

REPUBLIC OF SOUTH AFRICA

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# **LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL**

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*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill  
published in Government Gazette No 23247 of 19 March 2002)  
(The English text is the official text of the Bill)*

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(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

**[B 22—2002]**

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# BILL

**To amend the Local Government: Municipal Structures Act, 1998, in order to enable a member of a Municipal Council to become a member of another party whilst retaining membership of that Council; and to provide for matters connected therewith.**

**WHEREAS** section 46(1)(d) of the Constitution requires an electoral system for the National Assembly that results, in general, in proportional representation;

**AND WHEREAS** section 105(1)(d) of the Constitution requires an electoral system for provincial legislatures that results, in general, in proportional representation;

**AND WHEREAS** section 157(2) of the Constitution requires an electoral system for local government comprising either proportional representation or proportional representation combined with a system of ward representation;

**AND WHEREAS** the Local Government: Municipal Structures Act, 1998, provides for an electoral system for local government comprising proportional representation combined with a system of ward representation;

**AND WHEREAS** item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, provides that an Act of Parliament may, within a reasonable period after the new Constitution took effect, be passed in accordance with section 76(1) of the new Constitution to amend that item and item 23 in order to provide for—

- \* the manner in which it will be possible for a member of a legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature; and
- \* any existing party to merge with another party, or any party to subdivide into more than one party;

**AND WHEREAS** provision has been made by section 158A of the Constitution in respect of local government for—

- \* a councillor to retain membership of a municipal council where such councillor ceases to be a member of the party which nominated that councillor; and
- \* any existing party to merge with another party, or any party to subdivide into more than one party;

**AND WHEREAS** there is a need for uniformity within the three spheres of government regarding matters such as changing membership of a party without losing one's seat, and mergers or subdivision of parties,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 27 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000 and section 121 of Act 32 of 2000**

1. Section 27 of the Local Government: Municipal Structures Act, 1998, is hereby amended by the deletion of paragraphs (c) and (f).

**Short title**

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

## **MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2002**

### **1. BACKGROUND**

1.1 On 13 November 2001 the National Assembly gave permission to the Assembly's Portfolio Committee on Justice and Constitutional Development to proceed with the consideration of the *Loss or Retention of Membership of National and Provincial Legislatures Bill, 2001* (the Membership Bill).

1.2 The purpose of the Membership Bill is to create a mechanism in terms of which—

- (a) members of the National Assembly or a provincial legislature can change their party membership without losing their seats;
- (b) an existing party may merge with another party; and
- (c) a party may subdivide into more than one party.

1.3 This mechanism is sought to be created by way of amendments to items 23 and 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

1.4 However, at present the Constitution does not provide for similar changes of party membership, mergers between parties or subdivision of parties in the context of local government.

1.5 The Department of Justice and Constitutional Development has proposed a constitutional amendment in respect of the local government sphere, which deals comprehensively with crossing the floor, the mergers of parties and the subdivision of parties within municipal councils. A draft Bill was published for public comment in *Government Gazette* No. 23218 of 11 March 2002. The Bill was introduced into Parliament as B 16—2002.

1.6 The Local Government: Municipal Structures Amendment Bill, 2002 (“the Structures Amendment Bill”), seeks to amend the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (“the Structures Act”), in order to complement the constitutional amendments proposed by the Department of Justice and Constitutional Development in respect of the local government sphere.

### **2. PROVISIONS OF STRUCTURES AMENDMENT BILL**

The proposed constitutional amendment will render paragraphs (c) and (f) of section 27 of the Structures Act unconstitutional and redundant. The purpose of the Structures Amendment Bill is merely to repeal the said paragraphs (c) and (f).

### **3. PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Provincial and Local Government are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.