

REPUBLIC OF SOUTH AFRICA

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA SECOND AMENDMENT BILL

(As amended by the Portfolio Committee on Constitutional Affairs (National Assembly))

(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

[B 85B—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 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 (hereinafter referred to as the principal Act), is hereby amended by the insertion after subsection (6) of the following subsection: 5

- “(6A) If the criteria envisaged in subsection (3)(b) cannot be fulfilled without a municipal boundary extending across a provincial boundary—
- (a) that municipal boundary may be determined across the provincial boundary, but only— 10
 - (i) with the concurrence of the provinces concerned; and
 - (ii) after the respective provincial executives have been authorised by national legislation to establish a municipality within that municipal area; and
 - (b) national legislation may— 15
 - (i) subject to subsection (5), provide for the establishment in that municipal area of a municipality of a type agreed to between the provinces concerned;
 - (ii) provide a framework for the exercise of provincial executive authority in that municipal area and with regard to that municipality; and 20
 - (iii) provide for the re-determination of municipal boundaries where one of the provinces concerned withdraws its support of a municipal boundary determined in terms of paragraph (a).”.

Amendment of section 157 of Act 108 of 1996

2. Section 157 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection: 25

“(4)(a) If the electoral system includes ward representation, the delimitation of wards must be done by an independent authority appointed in terms of, and operating according to, procedures and criteria prescribed by national legislation.

(b) Where a municipal boundary has been determined in terms of section 155(6A), a ward delimited within that municipal boundary may not extend across the provincial boundary concerned.” 5

Short title

3. 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

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.

Clause 2 seeks to provide that a word delimited within a municipal boundary may not extend across a provincial boundary.

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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