

REPUBLIC OF SOUTH AFRICA

LOCAL GOVERNMENT: MUNICIPAL ELECTORAL AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 33478 of 20 August 2010)
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 27—2010]

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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 Local Government: Municipal Electoral Act, 2000, so as to supplement provisions relating to the election timetable and insert a related Schedule to the Act; to amend provisions relating to nomination of candidates; to provide for central payments of deposits by a party which contests election in more than one municipality; to empower presiding officers to alter boundaries of voting stations, if necessary; to revise provisions relating to number of party agents at a voting station; to clarify the rights and responsibilities relating to assistance to certain voters; to provide for special votes and the procedure related thereto; to enhance the powers and functions of the Electoral Commission and the Electoral Court in relation to the determination and declaration of the result of an election; to provide for further regulation of objections material to the result of an election; and to provide for matters connected therewith.

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

Amendment of section 11 of Act 27 of 2000

1. Section 11 of the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000) (hereinafter referred to as the principal Act), is hereby amended by— 5
- (a) the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) compile a timetable for the election in accordance with Schedule 3;
and”; and
- (b) the addition of the following subsection:
- “(3) Any act required to be performed in terms of this Act must be 10
performed by no later than a date and time stated in the election
timetable.”.

Amendment of section 14 of Act 27 of 2000

2. Section 14 of the principal Act is hereby amended by— 15
- (a) the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) in the prescribed format and signed by the party’s duly authorised
representative—
- (i) a notice of its intention to contest the election; [and]

- (ii) a party list; **[and]**;
 - (iii) an undertaking binding the party, its candidates, persons holding political or executive office in the party, its representatives, members and supporters, to the Code; and
 - (iv) a declaration that none of the candidates on the party list is disqualified from standing for election in terms of the Constitution or any applicable legislation; and”;
- (b) the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) a **[certified]** copy of that page of the candidate’s **[identification]** identity document on which the candidate’s photo, name and identity number appear.”;
- (c) the substitution for subsection (4) of the following subsection:

“(4) If a party omits to attach to its party list **[all]** any of the documents mentioned in subsection (3), the Commission must—

 - (a) notify the party in writing by no later than the relevant date and time stated in the election timetable; and
 - (b) allow the party to submit the outstanding documents to the office of the Commission’s local representative by **[not]** no later than **[a]** the date and time stated in the election timetable.”;
- (d) the substitution for subsection (5) of the following subsection:

“(5) The Commission must remove from a party list the name of a candidate—

 - (a) in respect of whom any outstanding document has not been submitted by the date and time referred to in subsection (4); and
 - (b) who is not registered as a voter on that municipality’s segment of the voters’ roll.”;
- (e) the addition of the following subsection:

“(6) The Commission must notify the party of the removal of the name of the candidate contemplated in subsection (5).”.

Amendment of section 17 of Act 27 of 2000

3. Section 17 of the principal Act is hereby amended by—

- (a) the substitution for subsection (2) of the following subsection:

“(2) The following must be attached to a nomination when **[the nomination]** it is submitted **[to the Commission]**:

 - (a) In the case of an independent ward candidate, a prescribed form with the signatures of at least 50 voters whose names appear on the municipality’s segment of the voters’ roll for any voting district in the contested ward;
 - (b) a prescribed acceptance of nomination signed by the **[ward]** candidate;
 - (c) a **[certified]** copy of the page of the candidate’s **[identification]** identity document on which the candidate’s photo, name and identity number appear; **[and]**
 - (d) a deposit equal to a prescribed amount, if any, payable by means of a bank guaranteed cheque in favour of the Commission;
 - (e) a prescribed undertaking, signed by the candidate, to be bound by the Code; and
 - (f) a prescribed declaration, signed by the candidate, that he or she is not disqualified from standing for election in terms of the Constitution or any applicable legislation.”;
- (b) the insertion after subsection (2) of the following subsection:

“(2A) If any document mentioned in paragraphs (b) and (c) of subsection (2) were not attached to the nomination, the Commission must—

 - (a) notify the nominating party or person in writing by no later than the date stated in the election timetable; and
 - (b) allow the nominating party or person to submit the outstanding document by no later than a date stated in the election timetable.”;

- (c) the substitution for subsection (3) of the following subsection:

“(3) The Commission must accept a nomination submitted to it and allow the nominated person to stand as a candidate in the ward if **[section 16(1) and subsections (1) and (2) of this section have been complied with]**—

- (a) the provisions of section 16 and this section have been complied with; and
(b) the candidate is registered as a voter on that municipality’s segment of the voters’ roll.”.

Insertion of section 17A in Act 27 of 2000

4. The following section is hereby inserted after section 17 of the principal Act:

“Central Payments of Deposits

17A. (1) A party contesting elections under section 14 in more than one municipality on the same day may also pay the required deposits to the Commission at the Commission’s national office at the prescribed address.

(2) Payments must be made by bank guaranteed cheque before the cut-off time for the submission of party lists and every cheque must be accompanied by a notice in the prescribed form specifying the details of each municipality to which the deposits apply.”.

Amendment of section 21 of Act 27 of 2000

5. Section 21 of the principal Act is hereby amended by the addition of the following subsection:

“(3) The presiding officer may, after consultation with the party agents and members of the security services who are present, at any time re-determine and re-demarcate the boundary of a voting station if it is necessary to do so in order to ensure proper control and security at that voting station.”.

Amendment of section 39 of Act 27 of 2000

6. Section 39 of the principal Act is hereby amended by—

- (a) the substitution in subsection (1) for paragraph (a) of the following paragraph:
“(a) two or more agents per voting station as may be indicated by the Commission, if voting at the voting station takes place in more than one room or separately enclosed area; and”; and
(b) the substitution in subsection (2) for paragraph (a) of the following paragraph:
“(a) one [agent] or more agents per voting station in the ward, if voting at the voting station takes place in more than one room or separately enclosed area; and”.

Amendment of section 48 of Act 27 of 2000

7. Section 48 of the principal Act is hereby amended by—

- (a) the substitution in subsection (1) for paragraph (a) of the following paragraph:
“(a) the voter requires assistance due to physical disability, including blindness or other visual impairment;”; and
(b) the substitution in subsection (2) for the words preceding paragraph (a) of following words:
“(2) The presiding officer or a voting officer, at the request of a voter referred to in subsection (1) or a voter who is unable to read, must assist that voter [to cast a vote] in voting and provide such assistance in the presence of—”.

Substitution of section 55 of Act 27 of 2000

8. The following section is hereby substituted for section 55 of the principal Act:

“Special votes

55. Any voter who is unable, on voting day, to cast his or her vote at the voting station in the voting district where he or she is registered, may in the prescribed manner apply and be allowed, prior to voting day, to cast a special vote within that voting district.” 5

Substitution of section 64 of Act 27 of 2000

9. The following section is hereby substituted for section 64 of the principal Act:

“Determination and declaration of result of election 10

64. (1) On receipt of all the results of the count in respect of all ballots conducted at the voting stations within the municipality, the Commission must—

- (a) determine the result of the election in the municipality;
- (b) record the result on a prescribed form; and 15
- (c) declare the result in public.

(2) If the Commission is unable to determine and declare the result of an election within the seven-day period required by section 5 of the Electoral Commission Act, the Commission may, within that period, apply to the Electoral Court for an extension of the period and must furnish the Electoral Court with good reason for doing so. 20

(3) Despite the provisions of any law, the Electoral Court may, on good cause shown, grant or refuse an application referred to in subsection (2).”.

Substitution of section 65 of Act 27 of 2000

10. The following section is hereby substituted for section 65 of the principal Act: 25

“Objections material to result of election

65. (1) An interested party may lodge with the Commission an objection material to the result of an election, concerning—

- (a) any aspect of the voting or counting proceedings provided for in Chapter 5 or Chapter 6, respectively; or 30
- (b) alleged unlawful—
 - (i) interference with or obstruction of election activities or processes in the vicinity of, at or in a voting station; or
 - (ii) interference with or influencing, intimidation or obstruction of voters or prospective voters in the vicinity of, at or in a voting station. 35

(2) An objection must be lodged by serving by no later than 17:00 on the second day after voting day, at the Commission’s national office at the prescribed address, a written notice containing—

- (a) a reference to the election concerned and the relevant section of the Act in terms of which the objection is brought; 40
 - (b) the full name and physical address of the objecting party;
 - (c) the postal address and telephone number where the objecting party can be contacted and, if available, the party’s facsimile number and e-mail address; 45
 - (d) the interest of the objecting party in the matter;
 - (e) details of the objection and the aspect of the election concerned;
 - (f) detailed reasons for the objection;
 - (g) the relief sought;
 - (h) a list of supporting documents accompanying the notice of objection; 50
- and

- (i) proof of service of copies of the notice and annexures on all other interested parties.
- (3) The Commission may, on good cause shown, condone a late objection.
- (4) In considering and deciding the objection referred to in this section, the Commission may take any one or more, or all, of the following actions:
 - (a) Investigate the factual basis of the objection or cause it to be investigated;
 - (b) afford other interested parties an opportunity to make written or verbal submissions;
 - (c) call for written or verbal submissions from other persons or parties;
 - (d) call upon the objecting party to submit further information or arguments in writing or verbally; or
 - (e) conduct a hearing on the objection.
- (5) The Commission must consider the objection and either reject or uphold it.
- (6) If the Commission decides to uphold the objection before the result of the election had been determined, the Commission may—
 - (a) decide that the votes cast at a particular voting station do not count in whole or in part;
 - (b) decide that the votes cast at a particular voting station in favour of a party or candidate must be deducted in whole or in part from the votes cast in favour of that party or candidate in the election; or
 - (c) reduce the number of votes cast in favour of a party or a candidate.
- (7) If the Commission decides to uphold the objection after the result of the election had been declared, the Commission may—
 - (a) amend the result; or
 - (b) if it is of the opinion that the seriousness and extent of unlawful conduct or irregularities that occurred may justify the setting aside of the election, refer the objection to the Electoral Court for its decision.
- (8) The Commission must immediately notify the objecting party and any other interested parties involved in the objection of its decision in terms of subsection (5).
- (9) An objecting party or other party involved in the objection who feels aggrieved by the decision of the Commission may, within seven days of the Commission's decision, lodge an appeal to the Electoral Court in terms of section 20 of the Electoral Commission Act and the Rules of the Electoral Court.
- (10) The Electoral Court must—
 - (a) consider an appeal contemplated in subsection (9) and either—
 - (i) reject the appeal;
 - (ii) amend the decision of the Commission;
 - (iii) set aside the election; or
 - (iv) make an appropriate order; and
 - (b) notify the parties to the appeal of its decision.
- (11) The Electoral Court—
 - (a) may, after having considered an objection referred to it by the Commission in terms of subsection (7)(b), either—
 - (i) reject the objection;
 - (ii) amend the result of the election;
 - (iii) set aside the election; or
 - (iv) make an appropriate order; and
 - (b) must notify the objecting party of its decision.
- (12) The declared result of an election is not suspended by an appeal in terms of subsection (9) or a referral to the Electoral Court in terms of subsection (7)(b)."

Insertion of Schedule 3 in Act 27 of 2000

11. The following Schedule is hereby inserted in the principal Act after Schedule 2:

“SCHEDULE 3

ELECTION TIMETABLE

In terms of section 11 of the Local Government: Municipal Electoral Act, 2000 (hereinafter referred to as “the Act”), the Electoral Commission (hereinafter referred to as the Commission) hereby compiled this election timetable to apply to the (particulars of relevant election) that will be held on (date/s). (A reference to ‘section’ in this election timetable is a reference to that section of the Act and a reference to “regulation” is a reference to that regulation in the Municipal Electoral Regulations, 2000.)

Cut-off time for act to be performed

1. An act required in terms of the Act and the Municipal Electoral Regulations, 2000, to be performed by no later than a date stated in the election timetable must be performed before 17:00 on that date.

Notice that list of addresses of voting stations is available for inspection

2. The Commission must give notice by (date) that from the date of the notice until the voting day copies of a list of all voting stations and their addresses will be available for inspection at the office of the Commission’s local representative.

Notice of route of mobile voting station

3. The Commission must give notice by (date) of the route, including the locations and estimated times of stopping of each mobile voting station.

Cut-off date for publication of voters’ roll

4. By (date), the Chief Electoral Officer must certify the voters’ roll or the municipality’s segments of the voters’ roll to be used in this election in terms of section 6(2), and make those segments available for inspection.

Cut-off date for submission of notice to contest, list of candidates and nomination of ward candidate

5. (1) Registered parties that intend to contest this election in terms of section 14 must nominate and submit a notice of intention to contest, a party list of their candidates and the prescribed deposit with the supporting documents for the election to the office of the Commission’s local representative in the prescribed form and manner by (date).

(2) Registered parties and nominators of independent candidates that intend to contest a ward in this election in terms of section 17, must submit their nominations and the prescribed deposits with the supporting documentation for the said ward election to the office of the Commission’s local representative in the prescribed form and manner by (date).

(3) Payment of the prescribed deposits in terms of section 17A must be made by (date).

Notice of non-compliance

- 6.** (1) (a) The Commission must notify a registered party that has submitted a party list of candidates in terms of section 14 but has not fully complied with section 14(3), of that non-compliance by (date). 5
 (b) If the notified party takes the opportunity to comply with section 14(3), that party must do so by (date).
 (2) (a) The Commission must notify the nominating party or person of a candidate who has not fully complied with section 17(2)(b) and (c), of that non-compliance by (date).
 (b) If the nominating party or person takes the opportunity to comply with section 17(2)(b) or (c), that party or person must do so by (date). 10

List of parties entitled to contest election and list of candidates

- 7.** By (date), the Commission—
 (a) must compile the list of the registered parties entitled to contest this election; 15
 (b) must certify the party lists for this election; and
 (c) keep those lists available at the office of the Commission's local representative.

List of ward candidates to contest ward election

- 8.** By (date), the Commission must—
 (a) compile and certify for each ward contested in this election, a list of candidates contesting that ward; and
 (b) keep copies of those lists available at the office of the Commission's local representative. 20
 25

Issue of certificate to candidate

- 9.** By (date), the Commission must issue—
 (a) the prescribed candidate certificate to each candidate on the certified party lists in this election; and
 (b) the prescribed candidate certificate to each candidate on the certified list of ward candidates in this election.”. 30

Short title and commencement

- 12.** This Act is called the Local Government: Municipal Electoral Amendment Act, 2010, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 35

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL ELECTORAL AMENDMENT BILL, 2010

1. OBJECTS OF BILL

The main objects of the Local Government: Municipal Electoral Amendment Bill (“the Bill”) are to supplement provisions relating to the election timetable and insert a related Schedule to the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000) (“the Act”), to amend provisions relating to the nomination of candidates, to revise provisions relating to number of party agents at voting stations, to empower presiding officers to alter boundaries of voting stations if necessary, to clarify the rights and responsibilities relating to assistance to certain voters, to provide for special votes and the procedure related thereto, to provide for further regulation of the objections material to the results of elections and enhance the powers of the Electoral Commission (“the Commission”) and the Electoral Court, and to provide for matters connected therewith.

2. DISCUSSION

The Bill introduces the amendments as follows:

- 2.1 **Clause 1** amends section 11 of the Act in order to provide for the compilation of a *pro forma* timetable for the elections.
- 2.2 **Clause 2** amends section 14 of the Act in order to provide for the submission of an undertaking binding the party, its candidates, persons holding political or executive office in the party, its representatives, members and supporters, to the Code, as well as the submission of a declaration that none of the candidates on the list is disqualified from standing for elections.
- 2.3 **Clause 2** also effects certain technical amendments to section 14(1)(b), (3)(b) and (4) of the Act, and in subsection (5) provides that the Commission must remove from a party list the name of a candidate that has not submitted outstanding documents and also the name of a candidate who is not registered as a voter.
- 2.4 **Clause 3** amends section 17 of the Act in order to, amongst others, provide that a candidate must submit a prescribed undertaking declaration to be bound by the Code, as well as a prescribed declaration signed by the candidate that he or she is not disqualified from standing for election in terms of the Constitution of the Republic of South Africa, 1996, or any applicable legislation.
- 2.5 **Clause 3** further seeks to provide that where one or both documents required together with the nomination are not submitted, the Commission must notify the nominating party or person concerned in writing by no later than the date stated in the election timetable, and further allow the nominating party or person to submit the outstanding documents by no later than a date stated in the election timetable. Furthermore, the clause provides that the Commission must accept a nomination if the provisions of sections 16 and 17 have been complied with and if a candidate is registered as a voter in the relevant municipality’s segment of the voter’s roll.
- 2.6 **Clause 4** inserts section 17A in the Act in order to provide for the central payments of deposits. The clause further provides that payments must be made by bank-guaranteed cheque before the cut-off time for submission of party lists, specifying the details of each municipality to which the deposits apply.
- 2.7 **Clause 5** amends section 21 of the Act in order to make provision to empower the presiding officer, after consultation with party agents and members of

the security services present at the voting station, to re-determine and re-demarcate the boundary, should this become necessary in order to ensure proper control and security at the voting station.

- 2.8 **Clause 6** amends section 39 of the Act in order to make provision for two or more agents per voting station, if the Commission indicates that voting at a voting station takes place in more than one room or separately enclosed area.
- 2.9 **Clause 7** amends section 48 of the Act in order to, in addition to persons with physical disability, include persons with blindness or other visual impairment to be offered assistance by any person other than the presiding officer. The clause further provides that upon request by a voter referred to in section 48(1) of the Act or a voter that is unable to read, the presiding officer or a voting officer must assist that voter in voting.
- 2.10 **Clause 8** substitutes section 55 of the Act in order to make provision for special votes for any voter who is unable, on voting day, to cast his or her vote at the voting station in the voting district where he or she is registered to apply and be allowed, prior to voting day, to cast a special vote within that voting district.
- 2.11 **Clause 9** substitutes section 64 of the Act in order to make provision to empower the Commission to apply to the Electoral Court for extension of the period to determine and declare the elections if the Commission is unable to determine and declare the results within the seven- day period required by section 5 of the Electoral Commission Act, 1996 (Act No. 51 of 1996).
- 2.12 **Clause 10** substitutes section 65 of the Act in order to revise the provisions relating to objections material to results of elections so as to remove the ambiguity in the current provisions of the Act.
- 2.13 **Clause 11** inserts Schedule 3 in the Act, containing the Election Timetable as contemplated in clause 1 that amends section 11 of the Act.
- 2.14 **Clause 12** deals with the short title and commencement of the Act.

3. INSTITUTIONS CONSULTED

The National Party Liaison Committee.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Home Affairs 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 sections 74 or 76 of the Constitution applies.
- 5.2 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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