

REPUBLIC OF SOUTH AFRICA

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL

(As amended by the Portfolio Committee on Constitutional Affairs (National Assembly))

(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

[B 84B—98]

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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 extend the term of Municipal Councils; to provide for the designation of alternates in respect of certain members of the Judicial Service Commission; to amend the name of the Human Rights Commission; to adjust the powers of the Public Service Commission; and to extend and modify the application of transitional arrangements in respect of local government; and to provide for matters connected therewith.

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

Amendment of section 159 of Act 108 of 1996

1. The following section is hereby substituted for section 159 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the principal Act): 5

“Terms of Municipal Councils

159. (1) The term of a Municipal Council may be no more than **[four]** five years, as determined by national legislation.

(2) If a Municipal Council is dissolved in terms of national legislation, or when its term expires, an election must be held within 90 days of the date that Council was dissolved or its term expired. 10

(3) A Municipal Council, other than a Council that has been dissolved following an intervention in terms of section 139, remains competent to function from the time it is dissolved or its term expires, until the newly elected Council has been declared elected.”. 15

Amendment of section 178 of Act 108 of 1996

2. Section 178 of the principal Act is hereby amended—

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

“(k) when considering matters specifically relating to a provincial or local division of the High Court, the Judge President of that division 20

and the Premier of the province concerned, or an alternate designated by **[the Premier, of the province concerned]** each of them.”;

(b) by the addition of the following subsections:

“(7) If the Chief Justice or the President of the Constitutional Court is temporarily unable to serve on the Commission, the Deputy Chief Justice or the Deputy President of the Constitutional Court, as the case may be, acts as his or her alternate on the Commission. 5

(8) The President and the persons who appoint, nominate or designate the members of the Commission in terms of subsection (1)(c), (e), (f) and (g), may, in the same manner appoint, nominate or designate an alternate for each of those members, to serve on the Commission whenever the member concerned is temporarily unable to do so by reason of his or her incapacity or absence from the Republic or for any other sufficient reason.”. 10 15

Amendment of section 196 of Act 108 of 1996

3. Section 196 of the principal Act is hereby amended by the addition to subsection (4) of the following paragraph:

“(g) to exercise or perform the additional powers or functions prescribed by an Act of Parliament.”. 20

Substitution of expression in Act 108 of 1996

4. The principal Act is hereby amended by the substitution for the expression “Human Rights Commission”, wherever it occurs, of the expression “South African Human Rights Commission”.

Amendment of item 26 of Schedule 6 to Act 108 of 1996

5. Item 26 of Schedule 6 to the principal Act is hereby amended—

(a) by the substitution for paragraphs (a) and (b) of subitem (1) of the following paragraphs, respectively:

“(a) the provisions of the Local Government Transition Act, 1993 (Act 209 of 1993), as may be amended from time to time by national legislation consistent with the new Constitution, remain in force in respect of a Municipal Council until **[30 April 1999 or until repealed, whichever is sooner]** a Municipal Council replacing that Council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution; and 30 35

(b) a traditional leader of a community observing a system of indigenous law and residing on land within the area of a transitional local council, transitional rural council or transitional representative council, referred to in the Local Government Transition Act, 1993, and who has been identified as set out in section 182 of the previous Constitution, is *ex officio* entitled to be a member of that council until **[30 April 1999 or until an Act of Parliament provides otherwise]** a Municipal Council replacing that council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution.”; and 40 45

(b) by the substitution in subitem (2) for the expression “30 April 1999” of the expression “30 April 2000”.

Short title

6. This Act is called the Constitution of the Republic of South Africa Amendment Act, 1998. 50

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL, 1998

1.1 In terms of section 159 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996, hereafter “the Constitution”), and with reference to the previous local government elections, the final date for the holding of local government elections differs in respect of different parts of the country. The maximum term of Municipal Councils is one year shorter than those of the national legislature and provincial legislatures, which complicates efforts to synchronise elections within all spheres of government.

1.2 In order to address this problem clause 1 of the Bill seeks to amend section 159 of the Constitution, so as to determine the term of Municipal Councils to be not more than five years. Clause 1 also proposes to regulate the functioning of an existing Municipal Council until the newly elected Council assumes office.

2. The Judicial Service Commission has requested that section 178 of the Constitution be amended in order to provide for the designation of alternates in respect of certain members of the Commission in order to facilitate the work of that Commission. The Commission stated its preference for a provision in terms of which the designating authority could name an alternate in advance, so as to avoid a situation where alternates would be nominated on an *ad hoc* basis. Clause 2 seeks to give effect to the request.

3. Uncertainty exists with regard to the powers of the Public Service Commission pertaining to the hearing of appeals in, and the investigation of, cases of misconduct. Apart from this, the need to adjust the powers and functions of the Public Service Commission may be anticipated to recur from time to time. Clause 3 of the Bill seeks to address these matters by providing for the allocation of additional powers and functions to the Public Service Commission by an Act of Parliament. This provision would enable the adjustment of the powers and functions of the Public Service Commission in future, without recourse to a constitutional amendment.

4. The Chairperson of the Human Rights Commission has proposed that the name of that Commission be changed to the “South African Human Rights Commission”. It is argued that it is practice for national human rights institutions to bear the appellation of the countries concerned. The current name also results in confusion between the Human Rights Commission and the Human Rights Committee, which was formerly known as the Human Rights Commission. Clause 4 seeks to effect the necessary change of name.

5.1 Item 26(1) of Schedule 6 to the Constitution provides special constitutional protection to the provisions of the Local Government Transition Act, 1993 (Act No. 209 of 1993, “the LGTA”), until 30 April 1999. It also provides for traditional leaders to be *ex officio* members of local government structures until that date. Fundamental aspects of the present local government dispensation are dependent for their constitutional tenability on the said protection. In order to apply the provisions of the LGTA until the next local government elections, it is necessary to extend the protection beyond 30 April 1999.

5.2 Clause 5 of the Bill provides for the extension of the duration of the transitional arrangement in respect of the provisions of the LGTA, and for the extension of the *ex officio* membership of traditional leaders on Municipal Councils, until the date on which a Municipal Council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the (new) Constitution.

6. None of the above amendments relates to a matter that affects the National Council of Provinces, alters provincial boundaries, powers, functions or institutions, or amends a provision that deals specifically with a provincial matter. Consequently, the Department of Constitutional Development and the State Law Advisers are of the view that the legislative procedure established by section 74(3)(a) of the Constitution has to be followed and that the Bill is required to be passed by the National Assembly only.

7. The Bill was published for public comment and submitted to the provincial legislatures for their views, and is to be submitted to the National Council of Provinces for public debate, as required by section 74(5) of the Constitution.

BODIES/ORGANISATIONS CONSULTED

The Department of Justice
The Human Rights Commission
The Judicial Service Commission
The Ministry for the Public Service and Administration

Implications for provinces

The amendments do not affect provinces.

Implications for municipalities

The amendments have the effect of extending the term of existing municipalities. As a result of the amendments to item 26 of Schedule 6 to the Constitution, a Municipal Council will remain competent to function in terms of the LGTA until it is replaced by a newly elected Municipal Council, and the *ex officio* membership of traditional leaders will be maintained until the Municipal Council concerned has been replaced by a newly elected Municipal Council. The amendment to section 159 of the Constitution specifically authorises a Municipal Council to continue to function pending the first meeting of the newly elected Council, even after its term has expired or it has been dissolved in terms of national legislation.

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