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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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## GENERAL NOTICE

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### NOTICE 1632 OF 2005

#### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

#### PUBLICATION OF BILL AMENDING CONSTITUTION

The Minister for Justice and Constitutional Development intends introducing the Constitution Twelfth Amendment Bill of 2005, in the National Assembly. The Bill is hereby published for public comment in accordance with section 74(5)(a) of the Constitution of the Republic of South Africa, 1996. Any person wishing to comment on the proposed amendments is invited to submit written comments to the Minister for Justice and Constitutional Development. Comments should kindly be directed to the attention of Mr J J Labuschagne, Private Bag X 81, Pretoria, 0001, by not later than 26 September 2005.

(Electronic mail address: [Jolabuschagne@justice.gov.za](mailto:Jolabuschagne@justice.gov.za))

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#### CONSTITUTION TWELFTH AMENDMENT BILL

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

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#### GENERAL EXPLANATORY NOTE:

- [            1            Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_            Words underlined with a solid line indicate insertions in existing enactments.
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#### BILL

To amend the Constitution of the Republic of South Africa, **1996**, so as to effect a technical change; and to determine the geographical areas of the nine provinces of the Republic of South Africa; and to provide for matters connected therewith.

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

Substitution of section 103 of the Constitution of the Republic of South Africa, **1996**, as amended by section 3 of Act 3 of 2003

1. The following section is substituted for section **103** of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution):

## "Provinces

103. (1) The Republic has the following provinces:

- (a) Eastern Cape
- (b) Free State
- (c) Gauteng
- (d) KwaZulu-Natal
- (e) Limpopo
- ~~(e)~~(f) Mpumalanga
- ~~(f)~~(g) Northern Cape
- ~~(g)~~ **Limpopo**
- (h) North West
- (i) Western Cape.

(2) The ~~{boundaries}~~ areas of the respective provinces [are those that existed when the Constitution took effect] comprise the geographical areas represented by the maps referred to in the Notices listed in Schedule 1A."

Amendment of section **155** of the Constitution of the Republic of South Africa, **1996**, as amended by section **1** of Act **87** of **1998**

**2.** Section 155 of the Constitution is hereby amended by the deletion of subsection (6A).

Amendment of section **157** of the Constitution of the Republic of South Africa, **1996**, as amended by section **2** of Act **87** of **1998**

**3.** Section 157 of the Constitution is hereby amended by the deletion of paragraph (b) of subsection (4).

Insertion of Schedule 1A in the Constitution of the Republic of South Africa, **1996**

**4.** The following Schedule is hereby inserted in the Constitution after Schedule 1:

**"SCHEDULE 1A  
GEOGRAPHICAL AREAS OF PROVINCES**

The Province of the Eastern Cape

- Map No. 42 of the Schedule to Notice 1 **179** of 2005 (Ukhahlamba District Municipality)
- Map No. 38 ~~of~~ the Schedule to Notice ~~179~~ of 2005 (Nelson Mandela Metropolitan Municipality)
- Map No. **4** of the Schedule to Notice **1594** of 2005 (Alfred Nzo District Municipality)
- Map No. 39 of the Schedule to Notice 1 **179** of **2005** (Cacadu District Municipality)
- Map No. **40** of the Schedule to Notice 1 **179** of **2005** (Amatole District Municipality)
- Map** No. 41 of the Schedule to Notice 1 **179** of 2005 (Chris Hani District Municipality)

Map No. 43 of the Schedule to Notice 1 179 of 2005 (**OR** Tambo District Municipality)

#### **The Province of the Free State**

Map No. 45 of the Schedule to Notice 1 179 of 2005 (Xhariep District Municipality)

Map No. 46 of the Schedule to Notice 1 179 of 2005 (Motheo District Municipality)

Map No. 47 of the Schedule to Notice 1 179 of 2005 (Lejweleputswa District Municipality)

Map No. 48 of the Schedule to Notice 1 179 of 2005 (Thabo Mofutsanyane District Municipality)

Map No. 49 of the Schedule to Notice 1 179 of 2005 (Northern Free State District Municipality)

#### **The Province of Gauteng**

Map No. 1 of the Schedule to Notice 1 179 of 2005 (Metropolitan Municipality Ekurhuleni)

Map No. 2 of the Schedule to Notice 1 179 of 2005 (Metropolitan Municipality Tshwane)

Map No. 13 of the Schedule to Notice 1 594 of 2005 (Metsweding District Municipality)

Map No. 25 of the Schedule to Notice 1 594 of 2005 (West Rand District Municipality)

Map No. 72 of the Schedule to Notice 1 179 of 2005 (City of Johannesburg)

Map No. 73 of the Schedule to Notice 1 179 of 2005 (Sedibeng District Municipality)

#### **The Province of KwaZulu-Natal**

Map No. 1 of the Schedule to Notice 1 594 of 2005 (Sisonke District Municipality)

Map No. 50 of the Schedule to Notice 1 179 of 2005 (eThekweni Metropolitan Municipality)

Map No. 51 of the Schedule to Notice 1 179 of 2005 (Ugu District Municipality)

Map No. 52 of the Schedule to Notice 1 179 of 2005 (uMgungundlovu District Municipality)

Map No. 53 of the Schedule to Notice 1 179 of 2005 (Uthukela District Municipality)

Map No. 54 of the Schedule to Notice 1 179 of 2005 (Umzinyathi District Municipality)

Map No. 55 of the Schedule to Notice 1 179 of 2005 (Amajuba District Municipality)

Map No. 56 of the Schedule to Notice 1 179 of 2005 (Zululand District Municipality)

Map No. 57 of the Schedule to Notice 1 179 of 2005 (Umkhanyakude District Municipality)

Map No. 58 of the Schedule to Notice 1 179 of 2005 (uThungulu District Municipality)

Map No. 59 of the Schedule to Notice 1 179 of 2005 (Ilembe District Municipality)

#### **The Province of Limpopo**

Map No. 15 of the Schedule to Notice 1 594 of 2005 (Sekhukune District Municipality)

Map No. 19 of the Schedule to Notice 1 594 of 2005 (Mopani District Municipality)

Map No. 65 of the Schedule to Notice 1 179 of 2005 (Vhembe District Municipality)

Map No. 66 of the Schedule to Notice 1 179 of 2005 (Capricorn District Municipality)

Map No. 67 of the Schedule to Notice 1 179 of 2005 (Waterberg District Municipality)

#### **The Province of Mpumalanga**

Map No. 23 of the Schedule to Notice 1 594 of 2005 (Ehlanzeni District Municipality)

Map No. 61 of the Schedule to Notice 1179 of 2005 (**Gert Sibande District Municipality**)  
Map No. 62 of the Schedule to Notice 1179 of 2005 (Nkangala District Municipality)

**The Province of the Northern Cape**

Map No. 11 of the Schedule to Notice 1594 of 2005 (Frances Baard District Municipality)  
Map No. 37 of the Schedule to Notice 1179 of 2005 (Siyanda District Municipality)  
Map No. 35 of the Schedule to Notice 1179 of 2005 (Namakwa District Municipality)  
Map No. 36 of the Schedule to Notice 1179 of 2005 (Pixley Ka Seme District Municipality)  
Map No. 6 of the Schedule to Notice 1594 of 2005 (Kgalagadi District Municipality)

**The Province of North West**

Map No. 27 of the Schedule to Notice 1594 of 2005 (Southern District Municipality)  
Map No. 68 of the Schedule to Notice 1179 of 2005 (Bojanala District Municipality)  
Map No. 69 of the Schedule to Notice 1179 of 2005 (Central District Municipality)  
Map No. 70 of the Schedule to Notice 1179 of 2005 (Bophirima District Municipality)

**The Province of the Western Cape**

Map No. 29 of the Schedule to Notice 1179 of 2005 (City of Cape Town)  
Map No. 30 of the Schedule to Notice 1179 of 2005 (West Coast District Municipality)  
Map No. 31 of the Schedule to Notice 1179 of 2005 (Cape Winelands District Municipality)  
Map No. 32 of the Schedule to Notice 1179 of 2005 (Overberg District Municipality)  
Map No. 33 of the Schedule to Notice 1179 of 2005 (Eden District Municipality)  
Map No. 34 of the Schedule to Notice 1179 of 2005 (Central Karoo District Municipality)

**Short title**

**5.** This Act is called the Constitution Twelfth Amendment Act of 2005, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION TWELFTH  
AMENDMENT BILL OF 2005**

(Published in terms of Rule 258(3) of the Rules of the National Assembly)

**1. BACKGROUND**

1.1 The present nine provinces of the Republic of South Africa (the Republic) were established under section 124(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (the Interim Constitution). The areas of the respective provinces were defined in Part 1 of Schedule 1 to the Interim Constitution, which defined those areas primarily by reference to specific districts created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

1.2 Section 103(2) of the Constitution of the Republic of South Africa, 1996 (the Constitution) provides that "[t]he boundaries of the provinces are those that existed when the Constitution took effect". In other words, as defined under the Interim Constitution. Consequently, provincial boundaries are determined by reference to the boundaries of magisterial districts, rather than by reference to municipal boundaries. This state of affairs has resulted in some practical difficulties, particularly in respect of service delivery.

1.3 In terms of section 151(1) of the Constitution the local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic. In terms of section 155(6) of the Constitution each provincial government must establish municipalities in its province and must, by legislative or other measures, among others, provide for the monitoring and support of local government in the province.

1.4.1 Section 155(6A) of the Constitution regulates the establishment of the so-called "cross-boundary municipalities". It provides that if the criteria for the determination of municipal boundaries cannot be fulfilled without a municipal boundary extending across a provincial boundary, that municipal boundary may be determined across the provincial boundary, but only with the concurrence of the provinces concerned and after the respective provincial executives have been authorised by national legislation to establish a municipality within that municipal area. Such legislation has been enacted in the form of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).

1.4.2 Section 155(6A) further provides that national legislation may, among others—

- (a) provide a framework for the exercise of provincial executive authority in that municipal area and with regard to that municipality; and
- (b) provide for the re-determination of municipal boundaries where one of the provinces concerned withdraws its support of a municipal boundary as determined.

National legislation that has been enacted in this regard is—

- (i) the Local Government: Cross-boundary Municipalities Act, 2000 (Act No. 29 of 2000), that authorises the provincial executives affected to establish cross-boundary municipalities and provides for the re-determination of the boundaries

- of such municipalities under certain circumstances; and
- (ii) the Redetermination of the Boundaries of Cross-boundary Municipalities Act, 2000 (Act No. 69 of 2000), that authorises the re-determination of the boundaries of certain cross-boundary municipalities.

1.5 Sixteen cross-boundary municipalities were established in terms of the above-mentioned statutory provisions, affecting five provinces in the Republic. Since their establishment, numerous problems have been experienced in administering these municipalities. Consequently, on 1 November 2002 the Presidential Co-ordinating Council resolved, among others, that—

- (a) the notion of cross-boundary municipalities be done away with; and
- (b) provincial boundaries be reviewed so that all municipalities fall within one province or the other.

1.6 The Re-determination of the Boundaries of Cross-boundary Municipalities Act, 2005 (Act No. 6 of 2005), that authorises the re-determination of the boundaries of certain cross-boundary municipalities, and the Cross-boundaries Municipality Laws Repeal Bill, 2005, that seeks to repeal all laws providing for cross-boundary municipalities, envisage giving effect to the resolution adopted by the Presidential Co-ordinating Council.

1.7 The Bill seeks to determine the geographical areas of the nine provinces of the Republic.

## 2 OBJECTS OF BILL

### 2.1 Clause 1

Clause 1 seeks to effect certain technical changes to section 103 of the Constitution by, among others, providing for the alphabetical sequence of the provinces.

### 2.2 Clauses 2 and 3

Clauses 2 and 3 seek to repeal sections 155(6A) and 157(4)(b) of the Constitution, respectively.

### 2.3 Clause 4

2.3.1 Clause 4 seeks to insert a new Schedule 1A in the Constitution that defines the areas of the provinces with reference to the geographical areas that are represented by municipal demarcation maps. These maps are contained in official notices issued by the Municipal Demarcation Board.

2.3.2 By using municipal demarcation maps, the greatest common denominator of geographical areas is used, namely 6 metropolitan municipalities and 46 district municipalities. These structures represent wall to wall municipalities, whilst local municipal areas do not cover the whole of the territory of the Republic.

2.3.3 By using municipal demarcation maps it would also not be necessary to amend the Constitution when the inner boundaries of metropolitan and district municipalities are

changed.

2.4 Clause5

This clause contains the short title of the Bill.

**3. PARLIAMENTARY PROCEDURE**

**3.1** The State Law Advisers and the Department of Justice and Constitutional Development are **of** the opinion that the proposed amendments fall within the ambit of section 74(3)(b) of the Constitution and consequently require the approval of both the National Assembly and the National Council of Provinces.

**3.2** **As** the Bill is intended to determine provincial boundaries, the National Council of Provinces may not, in terms of section 74(8) of the Constitution, pass the Bill unless it has been approved **by** the legislatures of the provinces concerned.

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