

REPUBLIC OF SOUTH AFRICA

JUDGES' REMUNERATION AND CONDITIONS OF EMPLOYMENT AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75; particulars of proposed
amendments published in Gazette No. 34444 of 7 July 2011)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 12—2011]

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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.

BILL

To amend the Judges’ Remuneration and Conditions of Employment Act, 2001, so as to provide for a minimum period of active service as Chief Justice of South Africa and President of the Supreme Court of Appeal; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Amendment of section 3 of Act 47 of 2001

1. Section 3 of the Judges’ Remuneration and Conditions of Employment Act, 2001 (hereinafter referred to as the principal Act), is hereby amended by the substitution in paragraph (a) of subsection (1) for the words preceding subparagraph (i) of the following words: 5

“(a) must, subject to the provisions of [section] sections 4(1) [or] and (2) and 8(a), be discharged from active service as a Constitutional Court judge, on the date on which he or she—”. 10

Substitution of section 8 of Act 47 of 2001

2. The following section is hereby substituted for section 8 of the principal Act:

“Minimum period of active service as Chief Justice of South Africa and President of Supreme Court of Appeal

8. (a) A Chief Justice of South Africa who becomes eligible for discharge from active service in terms of section 3(1)(a) or 4(1) or (2) before he or she has completed seven years’ active service as such Chief Justice must, subject to the provisions of paragraph (c), from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as Chief Justice of South Africa to the date on which he or she completes a period of seven years’ active service as such Chief Justice or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as Chief Justice of South Africa. 15 20

(b) A President of the Supreme Court of Appeal who becomes eligible for discharge from active service in terms of section 3(2)(a) or 4(4) before he 25

or she has completed seven years' active service as President of the Supreme Court of Appeal must, subject to the provisions of paragraph (c), from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as President of the Supreme Court of Appeal to the date on which he or she completes a period of seven years' active service as President of the Supreme Court of Appeal or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as President of the Supreme Court of Appeal.

(c) A Chief Justice of South Africa or a President of the Supreme Court of Appeal who continues to perform active service in terms of paragraph (a) or (b) may at any time—

- (i) be discharged by the President from active service as Chief Justice of South Africa or President of the Supreme Court of Appeal if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or
- (ii) on his or her request and with the approval of the President, be discharged from active service as Chief Justice of South Africa or President of the Supreme Court of Appeal if there is any reason which the President deems sufficient.

Short title

3. This Act is called the Judges' Remuneration and Conditions of Employment Amendment Act, 2011.

**MEMORANDUM ON THE OBJECTS OF THE JUDGES'
REMUNERATION AND CONDITIONS OF EMPLOYMENT
AMENDMENT BILL, 2011**

1. BACKGROUND

- 1.1 Section 176(1) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), provides for a Constitutional Court judge to hold office for a non-renewable term of 12 years, or until he or she attains the age of 70, whichever occurs first, except where an Act of Parliament extends the term of office of a Constitutional Court judge.
- 1.2 Section 3, read with sections 4 and 8, of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001) (“the Act”), gives effect to section 176(1) of the Constitution and creates certainty regarding the extension of tenure of the Chief Justice of South Africa and the President of the Supreme Court of Appeal.

2. OBJECTS OF THE BILL

- 2.1 The Bill amends the Act by providing for a minimum period of active service as—
- (a) Chief Justice of South Africa; and
 - (b) President of the Supreme Court of Appeal,
- and aligns the Act with section 176(1) of the Constitution.

2.2 Structure of Bill

(a) Period of active service as Chief Justice of South Africa

Provision is made in section 8(a) of the Act for the Chief Justice of South Africa to perform active service as the Chief Justice for a minimum period of seven years, or until he or she attains the age of 75 years, whichever event occurs first (Clause 2). Section 3 of the Act is amended to align this section with the amended section 8 (Clause 1).

(b) Period of active service as President of the Supreme Court of Appeal

Provision is made in section 8(b) of the Act for the President of the Supreme Court of Appeal to perform active service as the President of the Supreme Court of Appeal for a minimum period of seven years, or until he or she attains the age of 75 years, whichever event occurs first (Clause 2).

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

An explanatory summary of the Bill was published in *Gazette* No. 34444 of 7 July 2011 in accordance with Rule 241(c) of the Rules of the National Assembly.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

- 5.1 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 prescribed by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional leaders.

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