

REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE AMENDMENTS
TO

LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS
AMENDMENT BILL

[B 49-2003]

*(As agreed to by the Portfolio Committee on Provincial and Local Government
(National Assembly))*

[B 49A-2003]

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AMENDMENTS AGREED TO

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS AMENDMENT BILL
[B 49-2003]

CLAUSE 1

1. On page 2, after line 10, to insert:
- (b) the insertion after the definition of "district municipality" of the following definition:

" 'effective control', in relation to a private company, means the power which a shareholder in the private company may have -

(a) to appoint or remove at least the majority of the board of directors of the private company; or

to control at least the majority of the voting rights at a general meeting of the private company;":
2. On page 3, from line 15, to omit the definition of "parent municipality" and to substitute :

" **'Parent municipality'** -

(a) in relation to a municipal entity which is a private company in respect of which effective control vests in a single municipality, means that municipality;

(b) in relation to a municipal entity which is a private company in respect of which effective control vests in two or more municipalities collectively, means each of those municipalities;

(c) in relation to a municipal entity which is a service utility, means the municipality which established the entity; or

(d) in relation to a municipal entity which is a multi-jurisdictional service utility, means each municipality which is a party to the agreement establishing the service utility:"

CLAUSE 2

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause :

Substitution of section 9 of Act 32 of 2000

2. The following section is hereby substituted for section 9 of the principal Act:

"Assignment of functions or powers to municipalities
generally by Acts of Parliament or provincial Acts

9. (1) A Cabinet member or Deputy Minister seeking to initiate the assignment of a function or power by way of an Act of Parliament to municipalities in general, or any category of municipalities, must within a reasonable time before the draft Act providing for the assignment is introduced in Parliament-

- (a) request the Financial and Fiscal Commission to assess the financial and fiscal implications of the legislation, after informing the Financial and Fiscal Commission of the possible impact of such assignment on –
 - (i) the future division of revenue between the spheres of government in terms of section 214 of the Constitution;
 - (ii) the fiscal power, fiscal capacity and efficiency of municipalities or any category of municipalities; and
 - (iii) the transfer, if any, of employees, assets and liabilities; and
- (b) consult the Minister, the Minister of Finance and organised local government representing local government nationally with regard to–
 - (i) the assessment by the Financial and Fiscal Commission contemplated in paragraph (a);
 - (ii) the policy goals to be achieved by the assignment and the reasons for utilising assignment as the preferred option;
 - (iii) the financial implications of the assignment projected over at least three years;
 - (iv) any possible financial liabilities or risks after the three-year period referred to in subparagraph (iii);
 - (v) the manner in which additional expenditure by municipalities as a result of the assignment will be funded;
 - (vi) the implications of the assignment for the capacity of municipalities;
 - (vii) the assistance and support that will be provided to municipalities in respect of the assignment; and
 - (viii) any other matter that may be prescribed.

(2) An MEC seeking to initiate the assignment of a function or power by way of a provincial Act to municipalities, or any category of municipalities, in the province must within a reasonable time before the draft provincial Act providing for the assignment is introduced in the relevant provincial legislature–

- (a) request the Financial and Fiscal Commission to assess the financial and fiscal implications of the legislation, after informing the Financial and Fiscal Commission of the possible impact of such assignment on–
 - (i) the future division of revenue between the spheres of government in terms of section 214 of the Constitution;
 - (ii) the fiscal power, fiscal capacity and efficiency of municipalities or any category of municipalities; and
 - (iii) the transfer, if any, of employees, assets and liabilities; and
- (b) consult the MEC for local government, the MEC responsible for finance and organised local government representing local government in the province with regard to–
 - (i) the assessment by the Financial and Fiscal Commission contemplated in paragraph (a);
 - (ii) the policy goals to be achieved by the assignment and the reasons for utilising assignment as the preferred option;

- (iii) the financial implications of the assignment projected over at least three years;
 - (iv) any possible financial liabilities or risks after the three-year period referred to in subparagraph (iii);
 - (v) the manner in which additional expenditure by municipalities as a result of the assignment will be funded;
 - (vi) the implications of the assignment for the capacity of municipalities;
 - (vii) the assistance and support that will be provided to municipalities in respect of the assignment; and
 - (viii) any other matter that may be prescribed.
- (3) When draft legislation referred to in subsection (1) or (2) is introduced in Parliament or a provincial legislature, the legislation must be accompanied by—
- (a) a memorandum—
 - (i) giving at least a three-year projection of the financial and fiscal implications of the assignment of that function or power for those municipalities;
 - (ii) disclosing any possible financial liabilities or risks after the three-year period;
 - (iii) indicating how any additional expenditure by those municipalities will be funded; and
 - (iv) indicating the implications of the assignment for the capacity of those municipalities; and
 - (b) the assessment of the Financial and Fiscal Commission referred to in subsection (1)(a) or (2)(a), as the case may be."

CLAUSE 3

1. On page 4, from line 47, to omit the heading and to substitute:

**Assignment of functions or powers to specific municipalities by
acts of executive or by agreement**

2. On page 4, in line 49, to omit "an additional function or power is assigned to a municipality" and to substitute:

a function or power is assigned to any specific municipality

CLAUSE 4

1. On page 5, in line 6, to omit "an additional" and to substitute "a".

CLAUSE 5

Clause rejected.

CLAUSE 6

Clause rejected.

NEW CLAUSE

That the following be a new Clause:

Insertion of sections 21A and 21B in Act 32 of 2000

5. The following sections are hereby inserted in the principal Act, after section 21:

"Documents to be made public

21A. (1) All documents that must be made public by a municipality in terms of a requirement of this Act, the Municipal Finance Management Act or other applicable legislation, must be conveyed to the local community —

- (a) by displaying the documents at the municipality's head and satellite offices and libraries;
- (b) by displaying the documents on the municipality's official website, if the municipality has a website as envisaged by section 21B; and
- (c) by notifying the local community, in accordance with section 21, of the place, including the website address, where detailed particulars concerning the documents can be obtained.

(2) If appropriate, any notification in terms of subsection (1)(c) must invite the local community to submit written comments or representations to the municipality in respect of the relevant documents.

Official website

21B. (1) Each municipality must—

- (a) establish its own official website if the municipality decides that it is affordable; and
- (b) place on that official website information required to be made public in terms of this Act and the Municipal Finance Management Act.

(2) If a municipality decides that it is not affordable for it to establish its own official website, it must provide the information in terms of legislation referred to in subsection (1)(b) for display on an organised local government website sponsored or facilitated by the National Treasury.

(3) The municipal manager must maintain and regularly update the municipality's official website, if in existence, or provide the relevant information as required by subsection (2).".

CLAUSE 7

On page 6, from line 5, to omit subsection (1) and to substitute:

(1) A municipality must prepare for each financial

performance report reflecting --

- (a) the performance of the municipality and of each external service provider during that financial year;
- (b) a comparison of the performances referred to in paragraph (a) with targets set for and performances in the previous financial year; and
- (c) measures taken to improve performance.

CLAUSE 9

Clause rejected.

NEW CLAUSE

That the following be a new Clause:

Amendment of section 57 of Act 32 of 2000

8. Section 57 of the principal Act is hereby amended by the insertion after subsection (4) of the following subsections:

"(4A) The provisions of the Municipal Finance Management Act conferring responsibilities on the accounting officer of a municipality must be regarded as forming part of the performance agreement of a municipal manager.

(4B) Bonuses based on performance may be awarded to a municipal manager or a manager directly accountable to the municipal manager after the end of the financial year and only after an evaluation of performance."

CLAUSE 12

On page 7, in line 2, to omit "service", and to substitute "municipal service".

2. On page 7, from line 15, to omit paragraph (iv) and to substitute:
 - (iv) the likely impact on development, job creation and employment patterns in the municipality; and
3. On page 7, from line 18, to omit paragraph (c) and to substitute:
 - (c) conduct or commission a feasibility study which must be taken into account and which must include –
 - (i) a clear identification of the municipal service for which the municipality intends to consider an external mechanism;
 - (ii) an indication of the number of years for which the provision of the municipal service through an external mechanism might be considered;
 - (iii) the projected outputs which the provision of the municipal service through an external mechanism might be expected to produce;
 - (iv) an assessment as to the extent to which the provision of the municipal service through an external mechanism will –
 - (aa) provide value for money;
 - (bb) address the needs of the poor;
 - (cc) be affordable for the municipality and residents; and
 - (dd) transfer appropriate technical, operational and financial risk;
 - (v) the projected impact on the municipality's staff, assets and liabilities;
 - (vi) the projected impact on the municipality's integrated development plan;
 - (vii) the projected impact on the municipality's budgets for the period for which an external mechanism might be used, including impacts on revenue, expenditure, borrowing, debt and tariffs; and
 - (viii) any other matter that may be prescribed."; and

4. On page 7, in line 61, after "may" to insert " , in accordance with an agreement,".

CLAUSE 13

1. On page 8, in line 5, to omit "service" and to substitute "municipal service".
2. On page 8, from line 7, to omit paragraph (a) and to substitute:
- (a) a municipal entity or another municipality **[or a national or provincial organ of state]**, it may, subject to subsection (3), negotiate and enter into such an agreement with the relevant municipal entity or municipality **[or organ of state]** without applying Part 3 of this Chapter; **[or]**
3. On page 8, from line 11, to omit paragraph (aA) and to substitute:
- (aA) a national or provincial organ of state, it may enter into such an agreement with the relevant organ of state without applying Part 3 of this Chapter; or
4. On page 8, from line 25 to line 60, to omit subsections (3) to (5) and to substitute:
- (3) (a) Where a municipality decides to enter into a service delivery agreement with another municipality as contemplated by section 76(b)(ii), that other municipality must conduct or commission a feasibility study, which it must take into account, before the service delivery agreement is entered into.
- (b) The feasibility study referred to in paragraph (a), must include-
- (i) an assessment on the impact on the budget of that other municipality, and on its assets, liabilities and staff expenditure, for each of the financial years that it intends to serve as an external service provider;
- (ii) an assessment on whether it will be necessary to increase the number of staff to enable that other municipality to be an external service provider, and whether it will be necessary to transfer or second any staff from the appointing municipality to that other municipality;
- (iii) an assessment on the ability of that other municipality to absorb any commitments, liabilities or employees involved, if and when the appointment as external service provider ends; and
- (iv) any other relevant information as may be prescribed."

CLAUSE 16

1. On page 9, in line 22, to omit "Chapter 10" and to substitute "Chapter 11"

CLAUSE 18

1. On page 10, after line 4, to insert:
- (j) the minimum content and management of service delivery agreements;
- (k) additional matters that must be included in a feasibility study in terms of section 78(3)(c), which may include-
- (i) the strategic and operational costs and benefits of an

- external mechanism in terms of the municipality's strategic objectives;
- (ii) an assessment of the municipality's capacity to effectively monitor the provision of the municipal service through an external mechanism and to enforce the service delivery agreement;

CLAUSE 19

1. On page 10, from line 21, to omit the heading and to substitute:

Insertion of heading and sections 86B, 86C, 86D, 86E, 86F, 86G, 86H, 86I, 86J and 86K in Act 32 of 2000

2. On page 10, in line 30, to omit "The kinds of municipal entities recognised by this Act are -" and to substitute:

There are the following kinds of municipal entities:

3. On page 10, from line 38, to omit subsection (2) and to substitute:

(2) No municipality may establish, or participate in the establishment of, or acquire or hold an interest in, a corporate body, including a trust, except where such corporate body is -
(a) a private company, service utility or multi-jurisdictional service utility referred to in subsection (1); or
(b) a fund for the benefit of its employees in terms of a law regulating pensions or medical aid schemes.

4. On page 10, from line 45, to omit subsection (3) and to substitute:

(3) Subsection (2) does not apply to the acquisition by a municipality for investment purposes of securities in a company listed on the Johannesburg Securities Exchange in accordance with the investment framework envisaged in section 13 of the Municipal Finance Management Act.

5. On page 10, from line 48, to omit the proposed new section 86C.

6. On page 11, from line 27, to omit the proposed new section 86D and to substitute:

86C. (1) municipality may, subject to subsection (2) -

- (a) establish or participate in the establishment of a private company in accordance with the Companies Act, 1973 (Act No. 61 of 1973); or
- (b) acquire or hold an interest in a private company in accordance with the Companies Act, 1973 (Act No. 61 of 1973).
- (2) (a) A municipality may in terms of subsection (1)(a) or (b) either acquire or hold full ownership of a private company, or acquire or hold a lesser interest in a private company.
- (b) A municipality may acquire or hold such a lesser interest in a private company only if all the other interests are held by-
- (i) another municipality or municipalities;
- (ii) a national or provincial organ of state or organs of state; or
- (iii) any combination of institutions referred to in subparagraphs (i) and (ii).

(c) A municipality may, despite paragraph (b), acquire or hold an interest in a private company in which an investor other than another municipality or a national or provincial organ of state has an interest, but only if effective control in the private company vests in—

- (i) that municipality;
- (ii) another municipality; or
- (iii) that municipality and another municipality collectively.

(3) If a municipality establishes a private company or acquires or holds an interest in such a company, it must comply with the Companies Act, 1973 (Act No. 61 of 1973), and any other law regulating companies, but if any conflict arises between that Act or such law and a provision of this Act, this Act prevails.

7. On page 11, in line 43, to omit "**86E.**(1) A private company referred to in section 86D(1) -" and to substitute:

86D. (1) A private company referred to in section 86C(1) -

8. On page 11, from line 44 to omit paragraph (a) and to substitute:

(a) is a municipal entity if a municipality, or two or more municipalities collectively, have effective control of the private company; or

9. On page 12, in line 3, to omit "86F(1)(a)" and to substitute "86E(1)(a)".

10. On page 12, from line 4, to omit paragraph (b) and to substitute:

(b) has no competence to perform any activity which falls outside the functions and powers of its parent municipality contemplated by section 8.

11. On page 12, in line 8, to omit "**86F**" and to substitute "**86E**".

12. On page 12, from line 10, to omit paragraph (a) and to substitute :

(a) for the purpose of utilising the company as a mechanism to assist it in the performance of any of its functions or powers referred to in section 8;

13. On page 12, in line 13, to omit "function" and to substitute "function or power".

14. On page 12, from line 16, to omit subparagraph (ii) and to substitute:

(ii) the company would benefit the local community; and

15. On page 12, in line 24, to omit "**86G**." and to substitute "**86F**".

16. On page 12, in line 27, to omit "**86F** " and to substitute "**86E**".

17. On page 12, from line 28, to omit paragraph (b) and to substitute:

(b) consider and reach agreement on proposals for shared control of the company; and

18. On page 12, in line 33, to omit "**86H**." and to substitute "**86G**".

19. On page 12, in line 37, to omit subparagraph (i) and to substitute:

(i) subject to section 14 of the Municipal Finance Management Act; and

20. On page 12, in line 39, to omit "86D(2)" and to substitute "86C(2)".
21. On page 12, in line 43, to omit "**86I.**" and to substitute "**86H.**".
22. On page 12, in line 45, to omit "object" and to substitute "purpose".
23. On page 12, in line 47, to omit "object" and to substitute "purpose".
24. On page 12, from line 48, to omit paragraph (c) and to substitute:

(c) provide for -

- (i) a board of directors to manage the service utility;
- (ii) the number of directors to be appointed;
- (iii) the appointment of directors, the filling of vacancies and the replacement and recall of directors by the parent municipality;
- (iv) the terms and conditions of appointment of directors;
- (v) the appointment of a chairperson;
- (vi) the operating procedures of the board of directors;
- (vii) the delegation of powers and duties to the board of directors;
- (viii) any other matter necessary for the proper functioning of the board of directors;
- (ix) the acquisition of infrastructure, goods, services, supplies or equipment by the service utility, or the transfer of infrastructure, goods, services, supplies or equipment to the service utility;
- (x) the appointment of staff by the service utility, or the transfer or secondment of staff to the service utility in accordance with applicable labour legislation;
- (xi) the terms and conditions on which any acquisition, transfer, appointment or secondment is made;
- (xii) the governance of the service utility; and
- (xiii) any other matter necessary for the proper functioning of the service utility; and

25. On page 13, from line 17, to omit paragraph (d) and to substitute:

(d) determine budgetary and funding arrangements for implementation of the by-law.

26. On page 13, from line 21, to omit subsection (4) and to substitute:

(4) No by-law may confer on a service utility any functions or powers falling outside the competence of the parent municipality contemplated by section 8.

27. On page 13, in line 24, to omit "**86J.**" and to substitute "**86I.**".
28. On page 13, in line 27, to omit "object" and to substitute "purpose":
29. On page 13, in line 30, to omit "functions" and to substitute "functions or powers".
30. On page 13, in line 32, to omit "**86K.**" and to substitute "**86J.**".

- 31. On page 13, in line 34, to omit "its functions" and to substitute :
its functions or powers referred to in section 8
- 32. On page 13, in line 36, to omit "function" and to substitute "function or power".
- 33. On page 13, in line 45, to omit "**86L.**" and to substitute "**86K.**".

CLAUSE 20

Clause rejected.

NEW CLAUSE

- 1. That the following be a new Clause:

Substitution of section 87 of Act 32 of 2000

19. The following section is hereby substituted for section 87 of the principal Act:

"Establishment of multi-jurisdictional service utilities

87. Two or more municipalities by written agreement may establish a multi-jurisdictional service utility to perform any function or power envisaged by section 8 in their municipal areas or in any designated parts of their municipal areas."

CLAUSE 22

- 1. On page 14, in line 26, to omit "**service utilities**" and to substitute "**service utilities**".
- 2. On page 14, from line 36, to omit paragraph (d) and to substitute:

(d) determine budgetary and funding [**and scheduling**] arrangements for implementation of the agreement;
- 3. On page 15, from line 3, to omit subparagraph (vii) and to substitute:
(vii) the delegation of powers and duties to the [**governing body consistent with section 92**] board of directors; and
- 4. On page 15, in line 27, after "liabilities" to insert "and".
- 5. On page 15, from line 28, to omit paragraphs (i) and (j) and to substitute:
(i) provide for —

- (i) the governing of the multi-jurisdictional service utility;
 - (ii) compulsory written reports regarding the activities and performance of the multi-jurisdictional service utility to a parent municipality;
 - (iii) information that may be requested from the multi-jurisdictional service utility by a parent municipality;
 - (iv) the amendment of the agreement; and
 - (v) any other matter necessary for the proper functioning of the multi-jurisdictional service utility.

CLAUSE 23

1. On page 15, in line 39, to omit "participating" and to substitute "parent".

CLAUSE 25

1. On page 15, in line 53, to omit "participating" and to substitute "**[participating]** parent".
2. On page 16, in line 4, to omit "participating" and to substitute "**[participating]** parent".
3. On page 16, in line 12, to omit "participating" and to substitute "**[participating]** parent".
4. On page 16, from line 13, to omit paragraph (c) and to substitute:
 - (c) may appoint a nominee to inspect, at any time during normal business hours, the books, records, operations and facilities of the **[governing body]** multi-jurisdictional service utility, and **[of]** those of its contractors relating to the **[provision of the municipal service]** performance of the function or power for which the [district] multi-jurisdictional service utility is established.".

CLAUSE 26

1. On page 16, in line 25, to omit "participating" and to substitute "**[participating]** parent".
2. On page 16, in line 27, to omit "participating" and to substitute **[participating]** parent".

CLAUSE 27

1. On page 17, from line 2, to omit the proposed new section 93B and to substitute:

93B. A parent municipality which has sole control of a
municipal entity, or effective control in the case of a municipal entity
which is a private company —

- (a) must ensure that annual performance objectives and indicators for the municipal entity are established by agreement with the municipal entity and included in the municipal entity's multi-year business plan in accordance with section 87(5)(d) of the Municipal Finance Management Act;
- (b) must monitor and annually review, as part of the municipal entity's annual budget process as set out in section 87 of the Municipal Finance Management Act, the performance of the municipal entity against the agreed performance objectives and indicators; and
- (c) may liquidate and disestablish the municipal entity -
 - (i) following an annual performance review, if the performance of the municipal entity is unsatisfactory;
 - (ii) if the municipality does not impose a financial recovery plan in terms of the Municipal Finance Management Act and the municipal entity continues to experience serious or persistent financial problems; or
 - (iii) if the municipality has terminated the service delivery agreement or other agreement it had with the municipal entity.

2. On page 17, from line 19, to omit paragraph (a) and to substitute:

(a) must enter into a mutual agreement determining and regulate -
ing-

- (i) their mutual relationships in relation to the municipal entity;
- (ii) the exercise of any shareholder, contractual or other rights and powers they may have in respect of the municipal entity;
- (iii) the exercise of their powers and functions in terms of this Act and the Municipal Finance Management Act with respect to the municipal entity;
- (iv) measures to ensure that annual performance objectives and indicators for the municipal entity are established by agreement with the municipal entity and included in the municipal entity's multi-year business plan in accordance with section 87(5)(d) of the Municipal Finance Management Act;
- (v) the monitoring and annual review, as part of the municipal entity's annual budget process as set out in section 87 of the Municipal Finance Management Act, of the performance of the municipal entity against the established performance objectives and indicators;
- (vi) the payment of any monies by the municipalities to the municipal entity or by the municipal entity to the municipalities;
- (vii) procedures for the resolution of disputes between those municipalities;
- (viii) procedures governing conditions for and consequences of withdrawal from the municipal entity by a municipality;
- (ix) procedures for terminating the appointment and utilisation of the municipal entity as a mechanism for the performance of a municipal function;
- (x) the disestablishment of the municipal entity, the division, transfer or liquidation of its assets and the determination of the responsibility for its liabilities; and
- (xi) any other matter that may be prescribed; and

3. On page 17, from line 43, to omit paragraph (b) and to substitute:

(b) may liquidate and disestablish the municipal entity —

- (i) following an annual performance review, if the performance of the municipal entity is unsatisfactory;
- (ii) if the municipality does not impose a financial recovery plan in terms of the Municipal Finance Management Act and the municipal entity continues to experience serious or persistent financial problems; or
- (iii) if the municipality has terminated the service delivery agreement or other agreement it had with the municipal entity.

4. On page 17, from line 51, to omit the proposed new section 93D and to substitute:

93D. (1) The council of a parent municipality must designate
a councillor or an official of the parent municipality, or both, as the representative or representatives of the parent municipality –

- (a) to represent the parent municipality as a non-participating observer at meetings of the board of directors of the municipal entity concerned; and
- (b) to attend shareholder meetings and to exercise the parent municipality's rights and responsibilities as a shareholder, together with such other councillors or officials that the council may designate as representatives.

(2) (a) The official lines of communications between a municipal

entity and the parent municipality exist between the chairperson of the board of directors of the municipal entity and the mayor or executive mayor, as the case may be, of the parent municipality.

(b) The mayor or executive mayor, as the case may be, of a parent municipality may at any time call or convene any meeting of shareholders or other general meeting comprising the board of directors of the municipal entity concerned and the representatives of the parent municipality, in order for the board of directors to give account for actions taken by it.

(c) The council of a parent municipality may determine the reporting responsibilities of a municipal representative referred to in subsection (1)(a) or (b).

(3) (a) A municipal representative referred to in subsection (1)(b), must represent the parent municipality faithfully at shareholder meetings, without consideration of personal interest or gain, and must keep the council informed of—

- (i) how voting rights were exercised; and
- (ii) all relevant actions taken on behalf of the municipality by the representative.

(b) A municipal representative referred to in subsection (1)(a) or (b) -

- (i) must act in accordance with the instructions of the council; and
- (ii) may be reimbursed for expenses in connection with his or her duties as a municipal representative, but may not receive any additional compensation or salary for such duties.

5. On page 18, in line 18, to omit paragraph (b) and to substitute:

(b) must consist of at least a third non-executive directors; and

6. On page 18, in line 19, to omit "may" and to substitute "must" .

7. On page 18, from line 28, to omit the proposed new section 93F and to substitute:

93F. (1) A person is not eligible to be a director of a municipal entity if he or she —

- (a) holds office as a councillor of any municipality;
- (b) is a member of the National Assembly or a provincial legislature;
- (c) is a permanent delegate to the National Council of Provinces;
- (d) is an official of the parent municipality of that municipal entity;
- (e) was convicted of any offence and sentenced to imprisonment without the option of a fine, and a period of five years since completion of the sentence has not lapsed;
- (f) has been declared by a court to be of unsound mind; or
- (g) is an unrehabilitated insolvent.

(2) If a director of a municipal entity during that person's term of office becomes disqualified on a ground mentioned in subsection (1), such person ceases to be a director from the date of becoming disqualified.

8. On page 18, in line 49, to omit "effectively;" and to substitute "effectively; or".

9. On page 18, in line 55, to omit "conduct; or" and to substitute "conduct.".

10. On page 19, from line 1, to omit paragraph (d).

11. On page 19, in line 23, to omit "86C" and to substitute "93L".
12. On page 19, from line 25, to omit the proposed new section 931 and to substitute:

93L. (1) Meetings of the board of directors of a municipal entity must be open to the municipal representatives referred to in section 93D(1)(a).

(2) Municipal representatives referred to in section 93D(1)(a) have non-participating observer status in a meeting of the board of directors of a municipal entity.

13. On page 19, in line 31, to omit "board directors" and to substitute "board of directors".
14. On page 19, in line 38, to omit "No municipal entity may" and to substitute:

A municipal entity may not

15. On page 19, from line 44, to omit paragraph (a) and to substitute:

(a) the acquisition by a municipal entity of securities in a company listed on the Johannesburg Securities Exchange for investment purposes, subject to any applicable provisions of the Municipal Finance Management Act; or

16. On page 19, after line 48, to add:

Code of Conduct for directors and members of staff of municipal entity

93L. (1) (a) The Code of Conduct for councillors contained in Schedule 1 applies, with the necessary changes, to directors of a municipal entity.

(b) In the application of item 14 of Schedule 1 to directors of a municipal entity, that item must be regarded as providing as follows:

'Breaches of Code

14. (1) The board of directors of a municipal entity may —

- (a) investigate and make a finding on any alleged breach of a provision of this Code by a director; or
- (b) establish a special committee —
 - (i) to investigate and make a finding on any alleged breach of a provision of this Code by a director; or
 - (ii) to make appropriate recommendations to the board of directors.

(2) If the board of directors or special committee finds that a director has breached a provision of this Code, the board of directors may -

- (a) issue a formal warning to the director;
- (b) reprimand the director;
- (c) fine the director; or
- (d) recommend to the parent municipality that the director be removed or recalled in terms of section 93G.

(3) The board of directors of a municipal entity must inform a parent municipality of that entity of any action taken against a director in terms of subsection (2).'

(2) The Code of Conduct for municipal staff members contained in Schedule 2 applies, with the necessary changes, to members of staff of a municipal entity.

(3) For purposes of this section, any reference in Schedule 1 or 2 to a 'councillor', 'MEC for local government in the province', 'municipal council', 'municipality' and 'rules and orders' must, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a director of a municipal entity, parent municipality, board of directors, municipal entity and procedural rules respectively".

CLAUSE 28

1. On page 20, in line 2, to omit "principal Act is" and to substitute:

principal Act and the Part-heading preceding section 94 are

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 120 of Act 32 of 2000

28. Section 120 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) the matters listed in sections 22, 37, 49, 72, **[94]** 86A and 104;"

CLAUSE 29

1. On page 20, from line 7, to omit subitem (1) and to substitute:

(1) A breach of this Code is a ground for dismissal or other disciplinary steps against a staff member who has been found guilty of such a breach.

2. On page 20, in line 9, to omit "disciplinary steps include" and to substitute "disciplinary steps may include".
3. On page 20, in line 10, to omit paragraph (a) and to substitute:
(a) suspension without pay for no longer than three months;

NEW CLAUSE

1. That the following be a new Clause:

Amendment of Table of Contents of Act 32 of 2000

30. The Table of Contents of the principal Act is hereby amended—

- (a) by the substitution for the references to sections 9 and 10 of the following references:
"9. Assignment of functions or powers to municipalities generally by Acts of Parliament or provincial Acts
10 Assignment of functions or powers to specific municipalities by acts of executive or by agreement";
- (b) by the insertion after the reference to section 10 of the following reference:
"10A. Funding and capacity building"

- (c) by the insertion after the reference to section 21 of the following references:
"21A. Documents to be made public
21B. Official website";
- (d) by the substitution for the reference to section 46 of the following reference:
 "46. Annual performance reports";
- (e) by the substitution for the reference to Part 4 of Chapter 8 of the following reference:
"Part 4: Internal municipal service districts";
- (f) by the insertion after the reference to section 86 of the following references:
"Part 4A: Regulations and guidelines regarding
municipal services
 86A. Regulations and guidelines regarding municipal services
CHAPTER 8A
MUNICIPAL ENTITIES
Part 1: General provisions
 86B. Kinds of municipal entities
Part 2: Private companies
 86C. Establishment and acquisition of private companies
 86D. Legal Status of private companies established by municipalities or in which municipalities hold interests
 86E. Conditions precedent for establishing or acquiring interests in private companies
 86F. Conditions precedent for co-owning of private companies
 86G. Disposal of companies and equity interests in companies
Part 3: Service utilities
 86H. Establishment
 86I. Legal status of service utilities
 86J. Conditions precedent for establishing service utilities
 86K. Disestablishment of service utilities
Part 4: Multi-jurisdictional service utilities".
- (g) by the substitution for the references to sections 87, 88, 89 and 90 of the following references:
 "87. Establishment of multi-jurisdictional **[municipal service districts]** service utilities
 88. Minister requesting **[the]** establishment of multi-jurisdictional **[municipal service districts]** service utilities
 89. Contents of agreements establishing multi-jurisdictional **[municipal service districts]** service utilities
 90. Legal status of **[governing bodies]** multi-jurisdictional service utilities";
- (h) by the deletion of the reference to section 91;
- (i) by the substitution for the references to sections 92 and 93 of the following references:
 "92. Control of **[governing bodies of]** multi-jurisdictional **[municipal service districts]** service utilities
 93. Termination of multi-jurisdictional **[municipal service districts]** service utilities";
- (j) by the insertion after the reference to section 93 of the following references:

"Part 5: Duties and responsibilities of parent municipalities

- 93A. Duties of parent municipality with respect to municipal entities
- 93B. Parent municipalities having sole control
- 93C. Parent municipalities having shared control
- 93D. Municipal representatives

Part 6: Governance of municipal entities

- 93E. Appointment of directors
- 93F. Disqualifications
- 93G. Removal or recall of directors
- 93H. Duties of directors
- 93I. Meetings of board of directors
- 93J. Appointment of chief executive officer

Part 7: General

- 93K. Establishment of and acquisition of interests in corporate bodies disallowed
- 93L. Code of Conduct for directors and members of staff of municipal entity" and

- (k) by the insertion after the reference to item 14 of Schedule 2 of the following reference:
"14A. Disciplinary steps".

CLAUSE 30

Clause rejected.

NEW CLAUSE

- 1. That the following be a new Clause:

Transitional provisions

31. (1) If a municipality has established any corporate body, including a trust, under or in terms of applicable legislation before this Act took effect, such a corporate body continues to exist, despite the provisions of Chapter 8A of the principal Act, until such corporate body is disestablished or liquidated, as the case may be.

(2) A corporate body, including a trust, referred to in subsection (1) must be regarded as a municipal entity for the purposes of this Act, the principal Act and the Local Government: Municipal Finance Management Act, 2003, to the extent that the provisions of those Acts can be applied.

(3) A municipality that has established a corporate body referred to in subsection (1), must within three months after this Act takes effect, publish a list of all such corporate bodies in the relevant provincial gazette and make that list public in terms of section 21A of the principal Act.

(4) If, before this Act took effect —

- (a) a municipality or municipal entity has established a company referred to in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), the municipality or the parent municipality of the municipal entity may, despite that Act, pass a by-law converting the company into a service utility under the sole control of the municipality or parent municipality; or
- (b) two or more municipalities have established a company referred to in section 21 of the Companies Act, 1973 (Act No. 61 of 1973), those municipalities may, despite that Act, enter into an agreement converting the company into a multi-jurisdictional service utility under the shared control of those municipalities.

- (5) A by-law referred to' in subsection (4)(a) and an agreement referred to in subsection (4)(b) —
- (a) must substantially comply with sections 8611 (2) and 89, respectively, of the principal Act; and
 - (b) may provide for such transitional and other provisions as may be necessary to effectively convert the company into a service utility or multi-jurisdictional service utility, as the case may be.

LONG TITLE

1. On page 2, in the third line, to omit "**additional**".
2. On page 2, in the fourth line, to omit "**municipalities, and to provide**" and to substitute:

municipalities; to provide