

REPUBLIC OF SOUTH AFRICA

**TRANSFER OF STAFF TO
MUNICIPALITIES BILL**

(As introduced in the National Assembly)

(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

[B 13—98]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
OORPLASING VAN PERSONEEL
NA MUNISIPALITEITE**

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VIR PROVINSIALE SAKE EN STAATKUNDIGE ONTWIKKELING)

[W 13—98]

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BILL

To provide for the transfer of certain employees from a provincial administration to designated municipalities; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
 - (i) **“employee”** means an employee as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and who was immediately before the commencement of this Act permanently in the service of a provincial administration; (iv) 5
 - (ii) **“MEC”** means the member of the Executive Council of a province responsible for local government in that province; (i) 10
 - (iii) **“municipality”** means a municipality as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993); (ii)
 - (iv) **“provincial administration”** means a provincial administration as defined in the Public Service Act, 1994 (Proclamation No. 103 of 1994). (iii)

Transfer of employees 15

2. (1) Subject to the Labour Relations Act, 1995 (Act No. 66 of 1995), an MEC may transfer such number of employees as may be necessary for the effective administration of the municipality in question and which may be required to render efficient municipal services, to a municipality designated by the MEC with effect from a date determined by him or her by notice in the *Gazette*. 20

(2) No employee may be transferred without—

(a) his or her consent; and

(b) the concurrence of the designated municipality.

(3) If an employee is so transferred, the conditions of service of the municipality in question apply to him or her, but the conditions of service may in the aggregate not be less favourable than the conditions of service which applied to the employee immediately before. 25

Accumulated vacation leave

3. (1) Any vacation leave standing to the credit of an employee immediately before his or her transfer must, from the date of the transfer, be regarded as leave credited to him or her in the employment of the municipality in question, subject to the cash value, on date of transfer, of such leave being adjusted to an equivalent cash value applicable to an employee of similar rank of the municipality in question. 30

(2) (a) In respect of each employee transferred the relevant province must pay the municipality from its provincial revenue fund, the equivalent cash value contemplated in subsection (1). 35

(b) The payment contemplated in paragraph (a) must be made within 60 days of the date on which the employee is transferred.

(3) The cash value of the number of days vacation leave standing to the credit of an

employee at the date of transfer which exceeds the number of days vacation leave which an employee in the service of the municipality in question may accumulate, must be paid to the employee by that municipality at the rate applicable to the employee immediately before his or her transfer to the municipality.

Pensions

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4. Any employee who is a member of the Government Employees Pension Fund immediately before his or her transfer, remains a member of that fund, but may withdraw from that fund in accordance with the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996).

Disciplinary steps or grievance procedure suspends transfer

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5. (1) Any disciplinary steps instituted or being considered against an employee liable to be transferred in terms of section 2, or any grievance procedure instituted by such employee, suspends the transfer of the employee concerned until the finalisation of the relevant disciplinary steps or grievance procedures.

(2) The transfer of an employee contemplated in subsection (1) becomes effective on the first day of the month following the finalisation of the disciplinary steps or grievance procedure, unless the employee is dismissed.

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Short title

6. This is the Transfer of Staff to Municipalities Act, 1998.

MEMORANDUM ON THE OBJECTS OF THE TRANSFER OF STAFF TO MUNICIPALITIES BILL, 1998

1. The main object of the Bill is to provide for the transfer of public servants in the employ of provinces who are rendering municipal services in certain municipalities which were situated in the former independent states and self-governing territories and which are governed by Proclamation R. 293 of 1962 (commonly known as R. 293 towns). The Bill provides that employees may be transferred from a provincial administration to a municipality, subject to the Labour Relations Act, 1995 (Act No. 66 of 1995).

2. Clause 2 of the Bill provides that the member of the Executive Council for local government in the province in question may, subject to the Labour Relations Act, 1995, transfer an employee with his or her consent to a designated municipality, with effect from a date determined by the member in the *Provincial Gazette*. If an employee does not consent to the transfer, he or she will remain in the employment of the provincial administration in question, whilst the conditions of service of an employee who consents to a transfer may, in aggregate, not be less favourable than the conditions of service under which he or she served on the date of transfer. Clause 2 also provides that all transfers are subject to the concurrence of the municipality in question.

3. Clause 3 of the Bill provides that any accumulated vacation leave which stands to the credit of an employee before his or her transfer must be regarded as leave standing to his or her credit with the municipality in question. However, it should be noted that the leave provisions applicable to municipalities differ from those applicable to provincial administrations. Vacation leave in respect of municipal employees is calculated in terms of working days and in the case of provincial employees, in terms of calendar days. To address this problem the Bill provides that the province in question must pay from its provincial revenue fund to the municipality the cash value of the employee's accumulated vacation leave, and the municipality in turn must then pay to the employee the cash value of the accumulated vacation leave which exceeds the number of days accumulated vacation leave to which an employee in the service of the municipality is entitled.

4. Clause 4 of the Bill regulates the pension benefits of transferred employees. In terms of this clause the transferred employee will remain a member of the Government Employees Pension Fund, but may withdraw from that Fund in accordance with the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996).

5. Clause 5 of the Bill provides that disciplinary steps instituted against an employee who has consented to be transferred, or grievance procedure instituted by such an employee, must be finalised before the transfer becomes effective.

6. The following Departments and institutions were consulted:
- * Department of State Expenditure;
 - * Department of Finance;
 - * Department of Public Service and Administration; and
 - * The six provincial administrations in question.

The Bill was also published for public comment as required in terms of section 154 of the Constitution.

7. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department for Provincial Affairs and Constitutional Development are of the opinion that this Bill must be dealt with in accordance with section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.