



**GAUTENG**  
**LEGISLATURE**  
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OFFICE OF THE SPEAKER

06 December 2005

**The Chairperson of the NCOP  
Honourable M J Mahlangu  
National Council of Provinces  
P O Box 15  
Cape Town  
8000**

**Dear Hon Mahlangu**

**RE: MANDATE TO THE GAUTENG DELEGATION IN RESPECT OF THE CONSTITUTION  
TWELFTH AMENDMENT BILL [B33B-2005] – Section 74.**

In terms of Section 65 of the Constitution of the Republic of South Africa Act, (Act 108 of 1996), the Gauteng Provincial Legislature adopted the attached report, which contains the Final Voting Mandate to our provincial delegation in respect of the following bill:

1. Constitution Twelfth Amendment Bill [B33B-2005] – Section 74

Yours faithfully

**MR R M MDAKANE  
SPEAKER**



# GAUTENG LEGISLATURE

## LOCAL GOVERNMENT PORTFOLIO COMMITTEE

### FINAL VOTING MANDATE

ON

### CONSTITUTION TWELFTH AMENDMENT BILL [B33B-2005]

#### 1. INTRODUCTION

**The Chairperson of the Local Government Committee, Ms R S Letwaba tables the Committee's Final Voting Mandate on the Constitution Twelfth Amendment Bill [B33B-2005], as follows:**

#### 2. PROCESS FOLLOWED

On the 16<sup>th</sup> November 2005, the Speaker formally referred the Constitution Twelfth Amendment Bill [B33B-2005] – Section 74, to the Local Government Portfolio Committee, in terms of Rule 232(1) (a) read with 235(4) and (6).

The Committee in its meeting of the 21<sup>st</sup> November 2005, received a provincial briefing from the Permanent Delegate to the National Council of Provinces (NCOP), Honourable E Sogoni.

On the 24<sup>th</sup> November 2005 the Portfolio Committee convened in terms of Rule 235 (4)(a), to give the Department of Local Government an opportunity to present the views of the Executive Council on the referred Bill. The Department could not present the views of the Executive Council as a determination would be informed by the Gauteng Provincial Legislature processes.

On the 11th and 18th November 2005, the communities of Merafong approached the legislature with memoranda and petitions wherein they articulated their views with regard to the inclusion of Merafong municipality into the North West Province and demanded to be included in the Gauteng Province.

The Speaker subsequently referred the memoranda and petitions to the Committee for consideration and report.

The GPL in its sitting of Thursday, 17 November 2005, resolved that the legislature engage in a Joint Public Hearing Session with the North West Legislature, in order to receive presentations from the affected communities with regard to the provisions of the Constitution Twelfth Amendment Bill [B33B-2005]; and each legislature to process the outcome of the public hearing in their respective legislatures in accordance with their Standing Rules.

A Public Hearing was facilitated as per section 118 of the Constitution, wherein submissions both oral and written were called for and the public extensively engaged with the Committee on their views.

On the 29th November 2005, the Portfolio Committee deliberated and considered the principle and detail of the Constitution Twelfth Amendment Bill [B33B-2005] - Section 74, as well as a report on the analysis and assessment of the views of the "People"<sup>1</sup>.

A negotiating mandate was adopted and conveyed to the NCOP for purposes of deliberation in the Select Committee meeting of 30<sup>th</sup> November 2005. The Gauteng province negotiating position supported the Bill subject to the inclusion of Merafong City Local municipality into the West Rand District Municipality of the Gauteng province.

### 3. DETAIL OF THE BILL

The Portfolio Committee considered the detail of the Constitution Twelfth Amendment Bill [B33B-2005] - Section 74 as follows:

- (i) To amend the Constitution of the Republic of South Africa, 1996, so as to effect a technical change;
- (ii) To re-determine the geographical areas of the nine provinces of the Republic of South Africa; and
- (iii) To provide for matters connected therewith.

### 4. LEGAL FRAMEWORK

#### (a) Constitution<sup>2</sup>

- Section 155 establishes municipalities and requires national legislation to –
  - (a) Define the different types of municipalities that may be established; and
  - (b) establish criteria and procedures for the determination of municipal boundaries by an independent authority.
- Section 74(3)(b) provides that any provision of the Constitution may be amended by a bill passed also by the NCOP, with a supporting vote of at least six provinces, if the amendment *inter alia* alters provincial boundaries, powers, functions or institutions; or amends a provision that deals specifically with a provincial matter.
- **Section 74(8) provides that if a bill referred to section 73(3)(b), or any part of the bill concerns only a specific province or provinces, the NCOP may not pass the bill or the relevant part unless it has been approved by the legislature or legislatures of the province or provinces concerned.**

#### (b) Municipal Demarcation Act<sup>3</sup>

The Act provides for the criteria and procedures for the determination of municipal boundaries by an independent authority as required by section 155(3) of the Constitution.

Chapter 1, section 2 of the Act establishes an independent authority known as the Municipal Demarcation Board.

Chapter 2, section 21 requires the Board to determine boundaries for municipal areas for the whole of the Republic and may re-determine any municipal boundaries determined.

Section 22 provides that the Board determines or re-determines the municipal boundaries on its own initiative; on request by the Minister or MEC for Local Government; or on request by a municipality with the concurrence of any other municipality affected by the proposed determination or re-determination;

...

**Section 25 prescribes factors to be taken into account when the Board determines a municipal boundary and among other things, the interdependence of people, communities and economies**

<sup>1</sup> "People" refer to the attendees of the public hearing

<sup>2</sup> Act 108 of 1996

<sup>3</sup> Local Government Act, 27 of 1998

as indicated by existing and expected patterns of human settlement and migration; employment; commuting; spending; the use of amenities, the financial and administrative capacity of the municipality to perform municipal functions efficiently and effectively; etc.

(c) **Municipal Structures Act**<sup>4</sup>

Chapter 1, sections 2-11 of the Act describes the different categories and types of Municipalities and the requirement for provincial legislation to determine all categories of municipalities.

Chapter 2, section 12 of the Act requires the MEC for Local Government in a province, by notice in the Provincial Gazette to establish a municipality in each municipal area which the Demarcation Board will have demarcated in the province in terms of the Demarcation Act and the notice establishing the municipality must specify among other things, the category and type of municipality that is established and the boundaries of the municipal area.

5. **PROVISIONS OF THE CONSTITUTION TWELFTH AMENDMENT BILL**<sup>5</sup>

The bill seeks to amend the Constitution of the Republic of South Africa, Act 108 of 1996, by among other things, re-determining the geographical areas of the nine provinces of the Republic of South Africa.

Section 2 of the bill provides that the geographical areas of the respective provinces comprise the sum of the indicated geographical areas reflected in the various maps referred to in the Notice listed in Schedule 1A.

Section 3(a) of the bill provides that whenever the geographical area of a province is re-determined by an amendment to the Constitution, an Act of Parliament may provide for measures to regulate, within a reasonable time, the legal, practical and any other consequences of the re-determination.

Section 3(b) of the bill provides that an Act of Parliament envisaged in (a) may be enacted and implemented before such amendment to the Constitution takes effect, but any provincial functions, assets, rights, obligations, duties or liabilities may only be transferred in terms of that Act after that amendment to the Constitution takes effect.

6. **EFFECT OF SCHEDULE 1A ON GAUTENG PROVINCE**<sup>6</sup>

6.1 **Government Gazette No. 28189: 31 October 2005**

In terms Notice 1998 of 2005, the Minister of Provincial and Local Government requested the Municipal Demarcation Board to re-determine the boundaries of certain municipalities. A further request was received from the Minister to publish a notice and maps reflecting alternative proposals submitted by the Minister to the Board. Please see schedule below iro Gauteng:

Name of Municipality and existing designation/code	Proposed Designation / Code	Minister's alternative Proposal
West Rand District Municipality (CBDC8)	DC48	Merafong City Local Municipality is to be excluded from the municipal area of the West Rand District municipality and included in the municipal area of the Southern District Municipality. Westonaria to remain in the West Rand District Municipality.
Southern District Municipality (DC40)	DC40	

<sup>4</sup> Local Government Act, 117 of 1998

<sup>5</sup> Bill 33B-2005

<sup>6</sup> The primary focus is on the area that is in dispute – Merafong.

## 6.2 Government Gazette No. 28236: 21 November 2005

In terms of notice 1257 of 2005, the Municipal Demarcation Board announced the proposed re-determination of municipal boundaries, in terms of the Local Government: Municipal Demarcation Act, 1988 as follows –

*Based on the re-alignment of provincial boundaries as reflected in the Constitution Twelfth Amendment Bill of 2005, and the imminent repeal of legislative provisions related to cross-boundary municipalities, the Municipal Demarcation Board hereby proposes the re-determination, as envisaged by section 21 of the Local Government: Municipal Demarcation Act, 27 of 1998, of the boundaries of municipalities as reflected in the Schedule and maps.*

*Any proposed re-determination contained in this notice is to be sanctioned by national legislation. Please see schedule below iro Gauteng:*

Name of Municipality and existing designation/code	Proposed Designation / Code	Proposal
West Rand District Municipality (CBDC8)	DC48	The municipal area of Merafong City Local Municipality (CBLC8) is to be excluded from the municipal area of West Rand District municipality (CBDC8), and included into the municipal area of Southern District Municipality (DC40).
Southern District Municipality (DC40)	DC40	The municipal area of Merafong City Local Municipality (CBLC8) is to be excluded from the municipal area of West Rand District municipality (CBDC8), and included into the municipal area of Southern District Municipality (DC40).
Merafong City Local Municipality (CBLC8)	NW405	No changes to municipal boundary, but Merafong City Local Municipality (CBLC8) is to be excluded from the municipal area of West Rand District Municipality (CBDC8), and included into the municipal area of Southern District Municipality (DC40).

## 7. ANALYSIS

In line with the legal framework above –

1. the establishment and existence of the Municipal Demarcation Board is a Constitutional requirement and the Board is empowered by legislation to determine and/or to re-determine municipal boundaries *inter alia* on its own initiative or on request by the Minister or MEC for local government.
2. the proposed geographical areas of the nine provinces of the Republic of South Africa, are to be re-determined by the enactment of the Constitution Twelfth Amendment Bill [B33B-2005], and the implications of schedule 1A to the Bill on the Gauteng Province, in relation to the Merafong municipality, will be the exclusion of the Merafong Municipality from the Gauteng Province and its inclusion into the North West Province.

## 8. OVERVIEW AND ANALYSIS OF PUBLIC HEARING

This is the capturing of the written and oral submissions during the Committee's Public Hearing held in Carletonville on the Constitution Twelfth Amendment Bill. The following are some of the areas raised as validation in favour of incorporating Merafong to either the Gauteng Province or the North-West Province.

Issues around service delivery between the two provinces are one of the contentious areas raised by organised formations and oral submissions made during the public hearing.

## 8.1 Views in support of inclusion into the Gauteng Province

### 1. Social Development Cluster

#### 1.1 Social Services

In the North West Province, social services are said not to be rendered sufficiently by the Provincial Departments responsible for rendering social services in the North West Province. In Gauteng it is reported that the services are adequately made available for the community. These are the views strongly articulated in certain representations.

North West Government is said to be not capable of employing more staff, instead they have been relying on the services of volunteers for the period of about 5 years. It is also reported that there is inadequate infrastructure in place for the provision of social services. Gauteng Provincial Department of Social Development has on the other hand offices in Khutsong and Carletonville with proper infrastructure. Administrative work linked to the provision of social services is still provided manually and results in delays in the provision of required services.

#### 1.2 Home Affairs

This is one of the areas where strong feelings were observed, it was said that the Government of North West has failed the people in bringing the services closer to them. For instance, it was reported that the application for Identification Documents is conducted once a week by the officials from the Potchefstroom offices. Gauteng on the other hand has offices in Khutsong and in Carletonville. Applications are processed during all working days and related services are said to be efficient and effective.

#### 1.3 Health and Emergency Services

It was further reported that the provision of Health and Emergency Services is inadequate in the North West Province. For instance, there are only two clinics to cater for the entire community of Kokosi. The clinics are normally without medicines and the staff services are not available after normal working hours. People are always referred to Carletonville and Potchefstroom Hospitals. The Merafong City Local Municipality has inadequate provision of ambulance services. Gauteng Provincial Government is providing emergency services through the West Rand District Municipality wherein Merafong City Local Municipality is currently beneficiary.

Submissions made centred on the ability of the GPG health system to roll out anti-retrovirals (ARVs) in their public hospitals as compared to the North West Provincial Government. Furthermore, it was reported that the Gauteng hospitals and clinics are within reach as compared to those of North-West Province. The provision of primary health services in Gauteng are reported to be more efficient and effective in Gauteng Province.

#### 1.4 Education Systems

Overwhelming majority of submissions made indicated that the educational systems in the North West Province are either lagging behind in the provision of learning areas in the fields of Information Technology Systems (ITS) and other science and technology areas. The general opinion is that the Gauteng Department of Education (GDE) has strategically dealt with educational policies relating to science and technology. Educators in Gauteng have been trained in Outcomes Based Education (OBE) and are implementing it effectively in Gauteng. There are plenty of learning institutions located in the Gauteng Province. The GDE is said to have introduced a comprehensive nutritional programme in Gauteng schools.

It was also indicated that the GDE provides supplementary reading material as well as subject study guide material. Furthermore, additional learning equipment includes audio visuals and printed support material which is reported to be accessible throughout the year. Some of the programmes said to be provided by GDE includes:

- Senior intervention programme
- Role models intervention programme
- Maths, Science technology education
- Gauteng On-Line

### 1.5 Local Government Programmes

It is also important to note the submissions made around the capacity to deliver local government service delivery programmes such as:

- Water and sanitation programme
- Expanded Public Works programme

It was said that the abovementioned programmes have been efficiently implemented by municipalities and the department of Local Government in Gauteng. Mention was also made of advanced service delivery policy framework which will benefit the communities of the affected areas if they are to remain in Gauteng Province. Special mention of the benefits of the indigent policy initiatives by Gauteng municipalities was also emphasised.

The general sentiment is that the incorporation of Merafong into the North West Province would lead to service delivery backlogs.

### 1.6 Economic Development Cluster

Considering commercial and industrial linkages, it was mentioned that Gauteng is known as the economic hub of the country as well as that of the southern region of Africa. The development of Johannesburg as the "City of Gold" is as the result of the gold mines and those of Merafong have always been contributing to the Gross Domestic Product (GDP) of the Region. The main economic activities of the area are conducted with the Gauteng Province.

Workers from Merafong City, as represented by their respective labour organisations strongly argue for Merafong to remain in the Gauteng province as they have contributed to the economic development of the province. Merafong has always been supplying the Gauteng province with mineral deposits. The argument raised is that it is not economically prudent to incorporate two areas which can hardly offer any meaningful job opportunities. Merafong depends on the mining sector which is currently experiencing the dwindling production and North West relies on agriculture with minimal contribution towards their GDP. The current levels of unemployment in Merafong can indirectly lead to high levels of poverty once incorporated into the North West province.

The large part of the Merafong population is employed in areas forming part of the Gauteng province. This was presented as evidence strong enough to allow Merafong to remain in the Gauteng Province as there are much greater job creation opportunities in Gauteng.

The incorporation of Merafong into South District Municipality of North West has some financial burdens for the affected communities. Besides the fact many institutions are located in Mafikeng which might lead to high travelling costs, there are also other negative financial implications for the motor car owners, as they have to change their registration number plates from Gauteng to North West.

The Congress of South African Trade Unions (COSATU) and some of its 8 affiliates in the area have raised their objections of Merafong being incorporated into North West Province. Merafong is linked to the City Region of Gauteng by an extensive road network and rail infrastructure. The economic links related to the movement of goods and people are between Merafong City and the City Region of Gauteng. Manufactured goods and financial services move on daily basis between Merafong City, Westonaria and the City Region. COSATU argues that there are little manufactured goods or specialist support which finds its way from the North West Province into Merafong municipal area.

### 8.2 Views in favour of inclusion of Merafong into the North West Province

There were views expressed in favour of incorporating Merafong City Local Municipality into the North West Province, they were articulated as follows:

- The Merafong ANC Youth League is of the view that the Merafong City Local Municipality be incorporated into the North West. The Youth League's stance is influenced by the following considerations:

- *On the economic front:* the Merafong City Local Municipality depends highly on the neighbouring town of Potchefstroom which is in the North West. They tabulate the type of services Merafong City receives from North West such as Correctional, Health, Taxi registrations, Telkom and Eskom services.
- They are also of the view that Merafong City Local Municipality is better suited for the macro economic strategy of the North West which is primary based on the primary economy that is dependent on natural resources e.g. mining, agriculture, tourism.
- Ward 24 and 25 of Fochville supports the proposal that the Merafong City Local Municipality be located in Southern District of North West Province.

### 8.3 Key determining principles

The joint public hearing between North West and Gauteng Legislatures was held successfully. The key principles underpinning the approach of the public hearing are as follows:

- Service delivery and infrastructure development
- Social and economic development of the affected areas
- The current and future human settlements and migration patterns as they relate to the interdependence of people and communities
- Employment, commuting and dominant transport movements and related costs

An overwhelming majority of people attending the public hearing were opposed to the proposal to incorporate Merafong City Local Municipality into the North West Province, due to the fact that they were not provided with substantive and compelling reasons.

People of Merafong regard themselves as being an inseparable part of the West Rand District which forms part of the Gauteng Province. In pursuance of their argument it is argued that there are no social and economic fibre linkages between Merafong and areas in the North West Province such as Ventersdorp, Lichtenburg, Mafikeng, Klerksdorp or Rustenburg.

### 8.4. Recommendations on Public Hearing

In principle the Merafong community agreed with the phasing out of cross-boundary municipalities but argued for the inclusion of the municipal area of Merafong into the municipal area of the West Rand Municipality, Gauteng Province.

The public hearings gave every indication that the current service delivery challenges require a focused intervention approach. The purpose of the focused intervention approach will be to promote economic development and growth, human resource development and institutional development capacity, by mobilising and directing funds to sustainable development projects and related matters contained herein.

The intervention approach must provide a supportive framework to the affected Municipality (Merafong City Local Municipality area).

After due analysis of the Portfolio Committee's public hearing report the Department of Local Government together with sector departments of the Gauteng Province and the North West Province must conduct a service delivery audit to establish service delivery backlogs and recommend corrective measures for the North West Province Government. E.g. there is a need to strengthen the human resource capacity in the provision of social services including the provision of proper infrastructure in close proximity to the affected communities.

Home Affairs related services must be accessible and sufficient to the needs of the affected communities.

Health and Emergency Services are said to be inadequate in the North West Province and clinics are normally without medicines. These are critical issues which need urgent and immediate attention, especially the roll-out of anti-retroviral (ARV).



In conclusion the committee will await a hand-over report from the Department of Local Government of the Gauteng Province which report, must outline recommended corrective measures for the North West Province.

Of emphasis it is important to note that National Government has pledged to build and create transitional arrangements that will ensure that service delivery is sustained and improved in affected municipalities.

## 9. COMMITTEE POSITION AT THE NEGOTIATING STAGE

The Portfolio Committee on Local Government -

- in principle, supported the phasing-out of cross-boundary municipalities as envisaged by the Constitution Twelfth Amendment Bill [B33B-2005];
- in light of the outcome, impact assessment and analysis of the public hearing submissions, agreed with the inclusion of the geographical area of Merafong municipality into the West Rand District municipality in the Gauteng Province;
- recommended to the House, amendment to Schedule 1A of the Constitution Twelfth Amendment Bill [B33B-2005], to provide for the inclusion of the municipal area of Merafong into the municipal area of the West Rand District municipality of the Gauteng Province.

## 10. COMMITTEE POSITION AFTER CONSIDERATION OF NEGOTIATING MANDATES BY THE NCOP SELECT COMMITTEE

The Portfolio Committee's Negotiating Mandate indicated that Gauteng will support the Constitution Twelfth Amendment Bill on condition that the municipal area of Merafong is included in the municipal area of the West Rand District Municipality of the Gauteng Province. In the absence of any indication whether the Gauteng Legislature has adopted or rejected the Constitution Bill in terms of Section 74 (8), this signals a qualified support for the Constitution Bill.

Provinces can only adopt or reject the constitution bill in terms of Section 74 (8) of the constitution say (aye or nay). The legislative processes applicable to the constitution bill does not allow for amendments to be effected in the NCOP.

Subsequent to deliberations and negotiations by the select committee and the diverse positions advanced, the portfolio committee in considering the substance of the issues raised, **notwithstanding** the views of the public, reviewed their initial position based on the following-

1. the committee supports the phasing out of the cross boundary municipalities as envisaged by the Constitution Twelfth Amendment Bill [B33B-2005], cross boundary municipalities have proved difficult to administer with negative consequences on the delivery of services.
2. Gauteng supports the creation of viable and sustainable municipalities with a proper revenue base.
3. Implications of Gauteng not supporting the Constitution Twelfth Amendment Bill [B33B-2005].
  - If the veto of the Gauteng Province applies to the whole Constitution Bill as it relates to cross-boundary municipalities, the Cross-boundary Municipalities Laws Repeal Bill will have to be withdrawn from Parliament, and the local government elections would be conducted within the current municipal configuration, i.e. with cross-boundary municipalities.
  - If the notion of a narrow interpretation is applied to the provisions of the Constitution Bill which may be vetoed by a province, the implications are just as extensive as if the whole Constitution Bill is rejected. Lets for argument sake say Gauteng can only veto (reject) the part of the proposed Schedule 1A that defines its territory; it will mean that the authorisation to have cross-boundary municipalities is revoked, whilst the current boundary of Gauteng remains the same. The result of this would be that not only West Rand District but also Tshwane, Ekurhuleni and Metsweding would be affected. These municipalities (and their local municipalities where applicable) would have to be disestablished and those areas of the municipalities in question

that fall in Gauteng. The cross-boundary areas falling in the other provinces would likewise have to be re-demarcated into the new municipalities.

- The overall complication would be that the current boundaries of Gauteng are still determined with reference to magisterial districts, which are not used or referred to in the Constitution Twelfth Amendment Bill. Consequently, amendments that would be required in the Constitution Bill to address Gauteng's position may be such that it would not be possible to finalise the bill for the Local Government Elections, thus, elections would be conducted within the current municipal configuration.

#### **11 FINAL VOTING POSITION ADOPTED BY THE COMMITTEE**

In terms of Section 65 of the Constitution, the Local Government Portfolio Committee recommends that the House confer authority on the Head of its Delegation to the NCOP, to **Vote in Support** of the Constitution Twelfth Amendment Bill [B33B-2005].