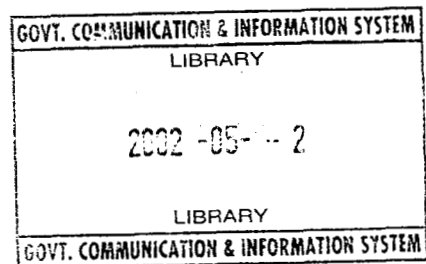


REPUBLIC OF SOUTH AFRICA

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL

*(As introduced in the National Assembly as a section 74 Bill; Bill published in
Government Gazette No 23218 of 11 March 2002)
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)



[B 16—2002]

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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 Constitution of the Republic of South Africa, 1996, so as to enable a member of a Municipal Council to become a member of another party whilst retaining membership of that Council; to enable an existing party to merge with another party, or to subdivide into more than one party, or to subdivide and any one of the subdivisions to merge with another party, whilst allowing a member of a Council affected by such changes to retain membership of that Council; and to provide for matters connected therewith.

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

AND WHEREAS section 47(3)(a) of the 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 105(1)(d) of the Constitution requires an electoral system for provincial legislatures that results, in general, in proportional representation;

AND WHEREAS section 106(3)(a) of the 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 item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, provides that an Act of Parliament may, within a reasonable period after the new Constitution took effect, be passed in accordance with section 76(1) of the new 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 section 157 of the Constitution requires an electoral system for local government—

- * comprising either proportional representation or proportional representation combined with a system of ward representation; and

- * ensuring that the total number of members elected from each party reflects the total proportion of the votes recorded for those parties;

AND WHEREAS section 158 provides for certain criteria for eligibility for membership of a Municipal Council;

AND WHEREAS the Local Government: Municipal Structures Act, 1998, provides for an electoral system for local government comprising proportional representation combined with a system of ward representation;

AND WHEREAS no provision has been made in the Constitution in respect of local government for—

- * a councillor to retain membership of a Municipal Council where such a councillor ceases to be a member of the party which nominated that councillor; and
- * any party to merge with another party, or any party to subdivide into more than one party or any party to subdivide and any one of the subdivisions to merge with another party, whilst allowing a member of a Council affected by such changes, to retain membership of that Council;

AND WHEREAS section 27 of the Local Government: Municipal Structures Act, 1998, provides that a councillor—

- * who was elected from a party list and ceases to be a member of that party; or
- * who was elected to represent a ward and who was—
 - (i) nominated by a party as a candidate in the ward election and ceases to be a member of that party; or
 - (ii) not nominated by a party as a candidate in the ward election and becomes a member of a party,

ceases to be a member of the Municipal Council in question;

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,

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

Amendment of section 157 of Act 108 of 1996, as amended by section 2 of Act 87 of 1998

1. Section 157 of the Constitution of the Republic of South Africa, 1996, is hereby amended— 5

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Subject to section 158A, a Municipal Council consists of—
 - (a) members elected in accordance with subsections [(2), (3), (4) and (5)] (2) and (3); or 10
 - (b) if provided for by national legislation—
 - (i) members appointed by other Municipal Councils to represent those other Councils; or
 - (ii) both members elected in accordance with paragraph (a) and members appointed in accordance with subparagraph (i) of this paragraph.”; and 15
- (b) by the substitution for subsection (3) of the following subsection:
 - “(3) An electoral system in terms of subsection (2) must [ensure that the total number of members elected from each party reflects the total proportion of the votes recorded for those parties] result, in general, in proportional representation.” 20

Insertion of section 158A in Act 108 of 1996

2. The following section is hereby inserted into the Constitution of the Republic of South Africa, 1996:

“Loss or retention of membership of Municipal Councils, mergers between parties and subdivision of parties, and filling of vacancies 5

158A. (1) A councillor who, otherwise than in accordance with subsection (2), (3) or (4), ceases to be a member of the party which nominated that councillor as a member of a Municipal Council ceases to be a member of that Council.

(2) (a) Subject to subsection (5), a councillor who was elected from the party list of a party represented in a Municipal Council (the nominating party) and who becomes a member of another party (the other party) remains a councillor of that Council if that councillor—

- (i) has become a member of the other party after the expiry of 12 months from the date of the previous election of all Municipal Councils; and
- (ii) whether by himself or herself, or together with one or more other councillors who simultaneously ceased to be members of the nominating party, represents not less than 10 per cent of the total number of seats held by the nominating party in that Council.

(b) The seat held by a councillor referred to in paragraph (a) must be regarded as having been allocated to the other party of which that councillor has become a member.

(3) (a) Subject to subsection (5), a councillor who was elected to represent a ward remains a councillor for that ward if that councillor—

- (i) used on the part of the ballot paper for wards the same distinguishing mark or symbol as a party which contested the election, and, after the expiry of 12 months from the date of the previous election of all Municipal Councils, ceases to be a member of that party and becomes a member of another party or ceases to be a member of that party and does not become a member of another party; or
- (ii) did not use on the part of the ballot paper for wards the same distinguishing mark or symbol as a party which contested the election and after the expiry of 12 months from the date of the previous election of all Municipal Councils becomes a member of such a party.

(b) The ward represented by a councillor referred to in paragraph (a) must be regarded as having been allocated to—

- (i) the party of which that councillor has become a member; or
- (ii) that councillor if such councillor has not joined another party.

(4) (a) Subject to subsection (5), any political party (the original party) which is represented in a Municipal Council may, after the expiry of 12 months from the date of the previous election of all Municipal Councils—

- (i) merge with another party; or
- (ii) subdivide into more than one party or subdivide and any one subdivision may merge with another party, if the members 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.

(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 councillors concerned remain members of that Municipal Council and the seats held by them must be regarded as having been allocated to the other party which they represent.

(5) (a) The provisions of subsections (2), (3) and (4)—

- (i) apply for a period of 15 days immediately after the commencement of this section, and, in the year of the commencement of this section, from the first to the fifteenth day of September; and
- (ii) in the years thereafter, only apply for the periods of the first to the fifteenth day of February and the first to the fifteenth day of September of each year, but not apply if such a period falls within 12 months of the date when the next election of all municipal councils must be held.

- (b) During a period referred to in paragraph (a)—
- (i) a councillor may change membership of a party only once, before the expiry of that period, by informing the municipal manager of the municipality concerned in writing of his or her decision to join another party or to join a party or to cease to be a member of any party, and if applicable, submit to the municipal manager written confirmation from such other party that he or she has been accepted as a member of that party; and 5
 - (ii) a party may merge with another party or subdivide into more than one party or subdivide and any one subdivision may merge with another party, only once, before the expiry of the period referred to in paragraph (a), by informing the municipal manager of the municipality concerned in writing that it has merged with another party or subdivided into more than one party or subdivided and merged with another party, and, if applicable, submit to the municipal manager written confirmation from such other party that it has accepted such merger. 10
- (c) During a period referred to in paragraph (a), no party represented in a Municipal Council may suspend or terminate the party membership of a councillor representing that party or perform any act whatsoever which may cause such a councillor to be disqualified from holding office as a councillor or change such councillor's position on a party list relating to the said Council without the written consent of the councillor concerned. 15
- (6) After the composition of a Municipal Council has been changed as a result of the provisions of subsection (2), (3) or (4)— 20
- (a) each party affected by— 25
 - (i) a change of membership as contemplated in subsections (2) and (3); or
 - (ii) a merger or subdivision or subdivision and merger as contemplated in subsection (4), 30
 must forthwith submit a list or a revised list, as the case may be, of candidates in respect of such a Municipal Council indicating the changes effected as a result of the change of party membership or the merger or subdivision or subdivision and merger of parties; and
 - (b) the municipal manager of the municipality concerned must, within 14 days after the submission of the list referred to in paragraph (a), publish a notice in the Provincial Gazette concerned which reflects— 35
 - (i) the ward representation in that Municipal Council;
 - (ii) the party representation in that Municipal Council; and
 - (iii) the lists of candidates submitted in terms of paragraph (a); and 40
 - (c) the composition of a Municipal Council reflected in a notice referred to in paragraph (b)(i) and (ii) is maintained until the next election of all Municipal Councils or until the composition of that Council is again reconstituted in accordance with subsection (2), (3) or (4) or until a by-election is held in that Council. 45
- (7) Vacancies in a Municipal Council must be filled in terms of national legislation.”.

Short title

3. This Act is called the Constitution of the Republic of South Africa Amendment Act, 2002. 50

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL, 2002

1. Background

1.1 On 13 November 2001 the National Assembly gave permission to the Assembly's Portfolio Committee on Justice and Constitutional Development to proceed with the consideration of the *Loss or Retention of Membership of National and Provincial Legislatures Bill, 2001* (the Membership Bill).

1.2 The purpose of the Membership Bill is to create a mechanism in terms of which—

- * members of the National Assembly or a provincial legislature can change their party membership without losing their seats;
- * an existing party may merge with another party; and
- * a party may subdivide into more than one party.

1.3 This mechanism is sought to be created by way of amendments to items 23 and 23A of Schedule 2 to the (interim) Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

1.4 However, at present the Constitution does not provide for similar changes of party membership, mergers between parties or subdivision of parties in the context of local government.

2. Provisions of Bill

The provisions of the Bill are largely modelled on the principles contained in the Membership Bill. These principles entail the following:

- * Changes of party membership will **only be allowed after the expiry of 12 months** after the date of the previous election of all Municipal Councils.
- * Similarly, such changes will **not be allowed during the 12 months preceding** the date of the next election of all Municipal Councils.
- * A **further requirement** is added, namely that a change of party membership will only be allowed if the **members wishing to leave a party represent not less than 10 per cent** of the seats held by the party concerned. (New section 158A(2).)
- * Similarly, mergers between or subdivisions of political parties will only be allowed after the expiry of 12 months after the date of the previous election of all Municipal Councils, and will **not be allowed during the 12 months preceding** the date of the next election of all Municipal Councils.
- * In respect of subdivisions the further requirement is also added that the **members leaving the original party must represent not less than 10 per cent** of the seats held by the party concerned. (New section 158A(4).)
- * All of the above steps may **only take place during limited periods** as determined by the Bill.
 - * In the year 2002, such periods will be **during the first fifteen days following the commencement of section 158A**, and again from the first to the fifteenth day of September.
 - * In the years thereafter, such **periods will last from the first to the fifteenth day of February**, and from the **first to the fifteenth day of September**, of each year. (New section 158A(5).)
- * The Bill also introduces a new principle (not contained in the Membership Bill), in that provision is made that, during a period allowed for the above changes of membership, mergers or subdivision of parties, **no party** represented in a Municipal Council may—
 - * **suspend or terminate the party membership** of a councillor representing that party; or
 - * perform any act whatsoever which may **cause such a councillor to be disqualified from holding office** as a councillor or change such councillor's position on a party list relating to the said Municipal Council. (New section 158A(5)(c).)
- * During a "window" allowed for crossing/mergers/subdivisions—
 - * a councillor is **allowed to change party membership only once**; and
 - * a party may **merge/subdivide only once**. (New section 158A(5)(b).)

3. Departments/persons/bodies consulted

The Bill was published for public comment in the *Gazette*.

4. Implications for provinces

None.

5. Financial implications for State

None.

6. Parliamentary procedure

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 74(3)(a) of the Constitution since it contains no amendment which—

- (i) relates to a matter that affects the National Council of Provinces;
- (ii) alters provincial boundaries, functions or institutions; or
- (iii) amends a provision that deals specifically with a provincial matter.