

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 21475 of 11 August 2000) (The English text is the official text of the Bill)

(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

[B 51—2000]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP PLAASLIKE REGERING: MUNISIPALE STRUKTURE

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No 21475 van 11 Augustus 2000 gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)

(MINISTER VIR PROVINSIALE EN PLAASLIKE REGERING)

[W 51—2000]

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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.

BILL

To amend the Local Government: Municipal Structures Act, 1998, so as to further regulate the contents of notices establishing municipalities; to further regulate transitional measures when existing municipalities are disestablished and new municipalities established; to further regulate the determination of the number of councillors; to redetermine the provisions from which a municipality may be exempted; to determine the date on which the first term of municipalities end; and to further regulate the transitional arrangements; to provide for a transitional arrangement; and to provide for matters connected therewith.

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

Amendment of section 12 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000

1. Section 12 of the Local Government: Municipal Structures Act, 1998 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The notice establishing the municipality must **[specify]** set out—”;

(b) by the substitution in subsection (3) for paragraph (d) of the following paragraph: 10

“(d) the name of the municipality or the provincial designation of the municipality;”;

(c) by the insertion in subsection (3) of the following paragraph after paragraph (d): 15

“(dA) in the case of a metropolitan or local municipality, the number of wards in the municipality;”.

Amendment of section 14 of Act 117 of 1998

2. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (5) of the following subsections: 20

“(5) (a) The MEC for local government in a province, by notice in the *Provincial Gazette*, may make provision for transitional measures to facilitate the disestablishment of an existing municipality and the establishment of a new municipality.

- (b) The measures contemplated in paragraph (a) may include measures—
- (i) establishing a committee to advise the MEC on any matter affecting the transition; and
 - (ii) in relation to the existing municipality, restricting or regulating the—
 - (aa) alterations to the staff establishment;
 - (bb) appointment of staff or the filling of vacancies;
 - (cc) upgrading of posts or promotions;
 - (dd) increases in salaries or wages;
 - (ee) disposal or acquisition of assets;
 - (ff) conclusion of contracts with a duration longer than one year or the renewal of such contracts; or
 - (gg) use of reserve capital.
- (6) The MEC must consult the existing municipality before publishing the notice contemplated in subsection (5).”.

Amendment of section 20 of Act 117 of 1998

3. Section 20 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) must be determined in accordance with a formula determined by the Minister by notice in the *Government Gazette*, which formula must be based on the number of voters registered on that municipality’s segment of the national common voters’ roll on a date determined in the notice;”.

Amendment of section 91 of Act 117 of 1998

4. Section 91 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) The MEC for local government in a province, within a policy framework as may be determined by the Minister, and by notice in the *Provincial Gazette*, may exempt a municipality in the province from **[a provision of section]** any of the provisions of sections 36 [(2),] (3) or (4), 38, [to 41] 39, 45 to 47, 48(2), (3) [and] or (4), 50 to 53, 58, 65 to 71, 75 and 76.”.

Amendment of section 93 of Act 117 of 1998

5. Section 93 of the principal Act is hereby amended—
- (a) by the insertion of the following subsection after subsection (1):
- “(1A) (a) Sections 12(4) and 16(3) only apply in respect of a municipality after its council has been declared elected as contemplated in item 26(1)(a) of Schedule 6 to the Constitution.
- (b) In respect of the first general election of municipal councils after the enactment of this Act, the MEC for local government must, before publishing a notice in terms of section 12 or 16—
- (i) consult organised local government in the province; and
 - (ii) publish particulars of the proposed notice for public comment for at least 14 days.”;

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

“(3) The first term of all municipal councils after the enactment of this Act expires **[not later than 1 November 2000 as determined by the Minister by notice in the *Government Gazette*]** on 31 October 2000.”; and

(c) by the addition of the following subsections:

“(4) Despite anything to the contrary in any other law and as from the date on which a municipal council has been declared elected as contemplated in item 26(1)(a) of Schedule 6 to the Constitution—

 - (a) section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), read with the necessary changes, apply to such a municipality; and

- (b) section 10H of the Local Government Transition Act, 1993 (Act No. 209 of 1993), read with the necessary changes, apply to the employees of such a municipality.
- (5) For purposes of subsection (4)—
- (a) any reference in section 10G or 10H of the Local Government Transition Act, 1993 (Act No. 209 of 1993), to—
- (i) ‘chairperson of the council’ must be construed as a reference to the speaker of the council;
 - (ii) ‘chief executive officer’ must be construed as a reference to the municipal manager appointed in terms of section 82;
 - (iii) ‘local council’, ‘metropolitan council’, ‘metropolitan local council’ and ‘rural council’ must be construed as a reference to a municipal council;
 - (iv) ‘MEC’ must be construed as a reference to the member of the Executive Council of a province responsible for local government;
 - (v) ‘MEC responsible for finance’ must be construed as a reference to the member of the Executive Council of a province responsible for finances in the province; and
 - (vi) ‘remaining area’ and ‘areas of jurisdiction of representative councils’ must be construed as a reference to a district management area; and
- (b) section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), must be regarded as having been amended by the insertion of the following subsection after subsection (6):
- ‘(6A) (a) Despite anything to the contrary in any other law, a municipality must value property for purposes of imposing rates on property in accordance with generally recognised valuation practices, methods and standards.
- (b) For purposes of paragraph (a)—
- (i) physical inspection of the property to be valued, is optional; and
 - (ii) comparative, analytical and other systems or techniques may be used, including—
- (aa) aerial photography;
 - (bb) information technology;
 - (cc) computer applications and software; and
 - (dd) computer assisted mass appraisal systems or techniques.’ ”.

Transitional arrangement

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6. For the first general election of municipal councils after the enactment of this Act, the date contemplated in section 20(1)(a) of the principal Act must be regarded as 31 March 2000.

Short title

7. This Act is called the Local Government: Municipal Structures Amendment Act, 2000.

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MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2000

1. The Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (“the Structures Act”), provides for the new constitutional dispensation for local government, in so far as it relates to the different categories and types of municipalities, the division of power between certain categories of municipalities and the electoral system to be applied. During the municipal demarcation process, as well as the implementation of the Structures Act, it became apparent that certain amendments need to be effected to the Structures Act in order to facilitate and finalise the demarcation process and other preparation for the forthcoming local government elections.

2. In view of the fact that the Property Rates Bill and the Municipal Finance Management Bill will not be finalised during 2000, it would appear that a legal vacuum may occur after the local government elections in so far as the regulation of the financial matters of the new municipalities are concerned. The obvious short-term solution to this problem appears to be an extension of the application of section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993) (“the Transition Act”), as part of the transitional arrangements contained in the Structures Act.

3. The Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998), also proposed certain amendments to the Structures Act in order to finalise the demarcation process and other preparations for the forthcoming local government elections.

4. Section 12 of the Structures Act deals with the contents of the notice in terms of which a municipality is established. During the process of preparing draft notices for the newly demarcated municipalities, it was realised that a number of important issues that should be contained in the establishment notices have not specifically been provided for in section 12. It is proposed that section 12 of the Structures Act be amended to specifically provide for matters such as the number of wards. There is a school of thought that the present wording of section 12(3) of the Structures Act would require a point to point description of municipal boundaries. In order to promote legal certainty in this regard, it is proposed that the word “specify” be substituted with the expression “set out”. All indications are that it may be difficult to finalise the names of all the newly demarcated municipalities before the publication of the establishment notices. It is therefore proposed that the present requirement in respect of the names be extended to allow for mere designations to be used.

5. Section 14(5) of the Structures Act allows a member of the Executive Council of a province (“the MEC”) to make provision for transitional measures to facilitate the disestablishment of existing municipalities and the establishment of new municipalities. All provinces have indicated that there exists a need for specific provisions that allow for a moratorium to be placed on municipalities in respect of matters such as the disposal and acquisition of assets, and the establishment of facilitation committees to advise and assist MECs in the process of finalising the establishment notices. It is proposed that section 14(5) be amended to specifically provide for such matters.

6. Section 20 of the Structures Act provides for the determination of a formula for the determination of the number of councillors, which formula must be based on the number of voters registered on each municipality’s segment of the national common voters’ roll. Uncertainty has arisen regarding the question as to which date should be used for the determination of the number of registered voters. The proposed amendment to section 20 provides that the date will be specified in the notice setting out the formula. However, in order to avoid any dispute regarding the date that was used in respect of the forthcoming elections, a transitional arrangement has been included in the Bill to fix the date that was used in the present instance.

7. In terms of section 91 of the Structures Act, the MEC may exempt a municipality from the provisions of certain sections of that Act. It was realised that certain of these provisions relate to matters that all municipalities should comply with, such as the election of a speaker. Consequently, it is proposed that section 91 be amended so as to

remove the reference to provisions in respect of which no municipality should be exempted.

8. Section 12(4) of the Structures Act prescribes a consultation process that must take place when a new municipality is to be established. In view of the fact that the country is on the eve of the introduction of a completely new local government dispensation that entails the disestablishment of all existing municipal structures and the establishment of completely new municipalities, and the fact that a comprehensive consultation process has already taken place as part of the current demarcation process and through facilitation committees that have been established by all nine MECs, it is not deemed expedient or practical to require MECs at this stage of the transformation process to comply with section 12(4) of the Structures Act. Consequently, it is proposed that section 93 of the Structures Act be amended to provide for a transitional arrangement regarding the application of section 12(4) of the Structures Act and the requirement to consult in so far as the newly demarcated municipalities are concerned.

9. In view of the fact that consideration is being given to proclaiming 1 November 2000 as the date on which the local government elections are to take place, it is necessary to amend section 93(3) of the Structures Act to reflect at least the date immediately prior to 1 November 2000 as the date on which the term of the existing municipal councils expire.

10. As it does not appear possible to enact financial legislation that would apply to the new municipalities before the forthcoming elections take place, it is deemed necessary to provide for an appropriate transitional arrangement by extending the application of sections 10G and 10H of the Transition Act to the new municipalities. This extension would also require further transitional arrangements regarding the valuation of property for purposes of imposing rates.

11. CONSULTATION

The Municipal Demarcation Board was consulted.

12. FINANCIAL IMPLICATIONS FOR STATE

None.

13. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Provincial and Local Government are of the opinion that this Bill must be dealt with in accordance with the procedure established by 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.