

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 55164
of 7 August 2026)
(The English text is the official text of the Bill)*

(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

To amend the Local Government: Municipal Structures Act, 1998, so as to insert certain definitions; to make it mandatory for a councillor appointed as municipal office bearer or in terms of sections 79, 79A and 80 of the Local Government: Municipal Structures Act, 1998, to possess the necessary experience, skills or qualifications; to extend the time period within which a local council must appoint its representatives to the district council; to extend the time period within which the first meeting of the council must be called after it has been declared elected; to provide for the time period within which a new speaker must be elected; to provide for voting by the council to include by way of show of hands or secret ballot; to provide for grounds of removal and the procedure for the removal of municipal office bearers; to extend the time period within which the meeting to determine the members of the executive committee must be held; to extend the time period within which the meeting for the election of the mayor, deputy mayor, an executive mayor and executive deputy mayor must be held; to provide for coalition agreements; to provide for the period within which an executive mayor must be elected after the removal of the executive mayor; to provide for the period within which a mayoral committee must be appointed after the appointment of the newly elected executive mayor; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000, section 3 of Act 19 of 2008 and section 1 of Act 3 of 2021

1. Section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (hereinafter referred to as the “principal Act”), is hereby amended—

(a) by the insertion after the definition of “category” of the following definitions:

“**coalition**” means an arrangement between two or more parties, elected in terms of the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000), and one or more independent ward councillor, if applicable; 10

“**coalition agreement**” means a written agreement entered into by two or more parties elected in terms of the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000), and one or more independent ward councillor, to form a coalition in a municipality in which no party has obtained a majority of seats in the council after an election or by-election;” 15

- (b) by the insertion after the definition of “existing municipality” of the following definition:
 “‘independent ward councillor’ means a person elected to represent a specific ward on a municipal council who contests the ward election as an individual and not as a representative of any political party;”; 5
- (c) by the insertion after the definition of “municipality” of the following definition:
 “‘municipal office bearer’ means the speaker, whip, executive mayor, deputy executive mayor, mayor, deputy mayor, member of the executive committee or member of the mayoral committee;”; and 10
- (d) by the insertion after the definition of “prescribe” of the following definition:
 “‘rules of order’ means a by-law which prescribes rules and orders of the municipal council for—
 (a) its internal arrangements;
 (b) its business and proceedings; and
 (c) the establishment, composition, procedures, powers and functions of its committees;”. 15

Amendment of section 21 of Act 117 of 1998, as amended by section 12 of Act 51 of 2002

2. Section 21 of the principal Act is hereby amended by the addition after subsection (2) of the following subsection: 20
 “(3) A councillor elected as a municipal office bearer or chairperson of a committee established in terms of sections 79, 79A and 80 must possess the experience, skills or qualifications relevant to local government or be capacitated to perform such functions optimally to promote the efficiency of the municipality.”. 25

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

3. Section 23 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:
 “(4) A local council must appoint its representatives to the district council within [14] 30 days after the result of the election of the local council has been declared.”. 30

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

4. Section 29 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 35
 “(2) The municipal manager of a municipality or, in the absence of the municipal manager, a person designated by the MEC for local government in the province, must call the first meeting of the council of that municipality within [14] 30 days after the council has been declared elected or, if it is a district council, after all the members to be appointed by local councils, have been appointed.”. 40

Amendment of section 36 of Act 117 of 1998, as amended by section 17 of Act 3 of 2021

5. Section 36 of the principal Act is hereby amended by the addition after subsection (5) of the following subsection: 45
 “(6) If the speaker vacates office during a term, a new speaker must be elected within 14 days from the date on which the speaker vacates office.”.

Substitution of section 40 of Act 117 of 1998

6. The following section is hereby substituted for section 40 of the principal Act:

“Removal of speaker from office

40. (1) A municipal council, by resolution taken by show of hands or secret ballot as may be decided by the municipal council, may remove its speaker from office. 5

(2) Prior written notice of an intention to move a motion for the removal of the speaker must be given in accordance with the rules of order of the municipal council and must allow a reasonable opportunity for the speaker to respond. 10

(3) A notice of intention to move a motion for the removal of a speaker may only be tabled once in a period of 12 months.

(4) Notwithstanding subsection (3), a motion contemplated in subsection (2) may be tabled where the grounds for removal from office are as a result of— 15

- (a) a violation of the Constitution;
- (b) a conviction for an offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other legislation applicable to local government; 20
- (c) any financial misconduct in terms of section 173(4) or (5) of the Local Government: Municipal Finance Management Act;
- (d) a serious breach of a provision of the Code of Conduct as set out in Schedule 7; or
- (e) an inability to perform the legislated and delegated functions of office.”. 25

Amendment of section 41B of Act 117 of 1998, as inserted by section 19 of Act 3 of 2021

7. Section 41B of the principal Act is hereby amended by the insertion after paragraph (b) of the following paragraph: 30

“(bA) in a municipality with a coalition, assist the political parties and independent ward councillors, if applicable, who have entered into a coalition agreement, to adhere to the terms of that agreement;”.

Amendment of section 41E of Act 117 of 1998, as inserted by section 19 of Act 3 of 2021 35

8. Section 41E of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“Removal of whip from office”;

(b) by the substitution for subsection (1) of the following subsection:

“(1) A municipal council [**may remove**], by resolution, taken by show of hands or secret ballot, as may be decided by the municipal council, may remove the whip from office.”; 40

(c) by the substitution for subsection (2) of the following subsection:

“(2) Prior written notice of an intention to move a motion for the removal of the whip must be given in accordance with the rules of order of the municipal council and must allow seven days for the whip to respond.”; and 45

(d) by the addition after subsection (2) of the following subsections:

“(3) A notice of intention to move a motion for the removal of the whip may only be tabled once in a period of 12 months. 50

(4) Notwithstanding subsection (3), a motion contemplated in subsection (2) may be tabled where the grounds for removal from office are as a result of—

- (a) a violation of the Constitution;
- (b) a conviction for an offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), Prevention and Combating of Corrupt 55

- Activities Act, 2004 (Act No. 12 of 2004), or any other legislation applicable to local government;
- (c) any financial misconduct in terms of section 173(4) or (5) of the Local Government: Municipal Finance Management Act;
 - (d) a serious breach of a provision of the Code of Conduct as set out in Schedule 7; or
 - (e) an inability to perform the legislated and delegated functions of office.”.

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

9. The following section is hereby substituted for section 45 of the principal Act:

“Determination of members of executive committees

- 45.** A municipal council must determine the members of its executive committee from among its members at a meeting that must be held—
- (a) within **[14] 30** days after the council’s election;
 - (b) if it is a district council, within **[14] 30** days after the last of the local councils has appointed its representatives to the district council; or
 - (c) within **[14] 30** days after the date with effect from which the type of the municipality has been changed from any of those mentioned in section 8(e), (f), (g) or (h), 9(c) or (d) or 10(b) to any of those mentioned in section 8(a), (b), (c) or (d), 9(a) or (b), or 10(a).”.

Amendment of section 53 of Act 117 of 1998, as amended by section 25 of Act 3 of 2021

- 10.** Section 53 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:

“(1) A municipal council **[may]**, by resolution taken by show of hands or secret ballot as decided by the municipal council, may remove from office one or more or all the members of its executive committee. **[Prior notice of an intention to move a motion for the removal of members must be given.]**”; and
 - (b) by the insertion after subsection (1) of the following subsections:

“(1A) Prior written notice of an intention to move a motion for the removal of members must be given in accordance with the rules of order of the municipal council and must allow five days for members to respond.

(1B) A notice of intention to move a motion for the removal of members may only be tabled once in a period of 12 months.

(1C) Notwithstanding subsection (1B), a motion contemplated in subsection (1A) may be tabled where the grounds for removal from office are as a result of—

 - (a) a violation of the Constitution;
 - (b) a conviction for an offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other legislation applicable to local government;
 - (c) any financial misconduct in terms of section 173(4) or (5) of the Local Government: Municipal Finance Management Act;
 - (d) a serious breach of a provision of the Code of Conduct as set out in Schedule 7; or
 - (e) an inability to perform the legislated and delegated functions of office.”.

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

- 11.** Section 55 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If a municipal council chooses to have an executive mayor it must elect an executive mayor and, if the MEC for local government in the province so approves, also an executive deputy mayor, from among its members at a meeting that must be held—

- (a) within [14] 30 days after the council’s election; 5
- (b) if it is a district council, within [14] 30 days after the last of the local councils has appointed its representatives to the district council; or
- (c) within [14] 30 days after the date with effect from which the type of the municipality has been changed from any of those mentioned in section 8(a), (b), (c) or (d), 9(a) or (b) or 10(a) to any of those mentioned in section 8(e), (f), (g) or (h), 9(c) or (d) or 10(b).” 10

Substitution of section 58 of Act 117 of 1998

12. The following section is hereby substituted for section 58 of the principal Act:

“Removal of executive mayor or deputy executive mayor from office

58. (1) A municipal council, by resolution taken by show of hands or secret ballot as decided by the municipal council, may remove its executive mayor or deputy executive mayor from office. 15

(2) Prior written notice of an intention to move a motion for the removal of the executive mayor or deputy executive mayor must be given in accordance with the rules of order of the municipal council and must allow five days for the executive mayor or deputy executive mayor to respond. 20

(3) A notice of intention to move a motion for the removal of an executive mayor or deputy executive mayor may only be tabled once in a period of 12 months.

(4) Notwithstanding subsection (3), a motion contemplated in subsection (2) may be tabled where the grounds for removal from office are as a result of— 25

- (a) a violation of the Constitution;
- (b) a conviction for an offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other legislation applicable to local government; 30
- (c) any financial misconduct in terms of section 173(4) or (5) of the Local Government: Municipal Finance Management Act;
- (d) a serious breach of a provision of the Code of Conduct as set out in Schedule 7; or 35
- (e) an inability to perform the legislated and delegated functions of office.”.

Amendment of section 60 of Act 117 of 1998

13. Section 60 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: 40

“(5) When the executive mayor vacates office—

- (a) the mayoral committee is dissolved, and the remaining members must vacate office with immediate effect;
- (b) within 14 days from the date on which the executive mayor vacates office, an executive mayor must be elected; and
- (c) the elected executive mayor, within 14 days of taking office, must appoint a mayoral committee.”. 45

Insertion of Part 2A in Act 117 of 1998

14. Part 2A is hereby inserted in the principal Act after section 60:

“Part 2A

Coalition

Coalition agreements

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60A. (1) In a municipality in which no party has a majority of seats on the council, parties and independent ward councillors, if applicable, must enter into a coalition agreement to regulate their participation in the governance of the municipality during the term of the council.

(2)(a) The coalition agreement referred to in subsection (1) must be signed by the respective authorised representatives of the parties and independent ward councillors contemplated in subsection (1) and the individual independent ward councillors, if applicable, and submitted to the municipal manager.

(b) The municipal manager must submit a copy of the signed coalition agreement to the respective MECs for local government and publish the signed copy in the *Provincial Gazette*.

(c) Any amendments to the coalition agreement must be signed by the parties referred to in paragraph (a), and a copy thereof submitted to the municipal manager, who must submit it to the respective MECs for local government and publish the amended version in the *Provincial Gazette*.

(3) The Minister may prescribe the form and manner in which a coalition agreement may be concluded, including dispute resolution mechanisms.”.

Amendment of section 79A of Act 117 of 1998, as inserted by section 29 of Act 3 of 2021

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15. Section 79A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A municipal council must establish a committee called the municipal public accounts committee within 30 days of the election of the speaker as contemplated in section 36(2).”; and

(b) by the insertion after subsection (2) of the following subsections:

“(2A) The municipal council must appoint the chairperson from—

(a) a political party whose members do not hold the position of executive mayor, deputy executive mayor, mayor, deputy mayor, speaker or whip;

(b) a political party that is not in a coalition, if the municipal council has a coalition, unless all political parties in the municipal council are parties to the same coalition agreement; or

(c) independent ward councillors—

(i) who do not hold the position of executive mayor, deputy executive mayor, mayor, deputy mayor, speaker or whip; or

(ii) who are not in a coalition, if the municipal council has a coalition, unless all independent ward councillors in the municipal council are parties to the same coalition agreement.

(2B) The chairperson may only be removed on reasonable grounds, and with the written concurrence of the MEC for local government in the province.”.

Substitution of section 92 of Act 117 of 1998

16. The following section is hereby substituted for section 92 of the principal Act:

“Regulations

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92. (1) The Minister may make regulations not inconsistent with this Act prescribing—

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

- (b) any matter that may facilitate the application of this Act.
 (2) Regulations in terms section 60A(3) must be submitted to Parliament at least 30 days before their promulgation.”.

Amendment of Schedule 3 to Act 117 of 1998, as amended by section 34 of Act 51 of 2002 and section 35 Act 3 of 2021 5

17. Schedule 3 to the principal Act is hereby amended by the substitution in item 6 for paragraph (a) of the following paragraph:

- “(a) a vote must be taken at the meeting by show of hands or secret ballot, as decided by the municipal council;”.

Amendment of Table of Contents of Act 117 of 1998, as amended by section 11 of Act 20 of 2002, section 9 of Act 2 of 2003 and section 18 of Act 55 of 2008 10

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

- (a) by the substitution for the item relating to section 40 of the following item:
 “**40. Removal of speaker** from office”;
- (b) by the substitution for the item relating to section 41E of the following item: 15
 “41E. Removal of whip from office”;
- (c) by the substitution for the item relating to section 58 of the following item:
 “**58. Removal of executive mayor or deputy executive mayor** from office”; and
- (d) by the insertion after the item relating to section 60 of the following item: 20

“Part 2A

Coalitions

60A. Coalition agreements”.

Short title and commencement

19. This Act is called the Local Government: Municipal Structures Amendment Act, 25 2026, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE LOCAL
GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL,
2026**

1. BACKGROUND

- 1.1 The conclusion of the 2016 Local Government Elections (“LGEs”) entrenched coalition politics within municipalities. At the conclusion of the 2021 LGEs, the number of hung councils increased significantly, bringing with them unprecedented governance and service delivery related challenges within municipalities. Statistics at our disposal indicate that the amount of hung council increased from 24 in the year 2000 to 81 after the conclusion of the 2021 LGEs.
- 1.2 The emergence of coalitions came mostly as a result of maturing democracy in South Africa, new political dispensations and coalition arrangements, which are systematically changing, resulting in political instability and many governance and service delivery related challenges within municipalities.
- 1.3 Despite being a relatively common occurrence in South Africa, coalitions have not yet become institutionalised (i.e. there are no rules or guidelines for coalition governments). The high number of hung councils has highlighted the need to strengthen the guidance on the formation and management of coalitions.
- 1.4 There has also been a huge outcry for a framework, guidelines or legislation that will guide the formation and management of coalitions within the local government sphere. These challenges, together with the imminent challenges brought about by coalitions in municipalities, call for a legislation or framework to guide and strengthen the functioning of coalitions within municipalities.
- 1.5 The proposed amendments to the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (the “Act”), is seen as a vehicle or mechanism within which coalitions can be institutionalised to address challenges in hung councils.
- 1.6 The Local Government: Municipal Structures Amendment Bill, 2026 (the “Bill”) seeks to provide a legislative framework that will guide the formation of the management of coalitions, as well as providing systems to minimise the challenges of coalitions within the local government sphere.
- 1.7 In summation, the Bill seeks to—
 - (a) add the definitions of “coalition”, “coalition agreement”, independent ward councillor, “municipal office bearer”, and “rules of order”;
 - (b) extend the time period within which a local council must appoint its representatives to the district council;
 - (c) extend the time period within which the first meeting of the council must be called after it has been declared elected;
 - (d) extend the time period within which the meeting to determine the members of the executive committee must be held;
 - (e) extend the time period within which the meeting for the election of the mayor, executive mayor and executive deputy mayor must be held;
 - (f) provide for coalition agreements;
 - (g) provide for voting by the council to include by way of show of hands or secret ballot;
 - (h) provide grounds for the removal of municipal office bearers from office;
 - (i) provide for the period in which an executive mayor must be elected after the removal of the current executive mayor;
 - (j) provide for the period in which a mayoral committee must be appointed after the appointment of the newly elected executive mayor; and
 - (k) provide for matters connected therewith.

2. CLAUSE BY CLAUSE ANALYSIS

The Bill contains 19 clauses, amending specific provisions in the Act. Clause 19 provides for the short title and commencement of the Bill.

- 2.1 Clause 1 seeks to amend section 1 of the Act, by inserting new definitions for “coalition”, “coalition agreement”, “independent ward councillor”, “municipal office bearer” and “rules of order”.
- 2.2 Clause 2 seeks to amend section 21 of the Act, by adding subsection (3) that provides a requirement that a councillor elected as a municipal office bearer or chairperson of a committee established in terms of sections 79, 79A and 80 must, at least, possess the experience, skills or qualifications relevant to local government or be capacitated to perform such functions optimally to promote the efficiency of the municipality.
- 2.3 Clause 3 seeks to amend section 23(4) of the Act, dealing with the election and appointment of district councils, by changing the requirement for a local council to appoint its representatives to the district council within 14 days after the result of the election of the local council has been declared. The Bill amends the period within which the local council’s representatives must be appointed to 30 days.
- 2.4 Clause 4 seeks to amend section 29(2) of the Act, dealing with meetings of municipal councils, by changing the requirement of the period of 14 days, within which the first meeting of the council of a municipality must be called after it has been declared elected or, if it is a district council, after all the members to be appointed by local councils have been appointed. The Bill amends the period to 30 days.
- 2.5 Clause 5 seeks to amend section 36 of the Act, dealing with the election of speakers, by adding subsection (6), which provides that if the speaker vacates office during a term, a new speaker must be elected within 14 days from the date that the speaker vacates office.
- 2.6 Clause 6 seeks to amend section 40 of the Act, dealing with the removal of the speaker from office, by resolution by the municipal council. The amendment requires that the removal of the speaker must be executed by a resolution taken by show of hands or secret ballot, as may be decided by the municipal council. Experience has shown that votes are being bought by certain political parties by soliciting bribes and voting is being influenced in exchange of favours or returns for elections in other positions as a municipal office bearer. This practice mostly results in instability associated with the exchange of favours if the agreed terms are not met by either party, resulting in disruptions of meetings and motions being instituted by the aggrieved party. The proposed amendment will result in a situation whereby these common occurrences, practices and corrupt activities that are done to influence voting in council meetings in exchange of favours are averted.

The need to provide for a discretion by the municipal council on deciding whether to vote by show of hands or secret ballot is necessitated by the desire to promote transparency and accountability, while also considering the complexities varying from one municipality to the another, and to avoid compromising the security and safety of councillors among municipalities. The amendment will therefore allow for the council to use either of the different modes of voting, as may be decided by the council.

Clause 6 further provides for the removal of the speaker only after 12 months have passed since they were elected or on prescribed grounds. Motions of no confidence have become popular in municipalities, thereby having a significant impact on stability within coalitions, giving rise to the frequent changing of speakers within a council. The intention is to introduce a so called “cooling off period” wherein no motions of no confidence may be brought,

unless justified, based on allowable grounds (as listed in the proposed amendment). The allowable grounds for removal through a motion of no confidence are clearly defined in the Bill to prevent generic or open-ended terms and their potentially varied interpretations, which could give rise to conflict and possible litigation.

The ultimate aim of this clause is to enable stability and eliminate frivolous motions of no confidence from being raised and thus guarantees continuity and averts disruptions occurring as a result of frequent calls for motions of no confidence.

- 2.7 Clause 7 seeks to amend section 41B of the Act, dealing with the functions of a whip, by inserting paragraph (bA), which adds the function of assisting the political parties and independent councillors, if applicable, who have entered into a coalition agreement in a municipality with a coalition government, to adhere to the terms of that agreement.
- 2.8 Clause 8 seeks to amend section 41E of the Act, dealing with the election of the council whip, to require that the removal of the whip must be executed by a resolution taken by show of hands or secret ballot, as may be decided by the municipal council. This is done to avert the same practices or situations, or conditions or circumstances outlined with reference to clause 7.
- 2.9 Clause 9 seeks to amend section 45 of the Act, providing for the election of members of executive committees, to change the timeframes within which such election must be held, from 14 days to 30 days.
- 2.10 Clause 10 seeks to amend section 53 of the Act, providing for the removal from office of executive committees, to require that the removal of one or more or all the members of the executive committee must be executed by a resolution taken by show of hands or secret ballot, as may be decided by the municipal council. This is done to avert the same practices or situations, or conditions or circumstances outlined in respect of clause 7.
- 2.11 Clause 11 seeks to amend section 55 of the Act, providing for the election of executive mayors, to change the timeframes within which such election must be held, from 14 days to 30 days.
- 2.12 Clause 12 seeks to amend section 58 of the Act, providing for the removal from office of the executive mayor or deputy executive mayor, to require that such removal must be executed by a resolution taken by show of hands or secret ballot, as may be decided by the municipal council. This is done to avert the same practices or situations, or conditions or circumstances outlined in respect of clause 7.
- 2.13 Clause 13 seeks to amend section 60 of the Act, dealing with mayoral committees, to provide that if the executive mayor vacates office, the mayoral committee appointed by that executive mayor dissolves and must vacate office. There are different interpretations of section 60 by municipalities in terms of the dissolving of the mayoral committee. Some are of the view that the Members of the Mayoral Committee (“MMCs”) do not vacate office when the mayoral committee is dissolved. The amendment is intended to clarify that the MMCs must vacate office when the executive mayor vacates office, and the mayoral committee is dissolved. The clause also requires that the election for a new executive mayor must be held within 14 days and that the new executive mayor must appoint a new mayoral committee within 14 days of their election. The provision intends to ensure that there is continuity and operational efficiencies.
- 2.14 Clause 14 seeks to insert “Part 2A: Coalition” after section 60 in the Act, to provide for binding coalition agreements between political parties in municipalities in which no party has a majority of seats on the council. Making the conclusion of a coalition agreement compulsory, as well as

requiring that the agreement must be published in the Provincial *Gazette*, will introduce a contractual connotation to the relationship between the different political parties, which will be legally enforceable and will constitute a prerequisite for a coalition government to govern a municipality. This, coupled with the necessary regulations, will bring about predictability in the process. Binding coalition agreements will also enable the constituencies to hold the executive and the political parties concerned accountable for failure to deliver on certain agreed terms within the agreement, which would result in the improvement of service delivery.

- 2.15 Clause 15 seeks to amend section 79A of the Act, providing for the establishment of a municipal public accounts committee, to provide that such establishment must occur within 30 days of the election of the speaker contemplated in section 36(2). In addition, the chairperson of the committee must be appointed from a political party whose members do not hold the position of executive mayor, deputy executive mayor, mayor, deputy mayor, speaker or whip, or from a political party that is not in a coalition agreement if the municipal council has a coalition government, unless all political parties in the municipal council are in the coalition agreement. The chairperson may also be appointed from independent ward councillors who do not hold the position of executive mayor, deputy executive mayor, mayor, deputy mayor, speaker or whip, or who are not in a coalition agreement if the municipal council has a coalition government, unless all independent ward councillors in the municipal council are in the coalition agreement. In addition, the chairperson may only be removed on reasonable grounds, and with the written concurrence of the MEC for local government in the province.
- 2.16 Clause 16 seeks to amend section 92 of the Act, dealing with regulations, by adding a requirement that regulations in terms of section 60A(3) must be submitted to Parliament for parliamentary scrutiny at least 30 days before their promulgation.
- 2.17 Clause 17 substitutes item 6 of Schedule 3 to the Act by including an alternative of having the election of municipal office bearers being done by show of hands or secret ballot, as may be decided by the municipal council. This is done to avert a situation whereby corrupt activities influence voting in council meetings.
- 2.18 Clause 18 is a consequential amendment, which provides for the amendment of the Table of Contents to the Act, to indicate amendments to the headings of sections 40, 41E and 58 of the Act, as well as the insertion of “Part 2A: Coalitions” and the insertion of section 60A, which deals with coalition agreements.
- 2.19 Clause 19 provides for the short title of the Act, once enacted, to be called the “*Local Government: Municipal Structures Amendment Act, 2026*”.

3. PARTIES CONSULTED

The following stakeholders were consulted on the proposed legislative amendments:

- (a) All Cabinet Ministers;
- (b) all Members of Executive Councils responsible for local government in the provinces;
- (c) President of SALGA;
- (d) all Executive Mayors and Mayors;
- (e) National House of Traditional and Khoisan Leaders;
- (f) Municipal Demarcation Board;
- (g) Independent Electoral Commission;
- (h) Financial and Fiscal Commission;
- (i) Public Service Commission;
- (j) Human Rights Commission;

- (k) Public Affairs Research Institute;
- (l) Institute for Local Government Management;
- (m) Chancellors and Vice Chancellors of all Universities in South Africa; and
- (n) members of the public and civil society organizations.

4. FINANCIAL IMPLICATIONS FOR THE STATE

No financial implications are foreseen in the implementation of the Bill.

5. PARLIAMENTARY PROCEDURE

- 5.1 The Constitution distinguishes between four categories of Bills, as follows:
- (a) Bills amending the Constitution (section 74);
 - (b) Ordinary Bills not affecting the provinces (section 75);
 - (c) Ordinary Bills affecting the provinces (section 76); and
 - (d) Money Bills (section 77).
- 5.2 Sections 74 to 77 of the Constitution require Parliament, firstly, to classify a Bill submitted to it, to determine which procedure should be followed in enacting the Bill. In terms of section 76(1) of the Constitution, when the National Assembly passes a Bill referred to in subsection (3), (4) or (5), the Bill must be referred to the National Council of Provinces and dealt with by the procedure set out in that provision. Section 76(3) of the Constitution, in turn, provides that “a Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4. . .”.
- 5.3 In summary, a Bill will be considered as a section 76 Bill—
- if it provides for legislation mentioned in paragraphs (a) to (f) of section 76(3) of the Constitution;
 - if it provides for legislation envisaged in section 44(2), 220(3) or Chapter 13 of the Constitution; or
 - if its provisions in a substantial measure fall within a functional area of concurrent national and provincial legislative competence listed in Schedule 4 to the Constitution.
- 5.4 In *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (8) BCLR 741 (CC), the Constitutional Court determined the proper test for the tagging of the Communal Land Rights Bill (previously B67-2003, and now Act No. 11 of 2004) (“CLARA”), after the High Court held that, in classifying the CLARA for “tagging”, Parliament had applied the incorrect test, namely, the “pith and substance” test, instead of the “substantial measure” test suggested by the Constitutional Court in the matter of *Ex parte the President: In re Constitutionality of the Liquor Bill* 2000 (1) BCLR 1 (CC) (the “*Liquor Bill case*”). The High Court, however, refused to declare the CLARA invalid for failure to enact it following the correct procedure.
- 5.5 The Constitutional Court concluded that there is a difference between determining whether the National Assembly or the National Council of Provinces (“NCOP”) has the competence to legislate in a particular field and determining how a Bill ought properly to be tagged and ultimately enacted. These are two different processes for which two different tests are to be applied. Ngcobo CJ reaffirmed the decision of the Constitutional Court in the *Liquor Bill case*, at paragraphs 63 to 64 that the statement: “. . . any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4. . .”, formulates the test for determining the procedure to be followed in enacting a Bill. Ngcobo CJ further, at paragraph 58, states the following:
- “What matters for tagging is **not the substance or the true purpose and effect of the Bill**, rather, what matters is **whether the provisions of the Bill “in substantial measure fall within a functional area listed in Schedule 4”**. This statement refers to the

test to be adopted when tagging Bills. This test for classification or tagging is different from that used by this Court to characterise a Bill in order to determine legislative competence. This “involves the determination of the subject-matter or the substance of the legislation, its essence, or true purpose and effect, that is, what the [legislation] is about” (Our emphasis.)

- 5.6 The Constitutional Court thus held that **the test for tagging must be informed by its purpose**. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how a Bill must be considered by the provinces and in the NCOP. **The question of how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces.** The more it affects the interests, concerns, and capacities of the provinces, the more say the provinces should have on its content. Ngcobo CJ, at paragraphs 69 and 70, concisely dealt with the tagging question as follows:

“The tagging of Bills before Parliament must be informed by **the need to ensure that provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affects them**. Paying less attention to the provisions of a Bill once its substance, or purpose and effect, has been identified undermines the role that provinces should play in the enactment of national legislation affecting them. . . .

To apply the “**pith and substance**” test to the tagging question, **therefore undermines the constitutional role of the provinces in legislation in which they should have a meaningful say**, and disregards the breadth of the legislative provisions that section 76(3) requires to be enacted in accordance with the section 76 procedure.” (Our emphasis.)

- 5.7 We have carefully considered the Bill and measured it against the matters listed in Schedules 4 and 5 to the Constitution. The Bill deals with matters relating to the local government elections and coalitions. The proposed amendments, therefore, filter through to the other spheres of government and will impact on the interests and concerns of all spheres of government. Considering this, the Department and the Office of the Chief State Law Adviser agree that the Bill must be tagged as a section 76 Bill.
- 5.8 Section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), provides for the referral of Bills to the National House of Traditional and Khoi-San Leaders (“National House”).

The Office of the Chief State Law Adviser is of the view that the Bill does not contain provisions pertaining to traditional or Khoi-San communities or to customary law or customs of traditional or Khoi-San communities and, therefore, the Bill does not need to be referred to the National House for comments.

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