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GENERAL NOTICES

NOTICE 394 OF 2010

DEPARTMENT OF COOPERATIVE GOVERNANCE

The Minister for Cooperative Governance and Traditional Affairs intends introducing the Local Government: Municipal Systems Amendment Bill in the National Assembly. The Bill is hereby published for public comment in terms of section 154(2) of the Constitution. Any person wishing to comment on the Bill is invited to submit written comments to:

The Director-General
Attention: Mr J Maepa
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Comments may also be faxed to 086 537 2337 or e-mailed to jackeym@cogta.gov.za or msabill2010@cogta.gov.za

Comments received after 14 June 2010 will not be considered.

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 collective bargaining; to extend the Minister's powers to make regulations relating to municipal staff matters; to effect 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, as amended by section 35 of Act 51 of 2002 and section 1 of Act 44 of 2003

1. Section 1 of the Local Government: Municipal Systems Act, 2000 (hereinafter referred to as the principal Act), is hereby amended by –
 - (a) 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] section 54A”; and
 - (b) the insertion after the definition of “parent municipality” of the following definition:

“political office’, in relation to a political party, 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:

“Appointment of municipal managers and acting municipal managers

54A (1) The municipal council of a municipality 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 may be prescribed by regulation.

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

(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 section.

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

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

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

(5) The municipality may re-advertise the post if it is not satisfied with the pool of candidates from which it must make its selection.

(6) The municipality may request the MEC or the Minister to second a suitable person to act in the advertised position until such time that a suitable candidate has been appointed as prescribed.

(7) The municipality must report to the MEC and the Minister on the appointment process and outcome, by providing the information as may be prescribed by regulation.

(8) If a person is appointed as municipal manager in contravention of this section, the MEC 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 fails to take appropriate measures referred to in subsection (8), the Minister may take the measures contemplated in that subsection.

(10) A councilor who votes in favour of, or in terms of a delegation from the council takes, a decision knowing that the decision is in contravention of this section, may be held personally liable for any fruitless and wasteful expenditure that the municipality may incur as a result of the invalid decision.

(11) A municipality may apply in writing to the Minister to be exempted from subsections (2) and (3) if it is unable to attract candidates complying with the prescribed requirements referred to in subsection (2).

(12) A person holding office as municipal manager or acting municipal manager before this section took effect, must be regarded as having been appointed in accordance with this section.”.

Amendment of section 55 of Act 32 of 2000, as amended by section 7 of Act 44 of 2003

3. Section 55 of the principal Act is hereby amended by the substitution for paragraph (q) of subsection (1) of the following paragraph:

“(q) the performance of any other function that may be assigned by the municipal council or prescribed by regulation.”.

Substitution of section 56 of Act 32 of 2000

4. The following section is hereby substituted for section 56 of the principal Act:
“Appointment of managers directly accountable to municipal manager

56. (1)(a) A municipal council, after consultation with the municipal manager-

(i) appoints a manager directly accountable to the municipal manager; and

(ii) must appoint an acting manager under circumstances and for a period as may be prescribed by regulation.

(b) A person appointed as a manager or an acting manager in terms of paragraph (a) must have the relevant skills and expertise to perform the duties associated with the post in question and meet any criteria as may be prescribed by regulation in relation to skills, expertise, competencies and qualifications associated with posts of that nature, taking into account the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination.

(2) A decision to appoint a person to a post referred to in subsection (1)(b), 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 section.

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

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

(4) The municipal council may re-advertise the post if not satisfied with the pool of candidates from which the selection must be made.

(5) If a person is appointed to a post referred to in subsection (1)(b) in contravention of this section, the MEC must, within 14 days of becoming aware of such appointment, take appropriate steps to enforce compliance by the municipality with this section, 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 apply in writing to the Minister to be exempted from subsections (1)(b) and (2) if it is unable to attract candidates complying with the prescribed requirements referred to in subsection (1)(b).

(7) A person holding office as a manager directly accountable to the municipal manager, or acting in the post of such a manager, when this section takes effect, must be regarded as having been appointed in accordance with this section."

Insertion of section 56A in Act 32 of 2000

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

"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 holding office 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, as amended by section 8 of Act 44 of 2003 and section 12 of Act 19 of 2008

6. (1) Section 57 of the principal Act is hereby amended by –
- (a) the substitution for paragraph (a) of subsection (2) of the following paragraph:
- “(a) (i) be concluded within **[a reasonable time]** sixty 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; and

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

(b) the substitution for subsection (3) of the following subsection:
“(3) The employment contract referred to in subsection (1)(a) must –

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

(i) with this Act;

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

(iii) any applicable labour legislation; and

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

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

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

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

- (e) the insertion after subsection (4) of the following subsection:
“(4A) Any regulations prescribing standards and procedures for evaluating performance of municipal managers or managers directly accountable to the municipal manager, and intervals for evaluation, must be regarded as forming part of a performance agreement referred to in subsection (1)(b)”;
 - (f) the deletion of paragraph (d) of subsection (6); and
 - (g) the deletion of subsection (7).
- (2) The repeal of section 57(7) of the principal Act does not affect –
- (a) 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; or
 - (b) the incumbent’s right to reapply for the same position at the expiry of the contract.

Insertion of section 57A in Act 32 of 2000

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

“Employment by other municipalities of dismissed municipal employees and municipal employees who are subjected to a disciplinary process

- 57A (1)** A municipal employee dismissed for misconduct may only be re- employed in any municipality after the expiration of a prescribed period.
- (2) Different periods may be so prescribed for different categories of misconduct.

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

(4) Subject to subsection (1), a decision whether or not to employ a person dismissed for misconduct shall be taken with due regard to the nature of the misconduct concerned.

(5) A municipal employee who is the subject of a disciplinary inquiry, may not be employed in another municipality until the disciplinary inquiry has been concluded."

Insertion of section 59A in Act 32 of 2000

8. The following section is hereby inserted in the principal Act after section 58:

"Regulations regarding duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers

59A The Minister may make regulations to regulate the duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to municipal managers."

Amendment of section 66 of Act 32 of 2000

9. Section 66 of the principal Act is hereby amended by –

(a) 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) the insertion of subsections (3), (4) and (5) after subsection (2):

“(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 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, as amended by section 38 of Act 51 of 2002

10. Section 67 of the principal Act is hereby amended by –

- (a) 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 by regulation in terms of section 72(1)(c), to ensure fair, efficient, effective and transparent personnel administration, including –;” and

- (b) 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**]”.

Insertion of section 71B in Act 32 of 2000

11. The following section is hereby inserted in the principal Act, after section 71A:

“Human resource management systems and mandates for collective bargaining”

71B. (1) The Minister may prescribe by regulation a framework to regulate –

- (a) human resource management systems for local government; and**
- (b) the mandating processes for collective bargaining.**

(2) A framework referred to in subsection (1) must regulate the matters referred to in that subsection in accordance with national policy”.

Amendment of section 72 of Act 32 of 2000, as amended by section 15 of Act 19 of 2008

12. Section 72 of the principal Act is hereby amended by –

- (a) 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;”;

- (b) the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(e) training and 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) the substitution for paragraph (g) of subsection (1) of the following paragraph:

“(g) the regulation of remuneration and the medical, pension and other conditions of service of staff members of municipalities, subject to applicable labour legislation;”;

- (d) the insertion in subsection (1) after paragraph (g) of the following paragraphs:

“(gA) the level of skills, expertise and competency that municipal managers and managers directly accountable to municipal managers must have;

(gB) prohibiting the performance of remunerative work outside the municipality”.

- (e) the deletion of the word “and” at the end of paragraph (b) of subsection (2); and

- (f) the insertion in subsection (2) after paragraph (b) of the following paragraph:

“(c) when necessary, differentiate between different categories of municipal staff members”.

Amendment of section 106 of Act 32 of 2000

13. (1) Section 106 of the principal Act is hereby amended by the insertion of subsection (5) after subsection (4):

“(5) 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 conduct such investigation.”

Amendment of Schedule 1 of Act 32 of 2000, as amended by sections 45 and 46 of Act 51 of 2002 and section 21 of Act 19 of 2008

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

“Voting at meetings

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

Repeal of section 82 of Act 117 of 1998, as amended by section 121 of Act 32 of 2000

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

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

17. This Act is called the Local Government: Municipal Systems Amendment Act, 2010.

NOTICE 395 OF 2010**DEPARTMENT OF COOPERATIVE GOVERNANCE
LOCAL GOVERNMENT: MUNICIPAL SYSTEMS AMENDMENT BILL, 2010**

The Minister for Cooperative Governance and Traditional Affairs intends introducing the Local Government: Municipal Systems Amendment Bill, 2010 in the National Assembly during the third quarter of 2010. The explanatory summary of the Bill is hereby published in accordance with Rule 241(1)(c) of the Rules of the National Assembly.

The Bill provides for:

The amendment of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), so as to insert certain definitions, to make further provision for the appointment of municipal managers and managers directly accountable to municipal managers; to provide for procedures and the setting of experience and competency criteria for such appointments, and for the consequences of appointments made; to determine timeframes within which performance agreements of municipal managers and managers directly accountable to municipal managers must be concluded; to require employment contracts and performance agreements of municipal managers and managers directly accountable to municipal managers as well as all staff systems and procedures of a municipality to be consistent with the Act and any regulations prescribed by the Minister; to prevent persons holding political office in political parties from taking up employment as municipal managers and managers directly accountable to municipal managers; to regulate the employment of municipal employees who have been dismissed or are subject to a disciplinary process, by other municipalities; to regulate 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 enable the Minister to prescribe frameworks to regulate human resource management systems for local government and mandating processes for collective bargaining; to extend the Minister's powers to prescribe regulations relating to municipal staff matters; to provide a liability clause for a councillor who vote in favour of a resolution before the council or a committee of the council which conflicts with any legislation applicable to local government; to enable the Minister to conduct an investigation into maladministration, fraud, corruption or any other serious malpractice in a municipality, if the MEC fails to conduct such investigation within a specified period; to make a consequential amendment in 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.

A copy of the Bill can be found on the website of the Department of Cooperative Governance: www.cogta.gov.za, and may, after introduction, also be obtained from:

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