

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES SECOND AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); Explanatory summary of Bill
and prior notice of its introduction published in Government Gazette No. 48442 of 14 April
2023)*

(The English text is the official text of the Bill)

(Ms. S GWARUBE, MP)

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GENERAL EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Local Government: Municipal Structures Act, 1998, so as to extend the time period within which a local council must appoint its representatives to the district council; to extend the time period within which the first meeting of the council must be called after it has been declared elected so as to in turn provide more time before the council has to elect its speaker and whip; to extend the time period within which the meeting to determine the members of the executive committee must be held so as to in turn provide more time before the council has to elect its mayor and deputy mayor; to extend the time period within which the election of an executive mayor and executive deputy mayor must be held; to provide for an electoral threshold when determining the allocation of proportional seats in a metropolitan, local and district council; to provide for an electoral threshold in determining the allocation of seats to representatives of local councils to district councils; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 23 of Act 117 of 1998, as amended by section 11 of Act 3 of 2021

1. Section 23 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (hereinafter referred to as the “principal Act”), is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) A local council must appoint its representatives to the district council within not less than 14 and not more than 30 days after the result of the election of the local council has been declared.”.

Amendment of section 29 of Act 117 of 1998, as amended by section 3 of Act 20 of 2002, section 9 of Act 2 of 2003, section 11 of Act 55 of 2008 and section 14 of Act 3 of 2021

2. Section 29 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The municipal manager of a municipality or, in the absence of the municipal manager, a person designated by the MEC for local government in the province, must call the first meeting of the council of that municipality within not less than 14 and not more than 30 days after the council has been declared elected or, if it is a district council, after all the members to be appointed by local councils, have been appointed.”.

Amendment of section 45 of Act 117 of 1998, as substituted by section 1 of Act 1 of 2003 and as amended by section 22 of Act 3 of 2021 and section 32 of Act 3 of 2021

3. Section 45 of the principal Act is hereby amended by the substitution for paragraphs (a), (b) and (c) of the following paragraphs:
- “(a) within not less than 14 and not more than 30 days after the council’s election;
- (b) if it is a district council, within not less than 14 and not more than 30 days after the last of the local councils has appointed its representatives to the district council; or
- (c) within not less than 14 and not more than 30 days after the date with effect from which the type of the municipality has been changed from any of those mentioned in section 8(e), (f), (g) or (h), 9(c), (d) or 10(b) to any of those mentioned in section 8(a), (b), (c) or (d), 9(a) or (b), or 10(a).”.

Amendment of section 55 of Act 117 of 1998, as amended by section 4 of Act 1 of 2003 and by section 32 of Act 3 of 2021

4. Section 55 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a), (b) and (c) of the following paragraphs:
- “(a) within not less than 14 and not more than 30 days after the council’s election;
- (b) if it is a district council, within not less than 14 and not more than 30 days after the last of the local councils has appointed its representatives to the district council; or
- (c) within not less than 14 and not more than 30 days after the date with effect from which the type of the municipality has been changed from any of those mentioned in section 8(a), (b), (c) or (d), 9(a), (b) or 10(a) to any of those mentioned in section 8(e), (f), (g) or (h), 9(c) or (d) or 10(b).”.

Amendment of Schedule 1 to Act 117 of 1998, as amended by section 93 of Act 27 of 2000, section 8 of Act 20 of 2002, sections 22, 23, 24, 25 and 26 of Act 51 of 2002, section 9 of Act 2 of 2003, section 16 of Act 55 of 2008 and section 33 of Act 3 of 2021

5. Schedule 1 to the principal Act is hereby amended by the addition of the following paragraph in item 13(2):
- “(c) Only a party who has already obtained at least one seat as per subitem (1)(a) may compete with similar surpluses as per paragraphs (a) and (b).”.

Amendment of Schedule 2 to Act 117 of 1998, as amended by section 93 of Act 27 of 2000, section 9 of Act 20 of 2002, sections 27, 29, 30, 31 and 32 of Act 51 of 2002, section 9 of Act 2 of 2003, section 17 of Act 55 of 2008 and section 34 of Act 3 of 2021

6. Schedule 2 to the principal Act is hereby amended—
- (a) by the addition of the following paragraph in item 7(2):
- “(c) Only a party who has already obtained at least one seat as per subitem (1) may compete with similar surpluses as per paragraphs (a) and (b).”;
- (b) by the addition of the following subitem in item 15:
- “(5) A council will not be entitled to a seat where the council did not meet the quota of votes for a seat in terms of subitems (1) and (2).”;
- (c) by the addition of the following paragraph in item 20(2):

- “(c) Only lists which have already obtained at least one seat as per subitem (1) may compete with similar surpluses as per paragraphs (a) and (b).”; and
- (d) by the addition of the following subitem in item 20:
- “(3) If the calculation in subitem (2) gives a figure that is a fraction of the figure in subitem (1), the council must not be awarded a seat and must not participate in any further calculation or award.”.

Short title and commencement

7. This Act is called the Local Government: Municipal Structures Second Amendment Act, 2023, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT:
MUNICIPAL STRUCTURES SECOND AMENDMENT BILL, 2023**

1. INTRODUCTION

- 1.1 South Africa is currently in a transitional phase where the ruling party no longer holds majorities in a number of metropolitan, district or local councils across South Africa. This has resulted in many coalition governments being formed at local government level. With the 2024 National elections around the corner, these elections are poised to be the first instance where the ruling party will slip below 50% of the votes. What this means for South Africa is that coalition governments will now be the “new norm”, at a national, provincial and local government level. Parties and Independent Candidates will have to come together and form workable coalitions for the good of the Republic of South Africa.
- 1.2 However, the current issue with coalition governments at local government level is that a high number of political parties are needed to join together in order to gain a majority in the council. What this means is that coalition governments are sometimes made up of up to 10 or more political parties, the majority of these parties having obtained only one seat each in the council. Often, in practice, some of these parties gain a seat without even first obtaining the requisite votes needed for such seat (namely, the seat quota). Instead, such seat is obtained through the next highest remainder calculations. The effect of this is that opposition parties continuously lobby these smaller parties to retract from coalitions in exchange for positions or favour. These “one person” parties who obtain a fraction of the votes of a municipality, now become ‘king makers’, which can destabilise entire governments which in turn affects service delivery to the very people who voted these parties in.
- 1.3 The Local Government: Municipal Structures Second Amendment Bill, 2023 (“the Bill”), aims to prevent circumstances such as these from occurring by providing for an electoral threshold into the calculation and allocation of seats in councils.
- 1.4 The practice of electoral thresholds is not a new concept and does not infringe upon the rules of general proportionality. Electoral thresholds are used in a number of countries such as Germany, Denmark, New Zealand, Turkey, Netherlands, Belgium, Greece, Romania, Ukraine and more.
- 1.5 The Bill also seeks to extend the period within which the first meeting of the council must be called after it has been declared elected, thereby extending the period within which the speaker, whip, an executive mayor, executive deputy mayor, mayor and deputy mayor can be elected in the council to provide more time for parties to engage with each other to form stable coalitions.

2. OBJECTS OF THE BILL

- 2.1 The purpose of the Bill is to amend the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (“the Act”), so as to provide an electoral threshold into the calculation and allocation of seats in councils so that parties must first obtain the number of the votes equal to the seat quota +1 before they are even entitled to be considered for seat calculations and allocations. This will ensure that smaller parties, who do not enjoy the confidence of the voters, are not let into council through “the back door” by way of the second round highest remainder calculations.
- 2.2 The Bill also seeks to amend the Act by extending the period within which the first meeting of the council must be called after it has been declared elected, such meeting to be called within not less than 14 and not more than 30 days after being declared elected, as opposed to the within 14 days provided for in the Act. This will in turn extend the time period within

which the speaker and whip should be elected in council as such election will take place at the first sitting. The Bill also extends the time period within which members of the executive committee must be determined and the time period within which an executive mayor and executive deputy mayor may be elected.

3. CONTENTS OF THE BILL

- 3.1 Clause 1 of the Bill amends section 23 of the Act so as to extend the time period within which a local council must appoint its representatives to the district council. The Bill provides that such appointment must take place within not less than 14 days and not more than 30 days after the result of the election of the local council has been declared.
- 3.2 Clause 2 of the Bill amends section 29 of the Act so as to extend the period within which the council must call the first meeting of the council after the council has been declared elected. The Bill provides that the first meeting of the council must be called within not less than 14 days and not more than 30 days after the council has been declared elected.
- 3.3 Clause 3 of the Bill amends section 45 of the Act by extending the period within which the meeting at which members of an executive committee are determined, must be held. The Bill provides that this meeting of the council must be called within not less than 14 days and not more than 30 days after the council has been declared elected; after the last of the local councils has appointed its representatives if it is a district council; or after the date from which a municipality has been changed from one type to another as provided.
- 3.4 Clause 4 of the Bill amends section 55 of the Act by extending the period within which an executive mayor and executive deputy mayor can be elected by a municipal council, district council or municipality that has changed from one type to another.
- 3.5 Clause 5 of the Bill amends Schedule 1 to the Act by amending Item 13 to provide that only a party who has already obtained at least one seat may compete with similar surpluses.
- 3.6 Clause 6 amends Schedule 2 to the Act by amending Item 7 to provide that only a party who has already obtained at least one seat may compete with similar surpluses. Clause 5 also amends item 15 of Schedule 1 to provide that a council will not be entitled to a seat where the council did not meet the quota of votes for a seat. Clause 5 also amends item 20 of Schedule 2 to the Act to provide that only lists which have already obtained at least one seat will be entitled to compete with similar surpluses and to provide that if the calculation gives a figure that is a fraction of the figure in subitem (1), the council must not be awarded a seat and must not participate in any further calculation or award.
- 3.7 Clause 7 provides for the short title and commencement date.

4. FINANCIAL IMPLICATIONS FOR THE STATE

A financial implication assessment may be completed upon introduction of the Bill.

5. DEPARTMENTS, BODIES OR PERSONS CONSULTED

None

6. PARLIAMENTARY PROCEDURE

- 6.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.
- 6.2 The Member is of the opinion that it is necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does contain provisions pertaining to matters referred to in section 154(2) of the Constitution.