

REPUBLIC OF SOUTH AFRICA

**LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 33189 of 14 May 2010)
(The English text is the official text of the Bill)*

(MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

[B 22—2010]

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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

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 by—

- (a) the substitution for the definition of “**municipal manager**” of the following definition:
 “**‘municipal manager’** means a person appointed in terms of section [82 of the Municipal Structures Act] 54A;”;
- (b) the insertion after the definition of “**parent municipality**” of the following definition:
 “**‘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
 (b) any position in the party equivalent to a position referred to in paragraph (a), irrespective of the title designated to the position;”.

Insertion of section 54A in Act 32 of 2000

2. The following section is hereby inserted in the principal Act after section 54: 15

“Appointment of municipal managers and acting municipal managers

- 54A.** (1) The municipal council of a municipality must appoint—
- (a) a municipal manager as head of the administration of the municipality; or
 (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.
- (3) A decision to appoint a person as municipal manager or acting municipal manager, and any contract concluded between the municipality 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.
- (4) If the post of municipal manager becomes vacant, the municipality 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.
- (5) The municipality must re-advertise the post if there is no suitable candidate who complies with the prescribed requirements.
- (6) (a) The municipality may request the MEC for local government to second a suitable person 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 municipality may request the Minister to second a suitable person until such time as a suitable candidate has been appointed.
- (7) (a) The municipality must inform the MEC for local government of the appointment process and outcome, as may be prescribed.
 (b) The MEC for local government must, on 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 municipality 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 municipality.
- (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 municipality 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

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) must at least have the relevant skills, expertise, competencies and qualifications as prescribed.

(2) A decision to appoint a person to a post referred to in subsection (1)(a), and any contract concluded between the municipality 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) 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.

(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 municipality 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 municipality.

(6) A municipality 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.”.

Insertion of section 56A in Act 32 of 2000

4. (1) The following section is hereby inserted in the principal Act after section 56:

“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. 5

(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.”. 10

Amendment of section 57 of Act 32 of 2000

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

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

“(a) (i) be concluded within [**a reasonable time**] 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 15

(ii) be concluded annually, thereafter, within one month after the beginning of [the] each financial year of the municipality;” 20

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

“(3) The employment contract referred to in subsection (1)(a) must—

(a) include [**subject to applicable labour legislation,**] details of duties, remuneration, benefits and other terms and conditions of employment as agreed to by the parties, subject to consistency with— 25

(i) this Act;

(ii) any regulations as may be prescribed that are applicable to municipal managers or managers directly accountable to municipal managers; and 30

(iii) any applicable labour legislation; and

(b) be signed by both parties before the commencement of service.”;

(c) the insertion after subsection (3) of the following subsection:

“(3A) Any regulations or guidelines 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).” 35

(d) the deletion of paragraph (b) of subsection (4); 40

(e) the insertion after subsection (4B) of the following subsection:

“(4C) Any regulations or guidelines 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).” 45

(f) the deletion of subsection (7).

- (2) The deletion of section 57(7) of the principal Act does not affect the continuation or validity of a fixed-term employment contract of a manager directly accountable to the municipal manager which is in force when this Act takes effect. 50

Insertion of section 57A in Act 32 of 2000

6. The following section is hereby inserted in the principal Act after section 57:

“Employment of dismissed municipal employees and municipal employees

57A. (1) A municipal employee dismissed for misconduct may only be re-employed in any municipality after the expiration of a prescribed period. 5

(2) Different periods of expiry must be prescribed for different categories of misconduct.

(3) 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. 10

(4) Subject to subsection (1), a decision whether or not to employ a person dismissed for misconduct must be taken with due regard to the nature of the misconduct concerned.”. 15

Insertion of section 59A in Act 32 of 2000

7. The following section is hereby inserted in the principal Act after section 59:

“Regulations regarding duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers 20

59A. The Minister may 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 66 of Act 32 of 2000 25

8. Section 66 of the principal Act is hereby amended by—

(a) the substitution for paragraph (a) of subsection (1) of the following paragraph: “(a) **[approve] develop** a staff establishment for the municipality, and submit the staff establishment to the municipal council for approval;”;

(b) the insertion after subsection (2) of the following subsections: 30

“(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). 35

(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.”. 40

Amendment of section 67 of Act 32 of 2000

9. Section 67 of the principal Act is hereby amended by—

(a) the substitution for the words in subsection (1) preceding paragraph (a) of the following words: 45

“(1) 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—”; and 50

- (b) 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 [**except to the extent that they are inconsistent with that person’s employment contract**].”.

Insertion of section 71B in Act 32 of 2000 5

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

“Human resource management systems and mandates for collective bargaining

- 71B.** (1) The Minister may prescribe a framework to regulate—
- (a) human resource management systems for local government; and
 - (b) mandating processes applicable to organised local government representing local government nationally.
- (2) A framework referred to in subsection (1) must regulate the matters referred to in that subsection in accordance with national policy.”.

Amendment of section 72 of Act 32 of 2000 15

11. Section 72 of the principal Act is hereby amended by—
- (a) 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; and”;
 - (b) the substitution for paragraph (e) of subsection (1) 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 [Local Government] Municipal Finance Management Act [, 2003 (Act No. 56 of 2003)];”;
 - (c) the substitution for paragraph (g) of subsection (1) of the following paragraph:
 “(g) the regulation of remuneration and the medical aid, pension and other conditions of service of staff members of municipalities, subject to applicable labour legislation;”;
 - (d) the insertion in subsection (1) after paragraph (g) of the following paragraphs:
 “(gA) the level of skills, expertise and competency that municipal managers and managers directly accountable to municipal managers must have;
 (gB) prohibiting the performance of remunerative work outside the municipality;”.
 - (e) the deletion in subsection (2) at the end of paragraph (a) of the word “and”;
 - (f) the insertion in subsection (2) at the end of paragraph (b) of the word “; and”;
 - and
 - (g) the insertion in subsection (2) after paragraph (b) of the following paragraph:
 “(c) when necessary, differentiate between different categories of municipal staff members.”.

Amendment of section 106 of Act 32 of 2000 45

12. Section 106 of the principal Act is hereby amended by the insertion after subsection (4) 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 Schedule 1 to Act 32 of 2000

13. Schedule 1 to the principal Act is hereby amended by the insertion of the following item after item 2:

“Voting at meetings

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.” 5

Repeal of section 82 of Act 117 of 1998

14. Section 82 of the Local Government: Municipal Structures Act, 1998, is hereby repealed. 10

Transitional arrangements

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.

Short title 15

16. This Act is called the Local Government: Municipal Systems Amendment Act, 2010.

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS AMENDMENT BILL, 2010

1. INTRODUCTION

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 Turnaround 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 insert a new provision, section 54A, in the Systems Act to regulate the appointment of municipal managers and acting municipal managers. The insertion of section 54A necessitates a consequential amendment to the Structures Act, *viz.* the repeal of section 82 which currently deals with the appointment of municipal managers, as well as the insertion of an amended definition for “municipal manager” in section 1 of the Systems Act. The proposed 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 or acting 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 municipality may re-advertise the post. Provision is, however, made for the Minister to exempt a municipality from these strict appointment requirements if the municipality is unable to attract a suitable candidate, which may happen, especially in the rural areas. Municipalities 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 for local government will be tasked to ensure that municipalities comply with this section.
- 2.3 It is proposed that section 55 of the Systems Act be amended to empower the Minister to assign, when necessary, additional functions to municipal managers by way of regulation or through guidelines. Currently only the municipal council can add to the job description of municipal managers as set out in the Systems Act.

- 2.4 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 persons to such managerial posts. It is proposed that an appointment should be null and void if the person appointed as such a 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 second tier managers. Accordingly, unless the municipality 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 municipality 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 for local government is tasked with enforcing compliance by municipalities with this section.
- 2.5 The Bill further inserts a new 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.
- 2.6 Although section 57 of the Systems Act currently requires both employment contracts and performance agreements for municipal managers and managers directly accountable to municipal managers, there is a need to tighten these provisions up to ensure full compliance with the letter and spirit of the Systems Act. The Bill proposes new provisions in the Systems Act that will 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.
- 2.7 The current section 57(7) of the Systems Act, which allows managers directly accountable to municipal managers to be appointed for fixed terms, is no longer supported as this practice impedes the building of a stable local public administration and institutional memory through the retention of skilled managerial personnel. It is accordingly proposed to delete this subsection. The Bill contains a transitional measure providing for current fixed-term employment contracts to continue until their terms expire and for current incumbents of the relevant posts to reapply for their posts at the expiry of their fixed-term contracts.
- 2.8 A new section 57A is inserted, providing that a municipal employee dismissed for misconduct may only be re-employed in any municipality after the expiration of a prescribed period.
- 2.9 In terms of a new section 59A, the Minister may 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.

- 2.10 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.
- 2.11 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. It is also proposed to delete the current provision whereby employment contracts, in the case of municipal managers or managers directly accountable to municipal managers, are allowed to trump these systems and procedures.
- 2.12 It is also proposed to insert a new section 71B in the Systems Act to empower the Minister to prescribe, in accordance with national policy, a framework to regulate human resource management systems for local government and the mandates of management and organised local government to engage in collective bargaining processes. This provision is necessary to align the local government human resource systems and bargaining council mandates with the broader public sector working environment and to ensure consistency with national policy.
- 2.13 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.
- 2.14 Section 106 of the 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.
- 2.15 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;
- 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 are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution. The Bill does not fall within the functional areas listed in Schedule 4 of the Constitution, nor does it provide for legislation envisaged in the sections referred to in section 76(3) of the Constitution.
- 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 leaders.