (a) the Constitution or legislation; or
- (b) an agreement or other instrument emanating from the Constitution or legislation;

“statutory power” means a power conferred by— 10

- (a) the Constitution or legislation; or
- (b) an agreement or other instrument emanating from the Constitution or legislation.

(2) In this Act, a word or expression derived from a word or expression defined in subsection (1) has a corresponding meaning unless the context indicates that another meaning is intended. 15

(3) This Act does not affect other Acts of Parliament regulating intergovernmental relations, and in the event of any conflict between a provision of this Act and a provision of such other Act, the provision of that other Act prevails.

(4) In the event of any conflict between a provision of this Act and— 20

- (a) provincial legislation, the conflict must be resolved in terms of section 146 of the Constitution;
- (b) a municipal by-law, the provision of this Act prevails.

Application of Act

2. (1) This Act applies to— 25

- (a) the national government and all national organs of state;
- (b) all provincial governments and all provincial organs of state; and
- (c) all local governments and all municipal organs of state.

(2) This Act does not apply to—

- (a) Parliament; 30
- (b) the provincial legislatures;
- (c) the courts and judicial officers;
- (d) any independent and impartial tribunal or forum contemplated in section 34 of the Constitution and any officer conducting proceedings in such a tribunal or forum; and 35
- (e) any institution established by Chapter 9 of the Constitution;
- (f) any other constitutionally independent institution; and
- (g) any public institution that does not fall within the national, provincial or local sphere of government.

Object of Act 40

3. The object of this Act is to provide within the concept of co-operative government set out in Chapter 3 of the Constitution a framework for the national government, provincial governments and local governments, and all organs of state within those governments, to facilitate co-ordination in the implementation of policy and legislation, including— 45

- (a) coherent government;
- (b) effective provision of services;
- (c) monitoring implementation of policy and legislation; and
- (d) realisation of national priorities.

Promoting object of Act 50

4. In conducting their affairs the national government, provincial governments and local governments, and all organs of state within those governments, must seek to achieve the object of this Act, including by—

- (a) taking into account the circumstances, material interests and budgets of other governments and organs of state in other governments, when exercising their statutory powers or performing their statutory functions; 55

- (b) consulting other affected organs of state in accordance with formal procedures, as determined by any applicable legislation, or accepted convention or as agreed with them or, in the absence of formal procedures, consulting them in a manner best suited to the circumstances, including by way of—
 - (i) direct contact; or 5
 - (ii) any relevant intergovernmental structures;
- (c) co-ordinating their actions when implementing policy or legislation affecting the material interests of other governments;
- (d) avoiding unnecessary and wasteful duplication or jurisdictional contests;
- (e) taking all reasonable steps to ensure that they have sufficient institutional capacity and effective procedures—
 - (i) to consult, to co-operate and to share information with other organs of state; and 10
 - (ii) to respond promptly to requests by other organs of state for consultation, co-operation and information sharing; and 15
- (f) participating—
 - (i) in intergovernmental structures of which they are members; and
 - (ii) in efforts to settle intergovernmental disputes.

CHAPTER 2

INTERGOVERNMENTAL STRUCTURES 20

Part 1

President's Co-ordinating Council

Composition

5. (1) There is a President's Co-ordinating Council consisting of—
- (a) the President; 25
 - (b) the Deputy President;
 - (c) the Minister in the Presidency;
 - (d) the Minister;
 - (e) the Cabinet member responsible for finance;
 - (f) the Cabinet member responsible for the public service; 30
 - (g) the Premiers of the nine provinces; and
 - (h) a person designated by the national organisation representing organised local government.
- (2) The President is the chairperson of the Council.
- (3) The President may invite any person not mentioned in subsection (1) to a meeting 35 of the Council.

Role

6. The Council is a consultative forum for the President—
- (a) to raise matters of national interest with provincial governments and organised local government and to hear their views on those matters; 40
 - (b) to consult provincial governments and organised local government on—
 - (i) the implementation of national policy and legislation in provinces and municipalities;
 - (ii) the co-ordination and alignment of priorities, objectives and strategies across national, provincial and local governments; and 45
 - (iii) any other matters of strategic importance that affect the interests of other governments;
 - (c) to discuss performance in the provision of services in order to detect failures and to initiate preventive or corrective action when necessary; and
 - (d) to consider— 50
 - (i) reports from other intergovernmental forums on matters affecting the national interest; and
 - (ii) other reports dealing with the performance of provinces and municipalities.

Meetings

7. (1) The President—
- (a) convenes the meetings of the Council; and
 - (b) determines the agenda for a meeting of the Council.
- (2) Suggestions for inclusion in the agenda for a meeting may be submitted to the Minister in terms of a framework determined by the President. 5
- (3) The Minister is responsible for providing administrative and other support services to the Council.

Part 2

National intergovernmental forums 10

Establishment

8. (1) Any Cabinet member may establish a national intergovernmental forum to promote and facilitate intergovernmental relations in the functional area for which that Cabinet member is responsible.
- (2) Any Minmec which existed when this Act took effect must for the purposes of this Act be regarded as having been established in terms of subsection (1), except if such Minmec was established by another Act of Parliament. 15

Composition

9. (1) A national intergovernmental forum established in terms of section 8(1) consists of— 20
- (a) the Cabinet member responsible for the functional area for which the forum is established;
 - (b) any Deputy Minister appointed for such functional area;
 - (c) the members of the Executive Councils of provinces who are responsible for a similar functional area in their respective provinces; and 25
 - (d) a person designated by the national organisation representing organised local government, but only if the functional area for which the forum is established includes a matter assigned to local government in terms of Part B of Schedule 4 or Part B of Schedule 5 to the Constitution or in terms of national legislation.
- (2) The relevant Cabinet member is the chairperson of the forum. 30
- (3) The relevant Cabinet member may invite any person not mentioned in subsection (1) to a meeting of the forum.

Role

10. A national intergovernmental forum established in terms of section 8 is a consultative forum for the Cabinet member responsible for the functional area for which the forum is established— 35
- (a) to raise matters of national interest within that functional area with provincial governments and, if appropriate, organised local government and to hear their views on those matters;
 - (b) to consult provincial governments and, if appropriate, organised local government on— 40
 - (i) the development of national policy and legislation relating to matters affecting that functional area;
 - (ii) the implementation of national policy and legislation with respect to that functional area; 45
 - (iii) the co-ordination and alignment within that functional area of—
 - (aa) strategic and performance plans; and
 - (bb) priorities, objectives and strategies across national, provincial and local governments; and
 - (iv) any other matters of strategic importance within the functional area that affect the interests of other governments; and 50
 - (c) to discuss performance in the provision of services in order to detect failures and to initiate preventive or corrective action when necessary.

Reports and referrals to President's Co-ordinating Council

11. (1) A national intergovernmental forum established in terms of section 8 must report back to the President's Co-ordinating Council on any matter referred to it by the Council.

(2) The Cabinet member responsible for the functional area for which a national intergovernmental forum is established may in consultation with the President refer any matter discussed in the forum to the Council. 5

Referrals to Budget Council and Budget Forum

12. The Cabinet member responsible for the functional area for which a national intergovernmental forum is established may in consultation with the Cabinet member responsible for finance refer any matter discussed in the forum to the Budget Council or the Budget Forum established in terms of the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of 1997), if such matter has implications for the national budget. 10

Meetings

13. (1) The Cabinet member responsible for the functional area for which a national intergovernmental forum is established— 15

(a) convenes the meetings of the forum; and

(b) determines the agenda for a meeting of the forum.

(2) Suggestions for inclusion in the agenda for a meeting may be submitted to the relevant Cabinet member in terms of a framework determined by that Cabinet member. 20

(3) The Department of the relevant Cabinet member is responsible for providing administrative and other support services to the forum.

Joint meetings

14. Two or more national intergovernmental forums established in terms of section 8 may meet jointly when necessary to discuss and consult on issues which are intersectoral in nature. 25

Part 3

Provincial intergovernmental forums

Establishment of Premier's intergovernmental forum

15. There is a Premier's intergovernmental forum to promote and facilitate intergovernmental relations between the province and local governments in the province. 30

Composition of Premier's intergovernmental forum

16. (1) A Premier's intergovernmental forum consists of—

(a) the Premier of the province; 35

(b) the member of the Executive Council of the province who is responsible for local government in the province;

(c) any other members of the Executive Council designated by the Premier;

(d) the mayors of district and metropolitan municipalities in the province;

(e) the administrator of any of those municipalities if the municipality is subject to an intervention in terms of section 139 of the Constitution; and 40

(f) a person designated by organised local government in the province.

(2) The Premier is the chairperson of the forum.

(3) The Premier may invite any person not mentioned in subsection (1) to a meeting of the forum. 45

Role of Premier's intergovernmental forum

17. A Premier's intergovernmental forum is a consultative forum for the Premier of a province and local governments in the province—

- (a) to discuss and consult on matters of mutual interest, including—
 - (i) the implementation in the province of national policy and legislation affecting local government interests;
 - (ii) matters arising in the President’s Co-ordinating Council and other national intergovernmental forums affecting local government interests in the province; 5
 - (iii) draft national policy and legislation relating to matters affecting local government interests in the province;
 - (iv) the implementation of national policy and legislation with respect to such matters; 10
 - (v) the development of provincial policy and legislation relating to such matters;
 - (vi) the implementation of provincial policy and legislation with respect to such matters;
 - (vii) the co-ordination of provincial and municipal development planning to facilitate coherent planning in the province as a whole; 15
 - (viii) the co-ordination and alignment of the strategic and performance plans and priorities, objectives and strategies of the provincial government and local governments in the province; and
 - (ix) any other matters of strategic importance that affect the interests of local governments in the province; and 20
- (b) to consider reports from—
 - (i) other provincial intergovernmental forums on matters of mutual interest to the province and local governments in the province; and
 - (ii) district intergovernmental forums in the province. 25

Meetings of Premier’s intergovernmental forum

- 18.** (1) The Premier of a province—
- (a) convenes the meetings of the Premier’s intergovernmental forum; and
 - (b) determines the agenda for a meeting of the forum.
- (2) Suggestions for inclusion in the agenda for a meeting may be submitted to the Premier in terms of a framework determined by the Premier. 30
- (3) The Department of the Premier is responsible for providing administrative and other support services to the forum.

Reports to President’s Co-ordinating Council

- 19.** A Premier’s intergovernmental forum— 35
- (a) must report annually to the President’s Co-ordinating Council on progress with the implementation of national policy and legislation within the province; and
 - (b) may report to the Council on matters of national interest that have arisen in the forum. 40

Other provincial intergovernmental forums

- 20.** (1) The Premier of a province may establish a formal provincial intergovernmental forum—
- (a) for any specific functional area to promote and facilitate effective and efficient intergovernmental relations between the province and local governments in the province with respect to that functional area; or 45
 - (b) for any specific part in the province to promote and facilitate effective and efficient intergovernmental relations between the province and local governments in that part.
- (2) The composition and role of a provincial intergovernmental forum established in terms of subsection (1) must be determined by the Premier of the relevant province. 50
- (3) Any formal provincial intergovernmental forum established for a purpose referred to in subsection (1) that existed when this Act took effect must for the purpose of this Act be regarded as having been established in terms of subsection (1), until disestablished by the Premier. 55

Interprovincial forums

21. (1) The Premiers of two or more provinces may establish an interprovincial forum to promote and facilitate intergovernmental relations between those provinces.

(2) The composition, role and functioning of an interprovincial forum established in terms of subsection (1) must be determined by agreement between the participating 5 provinces.

Part 4

Municipal intergovernmental forums

Establishment of district intergovernmental forums

22. There is a district intergovernmental forum to promote and facilitate intergovern- 10 mental relations between the district municipality and the local municipalities in the district.

Composition of district intergovernmental forums

23. (1) A district intergovernmental forum consists of— 15

- (a) the mayor of the district municipality;
- (b) the mayors of the local municipalities in the district or, if a local municipality does not have a mayor, a councillor designated by the municipality; and
- (c) the administrator of any of those municipalities if the municipality is subject to an intervention in terms of section 139 of the Constitution.

(2) The mayor of the district municipality or, if that municipality is subject to an 20 intervention, the administrator of the municipality is the chairperson of the forum.

(3) The chairperson of the forum may invite any person not mentioned in subsection (1) to a meeting of the forum.

Role of district intergovernmental forums

24. (1) The role of a district intergovernmental forum is to serve as a consultative 25 forum for the district municipality and the local municipalities in the district to discuss and consult each other on matters of mutual interest, including—

- (a) draft national and provincial policy and legislation relating to matters affecting local government interests in the district;
- (b) the implementation of national and provincial policy and legislation with 30 respect to such matters in the district;
- (c) matters arising in the Premier's intergovernmental forum affecting the district;
- (d) mutual support in terms of section 88 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- (e) the provision of services in the district; 35
- (f) coherent planning and development in the district;
- (g) the co-ordination and alignment of the strategic and performance plans and priorities, objectives and strategies of the municipalities in the district; and
- (h) any other matters of strategic importance which affect the interests of the 40 municipalities in the district.

(2) A district intergovernmental forum may refer a matter arising in the forum to—

- (a) the Premier's intergovernmental forum; or
- (b) any other provincial intergovernmental forum established in terms of section 20.

Meetings of district intergovernmental forums 45

25. (1) The chairperson of the district intergovernmental forum—

- (a) convenes the meetings of the forum; and
- (b) determines the agenda for a meeting of the forum.

(2) Suggestions for inclusion in the agenda for a meeting may be submitted by local 50 municipalities in the district to the chairperson.

(3) A majority of the local municipalities in a district may request the chairperson in writing—

- (a) to convene a meeting of the district intergovernmental forum at a time and place set out in the request; or
 - (b) to include in the agenda for a meeting any specific matter for discussion.
- (4) The chairperson of the district intergovernmental forum presides at meetings of the forum, but if that chairperson is absent from a meeting, the members present must elect another member to preside at the meeting. 5
- (5) The forum must meet at least once per year with service providers and other role players concerned with development in the district to co-ordinate effective provision of services and planning in the district.
- (6) The district municipality is responsible for providing administrative and other support services to the forum. 10

Intermunicipality forums

26. (1) Two or more municipalities may establish an intermunicipality forum to promote and facilitate intergovernmental relations between them.
- (2) The composition, role and functioning of an intermunicipality forum established in terms of subsection (1) must be determined by agreement between the participating municipalities. 15

Part 5

General

Intergovernmental technical support structures 20

27. (1) An intergovernmental forum may establish an intergovernmental technical support structure if there is a need for formal technical support to the forum.
- (2) An intergovernmental technical support structure—
- (a) must consist of officials representing the governments or organs of state participating in the intergovernmental forum which established the technical support structure; and 25
 - (b) may include any other persons who may assist in supporting the intergovernmental forum.

Consultation with organised local government

28. (1) Where there is an obligation in terms of this Act or any other legislation to consult organised local government on any matter, such consultation may be conducted through an appropriate intergovernmental structure. 30
- (2) If organised local government is not represented in the intergovernmental structure in question, it is for purposes of subsection (1) entitled to participate through a representative with full speaking rights in such structure when the relevant matter is discussed. 35

Status of intergovernmental structures

29. (1) An intergovernmental structure is a forum for intergovernmental consultation and discussion.
- (2) Although it is not an executive decision-making body, it may adopt resolutions or make recommendations in terms of agreed procedures. 40

Internal procedures of intergovernmental structures

30. (1) Every intergovernmental structure must adopt rules to govern its internal procedures, including—
- (a) the name and terms of reference of the intergovernmental structure; 45
 - (b) the functions of the chairperson;
 - (c) procedures for the functioning of the intergovernmental structure;
 - (d) the frequency of meetings and the manner in which meetings must be convened;
 - (e) procedures for the adoption of resolutions or recommendations; 50
 - (f) procedures for the settlement of intergovernmental disputes—

- (i) between the parties; or
 - (ii) that are referred to the intergovernmental structure for settlement; and
 - (g) procedures for the amendment of its internal rules.
- (2) The internal rules of an intergovernmental structure must be consistent with this Act and any other applicable legislation. 5
- (3) A party participating in an intergovernmental structure, and any person representing that party, must adhere to the provisions of the internal rules of that structure.
- (4) Any intergovernmental body not established in terms of this Act must comply with subsection (1) within one year unless an Act of Parliament in terms of which it was established specifically regulates the rules of such intergovernmental body. 10

Standard internal rules

- 31.** (1) The Minister may, by notice in the *Gazette*—
- (a) issue standard internal rules for intergovernmental structures; and
 - (b) when necessary amend any standard internal rules issued in terms of paragraph (a). 15
- (2) Standard internal rules issued under subsection (1) apply to an intergovernmental structure only—
- (a) if such intergovernmental structure formally adopts the rules; and
 - (b) to the extent and subject to the modifications and qualifications determined by the intergovernmental structure. 20

CHAPTER 3

CONDUCT OF INTERGOVERNMENTAL RELATIONS

Implementation protocols

- 32.** (1) Where the implementation of a policy, the exercise of a statutory power, the performance of a statutory function or the provision of a service depends on the participation of organs of state in different governments, those organs of state must co-ordinate their actions in such a manner as may be appropriate or required in the circumstances, and may do so by entering into an implementation protocol. 25
- (2) An implementation protocol must be considered when— 30
- (a) the implementation of the policy, the exercise of the statutory power, the performance of the statutory function or the provision of the service has been identified as a national priority;
 - (b) an implementation protocol will materially assist the national government or a provincial government in complying with its constitutional obligations to support the local sphere of government or to build capacity in that sphere; 35
 - (c) an implementation protocol will materially assist the organs of state participating in the provision of a service in a specific area to co-ordinate their actions in that area; or
 - (d) an organ of state to which primary responsibility for the implementation of the policy, the exercise of the statutory power, the performance of the statutory function or the provision of the service has been assigned lacks the necessary capacity. 40
- (3) An implementation protocol must—
- (a) identify any challenges facing the implementation of the policy, the exercise of the statutory power, the performance of the statutory function or the provision of the service and state how these challenges are to be addressed; 45
 - (b) describe the roles and responsibilities of each organ of state in implementing policy, exercising the statutory power, performing the statutory function or providing the service; 50
 - (c) give an outline of the priorities, aims and desired outcomes;
 - (d) determine indicators to measure the effective implementation of the protocol;
 - (e) provide for oversight mechanisms and procedures for monitoring the effective implementation of the protocol;
 - (f) determine the required and available resources to implement the protocol and the resources to be contributed by each organ of state with respect to the roles and responsibilities allocated to it; 55

- (g) provide for dispute-settlement procedures and mechanisms should disputes arise in the implementation of the protocol;
 - (h) determine the duration of the protocol; and
 - (i) include any other matters on which the parties may agree.
- (4) An implementation protocol must be— 5
- (a) consistent with any provisions of the Constitution or national legislation applicable to the relevant policy, power, function or service; and
 - (b) in writing and signed by the parties.
- (5) Any organ of state may initiate the process for the conclusion of an implementation protocol after consultation with the other affected organs of state. 10
- (6) The implementation of the protocol may be co-ordinated by an appropriate intergovernmental forum.

Provincial policies and legislation affecting local government

- 33.** (1) When developing provincial policies or draft legislation affecting the local sphere of government in a province, the provincial government must— 15
- (a) take into account national priorities;
 - (b) take into account the interests of local communities in the province; and
 - (c) consult the local sphere of government in the province or any specifically affected municipalities.
- (2) Consultation in terms of subsection (1) must be appropriately focused and include a consideration of the impact that such policy or legislation might have on the functional, institutional or financial integrity and coherence of government in the local sphere of government in the province. 20
- (3) Provincial intergovernmental forums established in terms of section 15 or 20 must, to the extent that it is practical, be utilised as forums for such consultation. 25

Responsibility for co-ordinating intergovernmental relations of provinces

- 34.** The Premier of a province is responsible for ensuring the co-ordination of intergovernmental relations within the provincial government with—
- (a) the national government; and
 - (b) local governments in the province. 30

Responsibility for co-ordinating intergovernmental relations of district municipalities

- 35.** The mayor of a district municipality is responsible for ensuring the co-ordination of intergovernmental relations within the district municipality with local municipalities in the district. 35

CHAPTER 4

SETTLEMENT OF INTERGOVERNMENTAL DISPUTES

Application of Chapter

- 36.** (1) This Chapter does not apply—
- (a) to the settlement of specific intergovernmental disputes in respect of which other national legislation provides resolution mechanisms or procedures; or 40
 - (b) to a dispute concerning an intervention in terms of section 100 or 139 of the Constitution.

Duty to avoid intergovernmental disputes

- 37.** (1) All organs of state must make every reasonable effort— 45
- (a) to avoid intergovernmental disputes when exercising their statutory powers or performing their statutory functions; and
 - (b) to settle intergovernmental disputes without resorting to judicial proceedings.

(2) Any formal agreement between two or more organs of state in different governments regulating the exercise of statutory powers or performance of statutory functions, including any implementation protocol or agency agreement, must include dispute-settlement mechanisms or procedures that are appropriate to the nature of the agreement and the matters that are likely to become the subject of a dispute. 5

Declaring disputes as formal intergovernmental disputes

38. (1) An organ of state that is a party to an intergovernmental dispute with another government or organ of state may declare the dispute a formal intergovernmental dispute by notifying the other party of such declaration in writing. 10

(2) Before declaring a formal intergovernmental dispute the organ of state in question must, in good faith, make every reasonable effort to settle the dispute, including the initiation of direct negotiations with the other party or negotiations through an intermediary.

Consequences of declaring formal intergovernmental disputes

39. (1) Once a formal intergovernmental dispute has been declared, the parties to the dispute must promptly convene a meeting between themselves, or their representatives— 15

(a) to determine the nature of the dispute, including—
 (i) the precise issues that are in dispute; and
 (ii) any material issues which are not in dispute; 20

(b) to identify any mechanisms or procedures, other than judicial proceedings, that are available to the parties to assist them in settling the dispute, including any mechanism or procedure provided for in legislation or any agreement between the parties;

(c) to agree on an appropriate mechanism or procedure to settle the dispute, subject to subsection (2); and 25

(d) to designate a person to act as facilitator.

(2) Where a mechanism or procedure is specifically provided for in other legislation or in an agreement between the parties, the parties must make every reasonable effort to settle the dispute in terms of such mechanism or procedure. 30

(3) If the parties to a dispute fail to convene a meeting in terms of subsection (1) the Minister may convene the meeting if—

(a) a national organ of state is involved in the dispute;

(b) the dispute is between different provinces or provincial organs of state from different provinces; or 35

(c) the dispute is between organs of state from different governments that do not fall under paragraph (a) or (b) of this subsection or subsection (4).

(4) If the parties to a dispute in a province fail to convene a meeting in terms of subsection (1) the MEC for local government in the province may convene the meeting if the dispute is— 40

(a) between a provincial organ of state and a local government or a municipal organ of state in the province; or

(b) between local governments or municipal organs of state from different local governments in the province.

(5) If the parties fail to attend a meeting convened by the Minister or MEC or to designate a facilitator referred to in subsection (1)(d), the Minister or MEC may designate a facilitator on behalf of the parties. 45

Role of facilitator

40. (1) A person designated as facilitator must—

(a) assist the parties to settle the dispute in any manner necessary; and 50

(b) submit to the Minister or the MEC for local government in the relevant province—

(i) an initial report concerning—

(aa) the nature of the dispute and the precise issues that are in dispute;

(bb) the mechanism or procedure to be used to settle the dispute; and 55

(cc) any other matter that may be prescribed by regulation in terms of section 44; and

- (ii) progress reports containing such information as may be prescribed by regulation in terms of section 44.
- (2) A report referred to in subsection (1)(b) must be submitted to—
 - (a) the Minister, if the report concerns a dispute referred to in section 39(3); or
 - (b) the MEC, if the report concerns a dispute referred to in section 39(4). 5
- (3) If a dispute referred to in subsection (2)(b) affects the national interest, the Minister may request the facilitator to submit a report to the Minister as well.

Assistance by Minister or MEC for local government

- 41. (1) A party to a formal intergovernmental dispute may request assistance in the settlement of the dispute from— 10
 - (a) the Minister, if it is a dispute referred to in section 39(3); or
 - (b) the MEC for local government in the relevant province, if it is a dispute referred to in section 39(4).
- (2) On receipt of a request in terms of subsection (1) the Minister or MEC may take any appropriate steps to assist the parties in settling the dispute, including the designation of an official in the public service or other person to act as facilitator between the parties. 15
- (3) A facilitator designated in terms of subsection (2) acts on the instructions of the Minister or MEC, as the case may be.

Judicial proceedings 20

- 42. (1) No government or organ of state may institute judicial proceedings in order to settle an intergovernmental dispute unless the dispute has been declared a formal intergovernmental dispute in terms of section 38 and all efforts to settle the dispute in terms of this Chapter were unsuccessful.
- (2) All negotiations in terms of section 38, discussions in terms of section 39 and reports in terms of section 40 are privileged and may not be used in any judicial proceedings as evidence by or against any of the parties to an intergovernmental dispute. 25

CHAPTER 5

MISCELLANEOUS

Reports to Parliament 30

- 43. The Minister may, from time to time when necessary, submit a report to Parliament for tabling in both Houses with regard to—
 - (a) the general conduct of intergovernmental relations in the Republic;
 - (b) the incidence and settlement of intergovernmental disputes; and
 - (c) any other relevant matters. 35

Regulations and guidelines

- 44. (1) The Minister may, by notice in the *Gazette*, issue—
 - (a) regulations not inconsistent with this Act concerning any matter that may be prescribed in terms of a provision of this Act; and
 - (b) guidelines not inconsistent with this Act concerning the conduct of intergov- 40
ernmental relations.
- (2) Before regulations or guidelines are issued in terms of subsection (1), the Minister must—
 - (a) publish the draft regulations or guidelines in the *Gazette* for public comment; and
 - (b) engage in an appropriate consultative process with organs of state on the substance of the regulations or guidelines. 45

Short title

- 45. This Act is called the Intergovernmental Relations Framework Act, 2005.

MEMORANDUM ON THE OBJECTS OF THE INTERGOVERNMENTAL RELATIONS FRAMEWORK BILL

1. Section 41(2) of the Constitution requires an Act of Parliament to establish or provide for structures and institutions to promote and facilitate intergovernmental relations, and to provide for appropriate mechanisms and procedures to facilitate the settlement of intergovernmental disputes. The Intergovernmental Relations Framework Bill, 2005, (“the Bill”) gives effect to this constitutional requirement. In addition, the object of the Bill is to provide, within the concept of co-operative government as set out in Chapter 3 of the Constitution, an institutional framework for the national government, provincial governments and local governments and all organs of state within those governments to facilitate coherent government, co-ordinate implementation of policy and legislation and provide for effective delivery of services, general realisation of national priorities and monitoring of implementation of policy and legislation.

2. BODIES/ORGANISATIONS CONSULTED

The President’s Co-ordinating Council
 Governance and Administration Cabinet Committee
 Two extended Cabinet workshops chaired by the President
 The Local Government Minmec
 The Forum of South African Directors-General
 The Governance and Administration Cluster of Directors-General
 All national Departments
 All provincial Premiers and MECs for Local Government; and
 South African Association of Local Government.

The Bill was published in terms of section 154(2) of the Constitution in *Government Gazette* No. 26970 of 5 November 2004.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. IMPLICATIONS FOR PROVINCES

The Bill establishes Premier’s intergovernmental forums (in some provinces these are referred to as Premier’s Co-ordinating Forums).

5. IMPLICATIONS FOR MUNICIPALITIES

The Bill establishes district intergovernmental forums (in some district municipalities these are referred to as district-mayoral forums).

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Provincial and Local Government are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution. The Bill does not fall within a functional area listed in Schedule 4 to the Constitution, nor does it provide for legislation envisaged in the sections referred to in section 76(3) of the Constitution.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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