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MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2002

1. I, Fholisani Sydney Mufamadi, Minister for Provincial and Local Government, in terms of section 154 of the Constitution, hereby publish the Local Government: Municipal Structures Amendment Bill, 2002, for public comment.
2. Comments must please be submitted in writing to –

The Director-General
Attention: Mr P W Heydenrych
Department of Provincial and Local Government
Private Bag X 804
PRETORIA
0001
3. Comments may also be faxed to facsimile number (012) 323 3349 at the above address.
4. Comments must be received by no later than **12 April 2002**

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, in order to enable a member of a Municipal Council to become a member of another party whilst retaining membership of that Council; and to provide for matters connected therewith.

WHEREAS section 46(1)(d) of the Constitution requires an electoral system for the National Assembly that results, in general, in proportional representation;

AND WHEREAS section 105(1)(d) of the Constitution requires an electoral system for provincial legislatures that results, in general, in proportional representation;

AND WHEREAS section 157(2) of the Constitution requires an electoral system for local government comprising either proportional representation or proportional representation combined with a system of ward representation.

AND WHEREAS the Local Government: Municipal Structures Act, 1998, provides for an electoral system for local government comprising proportional representation combined with a system of ward representation;

AND WHEREAS item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, provides that an Act of Parliament may, within a reasonable period after the new Constitution took effect, be passed in accordance with section 76(1) of the new Constitution to amend that item and item 23 in order to provide for—

- the manner in which it will be possible for a member of a legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature; and

- any existing party to merge with another party, or any party to subdivide into more than one party,

AND WHEREAS provision has been made by section 158A of the Constitution in respect of local government for—

- a councillor to retain membership of a municipal council where such a councillor ceases to be a member of the party which nominated that councillor; and
- any existing party to merge with another party, or any party to subdivide into more than one party;

AND WHEREAS there exist a need for uniformity within the three spheres of government regarding matters such as crossing the floor, and mergers or subdivision of parties;

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

Amendment of section 27 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000 and section 121 of Act 32 of 2000

1. Section 27 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), is hereby amended by the deletion of paragraphs (c) and (f) of subsection (1).

Short title

2. This Act is called the Local Government: Municipal Structures Amendment Act, 2002.

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2002

1. Background

1.1 On 13 November 2001 the National Assembly gave permission to the Assembly's Portfolio Committee on Justice and Constitutional Development to proceed with the consideration of the *Loss or Retention of Membership of National and Provincial Legislatures Bill, 2001* (the Membership Bill).

1.2 The purpose of the Membership Bill is to create a mechanism in terms of which—

- members of the National Assembly or a provincial legislature can change their party membership without losing their seats;
- an existing party may merge with another party; and
- a party may subdivide into more than one party.

1.3 This mechanism is sought to be created by way of amendments to items 23 and 23A of Schedule 2 to the (interim) Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

1.4 However, at present the Constitution does not provide for similar changes of party membership, mergers between parties or subdivision of parties in the context of local government.

1.5 The Department of Justice and Constitutional Development has proposed a constitutional amendment in respect of the local government sphere, which deals comprehensively with crossing the floor, the mergers of parties and the subdivision of parties within municipal councils. A proposed Bill was published for public comment in Gazette No. 23218 of 11 March 2002.

1.6 The proposed amendment to the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998, hereafter referred to as "the Structures Act"), is intended to compliment the constitutional amendments proposed by the Department of Justice and Constitutional Development in respect of the local government sphere.

2. Provisions of the Bill

2.1 The proposed constitutional amendment will render paragraphs (c) and (f) of section 27(1) of the Structures Act unconstitutional and redundant. The purpose of the proposed Structures Amendment Bill is merely to repeal the said paragraphs (c) and (f). Clause 1 of the Bill makes provision in this regard.

2.2 Clause 2 of the Bill provides for the Short title.