

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NO. 3977

20 October 2023

MS SIVIWE GWARUBE, MP

PUBLICATION FOR PUBLIC COMMENT

THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES

AMENDMENT BILL, 2023

Ms Siviwe Gwarube, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Local Government: Municipal Structures Amendment Bill, 2023, (“the draft Bill”) in Parliament, and hereby publishes the attached draft Bill for public comment in terms of Rule 276(1)(c) of the Rules of the National Assembly (9th Edition) and section 154(2) of the Constitution of the Republic of South Africa, 1996.

Ms Siviwe Gwarube, MP previously published an explanatory summary of the Bill in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition) in Government Gazette No.48311 of 24 March 2023.

Organised local government, municipalities, interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to the Speaker, PO Box 15, Cape Town, 8000; or emailed to speaker@parliament.gov.za and copied to legislation@da.org.za.

REPUBLIC OF SOUTH AFRICA

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LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL

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*(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)*

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(MS. S GWARUBE, MP)

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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 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 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.

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

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.]**
- (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.
- (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 the motion contemplated to in subsection (2) or (3) 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 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.]**

(2) Prior notice of an intention to move a motion for the removal of the executive mayor or deputy executive mayor must be given.

(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.

(4) Notwithstanding subsection (3), a motion contemplated to 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) 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).”.

Short title and commencement

4. This Act is called the Local Government: Municipal Structures Amendment Act, 2023 and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2023

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 province.
- 1.4 Local Government: Municipal Structures Amendment Bill, 2023 (“the Bill”) therefore intends to limit