

REPUBLIC OF SOUTH AFRICA

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# LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL

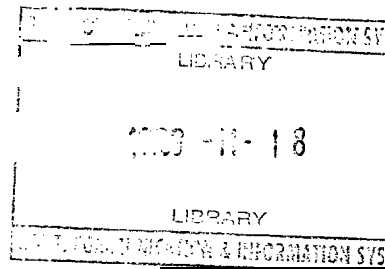
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*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Gazette No. 20579 of 26 October 1999) (The English text is the official text of the Bill)*

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(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

[B 60—99]



REPUBLIEK VAN SUID-AFRIKA

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# WYSIGINGSWETSONTWERP OP PLAASLIKE REGERING: MUNISIPALE STRUKTURE

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*(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No. 20579 van 26 Oktober 1999 gepubliseer) (Die Afrikaans teks is die amptelike vertaling van die Wetsontwerp)*

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(MINISTER VIR PROVINSIALE EN PLAASLIKE REGERING)

[W 60—99]

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“(2) The [Minister, on the recommendation of the] Demarcation Board, [and] after consulting the Minister and the MEC for local government in the province concerned, may by notice in the *Government Gazette* declare a part of an area that must have municipalities of both category C and category B as a district management area, if the establishment of a category B municipality in that part of 5 the area will not be conducive to fulfillment of the objectives set out in section 24 of the Demarcation Act.

(3) (a) The [Minister, on the recommendation of the] Demarcation Board, [and] after consulting the Minister and the MEC for local government in the province concerned, may by notice in the *Government Gazette* withdraw the 10 declaration of an area as a district management area.

(b) When such declaration is withdrawn, the MEC for local government in the province concerned must, in accordance with any boundary determinations or redetermination of the Demarcation Board and with effect from the date of the next election of municipal councils— 15

- (i) establish a local municipality for that area in terms of section 12; or
- (ii) include that area into another local municipality in terms of section [16] 17.”.

#### Repeal of section 13 of Act 117 of 1998

**4. Section 13 of the principal Act is hereby repealed.**

#### Amendment of section 24 of Act 117 of 1998

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**5. Section 24 of the principal Act** is hereby amended by the substitution for subsection (1) of the following subsection:

“(1 ) The term of municipal councils is **[no more than] five years, [as determined by the Minister by notice in the *Government Gazette*]** calculated from the day following the date or dates set for the previous election of all 25 municipal councils in terms of subsection (2).”.

#### Short title

**6. This is** the Local Government: Municipal Structures Amendment Act, 1999.

## MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 1999

The object of the Bill is to give effect to the judgment of the Constitutional Court in the cases:

*Executive Council of the Province of Western Cape versus the Minister for Provincial Affairs and Constitutional Development and Another* (Case CCT 15 of 1999); and

*Executive Council of KwaZulu-Natal versus the President of the Republic of South Africa and Others* (Case CCT 18 of 1999).

In its judgment, the Court found that sections 4, 5, 6(2), 13 and 24(1) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (“the Act”), were unconstitutional and it accordingly declared those sections invalid. The declaration of invalidity of section 6(2) was suspended for one year.

Section 4 of the Act allows the Minister responsible for local government to apply the criteria set out in section 2, in order to determine whether an area should have a category A municipality or whether it should have municipalities of both category C and category B. The Court found that the Constitution by necessary implication vests this power in the Demarcation Board. Clause 1 of the Bill accordingly realigns section 4 with this constitutional requirement.

Section 5 of the Act enables the Minister to declare an area that in terms of the criteria must have a category A municipality, a metropolitan area, and to fix nodal points within the area around which boundaries must be drawn. As the power to determine the category of the area and the power to determine the boundaries of the area are constitutionally both vested in the Demarcation Board, which the Board must exercise as components of the process of boundary determination, there appears to be no need for the formal declaration of such areas as metropolitan areas either before or after the determination of the outer boundaries. Clause 2 of the Bill consequently proposes the deletion of section 5.

Section 6(2) of the Act provides for the declaration by the Minister of district management areas within category C municipalities where the establishment of a local municipality is not feasible. The Court held that the establishment of district management areas impacts on the boundaries of municipalities which is a function that constitutionally must be performed by the Demarcation Board. Clause 3 of the Bill gives effect to the Court’s ruling by vesting the power to declare district management areas in the Demarcation Board.

Section 13 of the Act, which allows the Minister to issue guidelines to members of Executive Councils for local government to assist them in choosing the type of municipality that would be appropriate for a particular area, was declared invalid by the Court on the ground that it impinges on the power of provinces to decide on the types of municipality to be established in the province. Clause 4 of the Bill accordingly seeks to repeal this section.

Section 24(1) of the Act allows the Minister to determine the term of municipal councils by notice in the *Government Gazette*. The Court held that this section constitutes an impermissible delegation of parliamentary power, and that in terms of the Constitution only Parliament could fix the term. Clause 5 seeks to amend section 24(1) of the Act by deleting the reference to the Minister. The term of a municipal council will thus be five years, unless it is changed by an Act of Parliament.

### FINANCIAL IMPLICATIONS FOR STATE

None.

### PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Constitutional Development are of the opinion that this 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.