

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]

ISBN 0 621 28537 4

No. of copies printed 2 600

“(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.

Printed by Creda Communications

ISBN 0 621 28537 4

