

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. 39080 of 11 August 2015)
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 22—2015]

ISBN 978-1-4850-0250-5

No. of copies printed 1 800

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

To amend the Local Government: Municipal Electoral Act, 2000, so as to define an expression and to amend a definition; to amend provisions relating to the nomination of candidates; to provide for the electronic submission of candidate nomination documents; to provide for different modalities for payments of electoral deposits; to provide for the notification of interested parties where a candidate has been nominated by more than one person; to clarify the circumstances in which new ballot papers may be issued to voters; and to clarify the provisions relating to the determination and declaration of the results of by-elections; and to provide for matters connected therewith.

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

1. Section 1 of the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000) (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion after the definition of “assignment” of the following definition:
- “ **‘authorised representative’**, in relation to a party, means a natural person duly authorised by the party in accordance with its constitution to act on the party’s behalf for purposes of submitting a party list or nominating a ward candidate;” and
- (b) by the substitution for the definition of “identity document” of the following definition:
- “ **‘identity document’** means[—
- (a) **an identity document issued after 1 July 1986, in terms of section 8 of the repealed Identification Act, 1986 (Act No. 72 of 1986); or**
- (b) **a temporary identity certificate]** an identity card issued in terms of the Identification Act, 1997 (Act No. 68 of 1997), and, subject to section 25 of that Act, includes the green, bar-coded identity document contemplated in that section;”.

Amendment of section 14 of Act 27 of 2000, as amended by section 2 of Act 14 of 2010

2. Section 14 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 5
 “A party may contest an election in terms of section 13(1)(a) or (c) only if the party by not later than a date stated in the timetable for the election has submitted to the **[office of the Commission’s local representative] Commission—**”;
- (b) by the deletion in subsection (1)(a) of subparagraph (i); 10
- (c) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 “(b) a deposit equal to a prescribed amount, if any, payable **[by means of a bank guaranteed cheque in favour of the Commission] in the prescribed manner and form.**”;
- (d) by the insertion after subsection (1) of the following subsection: 15
 “(1A) A party must submit the documents referred to in subsection (1)—
 (a) electronically to the chief electoral officer in the prescribed manner;
 or
 (b) by hand to the office of the Commission’s local representative.”;
- (e) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
 “(b) allow the party to submit the outstanding documents **[to the office of the Commission’s local representative] as provided for in subsection (1A)** by no later than the date and time stated in the election timetable.”; and 25
- (f) by the insertion after subsection (4) of the following subsection:
 “(4A) If a candidate appears on more than one party list for an election— 30
 (a) the chief electoral officer must, in writing, notify the candidate and all the parties on whose party lists such a candidate appears by no later than the relevant date and time stated in the election timetable; and
 (b) each of the parties to whom notice has been given in terms of paragraph (a) may, by no later than the relevant date and time stated in the election timetable, substitute such a candidate and re-order the names on its party list as a result of that substitution.”. 35

Amendment of section 17 of Act 27 of 2000, as amended by section 3 of Act 14 of 2010

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

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) A person may contest an election as a ward candidate only if that person is nominated on a prescribed form and that form is submitted to the **[office of the Commission’s local representative] Commission** by not later than a date stated in the timetable for the election.”; 45
- (b) by the insertion after subsection (1) of the following subsection:
 “(1A) The prescribed nomination form must be submitted—
 (a) electronically to the chief electoral officer in the prescribed manner;
 or
 (b) by hand to the office of the Commission’s local representative.”;
- (c) by the deletion in subsection (2) of the word “and” at the end of paragraph (e), the insertion of the word “and” at the end of paragraph (f) and the addition to that subsection of the following paragraph:
 “(g) in the case of an independent ward candidate, a recent photograph of the candidate in such form as may be prescribed.”;

(d) by the insertion after subsection (2) of the following subsection:

- “(2B) If a ward candidate has been nominated by more than one party or person for an election—
- (a) the chief electoral officer must, in writing, notify the candidate and such parties or persons who have nominated such a candidate by no later than the relevant date and time stated in the election timetable; and
 - (b) each of the parties or persons to whom notice has been given in terms of paragraph (a) may, by no later than the relevant date and time stated in the election timetable, substitute such a candidate.”.

Amendment of section 17A of Act 27 of 2000, as inserted by section 4 of Act 14 of 2010

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

- “(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]** the party must submit to the Commission, before such cut-off time, a notice in the prescribed form specifying the details of each municipality to which the deposits apply.”.

Amendment of section 49 of Act 27 of 2000

5. Section 49 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) If a voter **[accidentally]** marks a ballot paper in a way that does not indicate for whom the voter wishes to vote and the ballot paper has not yet been placed in the ballot box, the voter may return that ballot paper to the presiding officer or a voting officer.”.

Amendment of section 64 of Act 27 of 2000, as amended by section 9 of Act 14 of 2010

6. Section 64 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) On receipt of all the results of the count in respect of all ballots conducted at the voting stations within the municipality or ward, as the case may be, the Commission must—
- (a) determine the result of the election in the municipality or ward, as the case may be;
 - (b) record the result on a prescribed form; and
 - (c) declare the result in public.”.

Amendment of Schedule 3 to Act 27 of 2000, as inserted by section 11 of Act 14 of 2010

7. Schedule 3 to the principal Act is hereby amended—

- (a) by the substitution in Item 5 for subitems (1) and (2) of the following subitems, respectively:

“(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 manner provided for in section 14(1A)(a) or (b) 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 manner provided for in section 14(1A)(a) or (b) in the prescribed form **[and manner]** by (date).”; and

(b) by the insertion after Item 6 of the following Item:

“Multiple nominations

- | | |
|--|--------------------|
| <p>6A. (1) The Commission must notify a candidate whose name appears on more than one party list for an election submitted in terms of section 14 and all the parties on whose party lists such a candidate appears by (date).</p> <p>(2) If the notified party decides to act in terms of section 14(4A)(b), that party must do so by (date).</p> <p>(3) The Commission must notify a ward candidate that has been nominated by more than one party or person for an election, and each party or person who has nominated such candidate, by (date).</p> <p>(4) If the notified nominating party or person decides to act in terms of section 17(2B)(b), that party or person must do so by (date).”.</p> | <p>5</p> <p>10</p> |
|--|--------------------|

Short title and commencement

- | | |
|--|-----------|
| <p>8. This Act is called the Local Government: Municipal Electoral Amendment Act, 2015, and comes into operation on a date determined by the President by proclamation in the <i>Gazette</i>.</p> | <p>15</p> |
|--|-----------|

**MEMORANDUM ON THE OBJECTS OF THE LOCAL
GOVERNMENT: MUNICIPAL ELECTORAL
AMENDMENT BILL, 2015**

1. OBJECTS OF BILL

The main objects of the Bill are to define an expression and amend a definition, to amend provisions relating to the nomination of candidates in order to provide for the electronic submission of candidate nomination documents and party lists, to provide for different modalities for payment of electoral deposits, to provide for the notification of interested parties where a candidate has been nominated by more than one person or party, to clarify the circumstances in which marked ballot papers may be cancelled at the instance of voters and to clarify the provisions relating to the determination and declaration of the results of by-elections.

2. DISCUSSION

The Bill provides for the objects, as follows:

- 2.1 **Clause 1** seeks to amend section 1 of the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000) (“the Act”), in order to define the expression “authorised representative” and to amend the definition of “identity document”.
- 2.2 **Clause 2** seeks to amend section 14 of the Act in order to provide for an additional modality of submission of party lists required for parties to contest elections by way of party lists and associated documents electronically to the chief electoral officer in addition to the current method of submitting these documents to the office of the Commission’s local representative in the relevant municipality.
- 2.3 **Clause 2** also seeks to provide, in conjunction with the proposed amendment of section 17A of the Act, for the Commission to prescribe additional modalities for the payment of electoral participation deposits in addition to the current method of bank guaranteed cheques.
- 2.4 **Clause 2** further seeks to amend section 14 of the Act by removing the requirement for parties to submit a notice of intention to contest the relevant election.
- 2.5 **Clause 2** further seeks to insert a requirement for the chief electoral officer to notify the relevant parties where a candidate’s name appears on multiple party lists and to afford the parties concerned the opportunity to substitute that candidate and re-order their party lists as a result.
- 2.6 **Clause 3** seeks to amend section 17 of the Act in order to provide for an additional modality of submission of nomination documents required for persons to contest ward elections electronically to the chief electoral officer, in addition to the current method of submitting these documents to the office of the Commission’s local representative in the relevant municipality.
- 2.7 **Clause 3** also seeks to provide for the requirement that an independent ward candidate must, together with his or her nomination documents, provide the Commission with a recent photograph of himself or herself in a form prescribed by the Commission.
- 2.8 **Clause 3** further seeks to insert a requirement for the chief electoral officer to notify the relevant parties or persons where a ward candidate has been nominated by more than one party or person and to afford the nominators concerned the opportunity to substitute that candidate as a result.

- 2.9 **Clause 4** seeks to amend section 17A of the Act in order to provide for the Commission to prescribe additional modalities for the payment of electoral participation deposits in addition to the current method of bank guaranteed cheques.
- 2.10 **Clause 5** seeks to amend section 49 of the Act by deleting the requirement that a voter may return a ballot paper that has not yet been placed in the ballot box to the presiding officer or a voting officer and be issued with a new ballot paper only if that voter accidentally marks a ballot paper in a way that does not indicate for whom the voter wishes to vote on the ballot paper. The deletion of the requirement that the ballot paper must have been marked by accident is intended to allow the Commission to take into account the votes of voters who change their minds about who to vote for after marking the ballot paper but prior to placing it in the ballot box.
- 2.11 **Clause 6** proposes an amendment to section 64 of the Act in order to clarify the uncertainty regarding whether the provisions contained in that section for the determination and declaration of election results apply to by-elections.
- 2.12 **Clause 7** is a consequential amendment of Item 5 of Schedule 3 to the Act, which contains the Election Timetable contemplated in clauses 2 and 4 that seek to amend sections 14 and 17 of the Act. This clause further inserts Item 6A in order to deal with further consequential amendments.

3. INSTITUTIONS CONSULTED

The following institutions were consulted:

- National Party Liaison Committee.
- Department of Co-operative Governance and Traditional Affairs.
- South African Local Government Association.

4. FINANCIAL IMPLICATIONS FOR STATE

The financial implications for the State relate to the enhancement of the candidate nomination system (business application) to provide for functionality in order to enable political parties to capture candidates from the Electoral Commission's website. The estimated cost for this system enhancement is R5 million which is already budgeted for and funded in the 2015/16 financial year. Therefore, no additional funding will be required.

5. PARLIAMENTARY PROCEDURE

- 5.1. The tagging of Bills is dealt with in sections 75 and 76 of the Constitution. Section 75 provides for the procedure to be followed regarding ordinary Bills which are not affecting provinces, whilst section 76 provides for the procedure to be followed regarding ordinary Bills which are affecting provinces.
- 5.2. In *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (8) BCLR 741 (CC), the Constitutional Court confirmed and upheld the test for tagging that was formulated in *Ex parte the President: In re Constitutionality of the Liquor Bill* 2000 (1) BCLR 1 (CC). The Constitutional Court, in the *Tongoane* case in paragraph 56, held that "the heading of section 76, namely, 'Ordinary Bills affecting provinces' provides 'a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76' (footnote omitted)".

- 5.3. The Constitutional Court, in paragraph 58, further held that “[w]hat matters for the purposes of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill ‘in substantial measure fall within a functional area listed in Schedule 4’ ”. In paragraph 59, the Court found that tagging “focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4 and not on whether any of its provisions are incidental to its substance”.
- 5.4. The Constitutional Court, in paragraph 70, held that “the test for determining how a Bill is to be tagged must be broader than that for determining legislative competence”.
- 5.5. The provisions of the Bill do not deal with any of the matters listed in Schedules 4 and 5 to the Constitution. The State Law Advisers and the Department of Home Affairs are therefore of the opinion that the Bill should be tagged as a section 75 Bill.
- 5.6. The State Law Advisers are also 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.