

OFFICE OF THE PRESIDENT

No. 1467
20 September 1995

NO. 61 OF 1995: LOCAL GOVERNMENT TRANSITION ACT AMENDMENT ACT, 1995.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

- ** ** Words between two asterisks indicate omissions from existing enactments.
- << >> Words between two pointed brackets indicate insertions in existing enactments.

ACT

To amend the Local Government Transition Act, 1993, so as to provide that a Provincial Committee for Local Government shall no longer be disestablished on the day immediately preceding the day determined for elections; to provide that Part VI shall apply to an exempted local government body; to make provision for the re-delimitation of the areas of jurisdiction, the re-determination of the powers and duties and the number of seats of a transitional council and a transitional metropolitan substructure; to further regulate the holding of local government elections; to provide for the disestablishment or re-establishment of a transitional council or transitional metropolitan substructure; to provide that executive committees need not be elected according to a system of proportional representation in the pre-interim phase; to provide that any person holding any office of profit under the Republic may take part as a candidate in the local government elections; and to provide for more than one candidate per ward; and to provide for matters incidental thereto.

(Afrikaans text signed by the President.)
(Assented to 20 September 1995.)

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

Amendment of section 3 of Act 209 of 1993, as amended by Proclamation No. R. 129 of 15 July 1994 and Proclamation No. R. 58 of 7 June 1995

1. Section 3 of the Local Government Transition Act, 1993 (Act No. 209 of 1993) (hereinafter referred to as the principal Act) is hereby amended by the deletion of paragraph (c) of subsection (1).

Substitution of section 5 of Act 209 of 1993

2. The following section is hereby substituted for section 5 of the principal Act:

"Administrator may exempt certain local government bodies from certain provisions of Act

5. (1) The Administrator may in writing exempt any local government body from the provisions of ****Parts**** <<Part IV>> ****and VI**** of this Act if the Administrator is satisfied that such local government body is non-racial and inclusive and has brought about stability at local level through effective government, orderly financial management and a single local government administration.

(2) From the date of an exemption granted by the Administrator as contemplated in subsection (1)-

- (a) ****Parts**** <<Part>> IV ****and VI**** of this Act shall not apply to an exempted local government body referred to in subsection (1), and any proclamation issued under the Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991), whereby such local government body was established, shall, subject to the provisions of this Act, continue to be of force up to the day immediately preceding the day ****determined**** <<on which an election is held in respect of the area concerned>> in terms of section 9(1); and
- (b) the provisions of section 16 of this Act shall apply mutatis mutandis in relation to such local government body."

Amendment of section 8 of Act 209 of 1993, as amended by Proclamation No. R. 174 of 30 November 1994

3. Section 8 of the principal Act is hereby amended-

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

"(b) the advice and written recommendations of the Board, the Administrator shall-

- (i) delimit <<or re-delimit>> the areas of jurisdiction of transitional councils and transitional metropolitan substructures;
- (ii) determine <<or re-determine>> the powers and duties of any transitional metropolitan council and transitional metropolitan substructure: Provided that-
 - (aa) the powers and duties of any transitional metropolitan council shall, subject to section 126 of the Constitution of the Republic of South Africa, 1993, and, in the case of the functions water and electricity, unless otherwise determined by national legislation, be at least the powers and duties listed in Schedule 2;
 - (bb) any transitional metropolitan council, may, at its discretion, decide not to exercise any such power or perform any such duty;
- (iii) determine <<or re-determine>> the number of seats in a transitional local council or transitional metropolitan council and transitional metropolitan substructure; and
- (iv) delimit <<or re-delimit>> the area of jurisdiction of any transitional local council and transitional metropolitan substructure into wards in accordance with Schedule 3. ";

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

"(3) After making a delimitation<<, or re-delimitation,>> and determination, <<or re-determination>>, contemplated in subsection (2), the Administrator shall exercise the powers conferred upon him or her by section 10(1) incorporating the provisions of such delimitation, <<or re-delimitation>>, and determination, <<or re-determination>>, in the proclamation contemplated in the said section."; and

(c) by the deletion of subsection (4).

Amendment of section 9 of Act 209 of 1993, as amended by Proclamation No. R. 174 of 30 November 1994, Proclamation No. R. 35 of 31 March 1995 and Proclamation No. R. 65 of 30 June 1995

4. Section 9 of the principal Act is hereby amended-

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

"(1) Notwithstanding anything to the contrary contained in any law, <<but subject to the provisions of this section>>, the first election, after the commencement of this Act, of the members of any transitional council, **and any** transitional metropolitan substructure<<, transitional rural council and transitional representative council>> **in the province concerned** shall take place on **a day** <<1 November 1995, except in the case of a particular transitional council, transitional metropolitan substructure, transitional rural council or transitional representative council, or any number of such councils and substructures, in respect of which>> **determined by** the Minister <<has determined another date>> by notice in the Gazette after consultation with the **respective Administrators** <<Administrator of a province concerned>>." ;

(b) by the insertion of the following subsections after subsection (1):

"<<(1A) If an election is not held before 31 March 1996, or if the Minister at any time has reason to believe that an election will not be held before 31 March 1996 in respect of-

- (a) a proclaimed transitional council or transitional metropolitan substructure;
- (b) a proclaimed transitional rural council or transitional representative council; or
- (c) any council or substructure in any area for which any such council or substructure has not been proclaimed, all the duties, powers and functions which vested in the Administrator concerned in terms of this Act in respect of any such council, substructure or area, shall vest in the Minister with effect from a date determined by the Minister by notice in the Gazette.

(1B) (a) Any transitional council, transitional metropolitan substructure or transitional rural council for the pre-interim phase shall dissolve on the day on which an election, as contemplated in subsection (1), of the members of such council or substructure is held, and until the first meeting of the newly elected council or substructure is held, the chief executive officer concerned or a person appointed by the Minister shall exercise or perform the duties, powers and functions of such council or substructure.

(b) The chief executive officer or person, as the case may be, referred to in paragraph (a), shall within thirty days after the election of the members of the transitional council, transitional metropolitan substructure or transitional rural council for the pre-interim phase, convene the first meeting of such council or substructure.

(c) Any transitional council or transitional metropolitan substructure or other such body for the pre-interim phase for which no election has been held before or on 31 March 1996, shall dissolve

on that day and the duties, powers and functions of such council, substructure or body shall from that day and until an election is held be exercised and performed by the chief executive officer concerned, or by a person appointed by the Minister as administrator of such council, substructure or body>>.";

- (c) by the insertion of the following subparagraph after subparagraph (v) of paragraph (a) of subsection (2):

"<<(vA) a Code of Conduct which shall be complied with by parties and candidates for the election, as well as for the establishment, constitution, powers, duties and functions of election tribunals and election appeal tribunals and for the sanctions which may be applied by such tribunals for contraventions of that Code>>";

- (d) by the addition of the following subsection after subsection (4):

"<<(5) Any regulation made under paragraph (a) of subsection (2), may be made effective from a date preceding its promulgation: Provided that if a penalty is prescribed for the contravention of any regulation which is so made effective from a date preceding its promulgation, such penalty shall be deemed not to have been prescribed for any such contravention which preceded such promulgation>>".

Amendment of section 10 of Act 209 of 1993, as amended by Proclamation No. R. 129 of 15 July 1994, Proclamation No. R. 174 of 30 November 1994 and Proclamation No. R. 59 of 8 June 1995

5. Section 10 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) the establishment, <<disestablishment or re-establishment>> under a name set out in the proclamation, of any transitional council or transitional metropolitan substructure;"

Amendment of section 16 of Act 209 of 1993, as amended by Proclamation No. R. 174 of 30 November 1994

6. Section 16 of the principal Act is hereby amended-

- (a) by the substitution for the proviso to paragraph (a) of subsection (5) of the following proviso:

": Provided that any such transitional council or transitional metropolitan substructure may delegate the power to take any decision on any matter pertaining to town planning to the committee referred to in subsection (6) or to any other committee appointed for this purpose <<or to a person in its employ>>; and"; and

- (b) by the substitution for the words preceding paragraph (a) of subsection (6) of the following words:

"(6) Notwithstanding anything to the contrary in any law contained, a transitional council or transitional metropolitan substructure referred to in subsection (1) shall elect according to a system of proportional representation from among its members an executive committee to exercise such powers and perform such duties as such transitional council or transitional metropolitan substructure may determine: <<Provided that during the pre-interim phase it will not be necessary to elect such committee according to a system of proportional representation>>:"

Provided <<further>> that-".

Amendment of Schedule 4 of Act 209 of 1993, as amended by Proclamation No. R. 174 of 30 November 1994 and Proclamation No. R. 35 of 31 March 1995

7. Schedule 4 of the principal Act is hereby amended-

(a) by the substitution for subparagraph (b) of paragraph 6 of the following subparagraph:

"(b) he or she is disqualified **to be** <<from being>> elected as a member of the National Assembly in terms <<of section 42(1) (a), (b), (c) or (d)>> of the Constitution of the Republic of South Africa, 1993;" and

(b) by the substitution for paragraph 7 of the following paragraph:

"7. Sixty per cent of the members of a transitional local council or a transitional metropolitan substructure shall be elected **on the basis that each such member shall** <<to>> represent **a ward** <<wards>> of such transitional local council or transitional metropolitan substructure and forty per cent of the members shall be elected according to a system of proportional representation: <<Provided that if such wards are represented by more than one member, all such wards shall be represented by the same number of members>>.".

Short title and commencement

8. (1) This Act shall be called the Local Government Transition Act Amendment Act, 1995.

(2) Sections 2, 3, 4(d) and 5 shall be deemed to have come into operation on 1 January 1995.

(3) Section 7 shall be deemed to have come into operation on 1 June 1995.

(4) Paragraph (b) of section 6 shall be deemed to have come into operation on 2 February 1994.