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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**DEPARTMENT OF CO-OPERATIVE GOVERNANCE****NOTICE 332 OF 2020****LOCAL GOVERNMENT: MUNICIPAL DEMARCATION BILL, 2020**

The Minister for Cooperative Governance and Traditional Affairs intends introducing the Local Government: Municipal Demarcation Bill, 2020 in the National Assembly.

The Bill and the explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly, for public comments.

**Members of the public are invited to submit written comments before 29 July 2020, to the following address:**

**By post to:** The Director-General

**For attention: Dr Kevin Naidoo**

Department of Cooperative Governance

Private Bag X804

**PRETORIA**

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**By e-mail to:** [kevin@cogta.gov.za](mailto:kevin@cogta.gov.za)

A copy of the Bill can be found on the website of the Department of Cooperative Governance at: [www.cogta.gov.za](http://www.cogta.gov.za), and may also be obtained from the Government Printers.

Comments received after the closing date will not be considered.

REPUBLIC OF SOUTH AFRICA

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**LOCAL GOVERNMENT: MUNICIPAL DEMARCATION BILL, 2020**

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(As introduced in the National Assembly (proposed section 75 Bill);  
(The English text is the official text of the Bill)

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(Minister for Cooperative Governance and Traditional Affairs)

[B ---2020]

## ACT

**To provide for the establishment and operations of the Municipal Demarcation Board; the criteria and procedures for the determination and redetermination of municipal boundaries and ward boundaries; the establishment of an Appeals Authority; and to provide for matters incidental thereto.**

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## CHAPTER 1

### INTERPRETATION AND APPLICATION OF ACT

#### 1 Definitions

(1) In this Act, unless the context otherwise indicates-

“**Appeals Authority**” means the Demarcation Appeals Authority established in terms of this Act;

“**Board**” means the members of the Board as established by section 6;

“**Chief Executive Officer**” means the person who is appointed to head the administration of the Municipal Demarcation Board.

“**Committee**” means any committee of the Board established in terms of section 15 and includes an investigating committee contemplated in section 30;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Delimitation**” means the determination or redetermination of ward boundaries.

“**Demarcation**” means the determination or redetermination of municipal boundaries.

“**Department**” means the department responsible for local government;

“**Determination**” includes any redetermination, and “determine” and “re-determine” have corresponding meanings;

“**Electoral Commission**” means the Electoral Commission established by section 3 of the Electoral Commission Act, 1996 (Act No. 51 of 1996);

“**Employee**”, includes a person seconded to the Board;

“**Financial year**” means the financial year of the Municipal Demarcation Board, commencing on 1 April and ending on 31 March;

“**Local Community**” means a group of people living in an area directly or indirectly affected by a municipal boundary determination or ward delimitation.

“**MDB**” means the Municipal Demarcation Board;

“**MEC for local government**” means the member of the Executive Council of a province responsible for local government in the Province;

“**Metropolitan area**” means an area recognised as a metropolitan area in terms of the Municipal Structures Act;

“**Minister**” means the national Minister responsible for local government;

“**Municipal Demarcation Board**” means the organisation that is comprised of the members of the Board and the administration;

“**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;

“**Municipality**” means a municipality mentioned in section 155 (6) of the Constitution and includes a municipality which existed when this Act took effect;

“**Organ of state**” means an organ of state as defined in section 239 of the Constitution;

“**Political office-bearer**” means-

- (a) the position of chairperson, deputy chairperson, secretary, deputy secretary or treasurer of a registered political party nationally or in any province, region or other area in which that party operates; or

- (b) any position in a political party that is equivalent to a position mentioned in paragraph (a), irrespective of the title designated to the position;

“**President**” means the President acting as the head of the national executive in terms of section 85 (2) of the Constitution;

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“**SALGA**” means the South African Local Government Association recognised in terms of the Organised Local Government Act, 1997 (Act No. 52 of 1997), as the national organisation representing municipalities;

“**Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**Systems Act**” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

“**This Act**” includes the Regulations made under section 53.

(2) When in this Act the Minister is required to act in consultation with the MECs for local government, the Minister must act with the concurrence of the majority of those MECs for local government after all the MECs for local government have been consulted.

## CHAPTER 2

### MUNICIPAL DEMARCATION BOARD

#### Part 1: Establishment, function and general powers of Municipal Demarcation Board

##### 2. Establishment

(1) The Municipal Demarcation Board is established in accordance with section 155(3)(b) of the Constitution.

(2) The MDB consists of the-

- (a) members of the Board appointed in terms of section 5 of this Act; and
- (b) the administration appointed in terms of section 18 of the Act.

##### 3. Status

The MDB -

- (a) is a juristic person;
- (b) is independent; and

- (c) must be impartial and perform its function without fear, favour or prejudice.

#### **4. Functions of the MDB**

The functions of the MDB are to-

- (a) determine or re-determine municipal boundaries in accordance with this Act and other appropriate legislation enacted in terms of Chapter 7 of the Constitution;
- (b) render an advisory service in respect of matters provided for in this Act and other appropriate legislation when so requested.
- (c) delimit wards for all municipalities that must have wards;
- (d) conduct municipal capacity assessments; and
- (e) make recommendations to Parliament on provincial boundary matters, when the matter arises during the course of municipal boundary determination.

#### **5. General powers of Municipal Demarcation Board**

The MDB may-

- (a) do all that is necessary or expedient to perform its function effectively, which includes the power to -
  - (i) determine its own staff establishment, and appoint employees in posts on the staff establishment having due regard to available funds;
  - (ii) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act or function;
  - (iii) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;
  - (iv) open and operate its own bank accounts;
  - (v) insure itself against any loss, damage or risk;
  - (vi) perform legal acts, including acts in association with or on behalf of any other person or organ of state;
  - (vii) institute or defend any legal action;
  - (viii) collect and disseminate relevant information; and
  - (ix) do anything that is incidental to the exercise of any of its powers.
- (b) not borrow money or overdraft on its bank accounts, unless authorised by the Public Finance Management Act.
- (c) require a municipality that may reasonably be affected by a boundary determination, to provide the Board or any of its committees with facilities, available to that municipality, for the holding of meetings.



(d) generate revenue, for the purpose of funding organizational projects that cannot be accommodated from the allocation.

## 6. Members of the Board

(1) The Board consists of members appointed by the President of the Republic of South Africa in terms of section 9 of this Act.

(2) The business and affairs of the MDB must be managed by and under the direction of the members of the Board, who have the authority to exercise all of the powers and perform any of the functions of the Board, except to the extent that this Act provides otherwise.

(3) The Chairperson is, for the purposes of the Public Finance Management Act, the executive authority of the Board.

(4) The Board is responsible for corporate governance by-

- (a) steering the organisation and setting the strategic direction;
- (b) approving policy and planning that give effect to the strategic direction;
- (c) overseeing and monitoring of implementation and execution of the policy and planning by the organisation; and
- (d) ensuring accountability for organisational performance.

## Part 2: Membership of Board

### 7. Composition

(1) The Board consists of no fewer than seven and no more than ten members.

(2) The Minister -

(a) must determine the number of the members of the Board by notice in the *Government Gazette*; and

(b) may from time to time alter the number determined in terms of paragraph (a), but a reduction in the number may only be effected by not filling a vacancy when such a vacancy arises.

(3) The composition of the Board must -

(a) reflect the broad composition of the South African Society; and

(b) collectively represent a pool of knowledge concerning issues relevant to municipal demarcation.

### 8. Qualifications

(1) A member of the Board must be a South African citizen and have a qualification or experience in or knowledge in relation to -

(a) local government generally; or

(b) any of the following:

- (i) development economics;
- (ii) integrated development planning;
- (iii) community development;
- (iv) traditional leadership and traditional communities;
- (v) local government and municipal administration;

- (vi) municipal finance;
- (vii) municipal services;
- (viii) social or economic geography;
- (ix) town and regional planning;
- (x) legal and constitutional matters affecting local government;
- (xi) land survey, cartography and geographical formation systems;
- (xii) public health care;
- (xiii) transport planning; or
- (xiv) information technology.

(2) The following persons are disqualified from becoming or remaining a member of the Board:

- (a) an unrehabilitated insolvent;
- (b) a person who is placed under curatorship;
- (c) a person who is declared to be of unsound mind by a court of the Republic;
- (d) a person who after 4 February 1997 has been convicted of an offence and sentenced to imprisonment without the option of a fine for a period of not less than 12 months;
- (e) a political office-bearer of a political party, whether in a permanent, temporary or acting capacity and any political representative in the local, provincial or national legislature; or
- (f) a fulltime employee of an organ of state.

(3) A disqualification in terms of subsection (2) (d) ends five years after the imprisonment has been completed.

## 9. Appointment procedure

(1) Whenever it is necessary to appoint members of the Board, the Minister must -

- (a) through advertisements in a newspaper circulating nationally, invite persons who comply with section 8 to apply within a specified period for appointment as a member; and
- (b) after consultation with the President, establish a selection panel consisting of -
  - (i) the Chief Justice, or a judge from the Constitutional Court designated by the Chief Justice, who must also be the convenor of the panel;
  - (ii) a person with specific knowledge of boundary demarcation designated by the Minister after consultation with the MECs for local government;
  - (iii) a person with specific knowledge of boundary demarcation designated by SALGA;
  - (iii) the Chairperson of the Portfolio committee responsible for local government in the National Assembly, or a person designated by the Chairperson;

- (iv) the Chairperson of the Select Committee of the National Council of Provinces responsible for local government matters, or a person designated by the Chairperson; and
  - (v) the Chairperson of the National House of Traditional Leaders, or a person designated by the Chairperson.
- (2) For the purposes of any subsequent establishment of a selection panel, a person designated in terms of subsection (1) (b) remains designated until replaced by the designating organisation.
- (3) The selection panel may determine its own procedure including its decision-making procedure, but must act in a transparent and open way.
- (4) The selection panel must consider all applications and from amongst the applicants compile a list of nominees taking into account sections 7(3) and 8.
- (5) The list referred to in subsection (4) must be submitted to the Minister and must consist of three more names than the number of appointments that must be made.
- (6) If the selection panel is unable to compile a list consisting of the required number of nominees, the procedure set out in subsections (1) (a), (4) and (5) must be repeated, except that applicants who applied in the first round -
- (a) need not reapply; and
  - (b) must be considered when the list is compiled in the second round.
- (7) The President must make the required number of appointments from the list, and publish the names of appointees in the *Government Gazette*.
- (8) As soon as a vacancy has occurred in the Board, the Minister must within 30 days of receiving the Board's written notification of the vacancy -
- (a) recommend to the President to fill the vacancy from the additional names that were submitted to the President in terms of subsection (5); or
  - (b) initiate the process outlined in this section if such persons referred to in subsection(5) are not available to fill a vacancy.
- (9) Subsection (8) does not apply if the Minister wants to reduce the number of members in terms of section 7(2)(b).

## 10. Terms of office

- (1) (a) The term of office of members of the Board is seven years, calculated from the date of appointment by the President.
- (b) If a vacancy arises and the President appoints a new member of the Board, the term of that member ends when the next Board is appointed by the President.
- (2) When the term contemplated in subsection (1) expires, a member may, subject to subsection (3), be reappointed in accordance with section 9.
- (3) A person may not hold office as a member of the Board for a period of more than two consecutive terms.
- (4) A person ceases to be a member of the Board when that person -
- (a) is no longer eligible under section 8 to be a member;

- (b) resigns;
- (c) is absent from three or more meetings of the Board without being granted leave of absence by the Chairperson; or
- (d) is removed from office in terms of subsection (7).

(5) A member of the Board may resign by giving at least three months' written notice to the Minister, but the Minister may accept a shorter period in a specific case.

(6) A member of the Board is regarded as having resigned if that member -

- (a) accepts nomination for the National Assembly, the National Council of Provinces, a provincial legislature or a municipal council; or
- (b) is a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of a provincial legislature or a member of a municipal council and fails to resign from such office within 30 days of having been appointed as a member of the Board.

(7) (a) The President may remove a member of the Board from office, but only on the ground of misconduct, incapacity or incompetence.

(b) A decision to remove such a member of the Board on the ground of misconduct or incompetence must be based on a finding to that effect by an investigating tribunal appointed by the President.

(c) The President may suspend a member of the Board who is under investigation under paragraph (b).

(8) Members are appointed on a part-time basis, except for the chairperson whose appointment must be full-time.

## 11. **Conditions of appointment of members**

(1) The conditions of service, remuneration, allowances and other benefits of members of the Board must from time to time be determined by the Minister, by notice in the *Government Gazette*, after consultation with the Minister for Finance.

## 12. **Chairperson and deputy chairperson**

(1) The President appoints one of the members of the Board as the chairperson and another member as the deputy chairperson of the Board.

(2) The chairperson and the deputy chairperson hold office as chairperson and deputy chairperson for the duration of their terms of office as members of the Board.

(3) The deputy chairperson acts as chairperson if -

- (a) the chairperson is absent or unable to perform the functions of chairperson; or
- (b) the office of chairperson is vacant.

## 13. **Meetings**

(1) The chairperson of the Board decides when and where the Board meets, but must convene a meeting if a majority of the members of the Board request

the chairperson in writing to convene a Board meeting at a time and place set out in the request.

(2) The chairperson or the deputy chairperson presides at meetings of the Board, but if both are absent from a meeting, the members of the Board present must elect another member to preside at the meeting.

(3) The majority of the members constitutes a quorum for a meeting of the Board.

(4)(a) A question before the Board is decided by a supporting vote of at least the majority of the members of the Board.

(b) In the event where a majority vote cannot be reached, the chairperson of the meeting will have the casting vote.

#### **14. Rules of procedure**

(1) The members of the Board must-

(a) determine rules of procedure for conducting its business;

(b) keep minutes of its proceedings and decisions; and

(c) make rules regarding the effective corporate governance of the Board, the distinct roles of, and the relationship between, the Chairperson of the Board and the Chief Executive Officer.

(2) The Board may, by notice in the *Government Gazette*, make rules regarding ancillary or incidental administrative or procedural matters that are necessary to prescribe for the proper performance by the Board of its functions.

#### **15. Committees**

(1) The Board must establish at least the following committees:

(a) Audit and Risk Governance Committee;

(b) Remuneration and Performance Committee.

(2) The Board may -

(a) establish one or more committees to assist the Board in the performance of its function or the exercise of any of its powers; and

(b) dissolve a committee at any time.

(3) The Board -

(a) must determine the function of a committee;

(b) must appoint the chairperson and other members of a committee;

(c) may authorise a committee to co-opt advisory members within limits determined by the Board;

(d) may remove a member of a committee from office at any time; and

(e) may determine a committee's procedure.

(4) When appointing members to a committee, the Board is not restricted to members of the Board, but at least one member must be a member of the Board.

(5) Sections 10 and 17 are applicable to members of a committee and when those sections are applied to members of a committee a reference in those

sections to the Board and a member of the Board must be read as a reference to a committee and a member of a committee, respectively.

(6) The Board determines the remuneration, allowances and other conditions of service of members of a committee who are not -

- (a) members;
- (b) employees; or
- (c) in the service of an organ of state.

#### **16. Assignment of powers and duties**

- (1) When necessary for the proper performance of its function, the Board may-
- (a) delegate any of its powers, excluding the power to make the final decision on the determination of a municipal boundary, to -
    - (i) a member of the Board;
    - (ii) a committee of the Board; or
    - (iii) an employee; or
  - (b) instruct any such member, committee or employee to perform any of the Board's duties.
- (2) A delegation or instruction in terms of subsection (1) -
- (a) is subject to any conditions and directions the Board may impose; and
  - (b) does not divest the Board of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The Board may confirm, vary or revoke any decision taken by a director of the Board, committee, or employee, in consequence of a delegation or instruction.

#### **17. Conduct of members**

- (1) A member of the Board -
- (a) must perform the functions of office in good faith and without fear, favour or prejudice;
  - (b) must disclose any personal or any private business interest that that member or any spouse, partner or business associate of that director may have in any matter before the Board and must withdraw from the proceedings of the Board when that matter is considered by the Board, unless the Board decides that the member's interest in the matter is trivial or not relevant;
  - (c) may not use the position or privileges of a member for private gain or to improperly benefit another person;
  - (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Board.
- (2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.

### Part 3: Administration and staff matters

#### 18. Chief Executive Officer

- (1) The Board must appoint a suitably qualified and experienced person as Chief Executive Officer.
- (2) The person appointed as the Chief Executive Officer holds office -
  - (a) for an agreed term not exceeding seven years, but which is renewable; and
  - (b) subject to the terms and conditions applicable to employees.
- (3) The Chief Executive Officer is the head of the administration of the MDB and is responsible for -
  - (a) the formation and development of an efficient administration;
  - (b) the organisation, control and management of all staff, including persons seconded to the Board from any other organ of state;
  - (c) the maintenance of discipline; and
  - (d) the carrying out of the decisions of the Board.
- (4) The Chief Executive Officer-
  - (a) is the accounting officer in accordance with the Public Finance Management Act, and must keep the necessary accounting and other related records; and
  - (b) may exercise all such powers and must perform all such duties and functions as may be entrusted or assigned to him or her by the Board, this Act or any other legislation.
- (5) Whenever the Chief Executive Officer is for any reason absent or unable to perform his or her functions, or whenever a vacancy in the office of chief executive officer occurs, the Board must designate a member of the administration to act in that capacity until the Chief Executive Officer resumes his or her functions, or a chief executive officer is appointed in terms of subsection (1), and that member has, while so acting, such powers and must perform such functions of the chief executive officer as may be delegated or assigned to him or her by the Board.
- (6) The Chief Executive Officer must appoint such employees of the MDB as he or she may consider necessary, in accordance with the Board approved organisational structure and delegations of authority, to enable the Board to exercise its powers and to perform its duties and functions effectively.
- (7) The conditions of service, remuneration, allowances, subsidies and other benefits of the Chief Executive Officer must be determined by the Board.
- (8) Notwithstanding the provisions of the Government Employees Pension Law, 1996 (Proclamation 21 of 1996)-
  - (a) any person appointed in terms of this section who, immediately before the date of such appointment was a member of the Government Employees Pension Fund referred to in section 2 of that law, may remain such member notwithstanding such appointment; and

(b) any person so appointed who is not a member of the said Fund may become a member of that Fund as from the date of such appointment and, if applicable, must contribute thereto.

**19. Conditions of employment of employees**

(1) An employee of the MDB is employed subject to the terms and conditions of employment determined by the Board.

(2) The terms and conditions must comply with the principles of public administration as contained in the Constitution.

(3) Persons in the public service or other organs of state seconded to the Board, perform their functions under the control and direction of the Chief Executive Officer.

**20. Services of non-employees**

If the MDB contracts for the services of any person, other than an employee, to perform any specific act or function, the Board may remunerate that person, and may reimburse that person for expenses.

**Part 4: Finances**

**21. Funding**

(1) The MDB is entitled to money appropriated annually by Parliament to enable it to perform its functions effectively.

(2) The MDB may receive money from any other source through the National Revenue Fund.

(3) For the purposes of subsection (1) the MDB -

(a) must submit to the Minister and the Minister of Finance, during each financial year, but before a date set by the Minister, estimates of the MDB's income and expenditure for the next financial year; and

(b) may submit to the Minister and the Minister of Finance, at any time during a financial year, estimates of the MDB's income and expenditure supplementary to those mentioned in paragraph (a).

(3) When submitting the estimates the MDB must disclose full particulars of any income that has accrued, or is expected to accrue, to the MDB from a source other than an appropriation by Parliament.

(4) The MDB must refund to the National Revenue Fund any money paid to the Board in terms of an appropriation under subsection (1) that has not been utilised at the end of a financial year, unless otherwise agreed with the Minister acting with the concurrence of Minister of Finance.

**22. Accountability**

As accounting officer of the MDB, the Chief Executive Officer must -

(a) keep full and proper records of all -

(i) income and expenditure of the MDB; and



- (ii) assets, liabilities and financial transactions of the MDB;
- (b) ensure that the MDB's available resources are properly safeguarded and used in the most efficient and effective way;
- (c) ensure that all statutory measures applicable to the MDB are complied with; and
- (d) prepare annual financial statements in accordance with generally accepted accounting practice within three months after the end of each financial year.

### **23. Audit**

The financial statements and records of the MDB must be audited annually by the Auditor-General.

### **24. Reporting**

- (1) The MDB is accountable to Parliament and must annually submit to both Houses of Parliament a written report on the activities of the MDB during a financial year.
- (2) The report must be submitted in accordance with the prescripts of the Public Finance Management Act.

## **CHAPTER 3 DEMARCATIION AND DELIMITATION**

### **Part 1: Demarcation criteria**

### **25. Demarcation objectives**

When the Board determines a municipal boundary its objective must be to establish an area that would -

- (a) enable the municipality for that area to fulfil its constitutional obligations, including -
  - (i) the provision of democratic and accountable government for the local communities;
  - (ii) the provision of services to the communities in an equitable and sustainable manner;
  - (iii) the promotion of social and economic development; and
  - (iv) the promotion of a safe and healthy environment;
- (b) enable effective local governance;
- (c) enable integrated development;
- (d) have a tax base as inclusive as possible of users of municipal services in the municipality; and
- (e) have the capacity to execute any other function in line with Minister's and the MEC of local government's allocated powers and functions in accordance with the Structures Act.

**26. Factors to be taken into account**

In order to attain the objectives set out in section 25, the Board must, when determining a municipal boundary, take into account -

- (a) the interdependence of people, communities and economics as indicated by -
  - (i) existing and expected patterns of human settlement and migration;
  - (ii) employment;
  - (iii) commuting and dominant transport movements;
  - (iv) spending;
  - (v) the use of amenities, recreational facilities and infrastructure; and
  - (vi) commercial and individual linkages;
- (b) the need for cohesive, integrated and unfragmented areas, including metropolitan areas;
- (c) the financial viability and administrative capacity of the municipality to perform municipal functions efficiently and effectively;
- (d) the need to share and redistribute financial and administrative resources;
- (e) provincial and municipal boundaries;
- (f) areas of traditional rural communities;
- (g) existing and proposed functional boundaries, including magisterial districts, voting districts, health, transport, police and census enumerator boundaries;
- (h) existing and expected land use, social, economic and transport planning;
- (i) the need for co-ordinated municipal, provincial and national programmes and services, including the needs for the administration of justice and health care;
- (j) topographical, environmental and physical characteristics of the area;
- (k) the administrative consequences of its boundary determination on -
  - (i) municipal creditworthiness;
  - (ii) existing municipalities, their council members and staff; and
  - (iii) any other relevant matter;
- (l) the need to rationalise the total number of municipalities within different categories and of different types to achieve the objectives of effective and sustainable service delivery, financial viability and macro-economic stability;
- (m) common geo-statistical building blocks, which facilitate and support a standard geographical hierarchy;
- (n) relevant national development policies and plans which might impact on the nature of local government and its boundaries;
- (o) relevant national and provincial policies and legislation relating to the institutional or functional reorganisation of local government; and
- (p) natural endowments, resources, assets, business investments and other drivers of economic growth.

**27. Determination of category of municipality**

(1) The Board must -

(a) apply the criteria set out in subsection (3) and determine whether an area in terms of the criteria must have a single category A municipality or whether it must have municipalities of both category C and category B; and

(b) determine the boundaries of the area.

(2) The Board may determine that an area must have a category A municipality only after consultation with the Minister, the MEC for local government in the province concerned and SALGA.

(3) An area must have a single category A municipality if that area can reasonably be regarded as-

(a) a conurbation featuring -

(i) areas of high population density;

(ii) an intense movement of people, goods, and services;

(iii) extensive development; and

(iv) multiple business districts and industrial areas;

(b) a centre of economic activity with a complex and diverse economy;

(c) a single area for which integrated development planning is desirable; and

(d) having strong interdependent social and economic linkages between its constituent units.

**Part 2: Municipal Boundary determinations****28. Initiation of demarcation process**

(1) The Board will only do determinations regarding the categorisation, amalgamation or any boundary change which will affect the movement of more than one whole ward in a municipality, every ten years.

(2) The Board performs the demarcation function mentioned in section 6(5) on -

(a) its own initiative;

(b) request from an individual or community;

(c) request by the Minister, MEC for local government or other statutory bodies; or

(d) request by a municipality with the concurrence of any other municipality affected by the proposed determination or redetermination,

Provided that the application in terms of subsections (b), (c) and (d) is accompanied by a motivation in terms of the demarcation criteria as set down in section 25 and 26.

(3) The Minister may, after consultation with the MECs for local government and the Board, determine priorities and reasonable timeframes for a

determination or redetermination, but such must be three years before the earliest possible date for the next local government elections.

(4) The Board may make no determination of municipal boundaries after the Minister has published the formula for councillors in terms of section 20 of the Structures Act.

## **29. Notification of intention to consider request for determination of municipal boundary**

(1) Before the Board considers any proposed determination of a municipal boundary, it must publish a notice in the area concerned-

(a) stating the Board's intention to consider the matter; and

(b) inviting written representations and views from the public within prescribed period which may not be less than 30 days.

(2) The Board must publish a notice in a newspaper circulating in the affected area.

(3) When the Board publishes a notice it must convey by any appropriate means of communication, the message contained in the notice.

(4) The Board must send by registered post, electronic mail or by hand, a copy of the notice to-

(a) the Minister;

(b) the MEC for local government in the province concerned;

(c) each municipality that will be affected by the Board's consideration of the matter;

(d) the magistrate concerned if any magisterial district is affected; and

(e) the provincial House of Traditional Leaders concerned established by provincial legislation in terms of section 212 (2) (a) of the Constitution if the boundary of a traditional authority is affected,

inviting them to submit written representations or their views on the matter to the Board within the prescribed period and on the prescribed form.

## **30. Conducting investigations on municipal boundaries**

(1) After receiving views and representations from stakeholders as detailed in section 29, the Board must institute a formal investigation on any application, unless-

(a) it is a minor technical adjustment or an application that can be dealt with in terms of a research, study or investigation already conducted by the Board in a period not longer than 18 months before the current application was lodged, or

(b) a proposed re-determination is in compliance with a provincial boundary change following a constitutional amendment.

(2) The Board may conduct the investigation itself, or designate one or more members of the Board, an expert, or an investigating committee to conduct the investigation on its behalf.

- (3) (a) The investigations committee may consist of not more than three persons who are subject matter experts with suitable qualifications and experience;
- (b) The investigations committee must, for purposes of municipal boundary demarcation, conduct an investigation on the feasibility of the proposed redetermination guided by the demarcation criteria.
- (c) The investigations committee must report and make recommendations to the Board.
- (4) For the purposes of its investigation 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 investigation to appear before the Board or the committee to -
    - (i) give evidence; or
    - (ii) 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 to -
    - (i) give evidence before the Board or committee; or
    - (ii) 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).
- (5) The chairperson of the committee must determine the procedure to be followed during an investigation.
- (6) On conclusion of the formal investigation a report must be submitted to the Board for consideration.
- (7) The Board must consider the report and decide to either refer it back for further investigation or endorse it.
- (8) In an instance where the report is endorsed it must be published on-
- (a) the official website of the MDB;
  - (b) a newspaper circulating in the affected area; and
  - (c) a radio station broadcasting in the affected area,
- to allow members of the Public to read the report and prepare for the public consultation meetings.

### **Part 3: Public Participation**

#### **31. Public Consultation**

- (1) Before a request is submitted in terms of section 29(2) (b) (c) and (d) of this Act, there must have been preliminary consultation with members of the public affected by the proposal.

- (2) Before the Board considers a re-determination it must comply with section 30 of this Act.
- (3) A public consultative meeting for all types of re-determinations must be conducted by the Board.
- (4) A notice must be published in a newspaper circulating in the area concerned inviting the public to attend the meeting, stating the-
  - (a) time;
  - (b) date; and
  - (c) venue of the meeting or each meeting.
- (5) When the Board publishes a notice as provided for in subsection (4) it must convey the message through any appropriate means of communication.
- (6) The date of the meeting may not be within two weeks following the release of the report to allow members of the public time to access the report.
- (7) The contents of the report provided for in section 31 (6) must be conveyed to the local community -
  - (a) by displaying the documents at the affected municipality's head and satellite offices and libraries;
  - (b) by displaying the documents on the Board's official website; and
  - (c) by notifying the local community, of the place, including the website address, where detailed particulars concerning the documents can be obtained.
- (8) When the Board invites the local community to submit written views and representations on the proposed demarcation, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the municipality or Board, named in the invitation, will assist that person to transcribe that person's comments or representations.
- (9) At the public meeting a representative of the MDB must-
  - (a) explain the purpose of the meeting, procedures of the meeting, municipal boundary re-determination process;
  - (b) allow the applicant or representative to make representations on their proposed municipal boundary re-determination proposal, :
  - (c) give the summary of the investigation report and any options open to the Board;
  - (d) allow members of the public attending the meeting to deliberate on the issues raised under paragraphs (b) and (c) or provide more information on the issue under consideration; and
  - (e) answer relevant questions.
- (10) Affected municipalities must identify and provide suitable and secure venues, locations that are accessible to the majority of the affected communities.
- (11) The Board, after the public consultative meetings, may conduct public hearings-

- (a) by written notice summon a person who in its opinion has information which is material to the investigation to appear before the Board or the committee to -
    - (i) give evidence; or
    - (ii) 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 to -
    - (i) give evidence before the Board or committee; or
    - (ii) 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).
- (12) The Board may consult any other interested parties during the consultative process.

### **32. Mechanisms, processes and procedures for public participation**

- (1) Participation by the members of the public in demarcation processes of the Board may take place through—
- (a) government, political, civil and other organised community based structures that represent communities who may be affected by the demarcation processes;
  - (b) mechanisms, processes and procedures through which citizens participate in the affairs of a municipality;
  - (c) other appropriate mechanisms, processes and procedures established by the Board; and
  - (d) generally applying the provisions for participation guided by other legislation that promote transparency and administrative justice.
- (2) The Board may establish appropriate mechanisms, processes and procedures to enable the members of the public to participate in the demarcation processes of the Board.
- (3) When establishing mechanisms, processes and procedures, the Board may take into account the needs of all citizens affected by demarcation processes.

### **33. Communication of information concerning public participation**

The Board must communicate to affected members of the public sufficient information on processes and procedures to encourage and facilitate public participation.

### **34. Publication of municipal boundary determination**

- (1) The Board must publish its final determination or redetermination of a municipal boundary in the relevant *Provincial Gazette*, after considering sections 29, 30 and 31.

(2) Any person aggrieved by a determination or redetermination may within 30 days of publication submit objections in writing to the Board, and the Board must -

- (a) consider those objections;
- (b) confirm, vary or withdraw its determination; and
- (c) publish its decision in terms of paragraph (b) in the relevant *Provincial Gazette*.

(3) The Board must provide reasons for its decisions after publication of the final decisions on boundary changes in terms of subsection (2) (c) by way of publication on its website or through any other appropriate means.

### **35. When boundary determinations take effect**

(1) After the Board has considered any objections in terms of section 34(2), the Board must without delay send particulars of the determination to the Electoral Commission.

(2) If the Electoral Commission is of the view that the boundary determination will-

(a) affect the representation of voters in the council of any of the municipalities affected by the boundary determination, the determination takes effect from the date of the next election in the area concerned; or

(b) not materially affect the representation of voters in such council, the determination takes effect from a date determined by notice in the relevant *Provincial Gazette* by the MEC for local government.

(3) (a) The Electoral Commission, within 60 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*.

(b) The MEC for local government concerned 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.

(4) (a) A determination referred to in subsection (2) (b) will take effect on the date of commencement of the municipal financial year following the date of publication of the notice affecting 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 and Minister of Finance of such determinations.

(c) The Minister of Finance may, in exceptional cases, including those referred to in section 87 of the Structures Act decide on a different or shorter period than the period referred to in paragraph (a) and (b).



## Part 4: Ward delimitation

### 36. Delimitation of wards

(1) After the Minister has published the formula for councillors in terms of section 20 of the Structures Act, the Board must for purposes of an election, after consultation with the Independent Electoral Commission, delimit all metropolitan municipalities and all local municipalities that must have wards, into wards.

(2) When the Minister has published the formula for councillors as set out in subsection (1), the Chairperson must-

- (a) compile a timetable for the delimitation of wards; and
- (b) publish the delimitation timetable in the *Government Gazette*.

(3) The Board may, by notice as required in subsection (2) (b), amend the delimitation timetable on good cause shown.

### 37. Number of wards

The number of wards in a metropolitan or local municipality must be equal to the number of ward councillors determined for the municipality in terms of section 22(2) of the Structures Act.

### 38. Ward delimitation criteria

(1) The MDB after consulting with the Electoral Commission must delimit a municipality into wards, taking into account the following criteria:

- (a) The number of registered voters in each ward, may not vary by more than 15 percent from the norm, where the norm is determined by dividing the total number of registered voters on the municipality's segment of the national common voters roll by the number of wards in the municipality;
- (b) the need to take into consideration-
  - (i) communication and accessibility;
  - (ii) density of population; and
  - (iii) topography and physical characteristics.
- (c) identifiable ward boundaries.

(2) The Board may only deviate, but by not more than 30 percent of the norm, in instances where-

- (a) there is a need to avoid as far as possible the fragmentation of a continuous built-up settlement area: Provided that such a settlement can be included wholly in one ward;
- (b) the voting station at which the voters residing in that portion of land was to be outside of the ward; or
- (c) there is a need to align the ward boundary to an identifiable topographic and physical feature such as road, river, mountain range, proclaimed traditional council area: Provided that, if there is a continuous built-up settlement area such an area will be included wholly in one ward.

(3) Before a final determination of wards, under the circumstances explained above, the MDB must submit particulars of the imminent ward determination to the Electoral Commission.

(4) The Electoral Commission must verify if the criteria for deviation is applied accordingly for the IEC to formally give their view to the MDB.

**39. Public participation in ward delimitation**

Before the Board publishes its delimitation of wards in terms of section 39, it must have followed a process outlined in section 31(4) and (5).

**40. Publication of ward delimitation**

(1) The MDB must publish its delimitation decision of wards for a municipality in the *Provincial Gazette* together with the reasons for the delimitation.

(2) Any person aggrieved by a delimitation may within 30 days of publication submit objections in writing to the MDB, and the Board must -

- (a) consider those objections;
- (b) confirm, vary or withdraw its delimitation, and
- (c) publish the final decision in the *Provincial Gazette*.

**Part 5: Demarcation Appeals Authority**

**41. Establishment and constitution of Appeals Authority**

(1) There is hereby established a body to be known as the Demarcation Appeals Authority which-

- (a) has jurisdiction throughout the Republic;
- (b) is a juristic person;
- (c) is an Appeals Authority of record; and
- (d) must exercise its functions in accordance with this Act.

(2) The Appeals Authority consists of a Chairperson and not less than three, but not more than ten, other individuals appointed by the President, on a part-time basis, on the recommendation of the Minister, from among persons nominated in response to a public call for nominations.

(3) The President must-

- (a) appoint the Chairperson and other members of the Appeals Authority on the date that this Act comes into operation; and
- (b) appoint a person to fill any vacancy on the Appeals Authority.

**42. Functions of Appeals Authority**

(1) The Appeals Authority may-

- (a) adjudicate on any dispute arising from the final municipal boundary or ward delimitation decision of the Board, to determine the merits of the dispute, and, if necessary, to impose any remedy provided for in this Act;

- (b) make any ruling or order necessary or incidental to the performance of its functions in terms of this Act.
- (2) The Minister, after consultation with the Board and by notice in the *Government Gazette*, must prescribe regulations for matters relating to the functions of the Appeals Authority, including-
  - (a) forms;
  - (b) time periods;
  - (c) information required;
  - (d) additional definitions;
  - (e) filing fees;
  - (f) access to confidential information;
  - (g) manner and form of participation in appeals procedures; and
  - (h) procedures.

#### **43. Qualifications of members of Appeals Authority**

- (1) The Chairperson and other members of the Appeals Authority, collectively must-
  - (a) represent a broader cross-section of the population of the Republic;
  - (b) have proven experience in demarcation issues; and
  - (c) comprise sufficient persons with legal training and experience.
- (2) Each member of the Appeals Authority must-
  - (a) be a citizen of South Africa, residing in South Africa; and
  - (b) have suitable qualifications and experience in economics, law, commerce, local government, demarcation or public affairs.
- (3) A person may not be a member of the Appeals Authority if that person is-
  - (a) a political office-bearer of a political party, whether in a permanent, temporary or acting capacity;
  - (b) a fulltime employee of an organ of state; or
  - (c) an elected political representative in any sphere of government.
  - (d) an unrehabilitated insolvent;
  - (e) subject to an order of a competent court holding that person to be mentally unfit or disordered; or
  - (f) a person who after 4 November 1997 has been convicted of an offence and sentenced to imprisonment without the option of a fine for a period of not less than 12 months.
- (4) A Board of Directors, whose terms have expired, may be considered for appointment only after the lapsing of a full term of the Appeals Authority.

#### **44. Term of office of members of Appeals Authority**

- (1) (a) Subject to subsection (2), the Chairperson and each member of the Appeals Authority may serve for a term of seven years.
- (b) The term of office of the Appeals Authority starts from the date of appointment of the members by the President.

- (2) The President may re-appoint a member of the Appeals Authority at the expiry of an Appeals Authority's term of office, but no person may be appointed to the Appeals Authority for more than two consecutive terms.
- (3) The Chairperson, may after a period of three months give a written notice to the Minister, to resign --
- (a) from the Appeals Authority; or
  - (b) as Chairperson, but remain as a member of the Appeals Authority.
- (4) A member of the Appeals Authority other than the Chairperson may resign by giving at least three months' written notice to the Minister, but the Minister may accept a shorter period in a specific case.
- (5) The President, on the recommendation of the Minister-
- (a) must remove the Chairperson or any other member of the Appeals Authority from office if that person becomes subject to any of the disqualifications referred to in section 41; and
  - (b) other than as provided in subsection (a), may remove the Chairperson or a member from office only for-
    - (i) serious misconduct;
    - (ii) permanent incapacity; or
    - (iii) engaging in any activity that may undermine the integrity of the Appeals Authority.

**45. Chairperson and Deputy Chairperson of Appeals Authority**

- (1) The President must, on the recommendation of the Minister, designate two members of the Appeals Authority as the Chairperson and Deputy Chairperson of the Appeals Authority.
- (2) The Chairperson is the convenor of the Appeals Authority.
- (3) The Deputy Chairperson performs the functions of Chairperson whenever-
- (a) the office of Chairperson is vacant; or
  - (b) the Chairperson is for any other reason temporarily unable to perform the functions of Chairperson.

**46. Appeals Authority proceedings**

- (1) Any person aggrieved by a decision of the Board that was published in terms of section 34(2)(c) may lodge an appeal of that decision with the Appeals Authority not later than 30 days from the date of the publication of that decision.
- (2) The Chairperson is responsible to manage the caseload of the Appeals Authority, and must assign each matter referred to the Appeals Authority to a panel composed of any three members of the Appeals Authority.
- (3) When assigning a matter in terms of subsection (1), the Chairperson must-
- (a) ensure that at least one member of the panel is a person who has legal training and experience; and
  - (b) designate a member of the panel to preside over the panel's proceedings.

(4) Where a member of the panel is unable to complete the proceedings, because of withdrawal from the hearing in terms of section 41, resignation, illness or death, the Chairperson must-

- (a) direct that the hearing of that matter proceed before any remaining members of the panel subject to the requirements of subsection (2)(a); or
- (b) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.

(5) The panel must consider the appeals and confirm or refer the determination back to the Board for reconsideration within 30 days from the date on which the appeal was lodged.

(6) The decision of a panel on a matter referred to it must be in writing and include reasons for that decision.

(7) A decision of the Chairperson or other person contemplated in subsection (5), or of a majority of the members of a panel in any other matter, is the decision of the Appeals Authority.

**47. Conflicts and disclosure of interest by members of Appeals Authority**

(1) A member of the Appeals Authority may not represent any person before a panel of the Appeals Authority.

(2) If, during a hearing, it appears to a member of the Appeals Authority that a matter concerns a financial or other interest of that member, that member must-

- (a) immediately and fully disclose the fact and nature of that interest to the Chairperson and to the presiding member at that hearing; and
- (b) withdraw from any further involvement in that hearing.

**48. Acting by member of Appeals Authority after expiry of term of office**

If, on the expiry of the term of office of a member of the Appeals Authority, that member is still considering a matter before the Appeals Authority, that member may continue to act as a member in respect of that matter only.

**49. Remuneration and benefits of members of Appeals Authority**

(1) The conditions of service, remuneration, allowances and other benefits of members of the Appeals Authority must from time to time be determined by the Minister, by notice in the *Government Gazette*, after consultation with the Minister of Finance.

(2) The Minister may determine any other conditions of appointment not provided for in this section.

**50. Administrative assistance to Appeals Authority**

The MDB must provide administrative and secretarial assistance to the Appeals Authority.

## **CHAPTER 4 MUNICIPAL CAPACITY ASSESSMENTS**

### **51. Municipal capacity assessments**

- (1) The MDB must conduct municipal capacity assessments to –
  - (a) support its decisions on the determination and redetermination of municipal boundaries;
  - (b) provide assistance and guidance to the Minister and MEC for local government regarding the assignment of functions and powers either through authorisation, revocation, or adjustment as contemplated in the Structures Act; and
  - (c) render an advisory service in respect of matters provided for in this Act and other relevant legislation;
- (2) When the MDB conducts a municipal capacity assessment, it must also take into account the provisions of Sections 9 and 10 of the Systems Act, and the following factors:
  - (a) operational, administrative and financial management capacity;
  - (b) infrastructure that enables a municipality to collect revenue and to govern on its own initiative the local government affairs of its community;
  - (c) natural resources;
  - (d) any other drivers of economic growth;
  - (e) any other factors considered by the Minister and the MEC for local government in the assignment of powers and functions in accordance with the Structures Act; and
  - (f) social cohesion.

## **CHAPTER 5 ROLE OF THE MUNICIPAL DEMARCATION BOARD IN THE ALTERATION OF PROVINCIAL BOUNDARIES**

### **52. Provincial boundary alteration**

- (1) The alteration of provincial boundaries must be done in terms of section 74 of the Constitution and rules and orders of the National Assembly.
- (2) The Minister may-
  - (a) On request by the MEC for local government, or other statutory bodies, or individual or community or any other establishment experiencing challenges with provincial boundaries consider requesting the MDB to investigate such issues;
  - (b) after consulting the MECs for local government, request the MDB to investigate areas affecting provincial boundaries; and
  - (c) make recommendations to Parliament on the basis of the Municipal Demarcation Board report.

(3) The MDB may make recommendations to the National Assembly on provincial boundary challenges identified when performing its functions in terms of section 6(5).

## CHAPTER 6 MISCELLANEOUS

### 53. Regulations and guidelines

(1) The Minister may, by notice in the *Gazette* and after consultation with the Board, make regulations or issue guidelines not inconsistent with this Act concerning any matter that may-

- (a) be prescribed in terms of this Act; and
- (b) facilitate the application of this Act.

### 54. Offences and penalties

A person who does not attend any public hearing when properly summoned by the MDB, or does not produce the documents as required by the summons, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both.

### 55. Amendment of legislation

The legislation mentioned in Schedule 1 is hereby amended to the extent set out in that Schedule.

### 56. Transitional arrangements

Any determination matter which was investigated by the Municipal Demarcation Board immediately before this Act took effect, must be regarded as having been concluded in terms of Act No. 27 of 1998.

### 57. Short title and commencement

This Act is called the Local Government: Municipal Demarcation Act, 2020, and takes effect on a date determined by the President by proclamation in the *Gazette*.

## Schedule 1

### REPEAL OF LEGISLATION

No and year of law	Short title	Extent of application
Act No. 117 of 1998	Local Government: Municipal Structures Act, 1998	Sections 2 and 4. Schedule 1, Items (2), (3), (4) and (5)

## MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL DEMARCATION BILL, 2020

### 1. BACKGROUND

1.1 The amendments to the Local Government: Municipal Demarcation Act No. 27 of 1998 (hereinafter referred to as the MDA) are based on proposals received from the Municipal Demarcation Board (MDB), and are further informed by:

- (i) Inputs from previous Boards;
- (ii) Recommendations from the Demarcation Process Review Task Team, which was established to review the process of demarcation;
- (iii) Lessons learnt from previous redeterminations and ward delimitation processes;
- (iv) Litigation;
- (v) Inputs from various other stakeholders;
- (vi) Opinion from the Office of the Chief State Law Advisor (OCSLA) on the independence of the MDB;
- (vii) Inputs from the June 2016 conference on Demarcation and Spatial Transformation; and
- (viii) Inputs made at a workshop convened by the Department of Cooperative Governance (DCoG) in March 2017 (attended by various national departments, provincial departments responsible for local government, and other stakeholders).

1.2 In summary, the proposed amendments, amongst others, aim to:

- (i) Clarify and differentiates between the members of the Board and the organisation itself;
- (ii) Indicate that the Chief Executive Officer is the accounting authority, and the Chairperson is the executive authority, for the purposes of the Public Finance Management Act;
- (iii) Require that a Board member to have experience in or knowledge appropriate to Information Technology;
- (iv) Require the selection panel to include a designee each from the National Assembly, and from the National House of Traditional Leaders;
- (v) Require that vacancies that arise on the Board may be filled by persons that were on the "long-list" that was submitted to the President, at the time of the establishment of the Board;
- (vi) Extend the term of office of Board members to seven (7) years (from 5), to allow for continuity and to ensure that the same Board presides over municipal boundaries that it resolved-on and the subsequent ward delimitation process;
- (vii) Ensure that all Board members, except for the Chairperson, serve on a part-time basis;
- (viii) Ensure that major boundary redeterminations, which affects the movement of more than one whole ward in a municipality, will only be done after every ten years;
- (ix) Deviate above the present norm of 15%, to 30%, when delimiting wards, but within strict conditions to avoid the splitting of communities;



- (x) Provide for the establishment of the Demarcation Appeals Authority to deal with disputes and appeals regarding decisions of the Board;
- (xi) Provide for more extensive public participation and stakeholder consultation for any redetermination proposal;
- (xii) Set timeframes for boundary redeterminations and ward delimitation, taking into account the programme of the Independent Electoral Commission (IEC);
- (xiii) Migrate the MDB functions from the Municipal Structures Act, to the MDA to ensure that the mandate of the MDB is provided in a single piece of legislation; and
- (xiv) Provide for the MDB to make recommendations to Parliament on the alteration of provincial boundaries.

1.3 Due to the many amendments to the original Act, it has necessitated the repeal of the MDA and for it to be replaced with a new Act.

1.4 This Memorandum on the Objects of the Bill does not deal in detail with the original legislation, but elaborates on the provisions of the new Act.

## **2. OBJECTS OF THE BILL**

The objects of the Bill are to provide for the establishment and operations of the Municipal Demarcation Board; the criteria and procedures for the demarcation and delimitation of boundaries; for the establishment of the Demarcation Appeals Authority; for the Board to undertake municipal capacity assessments; and to make recommendations on provincial boundaries.

## **3. SUMMARY OF THE BILL**

### **CHAPTER 1**

#### **INTERPRETATION AND APPLICATION OF THE ACT**

### **3.1 Section 1: Definitions**

Definitions are provided for the following:

- (i) Appeals Authority;
- (ii) Board;
- (iii) Chief Executive Officer;
- (iv) Delimitation;
- (v) Demarcation;
- (vi) Determination;
- (vii) Local Community;
- (viii) Metropolitan area;
- (ix) MDB;
- (x) Municipal Demarcation Board;
- (xi) Political office-bearer;
- (xii) Public Finance Management Act;
- (xiii) Structures Act; and
- (xiv) Systems Act.

## CHAPTER 2

### MUNICIPAL DEMARCATION BOARD

#### Part 1: Establishment, function and general powers of the Municipal Demarcation Board:

#### 3.2 Section 2: Establishment

This section points to provision 155(3)(b) of the Constitution which indicates that national legislation establish criteria and procedures for the determination of municipal boundaries by an independent authority.

This section also specifies that the Municipal Demarcation Board (or MDB) consists of members of the Board (the Board), and of the administration.

The aim of this provision is to differentiate between the Board and the organisation itself (including employees), as it is not clearly defined in the current Act.

#### 3.3 Section 3: Status

This section confirms that the MDB is a juristic person; is independent; and must be impartial when performing its functions.

#### 3.4 Section 4: Functions of the MDB

The five major functions of the MDB are confirmed in the Bill, that is to:

- (i) determine or re-determine municipal boundaries in accordance with this Act and other appropriate legislation enacted in terms of Chapter 7 of the Constitution;
- (ii) render an advisory service in respect of matters provided for in this Act and other appropriate legislation when so requested.
- (iii) delimit wards for all municipalities that must have wards;
- (iv) conduct municipal capacity assessments; and
- (v) make recommendations to Parliament on provincial boundary matters, when the matter arises during the course of municipal boundary determination.

#### 3.5 General Powers of the Municipal Demarcation Board

In this section, various powers are conferred on the MDB to do all that is necessary to effectively perform its functions, and confirms that the MDB may not borrow money unless authorised by the PFMA. Additionally, the MDB may request municipalities to provide it with facilities for it to hold meetings.

#### 3.6 Section 6: Members of the Board

- (i) Members of the Board are appointed by the President, and they are responsible for managing the business and affairs of the MDB.
- (ii) It is clarified that the:

- Chairperson is the executive authority;
- Board is responsible for matters of corporate governance; and
- MDB is responsible for:
  - Determining and redetermining municipal boundaries;
  - Rendering an advisory service;
  - Delimiting wards;
  - Conducting municipal capacity assessments; and
  - Making recommendations on provincial boundary matters.

## **Part 2: Membership of Board**

### **3.7 Section 7: Composition**

- (i) The Board consists of 7 to 10 members, which is determined by the Minister by Notice in the *Government Gazette*. The composition of the Board must also reflect South African society, and collectively represent a pool of knowledge relating to municipal demarcation.
- (ii) There is presently confusion and misinterpretation regarding the term “regional diversity” as contained in the current legislation. This leads to certain provinces demanding that the composition of the Board should be comprised of nine Board members selected from each of the provinces; that is not the intention of the legislation.

### **3.8 Section 8: Qualifications**

- (i) Information Technology is included as an additional qualification, or experience that is required by a member of the Board.
- (ii) This is necessary given that the work of the MDB is generally technical in nature, and it utilises information and communication technologies extensively to determine municipal and ward boundaries. The prevalence of such skills within the Board will enhance decision-making.
- (iii) Additionally, political office-bearers and full-time employees of an organ of state are not eligible from becoming a member of the Board.

### **3.9 Section 9: Appointment procedure**

- (i) The section provides for the Minister to establish a selection panel to appoint members of the Board. The selection panel has been expanded to include the Chairperson of the Portfolio Committee responsible for local government (or a designee), and the Chairperson of the NHTL (or a designee).
- (ii) When a vacancy arises in the Board, the Minister may proceed to reconstitute the selection panel, or may recommend to the President a name/s from the shortlist that was previously submitted to the President (from the prior process to establish the Board).

### **3.10 Section 10: Terms of Office**

- (i) The term of office of the Board has been increased to seven years, calculated from the date of appointment by the President. This is to allow for a sitting Board to preside over municipal boundaries, and the subsequent ward delimitation process, that that Board had finalised. Presently, an incoming Board inherits decisions taken on boundaries by the Board that was previously in place.
- (ii) A member of the Board may not hold office for more than two consecutive terms.
- (iii) A member ceases to be on the Board if such a person is absent from three or more Board meetings without being granted leave of absence by the Chairperson.
- (iv) All members of the Board will be appointed on a part-time basis, except for the Chairperson.

### **3.11 Section 11: Conditions of appointment of members**

The conditions of service, remuneration, allowances and other benefits of Board members will be determined by the Minister, after consultation with the Minister of Finance.

### **3.12 Section 12: Chairperson and Deputy Chairperson**

The President will appoint one member of the Board as the Chairperson and another person as the Deputy Chairperson.

### **3.13 Section 13: Meetings**

- (i) The Chairperson, or if the majority of the members so request, must convene a Board meeting.
- (ii) Section 12(4(b) provides for a casting vote by the Chairperson of the Board.

### **3.14 Section 14: Rules of procedure**

The Board must determine its rules of procedure for conducting its business, and the rules must ensure effective corporate governance of the Board. The rules must also provide for the specific roles of the Chairperson of the Board and for the Chief Executive Officer.

### **3.15 Section 15: Committees**

The Board will be required to establish, at the least, the Audit and Risk Governance Committee and the Remuneration and Performance Committee. Other committees may also be established, but all committees must include at least one member of the Board.

### **3.16 Section 16: Assignment of powers and duties**

- (i) The Board may delegate any of its powers to a member, an employee, or a committee of the Board, excluding the power to make the final decision on the determination of a municipal boundary.
- (ii) The Board may also confirm, vary or revoke any decision that it had previously delegated.

### **3.17 Section 17: Conduct of members**

This section requires members of the Board to perform their functions of office in good faith and without fear, favour or prejudice, and must disclose all personal and / or private business interests. A member who contravenes or fails to comply with the above, is guilty of misconduct.

### **Part 3: Administration and staff matters**

### **3.18 Section 18: Chief Executive Officer**

- (i) This section deals with the appointment of the CEO as the head of the administration of the Municipal Demarcation Board, for a period not exceeding seven years.
- (ii) The CEO is also the accounting officer, and must perform all functions as may be assigned to her / him by the Board.
- (iii) The CEO must appoint employees in accordance with an organisational structure that would have been approved by the Board.

### **3.19 Section 19: Conditions of employment of employees**

- (i) The Board will determine the conditions of employment of employees, which must comply with the principles of public administration as contained in the Constitution.
- (ii) Persons from other organs of state that are seconded to the Board will be under the control and direction of the CEO.

### **3.20 Section 20: Services of non-employees**

A person that is contracted to provide services may be remunerated and reimbursed for expenditure incurred.

### **Part 4: Finances**

### **3.21 Section 21: Funding**

- (i) The MDB will continue to receive funding from Parliament and from any other source through the National Revenue Fund (NRF).

- (ii) The MDB will be required to refund to the NRF any monies that have not been utilised by the end of a financial year.

### **3.22 Section 22: Accountability**

- (i) The CEO must keep full and proper records of all income, expenditure, assets, liabilities and financial transactions of the MDB.
- (ii) The CEO must also ensure that the MDB's available resources are properly safeguarded, and used in the most efficient and effective manner.

### **3.23 Section 23: Audit**

The financial statements and records of the MDB must be audited annually by the Auditor-General.

### **3.24 Section 24: Reporting**

The MDB must, in terms of the PFMA, annually submit a written report on its activities during a financial year to both Houses of Parliament.

## **CHAPTER 3**

### **DEMARCATION AND DELIMITATION**

#### **Part 1: Demarcation Criteria**

### **3.25 Section 25: Demarcation Objectives**

The Board will, in future, be required to consider the municipality's capacity to execute any other function in line with Minister's or MEC's allocated powers and functions when it determines a municipal boundary.

### **3.26 Section 26: Factors to be taken into account**

- (i) The Board will, in future, be required to consider the following additional factors when determining a municipal boundary:
  - (a) common geo-statistical building blocks, which facilitates and supports a standard geographical hierarchy;
  - (b) relevant national development policies and plans, which might impact on the nature of local government and its boundaries;
  - (c) relevant policies and legislation relating to the institutional or functional reorganisation of local government; and
  - (d) natural endowments, resources, assets, business investments and other drivers of economic growth.
- (ii) The intention is to add further criteria deemed necessary for the Board to consider, when determining municipal boundaries. These are not part of the current legislation and have surfaced to be critical as the Board carries out its mandate.

### **3.27 Section 27: Determination of category of municipality**

- (i) This section proposes that sections 2, 3 and 4 of the Municipal Structures Act be migrated into the MDA.
- (ii) As the MDB deals with matters relating to the determination of municipal boundaries, it is proposed that the provisions dealing with the application of criteria for demarcating Category A, B and C municipalities be provided for in the MDA.

### **Part 2: Municipal Boundary Determinations**

### **3.28 Section 28: Initiation of demarcation process**

- (i) The Board will, in the future, undertake redeterminations that affect more than one ward, only after every ten years.
- (ii) This section also provides for when the Board will perform its various functions, and clearly indicates that it will not redetermine municipal boundaries after the Minister publishes the formulae for determining the number of councillors. This is intended to ensure that preparations for municipal elections are not hampered by any late requests.
- (iii) Any application for municipal boundary redeterminations must be accompanied by a motivation in terms of the demarcation criteria as outlined in sections 24 and 25.

### **3.29 Section 29: Notification of intention to consider request for determination of municipal boundary**

- (i) This provision is from section 26 of the existing Act. It obliges the Board to publish a notice in the area concerned stating the Board's intention to consider a request for the determination of a municipal boundary.
- (ii) The notice will invite written representations and views from the public within a prescribed period, which may not be less than 30 days, before it considers any determination of a municipal boundary.
- (iii) A copy of the notice must also be sent to the MEC for local government, each affected municipality, and the provincial House of Traditional Leaders (if a traditional authority is affected).

### **3.30 Section 30: Conducting investigations on municipal boundaries**

- (i) The Board will be required to institute a formal investigation (unless if it is a minor technical adjustment) after receiving views from and representations from stakeholders.
- (ii) After conclusion of a formal investigation, a report must be submitted to the Board for consideration. At this stage, the Board may either endorse the report, or refer it back for further investigation.

## **Part 3: Public Participation**

### **3.31 Section 31: Consultation**

- (i) Sections 31 to 33 prescribes provisions dealing with consultation; mechanisms, processes and procedures; communication of information; and publication of boundary determination, respectively, to strengthen community participation in demarcation matters.
- (ii) Section 31 requires that the:
  - (a) MDB publish a notice in a local newspaper informing stakeholders of a public meeting, and to also communicate the same message through other means;
  - (b) Section 29 report must be conveyed to the public;
  - (c) MDB to clearly and comprehensively deal with boundary matters affecting the communities;
  - (d) Affected municipalities to provide suitable facilities for the engagement with the communities; and
  - (e) Board may conduct further public hearings after the initial engagements undertaken by the MDB.

### **3.32 Section 32: Mechanisms, processes and procedures for public participation**

This section provides details as to how the public may participate in demarcation processes, and further requires the Board to establish appropriate means to maximise public participation.

### **3.33 Section 33: Communication of information concerning public participation**

The section requires the Board to communicate sufficient information to members of the public affected by demarcation.

### **3.34 Section 34: Publication of municipal boundary determination**

- (i) The Board is required to publish its final determinations in the *Provincial Gazette* for comments, and after considering any objections, the Board must confirm, vary or withdraw its determination by publishing its final decision in the *Provincial Gazette*.
- (ii) The Board must also provide reasons when publishing its final decision.

### **3.35 Section 35: When boundary determinations take effect**

- (i) After finalising a boundary determination, the Board must send particulars of the determination to the IEC and to the relevant MEC for their views.
- (ii) The IEC and the relevant MECs must thereafter publish a Notice in the relevant *Provincial Gazette*.



## **Part 4: Ward delimitation**

### **3.36 Section 36: Delimitation of wards**

After the Minister publishes the formulae for determining the number of councillors, the Board must publish a delimitation timetable in the *Government Gazette*.

### **3.37 Section 37: Number of wards**

The number of wards must be equal to the number of ward councillors determined for a local or metropolitan municipality in terms of section 22(2) of the Structures Act.

### **3.38 Section 38: Ward delimitation criteria**

- (i) The number of registered voters in a municipality may not vary by more than 15% of the norm, where the norm is determined by dividing the total number of registered voters in a municipality by the number of wards in a municipality.
- (ii) The Board may deviate by not more than 30% of the norm in exceptional cases. However, before such a delimitation may be finalised, the Board must obtain the views of the IEC in this regard.

### **3.39 Section 39: Public participation in ward delimitation**

The same provisions relating to public participation when municipal boundaries are determined, are also applicable when wards are delimited.

### **3.40 Section 40: Publication of ward delimitation**

- (i) The MDB must also provide reasons when publishing its pre-final ward boundaries for public comments.
- (ii) After considering any objections that may have been received, the Board must confirm, vary or withdraw its delimitation.

## **Part 5: Demarcation Appeals Authority**

Sections 41 to 50 deal with the establishment of the Demarcation Appeals Authority (DAA).

The current Act does not provide for an appeal mechanism or dispute resolution process against the decisions of the Board, except for aggrieved persons to approach the courts to review the decisions of the Board.

The litigation process by its own nature is expensive and time-consuming. Also, in most instances communities resort to violent protests as they attempt to register their dissatisfaction. The establishment of the DAA will allow stakeholders to be heard by a competent and independent authority.

### **3.41 Section 41: Establishment and constitution of Appeals Authority**

This provision requires the President to appoint, on recommendation by the Minister, a DAA of not less than three and not more than ten members, who will serve on a part-time basis.

### **3.42 Section 42: Functions of Appeals Authority**

- (i) The DAA may adjudicate on disputes arising from the final boundary decisions made by the Board, and if necessary, may impose any remedy.
- (ii) This section also empowers the Minister to prescribe regulations for the functioning of the DAA.

### **3.43 Section 43: Qualifications of members of Appeals Authority**

- (i) The Chairperson and other members of the DAA must be South African citizens, and represent a broad cross-section of the population of the Republic; have proven experience in demarcation issues; and comprise of sufficient persons with legal training and experience.
- (ii) The same qualifications for members of the Board are applicable to members of the DAA.

### **3.44 Section 44: Term of office of members of Appeals Authority**

Members of the DAA may serve a term of seven years, commencing from the date that they were appointed by the President.

### **3.45 Section 45: Chairperson and Deputy Chairperson of Appeals Authority**

The President must, on the recommendation of the Minister, designate one member of the DAA as the Chairperson and another member of the DAA as the Deputy Chairperson.

### **3.46 Section 46: Appeals Authority proceedings**

- (i) Any person aggrieved by a demarcation decision of the Board has not more than 30 days from the date of decision by the Board, to lodge an appeal with the DAA.
- (ii) On receipt of such appeal, the Chairperson of the DAA must allocate such appeal to a panel of three DAA members.
- (iii) The panel must then consider the appeal, and either confirm or refer the determination back to the Board for consideration. This must be done within 30 days from the date that the appeal was lodged with the DAA.

### **3.47 Section 47: Conflicts and disclosure of interest by members of Appeals Authority**

A member of the DAA may not represent any person before a panel of the DAA, and a member of the DAA must immediately and fully disclose any interests in a specific matter.

### **3.48 Section 48: Acting by member of Appeals Authority after expiry of term of office**

If, on the expiry of the term of office of a member of the DAA, that member is still considering a matter before the DAA, then that member may continue to act as a member, but only in respect of that specific matter.

### **3.49 Section 49: Remuneration and benefits of members of Appeals Authority**

The conditions of service, remuneration, allowances and other benefits of members of the DAA must from time to time be determined by the Minister, by notice in the *Government Gazette*, after consultation with the Minister of Finance.

### **3.50 Section 50: Administrative assistance to Appeals Authority**

The MDB must provide administrative and secretarial assistance to the DAA.

## **CHAPTER 4**

### **MUNICIPAL CAPACITY ASSESSMENTS**

#### **3.51 Section 51: Municipal capacity assessments**

- (i) This section requires the MDB to conduct capacity assessments to support its decisions on the demarcation of boundaries.
- (ii) The MDB must also provide assistance and guidance to the Minister and the MEC for local government regarding the assignment of functions and powers.
- (iii) The MDB is also required to consider, amongst others, the provisions in Sections 9 and 10 of the Municipal Systems Act.

## **CHAPTER 5**

### **ROLE OF THE MUNICIPAL DEMARCATION BOARD IN THE ALTERATION OF PROVINCIAL BOUNDARIES**

#### **3.52 Provincial boundary alteration**

- (i) This section requires that the alteration of provincial boundaries must be done in accordance with Section 74 of the Constitution and the Rules and Orders of the National Assembly.
- (iii) The section also provides that the Minister may:

- (a) on request by the MEC for local government, or other statutory bodies, or individual or community or any other establishment experiencing challenges with provincial boundaries consider requesting the MDB to investigate such issues;
  - (b) after consulting the MECs for local government, request the MDB to investigate areas affecting provincial boundaries; and
  - (c) make recommendations to Parliament on the basis of the MDB report.
- (iii) The MDB may make recommendations to the National Assembly on provincial boundary challenges identified when performing its functions in terms of section 5(5).

## CHAPTER 6

### MISCELLANEOUS

#### 3.53 Regulations and guidelines

This section provides for the Minister, after consultation with the Board, to make regulations or issue guidelines on any matter that may be prescribed in terms of the Act.

#### 3.54 Offences and penalties

The Board is empowered to issue summons in case a person/s with critical information is needed to carry out its functions, but is refusing to do so as requested. The present legislation does not provide the Board with the option of this sanction which results, in some instances, in delays or failure to execute its functions.

#### 3.55 Amendment of legislation

Sections 2, 3 and 85(4), and Items 2 to 5 of Schedule 1 of the Municipal Structures Act are repealed.

#### 3.56 Transitional arrangements

Any determination matter which was investigated by the MDB immediately before this Act took effect, must be regarded as having been concluded in terms of Act No. 27 of 1998.

#### 3.57 Short title and commencement

The Act will be called the Local Government: Municipal Demarcation Act, 2020 and commencement will be by proclamation in the *Government Gazette* by the President.

## **4. PARTIES CONSULTED**

The following stakeholders/parties were consulted during the development of the Bill:

### **4.1 Sector Departments and Provinces**

- (i) Department of Traditional Affairs;
- (ii) Provincial Departments responsible for local government;
- (iii) Department of Rural Development and Land Reform;
- (iv) Department of Water and Sanitation;
- (v) Statistics South Africa;
- (vi) Department of Performance Monitoring and Evaluation;
- (vii) Department of South African Police Service;
- (viii) Department of Transport;
- (ix) Department of Justice and Constitutional Development;
- (x) Department of Home Affairs;
- (xi) Department of Tourism; and
- (xii) National Treasury.

### **4.2 Organisations and Institutions**

- (i) Municipal Demarcation Board;
- (ii) South African Local Government Association;
- (iii) South African Cities Network; and
- (iv) Independent Electoral Commission.

## **5. FINANCIAL IMPLICATIONS FOR THE STATE**

Financial implications are foreseen for the following:

- (i) Publication of the Bill for public comments;
- (ii) Public consultation processes that the MDB must undertake; and
- (iii) The establishment and remuneration of members of the Demarcation Appeals Authority.

## **6. FINANCIAL IMPLICATIONS FOR PROVINCES**

None.

## **7. FINANCIAL IMPLICATIONS FOR MUNICIPALITIES**

None.

## **8. PARLIAMENTARY PROCEDURE**

- 8.1 The Office of the Chief State Law Adviser and the Department of Cooperative Governance are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution apply.

- 8.2 The State Law Advisers (SLA) are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders (NHTL) in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act No. 41 of 2003, since it does not contain provisions pertaining to customary law or customs of traditional communities. However, out of courtesy, the SLA has advised that the NHTL should be informed accordingly.