

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); prior notice
of introduction and explanatory summary of bill published in
Government Gazette No. 40017 of 25 May 2016)
(The English text is the official text of the Bill)*

(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

[B 19—2018]

ISBN 978-1-4850-0485-1

No. of copies printed 800

[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the Local Government: Municipal Structures Act, 1998, so as to insert, delete and amend certain definitions; to remove all references to district management areas; to remove all references to plenary executive system as a type of municipality; to provide for a minimum of 15 councillors per municipality; to amend the deviation threshold; to provide for the prohibition of a councillor who was found guilty of a breach of the Code of Conduct for Councillors for a period of two years; to clarify the date of assumption of office by a councillor; to allow for extension on the declaration of the result of an election; to require the municipal manager to inform the MEC for local government in the province in addition to the Electoral Commission of ward vacancies; to provide that the MEC call and set the date for by-elections; to clarify who can inform the municipal manager of a specific vacancy; to allow the MEC to designate a person to call and chair a meeting of the municipal council when the speaker or acting speaker refuses to call the meeting; to provide for additional functions of the speaker; to provide for a whip of municipal council; to clarify the formula for the composition of an executive committee; to provide for the establishment of a Municipal Public Accounts Committee; to provide for the resolution of a situation where excessive seats may arise from the seat calculation in local municipalities; to amend the timeframe for the municipal manager to inform the chief electoral officer of vacancies; to allow for the MEC to inform the chief electoral officer of vacancies if the municipal manager fails to do so; to clarify the supplementation of party lists for local municipalities; to provide for the resolution of multiple seats which may arise where a candidate qualifies to be elected to more than one seat; to clarify the supplementation of party lists for district municipalities; to provide for a Code of Conduct for Councillors; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000 and section 3 of Act 19 of 2008

1. Section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of “councillor” of the following definition:

“**‘declared elected’** means the publication of a notice in the *Government Gazette* reflecting the names of the councillors elected, and which 10

councillors are deemed to have been elected to the office on the date of the declaration of the results of an election;”;

- (b) by the deletion of the definition of “district management area”;
- (c) by the substitution for the definition of “election” of the following definition:
 - “**‘election’** in relation to a district council, means the election of the councillors referred to in section 23(1)(a) **[and (c)]**; and
- (d) by the insertion after the definition of “ward committee” of the following definition:
 - “**‘whip’** means a councillor elected in terms of section 41A to be the whip of a municipal council;”.

Repeal of section 6 of Act 117 of 1998, as amended by section 3 of Act 58 of 1999

- 2. Section 6 of the principal Act is hereby repealed.

Amendment of section 7 of Act 117 of 1998

- 3. Section 7 of the principal Act is hereby amended by the deletion of paragraph (c).

Substitution of section 9 of Act 117 of 1998

- 4. The following section is hereby substituted for section 9 of the principal Act:

“Types of category B municipalities

- 9. There are the following types of category B municipalities:
 - (a) a municipality with a collective executive system;
 - (b) a municipality with a collective executive system combined with a ward participatory system;
 - (c) a municipality with a mayoral executive system; and
 - (d) a municipality with a mayoral executive system combined with a ward participatory system[;
 - (e) **a municipality with a plenary executive system; and**
 - (f) **a municipality with a plenary executive system combined with a ward participatory system].”.**

Substitution of section 10 of Act 117 of 1998

- 5. The following section is hereby substituted for section 10 of the principal Act:

“Types of category C municipalities

- 10. There are the following types of category C municipalities:
 - (a) a municipality with a collective executive system; and
 - (b) a municipality with a mayoral executive system[; and
 - (c) **a municipality with a plenary executive system].”.**

Amendment of section 12 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000 and section 1 of Act 33 of 2000

- 6. Section 12 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for paragraph (eA) of the following paragraph:
 - “(eA) in the case of a district municipality, the number of councillors, determined in terms of section 23, to—
 - (i) proportionally represent parties; and
 - (ii) be appointed by each of the local councils within the district municipality to directly represent each local municipality; [and
 - (iii) **proportionally represent parties from each district management area within that district municipality;]**”; and
- (b) by the deletion in subsection (4) of paragraph (a).

Amendment of section 16 of Act 117 of 1998, as amended by section 3 of Act 33 of 2000

7. Section 16 of the principal Act is hereby amended by the deletion in subsection (3) of paragraph (a).

Amendment of section 20 of Act 117 of 1998, as amended by section 4 of Act 33 of 2000

8. Section 20 of the principal Act is hereby amended—

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

“(b) may not be fewer than **[three]** 15 or more than 90 councillors, if it is a local or district municipality; and” ; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) A deviation in terms of subsection (3) may not be more than 20 per cent if the geographical size of the municipality is greater than 20 000 square kilometres and if less than 35 councillors have been determined for the municipality in terms of the formula.”.

Amendment of section 21 of Act 117 of 1998, as amended by section 12 of Act 51 of 2002

9. Section 21 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) A councillor who is removed from office by the MEC for local government in a province in terms of item 16(6)(b) of the Code of Conduct for Councillors contained in Schedule 7, may not stand as a candidate in an election for any municipal council for a period of two years from the date on which such person was removed from office.”.

Amendment of section 22 of Act 117 of 1998

10. Section 22 of the principal Act is hereby amended—

(a) by the deletion of subsection (4); and

(b) by the addition of the following subsection:

“(5) An elected councillor is deemed to assume office on the date of the declaration of the results of an election.”.

Amendment of section 23 of Act 117 of 1998

11. Section 23 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of paragraph (c);

(b) by the substitution for subsection (2) of the following subsection:

“(2) The number of councillors representing local municipalities **[and district management areas]** in a district council referred to in subsection (1)(b) **[and (c)]** must be—

(a) equal to 60 per cent (fractions to be disregarded) of the number of councillors determined for the municipality in terms of section 20 before any increase in terms of section 20(5), plus the increase; and

(b) allocated to the respective local councils **[and district management areas]** in accordance with Part 2 of Schedule 2.”; and

(c) by the addition of the following subsection:

“(5) An elected councillor is deemed to assume office on the date of the declaration of the results of an election.”.

Amendment of section 25 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000

12. Section 25 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

- “(a) the Electoral Commission does not declare the result of the election **[of a municipal council, or in a district management area, or in a ward,]** within the period specified in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996), unless the period is extended in terms of section 64(2) of the Municipal Electoral Act, 2000 (Act No. 27 of 2000); 5
- (b) a court sets aside the election of a council, **[or in a district management area,]** or in a ward;”;
- (b) by the insertion after subsection (2) of the following subsection: 10
 “(2A) The municipal manager must inform the MEC for local government in the province and the Electoral Commission of a vacancy in a ward within 14 days from the date on which the vacancy occurred.”;
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 15
 “The **[municipal manager of the municipality concerned]** MEC for local government in the province, after consulting the Electoral Commission, must, by notice in **[a local newspaper]** the Provincial Gazette, call and set a date for the by-election, which must be held within 90 days of the date—”;
- (d) the deletion of subsection (4); and 20
- (e) the substitution for subsection (6) of the following subsection:
 “(6) The **[municipal manager of a municipality]** MEC for local government in the province may not call a by-election in terms of subsection (3) if— 25
- (a) the next election of all municipal councils must be held— 25
- (i) within nine calendar months of the applicable date mentioned in paragraph (a), (b) or (c) of subsection (3); or
- (ii) if it is a by-election in a ward, within **[six]** nine calendar months of the applicable date mentioned in paragraph (a), (b) or (d) of subsection (3); **[and]** or 30
- (b) the MEC for local government in the province in consultation with the Minister decides that the by-election must stand over until the next election of all municipal councils.”. 30

Amendment of section 27 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000, section 121 of Act 32 of 2000, section 2 of Act 20 of 2002 and section 10 of Act 55 of 2008 35

13. Section 27 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (d) of the following paragraph: 40
 “(d) contravenes a provision of the Code of Conduct for Councillors set out in Schedule **[1 of the Local Government: Municipal Systems Act, 2000]** 7, and is removed from office in terms of the Code;” and
- (b) by the addition of the following subsection: 45
 “(2) For purposes of this section, only an authorised representative, as defined in the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000), may inform a municipal manager that a vacancy has arisen as contemplated in subsection (1)(c) and (f).”.

Amendment of section 29 of Act 117 of 1998, as amended by section 3 of Act 20 of 2002, section 9 of Act 2 of 2003 and section 11 of Act 55 of 2008

14. Section 29 of the principal Act is hereby amended by the insertion of the following subsection after subsection (1): 50

- “(1A) If the speaker or acting speaker refuses to call the meeting of the council as requested in terms of subsection (1), the MEC for local government in the province may designate a person to call and chair the meeting.”.

Insertion of section 29A in Act 117 of 1998

15. The following section is hereby inserted in the principal Act after section 29:

“Public notice of meetings of municipal councils

29A. The municipal manager of a municipality must give notice to the public, in a manner determined by the municipal council, of the time, date and venue of every— 5

- (a) ordinary meeting of the council;
- (b) special meeting of the council;
- (c) ordinary or special meeting of the council that was postponed; and
- (d) urgent meeting of the council, except when time constraints make this impossible.” 10

Amendment of section 30 of Act 117 of 1998

16. Section 30 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 15

“(1) A majority of the number of councillors determined in terms of section 20 and present at a meeting of the council constitutes a quorum before a vote may be taken on any matter.”; and
- (b) by the substitution for subsection (4) of the following subsection:

“(4) If on any question, other than a matter mentioned in section 160(2) of the Constitution, there is an equality of votes, the councillor 20
presiding must exercise a casting vote in addition to that councillor’s vote as a councillor.”.

Amendment of section 36 of Act 117 of 1998

17. Section 36 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: 25

“(5) A councillor may not hold office as speaker and mayor or executive mayor at the same time[, **but in a municipality of a type mentioned in section 9(e) or (f) or 10(c) the speaker must be called the mayor.**].”.

Amendment of section 37 of Act 117 of 1998, as amended by section 14 of Act 51 of 2002 30

18. Section 37 of the principal Act is hereby amended—

- (a) by the substitution for paragraphs (e) and (f) of the following paragraphs, respectively:
 - “(e) must ensure compliance in the council and council committees with the Code of Conduct set out in Schedule [1 to the Local 35
Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)] 7; [and]
 - (f) must ensure that council meetings are conducted in accordance with the rules and orders of the council[.]”; and
- (b) by the addition of the following paragraphs: 40
 - “(g) must ensure that the legislative authority of the municipality functions effectively;
 - (h) is responsible for the effective oversight over the executive authority of the municipality;
 - (i) must ensure the effectiveness of the committees of the municipal 45
council established in terms of section 79; and
 - (j) is responsible for the ethics and accountability of the municipal council.”.

Insertion of sections 41A, 41B, 41C, 41D, 41E and 41F in Act 117 of 1998

19. The following sections are hereby inserted in the principal Act after section 41:

“Part 3

Whips of municipal councils

Election of whip

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41A. (1) Each municipal council, who has more than 40 councillors, may elect a whip.

(2) At its first sitting after its election, or when necessary to fill a vacancy, a municipal council may elect its whip from among the councillors.

(3) The speaker of the municipality presides over the election of the whip. 10

(4) The procedure set out in Schedule 3 applies to the election of the whip.

(5) A councillor may not hold office as whip, speaker, mayor or executive mayor at the same time. 15

Functions of whip

41B. The whip of a municipal council—

(a) liaises with the different political parties to ensure representation in council and council committees; 20

(b) maintains sound relations between the various political parties;

(c) informs the whips of all parties on important matters on the council agenda;

(d) assists the speaker to count votes in the council meeting;

(e) facilitates the interaction between the executive and legislative oversight structures in the municipality; and 25

(f) resolves disputes between the speaker, mayor or executive mayor, or members of the mayoral committee.

Term of office of whip

41C. The whip of a municipal council is elected for a term ending, subject to section 41D, when the next council is declared elected. 30

Vacation of office

41D. The whip of a municipal council vacates office during a term if that person—

(a) resigns as whip;

(b) is removed from office; or 35

(c) ceases to be a councillor.

Removal from office

41E. (1) A municipal council may remove, by resolution, the whip from office.

(2) Prior written notice of an intention to move a motion for the removal of the whip must be given. 40

Acting whips

41F. If the whip of a municipal council is absent or not available to perform the functions of whip, or during a vacancy, the council must elect another councillor to act as whip.”. 45

Amendment of section 43 of Act 117 of 1998

20. Section 43 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) (a) If the council of a municipality establishes an executive committee, it must **[elect]** determine a number of councillors necessary for effective and efficient government, provided that no more than 20 per cent of the councillors (fractions to be disregarded) or 10 councillors, whichever is the least, are elected.

(b) An executive committee may not have less than three members. 10

(2) The award of seats on the executive committee to political parties or political interests must be determined in the following manner—

(a) the number of seats won by a political party or political interest divided by the total number of councillors determined for that municipality in terms of section 20 and multiplied by the number of seats on the executive committee; 15

(b) if the calculation in paragraph (a) gives a surplus, that surplus must compete with the other similar surpluses, and be awarded to the highest surplus;

(c) if there is an equality of the surpluses, the result must be determined by lot; 20

(d) the political party or political interest to which seats are allocated to on the executive committee must nominate their representatives to occupy such seats;

(e) nothing precludes a political party or political interest from nominating a councillor from another political party or political interest to one or more of its allocated seats; and 25

(f) in the event of a vacancy arising on the executive committee, the political party or political interest to which the seat was allocated to will nominate a councillor to fill that vacancy.”; and 30

- (b) by the deletion of subsection (3).

Amendment of section 44 of Act 117 of 1998

21. Section 44 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the committee of a municipal council which receives reports from the **[other]** committees of the council referred to in section 80, and which must forward these reports together with its recommendations to the council when it cannot dispose of the matter in terms of its delegated powers.”. 35

Amendment of section 56 of Act 117 of 1998, as amended by section 16 of Act 51 of 2002 40

22. Section 56 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An executive mayor is entitled to receive reports from committees of the **[municipal]** council referred to in section 80, and to forward these reports together with a recommendation to the council when the matter cannot be disposed of by the executive mayor in terms of the executive mayor’s delegated powers.”. 45

Amendment of section 73 of Act 117 of 1998, as amended by section 6 of Act 19 of 2008

23. Section 73 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 50

“(1) A metropolitan or local council must establish a ward committee for each ward in the municipality within 120 days after the election of the municipal council, in accordance with section 22.”; and

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

“(1A) (a) If a metropolitan or local council is unable to establish a ward committee in accordance with subsection (1), the speaker must, in 55

writing and on good cause shown, request the MEC, responsible for local government in the province concerned, for an extension.

(b) The MEC must forward the request as well as the reasons for granting or refusing the extension to the Minister within 14 days after making the decision.”.

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Insertion of section 79A in Act 117 of 1998

24. The following section is hereby inserted in the principal Act after section 79:

“Establishment of Municipal Public Accounts Committee

79A. (1) A municipal council must establish a committee called the Municipal Public Accounts Committee.

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(2) The mayor or executive mayor, deputy mayor or executive deputy mayor, any member of the executive committee, any member of the mayoral committee, speaker, whip and municipal officials are not allowed to be members of the Committee;

(3) The municipal council must determine the functions of the committee, which must include the following:

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(a) review the Auditor-General reports and comments of the Management and the Audit Committee and make recommendations to the municipal council;

(b) review internal audit reports together with comments from the Management and Audit Committee and make recommendations to the municipal council;

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(c) initiate and develop the oversight report contemplated in section 129 of the annual report as required in terms of section 129 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

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(d) attend to and make recommendations to the municipal council on any matter referred to it by the municipal council, executive committee, a committee of the council, a member of this committee, a councillor and the municipal manager; and

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(e) on its own initiative but subject to the direction of the municipal council, investigate and report to the municipal council on any matter affecting the municipality.

(4) Reports of the Committee must be submitted to the speaker who must table such reports in the next meeting of the municipal council.

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(5) (a) For the purposes of this section “Audit Committee” means the audit committee envisaged in section 166 of the Local Government Municipal: Finance Management Act, 2003.

(b) Each municipality and each municipal entity must establish an audit committee in accordance with that section.”.

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Amendment of section 81 of Act 117 of 1998, as amended by section 121 of Act 32 of 2000, section 5 of Act 33 of 2000 and section 18 of Act 51 of 2002

25. Section 81 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) When participating in the proceedings of a municipal council, a traditional leader is subject to the appropriate provisions of the Code of Conduct set out in Schedule [1 of the Local Government: Municipal Systems Act, 2000] 7.”.

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Amendment of section 85 of Act 117 of 1998, as amended by section 7 of Act 33 of 2000 and section 10 of Act 19 of 2008

26. Section 85 of the principal Act is hereby amended by the deletion of subsections (3) and (4).

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Repeal of section 89 of Act 117 of 1998

27. Section 89 of the principal Act is hereby repealed.

General amendment

28. Reference to sections “9(e) and (f) and 10(c)” in sections 45(c), 46(a), 48(5)(c)(ii), 55(1)(c), 57(1)(a), 57(2)(c)(ii) and 72(1) of the principal Act is hereby deleted.

Amendment of Schedule 1 to Act 117 of 1998, as amended by section 93 of Act 27 of 2000, sections 22, 23, 24, 25 and 26 of Act 51 of 2002 and section 9 of Act 2 of 2003

29. Schedule 1 to the principal Act is hereby amended—

(a) by the addition in item 16 of the following subitems:

“(3) A new quota of votes for a seat must be determined in accordance with the following formula (fractions to be disregarded):”

$$\frac{A - B}{C - (D + E)} + 1$$

Where—

A represents the total number of valid votes cast for all parties, consisting of those cast on the party vote and those cast for ward candidates representing parties;

B represents the total number of seats cast for the party with excessive seats, both on the party vote and for ward candidates representing parties;

C represents the number of seats in the council;

D represents the number of seats awarded to the party with excessive seats; and

E represents the number of independent ward councillors elected.

(4) (a) The total number of valid votes cast for each party, both on the party vote and for ward candidates representing the party, excluding the party that has excessive number of seats, must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled.

(b) If the calculation in paragraph (a) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(c) If the surplus for two or more parties is equal, the seat must be awarded to the party that received the highest number of valid votes.

(5) If a ward candidate representing a party is elected unopposed, a vote cast by a voter registered in that ward for the party of which that candidate is a representative must, for the purpose of factors A and B and subitem (4), be counted as two votes.

(6) In an election for a council that has wards, the Electoral Commission must deduct from the total number of seats to which each party is entitled in terms of subitem (4), the number of ward candidates representing the party who were declared elected.

(7) If no party is awarded a seat in terms of subitem (4) (a), the votes for each party must be treated in accordance with subitem (4)(b) as if they are surpluses.

(8) The Electoral Commission must determine in the manner provided in item 13(5), which party candidates are elected.

(9) If a party is entitled to an additional number of seats in terms of subitem (4) and its list of candidates does not contain a sufficient number of candidates after having applied item 17(1), the party concerned forfeits, subject to subitem (1), the unfilled seats and the process provided in this item must be repeated until all seats have been filled or until all listed candidates have been allocated to a vacant seat.”;

- (b) by the substitution in item 17 for subitem (1) of the following subitem:
 “(1) If a party list contains fewer candidates than the party is entitled to, the Electoral Commission must in writing immediately notify the party of the exact shortfall and request the party to deliver within two days of the notice a list supplemented by the name or names of one or more eligible candidates.”; 5
- (c) by the insertion of the following item after item 17:

“ **Multiple seats**

- 17A.** (1) If a candidate is assigned to more than one seat, the parties or independent ward candidates must, within two days after being informed by the chief electoral officer, indicate to the Electoral Commission which seat such candidate should be designated to. 10
- (2) If a party or independent ward candidate fails to indicate to the chief electoral officer which seat such candidate should be designated, such candidate’s name must be deleted from the lists. 15
- (3) If a ward seat allocation is deleted it shall lead to the holding of a by-election.”;
- (d) by the substitution in item 18(1) for paragraph (b) of the following paragraph:
 “(b) Whenever a councillor referred to in paragraph (a) ceases to hold office, the municipal manager concerned must within **[seven]** 14 days after the councillor has ceased to hold office, inform the chief electoral officer accordingly.” ; 20
- (e) by the addition of the following paragraph in item 18(1):
 “(c) If the municipal manager of the municipality concerned does not inform the chief electoral officer of the vacancy referred to in paragraph (a), the MEC for local government in the province, must inform the chief electoral officer of the vacancy.”; and 25
- (f) by the substitution in item 20 for subitem (1) of the following subitem: “
 (1) (a) A party may not supplement or change its list from the date of the closure of nomination of candidates for an election until the date of the declaration of the results for that election. 30
 (b) (i) Subject to paragraph (a), a party may supplement or change its list, provided that if a councillor elected according to a party list ceases to hold office, the party concerned may supplement or change its list by not later than 21 days after the councillor has ceased to hold office. 35
 (ii) The vacancy must be filled as soon as the party in question has supplemented, changed or increased its list, but not later than 14 days after the expiry of the 21-day period.”.

Amendment of Schedule 2 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000, section 9 of Act 20 of 2002, section 27 of Act 51 of 2002, section 29 of Act 51 of 2002, section 30 of Act 51 of 2002, section 31 of Act 51 of 2002, section 9 of Act 2 of 2003 and section 17 of Act 55 of 2008 40

- 30.** (1) Schedule 2 to the principal Act is hereby amended—
 (a) by the substitution for item 2 of the following item:

“**Electoral system for party representatives** 45

2. The councillors of a district council that in terms of section 23 must be elected in accordance with this Part, must be elected [as follows:

- (a) **a number of councillors determined for the municipality in terms of section 23(3) must be elected from party lists to proportionally represent parties in the council; and** 50
- (b) **a number of councillors allocated in terms of section 23(2)(b) to any district management areas in the municipality must be elected from party lists to proportionally represent parties in those areas] from party lists to proportionally represent parties in the council.”;**

(b) by the substitution for item 3 of the following item:

“Number of votes

3. In an election for a district council,—
- (a) each voter registered in the area of a local municipality within the district municipality has one vote, and may vote for one party only; 5
- and**
- (b) each voter registered in a district management area within the district municipality has two votes, and may vote for—
- (i) not more than one party that submitted a list for the district council; and 10
- (ii) not more than one party that submitted a list for the district management area.”;
- (c) by the substitution in item 5 for subitem (1) of the following subitem::
- “(1) The number of candidates on a party list submitted by a party may not exceed double the number of seats in the district council allocated, as the case may be, for the election of councillors— 15
- (a) referred to in section 23(1)(a); or
- (b) to represent a district management area in the district council.”;
- (d) by the substitution for item 6 of the following item: 20

“Quota

6. The quota of votes for a seat in a district council [or for a seat in a district council as a representative of a district management area,] must be determined in accordance with the following formula (fractions to be disregarded): 25

$$\frac{A}{B} + 1$$

Where—

- A represents the total number of valid votes cast for all parties; and 30
- B represents [, as the case may be, either—
- (a) the number of seats in the district council allocated in terms of section 23(1)(a); or
- (b) the number of seats allocated to a district management area in the district council.”; 35
- (e) by the substitution in item 8 for subitem (1) of the following subitem:
- “(1) If only one party submitted a list, an election must not be held for the district council [or in the district management area] concerned.”;
- (f) by the substitution in item (10) for subitem (1) of the following subitem:
- “(1) If a party list contains fewer candidates than the party is entitled to, the chief electoral officer must in writing immediately notify the party of the exact shortfall and request the party to deliver within two days of the notice a list supplemented by the name or names of one or more eligible candidates.”; 40
- (g) by the insertion of the following item after item 10: 45

“Multiple seats

- 10A.** If a candidate is assigned to more than one seat, item 17A of Schedule 1, adjusted as may be contextually necessary, applies.”;
- (h) by the substitution in item 13 for subitem (1) of the following subitem: 50
- “(1) (a) A party may not supplement or change its list from the date of the closure of the nomination of candidates for an election until the date of the declaration of the results for that election.

(b) (i) Subject to the provisions of paragraph (a), a party may supplement or increase its list, provided that if a councillor elected according to a party list, ceases to hold office, the party concerned may supplement or increase its list by not later than 21 days after the councillor has ceased to hold office.

(ii) The vacancy must be filled as soon as the party in question has supplemented, changed or increased its list, but not later than 14 days after the expiry of the 21-day period.”;

(i) by the substitution for the heading of Part 2 of the following heading:

“Part 2

***Allocation and election of representatives of local councils
[and district management areas] to district councils”;***

(j) by the substitution for item 14 of the following item:

“Manner of election

14. The section 23(2) members of a district council must be [—

(a)] appointed by the councils of the local municipalities in the area of the district council from among their members [; and

(b) **if there is a district management area in the district municipality, elected in accordance with Part 1 of this Schedule to represent that area on the district council.**”;

(k) by the substitution for item 15 of the following item:

“Award of seats on district councils

15. (1) The quota of registered voters that a local council [or a district management area] must have in order to be entitled to a seat on a district council must be determined in accordance with the following formula (fractions to be disregarded)—

$$\frac{A}{B} + 1$$

Where—

A represents the total number of voters registered on the district council’s segment of the national common [voters roll] voters’ roll; and

B represents the number of seats on the district council determined in terms of section 23(2)(a) for representatives of the local councils [and district management areas] but disregarding any increase in terms of section 20(5).

(2) Each local municipality [and each district management area] in the area of a district municipality is entitled to a number of seats on the district council determined by dividing the total number of voters registered on the segment of the national common voters’ roll for that local municipality [or district management area] by the quota of votes for a seat on the district council determined in accordance with subitem (1).

(3) If the calculation in subitem (2) gives a figure that is a fraction of the figure 1, the council [or district management area,] must be awarded one seat and must not participate in any further calculation or award.

(4) If the calculation in subitem (2) yields a surplus, that surplus must compete with similar surpluses of any other council [or district management area], and any seat or seats not awarded in terms of subitems (2) and (3) must be awarded in sequence of the highest surplus.”;

(l) by the substitution for the heading of item 23 of the following heading:

“Filling of vacancies of district councils”; and

(m) by the repeal of item 24.

Amendment of Schedule 3 to Act 117 of 1998, as amended by section 34 of Act 51 of 2002

31. Schedule 3 to the principal Act is hereby amended by the substitution for item (1) of the following item:

“Application

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1. The procedure set out in this Schedule applies whenever a municipal council meets to elect a speaker, an executive mayor, a deputy executive mayor, a whip, a mayor or a deputy mayor.”.

Addition of Schedule 7 to Act 117 of 1998

32. The following Schedule is hereby added to the principal Act:

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“SCHEDULE 7

CODE OF CONDUCT FOR COUNCILLORS

PREAMBLE

Councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role, councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfil their obligations to their communities, and support the achievement by the municipality of its objectives set out in section 19, the following Code of Conduct is established.

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Definitions

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1. In this Schedule ‘partner’ means a person who permanently lives with another person in a manner as if married.

General conduct of councillors

2. A councillor must—

- (a) perform the functions of office in good faith, honestly and in a transparent manner; and
- (b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

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Voting at meetings

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3. A councillor may not vote in favour of or agree to a resolution which is before the council or a committee of the council, which conflicts with any legislation applicable to local government.

Attendance at meetings

4. A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when—

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- (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the council; or
- (b) that councillor is required in terms of this Code to withdraw from the meeting.

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Sanctions for non-attendance of meetings

5. (1) A municipal council may impose a fine as determined by the standing rules and orders of the municipal council on a councillor for—
- (a) not attending a meeting which that councillor is required to attend in terms of item 4; or 5
 - (b) failing to remain in attendance at such a meeting.
- (2) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of item 4, must be removed from office as a councillor. 10
- (3)(a) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt for the purposes of this item.
- (b) The uniform standing procedure must comply with the rules of natural justice. 15

Disclosure of interests

6. (1) A councillor must—
- (a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and 20
 - (b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's direct or indirect interest in the matter is trivial or irrelevant. 25
- (2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council. 30
- (3) This section does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality. 35

Personal gain

7. (1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.
- (2) No councillor may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality. 40

Declaration of interests

8. (1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor: 45
- (a) Shares and securities in any company;
 - (b) membership of any close corporation;
 - (c) interest in any trust;
 - (d) directorships; 50
 - (e) partnerships;
 - (f) other financial interests in any business undertaking;
 - (g) employment and remuneration;
 - (h) interest in property;
 - (i) pension; and 55
 - (j) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.

(3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with subitem (1).

(4) The municipal council must determine which of the financial interests referred in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

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Full-time councillors

9. A councillor who is a full-time councillor may not undertake any other paid work except with the consent of a municipal council which consent shall not unreasonably be withheld.

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Rewards, gifts and favours

10. A councillor may not request, solicit or accept any reward, gift or favour for—

(a) voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member;

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(b) persuading the council or any committee in regard to the exercise of any power, function or duty;

(c) making a representation to the council or any committee of the council; or

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(d) disclosing privileged or confidential information.

Unauthorised disclosure of information

11. (1) A councillor may, not without the permission of the municipal council or a committee, disclose any privileged or confidential information of the council or committee to any unauthorised person.

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(2) For the purpose of this item **‘privileged or confidential information’** includes any information—

(a) determined by the municipal council or committee to be privileged or confidential;

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(b) discussed in closed session by the council or committee;

(c) disclosure of which would violate a person’s right to privacy; or

(d) declared to be privileged, confidential or secret in terms of law.

(3) This item does not derogate from the right of any person to access to information in terms of national legislation.

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Intervention in administration

12. A councillor may not, except as provided by law—

(a) interfere in the management or administration of any department of the municipal council, unless mandated by the council;

(b) give or purport to give any instruction to any employee of the council, except when authorised to do so;

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(c) obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or

(d) encourage or participate in any conduct which would cause or contribute to maladministration in the council.

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Council property

13. A councillor may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.

Councillor in arrears

14. A councillor may not be in arrears to the municipality for rates and service charges for a period longer than 3 months.

Breaches of Code

15. (1) If the speaker of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the speaker must— 5

- (a) authorise an investigation of the facts and circumstances of the alleged breach;
- (b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and 10
- (c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.

(2) A report in terms of subitem (1)(c) is open to the public.

(3) The speaker must report the outcome of the investigation to the MEC for local government in the province concerned. 15

(4) The chairperson must ensure that each councillor, when taking office, is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.

Investigation of breach 20

16. (1) A municipal council may—

- (a) investigate and make a finding on any alleged breach of a provision of this Code; or
- (b) establish a special committee— 25
 - (i) to investigate and make a finding on any alleged breach of this Code; and
 - (ii) to make appropriate recommendations to the council.

(2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may—

- (a) issue a formal warning to the councillor; 30
- (b) reprimand the councillor;
- (c) request the MEC for local government in the province to suspend the councillor for a certain period;
- (d) fine the councillor; or
- (e) request the MEC to remove the councillor from office. 35

(3) (a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.

(b) A copy of the appeal must be provided to the council. 40

(c) The council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the MEC for local government in writing.

(d) The MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal. 45

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation as to the appropriate sanction in terms of subitem (2) if a municipal council does not conduct an investigation contemplated in subitem (1) and the MEC for local government considers it necessary. 50

(5) The Commissions Act, 1947 (Act No. 8 of 1947), or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of subitem (4).

(6) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the MEC may— 55

- (a) suspend the councillor for a period and on conditions determined by the MEC; or
 - (b) remove the councillor from office.
- (7) Any investigation in terms of this item and any action by the MEC in terms of subitem (6) must be in accordance with the rules of natural justice. 5

Application of Code to traditional leaders

- 17.** (1) Items 1, 2, 6, 7, 10 (b) to (d), 11, 12, 13, 15 and 16 (1) apply to a traditional leader who participates or has participated in the proceedings of a municipal council in terms of section 81. 10
- (2) These items must be applied to the traditional leader in the same way they apply to councillors.
- (3) If a municipal council or a special committee in terms of item 16(1) finds that a traditional leader has breached a provision of this Code, the council may—
- (a) issue a formal warning to the traditional leader; or 15
 - (b) request the MEC for local government in the province to suspend or cancel the traditional leader's right to participate in the proceedings of the council.
- (4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the right of the traditional leader to participate in the proceedings of the municipal council should be suspended or cancelled. 20
- (5) The Commissions Act, 1947 (Act No. 8 of 1947), may be applied to an investigation in terms of subitem (4). 25
- (6) If the MEC is of the opinion that the traditional leader has breached a provision of this Code, and that such breach warrants a suspension or cancellation of the traditional leader's right to participate in the council's proceedings, the MEC may—
- (a) suspend that right for a period and on conditions determined by the MEC; or 30
 - (b) cancel that right.
- (7) Any investigation in terms of this item and any action by the MEC in terms of subitem (6) must be in accordance with the rules of natural justice.
- (8) The suspension or cancellation of a traditional leader's right to participate in the proceedings of a council does not affect that traditional leader's right to address the council in terms of section 81(3).” 35

Repeal of laws

- 33.** Section 19 and Schedule 1 to the Local Government: Municipal Systems Act, 2000, are hereby repealed. 40

Short title and commencement

- 34.** This Act is called the Local Government: Municipal Structures Amendment Act, 2018, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2018

1. BACKGROUND

- 1.1 The Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (“the Act”), was enacted prior to the first democratic local government elections (“LGEs”) which were held on 5 December 2000. Since then, there were general LGEs held on 1 March 2006; 18 May 2011 and 03 August 2016.
- 1.2 Apart from the four general LGEs that were held, there have also been many by-elections during the terms, as follows:
 - (a) 2000 — 60 by-elections;
 - (b) 2006 — 54 by-elections;
 - (c) 2011 — 741 by elections; and
 - (d) 2016 — 43 by elections (9 months into the term).
- 1.3 The Independent Electoral Commission (“IEC”), based on its experience with managing the LGEs, have identified various provisions in the Act that need refinement and amendment in order to better facilitate LGEs. In addition to the proposals from the IEC, the Department of Cooperative Governance also proposed some amendments to the Act.
- 1.4 The South African Local Government Association (“SALGA”), provinces and some municipalities also proposed amendments to the Act, which are, in the main, to promote certainty on some matters and to strengthen governance in municipalities.
- 1.5 These proposals are informed by the various consultative processes and engagements with the relevant stakeholders.

2. OBJECTS OF BILL

The main object of the Bill is to address the problems that have been experienced in the implementation of the Act since its inception, most notably around the administration and the management of municipal elections, and to promote the effective and efficient implementation of the Act, as well as to strengthen oversight and governance in municipalities.

3. SUMMARY OF BILL

3.1 Amendment of section 1: Definitions

- 3.1.1 Section 1 is amended in order to insert the definition of “declared elected”.
- 3.1.2 Presently, there are different interpretations with regard to the date of assumption of duty, with some councils interpreting it as the date of the election, and some councils interpreting it as the date when the publication of the results in the *Government Gazette* takes place.
- 3.1.3 There also appears to be different interpretations as to the date when a councillor becomes elected. Municipal councils and SALGA have previously requested clarity; since there were three different interpretations that could be inferred, namely:
 - (a) the election date;
 - (b) the date of publication of the results of an election; and
 - (c) the date of the first council meeting.
 This also had payroll implications for councillors.

- 3.1.4 The insertion of the definition of “declared elected” will therefore clarify the different interpretations. The date of assumption of duty is the date of the declaration of the results of the election by the IEC.
- 3.1.5 The amendment also seeks to delete the definition of “district management areas” (“DMAs”) as all the provisions relating to DMAs are being deleted from the Act (see explanation below under paragraph 3.2).
- 3.1.6 There is also provision made for the whip of a municipal council, as municipalities presently appoint whips without any empowering provision in the Act. The details around the election, functions, term of office, vacation of office, removal from office and acting whips are provided for in a new section 41A of the Act (discussed below under paragraph 3.16). The definition of “whip” is therefore inserted in the Act.

3.2 Repeal of section 6 (and other related provisions dealing with DMAs)

- 3.2.1 The DMAs were declared by the Municipal Demarcation Board (“MDB”) in terms of section 6 of the Act. The declaration of these areas was however withdrawn by the MDB in Notice No. 1022 of 2008, published on 19 August 2008 in *Government Gazette* No. 31353.
- 3.2.2 In accordance with section 21 of the Local Government: Municipal: Demarcation Act, 1998 (Act No. 27 of 1998), the MDB had redetermined the boundaries of municipalities to include the DMAs into the areas of local municipalities. In addition, during 2013, DMAs were deleted from the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004). The sections in the Act dealing with DMA’s are therefore obsolete and cause confusion as no DMA’s were operational since 2008.
- 3.2.3 The other sections (either wholly or in part) in the Act that are affected in this regard are sections 12, 23, 25 and 89, and items 2, 3, 5, 6, 8, 14 and 15 of Schedule 2.
- 3.2.4 Consequently, the provisions in the Act relating to DMAs have therefore been deleted.

3.3 Amendment of sections 7, 9 and 10 (and other related provisions dealing with plenary type of municipalities)

Sections 7(c), 9(e) and (f) and 10(c) dealing with the plenary type of municipality are repealed in order to abolish the establishment of plenary type municipalities.

3.4 Amendment of section 12: MECs to establish municipalities

The amendment seeks to delete subsection 4(a) of section 12 of the Act, as the requirement to consult SALGA in the province and affected municipalities is already provided for in section 12(4)(b).

3.5 Amendment of section 16: Amendment of section 12 Notices

The amendment seeks to delete subsection 3(a) of section 12 of the Act, as the requirement to consult SALGA in the province and affected municipalities is already provided for in section 16(3)(b).

3.6 Amendment of section 20: Determination of number of councillors

- 3.6.1 Section 20 of the Act is amended to provide for a minimum of 15 councillors in a municipality and to allow the MEC to deviate by 20% when the size of a municipal area exceeds 20 000 square kilometres.
- 3.6.2 The main objective of this amendment is to deepen democracy by—
- (a) prescribing a minimum number of councillors, which will also result in municipalities having a minimum of 8 wards; and
 - (b) ensuring that in large areas, an MEC may deviate by 20% of the number of councillors determined by the formulae that the Minister prescribes, after taking into account the budget and the category of municipality.

3.7 Amendment of section 21: Qualifications for councillors

- 3.7.1 Section 21 of the Act is amended in order to insert a new subsection (1A). Subsection (1A) prohibits a councillor who has been removed from office by an MEC in terms of item 16(6)(b) of the Code of Conduct for Councillors from standing as a candidate in an election for any municipal council for a period of two years from the date on which such person was removed from office.
- 3.7.2 The objective of this amendment is to ensure that there is a “cooling-off” period for a person to be eligible as a councillor again after such a person is removed from office as a councillor.

3.8 Amendment of section 22: Election of metropolitan and local councils

Section 22 of the Act is amended in order to add subsection (5) which provides clarity with regard to the date of assumption of duty of elected councillors.

3.9 Amendment of section 23: Election and appointment of district councils

Apart from deleting reference to DMAs, this amendment proposes an additional subsection to section 23 (Election of district councils), and essentially gives effect to the definition of “declared elected” that is proposed above.

3.10 Amendment of section 25: By-elections

- 3.10.1 Currently in terms of section 25(1)(a) of the Act, a by-election must be held if the IEC does not declare the result of the election of a municipal council (or in a district management area, or in a ward) within the period specified in the Electoral Commission Act, 1996 (Act No. 51 of 1996), which is seven days. Should the IEC not declare the results within the seven-day period, the amendment provides the IEC with recourse to apply to the Electoral Court for an extension. The IEC would, however, be required to provide good reasons for the extension.
- 3.10.2 The amendment also inserts a new section (2A) which requires the municipal manager to inform the MEC for local government and the IEC of a vacancy in a ward within 14 days of a vacancy occurring. The MEC for local government in the province is also required, after consulting the IEC, to call and set a date for by-elections (instead of the municipal manager as is currently the case), by notice in the *Provincial Gazette*, so as to avoid delays.
- 3.10.3 The amendments also provide for the cessation of by-elections to nine (9) months in all cases. The rationale behind this proposed amendment is that it becomes increasingly difficult to manage by-elections and manage the impact of demarcation with regard to municipal and ward

boundaries simultaneously. This also currently confuses voters who are targeted for re-registration into new wards. In the absence of the proposed amendment these voters could potentially be located outside of the old wards wherein a by-election would occur; and

- 3.10.4 Furthermore, a requirement is made for the consultation of the Minister when the MEC makes a decision with regard to the by-election in terms of section 25(6)(b).

3.11 Amendment of section 27: Vacation of office

This amendment makes reference to the definition of “authorised representative”, as provided for in the Municipal Electoral Act, 2000 (Act No. 27 of 2000).

3.12 Amendment of section 29: Meetings of municipal councils

The amendment seeks to insert a new subsection (1A) which authorises the MEC for local government in the province to designate a person to call and chair the meeting of the council, should a speaker or acting speaker refuse to call a meeting of the council as requested by the majority of the councillors in terms of subsection (1).

3.13 Insertion of section 29A: Public notice of meetings of municipal councils

Currently, section 19 of the Municipal Systems Act, 2000 (Act No. 32 of 2000), provides for notification of meetings of council. To ensure proper flow with regard to the management of meetings, section 29A has been inserted to provide for the municipal manager to give notice to the public of the various meetings of the council. Section 19 of the Municipal Systems Act, 2000, will therefore be repealed.

3.14 Amendment of section 30: Quorums and decisions

This amendment is aimed at—

- (a) confirming that a quorum consists of the number of councillors as determined by the MEC when the municipality was established (in terms of section 12 of the Act); and
- (b) confirming that a councillor presiding at a meeting may not have a casting vote when considering matters listed in section 160(2) of the Constitution of the Republic of South Africa, 1996 (“Constitution”). This accords with the judgement of *Provincial Minister for Local Government, Environmental Affairs and Development Planning, Western Cape v Municipal Council of the Oudtshoorn Municipality* (CCT05/15) [2015] ZACC 24; where the Constitutional Court found section 30(4) of the Act to be inconsistent with the Constitution to the extent that it empowered the speaker to have a vote on matters listed in section 160(2) of the Constitution.

3.15 Amendment of section 37: Functions of speakers

The proposed amendment seeks to strengthen the functions of speakers, and to, amongst other matters, ensure that the legislative arm of the municipality functions effectively.

3.16 Insertion of section 41A-F: Part 3: Whips of municipal councils

- 3.16.1 These provisions are inserted to provide for a new Part 3: Whips of Municipal Councils, as follows:
- (a) Section 41A: Election of whip;
 - (b) Section 41B: Functions of whip;
 - (c) Section 41C: Term of office;
 - (d) Section 41D: Vacation of office;

- (e) Section 41E: Removal from office; and
- (f) Section 41F: Acting whips.

3.16.2 Currently, there is no provision that provides for the appointment or election of a whip of the municipal council; this amendment therefore “regularises” this issue.

3.17 Amendment of section 43: Composition of executive committees

- 3.17.1 Currently, when executive committees (“EXCO”) are established—
- (a) political parties are, in some instances, not at liberty to decide who, from the party, should form part of the EXCO and are “directed” by the majority party in the council as to who should form part of the EXCO; and
 - (b) there is no uniform formula that is applied to determine representation of political parties in the committee.
- 3.17.2 The proposed amendment seeks to ensure that there is a uniform formula that will be implemented across the country for the composition of an EXCO; the formula is similar to the one in Schedule 1 of the Act.
- 3.17.3 Political parties will therefore be able to identify their own members to occupy seats on the EXCO, and will not be dictated to by the majority party in a council.

3.18 Amendment of section 44: Functions and powers of executive committees

Section 44 is amended in order to clarify that only reports from section 80 committees may be submitted to EXCO.

3.19 Amendment of section 56: Functions and powers of executive mayors

- 3.19.1 Section 56 of the Act provides for the functions and powers of executive mayors and indicates that they are entitled to receive reports from committees of the council and to forward these reports together with a recommendation to the council when the matter cannot be disposed of by the executive mayor in terms of the executive mayor’s delegated powers.
- 3.19.2 As the section 80 committees are the committees to assist EXCOs or executive mayors, the amendment clarifies that the executive mayor is entitled to only receive reports from section 80 committees.

3.20 Amendment of section 73: Establishment of ward committees

Currently, there is no timeframe for the establishment of ward committees in metropolitan and local municipalities. The proposed amendment seeks to provide for the establishment of ward committees within 120 days after the election of all municipal councils, unless extenuating circumstances do not allow this to happen.

3.21 Insertion of section 79A: Establishment of the Municipal Public Accounts Committee

- 3.21.1 The amendment seeks to insert a new section 79A which provides for the establishment of the Municipal Public Accounts Committee (“MPAC”).
- 3.21.2 The establishment of this specific committee is intended to strengthen oversight and promote good governance in municipalities. The insertion prohibits certain councillors from becoming members of the MPAC, and it outlines the roles and responsibilities of the MPAC.

- 3.21.3 Importantly, reports of the MPAC are submitted to the speaker who must table such reports in the next meeting of the municipal council.

3.22 Amendment of section 81(5): Participation in municipal councils

The amendment of section 81(5) is a consequential amendment necessitated by the insertion of the Code of Conduct for Councillors (Schedule 7) in the Act.

3.23 Amendment of section 85: Adjustment of division of functions and powers between district and local municipalities

- 3.23.1 Section 85(4) of the Act mandates the MDB to consider the capacity of a district or local municipality when determining or redetermining their municipal boundaries.
- 3.23.2 Section 85(4) is deleted from the Act and will be included in the Local Government: Municipal Demarcation Act, 1998. This will ensure that the mandate or functions of the MDB are provided for in its founding legislation.

3.24 Amendment of section 89: District management areas

The provisions in the Act relating to DMAs have been deleted.

3.25.1 Amendment of Schedule 1: Electoral System for Metropolitan and Local Councils: Item 16: Excessive seats

- (a) Item 16 deals with the allocation of excessive seats. Over time, challenges were experienced by the IEC with the application of the formula where, in some instances, seats that were finally allocated were in conflict with the number of seats that were determined by the MEC responsible for local government. Also, political parties that received a greater number of overall votes, were disadvantaged as they had to give up seats when the formula was applied.
- (b) In other words, item 16 of Schedule 1 comes into effect when a party, in its overall Proportional Representative (“PR”) allocation, receives fewer seats than ward seats obtained. Since the PR list seats are calculated by subtracting the ward seats from the overall total, this calculation will then yield a negative. In terms of this item, the party is then awarded zero seats on the PR list which in effect yields additional seats equal to the negative.
- (c) The problem with the current formulation is that the number of seats will be increased in the municipality. The proposed amendment will prescribe a procedure for the redistribution of seats, similar to item 17 which deals with insufficient party lists. The party with excessive seats will be awarded the ward seats and then excluded from the subsequent calculation where a new quota is determined and PR list seats recalculated.
- (d) The effect of the change will be that another party, or parties, will then “lose” the seat(s) on the PR list equal to the number of excessive seats gained.

3.25.2 Item 17: Insufficient party lists

- (a) Item 17(1) is amended by adding a time limit of two days for parties to submit a list that supplements a party’s existing list at the IEC, when the existing list of the party has fewer candidates than the party is entitled to.
- (b) A new item 17A is inserted to ensure that where candidates (either an independent ward councillor, or nominated by a political party) are assigned to more than one seat before an election, such candidate (or political party) has two days to

indicate to the IEC which seat will be occupied. If the timeframe is not adhered-to, then the name of the candidate is deleted from the list, and in the case of the candidate being a ward councillor, then a by-election must be held.

- (c) The chief electoral officer is required to declare councillors elected so that local councils may be established. Once local councils have been established then district councils need to convene within the stipulated time frame. Since time is of the essence, the provision of the names of the designated candidates within a specified time limit in the case of multiple seats, becomes extremely necessary.
- (d) To this end, attention is also drawn to Schedule 1A (item 16) of the Electoral Act, 1998 (Act No. 73 of 1998). The absence of a time limit previously delayed the publication of the councillors declared elected. The IEC is therefore of the view that where a party nominates a candidate for multiple positions and a candidate accepts such multiple nominations, it is reasonable to expect that they would have envisaged a scenario as alluded to in the Schedule.

3.25.3 Item 18: Filling of vacancies

- (a) Item 18(1)(b) is amended to provide for the municipal manager to report a vacancy that has arisen within 14 days (and not seven, which is presently the case).
- (b) Furthermore, the amendment allows for the MEC to inform the IEC of a vacancy that has arisen, in the event that the municipal manager has not done so.

3.25.4 Item 20: Filling vacancies and changing the order

- (a) Presently, political parties are able to supplement their lists and change the order thereof at any time. The proposed amendment of this item provides that a political party may not supplement or change its list from the date of closure of the candidate nomination, and may only do so after the results of the election have been declared.
- (b) However, if a councillor ceases to hold office, a political party may change its list within 21 days after the councillor has ceased to hold office. The vacancy must also be filled within 14 days after the 21 days' period.

3.26.1 Amendment of Schedule 2: Part 1 items 2, 3, 5, 6 and 8

Deals with DMAs. The provisions in the Act relating to DMAs have been deleted.

3.26.2 Item 10: Insufficient party lists

- (a) Item 10(1) is amended by adding a time limit of two days for parties to submit a list that supplements a party's existing list at the IEC, when the existing list of the party has fewer candidates than the party is entitled to.
- (b) Item 10A is inserted to ensure that where candidates are assigned to more than one seat before an election, such candidate (or political party) has two days to indicate to the IEC which seat will be occupied.

3.26.3 Item 13: Filling vacancies and changing the order

- (a) The proposed amendment of this item provides that a political party may not supplement or change its list from the date of closure for candidate nominations, and may only do so after the results of the election have been declared.

- (b) However, if a councillor ceases to hold office, a political party may change its list within 21 days after the councillor has ceased to hold office. The vacancy must also be filled within 14 days after the 21 days period.

3.26.4 Item 14: Manner of election

Deals with DMAs. The provisions in the Act relating to DMAs have been deleted.

3.26.5 Item 15: Award of seats on district councils

Deals with DMAs. The provisions in the Act relating to DMAs have been deleted.

3.26.6 Item 23: Filling of vacancies

- (a) The amendment of this item proposes the addition of the words “of district councils” after the heading “Filling of vacancies”.
- (b) This is to provide clarity and not cause confusion, as item 11 in the same schedule also provides for “Filling of vacancies”.

3.26.7 Item 24: Electing members representing a DMA

Deals with DMAs. The provisions in the Act relating to DMAs have been deleted.

3.27 Insertion of Schedule 7: Code of Conduct for Councillors

Presently, the Code of Conduct for Councillors is contained in the Municipal Systems Act, 2000. As the Act largely deals with matters relating to councillors, it is proposed that the Code for Councillors is repealed from the Municipal Systems Act, 2000, and inserted in the Act.

4. PARTIES CONSULTED

The following stakeholders or parties were consulted during the development of the Bill:

4.1 Sector Departments and Provinces

- (a) Department of Traditional Affairs;
- (b) Provincial Departments responsible for local government;
- (c) Department of Rural Development and Land Reform;
- (d) Department of Water and Sanitation;
- (e) Statistics South Africa;
- (f) Department of Performance Monitoring and Evaluation;
- (g) Department of South African Police Service;
- (h) Department of Transport;
- (i) Department of Justice and Constitutional Development;
- (j) Department of Home Affairs;
- (k) Department of Tourism; and
- (l) National Treasury.

4.2 Organisations and Institutions

- (a) Municipal Demarcation Board;

- (b) South African Local Government Association;
- (c) South African Cities Network; and
- (d) Independent Electoral Commission.

5. FINANCIAL IMPLICATIONS FOR THE STATE

Financial implications are envisaged to the extent of publishing the Bill for comments, and other related engagements.

6. FINANCIAL IMPLICATIONS FOR PROVINCES

None.

7. FINANCIAL IMPLICATIONS FOR MUNICIPALITIES

None.

8. PARLIAMENTARY PROCEDURE

- 8.1 The Constitutional Court, in *Tongoane and Others v Minister for Agriculture and Land Affairs and Others* CCT 100/09 [2010] ZACC 10 (11 May 2010), paragraph 72, stated that the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not, in substantial measure, affect the provinces. It stated that whether a Bill is a section 76 Bill is determined in two ways. Firstly by the explicit list of legislative matters in section 76(3)(a) to (f) of the Constitution, and secondly by whether the provisions of a Bill in substantial measure, fall within a concurrent provincial legislative competence.
- 8.2 The State Law Advisers and the Department of Cooperative Governance are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996 ("Constitution"), since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies. In other words, the Bill does not deal with any matters listed in Schedule 4 to the Constitution (functional areas of concurrent national and provincial legislative competence) wherein the procedure set out in section 76 of the Constitution would apply.
- 8.3 The State Law Advisers are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-4850-0485-1