



GOVERNMENT GAZETTE

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 295 2000

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 30 of 2000: Regional Councils Amendment Act, 2000.

EXPLANATORY NOTE:

- _____ Words underlined with a solid line indicate insertions in existing provisions.
- [] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Regional Councils Act, 1992, so as to provide for the insertion and addition of new definitions; to extend the powers, duties and functions of a chairperson; to provide for the filling of casual vacancies in management committees; to provide for the establishment of recruitment committees, the exercising of their powers and the periods of and vacation of office of members of recruitment committees; to extend the powers of regional councils, including the power to make regulations; to amend references to certain sections of the Local Authorities Act, 1992; to empower the Minister to make regulations relating to the entering into joint business ventures by regional councils relating to the commercialisation of services rendered or functions or duties exercised or carried out by regional councils and relating to tender board matters; to provide for the substitution of certain words in the Act; and to provide for incidental matters.

(Signed by the President on 21 December 2000)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Amendment of section 1 of Act No. 22 of 1992

1. Section 1 of the Regional Councils Act, 1992 (hereafter referred to as the principal Act), is amended -

- (a) by the insertion of the following definitions after the definition of "chairperson":

"decentralisation" means decentralisation as defined in section 1 of the Decentralisation Enabling Act, 2000;

'establishment', except in sections 24A and 40A, means the posts created for the normal and regular permanent requirements of any regional council;

'Line Ministry' means any Line Ministry as defined in section 1 of the Decentralisation Enabling Act, 2000;";

- (b) by the insertion of the following definitions after the definition of "Minister":

"organisational component" means -

- (a) in the case of a Line Ministry, any department, directorate, division, subdivision, section or subsection thereof, and any other related designation; and

- (b) in the case of a regional council, any department, directorate, division, subdivision, section or subsection thereof, and any other related designation;

'recruitment committee' means a recruitment committee referred to in section 24A;;

- (c) by the insertion after the definition of "regional officer" of the following definition:

" 'regulation' means a regulation made under this Act; "; and

- (d) by the addition of the following definitions :

" 'staff member means -

- (a) in the case of a staff member of a Line Ministry, any person employed in a post on or additional to the establishment of the Line Ministry;
- (b) in the case of a staff member of a regional council, any person employed permanently or temporarily on a full-time or part-time basis or under a contract of employment, in a post on or additional to the establishment of a regional council, and includes a regional officer; and

'this Act' includes the regulations."

Amendment of section 17 of Act No. 22 of 1992.

2. Section 17 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

"(2) Any member of a regional council who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period [of] not exceeding two years or to both such fine and such imprisonment."

Amendment of section 19A of Act No. 22 of 1992, as inserted by section 2 of Act No. 17 of 1997

3. Section 19A of the principal Act is amended -

- (a) by the renumbering thereof as "18A.";
- (b) by the deletion of the word "and" at the end of paragraph (a)(i); and
- (c) by the addition of the following subparagraphs to paragraph (a) :

"(iii) initiate the making of regulations by regional councils; and

(iv) initiate the entering into joint business ventures and the commercialisation of services, functions or duties as contemplated in the regulations."

Substitution of section 20 of Act No. 22 of 1992

4. The following section is substituted for section 20 of the principal Act :

“Vacation of office by members of management committees and filling of casual vacancies

20. (1) A member of a management committee shall vacate his or her office -

- (a) if he or she ceases to be a member of the regional council;
- (b) in the case of the chairperson, if he or she is absent, without the leave of the management committee, from three consecutive meetings of the management committee and his or her absence is not condoned by the management committee;
- (c) in the case of any member other than the chairperson, if he or she is absent -
 - (i) without the leave of the management committee; or
 - (ii) without the leave of the chairperson, if the chairperson is authorised by the management committee to grant such leave, from three consecutive meetings of the management committee, and his or her absence is not condoned by the management committee;
- (d) if the regional council resolves by a majority of all its members that it has no confidence in such member; or
- (e) if he or she in writing under his or her hand, addressed and delivered to the regional officer concerned, resigns as a member of the management committee.

(2) A casual vacancy in a management committee shall be filled, in accordance with the provisions of section 19 in respect of the election of members of the management committees, within a period of three months after the vacancy has occurred, for the unexpired portion of the period of office of the member who has vacated his or her office, unless the period of office of the member who has so vacated his or her office expires during the period of three months.”

Insertion of sections 24A, 24B and 24C in Act No. 22 of 1992

5. The following sections are inserted after section 24 of the principal Act :

“Establishment of recruitment committees

24A. (1) There is hereby established for each region, a committee to be known as a recruitment committee, and which shall consist of -

- (a) a member of the management committee of each region appointed by the regional council concerned, who shall be the chairperson of the recruitment committee;

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- (b) the head of the organisational component of the regional council concerned responsible for personnel administration, who shall be a member *ex officio*, or his or her representative;
- (c) three staff members of line ministries, nominated by the regional officer of the region concerned and appointed by the regional council concerned;
- (d) one staff member of the Ministry of Regional and Local Government and Housing, appointed by the Permanent Secretary thereof; and
- (e) one staff member of each Line Ministry, appointed by the Permanent Secretary of the Line Ministry concerned,

which appointments shall be made in writing addressed to the Minister.

(2) The head of the organisational component referred to in subsection (1)(b) shall designate, as secretary to the committee, one of the staff members of the regional council in respect of which the recruitment committee is established, and the secretary shall perform all the administrative functions of the recruitment committee as the committee may determine.

(3) A recruitment committee shall conform, in the performance or exercising of its functions or powers, to the national standards established by the Public Service Commission for the establishment and management of the public service in general.

(4) A regional council concerned shall designate, for a period not exceeding six months, a staff member to act as alternate member in the place of the head of the organisational component referred to in subsection (1)(b) and a staff member, nominated by the regional officer, to act as alternate member in the place of any staff member referred to in subsection (1)(c), during his or her absence or his or her incapacity, and to attend meetings on his or her behalf.

Recruitment of staff members for regional councils

24B. (1) The recruitment of staff members for regional councils -

- (a) for entry posts, shall be dealt with by the supervisor of the post concerned and the head of the organisational component of the regional council concerned;
- (b) for posts above an entry post but below the management cadre, shall be dealt with by the head of the organisational component of the regional council concerned and the head of the organisational component of the Line Ministry concerned; and
- (c) for posts in the management cadre, shall be dealt with by the recruitment committee of a regional council concerned.

(2) A recommendation by any person or a recruitment committee referred to in subsection (1)(a), (b) or (c), as the case may be, and which relates to the appointment of any person as a staff member of a regional council, shall be made to the regional council concerned for the appointment of such person as contemplated in section 23(1).

Terms of and vacation of office by members of recruitment committees

24C. (1) A member of a recruitment committee shall hold office for a period of three years and shall be eligible for re-appointment for one more term only.

(2) A member of a recruitment committee other than the chairperson thereof -

(a) may be removed from office, on the recommendation of the recruitment committee of which he or she is a member -

(i) in the case of a member referred to in section 24A(1)(b) or (c), by the regional council concerned; and

(ii) in the case of a member referred to in section 24A(1)(d) or (e), by the Permanent Secretary concerned,

for reasons which in the opinion of the regional council or the Permanent Secretary, as the case may be, render such member unsuitable to serve on the recruitment committee;

(b) shall vacate his or her office if he or she -

(i) ceases to be a staff member of the regional council concerned, the Line Ministry concerned or the Ministry of Regional and Local Government and Housing, as the case may be;

(ii) has without sufficient reasons or the leave of the recruitment committee, been absent from three consecutive meetings of the committee; or

(iii) is removed from office under paragraph (a).

(3) The chairperson of a recruitment committee shall vacate his or her office if he or she ceases to be a member of the management committee concerned.

Amendment of section 28 of Act No. 22 of 1992

6. Section 28 of the principal Act is amended -

(a) by the substitution for paragraph (l) of subsection (1) of the following paragraph:

“(l) to open banking accounts, including savings accounts, with a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998), a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 2 of 1986), and the **[Post Office] Savings Bank [controlled and managed by the Namibia Post Limited established by section 2]** as defined in section 1 of the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992)”;

(b) by the insertion of the following paragraph after paragraph (n) of subsection (1) :

“(nA) to determine, by notice in the *Gazette*, the charges, fees and other moneys payable in respect of any service rendered by the regional council in terms of the provisions of this Act, or pursuant to the regulation and control of any matter under this Act; ”;

- (c) by the substitution for paragraph (o) of subsection (1) of the following paragraph :
- “(o) to exercise any power assigned to regional councils by the laws governing communal land which vests in the Government of Namibia by virtue of the provisions of Schedule 5 to the Namibian Constitution, or any other power so assigned by or in terms of any other law;”; and
- (d) by the addition of the following paragraphs to subsection (1):
- “(p) to enter, subject to the regulations, into joint business ventures;
- (q) to commercialise, subject to the regulations, any service rendered, or any function or duty exercised or carried out, by it.”

Amendment of section 32 of Act No. 22 of 1992

7. Section 32 of the principal Act is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph :

- “(a) [~~The~~] the provisions of section 30, except paragraphs (p), (s), (t), (v), (w), (x), (y) and (z) of subsection (1), 33 to 62, 66 to 76, 78, ~~79,~~ [89,] 90, 91 and [93,] 94 of the Local Authorities Act, 1992, shall apply *mutatis mutandis* in respect of the management and control of a settlement area by a regional council as if such regional council were a village council as defined in section 1 of that Act or such settlement area were the area of such village council;”

Insertion of sections 44A and 44B in Act No. 22 of 1992

8. The following sections are inserted after section 44 of the principal Act :

“Regulations by regional councils

44A. (1) A regional council may make, after consultation with the Minister, regulations by notice in the *Gazette* relating to the prohibition, restriction, regulation and control of the conducting of any trade, business or occupation or other activity for gain in areas outside local authority areas in the region concerned, whether or not conducted from any premises, and the rendering of services in connection with such trade, business or occupation.

(2) Different regulations may be made under subsection (1) in respect of different areas within a region.

(3) A regulation made under subsection (1) may in respect of any contravention thereof or a failure to comply therewith, prescribe a penalty of a fine not exceeding N\$2 000 or imprisonment for a period not exceeding six months, or both such fine and such imprisonment.”

Regulations by Minister

44B. (1) The Minister may make regulations relating to -

- (a) the establishment and composition of regional tender boards, including -
- (i) the terms of office of and vacation of office and the remuneration, if any, of members of regional tender boards;

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- (ii) the disclosure of interest by members of regional tender boards;
- (iii) the powers and functions of regional tender boards;
- (iv) committees of regional tender boards and the delegation of powers;
- (v) meetings and decisions of regional tender boards;
- (vi) invitation of tenders and applications for pre-qualification;
- (vii) contents of applications for pre-qualification;
- (viii) final invitations of tenders where applications for pre-qualification have been invited;
- (ix) titles of tenders;
- (x) examination, evaluation, comparison and non-acceptance of tenders;
- (xi) acceptance of tenders and entry into force of agreements;
- (xii) exemption, if any, from tender procedures;
- (xiii) the performance of administrative functions;
- (xiv) expenditure;
- (xv) the entering into and the cancellation of agreements;
- (xvi) the procurement of goods and services for regional councils;
- (xvii) the letting or hiring of commodities on behalf of regional councils;
- (xviii) the acquisition or granting of rights for or on behalf of regional councils;
- (xix) the disposal of property of regional councils;
- (xx) the procedure and quorum at meetings of regional tender boards and any committee thereof, including the manner of voting and the number of votes required for a decision of a regional tender board;
- (xxi) decisions of a regional tender board;
- (xxii) the granting by a regional tender board of price preferences relating to tenders, including the basis on which such preferences may be granted;
- (xxiii) the imposition by a regional tender board of a monetary penalty, calculated on such basis as may be prescribed by regulation, on any person with whom a regional tender board has concluded an agreement on behalf of a regional council on the strength of a misrepresentation by that person, or information furnished by that person which, after the conclusion of such agreement, proves to have been incorrect information, including the manner in which any such penalty may be recovered;

- (xxiv) the recovery of expenses, losses or damages incurred or suffered by a regional council;
 - (xxv) a code of procedures, including confidentiality; and
 - (xxvi) generally, all matters in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve any objects relating to tender board matters;
- (b) the circumstances under which a regional council may enter into joint business ventures, including -
- (i) the type of businesses with which a regional council may enter into a joint business venture;
 - (ii) the purposes for which income derived from a joint business venture may be utilised;
 - (iii) the approval required, if any, and the conditions which may be imposed, before a regional council may enter into a joint business venture;
 - (iv) the form of a joint business venture;
 - (v) the alienation, encumbrance or disposal of shares, assets or other interests in a joint business venture;
 - (vi) the obtaining of shares or other interests in a joint business venture by -
 - (aa) a member or staff member of a regional council; or
 - (bb) any other person -
 - (ab) who is related to such member, whether by affinity or consanguinity;
 - (ac) who is a member of the household of such member;
 - (ad) with whom such member is in terms of the traditional laws and customs a partner in a customary union; or
 - (ae) who is a partner, agent or business associate of such member;
 - (vii) the ratio of representation of a regional council on the management body of a joint business venture;
 - (viii) the particulars which may be incorporated in the documents stating the objects and purposes of a joint business venture; and

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- (ix) the authority to which the accounting records and financial statements of a joint business venture shall be submitted;
- (c) the circumstances under which a regional council may commercialise any service rendered or duty or function exercised or carried out by it, including -
 - (i) the form of the commercialised business concerned;
 - (ii) the approval required, if any, and the conditions subject where to a regional council may commercialise a service, duty or function;
 - (iii) the alienation, encumbrance or disposal of shares, assets or other interests in a commercialised business;
 - (iv) the obtaining of shares or other interests in a commercialised business by -
 - (aa) a member or staff member of a regional council; or
 - (bb) any other person -
 - (ab) who is related to such member, whether by affinity or consanguinity;
 - (ac) who is a member of the household of such member;
 - (ad) with whom such member is in terms of the traditional laws and customs a partner in a customary union; or
 - (ae) who is a partner, agent or business associate of such member;
 - (v) the particulars which may be incorporated into the documents stating the objects and purposes of a commercialised business; and
 - (vi) the authority to which the accounting records and financial statements of a commercialised business shall be submitted.

(2) Regulations made under subsection (1) shall apply, unless determined otherwise in a regulation, to all regional councils.

Substitution of words in Act No. 22 of 1992, as amended by Act No. 17 of 1997

9. The principal Act is amended by the substitution for the words "other officers and employees", "other officers or employees", "other officer or employee" and "officer or employee" wherever they occur, for the words "other staff members", "other staff members", "other staff member" and "staff member", respectively.

Short title and commencement

10. (1) This Act shall be called the Regional Councils Amendment Act, 2000, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.