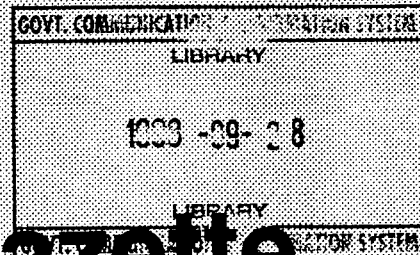


REPUBLIC
OF
SOUTH AFRICA



REPUBLIEK
VAN
SUID-AFRIKA



Government Gazette Staatskoerant

vol. 399

PRETORIA, 14 SEPTEMBER 1998

No. 19261

GENERAL NOTICE

NOTICE 2012 OF 1998

MINISTRY FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT

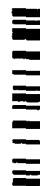
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA FIFTH AMENDMENT BILL, 1998

1. 1, Mohammed Valli Moosa, Minister for Provincial Affairs and Constitutional Development, under section 74(5) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), hereby publish the Constitution of the Republic of South Africa Fifth Amendment Bill, 1998 for public comment.

2. Comments must please be submitted to:

The Director-General
Attention: Dr PJ Bouwer
Department of Constitutional Development
Private Bag X804
PRETORIA
0001

3. Comments may also be faxed to facsimile number (012) 334-0614 at the above address.
4. Comments must be received by no later than 16 October 1998.



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 provide for the processing of mixed Bills; and to provide for matters connected therewith.

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

Insertion of section 76A in Act 108 of 1996

1. The following section is hereby inserted after section 76 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the principal Act):

“Mixed Bills

76A.(1) A Bill that contains legislation envisaged in section 76(3) or (4), and legislation to which section 75 would otherwise have applied, is a mixed Bill.

(2) The joint rules and orders may **prescribe** a procedure in terms of which a mixed Bill must be dealt with in parliamentary proceedings, despite sections 75 and 76 and other relevant sections of the Constitution.

(3) A mixed Bill may be introduced in the National Assembly only.

(4) This section is not applicable to legislation envisaged in section 77(1).”.

Amendment of section 172 of Act 108 of 1996

2. Section 172 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) If a court declares an Act of Parliament unconstitutional on the ground of a procedural defect, the court must make an order envisaged in subsection (1)(b)(ii).”

Short title

3. This Act is called the Constitution of the Republic of South Africa Fifth Amendment Act, 1998.



MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA FIFTH AMENDMENT BILL, 1998

1.1 Sections 75 and 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996, hereafter "the Constitution"), establish different legislative procedures for the passing of legislation by Parliament. In view of constitutional imperatives requiring a Bill to be passed in accordance with the correct legislative procedure, it has become necessary to make provision for a screening process whereby Bills are classified according to the applicable legislative procedure before they are proceeded with. To this end provision has been made in the draft joint rules and orders of Parliament for a Joint Tagging Mechanism.

1.2 In view of the fact that some Bills are of such a complex nature that it is not always possible to divide a Bill into more than one Bill to which only section 75 or section 76 of the Constitution applies, it has become necessary to make provision for the processing of a Bill to which both section 75 and section 76 of the Constitution apply (the so-called "mixed Bills").

1.3 Clause 1 of the Bill provides for the joint rules and orders of Parliament to prescribe a procedure in terms of which mixed Bills must be processed and considered; determines that mixed Bills may only be introduced in the National Assembly; and excludes money Bills from the application of this new provision in the Constitution.

2. Since the classification and processing of mixed Bills, or Bills to which either section 75 or 76 applies, may give rise to litigation, an amendment to section 172 of the Constitution is being proposed in clause 2 of the Bill that will allow Parliament to rectify any procedural deficiency where a court declares an Act of Parliament unconstitutional on the ground of a procedural defect.

3. In view of the fact that the Bill provides for constitutional amendments envisaged in section 74(3)(b) of the Constitution, the Department of Constitutional Development is of the opinion that the legislative procedure provided for in that section, must be followed and that, consequently, the Bill should be passed by both the National Assembly and the National Council of Provinces.

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Printed by and obtainable from the Government Printer, **Bosman** Street, Private Bag X85, Pretoria, 0001
 Tei: (012) 334-4507, 334-4511, 334-4509, 334-4515

Gedruk deur en verkrygbaar by die Staatsdrukker, **Bosmanstraat**, Privaat Sak X85, Pretoria, 0001
 Tel: (01 2) 334-4507, 334-4511, 334-4509, 334-4515