

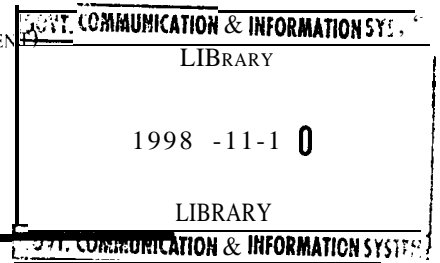
REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES BILL

*(As submitted by the Portfolio Committee on Constitutional Affairs in terms of Rule
147(2)(b), after consideration of the Local Government: Municipal Structures Bill
[B 68—98])*

(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

[B 68B—98]



REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP PLAASLIKE REGERING: MUNISIPALE STRUKTURE

*(Soos voorgelê deur die Portefeuljekomitee op Staatkundige Aangeleenthede ingevolge Reël
147(2)(b), na oorweging van die Wetsontwerp op Plaaslike Regering: Munisipale Strukture
[W 68—98])*

(MINISTER VAN PROVINSIALE SAKE EN STAATKUNDIGE ONTWIKKELING)

[W 68B—98]

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GENERAL EXPLANATORY NOTE:

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

BILL

To provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipality; to establish criteria for determining the category of municipality to be established in an area; to define the types of municipality that may be established within each category; to provide for an appropriate division of functions and powers between categories of municipality; to regulate the internal systems, structures and office-bearers of municipalities; to provide for appropriate electoral systems; and to provide for matters in connection therewith.

PREAMBLE

Whereas the Constitution establishes local government as a distinctive sphere of government, interdependent, and interrelated with national and provincial spheres of government;

Whereas there is agreement on the fundamental importance of local government to democracy, development and nation-building in our country;

Whereas past policies have bequeathed a legacy of massive poverty, gross inequalities in municipal services, and disrupted spatial, social and economic environments in which our people continue to live and work;

Whereas there is fundamental agreement in our country on a vision of democratic and developmental local government, in which municipalities fulfil their constitutional obligations to ensure sustainable, effective and efficient municipal services, promote social and economic development, encourage a safe and healthy environment by working with communities in creating environments and human settlements in which all our people can lead uplifted and dignified lives;

Whereas municipalities across our country have been involved in a protracted, difficult and challenging transition process in which great strides have been made in democratizing local government; and

Whereas municipalities now need to embark on the final phase in the local government transition process to be transformed in line with the vision of democratic and developmental local government;

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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DEFINITIONS

Definitions

1. [n this Act, unless the context otherwise indicates —
- “by-election”** means an election that is held between the regular elections called in terms of section 23; 5
- “capacity”**, in relation to a municipality, includes the administrative and financial management capacity and infrastructure that enables a municipality to collect revenue and to govern on its own initiative the local government affairs of its community;
- “category”**, in relation to municipalities, means a category A, B or C municipality envisaged in section 155(1) of the Constitution; 10
- “councillor”** means a member of a municipal council
- “delegation”**, in relation to a duty, includes an instruction to perform the duty;
- “Demarcation Act”** means the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);
- “Demarcation Board”** means the Municipal Demarcation Board established by section 2 of the Demarcation Act; 15
- “district council”** means the municipal council of a district municipality;
- “district management area”** means a part of a district municipality which in terms of section 6 has no local municipality and is governed by that district municipality alone;
- “district municipality”** means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155(I) of the Constitution as a category C municipality; 20
- “election”**, in relation to a district council, means the election of the councillors referred to in section 23(1)(a);
- “Electoral Act”** the Electoral Act, 1998 (Act No. 73 of 1998); 25
- “Electoral Commission”** means the Electoral Commission established by section 18 I of the Constitution;
- “executive committee”** means an executive committee established in terms of section 43;
- “executive mayor”** means an executive mayor elected in terms of section 55; 30
- “existing municipality”** includes a municipality that existed when this Act took effect;
- “integrated development plan”** means a plan aimed at the integrated development and management of a municipal area;
- “local council”** means the municipal council of a local municipality;
- “local municipality”** means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155(1) of the Constitution as a category B municipality; 35
- “MEC for local government”** means the member of the Executive Council of a province responsible for local government in the province;
- “metro council”** means the municipal council of a metropolitan municipality; 40
- “metropolitan municipality”** means a municipality that has exclusive executive and legislative authority in its area, and which is described in section 155(1) of the Constitution as a category A municipality;
- “metropolitan subcouncil”** or **“subcouncil”** means a metropolitan subcouncil established in terms of section 62; 45
- “Minister”** means the national Minister responsible for local government;
- “municipal council”** or **“council”** means a municipal council referred to in section 157 of the Constitution;
- “municipality”** includes a municipality referred to in section 155(6) of the Constitution; 50
- “organised local government in the province”** means a provincial organisation recognised in terms of section 2(I)(b) of the Organised Local Government Act, 1997 (Act No. 52 of 1997);
- “party”**, in relation to—
- (a) a metro or local council, means a party referred to in paragraph (a) or (b) of item I () of Schedule I; or 55
 - (b) a district council, means a party referred to in paragraph (a) or (b) of item 4 of Schedule 2;

- “**prescribe**” means prescribe by regulation in terms of section 92;
- “**SALGA**” means the South African Local Government Association recognised in terms of section 2(1)(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997);
- “**speaker**” means a councillor elected in terms of section 36 to be the chairperson of a municipal council as envisaged in section 160(1)(b) of the Constitution; 5
- “**type**” in relation to municipalities, means a type of municipality envisaged in section 155(2) of the Constitution, and defined in Part 2 of Chapter 1 of this Act;
- “**ward**” means a ward mentioned in item 2 of Schedule 1;
- “**ward committee**” means a ward committee established in terms of section 73.

CHAPTER 1 10

CATEGORIES AND TYPES OF MUNICIPALITY

Part 1: Categories of municipality

Areas which must have category A municipalities

2. An area must have a single category A municipality if that area can reasonably be regarded as— 15
- (a) a conurbation featuring—
 - (i) areas of high population density;
 - (ii) an intense movement of people, goods, and services;
 - (iii) extensive development; and
 - (iv) multiple business districts and industrial areas; 20
 - (b) a centre of economic activity with a complex and diverse economy;
 - (c) a single area for which integrated development planning is desirable; and
 - (d) having strong interdependent social and economic linkages between its constituent units.

Areas which must have municipalities of both category C and B 25

3. An area that does not comply with the criteria set out in section 2 must have municipalities of both category C and category B.

Application of criteria

4. (1) The Minister must apply the criteria set out in section 2 and determine whether an area in terms of the criteria must have a single category A municipality or whether it must have municipalities of both category C and category B. 30
- (2) The Minister may determine that an area must have a category A municipality only after consultation with the MEC for local government in the province concerned, the Demarcation Board, SALGA and organised local government in the province.

Declaration of metropolitan areas 35

5. (1) If the Minister determines that an area must have a single category A municipality, the Minister, by notice in the *Government Gazette*, must declare that area as a metropolitan area.
- (2) When declaring an area as a metropolitan area the Minister designates the area by identifying the nodal points of the area but must leave the determination of the outer boundaries to the Demarcation Board. 40

Parts of category C areas in which category B municipalities not viable

6. (1) If a part of an area that in terms of section 3 must have municipalities of both category C and category B, is declared in terms of subsection (2) as a district management area, that part does not have a category B municipality. 45

(2) The Minister, on the recommendation of the Demarcation Board and after consulting the MEC for local government in the province concerned, may declare a part of an area that must have municipalities of both category C and category B as a district management area if the establishment of a category B municipality in that part of the area will not be conducive to fulfilment of the objectives set out in section 24 of the Demarcation Act.

(3)(a) The Minister, on recommendation of the Demarcation Board and after consulting the MEC for local government in the province concerned, may by notice in the *Government Gazette* withdraw the declaration of an area as a district management area. 10

(b) When such declaration is withdrawn, the MEC for local government in the province concerned must, with effect from the date of the next election of municipal councils--

- (i) establish a municipality for that area in terms of section 12; or
- (ii) include that area into another local municipality in terms of section 16. 15

Part 2: Types of municipality

General

7. The different types of municipality that may be established within each category of municipality are defined in accordance with the following systems of municipal government or combinations of those systems, as set out in sections 8, 9 and 10: 20

- (a) Collective executive system which allows for the exercise of executive authority through an executive committee in which the executive leadership of the municipality is collectively vested.
- (b) Mayoral executive system which allows for the exercise of executive authority through an executive mayor in whom the executive leadership of the municipality is vested and who is assisted by a mayoral committee.
- (c) Plenary executive system which limits the exercise of executive authority to the municipal council itself.
- (d) Subcouncil participatory system which allows for delegated powers to be exercised by subcouncils established for parts of the municipality. 30
- (e) Ward participatory system which allows for matters of local concern to wards to be dealt with by committees established for wards.

Types of category A municipalities

8. There are the following types of category A municipalities:

- (a) a municipality with a collective executive system; 35
- (b) a municipality with a collective executive system combined with a subcouncil participatory system;
- (c) a municipality with a collective executive system combined with a ward participatory system;
- (d) a municipality with a collective executive system combined with both a subcouncil and a ward participatory system; 40
- (e) a municipality with a mayoral executive system;
- (f) a municipality with a mayoral executive system combined with a subcouncil participatory system;
- (g) a municipality with a mayoral executive system combined with a ward participatory system; and 45
- (h) a municipality with a mayoral executive system combined with both a subcouncil and a ward participatory system.

Types of category B municipalities

9. There are the following types of category B municipalities:

- (a) a municipality with a collective executive system; 50

- (b) a municipality with a collective executive system combined with a ward participatory system;
- (c) a municipality with a mayoral executive system;
- (d) a municipality with a mayoral executive system combined with a ward participatory system; 5
- (e) a municipality with a plenary executive system; and
- (f) a municipality with a plenary executive system combined with a ward participatory system.

Types of category C municipalities

10. There are the following types of category C municipalities: 10
- (a) a municipality with a collective executive system;
 - (b) a municipality with a mayoral executive system; and
 - (c) a municipality with a plenary executive system.

Determination of types for provinces

11. Provincial legislation must determine for each category of municipality the 15 different types of municipality that may be established in that category in the province.

CHAPTER 2

ESTABLISHMENT OF MUNICIPALITIES

MECs to establish municipalities

12. (1) The MEC for local government in a province, by notice in the *Provincial Gazette*, must establish a municipality in each municipal area which the Demarcation Board demarcates in the province in terms of the Demarcation Act.

- (2) The establishment of a municipality.
- (a) must be consistent with the provisions of this Act; and
 - (b) takes effect at the commencement of the first election of the council of that 25 municipality.
- (3) The notice establishing the municipality must specify—
- (a) the category of municipality that is established;
 - (b) the type of municipality that is established;
 - (c) the boundaries of the municipal area; 30
 - (d) the name of the municipality;
 - (e) the number of councillors as determined in terms of section 20;
 - (f) which councillors of the municipality (if any) may be designated as full-time in terms of section 18(4);
 - (g) any adjustments in the division of functions and powers in terms of section 85.35 affecting the municipality;
 - (h) any provisions of this Act from which the municipality has been exempted in terms of section 91; and
 - (i) any other relevant detail.
- (4) The MEC for local government must— 40
- (a) at the commencement of the process to establish a municipality, give written notice of the proposed establishment to organised local government in the province and any existing municipalities that may be affected by the establishment of the municipality;
 - (b) before publishing a notice in terms of this section, consult— 45
 - (i) organised local government in the province; and
 - (ii) the existing municipalities affected by the proposed establishment; and
 - (c) after such consultation publish particulars of the proposed notice for public comment.

(guidelines for selecting types

13. (1) The Minister, by notice in the *Government Gazette*, may determine guidelines to assist MECs for local government to decide which type of municipality would be appropriate for a particular area.

(2) An MEC for local government must take these guidelines into account when establishing a municipality in terms of section 12 or changing the type of a municipality in terms of section 16(1)(a).

Regulation of effects of establishment of municipality on existing municipalities

14. (1) The establishment of a municipality in terms of section 12 in the area of an existing municipality supersedes the existing municipality in that area, and the new municipality becomes its successor in law with regard to that area.

(2) If subsection (1) is applicable, the section 12 notice must—

- (a) provide for the disestablishment of the existing municipality or, if only part of the existing municipality's area is affected, the disestablishment of the existing municipality in the affected area; and
- (b) regulate the legal, practical and other consequences of the total or partial disestablishment of the existing municipality, including—
 - (i) the vacation of office by councillors of the existing municipality;
 - (ii) the transfer of staff from the existing municipality to the superseding municipality;
 - (iii) the transfer of assets, liabilities and administrative and other records from the existing municipality to the superseding municipality, taking into account the interests of creditors of the existing municipality; and
 - (iv) the continued application of any by-laws, regulations and resolutions of the existing municipality to or in that area, and the extent of such application.

(3) The transfer of staff in terms of a section 12 notice must take place in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995).

(4)(a) On production of a certificate by a municipality that any asset registered in a deeds registry was transferred to it in terms of a section 12 notice, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that asset in the name of that municipality.

(b) No duty, fee or other charge is payable for a registration in terms of paragraph (a).

(5) The MEC for local government in a province, by notice in the *Provincial Gazette*, may make provision for transitional measures to facilitate the disestablishment of an existing municipality and the establishment of a new municipality. The MEC must consult the existing municipality before publishing the notice.

Review and rationalisation of existing municipal by-laws

15. If an existing municipality is wholly or partially superseded by another municipality in terms of section 14(1), the by-law, regulations and resolutions (including standing delegations) of the existing municipality, to the extent that they continue to apply in the area or part of the area of the superseding municipality as provided for in section 14(2)(b)(iv), must be reviewed and, where necessary, rationalised by the superseding municipality.

Amendment of section 12 notices

16. (1) The MEC for local government in a province, by notice in the *Provincial Gazette*, may amend a section 12 notice—

- (a) to change the municipality from its existing type to another type;
- (b) to alter the name of the municipality;

- (c) subject to section 20, to alter the number of councillors, but only with effect from the next election of the municipal council;
 - (d) to specify which councillors of the municipality (if any) may be designated as full-time in terms of section 1X(4);
 - (e) to give effect to any adjustments in the division of functions and powers in terms of section 85 which affect the municipality;
 - (f) to specify any provisions of this Act from which the municipality has been exempted in terms of section 9 I;
 - (g) to give effect to any change in boundaries; or
 - (h) to further regulate the matters mentioned in section 14 after consulting all I O affected municipalities.
- (2) Any amendment of a section 12 notice must be consistent with the provisions of this Act.
- (3) The MEC for local government must—
- (a) at the commencement of the process to amend a section 12 notice, give written notice of the proposed amendment to organised local government in the province and any existing municipalities that may be affected by the amendment;
 - (b) before publishing the amendment notice consult—
 - (i) organised local government in the province; and
 - (ii) the existing municipalities affected by the amendment; and
 - (c) after such consultation publish particulars of the proposed notice for public comment.

Repeal, amendment or replacement of section 12 notices when boundaries are re-determined

17. (1) When the Demarcation Board in terms of the I demarcation Act re-determines a municipal boundary which affects the area of a municipality established in terms of section 12—

- (a) the provisions of sections 12 and 14 are applicable to the extent necessary to give effect to the re-determination; and
 - (b) the MEC for local government in the province concerned must repeal, amend or replace the relevant section 12 notice as may be required in the circumstances.
- (2) Before repealing, amending or replacing any notice in terms of subsection (1)(b), the MEC for local government must consult the affected municipalities,
- (3) Any repeal, amendment or replacement of a section 12 notice takes effect on a date mentioned in the notice, but if the number of councillors is changed section 16(1)(c) applies.

CHAPTER 3

MUNICIPAL COUNCILS

Part 1: Composition, membership, operation and dissolution

Municipalities must have municipal councils

- 18. (1)** Each municipality must have a municipal council.
- (2) A municipal council must meet at least quarterly.
- (3) A municipal council consists of a number of councillors determined by the MEC for local government in the province concerned by notice in the *Provincial Gazette*.
- (4) A municipality has the power to designate councillors determined by the MEC for local government as full-time. An MEC's determination must be in accordance with a policy framework as may be determined by the Minister after consulting the MECs for local government.

Municipal objectives

19. (1) A municipal council must strive within its capacity to achieve the objectives set out in section 152 of the Constitution.
- (2) A municipal council must annually review—
- (a) the needs of the community; 5
 - (b) its priorities to meet those needs;
 - (c) its processes for involving the community;
 - (d) its organisational and delivery mechanism for meeting the needs of the community; and
 - (e) its overall performance in achieving the objectives referred to in subsection (1). 10
- (3) A municipal council must develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers.

Determination of number of councillors

20. (1) The number of councillors of a municipal council— 15
- (a) must be determined in accordance with a formula determined by the Minister by notice in the *Government Gazette*, which formula must be based on the number of voters registered on that municipality's segment of the national common voters roll;
 - (b) may not be fewer than three or more than 60 councillors, if it is a local or district municipality; and 20
 - (c) may not be more than 270 councillors, if it is a metropolitan municipality.
- (2) Different formulae may be determined in terms of subsection (1)(a) for the different categories of municipalities.
- (3) The MEC for local government in a province may deviate from the number of councillors determined for a municipality in terms of subsection (1) by— 25
- (a) increasing the number of councillors if extreme distances, a lack of effective communication in the municipality or other exceptional circumstances render it necessary; or
 - (b) decreasing the number of councillors if it is necessary to achieve the most effective size for— 30
 - (i) active participation by all councillors at council meetings;
 - (ii) good and timely executive and legislative decisions;
 - (iii) responsiveness and accountability of councillors, taking into account the possible use of modern communication techniques and facilities; or 35
 - (iv) the optimum use of municipal funds for councillor allowances and administrative support facilities.
- (4) A deviation in terms of subsection (3) may be no more than—
- (a) three of the number determined for the municipality in accordance with the subsection (1)(a) formula, if 30 or fewer councillors have been determined for the municipality in terms of the formula, provided that a council of fewer than 40 seven may not be decreased; or
 - (b) 10 per cent of the number determined for the municipality in accordance with the subsection (1)(a) formula, if more than 30 councillors have been determined for the municipality in terms of the formula. 45
- (5) The number of councillors determined for a district municipality in terms of subsections (1) to (4) must be increased by any number of councillors required to give effect to item 15(3) of Schedule 2.

Qualifications for councillors

21. (1) Every citizen who is qualified to vote for a particular municipal council has the right— 50
- (a) to stand as a candidate in an election for that council, except a person disqualified in terms of section 158(1)(c) of the Constitution; and

(b) it elected, to become and remain a councillor except a person disqualified in terms of section 158(1)(a), (c), (d) or (e) of the Constitution.

(2) The MEC for local government in a province, by notice in the *Provincial Gazette*, may exempt a person from a disqualification mentioned in section 158(1)(a) of the Constitution to be a member of the municipal council concerned, but only when there is no substantial conflict of interest or any irreconcilable conflict between the duties of the person in the capacity as described in section 158(1)(a) of the Constitution and the person's mandate or duties as a member of the municipal council.

Election of metropolitan and local councils

22. (1) The council of a metropolitan or local municipality consists of councillors elected in accordance with Schedule 1—

- (a) by voters registered on that municipality's segment of the national common voters roll, to proportionally represent the parties that contested the election in that municipality; and
- (b) by voters registered on that municipality's segment of the national common voters roll in the respective wards in that municipality, to directly represent the wards.

(2) The number of ward councillors in a metropolitan or local council referred to in subsection (1)(b) must be equal to 50 per cent of the number of councillors determined for the municipality in terms of section 20, if the number of councillors determined in terms of section 20 is an uneven number, the fraction must be rounded off upwards.

(3) The number of proportionally elected councillors in a metropolitan or local municipality referred to in subsection (1)(a) is determined by subtracting the number determined in terms of subsection (2) from the number of councillors determined for the municipality in terms of section 20.

(4) If a local municipality has no wards, all its councillors must be elected in accordance with subsection (1)(a). Local municipalities with fewer than seven members have no wards.

Election and appointment of district councils

23. (1) The council of a district municipality consists of—

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

(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.

(3) The number of proportionally elected councillors referred to in subsection (1)(a) is determined by subtracting the number determined in terms of subsection (2)(a) from the number of councillors determined for the municipality in terms of section 20, including any increase in terms of section 20(5).

(4) A local council must appoint its representatives to the district council within 14 days after the result of the election of the local council has been declared.

Term of municipal councils

24. (1) The term of municipal councils is no more than five years as determined by the Minister by notice in the *Government Gazette*, calculated from the day following the date or dates set for the previous election of all municipal councils in terms of subsection (2). 5
- (2) Whenever necessary, the Minister, after consulting the Electoral Commission, must, by notice in the *Government Gazette*, call and set a date or dates for an election of all municipal councils, which must be held within 90 days of the date of the expiry of the term of municipal councils. The notice may be published either before or after the term of municipal councils expires in terms of subsection (1). 10

By-elections

25. (1) A by-election must be held if—
- (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 Act. 15
 - (b) a court sets aside the election of a council, or in a district development area, or in a ward;
 - (c) a council is dissolved; or
 - (d) a vacancy in a ward occurs,
- (2) If the election in a specific ward is the reason why the Electoral Commission does not declare the result of the election of a metro or Iota council, a by-election must be held in that ward only. 20
- (3) The municipal manager of the municipality concerned, after consulting the Electoral Commission, must, by notice in a local newspaper, call and set a date or dates for the by-election, which must be held within 90 days of the date— 25
- (a) of the voting day or last voting day of the previous election, if subsection (1)(a) applies;
 - (b) on which the election was set aside by the court, if subsection (1)(b) applies;
 - (c) on which the council was dissolved, if subsection (1)(c) applies; or
 - (d) on which the vacancy occurred, if subsection (1)(d) applies. 30
- (4) If the municipal manager of the municipality concerned does not call and set a date or dates for a by-election within 14 days of the applicable date referred to in paragraph (a), (b), (c) or (d) of subsection (3), the MEC for local government in the province, after consulting the Electoral Commission, must, by notice in the *Provincial Gazette*, call and set a date or dates for the by-election, which must be held within 90 days of the applicable date. 35
- (5) The term of a municipal council is not interrupted by a by-election.
- (6) The municipal manager of a municipality may not call a by-election in terms of subsection (3) if— 40
- (a) the next election of all municipal councils must be held—
 - (i) within nine calendar months of the applicable date mentioned in paragraph (a), (b) or (c) of subsection (3); or
 - (ii) if it is a by-election in a ward, within six calendar months of the applicable date mentioned in paragraph (a), (b) or (d) of subsection (3); and 45
 - (b) the MEC for local government in the province decides that the by-election must stand over until the next election of all municipal councils.
- (7) A by-election in a ward does not affect the representation of parties by councillors elected from party lists.

Term of office of councillors

26. (1) A person—
- (a) is elected as a member of a municipal council for a period ending when the next council is declared elected; or

- (b) is appointed as a representative of a local council to a district council for a period ending when the next local council is declared elected.
- (2) A person assumes office as a councillor when declared elected or when appointed, as the case may be.

Vacation of office

5

27. A councillor vacates office during a term of office if that councillor—
- (a) resigns in writing;
 - (b) is no longer qualified to be a councillor;
 - (c) was elected from a party list referred to in Schedule 1 or 2 and ceases to be a member of the relevant party; 10
 - (d) contravenes a provision of the Code of Conduct for Councillors set out in Schedule 5 and is removed from office in terms of the Code;
 - (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 by the local council as its representative in the district council; or 15
 - (f) was elected to represent a ward and who-
 - (i) used on the part of the ballot paper for wards the same distinguishing mark or symbol as a party which contested the election, and ceases to be a member of that party; or 20
 - (ii) did not use on the part of the ballot paper for wards the same distinguishing mark or symbol as a party which contested the election and becomes a member of a party.

Privileges and immunities

28. (1) Provincial legislation in terms of section 161 of the Constitution must provide at least— 25
- (a) that councillors have freedom of speech in a municipal council and in its committees; and
 - (b) for the circumstances in which councillors are or are not liable to civil or criminal proceedings, arrest, imprisonment or damages for— 30
 - (i) anything that they have said in, produced before or submitted to the council or any of its committees; or
 - (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the council or any of its committees.
- (2) Until provincial legislation contemplated in subsection (1) has been enacted the privileges referred to in paragraph (a) of subsection (1) will apply to all municipal councils in the province concerned. 35

Meetings of municipal councils

29. (1) The speaker of a municipal council decides when and where the council meets subject to section 18(2), but if a majority of the councillors requests the speaker in writing to convene a council meeting, the speaker must convene a meeting at a time set out in the request. 40
- (2) The municipal manager of a municipality or, in the absence of the municipal manager, a person designated by the MEC for local government in the province, must call the first meeting of the council of that municipality within 14 days after the council has been declared elected or, if it is a district council, after all the members to be appointed by local councils, have been appointed. 45

Quorums and decisions

30. (1) A majority of the councillors must be present at a meeting of the council before a vote may be taken on any matter. 50

(2) All questions concerning matters mentioned in section 160(2) of the Constitution are determined by a decision taken by a municipal council with a supporting vote of a majority of the councillors.

(3) All other questions before a municipal council are decided by a majority of the votes cast, subject to section 34.

(4) If on any question there is an equality of votes, the councillor presiding must exercise a casting vote in addition to that councillor's vote as a councillor.

(5) Before a municipal council takes a decision on any of the following matters it must first require its executive committee or executive mayor, if it has such a committee or mayor, to submit to it a report and recommendation on the matter—

(a) any matter mentioned in section 160(2) of the Constitution;

(b) the approval of an integrated development plan for the municipality, and any amendment to that plan; and

(c) the appointment and conditions of service of the municipal manager and a head of a department of the municipality,

Business of municipal councils

31. (1) A municipal council must conduct its business in an open manner, and may close its sittings, or authorise its committees to close their sittings, only when it is reasonable and justifiable to do so in an open and democratic society and having regard to the nature of the business which is conducted.

(2) A municipal council may make by-laws prescribing rules and orders for—

(a) its internal arrangements;

(b) its business and proceedings; and

(c) the establishment, composition, procedures, powers and functions of its committees.

Delegations to committees and other internal functionaries

32. (1) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system—

(a) delegate appropriate powers, excluding a power mentioned in section 160(2) of the Constitution and the power to approve its integrated development plan, to its—

(i) executive committee, if it has an executive committee;

(ii) executive mayor, if it has an executive mayor;

(iii) metropolitan subcouncils, if it has such subcouncils;

(iv) ward committees, if it has ward committees;

(v) other committees or elected office-bearers; and

(vi) municipal manager or any of its other officials;

(b) instruct any such committee or functionary to perform any of the council's duties; and

(c) withdraw any delegation or instruction.

(2) A delegation or instruction in terms of subsection (1)—

(a) must be in accordance with the Constitution and this Act;

(b) must be in writing;

(c) is subject to any limitations, conditions and directions the municipal council may impose;

(d) may include the power to sub-delegate a delegated power;

(e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and

(f) must be reviewed when a new council is elected or, if it is a district council, elected and appointed.

(3) The municipal council—

- (a) in accordance with procedures in its rules and orders, may, or at the request in writing of at least one quarter of the councillors, must, review any decision taken by a committee or functionary in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any vested rights; and
- (b) may require its executive committee or executive mayor to co-ordinate or review any decision taken by a committee or functionary in consequence of a delegation or instruction.

Criteria for establishment of committees

33. A municipality may establish a committee provided for in this Act if—
- (a) the municipality is of a type that is empowered in terms of this Act to establish a committee of the desired kind;
 - (b) the establishment of the committee is necessary, taking into account—
 - (i) the extent of the functions and powers of the municipality;
 - (ii) the need for the delegation of those functions and powers in order to ensure efficiency and effectiveness in their performance; and
 - (iii) the financial and administrative resources of the municipality available to support the proposed committee; and
 - (c) in the case of the establishment of an executive committee, the municipality has more than nine councillors.

Dissolution of municipal councils

34. (1) A municipal council may dissolve itself at a meeting called specifically for this purpose, by adopting a resolution dissolving the council with a supporting vote of at least two thirds of the councillors.
- (2) A municipal council may dissolve itself only when two years have passed since the council was last elected.
- (3) The MEC for local government in a province, by notice in the *Provincial Gazette*, may dissolve a municipal council in the province if—
- (a) the Electoral Commission in terms of section 13(2)(a) of the Demarcation Act is of the view that a boundary determination affects the representation of voters in that council, and the remaining part of the existing term of municipal councils is more than one year; or
 - (b) an intervention in terms of section 139 of the Constitution has not resulted in the council being able to fulfil its obligations in terms of legislation.
- (4) The MEC for local government may dissolve a municipal council in terms of subsection (3)(b) only—
- (a) with the concurrence of the Minister; and
 - (b) after notice of that dissolution has been tabled in the National Council of Provinces and that Council has approved the dissolution.

Caretaker provisions

35. (1) If a municipal council is dissolved or does not have enough members to form a quorum for a meeting, the MEC for local government in the province must appoint one or more administrators to ensure the continued functioning of the municipality until a new municipal council is elected or until the council has sufficient members for a quorum.
- (2) When appointing one or more administrators the MEC for local government, by notice in the *Provincial Gazette*, must determine the functions and powers of the administrator or administrators.

Part 2: Speakers of municipal councils

Election of speakers

36. (1) Each municipal council must have a chairperson who will be called the speaker.

(2) At its first sitting after its election, or when necessary to fill a vacancy, a municipal council must elect its speaker from among the councillors.

(3) The municipal manager of the municipality or, if the municipal manager is not available, a person designated by the MEC for local government in the province, presides over the election of a speaker.

(4) The procedure set out in Schedule 3 applies to the election of a speaker. 10

(5) A councillor may not hold office as speaker and mayor or executive mayor at the same time, but in a municipality of a type mentioned in section 9(e) or (f) or 10(c) the speaker must be called the mayor.

Functions of speakers

37. The speaker of a municipal council— 15

(a) presides at meetings of the council;

(b) performs the duties and exercises the powers delegated to the speaker in terms of section 32;

(c) must ensure that the council meets at least quarterly;

(d) must maintain order during meetings; 20

(e) must ensure compliance in the council and council committees with the Code of Conduct set out in Schedule 5; and

(f) must ensure that council meetings are conducted in accordance with the rules and orders of the council.

Term of office of speakers 25

38. The speaker of a municipal council is elected for a term ending, subject to section 39, when the next council is declared elected.

Vacation of office

39. The speaker of a municipal council vacates office during a term if that person— 30

(a) resigns as speaker;

(b) is removed from office; or

(c) ceases to be a councillor.

Removal from office

40. A municipal council by resolution may remove its speaker from office. Prior notice of an intention to move a motion for the removal of the speaker must be given. 35

Acting speakers

41. If the speaker of a municipal council is absent or not available to perform the functions of speaker, or during a vacancy, the council must elect another councillor to act as speaker.

CHAPTER 4

INTERNAL STRUCTURES AND FIJUNCTIONARIES

Part I: Executive committees

only municipalities of certain types may establish executive committees

42. (1) only municipalities of the types mentioned in sections 8(a),(b),(c) and (d), 59(a) and (b) and 10(a) may establish an executive committee.

(2) If a municipality of a type referred to in subsection (1) chooses to establish an executive committee, the provisions of this Part apply.

Composition of executive committees

43. (1) If the council of a municipality establishes an executive committee, it must (1) elect a number of councillors necessary for effective and efficient government, provided that no more than 20 per cent of the councillors or 10 councillors, whichever is the least, are elected. An executive committee may not have less than three members.

(2) An executive committee must be composed in such a way that parties and interests represented in the municipal council are represented in the executive committee in substantially the same proportion they are represented in the council.

(3) A municipal council may determine any alternative mechanism for the election of an executive committee, provided it complies with section 160(8) of the Constitution.

Functions and powers of executive committees

44. (1) An executive committee is— 20

- (a) the principal committee of the council of a municipality of a type that is entitled to establish an executive committee and
- (b) the committee of a municipal council which receives reports from the other committees of the council and which must forward these reports together with its recommendations to the council when it cannot dispose of the matter in 25 terms of its delegated powers.

(2) The executive committee must—

- (a) identify the needs of the municipality;
- (b) review and evaluate those needs in order of priority;
- (c) recommend to the municipal council strategies, programmes and services to 30 address priority needs through the integrated development plan and estimates of revenue and expenditure, taking into account any applicable national and provincial development plans; and
- (d) recommend or determine the best methods, including partnership and other approaches, to deliver those strategies, programmes and services to the 35 maximum benefit of the community.

(3) The executive committee in performing its duties must—

- (a) identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2)(c) can be evaluated, including key performance indicators which are specific to the 40 municipality and common to local government in general;
- (b) evaluate progress against the key performance indicators;
- (c) review the performance of the municipality in order to improve—
 - (i) the economy, efficiency and effectiveness of the municipality;
 - (ii) the efficiency of credit control and revenue and debt collection services: 45 and
 - (iii) the implementation of the municipality's by-laws:

- (d) monitor the management of the municipality's administration in accordance with the policy directions of the municipal council;
 - (e) oversee the provision of services to communities in the municipality in a sustainable manner;
 - (f) perform such duties and exercise such powers as the council may delegate to it in terms of section 32; 5
 - (g) annually report on the involvement of communities and community organisations in the affairs of the municipality; and
 - (h) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council 10
- (4) An executive committee must report to the municipal council on all decisions taken by the committee.

Election of members of executive committees

45. A municipal council must elect the members of its executive committee from among its members at a meeting that must be held— 15
- (a) within 14 days of the council's election; or
 - (b) if it is a district council, within 14 days after the last of the local councils has appointed its representatives to the district council.

Term of office of members

46. The members of an executive committee are elected for a term ending, subject to section 47, when the next municipal council is declared elected. 20

Vacancies

47. (1) A member of an executive committee vacates office during a term if that member— 25
- (a) resigns as a member of the executive committee;
 - (b) is removed from office as a member of the executive committee in terms of section 53; or
 - (c) ceases to be a councillor.
- (2) The filling of a vacancy in an executive committee is subject to section 43.

Election of mayors 30

48. (1) The municipal council must elect a member of its executive committee as the mayor and, if the MEC for local government in the province so approves, another member of the executive committee as the deputy mayor, of the municipality.
- (2) The election of a mayor and deputy mayor takes place when the executive committee is elected or when it is necessary to fill a vacancy. 35
- (3) The procedure set out in Schedule 3 applies to the election of a mayor and deputy mayor.
- (4) A mayor and deputy mayor is elected for the duration of that person's term as a member of the executive committee, but vacates office during a term if that person— 40
- (a) resigns as mayor or deputy mayor;
 - (b) is removed from office as a member of the executive committee in terms of section 53; or
 - (c) ceases to be a member of the executive committee.
- (5) No person may hold office as mayor or deputy mayor for more than two consecutive terms. If a person is elected to fill a vacancy in the office of mayor or deputy mayor, the period between that election and the next election of a mayor or deputy mayor is regarded as a term. 45
- (6) A mayor whose two consecutive terms have expired, may not immediately after the expiry be elected as deputy mayor.

Functions and powers of mayors

49. (1) The mayor of a municipality—

- (a) presides at meetings of the executive committee; and
- (b) performs the duties, including any ceremonial functions, and exercises the powers delegated to the mayor by the municipal council or the executive committee. 5

(2) The deputy mayor exercises the powers and performs the duties of the mayor if the mayor is absent or not available or if the office of the mayor is vacant. The mayor may delegate duties to the deputy mayor.

Meetings of executive committees

10

50. (1) The mayor decides when and where the executive committee meets, but if a majority of the members requests the mayor in writing to convene a committee meeting, the mayor must convene a meeting at a time set out in the request.

(2) If both the mayor and the deputy mayor are absent from a meeting, and there is a quorum, the members present must elect another member to preside at the meeting. 15

Procedures of executive committees

51. An executive committee, by resolution taken with a supporting vote of a majority of its members, may determine its own procedures subject to any directions and the rules and orders of the municipal council.

Quorum and decisions

20

52. (1) A majority of the members of an executive committee constitutes a quorum for a meeting.

(2) A question before the committee is decided if there is agreement among at least the majority of the members present at the meeting.

(3) If on any question there is an equality of votes, the member presiding must exercise a casting vote in addition to that member's vote as a member. 25

Removal from office of executive committees

53. (1) A municipal council may, by resolution remove from office one or more or all the members of its executive committee. Prior notice of an intention to move a motion for the removal of members must be given. 30

(2) If all the members of an executive committee are removed, a new election of members and the mayor and, if the municipality has a deputy mayor, the deputy mayor, must be held in terms of sections 45 and 48, respectively.

(3) The election of a member or members of an executive committee following a removal from office in terms of this section, is subject to section 43. 35

Part 2: Executive mayors

Only municipalities of certain types may elect executive mayors

54. (1) Only municipalities of the types mentioned in sections 8(e), (f), (g) and (h), 9(c) and (d) and 10(b) may have an executive mayor.

(2) If a municipality of a type referred to in sub-section (1) chooses to have an executive mayor, the provisions of this Part apply. 40

Election of executive mayors

55. (1) If a municipal council chooses to have an executive mayor it must elect an executive mayor and, if the MEC for local government in the province so approves, also an executive deputy mayor, from among its members at a meeting that must be held— 45

- (a) within 14 days of the council's election; or
- (b) if it is a district council, within 14 days after the last of the local councils has appointed its representatives to the district council.

(2) A vacancy in the office of executive mayor or executive deputy mayor must be filled when necessary. 5

(3) The procedure set out in Schedule 3 applies to the election of an executive mayor and executive deputy mayor.

Functions and powers of executive mayors

56. (1) An executive mayor is entitled to receive reports from committees of the municipal council and to forward these reports together with a recommendation to the council when the matter cannot be disposed of by the executive mayor in terms of the executive mayor's delegated powers. 10

(2) The executive mayor must—

- (a) identify the needs of the municipality;
- (b) review and evaluate those needs in order of priority; 15
- (c) recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan, and the estimates of revenue and expenditure, taking into account any applicable national and provincial development plans; and
- (d) recommend or determine the best way, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community. 20

(3) The executive mayor in performing the duties of office, must—

- (a) identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2)(c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general; 25
- (b) evaluate progress against the key performance indicators;
- (c) review the performance of the municipality in order to improve—
 - (i) the economy, efficiency and effectiveness of the municipality; 30
 - (ii) the efficiency of credit control and revenue and debt collection services; and
 - (iii) the implementation of the municipality's by-laws;
- (d) monitor the management of the municipality's administration in accordance with the "directly elected" municipal council; 35
- (e) oversee the provision of services to communities in the municipality in a sustainable manner;
- (f) perform such duties and exercise such powers as the council may delegate to the executive mayor in terms of section 32;
- (g) annually report on the involvement of communities and community organisations in the affairs of the municipality; and 40
- (h) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council.

(4) An executive mayor must perform a ceremonial role as the municipal council may determine. 45

(5) An executive mayor must report to the municipal council on all decisions taken by the executive mayor.

(6) The deputy executive mayor of a municipality exercises the powers and performs the duties of the executive mayor if the executive mayor is absent or not available or if the office of the executive mayor is vacant. 50

Term of office of executive mayors

57. (1) An executive mayor and a deputy executive mayor—

- (a) must be elected for a term ending, subject to section 58, when the next council is declared elected; and

(b) may not serve as executive mayor or deputy executive mayor for more than two consecutive terms. When a person is elected to fill a vacancy in the office of executive mayor or deputy executive mayor, the period between that election and the next election of an executive mayor or deputy executive mayor is regarded as a term. 5

(2) An executive mayor whose two consecutive terms have expired, may not immediately after the expiry be elected as deputy executive mayor.

Removal from office

58. A municipal council, by resolution may remove its executive mayor or deputy executive mayor from office. Prior notice of an intention to move a motion for the removal of the executive mayor or deputy executive mayor must be given. 10

Vacation of office

59. An executive mayor or deputy executive mayor vacates office during a term if that person—

- (a) resigns as executive mayor or deputy executive mayor; 15
- (b) is removed from office as executive mayor or deputy executive mayor; or
- (c) ceases to be a councillor.

Mayoral committees

60. (1) If a municipal council has more than nine members, its executive mayor—

- (a) must appoint a mayoral committee from among the councillors to assist the executive mayor; 20
- (b) may delegate specific responsibilities to each member of the committee;
- (c) may delegate any of the executive mayor's powers to the respective members; and
- (d) may dismiss a member of the mayoral committee. 25

(2) The mayoral committee must consist of the deputy executive mayor (if any) and as many councillors as may be necessary for effective and efficient government, provided that no more than 20 per cent of the councillors or 10 councilors, whichever is the least, are appointed.

(3) Those of the executive mayor's powers and functions as may be designated by the municipal council, must be exercised and performed by the executive mayor together with the other members of the mayoral committee. 30

(4) The members of a mayoral committee remain in office subject to subsection (5) and section 26, for the term of the executive mayor who appointed them.

(5) If the executive mayor vacates office, the mayoral committee appointed by that executive mayor dissolves. 35

Part 3: Metropolitan subcouncils

only metropolitan municipalities of certain types may establish metropolitan subcouncils

61. (1) only metropolitan municipalities of the types mentioned in section 8(b), (d), 40 (f) and (h) may establish metropolitan subcouncils.

(2) If a metropolitan municipality of a type referred to in subsection (1) chooses to establish metropolitan subcouncils, the provisions of this Part apply.

Establishment of metropolitan subcouncils

62. (1) If a metropolitan municipality decides to establish metropolitan subcouncils, it must do so by passing, after a process of public consultation, a by-law which— 45

- (a) determines the number of subcouncils to be established;
 - (b) determines for each subcouncil an area within the municipality consisting of a cluster of adjoining wards;
 - (c) establishes in each area a subcouncil under a distinct name;
 - (d) provides an equitable financial framework in terms of which the subcouncils must function; and
 - (e) regulates any other relevant matters.
- (2) When clustering wards to determine a metropolitan subcouncil area, the municipal council must—
- (a) apply the criteria set out in sections 24 and 25 of the Demarcation Act in so far as they can be applied; and
 - (b) consult the Demarcation Board.

Composition

63. (1) Each metropolitan subcouncil consists of—
- (a) the councillors representing the wards included in the subcouncil area; and
 - (b) an additional number of councillors determined by the metro council so that the combined total of paragraph (a) and this paragraph is substantially in the same proportion to the total number of councillors in the council as the number of registered voters in the area of the subcouncil is in proportion to the total number of registered voters in the municipality.
- (2) The councillors referred to in subsection (1)(b) must—
- (a) consist of councillors elected to the metro council from party lists in accordance with Part 3 of Schedule 1; and
 - (b) be appointed to the metropolitan subcouncil in accordance with Schedule 4.

Functions and powers

64. (1) A metropolitan subcouncil—
- (a) has such duties and powers as the metro council may delegate to it in terms of section 32; and
 - (b) may make recommendations to the metro council on any matter affecting its area.
- (2) A metropolitan subcouncil may advise the metro council on what duties and powers should be delegated to it.

Chairpersons

65. A metropolitan subcouncil must elect one of its members to be the chairperson of that subcouncil.

Term of office of members

66. The section 63(1)(b) members of a metropolitan subcouncil are elected for a term ending, subject to section 67, when the next metro council is declared elected.

Vacancies

67. A section 63(1)(b) member vacates office during a term if that person—
- (a) resigns as a member of the metropolitan subcouncil; or
 - (b) ceases to be a councillor.

Meetings

68. (1) The chairperson of a metropolitan subcouncil, subject to any directions of the metro council, decides when and where the subcouncil meets, but if a majority of the members requests the chairperson in writing to convene a meeting of the subcouncil, the chairperson must convene a meeting at a time mentioned in the request.

(2) The chairperson of a metropolitan subcouncil presides at meetings of that subcouncil. but if [he chairperson is absent from a meeting and a quorum is present the members present must elect another member to preside at that meeting.

Procedures of metropolitan subcouncils

69. A metropolitan subcouncil, with a supporting vote of a majority of its members, 5 may determine its own procedures, subject to any directions of the metro council.

Quorum and decisions

70. (1) A majority of the members of a metropolitan subcouncil constitutes a quorum for a meeting of that subcouncil.

(2) A question before a subcouncil is decided if there is agreement among at least the 10 majority of the members present at the meeting.

(3) If on any question there is an equality of votes, the member presiding must exercise a casting vote in addition to that member's vote as a member.

Committees

71. A metropolitan subcouncil may appoint committees, including a management 15 committee, from among its members to assist it in the performance of its duties and the exercise of its powers.

Part 4: Ward committees

Only metropolitan and local municipalities of certain types may have ward committees 20

72. (1) Only metropolitan and local municipalities of the types mentioned in sections 8(c), (d), (g) and (h) and 9(b), (d) and (f) may have ward committees.

(2) If a metropolitan or local municipality of a type referred to in subsection (1) chooses to establish ward committees, the provisions of this Part apply.

(3) The object of a ward committee is to enhance participatory democracy in local 25 government.

Establishment of ward committees

73. (1) If a metro or local council decides to have ward committees, it must establish a ward committee for each ward in the municipality.

(2) A ward Committee consists of— 30

(a) the councillor representing that ward in the council, who must also be the chairperson of the committee; and

(b) not more than 10 other persons.

(3) A metro or local council must make rules regulating—

(a) the procedure to elect the subsection (2)(b) members of a ward committee, 35 taking into account the need—

(i) for women to be equitably represented in a ward committee; and

(ii) for a diversity of interests in the ward to be represented.

(b) the circumstances under which those members must vacate office; and

(c) the frequency of meetings of ward committees. 40

(4) A metro or local council may make administrative arrangements to enable ward committees to perform their functions and exercise their powers effectively.

Functions and powers of ward committees

74. A ward committee—

(a) may make recommendations on any matter affecting its ward— 45

- (i) to the ward councillor; or
- (ii) through the ward councillor, to the metro or local council, the executive committee, the executive mayor or the relevant metropolitan subcouncil; and
- (b) has such duties and powers as the metro or local council may delegate to it in terms of section 32. 5

Term of office of members

75. The section 73(2)(b) members of a ward committee are elected for a term determined by the metro or local council.

Vacancies 10

76. If a vacancy occurs among the section 73(2)(b) members of a ward committee, the vacancy must be filled in accordance with a procedure determined by the metro or local council.

Remuneration

77. No remuneration is payable to the section 73(2)(b) members of a ward committee. 15

Dissolution of ward committees

78. A metro or local council may dissolve a ward committee if the committee fails to fulfil its object.

Part 5: Other committees of municipal councils

Establishment 20

79. (1) A municipal council may—
- (a) establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;
 - (b) appoint the members of such a committee from among its members; and
 - (c) dissolve a committee at any time. 25
- (2) The municipal council—
- (a) must determine the functions of a committee;
 - (b) may delegate duties and powers to it in terms of section 32;
 - (c) must appoint the chairperson;
 - (d) may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council; 30
 - (e) may remove a member of a committee at any time; and
 - (f) may determine a committee's procedure.

Committees to assist executive committee or executive mayor

80. (1) If a municipal council has an executive committee or executive mayor, it may appoint in terms of section 79, committees of councillors to assist the executive committee or executive mayor. 35

(2) Such committees may not in number exceed the number of members of the executive committee or mayoral committee.

- (3) The executive committee or executive mayor— 40
- (a) appoints a chairperson for each committee from the executive committee or mayoral committee;
 - (b) may delegate any powers and duties of the executive committee or executive mayor to the committee;
 - (c) is not divested of the responsibility concerning the exercise of the power or the performance of the duty; and 45

(d) may vary or revoke any decision taken by a committee, subject to any vested rights.

(4) Such a committee must report to the executive committee or executive mayor in accordance with the directions of the executive committee or executive mayor.

Part 6: Participation of traditional leaders

Participation in municipal councils

81. (1) Traditional authorities that traditionally observe a system of customary law in the area of a municipality, may participate through their leaders, identified in terms of subsection (2), in the proceedings of the council of that municipality, and those traditional leaders must be allowed to attend and participate in any meeting of the council.

(2)(a) The MEC for local government in a province, in accordance with Schedule 6 and by notice in the *Provincial Gazette*, must identify the traditional leaders who in terms of subsection (1) may participate in the proceedings of a municipal council.

(b) The number of traditional leaders that may participate in the proceedings of a municipal council may not exceed 10 per cent of the total number of councillors in that council, "but if the council has fewer than 10 councillors, only one traditional leader may so participate.

(c) If the number of traditional leaders identified in a municipality's area of jurisdiction exceeds 10 per cent of the total number of councillors the MEC for local government in the province may determine a system for the rotation of those traditional leaders.

(3) Before a municipal council takes a decision on any matter directly affecting the area of a traditional authority, the council must give the leader of that authority the opportunity to express a view on that matter. 25

(4) The MEC for local government in a province, after consulting the provincial House of Traditional Leaders, may by notice in the *Provincial Gazette*—

(a) regulate the participation of traditional leaders in the proceedings of a municipal council; and

(b) prescribe a role for traditional leaders in the affairs of a municipality. 30

(5) When participating in the proceedings of a municipal council a traditional leader is subject to the appropriate provisions of the Code of Conduct set out in Schedule 5.

Part 7: Municipal managers

Appointment

82. A municipal council must appoint— 35

(a) a municipal manager who is the head of administration and also the accounting officer for the municipality; and

(b) when necessary, an acting municipal manager.

CHAPTER 5

FUNCTIONS AND POWERS OF MUNICIPALITIES 40

General

83. (1) A municipality has the functions and powers assigned to it in terms of sections 156 and 229 of the Constitution.

(2) The functions and powers referred to in subsection (1) must be divided in the case of a district municipality and the local municipalities within the area of the district municipality, as set out in this Chapter. 45

(3) A district municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by—

- (a) ensuring integrated development planning for the district as a whole;
- (b) promoting bulk infrastructural development and services for the district as a whole;
- (c) building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking; and
- (d) promoting the equitable distribution of resources between the local municipalities in its area to ensure appropriate levels of municipal services within the area.

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Division of functions and powers between district and local municipalities

84. (1) A district municipality has the following functions and powers:

- (a) Integrated development planning for the district municipality as a whole, including a framework for integrated development plans for the local municipalities within the area of the district municipality, taking into account the integrated development plans of those local municipalities.
- (b) Bulk supply of water that affects a significant proportion of municipalities in the district.
- (c) Bulk supply of electricity that affects a significant proportion of municipalities in the district.
- (d) Bulk sewage purification works and main sewage disposal that affects a significant proportion of municipalities in the district.
- (e) Solid waste disposal sites serving the area of the district municipality as a whole.
- (f) Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole.
- (g) Regulation of passenger transport services.
- (h) Municipal airports serving the area of the district municipality as a whole.
- (i) Municipal health services serving the area of the district municipality as a whole.
- (j) Fire fighting services serving the area of the district municipality as a whole.
- (k) The establishment, conduct and control of fresh produce markets and abattoirs serving the area of the district municipality as a whole.
- (l) The establishment, conduct and control of cemeteries and crematoria serving the district as a whole.
- (m) Promotion of local tourism for the area of the district municipality.
- (n) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.
- (o) The receipt, allocation and, if applicable, the distribution of grants made to the district municipality.
- (p) The imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation.

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(2) A local municipality has the functions and powers referred to in section 83(1), excluding those functions and powers vested in terms of subsection (1) of this section in the district municipality in whose area it falls.

(3) Subsection (2) does not prevent a local municipality from performing functions in its area and exercising powers in its area of the nature described in subsection (1).

Adjustment of division of functions and powers between district and local municipalities

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85. (1) The MEC for local government in a province may, subject to the other provisions of this section, adjust the division of functions and powers between a district and a local municipality as set out in section 84(1) or (2), by allocating, within a prescribed policy framework, any of those functions or powers vested—

- (a) in the local municipality, to the district municipality; or
- (b) in the district municipality (excluding a function or power referred to in section 84(1)(a), (c) or (p)), to the local municipality.
- (2) An MEC may allocate a function or power in terms of subsection (1) only if—
 - (a) the municipality in which the function or power is vested lacks the capacity to perform that function or exercise that power; and
 - (b) the MEC has consulted and considered the assessment of the Demarcation Board on the capacity of the municipality concerned.
- (3) Subsection (2)(7) does not apply if the Demarcation Board omits to comply with subsection (4) within a reasonable period.
- (4) The Demarcation Board must—
 - (a) consider the capacity of a district or local municipality to perform the functions and exercise the powers vested in the municipality in terms of section 84(1) or (2) when—
 - (i) determining or redetermining the boundaries of the district and the local municipalities; or
 - (ii) requested in terms of subsection (2)(b) by the MEC for local government in the province concerned to do so; and
 - (b) convey its assessment in writing to the relevant MEC.
- (5) If an MEC disagrees with the Demarcation Board on the capacity of the district or local municipality and adjusts the division of functions and powers between the district and local municipality, or refuses to adjust the division contrary to the assessment of the Demarcation Board, the MEC must furnish reasons to the relevant municipalities and the Minister before finalizing an adjustment in terms of subsection (1).
- (6) Any adjustment of the division of functions and powers by way of an allocation in terms of subsection (1) or reallocation in terms of subsection (9) must be reflected in the notices referred to in section 12 which establish the municipalities concerned. Where applicable the legal, practical and other consequences of the allocation or reallocation must be regulated, including—
 - (a) the transfer of staff,
 - (b) the transfer of assets, liabilities and administrative and other records; and
 - (c) the continued application of any by-laws, regulations and resolutions in the area or the municipalities concerned and the extent of such application.
- (7) The Minister may by notice in the *Government Gazette* and after consulting the MEC for local government and the municipalities concerned—
 - (a) vary or withdraw any allocation of a function or power in terms of subsection (1) or reallocation of a function or power in terms of subsection (9); or
 - (b) adjust the division of functions and powers between a district and local municipality if the MEC has refused to make an adjustment in accordance with the assessment of the Demarcation Board.
- (8) The MEC must amend the relevant section 12 notices to give effect to any variation or withdrawal of any allocation or reallocation in terms of subsection (7).
- (9)(a) If a function or power has been allocated in terms of subsection (1) the MEC for local government in the province must regularly review the capacity of the relevant municipality and reallocate that function or power to that municipality when that municipality acquires the capacity to perform that function or exercise that power.
- (b) A reallocation in terms of paragraph (a) must be made with the concurrence of the receiving municipality or, in the absence of such concurrence, after having consulted the Demarcation Board.

Resolution of disputes concerning performance of functions or exercise of powers

86. If a district and a local municipality perform a function or exercise a power of a similar nature and a dispute arises between them concerning the performance of that function or the exercise of that power, the MEC for local government in the province, after consulting them, may, by notice in the *Provincial Gazette*, resolve the dispute by defining their respective roles in the performance of that function or in the exercise of that power.

Temporary allocation of functions and powers

87. (1) If the provision of basic services by a district or local municipality collapses or is likely to collapse because of that municipality's lack of capacity or for any other reason, the MEC for local government in the province may, after written notice to the district or local municipality and with immediate effect, allocate any functions and powers necessary to restore or maintain those basic services, to a local municipality which falls within that district municipality or to the district municipality in whose area that local municipality falls, as the case may be. 5

(2) The district or local municipality may lodge a written objection against the allocation to the Minister, who may confirm, vary or withdraw the allocation after having consulted the Demarcation Board. 10

(3) If the district or local municipality does not lodge a written objection against the allocation to the Minister within 14 days of the date of the notice referred to in subsection (1), the municipality is regarded as having consented to the allocation. 15

(4) The MEC for local government must reallocate that function or power to the original municipality when that municipality is in a position to resume the provision of those basic services. 15

Co-operation between district and local municipalities

88. (1) A district municipality and the local municipalities within the area of that district municipality must co-operate with one another by assisting and supporting each other. 20

(2) (a) A district municipality on request by a local municipality within its area may provide financial, technical and administrative support services to that local municipality to the extent that that district municipality has the capacity to provide those support services. 25

(b) A local municipality on request of a district municipality in whose area that local municipality falls may provide financial, technical and administrative support services to that district municipality to the extent that that local municipality has the capacity to provide those support services.

(c) A local municipality may provide financial, technical or administrative support services to another local municipality within the area of the same district municipality to the extent that it has the capacity to provide those support services, if the district municipality or that local municipality so requests. 30

(3) The MEC for local government in a province must assist a district municipality to provide support services to a local municipality. 35

District management areas

89. In district management areas, the district municipality has all the municipal functions and powers.

CHAPTER 6

Miscellaneous matters

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Cross-boundary municipalities

90. (1) This section applies to the establishment of a municipality envisaged in section 155(6A) of the Constitution only if an Act of Parliament authorises the establishment of the municipality.

(2) If the Demarcation Board demarcates a municipal area across a provincial boundary with the concurrence of the legislatures of the provinces involved, the MECs for local government in those provinces must, subject to subsection (1)— 45

(a) establish in that area, in accordance with section 12, a municipality of a type mentioned in section 8, 9 or 10 agreed to between them; and

- (b) with regard to that municipality, exercise their executive authority in terms of this Act and any other legislation jointly, except when the provincial governments concerned have entered into an agreement which provides for an alternative arrangement envisaged in subsection (3).
- (3) The governments of the provinces concerned may enter into an agreement providing for an arrangement which may include—
- (a) the exercise of their executive authority with regard to that municipality or in that municipal area by functionaries of one of those provincial governments on a delegation or agency basis;
 - (b) the provision of financial and other assistance to the municipality; and
 - (c) the suspension of all or any legislation of the one province and the application of all or any of the other province's legislation in that municipal area.
- (4) An agreement in terms of subsection (3)(c) that provides for the application of one province's legislation in that part of the municipal area that falls in another province, is enforceable only if the provincial legislature of that other province passes legislation providing for such application.
- (5) If a provincial legislature no longer supports the continuation of a cross-boundary municipality and passes a resolution calling for the (Disestablishment of that municipality, the Demarcation Board must redetermine the boundaries of the municipal area in such a way that no boundary extends across a provincial boundary.

Exemptions from certain provisions of this Act

91. (1) The MEC for local government in a province, within a policy framework as may be determined by the Minister, and by notice in the *Provincial Gazette*, may exempt a municipality in the province from a provision of section 36(2), (3) or (4), 38 to 41, 45 to 47, 48(2), (3) and (4), 50 to 53, 58, 65 to 71, 75 and 76.
- (2) A municipality exempted from a provision of this Act in terms of subsection (1) may pass its own legislation with regard to the matter dealt with in the exempted provision.

Regulations

92. The Minister may make regulations not inconsistent with this Act prescribing—
- (a) any matter that may or must be prescribed in terms of this Act; and
 - (b) any matter that may facilitate the application of this Act.

Application of this Act and transitional arrangements

93. (1) The provisions of this Act will only apply in respect of a municipality from the date contemplated in section 12, but this does not preclude the application of any provision of this Act for a purpose related to the determination of a municipal boundary, the establishment of a municipality or an election of a council.
- (2) If any conflict relating to the matters dealt with in this Act arises between this Act and the provisions of any other law, except the Constitution, the provisions of this Act prevail.
- (3) The first term of all municipal councils after the enactment of this Act expires not later than 1 November 2000 as determined by the Minister by notice in the *Government Gazette*.

Amendment of section 5 of Act 51 of 1996

94. Section 5 of the Electoral Commission Act, 1996 (Act No. 51 of 1996), is hereby amended by the deletion of subsection (1) of paragraph (m).

Short title

95. This Act is called the Local Government: Municipal Structures Act, 1998, and takes effect, subject to section 93, on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

Electoral system for metro and local councils

Definitions

1. [n this Schedule, unless the context otherwise indicates—
- “chief electoral officer”** means the chief electoral officer appointed in terms of section 12(1) of the Electoral Commission Act, 1996 (Act No. 51 of 1996), and includes a person designated by the chief electoral officer for the purposes of this Schedule;
- “election”** means an election called in terms of section 23, and, where appropriate, also a by-election called in terms of section 25;
- “independent ward councillor”** means a councillor who used on the ward ballot paper the distinguishing mark or symbol of a party which did not submit a party list in terms of item 12;
- “nomination day”** means the day determined in terms of the Electoral Act for the announcement of the nominated candidates and parties for a municipal election;
- “ward candidate representing a party”** means a ward candidate who used in an election on the part of the ballot paper for wards the same distinguishing mark or symbol as a party which submitted a party list in terms of item 10.

Part 1: General

Delimitation of wards

2. The Demarcation Board after consultation with the Electoral Commission, for purposes of an election, must delimit all metropolitan municipalities and all local municipalities that must have wards, into wards.

Number of wards

3. The number of wards in a metropolitan or local municipality must be equal to the number of ward councillors determined for the municipality in terms of section 22(2).

Delimitation criteria

4. The Demarcation Board after consulting the Electoral Commission must delimit a municipality into wards, each having approximately the same number of voters, taking into account the following criteria:
- (a) The number of registered voters in each ward, may not vary by more than fifteen per cent from the norm, where the norm is determined by dividing the total number of registered voters on the municipality's segment of the national common voters roll by the number of wards in the municipality.
 - (b) The need to avoid as far as possible the fragmentation of communities.
 - (c) The object of a ward committee as set out in section 72(3) which is to enhance participatory democracy in local government.
 - (d) The availability and location of a suitable place or places for voting and counting if appropriate, taking into consideration—
 - (i) communication and accessibility;
 - (ii) density of population;
 - (iii) topography and physical characteristics; and
 - (iv) the number of voters that are entitled to vote within the required time-frame
 - (e) The safety and security of voters and election material.
 - (f) Identifiable ward boundaries.

Publication of delimitation

5. (1) The Demarcation Board must publish it; delimitation of wards for a municipality in the *Provincial Gazette*.

(2) Any person aggrieved by a delimitation may within 14 days of publication submit objections in writing to the Demarcation Board, and the Board must—

- (a) consider those objections; and
- (b) confirm, vary or withdraw its determination

Electoral system for metro and local councils with wards

6. A metro council, and a local council having wards, must be elected as follows:

- (a) A number of councillors equal to the number of wards in the municipality must be directly elected in accordance with Part 2 of this Schedule to represent the wards in the Council; and
- (b) the rest of the councillors must be elected from party lists in accordance with Part 3 of this Schedule to represent parties proportionally in the council.

Electoral system for local councils without wards

7. If a local council has no wards, all the councillors must be elected from party lists in accordance with Part 3 of this Schedule to represent parties proportionally in the council.

Part 2: Ward election,

Number of votes

8. (1) In an election of a councillor for a ward each voter has one vote only, and a voter may vote for one candidate only.

(2) In each ward the candidate who receives the most votes is the elected councillor for that ward. In the event of two or more candidates receiving an equal number of votes, the result will be determined by lot.

Part 3: Proportional representation elections

Number of votes

9. (1) In an election for a metro council, or for a local council that has wards, each voter has two votes, and may vote for—

- (a) not more than one ward candidate; and
- (b) not more than one party.

(2) In an election for a local council that has no wards, each voter has one vote only, and may vote for one party only.

Submission of lists of candidates

10. A list of candidates may be submitted—

- (a) by a political party registered in terms of the Electoral Act; or
- (b) by a party other than a party referred to in paragraph (a) if it—
 - (i) has one or more office-bearers; and
 - (ii) operates an office or has an address within the municipality to which the election relates.

Party lists

11. (1) The number of candidates on a list submitted by a party may not exceed double the number of seats in the metro or local council to be filled from party lists.

(2) The candidates' names must appear on the list in the order of the party's preference, commencing with the first in order of preference and ending with the last.

(3) Every party must seek to ensure that fifty per cent of the candidates on the party list are women and that women and men candidates are evenly distributed through the list.

Quota

12. (1) The quota of votes for a seat in the metro or local council, must be determined in accordance with the following formula (fractions to be disregarded):

$$\frac{A}{B-C} + 1$$

Where—

A represents the total number of valid votes cast for all parties, consisting of those cast on the party vote and those cast for ward candidates representing parties;

B represents the number of seats in the metro or local council; and

C represents the number of independent ward councillors elected in the election.

(2) If a ward candidate representing a party is elected unopposed, a vote cast by a voter registered in that ward for the party of which that candidate is a representative must for the purpose of factor A be counted as two votes.

Allocating seats

13. (1) (a) The total number of valid votes cast for each party on the party vote and for the ward candidates representing the party must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled before any adjustment in terms of subitem (3).

(b) If a ward candidate representing a party is elected unopposed, a vote cast by a voter registered in that ward for the party of which that candidate is a representative must for the purpose of paragraph (a) be counted as two votes.

(2) (a) If the calculation in subitem (1) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(b) If the surplus for two or more parties is equal the seat must be awarded to the party that obtained the highest number of valid votes.

(3) (a) In an election for a metro council or for a local council that has wards, the chief electoral officer must deduct from the total number of seats to which each party is entitled in terms of subitem (1) and (2), the number of ward candidates representing that party who were declared elected.

(b) The result is the number of seats which the party is entitled to fill from its list of party candidates.

(4) If no party is awarded a seat in terms of subitem (1), the votes for each party, read with subitem (1)(b), must be treated in accordance with subitem (2) as if they are surpluses.

(5) The chief electoral officer must determine which party candidates are elected by selecting from the party's list, in accordance with the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled, beginning with the first candidate on the list and ending with the lowest ranking candidate.

Uncontested elections

14. (1) If only one party submitted a list, an election according to proportional representation must not be held for the metro or local council.

(2) The number of seats to which the party is entitled is the total number of seats on the council to be filled by proportional representation.

(3) The chief electoral officer must determine which party candidates are elected by selecting from the party's list, according to the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled.

Procedure if no party applications

15. (1) If no party applies for registration or every application is rejected, a by-election must be held within 90 days of nomination day.

(2) If no party applies for registration or every application is rejected for the by-election—

(a) the municipal manager must notify the chief electoral officer within 24 hours;

(b) the chief electoral officer within seven days must determine the date for a further election which must be held within 60 days; and

(c) the vacancies must remain unfilled until such time as they are filled by way of election.

(3) Section 25 applies to a by-election in terms of this item, to the extent that that section can be applied.

Excessive seats

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

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

Insufficient party lists

17. (1) If a party list contains fewer candidates than the party is entitled to, the chief electoral officer must in writing immediately notify the party of the exact shortfall and request the party to deliver a list supplemented by the name or names of one or more eligible candidates.

(2) Immediately upon receipt of the list referred to in subitem (1), the chief electoral officer must allocate the number of representatives, in the order of preference on the list, to which the party is entitled.

(3)(a) Subject to paragraph (b)—

(i) if the party concerned has ceased to exist, the seat or seats must remain unfilled;

(ii) if the party concerned does not deliver a supplemented list, the seat or seats remain unfilled until it delivers a list; or

(iii) if the party concerned delivers a supplemented list containing fewer names than the number of seats to be filled from that list, the seat or seats remain unfilled to the extent of the shortfall until it delivers a further list.

(b) Where seats are unfilled in terms of paragraph (a), and the vacancies render a quorum for the municipal council impossible, the party concerned forfeits the unfilled seats, and the seats must be filled within 14 days in accordance with subitems (4) to (10).

(4) If a party forfeits seats, a new quota of votes for a seat must be determined in accordance with the following formula (fractions to be disregarded):

$$\frac{A-B}{C-(D+E)} + 1$$

Where—

A represents the total number of valid votes cast for all parties, consisting of those cast on the party vote and those cast for ward candidates representing parties;

B represents the total number of valid votes cast for the party that has forfeited seats, both on the party vote and for ward candidates representing the party;

C represents the number of seats in the council;

D represents the number of seats awarded to the forfeiting party; and

E represents the number of independent ward councillors elected in the election.

(5) (a) The total number of valid votes cast for each party, both on the party vote and for ward candidates representing the party, excluding the party that has forfeited seats, must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled.

(b) If the calculation in paragraph (a) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surpluses.

(c) If the surplus for two or more parties is equal, the seat must be awarded to the party that received the highest number of valid votes.

(6) If a ward candidate representing a party is elected unopposed, a vote cast by a voter registered in that ward for the party of which that candidate is a representative must for the purpose of factors A and B and subitem 5) be counted as two votes.

(7) In an election for a council that has wards, the chief electoral officer must deduct from the total number of seats to which each party is entitled in terms of subitem (5), the number of ward candidates representing the party who were declared elected.

(8) If no party is awarded a seat in terms of subitem (5)(a) the votes for each party must be treated in accordance with subitem (5)(b) as if they are surpluses.

(9) The chief electoral officer must determine in the manner provided in item 13(5) which party candidates are elected.

(10) If a party is entitled to an additional number of seats in terms of subitem (5) and its list of candidates does not contain a sufficient number of candidates, the party concerned forfeits, subject to subitem (1), the unfilled seats and the process provided in this item must be repeated until all seats have been filled or until all listed candidates have been allocated to a vacant seat.

Filling of vacancies

18. (1) If a councillor elected from a party list ceases to hold office, the chief electoral officer must, subject to item 20, declare in writing the person whose name is at the top of the applicable party list to be elected in the vacancy.

(2) Where a party list has become exhausted, item 17, adjusted as may contextually be necessary, applies to the supplementation of the list, and if the party fails to supplement its list, or if the party has ceased to exist, the vacancy must remain unfilled.

Part 4: Filling and amending party lists

Causes of vacancies on lists

19. A person who is a candidate on a party list ceases to be a candidate and a vacancy arises in the list when the party withdraws the person's name by written notice to the chief electoral officer, or when that person—

- (a) assumes office as a councillor;
- (b) resigns from the list by written notice to the chief electoral officer;
- (c) becomes ineligible to be a candidate;
- (d) is disqualified or removed from the list in terms of any legislation;
- (e) ceases to be a member of the party for which that person was listed as a party candidate; or
- (f) ceases to be ordinarily resident in the municipality to which the list relates.

Filling vacancies and changing the order

20. (1) A party may supplement, change or increase its list at any time, provided that if a councillor elected according to a party list, ceases to hold office, the party concerned may supplement, change or increase its list by not later than 21 days after the councillor has ceased to hold office. The vacancy must be filled within 14 days after expiry of the 21 days' period.

(2) If a party supplements, changes or increases its list in terms of subitem (1) it must provide the chief electoral officer with an amended list.

SCHEDULE 2

Electoral system for district councils

Definitions

1. In this Schedule, unless the context otherwise indicates—

“**chief electoral officer**” means the chief electoral officer appointed in terms of section 12(1) of the Electoral Commission Act, 1996 (Act No. 51 of 1996), and includes a person designated by the chief electoral officer for the purposes of this Schedule;

“**election**” means an election called in terms of section 23, and, where appropriate, also a by-election called in terms of section 25;

“**nomination day**” means the day determined in terms of the Electoral Act for the announcement of the nominated candidates and parties for an election.

Part 1: Proportional elections

Electoral system for party representatives

2. The councillors of a district council that in terms of section 23 must be elected in accordance with this Part, must be elected as follows:

- (a) a number of councillors determined for the municipality in terms of section 23(3) must be elected from party lists to proportionally represent parties in the council; and
- (b) a number of councillors allocated in terms of section 23(2)(b) to any district management areas in the municipality must be elected from party lists to proportionally represent parties in those areas.

Number of votes

3. In an election for a district council—

- (a) each voter registered in the area of a local municipality within the district municipality has one vote, and may vote for one party only; and
- (b) each voter registered in a district management area within the district municipality has two votes, and may vote for—
 - (i) not more than one party that submitted a list for the district council; and
 - (ii) not more than one party that submitted a list for the district management area.

Submission of lists of candidates

4. A list of candidates may be submitted—

- (a) by a political party registered in terms of the Electoral Act; or
- (b) by a party other than a party referred to in paragraph (a) if it—
 - (i) has one or more office-bearers; and
 - (ii) operates an office or has an address within the district municipality to which the election relates.

Party lists

5. (1) The number of candidates on a party list submitted by a party may not exceed double the number of seats in the district council allocated, as the case may be, for the election of councillors—

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

(2) The candidates' names must appear on the list in the order of the party's preference, commencing with the first in order of preference and ending with the last.

(3) Every party must seek to ensure that fifty per cent of the candidates on the party list are women and that women and men candidates are evenly distributed through the list.

Quota

6. The quota of votes for a seat in a district council or for a seat in a district council as a representative of a district management area, must be determined in accordance with the following formula (fractions to be disregarded):

$$\frac{A}{B} + 1$$

Where—

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

B represents, as the case may be, either—

(a) the number of seats in the district council allocated in terms of section 23(1)(a); or

(b) the number of seats allocated to a district management area in the district council.

Allocating seats

7. (1) The total number of valid votes cast for each party must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled.

(2) (a) If the calculation in subitem (1) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(b) If the surplus for two or more parties is equal the seat must be awarded to the party that obtained the highest number of valid votes.

(3) If no party is awarded a seat in terms of subitem (1), the votes for each party must be treated in accordance with subitem (2) as if they are surpluses.

(4) The chief electoral officer must determine which party candidates are elected by selecting from the party's list, in accordance with the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled, beginning with the first candidate on the list and ending with the lowest ranking candidate.

Uncontested elections

8. (1) If only one party submitted a list, an election must not be held for the district council or in the district management area concerned.

(2) The number of seats to which the party is entitled is the total number of seats on the council to be filled by the election concerned.

(3) The chief electoral officer must determine which party candidates are elected by selecting from the party's list, according to the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled.

Procedure if no party applications

9. (1) If no party applies for registration or every application is rejected, a by-election must be held within 90 days of nomination day.

(2) If no party applies for registration or every Implication is rejected for the by-election—

- (a) the municipal manager must notify the chief electoral officer within 24 hours;
- (b) the chief electoral officer within seven days must determine the date for a further election which must be held within 90 days; and
- (c) the vacancies must remain unfilled until such time as they are filled by way of election.

(3) Section 25 applies to a by-election in terms of this item, to the extent that that section can be applied.

Insufficient party lists

10. (1) If a party list contains fewer candidates than the party is entitled to, the chief electoral officer must in writing immediately notify the party of the exact shortfall and request the party to deliver a list supplemented by the name or names of one or more eligible candidates.

(2) Immediately upon receipt of the list referred to in subitem (1), the chief electoral officer must allocate the number of representatives, in the order of preference on the list, to which the party is entitled.

(3)(a) Subject to paragraph (b)—

- (i) if the party concerned has ceased to exist, the seat or seats must remain unfilled;
- (ii) if the party concerned does not deliver a supplemented list, the seat or seats remain unfilled until it delivers a list; or
- (iii) if the party concerned delivers a supplemented list containing fewer names than the number of seats to be filled from that list, the seat or seats remain unfilled to the extent of the shortfall until it delivers a further list.

(b) Where seats are unfilled in terms of paragraph (a), and the vacancies render a quorum for the municipal council impossible, the party concerned forfeits the unfilled seats, and the seats must be filled within 14 days in accordance with subitems (4) to (8).

(4) If a party forfeits seats, a new quota of votes for a seat must be determined in accordance with the following formula (fractions to be disregarded):

$$\frac{A-B}{C-D} + 1$$

Where—

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

B represents the total number of valid votes cast for the party that has forfeited seats;

C represents the number of seats in the council to be filled in the election; and

D represents the number of seats awarded to the forfeiting party.

(5) (a) The total number of valid votes cast for each party, excluding the party that has forfeited seats, must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled.

(b) If the calculation in paragraph (a) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(c) If the surplus for two or more parties is equal, the seat must be awarded to the party that received the highest number of valid votes.

(6) If no party is awarded a seat in terms of subitem (5)(a) the votes for each party must be treated in accordance with subitem (5)(b) as if they are surpluses.

(7) The chief electoral officer must determine in the manner provided in item 8(3) which party candidates are elected.

(8) If a party is entitled to an additional number of seats in terms of subitem (5) and its list of candidates does not contain a sufficient number of candidates, the party concerned, subject to subitem (1), forfeits the unfilled seats and the process provided in this item must be repeated until all seats have been filled or until all listed candidates have been allocated to a vacant seat.

Filling of vacancies

11. (1) If a councillor elected from a party list ceases to hold office, the chief electoral officer must, subject to item 13, declare in writing the person whose name is on the top of the applicable party list to be elected in the vacancy.

(2) Where a party list has become exhausted, item 10, adjusted as may contextually be necessary, applies to the supplementation of the list, and if the party fails to supplement its list, or if the party has ceased to exist, the vacancy must remain unfilled.

Causes of vacancies on lists

12. A person who is a candidate on a party list ceases to be a candidate and a vacancy arises in the list when the party withdraws the person's name by written notice to the chief electoral officer or when that person—

- (a) assumes office as a councillor;
- (b) resigns from the list by written notice to the chief electoral officer;
- (c) becomes ineligible to be a candidate;
- (d) is disqualified or removed from the list in terms of any legislation;
- (e) ceases to be a member of the party for which that person was listed as a party candidate; or
- (f) ceases to be ordinarily resident in the municipality to which the list relates.

Filling vacancies and changing the order

13. (1) A party may supplement, change or increase its list at any time, provided that if a councillor elected according to a party list, ceases to hold office, the party concerned may supplement, change or increase its list by not later than 21 days after the councillor has ceased to hold office. The vacancy must be filled within 14 days after expiry of the 21 days period.

(2) If a party supplements, changes or increases its list in terms of subitem (1) it must provide the chief electoral officer with an amended list.

Part 2: Allocation and election of representatives of local councils and district management areas to district councils

Manner of election

14. The section 23(2) members of a district council must be—

- (a) appointed by the councils of the local municipalities in the area of the district council from among their members; and
- (b) if there is a district management area in the district municipality, elected in accordance with Part I of this Schedule to represent that area on the district council.

Award of seats on district councils

15. (1) The quota of registered voters that a local council or a district management area must have in order to be entitled to a seat on a district council must be determined in accordance with the following formula (fractions to be disregarded)—

$$\frac{A}{B} + 1$$

Where—

A represents the total number of voters registered on the district council's segment of the national common voters roll; and

B represents the number of seats on the district council determined in terms of section 23(2)(o) for representatives of the local councils and district management areas but disregarding any increase in terms of section 20(5).

(2) Each local municipality and each district management area in the area of a district municipality is entitled to a number of seats on the district council determined by dividing the total number of voters registered on the segment of the national common voters' roll for that local municipality or district management area by the quota of votes for a seat on the district council determined in accordance with subitem (1).

(3) If the calculation in subitem (2) gives a figure that is a fraction of the figure 1, the council or district management area, must be awarded one seat and must not participate in any further calculation or award.

(4) If the calculation in subitem (2) yields a surplus, that surplus must compete with similar surpluses of any other council or district management area, and any seat or seats not awarded in terms of subitems (2) and (3) must be awarded in sequence of the highest surplus.

Electing local councils' representatives to district councils

16. (1) The chief electoral officer must manage the election of representatives of a local council to the district council.

(2) If a local council has been awarded one seat—

(a) any councillor may nominate a candidate;

(b) each councillor has one vote; and

(c) the candidate who receives the most votes is elected.

(3) If the council has been awarded more than one seat, the council must elect that number of members according to proportional representation as set out in items 17 to 22.

Candidates lists

17. (1) Every party or councillor may submit a candidates' list containing the names of councillors, accompanied by a written acceptance by each listed candidate.

(2) A party or councillor may not submit more than one list.

(3) The candidates' names must appear on the list in order of preference, starting with the first in order of preference and ending with the last.

(4) The name of a councillor may appear on one list only.

(5) Every party or councillor must seek to ensure that fifty per cent of the candidates on the candidates list are women and that women and men candidates are evenly distributed through the list.

Number of votes

18. Each councillor casts one vote for one list only.

Determining the quota

19. In a local council, the quota of votes for a seat to the district council must be determined in accordance with the following formula (fractions to be disregarded)—

$$\frac{A}{B} + 1$$

Where—

A represents the number of members of the local council; and

B represents the number of seats that the local council has been awarded on the district council in accordance with item 15.

Allocating seats

20. (1) The number of votes cast in favour of each list must be divided by the quota of votes for a seat and the result is the number of seats allocated to that list.

(2) If the calculation in subitem (1) gives a surplus, that surplus must compete with

other similar surpluses of any other lists, and any seat or seats not allocated under subitem (1) must be awarded in sequence of the highest surplus.

Selecting names from the list

21. The chief electoral officer, in accordance with the order of preference on a list, must select the number of candidates from the list that is equal to the number of seats allocated to that list.

Insufficient lists

22. In the case of a list containing fewer names than the number of seats allocated to that list, the corresponding provisions of item 10 must be applied to the extent that that item can be applied.

Filling of vacancies

23. If a councillor elected from a candidates' list ceases to hold office or the list has become exhausted, the corresponding provisions of item 11 must be applied to the extent that that item can be applied,

Electing members representing a district management area

24. The councillors representing a district management area must be elected in accordance with the proportional electoral system set out in Part 1 of this Schedule.

SCHEDULE 3

Election of municipal office-bearers

Application

1. The procedure set out in this Schedule applies whenever a municipal council meets to elect a speaker, an executive mayor, a deputy executive mayor, a mayor or a deputy mayor.

Nominations

2. The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

Formal requirements

3. (1) A nomination must be made on the form determined by the municipal manager.

(2) The form on which a nomination is made must be signed by two members of the municipal council.

(3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

Announcement of names of candidates

4. At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

Single candidate

5. If only one candidate is nominated, the person presiding must declare that candidate elected.

Election procedure

6. If more than one candidate is nominated—

(a) a vote must be taken at the meeting by secret ballot;

(b) each councillor present at the meeting may cast one vote; and

(c) the person presiding must declare elected the candidate who receives a majority of the votes.

Elimination procedure

7. (1) If no candidate receives a majority of the votes the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.

(2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

Further meetings

8. (1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days at a time determined by the person presiding.

(2) If a further meeting is held in terms of subitem (1) the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

SCHEDULE 4

Method of allocating councillors elected from party lists to metropolitan subcouncils

Quota

1. (1) The quota of votes for a seat in the section 63(1)(b) component of a metropolitan subcouncil, is determined by dividing the total number of valid votes cast for parties on the party vote in the area of that subcouncil in the election for the municipal council concerned, by the total number of seats in that component, plus one.

(2) The result, plus one, disregarding fractions, is the quota of votes per seat.

Allocating seats to parties

2. (1) The total number of valid votes cast for each party on the party vote in the area of the metropolitan subcouncil must be divided by the quota of votes per seat. The result is the total number of seats to which each party is entitled in the section 63(1)(b) component of that subcouncil.

(2) (a) If the calculation in subitem (1) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses of any other parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(b) If the surplus for two or more parties is equal, the mayor of the municipality must determine by lot which of those parties is entitled to the seat.

(3) If no party is awarded a seat in terms of subitem (1), the votes for each party must be treated in accordance with subitem (2) as if they are surpluses.

Designation of councillors for metropolitan subcouncils

3. Each party represented in a metro council must designate from among the councillors elected from its party list, its representatives to each metropolitan subcouncil in the municipality with regard to which seats were awarded to it in terms of item 2.

Councillors to serve on one metropolitan subcouncil only

4. No councillor may serve on more than one metropolitan subcouncil.

Vacancies

5. Parties must fill vacancies as they occur.

SCHEDULE 5

CODE OF CONDUCT

Preamble

Councillors are elected to represent local communities on municipal councils, to ensure that [municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainably within the means of the municipality. In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfil their obligations to their communities, and support the achievement by the municipality of its objectives set out in section 19 of the Act, the following Code of Conduct is established.

Definitions

1. In this Schedule “partner” means a person who permanently lives with another person in a manner as if married.

General conduct of councillors

2. A councillor must—

- (a) perform the functions of office in good faith, honestly and a transparent manner; and
- (b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

Attendance at meetings

3. A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when—

- (a) leave of absence is granted in terms of an applicable law or as determined by the rules and order of the council; or
- (b) that councillor is required in terms of this Code to withdraw from the meeting.

Sanctions for non-attendance of meetings

4. (1) A municipal council may impose a fine as determined by the standing rules and orders of the municipal council on a councillor for:

- (a) not attending a meeting which that councillor is required to attend in terms of item 3; or
- (b) failing to remain in attendance at such a meeting.

(2) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of item 3, must be removed from office as a councillor.

(3) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt for the purposes of this item. The uniform standing procedure must comply with the roles of natural justice.

Disclosure of interests

5. (1) A councillor must—

- (a) disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and
 - (b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's direct or indirect interest in the matter is trivial or irrelevant.
- (2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council at which it is possible for the councillor to make the disclosure.
- (3) This section does not apply to an interest or benefit which a councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.

Personal gain

6. (1) A councillor may not use the position or privileges of a councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.
- (2) Except with the prior consent of the municipal council, a councillor may not—
- (a) be a party to or beneficiary under a contract for—
 - (i) the provision of goods or services to the municipality; or
 - (ii) the performance of any work otherwise than as a councillor for the municipality;
 - (b) obtain a financial interest in any business of the municipality; or
 - (c) for a fee or other consideration appear on behalf of any other person before the council or a committee.
- (3) If more than one quarter of the councillors object to consent being given to a councillor in terms of subitem (2), such consent may only be given to the councillor with the approval of the MEC for local government in the province.

Declaration of interests

7. (1) When elected or appointed, a councillor must within 60 days declare in writing to the municipal manager the following financial interests held by that councillor:
- (a) shares and securities in any company;
 - (b) membership of any close corporation;
 - (c) interest in any trust;
 - (d) directorships;
 - (e) partnerships;
 - (f) other financial interests in any business undertaking;
 - (g) employment and remuneration;
 - (h) interest in property;
 - (i) pension; and
 - (j) subsidies, grants and sponsorships by any organisation.
- (2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.
- (3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with subitem (1).
- (4) The municipal council must determine which of the financial interests referred in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

Full-time councillors

8. A councillor who is a full-time councillor may not undertake any other paid work, except with the consent of a municipal council which consent shall not unreasonably be withheld.

Rewards, gifts and favours

9. A councillor may not request, solicit or accept any reward, gift or favour for—
- (a) voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member;
 - (b) persuading the council or any committee in regard to the exercise of any power, function or duty;
 - (c) making a representation to the council or any committee of the council; or
 - (d) disclosing privileged or confidential information.

Unauthorised disclosure of information

10. (1) A councillor may not without the permission of the municipal council or a committee disclose any privileged or confidential information of the council or committee to any unauthorised person.

(2) For the purpose of this item “privileged or confidential information” includes any information—

- (a) determined by the municipal council or committee to be privileged or confidential;
- (b) discussed in closed session by the council or committee;
- (c) disclosure of which would violate a person’s right to privacy; or
- (d) declared to be privileged, confidential or seen to in terms of law.

(3) This item does not derogate from the right of any person to access to information in terms of national legislation.

Intervention in administration

11. A councillor may not, except as provided by law—

- (a) interfere in the management or administration of any department of the municipal council unless mandated by council;
- (b) give or purport to give any instruction to any employee of the council except when authorised to do so;
- (c) obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or
- (d) encourage or participate in any conduct which would cause or contribute to maladministration in the council.

Council property

12. A councillor may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.

Duty of chairpersons of municipal councils

13. (1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached the chairperson must—

- (a) authorise an investigation of the facts and circumstances of the alleged breach;
- (b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
- (c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.

(2) A report in terms of subitem (1)(c) is open to the public.

(3) The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.

(4) The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.

Breaches of Code

14. (1) A municipal council may -

(a) investigate and make a finding on any alleged breach of a provision of this Code; or

(b) establish a special committee-

- (i) to investigate and make a finding on any alleged breach of this Code; and
- (ii) to make appropriate recommendations to the council.

(2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may—

(a) issue a formal warning to the councillor;

(b) reprimand the councillor;

(c) request the MEC for local government in the province to suspend the councillor for a period;

(d) fine the councillor; and

(e) request the MEC to remove the councillor from office.

(3)(a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.

(b) A copy of the appeal must be provided to the council.

(c) The council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the MEC for local government in writing.

(d) The MEC or the MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal.

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the councillor should be suspended or removed from office.

(5) The Commissions Act, 1947 (Act No.8 of 1917), may be applied to an investigation in terms of subitem (3).

(6) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the MEC may—

(a) suspend the councillor for a period and on conditions determined by the MEC;

or

(b) remove the councillor from office.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

Application of Code to traditional leaders

15. (1) Items 1, 2, 5, 6, 9 (b) to (d), 10, 11, 12, 13 and 14 (1) apply to a traditional leader who participates or has participated in the proceedings of a municipal council in terms of section 81.

(2) These items must be applied to the traditional leader in the same way they apply to councillors.

(3) If a municipal council or a special committee in terms of item 14 (1) finds that a traditional leader has breached a provision of this Code, the council may—

(a) issue a formal warning to the traditional leader; or

(b) request the MEC for local government in the province to suspend or cancel the traditional leader's right to participate in the proceedings of the council.

(4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the right of the traditional leader to participate in the proceedings of the municipal council should be suspended or cancelled.

(5) The Commissions Act, 1947, may be applied to an investigation in terms of subitem (4).

(6) If the MEC is of the opinion that the traditional leader has breached a provision of this Code, and that such breach warrants a suspension or cancellation of the traditional leader's right to participate in the council's proceedings, the MEC may

(a) suspend that right for a period and on condition determined by the MEC; or

(b) cancel that right.

(7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

(8) The suspension or cancellation of a traditional leader's right to participate in the proceedings of a council does not affect that traditional leader's right to address the council in terms of section 8 I (3).

SCHEDULE 6

Identification of traditional leaders@ purposes of section 81

Manner of identification

1. (1) If it comes to the notice of the MEC for local government in a province that one or more traditional authorities traditionally observe a system of customary law in the area of a municipality, the MEC—

- (a) must inform the provincial House of Traditional Leaders of the maximum number of traditional leaders that may be identified in terms of section 81 to participate in the proceedings of the council of that municipality;
- (b) must request that House of Traditional Leaders to recommend which leaders of that traditional authority or of those traditional authorities can be identified for the purposes of section 81;
- (c) on receipt of the recommendation, or if no recommendation is received within 30 days after the request in terms of paragraph (b) has been made, may identify the leaders of that authority or authorities; and
- (d) if any leaders have been identified in terms of paragraph (c), must submit the names of those leaders to the municipal manager of that council.

(2) In a province in which no provincial House of Traditional Leaders has been established, the MEC must consult the traditional authority concerned before identifying any leader for the purposes of section 81.

Guidelines for identification

2. The traditional leader to be identified must

- (a) hold the supreme office of authority amongst all the leaders of the traditional authority referred to in item 1; and
- (b) be ordinarily resident within the area of the municipality concerned.

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT : MUNICIPAL STRUCTURES BILL, 1998

1. The main object of the Bill is to provide for the new constitutional dispensation for local government in so far it relates to the different categories and types of municipalities, as well as the division of powers and functions between certain categories of municipalities as well as for the electoral system to be applied in the local sphere of government.

2. The Bill forms part of a package of legislation aimed at the transformation of local government into a more citizen friendly, accountable, developmental, financially sustainable and performance orientated sphere of government. The Bill will be followed by the Municipal Systems Bill which provides for public participation in the affairs of local government, and greater accountability to citizen, for municipal performance through planning, budgeting and reporting practices.

3. Part 1 of Chapter 1 establishes criteria for determining when an area should have a single category A municipality or when it should have municipalities of both category B and C. Part 2 of Chapter 1 defines the different types of municipalities that may be established within each category.

4. Chapter 2 of the Bill provides for the establishment of municipalities by the MEC for local government by notice in the *Provincial Gazette*, in which the category, the type, the boundaries, the name and the number of councillors of the municipality is specified. It furthermore regulates the consequences where a newly established municipality supersedes an existing municipality. It also provides for the amendment, repeal or replacement of a notice establishing a municipality.

5. Part 1 of Chapter 3 of the Bill regulates the number of councillors to be elected or appointed, the qualifications applicable to councillors as well as the election or appointment of councillors. It also provides for the holding of by-elections, the term of office of councillors, the vacation of office, privileges and immunities of councillors, the dissolution of municipalities and the assignment of powers and duties to committees and other internal functionaries.

6. Part 2 of Chapter 3 of the Bill deals with the election, functions, term of office and vacation of office of speakers of municipal councils.

7. Part 1 of Chapter 4 of the Bill provides criteria for determining when municipal councils may elect an executive committee, the composition, powers and functions, the term of office, the filling of vacancies, removal from office, quorums and decisions and the appointment of subcommittees of executive committees. It also provides for the election of a mayor and defines the powers and functions of a mayor.

8. Part 2 of Chapter 4 provides criteria for the election of an executive mayor, the powers and functions, the term of office and the removal and vacation of office of executive mayors. It furthermore provides for the appointment of mayoral committees.

9. Part 3 and 4 of Chapter 4 provide for the establishment, composition, powers and functions, the term of office and vacation of office quorum and decisions of metropolitan subcouncils and ward committees respectively. Part 5 of Chapter 4 provides criteria when a municipality may establish other committees.

10. Part 6 of Chapter 4 of the Bill provides for the participation of traditional leaders in the proceedings of district and local councils, the regulation of their participation and the ceremonial role of traditional leaders in the affairs of a district and local council. Part 7 of Chapter 4 provides for the appointment and responsibilities of chief executive officers as head of the administration of a municipal council and accounting officer.

II. Chapter 5 of the Bill provides for an appropriate division of powers and functions between municipalities when an area has both category E and C municipalities. It also provides for a dispute resolution mechanism whereby the MEC for local government with the concurrence of the municipalities concerned or with the approval of the Minister by notice in the *Provincial Gazette* may assign any of the powers and functions to a local or district municipality.

12. Chapter 6 provides for miscellaneous matters which *inter alia* includes a provision in terms of which the Minister may make regulations. It also contains a provision dealing with transitional arrangements.

13. Schedule 1 to the Bill regulates the electoral system for metro and local councils, ward elections, proportional representation elections as well as the topping up and amendment of party lists.

14. Schedule 2 and 3 to the Bill provides for the electoral system for councillors of district councils and the election of municipal office bearers respectively.

15. Schedule 4 to the Bill provides for a method of allotting councillors elected from party lists to metropolitan subcouncils whilst Schedule 5 to the Bill provides for a Code of Conduct for councillors.

16. Schedule 6 to the Bill provides for the identification of traditional leaders who are entitled to participate in the proceedings of local and district councils.

17. The following parties and institutions were consulted:

- Department of Finance;
- MECS for local government in the nine provinces; and
- South African Local Government Association.

The Bill was also published for public comments as required in terms of section 154 of the Constitution.

The Department of Constitutional Development and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with section 75 of the Constitution.