

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**LOCAL GOVERNMENT: MUNICIPAL
STRUCTURES AMENDMENT BILL**

[B 51—2000]

(As agreed to by the Portfolio Committee on Provincial and Local Government (National Assembly))

[B 51A—2000]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP**

**WYSIGINGSWETSONTWERP OP
PLAASLIKE REGERING:
MUNISIPALE STRUKTURE**

[W 51—2000]

*(Soos goedgekeur deur die Portefeuljekomitee oor Provinsiale en Plaaslike Regering
(Nasionale Vergadering))*

[W 51A—2000]

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AMENDMENTS AGREED TO

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL [B 51—2000]

NEW HEADING

1. That the following be a new Heading to precede Clause 1:

CHAPTER 1

AMENDMENT OF ACT 117 OF 1998

CLAUSE 1

1. On page 2, from line 10, to omit paragraph *(b)*.
2. On page 2, after line 17, to add the following paragraph:
 - (c) by the deletion of paragraph *(g)* of subsection (3).

CLAUSE 2

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses:

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 (1) of the following subsection:

“(1) *(a)* A municipality established in terms of section 12 in a particular area, supersedes the existing municipality or municipalities to the extent that the existing municipality or municipalities fall within that area.

(b) The superseding municipality becomes the successor in law of the existing municipality subject to paragraph *(c)*.

(c) Where a district municipality and one or more local municipalities within the area of the district municipality supersede the existing municipality or municipalities in that area, the district and local municipalities in that area become the successors in law of the existing municipality or municipalities depending on the specific assets, liabilities, rights and obligations allocated to the district and local municipalities respectively in terms of the relevant section 12 notice or notices.”;

- (b) by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

“(2) If subsection (1) is applicable, the section 12 notice, or any amendment of the section 12 notice, must—”; and

- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) regulate the legal, practical and other consequences of the total or partial disestablishment of the existing municipality, including—

- (i) the vacation of office by councillors of the existing municipality;
- (ii) the transfer of staff from the existing municipality to the superseding municipality, or, if there is more than one superseding municipality, to any of the superseding municipalities;
- (iii) the transfer of assets, liabilities, rights and obligations, and administrative and other records, from the existing municipality to the superseding municipality, or, if there is more than one superseding municipality, to any of the superseding municipalities, taking into account the interests of creditors of the existing municipality; and
- (iv) the continued application of any by-laws **[, regulations]** and resolutions of the existing municipality to or in that area, and the extent of such application:

Provided that if the superseding municipality is a district or local municipality a transfer referred to in subparagraph (ii) or (iii) must be effected in a way that would enable the superseding municipality to perform the functions or exercise the powers assigned to it in terms of section 84(1) or (2).”;

- (d) by the substitution for subsection (3) of the following subsection:

“(3) (a) The transfer of a staff member in terms of a section 12 notice must **[take place]** be—

- (i) on conditions of service not less favourable than those under which that staff member served in the existing municipality; and
- (ii) in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995).

(b) A section 12 notice transferring staff of an existing municipality to a superseding municipality may determine that—

- (i) the staff transferred from the existing municipality to the superseding municipality form an administrative unit that functions as such until the superseding municipality has established a staff structure and has appointed staff to positions on that staff structure; and
- (ii) such administrative unit functions under the control of the municipal manager or acting municipal manager of the superseding municipality.”.

Amendment of section 16 of Act 117 of 1998

3. Section 16 of the principal Act is hereby amended by the deletion of paragraph (e) of subsection (1).

NEW CLAUSES

1. That the following be new Clauses:

Amendment of section 81 of Act 117 of 1998

5. Section 81 of the principal Act is hereby amended by the substitution for the expression “10 per cent”, wherever it occurs, of the expression “20 per cent”.

Amendment of section 84 of Act 117 of 1998

6. Section 84 of the principal Act is hereby amended—
 (a) by the substitution for subsection (1) of the following subsection:

“(1) A district municipality has the following functions and powers:

- (a) Integrated development planning for the district municipality as a whole, including a framework for integrated development plans **[for the local municipalities within]** of all municipalities in the area of the district municipality[, **taking into account the integrated development plans of those local municipalities**].
- (b) **[Bulk supply of water that affects a significant proportion of municipalities in the district]** Potable water supply systems.
- (c) Bulk supply of electricity **[that affects a significant proportion of municipalities in the district]**, which includes, for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity.
- (d) **[Bulk sewage purification works and main sewage disposal that affects a significant proportion of municipalities in the district]** Domestic waste-water and sewage disposal systems.
- (e) Solid waste disposal sites **[serving the area of the district municipality as a whole]**, in so far as it relates to—
 - (i) the determination of a waste disposal strategy;
 - (ii) the regulation of waste disposal;
 - (iii) the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district.
- (f) Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole.
- (g) Regulation of passenger transport services.
- (h) Municipal airports serving the area of the district municipality as a whole.
- (i) Municipal health services **[serving the area of the district municipality as a whole]**.
- (j) Fire fighting services serving the area of the district municipality as a whole, which includes—

- (i) planning, co-ordination and regulation of fire services;
- (ii) specialised fire fighting services such as mountain, veld and chemical fire services;
- (iii) co-ordination of the standardisation of infrastructure, vehicles, equipment and procedures;
- (iv) training of fire officers.
- (k) The establishment, conduct and control of fresh produce markets and abattoirs serving the area of **[the district municipality as a whole]** a major proportion of the municipalities in the district.
- (l) The establishment, conduct and control of cemeteries and crematoria serving the **[district as a whole]** area of a major proportion of municipalities in the district.
- (m) Promotion of local tourism for the area of the district municipality.
- (n) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.
- (o) The receipt, allocation and, if applicable, the distribution of grants made to the district municipality.
- (p) The imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation.”; and
- (b) by the substitution for subsection (3) of the following subsection;

“(3)(a) The Minister may, by notice in the *Government Gazette*, and after consultation with the Cabinet member responsible for the functional area in question, and after consulting the MEC for local government in the province and, if applicable, subject to national legislation, authorise a local municipality to perform a function or exercise a power mentioned in subsection (1) (b), (c), (d) or (i) in its area or any aspect of such function or power.

(b) The Minister must in the notice referred to in paragraph (a) regulate the legal, practical and other consequences of the authorisation, which may include—

 - (i) the transfer of staff;
 - (ii) the transfer of assets, liabilities, rights and obligations, and administrative and other records; and
 - (iii) the continued application of any by-laws and resolutions in the area of the municipalities concerned and the extent of such application.

(c) The Minister may amend a notice issued in terms of paragraph (a) to effect technical changes or to regulate the authorisation more effectively.”.

Amendment of section 85 of Act 117 of 1998

7. Section 85 of the principal Act is hereby amended by—
- (a) the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) in the district municipality (excluding a function or power referred to in section 84(1) (a), (b), (c), (d), (i), (o) or (p), to the local municipality.”; and

(b) by the addition of the following subsection:

“(10) This section does not apply before the date of the first elections of municipal councils in terms of this Act.”.

Substitution of section 86 of Act 117 of 1998

8. The following section is hereby substituted for section 86 of the principal Act:

“Resolution of disputes concerning performance of functions or exercise of powers

86. [If a district and a local municipality perform a function or exercise a power of a similar nature and] If a dispute arises between **[them]** a district and a local municipality concerning the performance of **[that]** a function or the exercise of **[that]** a power, the MEC for local government in the province, after consulting them, may, by notice in the *Provincial Gazette*, resolve the dispute by defining their respective roles in the performance of that function or in the exercise of that power.

Amendment of section 90 of Act 117 of 1998

9. Section 90 of the principal Act is hereby amended by the substitution in the Afrikaans text in subsection (2) for the words “betrokke munisipaliteit” of the words “betrokke provinsies”.

CLAUSE 5

1. On page 4, from line 34, to omit paragraph (a) and to substitute:
 - (a) by the substitution for subsection (2) of the following subsection:

“(2) If any conflict relating to the matters dealt with in this Act arises between this Act and the provisions of any other law, except the Constitution and Chapter 2 of the Local Government: Municipal Structures Amendment Act, 2000, the provisions of this Act prevail.”;
2. On page 6, from line 1, to omit paragraph (b) and to substitute:

(b) any regulation made under section 12 of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and which relates to section 10G of that Act, read with the necessary changes, apply to such a municipality.
3. On page 6, in line 5, to omit “or 10H”.
4. On page 6, in line 6, after “1993),” to insert:

or a regulation referred to in subsection (4)(b),
5. On page 6, in line 17, to omit “finance” and to substitute “Finance”.
6. On page 6, in line 33, before “comparative” to insert:

in lieu of valuation by a valuer, or in addition thereto,

CLAUSE 6

Clause rejected.

NEW CHAPTER

1. That the following be a new Chapter:

CHAPTER 2

TRANSITIONAL ARRANGEMENTS IN RESPECT OF NEW LOCAL GOVERNMENT DISPENSATION

Definitions

12. (1) In this Chapter a word or expression to which a meaning has been assigned in the Structures Act, has that meaning and, unless the context otherwise indicates—

“existing municipality” means a municipality established in terms of legislation other than the Structures Act before the date of the first elections of municipal councils in terms of that Act;

“new municipality” means a municipality established or to be established in terms of the Structures Act;

“section 12 notice” means a notice envisaged in section 12 (1) of the Structures Act;

“Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“superseding municipality” means a new municipality which wholly or partially supersedes an existing municipality in accordance with section 14 (1) of the Structures Act;

“transition” means the process of putting into operation the new local government dispensation as set out in the Structures Act read with Chapter 7 of the Constitution.

Duration of transition

13. (1) The transition ends two years from the date of the first election of municipal councils in terms of the Structures Act, unless the Minister determines a shorter period by notice in the *Government Gazette*.

(2) This Chapter lapses when the transition ends.

Transitional application of section 12 of Act 117 of 1998

14. (1) For purposes of the transition, section 12 of the Structures Act must be regarded as permitting—

- (a) a new municipality to be named in the section 12 notice by way of a provisional designation which must consist of or include the number allocated to the area of the municipality when that area was demarcated in terms of the Demarcation Act; and
- (b) the establishment of a district municipality, the establishment of local municipalities within the area of the district municipality, and the total or partial disestablishment of existing municipalities within that area, to be effected by way of the same section 12 notice.

(2) Section 12 (4) of the Structures Act does not apply during the transition.

Transitional application of section 14 of Act 117 of 1998

15. For purposes of the transition, section 14 (5) of the Structures Act must be regarded to read as follows:

“(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; or
- (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.

(c) The MEC must consult the existing municipality before publishing the notice contemplated in paragraph (a).”.

Transitional application of section 16 of Act 117 of 1998

16. (1) For purposes of the transition, section 16 (2) of the Structures Act must be regarded to read as follows:

“(2) Any amendment of a section 12 notice must be consistent with the provisions of this Act read with the provisions of Chapter 2 of the Local Government: Municipal Structures Amendment Act, 2000.”.

(2) Section 16 (3) of the Structures Act does not apply when a section 12 notice is amended for purposes of the transition.

Transitional arrangement in respect of notice and consultation

17. For purposes of the transition, the MEC for local government in a province must, before publishing a notice in terms of section 12 or 16 of the Structures Act—

(a) consult organised local government in the province; and

(b) publish particulars of the proposed notice for public comment for at least 14 days.

Temporary authorisations

18. (1) The MEC for local government in a province, by notice in the *Provincial Gazette*, may authorise—

- (a) a local municipality to perform a function or exercise a power of a nature described in section 84(1) (e), (f), (g), (h), (j), (k), (l), (m) and (n) in its area or an aspect of such function or power; or

(b) a district municipality to perform a function or exercise a power of the nature referred to in section 84(2) in the area of a local municipality, or an aspect of such function or power.

(2) The MEC may issue an authorisation in terms of subsection (1) only if—

(a) the district municipality or the local municipality, as the case may be, cannot or does not perform the function or exercise the power in the relevant area or if, for any other reason, it is necessary to ensure the continued performance of the function or exercise of the power in that area; and

(b) the Demarcation Board has recommended the authorisation.

(3)(a) If the Demarcation Board has made a recommendation in favour of an authorisation and the MEC disagrees with the recommendation, the MEC must furnish reasons, in writing, to the Board and the Minister.

(b) After considering the reasons furnished by the MEC and after consulting the Demarcation Board, the Minister may by notice in the *Government Gazette* issue the authorisation subject to subsection (2)(a).

(4) The MEC or the Minister must in the notice referred to in subsection (1) or (3), as the case may be, regulate the legal, practical and other consequences of the authorisation, which may include—

- (i) the transfer of staff;
- (ii) the transfer of assets, liabilities, rights and obligations, and administrative and other records; and
- (iii) the continued application of any by-laws and resolutions in the area of the municipalities concerned and the extent of such application.

(5) The MEC or Minister may amend a notice issued in terms of subsection (1) or (3), as the case may be, to effect technical changes or to regulate the authorisation more effectively.

(6) (a) The MEC must revoke an authorisation issued in terms of subsection (1) or (3) if—

- (i) the Demarcation Board so recommends; or
- (ii) an adjustment concerning the relevant function or power is made in terms of section 85.

(b) The Demarcation Board must so recommend if the reason for the authorisation is no longer valid.

(7) When an authorisation is revoked in terms of subsection (6) or lapses in terms of section 13, the MEC must, if necessary, regulate by notice in the *Provincial Gazette* the legal, practical and other consequences resulting from the revocation or lapsing of the authorisation, which may include—

- (a) the transfer of staff;
- (b) the transfer of assets, liabilities, rights and obligations, and administrative and other records; and
- (b) the continued application of any by-laws, and resolutions in the area of the municipalities concerned and the extent of such application.

Transitional arrangement in respect of section 20 of Act 117 of 1998

19. For the first election of municipal councils after the enactment of this Act, the date contemplated in section 20(1)(a) of the Structures Act, as amended by section 2 of this Act, must be regarded as 31 March 2000.

LONG TITLE

1. On page 2, from the seventh line, to omit “to provide for a transitional arrangement;”.