

Western Cape Government • Wes-Kaapse Regering • URhulumente weNtshona Koloni

PROVINCE OF THE WESTERN CAPE

PROVINSIE WES-KAAP

IPHONDO LENTSHONA KOLONI

**Provincial Gazette
Extraordinary**

**Buitengewone
Provinsiale Koerant**

**Isongezelelo
kwiGazethi yePhondo**

7251

7251

7251

Friday, 11 April 2014

Vrydag, 11 April 2014

Lwesihlanu, 11 Epreli 2014

Registered at the Post Office as a Newspaper

*(*Copies are obtainable at Room M21, Provincial
Legislature Building, 7 Wale Street, Cape Town
8001.)*

OFFICE OF THE PREMIER
OF THE PROVINCE OF THE
WESTERN CAPE

P.N. 100/2014

11 April 2014

It is hereby notified that the Premier of the Province of Western Cape has assented to the following Act which is hereby published for general information:—

No. 4 of 2014: Western Cape Monitoring and Support of Municipalities Act, 2014.

As 'n nuusblad by die Poskantoor geregistreer

*(*Afskrifte is verkrygbaar by Kamer M21,
Provinsiale Wetgewer-gebou, Waalstraat 7,
Kaapstad 8001.)*

KANTOOR VAN DIE PREMIER
VAN DIE PROVINSIE
WES-KAAP

P.K. 100/2014

11 April 2014

Hiermee word bekend gemaak dat die Premier van die Provinsie Wes-Kaap die onderstaande Wet, wat hierby ter algemene inligting gepubliseer word, bekragtig het:—

Nr. 4 van 2014: Wes-Kaapse Wet op Monitoring en Ondersteunings van Munisipaliteite, 2014.

Ibhaliswe ePosini njengePhephandaba

*(*Iikopi zifumaneka kwigumbi M21, kwiSakhiwo
seNdлу yoWiso Mthetho yePhondo, e7 Wale Street,
eKapa 8001.)*

I-OFISI YENKULUMBUSO
YEPHONDO LENTSHONA
KOLONI

I.S. 100/2014

11 Epreli 2014

Kwenziwa isaziso apha sokuba iNkulumbuso yePalamente yePhondo leNtshona Koloni iwamkele ngokusemthethweni lo Mthetho ulandelayo opapashelwe ulwazi gabalala apha:—

Nomb 4 ka-2014: UMthetho woBeko-Liso neNkxaso yooMasipala weNtshona Koloni, 2014.

(Afrikaans text signed by the Premier)
(Assented to 31 March 2014)

ACT

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—

(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.

(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, 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 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

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 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;

(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 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 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 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 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
- (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.

(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.

Investigation of municipality

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

- (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.

(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).

(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—

- (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;
- (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.

(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.

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

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, 30 under Chapter 13 of the Municipal Finance Management Act.

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

15

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*.