

REPUBLIC OF SOUTH AFRICA

CONSTITUTION SIXTEENTH AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 74);
Bill published in Government Gazette No. 31692 of 9 December 2008)
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 1—2009]

REPUBLIEK VAN SUID-AFRIKA

SESTIENDE WYSIGINGSWETSONTWERP OP DIE GRONDWET

*(Soos ingedien by die Nasionale Vergadering (voorgestelde artikel 74);
Wetsontwerp in Staatskoerant No. 31692 van 9 Desember 2008 gepubliseer)
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[W 1—2009]

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BILL

To amend the Constitution of the Republic of South Africa, 1996, in order to re-determine the geographical areas of the provinces of Gauteng and North West; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts as follows:—

Amendment of Schedule 1A to the Constitution of the Republic of South Africa, 1996, as inserted by section 4 of the Constitution Twelfth Amendment Act of 2005 and amended by section 1 of the Constitution Thirteenth Amendment Act of 2007 5

1. Schedule 1A to the Constitution of the Republic of South Africa, 1996, is hereby amended by—

- (a) the substitution, under the heading “The Province of Gauteng”, for the reference to “Map No. 4 of Schedule 1 to Notice 1998 of 2005” of a reference to “Map No. 4 in Notice 1490 of 2008”; and 10
- (b) the substitution, under the heading “The Province of North West”, for the reference to “Map No. 5 of Schedule 1 to Notice 1998 of 2005” of a reference to “Map No. 5 in Notice 1490 of 2008”.

Short title and commencement

2. This Act is called the Constitution Sixteenth Amendment Act of 2009, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 15

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION SIXTEENTH AMENDMENT BILL OF 2009

1. BACKGROUND

1.1 In order to give effect to the Presidential Co-ordinating Council's resolution in 2002 that—

- (a) the notion of cross-boundary municipalities be done away with; and
- (b) provincial boundaries be reviewed so that all municipalities fall within one province or the other,

the Constitution Twelfth Amendment Act of 2005 re-determined the geographical areas of certain provinces of the Republic of South Africa to avoid municipal boundaries stretching over provincial boundaries. This resulted, amongst others, in the Merafong City Local Municipality (which includes the area of Khutsong) being incorporated into the province of North West. The residents of the Merafong City Local Municipality, and especially of Khutsong, have clearly expressed their opposition against their incorporation into the province of North West.

1.2 In *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* 2008 (5) SA 171 (CC), the applicants challenged the validity of those parts of the Constitution Twelfth Amendment Act of 2005 that relate to the incorporation of the Merafong City Local Municipality into the province of North West. The applicants requested the Constitutional Court to declare that the provincial legislature of Gauteng had failed to comply with its obligation in terms of section 118 of the Constitution of the Republic of South Africa, 1996 (the Constitution), to facilitate public involvement in its processes leading up to the approval of the Constitution Twelfth Amendment Bill of 2005 (the Twelfth Amendment Bill) by the National Council of Provinces (the NCOP). In the alternative, they sought a declaration that the provincial legislature of Gauteng had failed to exercise its legislative powers rationally when it decided to vote in support of the relevant parts of the Twelfth Amendment Bill in the NCOP. On 13 June 2008 the Constitutional Court handed down judgment and held that “[t]he applicants have not shown that the Gauteng Provincial Legislature failed to facilitate public involvement, or acted irrationally, in supporting the Twelfth Amendment Bill in the NCOP”. Consequently, the application was dismissed.

1.3 The residents of Khutsong have advanced various reasons for their continuous demand to be re-incorporated into the province of Gauteng. This has led to a decision being taken by Government to re-incorporate the Merafong City Local Municipality into the province of Gauteng.

2. OBJECTS OF BILL

2.1 The Bill intends to give effect to the decision to re-incorporate the Merafong City Local Municipality into the province of Gauteng. This is sought to be achieved by amending Schedule 1A to the Constitution in order to re-determine the geographical areas of the provinces of Gauteng and North West.

2.2 The Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Bill, 2009 (the Repeal Bill), intends to provide for consequential matters as a result of the re-determination of the geographical areas of the provinces of Gauteng and North West.

2.3 In view of the interrelationship between the Bill and the Repeal Bill, the two Bills should be dealt with as a package in Parliament and should be passed by Parliament and implemented simultaneously.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

- 3.1 The National Treasury, the Department of Provincial and Local Government, the Electoral Commission, the Municipal Demarcation Board and the South African Local Government Association were consulted.
- 3.2 In terms of section 74(5)(a) and (b) of the Constitution, the Bill was—
- (a) published in the national *Government Gazette* for public comment; and
 - (b) submitted to the provincial legislatures for their views.

4. IMPLICATIONS FOR PROVINCES

- 4.1 The Bill intends to re-determine the geographical areas of the provinces of Gauteng and North West and will therefore have an effect on those provinces.
- 4.2 Provincial functions performed in the affected municipalities, either by provincial governments of the provinces concerned or on an agency basis by the affected municipalities, will need to be addressed. This might also require adjustments to provincial budgets of the provinces concerned in order to address the shift in functions performed by one province to another.

5. FINANCIAL IMPLICATIONS FOR STATE

An adjustment to provincial equitable share allocations based on shifts in population of the provinces concerned will need to be effected.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the proposed amendments fall within the ambit of section 74(3)(b) of the Constitution and consequently require the approval of both the National Assembly and the National Council of Provinces.
- 6.2 As the Bill intends to re-determine the geographical areas of the provinces of Gauteng and North West, the National Council of Provinces may not, in terms of section 74(8) of the Constitution, pass the Bill unless it has been approved by the legislatures of the provinces concerned.
- 6.3 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.