

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
CONSTITUTION OF THE
REPUBLIC OF SOUTH AFRICA
AMENDMENT BILL**

[B 16—2002]

*(As agreed to by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))*

[B 16A—2002]

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AMENDMENTS AGREED TO

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL [B 16—2002]

CLAUSE 1

1. On page 3, in line 8, to omit "section 158A," and to substitute "Schedule 6A".

CLAUSE 2

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

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

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.

(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—

- (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

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

- (b) who represents a ward in that Council, remains a councillor for that ward, if that councillor—
- (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
 - (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.
- 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.
- (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—
- (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.

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.

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.

(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—

- (i) a Category A and a Category B municipality referred to in item 5 must be reconstituted in accordance with applicable law; and
- (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.

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

7. (1) During the first 15 days immediately following the date of the commencement of this Schedule—

- (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;
- (b) a councillor who was elected to represent a ward in a Municipal Council and who—
 - (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
 - (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—
 - (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—
 - (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)."