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**GOVERNEMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**DEPARTMENT OF CO-OPERATIVE GOVERNANCE**

NO. R. 655

30 July 2021

**PROVINCE OF THE EASTERN CAPE****PUBLICATION FOR PUBLIC COMMENT****DETERMINATION OF TYPES OF MUNICIPALITIES BILL, 2021**

In terms of section 154(2) of the Constitution of the Republic of South Africa, 1996, the attached Bill is hereby published for public comment before it's enactment.

Interested persons and organisations may submit their comments to the above-mentioned Bill in writing on or before the 15 August 2021 to the attention of:

The Acting Director: Municipal Administration  
Attention: Mr. B.G. Duma  
Department of Cooperative Governance and Traditional Affairs  
Room 3127  
Tyamzashe Building  
Phalo Avenue  
BHISHO

**OR**

Private Bag X0035  
BHISHO  
5605

Comments may be emailed to [Bulelani.duma@eccogta.gov.za](mailto:Bulelani.duma@eccogta.gov.za)

Comments must be submitted within (14) days of the date of publication hereof.

I, Xolile Nqatha, Member of the Executive Council responsible for local government in the Province of the Eastern Cape, hereby publishes the Determination of Types of Municipalities Bill, 2021 for public comments in terms of Section 154(2) of the Constitution of the Republic of South Africa, 1996.



**XOLILE NQATHA**  
**MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR LOCAL**  
**GOVERNMENT AND TRADITIONAL AFFAIRS**

Date: 16/02/2021

**PROVINCE OF THE EASTERN CAPE**

**DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL  
AFFAIRS**

**DETERMINATION OF TYPES OF MUNICIPALITIES BILL , 2021**

**As Introduced**

**(BY THE MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR CO-  
OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS IN THE PROVINCE  
OF THE EASTERN CAPE)**

**BILL**

**To determine the types or municipality that may be established in the Province of the Eastern Cape; and to provide for matters in connection therewith.**

**Preamble.**

**WHEREAS** section 155 (1) of the Constitution defines the different categories of municipality that may be established;

**AND WHEREAS** section 155 (2) of the Constitution requires national legislation to define the different types of municipality that may be established within each category of municipality;

**AND WHEREAS** Part 2 of Chapter 1 of the Local Government. Municipal Structures Act, 1998 (Act No. 117 of 1998), in compliance with section 155 (2) of the Constitution, has defined the different types of municipality that may be established within each category of municipality;

**AND WHEREAS** section 155 (5) of the Constitution requires provincial legislation to determine the different types of municipalities to be established in the province;

**BE IT THEREFORE ENACTED** by the Legislature of the Province of the Eastern Cape as follows:—

**Definitions.**

1. In this Act, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); has a similar meaning; and—

**“category”**, in relation to municipalities, means a category A, B or C municipality envisaged in section 155 (1) of the Constitution;

**“collective executive system”** means a system of municipal government which allows for the exercise of executive authority through an executive committee in which the executive leadership of the municipality is collectively vested;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

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

**“Legislature”** means the Provincial Legislature of the Eastern Cape Province;

**“ward participatory system”** means a system of municipal government which allows for matters of local concern to wards to be dealt with by committees established for wards.

### **Establishment of Municipalities.**

2. The MEC hereby determines that the types of municipality in each category that may be established in the Province of the Eastern Cape must be as set out in sections 3, 4 and 5.

### **Category A municipalities.**

3. In category A the following types of municipalities may be established in the province:

- (a) a municipality with a collective executive system;
- (b) a municipality with a collective executive system combined with a sub council participatory system;
- (c) a municipality with a collective executive system combined with a ward participatory system;
- (d) a municipality with a collective executive system combined with both a sub council and a ward participatory system;
- (e) a municipality with a mayoral executive system;
- (f) a municipality with a mayoral executive system combined with a subcouncil participatory system;

- (g) a municipality with a mayoral executive system combined with a ward participatory system; and
- (h) a municipality with a mayoral executive system combined with both a subcouncil and a ward participatory system.

### **Category B municipalities**

4. In category B the following types of municipalities may be established in the province:

- (a) a municipality with a collective executive system;
- (b) a municipality with a collective executive system combined with a ward participatory system;
- (c) a municipality with a mayoral executive system;
- (d) a municipality with a mayoral executive system combined with a ward participatory system;

### **Category C municipalities**

5. In category C the following types of municipalities may be established in the province:

- (a) a municipality with a collective executive system ; and
- (b) a municipality with a mayoral executive system.

### **Application of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)**

6. The provisions of sections 12, 16 and 17 of the Local Government Municipal Structures Act, 1998 (Act No. 117 of 1998), shall apply with the necessary changes.

### **Short title.**

7. This Act is called the Eastern Cape Determination of Types of Municipalities Act, 2021.

## **EXPLANATORY MEMORANDUM ON THE DETERMINATION OF TYPES OF MUNICIPALITIES BILL (EASTERN CAPE), 2021**

### **PART 1**

#### **(GENERAL PRINCIPLES)**

##### **1. BACKGROUND**

On the 10 February 2020, the National Assembly passed the Municipal Structures Amendment Act. The President assented to this Municipal Structures Amendment Act 3 of 2021 on the 26 May 2021.

In terms of section 4 and 5 of the amendment act, section 9 and 10 of the Local Government: Municipal Structures Act, have been amended to remove all references to plenary executive system as a type of a municipality.

The Eastern Cape Province is one of the provinces that still has the following plenary types municipalities; Blue Crane Route and Koukamma LM's located under Sarah Baartman District Municipality and Great Kei L.M located under Amathole District Municipality.

##### **2. REASONS AND EFFECT OF THE BILL**

In terms of section 11 of the Local Government: Municipal Structure Act 117 of 1998, *provincial legislation must determine for each category of municipality the different types of municipality that may be established in the province.* The provincial legislation referred to in this section was repealed in its entirety by the Eastern Cape Repeal of Local Government Laws No 6 of 2016.

The Bill is therefore to enable the MEC for local government in the province to redetermine the aforementioned plenary types into types that are permitted in terms of the Local Government: Municipal Structures Act.

##### **3. OBJECTS OF THE BILL**

The object of the Bill is to re-enact the Determination of Types of Municipalities legislation.

#### **4. FINANCIAL IMPLICATIONS**

The estimated costs associated with the publication of the Bill in the Provincial Gazette to solicit public comments will be R10 000-R12 000.00.

#### **5. CONSULTATION**

Consultations will be held with all municipalities in the province. The consultations will also include South African Local Government Association and plenary type municipalities in the province.

In order to meet the provisions of section 154(2) of the Constitution, the bill will be published for public comment before it is introduced in the provincial legislature.

### **PART 2**

#### **(CLAUSE BY CLAUSE ANALYSIS)**

##### **Clause 1**

The clause deal with definitions of words and concepts referred to in this bill

##### **Clause 2**

Clause 2 is the empowering provision for the MEC to determine the types of municipality in each category that may be established in the Province of the Eastern Cape.

##### **Clause 3**

Clause 3 deals with types of municipality that may be established under category A. The clause is aligned with the relevant provision of the Local Government: Municipal Structures Act.

##### **Clause 4**

Clause 4 deals with types of municipality that may be established under category B. The clause is aligned with the relevant provision of the Local Government: Municipal Structures Act.

**Clause 5**

Clause 5 deals with types of municipality that may be established under category C. The clause is aligned with the relevant provision of the Local Government: Municipal Structures Act.

**Clause 6**

Clause 6 is intended to ensure that relevant provisions of the Local Government: Municipal Structures Act apply when determination of types of municipality is done.

**Clause 7**

This clause provide the short title of the Act sought to be re-enacted.