

**THE LOCAL GOVERNMENT (AMENDMENT) BILL,
2010**

MEMORANDUM

The object of this Bill is to amend the Local Government Act so as to—

- (a) establish the Local Government Service Commission and provide for its functions and powers;
- (b) vest the power to appoint, transfer, second, promote, discipline or discharge the staff of councils in the Commission;
- (c) increase the tenure of office of the mayor, deputy mayor, chairperson and vice-chairperson of a council from one year to two and a half years; and
- (d) provide for matters connected with, or incidental to, the foregoing.

A. J. SHONGA JNR,
Solicitor-General

BILL

ENTITLED

An Act to amend the Local Government Act.

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Local Government (Amendment) Act, 2010, and shall be read as one with the Local Government Act, in this Act referred to as the principal Act.

Short title

Cap. 281

5 2. Section *two* of the principal Act is amended by the insertion in the appropriate place of the following new definition:

Amendment
of section 2

“Commission” means the Local Government Service Commission established under section *ninety*;

3. Section *sixteen* of the principal Act is amended by the deletion of subsections (2) and (3) and the substitution therefor of the following new subsections:

Amendment
of section 16

(2) The mayor, deputy mayor, chairperson or vice-chairperson of a council shall be elected—

- 15 (a) when the council first sits after an ordinary election; and
- (b) subject to the provisions of this Act, at the first ordinary meeting of the council held immediately after the expiry of the term of office of the mayor, deputy mayor, chairperson or vice-chairperson
- 20 elected under paragraph (a).

(3) A person shall hold office as a mayor, deputy mayor, chairperson or vice-chairperson of the council for only one term.

(4) Where a person has held office once as mayor, deputy mayor, chairperson or vice-chairperson of a council, the person may be elected to that office again after five years from the date on which the person last held the office.

(5) On the commencement of this Act, a person holding office as a mayor, deputy mayor, chairperson or vice-chairperson of a council shall continue to hold such office until the end of the term of that office.

Repeal and
replacement
of section 17

4. The principal Act is amended by the repeal of section *seventeen* and the substitution therefor of the following new section:

Tenure of
office of
mayor, etc.

17. (1) A mayor, deputy mayor, chairperson and vice-chairperson of a council shall, subject to the provisions of this Act, hold office for a period of two and a half years from the date of election.

(2) A person elected as mayor, deputy mayor, chairperson or vice-chairperson of a council in the first election after the commencement of this Act shall, subject to the provisions of this Act, hold office up to the date of the announcement of the next ordinary election.

Amendment
of section 45

5. Section *forty-five* of the principal Act is amended in subsection (3) by the insertion—

(a) in paragraph (g), immediately after the semi-colon, of the word “and”; and

(b) immediately after paragraph (g), of the following new paragraph:

(h) the salaries of principal officers and officers of a council.

Repeal and
replacement
of Part X

6. The principal Act is amended by the repeal of Part X and the substitution therefor of the following new Part:

PART X

THE LOCAL GOVERNMENT SERVICE COMMISSION

90. (1) There is hereby established the Local Government Service Commission.

Establishment
of Local
Government
Service
Commission

5 (2) The Commission shall consist of—

- (a) a Chairperson;
- (b) a Vice-Chairperson; and
- (c) three other members.

(3) The members of the Commission shall be appointed by the
10 President and shall serve on full-time basis.

(4) A person shall not be eligible for appointment as a member of the Commission if—

- (a) that person is under any written law, adjudged or otherwise declared to be of unsound mind;
- 15 (b) that person is adjudged or declared bankrupt under any written law in Zambia;
- (c) that person has been convicted of an offence under this Act or any other law and been sentenced therefor for a period exceeding six months;
- 20 (d) that person is a member of the National Assembly;
- (e) that person is a councillor;
- (f) that person is employed in the local government service or in any council;
- (g) that person is not a citizen of Zambia;
- 25 (h) that person's freedom of movement is restricted or that person is detained under any law in force in Zambia; or
- (i) that person holds any office in a political party.

(5) The expenses and costs of the Commission shall be paid out of funds appropriated by Parliament for the performance of
30 the Commission's functions under this Act.

91. The functions of the Commission are to—

Functions of
Commission

- (a) exercise responsibility in respect of all matters relating to the staff of the councils established under this Act; and
- (b) do all such things as are necessary or incidental to the
35 regulation of service with councils.

92. (1) A member of the Commission shall, subject to the other provisions of this Part, hold office for a term of three years and may be re-appointed for a further term of three years.

Tenure of
office and
vacancy

(2) Upon the expiration of the term for which a member is appointed, the member shall continue to hold office until another member is appointed, but in no case shall any extension of the period exceed three months.

(3) The office of a member shall be vacated— 5

(a) at the expiry of the term for which the member was appointed or re-appointed;

(b) upon the member's death;

(c) if the member is adjudged bankrupt;

(d) if the member is absent from three consecutive meetings of the Commission which the member has had notice, without the prior approval of the Commission; 10

(e) upon the expiry of one month's notice of the member's intention to resign, given by the member in writing to the Minister; 15

(f) if the member becomes mentally or physically incapable of performing duties as a member;

(g) if the member is removed by the President for inability to discharge the functions of the member's office; or

(h) if the member is convicted of an offence under this Act or any other law. 20

(4) Where there is a vacancy in the membership of the Commission before the expiry of the term of office, the Minister shall appoint another person to replace the member who vacates office but that person shall only hold office for the remainder of the term. 25

Commission
to appoint
staff of
council

93. The Commission shall—

(a) appoint such principal officers and officers of a council as the Commission considers necessary for the performance of the functions of such council; and 30

(b) discipline any principal officer or officer of a council.

Transfer of
staff of
council

94. The Commission may transfer any principal officer or officer of a council from one council to another, on such terms and conditions as the Commission may determine.

Secondment
of officer etc.
to another
council

95. (1) The Commission may, upon receiving a request from a council, second an officer to that council for such period and on such terms and conditions as the Commission may determine. 35

(2) The Commission may, in accordance with regulations issued by the Commission under section *one hundred and five*, authorise the secondment, to a council, of an officer of the civil service or a statutory corporation. 40

96. Any person who, prior to the commencement of this Act, is employed as a principal officer or an officer of a council shall continue to hold office in the council after the commencement of this Act on such terms and conditions as the Commission may
5 determine.
97. The Minister responsible for local government shall provide the necessary staff to the Commission to enable the Commission perform its functions under this Act. Secretariat of Commission
98. The President and the Minister may give to the
10 Commission or to any person to whom the functions of the Commission are delegated, such general directions with respect to the discharge of the functions of the Commission as the President or the Minister may consider necessary, and the Commission or that person, as the case may be, shall comply with those directions. Directions by President and Minister
- 15 99. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure. Proceedings of Commission
- (2) The Commission shall meet at least once in every quarter of the year for the transaction of its business at such places and times as the Commission may determine.
- 20 (3) Upon giving notice of not less than fourteen days, a meeting of the Commission may be called by the Chairperson and shall be called if not less than three members so request in writing:
- Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called
25 upon giving a shorter notice.
- (4) Three members of the Commission shall form a quorum at any meeting of the Commission.
- (5) There shall preside at any meeting of the Commission—
- (a) the Chairperson;
- 30 (b) in the absence of the Chairperson, the Vice-Chairperson;
or
- (c) in the absence of both the Chairperson and Vice-Chairperson, such member as the members present shall elect for the purpose of that meeting.
- 35 (6) A decision of the Commission on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.

(7) Where a member is for any reason unable to attend a meeting of the Commission, the member may, in writing, nominate another person from the same organisation to attend the meeting in that member's stead and such person shall be deemed to be a member for the purpose of that meeting. 5

(8) The Commission may invite any person whose presence, in its opinion, is desirable to attend and participate in the deliberations of a meeting of the Commission, but that person shall have no vote.

(9) The validity of any proceedings, act or decision of the Commission shall not be affected by any vacancy in the membership 10 of the Commission or any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

(10) The Commission shall cause minutes to be kept of the proceeding of every meeting of the Commission and any committee 15 established by the Commission.

Committees

100. (1) The Commission may, for the purpose of performing its functions under this Act, constitute any committee and may delegate to the committee any of its functions.

(2) The Commission may appoint as members of a committee 20 constituted under subsection (1), persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.

(3) Subject to any specific or general direction of the Commission, a committee may regulate its own procedure. 25

Emoluments
and
allowances

101. A member of the Commission or any c o m m i t t e e thereof shall be paid such emoluments and allowances as the Commission may, with the approval of the Minister, determine.

Disclosure of
interest

102. (1) Any person who is present at a meeting of the Commission or a committee of the Commission at which any matter 30 is the subject of consideration, and in which matter the person or that person's spouse is directly or indirectly interested in a private capacity, shall, as soon as is practicable after the commencement of the meeting, disclose the interest and shall not, unless the Commission or the committee, as the case may be, otherwise directs, 35 take part in any consideration or discussion of, or vote on, any question relating to that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Prohibition of publication or disclosure of information to 40 unauthorised persons

103. (1) A person shall not, without the consent in writing given by or on behalf of, the Commission, publish or disclose to any unauthorised person, otherwise than in the course of that person's duties, the contents of any document, communication or information
5 whatsoever which relates to, and which has come to that person's knowledge in the course of, that person's duties under this Act.

Prohibition of publication or disclosure of information to unauthorised persons

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units, or to imprisonment for a period not
10 exceeding two years, or to both.

(3) A person who having information which to that person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable,
15 upon conviction, to a fine not exceeding two hundred thousand penalty units, or to imprisonment for a period not exceeding two years, or to both.

104. An action or other proceeding shall not lie or be instituted against a member of the Commission, a committee of the
20 Commission or a member of staff of the Commission for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of any of the powers, functions or duties conferred under this Act.

Immunity of members of Commission

25 105. (1) The Commission may, with the approval of the President, make regulations governing service with a council and the powers and duties of councils with regard to their principal officers and officers.

Regulations

(2) Without prejudice to the generality of subsection (1),
30 regulations made under this section may provide for—

- (a) the creation or abolition of any post in a council;
- (b) the terms and conditions of appointment, promotion, transfer, secondment, dismissal, discharge and discipline of principal officers and officers;
- 35 (c) the qualifications for appointment to any post in a council;
- (d) establishment of a council secretariat under the supervision of the principal officer of the council, the other members of the secretariat, and their functions; or
- 40 (e) the training of principal officers and officers of a council and the standards for promotion of officers.

(3) Regulations under this section may make different provisions for different categories of councils and different categories of principal officers or officers.

Repeal of
Third
Schedule

7. The principal Act is amended by the repeal of the Third Schedule.

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