

GENERAL NOTICES ALGEMENE KENNISGEWINGS

NOTICE 520 OF 2008

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

PUBLICATION OF BILL AMENDING CONSTITUTION

The Minister for Justice and Constitutional Development intends introducing the Constitution Fourteenth Amendment Bill of 2008, in the National Assembly. The Bill is hereby published for public comment in accordance with section 74(5)(a) of the Constitution of the Republic of South Africa, 1996. Any person wishing to comment on the proposed amendments is invited to submit written comments to the Minister for Justice and Constitutional Development. Comments should kindly be directed for the attention of Mr J J Labuschagne, Private Bag X 81, Pretoria, 0001, or faxed to him at 086 501 8053 by not later than 9 June 2008.

(Electronic mail address: Jolabuschagne@justice.gov.za)

CONSTITUTION FOURTEENTH AMENDMENT BILL

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

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—

- * further regulate the determination of political party participation in provincial delegations to the National Council of Provinces; and
- * abolish the right—
 - ** of a member of the National Assembly or a provincial legislature to become a member of another political party whilst retaining membership of the National Assembly or that provincial legislature; 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 or a provincial legislature affected by such changes to retain membership of the National Assembly or that provincial legislature; and to provide for matters connected therewith.

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

Amendment of section 61 of the Constitution of the Republic of South Africa, 1996, as amended by section 1 of the Constitution Ninth Amendment Act of 2002

1. Section 61 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution), is hereby amended by the substitution for subsection (2) of the following subsection:

- "(2) [(a)] A provincial legislature must, within 30 days after the result of an election of that legislature is declared—
- [(i)] (a) determine, in accordance with national legislation, how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and
 - [(ii)] (b) appoint the permanent delegates in accordance with the nominations of the parties.

[(b) If the composition of a provincial legislature is changed on account of changes of party membership, mergers between parties, subdivision of parties or subdivision and merger of parties within that legislature, it must within 30 days after such change—

- (i) determine, in accordance with the national legislation referred to in paragraph (a), how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and
- (ii) appoint the permanent delegates in accordance with the nominations of the parties.]".

Amendment of section 62 of the Constitution of the Republic of South Africa, 1996, as amended by section 2 of the Constitution Ninth Amendment Act of 2002

2. Section 62 of the Constitution is hereby amended by the substitution for subsection (3) of the following subsection:

- "(3) Permanent delegates are appointed for a term that expires[—
- (a)] immediately before the first sitting of the provincial legislature after its next election[; or
 - (b) on the day before the appointment of permanent delegates in accordance with section 61(2)(b)(ii) takes effect].".

Amendment of section 105 of the Constitution of the Republic of South Africa, 1996, as amended by section 3 of the Constitution Tenth Amendment Act of 2003

3. Section 105 of the Constitution is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"[Subject to Schedule 6A, a] A provincial legislature consists of women and men elected as members in terms of an electoral system that—".

Amendment of section 106 of the Constitution of the Republic of South Africa, 1996, as amended by section 4 of the Constitution Tenth Amendment Act of 2003

4. Section 106 of the Constitution is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) A person loses membership of a provincial legislature if that person—

- (a) ceases to be eligible;**
- (b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership; or**
- (c) ceases to be a member of the party that nominated that person as a member of the legislature[, **unless that member has become a member of another party in accordance with Schedule 6A].".****

Amendment of Schedule 3 to the Constitution of the Republic of South Africa, 1996, as amended by section 2 of the Constitution Fourth Amendment Act of 1999, section 19 of the Constitution Sixth Amendment Act of 2001 and section 3 of the Constitution Ninth Amendment Act of 2002

5. Schedule 3 to the Constitution is hereby amended—

(a) by the substitution for item 3 of Part B of the following item:

"3. If the competing surpluses envisaged in item 2 are equal, the undistributed delegates in the delegation must be allocated to the party or parties[, **including any merged party as contemplated in section 61(2)(b),] with the same surplus in the sequence [**of votes recorded, starting with the party or merged party which recorded**] from the highest to the lowest number of votes[, **including combined votes in the case of a merged party,**] that have been recorded for those parties during the last election for the provincial legislature concerned[, **but if any of the parties with the same surplus—****

- (a) came into existence on account of changes of party membership or subdivision of parties within that legislature as contemplated in section 61(2)(b); and**
- (b) did not participate in the last election for the provincial legislature concerned,**

the legislature must allocate the undistributed delegates in the delegation to the party or parties with the same surplus in a manner

- which is consistent with democracy]."; and
- (b) by the addition in Part B of the following item:
- "4. If more than one party with the same surplus recorded the same number of votes during the last election for the provincial legislature concerned, the legislature concerned must allocate the undistributed delegates in the delegation to the party or parties with the same surplus in a manner which is consistent with democracy.".

Repeal of Schedule 6A to the Constitution of the Republic of South Africa, 1996, as inserted by section 6 of the Constitution Tenth Amendment Act of 2003

6. Schedule 6A to the Constitution is hereby repealed.

Short title and commencement

7. This Act is called the Constitution Fourteenth Amendment Act of 2008, and comes into operation on a date set by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION
FOURTEENTH AMENDMENT BILL OF 2008
(Published in terms of Rule 258(3) of the Rules of the National Assembly)**

1. BACKGROUND

- 1.1 During 2002 and 2003 Parliament passed the so-called "floor crossing" legislation. The common objective of that legislation was—
- (a) to enable 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
 - (b) to enable an existing political party to merge with another political party, to subdivide into more than one political party or to subdivide and any one subdivision to merge with another political party.
- 1.2 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 effect of abolishing floor crossing would mean that we revert to the position prior to 2002. This would mean that—
- (a) a member of the National Assembly, a provincial legislature or a Municipal Council will no longer be able to become a member of another political party whilst retaining membership of the National Assembly, that provincial legislature or that Council;
 - (b) an existing political party will no longer be able to merge with another political party, or to subdivide into more than one political party or to subdivide and any one subdivision to merge with another political party; and
 - (c) a political party will also no longer be able to change the name of the party

in the National Assembly, provincial legislature or Municipal Council.

- 1.3 The Constitution Fourteenth Amendment Bill of 2008 (the Bill), 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 Matters Amendment Bill, effecting consequential amendments to various laws relating to loss of membership of the National Assembly, a Provincial Legislature or a Municipal Council, 2008, seeks to effect amendments, which are mainly of a consequential nature and which emanate from the provisions of the Bill and the Constitution Fifteenth Amendment Bill of 2008, to numerous relevant Acts.

2. OBJECTS OF THE BILL

- 2.1 The objects of the Bill are to amend the Constitution of the Republic of South Africa, 1996 (the Constitution), so as to abolish the right—
 - (a) of a member of the National Assembly or a provincial legislature to become a member of another political party whilst retaining membership of the National Assembly or that provincial legislature; and
 - (b) 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 or a provincial legislature affected by such changes to retain membership of the National Assembly or that provincial legislature.
- 2.2 The above objects are sought to be achieved by—
 - (a) **clause 6** that seeks to repeal Schedule 6A of the Constitution (that regulates the retention of membership of the National Assembly or a provincial legislature, after a change of party membership, mergers between parties, subdivision of parties and subdivision and merger of parties); and
 - (b) **clauses 1 to 4 and 5(a)** that seek to effect consequential amendments to sections 61, 62, 105 and 106 of, and Part B of Schedule 3 to, the Constitution.
- 2.3 Although not related to floor crossing, **clause 5(b)** seeks to amend Part B of Schedule 3 to the Constitution so as to further regulate the determination of political party participation in provincial delegations to the National Council of Provinces. This proposed amendment gives effect to a proposal that was made during the Second Reading debate on the Constitutional Matters Amendment Bill [B 22B—2005], that took place in the National Assembly on 23 August 2005.
- 2.4 As the next window for floor crossing on local government level is in September 2009, the Bill, the Constitution Fifteenth Amendment Bill of 2008, and the General Matters Amendment Bill, effecting consequential amendments to various laws relating to loss of membership of the National Assembly, a Provincial

Legislature or a Municipal Council, 2008, have to be passed by Parliament and implemented before 1 September 2009.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

In terms of section 74(5) of the Constitution the Bill was—

- (a) published in the national *Gazette* for public comment; and
- (b) submitted to the provincial legislatures for their views.

4. IMPLICATIONS FOR PROVINCES

As discussed in paragraph 2 above.

5. FINANCIAL IMPLICATIONS FOR STATE

None

6. PARLIAMENTARY PROCEDURE

The Department of Justice and Constitutional Development is of the opinion that the proposed amendments fall within the ambit of section 74(3)(b) of the Constitution and consequently require the approval of both the National Assembly and the National Council of Provinces.