**MINISTRY**

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**THE CHAIRPERSON: CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

Parliament of the Republic of South Africa

P.O. Box 15

CAPE TOWN

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Per-email to: scassiem@parliament.gov.za

Dear Colleague,

**RE: STAKEHOLDER ENGAGEMENT ON THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL (B19-2018):**

Reference is made to your letter dated 31 October 2018.

I support the proposed provisions in the Bill subject to the following:-

1. The proposed amendment to section 20 provides a minimum of 15 councillors compared to the previous minimum of 3. It is submitted that this may lead to undesirable implications as there will be an increase of at least 22 councillors for the KwaZulu-Natal Province alone. This could have a significant cost implication for relevant municipalities as most of our municipalities are small, rural and financially constrained;
2. It is noted that it is proposed that section 20(4) of the current Act be substituted by a new clause which provides that a deviation of the determination of the number of councillors by an MEC is restricted to a deviation of not more than 20% if the geographical size of the municipality is greater than 20 000 square kilometres and less than 35 councillors. In terms of this proposed amendment, it appears that an MEC may not decrease the number of councillors as in terms of the current Section 20(3)(b) of the Act, as the new sub section (4) only provides for a deviation in the number of councillors based on geographical size of more than 20 000 square kilometres. In a municipality of less than that size, a deviation would no longer be possible. It is, therefore, submitted that the proposed amendment should be amended to provide for a deviation as envisaged in the current sub section (3)(b) of the Act;
3. It is suggested that section 27(e) of the current Act be amended by the insertion after the word “replaced”, of the expression “, in terms of Item 23 of Schedule 2 to this Act,”. This is to ensure that there is certainty on local representatives to district councils and to clarify that such replacement does not entail a re-election;
4. It is suggested that Clause 15 of the Bill, which requires Public Notices of council meetings, be extended to meetings of other Committees of council, as such are also open to the public;
5. Section 139 of the Constitution was amended during 2003 to provide for a procedure for provincial government to intervene in local government. However, the current section 34(3) and (4) of the Act do not fully address the 2003 Constitutional amendment of section 139, as the sections still provide MECs responsible for local government with a prerogative to dissolve a municipal council, although reference is made in the section to section 139 of the Constitution;
6. Clause 18 of the Bill is supported, however, it is submitted that this section should be amended by the insertion of subsection (k) to section 37 of the Structures Act, to provide that the Speaker is responsible for the community participation function, including the election and effective operation of ward committees. There is currently no custodian for this function in the current legislative framework. In KwaZulu-Natal it has become an established practise for speakers of councils to lead the public participation processes, particularly, those surrounding the establishment and functionality of ward committees. However, this is met with challenges in some municipalities as it is not prescriptive. It, therefore, becomes extremely difficult to hold the speakers of councils accountable for such matters;
7. It is suggested that the proposed Section 79A(3) be amended by the inclusion of an additional subsection (f), to provide for additional functions of the Municipal Public Accounts Committee, which will read — “(f) Exercise oversight over the executive and administration of the municipality”. This is to allow the Committee to effectively exercise an oversight role without being limited to the instructions received from Councils;
8. It is suggested that the proposed Item 17A(1)(e) of Schedule 1 be amended to include 14 days at the end of the paragraph 18(1)(c) in order to allow MECs responsible for local government to inform the chief electoral officer of a vacancy within 14 days where the municipal manager does not;
9. It is suggested that the proposed Item 17A(1)(f) of Schedule 1 be amended to read that “A party may not supplement or change its list from the date of the closure of nomination of candidates for an election until a day after a date of the first council meeting”. This has been a practical challenge experienced by our Province after the 2016 local government elections;
10. It is suggested that Items 3 and 6 of Schedule 2 be amended by removing reference to “District Management Area” in keeping with the proposed amendments in the Bill;
11. It is suggested that the proposed Item 10A(1) of Schedule 2 be amended to read that “A party may not supplement or change its list from the date of the closure of nomination of candidates for an election until a day after a date of the first council meeting”;
12. It is suggested that Item 12 of Schedule 7 be amended by the substitution of the word “Intervention” with the word “Interference”;
13. It is suggested that Item 13 of Schedule 7 be amended by the substitution of the word “Council Property” with the word “Municipal Property’’, where applicable;
14. It is suggested that Item 15(3) of Schedule 7 be amended after the words “province concerned” by the following words “within 14 days after paragraph (a),(b) and (c) have been complied with. This is to allow speakers of councils to inform MECs of the outcome of an investigation within 14 days of completing the process outlined in this respect; and
15. It is suggested that Item 15 of Schedule 7 be amended by inserting a new item 15(5) to read, “if the Speaker of council is the alleged perpetrator or the Speaker refuses to authorise an investigation, the council must establish a Special Committee, as contemplated in Item 16(b), to investigate and make finding on any alleged breach of this Code. This is aimed at clarifying the position where a speaker of council is implicated in breaching Schedule 7 of the Act.

It should be noted that where there are no comments, the proposed amendments to the sections are fully supported.

I trust you will find the above in order.

Thanking you

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**MS. N. DUBE-NCUBE, MPL**

**MEC FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS** **KWAZULU NATAL**

**DATE**: