

Government Gazette, No. 21293

20 June 2000

GENERAL NOTICE Notice 2235 of 2000

MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2000

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, 2000, for public comment.
2. Comments must please be submitted in writing to -

The Director-General
Attention: Mr S L Louw
Department of Provincial and Local Government
Private Bag X 804
PRETORIA
0001
3. Comments may also be faxed to facsimile number (012) 334 0608 at the above address.
4. Comments must be received by no later than **10 July 2000**.

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, to further regulate the contents of notices in terms of which municipalities are established; to make further provision for transitional measures when boundary determinations require the disestablishment of existing municipalities and the establishment of new municipalities; to make further provision in connection with the formula for the determination of the number of councillors; to redetermine the circumstances in which ward councillors must vacate office if they become, or ceases to be, members of a political party; to redetermine the provisions from which a municipality may be exempted; to determine the date on which the first term of municipalities after the enactment of the Local Government: Municipal Structures Act, 1998, will end; to provide for transitional arrangements; 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

1. Section 12 of the Local Government: Municipal Structures Act, 1998 (hereinafter called the principal Act), is hereby amended-
 - a. by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
"(3) The notice establishing the municipality must [specify] set out - '";
 - b. by the substitution in subsection (3) for paragraph (d) of the following paragraph:
"(d) the name of the municipality or a provisional designation of the municipality."; and

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

"(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

1. (a) by the substitution for subsection (5) of the following subsection:

"(5) 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, which may include measures -

- a. establishing a committee to advise the MEC on any matter affecting the transition:
- b. restricting or regulating. in relation to the existing municipality

(i) alterations to the staff establishment;

(ii) the appointment of staff or the filling of vacancies;

(iii) the upgrading of posts or promotions;

(iv) increases in salaries or wages;

(v) the disposal or acquisition of assets;

(vi) the conclusion of contracts with a duration longer than one Year or the renewal of such contracts; or

(vii) the use of reserve capital. [The MEC must consult the existing municipality before publishing the notice.]; and

b. by the addition of the following subsection:

"(6) The MEC must consult the existing municipality before publishing a 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 for paragraph (a) of subsection (1) 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 27 of Act 117 of 1998

4. Section 27 of the principal Act is hereby amended by the substitution for paragraph (f) of the following paragraph:

"(f) was elected to represent a ward and who -

- i. **[used on the part of the ballot paper for wards the same distinguishing mark or symbol as a party which contested the election,]** was nominated by a party as a candidate in the ward election and ceases to be a member of that party; or
- ii. **[did not use on the part of the ballot paper for wards the same distinguishing mark or symbol as a party which contested the election]** was not nominated by a party as a candidate in the ward election
- iii. and becomes a member of a party."

Amendment of section 91 of Act 117 of 1998

5. 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 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

6. Section 93 of the principal Act is hereby amended

a. by the insertion after subsection (1) of the following subsection:

"(1A) (a) Section 12(4) will only apply in respect of a municipality after its council has been declared elected as envisaged by 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 -

- i. consult organised local government in the province; and
- ii. publish particulars of the proposed notice for public comment for at least 14 days."; and

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."

Transitional arrangement

7. For the first general election of municipal councils after the enactment of this Act, the date referred to in section 20(1)(a) of the principal Act is deemed to be 31 March 2000.

Short title

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

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

A request has been received from the Municipal Demarcation Board to effect certain amendments to the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (hereafter referred to as "the Structures Act"). Most of these proposed amendments relate to matters that need to be addressed in order to finalise the demarcation process and other preparations for the forthcoming local government elections.

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 words "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.

Section 14(5) of the Structures Act allows a 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 MEC's in the process of finalising the establishment notices. It is proposed that section 14(5) be amended to specifically provide for such matters.

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 Local Government: Municipal Structures Amendment Bill, 2000 ("the Bill") to fix the date that was used in the present instance.

Section 27 of the Structures Act deals with the circumstances under which a councillor vacates office. The proposed amendment merely entails a re-wording of paragraph (l) of section 27 in order to bring it into line with the provisions of the Municipal Electoral Bill.

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.

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 MEC's, it is not deemed expedient or practical to require MEC's 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.

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.

Clause 1 of the Bill proposes the amendment of section 12 of the Structures Act so as to facilitate the finalisation of the establishment notices.

Clause 2 of the Bill proposes the amendment of section 14 of the Structures Act by making specific reference to the establishment of an advisory committee, and the restricting or regulating of certain actions by an existing municipality.

Clause 3 of the Bill proposes the amendment of section 20 of the Structures Act so as to allow the date on which the number of registered voters is to be determined, to be determined in the relevant notice by the Minister.

Clause 4 of the Bill proposes the amendment of section 27 of the Structures Act so as to align the wording of paragraph (f) with that of the Municipal Electoral Bill.

Clause 5 of the Bill proposes an amendment of section 91 of the Structures Act so as to re-determine the provisions of the Structures Act from which a municipality may be exempted.

Clause 6 of the Bill proposes an amendment of section 93 of the Structures Act so as to insert a transitional arrangement regarding the application of section 12(4) of the Structures Act and the requirement to consult, and to determine 31 October 2000 as the date on which the term of the existing municipal councils expire.

Clause 7 of the Bill contains a transitional arrangement regarding the date referred to in section 20(1)(a) of the Structures Act.