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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF CO-OPERATIVE GOVERNANCE**NO. 568****25 MAY 2016****LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2016**

The Minister for Cooperative Governance and Traditional Affairs intends introducing the Local Government: Municipal Structures Amendment Bill, 2016 in the National Assembly.

The Bill and the explanatory summary of the Bill is hereby published in accordance with Rule 241(1)(c) of the Rules of the National Assembly, for public comments.

Members of the public are invited to submit written comments within 30 calendar days of the date of publication of this Notice, to the following address:

By post to: The Director-General

For attention: Dr Kevin Naidoo

Department of Cooperative Governance

Private Bag X804

PRETORIA

0001

By e-mail to: kevin@cogta.gov.za

A copy of the Bill can be found on the website of the Department of Cooperative Governance at: **www.cogta.gov.za**, and may also be obtained from the Government Printers.

Comments received after the closing date will not be considered.

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2016

(As introduced in the National Assembly (proposed section 75 Bill);
(The English text is the official text of the Bill)

(Minister for Cooperative Governance and Traditional Affairs)

[B ---2016]

GENERAL EXPLANATORY NOTE:

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

_____ Words underlined with a solid line indicates insertions in existing enactments.

BILL

To amend the Local Government: Municipal Structures Act, 1998, to amend the table of contents; to amend the definitions; to amend the criteria for category A municipalities; to remove all references to district management areas; to clarify the date of assumption of office by a councillor; determine that the President must call and set the date for municipal council elections; to allow for extension on the declaration of the result of an election; to require the municipal manager to inform the IEC of ward vacancies; to determine that the MEC call and set the date for by-elections; to clarify the quorum requirements for a meeting of council; to clarify the circumstances for the casting vote of the councillor presiding during a council meeting; to increase the variance of the number of voters in each ward during demarcation; to clarify the allocation of excessive seats in local municipalities; to provide for multiple seats in local municipalities; to amend the timeframe for the municipal manager to inform the IEC of vacancies; to allow for the MEC to inform the IEC of vacancies if the municipal manager fails to do so; to clarify the supplementation of party lists for local municipalities; to provide for multiple seats in district municipalities; to clarify the supplementation of party lists for district municipalities; to amend the heading relating to the filling of vacancies of district councils; and to provide for matters connected therewith.

Amendment of section 1 of Act 117 of 1998

1. Section 1 of the principal Act, is hereby amended -

- (a) by the insertion of the following definition, after the definition of “councillor”:
““declared elected” means the publication of a notice in the government gazette reflecting the names of the councillors elected, and which councillors are deemed to have been elected to the office on the date of the declaration of the results of an election;”; and
- (b) by the deletion of the definition of “district management area”.

Substitution of section 2 of Act 117 of 1998

2. The following section is hereby substituted for section 2 of the principal Act:

“2. Areas which must have category A municipalities

An area must have a single category A municipality if that area can reasonably be regarded as-

- (a) a conurbation featuring -
 - (i) areas of high population density;
 - (ii) an intense movement of people, goods, and services;
 - (iii) extensive development; **[and]** or
 - (iv) multiple business districts and industrial areas;
- (b) a centre of economic activity with a complex and diverse economy;
- (c) a single area for which integrated development planning is desirable;
[and] or
- (d) having strong interdependent social and economic linkages between its constituent units.”

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

3. Section 6 of the principal Act is hereby repealed.

Amendment of section 12 of Act 117 of 1998, as amended by Act 27 of 2000

4. Section 12 of the principal Act, is hereby amended by the substitution for subsection (3)(eA) of the following subsection:

“(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;]**”.

Amendment of section 22 of Act 117 of 1998

5. Section 22 of the principal Act, is hereby amended by the addition of the following section-

“(5) An elected councillor will be 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

6. Section 23 of the principal Act, is hereby amended -

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

“(1) The council of a district municipality consists of -

- (a) councillors elected in accordance with Part 1 of Schedule 2 by voters registered on that municipality’s segment of the national common voters roll, to proportionally represent the parties that contested the election in that district municipality; and
- (b) councillors appointed in accordance with Schedule 2 by the councils of the respective local municipalities within that district municipality, to directly represent those local municipalities[; **and**
- (c) **if the district municipality has a district management area, councillors elected in accordance with Part 1 of Schedule 2 by voters registered on that district municipality’s segment of the national common voters**

roll in that area, to proportionally represent the parties that contested the election in that area.]”;

- (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 will be deemed to assume office on the date of the declaration of the results of an election.”.

Amendment of section 24 of Act 117 of 1998, as amended by Act 27 of 2000

7. Section 24 of the principal Act, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Whenever necessary, the **[Minister]** President, after consulting the Electoral Commission, must, by notice in the Government Gazette, call and set a date for an election of all municipal councils, which must be held within 90 days of the date of the expiry of the term of municipal councils. The notice may be published either before or after the term of municipal councils expires in terms of subsection (1).”.

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

8. Section 25 of the principal Act, is hereby amended by-

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

- “1(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 extended in terms of section 64(2) of the Municipal Electoral Act;
- (b) a court sets aside the election of a council, **[or in a district management area,]** or in a ward;
- (c) a council is dissolved; or
- (d) a vacancy in a ward occurs.”;
- (b) the substitution for subsection (3) of the following subsection:
- “(3) (a) 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.
- (b) 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 -
- [(a)](i)** of the voting day of the previous election, if subsection (1)(a) applies;
- [(b)](ii)** on which the election was set aside by the court, if subsection (1)(b) applies;
- [(c)](iii)** on which the council was dissolved, if subsection (1)(c) applies; or
- [(d)](iv)** on which the vacancy occurred, if subsection (1)(d) applies.”;
- (c) the deletion of subsection (4);
- (d) 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 -

- (a) the next election of all municipal councils must be held -
 - (i) within nine calendar months of the applicable date mentioned in paragraph (a), (b) or (c) of subsection (3); or
 - (ii) 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
- (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.”

Amendment of section 27 of Act 117 of 1998

10. Section 27 of the principal Act, is hereby amended by the addition of the following sub-section:

“(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 sections 27(1)(c) and (f).”.

Amendment of section 30 of Act 117 of 1998

9. Section 30 of the principal Act, is hereby amended –

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

“(1) A majority of the number of councillors in terms of section 12(3)(e), constitutes a quorum and must be present at a meeting of the council 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 presiding must exercise a casting vote in addition to that councillor’s vote as a councillor.”.

Repeal of section 89 of Act 117 of 1998

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

Amendment of Schedule 1 of Act 117 of 1998

11. Item 4 of Schedule 1 of the principal Act, is amended by the substitution for subitem (a) of the following subitem:

“(a) The number of registered voters in each ward, may not vary by more than **[fifteen]** twenty per cent from the norm, where the norm is determined by dividing the total number of registered voters on the municipality’s segment of the national common voters roll by the number of wards in the municipality.”

Amendment of Schedule 1 of Act 117 of 1998

12. Schedule 1 of the principal Act is amended by the substitution for item 16 of the following item:

“16. Excessive seats

(1) If, through the election of ward candidates, a party listed on the part of the ballot paper for parties has obtained a number of seats that is equal to, or greater than the total number of seats in the council to which it is entitled under item 13, that party must not be allocated any seats from its list of party candidates.

(2) The seats of ward candidates are not affected.

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

A – B +1

C – (D+ E)

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 valid votes 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 sub-item (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, 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.”.

Amendment of Schedule 1 of Act 117 of 1998, as amended by Act No 51 of 2002

13. Item 17 of Schedule 1 of the principal Act is amended by-

- (a) the substitution 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 a list supplemented by the name or names of one or more eligible candidates.”
- (b) the addition of the following subitem after subitem 17:
- “17A Multiple seats**
- (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 Commission which seat such candidate should be designated to.
- (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.”
- (3) If a ward seat allocation is deleted it shall lead to the holding of a by election.”.

Amendment of Schedule 1 of Act 117 of 1998, as amended by Act No 51 of 2002

14. Schedule 1 of the principal Act is amended by the substitution for item 18 of the following item:

- “(1) (a) If a councillor elected from a party list ceases to hold office, the chief electoral officer, must, subject to item 20, declare in writing the person whose name is at the top of the applicable party list to be elected in the vacancy.
- (b) Whenever a councillor referred to in paragraph (a) ceases to hold office, the municipal manager concerned must within **[seven]** fourteen days after the councillor has ceased to hold office, inform the chief electoral officer accordingly.
- (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.”.

Amendment of Schedule 1 of Act 117 of 1998, as amended by Act No 51 of 2002

15. Schedule 1 of the principal Act is amended by the substitution for item 20 of the following item:

- “(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.
- (b) Subject to the provisions of subitem (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. 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

16. Schedule 2 of the principal Act is amended by the substitution for item 2 of the following item:

“2. Electoral system for party representatives

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**
- (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.”

Amendment of Schedule 2 of Act 117 of 1998

17. Schedule 2 of the principal Act is amended by the substitution for item 3 of the following item:

“3. Number of votes

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; 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
 - (ii) not more than one party that submitted a list for the district management area.]”.

Amendment of Schedule 2 of Act 117 of 1998

18. Schedule 2 of the principal Act is amended by the substitution for subitem 5(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 [-

- (a) referred to in section 23(1)(a); or
- (b) to represent a district management area in the district council.]”.

Amendment of Schedule 2 of Act 117 of 1998

19. Schedule 2 of the principal Act is amended by the substitution for item 6 of the following item:

“6. Quota

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):

A

___ +1

B

Where -

A represents the total number of valid votes cast for all parties; and

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].**

Amendment of Schedule 2 of Act 117 of 1998

20. Schedule 2 of the principal Act is amended by the substitution for subitem 8(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.”

Amendment of Schedule 2 of Act 117 of 1998

21. Item 10 of Schedule 2 of the principal Act is amended by-

(a) the substitution for subitem 10(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 a list supplemented by the name or names of one or more eligible candidates.”; and

(b) the addition of the following subitem after subitem 10(8):

“10A. Multiple seats

If a candidate is assigned to more than one seat, item 17A of Schedule 1, adjusted as may be contextually necessary, applies.”

Amendment of Schedule 2 of Act 117 of 1998, as amended by Act No 51 of 2002

22. Schedule 2 of the principal Act is amended by the substitution for subitem 13(1) of the following subitem:

“(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) Subject to the provisions of subitem (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. 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

23. Part 2 of Schedule 2 of the principal Act is amended 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”

Amendment of Schedule 2 of Act 117 of 1998

24. Schedule 2 of the principal Act is amended by the substitution for item 14 of the following item:

“14. Manner of election

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 I of this Schedule to represent that area on the district council].”.**

Amendment of Schedule 2 of Act 117 of 1998

25. Schedule 2 of the principal Act is amended by the substitution for item 15 of the following item:

“15. Award of seats on district councils

(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; 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.”

Amendment of Schedule 2 of Act 117 of 1998

26. Schedule 2 of the principal Act is amended by the substitution for the heading of item 23 of the following heading:

“23. Filling of vacancies of district councils”.

Repeal of Item 24 of Schedule 2 of Act 117 of 1998

27. Item 24 of Schedule 2 of the principal Act is hereby repealed.

Amendment of Table of Contents

28. The Table of Contents of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (hereinafter referred to as the “principal Act”), is hereby amended by the substitution for the heading of Schedule 2, Part 2, of the following heading:

“Part 2: Allocation and election of representatives of local councils [and district management areas] to district councils”

Short title

29. This Act is called the Local Government: Municipal Structures Amendment Act, 2016, 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, 2016

1. BACKGROUND

The Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) – (Municipal Structures Act) was enacted prior to the first democratic local government elections (LGEs) which was held on 5 December 2000. Since then, there were general LGEs held on 1 March 2006 and on 18 May 2011.

Apart from the three general LGEs that were held, there have also been many by-elections during the three terms. For example, there were 60 and 54 by-elections during the first and second terms, respectively, and with more than 700 by-elections already being held during the present term.

The Independent Electoral Commission (IEC), based on its experience with managing the LGEs, have identified various provisions in the Municipal Structures Act that need refinement and amendment in order to better facilitate LGE.

In addition to the proposals from the IEC, the Department of Cooperative Governance (DCoG) also proposes some amendments to the Act.

2. OBJECTS OF THE BILL

The main object of the Bill is to address the problems that have been experienced in the implementation of the Municipal Structures 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.

3. SUMMARY OF THE BILL

3.1 Amendment of Section 1:

This proposal requires that the term “declared elected” to be defined.

Presently, there is no uniform interpretation of 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. The insertion of the definition will confirm that the date of assumption of duty is the date of the declaration of the results of the election by the IEC.

The need for the definition of “declared elected” also arose out of different interpretations as to the date when a councillor becomes elected. Municipal councils and the South African Local Government Association (SALGA) have previously asked for an interpretation since there were three different interpretations that could be inferred, namely: the election date; the date of publication of the results of an election; and the date of the first council meeting. This also had payroll implications for councillors.

3.2 Amendment of Section 2:

This proposal provides for the restrictive requirement of various criteria being complied-with to be removed when identifying those areas that must have a single category A municipality.

Regulations envisaged in terms of section 41 of the Local Government: Municipal Demarcation Act (Act No. 27 of 1998) will provide a framework when the Municipal Demarcation Board (MDB) demarcates a Category A municipality.

3.3 Amendment of Section 6 (and other related provisions dealing with District Management Areas – [DMAs])

During 2000, DMAs were declared by the MDB in terms of Section 6 of the Municipal Structures Act. The declaration of these areas was withdrawn by the MDB in Notice No. 1022 of 2008, published on 19 August 2008 in *Government Gazette* No. 31353.

In terms of Section 21 of the Municipal Demarcation Act, the boundaries of municipalities had been redetermined to include the DMAs into the areas of local municipalities.

In addition, during 2013, DMAs were deleted from the Municipal Property Rates Act, 2004, and currently the clauses in the Municipal Structures Act are obsolete and causes confusion as no DMAs were operational since 2008.

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.

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

3.4 Amendment of Section 22:

This amendment proposes an additional subsection to Section 22 (Election of metropolitan and local councils) and essentially gives effect to the definition that is proposed above.

3.5 Amendment of Section 23:

This amendment proposes an additional subsection to Section 23 (Election of district councils), and essentially gives effect to the definition that is proposed above.

3.6 Amendment of Section 24(2):

This amendment deals with the President calling and setting the date for municipal elections, rather than the Minister doing so (as is presently provided-for in the Structures Act).

3.7 Amendment of Section 25(1) (a):

This amendment deals with the administration of by-elections.

- (i) Presently, 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, which is seven days.
- (ii) The amendment proposes that the IEC will, in future, not be constrained by the seven days period, but will have recourse to applying to the Electoral Court for an extension to declare the result of the election of a municipal council. The IEC will be required to provide good reasons for doing so.

3.8 Amendment of Section 25(3), 25(4) and 25(6):

Presently, the municipal manager, after consulting the IEC, must call and set a date for a by-election.

This amendment is aimed at:

- (a) Requiring the municipal manager to inform the MEC and the IEC of the vacancy within 14 days of a vacancy taking place;
- (b) Authorising the MEC, after consulting the IEC, to call and set a date for by-elections (instead of the municipal manager), so as to avoid delays;
- (c) Providing 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 by-election would occur.
- (d) Ensuring that the MEC may only decide that a by-election may stand over until the next election of municipal councils if it is done in consultation with the Minister.

3.9 Amendment of Section 27:

This amendment makes reference to the definition of “authorised representative”, as provided for in the Municipal Electoral Act, as amended in 2016.

3.10 Amendment of Section 30:

- (i) Section 30 of the Municipal Structures Act deals with quorums and decisions, and the proposed amendment confirms that the number to be considered to determine the quorum must be the number of councillors as determined by the MEC when the municipality was established (in terms of section 12 of the Municipal Structures Act).
- (ii) Further, in the matter before the Constitutional Court between the MEC for local government from the Western Cape Province (applicant) and the Minister (as one of four respondents), the Court confirmed on 18 August 2015 that the councillor presiding at a meeting may not have a casting vote when considering matters mentioned in section 160(2) of the Constitution. These matters are the:
 - (a) Passing of by-laws;
 - (b) Approval of budgets;
 - (c) Imposition of rates and other taxes, levies and duties; and
 - (d) Raising of loans.
- (iii) In deciding the matter, the Court “read-in” certain words into section 30(4) of the Municipal Structures Act, and the proposed amendment regularises this reading-in by the Court.

3.11 Amendment of Schedule 1: Electoral System for Metropolitan and Local Councils: Delimitation Criteria:

- (i) Presently, the number of registered voters in each ward may not vary by more than 15% from the norm, where the norm is determined by dividing the total

number of registered voters for the municipality by the number of wards in the municipality.

- (ii) To ensure that the 15% norm is adhered-to, ward boundaries need to be changed to accommodate this requirement.
- (iii) It is therefore proposed that the variation from the norm be changed to 20% to minimise the changing of ward boundaries, as provided for in this amendment.

3.12 Amendment of Schedule 1: Part Three: Item 16: Proportional Representation Elections:

This Item in the Schedule deals with the allocation of excessive seats.

- (i) 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.
- (ii) In other words, Item 16 of Schedule 1 comes into effect when a party, in its overall 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.
- (iii) 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 section 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.

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.

3.13 Amendment of Schedule 1: Part Three: Item 17: Insufficient Party Lists

- (i) 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.
- (ii) A new Item 17A is proposed 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 is to be held.

- (iii) 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.
- (iv) To this effect, your 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. It is our view that where a party nominates a candidate for multiple positions and a candidate accepts such multiple nominations, that it is reasonable to expect that they would have envisaged a scenario as alluded to in the Schedule.

3.14 Amendment of Schedule 1: Part Three: Item 18: Filling of Vacancies

- (i) 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).
- (ii) The further 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.

3.15 Amendment of Schedule 1: Part Three: Item 20: Filling of Vacancies and Changing the Order:

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:

- (i) A political party may not supplement or change its list from the date of the close of candidate nomination, and may only do so after the results of the election have been declared.
- (ii) 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.

3.16 Amendment of Schedule 2: Electoral System for District Councils: Part 1: Proportional Elections: Item 10: Insufficient Party Lists:

- (i) 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.
- (ii) A new Item 10A is proposed 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.

3.17 Amendment of Schedule 2: Electoral System for District Councils: Part 1: Proportional Elections: Item 13: Filling Vacancies and Changing the Order:

The proposed amendment of this item provides that:

- (i) A political party may not supplement or change its list from the date of the close of candidate nomination, and may only do so after the results of the election have been declared.
- (ii) 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.

3.18 Amendment of Schedule 2: Electoral System for District Councils: Part 2: Allocation and Election of Representatives of Local Councils to District Councils: item 23: Filling of Vacancies

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

4. PARTIES CONSULTED

- (i) Engagements have been held with the following stakeholders:
 - Office of the Chief State Law Adviser (OCSLA);
 - The IEC;
 - The MDB;
 - The SALGA; and
 - Provincial Departments responsible for local government.

- (ii) The OCSLA has advised that the Bill is in accordance with the principles of the Constitution and the law, and none of its provisions go against those principles.

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 OCSLA and the Department of Cooperative Governance are of the opinion that the Amendment Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution apply.
- 8.2. The State Law Advisers are 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.

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