



# Government Gazette

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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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## GENERAL NOTICE

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### NOTICE 2034 OF 2002

#### MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT

#### LOCAL GOVERNMENT: MUNICIPAL STRUCTURES SECOND AMENDMENT BILL, 2002

1. I, Fholisani Sydney Mufamadi, Minister for provincial and Local Government, in terms of section 154(2) of the Constitution, hereby publish the Local Government: Municipal Structures Second Amendment Bill, 2002, for public comment.
  
2. Comments must please be submitted in writing to –  
  
The Director-General  
Attention: Adv. S Kholong  
Department of Provincial and Local Government  
Private Bag X804  
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 7 November 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

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**BILL**

**To amend the Local Government: Municipal Structures Act, 1998, so as to regulate the effects arising from a change of the type of municipality where such a change affects the respective terms of office of a member of the executive committee and an executive mayor; and to provide for matters connected therewith.**

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

**Amendment of section 45 of Act 117 of 1998**

1. The following section is hereby substituted for section 45 of the Local Government: Municipal Structures Act, 1998 (hereafter the Structures Act):

**“Election of members of executive committees**

**45.** A municipal council must elect the members of its executive committee from among its members at a meeting that must be held –

- (a) within 14 days of the council’s election; **[or]**
- (b) if it is a district council, within 14 days after the last of the local councils has appointed its representatives to the district council; or
- (c) within 14 days of the date from which the type of the municipality has been changed from any of the types mentioned in sections 8(e), (f), (g), or (h), 9(c), (d), (e) or (f) or 10(b) or (c) to any of the types referred to in sections 8(a), (b), (c) or (d), 9(a) or (b) or 10(a).”

**Amendment of section 47 of Act 117 of 1998**

2. Section 47 of the Structures Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A member of an executive committee vacates office during a term if that member –

- (a) resigns as a member of the executive committee;
- (b) is removed from office as a member of the executive committee in terms of section 53; **[or]**
- (c) ceases to be a councillor; or
- (d) ceases to be a member of the executive committee as a result of the type of the municipality having been changed from any of the types mentioned in sections 8(a), (b), (c) or (d), 9(a) or (b) or 10(a) to any of the types referred to in sections 8(e), (f), (g) or (h), 9(c), (d), (e) or (f) or 10(b) or (c).”

#### **Amendment of section 55 of Act 117 of 1998**

3. Section 55 of the Structures Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If a municipal council chooses to have an executive mayor it must elect an executive mayor and, if the MEC for local government in the province so approves, also an executive deputy mayor, from among its members at a meeting that must be held –

- (a) within 14 days of the council’s election; **[or]**
- (b) if it is a district council, within 14 days after the last of the local councils has appointed its representatives to the district council; or
- (c) within 14 days of the date from which the type of the municipality has been changed from any of the types mentioned in sections 8(a), (b), (c) or (d), 9(a), (b), (e) or (f) or 10(a) or (c) to any of the types referred to in sections 8(e), (f), (g) or (h), 9(c) or (d) or 10(b).”

#### **Amendment of section 57 of Act 117 of 1998**

4. Section 57 of the Structures Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) must be elected for a term ending, subject to [section] sections 58 and 59, when the next council is declared elected; and”.

#### **Amendment of section 59 of Act 117 of 1998**

5. The following section is hereby substituted for section 59 of the Structures Act:

##### **“Vacation of office**

**59.** An executive mayor or deputy executive mayor vacates office during a term if that person –

- (a) resigns as executive mayor or deputy executive mayor;
- (b) is removed from office as executive mayor or deputy executive mayor; [or]
- (c) ceases to be a councillor; or
- (d) ceases to hold office as executive mayor or deputy executive mayor as a result of the type of the municipality having been changed from any of the types mentioned in sections 8(e), (f), (g), or (h), 9(c) or (d) or 10(b) to any of the types referred to in sections 8(a), (b), (c) or (d), 9(a), (b), (e) or (f) or 10(a) or (c).”.

##### **Short title**

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

## MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES SECOND AMENDMENT BILL

1. Although provision is made in section 16 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)(hereafter "the Structures Act"), for the type of a municipality to be changed, it is not all that clear when such a change may be effected. This is especially true where a change in the type of a municipality would have an effect on the term of office of office bearers. In order to address this uncertainty, amendments to the Structures Act are proposed that would make it clear that an affected office bearer would vacate her or his office where a change in the type of municipality affects such an office bearer's continued term of office. This would mainly be the case where the type of municipality is changed from an executive committee type to an executive mayoral type, and vice versa.

2.1 Clause 1 of the Bill proposes an amendment to section 45 of the Structures Act to determine the applicable timeframe for the election of members of the executive committee where the type of a municipality has been changed from an executive mayoral type to an executive committee type.

2.2 Clause 2 of the Bill proposes an amendment to section 47 of the Structures Act to make it clear that a member of an executive committee vacates her or his office where the type of a municipality is changed from an executive committee type to an executive mayoral type.

2.3 Clause 3 of the Bill proposes an amendment to section 55 of the Structures Act to determine the applicable timeframe for the election of an executive mayor and executive deputy mayor where the type of a municipality has been changed from an executive committee type to an executive mayoral type.

2.4 Clause 4 of the Bill contains a consequential amendment to section 57 of the Structures Act.

2.5 Clause 5 of the Bill proposes an amendment to section 59 of the Structures Act to make it clear that an executive mayor and executive deputy mayor vacates her or his office where the type of a municipality is changed from an executive mayoral type to an executive committee type.

### **3. BODIES AND ORGANISATIONS CONSULTED**

The Western Cape Department of Local Government

### **4. FINANCIAL IMPLICATIONS**

None.

### **5. IMPLICATIONS FOR PROVINCES**

There are no direct implications for provinces.

### **6. IMPLICATIONS FOR MUNICIPALITIES**

Implications for a municipality would only arise where the existing type of that municipality is changed.

### **7. PARLIAMENTARY PROCEDURE**

The Department of Provincial and Local Government is of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution. The Bill does not fall within a functional area listed in Schedule 4 to the Constitution, and does not provide for legislation envisaged in the sections referred to in section 76(3) of the Constitution.