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CHAPTER 10

LOCAL GOVERNMENT

General Objectives

- 163.** (1) The objectives of local government as a distinct level/sphere of government are -
- (a) to secure democratic government for local communities and to enhance democracy in general;
 - (b) to promote the social and economic development of local communities within the framework of national and provincial development policies and to enhance social and economic development generally;
 - (c) to provide in the basic socio-economic needs of local communities;
 - (d) to promote the participation of local communities and community organisations in the affairs of local government; and
 - (e) to assist in the development and maintenance of a safe and healthy environment.
- (2) National and provincial government must assist in the realisation of these objectives by actively developing local government and broadening and strengthening its capacity.

Establishment of local government structures

- 164.** (1) Local government in the Republic must be given effect to through municipalities exercising power within their respective municipal areas.
- (2) Municipalities must be established for the whole of the Republic. For this purpose national legislation must -
- (a) provide for an independent person or body to demarcate the whole of each province into municipal areas;

- (b) provide for a provincial organ of state to establish a municipality for each municipal area; and
- (c) determine the different categories of municipalities that may be established.

General duties of municipalities

165. Municipalities must endeavour to achieve the objectives set out in section 163 and must -

- (a) orientate its administration and its budgeting and planning processes to the social, economic and political development of its area and its communities;
- (b) provide basic services in a sustainable manner within its financial and physical capacity;
- (c) engage itself in national and provincial development programmes when required to do so; and
- (d) provide mechanisms for the participation of its community and community organisations in its processes.

Municipal legislative and executive authority

166. (1) Each municipality has a municipal council.

- (2) The legislative and executive authority of a municipality is vested in its council and confers on the council the power -
 - (a) to pass legislation for its municipal area with regard to -
 - (i) any matter within the functional areas listed in Schedule 6;
 - (ii) any matter outside these functional areas explicitly delegated to it by national or provincial legislation;
 - (b) to administer legislation passed by it;
 - (c) to administer national or provincial legislation in its municipal area where the administration of that legislation has been assigned to it in terms of national or provincial legislation; and
 - (d) to perform any other function assigned to it in terms of national or provincial legislation.

- (3) Legislation passed by a municipal council which is reasonably necessary for or incidental to the effective exercise of its power to legislate with regard to a matter within the functional areas listed in Schedule 6, is deemed to fall within those functional areas.

Conflicts between municipal and other legislation

167. (1) In the event of a conflict between national legislation and municipal legislation the municipal legislation is invalid.

- (2) In the event of a conflict between provincial legislation (including a provincial constitution) and municipal legislation which falls within the functional areas listed in Schedule 6 the provincial legislation prevails over the municipal legislation only if the provincial legislation -

(a) deals with a matter that cannot be regulated effectively by legislation enacted by municipal councils individually;

(b) establishes -

- (i) norms and standards;
- (ii) structural, regulatory and other frameworks; or
- (iii) a provincial policy,

aimed at achieving uniformity across the province with regard to a matter which in the interest of the province as a whole requires uniformity;

(c) deals with the administration of local government in the province as a whole; or

(d) is aimed at preventing unreasonable action by a municipality which is prejudicial to another municipality or the province as a whole.

Composition of municipal councils

168. A municipal council consists of the women and men elected as members in accordance with a system of proportional representation, or both proportional and ward representation, prescribed by national legislation.

Membership

168A.(1) Every citizen who is qualified to vote for a municipal council is eligible to be a member of that council, except -

- (a) anyone who is appointed by or is in the service of the state and receives remuneration and who has not been exempted from this disqualification in terms of national legislation;
- (b) anyone who is disqualified from voting for the National Assembly or is disqualified in terms of section 42(1)(c), (d) or (e) to be a member of the Assembly;
- (c) a member of the National Assembly, the National Council of Provinces or a provincial legislature; or
- (d) a member of another municipal council; but, this disqualification does not apply to a member of a municipal council representing that council in another municipal council.

Elections

168B.(1)

Elections of municipal councils must take place at intervals of not more than five years.

(2) Anyone may vote for a municipal council if they -

- (a) are qualified to vote for the National Assembly;
- (b) ordinarily reside in the municipal area; and
- (c) are registered as voters on the municipality's common voters roll.

(3) A municipality must compile and continuously update its common voters roll.

(4) Where an electoral system applies which includes ward representation, national legislation must provide for an independent person or body to demarcate the wards.

Internal autonomy

168C.

A municipal council may determine and control its internal arrangements and may make rules and orders concerning its business and proceedings, including rules and orders regulating the establishment, composition, powers and functions and procedures of its committees.

**Privilege
168D.**

- (1) Members of a municipal council have freedom of speech and debate in the council and in its committees, subject to its rules and orders.
- (2) Members of municipal councils are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -
 - (a) anything they have said in, produced before, or submitted to the council or any of its committees; or
 - (b) anything revealed as a result of anything that they have said produced or submitted.
- (3) Other privileges and immunities of members of municipal councils may be prescribed by national legislation.

Promulgation of municipal legislation

168E. Municipal legislation must be promulgated in the official gazette of the relevant province, and may only be enforced upon its promulgation.

Organised local government

168F. National legislation must provide for -

- (a) municipalities to organise themselves into provincial and national representative bodies;
- (b) the powers and functions of these bodies; and
- (c) the designation by these bodies of people to represent local government in the National Council of Provinces and in any other consultation or interaction with national and provincial government.

Consultation with local government

168G. National and provincial Bills which materially affect the status structures, powers and functions of local government may not be introduced in the National Assembly or a provincial legislature unless organised local government has been given a reasonable opportunity to make representations on them.

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Other matters

168H.

All matters concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation.

SCHEDULE 6

LOCAL GOVERNMENT LEGISLATIVE COMPETENCES

Child care facilities
Cleansing
Community services
Cultural services
Economic and social development
Environmental protection and conservation
Municipal Elections
Electricity
Housing
Land use planning and development
Library services
Licensing
Parks and recreation
Planning
Primary Health Care
Primary welfare services
Produce markets
Protection
Public works
Rates, tariffs and taxes
Roads and storm water management
Sanitation
Traffic
Transportation facilities
Water
Any other functional area which has been identified in national or provincial legislation.