



# Wes-Kaapse Provinsiale Parlement Western Cape Provincial Parliament IPalamente yePhondo leNtshona Koloni

## COMMITTEE REPORT

**(Negotiating mandate stage)** Report of the Standing Committee on Local Government on the Local Government: Municipal Systems Amendment Bill [B 2B–2019] (NCOP), dated 5 May 2021, as follows:

The Standing Committee on Local Government, having considered the subject of the Local Government: Municipal Systems Amendment Bill [B 2B–2019] (NCOP) referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape's delegation in the NCOP the authority to support the Bill. The Committee further proposes the following amendments:

### 1. General comments

The Amendment Bill requires language editing and formatting. Further, the Commonwealth conventions on legislative drafting apply to all forms of legislation, including Bills. The Amendment Bill does not comply with these conventions. Some of the errors or problematic drafting practices contained in the Amendment Bill are the following:

- 1.1 Clause 2: Incorrect punctuation in section 54A (10): Delete inverted commas and second full stop at the end of the proposed subsection.
- 1.2 Clause 3: Incorrect numbering: Section 56(4A) should become (5), and consequential amendments should be brought about.
- 1.3 Clause 5(1): Incorrect numbering – there is no sub-clause (2). Delete the sub-clause numbering.
- 1.4 Clause 5(1)(e): Incorrect wording. Delete “and” at end of sub-clause.
- 1.5 Clause 5(1)(f): Incorrect indication of amendment and incorrect punctuation. Delete inverted commas before (f), and full stop at the end. Add semi-colon and “and”.
- 1.6 Clause 5(1)(g): Incorrect indication of amendment. Delete inverted commas before (g).

The provisions mentioned above are not the only provisions in which these or other errors appear.

It is proposed that the Amendment Bill should be amended to ensure consistency with accepted legislative drafting practices and Commonwealth conventions.

## 2. Comments on specific provisions

### 2.1 Clause 1: Amendment of section 1

The definition in the principal Act for “political office bearer” does not include a reference to a whip. The definition should be amended to include a reference to a whip, to ensure alignment with the Local Government: Municipal Structures Amendment Bill [B19D- 2018].

It is proposed to amend the definition of “political office bearer” by inserting a reference to whip.

There is no definition for the term “second” or “secondment”.

It is proposed to insert a definition for “second” or “secondment”, to clarify that conditions may be set.

### 2.2 Clause 2: Substitution of section 54A

This clause deals with the **“Appointment of municipal managers and acting municipal managers”**. To that end, this clause provides for the substitution of Section 54A of the Principal Act.

In that regard, Clause 54A (8) of the Bill provides that **“...if a person is appointed as municipal manager in contravention of this section, the MEC for local government must take appropriate steps to enforce compliance by the municipal council with this section, which may include an application to a court for a declaratory order on the validity of the appointment, or any other legal action against the municipal council...”**

A consideration of the above provision suggests that an MEC is authorised to even approach the Court to ensure compliance. And this is commendable, as it accords with the objectives of the Bill to professionalise Councils and to ensure good Governance.

However, the Bill falls short in its follow-through, when one considers Clause 54A (9). This particular clause provides that **“...where an MEC for local government fails to take appropriate steps referred to in subsection (8), the Minister may take the steps contemplated in that subsection...”**.

If one of the objectives of the Bill is to ensure compliance and accountability, then it is unclear why it is provided that the MEC is **compelled** to act, while the Minister, in turn, only has a **discretion** to do so.

In addition, Clause 54A (8) provides that **“... if a person is appointed as municipal manager in contravention of this section, the MEC must take steps...”**.

The Bill is however silent on any retributive action to be taken against those who in fact appointed that person in the first place.

This flies in the face of ensuring compliance and accountability.

Further, the Bill provides for the instance where the MEC may fail to take appropriate steps, but, inexplicably, and mindful of its purported objective of ensuring compliance, prudent Governance and accountability, the Bill is silent on any accountability that should befall the MEC for not taking the appropriate steps.

It is proposed to amend section 54A to provide for:

- a) Compelling the Minister to take appropriate steps where the MEC fails to do so;
- b) Accountability by those who appointed someone contrary to the compliance prescripts;

- c) Accountability by the MEC where he/she fails to take appropriate steps.

The reference to “senior manager” in section 54A (10) is incorrect as this proposed section deals with municipal managers.

It is proposed to change the reference to “municipal manager”.

The cross-reference to subsection (7)(b) in section 54A (10) is incorrect and referral should be made to subsection (8).

It is proposed to omit the cross-reference to subsection (7)(b) and substitute with cross reference to subsection (8).

### **2.3 Clause 3: Substitution of section 56**

There is an incomplete cross-reference in section 56(2).

It is proposed to include reference to subsection (1)(a)(i) in the introductory part.

### **2.4 Clause 4: Amendment of sections 54A and 56**

Clause 4 aims to amend the wording in sections 54A and 56. However, both these sections are substituted in their entirety by the Bill, so the amendment is superfluous.

It is proposed to delete clause 4.

### **2.5 Clause 6: Substitution of section 57A**

This clause, with reference to Section 57A of the Principal Act, deals with the “*Employment of dismissed staff and record of disciplinary proceedings*”

In particular, Clause 6(9) provides that “**the Minister must maintain a record of all staff members that have:**

- (a) been dismissed for misconduct; or**
- (b) resigned prior to the finalisation of the disciplinary proceedings, which record must be made available to municipalities as prescribed.”.**

It is observed that there are numerous instances where staff resign from the employment of a Municipality before they are subjected to disciplinary proceedings where there are allegations of misconduct against them.

Again, in the interest of the Bill’s purported objective of ensuring accountability and good governance, and to ensure the prudent management of public funds, it is unclear why the Bill is silent on obliging a Municipal Council to, notwithstanding the resignation of a staff member, still institute legal proceedings, within a certain timeframe, for the recovery of public funds lost due to mismanagement or misconduct.

It is proposed that by **expressly providing for a specific timeframe within which this must happen, will underscore the Bill’s objective of vigilant financial management and clean governance.**

## 2.6 Clause 10: Insertion of section 71B

This clause deals with “**Staff members prohibited from holding political office**” by the insertion of Clause 71B.

In particular, Clause 71B (1) provides that “**a staff member may not hold political office in a political party, whether in a permanent, temporary or acting capacity.**”

In turn, Clause 71B (2) provides that “**...a person who has been appointed as a staff member before Subsection (1) takes effect, must comply with subsection (1) within one year of the commencement of subsection (1).**”

If it is accepted (**and it is submitted that there are no grounds NOT to draw this inference**), that the primary purpose of this provision is to ensure the prevention of a “conflict of Interest” where an employee of the Municipality is also a Political Party office-bearer, then it is unclear why the Bill provides for **indulging** that employee for another 12 months after it has become known that the employee is in fact “conflicted”. This is not congruent with the Bill’s purported objective of clean Governance and Transparency.

It is submitted that the one year period is arbitrary, and provides no objective or rational basis for continuing the indulgence of a “conflicted” employee and as the provision stands, flies in the face of the Bill’s objectives.

## 2.7 Clause 12: Amendment of section 106

This clause seeks to amend Section 106 of the Principal Act by the substitution of Subsection (5) of the following subsection:

**“Where an MEC fails to conduct an investigation within 90 days, notwithstanding a request from the Minister, the Minister may in terms of this section conduct such investigation”.**

Again, it is observed that, whereas the MEC is compelled to act, the Minister only has a discretion to do so in relation to the same matter. This, it is submitted, is incongruent with the “compliance” objective.

In addition, the Bill is silent on any consequences in relation to the MEC for his/her “failure” to act.

It is proposed that the Bill provides for:

- a) Compelling the Minister to take appropriate steps where the MEC fails to do so;
- b) Accountability by the MEC where he/she fails to take appropriate steps; and
- c) In line 21 after the word “conduct” insert the words “and finalise”.

## 2.8 Clause 13: Amendment of section 120

The Minister is also obligated to make regulations in other sections, such as proposed section 57A.

It is proposed that all cross-references are completed and corrected.

## **2.9 Clause 14: Amendment of Schedule 1: Voting at meetings**

From the text of the Bill, it is not clear how non-compliance will be detected, and how, and by whom, this will be enforced.

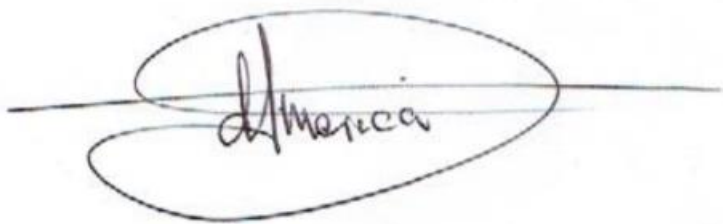
Mindful of the Bill's purported objective of Accountability and good Governance, it is also not clear what "consequences" will ensue, inside the Council or externally, and for a Councillor who does in fact vote contrary to legislation.

It is submitted that, notwithstanding the Bill's stated objectives, it falls short of its own mark, by not providing for follow-through in instances of non-compliance and that an opportunity exists in the Bill for the creation of new Statutory Offences, as a deterrent to non-compliance, be it in relation to a Staff member, a Councillor, or an MEC.

## **2.10 Clause 16: Repeal of Act 7 of 2011**

This provision is incomplete.

It is proposed that section 82 of the Structures Act also be repealed. If said section is not repealed, there will be conflicting provisions in the two Acts.

A handwritten signature in black ink, appearing to read 'D. America', is enclosed within a large, hand-drawn oval. A horizontal line passes through the center of the oval, extending to the left and right edges of the page.

**MR D AMERICA, MPP  
CHAIRPERSON: STANDING COMMITTEE ON LOCAL GOVERNMENT  
5 MAY 2021**