

REPUBLIC OF SOUTH AFRICA

**LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS
AMENDMENT BILL**

*(As amended to 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 2B—2019]

ISBN 978-1-4850-0678-7

No. of copies printed 800

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, treasurer or an elected or appointed decision-making position of a political 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 20

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

“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 or acting municipal manager in terms of subsection (1) must at least have the skills, expertise, competencies and qualifications as prescribed. 30

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

(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. 50

(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.

(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 55

suitable person, on such conditions as prescribed, until such time as a suitable candidate has been appointed.

(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) If the MEC for local government fails to respond to the appointment process and outcome within the timeframes, as contemplated in subsection (7)(b) or the Minister fails to respond as contemplated in subsection (9), the appointment of the senior manager will be deemed to be in compliance with this Act: Provided the municipality submitted all relevant documents, as prescribed.”.

(11) 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.

(12) 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.

(13) 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) or (ii) 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”.

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

5. (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;”;

- (b) by the substitution for subsection (3) of the following subsection:
 “(3) The employment contract referred to in subsection (1)(a) must—
 (a) include details of duties, remuneration, benefits and other terms and conditions of employment, as agreed to by the parties, subject to consistency with—
 (i) this Act;
 (ii) any regulations as may be prescribed that are applicable to municipal managers or managers directly accountable to municipal managers; and
 (iii) any applicable labour legislation; and
 (b) be signed by both parties before the commencement of service.”;
- (c) by the substitution for subsection (3A) of the following subsection:
 “(3A) Any regulations that relate to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers or managers directly accountable to municipal managers, must be regarded as forming part of an employment contract referred to in subsection (1)(a).”;
- (d) by the deletion in subsection (4) of paragraph (b);
- (e) by the substitution for subsection (4C) of the following subsection:
 “(4C) Any regulations that relate to standards and procedures for evaluating performance of municipal managers or managers directly accountable to municipal managers, and intervals for evaluation, must be regarded as forming part of a performance agreement referred to in subsection (1)(b).”; and
- “(f) by the substitution for subsection (6) of the following subsection:
 “(6) The employment contract for a municipal manager must be signed within one month of his or her date of appointment and must—
 (a) be for a fixed term of employment up to a maximum of five years, not exceeding a period ending one year after the election of the next council of the municipality;
 (b) include a provision for cancellation of the contract, in the case of non-compliance with the employment contract or, where applicable, the performance agreement; and
 [(c) stipulate the terms of the renewal of the employment contract, but only by agreement between the parties; and]
 (d) reflect the values and principles referred to in section 50, the Code of Conduct set out in Schedule 2, and the management standards and practices contained in section 51.”.
- “(g) by the substitution for subsection (7) of the following subsection:
 “(7)(a) Subject to paragraph (b), a municipal council must make a decision on whether the employment contract of a manager directly accountable to the municipal manager must be for a fixed term, in accordance with subsection (6), or on a permanent basis.
 (b) A decision in terms of paragraph (a) must be made by the municipal council, in consultation with the mayor or the executive committee, as the case may be, after recommendation by the municipal manager.”.

Substitution of section 57A in Act 32 of 2000, as inserted by section 7 of Act 7 of 2011

6. The following section is hereby substituted for section 57A of the principal Act: 50

“Employment of dismissed staff and record of disciplinary proceedings

- 57A.** (1) Any staff member dismissed for misconduct may only be re-employed in any municipality after the expiry of a prescribed period.
 (2) The Minister must prescribe different periods of expiry, as contemplated in subsection (1), for different categories of misconduct.
 (3) Notwithstanding subsections (1) and (2), a staff member dismissed for financial misconduct contemplated in section 171 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of

2003), corruption or fraud, may not be re-employed in any municipality for a period of 10 years.

(4) Notwithstanding subsection (1), the Minister may prescribe acts of misconduct in respect of which no period need expire before a person may again be employed in any municipality.

(5) Subject to subsection (1), a decision to employ a person dismissed for misconduct must be taken with due regard to the nature of the misconduct concerned.

(6) A municipality must maintain a record that contains the prescribed information regarding the disciplinary proceedings of staff members dismissed for misconduct.

(7) A copy of the record referred to in subsection (6) must be submitted to the MEC for local government on a quarterly basis.

(8) The MEC for local government must, within 14 days of receipt of the record referred to in subsection (6), submit a copy thereof to the Minister.

(9) The Minister must maintain a record of all staff members that have—
 (a) been dismissed for misconduct; or
 (b) resigned prior to the finalisation of the disciplinary proceedings, which record must be made available to municipalities as prescribed.”.

Amendment of section 66 of Act 32 of 2000, as amended by section 8 of Act 7 of 2011

7. Section 66 of the principal Act is hereby amended—

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

“(a) develop a staff establishment for the municipality, and submit the staff establishment to the municipal council for approval;”;

(b) by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:

“(3) No person may be employed in a municipality unless the post to which he or she is appointed, is provided for in the staff establishment of that municipality.

(4) A decision to employ a person in a municipality, and any contract concluded between the municipality and that person in consequence of the decision, is null and void if the appointment was made in contravention of subsection (3).

(5) Any person who takes a decision contemplated in subsection (4), knowing that the decision is in contravention of subsection (3), may be held personally liable for any irregular or fruitless and wasteful expenditure that the municipality may incur as a result of the invalid decision.”.

Amendment of section 67 of Act 32 of 2000, as amended by section 38 of Act 51 of 2002 and section 9 of Act 7 of 2011

8. Section 67 of the principal Act is hereby amended—

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

“A municipality, in accordance with applicable law and subject to any applicable collective agreement, must develop and adopt appropriate systems and procedures, consistent with any uniform standards prescribed in terms of section 72(1)(c), to ensure fair, efficient, effective and transparent personnel administration, including—”;

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

“(3) Systems and procedures adopted in terms of subsection (1), apply also to a person referred to in section 57.”.

Substitution of section 71 of Act 32 of 2000, as substituted by section 10 of Act 7 of 2011

9. The following section is hereby substituted for section 71 of the principal Act:

“Bargaining council agreements

71. (1) Organised local government must, before embarking on any negotiations with parties in the bargaining council established for municipalities, consult the—

(a) Financial and Fiscal Commission established in terms of section 220 of the Constitution;

(b) Minister; and

(c) any other parties as may be prescribed.

(2) Organised local government must, in concluding any collective agreement resulting from negotiations contemplated in subsection (1), take into account—

(a) the budgets of municipalities;

(b) the fiscal capacity and efficiency of municipalities; and

(c) national economic policies.

(3) Municipalities must comply with any collective agreements concluded by organised local government within its mandate on behalf of local government in the bargaining council established for municipalities.”

Insertion of section 71B in Act 32 of 2000

10. The following section is hereby inserted in the principal Act after section 71A:

“Staff members prohibited from holding political office

71B. (1)A staff member may not hold political office in a political party, whether in a permanent, temporary or acting capacity.

(2) A person who has been appointed as a staff member before subsection (1) takes effect, must comply with subsection (1) within one year of the commencement of subsection (1).”

Amendment of section 72 of Act 32 of 2000, as amended by section 15 of Act 19 of 2008 and section 11 of Act 7 of 2011

11. Section 72 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (c) of the following subparagraph:
- “(ii) municipal staff systems and procedures referred to in section 67(1) and the matters that must be dealt with in such systems and procedures, including—
- (aa) transfers; and
- (bb) termination of service; and”;
- (b) by the substitution in subsection (1) for paragraph (e) of the following paragraph:
- “(e) training, competency and skills development of staff members of municipalities, including in-house training, subject to the requirements of the Skills Development Act, 1998 (Act No. 81 of 1998), the Skills Development Levies Act, 1999 (Act No. 28 of 1999), and the Municipal Finance Management Act;”;
- (c) by the substitution in subsection (1) for paragraphs (gA), (gB) and (gC) of the following paragraphs, respectively:
- “(gA) subject to applicable labour legislation, the regulation of medical aid and pension, after consultation with the Minister of Health and the Minister of Finance;
- (gB) the level of skills, expertise and competency that municipal managers and managers directly accountable to municipal managers must have;

- (gC) prohibiting the performance of remunerative work outside the municipality.”;
- (d) by the deletion in subsection (2) at the end of paragraph (a) of the word “and”;
- (e) by the substitution in subsection (2) at the end of paragraph (b) for the word “and” of the word “and”;
- (f) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
“(c) when necessary, differentiate between different categories of municipal staff members.”; and
- (g) by the substitution for subsection (2A) of the following subsection:
“(2A) The Minister may, subject to applicable labour legislation and after consultation with the Minister for Public Service and Administration, 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.”.

Amendment of section 106 of Act 32 of 2000, as amended by section 18 of Act 19 of 2008 and section 12 of Act 7 of 2011

12. Section 106 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:
- “(5) (a) Where an MEC fails to conduct an investigation within 90 days, notwithstanding a request from the Minister in terms of subsection (4)(a), the Minister may in terms of this section conduct such investigation.
(b) The Minister must send a report detailing the outcome of the investigation referred to in paragraph (a) to the President.”.

Amendment of section 120 of Act 32 of 2000, as amended by section 28 of Act 44 of 2003 and section 13 of Act 7 of 2011

13. Section 120 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:
“(a) the matters listed in sections 22, 37, 49, 54A, 56, 72, 86A and 104;”.

Amendment of Schedule 1 to Act 32 of 2000, as inserted by section 14 of Act 13 of 2011

14. Schedule 1 to the principal Act is hereby amended by the substitution for item 2A of the following item:

“Voting at meetings 35

2A. 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.”.

Transitional provisions

15. This Act does not affect the employment contract of a municipal manager or a manager directly accountable to the municipal manager entered into before this Act took effect, and such contract continues until it lapses or is terminated. 40

Repeal of Act 7 of 2011

16. Act No. 7 of 2011 is hereby repealed.

Short title and commencement 45

17. This Act is called the Local Government: Municipal Systems Amendment Act, 2019, and comes into operation on a date fixed by the President by proclamation in the *Government Gazette*.

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS AMENDMENT BILL

1. INTRODUCTION

- 1.1 The constitutionality of the Local Government: Municipal Systems Amendment Act 7 of 2011 (the “Amendment Act”) was challenged in the High Court of South Africa, Gauteng Division, Pretoria, on 23 February 2016, in the matter of *South African Municipal Workers’ Union v Minister of Co-Operative Governance and Traditional Affairs* [2016] ZAGPPHC 733. The application was brought by the South Africa Municipal Workers’ Union (“SAMWU”), against the Minister of Cooperative Governance and Traditional Affairs, the Speaker of the National Assembly, the Chairperson of the National Council of Provinces, the Premiers of the nine provinces and the South African Local Government Association (“SALGA”).
- 1.2 Section 76(3) of the Constitution of the Republic of South Africa, 1996 (the “Constitution”), provides that a Bill must be dealt with in terms of either sections 76(1) or 76(2), if it provides for legislation envisaged in, *inter alia*, section 195(3) and (4) or section 197 of the Constitution. SAMWU argued that the Bill fell within these categories and sought an order declaring the Amendment Act unconstitutional and invalid on the basis that it had been passed in terms of the procedure provided for in section 75 of the Constitution, which deals with ordinary Bills not affecting the provinces, rather than the procedure in terms of section 76 of the Constitution, which provides for the procedure in respect of ordinary Bills affecting the provinces.
- 1.3 Based on the High Court’s analysis and assessment of the Amendment Act, it concluded that the importance of the provinces’ enforcement and monitoring role in respect of municipalities, and its concurrent legislative competence to legislate in order to support and strengthen local municipalities substantially, would affect the provinces, and that the procedure prescribed in section 76 of the Constitution should have been followed in enacting the Amendment Act (as provided for in section 195(3) of the Constitution, for example). The Court concluded that the Amendment Act could be classified as legislation envisaged in section 195(3) of the Constitution. Given all the considerations, it was held that the incorrect route was followed in enacting the Amendment Act. The Court found that the Amendment Act should have been tagged as a section 76 Bill because of the enhanced importance of the interplay between the municipalities and provinces. The Court declared the Amendment Act invalid in its entirety for want of compliance with the procedures set out in section 76 of the Constitution and referred the matter to the Constitutional Court for confirmation.
- 1.4 In the matter of *South African Municipal Workers’ Union v Minister of Co-Operative Governance and Traditional Affairs* 2017 JDR 0459 (CC), on 9 March 2017, the Constitutional Court confirmed the High Court’s order, declaring the Amendment Act invalid for being incorrectly classified as a section 75 Bill. The declaration of invalidity was suspended for a period of 24 months to allow the Legislature an opportunity to correct the defect. In effect, this means that the defect must be corrected by 9 March 2019.
- 1.5 The Local Government: Municipal Systems Act (Act No. 32 of 2000) (“the Systems Act”), authorises the Minister to set norms and standards or guidelines in relation to personnel matters, but does not give the Minister any effective regulatory powers relating to these matters especially as far as they relate to municipal managers and managers directly accountable to municipal managers. The main object of this Bill is to grant the Minister adequate regulatory powers in respect of municipal managers and managers directly accountable to municipal managers. The Bill furthermore also addresses key elements of the Local Government Turn Around Strategy.

2. PROPOSED AMENDMENTS

- 2.1 The power to appoint municipal managers is currently contained in section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (the “Structures Act”), whilst the corresponding power in relation to other senior managers and municipal staff in general is dealt with in the Systems Act. For the sake of consistency relating to staff appointments, the Bill now transfers the appointment power of municipal managers and acting municipal managers to the Systems Act. Currently, section 82(2) of the Structures Act also contains the requirements relating to the skills and expertise municipal managers must have to perform the duties associated with the post. Due to the inherent vagueness of this provision, municipalities in many instances have appointed managers who are not capable and equipped to provide the necessary leadership and supervision to facilitate a culture of public service and accountability.
- 2.2 It is accordingly proposed to substitute section 54A of the Systems Act to regulate the appointment of municipal managers and acting municipal managers. The proposed substitution of section 54A will enable the Minister to determine, by regulation or through guidelines, a minimum level of skills, expertise, competencies and qualifications for municipal managers appointed from the date on which section 54A takes effect. The idea is that an appointment should be null and void if the person appointed as municipal manager does not have the prescribed skills, expertise, competencies or qualifications. It is also proposed to insert an appointment procedure in this section to ensure that a vacant post of municipal manager is advertised nationally to attract as wide as possible a pool of candidates. A person may be selected for appointment as municipal manager only from this pool of candidates. If the pool of candidates is insufficient, the municipal council may re-advertise the post. Provision is, however, made for the Minister to exempt a municipal council from these strict appointment requirements if the municipal council is unable to attract a suitable candidate, which may happen especially in the rural areas. The municipal council will also be required to inform to the MEC for local government and the Minister by way of a report on the appointment process, as well as its outcome, whilst the MEC will be tasked to ensure that municipal councils comply with this section.
- 2.3 Section 56 of the Systems Act regulates the appointment of managers and acting managers directly accountable to municipal managers. New provision is made for the Minister to determine, by regulation or through guidelines, criteria in relation to skills, expertise, competencies and qualifications for the appointment of a person to the post of manager directly accountable to a municipal manager. It is proposed that an appointment should be null and void if the person appointed as manager directly accountable to a municipal manager does not have the prescribed skills, expertise, competencies or qualifications. It is also proposed that the same procedure applicable to the appointment of municipal managers be followed for the appointment of managers directly accountable to municipal managers. Accordingly, unless the municipal council is exempted by the Minister, a vacant post for senior manager must be advertised nationally in order to attract a wide pool of candidates from which the appointment must be made. The municipal council must inform the MEC for local government and the Minister of the appointment process, as well as its outcome, by way of a report. Here again the MEC is tasked with enforcing compliance by municipal councils with this section.
- 2.4 The Bill further substitutes section 56A in the Systems Act to prevent municipal managers and managers directly accountable to municipal managers to hold political office in a political party, whether in a permanent, temporary or acting capacity. “Political office” is defined to refer to the position of chairperson, deputy chairperson, secretary, deputy secretary or treasurer of a political party nationally or in any province, region or other area in which the party operates. Other political rights of senior managers are

unaffected by the amendment and they remain entitled to enjoy and exercise these rights freely. Section 56A will not apply to municipal managers and managers directly accountable to municipal managers holding office at the time when section 56A takes effect.

- 2.5 The substitution of section 57 of the Systems Act tightens the section 57 up to ensure full compliance with the letter and spirit of the Systems Act. The Bill proposes the substitution of provisions in the Systems Act in order to provide for an appointment as such a manager to lapse if the person appointed does not sign a performance agreement within 60 days. There is also a need to ensure consistency in respect of both the terms of these employment contracts relating to duties, remuneration, benefits and other conditions of employment, and the terms of performance contracts relating to standards of performance evaluation and intervals for evaluation. Provision is therefore made in the Bill to empower the Minister to make regulations relating to these matters and to provide for such regulations to be regarded as forming part of the employment contracts and performance agreements of these managers.
- 2.6 Section 57A is substituted, providing that a staff member of any municipality who has been dismissed for misconduct may only be re-employed in any municipality after the expiry of a prescribed period. The proposed substitution further provides that a staff member dismissed for financial misconduct contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), corruption or fraud, may not be re-employed for a period of five years. A system is introduced whereby municipalities would be required to maintain a record regarding the disciplinary proceedings of staff members dismissed for misconduct and forward it to the MEC for local government, who must forward it to the Minister to keep and make available to municipalities as prescribed.
- 2.7 An amendment of section 66 of the Systems Act provides that staff establishments of municipalities have to be approved by municipal councils and bars 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.
- 2.8 In terms of section 67 of the Systems Act, municipalities are tasked to develop and adopt systems and procedures to ensure fair, efficient, effective and transparent personnel administration. Leaving human resource development entirely to municipalities has, however, proved to be unsuccessful as some municipalities are experiencing difficulties in developing their own human resource policies. To ensure stability and consistency in the local government workforce it is necessary to amend section 67 to ensure that these systems and procedures are consistent with uniform standards prescribed by the Minister.
- 2.9 In terms of an amendment to section 71 of the Systems Act, organised local government must, before embarking on any negotiations with parties in the bargaining council for municipalities, consult the Minister and any other parties as may be prescribed. This is to ensure that the Minister is at all times aware of the issues that will be bargained on, as well as the framework within which such bargaining will take place.
- 2.10 In line with the general thrust of the Bill to tighten up municipal staff matters, it is also necessary to amend section 72 of the Systems Act, which empowers the Minister to make regulations and guidelines on various matters. Whilst most of the proposed changes to section 72 are either technical or consequential, the amendment also confers some additional powers on the Minister, such as to regulate the performance by municipal staff members of remunerative work outside the municipality and to make regulations in relation to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers.

2.11 Section 106 of the Systems Act is amended to enable the Minister to conduct an investigation into maladministration, fraud, corruption or any other serious malpractice in a municipality, if the MEC fails to conduct such investigation.

2.12 Section 120 of the Systems Act is amended to include issues regarding the appointment of municipal managers (section 54A) and managers directly accountable to municipal managers (section 56) in the list of matters on which the Minister may make regulations or issue guidelines, only after consultation with organised local government representing local government nationally.

2.13 Finally, it is proposed to amend the Disciplinary Code for Municipal Councillors contained in Schedule 1 to the Systems Act by adding a provision to prevent councillors from voting in favour of resolutions before the council or a committee of the council where such resolutions are in conflict with legislation applicable to local government.

3. BODIES/ORGANISATIONS CONSULTED

- The South African Local Government Association;
- NEDLAC
- The provincial departments responsible for local government; The Bill was published for public comment in terms of section 154(2) of the Constitution.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None.

5. FINANCIAL IMPLICATIONS FOR PROVINCES

None.

6. FINANCIAL IMPLICATIONS FOR MUNICIPALITIES

None.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Cooperative Governance and Traditional Affairs (the “Department”) are of the view that Parliament must give effect to the Constitutional Court order in the matter of *South African Municipal Workers’ Union v Minister of Co-Operative Governance and Traditional Affairs* 2017 JDR 0459 (CC) and must deal with this Bill in accordance with the procedure established by section 76 of the Constitution in that—

- (a) the Bill may be regarded as legislation envisaged in section 195(3) of the Constitution;
- (b) the Bill emphasises provinces’ enforcement and monitoring role in respect of municipalities; and
- (c) Parliament’s concurrent legislative competence to legislate in order to support and strengthen local municipalities substantially, would affect the provinces.

7.2 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.

Printed by Creda Communications

ISBN 978-1-4850-0678-7