
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF CO-OPERATIVE GOVERNANCE**NOTICE 2506 OF 2024****LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL**

The Minister of Cooperative Governance and Traditional Affairs intends introducing the Local Government: Municipal Structures Amendment Bill, 2024 in the National Assembly.

The Bill and the explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly, for public comments.

Members of the public are invited to submit written comments on or before 5 July 2024, to the following address:

By post to:

Director-General
For the attention: Mr Nhlamulo Mathye
Department of Cooperative Governance
Private Bag X804
PRETORIA
0001

By e-mail to:

Comments.coalitionbill@cogta.gov.za

A copy of the Bill can be found on the website of the Department of Cooperative Governance at: www.cogta.gov.za and may also be obtained from the Government Printers.

Comments received after the closing date will not be considered.

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill and prior notice of its introduction published in Government
Gazette No. 50682 of 21 May 2024) (The English text is the official text of the Bill)*

(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

[B — 2024]

GENERAL EXPLANATORY NOTE:

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

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

To amend the Local Government: Municipal Structures Act, 1998 so as to insert the definition for coalition agreement; to change municipalities with a mayoral executive system, in which no party obtained a majority of seats, to a collective executive system within a prescribed period; to provide for the election or removal from office of municipal office-bearers to be by a show of hands; to provide for the grounds for removal of municipal office-bearers from office; to provide for binding coalition agreements; to provide a minimum threshold of one percent of the valid votes cast during an election for a party to qualify for a seat on the council and to provide for matters connected therewith.

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

Amendment of section 1 of Act 117 of 1998 as amended by section 93 of Act No.27 of 2000; section 3 of Act No.19 of 2008 and section 1 of Act No.3 of 2021

1. Section 1 of the principal Act is hereby amended by the insertion before the definition of “Code of Conduct” of the following definition:

“coalition agreement” means a written agreement negotiated between parties that form a coalition government in a municipality in which no political party has a majority of seats on the council;”.

Insertion of section 12A in Act 117 of 1998

2. The following section is hereby inserted in the principal Act after section 12:

“Municipalities that must have a collective executive system

12A. A municipality with a mayoral executive system, in which no political party obtains a majority of seats when the municipal council is declared elected or after a by-election contemplated in section 25, must, in accordance with section 16, be changed to a type of municipality with a collective executive system by the MEC for local government within 30 days after the municipal council was declared elected or after a by-election contemplated in section 25.”

Amendment of section 40 of Act 117 of 1998

3. The following section is hereby substituted for section 40 of the principal Act:

“40. (a) A municipal council, by resolution taken by show of hands, may remove its speaker from office: Provided that two years have passed since the speaker was elected.

(b) Notwithstanding the provisions of paragraph (a), the municipal council may remove the speaker from office at any time if such removal is on the grounds of—

- (i) a serious violation of the Constitution or the law;
- (ii) serious misconduct; or
- (iii) inability to perform the functions of office.

(c) Prior notice of an intention to move a motion for the removal of the speaker must be given.”.

Amendment of section 41E of Act 117 of 1998 as inserted by section 19 of Act No.3 of 2021

4. Section 41E of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) A municipal council may remove, by resolution taken by show of hands, the whip from office: Provided that two years have passed since the whip was elected.

(b) Notwithstanding the provisions of paragraph (a), the municipal council may remove the whip from office at any time if such removal is on the grounds of—

- (i) a serious violation of the Constitution or the law;
- (ii) serious misconduct; or
- (iii) inability to perform the functions of office.”.

Amendment of section 43 of Act 117 of 1998

5. Section 43 of the principal Act is hereby amended by the addition of the following subsection:

“(4) (a) In a municipality in which no party has a majority of seats on the council, any two or more political parties may enter into a binding coalition agreement, which must be made public, to regulate their participation in the governance of the municipality during the term of the council.

(b) The Minister may make regulations regarding for the details of the agreement contemplated in paragraph (a)."

Amendment of section 53 of Act 117 of 1998

6. Section 53 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) A municipal council may, by resolution taken by show of hands, remove from office one or more or all the members of its executive committee: Provided that two years have passed since the executive committee was elected or since the member or members affected by such a resolution were elected.

(b) Notwithstanding the provisions of paragraph (a), the municipal council may at any time remove from office one or more or all the members of its executive committee if such removal is on the grounds of—

- (i) a serious violation of the Constitution or the law;
- (ii) serious misconduct; or
- (iii) inability to perform the functions of office.

(c) Prior notice of an intention to move a motion for the removal of member or members must be given."

Amendment of section 58 of Act 117 of 1998

7. Section 58 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) A municipal council, by resolution taken by show of hands, may remove its executive mayor or deputy executive mayor from office: Provided that two years have passed since the executive mayor or deputy executive mayor was elected.

(b) Notwithstanding the provisions of paragraph (a), the municipal council may remove its executive mayor or deputy executive mayor from office at any time if such removal is on the grounds of—

- (i) a serious violation of the Constitution or the law;

(ii) serious misconduct; or

(iii) inability to perform the functions of office.

(c) Prior notice of an intention to move a motion for the removal of the executive mayor or deputy executive mayor must be given.”.

Amendment of Schedule 1 to Act 117 of 1998

8. Item 13 of Schedule 1 to the principal Act is hereby amended by the substitution for paragraph (a) of subitem (1) of the following paragraph:

“(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): Provided that a party must obtain a minimum of one percent of the valid votes cast in order to qualify for a seat on the council and if the one percent threshold is not met the party concerned must be eliminated from all further calculations for the allocation of seats on the council.”.

Amendment of Schedule 3 to Act 117 of 1998

9. Item 6 of Schedule 3 to the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) a vote must be taken at the meeting by [**secret ballot**] show of hands.”.

Short title and commencement

10. This Act is called the Local Government: Municipal Structures Amendment Act, 2024, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2024

1. BACKGROUND

- 1.1. The conclusion of the 2016 local government elections (LGEs) entrenched coalition politics within municipalities. At the conclusion of the 2021 LGEs, the number of hung councils increased significantly, bringing with it unprecedented governance and service delivery related challenges within municipalities. Statistics at our disposal indicate that the amount of hung council increased from 24 in the year 2000 to 81 after the conclusion of the 2021 LGE.
- 1.2. The emergence of coalitions governance came mostly as a result of maturing democracy in South Africa, new political dispensations, and coalition arrangements which are systematically changing, resulting in political instability, many governance and service delivery related challenges within municipalities.
- 1.3. Despite being a relative common occurrence in South Africa, coalition governments have not become institutionalised i.e. there are no rules or guidelines for coalition governments. The high number of hung councils has highlighted the need to strengthen the guidance on the formation and management of coalition councils.
- 1.4. There has been also a huge outcry for a framework or guidelines or legislation that will guide the formation and management of coalition governments within the local government sphere. These challenges together with the imminent challenges brought about coalitions government in municipalities, calls for a legislation or framework to guide and strengthen the functioning of coalition within municipalities.

- 1.5. The amendments to the Local Government: Municipal Structures Act, 1998, as amended, is seen as a vehicle or mechanism within which the coalitions governments can be institutionalised to address challenges in hung councils.
- 1.6. The Local Government: Municipal Structures Amendment Bill, 2023 (the “Bill”) seeks to provide a legislative framework that will guide the formation the management of coalition governments, as well as providing systems to minimise the challenges of coalitions within the Local Government sphere.
- 1.7. In summation, the Bill seeks to –
 - (a) insert the definition of coalition agreement;
 - (b) change municipalities with a mayoral executive system, in which no party obtained a majority of seats, to a collective executive system within a prescribed period;
 - (c) provide for the election or removal from office of municipal office-bearers to be by a show of hands;
 - (d) provide for the grounds for removal of municipal office-bearers from office;
 - (e) to provide for binding coalition agreements; and
 - (f) provide a minimum threshold of one percent of the valid votes cast during an election for a party to qualify for a seat on the council.

2. OBJECTS OF BILL

- 2.1. The Bill has 10 clauses, amending specific provisions in the Local Government: Municipal Structures Act, 1998, as amended (hereinunder referred to as “the Principal Act”).
- 2.2. Clause 1 to insert in section 1 of the Principal Act a definition of “coalition agreement” to mean a written agreement that is negotiated between parties that form a coalition government in a municipality in which no political party has a majority of seats on the council.

- 2.3. Clause 2 amends section 12 of the Principal Act dealing with the establishment of a municipality, including the type of municipality that the MEC for Local Government may establish, by an insertion of provision that a municipality with a mayoral executive system in which no political party obtains a majority of seats when the municipal council is declared elected or after a by-election contemplated in section 25 must, in accordance with section 16, be changed to a type of municipality with a collective executive system. The reason for the changes, is that in the mayoral executive committee system, the Executive mayors are elected (and removed) by majority of councillors in the municipal councils, and they also select and appoint their mayoral committee members. The reality is that when the executive mayor vacates office, the entire mayoral committee vacates office too. Whereas, in the executive committee system, the political composition of the executive committee is largely fixed by law comprising of different councillors proportionally elected in the positions, and thus not subject to majority rule. Coalition negotiations can then focus on the position of the mayor, the chief whip and committee chairs. Importantly, when the coalition collapses, and the mayor is removed from office, the rest of the executive committee stays on. It thus makes for a more stable governance system for hung councils and ensures continuity in the council. This amendment will promote stability from a governance perspective in that the executive authority will be collectively vested in the executive committee, which will be representative of the political parties in the council and accountable to the municipal council. This will also bring about greater transparency and accountability.
- 2.4. Clause 3 amends section 40 of the principal Act dealing with the removal of the speaker from office by resolution by the municipal council. The amendment to require that the removal of the speaker must be executed by a resolution taken by show of hands. Experience has shown that votes are being bought by certain political parties by soliciting bribes and influencing voting in exchange of favours or returns for elections in other positions as a municipal office bearer. This practice mostly results in instability associated with the exchange of favours if the agreed terms are not met by either party resulting in disruptions of meetings

and motions being instituted by the aggrieved party. The proposed amendment will result in a situation whereby these common occurrence, practices and corrupt activities done to influence voting in council meetings in exchange of favours be averted.

The clause also provides for the removal of the speaker only after two years have passed since they were elected or on prescribed grounds. Motions of no confidence had become popular in municipalities, thereby having a significant impact on stability within coalitions, given rise by frequent changing of speakers in council. The intention is to introduce a so called “cooling off period” wherein no motions of no confidence may be brought unless based on allowable grounds and are justified. This will enable stability and eliminate frivolous motions of no confidence from being raised and thus guarantees continuity and avert disruptions occurring as a result of frequent calls for motions of no confidence.

- 2.5. Clause 4 amends section 41E of the principal Act dealing with the election of the council whip, to require that the removal of the whip must be executed by a resolution taken by show of hands. This is done to avert the same practices / situations / conditions / circumstances outlined in clause 2 above.
- 2.6. Clause 5 amends section 43 of the principal Act, providing for composition of executive committees, to provide for binding coalition agreements between political parties in municipalities in which no party has a majority of seats on the council. Making the conclusion of a coalition agreement compulsory will introduce a contractual connotation to the relationship between the different political parties which will be legally enforceable and will constitute a prerequisite for coalition government to govern a municipality. This, coupled with Regulations, will bring about predictability in the process. The binding agreements will also enable the constituencies to hold the executive and the political parties concerned for failure to deliver on certain agreed terms resulting in improvement to service delivery.

- 2.7. Clause 6 amends section 53 of the principal Act to require that the removal of one or more or all the members of the executive committee must be executed by a resolution taken by show of hands. This is done to avert the same practices / situations / conditions / circumstances outlined in clause 2 above.
- 2.8. Clause 7 amends section 58 of the principal Act to require that the removal of the executive mayor or deputy executive mayor must be executed by a resolution taken by show of hands. This is done to avert the same practices / situations / conditions / circumstances outlined in clause 2 above.
- 2.9. Clause 8 amends Item 13 of schedule 1 of the principal Act, electoral system for metro and local councils, to introduce a **1% threshold** of valid votes cast for a political party, to qualify for a seat on the municipal council. Experience had shown that the formular as it stands favours smaller parties to be represented in the municipal councils and those smaller parties tended to dictate terms to meet their interests at all costs. In order to increase political stability and reduce having too many small parties in the political system, the amendment introduces threshold by providing that a party must obtain a minimum of one percent of the valid votes cast in order to qualify for a seat on the council and if the one percent threshold is not met, the party concerned must be eliminated from all further calculations for the allocation of seats on the council. This will limit the number of parties allocated seats in council and thus enabling fewer parties to form stable coalitions.
- 2.10. Clause 9 amends Item 6 of Schedule 3 to the principal Act, dealing with the election procedure, by providing that the election of municipal office-bearers to be done by show of hands rather than by secret ballot. This is done to avert a situation whereby corrupt activities influence voting in council meetings.
- 2.11. Clause 10 provides for the short title of the Act to be called the “*Local Government: Municipal Structures Amendment Act, 2024*”.

3. PARTIES CONSULTED

The following stakeholders were consulted on the proposed legislative amendments:

- (a) Provincial Departments responsible for local government (CoGTA /CoGHSTA /DLG);
- (b) National Treasury; and
- (c) South African Local Government Association.

4. FINANCIAL IMPLICATIONS FOR THE STATE

No financial implications are foreseen in the implementation of the Bill.

5. PARLIAMENTARY PROCEDURE

5.1. The Constitution of the Republic of South Africa, 1996, ("the Constitution") distinguishes between four categories of Bills as follows:

- Bills amending the Constitution (section 74);
- Ordinary Bills not affecting provinces (section 75);
- Ordinary Bills affecting provinces (section 76); and
- Money Bills (section 77).

A Bill must be correctly classified or tagged; otherwise, it would be constitutionally invalid.

5.2. The Bill has been considered against the provisions of the Constitution relating to the tagging of Bills, and against the functional areas listed in Schedule 4 to the Constitution.

5.3. The Constitutional Court stated in the case of *Tongoane and Others v Minister of Agriculture and Land Affairs and Others* 2010 (8) BCLR 741 (CC), that the

test for the tagging of Bills essentially entails that "any Bill whose provisions in substantial measure" affects the provinces must be classified to follow the section 76 procedure.

5.4. In the light of the above, we are of the view that the Bill should be dealt with in accordance with the procedure set out in section 76 of the Constitution, as it affects the provinces.

5.5. The tagging of the Bill would be subject to confirmation by the Office of the State Law Advisor.

6. REFERRAL TO NATIONAL HOUSE OF TRADITIONAL LEADERS.

6.1. Section 39 of the Traditional and Khoi-San Leadership Act, 2019, which commenced on 1 April 2021, requires that any Bill which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or pertaining to any matter referred to in section 154(2) of the Constitution must, before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments.

6.2. The Office of the State Law Advisor and the Parliamentary Legal Office will advise and provide guidance regarding the referral of the Bill to the National House of Traditional Leaders.