

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 21071 of 13 April 2000)
The English text is the official text of the Bill)*

(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

[B 27—2000]

ISBN 0 621 29500 0

BILL

To provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of communities, and ensure universal access to essential services that are affordable to all; to define the legal nature of a municipality as including residents and communities within the municipal area, working in partnership with the municipality's political and administrative structures; to provide for public participation; to provide for the manner in which municipal powers and duties are exercised and performed; to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government; to provide a framework for local public administration and human resource development; to empower the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs into account by providing a framework for the provision of services, service delivery agreements and municipal service districts; to provide for credit control and debt collection; to establish a framework for support, monitoring and standard setting by other spheres of government in order to progressively build local government into an efficient, frontline development agency capable of integrating the activities of all spheres of government for the overall social and economic upliftment of communities; to provide for legal matters pertaining to local government; and to provide for matters incidental thereto.

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

TABLE OF CONTENTS

CHAPTER 1

INTERPRETATION

5

1. Definitions

CHAPTER 2

LEGAL NATURE OF MUNICIPALITIES AND INTERNAL RELATIONSHIPS

2. Legal nature
3. Co-operative government
4. Rights and duties of governing structures
5. Rights and duties of communities, residents and ratepayers
6. Exercise of rights and performance of duties

10

CHAPTER 3

PUBLIC PARTICIPATION

- | | | |
|-----|---|---|
| 7. | Development of culture of public participation | |
| 8. | Mechanisms, processes and procedures for public participation | |
| 9. | Promotion of public participation | 5 |
| 10. | Public notice of meetings of municipal councils | |
| 11. | Admission of public to meetings | |
| 12. | Regulations and guidelines | |

CHAPTER 4

MUNICIPAL POWERS AND DUTIES 10

- | | | |
|-----|--|----|
| 13. | General empowerment | |
| 14. | Consultation when additional functions and powers are assigned to municipalities | |
| 15. | Executive and legislative authority | |
| 16. | Legislative procedures | 15 |
| 17. | Publication of by-laws | |
| 18. | Standard draft by-laws | |
| 19. | Municipal code | |

CHAPTER 5

INTEGRATED DEVELOPMENT PLANNING 20

Part 1: General

- | | | |
|-----|---|--|
| 20. | Municipal planning to be developmentally oriented | |
| 21. | Municipal planning in co-operative government | |
| 22. | Adoption of integrated development plans | |

Part 2: Contents of integrated development plans 25

- | | | |
|-----|---|--|
| 23. | Core components of integrated development plans | |
|-----|---|--|

Part 3: Process for planning, drafting, adopting and review of integrated development plans

- | | | |
|-----|---|----|
| 24. | Adoption of process | |
| 25. | Contents of process | 30 |
| 26. | Provincial supervision | |
| 27. | Copy of process to be submitted to MEC for local government | |
| 28. | Drafting of integrated development plan | |
| 29. | Copy of integrated development plan to be submitted to MEC for local government | 35 |
| 30. | <i>Ad hoc</i> committees | |
| 31. | Annual review and amendment of integrated development plan | |

Part 4: Miscellaneous

- | | | |
|-----|--|----|
| 32. | Status of integrated development plan | |
| 33. | Municipality to give effect to integrated development plan | 40 |
| 34. | Regulations and guidelines | |

CHAPTER 6

PERFORMANCE MANAGEMENT

Part 1: General

- | | | |
|-----|--|---|
| 35. | Establishment of performance management system | |
| 36. | Developing of performance management system | 5 |
| 37. | Monitoring and review of performance management system | |

Part 2: Core components of performance management system

- | | | |
|-----|--|----|
| 38. | Core components | |
| 39. | General key performance indicators | |
| 40. | Notification of key performance indicators and performance targets | 10 |
| 41. | Audit of performance measurement | |
| 42. | Annual reports | |
| 43. | Publication | |
| 44. | Reports by MEC | |
| 45. | Reports by Minister | 15 |
| 46. | Regulations | |

CHAPTER 7

LOCAL PUBLIC ADMINISTRATION AND HUMAN RESOURCES

Part 1: Basic principles

- | | | |
|-----|---|----|
| 47. | Basic values and principles governing local public administration | 20 |
| 48. | Organisation of administration | |
| 49. | Inconsistency with applicable labour legislation | |

Part 2: Structures, functionaries and roles

- | | | |
|-----|---|----|
| 50. | Roles and responsibilities | |
| 51. | Municipal managers | 25 |
| 52. | Employment contracts for municipal managers and managers directly accountable to municipal managers | |
| 53. | Remuneration of municipal managers and managers directly accountable to municipal managers | |

Part 3: Delegation system 30

- | | | |
|-----|---|----|
| 54. | Delegations | |
| 55. | Delegation of certain powers to councillors or officials disallowed | |
| 56. | Referral of matters to delegating authorities for decision | |
| 57. | Appeals | |
| 58. | Duty to report to delegating authorities | 35 |
| 59. | Withdrawal, amendment or lapsing of delegation or subdelegation | |
| 60. | Review of delegations | |

Part 4: Staff matters

- | | | |
|-----|---|----|
| 61. | Staff establishments | |
| 62. | Human resource development | 40 |
| 63. | Capacity building | |
| 64. | Code of Conduct for municipal employees | |
| 65. | Code of Conduct to be provided to staff members | |

Part 5: Miscellaneous

- | | | |
|-----|----------------------------|----|
| 66. | Regulations and guidelines | 45 |
|-----|----------------------------|----|

CHAPTER 8

MUNICIPAL SERVICES

67.	General duty	
<i>Part 1: Service tariffs</i>		
68.	Tariff policy	5
69.	By-laws to give effect to policy	
<i>Part 2: Provision of services</i>		
70.	Mechanisms for provision of services	
71.	When municipalities must decide on mechanisms to provide municipal services	10
72.	Criteria for deciding on mechanisms to provide municipal services	
73.	Provision of services by municipality itself	
74.	Provision of services by way of service delivery agreements	
75.	Responsibilities of municipalities when providing services through service delivery agreements	15
76.	Service utilities and municipal business enterprises	
<i>Part 3: Service delivery agreements involving competitive bidding</i>		
77.	Competitive bidding	
78.	Negotiation and agreement with prospective service provider	
<i>Part 4: Municipal service districts</i>		
79.	Establishment of internal municipal service districts	
80.	Establishment of multi-jurisdictional municipal service districts	
81.	Contents of agreements establishing multi-jurisdictional municipal service districts	
82.	Legal status of governing bodies	25
83.	Powers and duties of governing bodies	
84.	Control of governing bodies	
85.	Termination of multi-jurisdictional municipal service districts	
<i>Part 5: Regulations and guidelines</i>		
86.	Regulations and guidelines	30

CHAPTER 9

CREDIT CONTROL AND DEBT COLLECTION

87.	Customer care and management	
88.	Debt collection responsibility of municipalities	
89.	Contents of policy	35
90.	By-laws to give effect to policy	
91.	Supervisory authority	
92.	Implementing authority	
93.	Municipality's right of access to premises	
94.	Accounts	40
95.	Agreements with employers	
96.	Regulations	

CHAPTER 10

PROVINCIAL AND NATIONAL MONITORING AND STANDARD SETTING

<i>Part 1: Provincial monitoring</i>		
97.	Provincial monitoring of municipalities	
98.	Non-performance and maladministration	45

Part 2: National monitoring and standard setting

99. Furnishing of information
 100. Essential national and minimum standards

CHAPTER 11**LEGAL MATTERS** 5

101. Legal proceedings
 102. Notices
 103. Certain certificates to be evidence
 104. Copy of *Provincial Gazette* as evidence
 105. Fines and bail 10
 106. Time of notices and payments
 107. Service of documents and process
 108. Public servitudes
 109. Custody of documents
 110. Restraint on transfer of property 15

CHAPTER 12**MISCELLANEOUS**

111. Offences and penalties
 112. Regulations and guidelines
 113. Amendment of legislation 20
 114. Transitional arrangements
 115. Short title and commencement

SCHEDULE 1**CODE OF CONDUCT FOR MUNICIPAL OFFICIALS**

1. Definitions 25
 2. General conduct
 3. Commitment to serving public interest
 4. Personal gain
 5. Disclosure of benefits
 6. Unauthorised disclosure of information 30
 7. Undue influence
 8. Rewards, gifts and favours
 9. Council property
 10. Payment of arrears
 11. Participation in elections 35
 12. Reporting duty of employees
 13. Breaches of Code

SCHEDULE 2**LEGISLATION AMENDED****CHAPTER 1** 40**INTERPRETATION****Definitions**

1. In this Act unless inconsistent with the context—
 (i) “category”, in relation to municipalities, means a category A, B or C municipality envisaged in section 155(1) of the Constitution; 45
 (ii) “community”, in relation to a municipality, includes any stakeholder, non-governmental, private sector or labour organisation or body which is—
 (a) involved in local affairs within a municipality; or

- (b) concerned with the protection or promotion of any specific interest in the municipality;
- (iii) “councillor” means a member of a municipal council;
- (iv) “delegating authority”—
 - (a) in relation to a delegation of a power or duty by a municipal council, means the municipal council; or
 - (b) in relation to a subdelegation of a power or duty by another structure, or by a functionary, councillor or official of a municipality, means that structure, functionary, councillor or official;
- (v) “delegation”, in relation to a duty, includes an instruction to perform the duty, and “delegate” has a corresponding meaning;
- (vi) “development” includes—
 - (a) integrated social, economic, environmental, spatial, infrastructural, institutional, organisational and human resources upliftment of a community aimed at improving the quality of life of its members with specific reference to the poor and other disadvantaged sections of the community; and
 - (b) sustainable development as defined in section 1 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- (vii) “district municipality” means a category C municipality contemplated in section 155(1)(c) of the Constitution;
- (viii) “environmentally sustainable”, in relation to the provision of a municipal service, means the provision of a municipal service in a manner aimed at ensuring that—
 - (a) the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;
 - (b) the potential benefits to the environment and to human health and safety are maximised to the extent reasonably possible under the circumstances; and
 - (c) legislation intended to protect the environment and human health and safety is complied with;
- (ix) “executive authority”, in relation to a municipality, means the municipality’s executive authority envisaged in section 156(1) of the Constitution, read with section 15(1) of this Act;
- (x) “financially sustainable”, in relation to the provision of a municipal service, means the provision of a municipal service in a manner—
 - (a) aimed at ensuring that revenues from that service, including budgeted subsidies for the service, are sufficient to cover the cost of—
 - (i) operating the service; and
 - (ii) maintaining, repairing and replacing the physical assets used in the provision of the service;
 - (b) aimed at ensuring a reasonable surplus or, in the case of a service provided by a service provider that is a business enterprise, a reasonable profit;
 - (c) aimed at ensuring that the municipality or other service provider generates sufficient capital requirements for the performance of the service; and
 - (d) that takes account of the current and anticipated future—
 - (i) level and quality of that service;
 - (ii) demand for the service; and
 - (iii) ability and willingness of residents to pay for the service;
- (xi) “functionary”, in relation to a municipality, means a person elected, designated or appointed by a municipal council to a post or position regulated by the Municipal Structures Act;
- (xii) “integrated development plan” means a plan envisaged in section 22;
- (xiii) “internal trading entity” means an entity operating within the administration of a municipality for the provision or sale of services or goods and which in terms of the Municipal Finance Management Act is permitted to operate a separate bank account;
- (xiv) “labour legislation” includes collective agreements in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (xv) “local municipality” means a category B municipality contemplated in section 155(1)(b) of the Constitution;

- (xvi) “MEC” means a member of a provincial executive council;
- (xvii) “MEC for local government” means the MEC responsible for local government in a province;
- (xviii) “Minister” means the national Minister responsible for local government;
- (xix) “municipal business enterprise” means a company registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), which— 5
- (a) is under the ownership control of one or more municipalities;
- (b) has been assigned financial and operational authority to carry on a business activity;
- (c) as its principal business provides goods or services in accordance with ordinary business principles; and 10
- (d) is financed fully or substantially from sources other than—
- (i) a municipal revenue fund; or
- (ii) by way of a rate on property, or a tax, levy or duty, or a surcharge on service fees, imposed by a municipality; 15
- (xx) “municipal council” or “council” means a municipal council referred to in section 157 of the Constitution;
- (xxi) “Municipal Finance Management Act” means the Local Government: Municipal Finance Management Act, 2000;
- (xxii) “municipality”— 20
- (a) as a corporate entity, means a municipality as described in section 2; and
- (b) as a geographic area, means an area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);
- (xxiii) “municipal manager” means a person appointed in terms of section 82 of the Municipal Structures Act; 25
- (xxiv) “Municipal Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- (xxv) “national organ of state” means—
- (a) any department of state in the national sphere of government; or
- (b) any other functionary or institution in the national sphere of government, excluding a court or a judicial officer— 30
- (i) exercising a power or performing a function in terms of the Constitution; or
- (ii) exercising a public power or performing a public function in terms of any law; 35
- (xxvi) “organised local government” means an organisation recognised in terms of section 2(1)(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997), to represent local government nationally or provincially;
- (xxvii) “ownership control”, in relation to an entity, means the ability to exercise any of the following powers to govern the financial and operating policies of the entity in order to obtain benefits from its activities: 40
- (a) to appoint or remove at least the majority of the board of directors or equivalent governing body;
- (b) to cast at least the majority of the votes at meetings of the board of directors or equivalent governing body; or 45
- (c) to control at least the majority of the voting rights at a general meeting;
- (xxviii) “prescribe” means prescribe by regulation or guidelines in terms of section 112;
- (xxix) “*Provincial Gazette*” means the *official gazette* of the province concerned;
- (xxx) “provincial organ of state” means— 50
- (a) any provincial administration or department within a provincial administration; or
- (b) any other functionary or institution in the provincial sphere of government—
- (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or 55
- (ii) exercising a public power or performing a public function in terms of any legislation;
- (xxxi) “ratepayer”, in relation to a municipality, means a person who is liable to the municipality for the payment of— 60
- (a) rates on property in the municipality;
- (b) any other tax, duty or levy imposed by the municipality; or

- (c) fees for services provided either by the municipality or in terms of a service delivery agreement;
- (xxxii) “resident”, in relation to a municipality, means a person who is ordinarily resident in the municipality;
- (xxxiii) “service authority” means the authority of a municipality to regulate the provision of a municipal service by a service provider; 5
- (xxxiv) “service delivery agreement” means an agreement between a municipality and a third party mentioned in section 70(c) in terms of which a municipal service is provided by that third party, either for own account or on behalf of or in partnership with the municipality; 10
- (xxxv) “service provider” means a person or institution, or any combination of persons and institutions, which provides a municipal service to communities, residents and ratepayers in a municipality;
- (xxxvi) “service utility” means an entity established by one or more municipalities which— 15
- (a) is a separate juristic person controlled by applicable by-laws of the municipality or municipalities concerned; and
- (b) provides a municipal service regulated by by-laws of the municipality or municipalities in terms of a service delivery agreement with the municipality or municipalities; 20
- (xxxvii) “structure”, in relation to a municipality, means the council of the municipality or any committee or other collective structure of a municipality elected, designated or appointed in terms of the Municipal Structures Act;
- (xxxviii) “this Act” includes any regulations made in terms of section 112;
- (xxxix) “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 the Municipal Structures Act. 25

CHAPTER 2

LEGAL NATURE OF MUNICIPALITIES AND INTERNAL RELATIONSHIPS

Legal nature 30

2. A municipality—

- (a) is a corporate entity within the local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Act, 1998;
- (b) consists of— 35
- (i) the structures, functionaries and administration of the municipality; and
- (ii) the communities, residents and ratepayers of the municipality; and
- (c) functions in its area in accordance with the political, statutory and other relationships between its structures, functionaries and administration and its communities, residents and ratepayers; and 40
- (d) has a separate legal personality which excludes liability on the part of its communities, residents and ratepayers for the actions of the municipality.

Co-operative government

3. (1) Municipalities must, within the constitutional system of co-operative government envisaged in section 41 of the Constitution— 45

- (a) seek to integrate the exercise of their legislative and executive authority with the policies, programmes, legislation and institutional arrangements of the national and provincial spheres of government;
- (b) participate in organised local government to the extent necessary— 50
- (i) to seek solutions for problems relating to local government generally;
- (ii) to develop common approaches for local government as a distinct sphere of government; or
- (iii) to facilitate compliance with the principles of co-operative government and intergovernmental relations as set out in section 41 of the Constitution; and 55
- (c) seek to comply with any agreements concluded by organised local government within its mandate on behalf of local government.

(2) Subsection (1)(a) applies only to the extent that that subsection does not compromise or impede a municipality's ability or right to exercise its powers or to perform its duties.

Rights and duties of governing structures

- 4.** (1) The council of a municipality has the right— 5
- (a) to govern on own initiative the local government affairs of the communities, residents and ratepayers of the municipality;
 - (b) to perform the duties and exercise the powers of the municipality;
 - (c) to perform its functions without interference or fear of intimidation and threats; and 10
 - (d) to finance the affairs of the municipality by—
 - (i) charging fees for services; and
 - (ii) imposing surcharges on fees, rates on property and, to the extent authorised by national legislation, other taxes, levies and duties.
- (2) The council of a municipality must, within the municipality's financial and administrative capacity and having regard to practical considerations— 15
- (a) exercise the municipality's executive and legislative authority and use the resources of the municipality in the best interests of the communities, residents and ratepayers of the municipality;
 - (b) provide, without favour or prejudice, democratic and accountable government for communities, residents and ratepayers; 20
 - (c) encourage the involvement of communities, residents and ratepayers in the affairs of the municipality;
 - (d) strive to provide municipal services to all communities, residents and ratepayers in a financially and environmentally sustainable manner; 25
 - (e) promote development in the municipality;
 - (f) promote a safe and healthy environment in the municipality; and
 - (g) together with national and provincial organs of state, assist in the progressive realisation of the fundamental rights contained in the Constitution.

Rights and duties of communities, residents and ratepayers 30

- 5.** (1) A community, a resident and a ratepayer of a municipality have the right—
- (a) to demand that the proceedings of the municipal council and those of any other structure or any functionary of the municipality must be—
 - (i) open to the public, subject to section 11;
 - (ii) conducted impartially and without prejudice; and 35
 - (iii) untainted by personal self-interest;
 - (b) to submit written recommendations, representations and complaints to the municipal council or to another structure or a functionary or the administration of the municipality;
 - (c) to participate in the decision-making processes of the municipality through mechanisms and in accordance with processes and procedures provided for in this Act or other applicable legislation; 40
 - (d) to be informed of decisions of the municipal council, and any other structure or any functionary of the municipality, affecting their rights, property and reasonable expectations; 45
 - (e) to regular disclosure of the state of affairs of the municipality, including its finances;
 - (f) to prompt responses from the municipal council, and any other structure or any functionary of the municipality, to written communications, including complaints; and 50
 - (g) to the use and enjoyment of public facilities and municipal services which the municipality provides to residents, communities and ratepayers provided they comply with their duties set out in subsection (2).
- (2) A community, a resident and a ratepayer of a municipality have the duty— 55
- (a) where applicable, to pay service fees, surcharges on fees, rates on property and other taxes, levies and duties imposed by the municipality promptly;
 - (b) to observe the mechanisms, processes and procedures of the municipality for exercising their rights;
 - (c) to respect the municipal rights of other residents and ratepayers;

- (d) to treat councillors and municipal officials with dignity and respect;
- (e) to allow municipal officials reasonable access to their property for the performance of municipal functions; and
- (f) to comply with by-laws and other legislation of the municipality applicable to them. 5

Exercise of rights and performance of duties

6. The rights and duties of the structures and functionaries of a municipality, and of the communities, residents and ratepayers of a municipality, as set out in sections 4 and 5, are subject to the Constitution, the other provisions of this Act and other applicable legislation. 10

CHAPTER 3

PUBLIC PARTICIPATION

Development of culture of public participation

7. (1) A municipality must seek to develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must for this purpose encourage and create conditions for communities, residents and ratepayers in the municipality to participate in local affairs through— 15

- (a) structures for participation in terms of the Municipal Structures Act;
- (b) the mechanisms, processes and procedures for participation in municipal governance established in terms of this Act, including in— 20
 - (i) the preparation, implementation and review of the integrated development plan; and
 - (ii) the monitoring and review of its performance;
- (c) other appropriate mechanisms, processes and procedures established by the municipality; and 25
- (d) generally applying the provisions for participation as provided for in this Chapter.

(2) Subsection (1) must not be interpreted as permitting interference with a municipal council's right to govern and to perform the functions and exercise the powers of the municipality. 30

Mechanisms, processes and procedures for public participation

8. (1) A municipality must establish appropriate mechanisms, processes and procedures to enable communities, residents and ratepayers in the municipality to participate in local affairs in the municipality, and must for this purpose provide for— 35

- (a) the receipt, processing and consideration of petitions and complaints lodged by communities, residents and ratepayers in the municipality;
- (b) public meetings and hearings by the municipal council and other structures and functionaries of the municipality, when appropriate.

(2) When establishing mechanisms, processes and procedures in terms of subsection (1) the municipality must take into account the special needs of— 40

- (a) people who cannot read or write;
- (b) people with disabilities; and
- (c) other disadvantaged groups.

(3) A municipality must disseminate among communities, residents and ratepayers in the municipality, information concerning these mechanisms, processes and procedures, taking into account— 45

- (a) the financial and administrative capacity of the municipality;
- (b) language preferences and usage in the municipality; and
- (c) the special needs of people who cannot read or write.

(4) A municipal council may establish one or more advisory committees consisting of persons who are not councillors to advise the council on any matter within the council's competence. 50

Promotion of public participation

9. A municipality must strive to build the capacity of communities, residents and ratepayers of the municipality to participate in the local affairs of the municipality by communicating information concerning—

- (a) the available mechanisms, processes and procedures to encourage and facilitate public participation; 5
- (b) the matters with regard to which public participation is encouraged;
- (c) the rights and duties of communities, residents and ratepayers; and
- (d) municipal governance, management and development.

Public notice of meetings of municipal councils

10

10. The municipal manager of a municipality must give public notice in a manner determined by the municipal council of the time, date and venue of every—

- (a) ordinary meeting of the municipal council; and
- (b) special or urgent meeting of the council, except when time constraints make this impossible. 15

Admission of public to meetings

11. (1) Meetings of a municipal council and any other structure of a municipality are, subject to subsection (3), open to the public, including the media, and the council or such structure may not exclude the public, including the media, from a meeting, except when— 20

- (a) it is reasonable to do so having regard to the nature of the business being transacted; and
- (b) a by-law or a resolution of the council specifying the circumstances in which the council or such structure may close a meeting and which complies with paragraph (a), authorises the council or such structure to close the meeting to the public. 25

(2) A municipal council may not exclude the public, including the media, from a meeting at which a matter of public interest is to be discussed, unless the municipality has given at least 14 days' public notice of closure of the meeting.

(3) An executive committee mentioned in section 42 of the Municipal Structures Act and a mayoral committee mentioned in section 60 of that Act may close any or all of its meetings to the public, including the media. 30

(4) A municipal council—

- (a) within the financial and administrative capacity of the municipality, must set aside places for the public in the chambers and other places where the council and its committees meet; and 35
- (b) may take reasonable steps to regulate public access to, and public conduct at, meetings of the council and its committees.

Regulations and guidelines

12. The Minister may in terms of section 112 make regulations and issue guidelines concerning— 40

- (a) minimum standards for municipalities when applying the provisions of this Chapter; and
- (b) any matter that may facilitate— 45
 - (i) the participation of communities, residents and ratepayers in the municipality in the affairs of the municipality; or
 - (ii) the application of this Chapter.

CHAPTER 4**MUNICIPAL POWERS AND DUTIES****General empowerment**

50

13. (1) A municipality has all the powers and duties conferred by or assigned to it in terms of sections 44(1)(a)(iii), 104(1)(c), 156 and 229 of the Constitution, and must exercise or perform them subject to Chapter 5 of the Municipal Structures Act.

(2) A municipality may do anything reasonably necessary for, or incidental to, the effective performance of its functions.

Consultation when additional functions and powers are assigned to municipalities

14. (1) A Cabinet member initiating the assignment of a function to municipalities generally by way of national legislation in terms of section 44(1)(a)(iii) or 156(1)(b) of the Constitution, must, before the draft legislation providing for the assignment is introduced in Parliament—

- (a) consult the Minister and organised local government representing local government nationally; and
- (b) consider any assessment by the Financial and Fiscal Commission in terms of subsection (4).

(2) An MEC initiating the assignment of a function to municipalities in a province by way of provincial legislation in terms of section 104(1)(c) or 156(1)(b) of the Constitution, must, before the draft legislation providing for the assignment is introduced in the relevant provincial legislature—

- (a) consult the MEC for local government in the province and organised local government representing local government in the province; and
- (b) consider any assessment by the Financial and Fiscal Commission in terms of subsection (4).

(3) The Cabinet member or MEC initiating the assignment of a function in terms of section 44(1)(a)(iii), 99, 104(1)(c), 126 or 156(1)(b) of the Constitution to municipalities generally, to municipalities in a province or to any specific municipality, as the case may be, must take appropriate steps to ensure sufficient funding for the performance of the assigned function by the municipalities or municipality concerned if—

- (a) the assignment of the function imposes a duty on the municipalities or municipality concerned;
- (b) that duty falls outside the functional areas listed in Part B of Schedule 4 or Part B of Schedule 5 to the Constitution or is not incidental to any of those functional areas; and
- (c) the performance of that duty has significant financial implications for the municipalities or municipality concerned.

(4) The Cabinet member or MEC initiating the assignment of a function referred to in subsection (3), or organised local government, may request the Financial and Fiscal Commission to make an assessment of the financial implications of the assignment for the municipalities or municipality concerned.

Executive and legislative authority

15. (1) The executive and legislative authority of a municipality is exercised by the council of the municipality, and the council takes all the decisions of the municipality except decisions taken in consequence of a delegation or subdelegation in terms of section 54.

(2) A municipality may exercise executive and legislative authority within its boundaries only, but may, by written agreement with another municipality, exercise executive authority in the area of that other municipality.

(3) A municipality exercises its legislative or executive authority by—

- (a) developing and adopting policy, plans, programmes and strategies, including setting targets for delivery;
- (b) promoting and undertaking social and economic development;
- (c) implementing applicable national and provincial legislation and its own legislation;
- (d) administering and regulating its affairs and the local government affairs of its communities;
- (e) providing municipal services to communities, residents and ratepayers, or appointing appropriate service providers in accordance with the criteria listed in section 72;
- (f) regulating municipal services where those services are provided by service providers other than the municipality;
- (g) establishing and maintaining an administration;
- (h) approving and implementing its budgets;
- (i) imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees, including setting and implementing tariff, rates and tax and debt collection policies;

- (j) monitoring the impact and effectiveness of any services, policies, programmes or plans, also by establishing and implementing performance management systems;
- (k) passing by-laws and taking decisions on any of the above-mentioned matters; and 5
- (l) doing anything else within its legislative and executive competence.

(4) A decision taken by a municipal council or any other structure or functionary of a municipality in the exercise of the municipality's executive authority, must be in writing.

Legislative procedures 10

16. (1) Only a member or committee of a municipal council may introduce a draft by-law in the council.

- (2) A by-law must be made by a decision taken by a municipal council—
 - (a) in accordance with the rules and orders of the council; and
 - (b) with a supporting vote of a majority of its members. 15

- (3) No by-law may be passed by a municipal council unless—
 - (a) all the members of the council have been given reasonable notice; and
 - (b) the proposed by-law has been published for public comment in a manner that allows the public an opportunity to make representations with regard to the proposed by-law. 20

(4) Subsections (1) to (3) also apply when a municipal council incorporates by reference, as by-laws, provisions of—

- (a) legislation passed by another legislative organ of state; or
- (b) standard draft by-laws made in terms of section 18.

Publication of by-laws 25

17. A by-law passed by a municipal council must be published promptly in the *Provincial Gazette*, and takes effect when published or on a future date determined by or in terms of the by-law.

Standard draft by-laws

18. (1) (a) The Minister, at the request of organised local government representing local government nationally, or after consulting the MECs for local government and organised local government, may by notice in the *Gazette*— 30

- (i) make standard draft by-laws concerning any matter for which municipal councils may make by-laws; and
- (ii) amend any standard draft by-laws made in terms of subparagraph (i). 35

(b) Before making or amending any standard draft by-laws in terms of paragraph (a), the Minister must—

- (i) publish the proposed standard draft by-laws or amendment in the *Gazette* for public comment; and
- (ii) consult the Cabinet member concerned if those standard draft by-laws or amendment affects that Cabinet member's area of responsibility. 40

(2) (a) An MEC for local government, at the request of organised local government representing local government in the province, or after consulting the Minister and organised local government, may by notice in the *Provincial Gazette*—

- (i) make standard draft by-laws concerning any matter for which municipal councils in the province may make by-laws; and
- (ii) amend any standard draft by-laws made in terms of subparagraph (i). 45

(b) Before making or amending any standard draft by-laws in terms of paragraph (a), the MEC must—

- (i) publish the proposed standard draft by-laws or amendment in the *Provincial Gazette* for public comment; and
- (ii) consult the MEC concerned if those standard draft by-laws or amendment affects that MEC's area of responsibility. 50

(3) (a) A standard draft by-law or an amendment of a standard draft by-law is applicable in a municipality only if, and to the extent and subject to any modifications and qualifications, adopted by the council of that municipality. 55

(b) The repeal of a standard draft by-law after it has been adopted by a municipality does not affect the continuation of that by-law in that municipality.

(4) If a municipal council intends to adopt a standard draft by-law with or without any modifications or qualifications, it must follow the procedure set out in section 16(3) and, after adoption, publish the by-law in accordance with section 17.

Municipal code

19. (1) A municipality must compile and maintain, in bound or loose-leaf form, a compilation of all its by-laws, and other legislative instruments applicable in the municipality, including any provisions incorporated by reference as by-laws of the municipality. 5

(2) This compilation, to be known as the municipal code, must be—

- (a) constantly updated and annotated; and 10
- (b) kept at the municipality's head office as the municipality's official record of all applicable by-laws, and other legislative instruments.

(3) The municipality, at the written request of a member of the public, must provide that person with a copy of or an extract from its municipal code against payment of a reasonable fee determined by the municipal council. 15

CHAPTER 5

INTEGRATED DEVELOPMENT PLANNING

Part 1: General

Municipal planning to be developmentally oriented

20. (1) A municipality must undertake developmentally oriented planning so as to ensure that it— 20

- (a) strives to achieve the objects of local government set out in section 152 of the Constitution;
- (b) gives effect to its developmental duties as required by section 153 of the Constitution; and 25
- (c) assists national and provincial organs of state in the progressive realisation of the fundamental rights contained in the Constitution.

(2) Subsection (1) must be read with Chapter IV of the Development Facilitation Act, 1995 (Act No. 67 of 1995).

Municipal planning in co-operative government 30

21. The planning undertaken by a municipality must be aligned with, and complement, the development plans and strategies of other affected municipalities, organs of state of the province within which the municipality is located, and national organs of state so as—

- (a) to give effect to the principles of co-operative government contained in section 41 of the Constitution; and 35
- (b) to ensure participation in national and provincial development programmes as required in terms of section 153(b) of the Constitution.

Adoption of integrated development plans

22. (1) Each municipal council must, within a prescribed period after the start of its elected term, adopt a single, inclusive plan for the development of the municipality which— 40

- (a) links, integrates and co-ordinates plans and proposals for the development of the municipality;
- (b) aligns the resources and capacity of the municipality for the implementation of the plan; 45
- (c) forms the policy framework and general basis on which annual budgets must be based;
- (d) complies with the provisions of this Chapter; and
- (e) is compatible with national and provincial development planning requirements binding on the municipality in terms of legislation. 50

(2) An integrated development plan adopted by a municipal council in terms of subsection (1) may be amended in terms of section 31 and remains in force until replaced by the next elected council.

Part 2: Contents of integrated development plans

Core components of integrated development plans

5

23. (1) An integrated development plan must reflect—

- (a) the municipal council's vision for the long-term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs;
- (b) an assessment of the existing level of development in the municipality, which must include an identification of communities which do not have access to basic municipal services; 10
- (c) the council's development priorities and objectives for its elected term, including its internal transformation needs;
- (d) the council's development strategies which must be aligned with any national or provincial sectoral planning requirements binding on the municipality in terms of legislation; 15
- (e) a spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality;
- (f) the council's operational strategies; 20
- (g) a financial plan, which must include a budget projection for at least the next three years; and
- (h) the core components of the municipality's performance management system as provided for in Chapter 6.

(2) The integrated development plan of a district municipality must contain a framework for the integrated development plans of the local municipalities within the area of that district municipality. 25

Part 3: Process for planning, drafting, adopting and review of integrated development plans

Adoption of process

30

24. Each municipal council must adopt a process set out in writing to guide the planning, drafting, adoption and review of its integrated development plan within a prescribed period after the start of its elected term.

Contents of process

25. (1) The process referred to in section 24 must assist the municipal council to identify and define its development needs, priorities and objectives, and must— 35

- (a) include a programme for the drafting of the integrated development plan;
- (b) determine methods and procedures to provide for—
 - (i) consultation with communities, residents and ratepayers on their development needs and priorities; 40
 - (ii) participation by communities, residents and ratepayers in the municipality in the drafting process and the review of the integrated development plan; and
 - (iii) the identification of other role-players to be consulted in the drafting process, including other organs of state. 45
- (c) identify all planning requirements binding on the municipality in terms of national and provincial legislation; and
- (d) deal with any other matters that may be prescribed in terms of section 34.

(2) The process adopted by a district municipality in terms of section 24 must include procedures for consultation with the local municipalities within the area of the district municipality. 50

Provincial supervision

26. The MEC for local government in the province may subject to any other law regulating provincial supervision of local government—

- (a) monitor the process followed by a municipality to guide the planning, drafting, adoption and review of its integrated development plan;
- (b) assist a municipality with the planning, drafting, adoption and review of its integrated development plan;
- (c) facilitate the co-ordination and alignment of— 5
 - (i) integrated development plans of different municipalities, including those of district municipalities and local municipalities within its area; and
 - (ii) the integrated development plan of a municipality with the plans, strategies and programmes of national and provincial organs of state;
- (d) take any appropriate steps to resolve disputes or differences in connection with the planning, drafting, adoption or review of an integrated development plan between— 10
 - (i) a municipality and communities, residents or ratepayers in the municipality; and
 - (ii) different municipalities. 15

Copy of process to be submitted to MEC for local government

- 27.** (1) A copy of the process as adopted by a municipal council, and any subsequent amendment of the process, must be submitted to the MEC for local government in the province within 30 days of the adoption or amendment of the process.
- (2) If a process as adopted by a municipal council, or any subsequent amendment of the process, does not comply with a requirement of this Chapter, the MEC for local government in the province may, within 30 days of receiving a copy of the process or the amendment, request the municipal council to adjust the process or the amendment in accordance with the MEC's proposals.
- (3) A municipal council must consider the MEC's proposals and, within 30 days of receiving the MEC's request, must— 25
- (a) if it agrees with those proposals, adjust its process or amendment in accordance with the MEC's request; or
 - (b) if it disagrees with the proposals, object to the MEC's request and furnish the MEC with reasons in writing why it disagrees. 30
- (4) On receipt of an objection in terms of subsection (3)(b), the MEC may refer the municipality's objection to an *ad hoc* committee referred to in section 30 for decision by the committee.

Drafting of integrated development plan

- 28.** (1) The executive committee or executive mayor of a municipality or, if the municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the municipal council, must— 35
- (a) manage the drafting of the municipality's integrated development plan;
 - (b) assign responsibilities in this regard to the municipal manager; and
 - (c) submit the draft plan to the municipal council for adoption by the council. 40
- (2) If the municipality is required to comply with planning requirements in terms of national or provincial legislation, the responsible national or provincial organs of state must—
- (a) integrate their planning requirements with the planning processes of the municipality in terms of this Chapter; and 45
 - (b) take reasonable steps to assist the municipality to meet the time limit mentioned in section 22 and the other requirements of this Chapter applicable to its integrated development plan.
- (3) A district municipality must—
- (a) plan integrated development for the area of the district municipality as a whole but in close consultation with the local municipalities in that area; and 50
 - (b) draft its integrated development plan taking into account the integrated development processes and proposals of the local municipalities in that area.
- (4) A local municipality must align its integrated development plan with the framework required in terms of section 23(2) and contained in the integrated development plan of the district municipality in whose area that local municipality falls. 55

Copy of integrated development plan to be submitted to MEC for local government

- 29.** (1) A copy of the integrated development plan as adopted by a municipal council, and any subsequent amendment to the plan, must be submitted to the MEC for local government in the province within 30 days of the adoption or amendment of the plan.
- (2) If an integrated development plan as adopted by a municipal council, or any subsequent amendment to the plan, does not comply with a requirement of this Act or is in conflict with or is not aligned with or negates any of the development plans and strategies of other affected municipalities, organs of state of the province in which the municipality is located, or national organs of state, the MEC for local government in the province may, within 30 days of receiving a copy of the plan or the amendment, request the municipal council to adjust the plan or the amendment in accordance with the MEC's proposals.
- (3) A municipal council must consider the MEC's proposals and, within 30 days of receiving the MEC's request, must—
- (a) if it agrees with those proposals, adjust its integrated development plan or amendment in accordance with the MEC's request; or
 - (b) if it disagrees with the proposals, object to the MEC's request and furnish the MEC with reasons in writing why it disagrees.
- (4) On receipt of an objection in terms of subsection (3)(b), the MEC may refer the municipality's objection to an *ad hoc* committee referred to in section 30 for decision by the committee.

Ad hoc committees

- 30.** (1) Whenever necessary, the MEC for local government in a province must appoint an *ad hoc* committee consisting of an equal number of members representing local government, the provincial government and the national government to decide an objection by a municipality in terms of section 27(3)(b) or 29(3)(b).
- (2) The MEC appoints the members of an *ad hoc* committee representing—
- (a) local government, with the concurrence of the municipality and any other municipality involved in the dispute;
 - (b) the provincial government, with the concurrence of the provincial organ or organs of state involved in the dispute or in whose functional area the dispute is located; and
 - (c) the national government, with the concurrence of the national organ or organs of state involved in the dispute or in whose functional area the dispute is located.
- (3) An objection referred to an *ad hoc* committee must be dealt with in accordance with any prescribed procedures.
- (4) A matter before an *ad hoc* committee is decided if the representatives of at least two spheres of government agree on the matter.
- (5) If the *ad hoc* committee rejects the municipality's objection, the municipality must adjust its process or integrated development plan or amendment, as the case may be, in accordance with the committee's decision within 30 days of the date on which the decision was taken.

Annual review and amendment of integrated development plan

- 31.** A municipal council—
- (a) must annually review and update its integrated development plan in accordance with an assessment of its performance measurements in terms of section 38; and
 - (b) may amend its integrated development plan in accordance with the prescribed process.

Part 4: Miscellaneous

Status of integrated development plan

- 32.** (1) An integrated development plan adopted by a municipality—
- (a) is the principle planning instrument which guides and informs all planning and development, and all decisions with regard to planning and development, in the municipality; and

- (b) binds all persons except to the extent of any inconsistency between a municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails.
- (2) A spatial development framework contained in an integrated development plan prevails over a plan as defined in section 1 of the Physical Planning Act, 1991 (Act No. 125 of 1991). 5

Municipality to give effect to integrated development plan

33. A municipal council must give effect to its integrated development plan and conduct its affairs in a manner which is consistent with its integrated development plan.

Regulations and guidelines 10

34. The Minister may for the purposes of this Chapter make regulations and issue guidelines in terms of section 112 to provide for or to regulate the following matters:

- (a) incentives to ensure that municipalities adopt their integrated development plans, and their processes for the planning, drafting, adoption and review of those plans, within the applicable prescribed period; 15
- (b) the detail of integrated development plans;
- (c) criteria municipalities must take into account when planning, drafting, adopting or reviewing their integrated development plans;
- (d) the detail of the process for the planning, drafting, adoption and review of integrated development plans; 20
- (e) a process for the amendment of integrated development plans;
- (f) the manner and time within which an objection must be referred to an *ad hoc* committee envisaged in section 30;
- (g) the manner and time within which written evidence or documents must be submitted to an *ad hoc* committee; 25
- (h) the proceedings of an *ad hoc* committee; and
- (i) any other matter that may facilitate—
 - (i) integrated development planning and the drafting of integrated development plans; or
 - (ii) the application of this Chapter. 30

CHAPTER 6

PERFORMANCE MANAGEMENT

Part 1: General

Establishment of performance management system

- 35.** A municipality must administer its affairs in an economical, effective, efficient and accountable manner, and must for this purpose— 35
- (a) establish a performance management system commensurate with its resources and best suited to its circumstances that is in line with the objectives, indicators and targets contained in its integrated development plan; and
 - (b) promote a culture of performance management among its structures and functionaries and in its administration. 40

Developing of performance management system

- 36.** The executive committee or executive mayor of a municipality or, if the municipality does not have an executive committee or executive mayor, a committee of councillors appointed by the municipal council must— 45
- (a) manage the development of the municipality's performance management system;
 - (b) assign responsibilities in this regard to the municipal manager; and
 - (c) submit the proposed system to the municipal council for adoption.

Monitoring and review of performance management system

37. A municipality may establish mechanisms to monitor and review its performance management system.

Part 2: Core components of performance management system

Core components 5

38. A municipality must in terms of its performance management system and in accordance with any regulations and guidelines that may be prescribed—

- (a) set appropriate key performance indicators as a yardstick for measuring performance with regard to the municipality's development objectives set out in its integrated development plan; 10
- (b) set performance targets with regard to each of those development objectives;
- (c) monitor, and measure at least once per year as part of the municipality's internal auditing processes, performance with regard to each of those development objectives against the key performance indicators and targets set in terms of paragraphs (a) and (b); 15
- (d) take steps to improve performance with regard to those development objectives where performance targets are not met; and
- (e) establish a process of regular—
 - (i) internal reporting to the council and specific structures and functionaries of the municipality; and 20
 - (ii) external reporting to the public and appropriate national and provincial organs of state.

General key performance indicators

39. (1) The Minister, after consultation with the MECs for local government and organised local government representing local government nationally, may— 25

- (a) prescribe general key performance indicators that are appropriate and that can be applied to local government generally; and
- (b) when necessary, review and adjust those general key performance indicators.

(2) Key performance indicators set by a municipality must include any general key performance indicators prescribed in terms of subsection (1), to the extent that these indicators are applicable to the municipality concerned. 30

Notification of key performance indicators and performance targets

40. A municipality, in a manner determined by the municipal council, must make known, both internally and to the general public, the key performance indicators and performance targets set by it for purposes of its performance management system. 35

Audit of performance measurement

41. The results of a performance measurement in terms of section 38(c) must be audited annually by the municipality's external auditor or the Auditor-General.

Annual reports

42. A municipality must prepare for each financial year an annual report consisting of— 40

- (a) a performance report reflecting—
 - (i) the municipality's performance during that financial year, including that of any service provider;
 - (ii) the development and service delivery priorities and the performance targets set by the municipality for the following financial year; and 45
 - (iii) measures that were or are to be taken to improve performance;
- (b) the financial statements for that financial year, including an audit report on those statements; and
- (c) any other reporting requirements in terms of the Municipal Finance 50 Management Act or any other law.

Publication

- 43.** The municipality must within 14 days after the tabling of its annual report in the municipal council—
- (a) make copies of the report accessible to the public, interested persons and the media, free of charge or at a reasonable price; and 5
 - (b) submit a copy of the report to—
 - (i) the MEC for local government in the province;
 - (ii) the Auditor-General; and
 - (iii) such other institution as may be prescribed.

Reports by MEC 10

44. The MEC for local government must annually compile and submit to the provincial legislatures and the Minister a consolidated report of municipalities in the province.

Reports by Minister

- 45.** (1) The Minister must annually compile and submit to Parliament and the MECs 15 for local government a consolidated report of local government performance in terms of general key performance indicators.
- (2) The report must be published in the *Gazette*.

Regulations

- 46.** The Minister may for the purposes of this Chapter make regulations and issue 20 guidelines in terms of section 112 to provide for or regulate—
- (a) the setting of key performance indicators by a municipality with regard to its development objectives;
 - (b) the identification of appropriate general key performance indicators that can be applied to municipalities generally and that reflect the object and purport of section 20; 25
 - (c) the regular review by a municipality of its key performance indicators;
 - (d) the setting of a framework for performance targets by municipalities consistent with their development priorities, objectives and strategies set out in their integrated development plans; 30
 - (e) mechanisms, systems and processes for the monitoring and measurement of performance by a municipality with regard to its development objectives;
 - (f) the auditing of performance measurements;
 - (g) the assessment of those performance measurements by a municipality;
 - (h) the assessment of progress by a municipality with the implementation of its integrated development plan; 35
 - (i) the improvement of performance;
 - (j) the format of an annual report;
 - (k) any other matter that may facilitate—
 - (i) the implementation by municipalities of an efficient and effective system 40 of performance management; or
 - (ii) the application of this Chapter.

CHAPTER 7**LOCAL PUBLIC ADMINISTRATION AND HUMAN RESOURCES*****Part 1: Basic principles* 45****Basic values and principles governing local public administration**

- 47.** (1) Local public administration is governed by the democratic values and principles embodied in section 195 (1) of the Constitution.
- (2) In administering its affairs a municipality must strive to achieve the objects of local government set out in section 152 (1) of the Constitution, and to— 50
- (a) consult communities, residents and ratepayers about the level, quality and

range of municipal services provided by the municipality either directly or through another service provider, and the available options for service delivery;

- (b) give communities, residents and ratepayers access to the municipal services to which they are entitled; 5
- (c) give communities, residents and ratepayers full and accurate information about the level and standard of municipal services they are entitled to receive; and
- (d) inform communities, residents and ratepayers how the municipality is managed, of the cost involved and the persons in charge. 10

Organisation of administration

48. A municipality must within its administrative and financial capacity establish and organise its administration in a manner that enables it to—

- (a) be responsive to the needs of communities, residents and ratepayers;
- (b) facilitate a culture of public service amongst staff; 15
- (c) be performance orientated and focussed on the objects of local government set out in section 152 of the Constitution and its developmental duties as required by section 153 of the Constitution;
- (d) ensure that its structures, functionaries, managers and staff relate their roles and responsibilities to the priorities and objectives set out in the municipality's integrated development plan; 20
- (e) establish clear relationships, and facilitate co-operation, co-ordination and communication, between—
 - (i) its structures and functionaries and its administration;
 - (ii) its structures, functionaries and administration and its communities, residents and ratepayers; 25
- (f) organise its structures, functionaries and administration in a flexible way in order to respond to changing priorities and circumstances;
- (g) organise the functions of the administration into operationally effective and appropriate administrative units and mechanisms, including departments and other functional or business units; 30
- (h) assign clear responsibilities for the management and co-ordination of these administrative units and mechanisms;
- (i) maximise efficiency of communication and decision making within the administration; 35
- (j) delegate and devolve responsibility to the most effective level within the administration;
- (k) involve staff in management decisions as far as is practicable; and
- (l) hold the municipal manager accountable for the overall performance of the administration. 40

Inconsistency with applicable labour legislation

49. In the event of any inconsistency between a provision of this Chapter, including the Code of Conduct referred to in section 64, and any applicable labour legislation, the labour legislation prevails.

Part 2: Structures, functionaries and roles 45

Roles and responsibilities

50. (1) A municipality must, within the framework of the Municipal Structures Act, define the specific role and area of responsibility of each structure and functionary of the municipality.

(2) The respective roles and areas of responsibility of each structure and functionary must— 50

- (a) be defined in precise terms by way of separate terms of reference, in writing, for each structure or functionary; and
 - (b) be acknowledged and given effect to in the rules, procedures, instructions, policy statements and other written instruments of the municipality. 55
- (3) Instruments defining, acknowledging or giving effect to the roles and areas of

responsibility of these structures and functionaries must be appropriate to the category and type in which the municipality falls.

(4) Terms of reference mentioned in subsection (2)(a) may include the delegation of powers and duties to the relevant structure or functionary in terms of section 54.

(5) When defining the respective roles and areas of responsibility of each structure and functionary, the municipality must determine— 5

- (a) the relationships among those structures and functionaries and the manner in which they must interact;
- (b) appropriate lines of accountability and reporting for those structures and functionaries; 10
- (c) mechanisms, systems and processes for minimising cross-referrals and unnecessary overlapping of responsibilities between those structures and functionaries;
- (d) mechanisms, systems and processes for resolving disputes between those structures and functionaries; and 15
- (e) mechanisms, systems and processes for interaction between—
 - (i) those structures or functionaries and officials of the municipality; and
 - (ii) councillors and officials of the municipality.

Municipal managers

51. (1) As head of administration the municipal manager of a municipality is, subject to the policy directions of the municipal council, responsible and accountable for— 20

- (a) the formation and development of an economical, effective, efficient, accountable and performance-driven administration;
- (b) the management of the municipality's administration in accordance with this Act and other legislation applicable to the municipality; 25
- (c) the implementation of the municipality's integrated development plan, and the monitoring of progress with implementation of the plan;
- (d) the management of the provision of services to communities, residents and ratepayers in a sustainable manner;
- (e) the control, management, effective utilisation and training of staff; 30
- (f) the maintenance of discipline of staff;
- (g) the promotion of sound labour relations and compliance by the municipality with applicable labour legislation;
- (h) advising the structures and functionaries of the municipality;
- (i) managing communications between the municipality's administration and its structures and functionaries; 35
- (j) carrying out the decisions of the structures and functionaries of the municipality;
- (k) the administration and implementation of the municipality's by-laws and other legislation; 40
- (l) the exercise of any powers and the performance of any duties delegated by the municipal council, or subdelegated by other delegating authorities of the municipality, to the municipal manager in terms of section 54;
- (m) the implementation of national and provincial legislation applicable to the municipality; 45
- (n) facilitating participation by communities, residents and ratepayers in the affairs of the municipality; and
- (o) the performance of any other function that may be assigned by the municipal Council.

(2) As accounting officer of the municipality the municipal manager is responsible and accountable for— 50

- (a) all income and expenditure of the municipality;
- (b) all assets and the discharge of all liabilities of the municipality; and
- (c) proper and diligent compliance with the Municipal Finance Management Act.

Employment contracts for municipal managers and managers directly accountable to municipal managers 55

52. (1) (a) The municipal manager and each manager directly accountable to the municipal manager must enter into a written employment contract with the municipality.

(b) A municipal council must take the necessary steps to ensure compliance with paragraph (a). 60

- (2) The contract must include, subject to applicable labour legislation—
- (a) details of remuneration, benefits and other terms and conditions of employment;
 - (b) performance objectives and targets that must be met, and the time frames within which those performance objectives and targets must be met; 5
 - (c) standards and procedures for evaluating performance and intervals for evaluation; and
 - (d) the consequences of substandard performance.
- (3) In addition the contracts for municipal managers appointed after this section becomes applicable to a municipality in terms of section 115 must— 10
- (a) be for a fixed term of employment not exceeding a period ending two years after the election of the next municipal council, but which may be renewed by agreement; and
 - (b) include a provision for renewal or cancellation of the contract.
- (4) A municipality may extend the application of subsection (3) to any manager directly accountable to the municipal manager. 15

Remuneration of municipal managers and managers directly accountable to municipal managers

53. Each municipal council must, on or before 31 October of each year, cause the full particulars of the basic salary and all other benefits of whatever nature applicable to the municipal manager and every manager that is directly accountable to the municipal manager, to be published in a newspaper in circulation in the area of the municipality concerned. 20

Part 3: Delegation system

Delegations 25

- 54.** (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—
- (a) delegate appropriate powers, excluding a power mentioned in section 160(2) of the Constitution and the power to approve or amend the municipality's integrated development plan, to any of the municipality's structures, functionaries, councillors or officials; 30
 - (b) instruct any such structure, functionary, councillor or official to perform any of the municipality's duties; and
 - (c) withdraw any delegation or instruction. 35
- (2) A delegation or instruction in terms of subsection (1)—
- (a) must not conflict with the Constitution, this Act or the Municipal Structures Act;
 - (b) must be in writing;
 - (c) is subject to any limitations, conditions and directions the municipal council may impose; 40
 - (d) may include the power to subdelegate a delegated power;
 - (e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and
 - (f) must be reviewed when a new council is elected or, if it is a district council, elected and appointed. 45
- (3) The municipal council—
- (a) in accordance with procedures set out in its rules and orders, may, or at the request in writing of at least one quarter of the councillors, must, review any decision taken by such a structure, functionary, councillor or official in consequence of a delegation or instruction, and either confirm, vary or revoke the decision subject to any rights that may have accrued to a person; and 50
 - (b) may require its executive committee or executive mayor to review any decision taken by such a structure, functionary, councillor or official in consequence of a delegation or instruction. 55

Delegation of certain powers to councillors or officials disallowed

55. A delegating authority may not delegate to a councillor or official the power to—

- (a) expropriate immovable property or rights in or to immovable property;
- (b) determine or alter the remuneration, benefits or other conditions of service of the municipal manager or managers directly responsible to the municipal manager;
- (c) make investments on behalf of the municipality. 5

Referral of matters to delegating authorities for decision

56. A structure, functionary, councillor or official of a municipality to whom a delegating authority has delegated or subdelegated a power to dispose of matters falling within the area of responsibility of that structure, functionary, councillor or official may, or must if instructed to do so by the relevant delegating authority, refer a matter before the structure, functionary, councillor or official to the relevant delegating authority for a decision. 10

Appeals

57. (1) A person whose rights are affected by a decision taken by a structure, functionary, councillor or official of a municipality in terms of a power or duty delegated or subdelegated by a delegating authority to the structure, functionary, councillor or official, may appeal to the delegating authority against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the decision. 15

(2) The municipal manager must promptly submit the appeal to the relevant delegating authority. 20

(3) The delegating authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Duty to report to delegating authorities 25

58. A structure, functionary, councillor or official of a municipality to whom a delegating authority has delegated or subdelegated a power or duty, must report to the delegating authority at such intervals as the delegating authority may require, on all decisions taken in terms of that delegated or subdelegated power or duty since the last report. 30

Withdrawal, amendment or lapsing of delegation or subdelegation

59. The withdrawal, amendment or lapsing of a delegation or subdelegation does not invalidate anything done as a consequence of a decision taken in terms of that delegation or subdelegation.

Review of delegations 35

60. (1) Whenever it becomes necessary in terms of section 54(2)(f) to review a municipality's delegations, the municipal manager of the municipality must submit to the municipal council—

- (a) a report on the existing delegations issued in terms of section 54 by the council and other delegating authorities of the municipality; and 40
- (b) recommendations on any changes to the existing delegations which the municipal manager may consider necessary.

(2) If the municipality has an executive committee or executive mayor, the municipal manager must submit the report and any recommendations to the municipal council through the executive committee or executive mayor. 45

Part 4: Staff matters

Staff establishments

61. (1) A municipal manager, within a policy framework determined by the municipal council, must—

- (a) approve a staff establishment for the municipality; 50

- (b) provide a job description for each post on the staff establishment;
- (c) align the remuneration and other conditions of service for each post on the staff establishment in accordance with any applicable labour legislation; and
- (d) regularly evaluate the staff establishment and, if necessary, review the staff establishment and the remuneration and conditions of service. 5

(2) Subsection (1)(c) and (d) does not apply to remuneration and conditions of service regulated by employment contracts referred to in section 52.

Human resource development

62. (1) A municipality must adopt systems and procedures providing for fair, efficient, effective and transparent personnel administration, including— 10

- (a) the recruitment, selection and appointment of persons as staff members;
- (b) service benefits and obligations of staff;
- (c) the supervision, control and disciplining of staff;
- (d) the monitoring, measuring and evaluating of performance of staff;
- (e) the promotion and demotion of staff; 15
- (f) the transfer of staff;
- (g) grievance procedures;
- (h) the investigation of allegations of misconduct and complaints against staff;
- (i) the dismissal and retrenchment of staff; and
- (j) any other matter as may be prescribed in terms of section 66. 20

(2) Such systems and procedures, to the extent that they deal with matters falling under applicable labour legislation and affecting the rights and interests of employees, must comply with any procedural and other requirements of such legislation.

(3) Such systems and procedures apply to a person referred to in section 52 except to the extent that they are inconsistent with that person's employment contract. 25

(4) The municipal manager must—

- (a) ensure that every staff member and every relevant representative union has easy access to a copy of these staff systems and procedures, including any amendments thereto;
- (b) at the written request of a staff member, make a copy of or extract from these staff systems and procedures, including any amendments thereto, available to that staff member; and 30
- (c) ensure that the purpose, contents and consequences of these staff systems and procedures are explained to staff members who cannot read.

Capacity building 35

63. (1) A municipality must develop its human resource capacity to a level that enables it to perform its functions and exercise its powers in an economical, effective, efficient and accountable way, and for this purpose must comply with the Skills Development Act, 1998 (Act No. 81 of 1998), and the Skills Development Levies Act, 1999 (Act No. 28 of 1999). 40

(2) A municipality may in addition to any provision for a training levy in terms of the Skills Development Levies Act, 1999, make provision in its budget for the development and implementation of training programmes.

(3) A municipality which does not have the financial means to provide funds for training programmes in addition to the levy payable in terms of the Skills Development Levies Act, 1999, may apply to the Sector Education and Training Authority for local government established in terms of the Skills Development Act, 1998, for such funds. 45

Code of Conduct for municipal employees

64. The Code of Conduct contained in Schedule 1 applies to every staff member of a municipality. 50

Code of Conduct to be provided to staff members

65. (1) The municipal manager of a municipality must—

- (a) provide a copy of the Code of Conduct to every member of the staff of the municipality; and

- (b) provide every staff member with any amendment of the Code of Conduct.
- (2) The municipal manager must ensure that the purpose, contents and consequences of the Code of Conduct are explained to staff members who cannot read.

Part 5: Miscellaneous

Regulations and guidelines	5
<p>66. The Minister may for the purposes of this Chapter make regulations and issue guidelines to provide for or to regulate the following matters:</p>	
(a) the procedure to be followed in appealing against decisions taken in terms of delegated powers and the disposal of such appeals;	
(b) the suspension of decisions on appeal;	10
(c) the setting of uniform standards for—	
(i) municipal staff establishments;	
(ii) municipal staff systems and procedures and the matters that must be dealt with in such systems and procedures; and	
(iii) any other matter concerning municipal personnel administration;	15
(d) the establishment of job evaluation systems;	
(e) the regulation of remuneration and other conditions of service of municipal employees, subject to applicable labour legislation;	
(f) the compulsory membership of municipal employees to provident and pension funds and medical schemes;	20
(g) municipalities' contributions to those funds and schemes, including the upper limits of such contributions;	
(h) the measuring and evaluation of staff performance;	
(i) the development of remuneration grading and incentive frameworks for municipal employees;	25
(j) corrective steps in the case of substandard performance by staff;	
(k) capacity building within municipal administrations;	
(l) training of municipal employees, including in-house training; and	
(m) any other matter that may facilitate—	
(i) the implementation by a municipality of an efficient and effective system of personnel administration; or	30
(ii) the application of this Chapter.	

CHAPTER 8

MUNICIPAL SERVICES

General duty	35
<p>67. (1) A municipality must give priority to the basic needs of the community, promote the development of the community, and ensure that all residents, communities and ratepayers in the municipality have access to at least the minimum level of basic municipal services.</p>	
(2) The municipal services provided by a municipality must—	40
(a) be equitable and accessible to all communities, residents and ratepayers;	
(b) be provided in a manner that is conducive to—	
(i) the prudent and effective use of available resources; and	
(ii) the improvement of standards of quality over time;	
(c) be financially sustainable;	45
(d) be environmentally sustainable; and	
(e) be regularly reviewed with a view to upgrading, extension and improvement.	

Part 1: Service tariffs

Tariff policy

68. (1) A municipal council must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements, and which complies with the provisions of this Act and with any other sectoral legislation.	50
---	----

- (2) A tariff policy must incorporate the following principles, namely that—
- (a) users and consumers of municipal services should be treated equitably in the application of tariffs;
 - (b) the amount individual users or consumers pay for services should generally be in proportion to their use of that service; 5
 - (c) poor households must have access to at least basic services through—
 - (i) tariffs that cover only operating and maintenance costs;
 - (ii) special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service; or
 - (iii) any other direct or indirect method of subsidisation of tariffs for poor households; 10
 - (d) tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance and administration costs, and interest charges;
 - (e) tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidisation from sources other than the service concerned; 15
 - (f) provision may be made in appropriate circumstances for a surcharge on the tariff for a service;
 - (g) provision may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users and consumers; 20
 - (h) the economical, efficient and effective use of resources, the recycling of waste, and other appropriate environmental objectives must be encouraged;
 - (i) the extent of subsidisation of tariffs for poor households and other categories of users and consumers should be fully disclosed. 25
- (3) A tariff policy may differentiate between different categories of users, consumers, debtors, service providers, services, service standards, geographical areas and other matters as long as such differentiation does not amount to unfair discrimination.

By-laws to give effect to policy 30

69. (1) A municipal council must adopt by-laws to give effect to the implementation and enforcement of its tariff policy.

(2) By-laws in terms of subsection (1) may differentiate between different categories of users, consumers, debtors, service providers, services, service standards, geographical areas and other matters as long as such differentiation does not amount to unfair discrimination. 35

Part 2: Provision of services

Mechanisms for provision of services

- 70.** A municipality may provide a municipal service in the municipality or a part of the municipality through—
- (a) an administrative structure within its administration; 40
 - (b) an internal trading entity established by it subject to the Municipal Finance Management Act; or
 - (c) a service delivery agreement concluded by it with—
 - (i) other municipalities;
 - (ii) national or provincial organs of state; 45
 - (iii) service utilities;
 - (iv) municipal business enterprises;
 - (v) community-based organisations or non-governmental organisations;
 - (vi) traditional authorities;
 - (vii) water committees established in terms of the Water Services Act, 1997 (Act No. 108 of 1997); or 50
 - (viii) any other person legally competent to operate a business activity.

When municipalities must decide on mechanisms to provide municipal services

- 71.** A municipality must review and decide on the appropriate mechanism to provide a municipal service when— 55
- (a) preparing its integrated development plan;

- (b) a new municipal service is to be provided;
- (c) an existing municipal service is to be upgraded, extended or improved;
- (d) a performance evaluation in terms of Chapter 6 requires a review of the delivery mechanism;
- (e) the municipality is restructured or reorganised in terms of the Municipal Structures Act; 5
- (f) requested by a community or a significant body of residents or ratepayers; or
- (g) instructed to do so by the MEC for local government in the province acting in terms of section 139(1)(a) of the Constitution.

Criteria for deciding on mechanisms to provide municipal services 10

72. When a municipality has to decide on a mechanism to provide a municipal service in the municipality or a part of the municipality, or to review any existing mechanism, it must—

- (a) assess the different service delivery options, taking into account—
 - (i) the direct and indirect costs and benefits associated with the project, including the expected effect of any service delivery mechanism on the environment and on human health, well-being and safety; 15
 - (ii) the capacity and potential future capacity of the municipality and prospective third party service providers to furnish the skills, expertise and resources necessary for the provision of the service; 20
 - (iii) the views of communities, residents and ratepayers; and
 - (iv) the likely impact on local economic development and employment patterns in the municipality;
- (b) select the mechanism or range of mechanisms which will achieve the best outcome in accordance with the requirements of section 67(2); and 25
- (c) comply with any national sectoral legislation relating to the appointment of a service provider.

Provision of services by municipality itself

73. If a municipality decides to provide a municipal service either through an administrative structure within its administration or an internal trading entity, it must— 30

- (a) allocate sufficient human, financial and other resources necessary for the proper provision of the service; and
- (b) transform the provision of that service in accordance with the requirements of this Act.

Provision of services by way of service delivery agreements 35

74. (1) If a municipality decides to provide a service by way of a service delivery agreement with—

- (a) a service utility established by it or a municipal business enterprise under its ownership control, it may enter into such an agreement with the service utility or municipal business enterprise; 40
- (b) another municipality or a national or provincial organ of state, it may negotiate and enter into such an agreement with the relevant municipality or organ of state; or
- (c) any person other than an institution referred to in paragraph (a) or (b), it must follow the procedure set out in Part 3 of this Chapter before entering into such an agreement with any such person. 45

(2) Before a municipality enters into a service delivery agreement it must establish a mechanism and programme for stakeholder consultation and information dissemination regarding the service delivery agreement.

Responsibilities of municipalities when providing services through service delivery agreements 50

75. (1) If a municipal service is provided by way of a service delivery agreement, the municipality remains responsible for ensuring that that service is provided to its communities, residents and ratepayers in terms of the provisions of this Act, and accordingly must— 55

- (a) regulate the provision of the service, in accordance with section 38;
 - (b) monitor and from time to time assess implementation of the agreement, including the performance of the service provider in accordance with section 38;
 - (c) exercise its powers and perform its duties in terms of Chapters 5 and 6 if the municipal service in question falls within a development priority or objective in terms of the municipality's integrated development plan; 5
 - (d) within a tariff policy determined by the municipal council in terms of section 68, control the setting and adjustment of tariffs by the service provider for the municipal service in question; and 10
 - (e) generally exercise its service authority so as to ensure uninterrupted delivery of the service in the best interest of its communities, residents and ratepayers.
- (2) A service delivery agreement may authorise a municipality to—
- (a) assign to a service provider responsibility for—
 - (i) developing and implementing detailed service delivery plans within the framework of the municipality's integrated development plan; 15
 - (ii) the operational planning, management and provision of the municipal service;
 - (iii) undertaking social and economic development that is directly related to the provision of the service; 20
 - (iv) customer management;
 - (v) managing its own accounting, financial management, budgeting, investment and borrowing activities within a framework of transparency, accountability, reporting and financial control determined by the municipality, subject to the Municipal Finance Management Act; 25
 - (vi) the collection of service fees from users of services in accordance with the municipal council's tariff policy in accordance with the credit control measures established in terms of Chapter 9;
 - (b) review and adjust tariffs;
 - (c) pass on to the service provider, through a transparent system that must be subject to performance monitoring and audit, funds for the subsidisation of services to the poor; 30
 - (d) in accordance with applicable labour legislation, transfer or second any of its employees to the service provider, with the concurrence of the employees concerned; 35
 - (e) take over the management or provide for judicial management of the service provider, or in any other way ensure continuity of the service if the service provider becomes insolvent, is liquidated or is for any reason unable to perform its functions in terms of the service delivery agreement; or
 - (f) take over the municipal service, including all assets, when the service delivery agreement expires or is terminated. 40
- (3) A service delivery agreement may be amended by agreement between the parties, except where an agreement has been concluded following a competitive bidding process, in which case an amendment can only be made after communities, residents and ratepayers in the municipality have been given— 45
- (a) reasonable notice of the intention to amend the agreement and the reasons for the proposed amendment; and
 - (b) sufficient opportunity to make representations to the municipality.
- (4) No councillor or staff member of a municipality may share in any profits or receive any benefits from a service provider providing a municipal service in terms of a service delivery agreement. 50

Service utilities and municipal business enterprises

- 76.** (1) A municipality, either alone or with another municipality, but subject to the provisions of the Municipal Finance Management Act, may—
- (a) establish a service utility to provide a municipal service in the municipality or in those municipalities in terms of a service delivery agreement with the municipality or those municipalities; 55
 - (b) establish a municipal business enterprise to provide a municipal service in the municipality or in those municipalities in terms of a service delivery agreement with the municipality or those municipalities; 60

- (c) acquire ownership control in a company registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), which as its main business provides or intends providing a municipal service in the municipality or in those municipalities in terms of a service delivery agreement with the municipality or those municipalities; and 5
- (d) transfer any of its staff or assets to that service utility or municipal business enterprise subject to any applicable labour legislation.
- (2) A power referred to in subsection (1)(a) must be exercised by way of appropriate by-laws passed by the municipality or municipalities concerned.
- (3) A company in which one or more municipalities acquire ownership control in terms of subsection (1)(c) becomes a municipal business enterprise. 10

Part 3: Service delivery agreements involving competitive bidding

Competitive bidding

77. (1) If a municipality decides to provide a municipal service by way of a service delivery agreement with a person referred to in section 74(1)(c), it must select the service provider through selection and pre-qualification processes which— 15
- (a) are competitive, fair, transparent, equitable and cost-effective;
 - (b) allow all prospective service providers to have equal and simultaneous access to information relevant to the bidding process;
 - (c) minimise the possibility of fraud and corruption; and 20
 - (d) make the municipality accountable to communities, residents and ratepayers about progress with selecting a service provider, and the reasons for any decision in this regard.
- (2) Subject to the provisions of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), a municipality may determine a preference for categories of service providers in order to advance the interest of persons disadvantaged by unfair discrimination, as long as the manner in which such preference is exercised does not compromise or limit the quality, coverage, cost and developmental impact of the services. 25
- (3) The selection process may comprise— 30
- (a) formal competitive tendering among bidders selected through a formal pre-qualification process;
 - (b) competitive negotiation (without formal competitive tendering) among parties selected through a formal pre-qualification process;
 - (c) solicitation of competing proposals from two or more potential providers, without a formal pre-qualification process; 35
 - (d) any other fair, equitable, transparent, and cost-effective competitive process as may be prescribed; and
 - (e) in the case of unsolicited proposals which contain genuine innovations in service delivery mechanisms, procedures to ensure cost competitiveness and value for money while at the same time recognising the value of, and rewarding, genuine innovators. 40
- (4) In selecting a service provider a municipality must apply the criteria listed in section 72(a) as well as any preference for categories of service providers referred to in subsection (2) of this section. 45

Negotiation and agreement with prospective service provider

78. (1) After a prospective service provider has been selected, the municipality must on the basis of the bidding documents, and any addenda, amendments or variations thereto that were provided to all the bidders, negotiate the final terms and conditions of the service delivery agreement with the preferred service provider and, if successful, enter into such an agreement with the selected service provider on the terms and conditions specified in the bidding documents, as modified or supplemented in the negotiations, if such modifications do not materially affect the bid in a manner which compromises the integrity of the bidding process. 50
- (2) If the municipality and the selected service provider fail to reach agreement within the time allowed by the municipality for negotiations, the municipality may negotiate with the next-ranked prospective service provider. 55

- (3) When a municipality has entered into a service delivery agreement it must—
- (a) make copies of the agreement available at its offices for public inspection during office hours; and
 - (b) give notice in a newspaper circulating in the municipality of—
 - (i) particulars of the service that will be provided under the agreement; 5
 - (ii) the name of the selected service provider; and
 - (iii) the place where and the period for which copies of the agreement are available for public inspection.

Part 4: Municipal service districts

Establishment of internal municipal service districts 10

- 79.** (1) A municipality may establish a part of the municipality as an internal municipal service district to facilitate the provision of a municipal service in that part of the municipality.
- (2) Before establishing an internal municipal service district, the municipality must consult the communities, residents and ratepayers that will be affected. 15
- (3) When a municipality establishes an internal municipal service district, the municipality—
- (a) must determine the boundaries of the district;
 - (b) must determine the mechanism that will provide the service in the district;
 - (c) in order to finance the service in the district, may— 20
 - (i) impose a special surcharge in the district on the tariff for the service; or
 - (ii) increase the tariff in the district for that service;
 - (d) must establish separate accounting and other record-keeping systems with respect to the provision of the service in the district; and
 - (e) may establish a committee composed of persons representing communities, 25
 - residents and ratepayers in the district to act as a consultative and advisory forum for the municipality regarding the management of and other matters relating to the service in the district.

Establishment of multi-jurisdictional municipal service districts

- 80.** Two or more municipalities by written agreement may establish designated parts 30 of their respective municipal areas as a multi-jurisdictional municipal service district to facilitate the provision of a municipal service in those parts of the municipal areas.

Contents of agreements establishing multi-jurisdictional municipal service districts

- 81.** (1) An agreement establishing a multi-jurisdictional municipal service district 35 must describe the rights, obligations and responsibilities of the participating municipalities and must—
- (a) determine the boundaries of the district;
 - (b) identify the municipal service to be provided in terms of the agreement;
 - (c) determine the mechanism that will provide the service in the district; 40
 - (d) determine budgetary, funding and scheduling arrangements for implementation of the agreement;
 - (e) provide for—
 - (i) the establishment of a governing body for the multi-jurisdictional 45
 - municipal service district;
 - (ii) the appointment of representatives of the participating municipalities to the governing body, the filling of vacancies and the replacement and recall of representatives;
 - (iii) the number of representatives appointed for each participating municipality, subject to subsection (2); 50
 - (iv) the terms and conditions of appointment of those representatives;
 - (v) the appointment of a chairperson;
 - (vi) the operating procedures of the governing body;
 - (vii) the delegation of powers and duties to the governing body consistent 55
 - with section 84; and
 - (viii) any other matter relating to the proper functioning of the governing body;

- (f) provide for—
 - (i) the acquisition of infrastructure, goods, services, supplies or equipment by the governing body, or the transfer of infrastructure, goods, services, supplies or equipment to the governing body;
 - (ii) the appointment of staff by the governing body, or the transfer or secondment of staff to the governing body in accordance with applicable labour legislation; 5
 - (iii) the terms and conditions on which any acquisition, transfer, appointment or secondment is made; and
 - (g) determine the conditions for, and consequences of, the withdrawal from the agreement of a participating municipality; 10
 - (h) determine the conditions for, and consequences of, the termination of the agreement, including—
 - (i) the method and schedule for winding-up the operations of the district;
 - (ii) the distribution of the proceeds; and 15
 - (iii) the allocation among the participating municipalities of any liabilities.
- (2) A governing body must consist of between three and fifteen representatives.

Legal status of governing bodies

82. The governing body of a multi-jurisdictional municipal service district is a juristic person. 20

Powers and duties of governing bodies

- 83.** (1) The governing body of a multi-jurisdictional municipal service district, in relation to the provision of the municipal service for which the district is established—
- (a) may in terms of the delegation in the agreement establishing the governing body exercise any of the powers a municipality may exercise for the proper provision of a service of the kind in question, subject to any limitations, qualifications and directives set out in the agreement; and 25
 - (b) must in terms of the delegation perform all the duties a municipality must perform in terms of legislation when providing a service of the kind in question, subject to any limitations, qualifications and directives set out in the agreement. 30
- (2) In addition a governing body has the following powers, subject to any limitations, qualifications and directives set out in the agreement establishing the governing body:
- (a) To determine its own staff establishment and appoint employees to posts on its staff establishment; 35
 - (b) to obtain the services of any person or entity to perform any specific act or function;
 - (c) to open a bank account;
 - (d) to acquire or dispose of any right in or to property;
 - (e) to insure itself against any loss, damage, risk or liability; 40
 - (f) to perform legal acts, or institute or defend any legal action in its own name; and
 - (g) to do anything that is incidental to the exercise of any of its powers or duties.

Control of governing bodies

- 84.** (1) The governing body of a multi-jurisdictional municipal service district— 45
- (a) is accountable to the participating municipalities; and
 - (b) must comply with any legislation applicable to the financial management of municipalities and municipal public entities.
- (2) A participating municipality—
- (a) is entitled to receive such regular written reports from the governing body of a district with respect to its activities and performance, as may be set out in the agreement establishing the governing body; 50
 - (b) may request the governing body to furnish it with such information regarding its activities as the participating municipality may reasonably require; and
 - (c) may appoint a nominee to inspect, at any time during normal business hours, the books, records, operations and facilities of the governing body, and of those of its contractors relating to the provision of the municipal service for which the district is established. 55

Termination of multi-jurisdictional municipal service districts

- 85.** A multi-jurisdictional municipal service district terminates—
- (a) automatically when there is only one remaining participating municipality;
 - (b) by written agreement among all of the participating municipalities; or
 - (c) upon the termination date or the fulfilment of any condition for termination contained in the agreement establishing the district. 5

Part 5: Regulations and guidelines

Regulations and guidelines

86. (1) The Minister may for the purposes of this Chapter make regulations and issue guidelines in accordance with section 112 to provide for or regulate the following matters: 10

- (a) The preparation, adoption and implementation of a municipal tariff policy;
- (b) the subsidisation of tariffs for poor households through—
 - (i) cross-subsidisation within and between services;
 - (ii) equitable share allocations to municipalities; and 15
 - (iii) national and provincial grants to municipalities;
- (c) limits on tariff increases;
- (d) criteria to be taken into account by municipalities when imposing surcharges on tariffs for services and determining the duration thereof;
- (e) incentives and penalties to encourage— 20
 - (i) the economical, efficient and effective use of resources when providing services;
 - (ii) the recycling of waste; and
 - (iii) other environmental objectives;
- (f) criteria to be taken into account by municipalities when assessing options for the provision of a municipal service; 25
- (g) measures against malpractices in selecting and appointing service providers, including measures against the stripping of municipal assets;
- (h) mechanisms and procedures for the co-ordination and integration of sectoral requirements in terms of legislation with the provisions of this Chapter, and the manner in which municipalities must comply with these; 30
- (i) each of the different kinds of selection processes referred to in section 77;
- (j) requirements for reporting to the public, the community and service providers involved in the selection process;
- (k) pre-qualification processes, including minimum pre-qualifications criteria; 35
- (l) the circumstances in which a particular selection process or pre-qualification process must be used;
- (m) the circumstances in and the conditions on which a municipality may dispense with the prescribed selection processes or pre-qualification processes;
- (n) the requirements or kind of requirements a municipality may or must impose on prospective participants as preconditions for participation in a selection process; 40
- (o) procedures for dealing with unsolicited proposals, including incentives for prospective service providers (which may include preferential treatment in the bidding process), to make unsolicited proposals concerning the provision of a service which— 45
 - (i) is innovative and original;
 - (ii) uses procedures or technology that a municipality has not previously considered or that has not been applied elsewhere in the Republic;
- (p) the exclusion from bidding processes of prospective service providers which have been engaged in corrupt or illegal practices, the criteria and procedures for determining which prospective service providers are excluded, and appeal mechanisms for excluded prospective service providers; 50
- (q) standard draft service delivery agreements;
- (r) performance guarantees by service providers; and 55
- (s) any other matter that may facilitate—
 - (i) the effective and efficient provision of municipal services; or
 - (ii) the application of this Chapter.

(2) The Minister may only make regulations and issue guidelines contemplated in paragraphs (a), (b), (c), (d) and (e) of subsection (1) after consultation with the Minister of Finance.

CHAPTER 9

CREDIT CONTROL AND DEBT COLLECTION

5

Customer care and management

87. In relation to the levying of rates and other taxes by a municipality and the charging of fees for municipal services, a municipality must, within its financial and administrative capacity—

- (a) establish a sound customer management system that aims to create a positive and reciprocal relationship between persons liable for these payments and the municipality, and where applicable, a service provider; 10
- (b) establish mechanisms for users of services and ratepayers to give feedback to the municipality or other service provider regarding the quality of the services and the performance of the service provider; 15
- (c) take reasonable steps to ensure that users of services are informed of the costs involved in service provision, the reasons for the payment of service fees, and the manner in which monies raised from the service are utilised;
- (d) take reasonable steps to ensure that the consumption of services by individual users of services is measured through accurate and verifiable metering systems; 20
- (e) ensure that persons liable for payments, receive regular and accurate accounts that indicate the basis for calculating the amounts due;
- (f) provide accessible mechanisms for those persons to query or verify accounts and metered consumption, and appeal procedures which allow such persons to receive prompt redress for inaccurate accounts; 25
- (g) provide accessible mechanisms for dealing with complaints from such persons, together with prompt replies and corrective action by the municipality;
- (h) provide mechanisms to monitor the response time and efficiency in complying with paragraph (g); and 30
- (i) provide accessible pay points and other mechanisms for settling accounts.

Debt collection responsibility of municipalities

88. A municipality—

- (a) must collect all money that is due and payable to it, subject to this Act; and 35
- (b) for this purpose, must adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies and complies with the provisions of this Act.

Contents of policy

89. (1) A credit control and debt collection policy must provide for— 40

- (a) credit control procedures and mechanisms;
- (b) debt collection procedures and mechanisms;
- (c) provision for indigent debtors that is consistent with its rates and tariff policies and any national policy on indigents;
- (d) interest on arrears; 45
- (e) extensions of time for payment of accounts;
- (f) termination of services or the restriction of the provision of services when payments are in arrears;
- (g) matters relating to unauthorised consumption of services, theft and damages; and 50
- (h) any other matters that may be prescribed in terms of section 96.

(2) A credit control and debt collection policy may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters as long as the differentiation does not amount to unfair discrimination.

By-laws to give effect to policy

90. (1) A municipal council must adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement.

(2) By-laws in terms of subsection (1) may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters as long as the differentiation does not amount to unfair discrimination. 5

Supervisory authority

91. A municipality's executive committee or executive mayor or, if a municipality does not have an executive committee or executive mayor, the municipal council itself or a committee appointed by it, as the supervisory authority must— 10

- (a) oversee and monitor—
 - (i) the implementation and enforcement of the municipality's credit control and debt collection policy and any by-laws enacted in terms of section 90; and
 - (ii) the performance of the municipal manager in implementing the policy and any by-laws; 15
- (b) when necessary, evaluate, review or adapt the policy and any by-laws, or the implementation of the policy and any such by-laws, in order to improve efficiency of its credit control and debt collection mechanisms, processes and procedures; and 20
- (c) at such intervals as may be determined by the council report to a meeting of the council, except when the council itself performs the duties mentioned in paragraphs (a) and (b). 20

Implementing authority

92. The municipal manager or service provider must— 25

- (a) implement and enforce the municipality's credit control and debt collection policy and any by-laws enacted in terms of section 90;
- (b) in accordance with the credit control and debt collection policy and any such by-laws, establish effective administrative mechanisms, processes and procedures to collect money that is due and payable to the municipality; and 30
- (c) at such intervals as may be determined by the council report the prescribed particulars to a meeting of the supervisory authority referred to in section 91.

Municipality's right of access to premises

93. The occupier of premises in a municipality must give an authorised representative of the municipality access at all reasonable hours to the premises in order to read, inspect, install or repair any meter or service connection for reticulation, or to disconnect, stop or restrict the provision of any service. 35

Accounts

94. A municipality may—

- (a) consolidate any separate accounts of persons liable for payments to the municipality; 40
- (b) credit a payment by such a person against any account of that person; and
- (c) implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person. 45

Agreements with employers

95. A municipality may—

- (a) with the consent of a person liable to the municipality for the payment of rates or other taxes, or fees for municipal services, enter into an agreement with that person's employer to deduct from the salary or wages of that person— 50
 - (i) any outstanding amounts due by that person to the municipality; or
 - (ii) such regular monthly amounts as may be agreed; and

- (b) provide special incentives for employers to enter into such agreements.

Regulations

96. The Minister may for the purposes of this Chapter make regulations and issue guidelines in accordance with section 112 to provide for or regulate the following matters: 5

- (a) the particulars that must be contained in the municipal manager's report in terms of section 92;
- (b) the identification of municipal services provided by the municipality or other service providers to users of services where the use of the service by the user can reasonably be determined, measured or estimated per quantity used or per frequency of such use; 10
- (c) the determination, measurement or estimate of the use by each user of each service so identified;
- (d) user agreements, and deposits and bank guarantees for the provision of municipal services; 15
- (e) the rendering of accounts to ratepayers and users and the particulars to be contained in the accounts;
- (f) the action that may be taken by municipalities and service providers to secure payment of accounts that are in arrears, including—
 - (i) the termination of municipal services or the restriction of the provision of services; 20
 - (ii) the seizure of property;
 - (iii) the attachment of rent payable on a property; and
 - (iv) the extension of liability to a director, if the debtor is a company;
- (g) appeals against— 25
 - (i) the accuracy of accounts for municipal taxes or services; and
 - (ii) action taken by a municipality to secure the payment of arrears;
- (h) the manner in and time within which such appeals must be lodged and determined and the consequences of successful and unsuccessful appeals;
- (i) extensions for the payment of arrears; 30
- (j) service connections and disconnections, and the resumption of discontinued services;
- (k) the combating of unauthorised consumption, connection and reconnection and theft of municipal services;
- (l) the tampering with or theft of meters, service supply equipment and reticulation network and any other fraudulent activity in connection with the provision of municipal services; and 35
- (m) any other matter that may facilitate—
 - (i) effective and efficient systems of credit control and debt collection by municipalities; or 40
 - (ii) the application of this Chapter.

CHAPTER 10

PROVINCIAL AND NATIONAL MONITORING AND STANDARD SETTING

Part 1: Provincial monitoring

Provincial monitoring of municipalities 45

97. (1) The MEC for local government in a province must establish mechanisms, systems and processes—

- (a) to monitor municipalities in the province in managing their own affairs, exercising their powers and performing their duties;
- (b) to monitor the development of local government capacity in the province; and 50
- (c) to assess the support needed by municipalities to strengthen their capacity to manage their own affairs, exercise their powers and perform their duties.

(2) The MEC for local government in a province may by notice in the *Provincial Gazette* require municipalities of any category, type or class specified in the notice to submit to a specified provincial department or institution such information as may be required in the notice, either at regular intervals or within a period as may be specified. 55

- (3) When exercising their powers in terms of subsection (1), MECs for local government—
- (a) must rely as far as is possible on annual reports in terms of section 42 and information submitted by municipalities in terms of subsection (2); and
 - (b) may make reasonable requests to municipalities for additional information after taking into account—
 - (i) the administrative burden on municipalities to furnish the information;
 - (ii) the cost involved; and
 - (iii) existing performance monitoring mechanisms, systems and processes in the municipality.

Non-performance and maladministration

- 98.** (1) If an MEC has reason to believe that a municipality in the province cannot or does not fulfil an executive obligation binding on that municipality or that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality in the province, the MEC may—
- (a) by written notice to the municipality, request the municipal council or municipal manager to provide the MEC with information required in the notice; and
 - (b) if the MEC considers it necessary, designate a person or persons to investigate the matter.
- (2) In the absence of applicable provincial legislation, the provisions of sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), and the regulations made in terms of that Act apply, with the necessary changes as the context may require, to an investigation in terms of subsection (1)(b).
- (3) The municipality concerned must bear the cost of any investigation in terms of this section.

Part 2: National monitoring and standard setting

Furnishing of information

99. The Minister, by notice in the *Gazette*, may require municipalities of any category, type or class specified in the notice to submit to a specified national department or institution such information concerning their affairs as may be required in the notice, either at regular intervals or within a period as may be specified.

Essential national and minimum standards

- 100.** (1) Except where otherwise provided for by an Act of Parliament, the Minister may, by notice in the *Gazette*, establish essential national standards and minimum standards for—
- (a) any municipal service or function assigned to municipalities in terms of section 156 (1) of the Constitution, after consulting—
 - (i) the Minister of Finance;
 - (ii) organised local government representing local government nationally;
 - (iii) the MECs for local government; and
 - (iv) any Cabinet member responsible for regulating that service; and
 - (b) the performance by MECs of their functions in terms of this Chapter, after consulting—
 - (i) organised local government representing local government nationally; and
 - (ii) the MECs for local government.
- (2) A Cabinet member, after consulting the Minister, may exercise the power contained in subsection (1)(a) in relation to a municipal service or function falling within the functional area for which that Cabinet member is responsible.
- (3) Standards established in terms of subsection (1) may distinguish between different categories, types and kinds of municipalities.
- (4) Draft standards in terms of subsection (1) or (2) must be published for public comment in the *Gazette* before their enactment.

CHAPTER 11

LEGAL MATTERS

Legal proceedings

101. (1) A municipality is a local authority for purposes of the Limitation of Legal Proceedings (Provincial and Local Authorities) Act, 1970 (Act No. 94 of 1970). 5

(2) A municipality may compromise or compound any action, claim or proceedings, and may submit to arbitration any matter other than a matter involving a decision on its status, powers or duties or the validity of its acts or by-laws.

Notices

102. (1) When anything must be notified by a municipality in the media, it must be done in a newspaper or newspapers circulating in its area and determined by the municipal council as a newspaper of record. 10

(2) When a municipality must publicly notify anything, it must be done in the official languages determined by the municipal council, having regard to language preferences and usage within its area. 15

(3) A copy of every notice that must be published in the *Provincial Gazette* or the media, must be displayed at the municipal offices.

(4) When the public is invited to submit written comments or representations to the municipal council on any matter before the council, it must state in the invitation that any person who cannot write may come during office hours to a place where an official of the council named in the invitation, will assist that person to transcribe that person's comments or representations. 20

(5) (a) When a form must be completed, a municipal council must give reasonable assistance to persons who cannot read or write to enable such persons to understand and complete the form. 25

(b) If the form relates to a charge or to the provision of any services, the assistance must include an explanation of its terms and conditions.

Certain certificates to be evidence

103. In legal proceedings against a municipality, a certificate signed by an official of the municipality that the municipality used the best-known, or only, or most practicable methods that are available in exercising any power or performing any duty assigned to it in terms of any legislation, must on its mere production by any person be accepted by the court as evidence of that fact. 30

Copy of *Provincial Gazette* as evidence

104. A copy of the *Provincial Gazette* in which a by-law, regulation or other legislative instrument has been published may on its mere production in a court by any person, be used as evidence that that by-law, regulation or other legislative instrument was passed or issued by a municipality concerned. 35

Fines and bail

105. Fines and estreated bails recovered in respect of offences or alleged offences of by-laws or regulations of a municipality— 40

(a) are excluded from payment into the National Revenue Fund; and

(b) must be paid into the revenue fund of the municipality.

Time of notices and payments

106. (1) Normal or extended office hours is the only time a payment may be made to or any notice may be served on— 45

(a) the council of a municipality;

(b) any other structure or functionary of the municipality; or

(c) any official of the municipality in an official capacity.

(2) Subsection (1) does not apply to payments by electronic transfer or at agency pay-points.

Service of documents and process

107. (1) Any notice or other document that is served on a person in terms of this Act, is regarded as having been served— 5

- (a) when it has been delivered to that person personally;
- (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
- (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgment of the posting thereof from the postal service is obtained; 10
- (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c); or
- (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or premises, if any, to which it relates. 15

(2) When any notice or other document must be authorised or served on the owner, occupier or holder of any property or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question, and it is not necessary to name that person. 20

(3) Any legal process is effectively and sufficiently served on a municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

Public servitudes 25

108. Public servitudes within a municipal area are under the control of the council of the municipality, which must protect and enforce the rights of the public arising from those servitudes.

Custody of documents

109. Except where otherwise provided, all records and documents of a municipality are in the custody of the municipal manager. 30

Restraint on transfer of property

110. (1) A registrar of deeds or other registration officer of immovable property may not register the transfer of property except on production to that registration officer of a prescribed certificate— 35

- (a) issued by the municipality in which that property is situated; and
- (b) which certifies that all amounts due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the three years preceding the date of application for the certificate have been fully paid. 40

(2) In the case of the transfer of immovable property by a trustee of an insolvent estate, the provisions of this section are subject to section 89 of the Insolvency Act, 1936 (Act No. 24 of 1936).

(3) An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property. 45

CHAPTER 12

MISCELLANEOUS

Offences and penalties 50

111. (1) A councillor who attempts to influence the municipal manager or any

municipal official or agent of a municipality not to enforce an obligation in terms of this Act or any by-law, regulation or decision of the council of the municipality, is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

(2) A person who contravenes section 93 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year. 5

Regulations and guidelines

112. (1) The Minister may, by notice in the *Gazette*, make regulations and issue guidelines not inconsistent with this Act concerning—

- (a) the matters listed in sections 12, 34, 46, 66, 86 and 96; 10
- (b) any matter that may be prescribed in terms of this Act; and
- (c) any matter that may facilitate the application of this Act.

(2) Regulations and guidelines made or issued in terms of subsection (1) may differentiate between—

- (a) different kinds of municipalities which may, for the purposes of the regulations, be defined in the regulations either in relation to categories or types of municipalities or in any other way; 15
- (b) different categories of municipal services;
- (c) different categories of service providers;
- (d) ratepayers, users of services, debtors and other categories of persons; or 20
- (e) different categories of ratepayers, users of services or debtors,

as long as the differentiation does not amount to unfair discrimination.

(3) Regulations in terms of subsection (1) may prescribe penalties for the contravention of or non-compliance with any specific provisions of the regulations, which may include an appropriate fine and imprisonment not exceeding a period of six months. 25

(4) Draft regulations and guidelines must be published in the *Gazette* for public comment before their enactment in terms of subsection (1).

(5) The absence of a regulation or guideline that may be prescribed in terms of this Act does not prevent— 30

- (a) the application of a provision of this Act in connection with which the regulation or guideline may be prescribed; or
- (b) the performance of a function or the exercise of a power assigned in terms of such a provision.

(6) Guidelines issued in terms of subsection (1) are not binding, but non-compliance with any guidelines may be taken into account in the determination of inter-governmental financial policies and arrangements. 35

Amendment of legislation

113. The legislation mentioned in Schedule 2 is hereby amended to the extent set out in that Schedule. 40

Transitional arrangements

114. (1) Any written agreement referred to in section 15(2) which existed immediately before this Act took effect, must be regarded as having been concluded in terms of that section.

(2) The Minister may— 45

- (a) initiate steps for the rationalisation of existing national and provincial planning legislation applicable to municipalities in order to facilitate local development planning as an integrated concept within the constitutional system of co-operative government envisaged in section 41 of the Constitution; and 50
- (b) establish mechanisms for facilitating sectoral regulation with respect to local government matters.

Short title and commencement

115. (1) This Act is called the Local Government: Municipal Systems Act, 2000.

(2) (a) The President may, by notice in the *Gazette*, determine that provisions of the Act, listed in the notice, apply to municipalities listed in the notice from a date specified in the notice.

(b) Until the notice contemplated in paragraph (a) is issued, no provision of this Act is binding on any municipality. 5

(c) Different dates may, in terms of paragraph (a), be specified for—

(i) different provisions of this Act; and

(ii) different kinds of municipalities which may, for the purposes of this subsection, be described in the notice either in relation to their categories or in any other way. 10

SCHEDULE 1

CODE OF CONDUCT FOR MUNICIPAL OFFICIALS

Definitions

1. In this Schedule “**partner**” means a person who permanently lives with another person in a manner as if married. 5

General conduct

2. An employee of a municipality must at all times—
- (a) loyally execute the lawful policies of the municipal council;
 - (b) perform the functions of office in good faith, diligently, honestly and in a transparent manner; 10
 - (c) act in such a way that the spirit, purport and objects of section 47 are promoted;
 - (d) act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
 - (e) act impartially and treat all people, including other employees, equally 15 without favour or prejudice.

Commitment to serving public interest

3. An employee of a municipality is a public servant in a developmental local system, and must accordingly—
- (a) implement the provisions of section 47(2); 20
 - (b) foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;
 - (c) promote and seek to implement the basic values and principles of public administration described in section 195(1) of the Constitution;
 - (d) obtain copies of or information about the municipality’s integrated develop- 25 ment plan, and as far as possible within the ambit of the employee’s job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;
 - (e) participate in the overall performance management system for the municipal- 30 ity, as well as the official’s individual performance appraisal and reward system, if such exists, in order to maximise the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.

Personal gain 35

4. (1) An employee may not—
- (a) use the position or privileges of an employee, or confidential information obtained as an employee, for private gain or to improperly benefit another person; or
 - (b) take a decision on behalf of the municipality concerning a matter in which that 40 employee, or that employee’s spouse, partner or business associate, has a direct or indirect personal or private business interest.
- (2) Except with the prior consent of the council of a municipality, an employee of the municipality may not—
- (a) be a party to a contract for— 45
 - (i) the provision of goods or services to the municipality; or
 - (ii) the performance of any work for the municipality otherwise than as an employee;
 - (b) obtain a financial interest in any business of the municipality; or
 - (c) be engaged in any business, trade or profession other than the work of the 50 municipality.

Disclosure of benefits

5. (1) An employee of a municipality who, or whose spouse, partner, business associate or close family member, has acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose in writing full particulars of the benefit to the council. 5

(2) This item does not apply to a benefit which an employee, or a spouse, partner, business associate or close family member, has or acquires in common with all other residents of the municipality.

Unauthorised disclosure of information

6. (1) An employee of a municipality may not without permission disclose any privileged or confidential information obtained as an employee of the municipality to an unauthorised person. 15

(2) For the purpose of this item “privileged or confidential information” includes any information—

(a) determined by the municipal council or any structure or functionary of the municipality to be privileged or confidential; 15

(b) discussed in closed session by the council or a committee of the council;

(c) disclosure of which would violate a person’s right to privacy; or

(d) declared to be privileged, confidential or secret in terms of any law.

(3) This item does not derogate from a person’s right of access to information in terms of national legislation. 20

Undue influence

7. An employee of a municipality may not—

(a) influence or attempt to influence the council of the municipality, or a structure or functionary of the council, or a councilor, with a view to obtaining any appointment, promotion, privilege, advantage or benefit, or for a family member, friend or associate; 25

(b) mislead or attempt to mislead the council, or a structure or functionary of the council, in its consideration of any matter; or

(c) be involved in a business venture with a councilor without the prior written consent of the council of the municipality. 30

Rewards, gifts and favours

8. (1) An employee of a municipality may not request, solicit or accept any reward, gift or favour for—

(a) persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty; 35

(b) making a representation to the council, or any structure or functionary of the council;

(c) disclosing any privileged or confidential information; or 40

(d) doing or not doing anything within that employee’s powers or duties.

(2) An employee must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the employee, would constitute a breach of subitem (1).

Council property 45

9. An employee of a municipality may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that official has no right.

Payment of arrears

10. A municipal employee may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may deduct any outstanding amounts from an employee’s salary after this period. 50

Participation in elections

11. An employee of a municipality may not participate in an election of the council of the municipality, other than in an official capacity or pursuant to any constitutional right.

Reporting duty of employees

12. Whenever an employee has reasonable grounds for believing that there has been a breach of this Code, the employee must without delay report the matter to a superior officer or to the speaker of the council. 5

Breaches of Code

13. Breaches of this Code must be dealt with in terms of the disciplinary procedures of the municipality envisaged in section 62(1)(h). 10

SCHEDULE 2

LEGISLATION AMENDED

1. Sections 31 and 32 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), are hereby repealed.
2. Schedule 4 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), 5
is hereby amended by the addition of the following item:
 - “2. Fines and estreated bails paid in respect of offences and alleged offences in terms of by-laws and other legislation enacted by municipalities.”.

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS BILL, 2000

1. SCOPE OF THE BILL

The Local Government: Municipal Systems Bill is the third piece of legislation to give effect to the Local Government White Paper, the first two being the Local Government: Municipal Demarcation Act and Municipal Structures Act. While the two Acts deal with the institutional and jurisdictional aspects of the local government transformation process, the Municipal Systems Bill seeks to establish the basic principles and mechanisms to give effect to our collective vision of “developmental government”. Its focus is therefore primarily on the internal systems and administration of the municipality.

The Bill will be complemented by and is aligned with the legislation to be enacted by the Department of Finance dealing with issues of financial management, budgeting, borrowing and treasury control, as well as legislation reforming the property rating and taxation system.

Together this suite of legislation will complete the process of reviewing and reforming the overall regulatory system for local government, and will enable government to repeal virtually the entire body of legislation and provincial ordinances inherited from the apartheid era. It is proposed to deal with the repeal process early in the year 2000.

The Bill has been drafted on the basis of a detailed investigation into the current capacity problems of local government, and an analysis of existing approaches and innovations to service delivery in local government.

The legislative approach adopted in the Bill is broadly enabling, and seeks to achieve a degree of equivalence and balance between the regulatory frameworks governing the three spheres of government. The Bill is mandatory only to the extent that the fundamental elements of public sector reform, socio-economic development, delivery of basic services, and public reporting and accountability need to be applied uniformly on a country-wide basis.

The Bill describes the core processes or elements that are essential to realising a truly developmental local government system. These include participatory governance, integrated development planning, performance management and reporting, resource allocation and organisational change. The Bill links these processes into a single cycle at local level, that will align various sectoral initiatives from national and provincial government departments with a municipality’s own capacity and processes. This will ensure better synergy between local, provincial and national initiatives, and a more effective system of inter-governmental relations.

In summary the Bill aims to:

- Clarify the legal nature of a municipality, and, by including the communities, residents and ratepayers within the municipal area in the definition of a municipality, establish a system of internal relationships for effective participatory governance, in which the different components of a municipality have certain key rights and responsibilities. This lays the foundation for the later Chapters in the Bill, in which participatory processes are critical to the success of initiatives such as planning and performance management.
- Establish certain basic requirements for public accountability and participation which are essential to the long-term sustainability of the municipality.
- Assign powers of general competence to local government, and manage the process of decentralising functions to local government to ensure proper co-ordination of the decentralisation process and the prevention of unfunded mandates.
- Regulate the promulgation of municipal by-laws to achieve greater symmetry between national, provincial and local legislative actions.
- Clarify the nature of the legislative and executive power of municipalities, and in particular develop the notion of a separation between the roles of “service authority” and “service provider”. This separation was initially introduced through the Water Services Act, and it is proposed to extend this to all municipal services. As “service authorities” municipalities remain responsible for and must see to the effective delivery of a particular service, and provide a policy and regulatory framework within which that service is provided, subject to any applicable national or provincial legislation. This

ensures that municipalities take full responsibility for the service delivery process, while enabling them to choose the most appropriate service provider from a menu of options.

- Rationalise the system of municipal planning into a single comprehensive five-yearly planning cycle, subject to annual monitoring and review, in which Integrated Development Plans (IDPs) are adopted by municipal councils as their core planning and management instrument. This system provides an important framework for municipalities to comply with the more detailed sectoral planning requirements of various national Departments. By linking their sectoral planning requirements into the municipality's IDP and budgeting processes, line Departments will achieve better integration of initiatives, improved compliance, as well as benefit from the alignment of sectoral strategies with municipal budgets and human resource deployment in terms of legal obligations.
- Establish a performance management system for local government, including a system of measuring and evaluating performance in priority areas, and reporting annually to citizens and other spheres of government, so that performance can be compared across the whole of local government, and under-performance in critical areas identified at an early stage. This will provide municipalities with a tool to evaluate progress with their IDP, as well as a more rational and informed basis for choosing appropriate service providers. It will also enable a far more appropriate and targeted system of capacity building and intervention to be put in place by national and provincial government.
- Entrench the “Batho Pele” principles in local public administration, and synchronise local administrative reform with the system of performance contracts, performance evaluation, codes of conduct, job evaluation, performance incentives, managerial responsibilities and delegations being implemented in national and provincial government.
- Provide a clear regulatory framework for municipal service partnerships, particularly processes such as competitive bidding, dealing with unsolicited proposals, and contract monitoring and compliance, which gives legal effect to the framework agreement on restructuring municipal services signed between government and Cosatu on 16 December 1998.
- Make provision for municipal service districts, including multi-jurisdictional service districts in which municipalities combine their regulatory powers in order to manage service provision on a more functional basis.
- Establish a set of principles and guidelines to guide the setting of tariffs for municipal services, in order to help municipalities ensure long-term sustainability of service delivery, and establish mechanisms for assisting indigent households.
- Empower municipalities to implement tough and effective credit control and debt collection strategies, in order to deal with non-payment for services, while at the same time making sure that proper customer management systems are established and that the genuinely indigent receive targeted relief.
- Create a clear framework to guide national and provincial monitoring and capacity building in terms of the Constitution, which establishes essential minimum standards for service delivery, rationalises existing monitoring systems, and aims over the longer term to build an effective, integrated, performance-oriented service delivery system.

The various provisions of the Bill will be implemented incrementally, with the bulk of the Bill's provisions becoming effective after the date of the next local government elections. Different provisions will be phased in over different timeframes for various categories and classes of municipalities, as the requisite capacity to implement the provisions of the legislation develops. The Bill provides for the Minister to issue regulations in a large number of areas, which will also be used to build capacity in municipalities incrementally. The Bill will enable municipalities, over time, to move towards a more performance orientated “Batho Pele” approach to service delivery, and lead to a progressive build-up of municipal capacity to perform the functions allocated to local government by the Constitution and subsequent legislation.

2. Other Departments and organisations consulted:

In the process of drafting the Bill the following organisations and forums have been consulted:

All nine provincial MECs for local government
 Salga
 Department of Land Affairs
 Department of Finance
 Department of State Expenditure
 Department of Minerals and Energy
 Department for Public Service and Administration
 Department of Labour
 Department of Housing
 Department of Environmental Affairs and Tourism
 Department of Health
 Department of Transport
 Department of Water Affairs and Forestry
 Office for Public Enterprises
 Office of the Auditor-General
 South African Municipal Workers Union
 Independent Municipal and Allied Trade Unions
 Urban Sector Network
 National Land Committee
 Legal Resources Centre
 Gender Advocacy Programme
 Mvula Trust
 Institute for Local Government Managers
 Institute for Municipal Administrators of South Africa
 Institute for Municipal Finance Officers
 Development and Planning Commission
 All metropolitan municipalities, district and local councils
 Development Bank of Southern Africa

FORUMS

Local Government Minmec
 Local Government Sectoral Forum
 Local Government Bargaining Council
 Nedlac

3. FINANCIAL IMPLICATIONS

No direct financial implications are foreseen. Provision has been made in the budget of the Department for the publication of the Bill, and the communication of the provisions of the Bill after promulgation in user-friendly guidelines and handbooks.

4. PARLIAMENTARY PROCEDURE

The Department of Provincial and Local Government and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with the procedure set out in section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5. OFFICIAL TEXT

The English text is the official text of the Bill. The Afrikaans text is the official translated version of the Bill.