

REPUBLIC OF SOUTH AFRICA

ELECTORAL AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); prior notice of its
introduction together with an explanatory summary of Bill published in
Government Gazette No. 41677 of 1 June 2018)
(The English text is the official text of the Bill)*

(MR M WATERS, MP)

[B 24—2018]

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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 Electoral Act, 1998, so as to apply a single standard of identification to all South African voters; to provide for increased geographical coverage of registration and voting stations in foreign countries with significant numbers of eligible voters; to provide for voting to take place on weekends; to provide for time zones to be taken into account when setting deadlines for receipt and counting of votes from citizens ordinarily resident at a place outside the Republic; to provide for special votes in elections for a provincial legislature of persons ordinarily resident outside the Republic; and to provide for matters connected therewith.

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

Amendment of section 6 of Act 73 of 1998, as amended by section 2 of Act 34 of 2003 and section 2 of Act 18 of 2013

1. Section 6 of the Electoral Act, 1998 (hereinafter referred to as the “principal Act”), 5 is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any South African citizen, including a citizen who is ordinarily resident at a place outside the Republic, in possession of an identity document may apply for registration as a voter: **Provided that where that citizen is ordinarily outside the Republic, he or she must in addition to the identity document produce a valid South African passport**.” 10

Amendment of section 17 of Act 73 of 1998

2. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Whenever the President or Acting President calls an election of the National 15 Assembly the proclamation concerned must—
(a) set a single day and date for voting; and
(b) if section 33(4) applies, set a single day and date that falls on a weekend for casting those votes.”

Amendment of section 33 of Act 73 of 1998, as amended by section 2 of Act 40 of 2003, section 9 of Act 34 of 2003 and section 6 of Act 18 of 2013

3. Section 33 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

“(4) In an election for the National Assembly, the Commission must allow a person to apply for and cast a special vote if that person’s name appears on the segment of the voter’s roll for persons ordinarily resident at a place outside the Republic, if that person notifies the Commission within 15 days after the proclamation of the date of the election of his or her intention to vote outside the Republic and, subject to section 64(1)(b), the location of the South African embassy, high commission or consulate where he or she will cast his or her vote.”; and

(b) by the substitution for subsection (6) of the following subsection:

“(6) The Commission must prescribe—

(a) the procedure for applying for special votes in an election for the National Assembly; **[and]**

(b) the procedure, consistent in principle with Chapter 4, for the casting and counting of special votes, taking into account, where applicable, the times zone of the country where a person who is ordinarily resident at a place outside of the Republic has casted his or her vote; and

(c) subject to paragraph (b) of section 64(1), the operational requirements for a voting station contemplated in that paragraph.”.

Amendment of section 33A of Act 73 of 1998, as inserted by section 7 of Act 18 of 2013

4. Section 33A of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) In an election for a provincial legislature, the Commission must allow a person to apply for and cast a special vote if that person’s name appears on the segment of the provincial voter’s role for persons ordinarily resident at a place outside the Republic, if that person notifies the Commission within 15 days after the proclamation of the date of the election of his or her intention to vote outside the Republic and, subject to section 64(1)(b), the location of the South African embassy, high commission or consulate where he or she will cast his or her vote.”.

Amendment of section 64 of Act 73 of 1998, as amended by section 18 of Act 34 of 2003

5. Section 64 of the principal Act is hereby amended—

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

“(1) **[The Commission must establish for an election one voting station, or one voting station and a mobile voting station, or only a mobile voting station, in each district in which the election will be held]** For an election the Commission must—

(a) establish one voting station, or one voting station and a mobile voting station, or only a mobile voting station, in each district in which the election will be held; and

(b) where a prescribed amount of valid applications for special votes have been received in terms of the procedure contemplated in section 33(6)(a) from a single conurbation in another country, in consultation with the Minister responsible for foreign affairs, endeavour to establish a voting station within that conurbation.”; and

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

“(3) Before determining the location of a voting station, the Commission may consult on the proposed location of that voting station **[with]**—

(a) with the municipal party liaison committee for the municipality within which that voting station will fall; **[or]**

- (b) if no municipal party liaison committee has been established in the municipality, with the provincial party liaison committee for the province within which the voting station will fall; or
- (c) when subsection (1)(b) is applicable, with the diplomatic or consular representative of the Republic accredited to the country concerned.” 5

Short title and commencement

6. This Act is called the Electoral Amendment Act, 2018, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE ELECTORAL AMENDMENT BILL, 2018

1. INTRODUCTION

The right to vote forms the foundation for all democratic political processes in South Africa. As such, the Electoral Act, 1998 (Act No. 73 of 1998), regulates elections of the National Assembly, the provincial legislatures and municipal councils and provides for related matters. It is imperative that registration and voting mechanisms be as broad and inclusive as possible in order to ensure that all South African citizens are able to exercise their right to vote unencumbered. However, the current mechanisms in place, as provided for in the Electoral Act, fall short in respect of overseas-based voters.

2. OBJECTS OF THE BILL

The purpose of the Bill is to amend the Electoral Act, 1998 (Act No. 73 of 1998), in order to provide for the application of a single standard of identification to all South African voters. The Bill further seeks to increase the geographical coverage of registration and voting stations in foreign countries with significant numbers of eligible voters and to provide for voting to take place on weekends. The Bill also provides for time zones to be taken into account when setting deadlines for receipt and counting of votes from citizens ordinarily resident at a place outside the Republic.

3. CONTENTS OF THE BILL

- 3.1 Clause 1 amends section 6 of the Act by repealing the requirement for a citizen ordinarily resident at a place outside the Republic to also produce a valid South African passport when applying to register as a voter.
- 3.2 Clause 2 amends section 17 of the Act. This clause provides for voting to take place on weekends when casting special votes in foreign countries.
- 3.3 Clause 3 amends section 33 of the Act by incorporating a reference to section 64(1)(b). The clause further requires the Commission to take into account the time zones of foreign countries when prescribing the procedure for casting and counting a special vote. Clause 3 also provides that the Commission must prescribe the operational requirements for a voting station contemplated in section 64(1)(b).
- 3.4 Clause 4 amends section 33A of the Act by providing for persons to apply for and cast special votes if their names appear on a provincial voter's roll for persons ordinarily resident outside the Republic.
- 3.5 Clause 5 amends section 64 by providing for the Commission to, amongst other things, endeavour to establish voting stations in locations outside the South African embassies, high commissions and consulates in foreign countries. The clause further provides that when determining the location of such a voting station, the Commission must consult with the diplomatic or consular representative of the Republic accredited to the country concerned.
- 3.6 Clause 6 is the short title.

4. FINANCIAL IMPLICATIONS FOR THE STATE

The costs associated with this Bill would relate to the casting of special votes by South Africans living abroad. However, the number of South Africans who are eligible to vote could only be determined once they have applied for special votes, and it is therefore not possible to predict the costs associated with this exercise accurately.

5. PARLIAMENTARY PROCEDURE

- 5.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution as its provisions do not in a substantial manner deal with any functional area of concurrent national and provincial legislative competence listed under Schedule 4 to the Constitution, nor do they deal with any other matter contained in section 76(3), (4) or (5).
- 5.2 The Member is 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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