

# DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

## *“PRESENTATION ON THE DEPARTMENTAL PERSPECTIVE ON THE MUNICIPAL DEMARCATION BILL”*

COGTA PORTFOLIO COMMITTEE MEETING

14 FEBRUARY 2024



**GAUTENG**  
PROVINCIAL GOVERNMENT  
REPUBLIC OF SOUTH AFRICA

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## OVERVIEW

- The presentation from the department provides the overview and purpose of the Bill and the comments from the department in relation to the principles and context to the Bill.

## PURPOSE

1. To provide for the establishment, functions and powers of the Independent Municipal Demarcation Authority (IMDA) and set the criteria and procedures for the determination or redetermination of municipal boundaries and delimitation of wards by the Authority and for the conducting of municipal capacity assessments.
2. To provide the Portfolio Committee with the Departmental perspective of the Independent Municipal Demarcation Authority Bill in relation to:
  - the demarcation context by providing an overview of the THREE major demarcation experiences in the Gauteng Province.
  - Comment on the stance of the Department on each of the key features in the amendments to the Bill.
  - Provide concluding remarks

## BACKGROUND

- The Speaker of the Gauteng Provincial Legislature formally referred the Independent Municipal Demarcation Authority Bill [B14B-2022] (Section) 76 to the Portfolio Committee on CoGTA and E-Gov for formal consideration in terms of Rule 245 (1) read with 246(1) 247 and 248.
- It is on this background that the Portfolio Committee on CoGTA and E-Gov invites the Department to make a presentation and the stance of the Department on the Independent Municipal Demarcation Authority Bill [B14B- 2022] (Section) 76.

## INTENTION OF THE BILL

- To seek the repeal and replacement of the Local Government: Municipal Demarcation Act No. 27 of 1998, to bring it in line with current demarcation board practices.
- This includes transferring the current functions of the MDB from the Local Government: Municipal Structure Act No. 117 of 1998, to the new Bill.
- In essence, the Bill will consolidate all demarcation related issues under one law.



# **THE GAUTENG PERSPECTIVE ON THE AMENDMENTS**

## DEPARTMENTAL PERSPECTIVE

- The Bill is largely a re-enactment of the current Demarcation Act, but "to bring it in line with current demarcation board practices", it contains **Key Features**, which is not provided for in the current Act.
- As alluded to above, apart from transferring the current MDB's functions from the Municipal Structure Act to the new Bill, the following salient features proposed by the new Bill, is noteworthy:
  - IMDA may only determine or re-determine a municipal boundary once every 10 years. This is so to minimise disruption and ensure stability, as the current timeframe is not sufficient to allow a municipality to establish itself and function properly.



## DEPARTMENTAL PERSPECTIVE (*Cont..*)

- The Bill would allow for an appeals process, by virtue of the creation of the Independent Demarcations Appeal Authority, for any interested party that is aggrieved by a decision of the IMDA.
- This will ensure that the process is done impartially by giving affected communities recourse to raise any objections they have regarding a proposed demarcation.
- One of the major amendments to the current Act is the inclusion of communities affected by any proposed demarcation to participate meaningfully in said process. The current Act does not provide for public participation to the extent that the Bill would now require.
- The Bill would provide for more extensive public participation and stakeholder consultation for any demarcation matter. The Bill enjoins the IMDA to establish appropriate mechanisms, processes and procedures for public participation.

## DEPARTMENTAL PERSPECTIVE (*Cont..*)

- This Bill specifically provides for Traditional and Khoi-San leaders to play a role in the selection of members of the IMDA and for the Traditional and Khoi-San leaders to be involved in the boundary determination process.
- It is our considered opinion that the Department supports the Bill however, noted from the Presentation that the following issues should be considered:
  - Key consideration must be given to the term of office of the Municipal Demarcation Board (5 years) and the timeframe for considering the redetermination of municipal boundaries (10 years). This may cause administrative challenges as two boards will consider redeterminations.
  - While the inclusion of capacity assessments is welcomed, the Bill does not go far enough in ensuring that capacity assessments are well defined. To this end, it is recommended that the Municipal Demarcation Board, DCoG and Provinces develop guidelines for conducting capacity assessments.

## DEPARTMENTAL PERSPECTIVE (Cont..)

CLAUSE	AMENDMENT DETAILS	DEPARTMENT RESPONSE / STANCE
	<b>Amendment to Title to <u>Independent Municipal Demarcation Authority Bill, 2022</u> Aligns to section 155(3)(b) of the Constitution which requires that national legislation must “establish criteria and procedures for the determination of municipal boundaries by an <u>independent authority</u>”.</b>	The alignment to the Constitution is a significant improvement. It endorses the independence of the Authority
<b>Long title</b>	Provides for - <u>establishment of the IMDA</u> ; criteria and procedures for the determination and redetermination of <u>municipal boundaries</u> ; <u>delimiting</u> of wards; <u>capacity assessments of municipalities</u> ; <u>establishment of an Appeals Authority</u> .	The inclusion of capacity assessments is welcomed. Capacity assessments are a major consideration in the evolution of the Gauteng Global City Region and the move towards Single-Tier Municipalities in the future.
<b>1. Definitions</b>	Defines various terms – Appeals Authority; Authority; Board; Demarcation; Municipal Capacity Assessment; political office-bearer; traditional leadership.	Definition offer clarity and are supported.
<b>2. Purpose of Act</b>	Establishment of IMDA and set criteria and procedures for the determination or redetermination of municipal boundaries and delimitation of wards by the Authority.	The purpose of the Act is clear and easily understood.
<b>3. Establishment of Authority</b>	<u>Authority</u> consists of members of the <u>Board, and the administration</u> . <u>Aim of this provision is to differentiate between the Board and the administration (including employees)</u> - is not clearly defined in current legislation.	This clarification is welcomed. It resolves the collective nature of the Authority which is Board+Admin = Authority

## DEPARTMENTAL PERSPECTIVE (Cont..)

CLAUSE	AMENDMENT DETAILS	DEPARTMENT RESPONSE / STANCE
Status of Authority	Authority is a constitutional institution, is independent, and must be impartial when performing its functions.	The impartiality wording will engender greater confidence especially among political parties and by communities.
4. Functions of Authority	<p><b>Four major functions</b> of the Authority are as follows:</p> <ul style="list-style-type: none"> <li>(i) determine or redetermine municipal boundaries in accordance with this Act and other appropriate legislation;</li> <li>(ii) delimit wards for all municipalities that must have wards;</li> <li>(iii) render an advisory service;</li> <li><b>(iv) <u>conduct municipal capacity assessments.</u></b></li> </ul>	<b>The addition of part (iv) is strongly supported</b>
5. Powers of Authority	<b>Various powers are conferred on the Authority to effectively perform its functions</b> and confirms that the Authority may determine its own <b>staff establishment</b> and appoint employees in posts on the staff establishment.	This will strengthen the Authority's ability to fulfil its obligations.
7. Composition of Board	Removes the requirement of <b>“reflect regional diversity”</b> and provides for <b>“reflect broad composition of SA Society”</b> . Board will consist of no less than 7 and not more than 10 members.	This allows the Authority to assume a national position, rather a regional one which could be legally contested as determination and re-determination of boundaries are challenged.

## DEPARTMENTAL PERSPECTIVE (Cont..)

CLAUSE	AMENDMENT DETAILS	DEPARTMENT RESPONSE / STANCE
<p><b>8. Responsibilities of Board</b></p>	<p>The business and affairs of the Authority must be managed by the Board. The Board is <b><u>responsible for the corporate governance of the Authority</u></b> and may exercise any other power and perform any other functions that the Board is authorised to do in terms of the Act or other legislation.</p>	<p>This will enforce good governance on the Board which must oversee the Administration.</p>
<p><b>9. Qualifications of Board members</b></p>	<p>Adds - <b><u>Information Technology (IT) as an additional qualification</u></b>, for a Board member. This is necessary given that <b><u>work of the Authority is generally technical</u></b> and utilises ICT extensively.</p> <p>Political office-bearers and full-time employees of an organ of state cannot be Board members.</p>	<p>Supports the need of technical IT on the Board. Supported.</p>
<p><b>10. Appointment of Board members</b></p>	<p>Selection panel will also consist of - <b><u>Portfolio Committee in the NA (CoGTA); and National House of Traditional and Khoi-San Leaders.</u></b></p> <p>Requires the Minister, within 30 days of receiving the Board's notification of vacancy, to recommend to the President a person to fill the vacancy from the additional names / long-list; or initiate a new process.</p>	<p>The inclusion of the Portfolio Committee in the National Assembly is most welcome by the Department. The inclusion of a representative of Traditional Leaders is also a sound addition.</p>

## DEPARTMENTAL PERSPECTIVE (Cont..)

CLAUSE	AMENDMENT DETAILS	DEPARTMENT RESPONSE / STANCE
<p><b>11. Term of office, termination and resignation of Board member</b></p>	<p><u>Term of office of the Board is five years</u>, calculated from the date of appointment by the President. However, term is aligned to the term of Municipal Councils - <b>ends within six months after the commencement of the term of LG</b>. This is to ensure that <b>a single Board is responsible for the entire process</b> of determining / redetermining municipal boundaries, as well as delimiting wards in preparation for a general election of all municipal councils.</p> <p>A <u>member of the Board may not hold office for more than two consecutive terms</u> and ceases to be a member if he or she is <u>absent from three or more Board meetings</u> without being granted leave of absence by the Chairperson.</p> <p>All members of the Board appointed on a part-time basis, except for the Chairperson, who may be full- or part-time.</p>	<p>This alignment will address the weakness that saw different Boards having to deal with a single redetermination.</p> <p>The 2-term limit ensures replenishing but also allows for reasonable retention of institutional knowledge by Board Members.</p>
<p><b>12. Conditions of appointment of Board members</b></p>	<p>Conditions of appointment are finalised by the Minister with the concurrence of the Minister of Finance.</p>	<p>Noted and this is good practice</p>
<p><b>13. Chairperson and deputy chairperson</b></p>	<p><u>President appoints one member of the Board as the Chairperson and another person as the Deputy Chairperson</u>.</p> <p>The deputy chairperson acts as chairperson if the chairperson is absent or unable to perform the functions of chairperson; or the office of chairperson is vacant.</p>	<p>This should ensure a high-level of responsibility on the President to ensure that appointments serve the best interests of the people of South Africa.</p>

## DEPARTMENTAL PERSPECTIVE (Cont..)

CLAUSE	AMENDMENT DETAILS	DEPARTMENT RESPONSE / STANCE
<b>14. Meetings</b>	Chairperson, or if the majority of the members so request, must convene a Board meeting. <b><u>Majority of members of the Board in office constitutes a quorum</u></b> for a meeting of the Board. Also provides for a casting vote by the Chairperson.	Regular and supported
<b>15. Rules of procedure</b>	Board <b><u>must determine its rules of procedure for conducting meetings</u></b> - and must keep minutes of the proceedings and decisions. The Board may make rules regarding ancillary or incidental administrative or procedural matters that are necessary for the proper performance of the functions of the Board.	Regular and Supported
<b>16. Committees</b>	<b><u>Board will be required to establish, at the least, the audit and risk governance committee, and the remuneration and performance committee.</u></b> Other committees may also be established, but all committees must include at least one Board member.	Audit and Risk Committee are essential for Good Governance
<b>17. Delegation of and instruction to exercise powers and perform functions by Board</b>	Board may delegate any of its powers to a member, an employee, or a <b><u>committee of the Board, excluding the power to make the final decision on the determination of a municipal boundary.</u></b> Board may confirm, vary, revoke any decision that it had previously delegated to a member of the Board, committee or employee.	The exclusion of the final decisions on determination of municipal boundaries by a single member is an essential safeguard.
<b>18. Conduct of Board members</b>	Requires Board members to perform their functions of office in good faith and without fear, favour, or prejudice, and must disclose all personal and / or private business interests. Members who contravenes or fails to comply with the above, is guilty of misconduct.	Noted and Supported

## DEPARTMENTAL PERSPECTIVE (Cont..)

CLAUSE	AMENDMENT DETAILS	DEPARTMENT RESPONSE / STANCE
19. Chief Executive Officer	<u>CEO</u> is head of the administration of the Authority, for a period not exceeding five years (renewable). CEO is the accounting officer and must perform all functions as may be assigned to her or him by the Board,	The renewable clause allows for retention of a well performing CEO
20. Conditions of employment of employees	<b><u>Board will determine the conditions of employment of employees, which must comply with the principles of public administration</u></b> as contained in the <b><u>Public Administration Management Act No. 11 of 2014.</u></b> <b><u>Officials may be seconded from other organs of state.</u></b>	Noted and Supported
21. Contracting for services	A person that is contracted to provide services may be remunerated and reimbursed for expenditure incurred.	This must be well managed by the CEO with oversight by the Board
22. Finances of Authority	Authority will continue to receive funding from Parliament, and from any other source, through the National Revenue Fund.	Funding must be adjusted to support the amendments of the Act, especially in relation to Capacity Assessments.
23. Determination or Redetermination of municipal boundary objectives	<b><u>Authority must determine boundaries in accordance with the objects of local government</u></b> as set out in Section 152 of the Constitution, and also ensure that the areas enable effective local governance and integrated development, have an inclusive tax base of users of municipal services. Authority must also consider the municipality's capacity to execute its powers and functions; <b><u>aligned to SPLUMA.</u></b>	The SPLUMA alignment is most welcome.



## DEPARTMENTAL PERSPECTIVE (Cont..)

CLAUSE	AMENDMENT DETAILS	DEPARTMENT RESPONSE / STANCE
<p><b>24. Factors to be taken into account</b></p>	<p><b>Authority must consider the following additional factors</b> when determining a municipal boundary:</p> <ul style="list-style-type: none"> <li>○ common geo-statistical building blocks, which facilitates and supports a standard geographical hierarchy;</li> <li>○ relevant national development policies and plans, which might impact on the nature of local government and its boundaries;</li> <li>○ relevant policies and legislation relating to the institutional or functional reorganisation of local government;</li> <li>○ natural endowments, resources, assets, business investments and other drivers of economic growth; and</li> <li>○ <b>views of the people and communities living in the area.</b></li> </ul>	<p>The addition of the views of communities is essential. This was a significant flaw in the Sedibeng Re-Demarcation process.</p>
<p><b>25. Determination of category of municipality</b></p>	<p><b><u>Sections 2 to 4 of the Municipal Structures Act be migrated into the IMDA.</u></b></p> <p>These sections deal with the categories of municipality.</p>	<p>This migration from the Structures Act to the IMDA will ensure that the Categorization of Municipalities and the determination of Municipal boundaries are in a single coherent process.</p>
<p><b>26. Initiation of determination or redetermination of municipal boundary process</b></p>	<p><b><u>Board will undertake determinations or redeterminations that affect more than one ward, only after every ten years.</u></b></p> <p><b><u>Priorities and timeframes</u></b> may be determined, but only 3 years before the end of term of Municipal Councils.</p> <p><b><u>Board will not determine or redetermine municipal boundaries after Minister publishes formulae determining number of councillors.</u></b></p> <p>This is intended to ensure that preparations for municipal elections are not hampered by any late requests for boundary changes.</p>	<p>The 10 Year moratorium ensure periods of stability with tome to make assessment of redeterminations thar are needed.</p>

## DEPARTMENTAL PERSPECTIVE (Cont..)

CLAUSE	AMENDMENT DETAILS	DEPARTMENT RESPONSE / STANCE
27. Notification of intention to consider a request for determination or redetermination of municipal boundary	<p><b><u>Requires the Authority to publish a Notice in the area concerned stating its intention to consider a request for the determination of a municipal boundary.</u></b></p> <p>The Notice will invite written representations and <b><u>views from the public within 30 days</u></b>, before it considers any determination of a municipal boundary.</p> <p>Also requires comments from a targeted audience (Minister, MECs, SALGA, affected municipalities, magistrate, TK-SL structures).</p>	The emphasis on Public notification and participation is welcomed.
28. Conducting investigations on determination or redetermination of municipal boundaries	<p><b><u>Board will be required to institute a formal investigation (unless if it is a minor technical adjustment) after receiving views and representations from stakeholders.</u></b></p> <p>Investigation may be undertaken by the Board, or an investigating committee to undertake same on Board's behalf.</p> <p>After formal investigation, report must be submitted to the Board for consideration. If report is endorsed, Board uses the report to prepare for public engagements.</p>	Determination of Municipal Boundaries must be evidence based and the investigations must support decision making.
29. Public consultation for determination or redetermination of municipal boundary	<p><b><u>Authority to publish a notice in a local newspaper informing stakeholders of a public meeting</u></b>, and for the Authority to also communicate the same message through other means.</p> <p>The report that was concluded by the investigating committee must be conveyed to the local community and written submissions must be invited.</p> <p><b><u>Board may consult other interested parties during consultative process.</u></b></p>	Both the publication and consultation of other parties are sound amendments.

## DEPARTMENTAL PERSPECTIVE (Cont..)

CLAUSE	AMENDMENT DETAILS	DEPARTMENT RESPONSE / STANCE
<b>30. Mechanisms, processes and procedures for public participation</b>	Participation may take place via government, political, civil CBOs that represent communities. Authority may also use virtual platforms to enable communities and stakeholders to participate.	The participation mechanisms are noted and supported
<b>31. Publication of and objection to determination or redetermination of a municipal boundary</b>	<b><u>Authority must publish its final determinations in the Provincial Gazette for comments</u></b> , and after considering any objections, the Board must confirm, vary or withdraw its determination by publishing its final decision in the Provincial Gazette.  Board <b><u>must also provide reasons for its decisions</u></b> after publishing its final decision (on website or other means).	The opportunity for objections is an important feature supporting democracy.
<b>32. When determination or redetermination of municipal boundary takes effect</b>	<b><u>After finalising a boundary determination, the Authority must send particulars of determination to IEC and to relevant MEC for their views.</u></b> The IEC and the relevant MECs must thereafter publish a Notice in the relevant Provincial Gazette.	This is due process
<b>33. Delimitation of ward process</b>	The Authority must <b><u>publish a delimitation of wards timetable in the Gazette</u></b> after the Minister publishes the formulae for determining the number of councillors – may amend the timetable on good cause shown.	The establishment of a timetable will allow better coordination

## DEPARTMENTAL PERSPECTIVE (Cont..)

CLAUSE	AMENDMENT DETAILS	DEPARTMENT RESPONSE / STANCE
34. Number of wards	The number of wards in a metropolitan or local municipality <b><u>must be equal to the number of ward councillors</u></b> determined for the municipality in terms of section 22(2) of the Structures Act.	Ensures that each ward has a Ward Councillor.
35. Criteria for the delimitation of wards	<b><u>Number of registered voters in each ward may not vary by more than 15% of the norm</u></b> , where the norm is determined by dividing the total number of registered voters in a municipality by the number of wards in a municipality. <b><u>Board may deviate by not more than 30% of the norm</u></b> in exceptional cases – Authority must also publish intention in the Gazette.	This leeway is essential to allow for community not to be split, or to keep smaller communities together as a unitary ward.
36. Public participation in delimitation of wards	<b><u>A similar process as in Clause 29 must be followed for ward delimitation as well (Public consultation).</u></b>	Noted
37. Publication of and objection to delimitation of wards	<b><u>Board must provide reasons for decisions to those who submitted objections, or to those who request such reasons.</u></b>	Ensures accountability by the Board to support its decision making.
38 to 46. Demarcation Appeals Authority	Clauses 38 to 46 deal with <b><u>the establishment of the Demarcation Appeals Authority (DAA).</u></b> The current Act does not provide for <b><u>an appeal mechanism or dispute resolution process</u></b> against the decisions of the Board, except for <b><u>aggrieved persons to approach the courts</u></b> to review the decisions of the Board. Communities resort to violent protests when aggrieved with boundary decisions – <b><u>the DAA will allow stakeholders to make representations to an independent authority.</u></b>	An Appeals mechanism is good practice to deal with disputes

## RECOMMENDATIONS

The Department is in support of the above submissions, but propose a modification/amendment to the second consideration to read as follows:

- While the inclusion of capacity assessments it welcomed, the Bill does not go far enough in ensuring that capacity assessments are well defined. To this end, it is recommended that the Minister, i.t.o section 48 of the Bill, and in consultation with the IMDA and Provinces develop Regulations or Guidelines for conducting capacity assessments."
- This modification is proposed as section 48 of the Bill empowers the Minister to issue Regulations or guidelines which will have more statutory weight, as it will be law.
- In addition to the abovementioned considerations, we would further suggest that consideration be given to appoint an eminent retired Judge as the Chairperson of the Independent Demarcation Appeal Authority as this will further enhance impartiality.
- In respect of the Legal implications of the Bill, we could not establish any, at least any adverse legal implications. The Bill endows statutory powers and functions on those authorities (IMDA, Appeal Authority, the CEO, etc) mentioned in the Bill and it is expected that they will comply with obligations imposed upon them, failing which, any non-compliance will inevitably have legal consequences.
- It is further noted that Clause 49 of the Bill provides for offences and penalties and dictates that "A person who does not comply with a summons or does not provide documents that are requested by the Authority, is guilty of an offence and may be fined or imprisoned." In other words, provision is made to criminalise particular conduct that will be met with criminal sanction.

## RECOMMENDATIONS (Cont..)

- The Department has not engaged Municipalities for input on the Bill. It is, nevertheless, our understanding, as per the explanatory memorandum of the Bill, that organised local government, representing municipalities, have been consulted because section 154(2) of the Constitution demands such consultation and for the sake of completeness, reads as follows:
  - *"(2) Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation."*
- In respect of the Process after receiving inputs from all stakeholders, it is noted that the Bill is at the stage where the GPL, through the Provincial Portfolio Committee: COGTA ("the Committee") is required to execute its responsibilities in respect of the legislative steps pertaining to the enactment of the Bill into law. In other words, its a GPL process and after receiving inputs from stakeholders required to present to the Committee, the GPL is enjoined to proceed with the Bill in terms of its processes as prescribed by its Rules and Orders. Once the GPL has taken a position on the Bill, it will convey its stance to Parliament via the NCOP before the Bill is finally adopted by Parliament.
- The envisaged date of the operation of the Bill, will be, once all legislative processes have been concluded, including the adoption of the Bill by Parliament be presented to the Hon. President to sign into law. Once signed, the Bill becomes law and takes effect on a date determined by the President by Proclamation in the Gazette as contemplated in Clause 52 of the Bill.



# **DISCUSSIONS/INPUTS/COMMENTS**



## Get in touch with us

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