



Parliament of Sint Maarten

Staten van Sint Maarten

Parliamentary Year 2015-2016-090

National Ordinance containing general regulations concerning administrative enforcement of legal stipulations (National Ordinance administrative enforcement)

**Report
No. 5**

Parliament in its meeting of the Central Committee has exchanged views with the Government on the Draft National Ordinance containing general regulations concerning administrative enforcement of legal stipulations (National Ordinance administrative enforcement).

Parliament considers the present draft to be sufficiently prepared if the questions asked below are answered in time for the public meeting so that the draft can be discussed in a public meeting.

The National-Alliance faction has with interest taken note of the draft ordinance and remarks that they will have to go thru this law with a fine-tooth comb seeing its complexity. Will this ordinance be implemented in collaboration with the labor inspectorate? Do they have enough vehicles for when the enforcement officer is making site visits? Does the Ministry lack tools to carry out these tasks?

Will the Minister be able to get enough support from his colleagues from Aruba if needed? Does Curacao have a similar law on administrative enforcement? Is article 47, second paragraph expired with reference to article 251 and 253 of the Code of Criminal Procedure? What kind of effects will this national ordinance have on the relationship between Ministers and their department heads? Will each Minister have to report his or her plans after the implementation of this national ordinance? What happens if the enforcement officer reports incorrect findings? Can an administrative authority be punished if he or she does not comply with the National Ordinance administrative enforcement? For example, when exceeding a term? Will the government of Sint Maarten be held liable for damages resulting from the misapplication of

this law? Article 2, second paragraph regards issuing of sanctions. Can this also be conducted at the end of the term? Would it be possible for each ministry to come and explain how this ordinance will affect them? What is the meaning of the following terminology:

- I. as far as possible (in article 16, paragraph 4)
- II. reasonably believes (in article 17, paragraph 2)
- III. reasonable period (in article 18, paragraph 1)
- IV. cooperation which the inspector reasonably can claim in (article 18, subsection 1).

How are the already existing laws that contain administrative sanctions, presently executed? Is the procedure to get a restaurant permit too complicated? How about the situation in Aruba and Curaçao? Are there any plans to establish a small claims court by Government?

How is it possible that one person will obtain a permit to build a house, while the permit to build the similar house by someone else can be rejected? Will the inspectors be required to receive specific training as special investigation officers (“bavpol”) to get certain authorities?

The United St. Maarten Party-faction has with interest taken note of the draft and requests that the Parliament deals with topics in this legislation chapter by chapter. Can the existing laws not perform the same tasks if given more authority? What is the difference when applying this draft legislation opposed to what we already have? May anyone submit a request for the enforcement of article 6 in regards to this National Ordinance? Will the administrative authority always be able to respond within the set deadline? Will more persons be employed to do these tasks? Will there be a general enforcement policy? Is there enough budgeted to apply article 41 of this National Ordinance? Will there be an appeal procedure in this administrative enforcement Ordinance? What is in place to guarantee consistency in appeal procedures? Will there be a central appeal committee? This central appeal committee will be appointed by whom? Should there be changes made in the LAR? Why instill punishment when there are so many other options to ensure the compliance of citizens to the law? Sint Maarten has copied this law from Aruba. Will Sint Maarten seek contact with the minister of Justice in Aruba?

How lengthy has the legislation process been so far and how much longer before it is completed? What effect will this

draft law have on the economy? Does the Chamber of Commerce have to publish its policy document to prevent violation or non-adherence to the “Handelsregisterverordening” by business owners?

The Democratic Party-faction also has, with great interest, taken note of the draft. The faction indicates that this draft is a very technical document and asks if a general law will be implemented in Aruba? What are the preparations regarding the activation of this law? How will this be accomplished on Sint Maarten? How will improper use of, or abuse of the officer's new authoritative powers be avoided? Is the “Arbeids inspectie” (Inspectorate of Labor) already fully equipped for its new administrative powers? Wouldn't it be better to have a more centralized body of control since the infringements of a particular case may fall under different ministries?

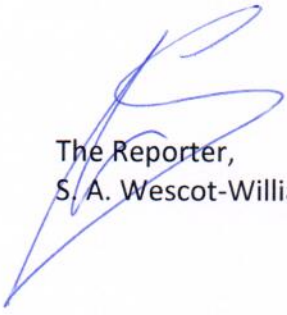
Will the draft law be correctly executed from the very start? Can a summary of the draft law be sent to Parliament in English?

The United People's Party-faction with great interest has taken note of the draft and asks for clarity on the checks and balances in the relationship between an administrative authority and the Public Prosecution. Will this draft law be translated law into English? In which case will an order be subjected to a financial penalty, an administrative enforcement order or an administrative fine be imposed?

- a. Who determines that the actual violation warrants the respective penalties?
- b. Who determines in which case will a business be closed?
- c. What will happen in the case that a business is wrongfully closed?
- d. In which cases will an inspector only issue a warning without further sanctions?
- e. Will there be a competition amongst inspectors to see who has collected the most administrative fines?
- f. Will the draft law also apply to the Bureau voor Telecommunicatie en Post (BTP), the Chamber of Commerce ("Kamer van Koophandel") and other quasi-government-like businesses? Will the Chamber of Commerce be contacted to modernize the Handelsregisterverordening so this law will become more effective?

Is there any legal provision, stating the maximum timeframe within which an administrative body has to decide upon a request by a citizen? What are the consequences if this timeframe expires without action?

This report is to be considered as Final Report.
Stipulated in the meeting of the Central Committee of October 25th, 2017.



The Reporter,
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