

REPUBLIC OF SOUTH AFRICA

**CROSS-BOUNDARY
MUNICIPALITIES LAWS REPEAL
AND RELATED MATTERS
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75);
Explanatory summary of Bill published in Government Gazette No. 29992 of 15 June 2007)
(The English text is the official text of the Bill)*

(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

[B 25—2007]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
DIE HERROEPING VAN WETTE
BETREFFENDE
OORGRENSMUNISIPALITEITE EN
AANVERWANTE
AANGELEENTHEDE**

*(Soos by die Nasionale Vergadering ingedien (voorgestelde artikel 75);
Verduidelikende opsomming van Wetsontwerp in Staatskoerant No. 29992 van 15 Junie
2007 gepubliseer)
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VIR PROVINSIALE EN PLAASLIKE REGERING)

[W 25—2007]

ISBN 978-1-920240-21-9

GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005, so as to insert a section relating to the application of the Act; to re-enact certain provisions; and to provide for matters connected therewith.

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

Insertion of section 1A in Act 23 of 2005

1. The following section is hereby inserted in the Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005 (hereinafter referred to as the principal Act), after section 1: 5

“Application of Act as amended by Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Act, 2007

1A. In the application of this Act, as amended by the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Act, 2007, 10
due regard must be had to the provisions of the Constitution Thirteenth Amendment Act of 2007.”.

Amendment of Schedule 4 to Act 23 of 2005

2. Schedule 4 to the principal Act is hereby amended by—
(a) the substitution for all the expressions in the row relating to “**KZ5a6** known 15
as Umzimkulu Local Municipality” of the following expressions:

Identified by Map No. 8 of the Schedule to Notice 1257 of 2005	KZ5a6 known as Umzimkulu Local Mu- nicipality	KwaZulu-Natal
--	--	---------------

20

- (b) the substitution for all the expressions in the row relating to “**DC43** known as Sisonke District Municipality” of the following expressions:

Identified by Map No. 7 of the Schedule to Notice 1257 of 2005	DC43 known as Sisonke District Municipality	KwaZulu-Natal
--	--	---------------

5

- (c) the substitution for all the expressions in the row relating to “**DC44** known as Alfred Nzo District Municipality” of the following expressions:

Identified by Map No. 11 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496 of 2005	DC44 known as Alfred Nzo District Municipality	Eastern Cape
---	---	--------------

10

15

- (d) the substitution for all the expressions in the row relating to “**EC05b2** known as Umzimvubu Local Municipality” of the following expressions:

Identified by Map No. 10 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496 of 2005	EC05b2 known as Umzimvubu Local Municipality	Eastern Cape
---	---	--------------

20

- (e) the substitution for all the expressions in the row relating to “**EC05b3** known as Matatiele Local Municipality” of the following expressions:

Identified by Map No. 9 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496 of 2005	EC05b3 known as Matatiele Local Municipality	Eastern Cape
--	---	--------------

30

Amendment of Schedule 5 to Act 23 of 2005

35

3. Schedule 5 to the principal Act is hereby amended by—

- (a) the substitution for all the expressions in the row relating to “**KZ5a6** known as Umzimkulu Local Municipality” of the following expressions:

Notice 1756 of 2005 (KwaZulu-Natal), read with Notice 3253 of 2005 (KwaZulu-Natal)	KZ5a6 known as Umzimkulu Local Municipality (Map No. 8 of the Schedule to Notice 1257 of 2005)	KwaZulu-Natal	EC05b1
--	---	---------------	---------------

40

45

- (b) the substitution for all the expressions in the row relating to “**DC43** known as Sisonke District Municipality” of the following expressions:

Notice 1756 of 2005 (KwaZulu-Natal), read with Notice 344 of 2000 (KwaZulu-Natal) and Notice 3253 of 2005 (KwaZulu-Natal)	DC43 known as Sisonke District Municipality (Map No. 7 of the Schedule to Notice 1257 of 2005)	<u>KwaZulu-Natal</u>	DC43	5
				10

- (c) the substitution for all the expressions in the row relating to “**DC44** known as Alfred Nzo District Municipality” of the following expressions:

Notice 43 of 2005 (Eastern Cape)	DC44 known as Alfred Nzo District Municipality (Map No. 11 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496 of 2005)	<u>Eastern Cape</u>	DC44	15
				20

- (d) the substitution for all the expressions in the row relating to “**EC05b2** known as Umzimvubu Local Municipality” of the following expressions: 25

Notice 43 of 2005 (Eastern Cape)	EC05b2 known as Umzimvubu Local Municipality (Map No. 10 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496 of 2005)	<u>Eastern Cape</u>	EC05b2	30
				35

- (e) the substitution for all the expressions in the row relating to “**EC05b3** known as Matatiele Local Municipality” of the following expressions:

Notice 43 of 2005 (Eastern Cape)	EC05b3 known as Matatiele Local Municipality (Map No. 9 of the Schedule to Notice 1257 of 2005, read with correction Notice 1496 of 2005)	<u>Eastern Cape</u>	KZ5a3	40
				45

Application of Act 23 of 2005

4. (1) Section 2(4) of the principal Act applies to the municipalities referred to in sections 1 and 2 of this Act in accordance with the provisions of the Constitution Thirteenth Amendment Act of 2007.

(2) Sections 4 and 5 of the principal Act apply to the areas of jurisdiction of the municipalities referred to in sections 1 and 2 of this Act in accordance with the provisions of the Constitution Thirteenth Amendment Act of 2007. 5

Short title and commencement

5. This Act is called the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Act, 2007, and takes effect on the same date on which the Constitution Thirteenth Amendment Act of 2007 takes effect. 10

MEMORANDUM ON THE OBJECTS OF THE CROSS-BOUNDARY MUNICIPALITIES LAWS REPEAL AND RELATED MATTERS AMENDMENT BILL

1. BACKGROUND

- 1.1 The Constitution Twelfth Amendment Act of 2005 (hereafter the “Constitution Twelfth Amendment”) and the Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005 (Act No. 23 of 2005) (hereafter the “Cross-boundary Laws Repeal Act”) were enacted during December 2005. The Constitution Twelfth Amendment amended the Constitution of the Republic of South Africa, 1996, by providing for the re-determination of the geographical areas of the provinces and doing away with the concept of cross-boundary municipalities. The Cross-boundary Laws Repeal Act supported and complemented the Constitution Twelfth Amendment by providing transitional arrangements to ensure a smooth transition from the cross-boundary municipality dispensation to a new dispensation where a municipality would only be located in one particular province.
- 1.2 The constitutionality of the Constitution Twelfth Amendment and the Cross-boundary Laws Repeal Act was challenged in the Constitutional Court by the Matatiele community. The Constitutional Court handed down judgement in the Matatiele matter on 18 August 2006. In essence, the Court declared those provisions of the Constitution Twelfth Amendment that transferred the Matatiele Municipality from the KwaZulu-Natal Province to the Eastern Cape Province to be invalid. As a result of their interdependence, this declaration of invalidity was extended to those provisions of the Cross-boundary Laws Repeal Act that concerned the KwaZulu-Natal Province.
- 1.3 The order of invalidity is suspended for 18 months, during which time Parliament has the opportunity to correct the constitutional defect that led to the order of invalidity.
- 1.4 For various technical reasons, the order of invalidity was formulated with reference to Matatiele only. However, it stands to reason that the failure of the KwaZulu-Natal legislature to consult on the proposed changes to its provincial boundaries (which gave rise to the order of invalidity), also affects other boundary changes impacting on the Province of KwaZulu-Natal (such as the inclusion of Umzimkulu into KwaZulu-Natal). It also follows, that the “knock-on effect” on municipalities that are now located in the Eastern Cape Province, should also be provided for in any legislative measure that seeks to rectify the constitutional defect that led to the Constitutional Court’s order of invalidity. Put in other words: It would appear that any proposed legislative amendments that are intended to rectify the identified constitutional defect must also include references to the Eastern Cape Province.
- 1.5 It stands to reason that the invalid provisions of the Constitution Twelfth Amendment and the Cross-boundary Laws Repeal Act have to be addressed by two separate Bills, viz. a Constitution Amendment Bill and an Amendment Bill that amends the Cross-boundary Laws Repeal Act. Although the Ministry of Justice and Constitutional Development would be processing the Constitution Thirteenth Amendment Bill of 2007 and the Ministry for Provincial and Local Government would be processing the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Bill, 2007, these two Bills must be read together. These two Bills are premised on the principle that only those provisions in the Twelfth Constitution Amendment and the Cross-boundary Laws Repeal Act that refer directly to the provinces of the Eastern Cape and KwaZulu-Natal are to be substituted and re-enacted.

2. OBJECTS OF BILL

The Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Bill, 2007 (hereafter “the Bill”), primarily seeks to amend the Cross-boundary Laws Repeal Act by substituting and re-enacting those provisions of the said Act that were declared invalid by the Constitutional Court. The Bill also seeks to provide for the manner of application of the re-enacted provisions.

3. BODIES/ORGANISATIONS CONSULTED

- The Department of Justice and Constitutional Development
- The Bill was published for public comment in terms of section 154(2) of the Constitution.

4. FINANCIAL IMPLICATIONS FOR STATE

None, since the Bill seeks to re-enact provisions of the Cross-boundary Laws Repeal Act that were found to be invalid.

5. IMPLICATIONS FOR PROVINCES

In so far as the Bill is dependent on the passing of the Constitution Thirteenth Amendment Bill of 2007, the legislatures of the Eastern Cape Province and the Province of KwaZulu-Natal has to approve the Constitution Thirteenth Amendment Bill of 2007 as required by section 74(8) of the Constitution.

6. IMPLICATIONS FOR MUNICIPALITIES

The configuration of municipalities in the Eastern Cape Province and the Province of KwaZulu as preserved by the suspension order of the Constitutional Court in the Matatiele matter would be maintained.

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers and the Department of Provincial and Local Government are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed 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.
- 7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.