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GENERAL NOTICE

NOTICE 842 OF 1998

MINISTRY FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES BILL, 1998

1. I, Mohammed Valli Moosa, Minister for Provincial Affairs and Constitutional Development, under section 154 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), hereby publish the Local Government: Municipal Structures Bill, 1998, for public comment.
2. Comments must please be submitted in writing to-
The Director-General
Attention: Mr S. L. Louw
Department of Constitutional Development
Private Bag 804
PRETORIA
0001.
3. Comments may also be faxed to facsimile number (012) 334-0608 at the above address.
4. Comments must be received by not later than 19 June 1998.

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES BILL

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.

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

Definitions

1. In this Act, unless the context otherwise indicates-

“**area committee**” means a committee established in terms of section 49;

“**area committee system**” means a system of municipal governance in which area committees established for parts of the municipality participate in the governance of the municipality;

“**category**”, in relation to municipalities, means a category A, B or C municipality envisaged in section 155(1) of the Constitution and defined in this Act as a metropolitan, local and district municipality, respectively;

“**councillor**” means a member of a municipal council;

“**Demarcation Act**” means the Local Government: Municipal Demarcation Act, 1998 (Act No of 1998);

“**Demarcation Board**” means the Municipal Demarcation Board established by section 2 of the Demarcation Act;

“developing municipality” means a local municipality declared to be a developing municipality in terms of section 76;

“district council” means the municipal council of a district municipality

“district municipality” means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described as a category C municipality in section 155(1) of the Constitution;

“Electoral Commission” means the Electoral Commission established by section 181 of the Constitution;

“executive committee” means a committee established in terms of section 31;

“executive committee system” means a system of municipal governance in which an executive committee exercises delegated executive power as set out in section 32;

“executive mayor” means a mayor elected in terms of section 43;

“executive mayor system” means a system of municipal governance in which an executive mayor exercises delegated executive power as set out in section 44;

“existing municipality” includes a municipality that existed before this **Act took effect**;

“integrated development plan” means a plan aimed at the integrated development and management of a municipal area and which has been compiled having regard to-

- (a) the general principles contained in Chapter 1 of the Development Facilitation Act, 1995 (Act No. 67 of 1995); and
- (b) where applicable, the subject matter of a land development objective contemplated in Chapter 4 of that Act;

“local council” means the municipal council of a local municipality;

“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 as a category B municipality in section 155(1) of the Constitution;

“MEC for local government” means the member of the Executive Council of a province responsible for local government in the province;

“metro council” means the municipal council of a metropolitan municipality;

“metropolitan area” means an area recognised as a metropolitan area in terms of section 26(1) of the Demarcation Act;

“metropolitan municipality” means a municipality that has exclusive executive and legislative authority in its area, and which is described as a category A municipality in section 155(1) of the Constitution;

“Minister” means the Minister for Provincial Affairs and Constitutional Development;

“municipal council” or **“council”** means a municipal council referred to in section 157 of the Constitution;

“municipality” includes a municipality referred to in section 155(6) of the Constitution;

“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 Chapter IV of the Electoral Act, 1993 (Act 202 of 1993);

“prescribe” means prescribe by regulation in terms of section 78;

“sparsely populated area” means an area within the area of a district municipality which in terms of section 9 has no local municipality and is served by that district municipality alone;

“speaker” means a **councillor** elected in terms of section 25 to be the chairperson of the municipal council as envisaged in section 160(1)(b) of the Constitution;

“**special election**” means an election that is held between the regular elections called in terms of section 18;

“**type**”, in relation to municipalities, means a type of municipality envisaged in section 155 (2) of the Constitution and defined in sections 10, 11 and 12 of this Act;

CHAPTER 1

ESTABLISHMENT OF MUNICIPALITIES

Part 1: Powers of MECs for local government

MEC’S to establish municipalities

2. (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
 - (b) takes effect on a date mentioned in the notice, which must be a date as close as possible before –
 - (i) the commencement of the first election for the council of that municipality, if it is a metropolitan or local municipality; or
 - (ii) the first appointment of the **councillors** of that municipality, if it is a district municipality.

- (3) The notice establishing the municipality must **specify** –
- (a) the category of municipality that is established, and, if it is a developing municipality, that fact;
 - (b) the type of municipality that is established, and, if it is a type requiring the establishment of area committees, the number of area committees to be established;
 - (c) the boundaries of the municipal area;

- (d) the name of the municipality;
- (e) the number of **councillors**; and
- (f) whether the office of speaker, member of the executive committee, executive mayor or member of the mayoral committee, or of any other elected office-bearers, must be filled by the incumbent in a full-time or part-time capacity.

(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

3. (1) The establishment of a municipality in terms of section 2 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 2 notice must -

- (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**–
 - (i) the vacation of office of **councillors** of the existing municipality;
 - (ii) the transfer of staff from the existing municipality to the superseding municipality;
 - (iii) the retrenchment of **staff**;
 - (iv) the transfer of assets, liabilities and administrative and other records from the existing municipality to the superseding municipality; and
 - (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 2 notice must be effected in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995).

(4) (a) On production of a certificate by a municipality that immovable property was transferred to it in terms of a section 2 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 property in the name of that municipality.

(b) No duty, fee or other charge is payable for a registration in terms of paragraph (a).

Review and rationalisation of existing municipal legislation and resolutions

4. If an existing municipality is wholly or partially superseded by another municipality, the legislation 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 3(2) (b)(iv), must be reviewed and, where necessary, rationalised by the superseding municipality.

Amendment of section 2 notices

5. (1) The MEC for local government in a province may, by notice in the *provincial Gazette*, amend a section 2 notice –

(a) to give effect to a request by a municipality –

- (i) to restructure the municipality from its existing type to another type of municipality that may be established in the province concerned;
- (ii) to alter its status, where applicable, to that of a developing municipality or to withdraw that status;
- (iii) to alter its name;
- (iv) to alter the number of **councillors**;
- (v) to increase or to decrease the number of its area **committees**; or
- (vi) concerning the full-time or part-time capacity of any of its elected office-bearers; or

(b) to further regulate the matters mentioned in section 3, after consulting **all** affected municipalities.

(2) Any amendment of a section 2 notice must be consistent with the provisions of this Act.

Repeal, amendment or replacement of section 2 notices when boundaries are redetermined

6. (1) When the **Demarcation Board** in terms of the Demarcation Act redetermines a municipal boundary which **affects** the **area** of a municipality established in terms of section 2 –

- (a) the provisions of **sections** 2 and 3 **are** applicable to the extent necessary to give effect to the redetermination; and
- (b) the MEC for local **government in the province** concerned must repeal, amend or replace the relevant section 2 notice or notices as maybe required in the circumstances.

(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 2 notice takes effect on a date mentioned in the notice, which must be a date as closely as possible before –

- (a) the election of the council of that municipality, if it is a metropolitan or local municipality;
o r
- (b) the appointment of the **councillors** of that municipality, if it is a district municipality.

Part 2: Categories of municipality**Areas in which metropolitan municipalities must be established**

7. Metropolitan areas must have metropolitan municipalities, i.e. category A municipalities,

Areas in which district and **local municipalities must be established**

8. **Areas other than metropolitan areas** must have both district and local municipalities, i.e. category B and C municipalities, except when, in terms of section 9, an area must be served by a district municipality alone.

Areas in which local municipalities not viable

9. (1) An area within a district municipality declared as a sparsely populated area must be governed by the district municipality alone.

(2) The Minister, on the recommendation of the Demarcation Board, may declare an area within a district municipality as a sparsely populated area **if** –

- (a) the establishment of a local municipality in that area will not be conducive of **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
- (b) no traditional authorities or representative local structures exist in the area.

Part 3: Types of Municipalities

Types of metropolitan municipalities

10. There are the following types of metropolitan municipalities:

- (a) Metropolitan executive committee type, i.e. a type of municipality characterised by an executive committee system.
- (b) Metropolitan executive committee (area committees) type, i.e. a type of municipality characterised by an executive committee system combined with an area committee system.
- (c) Metropolitan executive mayor type, i.e. a type of municipality characterised by an executive mayor system.
- (d) Metropolitan executive mayor (area committees) type, i.e. a type of municipality characterised by an executive mayor system combined with an area committee system.

Types of local municipalities

11. (1) There are the following types of local municipalities:

- (a) Local simple type, i.e. a type of municipality characterised by a municipal council that does not have more than 9 members.
- (b) Local executive committee type, i.e. a type of municipality characterised by an executive **committee** system.
- (c) Local executive mayor type, i.e. a type of municipality characterised by an executive mayor system.

(2) A local simple type does not have an executive committee **or** executive mayor,

Types of district municipalities

12. (1) There are the following types of district municipalities.
- (a) District simple type, i.e. a type of municipality characterised by a municipal council that does not have more than 9 members.
 - (b) District executive committee type, i.e. a type of municipality characterised by an executive committee system.
 - (c) District executive mayor type, i.e. a type of municipality characterised by an executive mayor system.
- (2) A district simple type does not have an executive committee or executive mayor.

Determination of types for provinces

13. 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**MUNICIPAL COUNCILS*****Part 1: Composition, election and membership*****Municipalities to have municipal councils**

14. (1) Each municipality must have a municipal council.
- (2) 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*.

Determination number of councillors

15. (1) The number of **councillors** of a municipal council –
- (a) may not be less than three or more than 150 **councillors**; and
 - (b) must be determined in accordance with a prescribed formula.
- (2) **The MEC** for local government in a province may deviate from a number of

councillors determined in terms of the prescribed formula, but only when it is necessary –

- (a) because of extreme distances or lack of effective communication in the municipality or other exceptional circumstances; or
- (b) to achieve the most effective size of a council which will permit –
 - (i) active participation by **all councillors** at council meetings;
 - (ii) good and timely executive and legislative decisions;
 - (iii) adequate representation,
 - (iv) responsiveness and accountability using modern communication concepts and facilities; and
 - (v) optimum use of municipal funds for **councillor** allowances and administrative support facilities.

Qualifications for councillors

16. (1) Every person 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
- (b) if elected, to become and remain a **councillor**, except a person disqualified in terms of section 158(1)(a), (b), (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.

(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.

Election or appointment of councillors

17. (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
- (b) in accordance with the electoral system set out in Schedule 1.

(2) The **councillors** representing local municipalities in a district council must be appointed—

- (a) by the local councils of the **municipalities** within the area of the district municipality; and
- (b) in accordance with the electoral system set out in Schedule 2.

(3) The **councillors** representing a sparsely populated area in a district council must be elected—

- (a) by voters registered in that area on the municipality's segment of the national voters roll; and
- (b) in accordance with the electoral system set out in Schedule 1.

When elections must be held

18. (1) Elections for metro and local councils and of representatives of sparsely populated areas to district councils, must be held —

- (a) at intervals of no more than four years; and
- (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) .

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

Special elections for metro and local councils, and in sparsely populated areas and wards

19. (1) A special election for a metro or local council, or in a sparsely populated area, or in a ward, must be held if, as the case may be -

- (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; or
- (c) that council is dissolved in terms of section 22 of this Act or section 139 of the Constitution, 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.

(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 special election must be held only in that ward.

(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 special election, which must be held within 60 days of the date –

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

Term of office of **councillors**

20. (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;
- (b) is appointed as a representative of a local council or a sparsely populated area to a district council for a period ending when the next representatives of that local or that sparsely populated area of which that person is a representative are appointed.

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

Vacation of office.

21. A **councillor** vacates office during a term if that **councillor** –

- (a) resigns in writing;
- (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; or
- (d) contravenes a provision of the Code of Conduct for **Councillors** set out in Schedule 5 in circumstances for which the Code prescribes loss of office as a **councillor**.

Dissolution of municipal councils

22. (1) A municipal council may dissolve itself by resolution adopted with a supporting vote of a majority of its members at a special meeting called for this purpose.

(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 –

- (a) the Electoral Commission in terms of section 23(2)(a) of the Demarcation Act is of the view that a boundary determination will materially affect the representation of voters in that council; and
- (b) the remaining term of the council is more than one year.

Functioning of municipal councils

23. A municipal council functions in terms of section 160 of the Constitution.

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

24. (1) A municipal council may -

- (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) speaker;
 - (ii) executive committee and mayor, if it has an executive committee;
 - (iii) executive mayor, if it has an executive mayor;
 - (iv) area committees, if it has area committees;
 - (v) ward committees, if it has ward committees;
 - (vi) other committees or elected office-bearers; and
 - (vii) chief executive officer;
- (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;
- (b) is subject to any limitations, conditions and directions the municipal council may impose;
- (c) may include the power to subdelegate a delegated power; and
- (d) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The municipal council 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.

Part 2: Speakers of municipal councils

Election of speakers

25. (1) Each municipal **council** must have a 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**.

(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 and mayor or executive mayor at the same time.

Functions of speakers

26. (1) The speaker of a municipal council –

- (a) presides at meetings of the council or may designate another member of the council to assist as presiding officer;
- (b) performs the duties and exercises the powers assigned to the speaker in terms of section 24;
- (c) must ensure that the council regularly meets;
- (d) must maintain discipline among the **councillors**; and
- (e) must ensure implementation in the council and council committees of the Code of Conduct set out in Schedule 6.

Term of office of speakers

27. The speaker of a municipal council is elected for the duration of that person's term of office as a **councillor**.

Removal from office

28. (1) A municipal council, by resolution taken **at a** special meeting convened for this purpose, may remove its speaker from office.

(2) **The** resolution **calling** for the removal of a speaker must be taken by the council with a supporting vote of a majority of its members.

Vacation of office

29. **The** speaker of a municipal council vacates office during a term if that person –

- (a) resigns as **speaker**;
- (b) is removed **from** office; or
- (c) ceases to be a **councillor**.

Acting speakers

30. If the speaker of municipal council is absent or not available to perform the functions of speaker, or during a vacancy, the council may elect another of the **councillors** to act as speaker.

CHAPTER 3**INTERNAL STRUCTURES AND FUNCTIONARIES*****Part 1: Executive committees*****Establishment of executive committees**

31. (1) A municipality of a type that is characterised by an executive committee system must have an executive committee as provided for in this Part.

(2) **The** council of a municipality of the type concerned must establish an executive committee consisting of-

- (a) seven **councillors**, if the council has 40 or more members;

- (b) five councillors, if the council has 20 to 39 members; and
- (c) three councillors, if the council has fewer than 20 members.

(3) Despite subsection (2), the MEC for local government in a province, on request of a municipal council, may approve an executive committee for that council consisting of a number of councillors that is more than *or* less than the number mentioned in that subsection, but only if this is necessary to improve effective and efficient government.

Functions and powers of executive committees

32. (1) An executive committee—

- (a) oversees the management of the municipality's administration in accordance with the policy directions of the municipal council;
- (b) oversees the provision of services to communities in the municipality;
- (c) ensures the initiation and preparation of an integrated development plan appropriate to the requirements of that municipality;
- (d) oversees the implementation of that integrated development plan, including the development of criteria in terms of which progress can be evaluated;
- (e) initiates and oversees the implementation of the socio-economic development programmes of the municipality;
- (f) regularly reviews and at least annually reports to the council on —
 - (i) the efficiency and management of each department of the municipality;
 - (ii) the efficiency of revenue and debt collection systems;
 - (iii) the implementation of the municipality's by-laws;
 - (iv) the provision of services;
 - (v) the implementation of the municipality's integrated development plan and socio-economic programmed; and
 - (vi) the involvement of communities and community organisations in the affairs of the municipality;
- (g) submits to the council annual and revised draft estimates of revenue and expenditure; and
- (h) performs such duties and exercises such powers as the council may assign to it in terms of section 24.

(2) An executive committee may make recommendations to the municipal council on any matter which concerns the municipality.

(3) Before a municipal council takes a decision on any of the following matters it must **first** require its executive committee to submit **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;
- (c) the approval of a socio-economic **programme** for the municipality, and any amendment to such a programme; and
- (d) the appointment and conditions of service of the chief executive officer and a head of a department of the municipality.

(4) An executive committee must report monthly to the municipal council on all decisions taken by the committee.

Election of members of executive committees.

33. A municipal council must elect the members of its executive committee at a meeting that must be held-

- (a) within 30 days of the council's election; or
- (b) if it is a district council, within 30 days after the last of the local councils has elected its representatives to the district council.

Term of office of members

34. The members of an executive committee are elected for a term ending when the next municipal council is declared elected, but remain in office until the next executive committee is elected and assumes office.

Vacancies

35. (1) A member of an executive committee vacates office during a term if that member –

- (a) resigns as a member of the executive committee;
- (b) is removed from office as a member of the executive committee; or
- (c) ceases to be a **councillor**.

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

(3) A vacancy in the office of a member of an executive committee must be filled in accordance with section 33.

Election of mayor

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

(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 councillor, but vacates office during a term if that person –

- (a) resigns as mayor;
- (b) is removed from office as a member of the executive committee in terms of section 41; or
- (c) ceases to be member of the executive committee.

Functions and powers of mayor

37. The mayor of a municipality –

- (a) presides at meetings of the executive committee;
- (b) performs the duties, including any ceremonial functions, and exercises the powers assigned to the mayor by the municipal council or the executive committee.

Meetings of executive committees

38. (1) The mayor decides when the executive committee meets, but a majority of the members may request the mayor in writing to convene a committee meeting at a time mentioned in the request.

(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

39. 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,

Quorum and decisions

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

(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

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

(2) A resolution calling for the removal of a member or members or all the members of an executive committee must be taken by the council with a supporting vote of a majority of the councillors.

(3) 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 33 and 36, respectively.

Subcommittees

42. **An** executive committee may appoint subcommittees from among its members to assist it in the performance of its duties and the exercise of its powers.

Part 2: Executive mayors

Election of executive mayors

43. (1) A municipality of a type that is characterised by an executive mayor system must have an executive mayor as provided for in this Part.

(2) The municipal council of a municipality of the type concerned, at its first meeting after its election or appointment, or when **necessary** to fill a vacancy, must elect the executive mayor from among the **councillors**.

(3) The speaker of the municipal council presides over the election of an executive mayor.

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

Functions and powers of executive mayors

44. (1) **An executive mayor—**
- (a) oversees the management of the municipality's administration in accordance with the policy directions of the municipal council;
 - (b) oversees the provision of services to communities in the municipality;
 - (c) ensures the preparation of an integrated development plan appropriate to the requirements of that municipality;
 - (d) oversees the implementation of that integrated development plan, including the development of criteria in terms of which progress can be evaluated;
 - (e) initiates and oversees the implementation of the **socio-economic** development programmed of the municipality;
 - (f) regularly reviews and at least annually reports to the council on —
 - (i) the efficiency and management of each department of the municipality;
 - (ii) the efficiency of revenue and debt collection systems;
 - (iii) the implementation of the municipality's by-laws;
 - (iv) the provision of services;
 - (v) the implementation of the municipality's integrated development plan and **socio-economic** programmes; and
 - (vi) the involvement of communities and community organisations in the **affairs** of the municipality;
 - (g) submits to the council annual and revised **draft** estimates of revenue and expenditure; and
 - (h) performs such duties and exercises such powers as the council may assign to the executive mayor in terms of section 24.

(2) An **executive** mayor may make recommendations to the municipal council on any matter which concerns the municipality.

(3) Before a municipal council takes a decision on any of the following matters, it must require its executive mayor **to** submit 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;
- (c) the approval of a socio-economic programme, and any amendment to such a programme; and
- (d) the appointment and conditions of service of a chief executive officer and head of a department of the municipality.

(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.

Term of office of executive mayors

45. **An** executive mayor is elected for a term ending when the next municipal council is declared elected but remains in office until the next executive mayor is elected and assumes office.

Removal from office

46. (1) A municipal council, by resolution taken at a special meeting convened for this purpose, may remove its executive mayor from office.

(2) The resolution calling for the removal of the executive mayor must be taken by the council with a supporting vote of a majority of its members.

Vacation of office

47. (1) **An** executive mayor vacates office during a term if that person –

- (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 is a councillor representing a ward, vacates office as executive mayor if that person changes party affiliations, but is eligible for re-election.

Mayoral committees

48. (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
- (d) dismiss a member.

(2) The members of the mayoral committee remain in office after an election of the municipal council until the next executive mayor is elected and assumes office.

(3) If an executive mayor vacates office, the mayoral committee appointed by that mayor must resign.

Part 3: Area committees in metropolitan municipalities

Establishment of area committees

49. (1) A metropolitan municipality of a type that is characterised by an area committee system must have area committees as provided for in this Part.

(2) The council of a metropolitan municipality of the type concerned must establish an area committee for each area demarcated by the Demarcation Board in terms of section 50.

(3) The MEC for local government in the province must determine the number of area committees for such metropolitan municipality.

Demarcation of jurisdictional areas of area committees

50. (1) The Demarcation Board must demarcate a metropolitan municipality of the type concerned into a number of areas equal to the number of area committees determined by the MEC for local government in terms of section 49 (3).

(2) When demarcating **the** areas, the Demarcation Board must apply the criteria set out in sections 24 and 25 of the Demarcation Act to the **extent** that these criteria can be applied.

Composition

51. (1) Each area committee consists of –

- (a) the **councillors** representing the wards included in the area of the area committee; and
- (b) an additional number of **councillors** determined by the **MEC** for local government in the province 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 area committee is in proportion to the total number of registered voters in the municipality.

(2) The **councillors** referred to in subsection (1)(b) must –

- (a) consist of **councillors** elected to the municipal council from party lists in accordance with Part 3 of Schedule 1; and
- (b) be appointed to the area committee in accordance with Schedule 4.

Functions and powers

52. (1) An area committee –

- (a) has such duties and powers as the metro council may assign to it in terms of section 24; and
- (b) may make recommendations to the council on any matter affecting its area.

Chairpersons

53. An area committee must elect one of its members to be the chairperson of the committee.

Terms of **office** of members

54. The section 51 (1)(b) members of an area committee are elected for a term ending when the next municipal council is declared elected, but remain in office until the next area committee is elected.

Vacancies

55. A section 51(1)(b) member vacates office during a term if that person ceases to be a **councillor**.

Meetings

56. (1) The chairperson of an area committee decides when that committee meets, but a majority of the members may request the chairperson in writing to convene a committee meeting at a time mentioned in the request.

(2) The chairperson of the area committee presides at meetings of that committee, 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 area committees

57. An area committee, with a supporting vote of a majority of its members, may determine its own procedures, subject to any directions of the metro council.

Quorum and decisions

58. (1) A majority of all the members of an area committee constitutes a quorum for a meeting.

(2) A question before an area 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.

Subcommittees

59. An area committee may appoint subcommittees 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 to have ward committees**

60. (1) All metro councils and all local councils that have wards must have ward 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

61. (1) The metro or local council must establish 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 persons residing in the ward and elected at a public meeting convened for that purpose by the council and held in the ward.

(3) The metro or local council must make rules regulating the procedure at a public meeting convened to elect the subsection (2)(b) members of a ward committee.

(4) The metro or local council may, despite subsections (2)(b) and (3), approve a different procedure for the election of the members of ward committees in the municipality.

Functions and powers of ward committees

62. (1) Award 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;
- (b) may make recommendations on any matter affecting its ward -
 - (i) to the ward **councillor**; or
 - (ii) through the ward **councillor** to the council, the executive **committee**, the executive mayor or the area committee; and
- (c) has such duties and powers with regard to its ward as the council may assign to it in terms of section 24.

Term of office of members

63. The 'section 60 (2) (b) members of a ward committee are elected for a term ending when the result of the election of the next municipal council is declared.

Vacancies

64. If a vacancy occurs among the section 60 (2)(b) members of a ward committee, the vacancy must be filled in accordance with a procedure determined by the metro or local council.

Remuneration

65. No remuneration is payable to the section 60 (2)(b) members of a ward committee.

Dissolution of ward committees

66. A metro or local council may dissolve a ward committee if the committee consistently fails to fulfil its objective.

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

67. (1) A municipal council may –

- (a) establish one or more committees to assist the council in the performance of its functions or the exercise of its powers;
- (b) appoint the members of such a committee; and
- (c) dissolve a committee at any time.

(2) The municipal council –

- (a) must determine the function of a committee;
- (b) may assign duties and powers to it in terms of section 24;
- (c) must appoint the chairperson;
- (d) may authorise a committee to co-opt advisory members within the limits determined by the council;
- (e) may remove a member of a committee at any time; and
- (f) may determine a committee's procedure.

Committees to assist executive committee

68. (1) If the municipal council has an executive committee, it may appoint in terms of section 66 committees of councillors to assist the executive committee in the performance of its duties and the exercise of its powers,

(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;
- (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 vested rights.

(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

69. (1) Traditional authorities that observe a system of customary law in the area of a district or local municipality may in accordance with subsections (2) and (3) participate in the proceedings of the district or local council, and those leaders must be allowed to attend and participate in any meeting of the council.

(2) The number of traditional leaders participating in the proceedings of the district or local council in terms of subsection (1) may not exceed ten per cent of the total number of **councillors** of the district or local council, but if a district or local council has fewer than ten members, one traditional leader may so participate.

(3) 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 designation of traditional leaders to participate in the proceedings of a district or local council;
- (b) regulate the participation of traditional leaders in the proceedings of a district or local council; and
- (c) prescribe a ceremonial role for traditional leaders in the affairs of a district or local municipality.

Part 7: Chief executive officers

Appointment

70. A municipal council must appoint a chief executive officer for the municipality.

Responsibilities

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

- (2) As head of administration the chief executive officer is responsible for –
- (a) the formation and development of an efficient administration;
 - (b) the organisation, control and management of all **staff**;
 - (c) the maintenance of discipline; and
 - (d) carrying out the decisions of the municipal council and, within a policy **framework** determined by the council, of other structures of the municipality.

(3) As accounting officer of the municipality the chief executive officer is responsible for the financial management of the municipality.

CHAPTER 4

FUNCTIONS AND POWERS OF MUNICIPALITIES

General

72. (1) A municipality has the functions and powers allocated to it in terms of section 156 of the Constitution.

(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

73. (1) A district municipality has the following functions and powers:
- (a) Bulk supply of water that affects more than one municipality.
 - (b) Bulk supply of electricity that affects more than one municipality.
 - (c) Integrated development planning for the district as a whole.
 - (d) The receipt, allocation and, if applicable, the distribution of grants.
 - (e) Bulk sewerage purification works and main sewerage disposal that affects more than one municipality..
 - (f) Regulation of passenger transport services.
 - (g) The establishment, conduct and control of fresh produce markets that affect more than one local municipality within the area of the district municipality.
 - (h) The establishment, conduct and control of cemeteries and **crematoria** utilised by more than one local municipality within the area of the district municipality,
 - (i) The imposition and collection of such taxes, levies and duties as maybe assigned to the district municipality in terms of national legislation.
 - (j) Any other functions and powers allocated to it in terms of section 73.

(2) A local municipality has the **functions** and powers referred to in section 71, excluding those assigned to the district municipality in whose area it falls.

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

Allocation of additional functions and powers and conflict resolution

74. (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 if the district municipality or local municipality does not concur, with the **concurrence** 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
- (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 circumscribing the district or the local

municipality's role in the **performance** of that fiction or in the exercise of that power.

Co-operation between district and local municipalities

75. (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 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.

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

Developing municipalities

76. (1) The MEC for local government in a province, by notice in the *Provincial Gazette*, may declare a local municipality to be a developing municipality if that municipality lacks –

- (a) administrative capacity and **infrastructure** to govern on its own initiative the local government affairs of its community; and
- (b) an adequate financial or tax base for the collection of revenue

(2) Despite section 72(2) -

- (a) a developing municipality 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 the developing municipality falls has all the municipal **functions** and powers in the area of the developing municipality not assigned to the developing municipality in terms of paragraph (a).

(3) The district municipality must –

- (a) in co-operation with the **MEC** for local government in the province, support and progressively strengthen the developing municipality's capacity; and
- (b) report every six months to the MEC for local government on its progress with its efforts.

Sparsely populated areas

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

CHAPTER 5:***Miscellaneous matters*****Regulations**

78. 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.

Transitional arrangements and repeal of laws

79.

Short title

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

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 electoral officer” means the person designated or appointed by the chief electoral officer in terms of section . . . of the Electoral Act, 1998 (Act No. of 1998), to assist in the conduct of an election or special election;

“nomination day” means the day determined by the municipal electoral officer for the announcement of the nominated candidates and registered parties for an election.

Part 1: General

Delimitation of wards

2. The Electoral Commission, for purposes of an election, must delimit all metropolitan and local municipalities into wards, except that a local municipality that has fewer than seven councillors or fewer than 1500 voters registered on its segment of the national common voters roll, may have no wards.

Number of wards

3. **The** number of wards in a metro 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 15.

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 ten 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 for 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 59(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
- (c) 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 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 60 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
- (c) 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 apolitical 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 with the municipal electoral officer of the municipality to which the election relates.

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 in a district council as a representative of the 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 municipal electoral 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 to which the party is entitled 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 list of the party 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 election

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 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 list of the party 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.

(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 application is received or every application is rejected, a special election must be held within 60 days of nomination day.

- (2) If no application is received or every application is rejected for the special election-
- (a) the municipal electoral officer must notify the chief electoral officer within 24 hours;
 - (b) within seven days the chief electoral officer must determine the date for a further election which must be held within six months; 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, any 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, that party must -

- (a) be allocated the number of representatives on its list; and
- (b) forfeit its entitlement to any further representation.

(2) If a party forfeits its entitlement, the municipal electoral officer must determine a new quota for each remaining seat by dividing the total number of party votes cast on the part of the ballot paper for parties, minus those votes cast for every party which has forfeited its entitlement, by

the remaining number of seats still to be allocated, plus one. The result, plus one, disregarding fractions, is the new quota of votes for a seat.

(3) 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.

(4) If a party is entitled to an additional number of representatives in terms of subitem (3) and its list of candidates does not contain a sufficient number of candidates, the process provided in subitems (2) and (3) 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 chief electoral officer must immediately declare in writing the person whose name is on the top of the applicable party list to be elected to that vacant office.

(2) Where a party list has become exhausted, the chief electoral officer must give the party not less than fourteen days written notice to supplement its list and if it fails to do so, 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 in writing delivered to the chief electoral officer;
- (d) becomes ineligible to be a candidate;
- (e) is disqualified or removed **from** the list in terms of any legislation;
- (f) ceases to be a member of the party for which that person was listed as a party candidate; or
- (g) ceases to be ordinarily resident in the municipality to which the list relates and the party withdraws the candidate's name in writing delivered 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, in addition, 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. (1) The members of a district council are –
 - (a) appointed by the councils of the local municipalities in the area of the district council; and
 - (b) if there is a sparsely populated area in the district municipality, elected to represent that area on the district council.

(2) Each local council must appoint **councillors** chosen by election by that council from amongst its **councillors**.

Entitlement to 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 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 the 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) gives a surplus, that surplus must compete with other surpluses similarly accruing to 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 council

3. (1) The district council must appoint a person as presiding officer for the purpose of managing and conducting the election in each local council.

(2) *The* presiding officer must convene a meeting of the 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 8.

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 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 local 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 surpluses similarly accruing to any other list, 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 must select the number of candidates from a list 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.

Insufficient party 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 area committees*****Quota**

1. (1) The quota of votes for a seat in the section 51(1)(b) component of an area committee, is determined by dividing the total number of valid votes cast for parties on the party vote in the area of that area committee in the election for the council of the municipality 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 area committee 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 51(1)(b) component of the area committee.

(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 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 area committees

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

Councillors to serve on one area committee only

4. No councillor may serve on more than one area committee.

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 is necessary or has been granted in advance in terms of an applicable law or the rules and orders of the council.

(2) A **councillor** who is absent from three or more successive meetings of the council without leave of absence in advance maybe removed from office as a member of the council 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 benefit personally, or for a relation or business associate;
- (c) participate in the taking of any decision by the council which –
 - (i) is **unlawful**,
 - (i) abrogates any right of the council, or breaches or neglects any obligation by the council, to the extent that it suffers loss or is otherwise prejudiced; or
- (d) discredit or undermine the municipality, its council, its committees or any of its **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** any employee of the council –
 - (i) not to implement any decision of the council; or

- (ii) to implement any decision contrary to this intent or purpose.

Unauthorized 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, solicitor accept any reward, gift or favour for –
- (a) voting or not voting in a particular manner on any matter before the council, or
 - (b) persuading 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) intervene 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 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 or asset owned, controlled or managed by the council, except as a right held 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 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) if satisfied that there appears to have been a contravention, report the matter ²to the next meeting of the council.

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

Contravention

11. (1) A municipal council may establish a special committee –

- (a) to investigate and make a finding on any alleged contravention of this Code; and
- (b) to make appropriate recommendations to the council.

(2) If a special committee finds that a **councillor** has contravened a provision of this Code, the council may –

- (a) issue a formal warning to the **councillor**;
- (b) reprimand the **councillor**;
- (c) suspend the **councillor** for a period; or
- (d) remove the **councillor** from office.

Application

12* **In this** Schedule “council” means –

- (a) the municipal council;
- (b) any committee of the council.

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