**COMMENTS ON THE LG: MUNICIPAL STRUCTURES BILL, 2018**

**(VERSION 2: 4 DECEMBER 2018)**

|  |  |  |
| --- | --- | --- |
| **GOVERNANCE** | **ELECTORAL** | **OTHER** |

| **CLAUSE** | **SECTION: MSA** | **PROPOSED AMENDMENT** | **STAKEHOLDER INPUTS****(SALGA; KZN: CoGTA; MDB; WC: LG, EA&DP; NC: CoGHSTA; FS: CoGTA; MP: CoGTA)** | **COMMENTS / DCoG POSITION** |
| --- | --- | --- | --- | --- |
| **1.**  | Section 1: Definitions | * The term **“declared elected”** be defined.
* Definition of “**DMA”** deleted.
* Definition of **“election”** is substituted.
* Insertion of definition for **“whip”.**
 | * **SALGA and FS:**
* Proposes a whip for a party, as well as a single Council whip or Chief whip to be elected.
 | * It is proposed that MPAC be defined.
 |
| * **NC:**
* Proposes that the committee **“Municipal Public Accounts Committee”** be defined (note that “Ward Committee” is presently defined).
 |
| **2.**  | Section 6: DMAs | * Section 6 (and other related provisions dealing with DMAs) repealed.
 | * **MDB:**
* The provisions relating to DMAs should be retained until such time that the work relating to the LG architecture is finalised.
 | * This section to be retained.
 |
| **3. to 5.** | Sections 7(c), 9(e), 9(f), 10(c) are deleted: Types of municipality | * Abolition of the plenary-type municipality.
 | * **SALGA and FS:**
* To come into effect at the next LGE.
* Proposes a collective executive system, with ward participation.
* Policy framework for FT Cllrs should be reviewed.
 | * This section to be retained; plenary-type municipality to be abolished.

 * **CHALLENGES WITH PLENARY TYPE**
* A plenary executive system limits the exercise of executive authority to the full municipal council.
* The municipal council takes all executive decisions regarding the business of the municipality and is also responsible as a council in general for the political guidance and leadership.
* A municipal council that has a plenary executive system cannot delegate its executive responsibilities to any individual councillor or to any of its committees.
* In instances where a municipal council is very large or has many decisions to contemplate, the taking of decisions in plenary would result in a slow decision-making process.
* **ADVANTAGES OF ABOLISHING THE PLENARY TYPE**
* In a collective executive system, the municipal council elects an Executive Committee from among the members of the council and then delegates some of the council’s executive responsibilities to that executive committee.
* The executive committee is then empowered to take decisions on matters that fall within its delegated powers and is thus vested with executive leadership responsibilities for that municipality.
* In essence, the establishment of a separate executive structure enables a small group of councillors who have been elected to the executive committee to deal with the day-to-day business of running the municipality. Without a smaller executive structure, the whole council would be required to meet every time a decision is to be taken
* A collective executive system with an executive committee should be much more effective and efficient to ensure a more speedy decision-reaching process.
* Because no member can take decisions individually, there is a far smaller chance that decisions will be taken in a biased or self-interested manner.
 |
| * **WC:**
* Not supported; it is proposed that the plenary system be retained.
* Transitional provisions will be required.
* **SALGA:**

**The view is held that the collective executive system would be an appropriate mechanism to replace the plenary type municipality and the current process seems an opportune time to introduce the matter.** |
| **6.** | Section 12(4)(a) is deleted: MECs to establish municipalities | * The subsection is deleted because it is repeated in 12(4)(b) – consultation with SALGA and existing municipalities.
 | * **SALGA, FS and WC:**
* Not supported.
 | * The proposed amendment (clause) is not to be proceeded with; the status quo will remain.
 |
| **7.**  | Section 16(3)(a) is deleted: Amendment of Section 12 Notices | * The subsection is deleted because it is repeated in 16(4)(b) – consultation with SALGA and existing municipalities.
 | * **SALGA, FS and WC:**
* Not supported.
 | * The proposed amendment (clause) is not to be proceeded with; the status quo will remain.
 |
| **8.**  | Amend Section 20: Determination of number of councillors **(Note: Subsection 20(4) is not substituted, but a new 20(4)(c) is added)** | * + Minimum of 15 Cllrs in a LM or DM.
	+ Subsections 20(4)(a) and (b) to be retained.
	+ New 20(4)(c) - Deviate **by not more than 20%** for determining number of Cllrs in municipalities greater than **20,000 square kilometres.**
 | * + **SALGA and FS:**
	+ Supports the minimum of 15 Cllrs.
	+ To take effect from the next LGE.
	+ Notes the financial implications.
	+ Policy framework for FT Cllrs should be reviewed.
 | * The proposed clause is to be amended to provide for a minimum of 10 Cllrs in a municipality.
* The proposed clause 8(b) should become a “NEW 20(4)(c)”.
* A NEW 20(4)(d) is proposed to require any deviation from the formula to be done with the concurrence of the Minister – such request for deviation must be supported with motivation from the MEC. As far as possible, the status quo with regards to maintaining the same number (present / status quo) of councillors must be obtained. This is to ensure stability.
* Registered voters must be used to determine the number of councillors.
 |
| * **KZN:**
* The minimum of 15 Cllrs will result in an increase of 22 Cllrs in KZN – concerned about the cost / financial implications.
* Proposes that the original 20(3)(b) be retained – that is, to allow an MEC to decrease the number of Cllrs.
 |
| * **MDB:**
* Supported
 |
| * **WC:**
* Not supported.
* **“A smaller ratio of citizens to councillor does not necessarily result in an improvement in democracy. While it may possibly increase responsiveness, it does not necessarily result in increased efficacy.”**
* Unintended financial implications for smaller municipalities that do not require 15 Cllrs.
* The MEC will have to transition those local and district municipalities that currently have less than 15 Cllrs to ones that do by amending all the affected Section 12 notices before the next LGE – this will be an administratively onerous task.
 |
| * **NC:**
* **OPTION1:**
* The number 15 is the only number if divided by 20% will give you 3 as the minimum number of members of an EXCO, as per Section 43 of the MSA.
* If we increase 20% to 30% under Section 43 and we decrease the number of minimum councillors, then the number of wards will decrease – the objective is to comply with Sections 152 and 153 of the Constitution, and that is to improve governance (separation of the Speaker and Mayor’s roles and responsibilities) and to deepen democracy by having more wards.
* **OPTION 2:**
* To increase the number of Cllrs in a municipality, it is proposed that **“population residing in a municipality”** rather than **“number of registered voters in a municipality”**, be utilised.
* This will result in municipalities being able to be of the collective executive type.
* **The aim of the amendment is to provide a formula that will give effect to an increased number of wards.**
* **The Electoral Act can continue to use the number of registered voters but the Structures Act should use the number of total registered population of census.**
 |
| **9.**  | Section 21: Qualifications for councillors | * Cllr removed from office by an MEC may not stand as a candidate in an election **for any municipal council** for period of two years after removal from office.
 | * **WC:**
* Not supported.
* Section 19 of the Constitution provides that every citizen has the right to stand for public office. Section 158 provides for who is eligible to be a Cllr, and also requires that national legislation may set qualification criteria.
* Section 21 of the MSA provides that every citizen who is eligible to vote for a particular council may stand as a candidate.
* Practical effect may be a prohibition of 7 years.
* The proposal is not rational and limits a citizen’s rights i.t.o. Section 19 read with Section 158 of the Constitution. This limitation cannot be justified i.t.o. Section 36 of the Constitution because the objective is not rationally based.
* **KZN:**
* It is believed that there needs to be a “cooling-off” period for a person to be eligible to be a councillor, after such a person is removed from office as being a councillor.
* This will prevent a councillor found in breach of the Code of Conduct for Councillors to stand for an election immediately after the removal, which renders the punishment futile.
* Although there have been no practical examples to support this principle, the proposed amendment is based on the rational possibility that councillors removed from office could be returned, almost immediately, by their respective political parties. In practice, this means that there are no repercussions for being removed from office, which does not assist in deterring non-compliance with the Code of Conduct for Councillors.
* There is already a similar “cooling-off” principle in place in terms of section 57A of the Local Government: Municipal Systems Act No. 32 of 2000, should a senior official be dismissed from duty.
* It is believed that this will assist in restoring public confidence in the system of local government.
 | * The clause is to be retained.
 |
| **10.**  | Section 22: Election of metropolitan and local councils | * Subsection 22(4) is deleted – refers to LMs with no wards or 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.
 | * **WC:**
* Not supported – given Section 26(2) of the MSA, the clause is unnecessary.
* Propose deletion of the clause.
 | * The clause is to be retained (as part of the process to abolish the plenary type municipality).
 |
| **11.** | 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.
 |  | * The clause is to be retained (as part of the process to remove reference to DMAs).
 |
| **11.** | Section 23: Election and appointment of district councils | * Subsection 23(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.
 | * **WC:**
* Not supported – given Section 26(2) of the MSA, the clause is unnecessary.
* Propose deletion of the clause.
 | * For discussion; input from legal drafters.
 |
| **12.**  | Section 25: By-elections | * Subsection 25(1) substituted to remove reference to DMAs.
 |  | * The clause is to be retained (as part of the process to remove reference to DMAs).
 |
| **12.**  | Section 25: By-elections | * 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 Provincial Gazette.
* Subsection 25(4) is deleted because it is catered-for in the new provisions above.
 | * **WC:**
* Does not support the extension by 3 months for the cessation of by-elections – this may impact municipalities with a participatory system because the lack of representation in the ward.
* This may disrupt the responsiveness of the municipality to the communities.
* Clause 12(6)(a)(ii) to be re-drafted to remove *“if”.*
 | * The clause is to be retained.
* The proposal is informed by challenges experienced across the country, and over a long period of time.
 |
| **13.** | Section 27: Vacation of office | * Reference to the Systems Act (Schedule 1) in the Systems Act is removed – Code of Conduct for Cllrs.
 | * **KZN:**
* It is proposed that Section 27(e) 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.
 | * The proposal from KZN is accepted.
 |
| * **WC:**
* If the Code of Conduct for Councillors is not deleted from the Municipal Systems Act, it could lead to confusion.
 |
| **13.** | Section 27: Vacation of office | * Subsection 27(2) is added to make cross-reference to definition of “authorised representative” in the Municipal Electoral Act.
 |  | * The clause is to be retained.
 |
| **14.** | Section 29: Meetings of municipal councils | * New 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.
 | * **SALGA and FS:**
* Not supported
* Proposes the following replacement:

***“If the speaker or acting speaker refuse to call a meeting of the council as requested in terms of subsection (1), the municipal manager of the municipality or, in the absence or refusal by the municipal manager, a person designated by the MEC for Local government in the province may designate a person to call and chair the meeting”.*** | * The proposal from SALGA is accepted as it is an improvement on the present formulation in the Bill, and is aligned to the proposal from the WC.
 |
| * **WC:**
* It is proposed that the MM must be empowered to call and chair both types of meetings contemplated in the new Section 29(1A) of the MSA – this aligns itself to Section 29(2) of the MSA.
* Further, if the MM fails or is unavailable to designate a person, the MEC must be empowered to do so. It must be clearly provided that the purpose of the designation is for that person so designated to at the meeting, is to preside over the election of an acting speaker who must then further chair the remainder of the meeting.
 |
| * **NC:**
* 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 **“without just cause”** – proposes the addition of these words**.**
 |
| **15.** | New section 29A: Public notice of meetings of municipal councils | * New section 29(A) is added for notice of meetings – this is an improvement / revision / migration of section 19 of the Systems Act.
 | * **KZN:**
* Propose amendment to include public notice for meetings of “other Committees of Council” too.
 | * The proposal from KZN is accepted.
* The proposal from WC is accepted.
* The proposal from NC is accepted in so far as it relates to the taking of an Oath or Affirmation (would it fit better after Section 29 or in the Code of Conduct?
 |
| * **WC:**
* It is proposed that the terms “ordinary”, “special” and “urgent” meetings be defined.
* It is also proposed that meetings in terms of Sections 18(2) and 29(1) be clarified.
 |
| * **NC:**
* **Proposes the insertion of NEW Section 29A(1) and 29A(2):**
	+ **29A(1): “Assumption of office by a councillor”**

***“A councillor must assume office within 14 days [the same date as the date when a council must hold its first meeting] of being declared elected, by swearing of oath or solemn affirmation of faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 7”.**** + **29A(2): “Oath or affirmation”**

***“Before a councillor / Mayor / Speaker / MMC / EXCOM begins to perform their functions, they must swear or solemnly affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 7.”*** * **NB: wording to be the same as that of Schedule 2 of the Constitution for Executive Mayors/ Mayors/ Speaker / Members of Executive or MMCo/Councillors as the case maybe.**
* The amendment is aimed at ensuring that the first meeting of the municipal council is not saddled with debates of which provision requires councillors to take oath or affirmation. **Tsantsabane municipal council spent 2 hours debating the matter before they could be sworn-in.**
* It also confirms the first council meeting to be the first day of “employment” of councillors.
 |
| **16.** | Section 30: Quorums and decisions | * Confirmation of quorum is provided, by cross-reference to the number determined by the MEC.
* Casting vote of the presiding Cllr is clarified.
 | * **WC:**
* Requests clarity on what number of Cllrs must be considered for the quorum
 | * The clause is to be retained.
* The number being referred to is the number as determined by the MEC in the Section 12 Notice.
 |
| **17.** | Section 36: Election of speakers | * Alignment with the abolition of the plenary-type municipality (Cllr may not hold office as speaker and mayor IN ANY municipality).
 | * **WC:**
* Not supported – the plenary type of municipality should be retained.
 | * The clause is to be retained (as part of the process to abolish the plenary type municipality).
 |
| **18.**  | Section 37: Functions of speakers | * 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 Speaker.
 | * **SALGA and FS:**
* Proposes 3 additional subparagraphs – ward committees, ward Cllrs; participation of Traditional Leaders –
	+ *“must ensure the effectiveness and functionality of* ***Ward Committees****”;*
	+ *“must ensure the performance of ward councillors and* ***Ward Committees****”; and*
	+ *“must ensure the meaningful participation of Traditional Leaders in Council”*
	+ *(FS replaces Ward Committees with* ***“public participation measures”****)*
 | * The proposal from SALGA and FS is accepted.
* The proposal improves on the clause in the Bill, and also incorporates the input from KZN.
* WC to further clarify the input made in this regard.
 |
| * **KZN:**
* Proposes addition of a subparagraph to include ***public participation*** as a further function for Speakers.
* **KZN:**
* **The proposal is supported as it is in line with the SALGA position and another step closer towards the implementation of the separation of functions in the local government sphere.**
 |
| * **WC:**
* It is proposed that paragraphs (g) and (h) be clarified – that is the legislative authority and the executive authority of the municipality.
	+ If paragraph (g) relates to when a council sits as a legislature, the speaker will not need to exercise this power for most of the time because the council mostly convenes in its executive role. It does not appear that provisions serve any meaningful legislative purpose.
	+ Further, the council is vested with legislative authority and exercises it. What will the “ensuring” role of the speaker entail? For example, if a council does not pass a by-law or follows the incorrect procedure in doing so, the proposed amendments will mean that the speaker will hold the council accountable – such a role is legally unsound.
	+ Furthermore, how can it be envisaged that a speaker has oversight over the executive authority of a municipality when that authority vests in the council? The council is not accountable to its speaker.
	+ The amendment will lead to potentially strained relations between a speaker and an executive mayor.
 |
| **19.** | New sections 41A to 41F: Whips of municipal councils | * Establishment of the Office of the Whip, to provide for: election, functions, term, vacation, removal, and acting whips.
 | * **SALGA and FS:**
* Proposes that ALL Councils have a FT whip (remove qualification of 40 Cllrs in the Policy Framework for FT Cllrs).
 | * The proposal for a full-time whip may be considered in terms of the policy framework for full-time councillors, as determined by the Minister after consulting the MECs for local government (Section 18(4)).
* SALGA to clarify who should be the “authorised representative”.
* NC to clarify their input.
 |
| **20.** | Section 43: Composition of executive committees | * + Councils must determine (not elect) the number off cllrs for the EXCO (fractions to be disregarded).
	+ Formula prescribed is: number of seats won by a party ÷ total no. of Cllrs for municipality × no. of EXCO seats; surpluses compete with other similar surpluses.
 | * **SALGA:**
* Supported
* Proposes that an “authorised representative” nominate representatives to the EXCO – proposes the following formulation:

***“The political party or political interest to which seats are allocated to on the executive committee must, through an authorised representative, nominate their representatives to occupy seats”.*** |
| * **NC:**
* Proposes improvement in the drafting.
	+ An insertion after the words “20 per cent of the councillors” **of the words** with “(fractions to be disregarded)” – **NC to clarify.**
	+ Insertion of the words *“must be”* after *“political interest”*, in Clause 20(2)(a).
 |
| **21.** | Section 44: Powers and functions of EXCOs | * It is clarified that EXCOs will only receive reports from the Section 80 committees (and not from other committees).
 |  | * The clause is to be retained.
 |
| **22.** | Section 56: Functions and powers of executive mayors | * 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.
 |  | * The clause is to be retained.
 |
| **23.** | Section 73: Establishment of ward committees | * 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.
 | * **SALGA and FS:**
* Proposes reformulation for the Speaker to request extension before the 120 day period; MEC to respond within 14 days.
* Remove requirement for MEC to inform the Minister – the following formulation is proposed:
	+ The insertion of subsection (1) should read:

***“If a metropolitan or local council is unable to establish a ward committee or ward committees in accordance with subsection (1), the speaker must, prior to the expiry of the 120 days after the elections, in writing and on good cause shown, request the MEC, responsible for local government in the province concerned, for an extension”.*** * + The insertion of subsection (1)(b) should read:

***“The MEC must respond to the request referred to in subsection (1)(a) within 14 days of receipt detailing the reasons for granting or refusing the extension”.**** + Deletion of the reference to the Minister.
 | * The proposals from SALGA and FS are accepted.
* WC must provide further clarity with regards to their input.
 |
| * **WC:**
* It is submitted that clause 23(a), unless legislative competence for it can be found in Chapter 7 of the Constitution, fetters the discretion of a council as contemplated in section 160(1) of the Constitution and is inconsistent with Section 160(1) of the Constitution and Section 33 of the MSA.
* It is proposed that the clause is reconsidered.
 |
| * **NC:**
* Proposes an improvement in the drafting of Clause 73(1).
* Proposes that if a municipal council does not comply within the 120 days period or after extension by the Minister, it is proposed that the IEC must be authorised to establish wards **(Committees)** for that municipality.
 |
| **24.** | New section 79A: Establishment of MPACs | * New section is added for the establishment of MPACs – this is to ensure that oversight is strengthened.
 | * **SALGA and FS:**
* Supports the proposed amendment – makes the following proposal for consideration:

***“The nature, stature and authority of MPACs should be very similar to Standing Committees on Public Accounts (SCOPA) at national and provincial legislature level.”*** | * The proposal from KZN is accepted.
* SALGA, WC and NC to further clarify the input made / proposed.
 |
| * **KZN:**
* Proposes an additional subparagraph for MPAC to also:

***“Exercise oversight over the executive and administration of the municipality.”*** |
| * **WC:**
* Unless legislative competence for it can be found in Chapter 7 of the Constitution, fetters the discretion of a council as contemplated in Section 160(1) of the Constitution and is inconsistent with Section 160(1) of the Constitution and Section 33 of the MSA.
* It is proposed that the clause is reconsidered.
* It is unclear when it is envisaged the reports and reviews should be done because no time periods are provided-for.
* Clause 79A(5)(b) is already provided-for in Section 166(1) of the MFMA – the provision is superfluous.
 |
| * **NC:**
* It is proposed that the election criteria be determined **(prescribed)** in Schedule 1.
 |
| **25.** | Section 81(5)(a): Participation in municipal councils (of traditional leaders) | * Reference to the Systems Act (Schedule 1) is removed – Code of Conduct for Cllrs.
 |  | * The clause to be retained.
 |
| **26.** | Section 85: Adjustment of functions and powers | * It is proposed that sections 85(3) and (4) be migrated to the Demarcation Act – mandate of the MDB.
 | * **MDB:**
* Migration should take place when the Demarcation Bill is processed.
 | * These provisions must be retained until such time that the Demarcation Act is amended to provide for this.
* DCoG is also undertaking further research in this regard.
 |
| * **WC:**
* The commencement of the clause must be simultaneous with the proposed amendment to the Municipal Demarcation Act.
 |
| **27.** | Section 89: DMAs | * The section is repealed.
 | * **MDB:**
* Not supported
* Proposes that the Section be retained until the discussion on the architecture of LG is finalised
 | * The clause to be retained.
 |
| **28.** | General amendment | * It is indicated which sections in the Act are deleted where reference is made to the plenary-type of municipality.
 | * **WC:**
* If the reference to the plenary-type municipality is deleted, then what will govern the election of members of the EXCO should a MEC intend to change the type of municipality.
* The Bill does not contain any savings or transitional provisions.
 | * WC to further clarify the input made.
* Proposal with regards to transitional provisions is accepted – due regard must be had to the change in type of municipality and determination of number of Cllrs, which must take effect / be implemented from the next term of LG (in 2021).
 |
| **29.** | Schedule 1: Part Three: Item 16: Excessive seats | * 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.
 | * **KZN:**
* Proposes that the MEC should report a vacancy to the IEC if the MM does not do so within 14 days of a vacancy arising
* Proposes that a party may only change or supplement its list until a day after the first council meeting.
 | * The proposal is accepted.
 |
| **29.** | Item 17: Insufficient party lists | * Parties are given 2 days to supplement their lists.
 |  | * The clause is retained.
 |
| **29.** | New Item 17A: Multiple seats | * Where a person is assigned to more than 1 seat, such person or party has 2 days to indicate their choice to the IEC.
 | * **KZN:**
* Item 17A(1)(e) of Schedule 1:
	+ Proposes that the words ***“within 14 days where the Municipal Manager does not.”***, be added at the end of Item 18(1)(c).
* Item 17A(1)(f) of Schedule 1:
	+ Proposes that the abovementioned Item be amended to read:

***“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.”.*** * The amendments are to address practical challenges experienced by the Province after the 2016 LGE.
 | * The proposal is accepted; drafting to be improved.
 |
| **29.** | Item 18: Filling of vacancies | * MM has 14 days (and not 7) to inform IEC of a vacancy.
 |  | * The clause is retained.
 |
| **29.** | Item 20: Filling vacancies and changing the order | * 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.
 |  | * The clause is retained.
 |
| **30.** | 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 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.
 | * **KZN:**
* Proposes that Item 10A 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.”.*** | * The proposal is accepted.
 |
| **30.** | 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 by clarifying that the filling of vacancies is in respect of district councils.
* Item 24 is repealed.
 |  | * The clause is retained.
 |
| **31.** | Schedule 3: Election of municipal office bearers: Item 1: Application | * Item amended to also include whip as an office-bearer.
 |  | * The clause is retained.
 |
| **32.** | New Schedule 7: Code of Conduct for Councillors | * Code of Conduct is migrated from the Systems Act.
 | * **KZN:**
* Item 12 of the Code:
	+ Substitution of the word **“Intervention”** with the word **“Interference”**.
* Item 13 of the Code:
	+ Substitution of the word **“Council Property”** with the words **“Municipal Property’’**.
* Item 15(3) of the Code:
	+ Item be amended by including, after the words **“province concerned”**, with 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.
* Insertion of NEW Item 15(5) to the Code:
	+ Proposes the insertion of 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 councils implicated in breaching the Code of Conduct. | * The proposals from KZN and WC are accepted.
* The input from WC with regards to Item 16(7) needs to be further clarified.
 |
| * **WC:**
* Item 2(b) of the Code:
	+ The words “credibility” and “integrity’ are two different concepts that are seldom compromised at the same time.
	+ It is proposed that the provision must be redrafted to refer to “credibility or integrity, or both credibility and integrity”.
* Item 5(2) of the Code:
	+ The words **“must be removed from office as a councillor”** must be changed to **“may be removed from office as a councillor”.** This will align to the rest of the provisions in Item 5 thereby allowing for a uniform procedure to be followed that complies with the rules of natural justice.
* Item 15(3) **(Speaker must report outcome of the investigation)** of the Code:
	+ Should be moved to Item 16 **(Investigation of Breach)** as it does not fit coherently in Item 15 **(Breaches of Code)**.
	+ It is proposed that a person who can act as initiator of the investigation is appointed.
	+ If this is accepted, then the following consequential amendments would have to be effected:
		- The words **“the council or”** must be deleted from Item 16(2).
	+ A new Item 16(3) should be inserted by to read as follows:

***“The Municipal Manager must inform the MEC for local government in the province concerned within 14 days of the finding and sanction decided on by the council.”**** + The current Item 16(b) must be amended by adding the following words at the end of the provision:

***“by the MEC.”**** Item 16(7) of the Code:
* It is not clear whether the reference to the “rules of natural justice” means that the listed actions or aspects thereof are subject to the PAJA, 2000.
* It is proposed that the wording be reconsidered and redrafted to provide clarity.
 |
| **33.** | Repeal of laws | * Section 19 and Schedule 1 of the Systems Act is repealed.
 |  | * The clause is retained.
 |
| **34.** | Short title and commencement | * Act is called: Local Government: Municipal Structures Amendment Act, 2018
 |  | * The clause is retained.
 |

**GENERAL / ADDITIONAL COMMENTS FOR PROVISIONS NOT PRESENTLY PROVIDED FOR IN THE BILL:**

| **NO.** | **STAKEHOLDER** | **PROPOSAL** | **COMMENTS** |
| --- | --- | --- | --- |
| **1.** | **SALGA** | * Plenary type municipalities be converted into collective executive system / type.
* Review the policy framework for the designation of full-time councillors.
* Whips should be in ALL councils (not just in councils where there are more than 40 councillors).
* An “authorised representative” of a political party / political interest must nominate person/s to occupy seats on the EXCO.
* The nature, stature and authority of MPACs should be very similar to that of the SCOPA in both Parliament and Provincial Legislatures.
 | * Further clarification needed on certain matters.
 |
| **2.** | **KZN: CoGTA** | * 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 34(4) of the MSA do not fully address the 2003 amendment as the sections in the MSA still require MECs to dissolve a municipal council, although reference is made in the MSA to section 139 of the Constitution.
* Items 3 and 6 of Schedule 2 be amended to remove reference to DMAs.
* Proposed various amendments to the Code of Conduct.
 | * Consideration to be given to deleting Sections 34(3) and (4).
 |
| **3.** | **MDB** | * The promulgation and date of effect for the MSA must be considered in that the MDB expect the publication of the formula for councillors by the Minister in April 2019, after which the ward delimitation process begins.
* It would have been prudent and beneficial if this Bill is considered in parallel with the Demarcation Amendment Bill to ensure that certain sections that are either deleted or repealed from this Bill do not leave a policy or legislative gap re-MDB mandate.
* Section 2 of the principal Act (Areas which must have Category A municipalities) is not being amended. However, the MDB made a proposal to the Department for this section as a whole to be migrated from the Structures Act to the Municipal Demarcation amendment Bill.
* The challenge of leaving these under Section 2 of the Structures Act would be that when the Municipal Demarcation Amendment Bill is processed, the Structures Act will need to be amended again.
* The rationale is to ensure that all provisions that directs the work and mandate of the MDB are consolidated into single legislation.
* The challenge of not migrating sections relating to the MDB from the MSA (Schedule 1) into the MDA Bill would be that as the Municipal Demarcation Amendment Bill is processed, the Structures Act will again have to be amended.
* The following points are recommended to be considered:
* The linking of sub-sections 3; 4 and 5 of section 85 in that if sub-section 3 and 4 are deleted, what will the MEC be disagreeing with in subsection 5?
* The migration of all these sub-sections into the Municipal Demarcation Amendment Bill.
* The migration of section 2 of the Principal Act to MDA. An interim solution is found if the Bill is not considered with the Municipal Demarcation Amendment Bill to ensure there is no vacuum.
 | * Inputs noted.
 |
| **4.** | **WC: LG, EA&DP** | * Tagging of the Bill be reconsidered.
* Bill be checked and edited by a legal editor.
* Political office-bearer be defined in the Municipal Systems Act.
* Sections 29(1) and 30(2) should be amended to provide clarity.
* Proposed various amendments to the Code of Conduct.
 | * Clarity has been provided in the amendment to Section 30(1) that the number of Cllrs determined by the MEC must be the number that must be considered when determining the majority.
 |
| **5.** | **NC: CoGHSTA** | * Proposes that population figures be utilized for the formula to determine the number of councillors as opposed to the usage of the registered voters figures. This will address the spatial disparities, promote governance and deepen democracy.
* Proposes insertion of new provisions in Section 29A: Assumption of office by a councillor; and Swearing of oath and solemn affirmation.
 | * Matters addressed in previous section of this schedule.
 |
| **6.** | **MP: CoGTA** | * Section 81(2) be amended to allow for the identification of a person by the Traditional Leader (TL), where the TL is not in a position to participate in the proceedings of a municipal council, based on cultural or any other consideration.

**RESPONSE FROM THE DTA:***“The Traditional and Khoi-San Leadership Bill includes (in one of the Schedules) a totally new section 81 which is doing away with the current system of identification of traditional leaders for participation in municipal council proceedings.**The new clause provides that the chairperson of a local house of traditional leaders and two other members elected by the house, may participate for purposes of section 81.* *The clause deals with all different kinds of permutations such as what to do if there is no local house of traditional leaders.**The new clause is thus doing away with the need to have alternate members.”* | * Inputs (from MP and DTA) noted.
 |
| **7.** | **FS: CoGTA** | * Plenary type municipalities be converted into collective executive systems.
* Review the policy framework for the designation of full-time councillors.
* Whips should be in ALL councils (not just in councils where there are more than 40 councillors).
* An “authorised representative” of a political party / political interest must nominate person/s to occupy seats on the EXCO.
* The nature, stature and authority of MPACs should be very similar to that of the SCOPA in both Parliament and Provincial Legislatures.
* Review the size of ward committees (is the maximum of 10 members enough for a ward committee?).
 | * Further clarification needed on certain matters.
 |