



**LOCAL GOVERNMENT: MUNICIPAL
STRUCTURES AMENDMENT BILL, 2018**
[B19-2018]

Presented to the:

**Provincial Legislature
Portfolio Committee on CoGTA**

Date: March / April / May 2020

BACK TO BASICS : SERVING OUR COMMUNITIES BETTER

PRESENTATION OUTLINE

- ❑ **Background**
- ❑ **High-level Overview of Amendments (9 slides)**
 - **Engagements in the Portfolio Committee on CoGTA – November and December 2018.**
 - **Engagement in the NCoP (Select Committee on CoGTA) – 4 February 2020.**
- ❑ **Further Details Relating to Amendments (40 slides)**

1.

AMENDMENTS TO THE MUNICIPAL STRUCTURES ACT

BACKGROUND

- ❑ Initially, amendments to the Municipal Structures Act (MStrA) mostly related to proposals received from the **Independent Electoral Commission (IEC)**. These proposals were informed by challenges that were experienced by the IEC in the administration and management of local government elections (LGEs).

- ❑ **Apart from the four general LGEs that were held, there have also been many by-elections during the terms, as follows:**
 - **2000** - **60 by-elections;**
 - **2006** - **54 by-elections;**
 - **2011** - **741 by-elections; and**
 - **2016** - **342 by-elections to date (February 2020).**

- ❑ DCoG, SALGA, Provinces and some municipalities have also proposed other amendments to the MSA, which are, in the main, to **promote certainty** on some matters and to **strengthen oversight and governance** in municipalities.

- ❑ The proposed amendments were also informed by various consultative processes and engagements with various stakeholders.

ENGAGEMENTS ON THE BILL

- ❑ Engagements were held as follows with the Portfolio Committee on CoGTA:
 - Stakeholders made presentations on 13, 14 and 20 November 2018 –
 - ✓ SALGA;
 - ✓ MDB;
 - ✓ KZN, WC, NC; and
 - ✓ DoJCD, IEC and DCoG.
 - ✓ **(Written inputs from FS: CoGTA and MP: CoGTA)**
- ❑ Advert in the weekend newspaper/s – closing date of 30 November 2018 for submissions – no submissions received.
 - Deliberations were held on –
 - ✓ **5 and 6 December 2018; and**
 - ✓ **Changes made to 20 Clauses.**
- ❑ The Bill was debated in the National Assembly on 13 February 2019 and thereafter submitted to the NCOP for concurrence (Section 76 Bill).
- ❑ Minister subsequently requested the NCOP to consider / table the Bill **(June 2019)**.
- ❑ Bill was revived by the NCOP on **17 October 2019**.

HIGH-LEVEL OVERVIEW OF AMENDMENTS TO THE MStrA

1.

32 Clauses in the Bill: Electoral; Governance; Other Note: Colour-coding

1.

ELECTORAL MATTERS (IEC)

- Definition of “declared elected”
- 14 day period to inform of vacancy
- Allocation / recalculation for excessive seats
- Party lists – timeframes

2.

GOVERNANCE MATTERS

- Abolition of plenary-type municipality
- Quorums and decisions
- Use of size of munic to deviate when determining # of cllrs
- Functions of Speakers
- Office of the Whip
- MPACs

3.

OTHER MATTERS

- Removal of reference to District Management Areas (DMAs)
- Migrate Section 19 of the Systems Act to the MStrA
- Migrate Schedule 1 of the Systems Act to the MStrA

CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENT
1.	1: Definitions	<ul style="list-style-type: none"> ▪ The term “declared elected” be defined. ▪ Definition of “DMA” deleted. ▪ Definition of “election” is substituted. ▪ Insertion of definition for “whip”. ▪ MPAC defined.
2.	6: DMAs	<ul style="list-style-type: none"> ▪ Section 6 (and other related provisions dealing with DMAs) repealed.
3. to 6.	7(c), 9(e), 9(f), 10(c) are deleted: Types of municipality	<ul style="list-style-type: none"> ▪ Abolition of the plenary-type municipality.
7.	20: Determination of number of councillors	<ul style="list-style-type: none"> ▪ Minimum of 15 Cllrs in a LM or DM. <u>(Changed to “10”)</u> ▪ Subsections 20(4)(a) and (b) to be retained. ▪ Deviate <u>by not more than 20%</u> for determining number of Cllrs in <u>local municipalities</u> greater than <u>20,000 square kilometres.</u> ▪ <u>Concurrence of Minister required when deviating.</u>
8.	21: Qualifications for councillors	<ul style="list-style-type: none"> ▪ Cllr removed from office by an MEC, for a Breach of the Code of Conduct, may not stand as a candidate in an election <u>for any municipal council</u> for period of two years after removal from office.
9.	22: Election of metropolitan and local councils	<ul style="list-style-type: none"> ▪ Subsection 22(4) is deleted – refers to LMs with fewer than 7 cllrs. ▪ Subsection 22(5) is added - aligned to section 1 – Cllr is deemed to assume office on the date of the declaration of the results of an election.

CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENT
10.	23: Election and appointment of district councils	<ul style="list-style-type: none"> ▪ Subsection 23(1)(c) is deleted – reference to DMAs. ▪ Subsection 23(2) is substituted to remove reference to DMAs.
	23: Election and appointment of district councils	<ul style="list-style-type: none"> ▪ Subsection 22(5) is added - aligned to section 1 – Cllr is deemed to assume office on the date of the declaration of the results of an election.
11.	25: By-elections	<ul style="list-style-type: none"> ▪ Subsection 25(1) substituted to remove reference to DMAs.
	25: By-elections	<ul style="list-style-type: none"> ▪ New subsection 25(2A) inserted for MM to inform MEC of ward vacancy within 14 days. ▪ MEC (and not the MM) to call and set the date for by-elections in <i>Provincial Gazette</i>. ▪ Subsection 25(4) is deleted because it is catered-for in the new provisions above.
12.	27: Vacation of office	<ul style="list-style-type: none"> ▪ Reference to the Systems Act (Schedule 1) is removed – Code of Conduct for Cllrs.
	27: Vacation of office	<ul style="list-style-type: none"> ▪ Subsection 27(2) is added to make cross-reference to definition of “authorised representative” in the Municipal Electoral Act.
13.	29: Meetings of municipal councils	<ul style="list-style-type: none"> ▪ <u>New</u> subsection 29(1A) is added for a person designated by the MEC to call a meeting in instances where the Speaker / Acting Speaker refuses to do so. <u>(Revised)</u>

CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENT
14.	New section 29A: Public notice of meetings of municipal councils	<ul style="list-style-type: none"> ▪ New section 29(A) is added for notice of meetings – this is an improvement / revision / migration of section 19 of the Systems Act. ▪ (Rejected, and revised)
15.	30: Quorums and decisions	<ul style="list-style-type: none"> ▪ Confirmation of quorum is provided, by cross-reference to the number determined by the MEC (must be present when voting on a matter). ▪ Casting vote of the presiding Cllr is clarified. (Revised)
16.	36: Election of speakers	<ul style="list-style-type: none"> ▪ Alignment with the abolition of the plenary-type municipality (Cllr may not hold office as speaker and mayor IN ANY municipality).
17.	37: Functions of speakers	<ul style="list-style-type: none"> ▪ Reference to the Systems Act (Schedule 1) is removed – Code of Conduct for Cllrs. ▪ Four subparagraphs are added to expand and strengthen the functions of the <u>Speaker</u>. (Revised)
18.	New sections 41A to 41F: Whips	<ul style="list-style-type: none"> ▪ <u>Establishment of the Office of the Whip</u>, to provide for: election, functions, term, vacation, removal, and acting whips.
19.	43: Composition of executive committees	<ul style="list-style-type: none"> ▪ Councils must determine (not elect) the number off cllrs for the EXCO (fractions to be disregarded). ▪ <u>Formula prescribed is:</u> Number of seats won by a party ÷ total no. of Cllrs for municipality × no. of EXCO seats; surpluses compete with other similar surpluses.
20.	44: Powers and functions of EXCOs	<ul style="list-style-type: none"> ▪ It is clarified that EXCOs will only receive reports from the Section 80 committees (and not from other committees).

CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENT
21.	56: Functions and powers of executive mayors	<ul style="list-style-type: none"> It is clarified that executive mayors will be entitled to receive reports from Section 80 committees (and not from other committees), and to forward such reports with recommendations to the council.
22.	73: Establishment of ward committees	<ul style="list-style-type: none"> Metros and LMs must establish ward committees within 120 days after a LGE. New subsection 73(1A) is inserted for the Speaker to request the MEC for an extension – the MEC must also forward the reasons to the Minister. (Revised)
23.	New section 79A: Establishment of MPACs	<ul style="list-style-type: none"> New section is added for the establishment of MPACs – this is to ensure that oversight is strengthened.
24.	81(5)(a): Participation in councils	<ul style="list-style-type: none"> In light of the TKLA, 2019, amendment is no longer relevant. DTA has drafted proposed amendments for consideration by the Select Committee.
25.	89: DMAs	<ul style="list-style-type: none"> The section is repealed.
26.	General amendment	<ul style="list-style-type: none"> It is indicated which sections in the Act are deleted where reference is made to the plenary-type of municipality.
27.	Schedule 1: Part Three: Item 16: Excessive seats	<ul style="list-style-type: none"> A procedure is prescribed for the redistribution of excessive seats (similar to Item 17 which deals with insufficient party lists). The party with excessive seats will be awarded the ward seats and then excluded from the subsequent calculation where a new quota is determined and PR list seats recalculated. Revised

CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENT
27.	Item 17: Insufficient party lists	<ul style="list-style-type: none"> ▪ Parties are given 2 days to supplement their lists.
	<u>New</u> Item 17A: Multiple seats	<ul style="list-style-type: none"> ▪ Where a person is assigned to more than 1 seat, such person or party has 2 days to indicate their choice to the IEC. ▪ Revised
28.	Item 18: Filling of vacancies	<ul style="list-style-type: none"> ▪ MM has 14 days (and not 7) to inform IEC of a vacancy.
	Item 20: Filling vacancies and changing the order	<ul style="list-style-type: none"> ▪ A party may only change its list after the declaration of results for that election. ▪ A party may be able to supplement its list with a former cllr only after 21 days after the cllr ceased to hold office.
	Schedule 2: Part One: Proportional elections: Electoral system for party representatives	<ul style="list-style-type: none"> ▪ Items 2, 3, 5, 6, 8 and 10 are substituted. ▪ If a candidate is assigned to more than 1 seat, then the party or independent ward candidate has 2 days to inform the IEC of decision. ▪ MM has 14 days (and not 7) to inform IEC of a vacancy. ▪ New Item 10A dealing with multiple seats is inserted.

CLAUSE	SECTION IN THE ACT	PROPOSED AMENDMENT
28.	Schedule 2: Part Two: Allocation and election of representatives of local councils and DMAs to district councils	<ul style="list-style-type: none"> ▪ The heading is substituted.(removal of DMAs). ▪ Items 14 and 15 are substituted – removal of reference to DMAs. ▪ Item 23 is substituted by clarifying that the filling of vacancies is in respect of <u>district councils.</u> ▪ Item 24 is repealed.
29.	Schedule 3: Election of municipal office bearers: Item 1: Application	<ul style="list-style-type: none"> ▪ Item amended to also include whip as an office-bearer.
30.	<u>New</u> Schedule 7: Code of Conduct for Councillors	<ul style="list-style-type: none"> ▪ Code of Conduct is migrated from the Systems Act. ▪ <u>Revised (Substitute: Intervention with Interference; Council with Municipal), etc</u> <u>...</u>
31.	Repeal of laws	<ul style="list-style-type: none"> ▪ Section 19 and Schedule 1 of the Systems Act is repealed.
32.	Short title and commencement	<ul style="list-style-type: none"> ▪ Act is called: Local Government: Municipal Structures Amendment Act, 2018 (2020)

2.

FURTHER DETAILS RELATING TO AMENDMENTS

CLAUSE (1)

PROPOSED AMENDMENTS

Section 1:
Definitions

DCoG, PROVINCES, IEC, SALGA

- The term “**declared elected**” be defined.
- Definition of “**DMA**” deleted.
- Definition of “**election**” is substituted.
- Insertion of definition for “**whip**” **and MPAC.**

COMMENTS

- Proposes that the date of declaration of the results by the IEC is the date of assumption of duty.
- Presently, there is no uniform interpretation of the date of assumption of duty, with some councils interpreting it as the **date of the election**, some interpreting it as the **date of publication of results**, and others as when the date of the **first council meeting**.
- The insertion of the definition will **confirm** that the date of assumption of duty is the date of the **declaration of the results of the election by the IEC.**
- Definition of **DMA is deleted** - see detailed reasons in the next slide.
- Definition of “**election**” is substituted to remove reference to DMAs.
- Definitions of “**whip**” and **MPAC** are inserted.

CLAUSE (2)

PROPOSED AMENDMENTS

Section 6:
District Management Areas
(DMAs)



DCoG

- Section 6 (and other related provisions dealing with DMAs) are repealed.
- Other sections (either wholly or in part) affected in this regard are **Sections 12, 23, 25 and 89, and Items 2, 3, 5, 6, 8, 14 and 15 of Schedule 2.**

COMMENTS

- During 2000, DMAs were declared by the MDB in terms of Section 6 of the MStrA.
- The declaration was withdrawn by the MDB in Notice No. 1022 of 2008, published on 19 August 2008 in *Government Gazette* No. 31353.
- In terms of Section 21 of the *Municipal Demarcation Act, 1998* municipal boundaries were redetermined to include the DMAs into the areas of local municipalities.
- In addition, during 2013, DMAs were deleted from the *Municipal Property Rates Act, 2004*, and presently, the provisions in the Act are obsolete.

Sections 7, 9 and 10:
Types of municipality

DCoG, PROVINCES

- Deletes sub-sections 7(c), 9(e), 9(f) and 10(c) in order to do away with plenary-type municipalities.

COMMENTS

- The aim is to do away with the plenary-type of municipality.
- The challenges experienced by plenary-type municipalities include the limiting of executive authority to the full council, and it is unable to delegate its executive responsibilities to any individual Cllr or any of its committees.

CLAUSE (6)

PROPOSED AMENDMENTS

Section 12:
MECs to establish
municipalities

- Delete subsections 12(a)(eA)(iii), which deals with DMAs.

DCoG, PROVINCES

COMMENTS

- Essentially gives effect to the removal of reference to “DMA” that is being proposed in Section 1.

CLAUSE (7)

PROPOSED AMENDMENTS

Section 20: ■ Section 20 is amended by prescribing a **minimum of 10 Cllrs** in a local or district municipality; and
Determination of ■ Inserting a **new 4A**, as follows:
number of
councillors

DCoG; N-CAPE

“A deviation in terms of subsection (3) **may be no more than 20%** if the geographical size of the local municipality is greater than **20,000 square kilometres**, if less than 35 Cllrs have been determined for the municipality in terms of the formula.”

COMMENTS

- This is aimed at including the geographical size of a municipality as a criterion when determining the number of Cllrs (i.e., if less than 35 Cllrs results from application of the formula in a **large municipality**, then MEC may deviate by **no more than 20%**).
- The intention is to deepen democracy in instances where fewer Cllrs have been determined for large municipalities – see next slide for affected municipalities (9).

PROPOSED AMENDMENT TO SECTION 20

<u>#</u>	<u>LOCAL MUNICIPALITY</u>	<u>SQ. KM</u>	<u>NO. OF CLLRS</u>	<u>NO. OF WARDS</u>	<u>GRADE</u>
1.	Karoo Hoogland (NC)	30,445.55	7	4	2
2.	Ubuntu (NC)	20,447.32	7	4	1
3.	Kareeberg (NC)	17,783.04	7	4	2
4.	Khai-Ma (NC)	15,922.38	7	4	2
5.	Kamiesberg (NC)	14,454.84	7	4	2
6.	!Kheis (NC)	11,173.93	7	4	2
7.	Richtersveld (NC)	9,826.29	7	4	1
8.	Laingsburg (WC)	8,846.60	7	4	2
9.	Prince Albert (WC)	8,188.31	7	4	2
10.	Thembelihle (NC)	8,036.23	7	4	1
11.	Renosterberg (NC)	5,533.13	7	4	1
12.	Kannaland(WC)	4,794.42	7	4	2
13.	Kgatelopele (NC)	2,483.16	7	4	2
14.	Impendle (KZN)	1,611.08	7	4	1
15.	Tokologo (FS)	9,324.53	8	4	2
16.	Hantam (NC)	39,493.63	9	5	2
17.	Siyathemba (NC)	14,783.16	9	5	2
18.	Mpofana (KZN)	1,758.97	9	5	2
19.	Magareng (NC)	1,546.96	9	5	2

PROPOSED AMENDMENT TO SECTION 20

<u>NO.</u>	<u>LOCAL MUNICIPALITY</u>	<u>AREA (SQ. KM)</u>
1.	Dawid Kruiper (NC)	44,610.77
2.	Hantam (NC)	39,493.63
3.	Karoo Hoogland (NC)	30,445.55
4.	Dr Beyers Naude (EC)	28,684.39
5.	Kai! Garib (NC)	26,626.20
6.	Kagisano/Molopo (NW)	23,871.47
7.	Beaufort West (WC)	21,988.08
8.	Ubuntu (NC)	20,447.32
9.	Joe Morolong (NC)	20,246.34

NC – 6; WC – 1; EC – 1; NW - 1

City of Johannesburg – 1,645 sq.km (27 X into DKLM)

Gauteng - 18,176 sq.km (2,45 X into DKLM)

Section
Qualifications
for
councillors.

21: ■ It is proposed that a new Section 21(1)(b) be inserted to provide as follows:

“A person removed from office by an MEC in terms of **Item 14(6)(b) of the Code of Conduct** may not stand as a candidate in an election for any municipal council for a period of two years from the date on which such person was removed from office.”

COMMENTS

- Provides for a **two-year “cooling-off” period** for a person to be eligible to be a Cllr again, after such a person was removed from office as being a Cllr.

KZN

Section 22:
Election of
metropolitan and local
councils

- An elected Cllr will be deemed to assume office on the date of the declaration of the results of an election.

COMMENTS

- The insertion of this additional subsection in Section 22 (Election of metropolitan and local councils) essentially **gives effect to the definition of the term “declared elected”** that is being proposed in Section 1.

DCoG, PROVINCES, IEC, SALGA

- Section 23: Election and appointment of district councils
- Subsection 23(1)(c) is deleted – reference to DMAs.
 - Subsection 23(2) is substituted to remove reference to DMAs.
 - **NEW Section 23(5)** to align with section 1, “declared elected”.

COMMENTS

- The deletion of this subsection 23(1)(c) and the substitution of subsection 23(2) (Election and appointment of district councils) essentially **gives effect to the removal of reference to “DMA”** that is being proposed in Section 1.

DCoG, PROVINCES, IEC, SALGA

Section 25: By-elections

IEC, DCoG

- The Municipal Manager must **inform the MEC and the IEC** of a vacancy within 14 days after such vacancy has arisen;
- The MEC (and not the Municipal Manager) must **call and set the date for a by-election in the *Provincial Gazette*** (and not in a local newspaper).
- The MEC (and not the Municipal Manager) **may not call a by-election within nine (and not six) months** of (see 25(3)).
- The MEC, **in consultation with the Minister,** decides that a by-election must stand over until the next election of all municipal councils.

COMMENTS

- The MM must inform the MEC within 14 days when a vacancy has arisen.
- The MEC is empowered to call and set the date for the by-elections in consultation with the IEC (instead of the MM) by Notice in the *Provincial Gazette* **(instead of in a local newspaper)**, so as to avoid delays.
- It also provides for the cessation of by-elections by the MEC, **in consultation with the Minister.**

Section 27:
Vacation of office

- Section 27 is amended by the substitution for paragraph (d) of the following paragraph: “(d) contravenes a provision of the **Code of Conduct for Councillors** set out in Schedule [1 of the Local Government: Municipal Systems Act, 2000] 7, and is removed from office in terms of the Code;” and
- (b) by the addition of the following subsection: “(2) For purposes of this section, only an **authorised representative**, as defined in the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000), may inform a municipal manager that a vacancy has arisen as contemplated in subsection (1)(c) and (f).”.

COMMENTS

- Schedule 1 of the Systems Act (Code of Conduct for Cllrs) is migrated into the Structures Act.
- Subsection 27(2) is added to make cross-reference to definition of **“authorised representative”** in the Municipal Electoral Act.

Section 29:
Meetings of municipal
councils.

- This section to be amended to ensure **a person designated by the MEC** must call a meeting in instances where the Speaker / Acting Speaker refuses to do so.

COMMENTS

- All meetings of municipal councils are convened / called by the Speaker/ Acting Speaker in terms of this legislation.
- Experience has shown that there are instances when a Speaker or Acting Speaker deliberately delay / refuse to call a meeting.
- **This amendment is aimed at providing an alternative by allowing the MEC to “intervene” when a Speaker / Acting Speaker refuses to call a meeting.**

KZN

<p><u>New</u> section 29A: Public notice of meetings of municipal councils</p>	<p>▪ New section 29(A) is added for <u>notice of meetings</u> – this is an improvement / revision of section 19 of the Systems Act.</p>
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COMMENTS

- This migration is to ensure proper flow with regard to the management of meetings and to better-fit **within the scheme of provisions in the MStrA.**
- The amendment will require the Municipal manager to give notice to the public of various meetings of the municipal council, except when the time constraints make this impossible.



CLAUSE (15)

PROPOSED AMENDMENTS

Section 30: ■ The proposed amendment confirms that the number to be considered to **determine the quorum** in a meeting must be the number of Cllrs as determined by the MEC in terms of section 12 of the Structures Act.

KZN, WC

- **Reading-in of the words** “...other than a matter mentioned in section 160(2) of the Constitution,” in section 30(4) MSA.

COMMENTS

- This proposal confirms the number that must be considered when deciding on quorum (that is, the number of **Cllrs as determined by the MEC (and not the number of incumbents [which excludes vacancies])**).
- The reading-in of the relevant words in section 30(4) formalises a ruling of the Constitutional Court of 18 August 2015 - MEC for LG in the Western Cape versus Oudtshoorn LM (and others), where it was confirmed that a **C** **presiding at a meeting may not have a casting vote** when considering matters mentioned in section 160(2) of the Constitution – i.e. **(a) Passing of by-laws; (b) Approval of budgets; (c) Imposition of rates and other taxes, levies and duties; and (d) Raising of loans.**

Section 36:
Election of speakers

Section 36 is amended by the substitution for subsection (5) of the following subsection:

“(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**”.

COMMENTS

- Alignment with the abolition of the plenary-type municipality (Cllr may not hold office as speaker and mayor **IN ANY** municipality).

DCoG

Section 37: Functions of speakers

Insert NEW additional subsections (g) to (j) in Section 37 for additional functions of the Speaker, as follows:

“The speaker of a municipal council:

- (g) *must ensure that the legislative arm of the municipality functions effectively;*
- (h) *is responsible for effective oversight over the executive authority of the council;*
- (i) *must ensure the effectiveness of the committees of the municipal council established in terms of section 79; and*
- (j) *is responsible for the ethics and accountability of the municipal council.”*



COMMENTS

- The proposed amendment is **to strengthen the role of the Speaker**, and to promote the proper functioning of the executive and legislative arms of the municipality.

CLAUSE (18)

PROPOSED AMENDMENTS

Amend Section 41: Provide for a **new Part 3**: Whips of Municipal Councils (and Sections 41A to 41F)

- New Part 3 and Section 41 to provide for the Office of the whip.
 - Section 41A: Election of whip;
 - Section 41B: Functions of whip;
 - Section 41C: Term of office;
 - Section 41D: Vacation of office;
 - Section 41E: Removal from office; and
 - Section 41F: Acting whips.

COMMENTS

- Presently, there is **no provision that provides for the appointment / election of a whip in council.**

DCoG, SALGA

Section 43: Composition of executive committees

- Section 43(1) be amended as follows by:
 - the replacement of the word “elect” with the word “determine”.
 - an insertion after the words “20 per cent of the councillors” with “, (fractions to be disregarded)”.

- Section 43(2) and (3) be replaced with a **NEW subsection 43(2):**

“The award of seats on the executive committee to political parties or political interests must be determined in the following manner-

(a) The number of seats won by a political party or political interest divided by the total number of councillors determined for that municipality in terms of Section 12(e) and multiplied by the number of seats on the executive committee;

(b) If the calculation in subparagraph (a) gives a surplus, that surplus must compete with other similar surpluses, and be awarded to the highest surplus;

(c) If there is an equality of the surpluses, the result must be determined by lot;

(d) The political party or political interest to which seats are allocated to on the executive committee must nominate their representatives to occupy such seats;

(e) Nothing precludes a political party or political interest from nominating a councillor from another political party or political interest to one or more of its allocated seats; and

(f) In the event of a vacancy arising on the executive committee, the political party or political interest to which the seat was allocated to will nominate a councillor to fill that vacancy.”



Municipality XYZ has 61 Cllrs, distributed as follows amongst three Political Parties: Party A – 52; Party B – 3; Party C – 2; Other Parties – 4.

<u>OPTION 1:</u>			<u>OPTION 2:</u>			<u>PROPOSED AMENDMENT</u>		
Allocation: [Seats ÷ Quota] Quota (Q) = [Seats ÷ Size of EXCO] + 1 Q = [61 ÷ 10) + 1 Q = 6.1 + 1 Q = 7.1 (Rounded-off to 7) Q = 7			Allocation: [Seats ÷ Quota] Quota = [Seats ÷ Size of EXCO] Q = [61 ÷ 10) Q = 6.1 (Rounded-off to 6) Q = 6			No Quota. Allocation: [Seats ÷ Total # of Cllrs] X Size of EXCO		
<u>ALLOCATION OF SEATS</u>			<u>ALLOCATION OF SEATS</u>			<u>ALLOCATION OF SEATS</u>		
A: (52 ÷ 7)	7.42	8	A: (52 ÷ 6)	8.6	9	A: (52 ÷ 61] X 10	8.52	9
B: (3 ÷ 7)	0.42	1	B: (3 ÷ 6)	0.5	1	B: (3 ÷ 61] X 10	0.49	1
C: (2 ÷ 7)	0.28	1	C: (2 ÷ 6)	0.3	0	C: (2 ÷ 61] X 10	0.32	0
TOTAL		10	TOTAL		10	TOTAL		10

COMMENTS (SECTION 43: EXECUTIVE COMMITTEES)

- The proposed amendment will ensure that there is a **uniform formula** that will be implemented nationally for the composition of an EXCO.
- The formula is similar to the one in Schedule 1 of the MStrA.
- Political parties will be able to **identify** their own members to occupy seats on the EXCO **(and not subjected to another election by the council)**.

CLAUSE (20)

PROPOSED AMENDMENTS

Section 44:
Functions and powers of executive committees

44: ■ Amend Section 44 (1)(b) to read as follows:

(1) An executive committee is-

(a) the principal committee ...

(b) “the committee of a municipal council which receives reports from the committees of the council referred to in section 80, and which must forward these reports together with its recommendations to the council when it cannot dispose of the matter in terms of its delegated powers.”

SALGA

COMMENTS

- **The practice, in some instances, is that EXCOs and EMs stifle reports of oversight committees as they say that they must go to them first so that they can deal with the matters, and that they only need to take it to council if they deem it necessary – who will forward a report implicating themselves?**
- The amendment will clarify that committees receiving the Section 80 reports must forward these reports directly to council (with recommendations).
- Section 80 committees are **THE** committees to assist EXCO’s or Executive Mayors – **(in terms of Section 80(1)).**

<p>Section 56: Functions and powers of executive mayors</p>	<p>Amend Section 56(1) to read as follows:</p> <p>“An executive mayor is entitled to receive <u>reports from Section 80 committees</u>, 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.”</p>
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COMMENTS

- Experience has shown that reports from various committees are submitted directly to an EM.
- The amendment will clarify that the EM is entitled to **ONLY** receive reports from Section 80 committees.
- Section 80 committees are **THE** committees to assist EXCO's or Executive Mayors – **(in terms of Section 80(1))**.

- Section 73: Establishment of Ward Committees.
- Municipalities **must establish ward committees within 120 days after the election of all municipal councils.**

COMMENTS

- Presently, there is no timeframe for the establishment of ward committees in local and metropolitan municipalities.
- The proposed amendment will now require that all municipalities must establish ward committees within 120 days after a “general” election of all municipalities (unless extenuating circumstances permit otherwise, such as in Nquthu post the 2016 LGE).

DCoG

Section 79:
Establishment

- A **NEW Section 79A** be inserted to provide as follows:
 - “79A Establishment of oversight committee**
 - (1) A municipality must establish a committee called the Municipal Public Accounts Committee;
 - (2) The mayor or executive mayor, deputy mayor or executive deputy mayor, any member of the executive committee, any member of the mayoral committee, speaker, whip and municipal officials are not allowed to be members of the Committee;
 - (3) The municipal council must determine the functions of the committee, which must include the following—
 - (i) review the **Auditor-General reports** and comments from the Management and the Audit Unit and make recommendations to the municipal council;
 - (ii) review **internal audit reports** together with comments from the **Management and Audit Committee** and make recommendations to the municipal council;
 - (iii) initiate and develop the oversight report contemplated in terms of section 129 of the **Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003)**;
 - (iv) attend to and make recommendations to the municipal council on any matter referred to it by the municipal council, **executive committee, a committee of the council**, a member of this committee, a councillor and the municipal manager; and
 - (v) on its own initiative but subject to the direction of the municipal council, investigate and report to the municipal council on any matter affecting the municipality.
 - Reports of the Committee must be submitted to the speaker who must table such reports in the next meeting of the municipal council.**
 - (5)(a) For the purposes of this section “Audit Committee” means the audit committee envisaged in section 166 of the *Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003)*; and
 - (b) Each municipality and each municipal entity must establish an audit committee³⁸ in accordance with that section ”

**DCoG, PROVINCES,
SALGA**

COMMENTS (SECTION 79A: ESTABLISHMENT (OF MPACS))

- The proposed amendment is to strengthen oversight and promote governance in municipalities.
- The amendment will indicate which Cllrs may be members of the Committee, and will provide for their roles and responsibilities.
- Importantly, reports of the MPAC must be submitted to the **Speaker who must table such reports in the next meeting of the municipal council.**

Section 81: Section 81(5)(a) is amended by the substitution in Participation in subsection (5) for paragraph (a) of the following municipal councils paragraph: (of traditional leaders)

“(a) 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 [1 of the Local Government: Municipal Systems Act, 2000].”.

COMMENTS

- Due to the enactment of the Traditional and Khoi-San Leadership Act, 2019, the Clause is no longer relevant.
- DTA has drafted proposed amendments to the Clause, for consideration by the Select Committee.
- Reference to the Systems Act (Schedule 1) is removed as the **Code of Conduct for Cllrs is migrated from the Systems Act into the MStrA.**



Section 89:
District management
areas

- This section is repealed.

COMMENTS

- This section is repealed in alignment with the repeal of Section 6 of the MStrA.

DCoG, PROVINCES, IEC, SALGA

CLAUSE (26)

PROPOSED AMENDMENTS

General amendment

Reference to sections “9(e) and (f) and 10(c)” in sections 45(c), 46(a), 48(5)(c)(ii), 55(1)(c), 57(1)(a), 57(2)(c)(ii) and 72(1) of the principal Act is hereby deleted.

COMMENTS

- Sections in the Act are deleted where **reference is made to the plenary-type of municipality.**

DCoG, NC, SALGA

CLAUSE (27)

PROPOSED AMENDMENTS

- Schedule 1: Part Three: Item 16: Excessive seats
- Deals with the allocation of excessive seats (multiple seats) **and to deal with the recalculation for the allocation of seats – new provision substitutes Item 16.**



IEC

COMMENTS

- Over time, challenges were experienced by the IEC with the application of the formula where, in some instances, seats that were finally allocated were in conflict with the number of seats that were determined by the MEC.
- In other words, Item 16 of Schedule 1 comes into effect when a party, in its overall PR allocation, receives fewer seats than ward seats obtained.
- The problem with the current formulation is that the number of seats will be increased in the municipality.
- The proposed amendment will **prescribe a procedure for the redistribution / recalculation** of seats (similar to Item 17 which deals with insufficient party lists).

CLAUSE (27)

PROPOSED AMENDMENTS

Amendment of
Schedule 1: Part
Three: Item 17:
Insufficient Party
Lists

- Political parties are given two days to supplement their list, when the existing list of the party has fewer candidates that the party is entitled to.
- Addition of a **new Item 17A** to deal with “Multiple Seats”.

COMMENTS

- Presently, the legislation is not prescriptive on the timeframe for parties to supplement their lists – this causes delays for the IEC to declare the results of elections.



IEC

CLAUSE (27)

PROPOSED AMENDMENTS

Schedule 1: Part
Three: Item 18: Filling
of Vacancies

- Item 18(1)(b) is amended to provide for the Municipal Manager **to report a vacancy within 14 days (and not seven, which is presently the case).**
- Item 18(1)(c) is amended to provide that if the Municipal Manager does not inform the IEC of a vacancy, **the MEC must do so.**

COMMENTS

- This is aimed at providing more time for the reporting of a vacancy by the MM.
- It provides an alternative in the case where the MM does not inform the IEC of a vacancy, and for the MEC to do so.



IEC

CLAUSE (27)

PROPOSED AMENDMENTS

Amendment of Schedule 1: Part Three: Item 20: Filling of vacancies and changing the order:

- The proposed amendment of this Item provides that a political party may not supplement or change its list from the date of the close of candidate nomination, and **may only do so after the results of the election have been declared.**

COMMENTS

- This is aimed at allowing the IEC to prepare for elections without disruptions from **parties who continuously change their lists in the run-up to elections.**

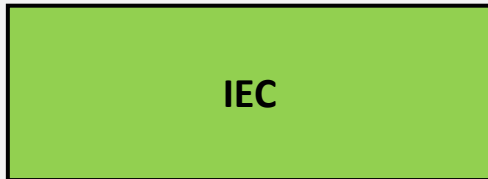


CLAUSE (28)

PROPOSED AMENDMENTS

Schedule 2: Part One:
Proportional elections:
Electoral system for party
representatives

- Items 2, 3, 5, 6, 8 and 10 are substituted.
- If a candidate is assigned to more than 1 seat, then he/she or party has 2 days to inform the IEC of decision.



COMMENTS

- This is aimed at ensuring that candidates act swiftly to enable the IEC to expeditiously finalise matters on their side.

Schedule 2: Electoral System for District Councils:
 Part 1: Proportional Elections:
 Item 10: Insufficient party lists.



- **New** Item 10A dealing with **multiple seats** is inserted.
- A party **may not supplement or change its list** from the date of the closure of the nomination of candidates for an election until the date of the declaration of the results for that election.
- Subject to the above, a party may supplement or increase its list, provided that if a Cllr elected according to a party list, ceases to hold office, **the party concerned may supplement or increase its list by not later than 21 days after the Cllr has ceased to hold office.**

COMMENTS

- Currently the legislation is not prescriptive on the timeframe for parties to supplement their lists – this causes delays in the IEC on declaring the results of elections.
- This is aimed at allowing the IEC to prepare for elections without interference by parties continuously changing its lists in the run-up to elections.

CLAUSE (28)

PROPOSED AMENDMENTS

Schedule 2: Part Two:
Allocation and election of
representatives of local
councils and DMAs to district
councils

- The heading is substituted (removal of DMAs).
- Items 14 and 15 are substituted – removal of reference to DMAs.
- Item 23 is substituted to clarify that the filling of vacancies is in respect of **district councils**.
- Item 24 is repealed.



IEC

COMMENTS

- The heading is substituted to remove reference to DMA's, as proposed in section 1 above.

CLAUSE (29)

PROPOSED AMENDMENTS

Schedule 3: Election of
municipal office bearers:
Item 1: Application

- Item amended to also include whip as an office-bearer.

DCoG, SALGA

COMMENTS

- This essentially gives effect to the provision of “**whip**” as proposed in section 1 above.

CLAUSE (30)

PROPOSED AMENDMENTS

Schedule 1: Code of Conduct for Councillors (Municipal Systems Act)

- It is proposed that Schedule 1 of the Municipal Systems Act be migrated to the MStrA (Code of Conduct for Councillors).

DCoG

COMMENTS

- The MStrA provides for:
 - Municipal councils (Composition, membership, operation and dissolution);
 - Internal structures and functionaries (EXCO, executive mayors, metropolitan sub-councils, ward committees, other committees of council).
- It is considered appropriate that the Code of Conduct for Councillors is therefore migrated to the MStrA.

Repeal of laws

- Section 19 and Schedule 1 of the Systems Act is repealed.

DCoG

COMMENTS

- This essentially gives effect to the migration of schedule 1 of the Systems Act (Code of Conduct for Cllrs) into the MStrA.

CLAUSE (32)

PROPOSED AMENDMENTS

Short title commencement

and

▪ Act is called: *Local Government: Municipal Structures Amendment Act, 2018*

COMMENTS

- This Act is called the *Local Government: Municipal Structures Amendment Act, 2018*, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

Thank You!

BACK TO BASICS : SERVING OUR COMMUNITIES BETTER



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