

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL

*(As amended by the Portfolio Committee on Cooperative Governance and
Traditional Affairs (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

[B 19B—2018]

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[] 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 10 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, acting speaker or municipal manager 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)]**;
- (d) by the insertion after the definition “municipality” of the following definition:
 - “**‘Municipal Public Accounts Committee’** means a committee established in terms of section 79A;”;
- (e) 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. 15

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 20

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 25
- (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].”.** 30

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 35
- (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 by the substitution in subsection (3) for paragraph (eA) of the following paragraph: 40

“(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** 45
- (iii) **proportionally represent parties from each district management area within that district municipality;].”.**

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

7. 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]** 10 or more than 90 councillors, if it is a local or district municipality; and” ; and

- (b) by the insertion in subsection (4) after paragraph (b) of the following paragraphs:

(c) 20 per cent if the geographical size of the local 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; and

(d) Any deviation in terms of section 20(4)(a), (b) or (c) must be done with the concurrence of the Minister.”.

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

8. 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(7)(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

9. 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

10. 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

11. 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 MEC for local government in the province may not call a by-election in terms of subsection (1) if— 25
 (a) the next election of all municipal councils must be held within nine calendar months of the applicable dates mentioned in subsection (3); 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, 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 30

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

- (a) by the substitution for paragraph (d) of the following paragraph: 35
 “(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;”
- (b) by the substitution for paragraph (e) of the following paragraph: 40
 “(e) is a representative of a local council in a district council and ceases to be a member of the local council which appointed that councillor to the district council or is replaced in terms of Item 23 of Schedule 2 to this Act by the local council as its representative in the district council; or”; and
- (c) 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 50

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

- “(1A) If the speaker or acting speaker refuses to call a meeting of the council as requested in terms of subsection (1), the municipal manager of the municipality or, in the absence or refusal by the municipal manager, a person designated by the MEC for local government in the province may on good cause shown designate a person to call and chair the meeting.”. 55