

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary
of Bill and prior notice of its introduction published in Government Gazette No. 42213
of 1 February 2019)
(The English text is the official text of the Bill)*

(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Local Government: Municipal Systems Act, 2000, so as to insert and amend certain definitions; to make further provision for the appointment of municipal managers and managers directly accountable to municipal managers; to provide for procedures and competency criteria for such appointments, and for the consequences of appointments made otherwise than in accordance with such procedures and criteria; to determine timeframes within which performance agreements of municipal managers and managers directly accountable to municipal managers must be concluded; to make further provision for the evaluation of the performance of municipal managers and managers directly accountable to municipal managers; to require employment contracts and performance agreements of municipal managers and managers directly accountable to municipal managers to be consistent with the Act and any regulations made by the Minister; to require all staff systems and procedures of a municipality to be consistent with uniform standards determined by the Minister by regulation; to bar municipal managers and managers directly accountable to municipal managers from holding political office in political parties; to regulate the employment of municipal employees who have been dismissed; to provide for the Minister to make regulations relating to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers; to provide for the approval of staff establishments of municipalities by the respective municipal councils; to prohibit the employment of a person in a municipality if the post to which he or she is appointed is not provided for in the staff establishment of that municipality; to enable the Minister to prescribe frameworks to regulate human resource management systems for local government and mandates for organised local government; to extend the Minister's powers to make regulations relating to municipal staff matters; to make a consequential amendment to the Local Government: Municipal Structures Act, 1998, by deleting the provision dealing with the appointment of municipal managers; 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 32 of 2000, as amended by section 1 of Act 44 of 2003, section 35 of Act 51 of 2002 and section 1 of Act 7 of 2011

1. Section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (hereinafter referred to as the “principal Act”), is hereby amended—

(a) by the substitution for the definition of “municipal manager” of the following definition: 5

“**‘municipal manager’** means a person appointed in terms of section 54A;”; and

(b) by the substitution for the definition of “political office” of the following definition: 10

“**‘political office’**, in relation to a political party or structure thereof, means—

(a) the position of chairperson, deputy chairperson, secretary, deputy secretary or treasurer of the party nationally or in any province, region or other area in which the party operates; or 15

(b) any position in the party equivalent to a position referred to in paragraph (a), irrespective of the title designated to the position;”.

Substitution of section 54A of Act 32 of 2000, as inserted by section 2 of Act 7 of 2011 and amended by section 4 of Act 7 of 2011

2. The following section is hereby substituted for section 54A of the principal Act: 20

“Appointment of municipal managers and acting municipal managers

54A. (1) The municipal council must appoint—

(a) a municipal manager as head of the administration of the municipal council; or 25

(b) an acting municipal manager under circumstances and for a period as prescribed.

(2) A person appointed as municipal manager in terms of subsection (1) must at least have the skills, expertise, competencies and qualifications as prescribed.

(2A) (a) A person appointed in terms of subsection (1)(b) may not be appointed to act for a period that exceeds three months. 30

(b) A municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a), for a further period that does not exceed three months. 35

(3) A decision to appoint a person as municipal manager, and any contract concluded between the municipal council and that person in consequence of the decision, is null and void if—

(a) the person appointed does not have the prescribed skills, expertise, competencies or qualifications; or 40

(b) the appointment was otherwise made in contravention of this Act.

(4) If the post of municipal manager becomes vacant, the municipal council must—

(a) advertise the post nationally to attract a pool of candidates nationwide; and 45

(b) select from the pool of candidates a suitable person who complies with the prescribed requirements for appointment to the post.

(5) The municipal council must re-advertise the post if there is no suitable candidate who complies with the prescribed requirements.

(6) (a) The municipal council may request the MEC for local government to second a suitable person, on such conditions as prescribed, to act in the advertised position until such time as a suitable candidate has been appointed. 50

(b) If the MEC for local government has not seconded a suitable person within a period of 60 days after receipt of the request referred to in paragraph (a), the municipal council may request the Minister to second a suitable person, on such conditions as prescribed, until such time as a suitable candidate has been appointed. 55

(7) (a) The municipal council must, within 14 days, inform the MEC for local government of the appointment process and outcome, as may be prescribed.

(b) The MEC for local government must, within 14 days of receipt of the information referred to in paragraph (a), submit a copy thereof to the Minister.

(8) If a person is appointed as municipal manager in contravention of this section, the MEC for local government must, within 14 days of receiving the information provided for in subsection (7), take appropriate steps to enforce compliance by the municipal council with this section, which may include an application to a court for a declaratory order on the validity of the appointment, or any other legal action against the municipal council.

(9) Where an MEC for local government fails to take appropriate steps referred to in subsection (8), the Minister may take the steps contemplated in that subsection.

(10) A municipal council may, in special circumstances and on good cause shown, apply in writing to the Minister to waive any of the requirements listed in subsection (2) if it is unable to attract suitable candidates.

(11) A person who has been appointed as acting municipal manager before this section took effect, must be regarded as having been appointed in accordance with this section for the period of the acting appointment.

(12) Any pending legal or disciplinary action in connection with an appointment made before this section took effect, will not be affected by this section after it took effect.

Substitution of section 56 of Act 32 of 2000, as substituted by section 3 of Act 7 of 2011 and amended by section 4 of Act 7 of 2011

3. The following section is hereby substituted for section 56 of the principal Act:

“Appointment of managers directly accountable to municipal managers

56. (1) (a) A municipal council, after consultation with the municipal manager, must appoint—

- (i) a manager directly accountable to the municipal manager; or
- (ii) an acting manager directly accountable to the municipal manager under circumstances and for a period as prescribed.

(b) A person appointed in terms of paragraph (a)(i) must at least have the skills, expertise, competencies and qualifications as prescribed.

(c) A person appointed in terms of paragraph (a)(ii) may not be appointed to act for a period that exceeds three months: Provided that a municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a), for a further period that does not exceed three months.

(2) A decision to appoint a person referred to in subsection (1)(a)(ii), and any contract concluded between the municipal council and that person in consequence of the decision, is null and void if—

- (a) the person appointed does not have the prescribed skills, expertise, competencies or qualifications; or
- (b) the appointment was otherwise made in contravention of this Act, unless the Minister, in terms of subsection (6), has waived any of the requirements listed in subsection (1)(b).

(3) If a post referred to in subsection (1)(a)(i) becomes vacant, the municipal council must—

- (a) advertise the post nationally to attract a pool of candidates nationwide; and
- (b) select from the pool of candidates a suitable person who complies with the prescribed requirements for appointment to the post.

(4) The municipal council must re-advertise the post if there is no suitable candidate who complies with the prescribed requirements.

(4A) (a) The municipal council must, within 14 days of the date of appointment, inform the MEC for local government of the appointment process and outcome, as may be prescribed.

(b) The MEC for local government must, within 14 days of receipt of the information referred to in paragraph (a), submit a copy thereof to the Minister.

(5) If a person is appointed to a post referred to in subsection (1)(a) in contravention of this Act, the MEC for local government must, within 14 days of becoming aware of such appointment, take appropriate steps to enforce compliance by the municipal council with this Act, which steps may include an application to a court for a declaratory order on the validity of the appointment or any other legal action against the municipal council.

(6) A municipal council may, in special circumstances and on good cause shown, apply in writing to the Minister to waive any of the requirements listed in subsection (1)(b) if it is unable to attract suitable candidates.

(7) A person appointed in a permanent capacity as a manager directly accountable to the municipal manager when this section takes effect, must be regarded as having been appointed in accordance with this section.

(8) A person appointed as an acting manager directly accountable to the municipal manager when this section takes effect, must be regarded as having been appointed in accordance with this section only for the period of the acting appointment.

(9) Any pending legal or disciplinary action in connection with an appointment made before this section took effect, will not be affected by this section after it took effect.

Substitution of words in section 54A and 56 of Act 32 of 2000, as inserted by section 4 of Act 7 of 2011

4. The principal Act is hereby amended by the substitution, in section 54A and section 56, for the word “municipality”, wherever it occurs, of the words “municipal council”.

Substitution of section 56A of Act 32 of 2000, as inserted by section 5 of Act 7 of 2011

5. The following section is hereby substituted for section 56A of the principal Act:

“Limitation of political rights of municipal managers and managers directly accountable to municipal managers

56A. (1) A municipal manager or manager directly accountable to a municipal manager may not hold political office in a political party, whether in a permanent, temporary or acting capacity.

(2) This section does not apply to a person appointed as municipal manager or a manager directly accountable to the municipal manager when subsection (1) takes effect.

Amendment of section 57 of Act 32 of 2000, as amended by section 8 of Act 44 of 2003, section 12 of Act 19 of 2008 and section 6 of Act 7 of 2011

6. (1) Section 57 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

- “(a) (i) be concluded within 60 days after a person has been appointed as the municipal manager or as a manager directly accountable to the municipal manager, failing which the appointment lapses: Provided that, upon good cause shown by such person to the satisfaction of the municipality, the appointment shall not lapse; and
(ii) be concluded annually, thereafter, within one month after the beginning of each financial year of the municipality;”;