**1. Report of the Portfolio Committee on Cooperative Governance and Traditional Affairs on the *Local Government: Municipal Systems Amendment Bill*** **[B2-2019] (National Assembly – Section 76), dated 04 November 2020.**

The Portfolio Committee on Cooperative Governance and Traditional Affairs having considered the subject of the *Local Government: Municipal Systems Amendment Bill* [B2-2019], referred to it on 6 February 2019, and classified by the Joint Tagging Mechanism as a section 76 Bill, reports the bill with amendments [B2A – 2019].

1. **BACKGROUND**
	1. **Tagging defect.** The Local Government: Municipal Systems Amendment Bill [B2 -2019] follows the enactment of the Municipal Systems Amendment Act, 2011 (“the Amendment Act”), to which the President acceded on 05 July 2011. In *South African Municipal Workers Union vs Minister of Cooperative Governance and Traditional Affairs,* the Constitutional Court delivered a judgement dated 09 March 2017, which declared the Amendment Act unconstitutional and invalid because it failed to comply with the procedures as set out in section 76 of the Constitution. Parliament tagged it as a section 75 instead of a section 76 Bill.
	2. **Suspension of invalidity.** The Constitutional Court suspended the order of invalidity for 24 months to allow for the correction of the procedural defect. This led to the introduction of the current Bill – the Local Government: Municipal Systems Amendment Bill [B2-2019] - which the Speaker referred to the Committee on 06 February 2019.
	3. **Public participation.** In accordance with the processes prescribed in Rule 286 of the *Rules of the National Assembly* (NA Rules), the Committee afforded interested persons and institutions opportunity to comment on the Bill. This was in the form of stakeholder engagements that took place on 26 and 27 February 2019, which afforded interested persons and institutions a minimum period of three weeks to prepare inputs. The stakeholder engagements considered contributions from the Western Cape Department of Local Government, Gauteng Department of Cooperative Governance and Traditional Affairs, Mpumalanga Department of Cooperative Governance and Traditional Affairs, Eastern Cape Department of Cooperative Governance and Traditional Affairs, as well as the South African Local Government Association – representing the views of 257 municipalities. The objects of the Bill were of direct import to the business of these stakeholders. **A separate Annexure detailing the nature of each stakeholder’s submission is available on request.**
	4. **Lapsing and revival.** The suspended period of invalidity lapsed on 09 March 2019 before the correction of the defect, and the Amendment Act therefore became invalid. There was an application to the Constitutional Court for condonation of non-compliance with its order of 09 March 2017 and extension of the 24-month period of suspension of the declaration of constitutional invalidity. In an order dated 20 March 2019, the Court refused the applications for condonation and extension as this was not interest of justice to do so. As per NA Rule 333(2), the Bill lapsed on 07 May 2019 following the end of the Sixth Session of the Fifth Parliament. On the First Session of the Sixth Parliament, on 29 October 2019, the Deputy Chief of the Majority Party, on behalf of the Chief Whip of the Majority Party, **moved that the House resumes proceedings on the Bill from the stage it was referred to the Committee for consideration and report.** The House agreed to the motion.
2. **FURTHER ENQUIRY INTO THE OBJECTS OF THE AMENDMENT BILL FOLLOWING ITS REVIVAL IN THE NATIONAL ASSEMBLY**
	1. Between the Bill’s revival on 29 October 2019 and the first Committee sitting of 26 February 2020 to consider stakeholder inputs, there was window period of nearly four months for interested persons and institutions to make further submissions on the Bill. The Portfolio Committee considered further inputs on the Bill as follows:
	2. On 26 February 2020, and on 04 March 2020, Committee received oral and written inputs from the Eastern Cape Provincial Department of Cooperative Governance, Human Settlements and Traditional Affairs, the South African Local Government Association, and the Western Cape Department of Local Government.
	3. The Committee also received a written input from the Limpopo Department of Cooperative Governance, Human Settlements and Traditional Affairs. The Independent Municipal and Allied Trade Union (IMATU) filed a written submission dated 09 March 2020, which pledged support for the Amendment Bill in its current form. On 10 March 2020, the Committee heard further oral input from IMATU. During the meeting of 10 March 2020, the Organisation for Undoing Tax Abuse (OUTA) also notified of intention to comment on the Bill in writing. To date, the Committee has not received the submission.
	4. Finally, on 05 June 2020 and 25 June 2020, the Committee heard further submissions from the South African Local Government Association and the National Department of Cooperative Governance and Traditional Affairs. These submissions sought to provide evidence to the effect there was a degree of professionalisation in local government following the introduction of the clause relating to the limitation of political rights of municipal managers and managers directly accountable to municipal managers. This limitation was demonstrably the least restrictive means of achieving local government professionalisation and arguably justifiable in terms of section 36 of the Constitution, and would therefore pass constitutional muster.

1. **COMMITTEE DELIBERATIONS**
	1. Having considered the inputs from the aforementioned stakeholders, the Committee met on 23 October 2020 for final deliberations on the Bill. The Committee sitting consisted of the following Members: Ms F Muthambi (Chairperson – ANC), Mr GG Mpumza (ANC), Ms P Xaba-Ntshaba (ANC), Ms Kibi (ANC), Ms D Direko (ANC), Ms M Tlou (ANC), Mr C Brink (DA) and Mr K Ceza (EFF). Two alternate members (Ms Kibi and Mr Ceza) acted as Members in accordance with Rule 156(2) of the *Rules of the National Assembly*.
	2. Having been thus constituted, the Committee considered and agreed to the following amendments:

| **AMENDMENT** | **COMMITTEE DECISION** |
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| **CLAUSE 1**On page 3, in line 14, after “secretary”, to omit “or treasurer of the party”, and to insert “, treasurer or an elected or appointed decision-making position of a political party”. | The Committee unanimously agreed to the proposed amendment. |
| **CLAUSE 2**1. On page 3, in line 27, after “manager”, to insert “or acting municipal manager”.
2. On page 4, after line 15, to insert the following new subsection:

“(10) If the MEC for local government fails to respond to the appointment process and outcome within the timeframes, as contemplated in subsection (7)*(b)* or the Minister fails to respond as contemplated in subsection (9), the appointment of the senior manager will be deemed to be in compliance with this Act: Provided the municipality submitted all relevant documents, as prescribed.”.1. On page 4, in line 16, to omit “(10)”, and to substitute with “(11)”.
2. On page 4, in line 20, to omit “(11)”, and to substitute with “(12)”.
3. On page 4, in line 23, to omit “(12)”, and to substitute with “(13)”.
 | The Committee unanimously agreed to all the amendments proposed under this clause. |
| **CLAUSE 3**1. On page 4, in line 36, after “(i)”, to insert “or (ii)”.
 | The Committee unanimously agreed to the proposed amendment. |
| **CLAUSE 5**1. On page 5, from line 31, to omit clause 5.
 | The Committee unanimously agreed to the proposed amendment. |
| **CLAUSE 6****1.** On page 6, after line 24, to insert the following new paragraph:“*(f)* by the substitution for subsection (6) of the following subsection: “(6) The employment contract for a municipal manager must be signed within one month of his or her date of appointment and must—*(a)* be for a fixed term of employment up to a maximum of five years, not exceeding a period ending one year after the election of the next council of the municipality;*(b)* include a provision for cancellation of the contract, in the case of non-compliance with the employment contract or, where applicable, the performance agreement; and**[*(c)* stipulate the terms of the renewal of the employment contract, but only by agreement between the parties; and]***(d)* reflect the values and principles referred to in section 50, the Code of Conduct set out in Schedule 2, and the management standards and practices contained in section 51.”.1. On page 6, in line 25, to omit paragraph *(f)* and to substitute with the following paragraph:

“*(f)* by the substitution for subsection (7) of the following subsection:“(7) *(a)* Subject to paragraph *(b)*, a municipal council must make a decision on whether the employment contract of a manager directly accountable to the municipal manager must be for a fixed term, in accordance with subsection (6), or on a permanent basis.  *(b)* A decision in terms of paragraph *(a)* must be made by the municipal council, in consultation with the mayor or the executive committee, as the case may be, after recommendation by the municipal manager.”. 1. On page 6, from line 26, to omit subclause (2).
 | The **majority** of Committee members agreed to all the proposed amendments under this clause. The Democratic Alliance (DA) would have preferred **permanent** appointment of Section 56 Managers, but was not opposed to the proposal to allow a Municipal Council to use its discretion in this regard. The Economic Freedom Fighters (EFF) preferred permanent appointment of Section 56 Managers. |
| **NEW CLAUSE**1. That the following be a new clause:

Insertion of section 71B in Act 32 of 200010. The following section is hereby inserted in the principal Act after section 71A:“Staff members prohibited from holding political office 71B. (1) A staff member may not hold political office in a political party, whether in a permanent, temporary or acting capacity. (2) A person who has been appointed as a staff member before subsection (1) takes effect, must comply with subsection (1) within one year of the commencement of subsection (1).” | The Committee unanimously agreed to the new clause. |

1. **CONSIDERATION OF THE AMENDMENT BILL**

The Portfolio Committee on Cooperative Governance and Traditional Affairs having deliberated on and considered the subject of the *Local Government: Municipal Systems Amendment Bill* [B2-2019] (National Assembly – Section 76), referred to it, and classified by the Joint Tagging Mechanism as a section 76 Bill, reports that it has agreed to the Bill with amendments [B2A-2019].

**Report to be considered.**