

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
LOCAL GOVERNMENT LAWS
AMENDMENT BILL**

[B 61—2002]

*(As agreed to by the Portfolio Committee on Provincial and Local Government
(National Assembly))*

[B 61A—2002]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WYSIGINGSWETSONTWERP OP
PLAASLIKE REGERINGSWETTE**

[W 61—2002]

*(Soos goedgekeur deur die Portefeuljekomitee oor Provinsiale en Plaaslike Regering
(Nasionale Vergadering))*

[W 61A—2002]

ISBN 0 621 33081 7

AMENDMENTS AGREED TO
LOCAL GOVERNMENT LAWS AMENDMENT BILL
[B 61—2002]

NEW CLAUSE

1. That the following be a new Clause:

Substitution of section 4 of Act 27 of 1998

5. The following section is hereby substituted for section 4 of the Demarcation Act:

“Functions

4. The **[function]** functions of the Board **[is]** are—
 (a) to determine municipal boundaries in accordance with this Act and other appropriate legislation enacted in terms of Chapter 7 of the Constitution; and
 (b) to render an advisory service in respect of matters provided for in this Act and other appropriate legislation when so requested.”.

CLAUSE 7

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 21 of Act 27 of 1998

8. Section 21 of the Demarcation Act is hereby amended—
 (a) by the addition to subsection (2) of the following proviso:
“Provided that section 26 does not apply where the Board redetermines a municipal boundary in respect of which the MEC for local government and all the municipalities that are affected by the redetermination have indicated in writing that they have no objection to such redetermination.”;
 (b) by the substitution for subsection (5) of the following subsection:
“(5) The Board must—
 (a) consider any objections; [and]
 (b) either confirm, vary or withdraw its determination;
 and
 (c) publish its decision in terms of paragraph (b) in the relevant Provincial Gazette.”; and
 (c) by the addition of the following subsection:
“(6) Any person may, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), request the Board to provide reasons for its decision in terms of subsection (5)(b).”.

CLAUSE 8

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Substitution of section 22 of Act 27 of 1998

9. The following section is hereby substituted for section 22 of the Demarcation Act:

“Work programme

- 22. (1)** The Board performs the function mentioned in section 21(1)—
- (a) [(i)] on its own initiative;
 - [(ii)] (b) on request by the Minister or a MEC for local government; or
 - [(iii)] (c) on request by a municipality with the concurrence of any other municipality affected by the proposed determination or redetermination [; and
- (b) **in accordance with priorities and reasonable time-frames for demarcation determined by the Minister in consultation with the MEC's for local government after the Board has been consulted].**
- (2) The Minister may, after consultation with the MEC's for local government and the Board, determine priorities and reasonable time-frames for a determination or redetermination.
- (3) Where the Board performs the function mentioned in section 21(1) on its own initiative as a result of receiving a request from a member of the public, the Board may—
- (a) require that member of the public to furnish the Board with such information as may be required by the Board; and
 - (b) solicit the views of the persons and institutions referred to in section 26(3) on the matter before the Board.
- (4) Where the Board has solicited the views of persons and institutions as provided for in subsection (3)(b), the Board does not need to comply with section 26 when it considers the determination or redetermination of a municipal boundary under the circumstances referred to in subsection (3).
- (5) Where the Board performs the function mentioned in section 21(1) on request by a municipality, the Board may require that municipality to furnish the Board with such information as may be required by the Board.”.

CLAUSE 9

1. On page 6, from line 37, to omit subsection (1) and to substitute:

“(1) [Once the Board has determined a municipal boundary it] After the Board has considered any objections in terms of section 21(5), or has redetermined a boundary under the circumstances provided for in the proviso to section 21(2), the Board must without delay send particulars of the determination to the Electoral Commission.”; and

CLAUSE 14

1. On page 8, from line 33, to omit subsection (3) and to substitute:

“(3) If the mayor is absent or not available and the municipality does not have a deputy mayor, or the deputy mayor is also absent or not available—
(a) the member of the executive committee designated thereto in writing by the mayor acts as mayor; or
(b) a councillor elected by the members of the executive committee from amongst themselves acts as mayor if the mayor has not designated a member thereto or if the designated member is absent or not available.”.

CLAUSE 15

1. On page 8, from line 46, to omit subsection (7), and to substitute:

“(7) If the executive mayor is absent or not available and the municipality does not have a deputy executive mayor, or the deputy executive mayor is also absent or not available, the council must designate a councillor to act as executive mayor.”.

CLAUSE 18

1. On page 10, from line 31, to omit paragraph (c) and to substitute:

(c) by the addition to subsection (3) of the following paragraphs:
“(d) Whenever the Minister revokes an authorisation envisaged by paragraph (a), the Minister must in the notice revoking that authorisation regulate the legal, practical and other consequences of the revocation, which may include—
(i) the transfer of staff;
(ii) the transfer of assets, liabilities, rights, obligations and administrative and other records; and
(iii) the continued application of any by-laws and resolutions in the area of the municipalities in question and the extent of such application.
(e) The Minister must comply with the consultation requirements as set out in paragraph (a) when a power referred to in paragraph (c) or (d) is to be exercised.”.

CLAUSE 19

1. On page 10, from line 48, to omit section 86, and to substitute:

86. [Indien 'n distriks- en plaaslike munisipaliteit 'n funksie verrig of 'n bevoegdheid uitoefen op 'n soortgelyke wyse, en] Indien 'n geskil [ontstaan] tussen [hulle] 'n distriks- en 'n plaaslike raad rakende die verrigting van [daardie] 'n funksie of die uitoefening van [daardie] 'n bevoegdheid ontstaan, kan die LUR vir plaaslike regering in die provinsie, na oorlegpleging met hulle, by kennisgewing in die *Provinsiale Koerant* die geskil besleg deur hulle onderskeie rolle in die verrigting van daardie funksie of die uitoefening van daardie bevoegdheid te omskryf.”.

CLAUSE 20

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 93 of Act 117 of 1998, as amended by section 11 of Act 33 of 2000

21. Section 93 of the Structures Act is hereby amended by the addition of the following subsections:

“(7) Despite Proclamation No. 148 of 8 December 1993 (Province of the Cape of Good Hope Gazette 4833 of 22 December 1993) and section 38 of the Property Valuation Ordinance, 1993 (Cape), the said Ordinance is deemed to have come into force—

(a) for the purposes of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), immediately before the commencement of that Constitution; and

(b) for all other purposes, on 1 July 1994.

(8) (a) With effect from 5 December 2000 and subject to paragraph (b), any reference in a law referred to in item 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), to a municipal council, municipality, local authority or another applicable designation of a local government structure, must be construed as a reference to a municipal council or a municipality established in terms of this Act, as the case may be.

(b) Paragraph (a) only applies to a law referred to in item 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), in so far as such a law is still applicable or becomes applicable to a municipal council or a municipality, as the case may be, at the time the Local Government Laws Amendment Act, 2002, comes into effect.

(9) Until the legislation envisaged in section 229(2)(b) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), is enacted, a municipality may use the valuations appearing on a provisional valuation roll or an additional valuation roll when imposing property rates.

(10) Subsections (7), (8) and (9) apply to matters that are the subject of pending litigation.”.

CLAUSE 34

1. On page 16, from line 26, to omit paragraph (a) and to substitute:

(a) by the insertion after the definition of “municipal manager” of the following definition:

“‘**municipal service**’ means a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether—

(a) such a service is provided, or to be provided, by the municipality through an internal mechanism contemplated in section 76 or by engaging an external mechanism contemplated in section 76; and

(b) fees, charges or tariffs are levied in respect of such a service or not;”;

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 59 of Act 32 of 2000

36. Section 59 of the Systems Act is hereby amended by the addition of the following subsection:

“(4) Any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the municipal council in accordance with the system of delegation referred to in subsection (1).”

CLAUSE 37

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Insertion of section 75A in Act 32 of 2000

39. The following section is hereby inserted in the Systems Act after section 75:

“General power to levy and recover fees, charges and tariffs

75A. (1) A municipality may—

- (a) levy and recover fees, charges or tariffs in respect of any function or service of the municipality; and
- (b) recover collection charges and interest on any outstanding amount.

(2) The fees, charges or tariffs referred to in subsection (1) are levied by a municipality by resolution passed by the municipal council with a supporting vote of a majority of its members.

(3) After a resolution contemplated in subsection (2) has been passed, the municipal manager must, without delay—

- (a) conspicuously display a copy of the resolution for a period of at least 30 days at the main administrative office of the municipality and at such other places within the municipality to which the public has access as the municipal manager may determine;
- (b) publish in a newspaper of general circulation in the municipality a notice stating—
 - (i) that a resolution as contemplated in subsection (2) has been passed by the council;
 - (ii) that a copy of the resolution is available for public inspection during office hours at the main administrative office of the municipality and at the other places specified in the notice; and
 - (iii) the date on which the determination will come into operation; and
- (c) seek to convey the information referred to in paragraph (b) to the local community by means of radio broadcasts covering the area of the municipality.

(4) The municipal manager must forthwith send a copy of the notice referred to in subsection (3)(b) to the MEC for local government concerned.”

CLAUSE 39

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Substitution of section 77 of Act 32 of 2000

41. The following section is hereby substituted for section 77 of the Systems Act:

“Occasions when municipalities must review and decide on mechanisms to provide municipal services

77. A municipality must review and decide on the appropriate mechanism to provide a municipal service in the municipality or a part of the municipality—

- (a) in the case of a municipal service provided through an internal mechanism contemplated in section 76, when—
 - (i) an existing municipal service is to be significantly upgraded, extended or improved;
 - (ii) a performance evaluation in terms of Chapter 6 requires a review of the mechanism; or
 - (iii) the municipality is restructured or reorganised in terms of the Municipal Structures Act;
- (b) in the case of a municipal service provided through an external mechanism contemplated in section 76, when—
 - (i) a performance evaluation in terms of Chapter 6 requires a review of the service delivery agreement;
 - (ii) the service delivery agreement is anticipated to expire or be terminated within the next 12 months; or
 - (iii) an existing municipal service or part of that municipal service is to be significantly upgraded, extended or improved and such upgrade, extension or improvement is not addressed in the service delivery agreement;
- (c) when a review is required by an intervention in terms of section 139 of the Constitution;
- (d) when a new municipal service is to be provided;
- (e) when requested by the local community through mechanisms, processes and procedures established in terms of Chapter 4; or
- (f) when a review of its integrated development plan requires a review of the delivery mechanism.”

CLAUSE 41

1. On page 20, from line 42, to omit section 109A and to substitute:

“Legal representation for employees or councillors of municipality

109A. A municipality may, subject to such terms and conditions as it may determine, provide an employee or councillor of the municipality with legal representation where—

- (a) legal proceedings have been instituted against the employee or councillor as a result of any act or omission by the employee or councillor in the exercise of his or her powers or the performance of his or her duties; or
- (b) the employee or the councillor has been summoned to attend any inquest or inquiry arising from the exercise of his or her powers or the performance of his or her duties.”.

CLAUSE 42

Clause rejected.

CLAUSE 43

1. On page 22, from line 38, to omit the proviso and to substitute:

Provided that nothing in this subsection precludes the subsequent collection by a municipality of any amounts owed to it in respect of such a property at the time of such transfer or conversion.

CLAUSE 47

Clause rejected.

LONG TITLE

1. On page 2, in the fifth line, after “**corrections**” to insert:

; to further regulate the functions and the work programme of the Board

2. On page 2, from the eleventh line, to omit “**where a particular municipality does not have a deputy mayor or a deputy executive mayor**”.
3. On page 2, in the sixteenth line, after “**power**”, to insert:

; to validate the Property Valuation Ordinance, 1993 (Cape), and provide for other technical arrangements connected thereto