

# Easing interventions in local government

## The proposed Constitutional amendment

**T**he proposed amendment to section 139(2) of the Constitution, tabled in Parliament in August, creates new grounds on which a province may intervene in a municipality, obliges a province to intervene in certain circumstances, and waters down the supervision function of the National Council of Provinces (NCOP). In short, it eases provincial intervention in local government.

### Grounds for intervention

At present, a province may only intervene when a municipality cannot or does not fulfil an executive obligation in terms of legislation. The proposed amendment adds two more grounds for intervention. First, a province may intervene if a municipality fails to approve a budget or revenue-raising measures giving effect to the budget. Second, if the municipality fails to fulfil 'any other obligation specified in an Act of Parliament, the serious or persistent breach of which threatens the health and safety of residents of the municipality.'

## **Failure to approve a budget and revenue raising measures**

Passing the budget and raising revenue are a municipality's most important legislative acts. Failure to do so has dire consequences. The democratic core of a municipality can be preserved by dealing with the matter legislatively. For example, section 10G of the Local Government Transition Act makes specific provision for a municipality's failure to adopt a budget – in this case, it must manage on the basis of the previous budget. A similar provision should be included in the Municipal Finance Management Bill. Moreover, if the failure to approve a budget is the result of the non-functioning of a council that was not resolved by a section 139 intervention, the Member of the Executive Committee (MEC) has the power in terms of the Structures Act to dissolve the council.

## **Fulfil any other obligation**

The second grounds for intervention are unclear. What is the ambit of 'any other obligation' – does it include legislative duties as well? What is the meaning of a breach 'which threatens the health and safety of residents'? If the idea is to authorise an intervention because of a financial emergency, the provision does not say so.

## **Duty to intervene**

A duty to intervene is placed on provinces when a municipality 'as a result of a crisis in its financial affairs, is in a serious or persistent breach of its obligations to provide basic services or to meet its financial obligations.' The steps that a province must take include adopting a recovery plan to restore the municipality to financial health (and, if the municipality does not implement it, to assume responsibility for its implementation), and approving a budget and revenue raising measures to give effect to the recovery plan. This duty to intervene should be coupled with the duty to monitor and support; it is only when a province has complied with its constitutional duty of support that the duty to intervene intrusively (by approving a budget and revenue raising measures) should come into effect.

## **Watering down the NCOP review**

If the national minister's approval for a provincial action is to be required (a provision that can be

questioned on the basis being an unnecessary duplication), then it should occur expeditiously. As it is an executive decision, a delay of 40 days is overly long.

At present the NCOP must review any intervention within 30 days of its first sitting after an intervention began. The proposal is that this period be extended to 180 days. This is an unnecessary watering down of the NCOP's supervisory role. Because intervention may also include the assumption of legislative authority (approval of a budget), more control is required, rather than less. While 30 days is a short period, it does infuse a measure of urgency in the matter. In the past the NCOP has managed within the 30-day limit. A period of 6 months will, in effect, allow an entire intervention to take place, including the approval of budgets, before the NCOP has had the opportunity to pronounce on the matter. It would defeat the very objective of having NCOP supervision in the first place.

Finally, the mandatory regular review of an intervention is made discretionary. The mandatory

## key points

Proposed constitutional amendment to section 139:

- Provincial executive can intervene where a municipality fail to approve a budget and revenue raising mechanism giving effect to the budget.
- A province must intervene when there is a serious and persistent breach of the duty to provide basic services.
- NCOP's supervisory role over interventions by the provincial executive in local government is watered down.

review is a critical measure that requires the NCOP to remain seized with the matter. It can set its own rules regarding the timing of its regular review and can thus manage its own workload. Making the review discretionary places the onus on the municipality to raise the matter and convince the NCOP to review the intervention.

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