

REPUBLIC OF SOUTH AFRICA

**GENERAL LAWS (LOSS OF
MEMBERSHIP OF NATIONAL
ASSEMBLY, PROVINCIAL
LEGISLATURE OR MUNICIPAL
COUNCIL) AMENDMENT BILL**

*(As amended by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 64B—2008]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

To amend the—

- **Public Funding of Represented Political Parties Act, 1997, so as to—**
 - **make further provision for the accountability of political parties in respect of moneys allocated from the Represented Political Parties' Fund;**
 - **substitute a reference to an obsolete law; and**
 - **empower the Electoral Commission to appoint an auditor in certain circumstances; and**
 - **Public Funding of Represented Political Parties Act, 1997, the Determination of Delegates (National Council of Provinces) Act, 1998, the Electoral Act, 1998, the Local Government: Municipal Structures Act, 1998, and the Local Government: Municipal Structures Amendment Act, 2002, so as to provide for matters consequential to the abolition of the right—**
 - **of a member of the National Assembly, a provincial legislature or a Municipal Council to become a member of another political party whilst retaining membership of the National Assembly, that provincial legislature or that Council; and**
 - **of an existing political party to merge with another political party, or to subdivide into more than one political party, or to subdivide and to permit any of the subdivisions to merge with another political party, whilst allowing a member of the National Assembly, a provincial legislature or a Council affected by such changes to retain membership of the National Assembly, that provincial legislature or that Council;**
- and to provide for matters connected therewith.**

Parliament of the Republic of South Africa enacts as follows:—

Amendment of section 5 of Act 103 of 1997, as amended by section 2 of Act 15 of 2005

1. Section 5 of the Public Funding of Represented Political Parties Act, 1997 (hereinafter referred to as the Funding Act), is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The allocation of moneys from the Fund to a political party will end when the party ceases [qualifying therefor] to qualify for it in terms of subsection (1)(a). [Subject to section 6A, a] A political party must within 21 days after the date on which it has so ceased to qualify, repay to the Commission the unspent balances, as at that date, of all moneys that had been allocated to it in terms of this section.”.

Amendment of section 6 of Act 103 of 1997, as amended by section 3 of Act 15 of 2005

2. Section 6 of the Funding Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Every political party to which moneys are allocated from the Fund~~[, must]~~—

(a) must keep, with a bank registered in the Republic, a separate banking account into which all moneys so allocated to the party must be deposited; ~~[and]~~

(b) must appoint an office-bearer or official of that party as its accounting officer with regard to all moneys from time to time allocated to that party from the Fund. The accounting officer’s responsibility is to account for the moneys so allocated to that party, and includes, in addition to any other duties imposed by this Act, the duty to ensure the party’s compliance with the requirements of this Act, and, in particular, to ensure that those moneys are not paid out for a purpose not authorised by this Act; and

(c) is accountable to the Commission in respect of all moneys so allocated to that party.”;

(b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) submit that statement and those books and records of account to [a public accountant and] an auditor registered and practising as such in terms of the [Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)] Auditing Profession Act, 2005 (Act No. 26 of 2005), to be audited.”; and

(c) by the insertion of the following subsection after subsection (5):

“(5A) (a) The Commission may appoint an auditor registered and practising as such in terms of the Auditing Profession Act, 2005, to—

(i) verify the auditor’s report and audited statement submitted to it in terms of subsection (5); or

(ii) audit the statement referred to in subsection (3) and the books and records of account kept in terms of this section if the accounting officer of a political party fails to have that statement and those books and records of account audited as contemplated in subsection (3).

(b) Subsection (4) applies, with the necessary changes, to an auditor who has performed an audit contemplated in paragraph (a)(ii).

(c) The verification of the auditor’s report and audited statement contemplated in paragraph (a)(i) or the auditor’s report and audited statement contemplated in paragraph (a)(ii), as the case may be, must be submitted to the Commission by the auditor concerned within one month after the date of his or her appointment by the Commission.”.

Repeal of section 6A of Act 103 of 1997, as inserted by section 4 of Act 15 of 2005

3. Section 6A of the Funding Act is hereby repealed.

Repeal of section 9A of Act 103 of 1997, as inserted by section 7 of Act 15 of 2005

4. Section 9A of the Funding Act is hereby repealed.

Amendment of section 10 of Act 103 of 1997, as amended by section 8 of Act 15 of 2005

5. Section 10 of the Funding Act is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) prescribing the procedure according to which and manner in which payments from, and to, the Fund are to be made after any election of Parliament or a provincial legislature **[or the expiry of the period referred to in item 4(1)(a) or (b) of Schedule 6A to the Constitution];** and”.

Amendment of Preamble of Act 103 of 1997, as amended by section 9 of Act 15 of 2005

6. The Preamble of the Funding Act is hereby amended by the deletion of the fifth paragraph.

Amendment of section 2 of Act 69 of 1998, as amended by section 11 of Act 15 of 2005

7. 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 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.

(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 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 six permanent delegates have been allocated to parties in the provincial delegation.

[(c) For the purposes of paragraphs (a) and (b), any party that is entitled to a delegate in the delegation of the province concerned and that—

(i) **came into existence on account of a change of party membership or subdivision of parties contemplated in section 61(2)(b) of the Constitution; and**

(ii) **did not participate in the last election of that provincial legislature, must be regarded as having recorded no votes during the last election of the provincial legislature concerned.]**

(d) If more than one party that is entitled to a delegate in a provincial legislature recorded the same number of votes during the last election of that provincial legislature **[or must be regarded in terms of paragraph (c) as having recorded no votes during that election],** the legislature concerned must, in a manner that is consistent with democracy—

(i) in the case of paragraph (a), elect so many delegates from the delegates of those parties to become special delegates as may be required to allocate four special delegates to parties in the provincial delegation; or

- (ii) in the case of paragraph (b), despite subsections (2) and (3), elect so many special delegates of those parties to become permanent delegates as may be required to allocate six permanent delegates to parties in the provincial delegation.”.

Amendment of item 23 of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003 5

8. Item 23 of Schedule 1A to the Electoral Act, 1998, is hereby amended by the substitution for subitem (1) of the following subitem:

- “(1) In the event of a vacancy in a legislature to which this Schedule applies, the party which the vacating member represented must fill the vacancy by nominating a person—
 - (a) whose name appears on the list of candidates—
 - (i) from which that party’s members were originally nominated; [or
 - (ii) **where applicable, submitted by a party in terms of item 5(2) of Schedule 6A to the Constitution;**] and
 - (b) who is the next qualified and available person on the list.”.

Amendment of section 26 of Act 117 of 1998, as amended by section 1 of Act 20 of 2002 and section 9 of the Constitution Tenth Amendment Act of 2003

9. Section 26 of the Local Government: Municipal Structures Act, 1998 (hereinafter referred to as the Structures Act), is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 20

- “(b) is appointed as a representative of a local council to a district council for a period ending when the next local council is declared elected[, **except that where such a person is replaced as a result of the provisions of item 6(a) of Schedule 6B to the Constitution, the newly appointed representative is appointed for the remainder of the replaced representative’s term.**]”.

Amendment of section 27 of Act 117 of 1998, as amended by section 93 of Act 27 of 2000, section 121 of Act 32 of 2000 and section 2 of Act 20 of 2002

- 10. Section 27 of the Structures Act is hereby amended—
 - (a) by the insertion after paragraph (b) of the following paragraph: 30
 - “(c) was elected from a party list referred to in Schedule 1 or 2 and ceases to be a member of the relevant party;”; and
 - (b) by the addition of the following paragraph:
 - “(f) was elected to represent a ward and who—
 - (i) was nominated by a party as a candidate in the ward election and ceases to be a member of that party; or
 - (ii) was not nominated by a party as a candidate in the ward election and becomes a member of a party.”.

Amendment of section 29 of Act 117 of 1998, as amended by section 3 of Act 20 of 2002 and section 9 of the Constitution Tenth Amendment Act of 2003 40

11. Section 29 of the Structures Act is hereby amended by the deletion of subsection (3).

Amendment of section 62 of Act 117 of 1998, as amended by section 4 of Act 20 of 2002

12. Section 62 of the Structures Act is hereby amended by the deletion in subsection (1) of paragraph (cA). 45

Amendment of section 63 of Act 117 of 1998, as substituted by section 5 of Act 20 of 2002 and amended by section 9 of the Constitution Tenth Amendment Act of 2003

13. Section 63 of the Structures Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Each metropolitan subcouncil consists of— 5
 - (a) the councillors representing the wards included in the subcouncil area; and
 - (b) an additional number of councillors allocated in terms of Part 1 of Schedule 4[, **except that where—** 10
 - (i) **metropolitan subcouncils are established;**
 - (ii) **the areas of existing metropolitan subcouncils are changed;**
 - or**
 - (iii) **the number of existing metropolitan subcouncils are changed,** 15
 - after the composition of a metro council has changed as a result of the provisions of item 2, 3 or 7 of Schedule 6B to the Constitution, the additional number of councillors is determined by the metro council so that the seats held by councillors referred to in subsection (2)(a) are as far as possible equally distributed amongst all the metropolitan subcouncils].”;** 20
- (b) by the deletion of subsection (1A); and
- (c) by the substitution for subsection (2) of the following subsection:
 - “(2) The councillors referred to in subsection (1)(b) must—
 - (a) consist of councillors elected to the metro council from party lists in accordance with Part 3 of Schedule 1; and 25
 - (b) be appointed to the metropolitan subcouncil—
 - (i) in accordance with Part 1 of Schedule 4[; **or**
 - (ii) **where the composition of the metro council in question has changed as a result of the provisions of item 2, 3 or 7 of Schedule 6B to the Constitution, in accordance with the** 30
 - mechanism referred to in section 62(1)(cA)].”.**

Substitution of section 66 of Act 117 of 1998, as substituted by section 6 of Act 20 of 2002 and amended by section 9 of the Constitution Tenth Amendment Act of 2003

14. The following section is hereby substituted for section 66 of the Structures Act:

“Term of office of members 35

66. (1) The section 63(1)(b) members of a metropolitan subcouncil are appointed for a term ending, subject to [subsection (2) and] section 67, when the next metro council is declared elected.

[(2) Where a section 63(1)(b) member of a metropolitan subcouncil is replaced as a result of the provisions of item 6(b) of Schedule 6B to the Constitution, the newly appointed member is, subject to section 67, appointed for the remainder of the replaced member’s term.]”. 40

Repeal of sections 93A and 93B of Act 117 of 1998, as inserted by section 7 of Act 20 of 2002 and amended by section 9 of the Constitution Tenth Amendment Act of 2003 45

15. Sections 93A and 93B of the Structures Act are hereby repealed.

Substitution of item 10 of Schedule 1 to Act 117 of 1998, as substituted by section 93 of Act 27 of 2000 and section 8 of Act 20 of 2002 and amended by section 9 of the Constitution Tenth Amendment Act of 2003

16. The following item is hereby substituted for item 10 of Schedule 1 to the Structures Act:

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“Submission of lists of candidates

10. (1) A list of candidates may be submitted only by a party.

[(2) A party that has gained representation in a municipality as a result of the provisions of item 2, 3 or 7 of Schedule 6B to the Constitution, may submit a list of candidates within seven days after the expiry of a period referred to in item 4(1)(a)(i) or (ii) of Schedule 6B to the Constitution.]”.

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Substitution of item 4 of Schedule 2 to Act 117 of 1998, as substituted by section 93 of Act 27 of 2000 and section 9 of Act 20 of 2002 and amended by section 9 of the Constitution Tenth Amendment Act of 2003

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17. The following item is hereby substituted for item 4 of Schedule 2 to the Structures Act:

“Submission of lists of candidates

4. (1) A list of candidates may be submitted only by a party.

[(2) A party that has gained representation in a municipality as a result of the provisions of item 2, 3 or 7 of Schedule 6B to the Constitution, may submit a list of candidates within seven days after the expiry of a period referred to in item 4(1)(a)(i) or (ii) of Schedule 6B to the Constitution.]”.

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Amendment of Table of Contents of Act 117 of 1998, as amended by section 11 of Act 20 of 2002 and section 9 of the Constitution Tenth Amendment Act of 2003

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18. The Table of Contents of the Structures Act is hereby amended by the deletion of the references to sections 93A and 93B, respectively.

Repeal of section 12 of Act 20 of 2002, as amended by section 9 of the Constitution Tenth Amendment Act of 2003

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19. Section 12 of the Local Government: Municipal Structures Amendment Act, 2002, is hereby repealed.

Repeal of section 13 of Act 20 of 2002

20. Section 13 of the Local Government: Municipal Structures Amendment Act, 2002, is hereby repealed.

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Amendment of section 14 of Act 20 of 2002

21. Section 14 of the Local Government: Municipal Structures Amendment Act, 2002, is hereby amended by the deletion of subsection (2).

Short title and commencement

22. This Act is called the General Laws (Loss of Membership of National Assembly, Provincial Legislature or Municipal Council) Amendment Act, 2008, and comes into operation on a date set by the President by proclamation in the *Gazette*.

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**MEMORANDUM ON THE OBJECTS OF THE GENERAL LAWS
(LOSS OF MEMBERSHIP OF NATIONAL ASSEMBLY, PROVINCIAL
LEGISLATURE OR MUNICIPAL COUNCIL)
AMENDMENT BILL, 2008**

1. BACKGROUND

- 1.1 The political terrain which necessitated floor crossing has changed. There is also a groundswell of resistance opposing floor crossing. Consequently, the need has arisen to abolish floor crossing. The Constitution Fourteenth Amendment Bill of 2008, seeks to abolish floor crossing in the National Assembly and provincial legislatures, whilst the Constitution Fifteenth Amendment Bill of 2008, seeks to abolish floor crossing in Municipal Councils. The General Laws (Loss of Membership of National Assembly, Provincial Legislature or Municipal Council) Amendment Bill, 2008 (the Bill), mainly seeks to effect consequential amendments, which are mentioned below.
- 1.2 The Constitution Fourteenth Amendment Bill of 2008, the Constitution Fifteenth Amendment Bill of 2008, and the Bill are tabled simultaneously and must be read in conjunction with one another.

2. OBJECTS OF BILL

- 2.1 The objects of the Bill are—
- (a) to effect amendments, which are mainly of a consequential nature and which emanate from the provisions of the Constitution Fourteenth Amendment Bill of 2008, and the Constitution Fifteenth Amendment Bill of 2008, to several relevant Acts; and
 - (b) to address one of the matters raised by the Portfolio Committee on Justice and Constitutional Development in its Report on the Constitutional Matters Amendment Bill [B 22B—2005] (now the Constitutional Matters Amendment Act, 2005 (Act No. 15 of 2005)), dated 19 August 2005.

2.2 Proposed legislative amendments relating to floor crossing

The Bill seeks to effect amendments to the following Acts:

- (a) Public Funding of Represented Political Parties Act, 1997 (Act No. 103 of 1997)
Clause 3 seeks to repeal section 6A of the Public Funding of Represented Political Parties Act, 1997 (the Funding Act), that regulates the repayment to the Electoral Commission (the Commission) of the unspent balances of moneys by a political party that, after a window period for floor crossing, ceases to qualify for the allocation of moneys from the Represented Political Parties' Fund (the Fund). **Clauses 1, 5 and 6** seek to effect consequential amendments to sections 5 and 10 and the Preamble of the Funding Act. **Clause 4** seeks to repeal section 9A of the Funding Act.
- (b) Determination of Delegates (National Council of Provinces) Act, 1998 (Act No. 69 of 1998)
Clause 7 seeks to effect consequential amendments to section 2 of the Determination of Delegates (National Council of Provinces) Act, 1998, that regulates the determination of permanent and special delegates in a province's delegation to the National Council of Provinces.
- (c) Electoral Act, 1998 (Act No. 73 of 1998)
Clause 8 seeks to effect a consequential amendment to item 23 of Schedule 1A to the Electoral Act, 1998, that regulates the filling of vacancies in the National Assembly and provincial legislatures.

- (d) Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)
Clauses 9, 11, 12, 13, 14, 16, 17 and 18 seek to effect consequential amendments to sections 26, 29, 62, 63 and 66, item 10 of Schedule 1, item 4 of Schedule 2 and the Table of Contents of the Local Government: Municipal Structures Act, 1998 (the Structures Act). **Clause 10** seeks to amend section 27 of the Structures Act, that regulates the vacation of office of councillors, so as to re-insert two provisions that were deleted from that Act by section 2 of the Local Government: Municipal Structures Amendment Act, 2002 (Act No. 20 of 2002). **Clause 15** seeks to repeal sections 93A and 93B of the Structures Act that provide for special measures for the application of item 6 of Schedule 6B to the Constitution of the Republic of South Africa, 1996 (the Constitution), and the publication of certain notices relating to floor crossing by the Commission, respectively. Both sections will become redundant once floor crossing has been abolished.
- (e) Local Government: Municipal Structures Amendment Act, 2002
Clauses 19 and 20 seek to repeal sections 12 and 13 of the Local Government: Municipal Structures Amendment Act, 2002, as those two sections will, once floor crossing has been abolished, become redundant. Section 12 regulates the registration of new political parties for purposes of Schedule 6B to the Constitution (which Schedule is to be repealed by clause 5 of the Constitution Fifteenth Amendment Bill of 2008), whilst section 13 contains transitional arrangements. **Clause 21** seeks to amend section 14 of the Local Government: Municipal Structures Amendment Act, 2002, that regulated the commencement of section 4 of the said Act.

2.3 Additional proposed amendments to the Funding Act

- 2.3.1 **Clause 2(a)** seeks to amend section 6(1) to make it clear that all political parties are accountable to the Commission in respect of the moneys allocated to them from the Fund. The purpose of **clause 2(b)** is to substitute a reference to an obsolete Act of Parliament.
- 2.3.2 In order to address one of the matters raised by the Portfolio Committee on Justice and Constitutional Development in its Report referred to in paragraph 2.1(b) above, **clause 2(c)** seeks to insert a new subsection (5A) in section 6 that will empower the Commission to appoint an auditor under certain circumstances to, for example, audit the books and records of account kept by a political party.
- 2.4 As the next window period for floor crossing on local government level is in September 2009, the Bill, the Constitution Fourteenth Amendment Bill of 2008, and the Constitution Fifteenth Amendment Bill of 2008, have to be passed by Parliament and implemented before 1 September 2009.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

- (a) The Bill was published in the national *Gazette* for public comment as required by section 154(2) of the Constitution.
- (b) The Department of Provincial and Local Government was consulted.

4. IMPLICATIONS FOR PROVINCES

The Bill seeks to further regulate—

- (a) the determination of permanent and special delegates to the National Council of Provinces; and
- (b) the filling of vacancies in provincial legislatures.

5. IMPLICATIONS FOR MUNICIPALITIES

As discussed in paragraph 2.2 above.

6. FINANCIAL IMPLICATIONS FOR STATE

None.

7. PARLIAMENTARY PROCEDURE

7.1 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 established 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.

7.2 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 communities.

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