

REPUBLIC OF SOUTH AFRICA

**CONSTITUTION OF THE
REPUBLIC OF SOUTH AFRICA
AMENDMENT BILL**

*(As amended by the Portfolio Committee on Justice and Constitutional Development
(National Assembly)) (The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 16B—2002]

ISBN 0 621 32199 0

No. of copies printed 1 800

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 Constitution of the Republic of South Africa, 1996, so as to enable a member of a Municipal Council to become a member of another party whilst retaining membership of that Council; to enable an existing party to merge with another party, or to subdivide into more than one party, or to subdivide and any one of the subdivisions to merge with another party, whilst allowing a member of a Council affected by such changes to retain membership of that Council; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 46(1)(d) of the Constitution of the Republic of South Africa, 1996 (the Constitution), requires an electoral system for the National Assembly that results, in general, in proportional representation;

AND WHEREAS section 47(3)(a) of the Constitution provides that a person loses membership of the National Assembly if that person ceases to be eligible on the grounds listed in section 47(1);

AND WHEREAS section 105(1)(d) of the Constitution requires an electoral system for provincial legislatures that results, in general, in proportional representation;

AND WHEREAS section 106(3)(a) of the Constitution provides that a person loses membership of a provincial legislature if that person ceases to be eligible on the grounds listed in section 106(1);

AND WHEREAS item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, provides that an Act of Parliament may, within a reasonable period after the new Constitution took effect, be passed in accordance with section 76(1) of the new Constitution to amend that item and item 23 in order to provide for—

- * the manner in which it will be possible for a member of a legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature; and
- * any existing party to merge with another party, or any party to subdivide into more than one party, whilst allowing a member of a legislature affected by such changes, to retain membership of such legislature;

AND WHEREAS section 157 of the Constitution requires an electoral system for local government—

- * comprising either proportional representation or proportional representation combined with a system of ward representation; and

- * ensuring that the total number of members elected from each party reflects the total proportion of the votes recorded for those parties;

AND WHEREAS section 158 provides for certain criteria for eligibility for membership of a Municipal Council;

AND WHEREAS the Local Government: Municipal Structures Act, 1998, provides for an electoral system for local government comprising proportional representation combined with a system of ward representation;

AND WHEREAS no provision has been made in the Constitution in respect of local government for—

- * a councillor to retain membership of a Municipal Council where such a councillor ceases to be a member of the party which nominated that councillor; and
- * any party to merge with another party, or any party to subdivide into more than one party or any party to subdivide and any one of the subdivisions to merge with another party, whilst allowing a member of a Council affected by such changes, to retain membership of that Council;

AND WHEREAS section 27 of the Local Government: Municipal Structures Act, 1998, provides that a councillor—

- * who was elected from a party list and ceases to be a member of that party; or
- * who was elected to represent a ward and who was—
 - (i) nominated by a party as a candidate in the ward election and ceases to be a member of that party; or
 - (ii) not nominated by a party as a candidate in the ward election and becomes a member of a party,

ceases to be a member of the Municipal Council in question;

AND WHEREAS the need exists for uniformity within the three spheres of government regarding loss or retention of membership of any legislature or Municipal Council in the event of a change of party membership, or mergers or subdivision or subdivision and merger of parties.

B E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 157 of Act 108 of 1996, as amended by section 2 of Act 87 of 1998

1. Section 157 of the Constitution of the Republic of South Africa, 1996, is hereby amended— 5

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Subject to Schedule 6A, a Municipal Council consists of—
 - (a) members elected in accordance with subsections [(2), (3), (4) and (5)] (2) and (3); or 10
 - (b) if provided for by national legislation—
 - (i) members appointed by other Municipal Councils to represent those other Councils; or
 - (ii) both members elected in accordance with paragraph (a) and members appointed in accordance with subparagraph (i) of this paragraph.”; and 15
- (b) by the substitution for subsection (3) of the following subsection:
 - “(3) An electoral system in terms of subsection (2) must **[ensure that the total number of members elected from each party reflects the total proportion of the votes recorded for those parties]** result, in general, in proportional representation.” 20

Insertion of Schedule 6A in Act 108 of 1996

2. The following Schedule is hereby inserted into the Constitution of the Republic of South Africa, 1996:

“Schedule 6A

Loss or retention of membership of Municipal Councils, after a change of party membership, mergers between parties, subdivision of parties and subdivision and merger of parties, and filling of vacancies 5

Loss or retention of Council membership

- 1. (1)** A councillor not representing a ward ceases to be a member of a Municipal Council if that councillor, other than in accordance with item 2, 3 or 7, ceases to be a member of the party which nominated that councillor as a member of that Council. 10
- (2) A councillor representing a ward in a Municipal Council ceases to be a member of that Council if that councillor, other than in accordance with item 2, 3 or 7— 15
- (a) ceases to be a member of a party which nominated that councillor as a candidate in the ward election; or
- (b) was not nominated by any party as a candidate in the ward election and becomes a member of a party.

Retention of Council membership in event of change of party membership 20

- 2. (1)** Subject to item 4, a councillor—
- (a) not representing a ward, who is a member of a party represented in that Municipal Council (the original party) and who becomes a member of another party (the new party), whether the new party participated in an election or not, remains a councillor of that Council; or 25
- (b) who represents a ward in that Council, remains a councillor for that ward, if that councillor— 30
- (i) was nominated by a party (the original party) as a candidate in the ward election and—
- (aa) ceases to be a member of the original party and becomes a member of another party (the new party), whether the new party participated in an election or not; or 35
- (bb) ceases to be a member of the original party and does not become a member of another party; or
- (ii) was not nominated by a party as a candidate in the ward election and becomes a member of a party, whether that party participated in an election or not, 40
- if the councillor referred to in paragraphs (a) and (b)(i), whether by himself or herself or together with one or more other councillors who, during a period referred to in item 4(1)(a) (i) or (ii) ceased to be members of the original party, represent not less than 10 per cent of the total number of seats held by the original party in that Council. 45
- (2) The seat held by a councillor referred to in subitem (1)(a) must be regarded as having been allocated to the new party of which that councillor has become a member.
- (3) The ward represented by a councillor referred to in subitem (1)(b) must be regarded as having been— 50
- (a) allocated to the party of which that councillor has become a member; or
- (b) acquired by that councillor, if such councillor has not become a member of another party. 55

Retention of Council membership in event of mergers, subdivision and subdivision and merger of parties

3. (1) Subject to item 4, any political party (the original party) which is represented in a Municipal Council may—
- (a) merge with another party, whether that party participated in an election or not; or
 - (b) subdivide into more than one party or subdivide and any one subdivision may merge with another party, whether that party participated in an election or not, if the members of a subdivision leaving the original party represent not less than 10 per cent of the total number of seats held by the original party in respect of that Council.
- (2) If a party merges with another party or subdivides into more than one party or subdivides and merges with another party in terms of subitem (1), the councillors concerned remain members of that Municipal Council and the seats held by them must be regarded as having been allocated to the new party which they represent pursuant to any merger, subdivision or subdivision and merger as contemplated in subitem (1).

Period of application of items 2 and 3 and further requirements

4. (1) (a) The provisions of items 2 and 3 only apply—
- (i) for a period of 15 days from the first to the fifteenth day of September in the second year following the date of an election of all Municipal Councils; and
 - (ii) for a period of 15 days from the first to the fifteenth day of September in the fourth year following the date of an election of all Municipal Councils,
- but do not apply during the year ending on 31 December 2002.
- (b) For the purpose of paragraph (a) “year” means a period of 365 days.
- (2) During a period referred to in subitem (1)(a)(i) or (ii)—
- (a) a councillor may only once—
 - (i) change membership of a party;
 - (ii) become a member of a party; or
 - (iii) cease to be a member of a party,
 by informing an officer designated by the Electoral Commission thereof in writing, and if that councillor has changed membership of a party or has become a member of a party, by submitting to that officer written confirmation from the party in question that he or she has been accepted as a member of that party; and
 - (b) a party may only once—
 - (i) merge with another party;
 - (ii) subdivide into more than one party; or
 - (iii) subdivide and any one subdivision merge with another party,
 by informing an officer designated by the Electoral Commission thereof in writing, and by submitting to that officer written confirmation from the party—
 - (aa) of the names of all councillors involved in such merger or subdivision; and
 - (bb) that it has accepted such merger; and
 - (c) no party represented in a Municipal Council may—
 - (i) suspend or terminate the party membership of a councillor representing that party in that Council; or
 - (ii) perform any act whatsoever which may cause such a councillor to be disqualified from holding office as such a councillor in that Council,without the written consent of the councillor concerned.

Composition of Council maintained until election or by-election, or reconstitution in terms of Schedule

5. After the expiry of a period referred to in item 4(1)(a), the composition of a Municipal Council, which has been reconstituted as a result of any conduct in terms of item 2 or 3, is maintained until the next election of all Municipal Councils or until the composition of that Municipal Council is reconstituted in accordance with item 2 or 3 or until a by-election is held in that Municipal Council. 5

Reconstitution by Municipal Councils

6. (a) A Municipal Council referred to in item 5 which appoints members of another Municipal Council, as contemplated in section 157(1)(b), must within 15 days of the expiry of a period referred to in item 4(1)(a)(i) or (ii) apply again the procedure provided for in national legislation for appointing such members to represent the appointing Council. 10
- (b) Within 30 days of the expiry of a period referred to in item 4(1)(a)(i) or (ii), all the structures and committees of— 15
- (i) a Category A and a Category B municipality referred to in item 5 must be reconstituted in accordance with applicable law; and 20
- (ii) a Category C municipality referred to in item 5 must be reconstituted in accordance with applicable law after all the appointments contemplated in paragraph (a) have been made in respect of that Category C municipality. 25

Transitional arrangement in respect of retention of membership of Municipal Councils in event of change of party membership, merger between parties, subdivision of parties and subdivision and merger of parties 25

7. (1) During the first 15 days immediately following the date of the commencement of this Schedule— 30
- (a) a councillor who was elected from the party list of a party represented in a Municipal Council (the original party) may become a member of another party (the new party), whether the new party participated in an election or not, whilst remaining a councillor of the Municipal Council concerned and the seat held by that councillor must be regarded as having been allocated to the new party of which that councillor has become a member; 35
- (b) a councillor who was elected to represent a ward in a Municipal Council and who— 40
- (i) was nominated by a party as a candidate in the ward election, may cease to be a member of the original party and become a member of the new party, whether the new party participated in an election or not, or cease to be a member of the original party and not become a member of another party; or 45
- (ii) was not nominated by a party as a candidate in the ward election, may become a member of a party, whether that party participated in an election or not, and the ward represented by such a councillor must be regarded as having been— 50
- (aa) allocated to the new party of which that councillor has become a member; or
- (bb) acquired by that councillor, if such councillor has not become a member of a party; and
- (c) any political party which is represented in a Municipal Council may— 55
- (i) merge with another party, whether that party participated in an election or not; or

(ii) subdivide into more than one party or subdivide and any one subdivision merge with another party, whether that party participated in an election or not,

whilst the councillors concerned remain members of that Council and the seats held by them must be regarded as having been allocated to the party which they represent pursuant to any merger, subdivision or subdivision and merger contemplated in this paragraph.

(2) The provisions of items 4(2), 5 and 6 are also applicable in respect of subitem (1), and any reference therein to a period referred to in item 4(1)(a)(i) or (ii) must be construed as a reference to the period referred to in subitem (1).

Filling of vacancies

8. Vacancies in a Municipal Council must be filled in terms of national legislation.

Amendment of Schedule

9. This Schedule may be amended by an Act of Parliament passed in accordance with section 76(1)."

Short title

3. This Act is called the Constitution of the Republic of South Africa Amendment Act, 2002.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL, 2002

1. Background

1.1 On 13 November 2001 the National Assembly gave permission to the Assembly's Portfolio Committee on Justice and Constitutional Development to proceed with the consideration of the *Loss or Retention of Membership of National and Provincial Legislatures Bill, 2002* (the Membership Bill).

1.2 The purpose of the Membership Bill is to create a mechanism in terms of which—

- * members of the National Assembly or a provincial legislature can change their party membership without losing their seats;
- * an existing party may merge with another party; and
- * a party may subdivide into more than one party.

1.3 This mechanism is sought to be created by way of amendments to items 23 and 23A of Schedule 2 to the (interim) Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

1.4 However, at present the Constitution does not provide for similar changes of party membership, mergers between parties or subdivision of parties in the context of local government.

2. Provisions of the Bill

2.1 The Bill amends section 157 of the Constitution by providing that an electoral system for local government must result, in general, in proportional representation. (Clause 1)

2.2 Clause 2 inserts a new Schedule 6A in the Constitution, which contains the mechanism in terms of which a councillor of a Municipal Council will be allowed to change party membership, and a party represented in a Council will be allowed to merge or to subdivide, or to subdivide and merge with another party, whilst the councillors concerned retain their seats in the Council. In order to promote uniformity within the three spheres of government regarding loss or retention of membership of any legislature or Municipal Council in the event of a change of party membership, or mergers or subdivision or subdivision and merger of parties, this mechanism is largely based on the principles contained in the Membership Bill. Such changes will only be allowed during the first 15 days following the commencement of the Bill, and thereafter—

- * only during a period of 15 days from the first to the fifteenth day of September in the second year following the date of an election of the legislature; and
- * during a period of 15 days from the first to the fifteenth day of September in the fourth year following the date of an election of the all Municipal Councils.

3. Departments/persons/bodies consulted

The Bill was published for public comment in *Gazette* No. 23218 of 11 March 2002.

4. Implications for provinces

None.

5. Financial implications for State

None.

6. Parliamentary procedure

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 74(3)(a) of the Constitution since it contains no amendment which—

- (i) relates to a matter that affects the National Council of Provinces;
- (ii) alters provincial boundaries, functions or institutions; or
- (iii) amends a provision that deals specifically with a provincial matter.