

REPUBLIC OF SOUTH AFRICA

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**LOCAL GOVERNMENT:  
MUNICIPAL STRUCTURES BILL**

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*(As introduced in the National Assembly)*

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(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

[B 68—98]

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REPUBLIEK VAN SUID-AFRIKA

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**WETSONTWERP OP PLAASLIKE  
REGERING: MUNISIPALE  
STRUKTURE**

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*(Soos ingedien in die Nasionale Vergadering)*

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(MINISTER VIR PROVINSIALE SAKE EN STAATKUNDIGE ONTWIKKELING)

[W 68—98]

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# BILL

To provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipality; to establish criteria for determining the category of municipality to be established in an area; to define the types of municipality that may be established within each category; to provide for an appropriate division of functions and powers between categories of municipality; to regulate the internal systems, structures and office-bearers of municipalities; to provide for appropriate electoral systems; and to provide for matters in connection therewith.

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**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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#### DEFINITIONS

##### Definitions

- |        |   |    |
|--------|---|----|
| 1.     | In this Act, unless the context otherwise indicates—  | 30 |
| (i)    | “ <b>by-election</b> ” means an election that is held between the regular elections called in terms of section 21; (xxiii)  |    |
| (ii)   | “ <b>category</b> ”, in relation to municipalities, means a category A, B or C municipality envisaged in section 155(1) of the Constitution; (viii)   |    |
| (iii)  | “ <b>councillor</b> ” means a member of a municipal council; (xx)   | 35 |
| (iv)   | “ <b>Demarcation Act</b> ” means the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998); (ii)   |    |
| (v)    | “ <b>Demarcation Board</b> ” means the Municipal Demarcation Board established by section 2 of the Demarcation Act; (i)   |    |
| (vi)   | “ <b>district council</b> ” means the municipal council of a district municipality; (v)   | 40 |
| (vii)  | “ <b>district municipality</b> ” means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155(1) of the Constitution as a category C municipality; (iv) |    |
| (viii) | “ <b>Electoral Act</b> ” the Electoral Act, 1998; (ix)  | 45 |
| (ix)   | “ <b>Electoral Commission</b> ” means the Electoral Commission established by section 181 of the Constitution; (xxvi)   |    |
| (x)    | “ <b>executive committee</b> ” means an executive committee established in terms of section 38; (xxv)   |    |
| (xi)   | “ <b>executive mayor</b> ” means an executive mayor elected in terms of section 51; (xxiv)  | 50 |

- (xii) **“existing municipality”** includes a municipality that existed when this Act took effect; (iii)
- (xiii) **“integrated development plan”** means a plan aimed at the integrated development and management of a municipal area; (vi)
- (xiv) **“local council”** means the municipal council of a local municipality; (xix) 5
- (xv) **“local municipality”** means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155(1) of the Constitution as a category B municipality; (xviii)
- (xvi) **“MEC for local government”** means the member of the Executive Council of a province responsible for local government in the province; (x) 10
- (xvii) **“metro council”** means the municipal council of a metropolitan municipality; (xiii)
- (xviii) **“metropolitan local council”** means a metropolitan local council established in terms of section 58; (xii) 15
- (xix) **“metropolitan municipality”** means a municipality that has exclusive executive and legislative authority in its area, and which is described in section 155(1) of the Constitution as a category A municipality; (xi)
- (xx) **“Minister”** means the Minister responsible for local government; (xiv)
- (xxi) **“municipal council”** or **“council”** means a municipal council referred to in section 157 of the Constitution; (xv) 20
- (xxii) **“municipality”** includes a municipality referred to in section 155(6) of the Constitution; (xvi)
- (xxiii) **“organised local government”** means a provincial organisation recognised in terms of section 2(1)(b) of the Organised Local Government Act, 1997 (Act No. 52 of 1997); (vii) 25
- (xxiv) **“party”** means any local organisation, body or voluntary association which has objects and purposes which, among others, have relevance to local government matters, and includes a political party which has been registered in terms of the Electoral Act; (xvii) 30
- (xxvi) **“prescribe”** means prescribe by regulation in terms of section 87; (xxvii)
- (xxvi) **“sparsely populated area”** means a part of a district municipality which in terms of section 6 has no local municipality and is governed by that district municipality alone; (xxx)
- (xxvii) **“speaker”** means a councillor elected in terms of section 31 to be the chairperson of a municipal council as envisaged in section 160(1)(b) of the Constitution; (xxi) 35
- (xxviii) **“type”** in relation to municipalities, means a type of municipality envisaged in section 155 (2) of the Constitution, and defined in Part 2 of Chapter 1 of this Act; (xxii) 40
- (xxix) **“ward”** means a ward mentioned in item 2 of Schedule 1; (xxviii)
- (xxx) **“ward committee”** means a ward committee established in terms of section 69. (xxix)

## CHAPTER 1

### CATEGORIES AND TYPES OF MUNICIPALITY 45

#### *Part 1: Categories of municipality*

#### Areas which must have category A municipalities

2. An area must have a single category A municipality if that area—
  - (a) can reasonably be regarded as—
    - (i) a conurbation; 50
    - (ii) a functionally integrated area;
    - (iii) a national centre of economic activity with a complex and diverse economy; and
    - (iv) a single area for which integrated development planning is desirable;
  - and 55
  - (b) is characterised by—
    - (i) strong social and economic linkages between its constituent units; and

- (ii) a high population density.

### **Areas which must have municipalities of both category C and B**

3. An area that does not comply with the criteria set out in section 2 must have municipalities of both category C and category B.

### **Application of criteria** 5

4. (1) The Minister must apply the criteria set out in section 2 and decide whether an area in terms of the criteria must have a single category A municipality or whether it must have municipalities of both category C and category B.

(2) The Minister may decide that an area must have a category A municipality, only after consultation with the MEC for local government in the province concerned and the Demarcation Board. 10

### **Declaration of metropolitan areas**

5. (1) If the Minister decides that an area must have a single category A municipality, the Minister, by notice in the *Government Gazette*, must declare that area as a metropolitan area. 15

(2) When declaring an area as a metropolitan area the Minister identifies the area by designating the core city but must leave the determination of the outer boundaries to the Demarcation Board.

### **Parts of category C areas in which category B municipalities not viable.**

6. (1) If a part of an area that in terms of section 3 must have municipalities of both category C and category B, is declared in terms of subsection (2) as a sparsely populated area, that part does not have a category B municipality. 20

(2) The Minister, on the recommendation of the Demarcation Board and after consulting the MEC for local government in the province concerned, may declare a part of an area that must have municipalities of both category C and category B as a sparsely populated area if— 25

- (a) the establishment of a category B municipality in that part will not be conducive to fulfilment of the objectives set out in section 24 of the Demarcation Act because the area is too sparsely populated and settlements in the area are too dispersed; and 30
- (b) no traditional authorities exist in the area.

## ***Part 2: Types of municipality***

### **General**

7. (1) The different types of municipality that may be established within each category of municipality are as set out in this Part. 35

(2) For the purposes of defining the different types of municipality—

- (a) a category A, B or C municipality is called a metropolitan, local or district municipality, respectively; and
- (b) 'capacity', in relation to a municipality, means the administrative and financial management capability and infrastructure that enable a municipality to collect revenue and to govern on its own initiative the local government affairs of its community. 40

### **Types of metropolitan municipalities**

8. There are the following types of metropolitan municipalities:

- (a) Metropolitan executive committee type, i.e. a type of metropolitan municipality which has the power to establish an executive committee. 45
- (b) Metropolitan executive committee (metropolitan local councils) type, i.e. a

- type of metropolitan municipality which has the power to establish an executive committee and the power to establish metropolitan local councils.
- (c) Metropolitan executive mayor type, i.e. a type of metropolitan municipality which has the power to elect an executive mayor.
- (d) Metropolitan executive mayor (metropolitan local councils) type, i.e. a type of metropolitan municipality which has the power to elect an executive mayor and the power to establish metropolitan local councils. 5

### **Types of local municipalities**

9. There are the following types of local municipality:
- (a) Local executive committee type, i.e. a type of local municipality which has wards and has the power to establish an executive committee. 10
- (b) Local executive committee (developing) type, i.e. a type of local municipality which has wards and has the power to establish an executive committee but has a general lack of capacity.
- (c) Local executive mayor type, i.e. type of local municipality which has wards and has the power to elect an executive mayor. 15
- (d) Local executive mayor (developing) type, i.e. a type of local municipality which has wards and has the power to elect an executive mayor but has a general lack of capacity.
- (e) Local plenary type, i.e. a type of local municipality which has no wards and has neither the power to establish an executive committee nor the power to elect an executive mayor. 20
- (f) Local plenary (developing) type, i.e. a type of local municipality which has neither the power to establish an executive committee nor the power to elect an executive mayor, and has a general lack of capacity. 25

### **Types of district municipalities**

10. There are the following types of district municipalities:
- (a) District executive committee type, i.e. a type of district municipality which has the power to establish an executive committee.
- (b) District executive mayor type, i.e. a type of district municipality which has the power to elect an executive mayor. 30
- (c) District plenary type, i.e. a type of district municipality which has neither the power to establish an executive committee nor the power to elect an executive mayor.

### **Determination of types for provinces 35**

11. Provincial legislation must determine for each category of municipality the different types of municipality that may be established in that category in the province.

## **CHAPTER 2**

### **ESTABLISHMENT OF MUNICIPALITIES**

#### **MECs to establish municipalities 40**

12. (1) The MEC for local government in a province, by notice in the *Provincial Gazette*, must establish a municipality in each municipal area which the Demarcation Board demarcates in the province in terms of the Demarcation Act.

- (2) The establishment of a municipality—
- (a) must be consistent with the provisions of this Act; and 45
- (b) takes effect on the date—

- (i) of the first election for the council of that municipality, if it is a metropolitan or local municipality; or
  - (ii) of the first appointment of the councillors of that municipality, if it is a district municipality.
- (3) The notice establishing the municipality must specify— 5
- (a) the category of municipality that is established;
  - (b) the type of municipality that is established;
  - (c) the boundaries of the municipal area;
  - (d) the name of the municipality;
  - (e) the number of councillors; 10
  - (f) the full-time or part-time capacity of any of the municipality's elected office-bearers;
  - (g) any provisions of this Act from which the municipality has been exempted in terms of section 86; and
  - (h) any other relevant detail. 15
- (4) Before publishing a notice in terms of this section, the MEC for local government must consult—
- (a) organised local government in the province; and
  - (b) the existing municipalities affected by the notice.

### **Regulation of effects of establishment of municipality on existing municipalities** 20

- 13.** (1) The establishment of a municipality in terms of section 12 in the area of an existing municipality supersedes the existing municipality in that area, and the new municipality becomes its successor in title with regard to that area.
- (2) If subsection (1) is applicable, the section 12 notice must— 25
- (a) provide for the disestablishment of the existing municipality or, if only part of the existing municipality's area is affected, the disestablishment of the existing municipality in the affected area; and
  - (b) regulate the legal, practical and other consequences of the total or partial disestablishment of the existing municipality, including— 30
    - (i) the vacation of office by councillors of the existing municipality;
    - (ii) the transfer of staff from the existing municipality to the superseding municipality;
    - (iii) where applicable, the retrenchment of staff;
    - (iv) the transfer of assets, liabilities and administrative and other records from the existing municipality to the superseding municipality; and 35
    - (v) the continued application of any by-laws, regulations and resolutions of the existing municipality to or in that area, and the extent of such application.
- (3) The transfer or retrenchment of staff in terms of a section 12 notice must take place in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995). 40
- (4) (a) On production of a certificate by a municipality that any asset registered in a deeds registry was transferred to it in terms of a section 12 notice, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that asset in the name of that municipality.
- (b) No duty, fee or other charge is payable for a registration in terms of paragraph (a). 45
- (5) The MEC for local government in a province, by notice in the *Provincial Gazette*, may make provision for transitional measures to facilitate the disestablishment of an existing municipality and the establishment of a new municipality.

### **Review and rationalisation of existing municipal by-laws** 50

- 14.** If an existing municipality is wholly or partially superseded by another municipality, the by-laws, regulations and resolutions (including standing delegations) of the existing municipality, to the extent that they continue to apply in the area or part

of the area of the superseding municipality as provided for in section 13(2) (b)(v), must be reviewed and, where necessary, rationalised by the superseding municipality.

#### **Amendment of section 12 notices**

- 15.** (1) The MEC for local government in a province, by notice in the *Provincial Gazette*, may amend a section 12 notice— 5
- (a) with the concurrence of the municipality concerned or the Minister—
    - (i) to change the municipality from its existing type to another type that may be established in the province concerned;
    - (ii) to alter the name of the municipality;
    - (iii) to alter the number of councillors, but only with effect from the next election of the municipal council or, if it is a district municipality, with effect from the date of the next appointment of councillors; 10
    - (iv) concerning the full-time or part-time capacity of any of the municipality's elected office-bearers; or
    - (v) to specify any provisions of this Act from which the municipality has been exempted in terms of section 86; or 15
  - (b) to regulate further the matters mentioned in section 13, after consulting all affected municipalities.
- (2) Any amendment of a section 12 notice must be consistent with the provisions of this Act. 20

#### **Repeal, amendment or replacement of section 12 notices when boundaries are re-determined**

- 16.** (1) When the Demarcation Board in terms of the Demarcation Act re-determines a municipal boundary which affects the area of a municipality established in terms of section 12— 25
- (a) the provisions of sections 12 and 13 are applicable to the extent necessary to give effect to the re-determination; and
  - (b) the MEC for local government in the province concerned must repeal, amend or replace the relevant section 12 notice as may be required in the circumstances. 30
- (2) Before repealing, amending or replacing any notice in terms of subsection (1)(b), the MEC for local government must consult the affected municipalities.
- (3) A repeal, amendment or replacement of a section 12 notice takes effect on a date mentioned in the notice, but if the number of councillors is changed section 15(1)(a)(iii) applies. 35

### **CHAPTER 3**

#### **MUNICIPAL COUNCILS**

##### *Part 1: Composition, membership, operation and dissolution*

#### **Municipalities must have municipal councils**

- 17.** (1) Each municipality must have a municipal council. 40
- (2) A municipal council must meet regularly.
- (3) A municipal council consists of an appropriate number of councillors determined by the MEC for local government in the province concerned by notice in the *Provincial Gazette*.
- (4) A municipality may have full-time members, but only as determined by the MEC for local government in the province within a policy framework as may be determined by the Minister. 45

#### **Determination of number of councillors**

- 18.** (1) The number of councillors of a municipal council—

- (a) must be determined in accordance with a prescribed formula based on the number of registered voters in the municipality;
  - (b) may not be less than three or more than 60 councillors if it is a local or district municipality; and
  - (c) may not be less than 60 or more than 180 councillors if it is a metropolitan municipality. 5
- (2) 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 10
  - (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; 15
    - (iii) adequate representation;
    - (iv) responsiveness and accountability of councillors, taking into account the possible use of modern communication techniques and facilities; and
    - (v) the optimum use of municipal funds for councillor allowances and administrative support facilities. 20

### Qualifications for councillors

- 19.** (1) Every citizen who is qualified to vote for a particular municipal council has the right—
- (a) to stand as a candidate in an election for that council, except a person disqualified in terms of section 158(1)(c) of the Constitution; and 25
  - (b) if elected, to become and remain a councillor, except a person disqualified in terms of section 158(1)(a), (c), (d) or (e) of the Constitution while the disqualification prevails.
- (2) The MEC for local government in a province, by notice in the *Provincial Gazette*, may exempt a person from a disqualification mentioned in section 158(1)(a) of the Constitution to be a member of the municipal council concerned when this is in the interests of good governance. 30
- (3) A councillor of a district municipality must either be a councillor of a local municipality within that district municipality or an elected representative of a sparsely populated area within that district municipality. 35

### Election or appointment of councillors

- 20.** (1) The councillors of a metropolitan or local municipality must be elected—
- (a) by voters registered on that municipality's segment of the national common voters' roll; and 40
  - (b) in accordance with the electoral system set out in Schedule 1.
- (2) The councillors representing local municipalities in a district municipality must be appointed—
- (a) by the councils of the local municipalities within the area of the district municipality; and 45
  - (b) in accordance with the electoral system set out in Schedule 2.
- (3) The councillors representing a sparsely populated area in a district municipality must be elected—
- (a) by voters registered in that area on the municipality's segment of the national voters' roll; and 50
  - (b) in accordance with the electoral system set out in Schedule 1.

### When elections must be held

- 21.** (1) Elections for metro and local councils and of representatives of sparsely populated areas to district councils, must be held—
- (a) at intervals of four years; and 55

(b) on the same date or dates.

(2) Whenever necessary, the Minister, after consulting the Electoral Commission, must, by notice in the *Government Gazette*, call and set a date or dates for an election referred to in subsection (1). The date or dates must be within 90 days of the expiry of the term of municipal councils. 5

(3) A local council must appoint its representatives to the district council within two weeks after the declaration of the result of the election of the local council.

### **By-elections for metro and local councils, and in sparsely populated areas and wards**

**22.** (1) A by-election for a metro or local council, or in a sparsely populated area, or in a ward, as the case may be, must be held if— 10

(a) the Electoral Commission does not declare the result of the election of that council, or in that sparsely populated area, or in that ward, within the period specified in the Electoral Act;

(b) a court sets aside the election of that council, or in that sparsely populated area, or in that ward; 15

(c) that council is dissolved, but the MEC for local government in the province concerned may decide that the election of the council must stand over until the next election of all metro and local councils if that election must be held within the next year; or 20

(d) a vacancy in a ward occurs.

(2) If the election in a specific ward is the reason why the Electoral Commission does not declare the result of the election of a metro or local council, a by-election must be held in that ward only.

(3) The MEC for local government in the province, after consulting the Electoral Commission, must by notice in the *Provincial Gazette* call and set a date or dates for the by-election, which must be held within 90 days of the date— 25

(a) of the last voting day of the previous election, if subsection (1)(a) applies;

(b) on which the election was set aside by the court, if subsection (1)(b) applies;

(c) on which the metro or local council was dissolved, if subsection (1)(c) applies; 30  
or

(d) on which the vacancy occurred, if subsection (1)(d) applies.

### **Term of office of councillors**

**23.** (1) A person—

(a) is elected as a member of a metro or local council for a period ending when the next metro or local council is declared elected; or 35

(b) is appointed as a representative of a local council, or elected as a representative of a sparsely populated area, to a district council for a period ending when the next representatives of that local council or that sparsely populated area are appointed or elected. 40

(2) A person assumes office as a councillor when declared elected or when appointed, as the case may be.

### **Vacation of office**

**24.** A councillor vacates office during a term of office if that councillor—

(a) resigns in writing; 45

(b) is no longer qualified to be a councillor;

(c) was elected from a party list referred to in Schedule 1 and ceases to be a member of the relevant party;

(d) contravenes a provision of the Code of Conduct for Councillors set out in Schedule 5 and is removed from office in terms of the Code; or 50

(e) ceases to be a member of the local council which appointed that councillor to the district council concerned.

### **Privileges and immunities**

- 25.** Provincial legislation must provide—
- (a) that councillors have freedom of speech in a municipal council and in its committees; and
  - (b) for the circumstances in which councillors are or are not liable to civil or criminal proceedings, arrest, imprisonment or damages for—
    - (i) anything that they have said in, produced before or submitted to the council or any of its committees; or
    - (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the council or any of its committees.

### **Meetings of municipal councils**

**26.** The speaker of a municipal council decides when and where the council meets, but if a majority of the councillors requests the speaker in writing to convene a council meeting, the speaker must convene a meeting at a time and place set out in the request.

### **Quorums and decisions** 15

- 27.** (1) A majority of the councillors must be present at a meeting of the council before a vote may be taken on any matter.
- (2) All questions concerning matters mentioned in section 160(2) of the Constitution are determined by a decision taken by a municipal council with a supporting vote of a majority of the councillors. 20
- (3) All other questions before a municipal council are decided by a majority of the votes cast, subject to section 29.
- (4) If on any question there is an equality of votes, the councillor presiding must exercise a casting vote in addition to that councillor's vote as a councillor. 25
- (5) Before a municipal council takes a decision on any of the following matters it must first require its executive committee or executive mayor, if it has such a committee or mayor, to submit to it a report and recommendation on the matter:
- (a) any matter mentioned in section 160(2) of the Constitution;
  - (b) the approval of an integrated development plan for the municipality, and any amendment to that plan; and 30
  - (c) the appointment and conditions of service of the chief executive officer and a head of a department of the municipality.

### **Assignment of powers and duties to committees and other internal functionaries**

- 28.** (1) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and in accordance with that system may— 35
- (a) delegate appropriate powers, excluding a power mentioned in section 160(2) of the Constitution and the power to approve its integrated development plan, to its—
    - (i) executive committee, if it has an executive committee; 40
    - (ii) executive mayor, if it has an executive mayor;
    - (iii) metropolitan local councils, if it has such councils;
    - (iv) ward committees, if it has ward committees;
    - (v) other committees or elected office-bearers; and
    - (vi) chief executive officer; 45
  - (b) instruct any such committee or functionary to perform any of the council's duties; and
  - (c) withdraw any delegation or instruction.
- (2) A delegation or instruction in terms of subsection (1)—
- (a) must be in accordance with the Constitution and this Act; 50
  - (b) must be effected in writing;

- (c) is subject to any limitations, conditions and directions the municipal council may impose;
  - (d) may include the power to sub-delegate a delegated power; and
  - (e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty. 5
- (3) The municipal council—
- (a) in accordance with procedures in its rules and orders, may review any decision taken by a committee or functionary in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any vested rights; and 10
  - (b) may require its executive committee or executive mayor to co-ordinate or review any decision taken by a committee or functionary in consequence of a delegation or instruction.

### **Dissolution of municipal councils**

- 29.** (1) A municipal council may dissolve itself by resolution adopted with a supporting vote of at least two thirds of the councillors at a meeting called specially for this purpose. 15
- (2) A municipal council may dissolve itself only when two years have passed since the council was last elected.
- (3) The MEC for local government in a province, by notice in the *Provincial Gazette*, may dissolve a municipal council in the province if— 20
- (a) the Electoral Commission in terms of section 23(2)(a) of the Demarcation Act is of the view that a boundary determination affects the representation of voters in that council and the remaining term of the council is more than one year; or 25
  - (b) an intervention in terms of section 139 of the Constitution has not resulted in the council being able to fulfil its obligations in terms of legislation.
- (4) The MEC for local government may dissolve a municipal council in terms of subsection (3)(b) only—
- (a) with the concurrence of the Minister; and 30
  - (b) after notice of that dissolution has been tabled in the National Council of Provinces and the Council has approved the dissolution.

### **Caretaker provisions**

- 30.** (1) If a council is dissolved or does not have enough members for a quorum, the MEC for local government in the province may appoint one or more administrators to ensure the continued functioning of the municipality until a new municipal council is elected or until the council has sufficient members for a quorum. 35
- (2) When appointing one or more administrators the MEC for local government, by notice in the *Provincial Gazette*, must determine the functions and powers of the administrator or administrators. 40

## ***Part 2: Speakers of municipal councils***

### **Election of speakers**

- 31.** (1) Each municipal council must have a chairperson who will be called the speaker.
- (2) At its first sitting after its election, or when necessary to fill a vacancy, a municipal council must elect its speaker from among the councillors. 45
- (3) The chief executive officer of the municipality presides over the election of a speaker.
- (4) The procedure set out in Schedule 3 applies to the election of a speaker.
- (5) A councillor may not hold office as speaker or mayor or executive mayor at the same time. 50

### **Functions of speakers**

- 32.** The speaker of a municipal council—

- (a) presides at meetings of the council and may designate another member of the council to relieve the speaker;
- (b) performs the duties and exercises the powers assigned to the speaker in terms of section 28;
- (c) must ensure that the council regularly meets; 5
- (d) must maintain discipline among the councillors during meetings;
- (e) must ensure compliance in the council and council committees with the Code of Conduct set out in Schedule 5; and
- (f) must ensure that council meetings are conducted in accordance with the rules and orders of the council. 10

### **Term of office of speakers**

**33.** The speaker of a municipal council is elected for a term ending when the next speaker is elected, subject to section 34.

### **Vacation of office**

- 34.** The speaker of a municipal council vacates office during a term if that person— 15
- (a) resigns as speaker;
  - (b) is removed from office; or
  - (c) ceases to be a councillor.

### **Removal from office**

**35.** A municipal council, by resolution taken at a meeting specially convened for this purpose, may remove its speaker from office. 20

### **Acting speakers**

**36.** If the speaker of a municipal council is absent or not available to perform the functions of speaker, or during a vacancy, the council must elect another councillor to act as speaker. 25

## **CHAPTER 4**

### **INTERNAL STRUCTURES AND FUNCTIONARIES**

#### *Part 1: Executive committees*

#### **Only municipalities of certain types may establish executive committees**

- 37.** (1) Only the following types of municipality may elect an executive committee: 30
- (a) metropolitan executive committee type;
  - (b) metropolitan executive committee (metropolitan local councils) type;
  - (c) local executive committee type;
  - (d) local executive committee (developing) type; and
  - (e) district executive committee type. 35
- (2) If a municipality establishes an executive committee, the provisions of this Part apply.

#### **Composition of executive committees**

**38.** (1) If the council of a municipality establishes an executive committee, it must elect a number of councillors necessary for effective and efficient government, provided no more than 20 per cent of the councillors or 10 councillors, whichever is the least, are elected. An executive committee may not have less than three members. 40

(2) An executive committee must be composed in such a way that parties represented in the municipal council are represented in the executive committee in substantially the same proportion they are represented in the council. 45

(3) A municipal council may determine any alternative mechanism for the election of an executive committee, provided that it complies with section 160(8) of the Constitution.

### Functions and powers of executive committees

- 39.** (1) An executive committee is—
- (a) the principal committee of a municipal council that is entitled to establish an executive committee; and
  - (b) entitled to submit to the council its own comment and recommendations on a report or recommendation by any other committee. 5
- (2) The executive committee must—
- (a) identify the needs of the municipality;
  - (b) review and evaluate those needs in order of priority;
  - (c) recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan and estimates of revenue and expenditure; and 10
  - (d) recommend or determine the best methods, including partnership and other approaches, to deliver those strategies, programmes and services to the maximum benefit of the community. 15
- (3) The executive committee in performing its duties must—
- (a) identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2)(c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general; 20
  - (b) evaluate progress against the key performance indicators;
  - (c) review the performance of the municipality in order to improve—
    - (i) the economy, efficiency and effectiveness of the municipality;
    - (ii) the efficiency of credit control and revenue and debt collection services; and 25
    - (iii) the implementation of the municipality's by-laws;
  - (d) monitor the management of the municipality's administration in accordance with the policy directions of the municipal council;
  - (e) oversee the provision of services to communities in the municipality in a sustainable manner; 30
  - (f) perform such duties and exercise such powers as the council may assign to it in terms of section 28;
  - (g) annually report on the involvement of communities and community organisations in the affairs of the municipality; and
  - (h) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council. 35
- (4) An executive committee must report monthly to the municipal council on all decisions taken by the committee.

### Election of members of executive committees

- 40.** A municipal council must elect the members of its executive committee from among its members at a meeting that must be held— 40
- (a) within 14 days of the council's election; or
  - (b) if it is a district council, within 14 days after the last of the local councils has appointed its representatives to the district council.

### Term of office of members 45

- 41.** The members of an executive committee are elected for a term ending when the next executive committee is elected, subject to section 42.

### Vacancies

- 42.** (1) A member of an executive committee vacates office during a term if that member— 50
- (a) resigns as a member of the executive committee;
  - (b) is removed from office as a member of the executive committee in terms of section 48; or
  - (c) ceases to be a councillor.

(2) A member of an executive committee who as councillor represents a ward, vacates office as such a member if that member changes party affiliations, but is eligible for re-election.

### **Election of mayor**

**43.** (1) The municipal council must elect a member of its executive committee as the mayor of the municipality. 5

(2) The election of a mayor takes place when the executive committee is elected or when it is necessary to fill a vacancy.

(3) The procedure set out in Schedule 3 applies to the election of a mayor.

(4) A mayor is elected for the duration of that person's term as a member of the executive committee, but vacates office during a term if that person— 10

(a) resigns as mayor;

(b) is removed from office as a member of the executive committee in terms of section 48; or

(c) ceases to be a member of the executive committee. 15

(5) A mayor may not serve as mayor for more than two consecutive terms.

### **Functions and powers of mayors**

**44.** The mayor of a municipality—

(a) presides at meetings of the executive committee; and

(b) performs the duties, including any ceremonial functions, and exercises the powers assigned to the mayor by the municipal council or the executive committee. 20

### **Meetings of executive committees**

**45.** (1) The mayor decides when and where the executive committee meets, but if a majority of the members requests the mayor in writing to convene a committee meeting, the mayor must convene a meeting at a time and place set out in the request. 25

(2) If the mayor is absent from a meeting and a quorum is present, the members present must elect another member to preside at the meeting.

### **Procedures of executive committees**

**46.** An executive committee, by resolution taken with a supporting vote of a majority of its members, may determine its own procedures subject to any directions and the rules and orders of the municipal council. 30

### **Quorum and decisions**

**47.** (1) A majority of the members of an executive committee constitutes a quorum for a meeting. 35

(2) A question before the committee is decided if there is agreement among at least the majority of the members present at the meeting.

(3) If on any question there is an equality of votes, the member presiding must exercise a casting vote in addition to that member's vote as a member.

### **Removal from office of executive committees** 40

**48.** (1) A municipal council, by resolution taken at a meeting specially convened for this purpose, may remove from office one or more or all the members of its executive committee.

(2) If all the members of an executive committee are removed, a new election of members and of the mayor must be held in terms of sections 40 and 43, respectively. 45

## Subcommittees

49. An executive committee may appoint subcommittees to assist it in the performance of its duties and the exercise of its powers.

### *Part 2: Executive mayors*

#### **Only municipalities of certain types to elect executive mayors** 5

50. (1) Only the following types of municipality may elect an executive mayor:
- (a) metropolitan executive mayor type;
  - (b) metropolitan executive mayor (metropolitan local councils) type;
  - (c) local executive mayor type;
  - (d) local executive mayor (developing) type; and 10
  - (e) district executive mayor type.
- (2) If the municipality elects an executive mayor, the provisions of this Part apply.

#### **Election of executive mayors**

51. (1) A municipal council must elect the executive mayor from among its members at a meeting that must be held— 15
- (a) within 14 days of the council's election; or
  - (b) if it is a district council, within 14 days after the last of the local councils has elected its representatives to the district council.
- (2) A vacancy in the office of executive mayor must be filled when necessary.
- (3) The procedure set out in Schedule 3 applies to the election of an executive mayor. 20

#### **Functions and powers of executive mayors**

52. (1) An executive mayor is entitled to submit to the council any comment and recommendations on a report or recommendation by any committee.
- (2) The executive mayor must— 25
- (a) identify the needs of the municipality;
  - (b) review and evaluate those needs in order of priority;
  - (c) recommend to the municipal council strategies, programmes and services to address priority needs through the integrated development plan, and the estimates of revenue and expenditure; and
  - (d) recommend or determine the best way, including partnership and other 30 approaches, to deliver those strategies, programmes and services to the maximum benefit of the community.
- (3) The executive mayor in performing the duties of office, must—
- (a) identify and develop criteria in terms of which progress in the implementation of the strategies, programmes and services referred to in subsection (2)(c) can be evaluated, including key performance indicators which are specific to the municipality and common to local government in general; 35
  - (b) evaluate progress against the key performance indicators;
  - (c) review the performance of the municipality in order to improve— 40
    - (i) the economy, efficiency and effectiveness of the municipality;
    - (ii) the efficiency of credit control and revenue and debt collection services; and
    - (iii) the implementation of the municipality's by-laws;
  - (d) monitor the management of the municipality's administration in accordance with the directions of the municipal council; 45
  - (e) oversee the provision of services to communities in the municipality in a sustainable manner;

- (f) perform such duties and exercise such powers as the council may assign to the executive mayor in terms of section 28;
  - (g) annually report on the involvement of communities and community organisations in the affairs of the municipality; and
  - (h) ensure that regard is given to public views and report on the effect of consultation on the decisions of the council. 5
- (4) An executive mayor must perform a ceremonial role as the municipal council may determine.
- (5) An executive mayor must report monthly to the municipal council on all decisions taken by the executive mayor. 10

#### **Term of office of executive mayors**

- 53.** An executive mayor—
- (a) is elected for a term ending when the next executive mayor is elected, subject to section 55;
  - (b) may not serve as executive mayor for more than two consecutive terms. 15

#### **Removal from office**

**54.** A municipal council, by resolution taken at a meeting specially convened for this purpose, may remove its executive mayor from office.

#### **Vacation of office**

- 55.** (1) An executive mayor vacates office during a term if that person— 20
- (a) resigns as executive mayor;
  - (b) is removed from office as executive mayor; or
  - (c) ceases to be a councillor.
- (2) An executive mayor who as councillor represents a ward, vacates office as executive mayor if that person changes party affiliations, but is eligible for re-election. 25

#### **Mayoral committees**

- 56.** (1) An executive mayor may—
- (a) appoint a mayoral committee from among the councillors to assist the mayor;
  - (b) assign specific responsibilities to each member of the committee;
  - (c) delegate any of the executive mayor's powers to the respective members; and 30
  - (d) dismiss a member of the mayoral committee.
- (2) The members of a mayoral committee remain in office after an election of the municipal council until the next executive mayor is elected and assumes office, subject to subsection (3) and section 24.
- (3) If an executive mayor vacates office, the mayoral committee appointed by that mayor dissolves. 35

### ***Part 3: Metropolitan local councils***

#### **Only metropolitan municipalities of certain types to establish metropolitan local councils**

- 57.** (1) Only the following types of metropolitan municipality may establish metropolitan local councils: 40
- (a) metropolitan executive committee (metropolitan local councils) type; and
  - (b) metropolitan executive mayor (metropolitan local councils) type.
- (2) If a municipality establishes metropolitan local councils, the provisions of this Part apply. 45

### Establishment of metropolitan local councils

- 58.** (1) If a metropolitan municipality decides to establish metropolitan local councils, it must do so by passing a by-law which—
- (a) determines the number of metropolitan local councils to be established;
  - (b) determines for each metropolitan local council an area within the municipality consisting of a cluster of adjoining wards; 5
  - (c) establishes in each area a metropolitan local council under a distinct name;
  - (d) provides an equitable financial framework in terms of which the metropolitan local councils must function; and
  - (e) regulates any other relevant matters. 10
- (2) When clustering wards to determine a metropolitan local council area, the municipal council must—
- (a) apply the criteria set out in sections 24 and 25 of the Demarcation Act in so far as they can be applied; and
  - (b) consult the Demarcation Board. 15

### Composition

- 59.** (1) Each metropolitan local council consists of—
- (a) the councillors representing the wards included in the metropolitan local council area; and
  - (b) an additional number of councillors determined by the metro council so that the combined total of paragraph (a) and this paragraph is substantially in the same proportion to the total number of councillors in the council as the number of registered voters in the area of the metropolitan local council is in proportion to the total number of registered voters in the municipality. 20
- (2) The councillors referred to in subsection (1)(b) must— 25
- (a) consist of councillors elected to the metro council from party lists in accordance with Part 3 of Schedule 1; and
  - (b) be appointed to the metropolitan local council in accordance with Schedule 4.

### Functions and powers

- 60.** (1) A metropolitan local council— 30
- (a) has such duties and powers as the metro council may assign to it in terms of section 28; and
  - (b) may make recommendations to the metro council on any matter affecting its area.
- (2) A metropolitan local council may advise the metro council on what duties and powers should be assigned to it. 35

### Chairpersons

- 61.** A metropolitan local council must elect one of its members to be the chairperson of that local council.

### Term of office of members 40

- 62.** The section 59(1)(b) members of a metropolitan local council are elected for a term ending when the next municipal council is declared elected, but remain in office until the next metropolitan local council for the area concerned is elected, subject to section 63.

### Vacancies 45

- 63.** A section 59(1)(b) member vacates office during a term if that person—
- (a) resigns as a member of the metropolitan local council; or
  - (b) ceases to be a councillor.

## Meetings

**64.** (1) The chairperson of a metropolitan local council decides when and where the local council meets, but if a majority of the members requests the chairperson in writing to convene a meeting of the local council, the chairperson must convene a meeting at a time and place mentioned in the request. 5

(2) The chairperson of a metropolitan local council presides at meetings of that local council but if the chairperson is absent from a meeting and a quorum is present the members present must elect another member to preside at that meeting.

## Procedures of metropolitan local councils

**65.** A metropolitan local council, with a supporting vote of a majority of its members, 10 may determine its own procedures, subject to any directions of the metro council.

## Quorum and decisions

**66.** (1) A majority of the members of a metropolitan local council constitutes a quorum for a meeting of that local council.

(2) A question before a metropolitan local council is decided if there is agreement 15 among at least the majority of the members present at the meeting.

(3) If on any question there is an equality of votes, the member presiding must exercise a casting vote in addition to that member's vote as a member.

## Committees

**67.** A metropolitan local council may appoint committees, including a management 20 committee, from among its members to assist it in the performance of its duties and the exercise of its powers.

### *Part 4: Ward committees*

## Metro and local councils may have ward committees

**68.** (1) All metro councils and all local councils that have wards may have ward 25 committees as provided for in this Part.

(2) The object of a ward committee is to enhance participatory democracy in local government.

## Establishment of ward committees

**69.** (1) If a metro or local council decides to have ward committees, it must establish 30 a ward committee for each ward in the municipality.

(2) A ward committee consists of—

(a) the councillor representing that ward in the council, who must also be the chairperson of the committee; and

(b) not more than 10 other persons who must be resident in the ward. 35

(3) A metro or local council must make rules regulating—

(a) the procedure to elect the subsection (2)(b) members of a ward committee; and

(b) the circumstances under which those members must vacate office.

(4) A metro or local council may make administrative arrangements to enable ward 40 committees to perform their functions and exercise their powers effectively.

## Functions and powers of ward committees

**70.** A ward committee—

(a) is an advisory forum for the metro or local council and other structures of the municipality concerning any matter of interest in or to the ward; 45

(b) may make recommendations on any matter affecting its ward—

(i) to the ward councillor; or

- (ii) through the ward councillor, to the metro or local council, the executive committee, the executive mayor or the relevant metropolitan local council;
- (c) has such duties and powers as the metro or local council may assign to it in terms of section 28. 5

### **Term of office of members**

**71.** The section 69(2)(b) members of a ward committee are elected for a term determined by the metro or local council.

### **Vacancies**

**72.** If a vacancy occurs among the section 69(2)(b) members of a ward committee, the vacancy must be filled in accordance with a procedure determined by the metro or local council. 10

### **Remuneration**

**73.** No remuneration is payable to the section 69(2)(b) members of a ward committee.

### **Dissolution of ward committees 15**

**74.** A metro or local council may dissolve a ward committee if the committee fails to fulfil its object.

## ***Part 5: Other committees of municipal councils***

### **Establishment**

- 75.** (1) A municipal council may— 20
- (a) establish one or more committees to assist the council in the performance of any of its functions or the exercise of any of its powers;
  - (b) appoint the members of such a committee; and
  - (c) dissolve a committee at any time.
- (2) The municipal council— 25
- (a) must determine the function of a committee;
  - (b) may assign duties and powers to it in terms of section 28;
  - (c) must appoint the chairperson;
  - (d) may authorise a committee to co-opt advisory members within the limits determined by the council; 30
  - (e) may remove a member of a committee at any time; and
  - (f) may determine a committee's procedure. 30

### **Committees to assist executive committee**

**76.** (1) If a municipal council has an executive committee, it may appoint in terms of section 75, committees of councillors to assist the executive committee in the performance of its duties and the exercise of its powers. 35

(2) Such committees are appointed for terms of not more than one year at a time. They may not in number exceed the number of members of the executive committee.

- (3) The executive committee—
- (a) appoints a chairperson for each committee; 40
  - (b) may assign any of its powers and duties to a committee;
  - (c) is not divested of the responsibility concerning the exercise of the power or the performance of the duty; and
  - (d) may vary or revoke any decision taken by a committee, subject to any vested rights. 45

(4) Such a committee must report to the executive committee in accordance with the directions of the executive committee.

**Part 6: Participation of traditional leaders**

**Participation in municipal councils**

**77.** (1) Traditional authorities that traditionally observe a system of customary law in the area of a district or local municipality, may participate through their leaders, identified in terms of subsection (2), in the proceedings of the district or local council, and those traditional leaders must be allowed to attend and participate in any meeting of the council concerned. 5

(2) (a) The MEC for local government in a province, in accordance with Schedule 6 and by notice in the *Provincial Gazette*, must identify the traditional leaders who in terms of subsection (1) may participate in the proceedings of a local or district council. 10

(b) The number of traditional leaders identified to participate in the proceedings of a local or district council may not exceed 10 per cent of the total number of councillors in that council, but if the council has fewer than 10 councillors, only one traditional leader may be so identified.

(3) Before a district or local council takes a decision on any matter directly affecting the area of a traditional authority, the council must give the leader of that authority the opportunity to address the council on that matter. 15

(4) The MEC for local government in a province, after consulting the provincial House of Traditional Leaders, may by notice in the *Provincial Gazette*—

(a) regulate the participation of traditional leaders in the proceedings of a district or local council; and 20

(b) prescribe a role for traditional leaders in the affairs of a district or local municipality.

**Part 7: Chief executive officers**

**Appointment** 25

**78.** A municipal council must appoint a chief executive officer for the municipality and must, when necessary, appoint an acting chief executive officer.

**Responsibilities**

**79.** (1) The chief executive officer is the head of administration and also the accounting officer of the municipality. 30

(2) As head of administration the chief executive officer is responsible for—

(a) the formation and development of an efficient administration;

(b) the management of the municipality's administration in accordance with the policy directions of the municipal council;

(c) the preparation of an integrated development plan appropriate to the requirements of the municipality; 35

(d) the implementation of that integrated development plan, and the monitoring of progress with implementation in terms of appropriate performance indicators;

(e) the provision of services to communities in a sustainable manner; 40

(f) the organisation, control and management of all staff;

(g) the maintenance of discipline of staff;

(h) carrying out the decisions of the municipal council and, within a policy framework determined by the council, of other structures of the municipality; and 45

(i) the performance of any functions and the exercise of any powers assigned by the council to the chief executive officer in terms of section 28.

(3) As accounting officer of the municipality the chief executive officer is responsible for—

(a) all income and expenditure of the municipality; 50

(b) all assets and the discharge of all liabilities of the municipality; and

(c) sound financial management of the municipality and the establishment of effective credit control mechanisms.

## CHAPTER 5

## FUNCTIONS AND POWERS OF MUNICIPALITIES

**General**

**80.** (1) A municipality has the functions and powers assigned to it in terms of sections 156 and 229 of the Constitution. 5

(2) The functions and powers referred to in subsection (1) must be divided in the case of local and district municipalities as set out in this Chapter.

**Division of functions and powers between local and district municipalities**

**81.** (1) A district municipality has the following functions and powers:

(a) Integrated development planning for the district municipality as a whole, including a framework for integrated development plans for the local municipalities within the area of the district municipality. 10

(b) Bulk supply of water that affects more than one municipality.

(c) Bulk supply of electricity that affects more than one municipality.

(d) Bulk sewage purification works and main sewage disposal that affects more than one municipality. 15

(e) Solid waste disposal sites serving the area of the district municipality as a whole.

(f) Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole. 20

(g) Regulation of passenger transport services.

(h) Municipal airports.

(i) Municipal health services serving the area of the district municipality as a whole.

(j) Fire fighting services serving the area of the district municipality as a whole. 25

(k) The establishment, conduct and control of fresh produce markets and abattoirs serving the area of the district municipality as a whole.

(l) The establishment, conduct and control of cemeteries and crematoria utilised by more than one municipality.

(m) Promotion of local tourism for the area of the district municipality. 30

(n) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.

(o) The receipt, allocation and, if applicable, the distribution of grants made to the district municipality.

(p) The imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation. 35

(q) Any other functions and powers allocated to a district municipality in terms of section 82 or 84.

(2) A local municipality has the functions and powers referred to in section 80, excluding those of such functions and powers allocated to the district municipality in whose area it falls. 40

(3) Subsection (2) does not prevent a local municipality from performing functions and exercising powers in its area of the nature described in subsection (1).

**Allocation of additional functions and powers and conflict resolution** 45

**82.** (1) The MEC for local government in a province, with the concurrence of a district municipality and a local municipality within the area of that district municipality, or in the absence of such concurrence, with the approval of the Minister, may, by notice in the *Provincial Gazette*, assign any of the functions and powers of—

(a) the local municipality to the district municipality; or 50

(b) the district municipality to the local municipality.

(2) In the event of a dispute between those municipalities concerning the performance of any function or the exercise of any power, the MEC for local government, by notice in the *Provincial Gazette*, may resolve the dispute by defining the district or the local municipality's role in the performance of that function or in the exercise of that power.

### **Co-operation between district and local municipalities** 5

**83.** (1) A district municipality and the local municipalities within the area of that district municipality must co-operate with one another by assisting and supporting each other.

(2) (a) A district municipality on request by a local municipality within its area may provide financial, technical and administrative support services to that local municipality to the extent that that district municipality has the capacity to provide those support services. 10

(b) A local municipality on request of a district municipality in whose area that local municipality falls may provide financial, technical and administrative support services to that district municipality to the extent that that local municipality has the capacity to provide those support services. 15

(3) The MEC for local government in a province must assist a district municipality to provide support services to a local municipality.

### **Local municipalities of developing types**

**84.** (1) Despite section 81(2)— 20

(a) a local municipality of a developing type has only those functions and powers assigned to it by the MEC for local government in the province concerned by notice in the *Provincial Gazette*; and

(b) the district municipality in whose area that local municipality falls has all the municipal functions and powers in the area of that local municipality not assigned to the local municipality in terms of paragraph (a). 25

(2) The district municipality must—

(a) in co-operation with the MEC for local government in the province, support and progressively strengthen the local municipality's capacity; and

(b) report every six months to the MEC for local government on progress with its efforts. 30

(3) The MEC must regularly review the capacity and tax base of that local municipality and assign those powers and functions to the municipality that it has the capacity and tax base to fulfil.

### **Sparsely populated areas** 35

**85.** In sparsely populated areas the district municipality has all the municipal functions and powers.

## **CHAPTER 6**

### ***Miscellaneous matters***

### **Exemptions from certain provisions of this Act** 40

**86.** The MEC for local government in a province, within a policy framework as may be determined by the Minister, and by notice in the *Provincial Gazette*, may exempt a municipality in the province from a provision of section 31(1), (2), (3) or (4), 33 to 36, 40 to 49, 51(3), 53 to 56, 61 to 67, 71 or 76(2), (3) or (4).

### **Regulations** 45

**87.** The Minister may make regulations not inconsistent with this Act prescribing—

(a) any matter that may or must be prescribed in terms of this Act; and

(b) any matter that may facilitate the application of this Act.

### **Application of this Act**

**88.** (1) The provisions of this Act will only apply in respect of a municipality from the date contemplated in section 12, but this does not preclude the Minister, the MEC for local government, the Demarcation Board or the Electoral Commission from applying any provision of this Act for a purpose related to the demarcation of a municipal boundary, the establishment of a municipality or an election of a council. 5

(2) If any conflict relating to the matters dealt with in this Act arises between this Act and the provisions of any other law, except the Constitution, the provisions of this Act prevail. 10

### **Short title**

**89.** This Act is called the Local Government: Municipal Structures Act, 1998, and takes effect on a date determined by the President by proclamation in the *Gazette*.

## SCHEDULE 1

### *Electoral system for metro and local councils and in sparsely populated areas*

#### Definitions

1. In this Schedule, unless the context otherwise indicates—
- “**chief electoral officer**” means the chief electoral officer appointed in terms of section 8(1) of the Electoral Commission Act, 1996 (Act No. 51 of 1996);
- “**independent ward councillor**” means a councillor who—
- (a) was elected as an independent; or
  - (b) used on the ward ballot paper the distinguishing mark or symbol of a party or organisation which did not submit a party list in terms of item 13;
- “**municipal election**” means a municipal election as defined in the Electoral Act;
- “**municipal electoral officer**” means a person designated by the chief electoral officer for a municipal election;
- “**nomination day**” means the day determined in terms of the Electoral Act for the announcement of the nominated candidates and registered parties for a Municipal election.

#### *Part 1: General*

#### Delimitation of wards

2. The Electoral Commission, for purposes of a municipal election, must delimit all metropolitan and local municipalities into wards, except that a local municipality that has fewer than nine councillors may have no wards.

#### Number of wards

3. The number of wards in a metropolitan or local municipality must be determined by the Electoral Commission in a way that the number of wards, as nearly as possible, equals sixty per cent of the number of councillors determined for the municipality in terms of section 18.

#### Delimitation criteria

4. The Electoral Commission must delimit a municipality into wards taking into account the following criteria:
- (a) An approximately equal number of registered voters between wards, with not more than fifteen per cent variation from the norm, where the norm is determined by dividing the total number of registered voters on the municipality’s segment of the national common voters’ roll by the number of wards in the municipality.
  - (b) The need to avoid as far as possible the fragmentation of communities.
  - (c) The object of a ward committee as set out in section 68(2) which is to enhance participatory democracy in local government.
  - (d) The availability and location of a suitable place or places for voting and counting if appropriate, taking into consideration—
    - (i) communication and accessibility;
    - (ii) density of population;
    - (iii) topography and physical characteristics; and
    - (iv) the number of voters that are entitled to vote within the required time-frame.
  - (e) The safety and security of voters and election material.
  - (f) Identifiable ward boundaries.

#### Publication of delimitation

5. (1) The Electoral Commission must publish its delimitation of wards for a municipality in the *Provincial Gazette*.

- (2) Any person aggrieved by a delimitation may within 14 days of publication submit objections in writing to the Electoral Commission, and the Commission must—
- (a) consider those objections; and
  - (b) confirm, vary or withdraw its determination.

#### **Electoral system for metro and local councils with wards**

6. A metro council, and a local council having wards, must be elected as follows:
- (a) A number of councillors equal to the number of wards in the municipality must be directly elected in accordance with Part 2 of this Schedule to represent the wards in the Council; and
  - (b) the rest of the councillors must be elected from party lists in accordance with Part 3 of this Schedule to proportionally represent parties in the council.

#### **Electoral system for local councils without wards**

7. If a local council has no wards, all the councillors must be elected from party lists in accordance with Part 3 of this Schedule to proportionally represent parties in the council.

#### **Electoral system for sparsely populated areas**

8. (1) The representatives of a sparsely populated area in a district council must be elected from party lists in accordance with Part 3 of this Schedule to proportionally represent the parties in that area in the council.
- (2) If the sparsely populated area has only one representative in the district council, the candidate of the party which receives the most votes is elected.

#### *Part 2: Ward elections*

##### **Number of votes**

9. (1) In an election of a councillor for a ward each voter has one vote only, and a voter may vote for one candidate only.
- (2) In each ward the candidate who receives the most votes is the elected councillor for that ward.

##### **Filling of vacancies**

10. If a councillor elected for a ward ceases to hold office, a special election must be held in the ward within 90 days to fill that vacancy.

#### *Part 3: Proportional representation elections*

##### **Number of votes**

11. (1) In an election for a metro council, or for a local council that has wards, each voter has two votes, and may vote for—
- (a) not more than one ward candidate; and
  - (b) not more than one party.
- (2) In an election for a local council that has no wards, each voter has one vote only, and may vote for one party only.
- (3) In an election for councillors representing a sparsely populated area in a district council, each voter has one vote only, and may vote for one party only.

##### **Parties**

12. A party may submit a list of candidates if—
- (a) it is a political party or other organisation, body, or voluntary association;
  - (b) it has one or more office-bearers;

- (c) it operates an office or has an address within the municipality to which the election relates;
- (d) it has a constitution which includes objects or purposes which are relevant to local government matters; and
- (e) it is registered as a party for the election in the municipality.

### Party lists

**13.** (1) The number of candidates on a list submitted by a party may not exceed the number of seats—

- (a) in the metro or local council to be filled from party lists; or
- (b) in the district council allocated for representatives of the sparsely populated area.

(2) The candidates' names must appear on the list in the order of the party's preference, commencing with the first in order of preference and ending with the last.

(3) Every party must seek to ensure that fifty per cent of the candidates on the party list are women and that women and men candidates are evenly distributed through the list.

### Quota

**14.** The quota of votes for a seat in the metro or local council, or for a seat in a district council as a representative of a sparsely populated area, must be determined in accordance with the following formula (fractions to be disregarded):

$$\frac{A}{B - C + 1} + 1$$

Where—

- A represents the total number of valid votes cast for all parties on the party vote;
- B represents, as the case may be, either—
  - (a) the number of seats in the metro or local council; or
  - (b) the number of seats allocated to a sparsely populated area in the district council; and
- C represents—
  - (a) the number of independent ward councillors elected in the election; or
  - (b) “nil”, if the council has no wards or if it is an election in a sparsely populated area.

### Allocating seats

**15.** (1) The total number of valid votes cast for each party on the party vote must be divided by the quota of votes for a seat. The result is the total number of seats to which each party is entitled before any adjustment in terms of subitem (3).

(2) (a) If the calculation in subitem (1) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses accruing to any other party or parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(b) If the surplus for two or more parties is equal the municipal electoral officer must determine by lot which of those parties is entitled to the seat.

(3) (a) In an election for a metro council or for a local council that has wards, the presiding officer must deduct from the total number of seats to which each party is entitled in terms of subitem (1) and (2), the number of ward candidates who were declared elected and who used on the part of the ballot paper for wards, the same distinguishing mark or symbol as that party.

(b) The remainder is the number of seats which the party is entitled to fill from its list of party candidates.

(4) If no party is awarded a seat in terms of subitem (1), the votes for each party must be treated in accordance with subitem (2) as if they are surpluses.

(5) The municipal electoral officer must determine which party candidates are elected by selecting from the party's list, in accordance with the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled, beginning with the first candidate on the list and ending with the lowest ranking candidate.

### **Uncontested elections**

**16.** (1) If the application and registration of only one party is accepted, an election according to proportional representation must not be held for the metro or local council or in the sparsely populated area concerned.

(2) The number of seats to which the party is entitled is the total number of seats on the council to be filled by proportional representation.

(3) The municipal electoral officer must determine which party candidates are elected by selecting from the party's list, according to the party's order of preference on the list, the number of candidates that is equal to the number of seats to which the party is entitled.

(4) If the number of party candidates on the party list of the party is less than the number of seats to be filled, then the number of seats to be filled by proportional representation is the number of seats which can be filled from the party list and any vacancies must remain unfilled until the next election of the council.

### **Procedure if no party applications**

**17.** (1) If no party applies for registration or every application is rejected, a by-election must be held within 90 days of nomination day.

(2) If no party applies for registration or every application is rejected for the by-election—

- (a) the municipal electoral officer must notify the chief electoral officer within 24 hours;
- (b) the chief electoral officer within seven days must determine the date for a further election which must be held within 90 days; and
- (c) the vacancies must remain unfilled until such time as they are filled by way of election.

### **Excessive seats**

**18.** (1) If, through the election of ward candidates, a party listed on the part of the ballot paper for parties has obtained a number of seats that is equal to or greater than the total number of seats in the council to which it is entitled under item 15 that party must not be allocated any seats from its list of party candidates.

(2) The seats of ward candidates are not affected.

### **Insufficient party lists**

**19.** (1) If a party list contains fewer candidates than the party is entitled to, the municipal electoral officer must in writing immediately notify the party of the exact shortfall and request the party to deliver, within 14 days of the date of receipt of the notice, a list supplemented by the name or names of one or more eligible candidates.

(2) Immediately upon receipt of the list referred to in subitem (1), the municipal electoral officer must allocate the number of representatives in the order of preference on the list to which the party is entitled.

(3) (a) Subject to the provisions of paragraph (b)—

- (i) if the party concerned has ceased to exist, or does not deliver within the time referred to in subitem (1), a supplemented list, the seat must remain unfilled; or
- (ii) if the party concerned delivers within the time referred to in subitem (1), a supplemented list containing less names than the number of seats to be filled from that list, seats must remain unfilled to the extent of the shortfall.

(b) Where seats are unfilled in terms of paragraph (a), and the vacancies render a quorum for the municipal council impossible, the party concerned forfeits the unfilled seats, and the seats must be filled within 14 days in accordance with subitem (4), (5) and (6).

(4) If a party forfeits seats, the municipal electoral officer must determine a new quota for the unfilled seats by dividing the total number of party votes cast on the part of the ballot paper for parties, minus the votes cast for the party which has forfeited seats, by the number of unfilled seats, plus one. The result, plus one, disregarding fractions, is the new quota of votes for an unfilled seat.

(5) A new determination of the allocation of representatives for parties which have further representatives on their lists must then be made in a similar manner to that provided in item 15.

(6) If a party is entitled to an additional number of representatives in terms of subitem (5) and its list of candidates does not contain a sufficient number of candidates, the process provided in subitems (4) and (5) must be repeated until all seats have been filled or until all listed candidates have been allocated to a vacant seat.

### **Filling of vacancies**

**20.** (1) If a councillor elected from a party list ceases to hold office, the municipal electoral officer must immediately declare in writing the person whose name is on the top of the applicable party list to be elected in the vacancy.

(2) Where a party list has become exhausted, the provisions of item 19, adjusted as may contextually be necessary, applies to the supplementation of the list, and if the party fails to supplement its list, or if the party has ceased to exist, the vacancy must remain unfilled.

### ***Part 4: Filling and amending party lists***

#### **Causes of vacancies on lists**

**21.** A person who is a candidate on a party list ceases to be a candidate and a vacancy arises in the list when that person—

- (a) assumes office as a councillor;
- (b) resigns from the list by written notice to the chief electoral officer;
- (c) becomes ineligible to be a candidate;
- (d) is disqualified or removed from the list in terms of any legislation;
- (e) ceases to be a member of the party for which that person was listed as a party candidate; or
- (f) ceases to be ordinarily resident in the municipality to which the list relates and the party withdraws the person's name by written notice to the chief electoral officer.

#### **Filling vacancies and changing the order**

**22.** (1) (a) Between the declaration of the result of the election and the next election, a party may fill any vacancy in its party list by adding to the end of it one or more candidates not exceeding the number to be filled.

(b) To fill a vacancy a party must deliver an application in the prescribed manner to the chief electoral officer.

(2) On one occasion during each year ending 31 December and, not later than 21 days after a councillor elected according to a party's list ceases to hold office, that party may—

- (a) change the order of its list; and
- (b) increase its list.

(3) To fill a vacancy, change the order or increase its list a party must deliver an application in the prescribed manner to the chief electoral officer. The application must set out the existing order of the party list and then identify the desired contents and order of its list with the full names, address and identity number of each candidate on the list.

## SCHEDULE 2

### *Electoral system for councillors of district councils*

#### **Manner of election of district council**

1. The members of a district council must be—
  - (a) appointed by the councils of the local municipalities in the area of the district council from among their members; and
  - (b) if there is a sparsely populated area in the district municipality, elected to represent that area on the district council.

#### **Award of seats on district councils**

2. (1) The quota of votes for a seat on a district council must be calculated by dividing the total number of voters on that district municipality's segment of the national common voters' roll, by the total number of seats on the district council, plus one. The result, plus one, disregarding fractions, is the quota of votes for a seat on the district council.

(2) Each local municipality and each sparsely populated area in the area of a district municipality is entitled to a number of seats on the district council determined by dividing the total number of voters registered on the segment of the national common voters' roll for that local municipality or sparsely populated area by the quota of votes for a seat on the district council determined in accordance with subitem (1).

(3) If the calculation in subitem (2) gives a figure that is a fraction of the figure 1, the council, or sparsely populated area, must be awarded one seat and must not participate in any further calculation or award.

(4) If the calculation in subitem (2) yields a surplus, that surplus must compete with similar surpluses of any other council or sparsely populated area, and any seat or seats not awarded in terms of subitems (2) and (3) must be awarded in sequence of the highest surplus.

#### **Electing members of district councils**

3. (1) The chief electoral officer must appoint a person as presiding officer for the purpose of managing the election of representatives for the district council in a local council.

(2) The presiding officer must convene a meeting of the local council for the purpose of the election.

- (3) If the council has been awarded one seat—
  - (a) any councillor may nominate a candidate;
  - (b) each councillor has one vote; and
  - (c) the candidate who receives the most votes is elected;

(4) If the council has been awarded more than one seat, the council must elect that number of members according to proportional representation as set out in items 4 to 9.

#### **Party lists**

4. (1) Each party or councillor may submit one list containing the names of councillors. The list must be in order of preference starting with the first in order of preference and ending with the last, and must be accompanied by a written acceptance by each listed member.

(2) The name of a councillor may appear on one list only.

(3) Every party must seek to ensure that fifty per cent of the candidates on the party list are women and that women and men candidates are evenly distributed through the list.

#### **Number of votes**

5. Each councillor has one vote.

**Determining the quota**

6. The quota of votes for a seat must be calculated by dividing the number of councillors on the local council by the number of seats which the council has been awarded on the district council plus one. The result, plus one, disregarding fractions, is the quota of votes for a seat on the district council.

**Allocating seats**

7. (1) The number of votes cast in favour of each list must be divided by the quota of votes for a seat and the result is the number of seats allocated to that list.

(2) If the calculation in subitem (1) gives a surplus, that surplus must compete with other similar surpluses of any other lists, and any seat or seats not allocated under subitem (1) must be awarded in sequence of the highest surplus.

**Selecting names from the list**

8. The presiding officer, in accordance with the order of preference on a list, must select the number of candidates from the list that is equal to the number of seats allocated to that list.

**Insufficient lists**

9. In the case of a list containing fewer names than the number of seats allocated to that list, the corresponding provisions of item 19 of Schedule 1 must be applied.

**Electing members representing a sparsely populated area**

10. The councillors representing a sparsely populated area must be elected in accordance with the proportional electoral system set out in Part 3 of Schedule 1.

**SCHEDULE 3*****Election of municipal office-bearers*****Application**

1. The procedure set out in this Schedule applies whenever a municipal council meets to elect a speaker, an executive mayor or a mayor.

**Nominations**

2. The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

**Formal requirements**

3. (1) A nomination must be made on the form determined by the chief executive officer.

(2) The form on which a nomination is made must be signed by two members of the municipal council.

(3) A person who is nominated must indicate acceptance of the nomination by signing either the nomination form or any other form of written confirmation.

**Announcement of names of candidates**

4. At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

**Single candidate**

5. If only one candidate is nominated, the person presiding must declare that candidate elected.

**Election procedure**

6. If more than one candidate is nominated—

(a) a vote must be taken at the meeting by secret ballot;

(b) each councillor present at the meeting may cast one vote; and

(c) the person presiding must declare elected the candidate who receives a majority of the votes.

**Elimination procedure**

7. (1) If no candidate receives a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.

(2) When applying subitem (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidate is to be eliminated.

**Further meetings**

8. (1) If only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days at a time determined by the person presiding.

(2) If a further meeting is held in terms of subitem (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

**SCHEDULE 4*****Method of allocating councillors elected from party lists to metropolitan local councils*****Quota**

1. (1) The quota of votes for a seat in the section 59(1)(b) component of a metropolitan local council, is determined by dividing the total number of valid votes cast for parties on the party vote in the area of that local council in the election for the municipal council concerned, by the total number of seats in that component, plus one.

(2) The result, plus one, disregarding fractions, is the quota of votes per seat.

**Allocating seats to parties**

2. (1) The total number of valid votes cast for each party on the party vote in the area of the metropolitan local council must be divided by the quota of votes per seat. The result is the total number of seats to which each party is entitled in the section 59(1)(b) component of that local council.

(2) (a) If the calculation in subitem (1) yields a surplus not absorbed by the seats awarded to a party, that surplus must compete with similar surpluses of any other parties, and any undistributed seat or seats must be awarded to the party or parties concerned in sequence of the highest surplus.

(b) If the surplus for two or more parties is equal, the speaker of the municipality must determine by lot which of those parties is entitled to the seat.

(3) If no party is awarded a seat in terms of subitem (1), the votes for each party must be treated in accordance with subitem (2) as if they are surpluses.

**Designation of councillors for metropolitan local councils**

3. Each party represented in a metro council must designate from among the councillors elected from its party list, its representatives to each metropolitan local council in the municipality with regard to which seats were awarded to it in terms of item 2.

**Councillors to serve on one metropolitan local council only**

4. No councillor may serve on more than one metropolitan local council.

**Vacancies**

5. Parties must fill vacancies as they occur.

## SCHEDULE 5

### *Code of conduct for councillors*

#### **Attendance at meetings**

1. (1) A councillor must attend each meeting of the council, except when leave of absence has been granted in terms of an applicable law or the rules and orders of the council.

(2) A councillor who is absent from three or more consecutive meetings of the council without leave of absence, may be removed from office as a councillor by resolution of a majority of the councillors.

(3) A councillor must perform the functions of office in an orderly manner.

#### **Misleading or improper influence**

2. A councillor may not directly or indirectly—

- (a) mislead the council in any matter before it;
- (b) influence or attempt to influence the council so as to gain any direct or indirect personal benefit, or for a relation or business associate;
- (c) participate in the taking of any decision by the council which—
  - (i) is unlawful; or
  - (ii) abrogates any right of the council, or breaches or neglects any obligation by the council, if the council as a result suffers loss or is otherwise prejudiced; or
- (d) discredit or undermine the municipality, its council, or any of its committees or office-bearers.

#### **Pressure on employees prohibited**

3. A councillor may not directly or indirectly—

- (a) put pressure on any employee of the council—
  - (i) to insert or omit any information in any council document; or
  - (ii) to frame a proposal or recommendation in any council document in a particular manner; or
- (b) ask an employee of the council—
  - (i) not to implement a decision of the council; or
  - (ii) to implement a decision contrary to its intent or purpose.

#### **Unauthorised disclosure of information**

4. A councillor may not directly or indirectly disclose any privileged or confidential information to any unauthorised person or body.

#### **Reward, gifts and favours**

5. A councillor may not directly or indirectly request, solicit or accept any reward, gift or favour for—

- (a) voting or not voting in a particular manner on any matter before the council;
- (b) influencing the council in regard to the exercise of any power, function or duty; or
- (c) the disclosure of privileged or confidential information.

#### **Intervention in administration**

6. A councillor may not directly or indirectly—

- (a) interfere in the management or administration of any department of the council;
- (b) give or purport to give any instruction to any employee of the council;

- (c) obstruct or attempt to obstruct the implementation of any decision of the council by an employee of the council; or
- (d) encourage or participate in any conduct which would cause or contribute to mal-administration in the council.

### **Council property**

7. A councillor may not directly or indirectly use, take, acquire or benefit from any property owned, controlled or managed by the council, except as a right exercised in common with other citizens of the municipality.

### **Duties of councillor**

8. If a councillor becomes aware of a contravention of this Schedule that councillor must inform the chief executive officer of the municipality in writing of that contravention.

### **Non payment of debts**

9. A councillor may not be in arrears on any municipal debt for a period of more than three months.

### **Duty of chief executive officer**

10. (1) If the chief executive officer becomes aware of any contravention of this Schedule, or if any person in writing alleges that this Schedule has been contravened, the chief executive officer must—

- (a) investigate the facts and circumstances;
- (b) request written comments within seven days from the councillor involved; and
- (c) report the matter to the next meeting of the council.

(2) The chief executive officer must report any alleged contravention of this Schedule to the MEC for local government in the province concerned.

(3) The chief executive officer must ensure that each councillor when taking office is given a copy of this Schedule and that a copy of the Schedule is available in every room or place where the council meets.

### **Contraventions**

11. (1) A council may—

- (a) investigate and make a finding on any alleged contravention of this Schedule; and
- (b) establish a special committee—
  - (i) to investigate and make a finding on any alleged contravention of this Schedule; and
  - (ii) to make appropriate recommendations to the council.

(2) If the council or a special committee finds that a councillor has contravened a provision of this Schedule, the council may—

- (a) issue a formal warning to the councillor;
- (b) reprimand the councillor;
- (c) request the MEC for local government in the province to suspend the councillor for a period; or
- (d) request the MEC to remove the councillor from office.

(3) The MEC for local government may appoint a committee to investigate any alleged contravention of this Schedule and make a recommendation on whether the councillor concerned should be suspended or removed from office.

(4) The Commissions Act, 1947 (Act No. 8 of 1947), may be applied to an investigation in terms of subitem (3).

(5) If the MEC is of the opinion that the councillor has contravened a provision of this Schedule, and that such contravention warrants a suspension or removal from office, the MEC for local government may—

- (a) suspend the councillor for a period and on conditions determined by the MEC;
- or

- (b) remove the councillor from office.

**Application**

**12.** In this Schedule “council” means—

- (a) the municipal council; or
- (b) except in items 10(1)(c) and 11, any committee of the council.

**SCHEDULE 6*****Identification of traditional leaders for purposes of section 77*****Manner of identification**

1. (1) If it comes to the notice of the MEC for local government in a province that one or more traditional authorities traditionally observe a system of customary law in the area of a district or local municipality, the MEC—

- (a) must inform the provincial House of Traditional Leaders of the maximum number of traditional leaders that may be identified in terms of section 77 to participate in the proceedings of that district or local council;
- (b) must request that House of Traditional Leaders to recommend which leaders of that traditional authority or of those traditional authorities can be identified for the purposes of section 77;
- (c) on receipt of the recommendation, or if no recommendation is received within 30 days after the request in terms of paragraph (b) has been made, may identify the leaders of that authority or authorities; and
- (d) if any leaders have been identified in terms of paragraph (c), must submit the names of those leaders to the chief executive officer of that district or local council.

(2) In a province in which no provincial House of Traditional Leaders has been established, the MEC must consult the traditional authority concerned before identifying any leader for the purposes of section 77.

**Guidelines for identification**

2. The traditional leader to be identified must—

- (a) hold the supreme office of authority amongst all the leaders of the traditional authority referred to in item 1; and
- (b) be ordinarily resident within the area of the municipality concerned.

**MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT : MUNICIPAL STRUCTURES BILL, 1998**

1. The main object of the Bill is to provide for the new constitutional dispensation for local government in so far it relates to the different categories and types of municipalities, as well as the division of powers and functions between certain categories of municipalities as well as for the electoral system to be applied in the local sphere of government.

2. Part 1 of Chapter 1 establishes criteria for determining when an area should have a single category A municipality or when it should have municipalities of both category B and C. Part 2 of Chapter 1 defines the different types of municipalities that may be established within each category.

3. Chapter 2 of the Bill provides for the establishment of municipalities by the MEC for local government by notice in the *Provincial Gazette*, in which the category, the type, the boundaries, the name and the number of councillors of the municipality is specified. It furthermore regulates the consequences where a newly established municipality supersedes an existing municipality. It also provides for the amendment, repeal or replacement of a notice establishing a municipality.

4. Part 1 of Chapter 3 of the Bill regulates the number of councillors to be elected or appointed, the qualifications applicable to councillors as well as the election or appointment of councillors. It also provides for the holding of by-elections, the term of office of councillors, the vacation of office, privileges and immunities of councillors, the dissolution of municipalities and the assignment of powers and duties to committees and other internal functionaries.

5. Part 2 of Chapter 3 of the Bill deals with the election, functions, term of office and vacation of office of speakers of municipal councils.

6. Part 1 of Chapter 4 of the Bill provides criteria for determining when municipal councils may elect an executive committee, the composition, powers and functions, the term of office, the filling of vacancies, removal from office, quorums and decisions and the appointment of subcommittees of executive committees. It also provides for the election of a mayor and defines the powers and functions of a mayor.

7. Part 2 of Chapter 4 provides criteria for the election of an executive mayor, the powers and functions, the term of office and the removal and vacation of office of executive mayors. It furthermore provides for the appointment of mayoral committees.

8. Part 3 and 4 of Chapter 4 provide for the establishment, composition, powers and functions, the term of office and vacation of office, quorum and decisions of metropolitan subcouncils and ward committees respectively. Part 5 of Chapter 4 provides criteria when a municipality may establish other committees.

9. Part 6 of Chapter 4 of the Bill provides for the participation of traditional leaders in the proceedings of district and local councils, the regulation of their participation and the ceremonial role of traditional leaders in the affairs of a district and local council. Part 7 of Chapter 4 provides for the appointment and responsibilities of chief executive officers as head of the administration of a municipal council and accounting officer.

10. Chapter 5 of the Bill provides for an appropriate division of powers and functions between municipalities when an area has both category B and C municipalities. It also provides for a dispute resolution mechanism whereby the MEC for local government with the concurrence of the municipalities concerned or with the approval of the Minister by notice in the *Provincial Gazette* may assign any of the powers and functions to a local or district municipality. It furthermore provides for the powers and functions of a local municipality of a developing type and a sparsely populated area.

11. Chapter 6 provides for miscellaneous matters which *inter alia* includes a provision in terms of which the Minister may make regulations. It also contains a provision dealing with transitional arrangements.

12. Schedule 1 to the Bill regulates the electoral system for metro and local councils as well as for sparsely populated areas, ward elections, proportional representation elections as well as the topping up and amendment of party lists.

13. Schedule 2 and 3 to the Bill provides for the electoral system for councillors of district councils and the election of municipal office bearers respectively.

14. Schedule 4 to the Bill provides for a method of allocating councillors elected from party lists to metropolitan subcouncils whilst Schedule 5 to the Bill provides for a Code of Conduct for councillors.

15. Schedule 6 to the Bill provides for the identification of traditional leaders who are entitled to participate in the proceedings of local and district councils.

16. The following parties and institutions were consulted:

- Department of Finance;
- MECs for local government in the nine provinces; and
- South African Local Government Association.

The Bill was also published for public comments as required in terms of section 154 of the Constitution.

The Department of Constitutional Development and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with section 75 of the Constitution.