

# Guarding against unfunded mandates

## The Systems Amendment Bill

Municipalities will receive greater protection against unfunded mandates in terms of the Municipal Systems Amendment Bill (the Amendment Bill) approved in September this year by the Portfolio Committee on Local Government.

The Bill aims to ensure that assignment of new functions and powers is done only after proper consideration of the financial implications for municipalities.

### Current provisions

As the Systems Act now reads, before a Minister or MEC initiates the assignment of a function or power to the municipality s/he must take steps to ensure that sufficient funding and capacity building initiatives, as the need may be, are available for the function's performance:

- if the assignment of a function

imposes a duty on the municipality that falls outside local government's competencies or functional areas; or

- if the assignment is not incidental to its functions; and
- if the performance of the function has financial implications for the municipality.

(These provisions have been retained in the Amendment Bill.)

Before a Bill assigning new functions to municipalities is adopted, there needs to be consultation between the Minister or MEC initiating the assignment and the Ministers of Finance, Provincial and Local Government and Salga. They must also consider the assessment by the Financial and Fiscal Commission (FFC) (see *LGL Bulletin* 2002:4 9).

### New provisions

The Amendment Bill broadens the current consultation process and adds more criteria for consultation by the Minister or MEC.

The process preceding a legislative assignment can be divided into three steps.

### **Step one: Assessment by FFC**

The MEC or Minister initiating the assignment must request an assessment from the FFC of the financial and fiscal implications of the proposed legislation. The FFC must be provided with information on the impact the assignment will have on:

- the future division of revenue between the spheres;
- the municipality's fiscal power, financial capacity and efficiency;
- the possible transfer of employees, assets and liabilities to municipalities.

### **Step two: Broader consultation**

After receiving the FFC's assessment, the Minister or MEC must consult with the Ministers of Finance, Provincial and Local Government and Salga on:

- the FFC's assessment;
- the reasons for using assignment as the preferred option and the policy goals to be achieved;
- the assignment's financial implications over at least a three-year period;
- possible financial liabilities or risks thereafter;
- the manner in which additional expenditure by the municipality as a result of the assignment will be funded;
- the assignment's implications for the municipality's capacity;
- the assistance and support that will be given to the municipality in regard to the assignment; and
- any other matter prescribed by the Minister of Provincial and Local Government in regulations or guidelines.

Where an MEC initiates the assignment, consultation will be between the MECs for Finance and Local Government and organised local government in the province.

### **Step three: Information accompanying a Bill**

A memorandum must accompany a Bill initiating an assignment when it is introduced to Parliament or a provincial legislature, outlining:

- a three-year projection of the financial implications of the assignment for the municipality;
- any financial liabilities or risks it may have for the municipality after the three-year period;

- how any additional expenditure by the municipality will be funded;
- the assignment's implications for the municipality's capacity.

The Bill must also be accompanied by the FFC's assessment of the assignment's financial and fiscal implications.

### **Executive assignments**

When an executive obligation is assigned to a municipality either in terms of legislation or by agreement, the body assigning the function must give the Minister of Provincial and Local Government and the National Treasury a memorandum before the function is assigned, detailing the same issues as above. If the assignment is initiated by an MEC, s/he must submit the memorandum to the MEC for Local Government in the province.

### **Comments**

This Bill is a welcome attempt to protect local government resource against unfunded mandates. A

## key points

- Greater protection against unfunded mandates.
- Consultation on providing additional funding for the assigned function is necessary.

more prominent role is played by the FFC as the scope of its assessment is extended to include the impact that the assignment will have on the future division of revenue between the spheres. The FFC assessment should indicate how the division of revenue would be influenced as a result of the assignment. The Bill also clarifies the issues on which the parties need to consult.

Geraldine Mettler  
Local Government Project  
Community Law Centre, UWC