

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES SECOND 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 68B—2002]

REPUBLIEK VAN SUID-AFRIKA

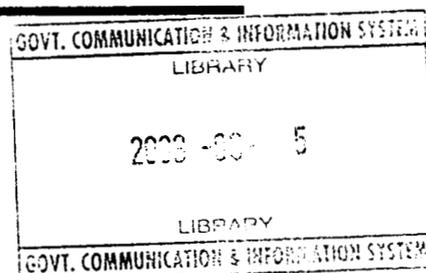
TWEEDE WYSIGINGSWETSONTWERP OP PLAASLIKE REGERING: MUNISIPALE STRUKTURE

*(Soos gewysig deur die Portefeuljekomitee oor Provinsiale en Plaaslike Regering)
(Nasionale Vergadering)
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VIR PROVINSIALE EN PLAASLIKE REGERING)

[W 68B—2002]

ISBN 0 621 33758 7



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.
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BILL

To amend the Local Government: Municipal Structures Act, 1998, so as to regulate the effect of a change in the type of municipality on the terms of office of members of executive committees and executive mayors; and to provide for matters connected therewith.

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

Substitution of section 45 of Act 117 of 1998

1. The following section is hereby substituted for section 45 of the Local Government: Municipal Structures Act, 1998 (hereinafter referred to as the principal Act): 5

“Election of members of executive committees

- 45.** A municipal council must elect the members of its executive committee from among its members at a meeting that must be held—
- (a) within 14 days **[of] after** the council’s election; **[or]**
 - (b) if it is a district council, within 14 days after the last of the local 10 councils has appointed its representatives to the district council; or
 - (c) within 14 days after the date with effect from which the type of the municipality has been changed from any of those mentioned in section 8(e), (f), (g) or (h), 9(c), (d), (e) or (f) or 10(b) or (c) to any of those mentioned in section 8(a), (b), (c) or (d), 9(a) or (b), or 10(a).” 15

Substitution of section 46 of Act 117 of 1998

2. The following section is hereby substituted for section 46 of the principal Act:

“Term of office of members

- 46.** The members of an executive committee are elected for a term ending, subject to section 47, when— 20
- (a) the type of the municipality has been changed from any of those mentioned in section 8(a), (b), (c) or (d), 9(a) or (b) or 10(a) to any of those mentioned in section 8(e), (f), (g) or (h), 9(c), (d), (e) or (f) or 10(b) or (c); or
 - (b) the next municipal council is declared elected.” 25

Amendment of section 48 of Act 117 of 1998

3. Section 48 of the principal Act is hereby amended—

(a) by the substitution for subsection (5) of the following subsection:

“(5) (a) No person may hold office as mayor or [deputy mayor] both mayor and executive mayor for more than two consecutive terms in the same council. 5

(b) No person may hold office as deputy mayor or both deputy mayor and deputy executive mayor for more than two consecutive terms in the same council.

(c) If a person is elected— 10

(i) to fill a vacancy in the office of mayor or deputy mayor, the period between that election and the next election of a mayor or deputy mayor is not regarded as a term; or

(ii) as mayor or deputy mayor where the type of the municipality has been changed from any of those mentioned in section 8(e), (f), (g) or (h), 9(c), (d), (e) or (f) or 10(b) or (c) to any of those mentioned in section 8(a), (b), (c) or (d), 9(a) or (b) or 10(a) during the term of the municipal council concerned, the period between that election and the next election of a mayor or deputy mayor is not regarded as a term.”; and 15 20

(b) by the substitution for subsection (6) of the following subsection:

“(6) A mayor whose two consecutive terms have expired as provided for in subsection (5)(a), may not immediately after the expiry be elected as deputy mayor.”.

Amendment of section 55 of Act 117 of 1998 25

4. Section 55 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If a municipal council chooses to have an executive mayor it must elect an executive mayor and, if the MEC for local government in the province so approves, also an executive deputy mayor, from among its members at a meeting that must be held— 30

(a) within 14 days [of] after the council’s election; [or]

(b) if it is a district council, within 14 days after the last of the local councils has appointed its representatives to the district council; or

(c) within 14 days after the date with effect from which the type of the municipality has been changed from any of those mentioned in section 8(a), (b), (c) or (d), 9(a), (b), (e) or (f) or 10(a) or (c) to any of those mentioned in section 8(e), (f), (g) or (h), 9(c) or (d) or 10(b).”.

Substitution of section 57 of Act 117 of 1998

5. The following section is hereby substituted for section 57 of the principal Act: 40

“Term of office of executive mayors

57. (1) An executive mayor and a deputy executive mayor [— (a)] must be elected for a term ending, subject to [section] sections 58 and 59, when—

(a) the type of the municipality has been changed from any of those mentioned in section 8(e), (f), (g) or (h), 9(c) or (d) or 10(b) to any of those mentioned in section 8(a), (b), (c) or (d), 9(a), (b), (e) or (f) or 10(a) or (c); or 45

(b) the next council is declared elected. [and

(b) **may not serve as executive mayor or deputy executive mayor for more than two consecutive terms. When a person is elected to fill a vacancy in the office of executive mayor or deputy executive mayor, the period between that election and the next election of an executive mayor or deputy executive mayor is regarded as a term.]** 50

- (2) (a) No person may hold office as executive mayor or both executive mayor and mayor for more than two consecutive terms in the same council.
- (b) No person may hold office as deputy executive mayor or both deputy executive mayor and deputy mayor for more than two consecutive terms in the same council. 5
- (c) If a person is elected—
 - (i) to fill a vacancy in the office of executive mayor or deputy executive mayor, the period between that election and the next election of an executive mayor or deputy executive mayor is not regarded as a term; or 10
 - (ii) as executive mayor or deputy executive mayor where the type of the municipality has been changed from any of those mentioned in section 8(a), (b), (c) or (d), 9(a), (b), (e) or (f) or 10(a) or (c) to any of those mentioned in section 8(e), (f), (g) or (h), 9(c) or (d) or 10(b) during the term of the municipal council concerned, the period between that election and the next election of an executive mayor or deputy executive mayor is not regarded as a term. 15
- ~~(2)~~ (3) An executive mayor whose two consecutive terms have expired as provided for in subsection (2)(a), may not immediately after the expiry 20 be elected as deputy executive mayor.”.

Short title

6. This Act is called the Local Government: Municipal Structures Amendment Act, 2003.

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES SECOND AMENDMENT BILL

1. Although provision is made in section 16 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (hereafter “the Structures Act”), for the type of a municipality to be changed, it is not all that clear when such a change may be effected. This is especially true where a change in the type of a municipality would have an effect on the term of office of office bearers. In order to address this uncertainty, amendments to the Structures Act are proposed that would make it clear that an affected office bearer would vacate her or his office where a change in the type of municipality affects such an office bearer’s continued term of office. This would mainly be the case where the type of municipality is changed from an executive committee type to an executive mayoral type, and vice versa.

2.1 Clause 1 of the Bill proposes an amendment to section 45 of the Structures Act to determine the applicable timeframe for the election of members of the executive committee where the type of a municipality has been changed from an executive mayoral type to an executive committee type.

2.2 Clause 2 of the Bill proposes an amendment to section 46 of the Structures Act to make it clear that the term of a member of an executive committee comes to an end where the type of a municipality is changed from an executive committee type to an executive mayoral type.

2.3 Clause 3 of the Bill proposes an amendment to section 48 of the Structures Act to make it clear that—

- (a) a person may not hold office as mayor, or where a type change occurs, as mayor and executive mayor, for more than two consecutive terms; and
- (b) where a person is elected as mayor or deputy mayor to fill a vacancy, that period is not regarded as a term.

2.4 Clause 4 of the Bill proposes an amendment to section 55 of the Structures Act to determine the applicable timeframe for the election of an executive mayor and executive deputy mayor where the type of a municipality has been changed from an executive committee type to an executive mayoral type.

2.5 Clause 5 of the Bill proposes an amendment to section 57 of the Structures Act to make it clear that—

- (a) a person may not hold office as executive mayor, or where a type change occurs, as executive mayor and mayor, for more than two consecutive terms; and
- (b) where a person is elected as executive mayor or executive deputy mayor to fill a vacancy, that period is not regarded as a term.

3. BODIES AND ORGANISATIONS CONSULTED

The Western Cape Department of Local Government
MINMEC for local government

The Bill has been published for public comment in terms of section 154(2) of the Constitution.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. IMPLICATIONS FOR PROVINCES

There are no direct implications for provinces.

6. IMPLICATIONS FOR MUNICIPALITIES

Implications for a municipality would only arise where the existing type of that municipality is changed.

7. PARLIAMENTARY PROCEDURE

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. The Bill does not fall within a functional area listed in Schedule 4 to the Constitution, and does not provide for legislation envisaged in the sections referred to in section 76(3) of the Constitution.