

Government Gazette

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GENERAL NOTICE

Notice 2359 of 1999

DEPARTMENT OF CONSTITUTIONAL DEVELOPMENT

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL

1. The Local Government: Municipal Structures Amendment Bill, is hereby published for public comment in terms of section 154 (2) of the Constitution.
2. Comments must please be submitted in writing to—

The Director General
Department of Constitutional Development
Private Bag X804
PRETORIA
0001.
3. Comments may also be faxed to facsimile number (012) 334-0608 / (012) 334-0609 or (012) 334-0604 at the above address.
4. Comments must be received by no later than **29 October 1999**.

BILL

To amend the Local Government: Municipal Structures Act, 1998, In order to align the Act with the constitutional requirement that the Demarcation Board must apply the criteria for determining whether an area must have a category A municipality or municipalities of both categories C and B; to vest the power to declare a part of the area of a category C municipality as a district management area in the Demarcation Board: To determine the term of municipal councils; to repeal section 13; and to provide for matters in connection therewith

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

Substitution of section 4 of Act 117 of 1998

1. The following section is hereby substituted for section 4 of the Local Government: Municipal Structures Act, 1998 (hereinafter referred to as the principal Act):

"Appilcatlon of criteria

4. (1) The **[Minister]** Demarcation Board must—

(a) apply the criteria set out in section 2 and detemmine whether an area in terms of the criteria must have a single category A municipality or whether it must have municipallites of both category C and category B; and

(b) determine the boundaries of the area in terms of the Demarcation Act.

(2) The **[Minister]** Demarcation Board may determine that an area must have a category A municipality only after consultation with the Minister, the MEC for Local government in the province concerned, **[the Demarcation Board]** SALGA and

organised local government in the province."

Repeal of section 5 of Act 117 of 1998

2. Section 5 of the Principal Act is hereby repealed.

Amendment of section 6 of 117 of 1998

3. Section 6 of the Principal Act is hereby amended by—

a. the substitution for subsection (2) of the following subsection:

"(2) [The Minister, on the recommendation of the Demarcation Board and after consulting the MEC for local government In the province concerned] The Demarcation Board may 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 the area will not be conducive to fulfilment of the objectives set out in section 24 of the Demarcation Act."; and

b. the substitution for subsection (3) of the following subsection:

"(a) [The Minister, on the recommendation of the Demarcation Board and after consulting the MEC for local government in the province concerned] The Demarcation Board may by notice in the *Government Gazette* withdraw the 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 redeterminations of the Demarcation Board and with effect from the date of the next election of municipal councils-

- 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

5. Section 24 of the principle 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 municipal councils in terms of subsection (2)."

Short title

6. This Act is called 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 Local Government: Municipal Structures Amendment 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 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), were unconstitutional and accordingly declared those sections invalid. The declaration of invalidity of section 6 (2) was suspended for one year.

Section 4 of the Act allowed 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 B. The Court found that the Constitution by necessary implication vests this power in the Demarcation Board. Clause 1 of the Bill accordingly re-aligns section 4 with this constitutional requirement.

Section 5 of the Act enabled the Minister to declare an area that in terms of the criteria! must have a category A municipality as 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 provided 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 MECs 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 repeals this section.

Section 24 (1) of the Act allowed the Minister to determine the term of municipal councils by notice in the *Government Gazette*. The Court ruled that this section constituted an impermissible delegation of parliamentary power and that in terms of the Constitution only Parliament could fix the term. To rectify the matter clause 5 of the Bill amends section 24 (1) by stating that the term of municipal councils will be five years calculated from the day following the date or dates set for the previous election of all municipal councils.