

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 559

5 July 2011

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 7 of 2011: Local Government: Municipal Systems Amendment Act, 2011.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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.

(English text signed by the President)
(Assented to 2 July 2011)

ACT

To amend the Local Government: Municipal Systems Act, 2000, so as to insert and amend certain definitions; to make further provision for the appointment of municipal managers and managers directly accountable to municipal managers; to provide for procedures and competency criteria for such appointments, and for the consequences of appointments made otherwise than in accordance with such procedures and criteria; to determine timeframes within which performance agreements of municipal managers and managers directly accountable to municipal managers must be concluded; to make further provision for the evaluation of the performance of municipal managers and managers directly accountable to municipal managers; to require employment contracts and performance agreements of municipal managers and managers directly accountable to municipal managers to be consistent with the Act and any regulations made by the Minister; to require all staff systems and procedures of a municipality to be consistent with uniform standards determined by the Minister by regulation; to bar municipal managers and managers directly accountable to municipal managers from holding political office in political parties; to regulate the employment of municipal employees who have been dismissed; to provide for the Minister to make regulations relating to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers; to provide for the approval of staff establishments of municipalities by the respective municipal councils; to prohibit the employment of a person in a municipality if the post to which he or she is appointed is not provided for in the staff establishment of that municipality; to enable the Minister to prescribe frameworks to regulate human resource management systems for local government and mandates for organised local government; to extend the Minister's powers to make regulations relating to municipal staff matters; to make a consequential amendment to the Local Government: Municipal Structures Act, 1998, by deleting the provision dealing with the appointment of municipal managers; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 32 of 2000

1. Section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution for the definition of “municipal manager” of the following definition:
- “ ‘**municipal manager**’ means a person appointed in terms of section **[82 of the Municipal Structures Act] 54A;**”;
- (b) by the insertion after the definition of “parent municipality” of the following definition:
- “ ‘**political office**’, in relation to a political party or structure thereof, means—
- (a) the position of chairperson, deputy chairperson, secretary, deputy secretary or treasurer of the party nationally or in any province, region or other area in which the party operates; or
- (b) any position in the party equivalent to a position referred to in paragraph (a), irrespective of the title designated to the position;”.

Insertion of section 54A in Act 32 of 2000

2. The following section is hereby inserted in the principal Act after section 54: 15

“Appointment of municipal managers and acting municipal managers

54A. (1) The municipal council must appoint—

- (a) a municipal manager as head of the administration of the municipality; or
- (b) an acting municipal manager under circumstances and for a period as prescribed. 20

(2) A person appointed as municipal manager in terms of subsection (1) must at least have the skills, expertise, competencies and qualifications as prescribed.

(2A) (a) A person appointed in terms of subsection (1)(b) may not be appointed to act for a period that exceeds three months. 25

(b) A municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a), for a further period that does not exceed three months. 30

(3) A decision to appoint a person as municipal manager, and any contract concluded between the municipality and that person in consequence of the decision, is null and void if—

- (a) the person appointed does not have the prescribed skills, expertise, competencies or qualifications; or
- (b) the appointment was otherwise made in contravention of this Act. 35

(4) If the post of municipal manager becomes vacant, the municipality must—

- (a) advertise the post nationally to attract a pool of candidates nationwide; and
- (b) select from the pool of candidates a suitable person who complies with the prescribed requirements for appointment to the post. 40

(5) The municipality must re-advertise the post if there is no suitable candidate who complies with the prescribed requirements.

(6) (a) The municipality may request the MEC for local government to second a suitable person, on such conditions as prescribed, to act in the advertised position until such time as a suitable candidate has been appointed. 45

(b) If the MEC for local government has not seconded a suitable person within a period of 60 days after receipt of the request referred to in paragraph (a), the municipality may request the Minister to second a suitable person, on such conditions as prescribed, until such time as a suitable candidate has been appointed. 50

(7) (a) The municipality must, within 14 days, inform the MEC for local government of the appointment process and outcome, as may be prescribed. 55

(b) The MEC for local government must, within 14 days of receipt of the information referred to in paragraph (a), submit a copy thereof to the Minister.

(8) If a person is appointed as municipal manager in contravention of this section, the MEC for local government must, within 14 days of receiving the information provided for in subsection (7), take appropriate steps to enforce compliance by the municipality 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 municipality.

(9) 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.

(10) A municipality may, in special circumstances and on good cause shown, apply in writing to the Minister to waive any of the requirements listed in subsection (2) if it is unable to attract suitable candidates.

(11) A person who has been appointed as acting municipal manager before this section took effect, must be regarded as having been appointed in accordance with this section for the period of the acting appointment.

(12) Any pending legal or disciplinary action in connection with an appointment made before this section took effect, will not be affected by this section after it took effect.”.

Substitution of section 56 of Act 32 of 2000

3. The following section is hereby substituted for section 56 of the principal Act:

“Appointment of managers directly accountable to municipal managers

56. (1) (a) A municipal council, after consultation with the municipal manager, must appoint—

- (i) a manager directly accountable to the municipal manager; or
- (ii) an acting manager directly accountable to the municipal manager under circumstances and for a period as prescribed.

(b) A person appointed in terms of paragraph (a)(i) must at least have the skills, expertise, competencies and qualifications as prescribed.

(c) A person appointed in terms of paragraph (a)(ii) may not be appointed to act for a period that exceeds three months: Provided that a municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a), for a further period that does not exceed three months.

(2) A decision to appoint a person referred to in subsection (1)(a)(ii), and any contract concluded between the municipality and that person in consequence of the decision, is null and void if—

(a) the person appointed does not have the prescribed skills, expertise, competencies or qualifications; or

(b) the appointment was otherwise made in contravention of this Act, unless the Minister, in terms of subsection (6), has waived any of the requirements listed in subsection (1)(b).

(3) If a post referred to in subsection (1)(a)(i) becomes vacant, the municipal council must—

(a) advertise the post nationally to attract a pool of candidates nationwide; and

(b) select from the pool of candidates a suitable person who complies with the prescribed requirements for appointment to the post.

(4) The municipal council must re-advertise the post if there is no suitable candidate who complies with the prescribed requirements.

(4A) (a) The municipal council must, within 14 days of the date of appointment, inform the MEC for local government of the appointment process and outcome, as may be prescribed.

(b) The MEC for local government must, within 14 days of receipt of the information referred to in paragraph (a), submit a copy thereof to the Minister.

(5) If a person is appointed to a post referred to in subsection (1)(a) in contravention of this Act, the MEC for local government must, within 14 days of becoming aware of such appointment, take appropriate steps to enforce compliance by the municipality with this Act, which steps may include an application to a court for a declaratory order on the validity of the appointment or any other legal action against the municipality.

(6) A municipality may, in special circumstances and on good cause shown, apply in writing to the Minister to waive any of the requirements listed in subsection (1)(b) if it is unable to attract suitable candidates.

(7) A person appointed in a permanent capacity as a manager directly accountable to the municipal manager when this section takes effect, must be regarded as having been appointed in accordance with this section.

(8) A person appointed as an acting manager directly accountable to the municipal manager when this section takes effect, must be regarded as having been appointed in accordance with this section only for the period of the acting appointment.

(9) Any pending legal or disciplinary action in connection with an appointment made before this section took effect, will not be affected by this section after it took effect.”.

Substitution of word in section 54A and section 56

4. The principal Act is hereby amended by the substitution, in section 54A and section 56, for the word “municipality”, wherever it occurs, of the words “municipal council”.

Insertion of section 56A in Act 32 of 2000

5. The following section is hereby inserted in the principal Act after section 56:

“Limitation of political rights of municipal managers and managers directly accountable to municipal managers

56A. (1) A municipal manager or manager directly accountable to a municipal manager may not hold political office in a political party, whether in a permanent, temporary or acting capacity.

(2) This section does not apply to a person appointed as municipal manager or a manager directly accountable to the municipal manager when subsection (1) takes effect.”.

Amendment of section 57 of Act 32 of 2000

6. (1) Section 57 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) (i) be concluded within [a reasonable time] 60 days after a person has been appointed as the municipal manager or as a manager directly accountable to the municipal manager, failing which the appointment lapses: Provided that, upon

good cause shown by such person to the satisfaction of the municipality, the appointment shall not lapse; and

(ii) be concluded annually, thereafter, within one month after the beginning of [the] each financial year of the municipality;”;

(b) by the substitution for subsection (3) of the following subsection: 5

“(3) The employment contract referred to in subsection (1)(a) must—

(a) include [, **subject to applicable labour legislation,**] details of duties, remuneration, benefits and other terms and conditions of employment as agreed to by the parties, subject to consistency with—

(i) this Act;

(ii) any regulations as may be prescribed that are applicable to municipal managers or managers directly accountable to municipal managers; and

(iii) any applicable labour legislation; and 10 15

(b) be signed by both parties before the commencement of service.”;

(c) by the insertion after subsection (3) of the following subsection:

“(3A) Any regulations that relate to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers or managers directly accountable to municipal managers, must be regarded as forming part of an employment contract referred to in subsection (1)(a).”;

(d) by the deletion of paragraph (b) of subsection (4);

(e) by the insertion after subsection (4B) of the following subsection:

“(4C) Any regulations that relate to standards and procedures for evaluating performance of municipal managers or managers directly accountable to municipal managers, and intervals for evaluation, must be regarded as forming part of a performance agreement referred to in subsection (1)(b).”;

(f) by the deletion of subsection (7). 20 25 30

(2) The deletion of section 57(7) of the principal Act does not affect the continuation or validity of a fixed-term employment contract of a manager directly accountable to the municipal manager which is in force when this Act takes effect.

Insertion of section 57A in Act 32 of 2000

7. The following section is hereby inserted in the principal Act after section 57: 35

“Employment of dismissed staff and record of disciplinary proceedings

57A. (1) Any staff member dismissed for misconduct may only be re-employed in any municipality after the expiry of a prescribed period.

(2) The Minister must prescribe different periods of expiry, as contemplated in subsection (1), for different categories of misconduct. 40

(3) Notwithstanding subsection (1) and (2), a staff member dismissed for financial misconduct contemplated in section 171 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), corruption or fraud, may not be re-employed in any municipality for a period of ten years. 45

(4) Notwithstanding subsection (1), the Minister may prescribe acts of misconduct in respect of which no period need expire before a person may again be employed in any municipality.

(5) Subject to subsection (1), a decision to employ a person dismissed for misconduct must be taken with due regard to the nature of the misconduct concerned. 50

(6) A municipality must maintain a record that contains the prescribed information regarding the disciplinary proceedings of staff members dismissed for misconduct. 55

(7) A copy of the record referred to in subsection (6) must be submitted to the MEC for local government on a quarterly basis.

(8) The MEC for local government must, within 14 days of receipt of the record referred to in subsection (6), submit a copy thereof to the Minister.

(9) 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.”

Amendment of section 66 of Act 32 of 2000

8. Section 66 of the principal Act is hereby amended—

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

“(a) [approve] develop a staff establishment for the municipality, and submit the staff establishment to the municipal council for approval;”;

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

“(3) No person may be employed in a municipality unless the post to which he or she is appointed, is provided for in the staff establishment of that municipality.

(4) A decision to employ a person in a municipality, and any contract concluded between the municipality and that person in consequence of the decision, is null and void if the appointment was made in contravention of subsection (3).

(5) Any person who takes a decision contemplated in subsection (4), knowing that the decision is in contravention of subsection (3), may be held personally liable for any irregular or fruitless and wasteful expenditure that the municipality may incur as a result of the invalid decision.”.

Amendment of section 67 of Act 32 of 2000

9. Section 67 of the principal Act is hereby amended—

(a) by the substitution for the words in subsection (1) preceding paragraph (a) of the following words:

“(1) A municipality, in accordance with applicable law and subject to any applicable collective agreement, must develop and adopt appropriate systems and procedures, consistent with any uniform standards prescribed in terms of section 72(1)(c), to ensure fair, efficient, effective and transparent personnel administration, including—”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) Systems and procedures adopted in terms of subsection (1), apply also to a person referred to in section 57 [except to the extent that they are inconsistent with that person’s employment contract].”.

Amendment of section 71 of Act 32 of 2000

10. The following section is hereby substituted for section 71 of the principal Act:

“Bargaining council agreements

71. (1) Organised local government must, before embarking on any negotiations with parties in the bargaining council established for municipalities, consult the—

(a) Financial and Fiscal Commission established in terms of section 220 of the Constitution;

(b) Minister; and

(c) any other parties as may be prescribed.

(2) Organised local government must, in concluding any collective agreement resulting from negotiations contemplated in subsection (1), take into account—

(a) the budgets of municipalities;

(b) the fiscal capacity and efficiency of municipalities; and

(c) national economic policies.

(3) Municipalities must comply with any collective agreements concluded by organised local government within its mandate on behalf of local government in the bargaining council established for municipalities.”

Amendment of section 72 of Act 32 of 2000

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11. Section 72 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (c) of the following subparagraph:
- “(ii) municipal staff systems and procedures referred to in section 67(1) and the matters that must be dealt with in such systems and procedures, including—
- (aa) transfers; and
- (bb) termination of service.”;
- (b) by the substitution for paragraph (e) of subsection (1) of the following paragraph:
- “(e) training, competency and skills development of staff members of municipalities, including in-house training, subject to the requirements of the Skills Development Act, 1998 (Act No. 81 of 1998), the Skills Development Levies Act, 1999 (Act No. 28 of 1999), and the [Local Government] Municipal Finance Management Act [, 2003 (Act No. 56 of 2003)];”;
- (c) by the insertion in subsection (1) after paragraph (g) of the following paragraphs:
- “(gA) subject to applicable labour legislation, the regulation of medical aid and pension, after consultation with the Minister of Health and the Minister of Finance;
- (gB) the level of skills, expertise and competency that municipal managers and managers directly accountable to municipal managers must have;
- (gC) prohibiting the performance of remunerative work outside the municipality.”;
- (d) by the deletion in subsection (2) at the end of paragraph (a) of the word “and”;
- (e) by the insertion in subsection (2) at the end of paragraph (b) of the word “; and”;
- (f) by the insertion in subsection (2) after paragraph (b) of the following paragraph:
- “(c) when necessary, differentiate between different categories of municipal staff members.”; and
- (g) by the insertion after subsection (2) of the following subsection:
- “(2A) The Minister may, subject to applicable labour legislation and after consultation with the Minister for Public Service and Administration, make regulations relating to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers.”.

Amendment of section 106 of Act 32 of 2000

12. Section 106 of the principal Act is hereby amended by the insertion after subsection (4) of the following subsection:

“(5) (a) Where an MEC fails to conduct an investigation within 90 days, notwithstanding a request from the Minister in terms of subsection (4)(a), the Minister may in terms of this section conduct such investigation.

(b) The Minister must send a report detailing the outcome of the investigation referred to in paragraph (a) to the President.”.

Amendment of section 120 of Act 32 of 2000

13. Section 120 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) the matters listed in sections 22, 37, 49, 54A, 56, 72, 86A and 104.”.

Amendment of Schedule 1 to Act 32 of 2000

14. Schedule 1 to the principal Act is hereby amended by the insertion of the following item after item 2:

“Voting at meetings

2A. A councillor may not vote in favour of or agree to a resolution which is before the council or a committee of the council which conflicts with any legislation applicable to local government.” 5

Repeal of section 82 of Act 117 of 1998

15. Section 82 of the Local Government: Municipal Structures Act, 1998, is hereby repealed. 10

Transitional arrangements

16. This Act does not affect the employment contract of a municipal manager or a manager directly accountable to the municipal manager entered into before this Act took effect, and such contract continues until it lapses or is terminated.

Short title 15

17. This Act is called the Local Government: Municipal Systems Amendment Act, 2011.