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GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 355 OF 2002

MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT

LOCAL GOVERNMENT LAWS AMENDMENT BIL, 2002

1. I, Fholisani Sydney Mufamadi, Minister for Provincial and Local Government, in terms of section 154 of the Constitution, hereby publish the Local Government Laws Amendment Bill, 2002, for public comment.
2. Comments must please be submitted in writing to –

The Director-General
Attention: Mr P W Heydenrych
Department of Provincial and Local Government
Private Bag X 804
PRETORIA
0001
3. Comments may also be faxed to facsimile number (012) 323 3349 at the above address.
4. Comments must be received by no later than 19 April 2002

KENNISGEWING 355 VAN 2002**MINISTERIE VIR PROVINSIALE EN PLAASLIKE REGERING****WYSIGINGSWETSONTWERP OP PLAASLIKE REGERING, 2002**

1. Ingevolge artikel 154 van die Grondwet, publiseer ek, Fholisani Sydney Mufamadi, Minister vir Provinsiale en Plaaslike Regering, hiermee die Wysigingswetsontwerp op Plaaslike Regering, 2002, vir openbare kommentaar.
2. Kommentaar moet skriftelik gerig word aan –

Die Direkteur-Generaal
Vir Aandag: Mnr P W Heydenrych
Departement van Provinsiale en Plaaslike Regering
Privaatsak X 804
PRETORIA
0001

3. Kommentaar kan ook gefaks word na faksimile nommer (012) 323 3349 by bovermelde adres.
4. Kommentaar moet nie later as 19 April 2002 ontvang word nie.

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 Organised Local Government Act, 1997, so as to dispense with the requirement that all categories of municipalities must be represented in a provincial organisation for it to be recognised in terms of that Act; to amend the Remuneration of Public Office Bearers Act 1998, so as to effect a technical amendment, and to validate the determination and payment of salaries and allowances of members of Municipal Councils in the Provinces of Gauteng and the Western Cape for the 1998/1999 municipal financial year; to amend the Local Government: Municipal Demarcation Act, 1998, so as to effect technical corrections; to provide for additional functions of the Demarcation Board; to provide for a smaller Demarcation Board; to expressly provide for the Minister's role in the appointment of members of the Demarcation Board; to provide for a less onerous procedure for redetermination of a boundary where the MEC and the affected municipalities agree to a redetermination; to make express provision for the publication of the Demarcation Board's decision where an objection was considered; to reduce the period in which the Electoral Commission must make known its views on when a boundary determination takes effect, and to further regulate that process; to make provision for the powers of the Demarcation Board or an investigating committee to collect evidence; to provide for additional powers for the Minister to make regulations; to amend the Local Government: Municipal Structures Act, 1998, so as to amend the Afrikaans text in order to bring it in line with the amendments effected to the English text by the Local Government: Municipal Electoral Act, 2000 and the Local Government: Municipal Structures Amendment Act, 2000; to make provision for an acting mayor and an acting executive mayor where a particular municipality does not have a deputy mayor or a deputy executive mayor, respectively; to provide for a new method of allocating seats on a metropolitan subcouncil to councillors elected on a party vote; to provide for the payment of out of pocket expenses to traditional leaders who participate in the proceedings of municipal councils; to authorise the Minister to regulate the consequences of a revocation of an authorisation in terms of section 84(3) of the Local Government: Municipal Structures Act; to amend section 10G of the Local Government Transition Act, 1993, to comply with the Constitution; to provide for uncontested ward elections; to provide for the election of office bearers of a municipality to be determined by lot if two candidates receive

the same number of votes; to amend the Local Government: Municipal Systems Act, 2000, so as to prohibit a councillor from being appointed as an employee of the municipality concerned; to provide for a general power to levy and recover fees, charges and tariffs; to further regulate the charging of interest on arrears; to provide for legal representation of employees of a municipality; to further regulate clearance certificates for the transfer of property; to amend the Local Government: Municipal Structures Amendment Act, 2000, in order to repeal outdated provisions; and to provide for matters connected therewith.

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

CHAPTER 1

AMENDMENT OF ORGANISED LOCAL GOVERNMENT ACT, 1997

Amendment of section 2 of Act 52 of 1997

1. Section 2 of the Organised Local Government Act, 1997 (Act No. 52 of 1997), is hereby amended by the deletion of the proviso to paragraph (b) of subsection (1).

CHAPTER 2

AMENDMENT OF REMUNERATION OF PUBLIC OFFICE BEARERS ACT, 1998

Amendment of section 7 of Act 20 of 1998, as amended by section 3 of Act 21 of 2000

2. Section 7 of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), is hereby amended-

- (a) by the substitution in subsection (2) for the word "Despite" of the words "Subject to"; and

- (b) by the addition of the following subsection:

"(6) The salaries and allowances paid to any member of a Municipal Council during the 1998/1999 municipal financial year in accordance with-

- (a) Circular 25 of 1998 (as amended by Amendment Slip No. 3 of 1998) issued by the Gauteng Department of Development Planning and Local Government; and

- (b) Proclamation (Western Cape) No. 48/1998 of 4 December 1998, read with Circular C18/1998 issued by the Western Cape Department of Governmental Affairs and Housing,
shall be deemed to have been validly determined and paid under this Act."

CHAPTER 3

AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL DEMARCATION ACT, 1998

Amendment of section 1 of Act 27 of 1998

3. Section 1 of the Local Government: Municipal Demarcation Act, 1998 (hereinafter referred to as the Demarcation Act), is hereby amended-

- (a) by the substitution for the definition of "Department" of the following definition:

"Department' means the Department of **[Constitutional Development]** Provincial and Local Government;";

- (b) by the substitution for the definition of "determination" of the following definition:

"determination' includes any redetermination, and 'determine' and 'redetermine'
[has a] have corresponding **[meaning]** meanings;";

- (c) by the substitution for the definition of "employee" of the following definition:

"employee', except in sections 34(1) and 35(1) **[and 36]**, includes a person seconded to the Board;";

- (d) by the substitution for the definition of "Minister" of the following definition:

"Minister' means the Minister for Provincial **[Affairs and Constitutional Development]** and Local Government; and

- (e) by the substitution for the definition of "this Act" of the following definition:

"this Act' includes the regulations made under section [42] 41."

Substitution of section 4 of Act 27 of 1998

4. 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;
- (b) to render an advisory service pertaining to the functions of the Board and any matter connected to it; and
- (c) to perform such other functions in terms of applicable legislation as may be necessary or required to contribute to a sound system of governance."

Amendment of section 5 of Act 27 of 1998

5. Section 5 of the Demarcation Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Board may require a municipality that may reasonably be affected by a boundary determination in terms of section 21, to provide the Board, or any of its committees, with facilities available to that municipality, including for the holding of meetings."

Amendment of section 6 of Act 27 of 1998

6. Section 6 of the Demarcation Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Board consists of no fewer than ~~[seven]~~ three and no more than ~~[15]~~ 10 members appointed by the President in accordance with section 8."

Amendment of section 8 of Act 27 of 1998

7. Section 8 of the Demarcation Act is hereby amended-
- (a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

"The list must be submitted to the Minister and must consist of –"; and

- (b) by the substitution for subsection (7) of the following subsection:

"(7) The President must, on the advice of the Minister, make the required number of appointments from the list."

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 subsections (4) and (5), and section 26 do 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."; and

- (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."

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 demarcation."

Amendment of section 23 of Act 27 of 1998

10. Section 23 of the Demarcation Act is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

"(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

(b) by the substitution for subsection (3) of the following subsection:

"(3) (a) The Electoral Commission, within [60] 30 days after having received the particulars referred to in subsection (1), must make known its view as envisaged in subsection (2) by notice in the relevant Provincial Gazette, and send a copy of the notice to the Board and the MEC for local government in the province concerned.

(b) A MEC for local government must publish the notice referred to in subsection (2)(b) within three months of the date of the notice published by the Electoral Commission in terms of paragraph (a), and send a copy of the notice to the Board."

Substitution of section 30 of Act 27 of 1998

11. The following section is hereby substituted for section 30 of the Demarcation Act:

"Powers to collect evidence

30. **[For the purposes of its investigation the]** The Board or an investigating committee may –

- (a) by written notice summon a person who in its opinion has information which is material to the performance of the functions of the Board or an investigation to appear before the Board or the committee –
 - (i) to give evidence; or
 - (ii) to produce a document available to that person and specified in the summons;
- (b) call a person present at a Board or committee meeting, whether summoned or not –
 - (i) to give evidence before the Board or committee; or
 - (ii) to produce a document in that person's custody;
- (c) administer an oath or solemn affirmation to that person;
- (d) question that person, or have such a person questioned by a person designated by the Board or committee; and
- (e) retain for a reasonable period a document produced in terms of paragraph (a)(ii) or (b)(ii)."

Amendment of section 41 of Act 27 of 1998

12. Section 41 of the Demarcation Act is hereby amended by the insertion after paragraph (a) of the following paragraph:

"(aA) by prescribing, on the advice of the Board, the particulars that must accompany a request in terms of section 22(1)(c);"

CHAPTER 4**AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998****Amendment of preamble to Act 117 of 1998**

13. The Preamble to the Local Government: Municipal Structures Act, 1998 (hereafter referred to as the Structures Act), is hereby amended by the substitution in the fourteenth line of the Afrikaans text for the word "nedesettings" of the word "nedersettings".

Amendment of section 1 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000

14. Section 1 of the Structures Act, 1998, is hereby amended by the substitution in the Afrikaans text for the definition of "party" of the following definition:

"party" [met betrekking tot –

(a) 'n metro- of plaaslike raad, 'n party bedoel in paragraaf (a) of (b) van item 10 van Bylae 1; of

(b) 'n distriksraad, a party bedoel in paragraaf (a) of (b) van item 4 van Bylae 2] 'n party wat ingevolge die Wet op die Verkiesingskommissie, 1996 (Wet No. 51 van 1996), geregistreer is;"

Amendment of section 12 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000 and section 1 of Act 33 of 2000

15. Section 12 of the Structures Act is hereby amended by the insertion in the Afrikaans text after paragraph (e) of subsection (3) of the following paragraph:

"(eA) in die geval van 'n distriksmunisipaliteit, die getal raadslede wat ingevolge artikel 23 bepaal is om –

(i) partye proporsioneel te verteenwoordig;

- (ii) aangestel te word deur elkeen van die plaaslike rade binne die distriksmunisipaliteit om elke plaaslike munisipaliteit direk te verteenwoordig; en
- (iii) partye van elke distrik bestuursgebied binne daardie distriksmunisipaliteit proporsioneel te verteenwoordig;”.

Amendment of section 21 of Act 117 of 1998, as amended

16. Section 21 of the Structures Act is hereby amended by the addition to subsection (2) of the following proviso:

“Provided that if such a person is designated as a full-time councillor in terms section 18(4), such exemption lapses.”

Amendment of section 24 of Act 117 of 1998, as amended by section 5 of Act 58 of 1999 and section 93 of Act 27 of 2000

17. Section 24 of the Structures Act is hereby amended –

- (a) by the deletion in the Afrikaans text of subsection (1) of the words “of datums”; and
- (b) by the substitution in the Afrikaans text of subsection (2) for the expression “datums” of the expression “n datum”.

Amendment of section 25 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000

18. Section 25 of the Structures Act is hereby amended –

- (a) by the substitution in the Afrikaans text of paragraph (a) of subsection (1) for the expression “Kieswet” of the expression “Wet op die Verkiesingskommissie, 1996 (Wet No. 51 van 1996)”;
- (b) by the deletion in the Afrikaans text of the words preceding paragraph (a) of subsection (3) of the words “of datums”;

- (c) by the deletion in the Afrikaans text of paragraph (a) of subsection (3) of the words "of laaste stembdag"; and
- (d) by the deletion in the Afrikaans text of subsection (4) of the words "of datums", wherever they occur.

Amendment of section 27 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000

19. Section 27 of the Structures Act is hereby amended by the substitution in the Afrikaans text for paragraph (f) of the following paragraph:

- "(f) verkies is om [wyke] 'n wyk te verteenwoordig en wat-
- (i) [op die gedeelte van die stembrief vir wyke dieselfde onderskeidende merk of simbool gebruik het as 'n party wat die verkiesing bestry het,] deur 'n party genomineer is as 'n kandidaat in die wyksverkiesing en wat ophou om 'n lid van daardie party te wees; of
 - (ii) [nie op die gedeelte van die stembrief vir wyke dieselfde onderskeidende merk of simbool gebruik het nie as 'n party wat die verkiesing bestry het,] nie deur 'n party as 'n kandidaat in die wyksverkiesing genomineer is nie, en wat lid van daardie party word."

Amendment of section 35 of Act 117 of 1998

20. Section 35 of the Structures Act is hereby amended by the substitution for subsection (1) of the following subsection:

- "(1) If a municipal council is dissolved in terms of section 34(3)(b) or does not have enough members to form a quorum for a meeting, the MEC for local government in the province must appoint one or more administrators to ensure the continued functioning of the municipality until a new municipal council is elected or until the council has sufficient members for a quorum."

Amendment of section 37 of Act 117 of 1998

21. Section 37 of the Structures Act is hereby amended –

- (a) by the substitution in paragraph (b) for the expression “section 32” of the expression “section 59 of the Local Government: Municipal Systems Act, 2000”; and
- (b) by the substitution in paragraph (e) for the expression “Schedule 5” of the expression “Schedule 1 of the Local Government: Municipal Systems Act, 2000”.

Amendment of section 49 of Act 117 of 1998

22. Section 49 of the Structures Act is hereby amended by the addition of the following subsection:

“(3) If a municipality does not have a deputy mayor, the following persons act as mayor if the mayor is absent or not available:

- (a) A member of the executive committee designated in writing by the mayor; or
- (b) a councillor elected by the members of the executive committee from amongst themselves if the mayor has not designated a member or if the designated member is absent or not available.”.

Amendment of section 56 of Act 117 of 1998

23. Section 56 of the Structures Act is hereby amended –

- (a) by the substitution in paragraph (f) of subsection (3) for the expression “section 32” of the expression “section 59 of the Local Government: Municipal Systems Act, 2000”; and
- (b) by the addition of the following subsection:

“(7) If a municipality does not have a deputy executive mayor, a councillor designated in writing by the executive mayor exercises the powers and performs the duties of the executive mayor if the executive mayor is absent or not available.”.

Substitution of section 63 of Act 117 of 1998

24. 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; 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 number of registered voters in the municipality]** allocated in terms of Schedule 4.

(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 in accordance with Schedule 4.

(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 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."

Amendment of section 64 of Act 117 of 1998

25. Section 64 of the Structures Act is hereby amended by the substitution in the Afrikaans text of subsection (2) for the expression "Metropolitaanse" of the expression "Metropolitaanse".

Amendment of section 81 of Act 117 of 1998, as amended by item 3 of Schedule 3 to Act 32 of 2000 and section 5 of Act 33 of 2000

26. Section 81 of the Structures Act is hereby amended –

(a) by the substitution in the Afrikaans text of subsection (1) for the expression "geïdentifiseer" of the expression "geïdentifiseer"; and

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

"(5) (a) When participating in the proceedings of a municipal council a traditional leader is subject to the appropriate provisions of the Code of Conduct set out in Schedule 5.

(b) (i) A traditional leader who participates in the proceedings of a municipal council is entitled to the payment of out of pocket expenses in respect of such participation.

(ii) A municipal council must determine the criteria for, and calculation of, the out of pocket expenses referred to in subparagraph (i).

(iii) Out of pocket expenses referred to in subparagraph (i) must be paid from the budget of the municipality concerned."

Amendment of section 84 of Act 117 of 1998, as amended by section 6 of Act 33 of 2000

27. Section 84 of the Structures Act is hereby amended

(a) by the substitution for paragraph (c) of the following paragraph:

"(c) The Minister may –

(i) **amend a notice issued in terms of paragraph (a) [to effect technical changes or to regulate the authorisation more effectively]; and**

(ii) regulate the legal, practical and other consequences required by such amendment."; and

(b) by the addition to subsection (3) of the following paragraph:

"(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 and obligations, and administrative and other records; and
- (iii) the continued application of any by-laws and resolutions in the area of the municipalities concerned and the extent of such application."

Substitution of section 86 of Act 117 of 1998, as amended by section 8 of Act 33 of 2000

28. The following section is hereby substituted in the Afrikaans text for section 86 of the Structures Act:

"Beslegting van geskille rakende verrigting van funksies of uitoefening van bevoegdheid

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, 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."

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

29. Section 93 of the Structures Act is hereby amended by the substitution in subsection (5) for paragraph (b) of the following paragraph:

"(b) section 10G of the Local Government Transition Act, 1993 (Act No. 209 of 1993), must be regarded as having been amended –

- (i) by the deletion in paragraph (a) of subsection (3) of the expression "two-thirds"; and
- (ii) by the insertion of the following subsection after subsection (6):

(6A) (a) Despite anything to the contrary in any other law, a municipality must value property for purposes of imposing rates on property in accordance with generally recognised valuation practices, methods and standards.

(b) For purposes of paragraph (a) –

(i) physical inspection of the property to be valued, is optional; and

(ii) in lieu of valuation by a valuer, or in addition thereto, comparative, analytical and other systems or techniques may be used, including –

(aa) aerial photography;

(bb) information technology;

(cc) computer applications and software; and

(dd) computer assisted mass appraisal systems or techniques.”

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

30. Item 1 of Schedule 1 to the Structures Act is hereby amended–

(a) by the substitution in the Afrikaans text for the definition of “**onafhanklike wyksraadslid**” of the following definition:

“**onafhanklike wyksraadslid**” ‘n raadslid wat [op die wykstembrief die onderskeibare merk of simbool gebruik het van ‘n party wat nie ‘n partylys ingevolge item 12 voorgelê het nie] nie deur ‘n party as ‘n kandidaat in ‘n wyksverkiesing genomineer is nie;” and

(b) by the substitution in the Afrikaans text for the definition of “**wykskandidaat wat ‘n party verteenwoordig**” of the following definition:

“**wykskandidaat wat ‘n party verteenwoordig**” ‘n wykskandidaat wat [in ‘n verkiesing wat op die deel van die wykstembrief dieselfde onderskeibare merk

of simbool gebruik het as 'n party wat 'n lys ingevolge item 10 voorgelê het] deur 'n party as 'n kandidaat in 'n wyksverkiezing genomineer is.”.

Insertion of new item after Item 8 of Schedule 1 to Act 117 of 1998

31. The following item is hereby inserted after item 8 of Schedule 1 to the Structures Act:

“Uncontested ward elections

8A. If only one candidate is duly nominated in a ward, an election is not held in that ward and the uncontested ward candidate is deemed to have been elected –

(a) in the case of an election called in terms of section 24(2), with effect from the date set for the election; or

(b) in the case of a by-election, with effect from the date stated in the time table for the by-election as the final date on which nominations for the by-election can be submitted.

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

32. The following item is hereby substituted in the Afrikaans text for item 10 of Schedule 1 to the Structures Act:

“Voorlegging van lyste van kandidate

10. 'n Lys van kandidate mag slegs deur 'n party voorgelê word.”.

Amendment of item 13 of Schedule 1 to Act 117 of 1998, as amended by

33. Item 13 of Schedule 1 to the Structures Act is hereby amended by the substitution for the words “chief electoral officer”, wherever they appear, of the words “Electoral Commission”.

Substitution of item 15 of Schedule 1 to Act 117 of 1998, as amended by section 93 of Act 27 of 2000

34. The following item is hereby substituted in the Afrikaans text for item 15 of Schedule 1 to the Structures Act:

"Prosedure in geval van geen party aansoeke

15. (1) Indien geen party [om registrasie aansoek doen nie, of elke aansoek verwerp word] 'n lys voorgelê het nie, moet 'n tussenverkiesing binne 90 dae vanaf nominasiedag gehou word, en die LUR vir plaaslike regering moet, na oorleg met die Kommissie, die datum vir die verkiesing bepaal.

[(2) Indien geen party om registrasie aansoek doen nie of elke aansoek vir die tussenverkiesing verwerp word –

(a) moet die munisipale bestuurder die hoofverkiesingsbeampste binne 24 uur verwittig;

(b) moet die hoofverkiesingsbeampste binne sewe dae die datum vir 'n verdere verkiesing wat binne 90 dae gehou moet word, bepaal; en

(c) moet die vakatures vakant bly totdat dit deur 'n verkiesing gevul word.

(3)] (2) Artikel 25 is van toepassing op 'n tussenverkiesing in die mate wat daardie artikel toegepas kan word."

Amendment of item 17 of Schedule 1 to Act 117 of 1998, as amended by

35. Item 17 of Schedule 1 to the Structures Act is hereby amended by the substitution for the words "chief electoral officer", wherever they appear, of the words "Electoral Commission".

Amendment of item 18 of Schedule 1 to Act 117 of 1998, as amended by

36. Item 18 of Schedule 1 to the Structures Act is hereby amended by the substitution for subitem (1) of the following subitem:

"(1) (a) If a councillor elected from a party list ceases to hold office, the chief electoral officer must, subject to item 20, declare in writing the person whose name is at the top of the applicable party list to be elected in the vacancy.

(b) Whenever a councillor referred to in paragraph (a) ceases to hold office, the municipal manager concerned must within seven days after the councillor has ceased to hold office, inform the chief electoral officer thereof."

Amendment of item 20 of Schedule 1 to Act 117 of 1998, as amended by

37. Item 20 of Schedule 1 to the Structures Act is hereby amended by the substitution for subitem (1) of the following subitem:

"(1) A party may supplement, change or increase its list at any time, provided that if a councillor elected according to a party list, ceases to hold office, the party concerned may supplement, change or increase its list by not later than 21 days after the councillor has ceased to hold office. The vacancy must be filled [within] as soon as the party concerned has supplemented, changed or increased its list, but not later than 14 days after expiry of the 21 days' period.

Amendment of item 1 of Schedule 2 to Act 117

38. Item 1 of Schedule 2 to the Structures Act is hereby amended –

(a) by the substitution in the Afrikaans text of the definition of "**verkiesing**" for the expression "toespasing" of the expression "toepassing"; and

(b) by the insertion after the definition of "election" of the following definition:

"independent ward councillor" means a councillor who was not nominated by a party as a candidate in a ward election;"

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

39. The following item is hereby substituted in the Afrikaans text for item 4 of Schedule 2 to the Structures Act:

"Voorlegging van lys van kandidate

4. 'n Lys van kandidate mag slegs deur 'n party voorgelê word.'

Substitution of item 9 of Schedule 2 to Act 117 of 1998, as amended by section 93 of Act 27 of 2000

40. The following item is hereby substituted in the Afrikaans text for item 9 of Schedule 2 to the Structures Act:

"Prosedure in geval van geen party aansoek

9. (1) Indien geen party [om registrasie aansoek doen nie, of elke aansoek verwerp word] 'n lys voorgelê het nie, moet 'n tussenverkiesing binne 90 dae van nominasiedag gehou word, en die LUR vir plaaslike regering moet, na oorleg met die Kommissie, die datum vir die verkiesing bepaal.

[(2) Indien geen party aansoek om registrasie doen nie of elke aansoek vir die tussenverkiesing verwerp word –

- (a) moet die munisipale bestuurder die hoofverkiesingsbeampte binne 24 uur in kennis stel;
- (b) moet die hoofverkiesingsbeampte binne sewe dae die datum vir 'n verdere verkiesing bepaal wat binne 90 dae gehou moet word; en
- (c) moet die vakatures vakant bly totdat dit deur 'n verkiesing gevul word.

(3)] (2) Artikel 25 is ingevolge hierdie item van toepassing op 'n tussenverkiesing, tot die mate wat daardie artikel toegepas kan word."

Amendment of item 10 of Schedule 2 to Act 117 of 1998

41. Item 10 of Schedule 2 to the Structures Act is hereby amended by the substitution in the Afrikaans text of subitem (7) for the expression "wtter" of the expression "watter".

Amendment of item 11 of Schedule 2 to Act 117 of 1998

42. Item 11 of Schedule 2 to the Structures Act is hereby amended by the substitution for subitem (1) of the following subitem:

"(1) (a) If a councillor elected from a party list ceases to hold office, the chief electoral officer must, subject to item 13, declare in writing the person whose name is at the top of the applicable party list to be elected in the vacancy.

(b) Whenever a councillor referred to in paragraph (a) ceases to hold office, the municipal manager concerned must within seven days after the councillor has ceased to hold office, inform the chief electoral officer thereof."

Amendment of item 13 of Schedule 2 to Act 117 of 1998, as amended by

43. Item 13 of Schedule 2 to the Structures Act is hereby amended by the substitution for subitem (1) of the following subitem:

"(1) A party may supplement, change or increase its list at any time, provided that if a councillor elected according to a party list, ceases to hold office, the party concerned may supplement, change or increase its list by not later than 21 days after the councillor has ceased to hold office. The vacancy must be filled [within] as soon as the party concerned has supplemented, changed or increased its list, but not later than 14 days after expiry of the 21 days' period.

Amendment of item 17 of Schedule 2 to Act 117 of 1998, as amended by

44. Item 17 of Schedule 2 to the Structures Act is hereby amended –

(a) by the substitution for subitem (1) of the following subitem:

"(1) Every party or independent ward councillor may submit a candidates' list containing the names of councillors, accompanied by a written acceptance by each listed candidate.";

(b) by the substitution for subitem (2) of the following subitem:

"(2) A party or independent ward councillor may not submit more than one list."; and

(c) by the substitution in subitem (5) for the expression "councillor" of the expression "independent ward councillor".

Amendment of item 20 of Schedule 2 to Act 117 of 1998

45. Item 20 of Schedule 2 to the Structures Act is hereby amended by the substitution for subitem (2) of the following subitem:

"(2) (a) If the calculation in subitem (1) gives a surplus, that surplus must compete with other similar surpluses of any other lists, and any seat or seats not allocated under subitem (1) must be awarded in sequence of the highest surplus.

(b) If the surplus for two or more lists is equal the seat or seats must be awarded in sequence of the highest number of votes cast for those lists.".

Amendment of item 23 of Schedule 2 to Act 117 of 1998

46. Item 23 of Schedule 2 to the Structures Act is hereby amended by the substitution in the Afrikaans text for the expression "uiteput" of the expression "uitgeput".

Amendment of item 8 of Schedule 3 to Act 117 of 1998

47. Item 8 of Schedule 3 to the Structures Act is hereby amended by the addition of the following subitem:

"(3) If at the further meeting held in terms of subitem (1) only two candidates are nominated, or if only two candidates remain after an elimination procedure has been applied, and those two candidates receive the same number of votes, the person presiding at such meeting must determine by lot who of the two candidates would hold the office for which the election has taken place."

Repeal of item 1 of Schedule 4 to Act 117 of 1998

48. Item 1 of Schedule 4 to the Structures Act is hereby repealed.

Substitution of item 2 of Schedule 4 to Act 117 of 1998

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

"Allocating seats to parties

2. (1) The seats in the section 63(1)(b) component of a metropolitan subcouncil is 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."

CHAPTER 5

AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000

Amendment of section 1 of Act 32 of 2000

50. Section 1 of the Local Government: Municipal Systems Act, 2000 (hereinafter referred to as the Systems Act), is hereby amended –

- (a) by the insertion after the definition of "labour legislation" of the following definition:

"land" means any land registered under separate title and includes –

- (a) the dominion therein, whether in full or diminished form; and
- (b) a unit as defined in section 1 of the Sectional Titles Act, 1986 (Act No. 95 of 1986);"; and

- (b) by the insertion after the definition of "Minister" of the following definition:

"MINMEC' means the periodic meeting of the Minister and the respective MEC's for local government to discuss matters of mutual interest in a spirit of co-operative government;"

- (c) by the insertion after the definition of "ratepayer" of the following definition:

"registrar of deeds' means a registrar as defined in section 102 of the Deeds Registry Act, 1937 (Act No. 47 of 1937);" and

- (d) by the insertion after the definition of "resident" of the following definition:

"right in land' means –

- (a) any real right in immovable property; or
- (b) any registered lease of land;"

Amendment of section 9 of Act 32 of 2000

51. Section 9 of the Systems Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) A Cabinet member or Deputy Minister initiating the assignment of a function or a power by way of national legislation to municipalities generally must, before the draft legislation providing for the assignment is introduced in Parliament –

- (a) consult the Minister, the national Minister of Finance and organised local government representing local government nationally;
- (b) consider any assessment by the Financial and Fiscal Commission in terms of subsection (4); **[and]**
- (c) publish the draft legislation in terms of section 154(2) of the Constitution; and
- (d) table the draft legislation at MINMEC for discussion.

(2) An MEC initiating the assignment of a function or a power by way of provincial legislation to municipalities in the province generally must, before the draft legislation providing for the assignment is introduced in the relevant provincial legislature –

- (a) consult the MEC responsible for finance in the province, the MEC for local government in the province and organised local government representing local government in the province;

- (b) consider any assessment by the Financial and Fiscal Commission in terms of subsection (4); **[and]**
- (c) publish the draft legislation in terms of section 154(2) of the Constitution; and
- (d) table the draft legislation at MINMEC for discussion.

Amendment of section 11 of Act 32 of 2000

52. Section 11 of the Systems Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) A decision taken by a municipal council or any other political structure or political office bearer of the municipality must be recorded in writing.”.

Amendment of section 62 of Act 32 of 2000

53. Section 62 of the Systems Act is hereby amended by the addition of the following subsection:

“(6) The provisions of this section do not detract from any appropriate appeal procedure provided for in any other applicable law.”.

Amendment of section 67 of Act 32 of 2000

54. Section 67 of the Systems Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“A municipality, in accordance with the Employment Equity Act, 1998, and subject to any applicable collective agreement, must develop and adopt appropriate systems and procedures to ensure fair, efficient, effective and transparent personnel administration, including –”.

Insertion of new section after section 75 of Act 32 of 2000

55. The following section is hereby inserted after section 75 of the Systems Act:

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

75A. (1) A municipality may levy and recover fees, charges or tariffs in respect of any function or service of the municipality.

(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) In determining fees, charges or tariffs under subsection (1), a municipality may-

(a) from time to time by resolution amend or withdraw such determination and determine a date, not earlier than 30 days from the date of the resolution, on which such determination, amendment or withdrawal shall come into operation; and

(b) recover any fees, charges or tariffs so determined or amended, including interest on any outstanding amount.

(4) After a resolution as contemplated in subsection (2) has been passed, the municipal manager must, without delay-

(a) conspicuously display for a period of at least 30 days a copy of the resolution at the main administrative office of the municipality and at such other places within the municipality to which the public has access and as the municipal manager may determine; and

(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;

(iii) the date on which the determination shall come into operation; and

(iv) that any person who desires to object to such determination or amendment shall do so in writing within 30 days after the date on which the notice is first displayed.

(5) Where-

(a) no objection is lodged within the period referred to in subsection (4)(b)(iv), the determination or amendment shall come into operation as contemplated in subsection (3)(a);

(b) an objection is lodged within the period referred to in subsection (4)(b)(iv), the municipality shall consider every objection and may amend or withdraw the determination or amendment and may determine a date other than the date contemplated in subsection (3)(a) on which the determination or amendment shall come into operation.

(6) The municipal manager shall forthwith send a copy of the notice referred to in subsection (4) to the MEC and cause a copy thereof to be published in the manner determined by the council.

Amendment of section 97 of Act 32 of 2000

56. Section 97 of the Systems Act is hereby amended by the addition of the following subsection:

"(3) (a) A municipality may charge interest on arrears at a rate not exceeding one percent higher than the average prime rate of the municipality's bank for the period that such arrears remain unpaid.

(b) Interest on arrears may only be charged in respect of relevant amounts that are outstanding for longer than 30 days.

Insertion of new section after section 109 of Act 32 of 2000

57. The following section is hereby inserted after section 109 of the Systems Act:

"Legal representation of employees of municipality

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

- (a) legal proceedings have been instituted against the employee as a result of any act or omission by the employee in the exercise of his or her powers or the performance of his or her duties;
- (b) the employee 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."

Substitution of section 117 of Act 32 of 2000

58. The following section is hereby substituted for section 117 of the Systems Act:

"Custody of documents

117. Except where otherwise provided, all records and documents of a municipality are in the custody of the municipal manager, or an official designated by the municipal manager."

Substitution of section 118 of Act 32 of 2000

59. The following section is hereby substituted for section 118 of the Systems Act:

"Restraint on transfer of land or right in land

118. (1) A registrar of deeds **[or other registration officer of immovable property]** may not register the transfer of **[property] land** or of any right in land except on production to that **[registration officer] registrar of deeds** of a prescribed certificate—

- (a) issued by the municipality in which that **[property] land** is situated; and
- (b) which certifies that all amounts that became due in connection with that **[property] land** for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

(1A) A prescribed certificate issued by a municipality in terms of subsection (1) is valid for a period of 120 days from the date it has been issued.

(2) In the case of the transfer of **[immovable property]** land or of any right in land by a trustee of an insolvent estate, the provisions of this section are subject to section 89 of the Insolvency Act, 1936 (Act No. 24 of 1936).

(3) An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the **[property]** land in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the **[property]** land.

(4) Subsection (1) does not apply to the first transfer from the State, a provincial government or municipality to a buyer of a residential property which was financed with funds or loans made available by the State, a provincial government or municipality: Provided that nothing in this section 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.

Insertion of new item after item 12 of Schedule 1 to Act 32 of 2000

60. The following item is hereby inserted after item 12 of Schedule 1 to the Systems Act:

"Payment of arrears

12A. A councillor may not be in arrears to the municipality for rates and service charges for a period longer than 3 months."

Amendment of item 14 of Schedule 1 to Act 32 of 2000

61. Item 14 of Schedule 1 to the Systems Act is hereby amended by the substitution for subitem (5) of the following subitem:

"(5) The Commissions Act, 1947 (Act 8 of 1947), or where appropriate applicable provincial legislation, may be applied to an investigation in terms of subitem [(3)] (4).

CHAPTER 6**AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT
ACT, 2000****Amendment of section 15 of Act 33 of 2000**

62. Section 15 of the Local Government: Municipal Structures Amendment Act, 2000, is hereby amended by the deletion of paragraph (a).

CHAPTER 7**MISCELLANEOUS MATTERS****Repeal of legislation**

63. The legislation specified in the first column of the Schedule is hereby repealed to the extent indicated in the second column of the Schedule.

Short title

64. This Act is called the Local Government Law Amendment Act, 2002.

SCHEDULE

| Title, No. and year of law | Extent of repeal |
|--|----------------------------|
| Local Government Ordinance, 1939 (Ordinance No. 17 of 1939)(Former Transvaal) | Section 50 |
| Local Government Ordinance, 1962 (Ordinance No. 8 of 1962)(Former Orange Free State) | Section 119 |
| Regulations for the Administration and Control of Townships in Black Areas, 1962 (Proclamation No. R. 293 of 16 November 1962) | Regulation 11 of Chapter 9 |
| Municipal Ordinance, 1974 (Ordinance No. 20 of 1974)(Former Cape of Good Hope) | Section 96 |
| Local Authorities Ordinance, 1974 (Ordinance No. 25 of 1974)(Former Natal) | Section 175 |
| Municipalities Act, 1979 (Act No. 25 of 1979)(Former Transkei) | Section 94 |
| Black Communities Development Act, 1984 (Act No. 4 of 1984) | Section 54(2)(a) |
| Municipal Act, 1987 (Act No. 17 of 1987)(Former Ciskei) | Section 91 |
| Proclamation No. R. 30 of 9 March 1988 | Regulation 17 |
| Regulations Regarding Local Councils, 1988 (Government Notice No. R. 2517 of 9 December 1988) | Regulation 43(5) |

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT LAW AMENDMENT BILL, 2002

1. In terms of the Organised Local Government Act, 1997, a provincial local government organisation may only be recognised if all the different categories of municipalities in the province in question are represented in that organisation. As a result of the limited number of Category A municipalities in the country, it is proposed that the said requirement be removed in order to facilitate the recognition of a provincial local government organisation that represents the majority of municipalities in the province in question.

2.1 Prior to the coming into operation of the Remuneration of Public Office Bearers Act, 1998 ("the Act"), the authority to determine councillor allowances vested in the respective MEC's responsible for local government. During the 1998/1999 municipal financial year unauthorised payments in respect of the allowances of municipal councillors arose from the determinations made in this regard by the Gauteng Provincial Government and the Western Cape Provincial Government, respectively.

These payments occurred as a result of circulars issued by the respective MEC's in contravention of the Act. These circulars were bona fide errors on the part of the provincial governments concerned. The Bill proposes an amendment to the Remuneration of Public Office Bearers Act so as to validate the circulars and consequently all payments made in terms thereof.

2.2 Arguments have been raised that the introductory words of section 7(2) of the Act (viz. "Despite the provisions of subsection (1) ..."), were intended to oust the power of the Minister to determine the upper limits of allowances of appointed councillors. This was never the intention, and an amendment is proposed to clarify the position.

3. The Municipal Demarcation Board has requested various amendments to the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998). Most of the amendments proposed are of a technical nature so as to either correct outdated references, or to clarify matters of process or interpretation. The proposed amendments that introduce new principles into the Demarcation Act can be summarised as follows:

(a) An amendment to section 4 is proposed that would empower the Demarcation Board to render advice on matters pertaining to demarcation. The Demarcation Board is currently assisting various departments to align their functional boundaries with municipal boundaries.

(b) An amendment to section 6 is proposed that would reduce the number of members of the Demarcation Board. Whilst the Demarcation Board would continue to exist, it is expected that it would only need a limited number of members to perform its functions. A Board consisting of minimum 3 and maximum 10 members is being proposed.

(c) An amendment to section 21 is proposed that would provide for a limited process to be followed in redetermining a municipal boundary where the MEC and the affected municipalities agree to such a redetermination.

(d) An amendment to section 23 is proposed to correct the process following the determination of a boundary, and to reduce the time for response by the Electoral Commission. The present wording of section 23(1) does not allow for objections to demarcations to be finalised before the Electoral Commission is informed of the determination of a boundary.

(e) An amendment to section 41 is proposed to allow the Minister to prescribe regulations regarding the information required by the Demarcation Board when a request for the determination of a boundary has been received from a municipality.

4.1 The amendments effected to the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), by the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000), only amended the English text of the Structures Act. In like manner, section 8 of the Local Government: Municipal Structures Amendment Act, 2000 (Act No. 33 of 2000), only amended the English text of section 86 of the Structures Act. In order to preserve the integrity of the two texts of the Structures Act, it is proposed that the relevant Afrikaans provisions be amended.

4.2 In terms of sections 48(1) and 55(1) of the Structures Act, the MEC for local government in a particular province must approve the election of a deputy mayor and a deputy executive mayor, respectively. In at least one province, the MEC for local government has not approved the election of deputy mayors or deputy executive mayors. This has the effect that no provision is made for acting mayors and acting executive mayors when the mayor or executive mayor is absent or not available. Amendments to sections 49 and 56, respectively, are proposed to provide for acting mayors and acting executive mayors.

4.3 The current position regarding the composition of metropolitan subcouncils has proved to be near impossible to implement. A new method of allocating seats to parties is being proposed that is not dependent on the size of a subcouncil being determined first. The proposed method would also have the effect of allocating all seats of councillors elected on a party vote to the respective subcouncils. Amendments to section 63 and schedule 4 are proposed in this regard.

4.4 In order to create an enabling environment for traditional leaders to participate in the proceedings of a municipal council as envisaged in section 81 of the Structures Act, a policy decision was taken to provide for the payment of out of pocket expenses in respect of such participation. An amendment to the said section 81 is proposed that would make provision for the payment of such expenses.

4.5 An amendment to section 84(3) is proposed enabling the Minister to revoke a notice authorising a local municipality to perform certain functions or exercise certain powers of district municipalities. Currently no provision pertaining to the revocation of such notice exist. An amendment to the Minister's power to amend such a notice is also proposed.

4.6 An amendment to section 93 of the Structures Act is proposed so as to make it clear that the majority required by section 160(3)(b) of the Constitution applies to the adoption of a budget.

4.7 The Structures Act does not make provision for uncontested ward elections. An amendment to Schedule 1 is proposed that would dispense with the holding of an election where only one candidate has been nominated.

4.8 During the recent local government elections, certain municipalities deadlocked on the election of certain office bearers. In order to avoid the recurrence of this situation, an amendment to item 8 of Schedule 3 to the Structures Act is proposed that would allow the result to be determined by lot.

5.1 A number of amendments to the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) are proposed. It is proposed that section 9 be amended to allow for the tabling at MINMEC of draft legislation pertaining to the assignment of a function or power by way of national legislation to municipalities generally. Similarly, technical amendments in regard to section 11 (Executive and legislative authority), section 62 (Appeals) and section 67 (Human resource development) are proposed.

5.2 Uncertainty exists regarding the power of a municipality to levy and recover fees, changes or tariffs for services provided by it. An amendment to section 75 is proposed to confirm this power of municipalities. It is proposed that section 97, pertaining to the contents of a credit control and debt collection policy be amended so as to allow a municipality to charge interest on arrears.

5.3 The need has been identified to make provision for a municipality to provide legal representation for employees where an employee is faced with legal proceedings that arose from the employee's scope of work. An appropriate amendment is proposed that would enable municipalities to provide legal representation to its employees.

5.4 Numerous practical problems are being experienced in respect of the clearance certificates required by section 118 of the Systems Act. After extensive consultations with various stakeholders, an amendment to section 118 is now proposed that attempts to address the interpretation and practical problems being experienced. It is intended to also issue regulations that would require a district municipality to inform the registrar of deeds of property in respect of which monies are due to the district municipality in order for the registrar of deeds to determine when two certificates are required. Other laws that require clearance certificates are expressly repealed in order to create certainty.

5.5 It is proposed that Schedule 1 to the Act (Code of Conduct for Councillors) be amended by inserting a provision to the effect that a councillor may not be in arrears to the municipality for rates and service charges for a period longer than three months.

Chapter 1 of the Bill contains the proposed amendments to the Organised Local Government Act, 1997.

Chapter 2 of the Bill contains the proposed amendments to the Remuneration of Public Office Bearers Act, 1998.

Chapter 3 of the Bill contains the proposed amendments to the Local Government: Municipal Demarcation Act, 1998.

Chapter 4 of the Bill contains the proposed amendments to the Local Government: Municipal Structures Act, 1998.

Chapter 5 of the Bill contains the proposed amendments to the Local Government: Municipal Systems Act, 2000.

Chapter 6 of the Bill contains the proposed amendments to the Local Government: Municipal Structures Amendment Act, 2000.

Chapter 7 of the Bill addresses miscellaneous matters.

Bodies/Organisations consulted

The Gauteng Department of Development Planning and Local Government
The Western Cape Department of Planning, Local Government and Housing
Municipal Demarcation Board
The Chief Registrar of Deeds

Financial implications

If the Bill is not passed the payments made in terms of the circulars will have to be recovered. The exact amounts involved are not known to the Department.

Implications for Provinces

None

Implications for Municipalities

If the Bill is passed, the salaries and allowances paid in accordance with the relevant circulars to councillors in the Provinces of Gauteng and the Western Cape would not be regarded as unauthorised expenditure.

Relevant municipalities would have to make provision in their budgets for the payment of out of pocket expenses to traditional leaders who participate in the proceedings of their councils.

Parliamentary procedure

The Department of Provincial and Local Government is 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, nor does it provide for legislation envisaged in the sections referred to in section 76(3) of the Constitution. Although the Bill provides for legislation envisaged in Chapter 13 of the Constitution, the Bill does not affect the financial interests of the provincial sphere of government.

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