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REPUBLIC OF SOUTH AFRICA

# CROSS-BOUNDARY MUNICIPALITIES LAWS REPEAL AND RELATED MATTERS AMENDMENT BILL

*(As amended by the Portfolio Committee on Provincial Affairs and Local Goverment (National Assembly))*
*(The English text is the official text of the Bill)*

(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

**[B 3B—2009]**

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**GENERAL EXPLANATORY NOTE:**

Words underlined with a solid line indicate insertions in existing enactments.

# BILL

**To amend the Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005, so as to provide for consequential matters as a result of the re-determination of the geographical areas of certain provinces; 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 23 of 2005**

**1.** Section 1 of the Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005 (hereinafter referred to as the "principal Act"), is hereby amended by the insertion after the definition of "section 12 notice" of the following definition:

" **'section 17 notice'** means a notice repealing, amending or replacing a section 12 notice in terms of section 17 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).".

**Substitution of section 1A of Act 23 of 2005, as inserted by section 1 of Act 24 of 2007**

**2.** The following section is hereby substituted for section 1A of the principal Act:

"**Application of Act as amended by Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Act, 2007, and Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Act, 2009**

**1A.** In the application of this Act, as amended by the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Act, 2007, and the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Act, 2009, due regard must be had to the provisions of the Constitution Thirteenth Amendment Act of 2007 and the Constitution Sixteenth Amendment Act of 2009.".

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**Amendment of section 2 of Act 23 of 2005**

**3.** Section 2 of the principal Act is hereby amended by the addition in subsection (4) of the following paragraphs:

"*(e)* Despite any applicable provision of the Local Government: Municipal Structures Act, 1998, and as a result of the demarcation of the Merafong City Local Municipality contemplated in section 5*(a)* of the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Act, 2009, the number of councillors of the Kenneth Kaunda District Municipality is reduced by the number of councillors representing Merafong City Local Municipality on that District Municipality and the number of councillors of the West Rand District Municipality is increased by that number.

*(f)* Despite the applicable provisions of the Local Government: Municipal Structures Act, 1998, the proposed section 17 notice referred to in the first column of Schedule 6 in respect of a disestablished municipality referred to in the second column of Schedule 6 must be regarded as the notice—

(i) repealing the section 12 notice that established the municipality referred to in the second column of schedule 6; and

(ii) issued by the MEC for local government of the province indicated in the third column of Schedule 6.".

**Amendment of section 4 of Act 23 of 2005**

**4.** Section 4 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) An MEC for local government may, by way of an amendment to an applicable section 12 notice, regulate any legal, practical or other consequences of the relocation of an area referred to in subsection (1) in so far as such regulation is necessary to ensure the proper functioning of a municipality in whose area of jurisdiction such relocated area falls or a municipality from whose area of jurisdiction such relocated area has been removed.".

**Amendment of Schedule 4 to Act 23 of 2005, as amended by section 2 of Act 24 of 2007**

**5.** Schedule 4 to the principal Act is hereby amended by—

*(a)* the substitution for the expressions in the row relating to "**NW405** known as the Merafong City Local Municipality" of the following expressions:

| | | |
|---|---|---|
| Identified by Map No. 14 of General Notice 1490 of 2008 | **GT484** known as Merafong City Local Municipality | Gauteng |

*(b)* the substitution for the expressions in the row relating to "**DC40** known as Southern District Municipality" of the following expressions:

| | | |
|---|---|---|
| Identified by Map No. 5 of General Notice 1490 of 2008 | **DC40** known as Dr Kenneth Kaunda District Municipality | North West |

*(c)* the substitution for the expressions in the row relating to "**DC48** known as West Rand District Municipality" of the following expressions:

| | | |
|---|---|---|
| Identified by Map No. 4 of General Notice 1490 of 2008 | **DC48** known as West Rand District Municipality | Gauteng |

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**Amendment of Schedule 5 to Act 23 of 2005, as amended by section 3 of Act 24 of 2007**

**6.** Schedule 5 to the principal Act is hereby amended by—

*(a)* the substitution for the expressions in the row relating to "**NW405** known as Merafong City Local Municipality" of the following expressions:

| | | | |
|---|---|---|---|
| Notice 5321 of 2008 (Gauteng) | **GT 484** known as Merafong City Local Municipality Map No.14 of General Notice 1490 of 2008 | Gauteng | **GT484** |

*(b)* the substitution for the expressions in the row relating to "**DC40** known as Southern District Municipality" of the following expressions:

| | | | |
|---|---|---|---|
| Notice 670 of 2008 (North West) | **DC40** known as Dr Kenneth Kaunda District Municipality Map No. 5 of General Notice 1490 of 2008 | North West | **DC40** |

*(c)* the substitution for the expressions in the row relating to "**DC48** known as West Rand District Municipality" of the following expressions:

| | | | |
|---|---|---|---|
| Notice 5321 of 2008 (Gauteng) | **DC48** known as West Rand District Municipality Map No.4 of General Notice 1490 of 2008 | Gauteng | **DC48** |

**Insertion of Schedule 6 in Act 23 of 2005**

**7.** The following Schedule is hereby inserted in the principal Act after Schedule 5:

**Schedule 6**

**Deemed disestablished municipalities in province**

| *Proposed section 17 notice* | *Designation of disestablished municipality* | *Province in which municipality is deemed to be disestablished* |
|---|---|---|
| *Notice 669 of 2008 (North West)* | **NW405** known as Merafong City Local Municipality (Map No. 14 of the Schedule to Notice 1257 of 2005) | North West |

**Application of Act 23 of 2005**

**8.** (1) Sections 2(4), 4 and 5 of the principal Act apply to the Municipalities referred to in sections 4 and 5 of this Act in accordance with the Constitution Sixteenth Amendment Act of 2009.

(2) For the purposes of the application of this Act, the expression "sections 2 to 4 of the Constitution Twelfth Amendment Act of 2005", wherever it appears in section 5 of the principal Act, must be substituted by the expression "the Constitution Sixteenth Amendment Act of 2009".

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**Transitional arrangements in respect of 2009 elections**

**9.** In order to give effect to the Constitution Sixteenth Amendment Act of 2009 and for purposes of section 24 of the Electoral Act, 1998 (Act No. 73 of 1998), the voting districts in the Merafong City Local Municipality are deemed to be part of the Gauteng provincial segment of the voters' roll, if the Constitution Sixteenth Amendment Act of 2009 comes into operation before the 2009 election date.

**Short title and commencement**

**10.** (1) This Act is called the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Act, 2009, and takes effect on the same date as the commencement of the Constitution Sixteenth Amendment Act of 2009.

(2) Section 9 is deemed to have come into operation on the day that the 2009 election was proclaimed in terms of sections 17 and 18 of the Electoral Act, 1998 (Act No. 73 of 1998).

# MEMORANDUM ON THE OBJECTS OF THE CROSS-BOUNDARY MUNICIPALITIES LAWS REPEAL AND RELATED MATTERS AMENDMENT BILL, 2009

## 1. BACKGROUND

The Constitution Twelfth Amendment Act of 2005 (hereafter referred to as "the Constitution Twelfth Amendment") and the Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005 (Act No. 23 of 2005) (hereafter referred to as "the Cross-boundary Laws Repeal Act") were enacted in 2005. The Constitution Twelfth Amendment amended the Constitution of the Republic of South Africa, 1996 (hereafter referred to as "the Constitution"), by providing for the re-determination of the geographical areas of provinces. The Cross-boundary Laws Repeal Act supported and complemented the Constitution Twelfth Amendment by providing for transitional arrangements to ensure a smooth transition from the cross-boundary municipality dispensation to where a municipality would only be located in one particular province.

One of the consequences of the Constitution Twelfth Amendment Act and the Cross-boundary Laws Repeal Act was that the Merafong Cross-boundary Municipality was incorporated into the North West Province in its entirety and became part of the then Southern District Municipality.

Due to opposition that has been expressed by the residents of Merafong City Local Municipality, and especially the residents of Khutsong, against their incorporation into the province of the North West, Government has decided that the Merafong City Local Municipality must be incorporated into the Gauteng Province.

The relocation of Merafong from the North West Province into the Gauteng province will require the re-determination of the geographical areas of the provinces of North West and Gauteng as well as the re-demarcation of the boundaries of the Dr Kenneth Kaunda and West Rand District Municipalities.

The re-determination of the geographical areas of provinces can only be effected by way of an amendment to the Constitution. The re-demarcation of the boundaries of the district municipalities and the consequences of such re-demarcation require an amendment to the Cross-boundary Laws Repeal Act.

Although the Ministry of Justice and Constitutional Development will be processing the Constitution Sixteenth Amendment Bill and the Ministry of Provincial and Local Government will be processing the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Bill, these two Bills must be read together.

## 2. OBJECTS OF BILL

The Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Bill, 2009 (hereafter referred to as "the Bill"), seeks to amend the Cross-boundary Repeal Act so as to provide for the re-demarcation of the boundaries of the Dr Kenneth Kaunda and West Rand District Municipalities and to provide for the consequences of such re-demarcation.

## 3. BODIES/ORGANISATIONS CONSULTED

The following bodies or organisations were consulted:

- The National Treasury
- The Department of Justice and Constitutional Development
- The Premiers the provinces of North West and Gauteng
- MEC's for Local Government in the provinces of North West and Gauteng
- The South African Local Government Association
- The Municipal Demarcation Board
- The Independent Electoral Commission

The Bill will be published for public comment in terms of section 154(2) of the Constitution.

## 4. FINANCIAL IMPLICATIONS FOR STATE

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

## 5. IMPLICATION FOR PROVINCES

Provincial functions performed in the affected municipalities, either by provincial governments or on an agency basis by the affected municipalities, would need to be addressed. This might also require adjustments to provincial budgets in order to address the shift in functions performed by one province to the other.

## 6. IMPLICATIONS FOR MUNICIPALITIES

The Merafong Local Municipality will be relocated to the Gauteng Province and the boundaries of the Dr Kenneth Kaunda and West Rand District Municipalities will be re-demarcated.

## 7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Provincial and Local Government are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution. The Bill does not fall within the functional areas listed in Schedule 4 of the Constitution, nor does it provide for legislation envisaged in the sections referred to in section 76(3) of the Constitution.

7.2 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 leaders.