

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 48311 of
24 March 2023)
(The English text is the official text of the Bill)*

(Ms S Gwarube, MP)

[B 9—2024]

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

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

To amend the Local Government: Municipal Structures Act, 1998, so as to limit the frequency in terms of which a motion to remove a speaker from office may be tabled; to provide for circumstances when tabling of a motion for the removal of a speaker from office will not be limited; to limit the frequency in terms of which a motion to remove a whip from office may be tabled; to provide for circumstances when tabling of a motion for the removal of a whip from office will not be limited; to limit the frequency in terms of which a motion to remove an executive mayor or deputy executive mayor from office may be tabled; to provide for circumstances when tabling of a motion for the removal of an executive mayor or deputy executive mayor from office will not be limited; to provide for a municipal council to make rules to regulate the appointment of an independent panel to determine the validity of a motion to remove a speaker, a whip, an executive mayor or an executive deputy mayor from office; and to provide for matters connected therewith.

Amendment of section 40 of Act 117 of 1998

1. Section 40 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (hereinafter referred to as the “principal Act”), is hereby amended by the substitution for section 40 of the following section:

“(1) A municipal council by resolution may remove its speaker from office. [Prior notice of an intention to move a motion for the removal of the speaker must be given.] 10

(2) Prior notice of an intention to move a motion for the removal of the speaker must be given.

(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—

(a) a violation of the Constitution or the law;

(b) misconduct; or

(c) an inability to perform the functions of office.

(5) When a motion contemplated in subsection (2) or (4) is in order, the speaker must immediately refer the motion to an independent panel established for the purposes of considering the preliminary validity of the motion.

(6) A municipal council must make rules to regulate the establishment and appointment of the panel referred to in subsection (5).”.

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

2. Section 41E of the principal Act is hereby amended by the addition 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. 5
- (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— 10
- (a) a violation of the Constitution or the law;
 - (b) misconduct; or
 - (c) an inability to perform the functions of office.
- (5) When the motion contemplated in subsection (2) or (4) is in order, the speaker must immediately refer the motion to an independent panel established for the purposes of considering the preliminary validity of the motion.
- (6) A municipal council must make rules to regulate the establishment and appointment of the panel referred to in subsection (5).” 15

Amendment of section 58 of Act 117 of 1998

3. Section 58 of the principal Act is hereby amended by the substitution for section 58 of the following section:

- “(1) A municipal council, by resolution may remove its executive mayor or deputy executive mayor from office. **[Prior notice of an intention to move a motion for the removal of the executive mayor or deputy executive mayor must be given.]** 20
- (2) Prior notice of an intention to move a motion for the removal of the executive mayor or deputy executive mayor must be given. 25
- (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— 30
- (a) a violation of the Constitution or the law;
 - (b) misconduct; or
 - (c) an inability to perform the functions of office.
- (5) When the motion contemplated in subsection (2) or (4) is in order, the speaker must immediately refer the motion to an independent panel established for the purposes of considering the preliminary validity of the motion. 35
- (6) A municipal council must make rules to regulate the establishment and appointment of the panel referred to in subsection (5).”

Short title and commencement

4. This Act is called the Local Government: Municipal Structures Amendment Act, 2024 and comes into operation on a date determined by the President by proclamation in the *Gazette*. 40

**MEMORANDUM ON THE OBJECTS OF THE LOCAL
GOVERNMENT: MUNICIPAL STRUCTURES
AMENDMENT BILL, 2024**

1. INTRODUCTION

- 1.1 South Africa is currently in a transitional phase where the ruling party no longer holds majorities in a number of metros or councils across South Africa. With the 2024 National Elections around the corner, these elections are poised to be the first instance where the ruling party will slip below 50% of the votes. What this means for South Africa is that coalition governments will now be the “new norm”. Political parties and Independent Candidates will have to come together and form workable coalitions for the good of South Africa.
- 1.2 However, what we have witnessed at municipal level are continuous political attacks on coalition governments from opposition parties who politick smaller parties to cross the floor in exchange for valuable Mayoral Committee positions, should the current government be successfully removed by way of a motion of no confidence. What we see in practice is motions of no confidence being used as a political tool, rather than for the mechanism it was originally intended, being a process to remove a speaker or mayor from office due to them not fulfilling their duties adequately. In fact, these motions are brought on spurious grounds only because the opposition coalition has 50% +1 of the votes to pass the motion. The result is that these motions make cities or municipalities ungovernable as a new Executive is installed every other month, not allowing the incumbent government enough time to actually make a difference.
- 1.3 There can be no question that this practice will continue which has, and will continue to have, a disastrous impact on the stability and running of a municipality. What needs to change is simple — there needs to be a limitation on the number of motions of no confidence that are allowed to be brought in a certain time frame. This will, at the very least, give the relevant government an uninterrupted period in which to perform or steady the municipality.
- 1.4 Local Government: Municipal Structures Amendment Bill, 2024 (“the Bill”) therefore intends to limit the number of motions of no confidence in executive mayors, deputy executive mayors, speakers and whips, as the case may be, to only one motion per 12 month period from the date of the last motion. However, as a safety mechanism, the Bill will propose that additional motions of no confidence may be brought in exceptional circumstances where the grounds for removal are as a result of a violation of the Constitution or the law, misconduct or the inability to perform the functions of office.
- 1.5 The purpose of this provision is to safeguard against instances where a motion of no confidence is brought on frivolous political grounds but then shortly thereafter, there is a real and valid ground for such removal.

2. OBJECTS OF THE BILL

- 2.1 The purpose of the Bill is to amend the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (“the Act”), so as to limit the frequency in which motions to remove a speaker, whip, executive mayor or deputy executive mayor, from office may be tabled, but to also provide for circumstances in which the tabling of a motion for the removal of a speaker, whip, executive mayor or deputy executive mayor, from office will not be limited. The Bill further provides for the speaker to appoint an independent panel to determine the validity of a motion to remove a speaker, whip, executive mayor or deputy executive mayor, from office and to provide for matters connected therewith.

3. CONTENTS OF THE BILL

- 3.1 Clause 1 amends the Act by amending section 40 to provide that a motion tabled for the removal of a speaker may only be brought once per 12-month period. Clause 1 also provides that notwithstanding this limitation, a motion for the removal of a speaker may be brought at any time where particular grounds have been met. Upon tabling of such a motion, the speaker must refer the motion to an independent panel to establish the validity of said motion.
- 3.2 Clause 2 amends the Act by amending section 41E to provide that a motion tabled for the removal of a whip may only be brought once per 12-month period. Clause 2 also provides that notwithstanding subclause (1), a motion for the removal of a whip may be brought at any time where particular grounds have been met. Upon tabling of such a motion, the speaker must refer the motion to an independent panel to establish the validity of said motion.
- 3.3 Clause 3 amends the Act by amending section 58 to provide that a motion tabled for the removal of an executive mayor or deputy executive mayor may only be brought once per 12-month period. Clause 3 also provides that notwithstanding this limitation a motion for the removal of an executive mayor or deputy executive mayor may also be brought at any time where particular grounds have been met. Upon tabling of such a motion, the speaker must refer the motion to an independent panel to establish the validity of said motion.
- 3.4 Clause 4 provides for the short title and commencement of the Bill.

4. FINANCIAL IMPLICATIONS FOR THE STATE

A financial impact assessment may be completed upon introduction of the draft Bill.

5. DEPARTMENTS, BODIES OR PERSONS CONSULTED

None

6. PARLIAMENTARY PROCEDURE

- 6.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established by 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.
- 6.2 The Member is of the opinion that the Bill may be referred to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), as it contains provisions pertaining to a matter referred to in section 154(2) of the Constitution.

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