



**cooperative
governance**

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS AMENDMENT BILL, 2019 [B 2B—2019]

Select Committee on CoGTA, Water, Sanitation and Human Settlement

Mr Tebogo Motlashuping 16 February 2021

OVERVIEW OF PRESENTATION

1. Background
2. Legislative Process
3. Impact of the Amendment Act
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5. Revival of the Bill
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1. BACKGROUND

- ❑ Prior to the enactment of the Municipal Systems Amendment Act, 2011 (Amendment Act), municipal managers were appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 ('the Structures Act') while managers directly accountable to municipal managers were appointed in terms of section 56 of the Municipal Systems Act, 2000 (the Systems Act), which provide that —

Both the Structures Act: Appointment of municipal managers and the Systems Act: Appointment of managers directly accountable to municipal managers (section 56) empower —

- municipal councils to appoint — a municipal manager as the head of the administration and accounting officer of the municipality or manager directly accountable to a municipal manager (senior manager), and
- A person appointed as a senior manager to **have the relevant skills and expertise** to perform the duties associated with that post.”
- The Bill was approved by Parliament on 19 April 2011 and assented to by the President on 5 July 2011.

1. BACKGROUND (CONT..)

- ❑ Both the Structures Act (s82) and Systems Act (s56) **did not prescribe the relevant minimum skills and expertise required to be appointed as a senior manager** and/ or to perform the duties associated with the relevant post.
- ❑ Legislative **lacuna and absence of uniform standards** laid a solid base for the following —
 - **disparate** human resource practices;
 - Appointment of **persons without the requisite professional and technical skills**;
 - **under-expenditure** on capital budgets;
 - **ineffective revenue collection strategies** resulting in the burgeoning municipal debt;
 - Collapse of **the rule of law resulting in** surging fraud and corruption;
 - **Poor service** delivery;
 - Lack of **consequent management**; and
 - **prolonged labour disputes** from some municipalities with huge sums of money intended for service delivery spent on defending labour disputes; and
- ❑ Legal uncertainty with regard to the Minister's regulatory powers in relation to appointment requirements and competency criteria for senior managers.

2. LEGISLATIVE PROCESS

- ❑ The Local Government: Municipal Systems Amendment Bill [B2 -2019] was introduced to Parliament **on 19 July 2010**, as part of the Local Government Turn Around Strategy (LGTAS) - strengthen the capacity of municipalities to perform their functions.
- ❑ The Amendment Bill was **tagged** (by Parliament) as an **ordinary Bill** not affecting the provinces – section 75 Bill.
- ❑ The Bill was **approved by Parliament on 19 April 2011** and **assented to by the President** on 5 July 2011.

❑ OBJECTS OF THE BILL

- insert and amend certain definitions;
- make further provision for the appointment of municipal managers and managers directly accountable to municipal managers;
- provide for procedures and competency criteria for such appointments, and for the consequences of appointments made otherwise than in accordance with such procedures and criteria;
- determine timeframes within which performance agreements of municipal managers and managers directly accountable to municipal managers must be concluded;
- make further provision for the evaluation of the performance of municipal managers and managers directly accountable to municipal managers;
- require employment contracts and performance agreements of municipal managers and managers directly accountable.
- to municipal managers to be consistent with the Systems Act and any regulations made by the Minister;
- require all staff systems and procedures of a municipality to be consistent with uniform standards determined by the Minister by regulation;

- prohibit municipal managers and managers directly accountable to municipal managers from holding political office in a political party;
- regulate the employment of municipal employees who have been dismissed;
- provide for the Minister to make regulations relating to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers;
- provide for the approval of staff establishments of municipalities by the respective municipal councils;
- To prohibit the employment of a person in a municipality if the post to which he or she is appointed is not provided for in the staff establishment of that municipality;
- enable the Minister to prescribe frameworks to regulate human resource management systems for local government and mandates for organised local government;
- extend the Minister's powers to make regulations relating to municipal staff matters;
- make a consequential amendment to the Local Government: Municipal Structures Act, 1998, by deleting the provision dealing with the appointment of municipal managers; and
- provide for matters connected therewith.

3. IMPACT OF THE AMENDMENT ACT

- ❑ A total of **1218 out of 1549** critical senior manager positions have been filled suitably qualified and competent senior managers.
- ❑ The **competency framework** incorporated in the Regulations has laid **a foundation for uniform competency requirements** for appointment of municipal managers and managers directly reporting to municipal managers as well as **skills audit and skills development** programmes.
- ❑ The **introduction of the competency tests** has built confidence in recruitment and selection processes of local senior managers.
- ❑ All senior manager **participate in the overall performance management system** of the municipality in order to maximise the ability of municipalities to achieve their objectives.
- ❑ Lays the basis for evaluation of performance and consequence management for sub-standard performance of senior managers.
- ❑ Strengthened checks and balances by ensuring that municipalities comply with the minimum competency requirements.
- ❑ Immensely contributed to the realisation of the ideals of the National Development Plan (building a capable state) and B2B Programme.
- ❑ Provide for the consequences of appointments made in contradiction of procedures and criteria as set out in the Amendment Act including the invocation of declaratory orders where the appointees do not meet the prescribed minimum requirements.
- ❑ Prohibits the employment of staff found guilty of serious misconduct for period ranging between two and ten years record of disciplinary proceedings.
- ❑ The Minister has established a register of all staff members that have been dismissed for misconduct or resigned prior to the finalisation of disciplinary proceedings, a total of one thousand 1653 were dismissed for misconduct and 130 resigned prior to finalisation of disciplinary proceedings.
- ❑ Prohibit the employment of any person in a municipality against non-existing posts.

4. CONSTITUTIONAL COURT ORDER

- ❑ **South African Municipal Workers Union (SAMWU) challenged the constitutionality of the Municipal Systems Amendment Act, 2011** in the High Court of South Africa Gauteng, Division, Pretoria in September 2013.
- ❑ **The High Court:**
 - **Declared the Amendment Act unconstitutional and invalid** as it failed to comply with the procedures set out in section 76 of the Constitution.
 - **Considered it unnecessary to decide the substantive issues** relating to limitation of political rights of municipal managers and managers reporting to municipal managers.
- ❑ **On 9 March 2017, the Constitutional-Court:**
 - Confirmed the High Court ruling – **declared the Amendment Act invalid.**
 - **Suspended the invalidity** of the Amendment Act **for a period of 24 months** to enable the Legislature an opportunity **to correct the tagging defect.**
 - **Deadline** for correcting the defect is 8 March 2019.
 - The Amendment Act was invalidated on 9 March 2019 before the procedural defect was corrected due to a misunderstanding between the Department and Parliament.

5. REVIVAL OF THE BILL

❑ The Amendment Bill was –

- Approved by Cabinet on 5 December 2018.
- Certified by the Chief State Law Adviser on 20 December 2018.
- Introduced to Parliament on 6 February 2019.
- Revived by the Sixth Parliament in October 2019 in accordance with Rule 286 of the *Rules of the National Assembly*.

❑ Public participation

- After revival of the Bill, the following stakeholders were consulted:
 - IMATU
 - SALGA
 - National Treasury
 - DPSA
 - Provincial Departments of Local Government
 - TAU SA
 - The FW De Klerk Foundation
 - Smith Tabata Attorneys
 - City of Joburg
 - Uthungulu Municipality
 - Overstrand Municipality
 - Merafong City Municipality
 - Msunduzi Municipality
 - Emakhazeni Municipality
 - ANC Emakhazeni Sub Region
 - North West University
 - Ethekewini Municipality
 - DLG – Western Cape
 - Midvaal Municipality
 - Cape Winelands Municipality
 - KAPLAN BLUMBERG
 - Attorneys
 - Mossel Bay Municipality
 - Commission for Gender Equality (CGE)
 - Nokeng Tsa Taemane Municipality
 - DLGTA-North West
 - The Good Governance Learning Network (GGLN)
 - IMFO

5. REVIVAL OF THE BILL

- ❑ After consultation, the Committee considered oral and written inputs on the Bill during a stakeholder engagements process that took place on 26 and 27 February 2020, and 4 March 2020.
 - The stakeholder engagements considered contributions from:
 - Western Cape Department of Local Government;
 - Gauteng Department of Cooperative Governance and Traditional Affairs;
 - Mpumalanga Department of Cooperative Governance and Traditional Affairs;
 - Eastern Cape Department of Cooperative Governance and Traditional Affairs; and
 - South African Local Government Association.
- ❑ The Committee also received written input from the following stakeholders:
 - Limpopo Department of Cooperative Governance, Human Settlements and Traditional Affairs.
 - Independent Municipal and Allied Trade Union (IMATU) filed a written submission dated 9 March 2020, which pledged support for the Amendment Bill in its current form. On 10 March 2020, the Committee heard further oral input from IMATU.
 - Organisation for Undoing Tax Abuse (OUTA) also notified of intention to comment on the Bill in writing.
 - SAMWU submitted oral inputs.
- ❑ The Committee, on 5 June 2020 and 25 June 2020, heard further submissions from SALGA and National CoGTA relating to the limitation of political rights of municipal managers and managers directly accountable to municipal managers.
- ❑ The Committee noted that the limitation was demonstrably the least restrictive means of achieving local government professionalisation and arguably justifiable in terms of section 36 of the Constitution. The proposal was expanded to include all staff members of a municipality, including staff below senior management echelon.
- ❑ The Bill was approved by the National Assembly and has been referred to the NCoP for concurrence on 4 December 2020.

6. PROPOSED AMENDMENTS

CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENTS
1	Definitions	<ul style="list-style-type: none"> • ‘municipal manager’ means a person appointed in terms of section 54A;’ • ‘political office’, in relation to a political party or structure thereof, means— <ul style="list-style-type: none"> (a) the position of chairperson, deputy chairperson, secretary, deputy secretary, treasurer or an elected or appointed decision-making position of a political party nationally or in any province, region or other area in which the party operates; or (b) any position in the party equivalent to a position referred to in paragraph (a), irrespective of the title designated to the position;’

6. PROPOSED AMENDMENTS

CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENTS
2	Section 54A – “Appointment of municipal managers and acting municipal managers	<ul style="list-style-type: none"> ▪ The criteria and minimum requirements for the appointment of municipal managers and acting municipal senior managers. ▪ In order to ensure compliance with the Act, municipalities are enjoined to report recruitment and selection outcomes to the MEC for local government and the Minister. If the MEC has any reason to believe that an appointment is not in accordance with the Regulations, the MEC may request the municipal council to correct such an appointment or to invoke a declaratory order to force compliance with the Act. Failure by the MEC or Minister to respond to the appointment process and outcome within the timeframes, the appointment of the senior manager will be deemed to be in compliance with this Act: Provided the municipality submitted all relevant documents, as prescribed. ▪ Secondment of an acting municipal manager by the MEC or Minister if the municipality fail to attract a suitable candidate.

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CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENTS
3	Section 56 – “Appointment of managers directly accountable to municipal managers	<ul style="list-style-type: none"> ▪ The criteria and minimum competencies and qualifications requirements for the appointment of managers directly accountable to municipal managers. ▪ In order to ensure compliance with the Act, municipalities are enjoined to report recruitment and selection outcomes to the MEC for local government and the Minister. If the MEC has any reason to believe that an appointment is not made in accordance with the Act, the MEC may request the municipal council to correct such an appointment or to invoke a declaratory order to force compliance with the Act.
4	Substitution of words in section 54A and 56 of Act 32 of 2000, as inserted by section 4 of Act 7 of 2011	<ul style="list-style-type: none"> ▪ The principal Act is hereby amended by the substitution, in section 54A and section 56, for the word “municipality”, wherever it occurs, of the words “municipal council”.

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CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENTS
5	Section 57 - “employment contract and performance agreement”	<ul style="list-style-type: none"> ▪ substitution in subsection (2) - performance agreement must be concluded– <ul style="list-style-type: none"> (a) within <u>60</u> days after a person has been appointed as the municipal manager or as a manager directly accountable to the municipal manager, <u>failing which the appointment lapses</u>; and (b) be <u>annually concluded thereafter within one month</u> after the beginning of each financial year of the municipality;” ▪ substitution for subsection (3) - employment contract must be <u>signed by both parties before the commencement of service</u>. ▪ substitution for subsection (3A) - <u>Any regulations that relate to the duties, remuneration, benefits.....</u>must be regarded as forming part of an employment contract ▪ substitution for subsection (4C) - <u>Any regulations that relate to standards and procedures for evaluating performance</u> must be regarded as forming part of a performance agreement

6. PROPOSED AMENDMENTS

CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENTS
5	Section 57 - “employment contract and performance agreement”	<ul style="list-style-type: none"> ▪ substitution of subsection 6 - The employment contract for a municipal manager must <u>must be signed within one month of his or her date of appointment and must—</u> [(c) stipulate the terms of the renewal of the employment contract, but only by agreement between the parties; and] ▪ substitution for subsection (7) - “(7)(a) <u>Subject to paragraph (b), a municipal council must make a decision on whether the employment contract of a manager directly accountable to the municipal manager must be for a fixed term, in accordance with subsection (6), or on a permanent basis.</u> (b) A decision in terms of paragraph (a) must be made by the municipal council, in consultation with the mayor or the executive committee, as the case may be, after recommendation by the municipal manager.”.

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6	Section 57A – “Employment of dismissed staff and record of disciplinary proceedings	<ul style="list-style-type: none"> ▪ The insertion of this section will provide that: <ul style="list-style-type: none"> (a) a municipal employee dismissed for misconduct may only be re-employed in any municipality after the expiry of a prescribed period; and that (a) a municipal employee who has been subjected to disciplinary inquiry may not be employed in another municipality until the disciplinary process is concluded ▪ The Minister must maintain a record of all staff members that have— <ul style="list-style-type: none"> (a) been dismissed for misconduct; or (b) resigned prior to the finalisation of the disciplinary proceedings, which record must be made available to municipalities as prescribed.”

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7	Section 66 – “Staff establishments”	<ul style="list-style-type: none"> ▪ The amendment provides that staff establishment of municipalities have to be approved by municipal council and prohibit the employment of a person in a municipality if the post is not provided for in the staff establishment of the municipality. ▪ This is intended to curb the bloating of municipal administrations in areas other than those linked to service delivery.
8	Section 67 – “Human Resource Development”	<ul style="list-style-type: none"> ▪ <u>Substitution in subsection (1) –</u> The amendment will ensure that systems and procedures developed by municipalities are consistent with any uniform standards prescribed by the Minister in terms of s72.

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9	Section 71 – “ Bargaining council agreements ”	Substitution of section 71 – Organised local government must, before embarking on any negotiations with parties in the bargaining council established for municipalities, consult the— (a) Financial and Fiscal Commission established in terms of section 220 of the Constitution; and (b) Minister.
10	New insertion of section 71B – “ Staff members prohibited from holding political office ”	New insertion of section 71B – (1) A staff member may not hold political office in a political party, whether in a permanent, temporary or acting capacity. (2) A person who has been appointed as a staff member before subsection (1) takes effect, must comply with subsection (1) within one year of the commencement of subsection (1).”

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11	Section 72 – “Regulations and guidelines”	Substitution of subsection (1) – The amendment confer additional powers on the Minister to regulate - <ul style="list-style-type: none"> (a) <u>training, competency and skills development of staff members of municipalities;</u> (b) <u>the minimum level of skills, expertise and competency that municipal managers and managers directly accountable to municipal managers must have;</u> (c) <u>subject to applicable labour legislation, the regulation of medical aid and pension, after consultation with the Minister of Health and the Minister of Finance;</u>
12	Section 106 – “non-performance and maladministration”	New insertion of section 71B – The amendment will enable the Minister to conduct an investigation into maladministration, fraud, corruption or any other serious malpractice in a municipality, if the MEC fails to conduct such investigation within a specified period.

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CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENTS
13	Section 120 – “Regulations and guidelines”	Substitution of subsection (1) for paragraph (a) of the following paragraph: “(a) the matters listed in sections 22, 37, 49, 54A, 56, 72, 86A and 104 ”.
14	Schedule 1 “Voting at meetings”	Substitution for item 2A A councillor may not vote in favour of or agree to a resolution which is before council or a committee of council which conflicts with any legislation applicable to local government”.

THANK YOU

Ngiyabonga | Re a leboga | Ndo livhuwa | Nndza nkhenisa | Ke a leboha haholo | Dankie | Enkosi



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