

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT LAWS AMENDMENT BILL

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

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

BILL

To amend the Organised Local Government Act, 1997, so as to repeal a transitional arrangement; to amend the Remuneration of Public Office Bearers Act, 1998, so as to effect a technical amendment; to validate certain determinations and payments; to amend the Local Government: Municipal Demarcation Act, 1998, so as to effect technical corrections; to further regulate the functions and the work programme of the Board; to reduce the size of the Demarcation Board; to expressly provide for, the Minister's role in the appointment of members of the Demarcation Board; and to make express provision for the publication of the Demarcation Board's decision where an objection was considered; to amend the Local Government: Municipal Structures Act, 1998, so as to effect technical corrections to the Afrikaans text; to make provision for an acting mayor and an acting executive mayor; to provide for the payment of out of pocket expenses to traditional leaders who participate in the proceedings of municipal councils; to authorise the Minister to regulate the consequences of the revocation of an authorisation to a local municipality to perform a certain function or exercise a certain power; to validate the Property Valuation Ordinance, 1993 (Cape), and provide for other technical arrangements connected thereto; to provide for uncontested ward elections; and to provide for the election of office bearers of a municipality to be determined by lot if two candidates receive the same number of votes; to amend the Local Government: Municipal Systems Act, 2000, so as to provide for a general power to levy and recover fees, charges and tariffs; to further regulate the charging of interest on arrears; to provide for legal representation of employees of a municipality; and to further regulate clearance certificates for the transfer of property; to amend the Local Government: Municipal Structures Amendment Act, 2000, so as to re-determine the transition period and to repeal outdated provisions; to repeal certain laws; and to provide for matters connected therewith.

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

CHAPTER 1

AMENDMENT OF ORGANISED LOCAL GOVERNMENT ACT, 1997

Amendment of section 1 of Act 52 of 1997

1. Section 1 of the Organised Local Government Act, 1997, is hereby amended by the deletion of subsection (2)

CHAPTER 2

AMENDMENT OF REMUNERATION OF PUBLIC OFFICE BEARERS ACT, 1998

Amendment of section 7 of Act 20 of 1998, as amended by section 3 of Act 21 of 2000

2. Section 7 of the Remuneration of Public Office Bearers Act, 1998, is hereby amended by the substitution in subsection (2) for the word "Despite" of the expression "Subject to".

Validation of certain determinations and payments

3. The salaries and allowances paid to any member of a municipal council during the 1998/1999 municipal financial year in accordance with - 15

- (a) Circular 25 of 1998 (as amended by Amendment Slip No. 3 of 1998) issued by the Gauteng Department of Development Planning and Local Government; and
- (b) Proclamation (Western Cape) No. 48/1998 of 4 December 1998, read with Circular C18/1998, issued by the Western Cape Department of Governmental Affairs and Housing

must be regarded as having been validly determined and paid under the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998).

CHAPTER 3

AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL DEMARCATION ACT, 1998

Amendment of section 1 of Act 27 of 1998

4. Section 1 of the Local Government: Municipal Demarcation Act, 1998 (in this Chapter referred to as the Demarcation Act), is hereby amended-

- (a) by the substitution for the definition of "Department" of the following definition: 30
 'Department' means the [Department of Constitutional Development] national department responsible for local government;
- (b) by the substitution for the definition of "determination" of the following definition: 35
 "'determination" includes any redetermination and 'determine' and 'redetermine' [has also have corresponding [meaning] meanings];"
- (c) by the substitution for the definition of "employee" of the following definition: 40
 "'employee', except in sections 34(1 and 35(1) [and 36], includes a person seconded to the Board;";
- (d) by the substitution for the definition of Minister of the following definition: 45
 "'Minister' means the national Minister [for ' **PrOvincial Affairs and Constitutional Development**] responsible for local government;"; and
- (e) by the substitution for the definition of "this Act" of the following definition: 45
 "'this Act' includes the regulations made under section [42] 41.".

Substitution of section 4 of Act 27 of 1998

5. **The following** section is hereby substituted for section 4 of the Demarcation Act :

"Functions

4.The [function] functions of the Board [is] are-

- to determine municipal boundaries in accordance with this Act and 5
- other appropriate legislation enacted in terms of Chapter 7 of the Constitution; and
- (b) to render an advisory service in respect of matters provided for in this Act and other appropriate legislation when so requested "

Amendment of section 6 of Act 27 of 1998

10

6. Section 6 of the Demarcation Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Board consists of no fewer than seven and no more than [15] 10 members appointed by the President in accordance with section 8." .

Amendment of section 8 of Act 27 of 1998

15

7. Section 8 of the Demarcation Act is hereby amended by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

"The list referred to in subsection (4) must be submitted to the Minister and must consist of-".

Amendment of section 21 of Act 27 of 1998

20

8. Section 21 of the Demarcation Act is hereby amended –

(a) by the addition to subsection (2) of the following proviso:

"Provided that section 26 does not apply where the Board redetermines a municipal boundary in respect of which the MEC for local government and all the municipalities that are affected by the redetermination have indicated in writing that they have no objection to such redetermination." 25

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

"(5) The Board must–

- (a) consider any objections; [and]
- (b) either confirm, vary or withdraw its determination; and 30
- (c) publish its decision in terms of paragraph (b) in the relevant Provincial Gazette." and

(c) by the addition of the following subsection :

–"(6) Any person may, subject to the Promotion of Access to Information Act 2000 (Act No 2 of 2000) request the Board to provide reasons for its decision in terms of subsection (5)(b)." 35

Substitution of section 22 of Act 27 of 1998

9 The following section is hereby substituted for section 22 of the Demarcation Act

"Work programme

22. The Board performs the function mentioned in section 21(1)- 40

- (a) [(i)] on its own initiative;
- [(ii)] (on request by the Minister or a MEC for local government; or
- [(iii)] (on request by a municipality with the concurrence of any other municipality affected by the proposed determination or redetermination [;and 45
- (b) **in accordance with** priorities and reasonable time-frames for demarcation determined by the Minister **in consultation with the MECs for local government** after the Board has been consulted].

The Minister may, after consultation with the ~~MEC's~~for local government and the Board, determine priorities and reasonable time-frames for a determination or redetermination.

(3) Where the Board performs the function mentioned in section 21(1) on its own initiative as a result of receiving a request from a member of the public, the Board may-

- (a) require that member of the public to furnish the Board with such information as may be required by the Board; and
- (b) elicit the views of the persons and institutions referred to in section 26(3) on the matter before the Board.

(4) Where the Board has solicited the views of persons and institutions as provided for in subsection (3)(b), the Board does not need to comply with section 26 when it considers the determination or redetermination of a municipal boundary under the circumstances referred to in subsection (3).

(5) Where the Board performs the function mentioned in section 21(1) on request by a municipality, the Board may require that municipality to furnish the Board with such information as may be required by the Board."

Amendment of section 23 of Act 27 of 1998

10. Section 23 of the Demarcation Act is hereby amended –

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

"(1) [Once the Board has determined a municipal boundary it] After the Board has considered any objections in terms of section 21(5) or has redetermined a boundary under the circumstances provided for in the proviso to section 21(2) the Board must without delay send particulars of the determination to the Electoral Commission."; and
- (b) by the addition to subsection (3) of the following paragraph, the existing subsection becoming paragraph (a):

"(b) The MEC for local government in the province concerned must publish the notice referred to in subsection (2)(b) within three months of the date of the notice published by the Electoral Commission in terms of 30 paragraph (a) and send a copy of the notice to the Board."

CHAPTER 4

AMENDMENT OF LOCAL GOVERNMENT : MUNICIPAL STRUCTURES ACT, 1998

Amendment of preamble to Act 117 of 1998

11. The Preamble to the Local Government: Municipal Structures Act, 1998 (in this Chapter referred to as the Structures Act), is hereby amended by the substitution in the fourteenth line of the Afrikaans text of the word "nedersettings" of the word "nedersettings".

Amendment of section 21 of Act 117 of 1998

12. Section 21 of the Structures Act is hereby amended by the addition to subsection (2) Of the following proviso:

~~"~~ Provided that if such a person is designated as a full-time councillor in terms of section 18(4) such exemption lapses "

Amendment of section 35 of Act 117 of 1998

13 Section 35 of the Structures Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) **If a municipal council** is dissolved in terms of section 34(3)(b) or does not have enough members to form a quorum for a **meeting, the MEC for local government in the** province must appoint one or more administrators to ensure the continued functioning of the municipality until a new municipal council is elected or until the council has sufficient members for a quorum."

Amendment of section 37 of Act 117 of 1998

14. Section 37 of the Structures Act is hereby amended-

- (a) by the substitution in paragraph (b) for the expression "section 32" of the expression "section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)"; and
- (b) by the substitution in paragraph (e) for the expression "Schedule 5" of the expression "Schedule 1 to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)".

Amendment of section 49 of Act 117 of 1998

15. Section 49 of the Structures Act is hereby amended by the addition of the 10 following subsection:

- "(3 If the mayor is absent or not available and the municipality does not have a deputy mayor, or the deputy mayor is also absent or not available-
- (a) the member of the executive committee designated thereto in writing by the mayor acts as mayor; or
- (b) a councillor elected by the members of the executive committee from amongst themselves acts as mayor if the mayor has not designated a member thereto or if the designated member is absent Or not aVailable."

Amendment of section 56 of Act 117 of 1998

16. Section 56 of the Structures Act is hereby amended-

- (a) by the substitution in paragraph (f) of subsection (3) for the expression "section 32" o1 the expression "section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)"; and
- (b) by the addition of the following stibsection:
 - "(7) If the executive mayor is absent or not available and the 25 municipality does not have a deputy executive mayor, or the deputy executive mayor is also absent or hot available the council must designate a councillor to act as executive mayor."

Amendment of section 64 of Act 117 of 1,998

17. Section 64 of the Structures Act is hereby amended by the substitution in 30 subsection (2) of the Afrikaans text for the word "Metropolitaanse" of the word "Metropolitaanse".

Amendment of section 81 of Act 117 of 1998, as amended by item 3 of Schedule 3 to Act 32 of 2000 and section 5 of Act 33 of 2000

18. Section 81 of the Structures Act is hereby amended -

- (a) by the substitution in 'subsection (1) of the Afrlkaaris text for the word "ge?dentifiseer" of the word "geIdentifiseer"; and
- (b) by the addition to subsection (5) of the following paragraph, the existing subsection becoming paragraph (a):
 - ~~"(b) (i) A traditional leader who participates in the proceedings of a~~ municipal council is entitled to the payment of out of pocket expenses in respect of such participation.
 - (ii) A municipal council must determine the criteria for, and calculation of, the out of pocket expenses referred to in subparagraph (i).
 - (iii) Out of pocket expenses referred to in subparagraph (i) must be 45 paid from the budget of the municipality in question."

Amendment of section 84 of Act 117 of 1998, as amended by section 6 of Act 33 of 2000

19. **Section 84 of the Structures Act** is hereby amended—

- (a) by the substitution in subsection (3)(b)(iii) of the Afrikaans text for the word "verandering" of the word "verordeninge";
- (b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:

"(c) The Minister may—
 amend a notice issued in terms of paragraph (a) **[to effect technical changes or to regulate the authorisation more effectively]; and**
 ~~regulate the legal practical and other consequences of such~~
 amendment." and
- (c) by the addition to subsection (3) of the following paragraphs:

~~"(d) Whenever the Minister revokes an authorisation envisaged by~~
 paragraph (a), the Minister must in the notice revoking that authorisation
 regulate the legal, practical and other consequences of the revocation,
 which may include—
 (i) the transfer of staff;
 (ii) the transfer of assets, liabilities, rights, obligations and administra-
 tive and other records; and
 (iii) the continued application of any by-laws and resolutions in the area
 of the municipalities in question and the extent of such application.
- (e) The Minister must comply with the consultation requirements as set out
 in paragraph (a) when a power referred to in paragraph (c) or (d) is to be
 exercised."

Substitution of section 86, of Act 117 of 1998, as amended by section 8 of Act 33 of 2000

20. The following section is hereby substituted for section 8 in the Afrikaans text of the Structures Act:

"Beslegting van geskille rakende verrigting van funksies of uitoefening van bevoegdhede

86. [Indien 'n distriks- en plaaslike munisipaliteit 'n funksie verrig of 'n bevoegdheid uitoefen op 'n soortgelyke wyse, en] ~~Indien 'n geskil [ontstaan] tussen [hulle] 'n distriks- en 'n plaaslike raad~~ rakende die verrigting van [daardie] 'n funksie of die uitoefening van [daardie] 'n bevoegdheid ~~ontstaan~~ kan die LUR vir plaaslike regering in die provinsie, na oorlegpleging met hulle, by kennisgewing in die *Provinsiale Koerant* die geskil besleg deur hulle onderskeie rolle in die verrigting van daardie funksie of die uitoefening van daardie bevoegdheid te omskryf."

Amendment of section 93 of Act 117 of 1998, as amended by section 11 of Act 33 of 2000

21. **Section 93 of the Structures Act, is hereby amended by the addition of the following subsections:**

"(7) Despite Proclamation No 148 of 8 December 1993 (Province of the Cape of Good Hope Gazette 4833 of 22 December 1993) and section 38 of the Property Valuation Ordinance, 1993 (Cape), the said Ordinance is deemed to have come into force—

(a) for the purposes of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), immediately before the commencement of that Constitution; and

(b) for all other purposes, on 1 July 1994.

(8) (a) With effect from 5 December 2000 and subject to paragraph (b), any reference in a law referred to in item 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), to a municipal council, municipality, local authority or another applicable designation of a local government structure, must be construed as a reference to a municipal council or a municipality established in terms of this Act, as the case may be.

(b) Paragraph (a) only applies to a law referred to in item 2 of Schedule to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), in so far as such a law is still applicable or becomes applicable to a municipal council or a municipality, as the case may be, at the time the Local Government Laws Amendment Act, 2002, comes into effect.

(9) Until the legislation envisaged in section 229(2)(b) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), is enacted, a municipality may use the valuations appearing on a provisional valuation roll or an additional valuation roll when imposing property rates.

(10) Subsections (7), (8) and (9) apply to matters that are the subject of pending litigation."

Insertion of item 8A in Schedule 1 to Act 117 of 1998

22. The following item is hereby inserted in Schedule 1 to the Structures Act after item 8:

"Uncontested ward elections

8A If only one candidate is duly nominated in a ward an election is not held in that ward and the uncontested ward candidate is deemed to have been elected-

- (a) in the case of an election called in terms of section 24(2), with effect from the date set for the election; or
- (b) in the case of a by-election, with effect from the date stated in the time table for the by-election as the final date on which nominations for the by-election may be submitted."

Amendment of item 13 of Schedule 1 to Act 117 of 1998

23. Item 13 of Schedule 1 to the Structures Act is hereby amended by the substitution for the expression "chief electoral officer", wherever it appears, of the expression "Electoral Commission".

Amendment of item 17 of Schedule 1 to Act 117 of 1998

24. Item 17 of Schedule 1 to the Structures Act is hereby amended by the substitution for the expression "chief electoral officer", wherever it appears, of the expression "Electoral Commission".

Amendment of item 18 of Schedule 1 to Act 117 of 1998

25. Item 18 of Schedule 1 to the Structures Act is hereby amended by the addition to subitem (1) of the following paragraph, the existing subitem becoming paragraph (a):

"1.b Whenever a councillor referred to in paragraph (a) ceases to hold office the municipal manager concerned must within seven days after the councillor has ceased to hold office inform the chief electoral officer accordingly. "

Amendment of item 20 of Schedule 1 to Act 117 of 1998

26. Item 20 of Schedule 1 to the Structures Act is hereby amended by the substitution for subitem (1) of the following subitem:

"(1) A party may supplement, change or increase its list at any time, provided that if a councillor elected according to a party list, ceases to hold office, the party concerned may supplement, change or increase its list by not later than 21 days after the councillor has ceased to hold office. The vacancy must be filled [within] as soon as the party in question has supplemented, changed or increased its list, but not later than 14 days after expiry of the [21 days] 21-day period."

Amendment of item 1 of Schedule 2 to Act 117 of 1998

27. Item 1 of Schedule 2 to the Structures Act is hereby amended-
- (a) by the substitution in the Afrikaans text for the word "toespasing" in the definition of "verkiesing" of the word "toepassing"; and
 - (b) by the insertion after the definition of "election" of the following definition: 5
"independent ward councillor means a councillor who was not nominated by a party as a candidate in a ward election;"

Amendment of item 10 of Schedule 2 to Act 117 of 1998

28. Item 10 of Schedule 2 to the Structures Act is hereby amended by the substitution in subitem (7) of the Afrikaans text for the word "wtter" of the word "watter" 10

Amendment of item 11 of Schedule 2 to Act 117 of 1998

29. Item 11 of Schedule 2 to the Structures Act is hereby amended by the addition to subitem (1) of the following paragraph, the existing subitem becoming paragraph (a):
"(b) Whenever a councillor referred to in paragraph (a) ceases to hold office the municipal manager concerned must within seven days after the councillor has ceased to hold office inform the chief electoral officer thereof." 15

Amendment of item 13 of Schedule 2 to Act 117 of 1998

30. Item 13 of Schedule 2 to the Structures Act is hereby amended by the substitution for subitem (1) of the following subitem:
- "(1) A party may supplement, change or increase its list at any time, provided 20 that if a councillor elected according to a party list, ceases to hold office, the party concerned may supplement, change or increase its list by not later than 21 days after the councillor has ceased to hold office. The vacancy must be **filled [within] as soon as the party in question has supplemented changed or increased its list but** not later than 14 days after expiry of the [21 days] 21-day period." 25

Amendment of item 17 of Schedule 2 to Act 117 of 1998

31. Item 17 of Schedule 2 to the Structures Act is hereby amended-
- (a) by the substitution for subitem (1) of the following subitem:
 "(1) Every party or independent ward councillor may submit a candidates' list containing the names of councillors, accompanied by a 30 written acceptance by each listed candidate.";
 - (b) by the substitution for subitem (2) of the following subitem:
 "(2) A party or independent ward councillor may not submit more than one list."; and
 - (c) by the substitution in subitem (5) for the word "councillor" of the expression 35
 "independent ward councillor".

Amendment of item 20 of Schedule 2 to Act 117 of 1998

32. Item 20 of Schedule 2 to the Structures Act is hereby amended by the addition to subitem (2) of the following paragraph, the existing subitem becoming paragraph (a):
 "(b) If the surplus on one list is equal to the surplus on any other list, the seat or 40 seats must be awarded in sequence of the highest number of votes cast for those lists."

Amendment of item 23 of Schedule 2 to Act 117 of 1998

33. The Afrikaans text of item 23 of Schedule 2 to the Structures Act is hereby amended by the substitution- 45
- (a) for the word "ulteput" of the word "uitgeput"; and
 - (b) for the expression "item 18 van Bylae 1" of the expression "item 11".

Amendment of item 8 of Schedule 3 to Act 117 of 1998

34. Item 8 of Schedule 3 to the Structures Act is hereby amended by the addition of the following subitem:

"(3) If at the further meeting held in terms of subitem(1) only two candidates are nominated or if only two candidates remain after an elimination procedure has been applied and those two candidates receive the same number of votes the person presiding at such meeting must determine by lot who of the two candidates will hold the office for which the election has taken place."

CHAPTER 5**AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000****Amendment of section 1 of Act 32 of 2000**

35. Section 1 of the Local Government: Municipal Systems Act, 2000 (in this Chapter referred to as the Systems Act), is hereby amended—

(a) by the insertion after the definition of "municipal manager" of the following definition: 15

'''municipal service' means a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether- -

(a) such a service is provided, or to be provided, by the municipality through an internal mechanism contemplated in section 76 or by engaging an external mechanism contemplated in section 76; and 20

(b) fees, charges or tariffs are levied in respect of such a service or not;";

(b) by the insertion after the definition of "prescribe" of the following definition: 25

'''property' means—

(a) immovable property registered in the name of a person, and includes a unit as defined in section 1 of the Sectional Titles Act, 1986 (Act No. 95 of 1986); or

(b) a right registered against immovable property in the name of a person;"; and 30

(c) by the insertion after the definition of "ratepayer" of the following definition:

'''registrar of deeds' means a registrar as defined in section 102 Of the Deeds Registries Act, 1937 (Act No. 47 of 1937);".

Amendment of section 59 of Act 32 of 2000

36. Section 59 of the Systems Act is hereby amended by the addition of the following subsection:

"(4) Any delegation or sub-delegation to a staff member of a Dower conferred on a municipal manager must be approved by the municipal council in accordance with the system of delegation referred to in subsection (1).". 40

Amendment of section 62 of Act 32 of 2000

37. Section 62 of the Systems Act is hereby amended by the addition of the following subsection:

"(6) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law." 45

Amendment of section 67 of Act 32 of 2000

38. Section 67 of the Systems Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"A municipality, in accordance with [the Employment Equity Act, 1998] applicable law and subject to any applicable collective agreement must develop and adopt appropriate systems and procedures to ensure fair, efficient, effective and transparent personnel administration, including -". 50

Insertion of section 75A in Act 32 of 2000

39. The following section is hereby inserted in the Systems Act after section 75 :

"General power to levy and recover fees, charges and tariffs

75A. (1) A municipality may—

- (a) levy and recover fees, charges or tariffs in respect of any function or service of the municipality; and 5
- (b) recover collection charges and interest on any outstanding amount .
- (2) The fees, charges or tariffs referred to in subsection (1) are levied by a municipality by resolution passed by the municipal council with a supporting vote of a majority of its members. 10
- (3) After a resolution contemplated in subsection (2) has been passed, the municipal manager must, without delay—
- (a) conspicuously display a copy of the resolution for a period of at least 30 days at the main administrative office of the municipality and at such other places within the municipality to which the public has access as the municipal manager may determine ; 15
- (b) publish in a newspaper of general circulation in the municipality a notice stating—
- (i) that a resolution as contemplated in subsection (2) has been passed by the council; 20
- (ii) that a copy of the resolution is available for public inspection during office hours at the main administrative office of the municipality and at the other places specified in the notice; and
- (iii) the date on which the determination will come into operation; and
- (c) seek to convey the information referred to in paragraph (b) to the local community by means of radio broadcasts covering the area of the municipality . 25
- (4) The municipal manager must forthwith send a copy of the notice referred to in subsection (3)(b) to the MEC for local government concerned." 30

Amendment of section 76 of Act 32 of 2000

40. Section 76 of the Systems Act is hereby amended by the substitution in paragraph (b)(iii) for item (aa) of the following item :

"(aa) a water services committee established in terms of the Water Services Act, 1997 (Act No. 108 of 1997);". 35

Substitution of section 77 of Act 32 of 2000

41. The following section is hereby substituted for section 77 of the Systems Act :

"Occasions when municipalities must review and decide on mechanisms to provide municipal services

- 77 A municipality must review and decide on the appropriate mechanism to provide a municipal service in the municipality or a part of the municipality- 40
- (a) in the case of a municipal service provided through an internal mechanism contemplated in section 76, when-
- (i) an existing municipal service is to be significantly upgraded, extended or improved; 45
- (ii) a performance evaluation in terms of Chapter 6 requires a review of the mechanism; or
- (iii) the municipality is restructured or reorganised in terms of the Municipal Structures Act; 50
- (b) in the case of a municipal service provided through an external mechanism contemplated in section 76, when-

- (i) a performance evaluation in terms of Chapter 6 requires a review of the service delivery agreement;
- (ii) the service delivery agreement is anticipated to expire or be terminated within the next 12 months; or
- (iii) an existing municipal service or part of that municipal service is to be significantly upgraded, extended or improved and such upgrade, extension or improvement is not addressed in the service delivery agreement;
- (c) when a review is required by an intervention in terms of section 139 of the Constitution;
- (d) when a new municipal service is to be provided;
- (e) when requested by the local community through mechanisms, processes and procedures established in terms of Chapter 4; or
- (f) when a review of its integrated development plan requires a review of the delivery mechanism.

15

Amendment of section 94 of Act 32 of 2000

42 Section 94 of the Systems Act is hereby amended by the substitution for subsection(2) of the following subsection:

"(2) The Minister may make regulations and issue guidelines contemplated in paragraphs (a), (b), (c), (d) and (e) of subsection (1) only after consultation with the Minister of Finance and any other Cabinet member whose portfolio is affected by the regulations and guidelines."

Insertion of section 109A in Act 32 of 2000

43. The following section is hereby inserted in the Systems Act after section 109:

Legal representation for employees or councillors of municipality

25

109A. A municipality may, subject to such terms and conditions as it may determine, provide an employee or councillor of the municipality with legal representation where-

- (a) legal proceedings have been instituted against the employee or councillor as a result of any act or omission by the employee or councillor in the exercise of his or her powers or the performance of his or her duties; or
- (b) the employee or the councillor has been summoned to attend any inquest or inquiry arising from the exercise of his or her powers or the performance of his or her duties."

35

Substitution of section 118 of Act 32 of 2000

44. The following section is hereby substituted for section 118 of the Systems Act.

"Restraint on transfer of property

118. (1) A registrar of deeds [or other registration officer of immovable property] may not register the transfer of property except on production to 40 that [registration officer] registrar of deeds of a prescribed certificate-

- (a) issued by the municipality or municipalities in which that property is situated; and
- (b) which certifies that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property 45 rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

(1A) A prescribed certificate issued by a municipality in terms of subsection (1) is valid for a period of 120 days from the date it has been issued.

(2) In the case of the transfer of **[immovable]** property by a trustee of an insolvent estate, the provisions of this section are subject to section 89 of the Insolvency Act, 1936 (Act No. 24 of 1936).

(3) An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.

(4) Subsection (1) does not apply to-

- (a) a transfer from the national government, a provincial government or a municipality of a residential property which was financed with funds or loans made available by the national government, a provincial government or a municipality; and
- (b) the vesting of ownership as a result of a conversion of land tenure rights into ownership in terms of Chapter 1 of the Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991);

Provided that nothing in this subsection precludes the subsequent collection by a municipality of any amounts owed to it in respect of such a property at the time of such transfer or conversion.

(5) Subsection (3) does not apply to any amount referred to in that subsection that became due before a transfer of a residential property or a conversion of land tenure rights into ownership contemplated in subsection (4) took place."

Insertion of item 12A in Schedule 1 to Act 32 of 2000

45. The following item is hereby inserted in Schedule 1 to the Systems Act after item 12:

"Councillor in arrears

12A. A councillor may not be in arrears to the municipality for rates and service charges for a period longer than 3 months."

Amendment of item 14 of Schedule 1 to Act 32 of 2000

46. Item 14 of Schedule 1 to the Systems Act is hereby amended by the substitution for subitem (5) of the following subitem:

"(5) The Commissions Act, 1947 (Act No. 8 of 1947), or, where appropriate applicable provincial legislation may be applied to an investigation in terms of subitem [(3)] (4)

CHAPTER 6

AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT ACT, 2000

Amendment of section 13 of Act 33 of 2000

47. Section 13 of the Local Government: Municipal Structures Amendment Act, 2000, is hereby amended by the substitution for subsection (i) of the following subsection:

"(1) The transition ends [two years from the date of the first election of 45 municipal councils in terms of the Structures Act, unless the Minister determines a shorter period by notice in the *Government Gazette*] on 30 June 2003."

CHAPTER 7

MISCELLANEOUS MATTERS

Repeal of legislation

48. The legislation specified in the first column of the Schedule is hereby repealed to the extent indicated in the second column of the Schedule. 5

Short title

49. This Act is called the Local Government Laws Amendment Act, 2002.

SCHEDULE
(Section 48)

Title, number and year of law	Extent of repeal
Local Government Ordinance, 1939 (Ordinance No. 17 of 1939) (Former Transvaal)	Section 50
Local Government Ordinance, 1962 (Ordinance No. 8 of 1962) (Former Orange Free State)	Section 119
Regulations for the Administration and Control of Townships in Black Areas, 1962 (Proclamation No. R. 293 of 16 November 1962)	Regulation 11 of Chapter 9
Municipal Ordinance, 1974 (Ordinance No. 20 of 1974) (Former Cape of Good Hope)	Section 96
Local Authorities Ordinance, 1974 (Ordinance No. 25 of 1974) (Former Natal)	Section 175
Municipalities Act, 1979 (Act No. 25 of 1979) (Former Transkei)	Section 94
Black Communities Development Act, 1984 (Act No. 4 of 1984)	Section 54(2)(a)
Municipal Act, 1987 (Act No. 17 of 1987) (Former Ciskei)	Section 91
Proclamation No. R. 30 of 9 March 1988	Regulation 17
Regulations Regarding Local Councils, 1988 (Government Notice No. R. 2517 of 9 December 1988)	Regulation 43(5)

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT LAWS AMENDMENT BILL, 2002

I. The Bill seeks to amend the –

- (a) Organised Local Government Act, 1997 (Act No. 52 of 1997);
- (b) Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998) ;
- (c) Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);
- (d) Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) ;
- (e) Local Government : Municipal Systems Act, 2000 (Act No. 32 of 2000); and
- (f) Local Government: Municipal Structures Amendment Act, 2000 (Act No.. 33 of 2000).

2.1 Prior to the coming into operation of the Remuneration of Public Office Bearers Act, 1998 ("the Act"), the authority to determine councillor allowances vested in the respective MECs responsible for local government. During the 1998/1999 municipal financial year unauthorised payments in respect of the allowances of municipal councillors arose from the determinations made in this regard by the Gauteng Provincial Government and the Western Cape Provincial Government, respectively. These payments occurred as a result of circulars issued by the respective MECs in contravention of the Act. These circulars were *bona fide* errors on the part of the provincial governments in question. The Bill seeks to validate the circulars and consequently all payments made in terms thereof.

2.2 Arguments have been raised that the introductory words of section 7(2) of the Act (viz. "Despite the provisions of subsection (1) . . ."), were intended to take away the power of the Minister to determine the upper limits of allowances of appointed councillors. This was never the intention, and an amendment is proposed to clarify the position.

3. The Municipal Demarcation Board has requested various amendments to the Local Government: Municipal Demarcation Act, 1998 ("the *Demarcation Act*"). Most of the amendments proposed are of a technical nature, namely to correct *outdated* references or to clarify matters of process or interpretation. The proposed amendments that introduce new principles into the Demarcation Act can be summarised as follows :

- (a) An amendment to section 6 is proposed that would reduce the minimum number of members of the Demarcation Board to seven. Whilst the Demarcation Board will continue to exist, it is expected that it will only need a limited number of members to perform its functions .
- (b) An amendment to section 23 is proposed to correct the process following the determination of a boundary. The present wording of section 23(1) does not allow for objections to demarcations to be finalised before the Electoral Commission is informed of the determination of a boundary .

4.1 Section 8 of the Local Government: Municipal Structures Amendment Act, 2000, only amended the English text of section 86 of the Local Government: Municipal Structures Act, 1998 ("the Structures Act"). In order to preserve the integrity of the two texts of the Structures Act, it is proposed that the relevant Afrikaans provisions be amended.

4.2 In terms of sections 48(1) and 55(1) of the Structures Act, the MEC for **local government** in a particular province must approve the election of a deputy mayor and a deputy executive mayor, respectively. In at least one province, the MEC for **local government** has not approved the election of deputy mayors or deputy executive mayors. This has the effect that no provision is made for acting mayors and acting executive mayors when the mayor or executive mayor is absent or not available. Amendments to sections 49 and 56, respectively, are proposed to provide for acting mayors and acting executive mayors .

4.3 In order to create an enabling environment for traditional leaders to participate in the proceedings of a municipal council as envisaged in section 81 of the Structures Act, a policy decision was taken to provide for the payment of out of pocket expenses in

respect of such participation. An amendment to the said section 81 is proposed that would make provision for the payment of such expenses.

4.4 An amendment to section 84(3) of the Structures Act is proposed, enabling the Minister to regulate the legal, practical and other consequences when a notice authorising a local municipality to perform certain functions or exercise certain powers of district municipalities is revoked. Currently, no provision pertaining to such regulation of consequences exists. An amendment to the Minister's power to amend such a notice is also proposed.

4.5 The validity of the Cape Valuation Ordinance is at present being challenged, and a resolution was adopted by Parliament that legislative measures would be adopted to create certainty in this regard. Consequently, amendments to section 93 of the Structures Act are being proposed that will create certainty regarding the Cape Valuation Ordinance.

4.6 The Structures Act does not make provision for uncontested ward elections. An amendment to Schedule 1 is proposed that would dispense with the holding of an election where only one candidate has been nominated.

4.7 During the last local government elections, certain municipalities deadlocked on the election of certain office bearers. In order to avoid the recurrence of this situation, an amendment to item 8 of Schedule 3 to the Structures Act is proposed that would allow the result to be determined by lot.

5.1 A number of amendments to the Local Government: Municipal Systems Act, 2000 ("the Systems Act"), are proposed. Several amendments of a technical nature are proposed, such as amendments to section 62 (appeals) and section 67 (human resource development).

5.2 A new section is proposed for the Systems Act to regulate the process for determining the fees, charges and tariffs to be levied by a municipality.

5.3 The need has been identified to make provision for a municipality to provide legal representation for employees where an employee is faced with legal proceedings that arose from the employee's scope of work. An appropriate amendment is proposed to the Systems Act that would enable municipalities to provide legal representation to its employees.

5.4 Numerous practical problems are being experienced in respect of the clearance certificates required by section 118 of the Systems Act. After extensive consultations with various stakeholders, an amendment to section 118 is now proposed that attempts to address the interpretation and practical problems being experienced. It is intended to also issue regulations that would require a district municipality to inform the registrar of deeds of property in respect of which monies are due to the district municipality in order for the registrar of deeds to determine when two certificates are required. Other laws that require clearance certificates are expressly, repealed in order to create certainty. Provision is also made for so-called "first time home owners" who acquire property with government assistance to be exempted from having to obtain a clearance certificate. A similar provision is proposed for the purposes of the transfer of property as a result of the upgrading of land tenure rights.

5.5 It is proposed that Schedule I to the Systems Act (Code of Conduct for Councillors) be amended by inserting a provision to the effect that a councillor may not be in arrears to the municipality for rates and service charges for a period longer than three months.

6. CONSULTATION

6.1 The following bodies and organisations were consulted:

The Gauteng Department of Development Planning and Local Government
 The Western Cape Department of Planning, Local Government and Housing
 Municipal Demarcation Board
 The Chief Registrar of Deeds
 The City of Cape Town
 The Department of Housing

6.2 The draft bill was published for public comment in *Government Gazette No. 23233* of 15 March 2002 in terms of section 154(2) of the Constitution.

7. FINANCIAL IMPLICATIONS FOR STATE

If the Bill is not passed the payments made in terms of the circulars issued in Gauteng and the Western Cape will have to be recovered. The exact amounts involved are not known to the Department.

8. IMPLICATIONS FOR PROVINCES

None

9. IMPLICATIONS FOR MUNICIPALITIES

9.1 If the Bill is passed, the salaries and allowances paid in accordance with the relevant circulars to councillors in Gauteng and the Western Cape will not be regarded as unauthorised expenditure.

9.2 The recent valuations of property in the Western Cape will be validated if the Bill is passed.

9.3 Relevant municipalities will have to make provision in their budgets for the payment of out of pocket expenses to traditional leaders who participate in the proceedings of their councils.

10. PARLIAMENTARY PROCEDURE

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 established by section 75 of the Constitution. The Bill does not fall within a functional area listed in Schedule 4 to the Constitution and does not provide for legislation envisaged in the sections referred to in section 76(3) of the Constitution. Although the Bill provides for legislation envisaged in Chapter 13 of the Constitution, the Bill does not affect the financial interests of the provincial sphere of government.