PUBLIC COMMENTS

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS AMENDMENT BILL, 2010

| **Clause**  **No** | **Comments** | **Proposal** | **Contact** | | **DCoG’ Comments** |
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| Person | **Institution** |
| 1(b) |  | The following be added to subsection (b) of the definition of **“political office”.  “**…including persons holding positions in a trade union or a body dealing with the placement or deployment of persons for employment.” | Cllr Rodger Ashe | Msunduzi Municipality | Not supported – proposed amendment undermines the precept of the LRA. Section 210 of the LRA provides that if there is inconsistency between any legislation and labour laws, then the labour laws prevail. The Bill agitates for advertisement and filling of posts with suitable qualified persons. |
| 1(b) | We believe that the political office definition should be in line with that of the ‘political office bearers’ and that of the ‘political structure’ as on the existing enactment.  In such a case, political office bearers in the municipal context will therefore mean the Mayor, Speaker, whilst the political structure means the municipal Council. This is in the context of the Local Government environment  The proposed definition of a political office is therefore not in line with the Local Government context and should therefore not be included in the Act. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Not accepted – “political office bearer” is defined in the Structures Act to include the speaker, executive mayor, mayor, deputy mayor or member of the executive committee and therefore “political office” in the context of the Bill is distinct. |
| 1 (b) | There is no point in defining “political office” if there is no definition of “political party”. Furthermore, the definition of “political office” should include “any office within a structure of a political party” e.g. youth league, women’s league, rate-payers associations and community organizations who submit candidates for election. |  | Marida Nel | Cape Winelands Municipality | Not accepted – “political office” is explicitly defined in the Bill. For the purpose of the Bill, a “league” is not regarded as a registered political party and therefore it is excluded from the definition of a political party. |
| 1(b) | That this definition is not inserted since the political structure within the Local Government context refers only to the municipal council and not the definition of political office bearers within the local government context, who are the Mayor and the Speaker, and therefore, these definitions must not be clouded. | It will be wise to revisit the ANC conference resolutions that led to the establishment of municipalities and policy documents which gave rise to the formulation of the existing Local Government Act, i.e. the Systems Act, the Structures Act, the Municipal Finance Management Act.  This will give you a clear understanding of why a political environment within the municipal context was defined as in the existing Acts. | Tholulwazi Branch (Ward 1A)  Bhekumuzi Masango Branch (Ward 3)  Vos Mazibuko Branch (Ward 7) | ANC Emakhazeni Sub Region | Not accepted – The comment misses the context of the Bill. The Bill defines “political party” as opposed to “political office bearers”. |
| 1(b) | There is no point in defining political office if there is not definition of political party. The Structures Act defines party which can be used. | Definition of political office should include: … any office within a structure of a political party, e.g. Youth League, Women’s League etc. Rate-payers associations and community organizations may submit candidates for elections.  Serving councillors should also be disqualified from being appointed as municipal employees within the prescribed period. | Adv Nadiema Davids | Mossel Bay Municipality | “Leagues” are not registered political parties and therefore fall outside of the definition of a political party as defined in the Bill.  Councillors, like every citizen have the right to choose their trade, occupation or profession freely for as long as they meet the prescribed requirements. |
| 1(b) | **Political Office;** To[o] be included in the listed positions, the municipal manager not be a member of the executive committee. This position has significant entrenched power to influence municipal business. |  | Ben Marais | TAU SA | Comment noted. Comment in sync with the objects of the Bill. |
| 1(b) |  | It is proposed to include “…, branches…” before *“…or other area…”.* | Eugene Möller | City of Joburg | Proposal accepted. Definition expanded to cover branch, regional and provincial structures where political parties operates. |
| 1(b) | Clause 1(b) inserts a definition of “political office” into the Act which then relates to clause 5 which prohibits municipal managers and managers directly accountable to municipal managers from holding political office. I agree with the principle, but I am concerned that the formulation of the provision creates possibly two loopholes whereby political parties can side-step the intention of the legislature.  Firstly, the designation of the position of chairperson, deputy chairperson, secretary, deputy secretary or treasurer resembles (some) of the senior positions within the majority party (especially on provincial level), but even so not all are included. Secondly, I believe the Department should consider that opposition parties that might be in political control of some municipalities could have different designations for party office bearers.  Also in relation to this matter, it is conceivable that if a party is intent on the making available of a party office bearer to apply for a position in municipal management, ways can be found to achieve this, resulting in a possible appointment to the management position still remaining political. | I assume the Department tries to overcome this difficulty by inserting paragraph (b) indicating that any position in the party equivalent to one of the positions mentioned before, irrespective of the title designated to the position, is also included in the definition. The question is however, how this matter can be effectively regulated. If one were to leave it to the courts it will in a sense be too late, as a court case would in all likelihood stem from an irregular appointment. I appreciate the Department’s dilemma as a possible route could be to describe the matter further in regulations. However, one would feel that such a step would be an infringement on the right of parties to deal with their internal affairs.  At least I would suggest that the provision should be more detailed to include some more designations of typical party political positions.  In this regard the Department could consider the inclusion of a time period, for example six months, between the resignation of a party office bearer from such a position and the *application* of such a person for a management position in a municipality. I believe that the inclusion of such measures will strengthen the democratically important division between politicians and officials. This could also contribute to the further development of an effective local bureaucracy that would facilitate improved implementation of national policy. | Pieter W Heydenrych | North West University | Agreed. Definition expanded to cover the equivalent or corresponding positions in a political party. There is no intention to regulate this matter otherwise than as provided in this clause.  Definition 1(b)(b) addresses this problem.  Proposal not accepted. The aim of the Bill is to depoliticize local public administration considering the harm caused by politicization of municipal administration. |
| 1(b) | The definition of political office lists chairperson, deputy chair person, secretary, deputy secretary, treasurer as political officers and then extends the definition to include a position equivalent to the aforementioned irrespective of the title designated. The phrase equivalent to may be used to restrict the wide interpretation of political office which was intended by the drafters to include other positions of authority that do not have the same or “equivalent” ambit/ scope as those defined but nevertheless are positions of authority and influence e.g. chief whips | It is our submission that the definition should be amended to include “any other position of authority”  The definition of “political office in relation to a political party” should be amended to include the word “branch” after the word region as this has been excluded.  In the definition of a political office, the term **ex-offico member and sub-committee head/ officer** must be included, these individuals still form part of the parties political leadership. | Mrs N. Moerane | Ethekwini Municipality | Proposal not accepted for want of compliance with the extent of the limitation requirement in section 36 of the Constitution.  Political office at branch, regional and provincial level have been factored in.  The definition is limited to the positions that have the authority to influence decisions in municipalities. The challenge is that Political leadership |
| 1(b) | The proposed insertion is laudable and fully supported. However, it is submitted that the actual wording of the definition may be too narrow to achieve the intended purpose thereof. For example, there are instances where a municipal employee is an “ordinary” member of a party’s regional or even provincial structure whilst none of “her/his” councillors are. In these situations the municipal manager is deemed to be politically senior [and superior] to the councillors, sometimes with devastating consequences.  There are also instances where municipal officials [not necessarily only managers] serve as directors on the boards of directors of municipal entities of other municipalities, and where they even serve as board members of public entities and other statutory boards. | **‘office’** in relation to a political party, means  –  *(a)* serving as an elected or co‐opted member in a decision‐making structure of a political party at national, provincial, regional or sub‐regional level;  *(b)* serving as chairperson, deputy chairperson, secretary, deputy secretary or treasurer in a decision‐making structure of a political party at local  level; or  *(c)* serving in any position in a decision making structure of a political party equivalent to a position referred to in paragraph *(a)* or *(b)* irrespective of the title of the position concerned; | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Proposal accepted and incorporated into the Bill.  Schedule 2 of the Code of Conduct for Municipal Staff prohibit municipal employees from performing a remunerative work outside of the municipality without council approval. |
| 1(b) | In our view “Political Office” should mean any position in a political party. |  | BB Biyela | Uthungulu Municipality | Definition constraint to a position in decision making structures at national, regional and branch level. |
| 1(b) |  | It is proposed that a definition of a political party be added to the Amendment Bill so that the definition of ‘political office’ ca[n] be defined within the context of a political party. The definition of ‘political office; should be extended to include the various structures that may exist within political parties e.g. Youth League, Woman’s League. | Timothy Zeeman | DLG – Western Cape | Agreed. Definition of political party provided in the Bill covering amongst others the structures of the political party. |
| 1(b) | Does not exclude him/her from being a councillor in another Council. |  | Mr TW Peeters | Midvaal Municipality | Agreed. This clause does not apply to appointment as councilllors. |
| 54A | The insertion of the proposed section 54A after section 54 is not appropriate as the latter section deals with the Code of Conduct for Councillors. | The new section should rather be inserted as section 55A, which deals with the appointment of municipal managers. | Marida Nel | Cape Winelands Municipality | Noted. To be considered by legal drafters for its appropriateness. |
| 54A | In this case, sec 82 of the Municipal Structures Act must remain enacted. |  | ON Nkosi | Emakhazeni Municipality | Not accepted. |
| 54A |  | It is proposed that the new section 54A(2) could be amended to provide that the municipal manager or managers directly accountable to the municipal manager must have all the competencies as prescribed in the Municipal Minimum Competency Regulations (MMC) Regulations. The Minister of Cooperative Governance and Traditional Affairs must not issue inconsistent or duplicate regulations with regards to financial management. | Jeannine Bednar-Giyose | National Treasury | Proposal not accepted. The aim of the Bill is make consequential amendments to the Structures Act to ensure a single point of reference on staffing matters.  National Treasury consulted and made inputs for alignment between the MFMA and the Systems Act. |
| 54A | The provision proposed in respect of the appointment of the municipal managers and acting municipal managers unfairly prejudices municipal managers in that:  The requirements that municipal man[a]gers or acting municipal managers must “at least have the skills, expertise, competencies and qualifications” is vague and lends itself to a subjective assessment of the person making such a determination.  It provides an unfair escape by municipalities from the relevant provisions of the Labor Relations Act. |  | Grant Howard | KAPLAN BLUMBERG  Attorneys | The Bill proposes a clause that says a person appointed as a municipal managers must at least have the skills, expertise, competencies and qualifications “as prescribed”. Prescribed means prescribed by regulation. Accordingly, the regulations will provide minimum requirements to limit the subject assessment. |
| 54A(1) |  | The appointment of an acting manager when the post of municipal manager is vacant. (s60 should be amended) | Adv Nadiema Davids | Mossel Bay Municipality | Noted – input incorporated into the Bill. Further detail to be provided in the regulations. |
| 54A(1) |  | That the following be inserted in the first line of section 54A (1) after the word “must”. “in its sole discretion and without outside interference”. | Cllr Rodger Ashe | Msunduzi Municipality | Proposal not supported. The proposed clause in the Bill is unambiguous and much more progressive. The proposed amendment will create ambiguity and lead to a multiplicity of legal opinion. |
| 54A(1) | The appointment of an acting manager for short periods should not be the full council, but be delegated (hopefully as in the envisaged regulation) |  | Werner Zybrands | Overstrand Municipality | Municipal council may use the delegation system to delegate this responsibility to a lower level. However, council has the right to know progress with regard to the filling of the relevant posty. |
| 54A(1) | It is difficult to comment on s54A(1)(b) as the circumstances and period *“may be prescribed by regulation”.* | It is proposed that s54A(1) reads as follows:  “The municipal council must appoint – “or “The council of a municipality must appoint” –“as reference to municipality is not necessary.  It is proposed that this should, with reference to an acting municipal manager, only be applicable to the appointment of an acting municipal manager if a suitable municipal manager could not be appointed in a vacant position. It is further proposed that this should only apply where it is necessary to appoint an acting Municipal Manager for a prolonged period of time, say 6 months or longer. The requirement that an acting Municipal Manager must be appointed by Council when the Municipal Manager is on leave or absent from office due to other work commitments for a temporary period, would be impractical and cause delays. | Eugene Möller | City of Joburg | Agreed. The powers to appoint municipal managers is vested in council.  . |
| 54A(1) | To regulate the circumstances and period in terms of which a municipal council must appoint an acting municipal manager (54A (1) (b)) creates the risk of compromising or impeding a municipality's ability or right to exercise its powers or perform its functions.  This could be regarded as constitutionally impermissible. |  | Justin Laing | Smith Tabata Attorneys | Section 151(2) of the Constitution empowers the municipal council of a municipality to manage its affairs and perform its functions but only subject to a national legislation. The Bill seeks to provide the national legislation contemplated in this section. |
| 54A(1) | The proposed amendment as reflected in the addition of section 54A(1) the principal act relating to the appointment of municipal managers and acting managers does not take gender into account. This is a cause for concern because skilled and competent women must also stand an equal chance of being considered for these key positions. | The Commission recommends that the proposed amendment include the requirement that both men and women must be encouraged to apply for the posts of municipal manager and acting municipal manager. | Adv Kamraj Anirudhra | Commission for Gender Equality ( CGE ) | Municipalities are constitutionally obliged to implement the Employment Equity Act, to set equity targets and report progress annually to the Department of Labour. This proposal will be taken care of. |
| 54A(1) | Section 10 of the Public Service Act 1994 (Proclamation 103 of 3 June 1994) forbids the permanent employment of a person as a public servant unless she/he is citizen of SA or a permanent resident and is “a fit and proper person”. There is no equivalent requirement for employing municipal staff members.  It should be possible for a municipal council to delegate the appointment of an acting municipal manager for limited periods to a political office‐bearer.  The expression *“by regulation”* after  *“prescribed”* is superfluous/ redundant and should be deleted. S. 1 of the principal act defines *“prescribed”* as meaning *“…prescribe by regulation or* *guidelines in terms of section 120 …”* | “**Appointment of municipal managers and acting municipal managers**  **54A** (1) The municipal council of a municipality must appoint –  *(a)* a municipal manager as head of the administration of the municipality; or  *(b)* an acting municipal manager, when –  *(i)* the position of municipal manager is vacant;  *(ii)* the municipal manager has been suspended; and  *(iii)* the municipal manager will be absent from work for a continuous period exceeding 10 working days, provided that only a manager who is directly accountable to the municipal manager may act in that position.  (2) A council may not delegate the power to appoint an acting municipal manager in terms of subsection (1)*(b).*  (3) The power to appoint an acting municipal manager in circumstances other than those enumerated in subsection (1)*(b)* may be delegated to an executive committee or executive mayor only.  (4) A person appointed as municipal manager must have the prescribed skills, expertise, competencies and qualifications.  (5) The council of a municipality is not competent to waive or relax the skills, expertise, competencies and qualifications that may be prescribed for appointing a municipal manager. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Noted.  The municipal delegation framework may be applicable to the extent that it is not contradictory to section 160 of the Constitution dealing with appointment of personnel.  Accepted  Some proposal will be considered in the regulations.  Proposal is superfluous. |
| 54A(1)(a) | As head of administration / Accounting Officer |  | Jean Venter | iLGM | Not accepted – The Bill is empowered by Chapter 7 of the Constitution and not the chapter dealing with municipal finances. |
| 54A(1)(b) | Municipalities must have in place rules to establish the period for which a person can act as municipal manager. It is not for national government to prescribe the day to day running of municipalities. This will infringe on the legislative mandate of local municipalities as per section 40 and 156 of the Constitution of South Africa, act no 108 of 1996. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Not accepted – Sections 151(2) and 154 of the Constitution empower national government to strengthen the capacity of municipalities to perform their functions. In line with policy objectives, promote good governance but not taking away council powers |
| 54A(1)(b) | It seems as if the proposed insertion seeks to interfere with and systematically erode the role of legislative authority of the municipal council. Therefore, sec 82 (1) and (2) of the Structures Act should remain unchanged. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Incorrect - Sections 151(2) and 154 of the Constitution empower national government to make national legislation aimed at strengthening the capacity of municipalities to perform their functions. |
| 54A(1)(b) | The appointment of an acting municipal manager under [circumstances] the said circumstances need be clearly spelt out or an indication is given whether council and the municipal man[a]ger will define those circumstances requiring appointment of an acting municipal manager.  The Bill in several of its sections refers to prescribed regulation, the regulation needs to be defined and attached as an annexure to the Act more especially regulation on Skills, expertise, competencies and qualifications for persons appointed as municipal manager or acting municipal managers. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Proposal noted. – principal legislation first and then regulations secondary legislation. |
| 54A(1)(b) | It is our view that proposed the regulations must clearly specify circumstances under which the acting municipal manager may be appointed by council. In the instance where the post is vacant, the municipal council is authorized to appoint acting municipal manager. A different scenario comes to the fore, where the municipal manager is on a leave of absence. In this instance, it is proposed the municipal manager may appoint the acting municipal manager under circumstances necessitated by urgency. If council is given the responsibility to appoint the acting MM under urgent circumstances, it may lead to administrative blockages given time taken to call council to consider the matter. |  | Pule Koee | DLGTA-North West | Accepted – will consider these in regulations |
| 54A(1)(b) | Appointment of Acting Municipal Manager in case of temporary absence due to meetings, leave etc. Delegation should be allowed to a political office bearer to appoint acting managers for a limited period of time. |  | Jean Venter | iLGM | Accepted |
| 54A(1)(b) | This period can in any event not affect any agreement of renewal of a contract in terms of Sec 56 (6). The period prescribed can only relate to an acting MM. This is interference.  Two problematic scenarios may arise:   * No regulations are promulgated * Over-regulatory provisions interfere in council prerogative |  | Mr TW Peeters | Midvaal Municipality | Not accepted – appointment of acting MM has nothing to do with the existing employment contract. |
| 54A(2) | The proposal on skills and competencies are noted and agreed with However, there is currently enough existing legislative framework that supports this,  e. g.   * section 82 (2) of the Municipal Structures Act; * Local Government: Municipal Performance Regulations for Municipal Managers and Managers directly accountable to the Municipal Manager, 2006 (Government Gazette no. 29089: 1 August 2006) |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Streamlined in the Bill and more clarity will be provided in the regulations. |
| 54A(2) | While this requirement is welcomed, it is difficult to comment as the detailed skills, expertise, competencies and qualifications will still be “*prescribed by regulation”*. The comment made under general applies to this amendment, namely to ensure no conflict with existing regulations will be created. | It is proposed that this section should not be applicable in instances where a municipal manager appoints a manager directly accountable to him/her to act in his/her capacity when the municipal manager is on official business, leave, etc. | Eugene Möller | City of Joburg | Not accepted – defeats the spirit of the Bill. |
| 54A(2) | This provision already exists as regulation 38 in Regulation 805 published in Government Gazette 29089 dated 1 August 2006, but was rarely complied with and never enforced. |  | Adv Nadiema Davids | Mossel Bay Municipality | Accepted – Court order set aside the provisions of the Municipal Performance Regulations |
| 54A(2) | This should be part of the appointment process of all municipalities and already prescribed in regulation 38 in Regulation 805 published in Government Gazette no. 29089 dated 1 August 2006. The question is not to regulate, but to implement and enforce. The will of a municipal council to adhere to legislative provisions and good human resource practice are key factors. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Ditto |
| 54A(2) | This provision already exists as regulation 38 in Regulation 805 published in Government Gazette 29089 dated 1 August 2006, but was rarely complied with and never enforced. |  | Werner Zybrands | Overstrand Municipality | Ditto |
| 54A(2) | The indicated provision is already addressed in regulation 38 of Regulation 805 published in Government Gazette No 29089 of 1 August 2006. The focus must be to enforce the regulation, which at present does not take place. |  | Ben Marais | TAU SA | Ditto |
| 54A(2) | The qualifying phrase “at least” as it appears in the 2nd line, combined with the undefined nature of the skills, expertise, competence and qualifications required renders the clause vague and ambiguous and would complicate implementation of clause 3(a). Moreover the optional nature of any regulations specifying the requisite skills, expertise, competence and qualifications required renders clause 3(a) unenforceable and is at variance with the prescribed regulations contemplated in sub clauses 54A(3)(*a*) and(4)(*b*). | The Centre would thus propose that the phrase “at least” be deleted and that the publication of regulations be made obligatory. The proposed altered clause should read:  “A person appointed as a municipal manager or acting municipal manager in terms of subsection (1) must have the appropriate skills, expertise, competence and qualifications necessary to perform the duties of the post and as prescribed  by regulation.” | Adv N de Havilland | The FW De Klerk Foundation | Liability clause has been introduced in the Bill  Emphasis on enforcement |
| 54A(2) | The expression *“at least”* in the proposed subsection is superfluous/ redundant and should be deleted.  It must be noted that the Minister of Finance, purporting to act in terms of s. 168 of the Local Government: Municipal Finance Management Act 2003 (Act No 56 of 2003)(hereafter “the MFMA”) issued *Municipal Regulations on* *Minimum Competency Levels*, 2007 (GN No R.493 of 15 June 2007).  The proposed subsection should oblige the Minister, when he prescribes the skills etc. of municipal managers, to take prescripts in this regard issued by the Minister of Finance into account [See s12(d), below].  The proposed subsection ought to first state that a municipal council is not competent to waive or relax the prescribe qualifications etc.  See proposed ss (6): If an acting municipal manager must also comply with the prescribed requirements, where will the MEC or Minister find a suitable candidate in the public service? |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Accepted – take out “at least”  Will align with the MFMA competency requirement when prescribing regulations  Accepted  Not accepted – must maintain legal drafting principles |
| 54A(2) | The regulations needs to provide and take into account the fact that there are vast differences between metropolitan and rural municipalities. The regulations will therefore need to be adjusted to meet the needs of the different categories of municipalities. The competencies, skills and experience of a municipal manager in a metropolitan municipality may be different than that of a municipal manager in a rural municipality. |  | Johan Koen | IMATU | Noted – will be dealt with through regulations. |
| 54A(2) | The prescription of skills, expertise, competencies and qualifications by the Minister (54A (2)) shifts core powers and functions away from the municipal council, thereby eroding the independence and executive authority of a municipality. |  | Justin Laing | Smith Tabata Attorneys | The Minister is accountable to Parliament on all HR systems and therefore has the responsibility to regulate. |
| 54A(3) | If the insertion is said to refer to the contravention of the existing legislation, namely the Systems Act, the Structures Act, the Performance Regulations and the Constitution of the Republic in terms of the Bill of Rights, then we agree with.  Of course any action that contravenes the existing pieces of legislation must be nullified. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Accepted - only MSA and MPRs 2006 will be reviewed. |
| 54A(3) | Care must be taken not to contravene the provisions in the Labour Relations Act (1995). The question is whether a municipality can appoint a person and after the appointment declares the appointment null and void? The proposal is that municipalities develop and implement policy to guide the appointment process of all employees in accordance with all applicable legislation. The key is the political will to implement policy. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | National norms and standards and municipality will develop policies aligned to the national norms and standards. |
| 54A(3) | The appointment of the incumbent must satisfy the requirements, as prescribed by the Labour Relations Act. |  | Ben Marais | TAU SA | Accepted |
| 54A(3) | We submit that insofar as the appointment of personnel by a municipal council [or a municipal manager] is an administrative act, that the principles established in *Oudekraal*  *Estates (Pty) Ltd v The City of Cape Town and Others* (25/08) [2009] ZASCA 85; 2010 (1)SA 333 (SCA) (3 September 2009) [at par.26] should prevail, for the reasons stated inthe judgement at par. 27 to 30. At par. 26  the Court said:  *“… the question that arises is what consequences follow from the conclusion that the Administrator acted unlawfully?*  *… (W)as the … Council entitled to disregard the Administrator’s approval and all its consequences merely because it believed that they were invalid provided that its belief was correct? In our view it was not. Until the Administrator’s approval (and thus also the consequences of the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question”.* | (6) Any decision to appoint a person in contravention of this section as municipal manager is *ab initio* void.  (7) Any employment contract concluded between a municipality and a person pursuant to a decision contemplated in subsection (6) is null and void,  (8) Any person, including an MEC for local government, the Minister and a trade union, may apply to a court to obtain an order declaring –  *(a)* a decision in terms of subsection (6) void and to set it aside; or  *(b)* a contract in terms of subsection (7) null and void. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Noted – nothing precludes the MEC/ Minister to approach a court of law for a declaratory order. |
| 54A(3) | While the intention behind this section is understood, it must be appreciated that while the Bill makes the conclusion of the contract null and void, it is the court of law that can give effect to that section. In other words the contract will continue to be legally binding between the parties until such time the courts are approached to nullify the contract.  It is not wise to encourage such litigation by either national or provincial sphere of government.  It is therefore advised that this section be revisited, and perhaps rephrased to make it mandatory for a municipality to apply for review of its act of entering into the contract, through use of the review procedure, provided for in the Promotion of Administrative Justice Act (PAJA).  If the review procedure is followed, then this would bring certainty to the status of the contract. |  | Adv Q D Kuhn | DLGH- KZN | MEC/Minister may approach court for a declaratory order in the event of contestation. |
| 54A(3)(a-b) | In terms of this section, in an event that a suitable person is not found with skills, expertise, competencies and qualifications but a municipal council has concluded a contract, nullifying the contract also puts the council open for labour disputes in terms of a person who has a legitimate expectation of being employed in that position. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Not accepted – what constitute legitimate expectation if a candidate does not meet minimum requirements? |
| 54A(3)(b) | A qualification is not equal to competency. Competency requires the demonstration to execute the task, which requires experience and knowledge. It can be assumed that competency includes a qualification. In this section the “or” between competency and qualification must be removed and be substituted with “and”. |  | Ben Marais | TAU SA | Accepted – replace “or” with “and” |
| 54A(4) | The cost implication should be taken into account, especially in small municipalities. Provisions should also be made for municipalities to make representations for exemptions as similarly provided in ss.11 |  | Adv Nadiema Davids | Mossel Bay Municipality | Not accepted – the municipality may advertise. |
| 54A(4) | This proposed insertion should not be located in the Act but should form part of each Municipal Council’s Human Resource policies and procedures, in line with legislation |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Not accepted – will be addressed by regulations. |
| 54A(4) | This sub-section requires, inter alia, the post of Municipal Manager to be advertised when it becomes vacant. It is suggested that the sub-section be amended by stipulating a time period of one month within which the post has to be advertised after it has become vacant. This will avoid a situation arising where a municipality has a person acting as Municipal Manager for an extended period of time. |  | Jean Venter | iLGM | Accepted – Minister may regulate any other thing that will facilitate… |
| 54A(4) | While the principle is agreed with, the cost implications of advertising the post nationally may prove to be a challenge for smaller municipalities. Provision should be made, within certain circumstances, for the smaller municipalities to apply to the MEC for exemption from this clause. |  | Timothy Zeeman | DLG – Western Cape | Not accepted – will lead to municipality saying there are unable to find suitably qualified. |
| 54A(4) | The requirement that a municipality must advertise a post nationally (54A (4)) is not appropriate for an independent sphere of government. This is surely an aspect of administrative detail that is best left to the municipality to determine. |  | Justin Laing | Smith Tabata Attorneys | Not accepted – this provision will assist municipalities to attract a pool of suitable candidates |
| 54A(4) | The recruitment process to be followed in the case of the appointment of the municipal managers ought to be regulated in terms of the suggested legislation. In this regards:  Regulating the recruitment processes of municipalities by virtue of the proposed amendments interferes with the executive authority given to municipalities in terms of Chapter 7 of the Constitution.  Any legislation which alters the effect of the Constitution ought only to be promulgated after the Constitution has been amended accordingly. |  | Grant Howard | KAPLAN BLUMBERG  Attorneys | Not accepted – powers of municipal council 160(1)(d) of the Constitution remains with the council. |
| 54A(4)(a) |  | The subordinate clause “to attract” should be altered to read “to attracting”. | Adv N de Havilland | The FW De Klerk Foundation | Not accepted – refer to state law advisers |
| 54A(4)(a-b) | We submit that the expression *“with a view to attract a pool of candidates nationwide”* inthe proposed subsection is superfluous/redundant and should be deleted. | (9) If the post of municipal manager becomes vacant the municipality must‐  (a) advertise the post in at least two newspapers with national  circulation for a period of at least  21 days;  (b) display a copy of the notice on the municipality’s official website; and  (c) select and appoint from amongst the candidates a suitable person complying with the prescribed requirements as municipal manager. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Accepted – better captured as regulations |
| 54 (A)(4)(b) | Even if a municipality attracts suitably qualified candidates, it may ignore these applications in an effort to appoint a politically preferable candidate. If control has to be exercised, this is where it should start. |  | Werner Zybrands | Overstrand Municipality | The preferred candidates must be competent and suitably qualitied. |
| 54 (A)(4)&(5) | These sections are procedural matters and as a result should not form part of the Act, but be couched in a regulation. |  | Adv Q D Kuhn | DLGH-KZN | Not accepted - important to highlight to ensure consistent application. |
| 54A(5) | The reasons for re-advertising must be tabled at the Municipal Council for approval, clearly indicating the motivation for this action. This must include the qualifications and competencies of applicants which submitted applications. This is required to ensure that transparency prevails during the process. |  | Ben Marais | TAU SA | Accepted – the reasons are clearly articulated in the Bill |
| 54A(5) | The proposed wording implies that a council has a choice as to whether it wants to re-advertise the position or not. | We submit that a municipality must be required to re-advertise the position at least once if the circumstances provided for in the proposed subsection prevails. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Accepted – how will the municipality re-advertise while approaching the MEC/Minister for secondment? |
| 54A(6) | This proposed amendment must not serve as an excuse for municipalities not to make an appointment. It is in the best interest of all municipalities that the position of Municipal Manager is filled as soon as reasonably possible. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Accepted |
| 54A(6) |  | Change the word “second” to recommend at least three candidates, the MEC or Minister can only recommend to council because council reserves the right to appoint. If the legislator is comfortable about secondment then regulations must specify prescribed timeframe. | Pule Koee | DLGTA-North West | Not accepted – will lead to too many delays. |
| 54A(6) | The Municipality is in a better position to recommend a list of suitable candidates from within its ranks  The amendment as it stands could be subject to abuse by the MEC or the Minister by a partial/biased appointment of an Acting Municipal Manager | We therefore suggest that the MEC or Ministers power to appoint an acting Municipal Manager be limited to a list of suitable candidates provided by the executive committee of the Municipality concerned. | Mrs N. Moerane | Ethekwini Municipality | Not accepted – power to appoint is vested in council. |
| 54A(6) | In terms of this section will the seconded person enter into a contract with the municipal council, and further on the pool of people that can be seconded will they meet the requirements and not be in violation of the amended section. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Will not enter into contract because they are seconded. |
| 54A(6) | Provided that such seconded person meets all the requirements relevant to such post and is acceptable to the Council. |  | Mr TW Peeters | Midvaal Municipality | Ditto |
| 54A(6) | With reference to the secondment mentioned here, who will determine the terms and conditions of secondment? Will this individual be subjected to similar prescribed requirements such as skills, expertise, competencies and the like? | In this regard, we would submit that, although appointed by MEC or Minister, the seconded person must report to Council where he/she has been seconded to so that she/he falls within the authority of Council and may therefore exercise delegated authority, be subjected to performance management processes and mechanisms. | Lance Joel | SALGA | Accepted – terms and conditions to be determined by regulations.  Ought to have the relevant skills.  Political decision. |
| 54A(6) | If the MEC of the Minister are requested to second a suitable person to act, then it will be consistent with the rest of the Bill for such person to have the same skills, expertise, competencies and qualifications as may be prescribed. This must be stated. |  | Justin Laing | Smith Tabata Attorneys | Accepted - regulations |
| 54A(6) | The clause should be amended so that it provides clarity as to when the MEC should act and when the Minister should act. The co-ordination of the secondment is unclear. The clause currently provides for discretion by municipalities to request the MEC or the Minister. |  | Timothy Zeeman | DLG – Western Cape | Accepted – rephrase, first give MEC a number of days to act, failing which the Minister will intervene. |
| 54A(6) | Is the implication being made that No one can act from amongst the managers that report directly to the Municipal Manager in case when the position of Municipal Manager is vacant?  The open ended situation of asking the MEC or Minister to second a person to come and act in the meantime, has to be elaborated in relation to the process to get that person ( from own department or else where, remuneration, place of stay and related benefits that might be applicable to the acting person ).  Same requirements applicable to Municipalities in observing who can be appointed as Municipal Manager or acting manager have to be observed also.  In case none of the managers directly reporting to the Municipal Manager is appointed acting, what is the rationale of going to National to ask for an actingMunicipal Manager, while this can be handled by the MEC. If between the MEC & the Minister, they identify someone national, it should be left to the  MEC to liase with the Minister for that appointment. ( Doing away with telling  the Municipality to ask either the MEC or Minister – leave only MEC ) |  | Jean Venter | iLGM | No, it does not imply that  Accepted  Accepted  MEC/Minister second and not appoint acting MM |
| 54A(6) | (6) and (7): The proposed insertion undermines sec 154 (1) of the Constitution of the Republic that relates to the role of provincial government in a cooperative government situation and/or environment.  It further undermines sec 152 (1) (a) of the Constitution which deals with the provision of democratic and accountable government in which case, a municipal council should hold its Accounting Officer accountable. In the case where such an employee is seconded from the other two spheres, such a person will account to the sphere that seconded him/her.  This insertion is further viewed as a tactical way of bringing in sec 139 of the Constitution which, in essence, suggests that the municipality is unable to manage its affairs.  The proposed insertion further undermines sec 40 (1) of the Constitution, which distinguishes the roles of each of the spheres of government, the spheres which are distinctive, interdependent and interrelated. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Regulations will ensure that the seconded is accountable to council. |
| 54A(6) | In terms of s54A (2) read with s54A (6) the municipality would not be able to appoint a manager directly accountable to the municipal manager of the municipality to act in the advertised position of a municipal manager if that manager does not comply with s54A (2) unless the Minister has exempted the municipality in terms of s54A (11). The practicality of this is questionable and it is proposed that a municipality should have the authority to appoint a manager to act in a vacant position of a municipal manager from the municipality’s managers who is directly accountable to the municipal manager for a limited period until a municipal manager has been appointed in the vacant position. | It is proposed that the person being seconded must also comply with s54A (2), namely the possession of prescribed skills and competencies.  It is proposed that the request should firstly be made to the MEC and if the MEC fails to respond to the request within a certain period, it be directed to the Minister. | Eugene Möller | City of Joburg | Accepted |
| 54A(6) | Secondment of public servants is regulated by s. 15(3) of the Public Service Act 1994. We could not find anything in the said section [or the proposed clause] that allows a municipality, having made such a request, to decline to accept a particular person or to request that she/he be recalled, should the municipality so wish. We suggest that the Bill should empower a municipality to do so.  The proposed subsection does not [expressly] require the relevant council to appoint the seconded public servant as acting municipal manager.  Is the municipality concerned required to reimburse the relevant department from where the person is seconded for her/his pay etc.?  A municipality may, in certain circumstances, be held vicariously liable for the wrongful acts of its employees. If a seconded employee commits a wrongful acts, who would be liable? |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Accepted  Regulations  Problematic  A common law principle. |
| 54A(7) | The regulations must provide that the information must be given to the Minister or MEC after the appointment process is finalized. |  | Pule Koee | DLGTA-North West | Accepted |
| 54A(7) | No reason is seen for reporting the process pursued to the MEC or Minister. The Constitution provides distinctly for the power of municipal councils (section 40 and 156). |  | Ben Marais | TAU SA | Not accepted – the Minister and MEC have to exercise their oversight roles to monitor and support municipalities |
| 54A(7) | The provisions in (7)&(8) seems to be intrusive. |  | Adv Nadiema Davids | Mossel Bay Municipality | Ditto |
| 54A(7) | The clause seems to undermine the authority of the MEC. | It is proposed that reporting be directed at the MEC only. There are existing processes in place in terms of which the Minister can be informed. | Timothy Zeeman | DLG – Western Cape | Not accepted – Checks and balances |
| 54A(7) | The principal Act does not contain a penalty clause. It is, therefore, notoriously difficult to enforce its requirements short of embarking on expensive civil litigation to obtain *mandamus*, an interdict or other suitable relief or threatening some or other “intervention”. The proposed provision is, therefore, like many similar provisions in a variety of statutes, likely to be largely ignored. |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Ditto |
| 54A(7) | There seems to be no reason why the municipality should report to either the MEC or Minister on the appointment process? Care should be taken not to infringe on the constitutional provision in section 40 and 156 of the Constitution of South Africa (1998).  There is no reason to report to the MEC or Minister on the outcome of the process. The municipality is a distinctive sphere of government with the necessary powers to make decisions on this level. Legislative provisions are in place in case of a municipal council that is unable or unwilling to adhere to applicable legislation. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Ditto |
| 54A(7) |  | Insert a time line for the clause to read as follows “…within 14 days of the process being complete”. | Mrs N. Moerane | Ethekwini Municipality | **NB** |
| 54A(7) | The nature of the information to be provided is unclear. It is thus suggested that the clause “by providing the information as may be prescribed by regulation” be deleted. |  | Adv N de Havilland | The FW De Klerk Foundation | Not accepted – standardize |
| 54A(7) | It is difficult to comment as the details on the information that needs to be provided must still be *“prescribed by regulation”.*  Should a municipality report to both the MEC and Minister? Would it not be more appropriate to report only to the MEC who in turn should report to the Minister? |  | Eugene Möller | City of Joburg | Not accepted – refer to ditto on pg 27 |
| 54A(7) | IMATU support the power vested in the MEC and / or Minister to intervene if the appointment of municipal managers and managers directly accountable to municipal managers are not affected in terms of the requirements of these sections.  IMATU is however concerned that the municipality is required to report on the appointment process. The problem lies therein that the post of municipal manager is vacant at the time of the appointment process. Who will therefore be required to report in the absence of the municipal manager? Will it be the mayor, mayoral committee, the municipal council or other officials or office bearers? IMATU is of the opinion that the body responsible for reporting to the MEC / Minister should be more clearly defined. |  | Johan Koen | IMATU | Not accepted – once an MM position becomes vacant, an acting municipal manager or secondment will be appointed. |
| 54A(7) | It is suggested that the responsibility to report to the MEC and the Minister on the appointment process and outcome be assigned to a specific political office bearer such as the Executive Mayor or Mayor, where applicable. It is also suggested that a specific time period within which the required report has to be submitted should be inserted in the sub-section.  Assigning responsibility and a time frame will ensure that the matter receives attention within a specified period, thereby avoiding a scenario where the matter is never reported, or possibly only reported after a prolonged period of time, which would negate what this section of the Bill aims to achieve.  Municipalities have been complaining about over regulation in terms of the many levels of reporting, like with MFMA. Is it not appropriate to report to the MEC, and copy the Minister, or let Municipalities report to MEC who will in turn  do a summary report of the Province to the Minister, thereby highlighting problematic areas that as the MEC might have picked up, for the Minister to then sanction some intervention. |  | Jean Venter | iLGM | Accepted – timeframe within which report must be submitted.  Will prolong the reporting process. |
| 54A(7) | Potential further onerous provisions and interference. |  | Mr TW Peeters | Midvaal Municipality | Not accepted – Oversight role by MEC and Minister |
| 54A(8) | In relation to a declaratory order which may be sought by the MEC the LRA(Labour Relations Act) may also protect the appointed person, care should be taken that this clause is not in conflict with legislation governing employment relations as well as the constitution in terms of legitimate expectation. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Noted |
| 54A(8) |  | Even though it is quite possible for government entities or spheres of government to sue each other, we believe that, any legal action between the two entities would have a negative impact of the image of government, we suggest the removal of “.. an application…” and insert the following “.. any appropriate action necessary to comply with the provisions of this Act..” | Mrs N. Moerane | Ethekwini Municipality | Not accepted – provided in case there is no agreement between the parties |
| 54A(8) | The Constitution of the Republic Act 108 of 1996 dedicates the whole chapter 3 to the regulation of intergovernmental disputes both substantively and procedurally. It is our considered view that this subsection seeks to push the parameter of the aforementioned chapter which provides that all spheres of government and state organs must avoid legal proceedings against one another. Secondly the Intergovernmental Relations Framework Act set out procedure and structure that must deal with intergovernmental disputes. It is proposed that the legislator consider removing the entire subsection. |  | Pule Koee | DLGTA-North West | Noted |
| 54A(8) | The steps to be taken by the MEC with regard to any suspected contravention must comply with the principles of administrative justice. Amongst other things, the MEC must be required to consider the report (7), investigate any possible contravention, and invite the municipality to comment, before attempting to enforce compliance. |  | Justin Laing | Smith Tabata Attorneys | Accepted |
| 54A(8) | The proposed subsection imposes on the MEC a policing duty, but only if the municipality concerned has supplied her/him with the required information. |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Noted – it is called monitoring or oversight. |
| 54A(8) | Again as in 54A(3) care must be taken not to contravene other labour related provisions and the municipal powers to make appointments |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Noted |
| 54A(8) | What is the rationale of rushing to courts on this matter, as opposed to intergovernmental relations on solving matters if the MEC feels that this section might have been contravened? If the MEC holds a view that the section has been contravened, a round table meeting with the political leadership of the Municipality, that would have appointed the incumbent, will suffice to address the impasse, as long as the MEC can demonstrate to the political leadership that the section has been contravened.  Our view is that if some sections like automatic termination because of a contract not being signed can be enforced without going to court, we need to do our best to address the other enforcements also without subjecting each other to court processes. The engagement by the MEC with the political leadership will have to be reported to the Minister, to show the problem that was identified, and the conclusion of the engagement so that the Minister can see if the section was contravened or complied with. |  | Jean Venter | iLGM | Noted – addressed in clause 2(8) |
| 54A(8) | Consideration should be given as to whether this amendment might be in conflict with the current provisions of the Labour Relations Act and employment practices. | It is proposed that *“…, which may include an application to a court for a declaratory order on the validity of the appointment or any other legal action against the municipality.”* be deleted. This proposed amendment could be seen as in conflict with s41(1)(h)(iv) of the Constitution and s 40(1)(b) of the Intergovernmental Relations Framework Act, Act No. 13 of 2005 (IGRFA). The Constitution stipulates that all spheres of government should avoid legal proceedings against one another. The IGRFA gives effect to the Constitution by stipulating that different spheres of government should not resort to judicial proceedings to resolve matters between the spheres of government. Litigation should only follow once the processes in the IGRFA have been followed. | Eugene Möller | City of Joburg | Dealt with in clause 2(8) |
| 54A(8) | The Constitution of the Republic Act 108 of 1996 dedicates the whole chapter 3 to the regulation of intergovernmental disputes both substantively and procedurally. It is our considered view that this subsection seeks to push the parameter of the aforementioned chapter which provides that all spheres of government and state organs must avoid legal proceedings against one another. Secondly the Intergovernmental Relations Framework Act set out procedure and structure that must deal with intergovernmental disputes. It is proposed that the legislator consider removing the entire subsection. |  | Pule Koee | DLGTA-North West | Dealt with in clause 2(8) |
| 54A(8) | The constitutionality of this provision may be challenged. Why not rather obtain the approval of the MEC prior to the appointment being made? |  | Werner Zybrands | Overstrand Municipality | Not accepted – power to appoint municipal manager rest in the municipal council. |
| 54A(8) | Derogates from the spirit and ethos of effective intergovernmental relation principles by indicating that the first line of action to enforce compliance by the Municipality may include an application to court. We suggest that the Amendment Act or proposed Regulations referred to in this Amendment Act should be drafted to include non-litigious remedies as the first line of action to enforce compliance by the Municipalities. This will be in keeping with Section 41(h)(vi) of the Constitution which states that all spheres of government and all organs of state within each sphere must… |  | Mrs N. Moerane | Ethekwini Municipality | Inter-Governmental Relations - Dealt with in clause 2(8) |
| 54A(8) | It is advised as aforementioned that a review process provided for in PAJA should be used to avoid encroaching the principle of co-operative government that is embodied in our intergovernmental relations framework. |  | Adv Q D Kuhn | DLGH-KZN | Ditto |
| 54A(8) & (9) | Reading them together, an assumption is made that the reporting would have been sent to both the Minister and MEC ( as suggested in 7 above ), but how the process will follow each other becomes a challenge – at what level will the Minister picks it up that the MEC didn’t do anything on the report. This just strengthen our view that the report should be to the MEC, copy to the Minister, and between the two, they will manage if in their view, some contravention of some clauses happened, and they can manage the time frames related to the MEC to take steps, thereby allowing the Minister to intervene if the MEC doesn’t report back to the Minister. |  | Jean Venter | iLGM | Accepted – need synergy between timeframes within which the MEC must take appropriate steps.  Review clause 2(8) to provide for reporting by MEC to the Minister within 14 days. |
| 54A(8) | Section 11 of the Systems Act is undermined by this proposed insertion, in particular sec 11 (3) (c), (d) and (k), which reads as follows:  11 (3) A municipality exercises its legislative or executive authority by-   1. establishing and maintaining an administration; 2. administering and regulating its internal affairs and the local government affairs of the local community;   (k) establishing and implementing performance management systems;  Chapter 3 of the Constitution provides for the principles of cooperative governance and intergovernmental relations within which all spheres of government must conduct their activities.  The mention of the application to court by the sphere of government is a serious violation of sec 41 (1) (h) of the Constitution which reads as follows:  All spheres of government and all organs of state within each sphere must cooperate with one another in mutual trust and good faith by avoiding legal proceedings against one another.  Further, sec 41 (3) of the Constitution stipulates that an organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.  Subsection (4) indicates that if a court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs of state involved.  The view to take the municipal council to court contravenes the above stipulations and therefore this insertion should not be enacted. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Inter-Governmental Relations - Dealt with in clause 2(8) |
| 54A(8) | In respect of the proposed new section 54A(8) and (9), it is recommended that it be carefully considered whether this provision, which would provide for the possible immediate approach by the MEC for Local Government or the Minister for Cooperative Governance and Traditional Affairs to court to obtain a declaratory order or to take other legal action, is in accordance with the requirements of cooperative governance as stipulated in section 41(1)(vi) of the Constitution, which requires all spheres of government and all organs of state to avoid legal proceedings against one another. This approach is also strongly affirmed in Chapter 4 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005). Similar comments apply in respect of clause 4 of the Bill, and the proposed amendment to section 56(5) of the Act. |  | Jeannine Bednar-Giyose | National Treasury | Inter-Governmental Relations - Dealt with in clause 2(8) |
| 54A(8) | Inconsistency in drafting in the two subsections: subsection (8) uses the phrase “appropriate steps” and subsections 9 uses the phrase “appropriate measures” (what is the difference?) Subsection 9 makes reference to “appropriate measures” referred to in subsection 8 but subsection 8 does not contain the phrase “appropriate measures” rather the subsections should use the phrase “appropriate steps”. Therefore, this means that subsection 9 makes reference to something that does not exist in subsection 8. Consistency in legal drafting is critical. It is therefore suggested that a single phrase be used. |  | Elias Ngolele | Nokeng Tsa Taemane Municipality | Accepted - align phrase “appropriate steps” and “appropriate measures”. |
| 54A(9) | Appropriate measures must be taken BEFORE any appointments are done. Not afterwards. Further, current legislative provisions are in place to allow the minister the necessary oversight. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Not accepted – comment in contradiction of s160(1)(d) of the Constitution which bestows the powers to appoint municipal personnel to municipal council. |
| 54A(9) | Who determines what is appropriate, Minister or MEC? |  | Adv Nadiema Davids | Mossel Bay Municipality | Not accepted – final arbitrator is the regulating authority (the Minister). |
| 54A(9) |  | This clause should be amended so as to include subsection (6) e.g. where an MEC fails to take appropriate measures referred to in subsections (60 and (8) the Minister may take the measures contemplated in that section. | Timothy Zeeman | DLG – Western Cape | The clause drafted refers to subsection (8) not (6).  Accepted - First the MEC must be approached then the Minister. |
| 54A(10) |  | That the following be inserted in the second line of subsection 54A (10) after the word “council”.  “or any other committee, structure or body”. | Cllr Rodger Ashe | Msunduzi Municipality | Not necessary – in terms of delegation. |
| 54A(10) | There should be punitive measures in general and not only regard in the appointment of acting Municipal Manager. |  | Adv Nadiema Davids | Mossel Bay Municipality | Accepted - this sanction should apply to all administrative actions that culminate to fruitless or wasteful expenditure. |
| 54A(10) | The section should be expanded to read that the fruitless and wasteful expenditure should be recovered in terms of the process as set out in section 32 of the MFMA. |  | Jeannine Bednar-Giyose | National Treasury | Accepted – add 11 after 2(10) to ensure alignment with the MFMA.  Appropriate legislative provision must be invoked. |
| 54A(10) | The liability that a councillor can accrue as a result of “knowing” is far reaching. If a councillor is fraudulently misled into believing inaccurate information, the he/ she can still be held liable.  It is therefore advised, that the reasonable man test be incorporated through defining the word “knowing” to include information that the reasonable man in the position of a councillor ought to know. |  | Adv Q D Kuhn | DLGH-KZN | The clause refers to councilors with knowledge of law, legislation.  The reasonable man test is tested in the court of law where there are facts. |
| 54A(10) | The provisions of the Constitution of South Africa (1998) sections 19(3)(b) and 158 must be taken into account. No requirement is prescribed to be a municipal councillor except that every citizen who is qualified to vote for a Municipal Council is eligible to be a member of that Council. As no legal qualifications are required to be a member of a council, it is difficult to see how members can be held personally accountable. Municipal Managers, as accounting officers of municipalities must be legally qualified must share the responsibility of such decision. | The following is proposed in line with the provision in the Local Government: Municipal Finance Management Act, 56 of 2003 section 32:  A political office – bearer of a municipality is liable for any fruitless or wasteful expenditure that the municipality may incur if that office – bearer knowingly and after been advised by the accounting officer of the municipality that the expenditure is likely to result in fruitless or wasteful expenditure, instructed an official of the municipality to incur the expenditure. | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Not accepted – municipal managers attend council meetings as an advisory capacity and therefore have no voting powers and cannot be held liable for council resolution.  Insertion of “after been advised by municipal manager that the resolution is likely to result on fruitless and wasteful expenditure” may be added to ensure alignment with the MFMA |
| 54A(10) | It will be difficult to pursue this strategy through court successfully considering the current competencies of some councillors. | The recommendation is that this action should be pursued, however limited to the members of such panel, who conducted the interview and made the recommendation, if such employee is a councillor or a municipality employee | Ben Marais | TAU SA | Not accepted – the decision to appoint a municipal manager it’s in the municipal council and therefore does not apply to other employees. |
| 54A(10) | Could have grave consequences whereby a councilor who votes in favor of a Municipal/ acting municipal manager be held unduly personally liable for such a vote. The reason we say so is because there is no objective measure in place to determine whether a councilor has maliciously voted in favor of a decision which contravenes this Section. |  | Mrs N. Moerane | Ethekwini Municipality | Irrelevant – basic requirement is knowingly which might be malicious. |
| 54A(10) | This provision is welcomed. It should, however, be stated that a provision such as this should be a general punitive measure and should not only relate to the appointment of municipal managers. |  | Timothy Zeeman | DLG – Western Cape | Accepted - this sanction should apply to all administrative actions that culminate to fruitless or wasteful expenditure. |
| 54A(10) | Councillor misspell as councilor. (This section and elsewhere). This clause will serve no purpose unless enforced in practice. The MFMA has a similar provision and, to the best of my knowledge, has hardly ever (if not never) been enforced. |  | Werner Zybrands | Overstrand Municipality | Accepted |
| 54A(10) | The Centre welcomes the accountability contained in this sub clause. However the term “delegate” ordinarily refers to a group of persons chosen to represent others. It is thus suggested that the term be replaced with the term “mandate”. The comma after the word “takes” is misplaced and should occur after the phrase “or in terms a mandate from the council”. |  | Adv N de Havilland | The FW De Klerk Foundation | Delegation to a certain context differs from mandate as delegation relates to decision making as opposed to assignment to legal authority. |
| 54A(10) | In terms of this section, a councilor *may* be held personably liable. Since this is discretionary, the question arises as to who would decide whether the councilor should be held personably liable?  How would this section be applicable where a committee takes a decision, will all the members of the committee then be personally liable? |  | Eugene Möller | City of Joburg | A court of law is the final arbitrator on this regard. |
| 54A(10) | Sec 32 of the Municipal Finance Management Act makes sufficient provision for dealing with matters of unauthorized, irregular or fruitless and wasteful expenditure, in relation to municipal political office bearers. The proposed insertion is therefore not necessary since it is well covered in the already mentioned section 32 of the MFMA. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Not accepted – al cross-referencing is important to give effect to the implementation of the MSA (Code of Conduct).  Solicit political decision consider changing “may” to “must”  MFMA creates a loophole for irrecoverable expenditure and therefore this clause may not be implementable. It may not assist us in achieving the desired results. |
| 54A(10) | This sub-section deals with possible personal liability of Councilors for fruitless and wasteful expenditure. Difficulty in implementing this sanction is anticipated for the following reasons:  • Voting at Council meetings may take place by a show of hands in which event it is not known who voted in favour and who voted against a particular motion; it should be deemed that a councilor voted in favour of the matter in question IF in the minutes it has not been recorded that the councilor voted against the matter, or was absence during the meeting.  • The sub-section only creates the possibility of personal liability. It is curious in that it provides “… takes a decision knowing that the decision is a contravention of this section …”, which appears to be contrary to the principle that ignorance of the law is no excuse.  It is suggested that consideration should be given to rephrasing the subsection with a view of addressing the aforesaid concerns. |  | Jean Venter | iLGM | Not accepted – any councillor who doesn’t vote against a council resolution that may result in fruitless and wasteful expenditure must call for the recording of his objection, be recorded in writing.  Ignore – not legal  Noted |
| 54A(10) | Who will ensure that the offending Councillor is held liable?  This is not really correct as in the situation envisaged in this sub-clause both kinds of expenditure may be incurred; for example, the expenditure on the advertisements for the post and travel expenses paid to prospective applicants will have been “fruitless and wasteful” if the whole process has to be gone through again. If the unlawfully appointed municipal manager has been paid any remuneration or settling-in expenses, these payments would constitute “irregular expenditure”. | The reference to “fruitless and wasteful expenditure” must be amended to “irregular expenditure”. | Brian Young | IMFO | Proposal accepted  Pre decisions expenses are mandated in law only post decision expenses. (to be clarified by drafters) |
| 54A(10) | This provision will lead to councillors wanting their own legal advisers and structure, it does not build nor encourage trust in the administration | A proviso would need to be added that where a councillor reasonably believed that legislation was being complied with, she/he would not be held accountable as contemplated.  While the motivation for inclusion of this provision is understood, we would suggest that a better method should be explored to introduce this in legislation. This does not apply anywhere in the public sector. | Lance Joel | SALGA | Not accepted – before making a decision on any matter of council, Councillors should be satisfied that legislation is complied with. |
| 54A(10) | A decision made contrary to this section, will result in *“irregular expenditure”* [because it was taken contrary to the Systems Act] and may also be *“fruitless* *and wasteful expenditure”* [because the expense could have been avoided had reasonable care been taken] to which the provisions of s. 32 of the MFMA would apply, if the expense resulted from a political office‐bearer (as defined in s. 1 of the MFMA) deliberately or negligently committing, authorising or making such expenditure.  S. 32 of the MFMA apparently does not apply to irregular or fruitless and wasteful expenses resulting from council resolutions – in such cases the common law principles of liability will have to be applied.  S. 32 of the MFMA essentially makes the council itself the final authority over whether an expense concerned should be recovered on the person who is liable for it.  The proposed subsection must oust s.32 (2) (b) of the MFMA in these cases to have the desired effect, or it has to introduce additional measures for that purpose.  The following question should be  considered:  (a) who would decide that a councillor would be held personally liable?  (b) how will the amount owing by the councillor concerned be collected? | It is suggested that the proposed provision should rather be incorporated in the Code of Conduct for Councillors.  It is proposed that the provision should not be limited only to decisions with regard to appointments, but to all decisions. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Corroborate the argument for drawing a distinction between “fruitless and wasteful” and “irregular” expenditure. |
| 54A(10) | Any reference to or use of the phrase “fruitless and wasteful expenditure” in the subsection is not appropriate or correct. | The phrase “councilor should be “councillor” (spelling mistake). The principal act uses the phrase “councillor”.  It is proposed that the above phrase be deleted for the phrase “irregular expenditure” which seems more appropriate. The Municipal Finance Management Act, 2003 (Act No. 56 of 2003) defines “irregular expenditure” to include the non-compliance with the Municipal Systems Act. The proposed subsection seeks to punish non-compliance with the Municipal Systems Act therefore the appropriate phrase that should be used is “irregular expenditure”  In view of the above, it is proposed that the subsection be redrafted in this way:  “*A councillor who votes in favour of a decision knowing that the decision is in contravention of this section, may be held personally liable for any irregular expenditure that the municipality may incur as a result of the invalid decision.”* | Elias Ngolele | Nokeng Tsa Taemane Municipality | Accepted  Accepted |
| 54A(11) | Councils are expected to establish skills retention policies and procedure manuals. Therefore, councils are to ensure that they attract people with the relevant skills and retain them. The proposed insertion is therefore not necessary. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Accepted |
| 54A(11) | Exemption from subsection (2) and (3) as contemplated in this subsection defeat the very purpose of attracting and getting the best suitable and able person. The very exemption may be open to abuse. Municipality may take simplistic approach of requesting exemption. It is proposed that the entire section be taken out. |  | Pule Koee | DLGTA-North West | This clause has potential to be abuse by municipalities; they will find reasons not to appoint any suitably qualified persons. |
| 54A(11) | In line with the comments submitted in relation to clause 54A (4), it is suggested that the aforementioned sub clause be included for exemption. Application for exemption should, however, be directed to the MEC and not the Minister. |  | Timothy Zeeman | DLG – Western Cape | Not accepted – agreed to delete clause. |
| 54A(11) | It is not clear why it should be provided that municipalities should be able to obtain an exemption to the requirements contained in subsections (2) and (3) in respect of the appointment of suitably qualified candidates. At the very least, consideration should be given to requiring that in such instances, municipalities would be required to indicate the measures that would be taken to ensure that the person appointed would be able to attain the required competencies within a prescribed period of time. Similar comments apply in respect in respect of clause 4 of the Bill and the amendment to section 56(6) of the Act. |  | Jeannine Bednar-Giyose | National Treasury | Require political decision. |
| 54A(11) | Exemption should not be regarded as disregarding obligation to develop in terms of existing regulations. Such exemption should to vest in the MEC. |  | Adv Nadiema Davids | Mossel Bay Municipality | Agreed to delete clause |
| 54A(11) | Whilst a municipality awaits a written exemption from the Minister what measures are in place to ensure that municipalities function with the presence of an accounting officer and this should also be included in the amended act. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Agreed to delete clause |
| 54A(11) | This provision links up with my previous comment. Councils will ignore suitable candidates in the first rounds of advertising until the preferred (unsuitable) candidate can be appointed. |  | Werner Zybrands | Overstrand Municipality | Agreed to delete clause |
| 54A(11 | This is an infringement of Council’s prerogative once again. If there is no suitable candidate after due process was followed, Council should be able to decide what is appropriate. |  | Mr TW Peeters | Midvaal Municipality | Agreed to delete clause |
| 54A(11) | It is considered that this sub-section which allows a Municipality to apply for exemption from the prescribed requirements for the appointment of Municipal Managers and managers directly accountable to Municipal Managers may give rise to abuse. For example, a municipality may apply for exemption simply because it wishes to make a certain appointment and not necessarily because it could not attract a candidate who complies with the prescribed requirements.  There appears to be no easy solution, but perhaps the concept of obtaining an exemption should be done away with and consideration could be given to prescribing in the regulations separate minimum requirements for candidates who apply for the position of Municipal Manager and managers accountable to the Municipal Manager for smaller municipalities. |  | Jean Venter | iLGM | Agreed to delete clause |
| 54A(11) | This sub clause undermines the effective governance sought to be guaranteed by the bill through the appointment only of suitably qualified persons. Sub clause 54A makes provision for an interim solution when a suitable candidate is not found. | In order to ensure that only suitable people are employed, the Centre proposes that this clause be deleted in its entirety and be replaced with the following sub clause:  “If a municipality is unable to attract candidates complying with the prescribed requirements referred to in subsection 54A(2), it may request the MEC or Minister to second a suitable person to act in the advertised position until such time as it is able to attract a suitable candidate.” | Adv N de Havilland | The FW De Klerk Foundation | Agreed to delete clause |
| 54A(11) |  | S54A (11) and S56 (6) – The above application should also require a comprehensive report to be submitted clearly showing the reasons and circumstances why the Municipality can not attract the individuals as stated by the Act.  The Act also needs to provide a time frame and a facility for suitable training of the unskilled appointee. | Mrs N. Moerane | Ethekwini Municipality | Noted – provision made in clause 7.  Not accepted – undermines the governance sought to be achieved by Bill. |
| 54A(11) | A municipality may well be able to attract candidates who satisfy all the prescribed requirements but may not want to appoint any of them, for whatever reason.  By affording a municipality the opportunity to apply for exemption [or even relaxation] is likely to open the door for abuse, intergovernmental disputes and even litigation where a municipality’s application is denied. |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Agreed to delete clause |
| 54A(12) | This subsection seeks to address a transitional arrangement which is covered under section16; therefore it is proposed that the subsection be removed. |  | Pule Koee | DLGTA-North West | Consider replacing “holding office” with “appointed” |
| 54A(12) | It is submitted that the proposed subsection should be reformulated to clearly state that the grace granted by it ends when an employment contract which existed when the section took effect terminates, regardless of whether such agreement is or may be extended or renewed. |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Not accepted – if renewed or extended, it must comply with the requirements of the Act. |
| 54A(12) |  | It is proposed that:   1. A fixed period (such as three months) is given for such municipal manager or acting municipal manager to resign from any political office or 2. This provision should only be valid for the current fixed term contract period of the incumbent. | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Not accepted |
| 54A(12) | Government Performance Measurement Regulations provides for development and should also apply for find application in this sub-section. |  | Adv Nadiema Davids | Mossel Bay Municipality | Not accepted – irrelevant to the clause. |
| 54A(12) | The Council does not agree with the proposed insertion of sec 54A in its entirety and therefore, subsection (12) will not be applicable. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Noted |
| 54A(12) | This should be qualified to the extent that it is only valid in terms of his/her current fixed term contract which contract may not be renewed. |  | Werner Zybrands | Overstrand Municipality | To be considered. |
| 54A(12) | This sub-section protects person in the post of Municipal Manager or acting as Municipal Manager at the time that the amendments become effective. There appears to be unnecessary duplication in the Bill as the proposed sections 54A (12), 56(7), 56A (2) and the Transitional arrangements provision of the Bill (section 16) all deal with exactly the same matter. |  | Jean Venter | iLGM | Noted |
| 54A(12) | The proposed Subsection 54 (A)(12) which allows for a person holding the office of municipal manager to be regarded as compliant with the proposed amendment is unsatisfactory. This subsection is unsatisfactory given the poor audit outcome of a large number of municipalities. In this regard 121 municipalities had disclaimers and adverse reports during 2007 /08 while 89 were given disclaimers and adverse reports by the Auditor-General during 2008/09. This indicates that a large number of municipalities require good financial management and this will be made possible only if sound leadership prevails. Therefore, by entrenching poor leadership, poor management and ineffective service delivery will be perpetuated. Accordingly, the Commission does not support the proposed Subsection 54(A)(12) and recommends that all existing appointments be reviewed. |  | Adv Kamraj Anirudhra | Commission for Gender Equality ( CGE ) | Not accepted – avert costly IGR dispute, arbitration and litigation cases. |
| 54A(12) | In terms of this clause all people who are already appointed when the amendments take effect will be deemed to have been appointed in accordance with this section, what if they do not meet the requirements in terms of qualifications and expertise. This should be properly addressed. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Not accepted - this is a standard principle but clause 16 adequately covers this. |
| 54A(12) | This situation cannot be permitted to continue infinite. Legislation to provide for the person to resign from political office within a period of three months, as prescribed under section 1(b) (b). His employment terminates at the expiry date of his current contact of employment. |  | Ben Marais | TAU SA | Not accepted – IGR disputes are avoided. |
| 54A(12) | The effect of this clause is to make the operation of the Act retroactive and will, as such, interfere with existing contractual rights of municipal managers or acting municipal managers. This appears to be in direct conflict with the provisions of clause 16 which protects existing contractual rights. If the intention is to facilitate the removal of unsuitable existing managers, clause 16 does also make provision for termination. | The Centre would accordingly propose that this clause be deleted in its entirety. | Adv N de Havilland | The FW De Klerk Foundation | Not accepted – the employment contracts of the current incumbents are protected. |
| 54A(12) | The subsection is problematic in the sense that it provides that ‘a person holding office as the municipal manager or acting municipal manager before this section took effect, must be regarded as having been appointed in accordance with this section.’ What if some current incumbents have not been appointed by municipal councils but by the Executive Mayor/ Mayors? In this instance section will be making legal what was illegal. Surely that is not the intention of the drafters of the Bill.  The subsection operates retrospectively and this is a problem in this instance. The subsection is extremely problematic in the sense that it would mean that persons currently appointed as Municipal Managers are *ex lege* (by operation of law) considered to have the relevant skills, expertise, competencies and qualifications to hold such positions. It appears that the clause was inserted to avoid instances where Municipal Managers are dismissed by municipalities on the basis that they do not have the relevant skills, expertise, competencies and qualifications when the Bill is promulgated. If this is correct that eventuality can be dealt with by simply deleting the subsection in the Bill. In law it is presumed that statutes/acts operate prospectively and not retrospectively. Therefore, there is no way in which the current incumbents of the concerned position can be dismissed on the basis that they do not have the necessary skills, expertise and qualifications. Thus, rather than providing a solution to an eventuality the subsection in fact creates problems in view of the fact that it operates retrospectively.. | The subsection should be deleted. | Elias Ngolele | Nokeng Tsa Taemane Municipality | Not accepted – Contractual rights of the current incumbents should be protected. |
| 55(q) | The insertion at the end of paragraph (q) seems to undermine the powers of the municipal council to manage its local administrative affairs. The proposed insertion is too administrative and will therefore infringe on the executive authority of council, as well as sec 51 (i) of the Municipal Systems Act, which indicates that:  A municipality must within its administrative and financial capacity establish and organize its administration in a manner that would enable the municipality to hold the municipal manager accountable for the overall performance of the administration.  The above will not be possible if the Minister will assign additional duties to the Municipal Manager. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Requires political decision |
| 55(q) | The proposed amendment is not supported as it might infringe on the Constitutional provisions regulating municipal powers and functions. The addition “or prescribed by regulation” is not supported. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Requires political decision |
| 55(q) |  | To be listed as s55(1)(A). | Lance Joel | SALGA | Requires political decision |
| 55(q) | The wording as prescribed by regulation is unnecessary as this is covered by the preceding by ss.55 (1)(p) |  | Adv Nadiema Davids | Mossel Bay Municipality | Noted |
| 55(q) | The Minister may prescribe functions with which Council does not agree. This will create conflict and is interference. |  | Mr TW Peeters | Midvaal Municipality | Requires political decision |
| 55(q) | The section creates a situation where terms and conditions of municipal managers may effectively be unilaterally changed by the promulgation of new regulations. This would infringe upon the right of the municipal managers to be consulted in respect of any proposed changes to their terms and conditions of employment. |  | Grant Howard | KAPLAN BLUMBERG  Attorneys | Not accepted - regulations will be published for public comments in terms of section 154(2) of the Constitution and municipal managers and organized local government will be consulted. |
| 55(q) |  | The word “assigned” should be substituted by the word “delegate” to correctly reflect the intention of the legislature. The sub-section should thus read as follows:  “(q) the performance of any other function that may be delegated by the municipal council or prescribed by regulation.” | Jean Venter | iLGM | Requires political decision |
| 55(q) | This section would be amended to give the Minister of Cooperative Governance and Traditional Affairs the power to issue regulations prescribing additional powers and functions to the Municipal Manager. This function currently lies with the Municipal Councils, and may be contested by the municipal sector. Effecting this amendment might be seen as undermining the authority of the Municipal Councils. We therefore suggest that this be reconsidered, since it has far reaching implications on the system of local government. |  | Jeannine Bednar-Giyose | National Treasury | Requires political decision |
| 55(q) | Municipal managers derive their powers, functions and duties from two sources only, namely (a) legislation and (b) delegation. S.55 (1)(m) of the principal act already provides for supplementing the municipal manager’s statutory powers, functions and duties by delegation and sub‐delegation.  The proposed subsection should be reformulated to refer to powers, duties and functions assigned to, or conferred upon, the municipal manager by any other legislation. | Section 55 of the principal Act is hereby amended by inserting paragraph *(r)* as follows after paragraph *(q)* in subsection (1):  *(r)* the performance of any function, discharge of any duty and exercise of any power conferred upon, or assigned by, any other legislation. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Requires political decision |
| 55(q) | The addition of the phrase “or prescribed by regulation” in current section 55 is supererogatory (i.e. that is it is an unnecessary addition). It is common cause that the Municipal Manager should perform any function that is prescribed by legislation, including the regulations promulgated in terms of that legislation. Consequently, the phrase does not add anything. It simply raises a question “is the current compliance by Municipal Managers with regulations such as the Municipal Finance Management Act: Supply Chain Regulations illegal or unnecessary since there is no section or subsection that specifically directs the Municipal Managers to comply with that regulation? The answer to this question cannot be positive therefore the phrase should be deleted. |  | Elias Ngolele | Nokeng Tsa Taemane Municipality | Requires political decision |
| 55(q) | The effect of such an amendment (55 (1) (q)) will be to further erode the independence and executive authority of a municipality. The Minister will exercise powers that were previously the sole prerogative of the municipal council. |  | Justin Laing | Smith Tabata Attorneys | Requires political decision |
| 56 | Our comments with regard to clause 2 is *mutatis mutandis* applicable to this clause |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Dealt with (same as clause 2) |
| 56 | The same comments as made under Section 54A above apply mutatis mutandis to this section. |  | Werner Zybrands | Overstrand Municipality | Dealt with (same as clause 2) |
| 56 |  | This section should include a clause in which the appointment of the section 56 Manager must be reported to the MEC. We suggest that we insert a time line for the clause to read as follows“…within 10 days of the process being complete”. | Mrs N. Moerane | Ethekwini Municipality | Agreed to timeframe of 14 days. |
| 56 | IMATU support the concept that the position of municipal manager must at all material times be filled by an acting municipal manager.  IMATU is of the opinion that this process should not be abused in that the person acting as municipal manager should by regulation not act for a longer period of six months. In this six month period a permanent municipal manager should be appointed.  IMATU is of the opinion that CoGTA should develop a pool of acting municipal managers which possesses the necessary skills, experience and competencies. CoGTA should therefore deploy an acting municipal manager if the position of municipal manager becomes vacant in any municipality.  IMATU is of the opinion that managers reporting directly to municipal managers can only be appointed, remunerated and offered conditions of service developed in the South African Local Government Bargaining Council, taking into account the category of the particular municipality. The municipality and municipal council should not be allowed to appoint any manager directly reporting to a municipal manager outside the parameters of employment determined by the South African Local Government Bargaining Council. IMATU supports the concept that managers reporting directly to municipal managers should possess the necessary, competencies, skills, qualifications and experience which will be determined by regulation. |  | Johan Koen | IMATU | Accepted  Noted – will be addressed by regulations.  Accept the ideas of pool of managers but do not agree with deployment because municipalities can appoint acting managers.  Not accepted – The scope of application in the SALGBC collective agreements excludes managers directly accountable to municipal managers for reasons not known to the Department  Provided for in the Bill |
| 56(1)(a) | It is difficult to comment on s56(1)(a)(ii) as the circumstances and period will still be *“prescribed by regulation.”* | It is proposed that *“…and…”* be deleted and “…or…” rather be inserted after *“…manager;…”* in s56(1)(a)(i).  It is proposed that this should, with reference to an acting manager, only be applicable with the appointment of an acting manager if a suitable manager could not be appointed in a vacant position. It is further proposed that this should only apply where it is necessary to appoint an acting Manager for a prolonged period of time, say 6 months or longer. The requirement that an acting Manager must be appointed by the Council when the Manager is on leave or absent from office due to other work commitments for a temporary period, would be impractical and cause delays.  It is proposed that this section be clarified, either by way of the amendment itself or by *“regulation”* | Eugene Möller | City of Joburg | Proposal accepted  Will be addressed by regulations. |
| 56(1)(a) |  | This section should not only apply to municipal managers and Section 56 appointees but should rather apply to all employees of the Municipality. | Mrs N. Moerane | Ethekwini Municipality | Noted – requires a political decision |
| 56(1)(a) | The GGLN supports the proactive and practical measures taken to introduce a greater degree of professionalisation into local government. It is envisaged that this will be accomplished, firstly, through installing clear procedures and guidelines for the appointment of municipal managers or managers who are directly accountable to municipal managers |  | Meera Ramjee | The Good Governance Learning Network (GGLN) | Noted |
| 56(1)(a) | The Municipal Council appoints managers that are directly accountable to the Municipal Manager. Those that are not directly accountable to the Municipal Manager are, however, appointed by the respective Municipal Manager and appointments are then ratified by the Municipal Council. The implication is that the Council is influential in the decision‐making process regarding municipal appointments. The position of the GGLN is that the balance of power, in this instance, should not lie in the political domain, if the overall agenda is to try and professionalise the municipal structure. |  | Meera Ramjee | The Good Governance Learning Network (GGLN) | Require political decision |
| 56(1)(a) | In order to ensure co‐operation between the municipal manager and his or her subordinate manager, which would ensure effective governance, the Centre would suggest that the appointment be made in consultation with, as opposed to after consultation with the Municipal Manager. |  | Adv N de Havilland | The FW De Klerk Foundation | Require political decision |
| 56(1)(a) | The proposed s56(1)(a) should be amended to provide for the appointment of a manager directly accountable to the Municipal Manager by the Municipal Manager and not council. If a municipal manager is to be accountable for performance he should have the prerogative to appoint managers who report to him, because his performance is dependent on their performance.  Furthermore, the current situation renders the disciplinary leverage of the Municipal Manager over his or her section 56 managers problematic, both in terms of the law (which does not specify who may discipline a section 56 manager) and in terms of practical dynamics. The rationale and purpose of the council appointing section 56 managers in addition to appointing the Municipal Manager is not clear. It invites administrative instability, particularly in politically volatile municipalities. |  | Adv Nadiema Davids | Mossel Bay Municipality | Require political decision |
| 56(1)(a) | The Department proposes the provision as follows: A municipal manager, after consultation with council …. It is believed that municipal manager is accountable to council and must be given necessary authority over staff establishment. | Seeing that this entire section is an exact *replica* of section 2 of the same Act, it is proposed the two sections must be merged and must provide for the appointment of municipal managers, acting municipal managers and managers directly accountable to municipal manager. | Pule Koee | DLGTA-North West | Require political decision |
| 56(1)(a)(i) |  | This section should be amended so as to give the municipal manager the authority to appoint managers directly accountable to the, in consultation with the council.  The proposed amendment will also bring an end to situation where councils, which are appointed run by a coalition of parties, decide beforehand that the CFO will be appointed by the one party while the Corporate service manager will be appointed by the other party of the coalition. | Timothy Zeeman | DLG – Western Cape | Require political decision  Noted |
| 56(1)(a)(i) | This section further blurs the lines of accountability and authority between the Council and Administration. The intention was always that Council appoints the municipal manager but that the municipal manager, after consultation with Council, would and should appoint people to the administration as head of administration. The problem we are trying to address in local government is precisely where Council (and political parties represented therein) appoints people to the administration but they must then report to the municipal manager. In practice, this leads to managers directly accountable to the municipal manager actually reporting, or feeling obliged to report, to Council members who appointed them rather than to the municipal manager.    The amendment provision as it stands will only perpetuate this problem in local government, rather than assisting in solving it. | This section should be amended to read: After consultation with Council, the municipal manager appoints, as head of administration, a manager or acting manager directly accountable to the municipal manager. | Lance Joel | SALGA | Require political decision |
| 56(1)(a)(i) | This subsection is incorrect grammatically and must be amended to read “must appoint a manager directly accountable to the municipal manager; and”. |  | Adv N de Havilland | The FW De Klerk Foundation | Accepted |
| 56(1)(a)(ii) | The period of appointment of an acting manager directly accountable to the municipal manager must be determined by the municipal council and is already prescribed by sec 51 of the Municipal Systems Act. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Align to 54A |
| 56(1)(a)(ii) | The addition “as may be prescribed by regulation”’ is not supported. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Accepted |
| 56(1)(a)(ii) | In terms of this section the circumstances stated must be clearly spelt out so the council is not burdened with trying to determine such circumstances. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Noted |
| 56(1)(a)(ii) | Firstly, subsection 4(ii) directs that the acting municipal manager must be ‘appointed under circumstances’ but which circumstances? And for a period as may be prescribed by regulation. First, the question is which regulations? Secondly, what if such regulations do not exist? Indeed, what happens where the regulations has not been promulgated, can Council proceed to appoint in any case and prescribed the period of appointment.  Secondly, further subsection 4(ii) is superfluous in the sense that if the Council can appoint a Municipal Manager it means that Council can appoint the Acting Municipal Manager. | The phrase “*with posts of that nature*” should be deleted for the phrase “*with the post of municipal manager*”. This is a unique post and there are no posts similar to this one. | Elias Ngolele | Nokeng Tsa Taemane Municipality | Noted – will be addressed by regulation. |
| 56(1)(a)(ii) | The envisaged regulation should preferably have been published with this bill to allow meaningful comment. |  | Werner Zybrands | Overstrand Municipality | Noted – regulations will be promulgated once the Bill has been enacted. |
| 56(1)(a)(iii) | The appointment of acting managers should be discretionary and not compulsory as envisaged by this amendment as a municipality may want to use this as an opportunity to restructure it’s administration and this will then prohibit them |  | Adv Nadiema Davids | Mossel Bay Municipality | Not accepted – applies to a vacant post. |
| 56(1)(a)(iii) | The appointment of acting managers should be discretionary and not compulsory as envisaged by this amendment, as a municipality may want to use the opportunity to restructure its administration.  The criteria relating to previously disadvantaged categories of persons should also be made applicable to the appointment of the municipal manager. |  | Marida Nel | Cape Winelands Municipality | Require political decision |
| 56(1)(b) | The performance regulation, Government Gazette no. 29089 of 2006 has sufficiently dealt with this provision. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | MPRs will be amended to avoid legal dispute. |
| 56(1)(b) | The criteria relating to disadvantaged categories persons being appointed must also be made applicable to the appointment of Municipal Manager. |  | Adv Nadiema Davids | Mossel Bay Municipality | Require political decision |
| 56(1)(b) | The addition “and meet any criteria as may be prescribed by regulation” is not supported. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Noted |
| 56(1)(b) | It is recommended that this section should be amended, in light of the comments above in relation to dealing with competencies as prescribed by the MMC Regulations. |  | Jeannine Bednar-Giyose | National Treasury | Noted – National Treasury will be consulted on the crafting of regulations. |
| 56(1)(b) | The emphasis on only appointing candidates with the appropriate prescribed skills, expertise, competencies or qualifications, on the one hand, functions to attract a strong skills set and experience base and, on the other, it effectively services the important position(s) held. |  | Meera Ramjee | The Good Governance Learning Network (GGLN) | Noted |
| 56(1)(b) | The criteria relating to previously disadvantaged persons should also apply to the appointment of municipal managers. |  | Timothy Zeeman | DLG – Western Cape | Require political decision |
| 56(1)(b) | In terms of s56(1)(b) the municipality would not be able to appoint another manager of the municipality to act in the position of a manager if that manager does not comply with s56(1)(b) unless the Minister has exempted the municipality in terms of s56(6). The practicality of this is questionable and it is proposed that a municipality should have the authority to appoint a manager to act in a vacant position of a manager from the municipality’s managers who is directly accountable to the manager for a limited period until a manager has been appointed in the vacant position. |  | Eugene Möller | City of Joburg | Exemption clause to be deleted. |
| 56(1)(b) | It is suggested that the words “taking into account the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination” should be deleted as it may give rise to an interpretation that the criteria in regard to skills, expertise, competencies and qualifications as  may be prescribed by regulation may be disregarded to protect or advance previously disadvantaged persons. In any event, the advancement of previously disadvantaged persons or categories of persons within organizations, including municipalities, is fully addressed in the Employment Equity Act, No. 55 of 1998. |  | Jean Venter | iLGM | Require political decision |
| 56(1)(2) | This amendment to the Act is endorsed to remove political influence. It is recommended that the incumbents referred to in this section of the Act must resign from there positions within three months of the time this Act takes affect. |  | Ben Marais | TAU SA | Standard practice to have transitional clause |
| 56(3) |  | In line with previous comment that such managers must be appointed by Municipal Manager and not council, the wording “the Municipal Council” should be replaced by “Municipal Manager”. | Adv Nadiema Davids | Mossel Bay Municipality | Require political decision |
| 56(3) | The subordinate clause “to attract” should be altered to read “to attracting”. |  | Adv N de Havilland | The FW De Klerk Foundation | Delete “with the view” |
| 56 (3) (a-b) | In Lieu of the two subsections headhunting can also be recommended if the need arises for headhunting and be regulated in the amended section. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Not accepted – municipalities can headhunt but should follow the normal recruitment process. |
| 56(4) |  | It is proposed that the sub-section be amended to read as follows:  “(4) The municipal council may re-advertise the posts if no suitable candidates meeting the essential requirements of the post have applied.” | Jean Venter | iLGM | Wording accepted and require political decision |
| 56(5) | See comments on 54A(3) and 54A(8). The proposal is not supported. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Noted |
| 56(5) | It should be noted that the municipality is an employer in its own right and by law. The question is what “*appropriate steps*” can the MEC possible take to enforce compliance with the section by municipalities? I think that the possible actions should be listed and should not be exhaustive. |  | Elias Ngolele | Nokeng Tsa Taemane Municipality | Not accepted – the listing of steps is an exclusion of other steps. |
| 56(5) |  | It is proposed that *“…, which may include an application to a court for a declaratory order on the validity of the appointment or any other legal action against the municipality.”* be deleted. This proposed amendment could be seen as in conflict with s41(1)(h)(iv) of the Constitution and s 40(1)(b) of the Intergovernmental Relations Framework Act, Act No. 13 of 2005 (IGRFA). The Constitution stipulates that all spheres of government should avoid legal proceedings against one another. The IGRFA gives effect to the Constitution by stipulating that different spheres of government should not resort to judicial proceedings to resolve matters between the spheres of government. | Eugene Möller | City of Joburg | Align with 54A – clause 2(8) |
| 56(5) | The Bill in providing for the appointment of the Municipal Manager contains a section which requires the Municipality to report to the MEC and the Minister on the appointment process and outcome (Section 54A(7)), as dealt with earlier on in relation to court processes. There is not a similar section relating to the appointment of managers directly accountable to the Municipal Manager. This appears to have been an omission particularly if one takes into  account the provisions of Section 54A(5) which require the MEC to take certain steps when becoming aware of an irregular appointment. |  | Jean Venter | iLGM | Accepted |
| 56(6) | This subsection clearly defeats the very essence of sourcing skilled and properly qualified people in that once exemption is granted the municipal councils will have to do with whatever sources are at hand, this clause must be cautiously included or reconsidered. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Exemption clause to be deleted. |
| 56(6) | No exemption should be allowed from complying with subsection (1)(b) and (2). If the exemptions are allowed it means that we are committing a mockery of subsection (1) as a whole. The principle must remain that a person appointed as the municipal manager or acting municipal manager should have the relevant skills, expertise and qualifications to be appointed as such otherwise we may have a situation where some municipalities appoints unsuitable persons as municipal managers or acting municipal managers and that may have a negative impact to service delivery. |  | Elias Ngolele | Nokeng Tsa Taemane Municipality | Not administratively possible.  Require political decision |
| 56(6) | This sub clause negates the effective governance sought to be guaranteed by the bill through the appointment only of suitably qualified persons. As is the case in respect of Municipal Managers and acting Municipal Managers, the Centre would suggest that provision be made for a request to the MEC or Minister for a temporary secondment until such time as a suitable candidate can be attracted. | In order to ensure that only suitable people are employed, the Centre accordingly proposes that this clause be  deleted in its entirety and be replaced with the following sub clause:  “If a municipality is unable to attract candidates complying with the prescribed requirements referred to in subsection 56(1)(b), it may request that the MEC or Minister second a suitable person to act in the advertised position until such time as it is able to attract a suitable candidate.” | Adv N de Havilland | The FW De Klerk Foundation | Accepted |
| 56(7) | As with proposed subsection 54A(12), the effect of this clause is to make the operation of the Act retroactive and will, as such, interfere with existing contractual rights of managers reporting directly to municipal managers. This appears to be in direct conflict with the provisions of clause 16 which protects existing contractual rights. If the intention is to facilitate the removal of unsuitable existing managers, clause 16 does also make provision for termination. | The Centre would accordingly propose that this clause be deleted in its entirety. | Adv N de Havilland | The FW De Klerk Foundation | Align with 54A(12) |
| 56A | It is not clear why it is necessary to provide in the new subsection (2), that the section would not apply to a person holding office as a municipal manager or a manager directly accountable to a municipal manager when the Act takes effect. |  | Jeannine Bednar-Giyose | National Treasury | Ditto |
| 56A | This provision is welcomed, but in order to eradicate the current malpractice, section 56(A)(2) should be amended to read that the persons referred to should resign their political office within 3 (three) months of the commencement date of the amendment act.  If this is deemed to be a current malpractice, why should it be condoned for a further period?  The relevant political party can easily elect new office bearers. |  | Werner Zybrands | Overstrand Municipality | Transitional clause for already existing s56 managers who are holding political office. |
| 56A | The underpinning rationale for the prohibition of senior staff holding political office is to avoid any potential conflict of interest. It is thus not clear why it is proposed that current senior staff should be exempt from this provision. | The Centre would thus suggest that such municipal managers and managers directly accountable to the municipal manager should have to resign from any such positions once subsection 56A(1) takes effect. | Adv N de Havilland | The FW De Klerk Foundation | Transitional clause. |
| 56A | That the proposed insertion is in contravention of the Constitution of the RSA, Act 108 of 1996, especially the Bill of Rights and in particular Section 19(1) which makes provision for every citizen to enjoy political rights, and the other rights, and the other rights in the following section. 3(2) (a), Section 7(1, 2 and 3) Section 8(1), Section 9(1, 2, 3, 4 and 5), Section 36 (1 and 2).  Further, we would like you to refer to the following documents of the ANC, which were consulted when the current System Act was developed and enacted, especially on the transformation of the state machinery under the ANC led government.  The Constitution of the African National Congress  The Reconstruction and Development Programme (RDP) 1994 document of the ANC  The Read to Govern document of the ANC |  | Tholulwazi Branch (Ward 1A)  Bhekumuzi Masango Branch (Ward 3)  Vos Mazibuko Branch (Ward 7) | ANC Emakhazeni Sub Region | Ditto |
| 56A | The insertion of this section is in direct contravention of the Constitution as follows:  Sec 3 (2) (a) states that all citizens are equally entitled to the rights, privileges and benefits of citizenship.  Sec 7 (1, 2 and 3) states that:   1. This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.   (2) The state must respect, protect, promote and fulfill the rights in the Bill of Rights.  (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.  Further on the application of the Bill, sec 8 states as follows:   1. The Bills Of Rights apply to all law, and binds the legislature, the executive, the judiciary and all organs of state.   On equality sec 9 states as follows:   1. Everyone is equal before the law and has the right to equal protection and benefit of the law. 2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Ditto |
|  | 1. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. 2. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination. 3. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.   On human dignity, sec 10 states that everyone has inherent dignity and the right to have their dignity respected and protected.  Further, sec 18 has the following to say on the freedom of association:  Everyone has the right to freedom of association.  Most importantly, the Constitution, in sec 19, makes provision for the political right of every citizen, including the Municipal Managers and Managers directly accountable to the Municipal Manager. Section 19 (1) makes the following provision:  Every citizen is free to make political choices, which includes the right-   1. To form a political party; 2. To participate in the activities of, or recruit members for, a political party; and |  |  |  | Ditto |
| 56A | Municipal managers and managers reporting directly to municipal managers should, in IMATU’s view, not hold any political office at the time of submission of his application for employment at any municipality. |  | Johan Koen | IMATU | Accepted |
| 56A | The Bill addresses an ambiguity that prevails at present which relates to party office bearers holding positions in the municipal administration. By calling for a separation of political office from the institutional role of a municipality, the undue influence of political officials or political parties over the administrative function of a municipality is curtailed. This is an important step towards introducing fairness and impartiality into the institutional space of a municipality. | We would like to suggest that the amendments should also apply to those appointed below a section 56 manager and not only to a municipal manager or a manager directly accountable to the municipal manager as it currently stands. Lower ranking officials holding relatively senior positions in a political party can exercise an equal or *potentially greater* political influence over other officials within the municipal administration. | Meera Ramjee | The Good Governance Learning Network (GGLN) | Require political decision |
| 56A | The section is a direct infringement upon the constitutional right of persons to stand for public office and, if elected, to hold such office. Reference is made in particular to the provisions of section 19 of the Constitution. |  | Grant Howard | KAPLAN BLUMBERG  Attorneys | Ditto |
| 56A | The heading of the section**: “Political rights of municipal managers and managers directly accountable to municipal managers”** gives one an impression that the political rights of such officials are about to be outlined in the section. | It is proposed that the heading should read as follows: **“Limitations of political rights of municipal managers and managers directly accountable to municipal managers”** because that is precisely the effect or the purported effect of the section. Alternatively, that is the aim of the section. The incongruence between the heading of the section and the effect or the aim of the section should be eliminated. Further, the heading is incongruent with the long title. With respect to the political rights of the municipal managers and managers directly accountable to the municipal manager the long title states that ………. “to bar municipal managers and managers directly accountable to municipal managers from holding political office in political parties……..,” The long title with respect to section 5 indicates that the aim is to prohibit or limit political rights of municipal managers and managers directly accountable to municipal managers therefore the heading of the section must be consistent with the long title. | Elias Ngolele | Nokeng Tsa Taemane Municipality | Proposal accepted but require political decision |
| 56A(1) |  | It is submitted that this provision must be extended to other municipal officials who are holding office of influence across the spectrum. Though there is a general feeling that the provision may unfairly limit the employees’ rights to freedom of association, it must be balanced with the need to curb wide scale political meddling in the administration at the local level. The provision does not limit the right to association (employees still have their exclusive to participate in political activities, they may vote their party of choice during the elections) but limit the holding of an office which leaves the applicant with two options, either to reject the appointment and continue with political office or resign from political office and take the employment offer. | Pule Koee | DLGTA-North West | Require political decision |
| 56A(1) | The prohibition against holding political office is unfairly discriminatory. The same principle should operate against any official of the municipality, to avoid situations where, for example, a senior manager is politically junior to an official who holds political office outside municipal employment. |  | Justin Laing | Smith Tabata Attorneys | Require political decision |
| 56A(1) | This principle needs to be extended to include directors and chief executive officers of municipal entities. |  | Timothy Zeeman | DLG-Western Cape | Require political decision |
| 56A(1) | We support the intent of the proposed provision. It is submitted, however, that the prohibition should not only apply to the top management of municipalities – it should apply to all municipal employees [except persons appointed for a limited period of time in a temporary capacity]. There are known cases where employees other than top managers hold higher political office than councillors of the municipality for which they work.  There are known instances where municipal employees serve as members of the governing bodies of other public institutions, e.g. the board of directors of a public entity or a municipal entity of another municipality, the national heritage council, non‐governmental organisations etc. Quite often the real and pretended demands imposed on these officials by these bodies are detrimental to the interests of the municipalities that employ them, it is vulnerable to the practice of “double dipping” and is usually undertaken without the approval of the employing municipality. | The following sections are hereby inserted in the principal Act after section 69:  **Political rights of municipal staff**  **members**  69A (1) A staff member of a municipality may not hold office as a member in any decision‐making structure of a political party, whether in a permanent, temporary or acting capacity.  (2) This section does not apply to a staff member of a municipality who holds office as a member in a decision‐making structure of a political party when subsection (1) takes effect until her or his term in that office terminates.  **Municipal staff members serving in other**  **public institutions**  69B (1) A staff member of a municipality may not hold office as a member of a public body.  (2)This section does not apply to a staff member of a municipality who holds office as a member of a public body when that subsection takes effect until her or his term in that office terminates. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Require political decision  Not accepted – ordinary staff members have the right of association or occupation.  Raise the issue of the managers who serve in public bodies as this may take their time. |
| 56A(1) | This should apply to all employees, not only contract employees. Again, the problem we are trying to solve would be defeated if it is only limited to municipal managers or managers directly accountable to him/her, as the scenario often painted in local government is one where junior officials (because of their political ranking) holds the municipal manager and other senior managers to account. This provision would effectively allow staff in the administration or junior staff more particularly to still politically “manage” managers and the municipal manager. The fact that only municipal managers and managers directly accountable to the municipal managers are excluded from being officers of political parties may, in addition, create a discriminatory practice. | The section should provide that no municipal employee, whether in a permanent, temporary or acting capacity, may hold political office in a political party. The professionalisation of local government is dependent hereon. | Lance Joel | SALGA | Require political decision |
| 56A(2) |  | It is submitted that this subsection must be deleted since it is covered under section 16 which deals transitional arrangement | Pule Koee | DLGTA-North West | Noted |
| 56A(2) |  | It is proposed that subsection (1) takes effect six months after the promulgation of the Act with regard to existing officials. | Cllr Rodger Ashe | Msunduzi Municipality | Noted |
| 56A(2) |  | Suggested that this section should apply to present incumbents with a grace period of 30 days. This principle needs to be extended to include directors and chief executive officers of municipal entities. (cut&paste Jaap’s input) | Adv Nadiema Davids | Mossel Bay Municipality | Disagree with grace period.  Require political decision |
| 56A(2) |  | It should be applicable to present incumbents of positions of municipal manager and managers directly accountable to the municipal manager with a grace period of 30 days for compliance. | Marida Nel | Cape Winelands Municipality | New appointment requirement will apply on renewal/ extension of contract. |
| 56A(2) | It is submitted that the proposed subsection should be reformulated to clearly state that the grace granted by it ends when an employment contract which existed when the section took effect terminates, regardless of whether such agreement is extended or renewed. |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Require political decision |
| 56A(2) |  | It is proposed that this section should not be limited to municipal managers and managers directly accountable to municipal managers, but should be applicable to all municipal staff members. | Eugene Möller | City of Joburg | Require political decision |
| 56A(2) | The insertion of section 56 A (2) in Act 32 0f 2000 relating to political rights of municipal managers and managers accountable to municipal managers is discriminatory. In effect it allows for some municipal managers to hold political office and others are prohibited. This is in contravention to Section 9 of the Constitution and cannot be justified by the limitation clause. Therefore it fails Constitutional muster. |  | Adv Kamraj Anirudhra | Commission for Gender Equality ( CGE ) | Extension to all staff members - Require political decision |
| 57 | The amendment about the lapsing of the appointment after 60 days in the event that performance agreement is not concluded within the latter time period is supported. However, the drafters would want to ensure that it is not inconsistent with any applicable labour legislation. It is not clear why it is proposed that subsections 6(d) and (7) should be deleted. |  | Jeannine Bednar-Giyose | National Treasury | Noted – We deleted 57(7) because a policy decision was taken not to extent fixed term employment contract of s56 manager.  57(6)(d) is contained in schedule 1 |
| 57 | Municipal managers and managers reporting to municipal managers should only be entitled to a thirteenth cheque like most municipal employees. No other incentives, performance bonuses and / or other payments should be paid to such persons. |  | Johan Koen | IMATU | Not accepted — the Act makes provision for this benefits and incentives schemes to be extended to staff below. |
| 57(1) | Any infringement of the Constitutional powers of municipalities is not supported. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Not accepted — he timeframes does not take away the powers of the municipalities |
| 57(1) | If a municipal manager is not allowed to appoint, he can then frustrate the appointment of managers directly accountable to him/her in this way by not entering into the contract as contemplated, which is also why the municipal manager should have the power to appoint managers accounting to him/her. |  | Lance Joel | SALGA | Noted – require political decision.  Lapsing (terminates) of the contract only applies to municipal managers and not to section 56 managers because we are making them permanent |
| 57(1) | The Bill is not explicit about contracts that have not been finalised to date. The question is what recourse is there available *at present* to address these tendencies. |  | Meera Ramjee | The Good Governance Learning Network (GGLN) | Liability clause to be aligned with s56 managers.  The Bill does not deal with these issues  There should be a Code of Conduct for municipal managers. |
| 57(1)(a) | This provision should make provision for exceptional circumstances where period may be extended beyond the 60 day period. |  | G J R Greveling | KWANALOGA | The employment contract of municipal manager terminates |
| 57(1)(a) (i) | Reg. 4(4)(a) of the *Local Government: Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers 2006* [GN No R.805 of 1 Aug.2006][hereafter “R.805”] allows aperiod of 90 days after assumption ofduty. We assume that the regulationwill be amended or rescinded to ensure legal certainty.  Does “lapsing” mean the relevant manager’s employment is terminated?  Must the employer notify the employee of the “lapsing”/termination? What happens if the manager simply continues working [and gets paid]?  In terms of the proposed amendment, a manager’s appointment/employment cannot lapse if an annual performance agreement is not concluded in subsequent years after the first year of employment. We propose that par. (a)(ii) should have the same result as par (i).  Anecdotal evidence suggests that most managers have signed performance agreements [although most of them are not signed within the prescribed timeframe]. However, actual performance is assessed rarely and, where it is assessed, the evaluation process and outcome is manipulated in order for managers to receive performance bonuses. | Section 57 of the principal Act is hereby amended by –  (a) inserting subsection (1A) as follows after subsection (1):  “(1A) A municipality must not permit or require a person who has been appointed as the municipal manager and a person who has been appointed as a manager who is directly accountable to the municipal manager to commence employment unless a written employment contract has been entered into and signed by the parties.”;  (b) the substitution for paragraph (a) of subsection (2) of the following paragraph:  “(a)(i) be concluded within **[a reasonable time]** sixty daysafter a person has beenappointed as the municipalmanager or as a managerdirectly accountable to themunicipal manager; and  (ii) be annually concluded thereafter within one month after the beginning of **[the]** each financial year of the municipality;”;  (c) inserting subsection (2A) as follows after subsection (2):  “(2A) An employment contract in terms of subsection (1)(*b)* lapses if a performance agreement is not concluded and entered into in terms of subsection (2).” | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Not accepted—because the law says be concluded after appointment  Raise for political decision, subject to labour legislation  Raise the issue of liability in terms of performance agreement not concluded.  Will be addressed in regulations |
|  |  | (d) the substitution for paragraph (b) of subsection (4) of the following paragraph:  “(4) The performance agreement referred to in subsection (1) *(b)* must include‐  *(b)* standards and procedures for evaluating performance **[and** **intervals for evaluation]** within 30 days after the end of each quarter and reporting thereon to the municipal council; and” | Dr Koos Smith | Friday Management Solutions (Pty) Ltd |  |
| 57(1)(a) (i) | This is just not fair or practical. The Council may be the party at fault - so why punish an official! What legal claim could be involved then when the official resigned from his previous work. |  | Mr TW Peeters | Midvaal Municipality | Require political decision -labour disputes and liability. |
| 57(1)(a) (i) | What will the effect be of *“failing which the appointment lapses”* if there is no fault on part of the manager. It is suggested that this provision should be further clarified. In terms of the provisions of the Labour Relations Act, a municipal council could experience difficulty to lawfully terminate an agreement if the municipal council has not fulfilled its obligations to ensure that the performance agreement be concluded within 60 days.  It should be noted that there might be legitimate reasons for not concluding the performance agreement within the specified period.  As this amendment could potentially be open to abuse, it is proposed that the words *“failing which the appointment lapses”* be deleted. |  | Eugene Möller | City of Joburg | Require political decision -labour disputes and liability |
| 57(1)(a) (i) |  | Performance contracts should be concluded prior to the assumption of duty in order to ensure that there is no prejudice to council or the applicant arising from the conclusion of the contract after the person has been appointed – draft contracts of employment and performance agreements should be available to all candidates when the post is advertised. | Marida Nel | Cape Winelands Municipality | Require political decision -labour disputes and liability |
| 57(1)(a) (i) | In terms of the above section and the amended section a performance agreement is of prime importance after an appointment, but if the delay and failing for signing such an agreement is not attributed to the appointed person the lapse of the appointment may lead to such person suing for constructive dismissal in terms of the Labour Relations Act. The applicable labour legislation refers to the Labour Relations Act. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Raise for political decision the implication for labour disputes |
| 57(1)(a) (i) |  | Performance contract must be concluded prior to the assumption of duty. This is recommended in order that there should be no prejudice to council or the applicant arising from conclusion of the contract after the person has commenced duty. It is also recommended that draft employment contracts and performance agreements should be available for all candidates when the post is advertised. | Adv Nadiema Davids | Mossel Bay Municipality | Raise for political decision the implication for labour disputes |
| 57(1)(b) | We fully support the proposed par. (b). It is consistent with s. 29(1) of the Basic Conditions of Employment Act 1997 (Act No. 75 of 1997). However, it is proposed that an additional subsection be inserted which expressly forbids a newly appointed manager to commence working prior to the employment contract being signed. Also, the council must approve the contract before it is signed [and, of course, any subsequent amendment thereof] [see the proposed insertion of section 57(1A) in the next column.  We agree with the proposed deletion from the existing enactment. With regard to the proposed insertions, we submit that it is superfluous/ redundant. |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Raise for political decision the implication for labour disputes  Noted |
| 57(1)(b) |  | Subsection 3(b) should say "within the period prescribed". | Lance Joel | SALGA | Accepted |
| 57(1)(b)(a) | This clause is grammatically incorrect and should be amended by the insertion of the word “with” after the phrase “subject to consistency” as it appears in line 4 of subsection 3(*a*) and by the deletion of “with” as it appears at the commencement of subsection 3(*a*)(i). |  | Adv N de Havilland | The FW De Klerk Foundation | Accepted |
| 57(1)(b)(a)(ii) | The requirement that an employment contract must contain terms and conditions that are consistent with any prescribed regulations infringes the principle of freedom of contract. It unreasonably narrows the space available for negotiation by the contracting parties. Furthermore, it marks another example of the erosion of the independence and executive autonomy of a municipality. |  | Justin Laing | Smith Tabata Attorneys | Any contractual relations must be consistent with the law for local government. |
| 57(1)(b)(a)(iii) | In most cases when the municipal managers and managers’ directly accountable to municipal managers have grievances, remuneration disputes, they are told that they are not covered by SALGBC Collective Agreement in some municipalities.  It is important that this section also include Municipal Council Policy to oblige municipalities to come up with policies to address the aforementioned issues. |  | N E Mokgethi | Merafong City Municipality | To be addressed in the regulations |
| 57(1)(b)(c)(3A) | Similarly, treating the regulations as forming part of the employment contract aggravates the infringement of freedom of contract principles. The same argument about the erosion of independence and executive autonomy finds place here, too. |  | Justin Laing | Smith Tabata Attorneys | Any contractual relations must be consistent with the law for local government. |
| 57(1)(c) | As stated in the general comments, the Minister should differentiate between different categories of municipalities when prescribing regulations in terms of the above amendments, for the remuneration, benefits and other terms of employment. |  | Eugene Möller | City of Joburg | Noted – this is a project on the Cogta’s business plan for this financial year. |
| 57(1)(c) | The contract of employment of employees may not be amended unilaterally by legislation without consent of employee.  Terms and conditions of service may generally be amended by a collective agreement concluded in a Bargaining Council but legislation cannot in our submission amend the benefits of employees as proposed in this clause.  The Municipal Managers are generally excluded from collective agreements in the SALGBC unless specifically included in these agreements. |  | G J R Greveling | KWANALOGA | Accepted – covered by clause 16.  Not accepted –This is contradictory argument |
| 57(1)(e) | S. 57(4A) and (4B) was inserted into the principal act by s. 8 of the Local  Government: Municipal Systems Amendment Act 2003 (Act No 44 of 2003). The proposed ss. should be numbered “(4C)” |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Accepted- to at the entire numbering of the Bill |
| 57(1)(e) | There is an existing subsection 4A in the Act. If this amendment is in addition to the existing subsections 4A and 4B, which refers to the provisions of the Municipal Finance Management Act conferring responsibilities on the accounting officer, it should be renumbered to 4C. |  | Eugene Möller | City of Joburg | Accepted- to at the entire numbering of the Bill |
| 57(1)(f) | The deletion of paragraph (d) of subsection (6) and subsection (7) again weakens the authority of a municipal council to hold their Municipal Managers accountable and to subject them to disciplinary actions in the event they do not comply with the code of conduct as determined by schedule 2 of the Systems Act |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Both the municipal managers and section 56 managers are appointed by the council, therefore council can still take disciplinary action. |
| 57(1)(f) | We do not agree with the proposed deletion. | We propose that par (c) should rather be deleted. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Not accepted – because is in contradiction with political decision already taken. |
| 57(1)(g) | Further, the removal of paragraph (d) subsection (6) is in direct contravention of section 195 and section 152 of the Constitution. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Not accepted – because the council can still hold section 56 managers accountable in terms of LRA procedures. |
| 57(1)(g) | A municipality has a discretion to extend the provisions of s57(6) which limits the employment period of a municipal manager, to any manager directly accountable to the municipal manager. By the deletion of the s57(7), does this imply that no such time limit is applicable to manager’s directly accountable to the municipal manager as provided for in terms of s57(6)? It is proposed that the deletion of s57(7) should be clarified. |  | Eugene Möller | City of Joburg | Making section 56 managers permanent in order to create stability and maintain institutional memory in local government administration |
| 57(1)(g) | If the intention of deleting/repealing ss (7) is to ensure that ss (6) also applies to managers who are directly accountable to the municipal manager, the introductory sentence of ss (6) should be reformulated as to ensure legal certainty. | Section 57 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:  (6) The employment contract for a municipal manager and a manager who is directly accountable to a municipal manager must – | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Not accepted – because policy decision that the fixed term contract should no longer be applied to section 56 managers. |
| 57(1)(g) | The deletion of ss.7 will have the effect that s56 managers can only be appointed on permanent contracts. No longer optional. This situation is not agreed with, as previously indicated, it is considered that municipal managers should appoint s.56 managers and therefore the period of office of these managers should be linked with the period of office of the municipal manager. |  | Adv Nadiema Davids | Mossel Bay Municipality | Not accepted – because policy decision that the fixed term contract should no longer be applied to section 56 managers |
| 57(2) | We submit that the formulation of the proposed ss (2) is inadequate. In par. (a) it appears that the reference to *“a fixed term* *employment contract”* should have been to an unlimited period [“lifelong”] employment contract and may result in confusion and uncertainty. If that is the case, proposed par (b) is superfluous/ redundant and could be deleted. | (2) The repeal of section 57(7) of the principal Act does not affect –  (a) the continuation or validity of an unlimited term employment contract of a manager directly accountable to the municipal manager which is in force when  this Act takes effect; or  (b) an incumbent’s right to apply for the same position at the expiry of the contract. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Not accepted – the clause is clear in its reference to fixed term employment contract for both municipal managers and managers directly accountable to mm.  Managers appointed in permanent capacity and who do not meet minimum requirements in the bill are catered for in clause 16. |
| 57(2) | The deletion of subsection 57(7) without making additional provision for managers directly accountable to the municipal manager will cause confusion.  If it is the intention that such managers should be appointed on a permanent basis and not fixed term contracts, this should be clearly stated or, if it is the intention that such managers should be appointed on the same basis as municipal managers as reflected in subsection 57(6), the heading of that section must be adjusted to include managers directly accountable to the municipal manager. |  | Marida Nel | Cape Winelands Municipality | Not accepted – the clause is clear in its reference to fixed term employment contract for both municipal managers and managers directly accountable to mm.  Managers appointed in permanent capacity and who do not meet minimum requirements in the bill are catered for in clause 16. |
| 57(2) | This will have effect that s56 managers may be appointed on a permanent basis. This amendment is welcomed as it will assist in bringing stability within the administration. |  | Timothy Zeeman | DLG – Western Cape | Noted |
| 57(2)(a) | The Centre welcomes the certainty occasioned by the stipulation of the time period within which a performance agreement must be concluded, as also the expressed consequences should this not be done. |  | Adv N de Havilland | The FW De Klerk Foundation | Refers to a different clause in the Bill (Noted) |
| 57(2)(a) | This allowed for appointment of these managers on a permanent or fixed term contract similar to the Municipal Manager.  The intention of the deletion of this Sec 57(7) is not understood – if it is to allow only permanent employment then it is not necessary as the current provision allow permanent employment.  If it is only to allow fixed term contracts then this is subject to current employment conditions as permanent employees cannot be forced onto fixed term contract where the duties remain the same. |  | G J R Greveling | KWANALOGA | Accepted  Not accepted – current situation allows for both and permanent contracts  See transitional arrangement in clause 16 |
| 57(2)(a)(i) | The provision that an appointment lapses if a performance agreement has not been concluded gives rise to the following concerns:  • A newly appointed Municipal Manager or manager accountable to the Municipal Manager may find himself / herself in the position that his/her appointment lapses due to no fault or neglect on the part of the appointee. Take for example a situation where a newly appointed Municipal Manager takes reasonable steps to ensure that the performance agreement is signed on behalf of the municipality, but notwithstanding the municipality refuses or fails to sign the agreement. Such circumstances could conceivably give rise to a challenge from the appointee regarding “lapsing of the appointment”.  • It is suggested that the above-mentioned difficulty could to some extent be addressed by adding a provision that the employment agreement must contain a clause to the effect that if a performance agreement between the municipality and the Municipal Manager or manager accountable to the Municipal Manager is not concluded within sixty days after the appointment, while the delay has been on the side of the employer, then such appointment will not lapse.  • In the case of an employment contract, some delays can happen due to the hectic schedule of the Executive ( Mayor ) to sign – provision should also be made that the signing can be concluded at least within 12 days of starting duty.  (b)(a) mentioning of the MFMA |  | Jean Venter | iLGM | Raise for political decision the implication for labour disputes and liability. |
| 57(2)(a)(i) | The setting of a time period (57 (2) (a) (i)) exposes a senior manager to the whims of a potentially hostile municipal council. Here, it would be possible for a slim majority to refuse to conclude a performance agreement, thereby scuppering an appointment after 60 days, without any fault on the part of the newly appointed senior manager. |  | Justin Laing | Smith Tabata Attorneys | Raise for political decision the implication for labour disputes and liability. |
| 57(2)(a)(ii) | Whereas section 57(2)(a)(i) contains a sanction for the failure to enter into a performance agreement within sixty days from appointment (namely lapsing of the appointment), there appears to be no sanction for the failure to annually conclude performance agreements in each successive financial year.  Consideration should also be given to stipulating a time period within which the performance agreements should be signed in each financial year following conclusion of the initial performance agreement after appointment to the post, possibly linking these with the approval of SDBIP’s by the end of May each year, and conclude the performance agreements simultaneously immediately after council adopts the budget, IDP and SDBIP’s. |  | Jean Venter | iLGM | Accepted – there is no sanction or liability for concluding performance agreement in each successive years (raise for political decision) |
| 57(2)(a-b) | Care should be taken that this section gives a legitimate expectation to reapply for the same position even amidst a lack of required skill, expertise and qualification which was not considered as the Act may have come into effect when such manager was already occupying the said position. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Not accepted – no expectation created as the applicant must meet the new requirements of the Bill |
| 57A | Care should be taken not to infringe on any applicable labour related legislation. |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Noted |
| 57A | * This amendment is not necessary because the contents thereof are already sufficiently covered by the following pieces of legislation * (a) Municipal Systems Act-Code of Conduct * (b) Labour Relations Act   (c) Performance Regulations and other pieces of legislation. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Noted – we are creating one point of reference for dealing with re-appointment of dismissed managers. |
| 57A | The practical implementation of this will be a problem. There is no database currently existing that would enable a municipality to implement this provision. Subsection (5) is potentially unconstitutional as it may lead to "double jeopardy” of a potential employee. In addition, there is no logical reason why this provision is restricted to local government employees only – it should be extended to all potential employees of the broader civil service. |  | Lance Joel | SALGA | Not accepted – as provision has already been made in the anti-corruption legislation and in the public administration act making it possible for regulation. |
| 57A | By precluding the appointment of employees who have been dismissed on the grounds of misconduct or those who are the subject of disciplinary enquiries reduces the likelihood of the same transgressions being repeatedly committed by a municipal employee in a different municipality. |  | Meera Ramjee | The Good Governance Learning Network (GGLN) | Noted |
| 57A | We are of the opinion that it is not practical to categorize misconduct into different categories with different periods for re-employment.  The intention is surely to try and prevent employees dismissed from being employed in similar posts where the possibility for such misconduct can be repeated.  For example a treasurer who was found guilty for theft, dishonesty or fraud and dismissed at one municipality should possibly not again be employed at another municipality as treasurer (if he was drunk on duty, assaulted another employee, displayed insubordination then these offences in my opinion have no direct impact on his post as treasurer and should not prejudice him with future employment as treasure)  A traffic officer that is dismissed for assault or drinking on duty may not be re-employed due to the nature of the job that he performs. | We therefore recommend that Sec 57(1) - (4) be deleted and be replaced with the following provision:  A decision by a municipality whether to employ a dismissed employee from another municipality shall be taken with due regard to the nature of the misconduct that the employee was dismissed for and the posts that the employee applied for at the new municipality | G J R Greveling | KWANALOGA | Not accepted –such categorization already exist in public, and secondly left to municipalities, it will lead to inconsistent |
| 57A | It’s not supported as it is an internal matter and should be dealt with by way of proper reference checks. A disclosure questionnaire could even address this issue. In practice it happens that managers who are subjected to disciplinary action resign before the completion thereof or resign before disciplinary action has commenced. |  | Adv Nadiema Davids | Mossel Bay Municipality | Not accepted - leave as it is in the bill |
| 57A | The clause should be extended to the effect that a dismissed municipal employee may not be re-employed by any sphere of government or a municipal entity until after the expiration of a prescribed period. |  | Timothy Zeeman | DLG – Western Cape | Raise for political decision |
| 57A | S57A(3) – insert “…be…” after *“…may again…”.*  It is difficult to comment in detail on this new section as the Minister still has to prescribe the time periods, different categories of misconduct and the acts that would constitute misconduct.  It is pointed out that only serious misconduct should lead to dismissal.  While this amendment is agreed with and welcomed, it should be noted that issues pertaining to misconduct are dealt with in terms of the Labour Relations Act and collective agreements reached at the South African Local Government Bargaining Council. This amendment, which is applicable to all municipal employees, may be met with resistance by labour.  S57A(5) – The practical implementation of this section is of concern. Certain disciplinary inquiries may be protracted and could take some time to resolve.  Will there be a data-base indicating instances where a municipal employee was dismissed or has resigned pending the outcome of a disciplinary inquiry? Would a central database be kept at the MEC’s or Minister’s offices for any enquiries from municipalities or is it expected of municipalities to keep and update a list of all disciplinary hearings should there be an enquiry from another municipality? |  | Eugene Möller | City of Joburg | Noted  Will be dealt with in the disciplinary regulations  Will be dealt with in the regulations |
| 57A | The application of this section is unconstitutional in that any person has a right to be employed, reemployed, earn a living and to be able to support dependents even after having been dismissed and that even criminals have a right to employment or be economically active |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Not accepted – rights can be limited, |
| 57A | We suggest that employees who have been found guilty during disciplinary or criminal proceedings of charges relating to dishonesty, fraud, embezzlement, extortion [blackmail] and corruption [including bribery, graft, nepotism, patronage]‐  • must be dismissed; and  • must be permanently “blacklisted” from employment in the public sector. |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Not looking into the question of extending, but when you blacklist, that could be unconstitutional |
| 57A | IMATU is of the opinion that CoGTA should develop a record centre whereby all municipalities should be obliged to enter records of all cases of misconduct where a disciplinary tribunal was established and where the employee was found guilty of such misconduct. Any prospective employee’s job application in any municipality should be submitted to the proposed record centre to verify the disciplinary record of the prospective employee. If the record centre report positively on the misconduct of any prospective employee, and where he or she may not be re-employed for the prescribed period determined by regulation, then and in that event, the application for employment should be excluded from any recruitment, selection and appointment processes.  IMATU is however of the opinion that the prohibition of employment for a certain period may be a double jeopardy system of workplace disciplinary management. IMATU is of the opinion that municipal managers and managers reporting directly to municipal managers should be completely barred from any future employment by any municipality if the conviction for misconduct related to any element of theft, fraud, embezzlement, corruption and or any other element of financial mismanagement and / or non compliance with financial regulations as contained and set out in the Municipal Finance Management Act 56 of 2003.  IMATU supports the concept that no municipal employee may be employed by any other municipality whilst misconduct is pending in another municipality. |  | Johan Koen | IMATU | It will be dealt with by regulations.  1 we limited to certain period, 2 some rights may be limited, 3 these are managers we are dealing with  Noted - Refer to Chief State Law Advisor |
| 57A(1) | By prescribing a period during which a municipal employee is prevented from being re-employed by a municipality, the Bill risks creating a double jeopardy situation. The employee will be punished twice: once, through dismissal, and twice, through the imposition of the prohibition on re-employment. This cannot be regarded as fair. It possibly infringes constitutional principles relating to the freedom of trade, occupation or profession. |  | Justin Laing | Smith Tabata Attorneys | Refer to Chief State Law Advisor |
| 57A(1) | Prescribed by whom? In terms of which criteria? |  | Mr TW Peeters | Midvaal Municipality | The Minister will prescribe, as regards the criteria, the regulations will prescribe. |
| 57A(1) &(2) | The centre welcomes the prohibition on immediately re‐employing municipal employees fired for misconduct. An immediate re‐employment makes a mockery of the dismissal and amounts to sanctioning the misconduct. However, in the absence of clarity on the prescribed periods during which the dismissed municipal employee may not be employed by another employee, the prohibition is unclear and hence unenforceable. | The centre would thus propose that it is mandatory that specific periods are prescribed by regulation. The Centre accordingly recommends that  subsection 57A(2) be amended to read:  “57A (2) Different periods must be so prescribed for different categories of misconduct.” | Adv N de Havilland | The FW De Klerk Foundation | Accepted – add “must” |
| 57A(3) | If a person has been dismissed for misconduct (and presumably after all appeal processes has been exhausted) it is doubtful that there could be reasons not to impose the prohibition. Once again the absence of a draft regulation inhibits a meaningful comment. |  | Werner Zybrands | Overstrand Municipality | Regulations will address |
| 57A(3) |  | Omission of the word “be” after the word “again”, (3) Notwithstanding…..person may again be employed…  Given the fact that implementation of subsection 5 of this section may pose difficulties, it is submitted that proposed regulations must make it a condition that prospective employees fill in an application forms (eg Z83) where they must disclose any previous and/or current disciplinary processes them against them. It must be made a condition in the application form that should the applicant misrepresents facts, the employment is null and void  That the regulation must seek to create a national database/ register of offenders from which municipalities can draw information. | Pule Koee | North West | Accepted  Accepted – will be dealt with in terms of regulations.  The appointment will be null and void in cases where the person is still subject of enquiry or dismissed. |
| 57A(4) | We respectfully question the need for Section 57A(4). The intended regulations will classify misconduct according to the gravity of the offence (Section 57A(2)), and will specify to which categories of misconduct to the prohibition referred to in Section 57A(1) will not apply (Section 57A(3)). What then is the purpose of Section 57A(4)? |  | Brian Young | IMFO | This is the limitation that we have put in, not just any case of misconduct.  Will distinguish between the categories of misconduct in the regulations. |
| 57A(5) | What about frivolous and vexatious actions or deliberate delays by the employer? Not acceptable in this form! A person is deemed innocent until proven guilty. |  | Mr TW Peeters | Midvaal Municipality | Not accepted – the person will still have legal recourse for frivolous and vexatious action. |
| 57A(5) | The outright prohibition against employing a municipal employee who is the subject of a disciplinary inquiry militates against the presumption of innocence. Why should an employee, with suitable training and experience, be prevented from taking up further municipal employment when the inquiry has not yet been concluded, possibly through no fault on the part of the employee? |  | Justin Laing | Smith Tabata Attorneys | Ditto |
| 57A(5) | This proposal is not supported as it might infringe on the rights of innocent employees. Your attention is drawn to the section 35(3)(h) of the Constitution of South Africa (1996). |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Ditto |
| 57A(5) | It is seriously unconstitutional as everyone is presumed innocent until proven guilty, any person who is a subject of a disciplinary inquiry is presumed to be innocent until after a preponderance of probabilities it is found probable that such misconduct has taken place. This section assumes that he may be found guilty and that he/she may not be employed. It is advisable that this clause be reconsidered. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Ditto |
| 57A(5) |  | In cases of financial misconduct which constitutes fraud or theft, such employees should not be re-employed and the proposed section should indicate this fact. | Marida Nel | Cape Winelands Municipality | Not accepted – it will be unconstitutional. |
| 57A(5) | This section is not practical as an employee can resign when disciplinary action is being instituted against him or her and then the disciplinary action will cease against the employee but employee cannot be employed as the disciplinary inquiry is not finalized – (new proposed provision must deal with resignation) |  | G J R Greveling | KWANALOGA | Ditto |
| 57A(5) | A question which often arises is when a disciplinary enquiry is actually concluded. We often encounter differing views that a disciplinary enquiry is only concluded when  –   * the disciplinary tribunal hands down a penalty; or * the internal appeal procedure has concluded and the appeal tribunal hands down a penalty; or * any dispute that may have been referred | (6) For the purpose of subsection (5), a disciplinary enquiry is concluded when a disciplinary tribunal has handed down its verdict. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Noted – Will be addressed in the regulations. |
| 57A(5) | The intention of sub-section 5 is not clear. A disciplinary enquiry can only proceed whilst the Municipal Manager or manager accountable to the Municipal Manager remains in the employ of the Municipality conducting the enquiry. Should the employee concerned resign, then there is no basis on which the disciplinary enquiry can proceed or concluded. It is accordingly suggested that sub-section 5 should either be rephrased to make the intention clear, or should be deleted in its entirety.  Is the intention here to indicate that the dismissed municipal employee can be employed by government departments or parastatals? And where do we locate the different categories & prescribed periods. |  | Jean Venter | iLGM | The drafters will look into the problem of people resigning while still subject to disciplinary inquiry.  Look into clause to strengthen ss(6) to force municipalities to conclude disciplinary processes. |
| 57A(5) | The problem with this provision is that, at times, "innocent" employees become the victim of political game playing. An employee is for instance charged on frivolous or vexatious grounds and delaying tactics are used not to bring the matter to finality.  In the process the employee/employer relationship becomes so strained that it is tantamount to constructive dismissal. The employee is, however, through this proposed provision constrained from seeking other employment. Such an employee may, in the process, be disbarred from applying to advertised vacancies that suit his/her competencies and the employment opportunity is foregone. |  | Werner Zybrands | Overstrand Municipality | Ditto  Ditto |
| 57A(5) | This infringes on the right of the individual to seek alternative appointment, having the municipality drawing out the process to finalise the outcome of the disciplinary enquiry due to a possible vindictive nature. This amendment can only be supported if the Act specifies a time period within such disciplinary enquiry must be completed. For this action to take place, a period of not more than three months is recommended |  | Ben Marais | TAU SA | Regulations will address this issue |
| 59A | This proposal is not supported. See comments on 55(q). |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Noted |
| 59A | Unfortunately, no comment can be provided since section 59 deals with the delegation system, however, the contents of the proposed insertion have already been catered for in the Government Gazette no. 29089, of 2006. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Noted |
| 59A | This clause can also be included in s72 where certain other provisions in this regards are already catered for. Not feasible in Metro Municipalities. |  | Adv Nadiema Davids | Mossel Bay Municipality | Not accepted – this clause has been specifically build to deal with senior managers. |
| 59A | This amendment is not supported. It removes the discretionary powers from municipality and ignores site specific needs and requirements. |  | Ben Marais | TAU SA | Not accepted – political mandated |
| 59A | The Minister should also take into account the latest collective agreement entered into between SALGA and labour relating to wage curves and matters relating to disciplinary procedures. | It is proposed that “…subject to applicable labour legislation and after consultation with organized local government …” be inserted after *“The Minister may…”.* | Eugene Möller | City of Joburg | Not accepted – municipal managers and section 56 managers are not covered by collective bargaining |
| 59A | This provision effectively strips a municipality from exercising its discretionary powers. The duties of managers will surely differ from municipality to municipality depending on the organisational structure and the community needs to be addressed. |  | Werner Zybrands | Overstrand Municipality | Ditto |
| 59A | Should this not be s. 58A?  We submit that such a legislative power already exists – see s 72(1)(g)? |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Will look into the numbering in the Bill |
| 59A | This may lead to interference. These regulations must be measured against criteria, otherwise it will be unconstitutional. |  | Mr TW Peeters | Midvaal Municipality | Does not cater for section 56 managers |
| 59A | IMATU is of the opinion that the remuneration, benefits and other conditions of service of municipal managers and managers reporting to municipal managers should rather be developed in the South African Local Government Bargaining Council with the view to conclude a collective agreement.  This system should take into account the categories of municipalities in determining the upper and lower levels of remuneration and other benefits of municipal managers and managers reporting directly to municipal managers |  | Johan Koen | IMATU | Not accepted - the SALGBC has failed to regulate the remuneration and other terms and conditions of Municipal Managers, leading to absurd situations emerging in many localities. Labour maintained that it was SALGA that had steadfastly refused to permit bargaining on substantive matters in respect of Municipal Managers at the SALGBC.  require political decision |
| 59A | The duties and terms and conditions of employment are critical to ensuring accountable and effective governance. Since this is the aim of the Bill, the Centre would recommend that the Minister be obliged to pass regulations regulating those areas. |  | Adv N de Havilland | The FW De Klerk Foundation | Noted |
| 59A | Earlier comments about the infringement of the principles of freedom of contract, and the erosion of the independence and executive autonomy of a municipality apply with regard to the inclusion of authorisation for the Minister to regulate terms and conditions of employment.  It is also noted that the Bill is silent about the situation where a disciplinary inquiry is still pending in respect of an employee whose fixed term contract of employment expires. This could have the implication that a former employee could never be employed by a municipality unless his or her disciplinary inquiry is revived. |  | Justin Laing | Smith Tabata Attorneys | Ditto  Compel the municipalities to conclude the disciplinary processes. |
| 66(a) | This proposed amendment is not necessary since sec 11 of the Systems Act already confers the executive and legislative powers to the Municipal Council  This must be read in sec 11 (3) paragraph (c) of the Systems Act. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Not accepted – not taking away any powers from the municipality. |
| 66(a) | This section should be deleted in its entirety. This section will create a problem for the municipal manager if the council does not support the municipal manager’s organizational structure and this would make it impossible to manage the municipality effectively. |  | Mrs N. Moerane | Ethekwini Municipality | Not accepted – not taking away any powers from the municipality. |
| 66(a) | The question arises what if the municipal council refuses to approve the developed staff establishment. |  | Werner Zybrands | Overstrand Municipality | Not accepted – not taking away any powers from the municipality. |
| 66(a) | This amendment is not supported as it is impractical in metropolitan and other large municipalities for the council to approve the structure of large staff establishment. What is important is that council set the policy and guidelines for staff establishment as this section reads at the moment. If it is the intension that the council must approve the staff establishment there is no need for a policy framework. |  | Adv Nadiema Davids | Mossel Bay Municipality | Not accepted – staff cannot be employed outside staff establishment. |
| 66(a) | With regard to the microstructure of a municipality, the posts on the microstructure are developed from the content of the integrated development plan (IDP) whereas the implementation of the municipality’s integrated development plan, and the monitoring of progress with implementation of the plan, is a function of the municipal manager. This ultimately relates to the functions and powers of the municipal manager as head of administration of a municipality and as such, the approval by a municipal council of a staff establishment for a municipality instead of the municipal manager, could effectively render a municipal manager unable to deliver in terms of his/her performance targets and thus have a detrimental effect on service delivery by, not only the municipal manager, but also other personnel on the microstructure.  The envisaged amendment is also contrary to section 55(1)(a) of the Systems Act, in accordance with which the municipal manager is responsible and accountable, subject to the policy directions of the municipal council, for the formation and development of an economical, effective, efficient and accountable administration. |  | Marida Nel | Cape Winelands Municipality | Not accepted – we want to place the responsibility to council, not one individual. The structure must be in line with DP.  Not accepted – can’t appoint staff outside staff establishment. |
| 66(a) | This amendment must provide for the negative also. The situation must be considered if the document is not approved by the municipal council and the steps then to be pursued. |  | Ben Marais | TAU SA | Not accepted – it must go with policy directives of the council. The municipal manager must follow the correct procedures. |
| 66(a) | It has been accepted generally in local  government that the expression *“staff establishment”* and *“organization structure”* are synonyms, whilst in human resourcesmanagement and organisation designdisciplines and restructuring practice theyare two distinct things. The *“organisation*  *structure”* refers to the structural configuration of the administration, in terms of basic organisation units, sub‐units and positions, i.e. the so‐called “organogram”.  The “*staff establishment”* is really a database [based on the structure] which indicates the various positions, their job levels, remuneration and benefits attached to them, etc. | **10.** Section 66 of the principal Act is hereby amended by‐  (a) the substitution for subsection (1) of the following subsection:  (1) A municipal manager, within a policy framework determined by the  municipal council and subject to any applicable legislation, must‐  *(a)* **[approve a staff establishment for]** prepare a proposedorganisation structure for theadministration of the municipality;  *(aA)* submit the proposed structure to the council for consideration;  *(b)* provide a job description for each  post **[on the staff establishment]** in the approved structure;  *(c)* attach to those posts the remuneration and other conditions of service as may be determined in accordance with any applicable labour legislation; and  *(d)* **[establish a process or mechanism to regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of**  **service]** annually during the review of the municipality’s integrated development plan, evaluate the approved structure and, if necessary, submit proposed changes thereto for consideration by the council.”.  (b) the insertion of subsection (1A) after subsection (1): | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | We keep what is contained in the Bill. |
|  |  | “(1A) The municipal council of a municipality must approve –  (a) the organisation structure of the administration; and  (b) any amendment thereof.”. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | The staff |
| 66(a) | IMATU is of the opinion that the staff establishment of all municipalities should not be approved by the municipal council but rather by the relevant MEC and Minister in the light of the serious service delivery imperatives facing local government and the republic.  If the authority to approve a staff establishment is vested in the municipal council the prevailing and illegal practice of making unauthorised appointments will prevail. It would also not root out the corruption which IMATU as part of organised labour is determined to quash from all municipalities.    IMATU supports the concept that any unauthorised appointments should be deemed null and void. Officials and office bearers making unauthorised appointments should be charged for misconduct. Such a charge should be included in the applicable disciplinary code collective agreement. The sanction for such misconduct should be dismissal in terms of the disciplinary code collective agreement.  IMATU is of the opinion that municipal councils and all political office bearers should be legally compelled *not* to interfere with any recruitment, selection and appointment processes in any municipality. This should be the exclusive domain of the municipal administration. |  | Johan Koen | IMATU | Ditto  Deal with it  Not accepted – not in the spirit of the Act. The act says the municipal manager will appoint managers directly accountable to municipal manager |
| 66(a) | The removal of a municipal manager's power to approve a staff establishment is a significant dilution of his or her powers as head of the administration. It places such a decision in the hands of the municipal council, possibly risking political interference. |  | Justin Laing | Smith Tabata Attorneys | Ditto |
| 66(a) | This provision may need to be reconsidered as it may not be feasible in metropolitan and large municipalities. |  | Timothy Zeeman | DLG-Western Cape | Ditto |
| 66(3) | In our experience positions are created at the drop of a hat if a municipality desires to appoint a particular person. Often persons are employed in positions that do not have even a duty sheet, have not been evaluated and have not been budgeted for. In the absence of a position being evaluated properly in terms of the relevant job evaluation system, the remuneration payable often has no rational basis. | “(3) No person may be employed in a municipality unless the post to which he or she is appointed –  *(a)* is provided for in the approved organisation structure of that municipality;  *(b)* has been evaluated in terms of the applicable job evaluation scheme; and  *(c)* adequate provision has been made in the budget. | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Noted – will be detailed in the regulatory framework once the job evaluation process is finalized. |
| 66(3) | Similarly, the prevention of the employment of anyone unless the post is provided for in the staff establishment further dilutes the municipal manager's powers and risks political interference. Surely the best person to identify the need for an additional resource and to approve the appointment is the head of the administration, not the municipal council. |  | Justin Laing | Smith Tabata Attorneys | Ditto |
| 66(3) | The Centre welcomes this provision. In terms of the National Treasuries report on “Local Governments Budget and Expenditure Review 2003 – 2009” the Treasury identified that on average 28% of municipal employees had been appointed to nonexistent posts. The specific figure between provinces varied dramatically, with the practice being most widely spread in Mpumalanga where 60% of municipal employees had been appointed to non‐existent posts. In the Eastern Cape the statistic was 39%, whilst in Kwa‐Zulu Natal it was 29% and in the Free State it was 23%. It is self evidentiary that these appointments run counter to all good human resource practices as mandated in section 195 of the Constitution and all accounting principles since they couldn’t have been budgeted for. |  | Adv N de Havilland | The FW De Klerk Foundation | Noted |
| 66(3&4) | It should be noted that a person with whom such an employment contract has been concluded, may have legal recourse against the municipality should the person resign a post to take up the new position.  This section should not prevent the placement of interns as part of skills development and learnerships programs and should be aligned to the Skills Development Act, No. 97 of 1998 and other legislation applicable to employment. |  | Eugene Möller | City of Joburg | Not accepted – contract still remains null and void. |
| 66(5) |  | The phrase “*fruitless and wasteful expenditure*” should be deleted and replaced with the phrase “*irregular expenditure*” for the same reasons state under the comments made with respect to Section 2(10) above. | Elias Ngolele | Nokeng Tsa Taemane Municipality | Accepted – add “for any fruitless, wasteful or irregular” |
| 66(5) | The proposed amendment is supported. To discharge the appointed person will have implications in terms of the Labour Relations Act. The consequential cost to be part of the wasteful expenditure culminating from actions taken against the municipality. |  | Ben Marais | TAU SA | Noted |
| 66(3,4-5) | This section may prevent further development which may arise due to operational requirements and or the need for a particular expertise. Further this may limit the power of municipal councils to increase development when the need arise for such expertise. In subsection (5) the matter may be discussed with the MEC prior to such appointment. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Not accepted – the MEC has no role in this regard. |
| 67 | IMATU is concerned that the ability of the Minister to issue regulations to ensure effective, fair, efficient and transparent personnel administration will undermine existing collective bargaining processes undertaken in the South African Local Government Bargaining Council. |  | Johan Koen | IMATU | Not accepted – s56 are not covered by SALGBC, and also to ensure uniformity of norms, rules and standards |
| 67(1) | Section 72 (1) (c) of the Systems Act has already sufficiently provided a guiding framework; therefore, there is no need for amendment. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Not accepted – Policies of municipalities should be consistent with national legislation |
| 67(1) | The requirement that a municipality must develop and adopt appropriate systems and procedures that are consistent with uniform standards raises the argument about the erosion of the independence and executive authority of a municipality. |  | Justin Laing | Smith Tabata Attorneys | Ditto |
| 67(3) | This omission in subsection (3) would have made sense if it was included in the performance regulations and not as part of the Systems Act. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | It will not have any impact on the staff establishment |
| 67 | Once again the absence of the envisaged regulation content makes it difficult to comment. It must be borne in mind that a regulation to meaningfully address this issue will take some time to develop and until that happens, the provision is toothless. |  | Werner Zybrands | Overstrand Municipality | Noted |
| 71A | It must be noted that we already have an established and well recognized structures namely SALGA as well as the unions – IMATU and SAMWU |  | Mrs N. Moerane | Ethekwini Municipality | The Minister should also be able to regulate in this regard because he is responsible for provincial and Local government. |
| 71B | IMATU is concerned that the ability of the Minister to issue regulations to provide a framework for human resource management will undermine existing collective bargaining processes undertaken in the South African Local Government Bargaining Council. |  | Johan Koen | IMATU | Ditto |
| 71B | Municipalities are not equal and operate under different circumstances therefore; it is not advisable and/or desirable to all for collective bargaining. Some maybe affected negatively as compared to others. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Noted |
| 71B | The principles of human resource management should be controlled through the LRA and BCSA and not in the MSA. |  | Mrs N. Moerane | Ethekwini Municipality | Not accepted The Minister should be able to regulate in this regard because he is responsible for provincial and Local government. |
| 71B | This is perhaps the most draconian of all the regulatory provisions and effectively emasculates municipalities. |  | Werner Zybrands | Overstrand Municipality | Noted |
| 71B | This is too wide and it impacts on SALGA's position as well as far as it relates to collective bargaining and mandating processes therefor. See comment on the institutional integrity of local government below. Currently, SALGA’s bargaining role is limited to staff excluding managers directly accountable to the municipal manager, does this remain relevant under this provision? | What can be done is to set criteria, such as for example in a financial crisis or recession, the Minister of Finance may restrict or limit increases, inflation targeting or enforce fiscal discipline. | Lance Joel | SALGA | Noted - there is no law that empowers |
| 71B | The effect and implications of this amendment on the functioning of the South African Local Government Association and the SALGBC should be considered. | It is proposed that “…after consultation with organized local government …” be inserted after *“The Minister may…”.* | Eugene Möller | City of Joburg | Not accepted – we leave the clause as it is. |
| 71B | Care should be taken that this clause is consistent with The Labour Relations Act, level with Collective Agreements and that it is consistent with the constitution on organizational rights. |  | Adv Jeffrey Baloyi | Nokeng Tsa Taemane | Accepted |
| 71B | What is this other than supreme interference in Labour processes if no measurable criteria and limits to his/her powers are clearly stipulated?? |  | Mr TW Peeters | Midvaal Municipality | Not accepted - the Minister should be able to regulate in this regard because he is responsible for provincial and Local government. We are not taking away the role of SALGBC |
| 71B | The Minister should not have such powers as a Bargaining Council exist for the Local Government Sector to conclude collective agreements within the mandating framework from the Employers Organization/SALGA and the Unions.  The same is applicable to the insertion of Sec 72(1) (g) as the Minister would not have such powers due to the jurisdiction of the SALGBC. |  | G J R Greveling | KWANALOGA | Ditto |
| 71B | We assume that proposed s. 71B(1)*(b)* does not purport to empower the Minister to issue a regulatory framework for mandating trade unions to engage in collective bargaining with SALGA on behalf of municipal councils. We submit that it is improper for the State [represented by the Minister] to prescribe collective bargaining mandates to municipal employers, as it flies directly into the face of the constitutional status of local government, the right of municipal employers to form and join employers’ organisations, the constitutional autonomy of municipal councils as employers and the obligation of employers’ organisations to be independent. We propose that par. *(b)* should be deleted. |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Ditto |
| 71B | How will the mandating process for collective bargaining relate to Unions demands, inflation related negotiations & exemptions from Municipalities that can’t afford. It is suggested that the Minister stays away from the bargaining process of municipalities, and leave that within SALGA and Unions. |  | Jean Venter | iLGM | Ditto |
| 71B(1) | These provisions should only provide for brad frameworks and should not be prescriptive as this would infringe on the autonomy of local government. |  | Timothy Zeeman | DLG-Western Cape | Accepted |
| 71B(1) | Authority for the Minister to prescribe a framework to regulate "human resource management systems" and the "mandating processes for collective bargaining" is uncomfortably vague. What do these terms mean? Surely definitions are needed? Furthermore, they suggest the erosion of independence and executive authority. |  | Justin Laing | Smith Tabata Attorneys | Details will be provided in the regulations. |
| 71B (1)(a) | The regulating of human resource management systems, in the first instance, is too prescriptive and belongs within the ambit of existing labour legislation, such as the Employment Equity Act, 1998 (Act No. 55 of 1998), which contains elaborate provisions regarding recruitment, selection, etc. Secondly, it constitutes a breach of the municipality’s constitutional autonomy to employ personnel that are necessary for the effective performance of its functions as per subsection 160(d) of the Constitution of the RSA, 1996. |  |  |  | The intention is not to take away SALGBC role, but to ensure that the Minister is consulted. |
| 71B (1)(b) | The regulating of mandating processes for collective bargaining is a matter that falls within the ambit of the Labour Relations Act, 1995 (Act No. 66 of 1995) and should not be contained in municipal specific legislation. |  | Marida Nel | Cape Winelands Municipality |  |
| 71B (1)(b) | More clarity is needed on what is meant by “mandating processes” for collective bargaining. Our understanding of what is meant by this phrase is that the Minister may regulate our involvement and decision making in collective bargaining matters thereby impeding on our rights and powers given to us by the Labour Relations Act. This is unacceptable as the rights and powers given to individuals employed at the Municipality, the unions and bargaining councils cannot be circumvented and limited by provincial/ national legislation. |  | Mrs N. Moerane | Ethekwini Municipality | Ditto |
| 71B(1)(b) | The Bill does not stipulate the framework within which the Minister may regulate. This is especially glaring in the instance where the Minister is given unfettered authority to regulate in the area of collective bargaining. The danger is that the Minister may become an original legislator, which is the actual role of Parliament. Subordinate legislation must be developed within the context and ambit of the original legislation. |  | Lance Joel | SALGA | Not accepted – The Minister will regulate the framework. |
| 72 | Setting guidelines pose no challenge as long as the approval of such shall be done by the Municipal Council in accordance with section 11 of the Systems Act. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Not accepted – Minister already has powers to regulate uniform standards. |
| 72 | Section 12, National norm and standard provides that wage bill of the municipality must not exceed 33% of the budget, it is therefore submitted that this position must regulated by a national legislation. |  | Pule Koee | DLGTA North West | Noted |
| 72 | It is important to highlight that all skills and competency related issues for municipal officials are currently regulated by the MMC Regulations issued under the MFMA. Creating a different legal framework for the competency levels of municipal officials, including municipal managers and managers directly accountable to municipal managers, will cause confusion in the municipal arena. It is suggested that the Bill cross-reference appropriately to the MMC Regulations wherever it refers to the competency levels of municipal officials.  Amending the Act as currently proposed in the Bill might be seen as duplicating the MMC Regulations issued under the MFMA which are already in the implementation phase. |  | Jeannine Bednar-Giyose | National Treasury | Noted, we will cross reference, however the MFMA will not take precedence over MSA on regulating the conditions of service for municipal employees. The focus of MFMA should be on financial competence. |
| 72 | In line with the general comments made, these regulations should be made in consultation with MEC’s. |  | Timothy Zeeman | DLG-Western Cape | Accepted – compliant with. |
| 72(c) | Since remuneration includes pension and medical benefits, the insertion of the phrase “and the medical, pension” is unnecessary and the Centre would suggest that it be excluded. |  | Adv N de Havilland | The FW De Klerk Foundation | Noted – will be looked into. |
| 72(c) |  | It is proposed that “…after consultation with organized local government and …” be inserted before *“…subject to applicable…”* | Eugene Möller | City of Joburg | Dealt with |
| 72(c)(g) | This kind of regulatory power could pave the way towards a single public service and strips a municipality of its discretionary powers. The existing rights of employees to choose a preferred pension or medical aid fund are also removed. |  | Werner Zybrands | Overstrand Municipality | Not accepted – We seek to introduce uniform, fair, equitable standards. |
| 72(d) | Reg. 13(1) of R.805 requires that a municipal manager and a manager who is directly accountable to the municipal manager “... must place the whole of his or  her time at the disposal of the municipality ...” We submit that it is possible to interpret that phrase of the regulation to prohibit top managers from engaging in secondary employment.  We submit that the Act should either impose an outright prohibition on secondary employment by municipal employees, or contain provisions similar to those in s. 30 of the Public Service Act 1994. |  | Dr Koos Smith | Friday Management Solutions (Pty) Ltd | Accepted – will align to the PSA |
| 72(d) | The provisions relating to the authority of the Minister to regulate the level of skills, expertise and competency, and to prohibit other remunerative work and invites the erosion -argument again.  In addition to the above, it is submitted that consideration must be given to providing for the permanent employment of senior managers, subject to termination on the basis of the standard LRA reasons. This will ensure the provision of job security, the prevention of the loss of institutional memory, the promotion of administrative stability and the minimisation of political manipulation. It is anticipated that this aspect may be addressed through subsequent legislative developments. |  | Justin Laing | Smith Tabata Attorneys | Noted |
| 72(d)(gA) | It is pointed out that as previously stated in these comments, the level of skills, expertise and competencies for municipal managers is already provided for in terms of Regulations passed previously. Care should be taken to ensure alignment.  As stated in the general comments, the Minister should differentiate between different categories of municipalities when prescribing regulations in terms of duties, remuneration, benefits and terms and conditions of employment. |  | Eugene Möller | City of Joburg | Will be addressed in the regulations |
| 72(d)(gB) | Does this amendment mean that employees may not have any interest in any private business whatsoever?  Does this mean holding a share or a directorship in a company would be prohibited? |  | Eugene Möller | City of Joburg | The MPRs requires them to declare. |
| 72(c)(g) | The ability of the Minister to issue regulations after consulting the relevant bargaining council which will regulate remuneration, medical, pension and other benefits of municipal employees is of serious concern to IMATU.  It is unclear what consultation with the relevant bargaining council implies and what role organised labour will play during the intended consultation process. What will the power of the Minister be if there is a deadlock on any particular issue in the South African Local Government Bargaining Council?  Medical and pension issues are currently the sole competency of the central council of the South African Local Government Bargaining Council. The parties to the South African Local Government Bargaining Council concluded various collective agreements which regulated inter alia the accreditation of medical schemes, the employer and employee contribution rates, and the maximum contribution payable by the employer party. The rationalisation of the retirement fund landscape is well under way in the central council of the South African Local Government Bargaining Council. |  | Johan Koen | IMATU | Not accepted – the Minster is not part the bargain council but will prescribe processes.  Ditto |
|  | IMATU is of the opinion that these issues should remain within the ambit of the South African Local Government Bargaining Council, and not be the subject of ministerial regulation. The ability of the minister to issue regulations will undermine the provisions of the South African Constitution which entitles citizens to be subjected to fair labour practices and participate in lawful industrial action. It will also undermine certain national legislation such as the Labour Relations Act, which give effect to the right of parties to collectively bargain mutual interest issues and / or to resort to industrial action if there are a deadlock on certain issues. |  | Johan Koen | IMATU | The role the of the SALGBC remains. |
| 72(d)(gB) | The envisaged section 72(gB) should not be entertained – The matter is fully and adequately catered for in Item 4(2)(c) of the Code of Conduct for Municipal Staff Members which determines that municipal employees may not be engaged in any business, trade or profession other than the work of the municipality, except with the prior consent of the council of a municipality.  If implemented, it would have the ludicrous effect that a general worker in the employ of a municipality will not be allowed to work outside business hours as a gardener to increase his income or that a talented artist may not sell his products. Should this provision be enforced, it will have the effect that such persons will be in breach of the contract of employment which may lead to dismissal. |  | Marida Nel | Cape Winelands Municipality | Dealt with  Must obtain prior approval from municipalities |
| 106(5) | The provision is deemed necessary as MECs have in the past failed to take timeous action. |  | Werner Zybrands | Overstrand Municipality | Noted |
| 106(5) | We see no reason why subsection (5) should be inserted in the Systems Act. Instead, the Minister must establish mechanisms, processes, systems and procedures to capacitate the relevant MECs so that they play their role effectively.  These processes must be bound by the principles of cooperative governance and intergovernmental relations as prescribed in Chapter 3 of the Constitution of the Republic. |  |  |  | Not accepted – the caption in the Bill is logical. |
| Schedule 1. Item 2 A | It is presumed that a transgression of this provision would lead to an investigation and, if found guilty, the imposition of one of the sanctions envisaged in item 14(2) of the Schedule. |  | Werner Zybrands | Overstrand Municipality | Not accepted –will not make any difference, |
| Schedule 1 | The legislation governing local government has already provided for this proposed insertion. There is therefore no need for amendment as such. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Not accepted |
| Schedule 1 | This clause must be amended to indicate that the vote notwithstanding be advised that a conflict exists  We do not believe that this should relate to voting, but rather to a councilor taking a decision, or purporting to take a decision, in terms of delegated authority which he or she should reasonably have known was unlawful. |  | Adv Nadiema Davids | Mossel Bay Municipality | Not accepted – putting the clause to deal with the code of conduct for councillors. |
| Schedule 1 | “Voting at meetings”  See comments on 54A(10). |  | Marie Helm | Soutpansberg District Agricultural Union - Local Government Committee | Not accepted – we linking to the resolution taken by council |
| Schedule 1 | It is submitted that the schedule must define the procedure to be followed during voting, to help council to be able to analyze voting pattern and follow the culprits |  | Pule Koee | DLGTA- North West | Not accepted can’t put the procedural issues in the principal act |
| Schedule 1 | This section must indicate that the voter had cast a vote after having been advised that conflict exists. |  | Marida Nel | Cape Winelands Municipality | Not accepted can’t put the procedural issues in the principal act |
| Schedule 1 | This section can also be interpreted to apply to unfunded mandates as well. To make the point more clearly – a councillor may legitimately vote against any expenditure relating to libraries and museums. This should be re-phrased to be more specific to the problem we are trying to address rather than being wide sweeping clauses which can have many unintended consequences. |  | Lance Joel | SALGA | Not accepted - |
| Schedule 1 |  | The phrase “*councilor*” should be “*councillor*” (correction of spelling).The word or phrase “*resolution*” should be deleted for the phrase “*proposal*” since the phrase “*resolution*” means that councillors have already voted and there is already a decision for council referred to as a resolution of council. Councillors vote for or against a proposal. If a majority of councillors vote in favour of a proposal then such a proposal becomes a council resolution. This correction should be made. | Elias Ngolele | Nokeng Tsa Taemane Municipality | Accepted  The proposal not accepted, we stick to the resolution. |
| Schedule 1 | This clause is redundant as any act which contravenes existing legislation is unlawful. | The Centre thus proposes that this be deleted. | Adv N de Havilland | The FW De Klerk Foundation | Ditto |
| Schedule 1 | This provision should not relate only to voting, but rather to a councillor taking a decision or purporting to take a decision in terms of delegated authority which he or she should reasonably have known was unlawful. |  | Timothy Zeeman | DLG-Western Cape | Ditto |
| 15 | There is no need to repeal the section above as there is consistency with the constitution & the Municipal Systems Act. |  | Executive Mayor, Speaker, Chief Whip and the Municipal Manager | Emakhazeni Municipality | Noted |
| 16 | This provision may need to be reworded to ensure that any extension of a contract entered into before this amendment took effect will be subject to the amendment. |  | Timothy Zeeman | DLG-Western Cape | Not accepted – municipalities should comply with the Act once assented into law |
| 16 | This is not correct since there are certain sections that operates retrospectively, for instance section 2(12) and section 4(7). For example section or subsections which states that *ex lege* the persons appointed before this Act comes to operations should be deemed to have been appointed in terms of this section and should therefore be deemed to have the relevant skills, expertise and qualifications to be appointed as municipal managers or acting municipal managers. |  | Elias Ngolele |  | Noted |
| N/A | The National Treasury supports the amendment prohibiting municipal staff members from engaging in other remunerative work outside the municipality.  This should be tested for constitutionality. We suggest that the proposed amendment be revised to read that the municipal staff members be obliged to declare their business interests as well. |  | Jeannine Bednar-Giyose | National Treasury | Noted |
| N/A | We like to put on record our support for action taken to increase the level of accountability of municipal officials and councillors. This organization firmly beliefs that present legislation are measuring up to the best in the world. The current problems experienced at municipal level are as a result of the appointment of incompetent persons, and the total disregard for compliance to legislative requirements. We trust that the recommended amendments will be enforced, as this is the fundamental flaw been experienced, causing the collapse of all systems at municipal level. |  | Ben Marais | TAU SA | Noted |
| N/A | It is recommended that the Department of Cooperative Governance take careful cognizance of and respect the provisions in the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (“the MFMA”), and in particular sections 83, 107 and 119, which already prescribe the enabling legal framework on competencies for financial management issues generally. The provisions are applicable to officials in municipalities and municipal entities, such as the accounting officers, senior managers, chief financial officer and all other officials having financial responsibilities.  The Municipal Minimum Competency Regulations, which were published in Gazette 29967 of June 2007 (“the MMC Regulations”), prescribe the said competencies. The range of disciplines covered in the regulations include planning, budgeting, reporting, accounting, supply chain management, costing, auditing, risk management, governance, ethics, IT, Project management, and the legislative framework. |  | Jeannine Bednar-Giyose | National Treasury | Noted |
| N/A | The National Treasury hopes that it will be possible to engage with colleagues from COGTA on the details of the amendments contained in the Municipal Systems Amendment Bill, 2010 (“the Bill”), as it appears that the Bill may have some unintended consequences for the smooth and effective operation of the legal framework impacting on Local Government, in light of the overlap with the responsibilities of National Treasury in terms of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003). |  | Jeannine Bednar-Giyose | National Treasury | Agreed |
| N/A | The Amendment Bill extensively makes mention of prescribed regulations. The Act cannot function without these regulations and it is imperative that these regulations be published for public comments within a short period of time after promulgation of the amended Act. |  | Mrs N. Moerane | Ethekwini Municipality | Noted |
| N/A | The Amendment Act should cater for the formation of a “professional body” recognized by the Department of Co-operative Governance and Traditional Affairs representing municipal managers and any manager reporting directly to the municipal manager. |  | Mrs N. Moerane | Ethekwini Municipality | Will be considered, a proposal has been made by iLGM |
| N/A | The Amendment Bill makes no reference to the link with the LGTAS approach and should do so in the body of the Explanatory Memorandum. |  | Lance Joel | SALGA | The amendment is based, amongst others, on the findings of the State of Local Government Report which resulted in LGTAS |
| N/A | In keeping with the principle of automony, section 151(3) of the Constitution provides that a municipality has the right to govern, on its own initiative, its affairs. Section 154(1) further provides that national and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and perform their functions. Of course, section 155(7) accords national and provincial governments the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4B and 5B, by regulating the exercise by municipalities of their executive authority referred to in section 156(1). Importantly, however, section 151(4) states that national and provincial government may not compromise or impede a municipality’s ability or right to exercise its powers and performs its functions. |  | Lance Joel | SALGA | Municipalities must govern subject to national and provincial legislation |
| N/A | It is clear that there is a dire need for the professionalisation of the municipal administration, and steps are to be taken to limit political interference in municipalities. However, the manner in which this Bill seeks to do so is of great concern, as the effect of the proposed amendment is that the institutional integrity of local government as a sphere of government is severely compromised. |  | Lance Joel | SALGA |  |
| N/A | By seeking to regulate the appointment of municipal managers as well as empowering the Minister to prescribe regulations on local government staff establishment and human resources systems, the Amendment Bill goes to the heart of the institutional integrity of local government and effectively disregards the constitutional principle that the three spheres of government exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere. |  | Lance Joel | SALGA |  |
| N/A | In general, the municipal council under the amendment is left with little or no room to determine the conditions of employment of the municipal manager or managers directly accountable to the municipal manager. The Minister is empowered by the Bill to issue regulations, prescribe the standards and procedures for evaluating performance, duties, remuneration, benefits and employment conditions of municipal managers. Local government, under this Bill, effectively stands to lose its institutional integrity in as far as the appointment and determination of the conditions of employment of the municipal manager or managers directly accountable to the municipal manager. The power to appoint and conditions therefor goes to the heart of the autonomy of any sphere of government. |  | Lance Joel | SALGA |  |
| N/A | The Minister is also empowered to prescribe regulations on municipal human resource establishment, staff establishment, human resources systems and mandates for collective bargaining for local government. The powers of the national government, specifically the Minister of CoGTA will be hereby be significantly increased, with a concomitant decrease of local government powers. Local government’s institutional integrity and broader autonomy will be severely compromised if the Minister is allowed to prescribe regulations on human resources systems in local government. The distinctiveness of local government can only be reflected if municipalities have the room to decide their own staff establishment and human resources systems. |  | Lance Joel | SALGA |  |
| N/A | There seems to be an extension of the Minister’s powers and authority in some respects beyond what is required or preferred. In particular, this relates to regulating training and competency and skills development of staff members of the municipality. Apart from this falling under the ambit of SALGA, it is not clear why this should fall within the Minister’s role. Furthermore, there is some conflation in the procedures outlined in section 54A which refers to the appointment of municipal managers and acting municipal managers. In one instance, the municipality may request the MEC or the Minister to second a suitable person to act in a position that becomes vacant and remains as such. Then, if a municipal appointment is in contravention of any matters pertaining to this appointment, the MEC is given the authority to take necessary steps to enforce compliance, failing which the Minister is then asked to take action. And finally, a municipality may apply in writing to the Minister to be exempted from certain sections of this ruling. | The point is threefold; firstly, the procedure needs to be clarified,  secondly, the Minister is potentially involved in administrative matters where in fact the MEC should be regarded as the first point of reference to settle such issues, and, thirdly, the approach tends towards one of inconsistency in terms of lines of authority and role demarcation with respect to the MEC and  Minister. | Meera Ramjee | The Good Governance Learning Network (GGLN) | Accepted |
| N/A | The concern of IMATU lies therein that the minister will have the ability to regulate various aspects of the current municipal landscape. This in turn undermines the distinction in the South African Constitution between the three spheres of government as being independent and separate spheres of government.  IMATU is also concerned with the ability of the minister to circumvent collective bargaining processes through the issuing of regulations. This, in turn, will undermine the role of organised labour in the local government sector to collectively bargain issues of mutual concern on behalf of its members.  IMATU is therefore of the opinion that the ability of the minister to issue regulations in respect of the human resource landscape, personnel administration, remuneration, medical benefits, retirement benefits and any other conditions of service should be severely curtailed and restricted. IMATU is of the opinion that these issues need to be determined in the current collective bargaining processes in the South African Local Government Bargaining Council. |  |  | IMATU |  |
| N/A | The City wishes to highlight the fact that there are also other Acts and Regulations applicable to the municipal manager (accounting officer) and managers, such as the Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers as well as Municipal Regulations on Minimum Competency Levels. | It is proposed that when the Minister in terms of the amendment prescribes regulations in this regard, he should also consider the already existing regulations applicable to Municipal Managers and Managers directly accountable to Municipal Managers and that alignment between the already existing regulations and the new regulations should be ensured. | Eugene Möller | City of Joburg |  |
| N/A | In terms of the proposed amendment, there are numerous provisions that allow the Minister to prescribe details by way of regulation. It would not be possible to implement such a section until the regulation pertaining thereto has also been prescribed. It is therefore proposed that the regulations be prescribed as soon as possible to ensure the full implementation of the amendments. | It is also proposed that the Minister should differentiate between different categories of municipalities when considering regulations pertaining to duties, remuneration, benefits skills, terms and conditions. As far as remuneration, benefits and terms and conditions are concerned, it must be noted that this is also governed by collective agreements entered into and between the South African Local Government Association and labour at the South African Local Government Bargaining Council. | Eugene Möller | City of Joburg |  |
| N/A | Chapters 8A of the Municipal Systems Act relates to Municipal Entities, are these amendments also applicable to such entities. Do the provisions as set out in the amendment also apply to the managing director and his directors? Are the managing directors and his direct reports also not allowed to hold political office? |  | Eugene Möller | City of Joburg |  |
| N/A | It should be emphasized that the municipality (Local Government) is the employer of municipal employees. National and Provincial Government should be careful not to over regulate the affairs of Local Government in respect of employment and the requirements associated therewith. It is also proposed that the view and opinion of the South African Local Government Association (SALGA) must be sought. |  | Eugene Möller | City of Joburg |  |
| N/A | IMFO would welcome the inclusion in the intended regulations of a requirement that Chief Financial Officers must be members in good standing of a professional body recognised by COGTA (obviously a body such as IMFO)). This would ensure that such CFO has the proper financial skills required for the effective fulfilment of his/her official duties and further ensure compliance in a stringent code of professional ethics. |  | Brian Young | IMFO |  |
| N/A | We would welcome the inclusion in the regulations of a prescribed application form which all prospective municipal managers and senior managers must complete when applying for a municipal appointment, such form setting out the basic (minimum) information which the applicant must furnish. This information must include the full employment history of the applicant in local government, including details of any suspensions and disciplinary inquiries, and must contain a declaration signed under oath. |  | Brian Young | IMFO |  |
| N/A | We strongly encourage the Ministers to cascade the prohibition on holding political office down to all levels of municipal officials. We have noted the comment that such a step will affect the conditions of service of municipal employees and is therefore a matter that must be taken up with the South African Local Government Bargaining Council. We certainly do not wish to see the enactment of the Bill retarded by negotiations into the SALGBC, but express the hope that such negotiations will commence in due course. |  | Brian Young | IMFO |  |
| N/A | The circumstances in which exemptions from the operation of sections 54A and 56 will be allowed should be spelt out clearly in the Bill in order to ensure objectivity.  It would have been better to include the “Regulations” referred to throughout the Bill as it would have enabled us to comment appropriately. |  | BB Biyela | Uthungulu Municipality |  |
| N/A | ILGM is concerned that the proposed amendments may usurp some of the powers of municipalities as statutory institutions in the third sphere of Government. Such a legislative intervention impacts directly on the autonomy of third sphere government to make appointments & manage their affairs. |  | Jean Venter | iLGM |  |
| N/A | ILGM accepts that there is a need for such an intervention, but feels that far greater recognition should be given to the role that professional institutes in local government can play in advising organized local government (SALGA) and the Department of Cooperative Governance & Traditional Affairs in regard to proposed legislation or regulations that impact on local government and specifically on the issues which the amendment Bill seeks to address. In addition to ILGM, without being exhaustive, the following local government institutes or associations can play a meaningful role, namely –   * Institute of Municipal Finance Officers (IMFO); * Institute of Municipal Engineers of SA (IMESA); * Institute of Municipal Administration of SA (IMASA); * Association of Municipal Electricity Undertakings (AMEU). |  | Jean Venter | iLGM |  |
| N/A | It is suggested that some consideration be given to formalizing the relationship between SALGA & COGTA and the professional institutes within local government in order to recognize and utilize to its fullest extent the professional inputs that these institutes can make in addressing many of the issues which organized local government is grappling with. |  | Jean Venter | iLGM |  |
| N/A | The Bill creates the risk of compromising or impeding a municipality's ability or right to exercise its powers or perform its functions. The independence and the executive authority of a municipality are eroded. Previous comments, in respect of advertising nationally and the MEC's enforcing compliance, are also applicable. |  | Justin Laing | Smith Tabata Attorneys |  |