



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 520 Cape Town 13 October 2008

No. 31509

THE PRESIDENCY

No. 1098

13 October 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 19 of 2008: Local Government Laws Amendment Act, 2008.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

Act No. 19, 2008

LOCAL GOVERNMENT LAWS
AMENDMENT ACT, 2008

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.

(English text signed by the President.)
(Assented to 9 October 2008.)

BILL

To amend the—

Local Government: Municipal Demarcation Act, 1998, so as to insert a definition; and to provide for determinations of municipal boundaries to take effect on the commencement of the following municipal financial year;

Local Government: Municipal Structures Act, 1998, so as to insert a definition; to provide for consequential amendments pertaining to interventions in municipalities; to provide for amendments to provisions relating to ward committees; and to provide for authorisations and adjustments of powers and functions to take effect on the commencement of the following municipal financial year;

Local Government: Municipal Systems Act, 2000, so as to substitute a definition; to provide that the term of employment of a municipal manager may not exceed a maximum of five years; to align certain delegations with the Local Government: Municipal Finance Management Act, 2003; to regulate the participation of municipal staff members in national, provincial and local elections; to amend the Minister's regulatory powers; to provide for a municipality to provide an owner with copies of accounts sent to the occupier of such property; to provide for a correction in the Afrikaans text of section 106; to refine the process to investigate maladministration and related matters; to provide for the exemption of municipalities from provisions of the said Act, and to amend the Code of Conduct for Councillors and Municipal Staff in order to align it with the Municipal Finance Management Act; and

Local Government: Municipal Property Rates Act, 2004, so as to substitute certain definitions; to allow quantification in terms of cost of relief measures to be dealt with through the municipal budget; to allow for municipalities not to value public service infrastructure if there is no intention to levy rates; to correct certain citations; and to allow for the curbing of rates revenue;
to rationalise local government laws that have become obsolete as a result of local government legislation that was enacted since 1994; 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 LOCAL GOVERNMENT: MUNICIPAL DEMARCATION ACT, 1998

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Amendment of section 1 of Act 27 of 1998, as amended by section 4 of Act 51 of 2002

1. Section 1 of the Local Government: Municipal Demarcation Act, 1998 (in this Chapter referred to as the Demarcation Act), is hereby amended by the insertion after the definition of “Minister” of the following definition:

“**‘municipal financial year’** means the financial year of a municipality commencing on 1 July each year and ending on 30 June of the following year.” 10

Amendment of section 23 of Act 27 of 1998, as amended by section 10 of Act 51 of 2002

2. Section 23 of the Demarcation Act is hereby amended by the addition of the following subsection: 15

“(4) (a) A determination referred to in subsection (2)(b) takes effect on the commencement date of the municipal financial year following the date of publication of the notice effecting such determination.

(b) The Board must, at least six months prior to the commencement of the municipal financial year in which boundary determinations are to take effect, inform the Minister of Finance of such determinations. 20

(c) The Minister of Finance may, in exceptional cases, including those referred to in section 87 of the Municipal Structures Act, 1998 (Act No. 117 of 1998), decide on a different or shorter period than the period referred to in paragraph (a) and (b).” 25

CHAPTER 2

AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT, 1998

Amendment of section 1 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000 30

3. Section 1 of the Local Government: Municipal Structures Act, 1998 (in this Chapter referred to as the Structures Act), is hereby amended by the insertion after the definition of “municipal council” of the following definition:

“**‘municipal financial year’** means the financial year of a municipality commencing on 1 July each year and ending on 30 June of the following year.” 35

Amendment of section 34 of Act 117 of 1998

4. Section 34 of the Structures Act is hereby amended—

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

“(3) The MEC for local government in a province, by notice in the *Provincial Gazette*, may dissolve a municipal council in the province if— 40

(a) the Electoral Commission in terms of section 23(2)(a) of the Demarcation Act is of the view that a boundary determination affects the representation of voters in that council, and the remaining part of the existing term of municipal councils is more than one year; or 45

(b) an intervention in terms of section 139 of the Constitution has not resulted in the council being able to fulfil its obligations in terms of legislation.”; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) The MEC for local government in a province may dissolve a municipal council in a province in accordance with the provisions of section 139 of the Constitution of the Republic of South Africa, 1996.”.

Amendment of section 35 of Act 117 of 1998, as amended by section 13 of Act 51 of 2002

5. 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)]** section 34(4) 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 73 of Act 117 of 1998

6. Section 73 of the Structures Act is hereby amended—

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

“(1) If a metro or local council **[decides to have]** establishes ward committees, it must establish a ward committee for each ward in the municipality.”; and

(b) by the addition of the following subsection:

“(5) (a) Out of pocket expenses referred to in paragraph (c) must be paid from the budget of the municipality in question.

(b) A metro or local council must develop a policy and determine criteria for and calculation of the out of pocket expenses referred to in paragraph (c) based on a provincial framework determined by the MEC subject to paragraph (e).

(c) A metro or local council may make arrangements for the payment of out of pocket expenses to members of ward committees in respect of participation by ward committee members in the activities of the ward committees.

(d) A municipal council may allocate funds and resources to enable ward committees to perform their functions, exercise their powers and undertake development in their wards within the framework of the law.

(e) The Minister must determine a national framework including criteria for the calculation of the out of pocket expenses referred to in paragraph (b).”

Amendment of section 74 of Act 117 of 1998

7. Section 74 of the Structures Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) has such duties and powers as the metro or local council may delegate to it in terms of section **[32]** 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).”.

Substitution of section 75 of Act 117 of 1998

8. The following section is hereby substituted for section 75 of the Structures Act:

“Term of office of members

(1) The section 73(2)(b) members of a ward committee are elected for a term **[determined by the metro or local council]** that corresponds with the term referred to in section 24 of this Act.

(2) The Minister may by notice in the *Government Gazette* prescribe regulations for the implementation of subsection (1).”.

Amendment of section 84 of Act 117 of 1998, as amended by section 6 of Act 33 of 2000 and section 19 of Act 51 of 2002

9. Section 84 of the Structures Act is hereby amended by the addition of the following subsection:

- “(4) (a) Subject to paragraph (c), any authorisation, amendment of an authorisation or revocation of an authorisation under subsection (3) takes effect on the commencement date of the municipal financial year following the date of publication of the notice effecting such authorisation or amendment or revocation. 5
- (b) The Minister must inform the Minister responsible for finance of his or her intention to publish a notice contemplated in paragraph (a) at least six months before the notice is to take effect in terms of that paragraph. 10
- (c) Paragraph (a) does not apply if any authorisation, amendment of an authorisation or revocation of an authorisation under subsection (3) is to coincide with an election of the council of an affected municipality.”. 15

Amendment of section 85 of Act 117 of 1998, as amended by section 7 of Act 33 of 2000 15

10. Section 85 of the Structures Act is hereby amended by the insertion after subsection (9) of the following subsection:

- “(9A) (a) Subject to paragraph (c), any adjustment of the division of functions and powers under this section takes effect on the commencement date of the municipal financial year following the date of publication of the notice effecting such adjustment. 20
- (b) The MEC or Minister, as the case may be, must inform the national Minister responsible for finance of his or her intention to publish a notice contemplated in paragraph (a) at least four months before the notice is to take effect in terms of that paragraph. 25
- (c) Paragraph (a) does not apply if any adjustment of the division of powers and functions under this section is to coincide with an election of the council of an affected municipality.
- (d) The Minister of Finance may, in exceptional cases, including those referred to in section 87 of Municipal Structures Act, 1998 (Act No 117 of 1998), decide on a different or shorter period than the period referred to in paragraph (a) and (b).” 30

CHAPTER 3**AMENDMENT OF LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000 35****Amendment of section 1 of Act 32 of 2000, as amended by section 35 of Act 51 of 2002 and section 1 of Act 44 of 2003**

11. Section 1 of the Local Government: Municipal Systems Act, 2000 (in this Chapter referred to as the Systems Act), is hereby amended by the substitution for the definition of “political office bearer” of the following definition: 40

“ ‘political office bearer’ means the speaker, executive mayor, deputy executive mayor, mayor, deputy mayor or a member of the executive committee as referred to in the Municipal Structures Act;”.

Amendment of section 57 of Act 32 of 2000, as amended by Act 44 of 2003

12. Section 57 of the Systems Act is hereby amended by the substitution in subsection (6) for paragraph (a) of the following paragraph: 45

“(a) be for a fixed term of employment up to a maximum of five years, not exceeding a period ending [two years] one year after the election of the next council of the municipality;”.