|  |
| --- |
| **Local Government: Municipal Structures Amendment Bill**The objectives of the Bill are to amend the Local Government: Municipal Structures Act, 1998, so as to insert, delete and amend certain deﬁnitions; to remove all references to district management areas; to remove all references to plenary executive system as a type of municipality; to provide for a minimum of 10 councillors per municipality; to amend the deviation threshold; to provide for the prohibition of a councillor who was found guilty of a breach of the Code of Conduct for Councillors for a period of two years; to clarify the date of assumption of office by a councillor; to allow for extension on the declaration of the result of an election; to require the municipal manager to inform the MEC for local government in the province in addition to the Electoral Commission of ward vacancies; to provide that the MEC call and set the date for by-elections; to clarify who can inform the municipal manager of a speciﬁc vacancy; to allow the MEC to designate a person to call and chair a meeting of the municipal council when the speaker or acting speaker or municipal manager refuses to call the meeting; to provide for additional functions of the speaker; to provide for a whip of municipal council; to clarify the formula for the composition of an executive committee; to provide for the establishment of a Municipal Public Accounts Committee; to provide for the resolution of a situation where excessive seats may arise from the seat calculation in local municipalities; to amend the timeframe for the municipal manager to inform the chief electoral officer of vacancies; to allow for the MEC to inform the chief electoral officer of vacancies if the municipal manager fails to do so; to clarify the supplementation of party lists for local municipalities; to provide for the resolution of multiple seats which may arise where a candidate qualiﬁes to be elected to more than one seat; to clarify the supplementation of party lists for district municipalities; to provide for a Code of Conduct for Councillors; and to provide for matters connected therewith. |
| **EASTERN CAPE:**The Province **votes in favour** of the Bill and mandates the Eastern Cape delegate to the NCOP to negotiate **within the following parameters.”** |
| 1. | Clause 8 | We propose that this clause be amended as follows:“A councillor who is removed from office by the MEC for local government in the province in terms of item 16(7)(b) of the Code of Conduct for Councillors contained in schedule 7, may not stand as a candidate for an election for any municipal council for a minimum period of two (2) years from the date of such removal which period may be increased depending of the gravity of contravention of the code.” | In terms of the Code of Conduct for councillors, as in schedule 7 of the Bill, all cases of misconduct bear the similar weight.**[IEC]**- The phrase *"which period may be increased depending of (on) the gravity of contravention of the code"* is open to differing interpretations and applications across provinces as well as across councilors within a province found guilty of such breach. It is not advisable to incorporate this additional increase.**Proposed amendment is not supported.** |
| 2. | Clause 11 | We propose that subsection 6 be amended as follows:“(6) The MEC for Local Government in the Province may not call a by-election in terms of subsection 1 if; (a) the next election of all municipal councils must be held within **[9]6** months calendar of the applicable dates mentioned insubsection (3).” | **[IEC]**– Also refer response to proposal made by Limpopo.The proposal that the MEC may call by-election within 6 calendar months before next election is not supported as the Commission require the entire 90 days (provided for in the Act) to prepare for a by-election. This will imply that a ward councillor will only serve 3 months under the current 6 months provision. It also becomes very difficult to administer elections where wards have changed. Effectively we would have to include a voter who is in a new ward and allow that voter to vote in the “existing” 2016 ward set.**Proposed amendment is not supported.** |
| 3. | Clause 22 | We propose that clause 22 be amended as follows:“ (1) A Metropolitan or a local council must establish a ward committee for each ward in the municipality within **[120]90** days after election of municipal council, in accordance with section 22 (1A)(a) If a metropolitan or local council is unable to establish a ward committee or ward committees in accordance with subsection 1, the speaker must prior to the expiry of **[120]90** days, after the election in writing and on good cause shown, request the MEC for local government in the province concerned for an extension. | Municipalities are engaged in many transition-related matters post the general election of all councils. Ward committees must also be composed by members who represent a diversity of interests by ensuring the inclusion of many / varied interest groups – See Guideline 7(a) to (t) in Government Gazette No. 27699 of 24 June 2005 (youth; women, religious groupings, senior citizens, community safety organisations, CBOs, ratepayers’/civic organisations, etc…).**Proposed amendment is not supported.** |
| **FREE STATE:** “The Portfolio Committee on Cooperative Governance and Traditional Affairs, Office of the Premier and Legislature, as designated by the Free State Legislature **votes in favour of the Bill with the following amendments**.” |
| 1. | Clause 12(4) & 16(3)(a) | Oppose the deletion of Section 12(4)(a) and Section 16(3)(a) for the following reasons:-* 1. Section 12(4) and Section 16(3)(a) respectively, obliges the MEC to give notice at the commencement of the process to establish a municipality and to consult prior to publishing the notice;
	2. The process outlined in Section 12 (4) and Section 16(3)(a) are distinct but yet related and necessary processes to ensure transparency and allow sufficient space and time for the affected parties (organised local government and the relevant municipalities) to inform or at least be part of the outcome of the process;
	3. The obligation on the MEC as outlined in Section 12(4)(a) and Section 16(3)(a) is an integral part of the process and if deleted will place the affected parties at a serious disadvantage to engage, from an informed perspective, with the MEC.
 | The proposed amendment was effected in the B version of the Bill.**No amendment required.**  |
| 2. | Clause 14 | Section 14 — Meetings of Municipal Councila. Oppose the proposed amendment for the following reason:-i. Section 29 of the Act provides for the Municipal Manager to convene the first meeting of council; ii. The same principle should apply where the Speaker refuses to convene a Council meeting as requested by a majority of Councillors; iii. As such the following amendment is proposed:- "If the speaker or acting speaker refuse to call a meeting of the council as requested in terms of subsection (1), the municipal manager of the municipality or, in the absence or refusal by the municipal manager, a person designated by the MEC for Local government in the province may designate a person to call and chair the meeting." | The proposed amendment was effected in the B version of the Bill.**No amendment required.**  |
| 3. | Clause 17 | Section 18 - Functions of Speakersa. In addition propose the following functions to be assigned to speakers:-1. "must ensure the effectiveness and functionality of Ward Committees",

ii."must ensure the performance of ward councillors and Ward Committees"; and iii. "must ensure the meaningful participation of Traditional Leaders in Council". | Proposal i, in relation to effectiveness and functionality of ward committees, is provided for in Clause 17(b)(k) of the Bill.Proposal ii will make it difficult for a Speaker to monitor performance of a ward councillor. However, the performance of Ward Committees can be ensured through the implementation of Clause 17(b)(k) of the Bill.The participation of traditional leaders in municipal council proceedings is regulated by section 81 of the Principal Act. The Traditional and Khoi-San Leadership Act, 2019 (Act No 3 of 2019), will replace section 81 once it commences. The new section 81 is very comprehensive and includes clear roles and responsibilities for participating traditional leaders.**Proposed amendment is not supported.** |
| 4. | Clause 18 | Section 19 - Whips of Municipal CouncilSupport the proposed amendment in principle with the following amendments:-1. Deletion of the reference to "more than 40 councillors" as this type of position should find expression in every municipal council;2. Consideration of the additions as proposed under paragraph I above (definitions). | This matter is provided for in the Policy Framework for the Designation of Full-time Councillors and not in the Bill.**Proposed amendment not supported.** |
| 5. | Clause 19 | Section 20 — Composition of Executive Committeesa. the words "through an authorised representative" to be inserted in clause (d) to read "the political party or political interest to which seats are allocated to on the executive committee must, through an authorised representative. nominate their representatives to occupy seats ' | **The proposal is supported.** There are instances when there are intra-party disagreements which results in the delay of the determination of EXCO representative/s. the nomination / determination will therefore be expected to come from the authorised representative.The words "through an authorised representative" to be inserted after “must” in Clause 19(2)(d) of the Bill.Similarly, the words "through an authorised representative" to be inserted after “will” in Clause 19(2)(e) of the Bill. |
| 6. | Clause 22 | Section 23 - Establishment of CommitteesSupport the proposed amendment with the following proposals for consideration:-a. The insertion of subsection (1) should read "If a metropolitan or local council is unable to establish a ward committee or ward committees in accordance with subsection (l), the speaker must, prior to the expiry of the 120 days after the elections, in writing and on good cause shown, request the MEC, responsible for local government in the province concerned, for an extension”.b. The insertion of subsection (l)(b) should read "The MEC must respond to the request referred to in subsection (l)(a) within 14 days of receipt detailing the reasons for granting or refusing the extension”.c. Deletion of the reference to the Minister. | The proposed amendment was effected in the B version of the Bill.**No amendment required.** |
| 7. | Clause 23 | Section 24 - Establishment of the MPACsSupport the proposed amendment with the following proposals for consideration:i. The nature, stature and authority of MPACs should be very similar to Standing Committees on Public Accounts (SCOPA) at national and provincial legislature level. | The municipal council, when determining the functions of the committee in terms of section 79A(3), may include those powers which are similar to those of SCOPA.**No amendment required.**  |
| **GAUTENG:** “The Portfolio Committee on CoGTA and Human Settlements supports the Municipal Structures Amendment Bill [B19B-2018] Section 76 with recommendations as stated below” |
| 1. |  | The Committee recommends that the Department should ensure that CDWs are regulated and properly and efficiently.  | Community Development Workers (CDWs) are public servants appointed in terms of the Public Service Act. They are at salary level 6. The proposal is already addressed as part of the PSA Regulations.**Proposed amendment not supported.** |
| 2. |  Clause 22 | The Act also needs to provide a mandatory mechanism for the replacement of Ward Committee members who have resigned, are not fulfilling their mandates or are otherwise unable or unwilling to continue. A better more streamlined complaints procedure against Ward and PR Councillors need to be put in place to be adjudicated upon by an independent body, like the Ombudsman. The Ombudsman or other independent body needs to be given greater independence and powers to investigate complaints against Councillors and other Officials in the employ of the city, including Executive Mayors. A mechanism needs to be put in place whereby the Ombudsman is appointed by Council, and can only be removed by Council, and who has the authority to investigate complaints against MECs and even the Executive Mayor if need be. Under the present system all complaints against an errant Councillor or city official has to be directed to the Speaker, who may be reluctant or unwilling to act in respect of complaints against a member of his or her own party. The greater oversight powers given to ward committees should include - the election of an independent chairperson who is another ward committee member. - the right to call public meetings and the authority to call meetings of the Ward Committee without the need for the Ward Councillor being present. The power to pass a motion of no confidence in the Ward Councillor of a majority of the ward committee, which must trigger a mandatory investigation by the Speaker or Ombudsman, and the findings of which investigation must be tabled before Council for possible further action. | Section 76 of the Principal Act on Vacancies (in ward committees) already provides for replacement of members. Government Gazette No. 27699 of 24 June 2005 on Guidelines for the establishment and Operations of Ward Committee provides guidance on the administration of the code of conduct for ward committee members.Section 74(b) of the Principal Act provides for metro or local municipalities to delegate duties and powers to ward committees in line with Section 59 of the Systems Act(which deals with delegations to maximise administrative and operational efficiency.)**Proposed amendment not supported.** |
| 3. | Clause 6 | Section 6 need to be amended reason being that the Civic Organisations Members must be elected in all Municipality to control this issue of nepotism, bribery of jobs and all submitted CV's to be treated equally. | Clause 6 deals with the establishment of municipalities and a technical amendment related to the removal of reference of District Management Areas.**Proposed amendment not supported.** |
| 4. | Clause 10 | Section 10 needs to be amended, Civic Organisation can elect members to oversee if the accounts are accurate for each household, there are many complaints of how our Communities are billed by the Municipalities and some Municipality staff are alleged to can be able to delete or amend their relative’s bill. | **Proposed amendment not supported.** |
| 5. | Clause 11 | Section 11 can be amended also whereby the member of Civic Organisation can be elected from each region and be able to table issues that are burden from our communities (but a person that will fight what is right for community). | Section 21 of the Principal Act provides for the qualifications for a councillor. Any citizen who is qualified to vote is eligible to be elected as a councillor.**Proposed amendment not supported.** |
| **KWAZULU-NATAL:** “The Portfolio Committee on Cooperative Governance and Traditional Affairs met on, Tuesday, the 8th of September 2020 and agreed to mandate the KwaZulu-Natal delegation to ***support*** the **Local Government: Municipal Structures Amendment Bill [B19B-2018]** *without any amendments.*” |
| No amendments proposed by the KwaZulu-Natal Portfolio Committee on Cooperative Governance and Traditional Affairs. |
| **LIMPOPO:** “The Committee, having considered comments and inputs, hereby confers to the province’s NCOP delegates the above negotiating mandate to vote in favour of the bill“. |
| 1. | Clause 11 | Section 25: It was noted that at times by-elections to replace a deceased councillor are often delayed by late submission of death certificate as a supporting declaration by deceased family and as a result the 14 days waiting period lapses. Against this background, there must be provision in the bill to allow by-elections even in such circumstances to avoid delays. | **[IEC]**Section 25 refers specifically to ward by-elections. The comment that by-elections are delayed by late submission of death certificate could not be verified by the Department. We are not aware of any by-election that has been delayed as a result of a death certificate. The Municipal Manager has 14 days and if he/she does not proclaim then the responsibility is with the MEC and there is no specific timeline other than the election timetable, which is in consultation with the Commission. The comment may, however, relate to filling of PR vacancies which is currently 7 days. The proposal in the bill is to extend this to 14 days which should cater for any potential delays.Challenges such as obtaining a death certificate as a compliance measure is but one of the reasons considered to increase the notification period of PR vacancies to 14 days by the Municipal Managers. **Proposed amendment not supported.** |
| 2. | Clause 11 | The bill must provide for consequences against a municipal manager who fails to inform the MEC about a ward vacancy within the municipality which exist as a result of deceased councilors in time. | **[IEC]**Failure to inform the IEC/ MEC about a vacancy more often happens with PR councillors. The comment would therefore apply to all councillor vacancies. The Commission has no objection to this proposal. Recent Mphalele judgement found the Municipal Manager “in dereliction of duty” for failing to inform the Chief Electoral Officer of a vacancy in time.In terms of the Local Government: Disciplinary Regulations for Senior Managers, 2010, it is a serious misconduct if a municipal manager fails to comply with or contravenes any Act, regulation, or legal obligation relating to the employment relationship. Therefore, a municipal manager who fails to inform the MEC about a ward vacancy within the municipality would be subject to disciplinary action in terms of the disciplinary code and procedures **i**n these regulations.**Proposed amendment not supported.** |
| 3. | Clause 11 | The bill provides for six (06) months for ordinary by-elections for a ward vacancy and nine (09) months for cessation of by-elections which apply to a dissolved municipality before general elections. The bill should reduce nine (09) months to six (06) months so that the surrounding communities do not suffer service delivery as there would virtually be no council operating in that municipality. | **[IEC]**Correction: The Act currently stipulates 9 months for a dissolved council and 6 months for a ward vacancy. PR vacancies are still filled until the end of the term. The proposal to align the 6 months for a ward to that of dissolved councils is that the Commission will require the entire 90 days (provided for in the Act) to prepare for a by-election. This will imply that a ward councillor will only serve 3 months under the current 6 months provision. It also becomes very difficult to administer elections where wards have changed. Effectively we would have to include a voter who is in a new ward and allow that voter to vote in the “existing” 2016 ward set. Section 139(c) of the Constitution stipulates that in the case of a dissolved municipal council an administrator must be appointed until a newly elected municipal council has been declared elected.**Proposed amendment not supported.** |
| 4. | Clause 7 | The size of municipality is critical. Some small municipalities have less than 7 councilors but have deputy mayors which is irrational job creation. The post of a deputy mayor should be for big municipalities. | Sections 48(1) and 55(1) of the Principal Act provides for the MEC to approve whether the municipal council should have a deputy mayor or deputy executive mayor, respectively.This allows flexibility for MECs to consider unique circumstances in their respective province (such as in the Northern Cape) to designated whether a municipality should or should not have a deputy mayor.**Proposed amendment not supported.** |
| 5. | Clause 17 | While participation of traditional leaders is recognized in the bill, however, most municipalities do not recognize traditional leaders in terms of benefits and remunerations which most often only accrue to councillors. In this regard, traditional leaders benefits and remuneration should be standardized and regulated rather than left to the discretion of individual municipalities. | The matter has been referred to the Department of Traditional Affairs for consideration.**Proposed amendment not supported.** |
| **MPUMALANGA:** “The Portfolio Committee on Human Settlements, Co-operative Governance and Traditional Affairs after considering the Bill confers on the permanent delegate representing the Province of Mpumalanga in the NCOP, the mandate to negotiate in favour of the Bill, without any proposed amendments”. |
| No amendments proposed by the Mpumalanga Portfolio Committee on Cooperative Governance, Human Settlements and Traditional Affairs |
| **NORTHERN CAPE: “**After due deliberation, the Portfolio Committee on Cooperative Governance, Human Settlements & Traditional Affairs **supports the Bill**. The Committee recommends to the House to mandate the Permanent Delegates to participate in deliberations at the negotiating stage and to **support** the Bill.”  |
| No amendments proposed by the Northern Cape Portfolio Committee on Cooperative Governance, Human Settlements and Traditional Affairs. |
| **NORTH WEST: “**The North West Provincial Legislature votes in Favour of the Bill with proposed amendments.” |
|  | Clause 8 | Section 1A: Rewording of this clause is proposed as follows: “A councillor who is suspected to have committed an offence during their term of office should be advised to step aside until the matter has been dealt with". | This clause refers to a councillor who has already been removed by the MEC from office.If the intention of the proposal is to request a councillor to step-aside from his / her position as a councillor, then that would have to be a party policy matter.**Proposed amendment not supported.** |
|  | Clause 13  | Section 1A: Proposal for an omission of repetition of the same words to read as follows: "If the Speaker or acting speaker refuses to call a meeting of the council in terms of subsection 1, the municipal manager of the municipality or, in the absence or refusal by the municipal manager, the MEC for local government in the province may on good cause shown designate a person to call and chair the meeting. | The words “on good cause shown designate a person to” in Clause 13(1A) has been deleted to avoid misinterpretation (as proposed by the Western Cape Provincial Legislature).**The proposed amendment is supported.**  |
| **WESTERN CAPE:** “The Standing Committee on Local Government, having considered the subject of the Local Government: Municipal Structures Amendment Bill [B 19B–2018] (NCOP) referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape’s delegation in the NCOP the authority to support the Bill. The Committee further proposes the following amendments:” |
| 1. | General legal comment | The Municipal Structures Amendment Bill [B 19-2018] (the initial Bill) was considered by the Portfolio Committee on Cooperative Governance and Traditional Affairs during 2018. The Committee, after its consideration of the initial Bill, proposed and agreed on certain changes to that Bill in the form of Bill [B19A- 2018] (the “A” Bill). The changes introduced in the “A” Bill have been incorporated into Bill [B 19B-2018] (the “B” Bill). In the initial Bill, the long title provided for the introduction of a minimum of 15 councillors for municipal councils. An amendment to the long title of the initial Bill was not proposed or agreed to in the “A” Bill. The “B” Bill however reflects a change in the long title that now refers to a minimum number of 10 councillors in its long title. It is submitted that this is problematic because the change in the long title of the “B” Bill is not an accurate reflection of what the Committee agreed on after its consideration of the initial Bill. It is proposed that the procedural and substantive implications of the long title of the “B” Bill are considered | The changes in the long title of the Bill is consequential as a result of Clause 7(b), which states that the number of councillors “may not be fewer than 10 or more than 90 councillors, if it is a local or district municipality.**Proposed amendment not supported.** |
| 2. | General legal comment | Not all the consequential amendments have been effected. For example, section 63(3) of the principal Act refers to Schedule 1 of the Local Government: Municipal Systems Act, 2000. Clause 32 read with clause 33 repeals the Code and incorporates it into the principal Act. The reference in section 63(3) must therefore be deleted. It is proposed that the amendment Bill is checked for any consequential amendments that may be required. | **The proposed amendment is supported.** Further amendments will be effected to section 63(3) of the Principal Act (as indicated below). |
| 3. | Clause 1(a) | The Memorandum on the Objects of the Bill states that the purpose of the proposed definition of “declared elected” is to provide clarity. However, to fully clarify, it is proposed that the words “by the Electoral Commission” are included at the end of the proposed definition.  | The words “by the Electoral Commission” to be included at the end of the proposed definition. **The proposed amendment is supported.** |
| 4. | Clause 1(e) | The insertion of the draft definition of “whip” necessitates a consequential amendment to the definition of “political officer bearer” in the Local Government: Municipal Systems Act, 2000. It is proposed that the definition of “political office bearer” in section 1 of the Local Government: Municipal Systems Act, 2000, is amended to include a whip. | Schedule 3 has been amended to include “whip’ as part of the office bearers in the council. When the Local Government: Municipal Systems Act is amended the definition of political officer bearer will also be amended to include “whip”.**Proposed amendment not supported.** |
| 5. | New Definitions | It is proposed that the Bill is amended by the insertion of the following new definitions: “**‘ordinary meeting’** means a meeting of the municipal council convened by the speaker; **‘special meeting’** means a meeting of the municipal council convened by the speaker in accordance with section 29(1) for the consideration of a particular matter;”. **‘urgent meeting’** means a meeting of the municipal council convened by the speaker in accordance with section 29(1B);”. | The Systems Act does not define the types of council meetings; this is normally addressed through the Rules of Order for Councils.**Proposed amendment not supported.** |
| 6. | Clause 3 | Clause 3 of the amendment Bill proposes the deletion of the plenary system of governance. This proposed amendment will restrict the possible governance structure options that a MEC may consider appropriate. It also removes the ability of a municipal council to revert to a plenary system by default if it decides not to exercise its election in terms of section 42(2) or 54(2). This is particularly pertinent in the case of coalition governments that may not agree on a particular system. Paragraph 3.3 of the Memorandum on the Objects of the Bill offers the following explanation for the deletion of the plenary executive system: a) A plenary executive system limits the exercise of executive authority to the full municipal council; b) The municipal council takes all executive decisions regarding the business of the municipality and is also responsible, as a council, for the political guidance and leadership; c) A municipal council that has a plenary executive system cannot delegate its executive responsibilities to any individual councillor or to any of its committees; and d) In instances where a municipal council is very large or has many decisions to contemplate, the taking of decisions in plenary would result in a slow decision-making process. Despite paragraph 3.3 of the Memorandum on the Objects of the Bill, the memorandum does not provide reasons for the proposed amendment. The first 3 points merely lists the characteristics of a plenary system and do not offer motivation for the proposed deletion of the system. It must be born in mind that the system is chosen because of its characteristics. The fourth point is a general statement which seemingly is made without considering the power of an MEC when the MEC establishes a municipality in terms of section 12 of the principal Act and the factors that the MEC takes into consideration at that point, for example, the size of the council. Also, the power of the MEC in terms of section 20(3)(b) where the MEC may decrease the number of councillors if it is necessary to achieve good and timely executive decisions. It is submitted that the policy basis for the deletion of the plenary executive system is lacking. Clarity is required on the rationale for this amendment. **The proposed amendment is not supported. It is proposed that the plenary system of Governance is retained.** | The intention is to do away with the plenary-type of municipality, for the following reasons:* Council elects the Mayor, but there is no executive or Speaker;
* Mayor chairs council meetings, and council, as a whole, makes the decisions and plans. So, the plenary acts as the Executive.
* Challenges experienced by plenary-type municipalities includes the limiting of executive authority to the full council, and it is unable to delegate its executive responsibilities to any individual Cllr, or to any of its committees.
* Mayor is also the Speaker of the council, and this results in a concentration of power in one individual, and undermines checks, balances, and accountability

Presently, the following are only plenary type municipalities:

| **PROVINCE** | **NO** | **NAME OF MUNICIPALITY** |
| --- | --- | --- |
| Eastern Cape | 1. | Blue Crane LM |
| 2. | Koukamma LM |
| 3. | Great Kei LM |
| Free State | 4. | Letsemeng LM |
| 5. | Mohokare LM |
| 6. | Tokologo LM |
| 7. | Mantsopa LM |
| 8. | Phumelela LM |
| KwaZulu-Natal | 9. | Mpofana LM |
| 10. | Impendle LM |
| Northern Cape | 11. | Richtersveld LM |
| 12. | Kamiesberg LM |
| 13. | Hantam LM |
| 14. | Karoo Hoogland LM |
| 15. | Khaima LM |
| 16. | Ubuntu LM |
| 17. | Umsobomvu LM |
| 18. | Kareeberg LM |
| 19. | Renosterberg LM |
| 20. | Siyathemba LM |
| 21. | Thembelihle LM |
| 22. | Kheis LM  |
| 23. | Kgatelopele LM |
| 24. | Magareng LM |
| 25. | Dikgatlong LM |

**Proposed amendment not supported.** |
| 7. | Clause 4 | See comment under clause 3 | See comment under clause 3**Proposed amendment not supported.** |
| 8. | Clause 5: | See comment under clause 3 | See comment under clause 3**Proposed amendment not supported.** |
| 9. | Clause 7(d) | The requirement of the concurrence of the Minister to effect a deviation may lead to unnecessary disputes in the event that agreement is not reached between the Minister and a MEC. It will furthermore result in a delay in the finalisation of the determination of the number of councillors and subsequent inefficiency. It is proposed that clause 7(d) is reconsidered and deleted. If it is retained, then it is proposed that express provision is made in the amendment Bill on how the consequences of an agreement not being reached between the Minister and a MEC is to be managed. | The request for concurrence of the Minister would have to satisfy the requirements set out in section 20(3) of the Principal Act, as follows: *“(3) The MEC for local government in a province may deviate from the number of councillors determined for a municipality in terms of subsection (1) by-* *(a) increasing the number of councillors if extreme distances, a lack of effective communication in the municipality or other exceptional circumstances render it necessary; or**(b) decreasing the number of councillors if it is necessary to achieve the most effective size for-* *(i) active participation by all councillors at council meetings;**(ii) good and timely executive and legislative decisions;**(iii) responsiveness and accountability of councillors, taking into account the possible use of modern communication techniques and facilities; or**(iv) the optimum use of municipal funds for councillor allowances and administrative support facilities.”*This requirement will also assist to verify that the formula for the determination of the number of councillors was correctly applied by the Provinces.**Proposed amendment not supported.** |
| 10. | Clauses 9(b) and 10(c) | Given section 26(2) of the Principal Act and the new proposed definition of “declared elected”, it is submitted that the amendments proposed in clauses 9(b) and 10(c) are unnecessary. It is proposed that clauses 9(b) and 10(c) are deleted. | Proposal is rejected.**Proposed amendment not supported.** |
| 11. | Clause 12(a) | The Code of Conduct for Councillors is proposed for incorporation into the Principal Act by the amendment proposed in clause 30. Without the concomitant deletion of Schedule 1 in the Local Government: Municipal Systems Act, 2000, the proposed amendment in clause 13(a) may lead to confusion. | Clause 31 of the Bill repeals schedule 1 to the Local Government: Municipal Systems Act, 2000.Further clarity is required on the proposal.**Proposed amendment not supported.** |
| 12. | Comment on section 29(1) of the principal Act: | Clarity is required on whether the majority of councillors referred to in section 29(1) of the principal Act means a majority of the members allocated to a municipality in terms of its establishment notice (section 12) or does it mean the majority of councillors in office at the time of the meeting. Further, section 30(2) also refers to a majority of. Clarity is also required on whether the same meaning ascribed to the expression “majority of councillors” in section 29(1) should be ascribed to section 30(2) and elsewhere in the principal Act It is proposed that section 29(1) (councilors in office at the time) and 30(2) (as per the establishment notice) of the Principal Act is amended to provide clarity. | The majority referred to in section 29(1) and section 30 refers to the majority of councillors determined by the MEC.**Proposed amendment not supported.** |
| 13. | Clause 13 | The new proposed amendment is supported in as far as it attempts to address the situation where a speaker or acting speaker refuses to call the meeting of the council as requested by a majority of the councillors in terms of section 29(1) of the principal Act. The proposed amendment is problematic for the following reasons:The provision is confusing. It is understood that when the speaker refuses to call the meeting, the Municipal Manager can act. If the Municipal Manager is absent or refuses to do so, the MEC may then designate a person to act. The action that either the Municipal Manager or the person designated by the MEC can take is to in turn, on a discretionary basis based on good cause, designate a further person to call and chair the meeting. This is one possible interpretation of the clause, but other interpretations are possible for example, that the Municipal Manager himself or herself calls and chairs the meeting and that it is only the person designated by the MEC who may designate a further person, on good cause, to call and chair the meeting. What the intention is, as set out in paragraph 3.10 of the Memorandum on the Objects of the Bill compared with the substantive content of the clause seems to be at odds with one another because paragraph 3.10 simply states that the person designated by the MEC may call and chair the meeting. The clause is therefore confusing and leads to issues of interpretation. This needs to be clarified. The clause does not address ordinary meetings. Two types of meetings are contemplated in section 29(1). These are the “ordinary” council meetings of the council and the meetings requested by a majority of the councillors. It is submitted that the clause must also provide for the situation where a speaker or acting speaker refuses, fails or is unavailable to call the “ordinary” meetings contemplated in section 29(1). The action in the clause is triggered when the speaker or acting speaker refuses to call the meeting. The MEC can act when the Municipal Manager is absent or refuses to call the meeting. Why the differentiation between the Municipal Manager and the speaker or acting speaker? Why is it also not when the speaker or acting speaker is absent? It is submitted that the action should also be triggered when the speaker or acting speaker is absent or fails to call the meeting. It is understood that the clause now introduces a further level of designation. Clarity is required on what the reason for this is. The purpose of the clause is to ensure a quick response when the speaker or acting speaker does not act. This further level of designation may have the opposite effect. In terms of the clause, the Municipal Manager or person designated by the MEC, may on good cause shown, designate a person to call and chair the meeting. The clause introduces the further requirement of “good cause”. The power to take the action is discretionary. This is indicated using the word “may”. This discretion is guided by the good cause that needs to be established. “Good cause” is a fluid concept and calls for assessment of the factual context. Concern is raised as to what the good cause must convince the Municipal Manager, or the person designated by the MEC of? In other words, at what objective must the good cause be aimed? It is that answer that will be determinative of whether the Municipal Manager or the person designated by the MEC will exercise the power. It is not clear from the clause in its current form what the objective is. It is submitted that if the clause is retained, it must clearly provide what the objective of the good cause must be. It is proposed that the new proposed section 29(1A) must be clear and unambiguous and must provide for the Municipal Manager to be empowered to call and chair both types of meetings contemplated in section 29(1) of the Act in the event that the Speaker or Acting Speaker refuses, fails or is absent to call meetings contemplated in section 29(1). In the event that the Municipal Manager is absent, refuses or fails to call such meetings, then the MEC for Local Government must designate a person to call and chair the meetings for the purpose of electing an Acting Speaker to preside over the remainder of the meetings. It is further proposed that the Bill is amended by the insertion after line 57 on page 5 the following clause: “(1B) The speaker may convene an urgent meeting if a special meeting was not requested in accordance with subsection (1) on a particular matter but the speaker, in his or her determination, is of the opinion that the particular matter requires a meeting of the municipal council.”.  | In support of the proposal, it is suggested that the words “on good cause shown designate a person to” in Clause 13(1A), be deleted.**Proposed amendment supported.**The proposed clause 1(B) is not supported as this may be provided for in the Rules of Order for Councils. **Proposed amendment not supported.** |
| 14. | Clause 14 | Section 29A provides for ordinary, special and urgent meetings. What is meant by these different types of meeting are not defined. The lack of clarity leads to problematic interpretation, particularly when applying sections 18(2) and 29(1) of the Principal Act. It is submitted that currently not all the committee meetings of council may be called by the Municipal Manager, for example, a disciplinary committee meeting. Is the intention of this clause to change the current arrangement that exists? If so, how is it intended to work practically? It is proposed that the terms “ordinary”, “special” and “urgent” meeting are clearly defined. It is also proposed that the nature of the meetings referred to in section 18(2) and 29(1) is clarified i.e. would the meetings contemplated in section 18(2) be considered ordinary meetings and those contemplated in section 29(1) when a request for a meeting is made, would those be considered special meetings? Clarity must be provided in this regard. | Currently in the System Act the types of council meetings are not defined. This is normally addressed through the Rules of Order for Councils.**Proposed amendment not supported.** |
| 15. | Clause 16 | See comments made under clause 3. | See comment under clause 3**Proposed amendment not supported.** |
| 16. | Clause 23: | It is not clear from the provisions of the new proposed section 79A when it is envisaged the reports and reviews referred to should be done because no time periods are provided for. The provision in the new proposed section 79A(5)(b) is already provided for in section 166(1) of the Local Government: Municipal Financial Management Act, 2003. The new proposed provision is superfluous. It is proposed that clause 23 must be reconsidered and redrafted to provide clarity. | This has been drafted for emphasis to show alignment with the MFMA. For example section 152 of the Constitution provides for the Objects of Local Government which are repeated in section 24 of the Municipal Demarcation Act, and reference to the same is made in section 23(1)(a), 50(2) and 51(c) of theMunicipal Systems Act .**Proposed amendment not supported.** |
| 17. | Clause 26 | If the references to sections 9(e), (f) and 10(c) are deleted in the sections listed in this clause, then what is envisaged will govern the election of members of an executive committee should a MEC intend to change the type of municipality in terms of section 16(1)(a) of the principal Act from the type referred to in section 9(e), (f) and 10(c)? The amendment Bill does not contain any savings or transitional provisions. Clarity is required in this regard. See the comment under clause 3 in this regard. | Sections 9(e), (f) and 10(c) relates to the abolition of the plenary type municipality**Proposed amendment not supported.** |
| 18. | Proposed Schedule 7Item 5(2) | The words “must be removed from office as a councillor” must be changed to “may be removed from office as a councillor”. This will align the provision to the rest of the provisions in item 5 thereby allowing for a uniform procedure to be followed that complies with the rules of natural justice before a councillor can be removed or fined. | The words “must” is in the original text of the Code of Conduct in the Systems Act (see Item 4(2)).**Proposed amendment not supported.** |
| 19. | Item 16 | The provision provides that in each investigation, an investigator or initiator is appointed regarding the conduct of investigations. This may not always be possible and therefore it is proposed that an alternative is provided for. It is proposed that provision is made in the Code that additionally, a person who can act as an initiator in the investigation must be appointed. It must also be clear that a municipal council must appoint a special committee and express provision must be made as to what must constitute the special committee. It is proposed that item 16(1) must be amended to read as follows: *“When a municipal council has considered a report as referred to in item 15(1)(c) and decided that disciplinary steps must be instituted against a councillor, the municipal council must –* *(a) establish a special committee consisting of councillors, or councillors as well as a person with the appropriate legal knowledge –* *(i) to investigate and make a finding on any alleged breach of the Code; and**(ii) to make recommendations to the Council regarding an appropriate sanction or sanctions;* *(b) appoint a person to act as an initiator in the investigation or authorise the municipal manager to appoint an initiator.”.* The current item 16(4)(b) must be amended **by adding the following words at the end of the provision: “by the MEC.”** This will ensure that the MEC can be assured that the appeal was received by the municipality when making the finding on the appeal. | The proposed amendments to 16(1) inherent the similar meaning as contained in the original text. However, the proposed 16(4)(b) amendment of adding the following words at the end of the provision: “by the MEC.” Is supported.**The proposed amendment to 16(4)(b) is supported.** |
| 20. | Item 17(7)  | It is not clear whether the reference to the “rules of natural justice” means that the listed actions or aspects thereof are subject to the Promotion of Administrative Justice Act, 2000. It is submitted that clarity must be provided in this regard. It is proposed that Schedule 7 of the Bill is amended by the substitution of item 17(7) with a new paragraph (7).“(7) Any investigation in terms of this item and any action by the MEC in terms of sub item (6) must be in accordance with section 3 of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).” | The proposal to substitute the words “natural justice” with “section 3 of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).”**The proposed amendment is supported.** |
| **PROPOSED AMENDMENTS FROM PROVINCIAL LEGISLATURESTHAT ARE SUPPORTED BY DCoG** |
| There are a number of proposed amendments by provinces that were considered valid. In supporting some of the proposals, the following amendments are proposed to the Bill:**CLAUSE 1 (WC)**1. On page 3, in line 2, to insert the words “by the Electoral Commission” after the word “election”.

**CLAUSE 13 (WC)**1. On page 5, in lines 56 and 57, to delete the words “on good cause shown designate a person to”.

**CLAUSE 19 (FS)**1. On page 8, in line 23, to insert the words “through an authorised representative” after the word “must”.
2. On page 8, in line 27, to insert the words “through an authorised representative” after the word “will”.

**ITEM 16:INVESTIGATION OF BREACH (WC)**1. On page 17, in line 40, to insert the words “by the MEC” after the word “council”.

**ITEM 16(8) (WC)**1. On page 18, in line 2, to substitute “(6)” with “(7)”, and to delete the words “with the rules of natural justice” and replace it with “section 3 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”.

**CONSEQUENTIAL AMENDMENTS (WC)**1. Section 63(3) of the Principal Act be amended by deleting, in the Principal Act, “Schedule 1 to the Local Government Municipal Systems Act, 2000” and replacing it with “Schedule 7”.
 |
| **DCoG: PROPOSED AMENDMENTS** |
| There are a number of technical and consequential amendments that the Department is proposing, as follows:**CLAUSE 1 (Definitions)**1. On page 1, to insert the definition of “authorised representative” in line 9, before the definition of “declared elected”, as follows:

**““authorised representative”** means a person as defined in the Local Government; Municipal Electoral Act, 2000 (Act No. 27 of 2000) and for the purpose of this Act, is also responsible for determining the representatives for the composition of the executive committee.”**CLAUSE 7 (Determination of number of councillors)**1. On page 4, in line 11, after “kilometres” to delete “[and if less than 35 councillors have been determined in terms of the formula.]”

**CLAUSE 23**1. On page 5, in line 54, to delete the words “of the municipality” after the word “manager”.

**CLAUSE 27 (Electoral system for metro and local councils) –** 1. On page 10, in line 19, to replace the word “seats” with the word “votes”.

**CLAUSE 30(Code of Conduct for Councillors)**1. On page 16, Schedule 7, Item 11(1), remove the commas in lines 17 and 18.1. On page 17, Schedule 7, Item 15(4), replace [chairperson] with speaker in line 10.(**This is a technical correction only and carries no changes in the meaning.)**

**ADDITIONAL PROPOSALS:****Composition of executive committees**1. On page 8, in line 9, replace the word “elected” with the word “determined”.

**CONSEQUENTIAL AMENDMENTS TO THE PRINCIPAL ACT AS A RESULT OF CLAUSE 19 IN THE BILL:****Section 45: Election of members of executive committees(These are technical corrections only and carry no changes in the meaning.)**The word “Election” should be replaced with the word “Determination” in the section heading.  Thereafter, the section should read as follows: “A municipal council must [elect]determine the members …”**Section 46: Term of office of members.**Should be amended to read as follows: “The members of an executive committee are [elected] determined for a term ending, .…..”**Section 48: Election of mayors.**Section 48(2)should be amended to read as follows:“The election of a mayor and deputy mayor takes place when the executive committee is [elected]determined or when it is necessary to fill a vacancy.”**Section 53: Removal from office of executive committees.**Section 53(2) should be amended to read as follows:“If all the members of an executive committee are removed, a new [election of members]determination of members must take place, and a new election of the mayor and, if the municipality has a deputy mayor, the deputy mayor, must be held in terms of sections 45 and 48, respectively.”**THE FOLLOWING NEW AMENDMENTS ARE PROPOSED (which cdeals with the date of effect of certain provisions):****Transitional Provisions / Measures**1. Transitional measures must be provided for the following matters:
* Changes in the number of councillors (to take effect from the next term of local government [2026]); and
* Changes in the type of municipality (to take effect from the next term of local government [2021]).
 |