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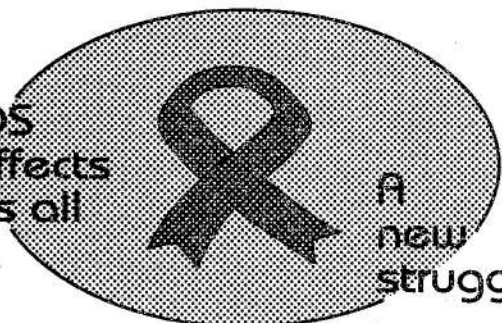
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JUNIE 2000

No. 21293

We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

Prevention is the cure

**AIDS
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DEPARTMENT OF HEALTH

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GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 2235 OF 2000

MINISTRY FOR PROVINCIAL AND LOCAL GOVERNMENT

LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2000

1. I, Fholisani Sydney Mufamadi, Minister for Provincial and Local Government, in terms of section 154 of the Constitution, hereby publish the Local Government: Municipal Structures Amendment Bill, 2000, for public comment.
2. Comments must please be submitted in writing to –

The Director-General
Attention: Mr S L Louw
Department of Provincial and Local Government
Private Bag X 804
PRETORIA
0001
3. Comments may also be faxed to facsimile number (012) 334 0608 at the above address.
4. Comments must be received by no later than **10 July 2000**.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Local Government: Municipal Structures Act, 1998, to further regulate the contents of notices in terms of which municipalities are established; to make further provision for transitional measures when boundary determinations require the disestablishment of existing municipalities and the establishment of new municipalities; to make further provision in connection with the formula for the determination of the number of councillors; to re-determine the circumstances in which ward councillors must vacate office if they become, or ceases to be, members of a political party; to redetermine the provisions from which a municipality may be exempted; to determine the date on which the first term of municipalities after the enactment of the Local Government: Municipal Structures Act, 1998, will end; to provide for transitional arrangements; and to provide for matters connected therewith.

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

Amendment of section 12 of Act 117 of 1998

1. Section 12 of the Local Government: Municipal Structures Act, 1998 (hereinafter called the principal Act), is hereby amended—

(a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(3) The notice establishing the municipality must **[specify] set out —**”;

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

- "(d) the name of the municipality or a provisional designation of the municipality"; and
- (c) by the insertion in subsection (3) after paragraph (d) of the following paragraph:
- "(dA) in the case of a metropolitan or local municipality, the number of wards in the municipality";.

Amendment of section 14 of Act 117 of 1998

2. Section 14 of the principal Act is hereby amended—

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

"(5) The MEC for local government in a province, by notice in the *Provincial Gazette*, may make provision for transitional measures to facilitate the disestablishment of an existing municipality and the establishment of a new municipality, which may include measures—

(a) establishing a committee to advise the MEC on any matter affecting the transition;

(b) restricting or regulating, in relation to the existing municipality—

(i) alterations to the staff establishment;

(ii) the appointment of staff or the filling of vacancies;

(iii) the upgrading of posts or promotions;

(iv) increases in salaries or wages;

(v) the disposal or acquisition of assets;

(vi) the conclusion of contracts with a duration longer than one year or the renewal of such contracts; or

(vii) the use of reserve capital. [The MEC must consult the existing municipality before publishing the notice.]"; and

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

"(6) The MEC must consult the existing municipality before publishing a notice contemplated in subsection (5)."

Amendment of section 20 of Act 117 of 1998

3. Section 20 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- “(a) must be determined in accordance with a formula determined by the Minister by notice in the *Government Gazette*, which formula must be based on the number of voters registered on that municipality’s segment of the national common voters roll on a date determined in the notice;”.

Amendment of section 27 of Act 117 of 1998

4. Section 27 of the principal Act is hereby amended by the substitution for paragraph (f) of the following paragraph:

“(f) was elected to represent a ward and who –

- (i) **[used on the part of the ballot paper for wards the same distinguishing mark or symbol as a party which contested the election,] was nominated by a party as a candidate in the ward election** and ceases to be a member of that party; or
- (ii) **[did not use on the part of the ballot paper for wards the same distinguishing mark or symbol as a party which contested the election] was not nominated by a party as a candidate in the ward election** and becomes a member of a party.”.

Amendment of section 91 of Act 117 of 1998

5. Section 91 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The MEC for local government in a province, within a policy framework as may be determined by the Minister, and by notice in the *Provincial Gazette*, may exempt a municipality in the province from a provision of section 36 [(2), (3) or (4), 38, **[to 41] 39**, 45 to 47, 48(2), (3) **[and] or** (4), 50 to 53, 58, 65 to 71, 75 and 76.”.

Amendment of section 93 of Act 117 of 1998

6. Section 93 of the principal Act is hereby amended-

(a) by the insertion after subsection (1) of the following subsection:

"(1A) (a) Section 12(4) will only apply in respect of a municipality after its council has been declared elected as envisaged by item 26(1)(a) of Schedule 6 to the Constitution.

(b) In respect of the first general election of municipal councils after the enactment of this Act, the MEC for local government must, before publishing a notice in terms of section 12-

(i) consult organised local government in the province; and

(ii) publish particulars of the proposed notice for public comment for at least 14 days."; and

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

"(3) The first term of all municipal councils after the enactment of this Act expires [not later than 1 November 2000 as determined by the Minister by notice in the *Government Gazette*] on 31 October 2000."

Transitional arrangement

7. For the first general election of municipal councils after the enactment of this Act, the date referred to in section 20(1)(a) of the principal Act is deemed to be 31 March 2000.

Short title

8. This Act is called the Local Government: Municipal Structures Amendment Act, 2000.

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL STRUCTURES AMENDMENT BILL, 2000

A request has been received from the Municipal Demarcation Board to effect certain amendments to the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (hereafter referred to as "the Structures Act"). Most of these proposed amendments relate to matters that need to be addressed in order to finalise the demarcation process and other preparations for the forthcoming local government elections.

Section 12 of the Structures Act deals with the contents of the notice in terms of which a municipality is established. During the process of preparing draft notices for the newly demarcated municipalities, it was realised that a number of important issues that should be contained in the establishment notices have not specifically been provided for in section 12. It is proposed that section 12 of the Structures Act be amended to specifically provide for matters such as the number of wards. There is a school of thought that the present wording of section 12(3) of the Structures Act would require a point to point description of municipal boundaries. In order to promote legal certainty in this regard, it is proposed that the word "specify" be substituted with the words "set out". All indications are that it may be difficult to finalise the names of all the newly demarcated municipalities before the publication of the establishment notices. It is therefore proposed that the present requirement in respect of the names be extended to allow for mere designations to be used.

Section 14(5) of the Structures Act allows a MEC to make provision for transitional measures to facilitate the disestablishment of existing municipalities and the establishment of new municipalities. All provinces have indicated that there exists a need for specific provisions that allow for a moratorium to be placed on municipalities in respect of matters such as the disposal and acquisition of assets, and the establishment of facilitation committees to advise and assist MEC's in the process of finalising the establishment notices. It is proposed that section 14(5) be amended to specifically provide for such matters.

Section 20 of the Structures Act provides for the determination of a formula for the determination of the number of councillors, which formula must be based on the number of voters registered on each municipality's segment of the national common voters roll. Uncertainty has arisen regarding the question as to which date should be used for the determination of the number of registered voters. The proposed amendment to section 20 provides that the date will be specified in the notice setting out the formula. However, in order to avoid any dispute regarding the date that was used in respect of the forthcoming elections, a transitional arrangement has been included in the Local Government: Municipal Structures Amendment Bill, 2000 ("the Bill") to fix the date that was used in the present instance.

Section 27 of the Structures Act deals with the circumstances under which a councillor vacates office. The proposed amendment merely entails a re-wording of paragraph (f) of section 27 in order to bring it into line with the provisions of the Municipal Electoral Bill.

In terms of section 91 of the Structures Act, the MEC may exempt a municipality from the provisions of certain sections of that Act. It was realised that certain of these provisions relate to matters that all municipalities should comply with, such as the election of a speaker. Consequently, it is proposed that section 91 be amended so as to remove the reference to provisions in respect of which no municipality should be exempted.

Section 12(4) of the Structures Act prescribes a consultation process that must take place when a new municipality is to be established. In view of the fact that the country is on the eve of the introduction of a completely new local government dispensation that entails the disestablishment of all existing municipal structures and the establishment of completely new municipalities, and the fact that a comprehensive consultation process has already taken place as part of the current demarcation process and through facilitation committees that have been established by all nine MEC's, it is not deemed expedient or practical to require MEC's at this stage of the transformation process to comply with

section 12(4) of the Structures Act. Consequently, it is proposed that section 93 of the Structures Act be amended to provide for a transitional arrangement regarding the application of section 12(4) of the Structures Act and the requirement to consult in so far as the newly demarcated municipalities are concerned.

In view of the fact that consideration is being given to proclaiming 1 November 2000 as the date on which the local government elections are to take place, it is necessary to amend section 93(3) of the Structures Act to reflect at least the date immediately prior to 1 November 2000 as the date on which the term of the existing municipal councils expire.

Clause 1 of the Bill proposes the amendment of section 12 of the Structures Act so as to facilitate the finalisation of the establishment notices.

Clause 2 of the Bill proposes the amendment of section 14 of the Structures Act by making specific reference to the establishment of an advisory committee, and the restricting or regulating of certain actions by an existing municipality.

Clause 3 of the Bill proposes the amendment of section 20 of the Structures Act so as to allow the date on which the number of registered voters is to be determined, to be determined in the relevant notice by the Minister.

Clause 4 of the Bill proposes the amendment of section 27 of the Structures Act so as to align the wording of paragraph (f) with that of the Municipal Electoral Bill.

Clause 5 of the Bill proposes an amendment of section 91 of the Structures Act so as to re-determine the provisions of the Structures Act from which a municipality may be exempted.

Clause 6 of the Bill proposes an amendment of section 93 of the Structures Act so as to insert a transitional arrangement regarding the application of section 12(4) of the

Structures Act and the requirement to consult, and to determine 31 October 2000 as the date on which the term of the existing municipal councils expire.

Clause 7 of the Bill contains a transitional arrangement regarding the date referred to in section 20(1)(a) of the Structures Act.

KENNISGEWING 2235 VAN 2000**MINISTERIE VIR PROVINSIALE EN PLAASLIKE REGERING****WYSIGINGSWET OP PLAASLIKE REGERING: MUNISIPALE STRUKTURE, 2000**

1. Ingevolge artikel 154 van die Grondwet, publiseer ek, Fholisani Sydney Mufamadi, Minister vir Provinsiale en Plaaslike Regering, hiermee die Wysigingswet op Plaaslike Regering: Munisipale Strukture, 2000, vir openbare kommentaar.
2. Kommentaar moet skriftelik gerig word aan –

Die Direkteur-Generaal
Vir Aandag: Mnr S L Louw
Departement van Provinsiale en Plaaslike Regering
Privaatsak X 804
PRETORIA
0001
3. Kommentaar kan ook gefaks word na faksimile nommer (012) 334 0608 by bovermelde adres.
4. Kommentaar moet nie later as **10 Julie 2000** ontvang word nie.

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WETSONTWERP

Tot wysiging van die Wet op Plaaslike Regering: Munisipale Strukture, 1998, ten einde die inhoud van kennisgewings ingevolge waarvan munisipaliteite ingestel word verder te reël; om verder voorsiening te maak vir oorgangsmatreëls wanneer grensvasstellings die afskaffing van bestaande munisipaliteite en die instelling van nuwe munisipaliteite vereis; om verder voorsiening te maak met betrekking tot die formule vir die bepaling van die getal raadslede; om die omstandighede te her-bepaal waaronder wyksraadslede amp moet ontruim indien hulle lede raak, of ophou om lede te wees van 'n politieke party; om die bepalings waarvan 'n munisipaliteit vrygestel mag word te her-bepaal; om die datum waarop die eerste termyn van munisipaliteite na die promulgering van die Wet op Plaaslike Regering: Munisipale Strukture, 1998, verval, te bepaal; om vir oorgangsmatreëls voorsiening te maak; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:-

Wysiging van artikel 12 van Wet 117 van 1998

1. Artikel 12 van die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (hieronder die Hoofwet genoem), word hierby gewysig-

(a) deur in subartikel (3) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

- "(3) Die kennisgewing wat die munisipaliteit instel moet die volgende **[spesifiseer] uiteensit-**";
- (b) deur paragraaf (d) van subartikel (3) deur die volgende paragraaf te vervang:
- "(d) die naam van die munisipaliteit of 'n voorlopige benaming van die munisipaliteit;"; en
- (c) deur na paragraaf (d) van subartikel (3) die volgende paragraaf in te voeg:
- "(dA) in die geval van 'n metropolitaanse of plaaslike munisipaliteit, die getal wyke in die munisipaliteit;".

Wysiging van artikel 14 van Wet 117 van 1998

2. Artikel 14 van die Hoofwet word hierby gewysig-

- (a) deur subartikel (5) deur die volgende subartikel te vervang:
- "(5) Die LUR vir plaaslike regering in 'n provinsie kan, by kennisgewing in die *Provinsiale Koerant*, voorsiening maak vir oorgangsreëlings om die afskaffing van 'n bestaande munisipaliteit en die instelling van 'n nuwe munisipaliteit te vergemaklik, wat maatreëls mag insluit-
- (a) wat 'n komitee instel om die LUR te adviseer oor enige aangeleentheid wat die oorgang raak;
- (b) wat ten opsigte van die bestaande munisipaliteit-
- (i) wysigings aan die personeeldiensstaat;
 - (ii) die aanstelling van personeel of die vulling van vakatures;
 - (iii) die opgradering van poste of bevorderings;
 - (iv) verhogings van salarisse of lone;
 - (v) die vervreemding of verkryging van bates;
 - (vi) die sluiting van kontrakte met 'n lewensduur van langer as een jaar of die hernuwing van sodanige kontrakte; of
 - (vii) die gebruik van reserve kapitaal,
- beperk of reguleer. [Die LUR moet die bestaande munisipaliteit raadpleeg voordat die kennisgewing gepubliseer word.]"; en
- (b) deur die volgende subartikel by te voeg:

"(6) Die LUR moet die bestaande munisipaliteit raadpleeg voordat 'n kennisgewing beoog in subartikel (5) gepubliseer word."

Wysiging van artikel 20 van Wet 117 van 1998

3. Artikel 20 van die Hoofwet word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

"(a) moet bepaal word ooreenkomstig 'n formule wat deur die Minister by kennisgewing in die *Staatskoerant* bepaal word, welke formule gebaseer moet word op die getal kiesers wat, op 'n datum bepaal in die kennisgewing, op daardie munisipaliteit se segment van die nasionale gemeenskaplike kieserslys geregistreer is;"

Wysiging van artikel 27 van Wet 117 van 1998

4. Artikel 27 van die Hoofwet word hierby gewysig deur paragraaf (f) deur die volgende paragraaf te vervang:

"(f) verkies is om **[wyke]** 'n wyk te verteenwoordig en wat-

(i) **[op die gedeelte van die stembrief vir wyke dieselfde onderskeidende merk of simbool gebruik het as 'n party wat die verkiesing bestry het,]** deur 'n party as 'n kandidaat in die wyksverkiesing genomineer is, en wat ophou om 'n lid van daardie party te wees; of

(ii) **[nie op die gedeelte van die stembrief vir wyke dieselfde onderskeidende merk of simbool gebruik het nie as 'n party wat die verkiesing bestry het,]** nie deur 'n party as 'n kandidaat in die wyksverkiesing genomineer is nie, en wat lid van daardie party word."

Wysiging van artikel 91 van Wet 117 van 1998

5. Artikel 91 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die LUR vir plaaslike regering in 'n provinsie kan binne 'n beleidsraamwerk wat die Minister mag bepaal, 'n munisipaliteit in die provinsie by kennisgewing in die

Provinsiale Koerant vrystel van 'n bepaling van artikel 36 [(2),] (3) of (4), 38, [tot 41] 39, 45 tot 47, 48(2), (3) [en] of (4), 50 tot 53, 58, 65 tot 71, 75 en 76."

Wysiging van artikel 93 van Wet 117 van 1998

6. Artikel 93 van die Hoofwet word hierby gewysig-

(a) deur na subartikel (1) die volgende subartikel in te voeg:

"(1A) (a) Artikel 12(4) is slegs van toepassing ten opsigte van 'n munisipaliteit nadat sy raad verkose verklaar is soos beoog in item 26(1)(a) van Bylae 6 by die Grondwet.

(b) Ten opsigte van die eerste algemene verkiesing van munisipale rade na die promulgering van hierdie Wet, moet die LUR vir plaaslike regering alvorens 'n kennisgewing ingevolge artikel 12 gepubliseer word-

(i) met georganiseerde plaaslike regering in die provinsie oorleg pleeg; en

(ii) besonderhede van die voorgenome kennisgewing vir ten minste 14 dae vir openbare kommentaar publiseer."; en

(b) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Die eerste termyn van alle munisipale rade na die promulgering van hierdie Wet verval [nie later as 1 November 2000 soos deur die Minister by kennisgewing in die *Staatskoerant* bepaal] op 31 Oktober 2000."

Oorgangsmatreë

7. Vir die eerste algemene verkiesing van munisipale rade na die promulgering van hierdie Wet, word die datum bedoel in artikel 20(1)(a) van die Hoofwet geag 31 Maart 2000 te wees.

Kort titel

8. Hierdie Wet heet die Wysigingswet op Plaaslike Regering: Munisipale Strukture, 2000.

MEMORANDUM OOR DIE OOGMERKE VAN DIE WYSIGINGSWETSONTWERP OP PLAASLIKE REGERING: MUNISIPALE STRUKTURE, 2000

'n Versoek is van die Munisipale Afbakeningsraad ontvang om sekere wysigings aan die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet No. 117 van 1998) (hierna die "Strukture Wet" genoem), aan te bring. Meeste van hierdie voorgestelde wysigings het betrekking op aangeleenthede wat aangespreek behoort te word ten einde die afbakeningsproses en ander voorbereidings vir die naderende plaaslike regeringsverkiezings af te handel.

Artikel 12 van die Strukture Wet handel oor die inhoud van die kennisgewing ingevolge waarvan 'n munisipaliteit ingestel word. Tydens die proses om konsep kennisgewings vir die nuut afgebakende munisipaliteite voor te berei, is daar besef dat 'n aantal belangrike sake wat in die instellingskennisgewings vervat behoort te word, nie spesifiek in artikel 12 voor voorsiening gemaak is nie. Daar word voorgestel dat artikel 12 van die Strukture Wet gewysig word om spesifiek vir aangeleenthede soos die getal wyke voorsiening te maak. Daar is 'n gedagterigting dat die huidige bewoording van artikel 12(3) van die Strukture Wet 'n punt tot punt beskrywing van munisipale grense sal vereis. Ten einde regsekerheid in hierdie verband te bevorder, word daar voorgestel dat die woord "spesifiseer" deur die woord "uiteensit" vervang word. Alles dui daarop dat dit moeilik mag wees om die name van al die nuut afgebakende munisipaliteite te finaliseer voor die publiserings van die instellingskennisgewings. Daar word derhalwe voorgestel dat die huidige vereiste ten opsigte van name uitgebrei word om toe te laat dat blote benamings gebruik mag word.

Artikel 14(5) van die Strukture Wet laat 'n LUR toe om voorsiening te maak vir oorgangsreëlings om die afskaffing van bestaande munisipaliteite en die instelling van nuwe munisipaliteite te vergemaklik. Al die provinsies het aangedui dat daar 'n behoefte bestaan vir spesifieke bepalings wat toelaat dat 'n moratorium geplaas word op munisipaliteite ten opsigte van aangeleenthede soos die vervreemding en verkryging van bates, en dat fasiliterings komitees ingestel word om LUR'e te adviseer en by te staan in die proses om die instellingskennisgewings te finaliseer. Daar word voorgestel dat artikel 14(5) gewysig word om spesifiek vir sodanige aangeleenthede voorsiening te maak.

Artikel 20 van die Strukture Wet maak voorsiening vir die bepaling van 'n formule vir die bepaling van die getal raadslede, welke formule gebaseer moet word op die getal kiesers

wat op elke munisipaliteit se segment van die nasionale gemeenskaplike kieserslys geregistreer is. Daar het onsekerheid ontstaan ten opsigte van die vraag welke datum gebruik behoort te word vir die vasstelling van die getal geregistreeerde kiesers. Die voorgestelde wysiging van artikel 20 maak voorsiening dat die datum vermeld word in die kennisgewing wat die formule uiteensit. Ten einde egter enige dispuut in verband met die datum wat ten opsigte van die naderende verkiesings gebruik is te vermy, is 'n oorgangsreëling in die Wysigingswetsontwerp op Plaaslike Regering: Munisipale Strukture, 2000 ("die Wetsontwerp") ingevoeg om die datum wat in die onderhawige geval gebruik is te bevestig.

Artikel 27 van die Strukture Wet handel oor die omstandighede waaronder 'n raadslid amp ontruim. Die voorgestelde wysiging behels bloot 'n her-bewoording van paragraaf (f) van artikel 27 ten einde dit in ooreenstemming met die bepalings van die Wetsontwerp op Munisipale Verkiesings te bring.

Ingevolge artikel 91 van die Strukture Wet, mag die LUR 'n munisipaliteit van die bepalings van sekere artikels van daardie Wet vrystel. Daar is besef dat sekere van hierdie bepalings betrekking het op aangeleenthede waaraan alle munisipaliteite behoort te voldoen, soos die verkiesing van 'n speaker. Gevolglik word daar voorgestel dat artikel 91 gewysig word ten einde die verwysing na bepalings ten opsigte waarvan geen munisipaliteit vrygestel behoort te word nie, te verwyder.

Artikel 12(4) van die Strukture Wet skryf 'n konsultasie proses voor wat moet plaasvind wanneer 'n nuwe munisipaliteit ingestel staan te word. In die lig daarvan dat die land op die vooraand is van die invoering van 'n geheel en al nuwe plaaslike regeringsbestel wat die afskaffing van alle bestaande munisipale strukture en die instelling van geheel en al nuwe munisipaliteite behels, en die feit dat 'n omvattende konsultasie proses alreeds plaasgevind het as deel van die huidige afbakenings proses en deur fasiliterings komitees wat deur al nege LUR'e ingestel is, word dit nie wenslik of prakties geag om van LUR'e op hierdie stadium van die oorgangsproses te vereis om aan artikel 12(4) van die Strukture Wet te voldoen nie. Gevolglik word daar voorgestel dat artikel 93 van die Strukture Wet gewysig word ten einde voorsiening te maak vir 'n oorgangsreëling met betrekking tot die toepassing van artikel 12(4) van die Strukture Wet en die vereiste om te konsulteer in soverre dit die nuut afgebakende munisipaliteite aangaan.