

REPUBLIC OF SOUTH AFRICA

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA SECOND AMENDMENT BILL

(As introduced in the National Assembly)

(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

[B 85—98]

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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.
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BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to amend the manner of determining the different types of municipality to be established in a province; and to provide that, where a municipal boundary is determined across a provincial boundary, national legislation must make provision for establishing a municipality of a type agreed to by the provincial governments concerned and for the exercising of executive authority over that municipality; and to provide for matters connected therewith.

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

Amendment of section 155 of Act 108 of 1996

1. Section 155 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), is hereby amended— 5
- (a) by the substitution for subsection (5) of the following subsection:
- “(5) **[Provincial legislation]** A provincial government must determine the different types of municipality to be established in the province.”; and
- (b) by the addition of the following subsection: 10
- “(8) (a) If in applying the criteria contemplated in subsection (3)(b) a municipal boundary extends across a provincial boundary, that boundary must be determined with the concurrence of the provincial governments concerned.
- (b) National legislation must provide for the provincial governments contemplated in paragraph (a)— 15
- (i) to establish in the area a municipality of a type agreed to between them; and
- (ii) to exercise their executive authority with regard to that municipality either jointly or on a delegated or agency basis in accordance with an agreement between them.” 20

Short title

2. This Act is called the Constitution of the Republic of South Africa Second Amendment Act, 1998.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA SECOND AMENDMENT BILL, 1998

Section 155(5) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996, hereafter “the Constitution”), requires provincial legislation for determining the different types of municipality to be established in a particular province. In the absence of existing provincial legislation determining the different types of municipality to be established in a particular province, provincial Acts will have to be enacted before such a determination can be effected. The amendment of section 155(5) of the Constitution will make it possible for the types of municipality to be determined by a provincial government without having recourse to the enactment of a provincial Act.

Certain communities that exist in adjoining provinces are so closely linked and socially and economically interdependent, that the establishment of a single functional municipality will require the determination of a municipal boundary across the provincial boundary in question. The Bill aims at making it possible for the demarcation authority contemplated in section 155(3)(b) of the Constitution, to be in a position to determine a municipal boundary across a provincial boundary with the concurrence of the provincial governments concerned (so called cross-border municipalities). Although national legislation will set out the manner in which cross-border municipalities are to be established, as well as the institutional arrangements for such municipalities, the proposed amendment to the Constitution is based on the following principles:

- (a) The determination of a municipal boundary across a provincial boundary must be with the concurrence of the provincial governments concerned.
- (b) The establishment of a cross-border municipality will be dependent on co-operation between the affected provinces.
- (c) The co-operation between affected provinces will entail that one province delegates its executive powers to the administering province.
- (d) The legislative authority of the affected province may not be compromised. However, the problem of two sets of (conflicting) provincial legislation in the area of the cross-border municipality can be overcome by the legislature of one province—
 - (i) incorporating by reference all laws of the “administering” province in its part of the municipal area; and
 - (ii) excluding any future laws it makes from application in that part of the cross-border municipality.

In view of the fact that the Bill provides for a constitutional amendment envisaged in section 74(3)(b) of the Constitution, the State Law Advisers and the Department of Constitutional Development are of the view that the legislative procedure provided for in that section must be followed and that the Bill is to be passed by both the National Assembly and the National Council of Provinces. Since the amendment contained in the Bill will affect all provinces, the provisions of section 74(8) of the Constitution are not applicable.

Consultation

The Bill has been submitted to the provincial legislatures for their views, and published for public comment as required by section 74(5) of the Constitution.

Implications for provinces

Provinces will be affected by the provisions of the Bill in so far as the determination of a municipal boundary across a provincial boundary will require the co-operation between affected provinces for a cross-border municipality to be established.

Implications for municipalities

Depending on the extent of co-operation between affected provinces, a cross-border municipality may well have to apply two sets of provincial legislation in its area of jurisdiction.

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