

REPUBLIC OF SOUTH AFRICA

LOSS OR RETENTION OF MEMBERSHIP OF NATIONAL AND PROVINCIAL LEGISLATURES BILL

*(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)*

(PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT (NATIONAL ASSEMBLY))

[B 25B—2002]

ISBN 0 621 32221 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 Schedule 2 to the Constitution of the Republic of South Africa, 1993, in order to enable a member of a legislature to become a member of another party whilst retaining membership of that legislature; to enable an existing party to merge with another party, or to subdivide into more than one party, or to subdivide and any one subdivision to merge with another party; to amend the Determination of Delegates (National Council of Provinces) Act, 1998, in order to make provision for the determination of certain delegates of a provincial legislature which has been reconstituted on account of changes of party membership and mergers or subdivision of parties; and to provide for matters connected therewith.

PREAMBLE

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

AND WHEREAS section 47(3)(a) of the 1996 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 47(4) of the 1996 Constitution provides that vacancies in the National Assembly must be filled in terms of national legislation;

AND WHEREAS section 105(1)(d) of the 1996 Constitution requires an electoral system for provincial legislatures that results, in general, in proportional representation;

AND WHEREAS section 106(3)(a) of the 1996 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 section 106(4) of the 1996 Constitution provides that vacancies in a provincial legislature must be filled in terms of national legislation;

AND WHEREAS Schedule 6 to the 1996 Constitution inserted item 23A in Schedule 2 to the Constitution of the Republic of South Africa, 1993, in order to provide—

- * for an additional ground for the loss of membership of the National or provincial legislatures; and
- * that an Act of Parliament may, within a reasonable period after the 1996 Constitution took effect, be passed in accordance with section 76(1) of the 1996 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 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,

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

Amendment of Schedule 2 to Act 200 of 1993, as amended by section 12 of Act 2 of 1994, section 3 of Act 20 of 1995 and Schedule 6 to Act 108 of 1996

1. Schedule 2 to the Constitution of the Republic of South Africa, 1993, is hereby amended by the substitution for items 23 and 23A of the following items: 5

“Vacancies

23. (1) In the event of a vacancy in a legislature to which this Schedule applies, the party which [nominated] the vacating member represented shall fill the vacancy by nominating a person— 10

(a) whose name appears on the list of candidates—

(i) from which [the vacating member was] that party's members were originally nominated; or

(ii) where applicable, submitted by a party in terms of item 23A(8); and 15

(b) who is the next qualified and available person on the list.

(2) A nomination to fill a vacancy shall be submitted to the Speaker in writing.

(3) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of item 23A(1), the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of item 7 or 14, as the case may be. 20

Additional ground for loss of membership of legislature and retention of membership of legislature in event of member joining another party, mergers between parties, subdivision of parties or merger and subdivision of parties 25

23A. (1) A person who is a member of a legislature to which this Schedule applies and who, other than in accordance with subitem (2), (3) or (4), ceases to be a member of the party which nominated that person as a member of the legislature, ceases to be a member of that legislature. 30

(2) (a) Subject to subitem (5), a member of a legislature who becomes a member of a party (the new party) other than the party which nominated that person as a member (the nominating party), whether the new party participated in an election or not, remains a member of that legislature if that member, whether by himself or herself or together with one or more other members who, during a period referred to in subitem (5)(a)(i) or (ii), ceased to be members of the nominating party, represent not less than 10 per cent of the total number of seats held by the nominating party in that legislature. 40

(b) The seat held by a member referred to in paragraph (a) is regarded as having been allocated to the new party which the member represents.

(3) (a) Subject to subitem (5), any political party (the original party) which is represented in a legislature may—

(i) merge with another party, whether that party participated in an election or not; or 45

- (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, 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 that legislature. 5
- (b) If a party merges with another party or subdivides into more than one party or subdivides and merges with another party in terms of paragraph (a), the members concerned remain members of that legislature and the seats held by them are regarded as having been allocated to the party which they represent pursuant to any merger, subdivision or subdivision and merger contemplated in paragraph (a). 10
- (4) During the first 15 days immediately following the date of the commencement of this item—
- (a) a member of a legislature may become a member of another party (the new party), whether the new party participated in an election or not, whilst remaining a member of the legislature concerned and the seat held by that member must be regarded as having been allocated to the new party of which that member has become a member; and 15
- (b) any political party which is represented in a legislature may— 20
- (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 members concerned remain members of that legislature 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. 25
- (5) (a) The provisions of subitems (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 the legislature; and 30
- (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 the legislature; but do not apply during the year ending on 31 December 2002. 35
- (b) For the purpose of paragraph (a) “year” means a period of 365 days.
- (c) During a period referred to in subitem (4) or in paragraph (a)(i) or (ii)—
- (i) a member of a legislature may only once change membership of a party, by informing the Speaker of the legislature thereof in writing and by submitting to the Speaker written confirmation from such other party that he or she has been accepted as a member of that party; and 40
- (ii) a party may only once— 45
- (aa) merge with another party;
- (bb) subdivide into more than one party; or
- (cc) subdivide and any one subdivision merge with another party, by informing the Speaker of the legislature thereof in writing and by submitting to the Speaker written confirmation from the other party of the names of all members involved in the merger or subdivision, and that the party has accepted the merger; and 50
- (iii) no party represented in a legislature may—
- (aa) suspend or terminate the party membership of a member representing that party in that legislature; or
- (bb) perform any act whatsoever which may cause such a member to be disqualified from holding office as such a member, without the written consent of the member concerned. 55
- (d) For the purposes of subitems (2) and (3), “party” means a party duly registered as a political party in accordance with applicable law, including a party so registered during the period referred to in paragraph (a)(i) or (ii).
- (e) A party which has not been registered in terms of any law applicable to the registration of political parties, will be regarded as a party for the purposes of subitem (4), but such a party must apply for registration as a 60

party in accordance with applicable law within the period referred to in subitem (4). If the party is not registered accordingly within four months after the expiry of that period, it is regarded as having ceased to exist as contemplated in item 23(3), and the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of item 7 or 14, as the case may be.

(6) After the expiry of a period referred to in subitem (4) or (5)(a)(i) or (ii), the composition of a legislature which has been reconstituted as a result of any conduct in terms of subitem (2), (3) or (4) is maintained until the next election of that legislature or until the composition of the legislature is reconstituted in accordance with subitem (2) or (3).

(7) The Speaker of a legislature contemplated in subitem (6) must, within seven days after the expiry of a period referred to in subitem (4) or (5)(a)(i) or (ii), publish a notice in the *Gazette* which must reflect—

(a) the number of seats allocated to each party represented in that legislature; and

(b) the name of, and party represented by, each member.

(8) Within seven days after the expiry of a period referred to in subitem (4) or (5)(a)(i) or (ii), each party represented in a legislature contemplated in subitem (6) must submit a list of its candidates to the Secretary of the legislature.

(9) This item and item 23 may be amended by an Act of Parliament passed in accordance with section 76 (1) of the new Constitution.

(10) Any existing political party may at any time change its name.”.

Amendment of section 2 of Act 69 of 1998

2. Section 2 of the Determination of Delegates (National Council of Provinces) Act, 1998, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) (a) If the total number of special delegates determined in terms of subsection (3) in respect of a particular provincial legislature is less than four, the delegates of the parties that are entitled to only one delegate in the delegation of that province must, despite subsection (1), become special delegates in the sequence from the lowest to the highest number of votes, including combined votes in the case of a merged party as contemplated in section 61(2)(b) of the Constitution, that have been recorded for those parties during the last election of that provincial legislature, until four special delegates have been allocated to parties in the provincial delegation: Provided that if any of the parties that are entitled to only one delegate in the delegation of that province—

(i) came into existence on account of changes of party membership or subdivision of parties within that legislature as contemplated in section 61(2)(b) of the Constitution; and

(ii) did not participate in the last election of that provincial legislature, the legislature must, in a manner which is consistent with democracy, elect so many delegates from the delegates of those parties to become special delegates as may be necessary to allocate four special delegates to parties in the provincial delegation.

(b) If the total number of special delegates determined in terms of subsection (3) in respect of a particular provincial legislature is more than four, those special delegates must, despite subsections (2) and (3), become permanent delegates in the sequence from the highest to the lowest number of votes, including combined votes in the case of a merged party as contemplated in section 61(2)(b) of the Constitution, that have been recorded for the parties concerned during the last election of that provincial legislature, until four special delegates have been allocated to parties in the provincial delegation: Provided that if any of those parties—

(i) came into existence on account of changes of party membership or subdivision of parties within that legislature as contemplated in section 61(2)(b) of the Constitution; and

(ii) did not participate in the last election of that provincial legislature,

that legislature must, despite subsections (2) and (3) and in a manner which is consistent with democracy, elect so many special delegates of those parties to become permanent delegates as may be required to allocate four special delegates to parties in the provincial delegation.".

Short title

5

3. This Act is called the Loss or Retention of Membership of National and Provincial Legislatures Act, 2002.

MEMORANDUM ON THE OBJECTS OF THE LOSS OR RETENTION OF MEMBERSHIP OF NATIONAL AND PROVINCIAL LEGISLATURES BILL, 2002

1. OBJECTS OF BILL

1.1 In terms of item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, (Act No. 200 of 1993), an Act of Parliament may, within a reasonable period after the new (1996) Constitution took effect, be passed in accordance with section 76(1) of the 1996 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.

1.2 The Bill therefore aims to substitute the said items 23 and 23A in order to provide for the procedures referred to above. The provisions of the Bill are applicable to members of, and parties represented in, the National Assembly and provincial legislatures. The mechanism contained in the Bill entails that a member of a legislature will be allowed to change party membership, or a party will be allowed to merge or to subdivide, or to subdivide and merge, only during the first 15 days following the commencement of the legislation, 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 legislature.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill is being introduced by the National Assembly's Portfolio Committee on Justice and Constitutional Development. Permission for introduction was granted by the National Assembly on 13 November 2001, and the draft legislation was subsequently published in the *Gazette* of 16 November 2001 for public comment. During the course of its deliberations on the Bill, the Portfolio Committee held public hearings and considered submissions from a variety of interested parties and role players.

3. IMPLICATIONS FOR PROVINCES

The provisions of the Bill may affect party representation in provincial legislatures.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

In terms of item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, the Bill must be passed in accordance with section 76(1) of the Constitution.