

REPUBLIC OF SOUTH AFRICA

**LOCAL GOVERNMENT:
MUNICIPAL STRUCTURES
AMENDMENT BILL**

*(As amended by the Portfolio Committee on Provincial and Local government
(National Assembly)) (The English text is the official text of the Bill)*

(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

[B 22B—2002]

ISBN 0 621 32203 2

No. of copies printed 1 800

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, in order to enable a member of a municipal council to become a member of another party whilst retaining membership of that council; to enable an existing party to merge with another party, or to subdivide into more than one party, or to subdivide and any one of the subdivisions to merge with another party, whilst allowing a member of a council affected by such changes to retain membership of that council; to provide for the convening of meetings after the composition of a municipal council has changed as a result of the provisions of Schedule 6A to the Constitution; to provide for the reconstitution of metropolitan subcouncils; to provide for special measures for the application of Schedule 6A to the Constitution; to further regulate the submission of lists of candidates; and to provide for matters connected therewith.

PREAMBLE

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, whilst allowing a member of a legislature affected by such changes, to retain membership of such legislature;

AND WHEREAS provision has been made by Schedule 6A to 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, or to subdivide and any one of the subdivisions to merge with another party, whilst allowing a member of a council affected by such changes to retain membership of that council;

AND WHEREAS the need exists for uniformity within the three spheres of government regarding loss or retention of membership of any legislature or municipal council in the event of a change of party membership, or mergers or subdivision or subdivision and merger of parties,

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

Amendment of section 26 of Act 117 of 1998

1. Section 26 of the Local Government: Municipal Structures Act, 1998 (hereinafter referred to as the Structures Act), is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 5

“(b) is appointed as a representative of a local council to a district council for a period ending when the next local council is declared elected, except that where such a person is replaced as a result of the provisions of item 6(a) of Schedule 6A to the Constitution, the newly appointed representative is 10 appointed for the remainder of the replaced representative’s term.”.

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

2. Section 27 of the Structures Act is hereby amended by the deletion of paragraphs (c) and (f). 15

Amendment of section 29 of Act 117 of 1998

3. Section 29 of the Structures Act is hereby amended by the addition of the following subsection:

“(3) Where the composition of a municipal council has been changed as a result of the provisions of item 2, 3 or 7 of Schedule 6A to the Constitution, the speaker of that council must, subject to item 6(b) of Schedule 6A to the Constitution, convene council meetings for purposes of dealing, amongst others, with the consequences of such a change, the first of which meetings must— 20

(a) in the case of a metro council or a local council, take place within seven days after the expiry of a period referred to in item 4(1)(a)(i) or (ii) of Schedule 6A to the Constitution; and 25

(b) in the case of a district council, take place within seven days after the completion of the appointments referred to in item 6(b)(ii) of Schedule 6A to the Constitution.”.

Amendment of section 62 of Act 117 of 1998 30

4. Section 62 of the Structures Act is hereby amended by the insertion in subsection (1) after paragraph (c) of the following paragraph:

“(cA) determines a mechanism that complies with Part 2 of Schedule 4 for the appointment of councillors in terms of section 63(2)(b)(ii);”.

Substitution of section 63 of Act 117 of 1998 35

5. The following section is hereby substituted for section 63 of the Structures Act:

“Composition

63. (1) Each metropolitan subcouncil consists of—

(a) the councillors representing the wards included in the subcouncil area; 40

and

(b) an additional number of councillors [determined by the metro council so that the combined total of paragraph (a) and this paragraph is substantially in the same proportion to the total number of councillors in the council as the number of registered voters in the area of the subcouncil is in proportion to the total 45

number of registered voters in the municipality] allocated in terms of Part 1 of Schedule 4, except that where—

- (i) metropolitan subcouncils are established;
 - (ii) the areas of existing metropolitan subcouncils are changed; or
 - (iii) the number of existing metropolitan subcouncils are changed,
- after the composition of a metro council has changed as a result of the provisions of item 2, 3 or 7 of Schedule 6A to the Constitution, the additional number of councillors is determined by the metro council so that the seats held by councillors referred to in subsection (2)(a) are as far as possible equally distributed amongst all the metropolitan subcouncils.
- (1A) Where metropolitan subcouncils have been established before the commencement of the Local Government: Municipal Structures Amendment Act, 2002, subsection (1)(b) continues to apply as if it was not amended by that Act until—
- (a) the first election of all municipal councils after such commencement; or
 - (b) the areas or the number of existing metropolitan subcouncils are changed as provided for in subsection (1)(b)(ii) or (iii),
- whichever occurs first.
- (2) The councillors referred to in subsection (1)(b) must—
- (a) consist of councillors elected to the metro council from party lists in accordance with Part 3 of Schedule 1; and
 - (b) be appointed to the metropolitan subcouncil—
 - (i) in accordance with Part 1 of Schedule 4; or
 - (ii) where the composition of the metro council in question has changed as a result of the provisions of item 2, 3 or 7 of Schedule 6A to the Constitution, in accordance with the mechanism referred to in section 62(1)(cA).
- (3) Item 3 of the Code of Conduct for Councillors set out in Schedule 1 to the Local Government: Municipal Systems Act, 2000, does not apply to the speaker, executive mayor, a member of the mayoral committee or a member of the executive committee, as the case may be, in respect of meetings of a metropolitan subcouncil of which such an office bearer is a member.”.

Substitution of section 66 of Act 117 of 1998

6. The following section is hereby substituted for section 66 of the Structures Act:

“Term of office of members

66. (1) The section 63(1)(b) members of a metropolitan subcouncil are [elected] appointed for a term ending, subject to subsection (2) and section 67, when the next metro council is declared elected.

(2) Where a section 63(1)(b) member of a metropolitan subcouncil is replaced as a result of the provisions of item 6(b) of Schedule 6A to the Constitution, the newly appointed member is, subject to section 67, appointed for the remainder of the replaced member’s term.”.

Insertion of new section after section 93 of Act 117 of 1998

7. The following sections are hereby inserted after section 93 of the Structures Act:

“Special measures for application of item 6 of Schedule 6A to Constitution

93A. Where the provisions of item 6 of Schedule 6A to the Constitution apply, the requirement of prior notice referred to in sections 40, 53(1) and 58, respectively, does not apply to meetings of a municipal council during the period referred to in item 6(b) of Schedule 6A to the Constitution.

Publication of notice by Electoral Commission

93B. The Electoral Commission must, within seven days of the expiry of a period referred to in item 4(1)(a)(i) or (ii) of Schedule 6A to the Constitution, publish a notice in the *Gazette* in respect of each municipal council whose composition has changed as a result of any conduct in terms of item 2, 3 or 7 of that Schedule, which must reflect—

- (a) the number of seats allocated to each party represented in that council;
- (b) the name of, and party represented by each councillor in the proportionally elected component of that council; and
- (c) the wards and the names of, and if applicable the party affiliation of, ward representatives in that council.

Substitution of item 10 of Schedule 1 to Act 117 of 1998, as amended by section 93 of Act 27 of 2000

8. The following item is hereby substituted for item 10 of Schedule 1 to the Structures Act:

“Submission of lists of candidates

10. (1) A list of candidates may be submitted only by a party.

(2) A party that has gained representation in a municipality as a result of the provisions of item 2, 3 or 7 of Schedule 6A to the Constitution, may submit a list of candidates within seven days after the expiry of a period referred to in item 4(1)(a)(i) or (ii) of Schedule 6A to the Constitution.

Substitution of item 4 of Schedule 2 to Act 117 of 1998, as amended by section 93 of Act 27 of 2000

9. The following item is hereby substituted for item 4 of Schedule 2 to the Structures Act:

“Submission of lists of candidates

4. (1) A list of candidates may be submitted only by a party.

(2) A party that has gained representation in a municipality as a result of the provisions of item 2, 3 or 7 of Schedule 6A to the Constitution, may submit a list of candidates within seven days after the expiry of a period referred to in item 4(1)(a)(i) or (ii) of Schedule 6A to the Constitution.

Substitution of Schedule 4 to Act 117 of 1998

10. The following Schedule is hereby substituted for Schedule 4 to the Structures Act:

“SCHEDULE 4

Part 1: Method of allocating councillors elected from party lists to metropolitan subcouncils

Allocating seats to parties

1. (1) The seats in the section 63(1)(b) component of a metropolitan subcouncil are allocated to each party in accordance with the following formula (fractions to be disregarded)—

$$\frac{A}{B} \times C$$

Where—

- A** represents the total number of valid votes cast for each party on the party vote in the area of the metropolitan subcouncil;
- B** represents the total number of valid votes cast for each party on the party vote in the area of the metro council; and

C represents the total number of seats allocated to each party in the metro council in accordance with Part 3 of Schedule 1.

(2) If all the seats held by councillors elected to the metro council from party lists in accordance with Part 3 of Schedule 1 have not been allocated in terms of subitem (1), the remaining number of seats are allocated to the parties represented in the metro council in accordance with the following formula:

$$A - B = C$$

Where—

A represents the total number of seats allocated to a party in the metro council in accordance with Part 3 of Schedule 1;

B represents the total number of seats allocated to a party in terms of subitem (1); and

C represents a positive number.

(3) (a) The number of seats allocated to a party in terms of subitem (2) are distributed amongst the metropolitan subcouncils in sequence of the highest fractions obtained by that party for the respective subcouncils during the calculations in terms of subitem (1).

(b) If the fraction for two or more subcouncils is equal, and the number of seats still to be distributed are less than the number of subcouncils to which the equal fractions apply, the party must elect to which of those subcouncils such seats are to be distributed.

Part 2: Principles of allocating councillors elected from party lists to metropolitan subcouncils

Principles of allocating seats to parties

2. The seats in the section 63(1)(b) component of a metropolitan subcouncil must be allocated to parties represented in the metro council in a manner that will allow parties and interests reflected in the metro council to be fairly represented in the metropolitan subcouncil in a manner consistent with democracy, taking into account the parties and interests reflected in the section 63(1)(a) component of that metropolitan subcouncil.

Part 3: General principles

Designation of councillors for metropolitan subcouncils

3. Each party represented in a metro council must designate from among the councillors not representing wards, its representatives to each metropolitan subcouncil in the municipality with regard to which seats were allocated to it in accordance with Part 1 or the principles set out in item 2.

Councillors to serve on one metropolitan subcouncil only

4. No councillor may serve on more than one metropolitan subcouncil.

Vacancies

5. Parties must fill vacancies as they occur.

Amendment of Table of Contents of Act 117 of 1998

11. The Table of Contents of the Structures Act is hereby amended—

(a) by the substitution for the reference to Schedule 4 of the following reference:

“SCHEDULE 4**Part 1: Method of allocating councillors elected from party lists to metropolitan subcouncils**

1. Allocating seats to parties

Part 2: Principles of allocating councillors elected from party lists to metropolitan subcouncils

2. Principles of allocating seats to parties

Part 3: General principles

3. Designation of councillors for metropolitan subcouncils
4. Councillors to serve on one metropolitan subcouncil only
5. Vacancies”; and

(b) by the insertion after the reference to section 93 of the following references:

“93A. Special measures for the application of item 6 of Schedule 6A to the Constitution

93B. Publication of notice by Electoral Commission”.

Registration of new parties for purposes of Schedule 6A to Constitution

12. (1) A party which has not been registered in terms of any law applicable to the registration of political parties will be regarded as a party for the purposes of item 7 of Schedule 6A to the Constitution, but such a party must apply for registration as a party in accordance with applicable law within the period referred to in item 7 of Schedule 6A to the Constitution. If the party is not registered accordingly within four months after the expiry of that period, it is regarded as having ceased to exist as a party, and the seats in question must be allocated to the remaining parties, with the necessary changes, as if such seats were forfeited seats in terms of applicable law.

(2) For the purposes of items 2 and 3 of Schedule 6A to the Constitution, “party” means a party duly registered as a political party in accordance with applicable law, including a party so registered during a period referred to in item 4(1)(a)(i) or (ii) of Schedule 6A to the Constitution.

Transitional arrangement

13. Despite section 14(2), a metro council may determine the mechanism referred to in section 62(1)(cA) of the Local Government: Municipal Structures Act, 1998, by way of resolution until a period of 30 days following the period referred to in item 7 of Schedule 6A to the Constitution, has expired.

Short title and commencement

14. (1) This Act is called the Local Government: Municipal Structures Amendment Act, 2002, and with the exception of section 4, comes into operation on the date that the Constitution of the Republic of South Africa Amendment Act, 2002, comes into operation.

(2) Section 4 comes into operation after a period of 30 days following the period of 15 days referred to in item 7 of Schedule 6A to the Constitution, has expired.

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, and the repeal of those paragraphs is proposed. However, the Structures Amendment Bill also proposes other amendments to the Structures Act to give effect to the constitutional amendments which requires the reconstitution of structures and committees of a municipal council, and in the case of a district municipality the reconstitution of a local municipality's representation on the district municipality. To this end the Structures Amendment Bill—

- (a) further regulates the term of office of local government representatives on a district municipality;
- (b) further regulates the first meetings of councils after changes of party membership or merger or subdivision of parties;
- (c) re-determining the principles of determining the size of metropolitan subcouncils and the allocation;
- (d) further regulates the submission of party lists; and
- (e) provides for transitional arrangements.

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.