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**GENERAL NOTICE**  
**ALGEMENE KENNISGEWING**

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**NOTICE 621 OF 2007**

**MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT**

**CROSS-BOUNDARY MUNICIPALITIES LAWS REPEAL AND RELATED MATTERS**  
**AMENDMENT BILL, 2007**

1. I, Fholisani Sydney Mufamadi, Minister for Provincial and Local Government, hereby, in terms of section 154(2) of the Constitution, publish the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Bill, 2007, for public comment.
2. Comments must be submitted in writing to –  
  
The Director-General  
Attention: Mr M Peter  
Department of Provincial and Local Government  
Private Bag X804  
**PRETORIA**  
0001
3. Comments may also be faxed to (012) 334-4828 at the above address, or e-mailed to [charmaine@dplg.gov.za](mailto:charmaine@dplg.gov.za).
4. No comments which are received after **19 June 2007** will be considered

CROSS-BOUNDARY MUNICIPALITIES LAWS REPEAL AND RELATED MATTERS  
AMENDMENT BILL

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*(As introduced in the National Assembly as a section 75 Bill; Explanatory summary of Bill  
published in Government Gazette No..... of .....) (The English text is the official text of  
the Bill)*  
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(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

[B – 20071

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## GENERAL EXPLANATORY NOTE:

- [ 1 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 Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005, so as to correct invalid provisions included into that Act; and to provide for matters connected therewith.**

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

**Amendment of Schedule 4 to Act 23 of 2005**

**1.** Schedule 4 to the Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005 (hereinafter referred to as the principal Act), is hereby amended by –

- (a) the substitution for all references related to “**KZ5a6** known as Umzimkulu Local Municipality” in the respective columns, of the following references:

Identified by Map No. 8 of the Schedule to Notice 1257 of 2005	<b>KZ5a6</b> known as Umzimkulu Local Municipality	<b>KwaZulu-Natal</b>
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- (b) the substitution for all references related to “**DC43** known as Sisonke District Municipality” in the respective columns, of the following references:

Identified by Map	<b>DC43</b> known as Sisonke District	<b>KwaZulu-Natal</b>
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No. 7 of the Schedule to Notice 1257 of 2005	Municipality	
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- (c) the substitution for all references related to "**DC44** known as Alfred Nzo District Municipality" in the respective columns, of the following references:

Identified by Map No. 11 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496 of 2005	<b>DC44</b> known as Alfred Nzo District Municipality	Eastern Cape
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- (d) the substitution for all references related to "**EC05b2** known as Urnzirvubu Local Municipality" in the respective columns, of the following references:

Identified by Map No. 10 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496 of 2005	<b>EC05b2</b> known as Umzimvubu Local Municipality	Eastern Cape
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- (e) the substitution for all references related to "**EC05b3** known as Matatiele Local Municipality" in the respective columns, of the following references:

Identified by Map No. 9 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496 of	<b>EC05b3</b> known as Matatiele Local Municipality	Eastern Cape
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2005		
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### Amendment of Schedule 5 to Act 23 of 2005

2. Schedule 5 to the principal Act is hereby amended by –

- (a) the substitution for all references related to “**KZ5a6** known as Umzimkulu Local Municipality” in the respective columns, of the following references:

Notice 1756 of 2005 (KwaZulu-Natal), read with Notice 3253 of 2005 (KwaZulu-Natal)	<b>KZ5a6</b> known as Umzimkulu Local Municipality (Map No. 8 of the Schedule to Notice 1257 of 2005)	KwaZulu-Natal	<b>EC05b1</b>
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- (b) the substitution for all references related to “**DC43** known as Sisonke District Municipality” in the respective columns, of the following references:

Notice 1756 of 2005 (KwaZulu-Natal), read with Notice 344 of 2000 (KwaZulu-Natal) and Notice 3253 of 2005 (KwaZulu-Natal)	<b>DC43</b> known as Sisonke District Municipality (Map No. 7 of the Schedule to Notice 1257 of 2005)	KwaZulu-Natal	<b>DC43</b>
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- (c) the substitution for all references related to “**DC44** known as Alfred Nzo District Municipality” in the respective columns, of the following references:

Notice 43 of 2005 (Eastern Cape)	<b>DC44</b> known as Alfred Nzo District Municipality (Map No. 11 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496	Eastern Cape	<b>DC44</b>
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	of 2005)		
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- (d) the substitution for all references related to "**EC05b2** known as Umzimvubu Local Municipality" in the respective columns, of the following references:

Notice 43 of 2005 (Eastern Cape)	<b>EC05b2</b> known as Umzimvubu Local Municipality (Map No. 10 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496 of 2005)	Eastern Cape	<b>EC05b2</b>
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- (e) the substitution for all references related to "**EC05b3** known as Matatiele Local Municipality" in the respective columns, of the following references:

Notice 43 of 2005 (Eastern Cape)	<b>EC05b3</b> known as Matatiele Local Municipality (Map No. 9 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496 of 2005)	Eastern Cape	<b>KZ5a3</b>
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### Application of Act 23 of 2005

3. (1) Section 2(4) of the principal Act applies to the municipalities referred to in sections 1 and 2 of this Act in accordance with the provisions of the Constitution Thirteenth Amendment Act of 2007.

(2) Sections 3 to 5 of the principal Act apply to the areas of jurisdiction of the municipalities referred to in sections 1 and 2 of this Act in accordance with the provisions of the Constitution Thirteenth Amendment Act of 2007.

### Short title and commencement

4. This Act is called the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Act, 2007, and takes effect on the same date as the commencement of the Constitution Thirteenth Amendment Act of 2007.

## MEMORANDUM ON THE OBJECTS OF THE CROSS- BOUNDARY MUNICIPALITIES LAWS REPEAL AND RELATED MATTERS AMENDMENT BILL

### 1. BACKGROUND

- 1.1 The Constitution Twelfth Amendment Act of 2005 (hereafter the "Constitution Twelfth Amendment") and the Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005 (Act No. 23 of 2005) (hereafter the "Cross-boundary Laws Repeal Act") were enacted during December 2005. The Constitution Twelfth Amendment amended the Constitution of the Republic of South Africa, 1996, by providing for the re-determination of the geographical areas of the provinces and doing away with the concept of cross-boundary municipalities. The Cross-boundary Laws Repeal Act supported and complimented the Constitution Twelfth Amendment by providing transitional arrangements to ensure a smooth transition from the cross-boundary municipality dispensation to a new dispensation where a municipality would only be located in one particular province.
- 1.2 The constitutionality of the Constitution Twelfth Amendment and the Cross-boundary Laws Repeal Act was challenged in the Constitutional Court by the Matatiele community. The Constitutional Court handed down judgement in the Matatiele matter on 18 August 2006. In essence, the Court declared those provisions of the Constitution Twelfth Amendment that transferred the Matatiele Municipality from the **KwaZulu-Natal** Province to the Eastern Cape Province to be invalid. As a result of their interdependence, this declaration of invalidity was extended to those provisions of the Cross-boundary Laws Repeal Act that concerned the **KwaZulu-Natal** Province.
- 1.3 The order of invalidity is suspended for 18 months, during which time Parliament has the opportunity to correct the constitutional defect that led to the order of invalidity.
- 1.4 For various technical reasons, the order of invalidity was formulated with reference to Matatiele only. However, it stands to reason that the failure of the **KwaZulu-Natal** legislature to consult on the proposed changes to its provincial boundaries (which



gave rise to the order of invalidity), also affects other boundary changes impacting on the Province of **KwaZulu-Natal** (such as the inclusion of Umzimkulu into **KwaZulu-Natal**). It also follows, that the "knock-on effect" on municipalities that are now located in the Eastern Cape Province, should also be provided for in any legislative measure that seeks to rectify the constitutional defect that led to the Constitutional Court's order of invalidity. Put in other words: It would appear that any proposed legislative amendments that are intended to rectify the identified constitutional defect must also include references to the Eastern Cape Province.

- 1.5 It stands to reason that the invalid provisions of the Constitution Twelfth Amendment and the Cross-boundary Laws Repeal Act have to be addressed by *two* separate Bills, *viz.* a Constitution Amendment Bill and an Amendment Bill that amends the Cross-boundary Laws Repeal Act. Although the Ministry of Justice and Constitutional Development would be processing the Constitution Thirteenth Amendment Bill of 2007 and the Ministry for Provincial and Local Government would be processing the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Bill, 2007, these two Bills must be read together. These *two* Bills are premised on the principle that only those provisions in the Twelfth Constitution Amendment and the Cross-boundary Laws Repeal Act that refer directly to the provinces of the Eastern Cape and **KwaZulu-Natal** are to be substituted and re-enacted.

## 2. OBJECTS OF THE BILL

The Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Bill, 2007 (hereafter "the Bill"), seeks to amend the Cross-boundary Laws Repeal Act by substituting and re-enacting those provisions of the said Act that were declared invalid by the Constitutional Court.

## 3. BODIES/ ORGANISATIONS CONSULTED

- The Department of Justice and Constitutional Development
- The Bill was published for public comment in terms of section 154(2) of the

Constitution.

#### 4. FINANCIAL IMPLICATIONS FOR THE STATE

None, since the Bill seeks to re-enact provisions of the Cross-boundary Laws Repeal Act that were found to be invalid.

#### 5. IMPLICATIONS FOR PROVINCES

In so far as the Bill is dependent on the passing of the Constitution Thirteenth Amendment Bill of 2007, the legislatures of the Eastern Cape Province and the Province of KwaZulu-Natal has to approve the Constitution Thirteenth Amendment Bill of 2007 as required by section 74(8) of the Constitution.

#### 6. IMPLICATIONS FOR MUNICIPALITIES

The configuration of municipalities in the Eastern Cape Province and the Province of KwaZulu as preserved by the suspension order of the Constitutional Court in the Matatiele matter would be maintained.

#### 7. PARLIAMENTARY PROCEDURE

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

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.