

NO. 97 OF 1996: LOCAL GOVERNMENT TRANSITION ACT SECOND AMENDMENT ACT, 1996.

PRESIDENT'S OFFICE

No. 1896.
22 November 1996

NO. 97 OF 1996: LOCAL GOVERNMENT TRANSITION ACT SECOND AMENDMENT ACT, 1996.

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

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Local Government Transition Act, 1993, so as to insert certain definitions and to delete other definitions; to provide that a person who has not been elected as a member of a district council may be appointed as the chairperson of such council; to provide that a district council shall consist of members elected on a proportional basis; to provide for the powers and duties of metropolitan councils, metropolitan local councils, district councils, local councils, rural councils and representative councils and for certain other matters relating to such councils during the interim phase; to provide that the Minister may determine in a regulation made under this Act that any person who contravenes or fails to comply with a provision of such regulation shall be guilty of an offence; and to substitute and add certain Schedules to the Act; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 12 November 1996.)

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

Amendment of section 1 of Act 209 of 1993, as amended by section 1 of Act 89 of 1995

1. Section 1 of the Local Government Transition Act, 1993 (hereinafter referred to as the principal Act), is hereby amended-

- (a) by the deletion of the definitions of "Administrator" and "Board";
- (b) by the insertion after the definition of "local government coordinating committee" of the following definition:

"'MEC' means the member of the executive council responsible for local government in the province concerned;";

- (c) by the deletion of the definition of "Official Gazette"; and
- (d) by the insertion after the definition of "provincial administration" of the following definition:

"'Provincial Gazette' means the Provincial Gazette of the province concerned;".

Amendment of section 9B of Act 209 of 1993, as inserted by section 9 of Act 89 of 1995

2. Section 9B of the principal Act is hereby amended by the addition to paragraph (b) of subsection (3) of the following proviso:

" : Provided that the MEC may appoint a person who has not been elected as a member of a district council, as chairperson of such council: Provided further that the period of office of a person who has been appointed as chairperson of a district council shall lapse by not later than 1 July 1997, whereafter the chairpersons of all district councils shall be elected."

Amendment of section 9C of Act 209 of 1993, as inserted by section 9 of Act 89 of 1995

3. Section 9C of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

"A transitional representative council shall subject to section 10D(2) be vested or charged with the following powers and duties, namely-".

Amendment of section 9D of Act 209 of 1993, as inserted by section 9 of Act 89 of 1995

4. Section 9D of the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph (b) of subsection (1) of the following subparagraph:

"(i) members elected as prescribed by regulation under section 12 on a proportional basis according to the number of members of each of the by transitional local councils, transitional representative councils or transitional rural councils, the areas of jurisdiction or areas of which are situated within the area of such district council; and"

Insertion of Part VIA in Act 209 of 1993

5. The following Part is hereby inserted after Part VI of the principal Act:

"PART VIA

INTERIM PHASE

Definitions

10B. In this Part, unless the context indicates otherwise-

'chief executive officer' means the person appointed by the council of a municipality as its chief executive officer or town clerk and includes any person acting lawfully in his or her stead irrespective of the designation of the post occupied by such person, and such person shall be the accounting officer of that municipality, and shall as such be charged with the responsibility of accounting for all moneys received and for all payments made by the municipality, and the acquisition, custody and disposal of all municipal property;

'council' means the council of a municipality;

'demarcation board' means a Municipal Demarcation Board established under section 10J;

'district council' means a services council, sub-regional council, regional council or district council referred to in section 10(3)(i);

'integrated development plan' means a plan aimed at the integrated development and management of the area of jurisdiction of the municipality concerned in terms of its powers and duties, and which has been compiled having regard to the general principles contained in Chapter 1 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), and, where applicable, having regard to the subject matter of a land development objective contemplated in Chapter 4 of that Act;

'local council' means a transitional local council as defined in section 1(1);

'metropolitan council' means a transitional metropolitan council as defined in section 1(1);

'metropolitan local council' means a transitional metropolitan substructure as defined in section 1(1);

'municipality' includes a local council, a metropolitan council, a metropolitan local council, a representative council, a rural council and a district council;

'prescribed' means prescribed by regulation under this Act;

'representative council' means a transitional representative council defined in section 9A;

'rural council' means a transitional rural council defined in section 9A.

Powers and duties of metropolitan councils and metropolitan local councils

10C. (1) A metropolitan council shall, having regard to the principles of co-operative government, promote-

- (a) integrated economic development;
- (b) the equitable redistribution of municipal resources; and
- (c) the equitable delivery of services,

so as to ensure that imbalances that may exist, are addressed.

(2) Notwithstanding the provisions of sections 7(1)(b), 8(2) and 10(3)(h), a metropolitan council-

- (a) shall have the powers and duties listed in Schedule 2;
- (b) shall have the powers and duties conferred or imposed upon or delegated or assigned to metropolitan councils generally or to a specific metropolitan council by or under any law: Provided that-
 - (i) no power or duty shall be delegated or assigned to a metropolitan council without providing the sufficient resources for the exercise of such power or the performance of such duty: Provided that such delegation or assignment shall be by agreement; and

such (ii) such delegation or assignment shall be made on a basis which will ensure the sustainability and practicability of the exercise of power or performance of such duty;

(c) may exercise any power or perform any duty concerning a matter which is reasonably necessary for or incidental to the effective exercise of its powers or performance of its duties.

(3) A metropolitan local council-

(a) shall have the powers and duties listed in Schedule 2A;

(b) shall in addition have all such other powers and duties as are normally conferred or imposed upon primary municipalities;

(c) shall have such other powers and duties conferred or imposed upon or delegated or assigned to metropolitan local councils by or under any law: Provided that-

(i) no power or duty shall be delegated or assigned to a metropolitan local council without providing the sufficient resources for the exercise of such power or the performance of such duty: Provided that such delegation or assignment shall be by agreement; and

such (ii) such delegation or assignment shall be made on a basis which will ensure the sustainability and practicability of the exercise of power or performance of such duty;

(d) may exercise any power or perform any duty concerning a matter which is reasonably necessary for or incidental to the effective exercise of its powers or the performance of its duties.

(4) Notwithstanding anything to the contrary in this Act contained, but subject to section 10N(4) (b), metropolitan councils and metropolitan local councils may agree on the re-allocation of the powers and duties listed in Schedules 2 and 2A: Provided that in the re-allocation of powers and duties practicability, technological advisability and economical and financial efficiency shall be taken into consideration.

are (5) (a) Before the contributions contemplated in item 1(c) of Schedule 2 are determined or claimed, the metropolitan council shall consult with all its metropolitan local councils generally or the particular metropolitan local council concerned.

(b) A metropolitan local council which feels aggrieved by the determination of a contribution contemplated in item 1(c) of Schedule 2 may, within 30 days after receiving notice of such determination, appeal to the Minister in writing against the determination, setting out the grounds of appeal.

(c) The Minister shall consider an appeal referred to in paragraph (b) and may confirm, set aside or alter the determination of the metropolitan council concerned.

(6) If a metropolitan local council cannot or does not exercise a power or perform a duty conferred or imposed upon such council, the metropolitan council may at the request of the MEC, intervene by assuming the responsibility for the

relevant power or duty for such period and under such conditions as the MEC may

determine: Provided that a metropolitan council shall not incur any financial liability as a result of such intervention and shall in accordance with item 1(b) of Schedule 2 be refunded for any expenditure incurred in respect of the exercise of the power or the performance of the duty.

(7) (a) Any metropolitan council or metropolitan local council may enter into agreements with each other or with any other person, body or institution in terms of which one party undertakes on behalf of the other to exercise a power or perform a duty which the other party may exercise or perform, subject to such conditions as may be agreed upon.

(b) A metropolitan council or metropolitan local council may not enter into an agreement contemplated in paragraph (a) in respect of any of its legislative

or expropriation powers or duties, its power to determine levies, taxes and rates or any power or duty requiring a resolution by a majority of all the members of such council.

(c) Notwithstanding anything to the contrary in any law contained, any agreement contemplated in paragraph (a) which was entered into prior to the commencement of the Local Government Transition Act Second Amendment Act, 1996,

shall be deemed to have been entered into in terms of that paragraph.

(8) (a) If a dispute arises between a metropolitan council and a metropolitan local council regarding the allocation or exercise of a power the performance of a duty, such dispute shall be resolved as determined in Schedule

8: Provided that in the resolution of a dispute the practicability, technological advisability and economical and financial efficiency be taken into consideration in the allocation or the exercise of powers and performance of duties to or by a metropolitan council or a metropolitan local council.

(b) Until such time as a dispute contemplated in paragraph (a) has been resolved, the council exercising the power or performing the duty at the time when the dispute arises, will remain responsible for the exercise of that power

or performance of that duty.

Powers and duties of district councils, local councils, rural councils and representative councils

10D. (1) A district council, a local council and a rural council-

(a) shall have the powers and duties contained in the proclamation contemplated in section 10, establishing such council: Provided that a district council, local council and a rural council may establish and control a municipal law enforcement agency subject to the South African Police Service Act, 1995 (Act No. 68 of 1995);

(b) shall have the powers and duties conferred or imposed upon or delegated or assigned to such council by or under any law: Provided that-

(i) no power or duty shall be delegated or assigned to such council without providing the sufficient resources for the exercise of such power or the performance of such duty: Provided that such delegation or assignment shall be by agreement; and

(ii) that such delegation or assignment shall be made on a basis which will ensure the sustainability and practicability of the exercise

of

such power or the performance of such duty; and

(c) may exercise any power or perform any duty concerning a matter which is reasonably necessary or which is incidental to the effective exercise of its powers and performance of its duties.

(2) A representative council-

(a) shall within its area of jurisdiction have those powers and duties as the MEC may, in consultation with the Minister and after consultation with-

(i) the representative council concerned; and

(ii) the district council concerned,

by notice in the Provincial Gazette identify as a power or duty of the representative council concerned, whereupon such representative council shall be competent to exercise such power or perform such duty within its area of jurisdiction;

(b) shall have any other power or duty conferred or imposed upon or delegated or assigned to representative councils generally or to a specific representative council or a category of representative councils by or under any law.

(3) Section 10C(6), (7) and (8) shall with the necessary changes apply to a district council, local council, rural council and representative council.

(4) A district council-

(a) may-

(i) at rates determined by the council with the concurrence of the MEC responsible for Finance with the concurrence of the Minister of Finance, levy and claim the levies referred to in section 12(1) (a) of the Regional Services Council Act, 1985 (Act No. 109 of 1985), or section 16(1) (a) of the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), as the case may be; and

(ii) claim payment from any local council, rural council or representative council to cover the actual costs of any service performed or rendered on behalf of or to such council; and

(b) shall-

(i) with the approval of the local councils, rural councils and representative councils concerned, formulate and implement an integrated development plan for its area of jurisdiction; and

(ii) with the approval of the local council, rural council or representative council concerned-

(aa) formulate and, if so requested, implement an integrated development plan in respect of each local council, rural

council and representative council within its area of jurisdiction; and

(bb) if so requested, ensure the provision of financial, technical and administrative support service to, as well as the proper functioning of, all the local councils, rural councils and representative councils within its area of jurisdiction:

Provided that a district council, local council and rural council shall, subject to subsection (4), within 12 months after the coming into operation of the Local Government Transition Act Second Amendment Act, 1996, or such further period as the MEC after consultation with the Minister may determine, formulate and implement an integrated development plan.

(5) The Minister shall, after consultation with the MECs, establish a body to advise on the expeditious establishment of municipalities in remaining areas and on the rendering of assistance to municipalities in rural areas for the development of administrative infrastructure and the building of service rendering capacity.

Alteration of municipalities

10E. (1) The MEC may, subject to subsections (2) and (3), after consultation with any municipality which may be affected and in respect of paragraphs (a), (b), (c) and (d) in accordance with the recommendations of the demarcation board, by notice in the Provincial Gazette-

- (a) combine or divide areas of jurisdiction of municipalities under a name mentioned in the notice;
- (b) alter the name of a municipality or delimit or re-delimit the area of jurisdiction of any municipality;
- (c) subject to section 5 of the Electoral Commission Act, 1996 (Act No. 51 of 1996), delimit or re-delimit the area of jurisdiction of a municipality into wards;
- (d) determine or re-determine the number of seats in a municipality; and
- (e) regulate any other matter which in his or her opinion is necessary as the result of the combination, division, delimitation or re-delimitation referred to in paragraphs (a), (b) and (c).

(2) The MEC may, having regard to the criteria listed in Schedule 6, combine, divide, delimit or re-delimit the area of jurisdiction of any municipality if all the municipalities having an interest in the proposed combination, division, delimitation or re-delimitation or which may be affected thereby, signify in writing that they have no objection to the proposed combination, division, delimitation or re-delimitation and that the holding of an inquiry contemplated in section 10J(8) is, in their opinion, not necessary.

(3) All persons who were members of a council immediately before the combination, division, delimitation or re-delimitation of its area of jurisdiction as contemplated in subsection (1), shall remain members of a council designated by the MEC for his or her unexpired term of office.

Organised local government

10F. (1) (a) The Minister may, on such conditions as he or she may determine, recognise one organisation representing the majority of organisations referred to in paragraph (b).

(b) The Minister may, in consultation with the MEC on such conditions as he or she may determine, recognise one organisation in each province representing the majority of municipalities in that province: Provided that all the different categories of municipalities in the province concerned shall be represented in the organisation concerned.

(2) (a) The Minister may, if he or she is of the opinion that an organisation does not comply with the conditions referred to in subsection (1), and after giving the organisation concerned 30 days' notice of his or her intention to do so, subject to paragraph (b), withdraw the recognition of such organisation.

(b) In the case of an organisation contemplated in subsection (1) (b) the Minister must act in consultation with the MEC.

Financial matters

10G. (1) Every municipality shall-

- (a) conduct its affairs in an effective, economical and efficient manner with a view to optimising the use of its resources in addressing the needs of the community;
- (b) conduct its financial affairs in an accountable and transparent manner;
- (c) prepare a financial plan in accordance with the integrated development plan in respect of all its powers, duties and objectives;
- (d) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of its community, and promote social and economic development within its area of jurisdiction and support the implementation of national and provincial development programmes;
- (e) manage its financial resources to meet and sustain its objectives;
- (f) regularly monitor and assess its performance against its integrated development plan; and
- (g) annually report to and receive comments from its community regarding the objectives set in its integrated development plan.

(2) (a) The chief executive officer of a municipality-

- (i) shall, subject to this Act and the regulations made thereunder, cause such accounting records to be kept as are necessary to reflect the transactions and financial state of affairs of the municipality;
- (ii) shall cause to be kept in the accounting records contemplated in subparagraph (i) a revenue account which shall be credited with all money which accrues to and is received by the municipality and be debited with all expenses of the municipality;
- (iii) shall cause all the money received by him or her on behalf of the municipality to be deposited in a banking account in the name of the municipality.

(b) The accounting records contemplated in paragraph (a) (i) shall be kept at a place determined by the municipality, and shall not be removed from that place without the municipality's consent, and the MEC shall be informed of such consent.

(c) Every municipality shall establish and maintain a system of internal

control and, as far as practicable, institute internal audit, including audit committees, as an independent appraisal function.

(d) Notwithstanding anything to the contrary in any law contained-

(i) the financial year of all municipalities shall end on 30 June in each year;

(ii) the accounts of municipalities shall be audited by the Auditor-General.

(e) (i) The chief executive officer of a municipality shall cause financial statements to be compiled in the format determined by the Auditor-General in respect of a financial year and submitted to the Auditor-General within three months after the end of that financial year or such longer period as the Auditor-General may approve.

(ii) The chairperson of the council shall after receipt of a report from the Auditor-General submit that report, not later than the second succeeding ordinary meeting of the municipality, which shall not take place behind closed doors, for discussion and to decide what corrective steps, if any, are to be taken: Provided that notice of such meeting and the fact that the council will be considering a report of the Auditor-General, shall be given in a newspaper circulating in the area of the council at least seven days before such meeting takes place, which meeting shall be open to the public: Provided further that the chief executive officer shall be present at such meeting for the purpose of responding to questions put to him or her in his or her capacity as accounting officer: Provided further that the Auditor-General or his or her representative may address such meeting, or a meeting of any committee of the council if he or she deems it to be in the public interest.

(iii) Within 30 days after the meeting referred to in subparagraph (ii), the chairperson of the council shall submit to the Auditor-General, the MEC and the MEC responsible for Finance, a copy of the minutes of that meeting containing the comments of the municipality with regard to the report of the Auditor-General and indicating what steps were taken or are to be taken in connection with any matter revealed by such report.

(f) If a person who is or was in the employ of a municipality causes or caused the municipality a loss or damage because he or she-

(i) failed to collect money owing to the municipality for the collection of which he or she is or was responsible;

(ii) is or was responsible for an irregular payment of money of the municipality or for a payment of such money not supported by a proper voucher;

(iii) due to an omission to carry out his or her duties, is or was responsible for fruitless expenditure of money of the municipality;

(iv) is or was responsible for a deficiency in, or for the destruction of or damage to money of the municipality, stamps, face value documents and forms having a potential value, securities, equipment, stores or any other property of the municipality; or

(v) due to an omission to carry out his or her duties, is or was responsible for a claim against the municipality,

the chief executive officer of that municipality, or, if the chief executive officer was responsible for such loss or damage, the council, shall determine the amount of such loss or damage and take disciplinary action where possible and in appropriate cases recover the loss or damage.

(g) Any loss suffered by a municipality and which the chief executive officer, or if the chief executive officer is responsible, the council, suspects to be due to any fraudulent or corrupt act or an act of bribery committed by any person, shall forthwith be reported by the chief executive officer or the council, as the case may be, to the South African Police Service.

(h) If the council is of the opinion that the municipality is unable to determine the amount or circumstances of any such loss, the council may at the municipality's expense appoint a person registered under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), to assist the municipality to determine the amount of the loss or the circumstances in which it occurred.

(i) Where a voucher or other proof of receipt or payment is in any way defective or has been lost or destroyed and the council is satisfied with the explanation of the responsible person, the council may make an order dispensing with the production of a voucher or such other proof, or may make such other order as may appear just in the circumstances,

(j) An expenditure concerned shall be unauthorised if-

(i) a payment is made by the chief executive officer without provision having been made therefor by any budget, or a payment or part of a payment resulting in the total amount of the approved annual operating or capital expenditure budget being exceeded;

(ii) a chief executive officer is unable to produce to the Auditor-General in respect of a payment, an appropriate Minister's, MEC's, council's or other authority required in terms of a law; or

(iii) a chief executive officer makes a payment inconsistent with a provision of any law.

(k) Unauthorised expenditure referred to in paragraph (j) shall be disallowed and shall not form a charge against a fund or account concerned until it has been approved by the responsible authority, in accordance with the normal budgetary procedure applicable to the fund

or

account concerned, and any unauthorised expenditure or part thereof as determined by the Minister, MEC or council, as the case may be, which has not been authorised, shall be recovered from the chief executive officer if he or she is unwilling to recover the amount concerned from the beneficiary or the person responsible for the unauthorised expenditure: Provided that where unauthorised expenditure has been effected-

(i) on a written instruction of a councillor notwithstanding the fact that he or she does not have the necessary authority; or

(ii) as a result of a council resolution in favour of which a councillor voted, unless it is recorded that such councillor voted against

such

resolution,

and after the chief executive officer has recorded his or her objections

against such instruction or resolution, such expenditure shall be recovered from the councillor concerned: Provided further that all such

unauthorised expenditure shall forthwith be reported by the chief executive officer to the MEC, the MEC responsible for Finance and the Auditor-General.

(1) For the purposes of paragraph (k), a reference to 'responsible authority' shall be construed as a reference to the authority which normally approves the local government's budget: Provided that where

an unauthorised expenditure has been effected on the written instruction of

a councillor or as a result of a council resolution referred to in the proviso to paragraph (k), a reference to 'responsible authority' shall be construed as a reference to the MEC responsible for Finance,

(m) (i) The MEC may after consultation with the MEC responsible for Finance,

whenever he or she is of the opinion that the finances of a municipality are or

may become unsound, instruct the council concerned to take such steps as he or she may specify in writing.

(ii) For the purposes of subparagraph (i), the term 'unsound' includes any failure to claim or to collect income or to control expenditure or to compile and approve an operating budget, or to comply with subsections (1), (2), (3), (4), (6) and (7).

(iii) In the event of a council failing to carry out and implement an instruction referred to in subparagraph (i), the MEC may take such steps or cause such steps to be taken as he or she may deem necessary in order to restore the finances of a council to a sound footing.

(3) (a) A municipality shall annually on or before the date determined by law, compile and by a two-thirds majority of all the members of its council, approve a budget for-

(i) operating income and expenditure; and

(ii) capital expenditure which must reflect the source of finance, future capital charges, operating and maintenance costs as well as the consequential influence thereof on levies, rates and services charges.

(b) A municipality shall-

(i) not budget for a year-end deficit on its operating account; and

(ii) ensure that the budget is in accordance with its integrated development plan.

(c) In addition to the budget referred to in paragraph (a), a municipality shall compile capital programmes including an investment programme for municipal infrastructure, having regard to the integrated development plan.

(4) (a) A municipality shall only incur expenditure in accordance with its approved budget: Provided that any decision required to be taken by a council to incur expenditure shall be taken by a majority of the votes cast.

(b) In so far as it may be essential for the pursuit of the national economic policy, the Minister of Finance, after consultation with the Minister, may determine maximum expenditure limits for the budgets or components of such budgets of municipalities for a financial year.

(c) The budgets referred to in subsection (3) (a) shall be submitted to the Minister of Finance within 14 days from the adoption thereof by the council for the purpose of monitoring whether the maximum expenditure limits referred to in paragraph (b) have been complied with: Provided that the Minister of Finance may delegate this monitoring function to the MEC responsible for Finance.

(d) If a budget contemplated in paragraph (c) does not comply with the maximum expenditure limits referred to in paragraph (b), such budget shall be referred back to the council concerned for reconsideration and amendment thereof at the next council meeting: Provided that the Minister of Finance may exempt a particular municipality from complying with the said maximum expenditure limits.

(5) (a) A municipality shall award contracts for goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(b) Notwithstanding paragraph (a), a municipality may, in accordance with a framework prescribed by national legislation, in awarding contracts give preference to the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination, and shall make the granting of such preferences public in the manner determined by the council.

(c) A municipality may dispense with the calling of tenders in the case of an emergency or of a sole supplier or within such limits as may be prescribed by a national law.

(6) A local council, metropolitan local council and rural council shall, subject to any other law, ensure that-

- (a) properties within its area of jurisdiction are valued or measured at intervals prescribed by law;
- (b) a single valuation roll of all properties so valued or measured is compiled and is open for public inspection; and
- (c) all procedures prescribed by law regarding the valuation or measurement of properties are complied with:

Provided that if, in the case of any property or category of properties, it is not feasible to value or measure such property, the basis on which the property rates thereof shall be determined, shall be as prescribed: Provided further that the provisions of this subsection shall be applicable to district councils in so far as such councils are responsible for the valuation or measurement of property within a remaining area or within the areas of jurisdiction of representative councils.

(7) (a) (i) A local council, metropolitan local council and rural council may by resolution, levy and recover property rates in respect of immovable property in the area of jurisdiction of the council concerned: Provided that a common rating system as determined by the metropolitan council shall be

applicable within the area of jurisdiction of that metropolitan council:
Provided further that the council concerned shall in levying rates take into account the levy referred to in item 1(c) of Schedule 2: Provided further that

this subparagraph shall apply to a district council in so far as such council is responsible for the levying and recovery of property rates in respect of immovable property within a remaining area or in the area of jurisdiction of a representative council.

(ii) A municipality may by resolution supported by a majority of the members of the council levy and recover levies, fees, taxes and tariffs in respect of any function or service of the municipality.

(b) In determining property rates, levies, fees, taxes and tariffs (hereinafter referred to as charges) under paragraph (a), a municipality may-

(i) differentiate between different categories of users or property on such grounds as it may deem reasonable;

(ii) in respect of charges referred to in paragraph (a)(ii), from time to time by resolution amend or withdraw such determination and determine a date, not earlier than 30 days from the date of the resolution, on which such determination, amendment or withdrawal shall come into operation; and

(iii) recover any charges so determined or amended, including interest on any outstanding amount.

(c) After a resolution as contemplated in paragraph (a) has been passed, the chief executive officer of the municipality shall forthwith cause to be conspicuously displayed at a place installed for this purpose at the offices of the municipality as well as at such other places within the area of jurisdiction of the municipality as may be determined by the chief executive officer, a notice stating-

(i) the general purport of the resolution;

(ii) the date on which the determination or amendment shall come into operation;

(iii) the date on which the notice is first displayed; and

(iv) that any person who desires to object to such determination or amendment shall do so in writing within 14 days after the date on which the notice is first displayed.

(d) Where-

(i) no objection is lodged within the period referred to in paragraph (c)(iv), the determination or amendment shall come into operation as contemplated in paragraph (b)(ii);

(ii) an objection is lodged within the period referred to in paragraph (c)(iv), the municipality shall consider every objection and may amend or withdraw the determination or amendment and may determine a date other than the date contemplated in paragraph (b)(ii) on which the determination or amendment shall come into operation, whereupon paragraph (c)(i) shall with the necessary changes apply.

(e) The chief executive officer shall forthwith send a copy of the notice referred to in paragraph (c) to the MEC and cause a copy thereof to be published in the manner determined by the council.

(f) Nothing in this section contained shall derogate from section 9 of the Electricity Act, 1987 (Act No. 41 of 1987).

(8) (a) (i) A municipality may obtain money and raise loans for capital expenditure and any resolution to do so shall require a majority of all the members of the council: Provided that the Minister of Finance may by notice in the Gazette determine reasonable conditions and criteria with regard to the raising of loans by municipalities, and such conditions and criteria may include the limiting or disallowance of such loans.

(ii) Loans for bridging finance, which shall include bank overdrafts, may only be raised by a municipality during a financial year in order to finance current expenditure in anticipation of the receipt of revenue in that particular financial year, and not as a continuous and unlimited revolving credit.

(b) A municipality-

(i) shall not raise loans denominated in a foreign currency; and

(ii) shall not incur any other liability or risk payable in a foreign currency without the prior approval of the Minister of Finance and subject to such conditions as he or she may determine.

(c) Any money borrowed by a municipality in accordance with this subsection and the interest thereon, shall be the financial obligation of the municipality concerned and shall be chargeable to and payable from the revenues and assets of that municipality.

(9) (a) A municipality may, subject to such investment policy (if any) as the Minister may determine by notice in the Gazette, with the concurrence of the Minister of Finance and subject to paragraph (b), invest in the following instruments or investments:

(i) Deposits with banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990);

(ii) securities issued by the National Government;

(iii) investments with the Public Investment Commissioners as contemplated by the Public Investment Commissioners Act, 1984 (Act No. of 1984);

(iv) deposits with the Corporation for Public Deposits as contemplated by the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984);

(v) a municipality's own stock or similar type of debt;

(vi) internal funds of a municipality which have been established in terms of a law to pool money available to the municipality and to employ such money for the granting of loans or advances to departments within a municipality, to finance capital expenditure;

(vii) bankers, acceptance certificates or negotiable certificates of deposit of banks;

(viii) long-term securities offered by insurance companies in order to meet the redemption fund requirements of municipalities; and

(ix) any other instruments or investments in which a municipality was under a law permitted to invest before the commencement of the

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that

such instruments shall not extend beyond the date of maturity or redemption thereof.

(b) The Minister may, with the concurrence of the Minister of Finance by notice in the Gazette determine instruments or investments other than those in paragraph (a) in which a municipality may invest.

(c) A municipality must within 30 days after an investment with currency of 12 months or longer has been made in terms of paragraph (a) or (b), publish in a local newspaper in circulation within its area of jurisdiction full details of any investments so made.

(10) A municipality may establish dedicated funds, provisions and reserves to meet specified objectives.

(11) A municipality shall ensure that-

(i) the acquisition and disposal;

(ii) the utilisation and control; and

(iii) the maintenance,

of its assets are carried out in an economic, efficient and effective manner.

(12) No claim of any creditor of any municipality may attach to or be paid out of the national revenue fund, or attach to or be paid by the national or any provincial government, unless specifically and duly authorised by such government.

Certain acts committed by council members or employees of municipalities, and by certain other people, are prohibited

10H. (1) Except with the consent of the council, no council member or employee of a municipality shall-

(a) accept any commission, remuneration or reward from any person other than

the municipality for or in connection with the performance or nonperformance of his or her functions as a member or an employee of

the

municipality or in connection with any transaction to which the municipality is a party;

(b) enter into any transaction with the municipality in a capacity other than that of a member or employee of the municipality, unless such transaction is connected with the provision of accommodation to him or her in the area under the municipality's jurisdiction or the rendering of a service to him or her as a resident of such area;

(c) perform work for or on behalf of the municipality in a capacity other than that of a member or employee of that municipality; or

(d) appear on behalf of any other person before the municipality or any committee or other institution of the municipality in a capacity other

than that of a member or employee of that municipality.

(2) Any council member or employee of a municipality who has accepted any commission, remuneration or reward in contravention of subsection (1), shall pay to the municipality an amount equal to the amount of such commission, remuneration or reward, or where it did not consist of money, the value thereof as determined by the municipality.

(3) (a) No transaction of purchase, sale, hire or lease shall be entered into by a municipality with an employee of that municipality or with the spouse, partner or business associate of such employee without the prior approval of the council having been obtained: Provided that this provision shall not apply where such a transaction is entered into with an employee in accordance with his or her conditions of service.

(b) No council member shall directly or indirectly become involved in any contract with the municipality or share in the profits or losses of any contract with the municipality or in any other manner obtain a financial interest in any of the businesses of the municipality without the prior approval of the council having been obtained, and in the event of more than 20 per cent of the council members objecting to the granting of such approval, the matter shall be referred to the MEC for his or her approval.

(c) If the spouse of a council member or a partner of such member or a partner of the member's spouse, or the employer of a member or the employer of the member's spouse becomes directly or indirectly involved in any contract with the municipality or directly or indirectly shares in the profits or losses of any contract with the municipality or in any other manner obtains a financial interest in the business of the municipality, such member shall disclose to the council the nature and extent of such interest to enable the council to submit the particulars thereof to the MEC for consideration.

(d) (i) A council member who has any material interest in any contract which is about to be entered into by the municipality, shall declare his or her interest and full particulars thereof at the first meeting of the council at which it is possible for him or her to do so, and he or she shall withdraw in the event of such contract being discussed by the council during any meeting of the council and he or she shall not participate in any voting in connection therewith.

(ii) A council member who becomes materially interested in a contract which has been entered into by the municipality, shall declare his or her interest and full particulars thereof at the first meeting of the council at which it is possible for him or her to do so.

(e) A declaration of interest under paragraph (d) shall be recorded in the minutes of the meeting of the council at which such declaration is made.

(f) A council member who contravenes a provision of paragraph (b), (c) or (d), shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding 12 months.

(4) If the MEC-

(a) after an allegation has come to his or her notice; or

(b) after he or she received a report from a council, a chief executive officer, the Auditor-General, the Public Protector appointed under

section 110 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), or an Attorney-General,

is prima facie of the opinion that a council member, a chief executive officer or an employee has acted unlawfully or is responsible for any act or

omission which has resulted or may result in fraud, corruption or maladministration, or is of the opinion that the allegation is of such a nature that it justifies further action, he or she shall, subject to subsection (5), appoint a commission of inquiry in terms of the respective provincial laws to inquire into the matter: Provided that in the absence of

a provincial law relating to a commission of inquiry, the provisions of sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947),

and the regulations made thereunder, shall with the necessary changes apply to the municipality concerned in so far as they are applicable to the functions of the municipality.

(5) The MEC may, instead of appointing a commission of inquiry-

(a) appoint any person to conduct an investigation into a matter referred to in subsection (4); and

(b) declare any provision of a provincial law contemplated in subsection (4) or the Commission's Act, 1947, applicable to the investigation.

(6) If the MEC, after considering a report referred to in subsection (4) or a report of a commission contemplated in subsection (5), is of the opinion that a council, a member or a chief executive officer or employee either intentionally acted unlawfully or is responsible for any act or omission which has resulted or may result in fraud, corruption or maladministration, he or she may take such steps as he or she may deem necessary so as to deal with the matter.

Furnishing of information

10I. The Minister or the MEC may by notice in writing or by notice in the Gazette or Provincial Gazette, respectively, request any municipality to supply

to him or her or to a national department of State or a provincial department or a body approved by him or her in a manner and form determined by him or her, any information listed in such notice and in such notice determine the period within which the relevant information must be supplied.

Establishment of Demarcation Boards

10J. (1) There is hereby established a National Demarcation Board which shall consist of nine members appointed by the Minister from among the persons contemplated in subsection (4) (b).

(2) (a) If the MEC does not act in accordance with the recommendation of a municipal demarcation board as contemplated in section 10F, the matter shall be referred to the National Demarcation Board for a decision.

(b) The other powers and duties of the National Demarcation Board shall be as prescribed.

(3) There is hereby established for each province a board, to be known as the Municipal Demarcation Board, which shall exercise the powers and perform the duties conferred upon or assigned to it in terms of this Act.

(4) Each demarcation board shall consist of six members, who shall, subject to the criteria listed in Schedule 5, be appointed by the MEC on a part-time basis, namely:

- (a) Two persons designated by the MEC;
- (b) two persons designated by the Minister; and
- (c) two persons designated by the relevant provincial organisation contemplated in section 10F.

(5) The MEC shall designate a member of the demarcation board as chairperson and another member as deputy chairperson.

(6) (a) The remuneration and allowances of the members, including the chairperson and the deputy chairperson of a demarcation board, shall be determined by the MEC with the concurrence of the MEC responsible for Finance.

(b) A member of the demarcation board who receives remuneration, allowances or other benefits by virtue of his or her employment by or position in the national or a provincial government or any local government and who continues to receive such remuneration, allowances or other benefits while serving as a member of the demarcation board, shall not receive any remuneration, allowance or other benefit of a member of the demarcation board, except to the extent required to place such member in the position in which he or she would have been were it not for such employment or position: Provided that this provision shall not preclude a member from receiving a reasonable subsistence and travelling allowances in respect of meetings of the board actually attended by such member.

(7) (a) The provisions of sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), or if the MEC so decides, the corresponding provisions of any similar law applicable in the province concerned, shall with the necessary changes apply to the demarcation board, and any committee of the demarcation board in so far as the sections concerned are applicable to the functions of such demarcation board or such committee of the demarcation board.

(b) A member of the demarcation board or of any committee thereof may, after due notice to the occupant, at all reasonable times enter upon and inspect any land or premises for the purposes of an inquiry being held, and the chairperson of the demarcation board may authorise any other person so to enter upon and inspect any land or premises.

(8) (a) Subject to paragraph (b) and, where applicable, section 5 of the Electoral Commission Act, 1996 (Act No. 51 of 1996), the demarcation board shall at the request of the MEC hold an inquiry and shall submit a report and recommendations to the MEC on-

- (i) the desirability or otherwise of delimiting or re-delimiting the area of jurisdiction of a municipality;
- (ii) the combination of the area of jurisdiction with that of another municipality, or the division of the area of jurisdiction of a municipality;

(iii) the delimitation or re-delimitation of the area of jurisdiction of a municipality into wards; and

(iv) the determination or redetermination of the number of seats in a municipality.

(b) When the demarcation board makes a recommendation as contemplated in paragraph (a), it shall take into account the criteria listed in Schedule 6.

(9) The MEC shall be responsible for the provision of secretarial and administrative services and technical assistance to the demarcation board.

Regulations concerning Demarcation Boards

10K. (1) The Minister may, after consultation with the MEC and the relevant organisations contemplated in section 10F, make regulations concerning-

- (a) the qualifications for, the appointment as, the term of office of, and the vacation of office as, members of the demarcation board;
- (b) the acting of another person as chairperson of the demarcation board;
- (c) the convening of, the procedure at and a quorum for the meetings of a demarcation board and the manner in which decisions will be taken by such demarcation board;
- (d) the performance of the administrative work of the board;
- (e) the appointment of committees by the demarcation board;
- (f) any matter incidental to the functions of the demarcation board which shall or may be prescribed; and
- (g) in general, any matter which the Minister may deem necessary or expedient to prescribe in order to achieve the objects of this Act, and the generality of this paragraph shall not be limited by the preceding paragraphs.

(2) A regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding five years.

Regulations concerning by-elections and voters' rolls

10L. (1) The Minister may, after consultation with the MEC and the relevant organisations contemplated in section 10F, make regulations concerning-

- (a) the maintenance and updating of voters' rolls for the purposes of municipal elections;
- (b) the conducting of and procedures for by-elections;
- (c) the expenses for the holding of by-elections;
- (d) a code of conduct which shall be complied with by political parties and candidates for by-elections, as well as for the establishment, constitution, powers and duties of election tribunals and election appeal tribunals and for the sanctions which may be applied by such tribunals for contraventions of such code; and

(e) corrupt and illegal practices and other related offences,

(2) Any regulation made under subsection (1) shall be in accordance with the principles contained in Schedule 4.

(3) A regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding five years.

Co-operative Government

10M. (1) The MEC shall promote and support the development of local government in order to enable municipalities to exercise their powers and perform their duties in the management of their affairs, and shall annually provide information to the Minister in this regard.

(2) The MEC and each municipality shall promote and support co-operation between municipalities in order to develop the capacity of each municipality to exercise its powers and perform its duties so as to manage its affairs.

Transitional provisions relating to sections 3, 9, 10 and 10C

10N. (1) A committee established under section 3 shall be disestablished on the day immediately following upon the day on which the last election or elections contemplated in section 9 have been held for the province concerned.

(2) The powers conferred upon the MEC by section 10 shall lapse in respect of the area of jurisdiction of a local council, metropolitan council, metropolitan local council, rural council or representative council on the day immediately prior to the commencement of the Local Government Transition Act Second Amendment Act, 1996.

(3) Any proclamation made under section 10 and which was in force immediately prior to the commencement of the Local Government Transition Act Second Amendment Act, 1996, shall, notwithstanding the provisions of subsection

(2), remain in force.

(4) The MEC may, with the concurrence of the Minister, by proclamation in the Provincial Gazette-

(a) amend or repeal a proclamation referred to in subsection (3): Provided that such proclamation may be amended with retrospective effect to a date not earlier than the publication thereof;

(b) notwithstanding anything to the contrary in this Act contained, amend or repeal a regulation contemplated in section 9(2); or

(c) re-allocate the powers and duties which have been agreed upon in terms of section 10C(3).

(5) In the event of an inconsistency between a proclamation referred to in subsections (3) or (4) and the provisions of this Act, the latter shall prevail: Provided that the provisions of this subsection shall not apply to those provisions of a proclamation dealing with the allocation of powers and duties of municipalities."

Repeal of section 11 of Act 209 of 1993

6. (1) Section 11 of the principal Act is hereby repealed.

(2) Subsection (1) shall, in respect of each province, come into operation on the day immediately after the day on which the election for members of municipalities have been held for the province concerned.

Substitution of section 12 of Act 209 of 1993

7. The following section is hereby substituted for section 12 of the principal Act:

"Regulations

12. (1) The Minister may, after consultation with the Administrator MEC, make regulations concerning-

- (a) anything which shall or may be prescribed under this Act;
- (b) any matter referred to in this Act which in his or her opinion are necessary or expedient for the effective carrying out or furtherance of the provisions and objects of this Act.

(2) A regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding five years."

Substitution of Schedule 2 to Act 209 of 1993

8. The following Schedule is hereby substituted for Schedule 2 to the principal Act:

"SCHEDULE 2

POWERS AND DUTIES OF METROPOLITAN COUNCILS REFERRED TO IN SECTION 10C(1)

Levies, Payments and Contributions

- 1. A metropolitan council may-
 - (a) at rates determined by the council with the concurrence of the MEC responsible for Finance with the concurrence of the Minister of Finance, levy and claim the levies referred to in section 12(1)(a) of the Regional Services Councils Act, 1985 (Act No. 109 of 1985), or section 16(1)(a) of the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), as the case may be;
 - (b) claim payments from any metropolitan local council to cover the actual costs of any service performed or rendered on behalf of or to such metropolitan local council;
 - (c) determine and claim an equitable contribution from all metropolitan local councils: Provided that such contribution shall be determined, and the utilisation of the sum total thereof shall be, as prescribed.

Grants and Transfers

2. The receipt, allocation and distribution of grants in accordance with an objective formula, or in the case of a specific transfer as determined by the Minister.

Integrated Development Plan

3. A metropolitan council shall, taking into account the development needs and priorities as determined by metropolitan local councils-

- (a) formulate and implement a metropolitan integrated development plan incorporating metropolitan land use planning, transport planning, infrastructure planning and the promotion of integrated economic development; and
- (b) co-ordinate and monitor local integrated development plans.

Water

4. The bulk supply of water, including-

- (a) the conservation of water;
- (b) the purification of water;
- (c) the distribution of water other than local supply reticulation;
- (d) the primary bulk supply to local supply points;
- (e) the installation, positioning and maintenance of bulk meters;
- (f) the determination of bulk tariffs;
- (g) the development and operation of a bulk water supply and distribution strategy for its area of jurisdiction after consultation with the metropolitan local council concerned;
- (h) the establishment and operation of a water coordinating system in association with external bulk suppliers;
- (i) the implementation of a bulk water supply and distribution plan for its area of jurisdiction;
- (j) the establishment and maintenance of an integrated bulk supply control and monitoring system for its area of jurisdiction;
- (k) the determination of a uniform base for the structuring of user tariffs.

Sewerage

5. Bulk sewage purification works and main sewage disposal including-

- (a) the formulation and implementation of policy relating to sewerage functions;
- (b) the design, construction, operation and maintenance of trunk mains and bulk sewage pump stations;
- (c) bulk sewage collection and disposal;
- (d) the planning of bulk conveyance of sewage and industrial effluent and the treatment thereof at treatment plants;
- (e) the determination and maintenance of a local development guide plan or master plan for bulk conveyance and treatment of sewage and industrial effluent;
- (f) the implementation of a master plan of bulk conveyance and treatment of sewage and industrial effluent;

- (g) the establishment and management of a coordinating system for the bulk sewerage system, with the concurrence of the other role-players;
- (h) the establishment of a system to monitor the flows in the bulk conveyance system;
- (i) the provision, operation and maintenance of bulk sewage and effluent infrastructure, including sludge disposal;
- (j) the determination of a uniformly structured bulk tariff for the purification and bulk conveyance of sewage;
- (k) the development of a uniform basis for the structuring of user tariffs.

Electricity

6. Subject to the provisions of any other law, the bulk supply of electricity, including the transmission and distribution and where applicable, the generation of electricity to reticulators in terms of any law.

Roads

7. The construction and maintenance of arterial roads that transcend more than one metropolitan local council boundary, including-

- (a) roads with significant traffic volumes;
- (b) roads forming major public transport corridors;
- (c) roads used extensively by traffic from outside the metropolitan local council within which such roads are situated;
- (d) roads in respect of which access and egress have been limited in accordance with a law;
- (e) roads of a major nature linking significant urban growth points or potential growth points;
- (f) the construction and maintenance of stormwater drainage systems and infrastructure that transcend more than one metropolitan local council boundary,

but excluding national roads, toll roads, provincial freeways and provincial arterial roads.

Passenger Transport Services

8. (a) The provision and regulation of passenger transport services.
- (b) The co-ordination of passenger transport services after consultation with the metropolitan local councils concerned.
- (c) The provision and control of public transport facilities.

Traffic Matters

9. (a) The co-ordination and determination of policy for traffic matters which affect more than one metropolitan council.
- (b) The provision and control of road traffic engineering which affects more than one metropolitan local council.

(c) Traffic law enforcement, if so requested by the metropolitan local council concerned.

Fresh Produce Markets

10. The establishment, conduct and control of fresh produce markets which affect more than one metropolitan local council.

Waste Disposal Facilities

11. (a) The determination of a waste disposal strategy.

(b) The identification of sites for the placing of waste disposal facilities.

(c) The establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one metropolitan local council.

Cemeteries and Crematoria

12. The establishment, conduct and control of cemeteries and crematoria utilised by more than one metropolitan local council.

Airports

13. The establishment and operation of airports, excluding national and international airports and landing strips.

Sport Facilities

14. The establishment, conduct and control of sport facilities of international standards.

Promotion of Tourism

15. The promotion of tourism.

Municipal Health Services

16. Subject to any other law, the planning, evaluation, monitoring and co-ordination of municipal health services.

Abattoirs

17. The establishment, management and control of metropolitan abattoirs.

Fire-fighting Services and Disasters

18. The provision and control of fire-fighting services and the planning for and management of disasters.

Libraries

19. The establishment, management and control of libraries serving the metropolitan area.

Museums

20. The establishment, management and control of museums.

Environmental Management

21. The co-ordination of environmental affairs.

Municipal Law Enforcement Agency

22. The establishment and control of municipal law enforcement agencies, subject to the South African Police Service Act, 1995 (Act No. 68 of 1995).".

Insertion of Schedule 2A in Act 209 of 1993

9. The following Schedule is hereby inserted after Schedule 2 to the principal Act:

"SCHEDULE 2A

POWERS AND DUTIES OF METROPOLITAN LOCAL COUNCILS REFERRED TO IN SECTION 10C(2)

Recovery of Costs

1. The claiming of payments from a metropolitan council to cover the actual costs of any service performed or rendered on behalf of or to such council.

Integrated Development Plan

2. A metropolitan local council shall formulate and implement a local integrated development plan, incorporating local land use planning, transport planning, infrastructure planning and the promotion of integrated local economic development, in accordance with the metropolitan integrated development plan.

Water

3. Water reticulation.

Sewerage

4. Sewage disposal and the provision of a sewerage system.

Electricity

5. The retail reticulation of electricity.

Roads

6. The construction and maintenance of roads and local stormwater drainage systems.

Traffic Matters

7. (a) Traffic law enforcement.
- (b) The testing of vehicles and drivers.
- (c) Matters pertaining to road safety.

Waste Disposal

8. The disposal of waste.

Cemeteries and Funeral Parlours

9. The establishment and control of cemeteries and funeral parlours.

Airports

10. The establishment and operation of airports, excluding national or international airports and landing strips.

Libraries

11. The establishment and operation of libraries.

Amusement Facilities and Beaches

12. The establishment, conduct and control of amusement facilities and the control of beaches.

Public nuisances

13. The control of public nuisances.

Environmental Affairs

14. The management and control of environmental affairs.

Tourism

15. The promotion of tourism.

Municipal Health Services

16. The provision of municipal health services.

Billboards and Advertisements

17. The control of billboards and the display of advertisements in public places.

Building Control

18. The control of building activities.

Cleansing

19. The provision of cleansing services in streets and public places.

Business Licensing

20. The licensing and control of places selling food.

Animals

21. The licensing and control of animals as well as the provision and control of facilities for the accommodation, impounding, care and burial of animals.

Markets

22. The establishment and control of markets, excluding fresh produce markets.

Pontoons, Ferries, Jetties, Piers and Harbours

23. The provision and control of pontoons, ferries, jetties, piers and harbours other than major ports.

Street Trading

24. The control of street trading.

Lighting

25. The lighting of streets and public places.

Public Places

26. The management and control of public places and gatherings in public places.

Fireworks

27. The control of fireworks.

Child Care Facilities

28. Management of child care facilities.

Municipal Law Enforcement Agency

29. The establishment and control of municipal law enforcement agencies, subject to the South African Police Service Act, 1995 (Act No. 68 of 1995).".

Amendment of Schedule 4 to Act 209 of 1993, as amended by section 4 of Act 12 of 1996

10. Schedule 4 to the principal Act is hereby amended by the substitution for the heading thereto of the following heading:

"PRINCIPLES REFERRED TO IN SECTION 9(4) SECTIONS 9(4) AND 10L(3)".

Amendment of Schedule 6 to Act 209 of 1993

11. Schedule 6 to the principal Act is hereby amended-

(a) by the substitution for the heading thereto of the following heading:

"CRITERIA REFERRED TO IN SECTION 11(6) (b) 10J(6) (b)"; and

(b) by the addition of the following item:

"9. The will of the local community.".

Addition of Schedule 8 to Act 209 of 1993

12. The following Schedule is hereby added to the principal Act:

"SCHEDULE 8

RESOLUTION OF DISPUTES CONTEMPLATED IN SECTION 10C(7)

1. If a dispute arises, the municipalities concerned shall jointly or severally have the right to declare a dispute by giving notice in writing to this effect to the other municipality or municipalities, and thereafter the municipalities concerned or their representatives shall attempt to settle the dispute by consensus within seven days of the dispute having been declared and should they fail to resolve the dispute, the municipalities may agree to attempt to resolve the dispute by mediation within a further period of 14 days.

2. Mediation means a process whereby-

- (a) the municipalities concerned agree on a mediator;
- (b) the mediator familiarises himself or herself with the position held by both municipalities and how the possible outcome might affect all other interested municipalities;
- (c) the mediator and the municipalities or their representatives discuss the dispute at a meeting attended by the municipalities in dispute;
- (d) the municipalities thereafter attempt to resolve the dispute by consensus; and
- (e) the municipalities share the mediator's costs equally.

3. Where no consensus can be reached by a municipality as to whether a dispute shall be declared with another municipality a decision shall be taken by a majority of all the members of the council.

4. If the municipalities are unable to resolve the dispute by consensus, the dispute shall be referred to a single arbitrator to be agreed upon between the municipalities, or failing such agreement within 14 days, to an arbitrator who shall be an advocate or attorney of not less than five years' experience as such, nominated on the application of either municipality, by the MEC.

5. The provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), shall with the necessary changes apply to an arbitration contemplated in item 4. The decision of the arbitrator shall be final and binding on the municipalities.

6. The arbitrator shall take into account the effect or impact of his or her decision on the municipalities which may be affected thereby.

7. The municipalities shall share all costs in the arbitration process equally."

Substitution of expressions in Act 209 of 1993

13. The principal Act is hereby amended-

- (a) by the substitution for the expression "Administrator", wherever it occurs, of the expression "MEC"; and
- (b) by the substitution for the expression "Official Gazette", wherever it occurs, of the expression "Provincial Gazette".

Transitional provisions

14. Notwithstanding the provisions of section 15, the auditing of the accounting records and financial statements of a municipality, in respect of any financial year which ended before or on 31 December 1996, shall be done in terms of the laws governing such audits and new budgets shall be compiled for the period 1 January 1997 to 30 June 1997.

Short title and commencement

15. (1) This Act shall be called the Local Government Transition Act Second Amendment Act, 1996.

(2) Section 2 shall be deemed to have come into operation on 1 November

1995.

(3) Section 4 shall come into operation on 1 July 1997.

(4) Section 10G(2)(d) of the principal Act, as inserted by section 5 of this Act, shall be deemed to have come into operation on 1 July 1996.