

REPUBLIC OF SOUTH AFRICA

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

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*(As amended by the Select Committee on Security and Constitutional Affairs  
(National Council of Provinces)) (The English text is the official text of the Bill)*

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(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

**[B 17D—2002]**

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## 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.

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# BILL

To amend the Constitution of the Republic of South Africa, 1996, in order to regulate the allocation of delegates to the National Council of Provinces in the event of changes of party membership, mergers between parties, subdivision of parties or subdivision and merger of parties within a provincial legislature; and to provide for matters connected therewith.

## PREAMBLE

**WHEREAS** the National Council of Provinces is composed of a single delegation from each province consisting of six permanent and four special delegates;

**AND WHEREAS** parties represented in a provincial legislature are entitled to delegates in the province's delegation, and national legislation must determine how many of each party's delegates are to be permanent delegates and how many are to be special delegates;

**AND WHEREAS** national legislation has been passed in accordance with item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, providing for—

- \* the manner in which it will be possible for a member of a national or a provincial 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, or to subdivide and any one of the subdivisions to merge with another party, whilst allowing a member of a legislature affected by such changes, to retain membership of such legislature;

**AND WHEREAS** in terms of the national legislation in question, changes of party membership, mergers between parties or subdivision of parties or subdivision and merger of parties within a provincial legislature, may necessitate changes in respect of that legislature's delegation to the National Council of Provinces,

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

### Amendment of section 61 of Act 108 of 1996

1. Section 61 of the Constitution of the Republic of South Africa, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) (a) A provincial legislature must, within 30 days after the result of an election of [a provincial] that legislature is declared [the legislature must]—
- [(a)] (i) determine, in accordance with national legislation, how many of each party’s delegates are to be permanent delegates and how many are to be special delegates; and 5
- [(b)] (ii) appoint the permanent delegates in accordance with the nominations of the parties.
- (b) If the composition of a provincial legislature is changed on account of changes of party membership, mergers between parties, subdivision of parties or subdivision and merger of parties within that legislature, it must within 30 days after such change— 10
- (i) determine, in accordance with the national legislation referred to in paragraph (a), how many of each party’s delegates are to be permanent delegates and how many are to be special delegates; and 15
- (ii) appoint the permanent delegates in accordance with the nominations of the parties.”. 15

#### **Amendment of section 62 of Act 108 of 1996**

2. Section 62 of the Constitution of the Republic of South Africa, 1996, is hereby amended by the substitution for subsection (3) of the following subsection: 20
- “(3) Permanent delegates are appointed for a term that expires—
- (a) immediately before the first sitting of a provincial legislature after its next election; or
- (b) on the day before the appointment of permanent delegates in accordance with section 61(2)(b)(ii) takes effect.”. 25

#### **Amendment of Schedule 3 to Act 108 of 1996, as amended by section 2 of Act 3 of 1999 and section 19 of Act 34 of 2001**

3. Schedule 3 to the Constitution of the Republic of South Africa, 1996, is hereby amended by the substitution for item 3 of Part B of the following item: 30
- “3. If the competing surpluses envisaged in item 2 are equal, the undistributed delegates in the delegation must be allocated to the party or parties, including any merged party as contemplated in section 61(2)(b), with the same surplus in sequence of votes recorded, starting with the party or merged party which recorded the highest number of votes, including combined votes in the case of a merged party, during the last election for the provincial legislature concerned, but if any of the parties with the same surplus— 35
- (a) came into existence on account of changes of party membership or subdivision of parties within that legislature as contemplated in section 61(2)(b); and
- (b) did not participate in the last election for the provincial legislature concerned, 40
- the legislature must allocate the undistributed delegates in the delegation to the party or parties with the same surplus in a manner which is consistent with democracy.”.

#### **Short title**

4. This Act is called the Constitution of the Republic of South Africa Second Amendment Act, 2002. 45

**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF  
THE REPUBLIC OF SOUTH AFRICA SECOND 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). The draft Membership Bill was published by the Portfolio Committee in *Government Gazette* No 22835 of 16 November 2001 for public comment.

- 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 may 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.

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). The said item 23A specifically authorises Parliament to amend items 23 and 23A by an Act of Parliament, passed in accordance with the provisions of section 76(1) of the (*new*) Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (the Constitution), in order to achieve the above objectives.

**2. Provisions of Bill**

2.1 The National Council of Provinces is composed of a single delegation, comprising four special delegates and six permanent delegates, from each province. Parties represented in a provincial legislature are entitled to delegates in the province's delegation in accordance with a formula set out in Schedule 3 to the Constitution. Each provincial legislature must, within 30 days after the result of an election is declared, determine the number of delegates of each party and appoint the permanent delegates of the parties. (Sections 60 and 61 of the Constitution.)

2.2 The provisions of the Membership Bill may lead to significant changes of party representation in a provincial legislature, which may, in turn, necessitate the redetermination of the composition of that legislature's delegation in the National Council of Provinces. As such changes would not result from an election, there is no mechanism in terms of which such a redetermination can take place. The Constitution of the Republic of South Africa Second Amendment Bill, 2002, aims to amend the Constitution in order to provide that, after the composition of a provincial legislature has been changed in accordance with national legislation (the Membership Bill), that legislature must determine the number of delegates of each party to the National Council of Provinces.

**3. Departments/persons/bodies consulted**

The Bill was published for public comment in the *Gazette*.

**4. Implications for provinces**

As discussed in paragraph 2.2. above.

**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 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.