

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**JUDGES' REMUNERATION AND
CONDITIONS OF
EMPLOYMENT BILL**

[B 83—2001]

*(As agreed to by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))*

[B 83A—2001]

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AMENDMENTS AGREED TO

JUDGES' REMUNERATION AND CONDITIONS OF EMPLOYMENT BILL [B 83—2001]

CLAUSE 1

1. On page 2, in line 19, to omit “and” and to substitute “or”.

CLAUSE 3

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Discharge of Constitutional Court judges and judges from active service

3. (1) A Constitutional Court judge who holds office in terms of section 176(1) of the Constitution—

- (a) must, subject to the provisions of section 4(1) or (2), be discharged from active service as a Constitutional Court judge, on the date on which he or she—
 - (i) attains the age of 70 years; or
 - (ii) has completed a 12-year term of office as a Constitutional Court judge,
 whichever occurs first;
- (b) may at any time be discharged by the President from active service as a Constitutional Court judge if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or
- (c) may at any time on his or her request and with the approval of the President be discharged from active service as a Constitutional Court judge if there is any reason which the President deems sufficient.

(2) A judge who holds office in a permanent capacity—

- (a) shall, subject to the provisions of section 4(4), be discharged from active service as a judge on the date on which he or she attains the age of 70 years, if he or she has on that date completed a period of active service of not less than 10 years, or, if he or she has on that date not yet completed a period of 10 years' active service, on the date immediately following the day on which he or she completes a period of 10 years' active service;
- (b) who has already attained the age of 65 years and has performed active service for a period of 15 years, and who informs the Minister in writing that he or she no longer wishes to perform active service, shall be discharged by the President from active service as a judge;
- (c) may at any time be discharged by the President from active service as a judge if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or

- (d) may at any time on his or her request and with the approval of the President be discharged from active service as a judge if there is any reason which the President deems sufficient.

CLAUSE 4

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Continuation of active service by Constitutional Court judges and judges

4. (1) A Constitutional Court judge whose 12-year term of office as a Constitutional Court judge expires before he or she has completed 15 years' active service must, subject to subsection (2), continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service, whereupon he or she must be discharged from active service as a Constitutional Court judge.

(2) A Constitutional Court judge who, on attaining the age of 70 years, has not yet completed 15 years' active service, must continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as a Constitutional Court judge.

(3) (a) A Constitutional Court judge who is discharged from active service in terms of section 3(1) or subsection (1) or (2) and who is also a judge contemplated in section 174(5) of the Constitution, may continue to perform active service as a judge in the court in which he or she held office as such immediately before he or she was appointed as a Constitutional Court judge if—

- (i) he or she indicates his or her willingness to do so in writing to the President three months before he or she is so discharged from active service; and
- (ii) he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3(2) or subsection (4).

(b) Nothing in this Act precludes a Constitutional Court judge—

- (i) who is discharged from active service in terms of section 3(1) or subsection (1) or (2); and
- (ii) who is not a judge contemplated in section 174(5) of the Constitution,

from being appointed to the office of judge in a court other than the Constitutional Court by the President on the advice of the Judicial Service Commission as contemplated in the Constitution, if he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3(2) or subsection (4).

(c) The holding of office by a judge referred to in paragraph (a) or (b)—

- (i) interrupts that judge's discharge from active service in terms of section 3(1) or subsection (1) or (2); and
- (ii) suspends any salary payable in terms of section 5 to that judge pursuant to such discharge from active service.

(d) The holding of office by a judge referred to in paragraph (a) or (b), entitles such a judge to an annual salary which—

- (i) is payable in terms of section 2; and

(ii) may not be less than the annual salary applicable to the highest office held as a Constitutional Court judge or a judge.

(4) A judge who on attaining the age of 70 years has not yet completed 15 years' active service, may continue to perform active service to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as a judge.

CLAUSE 5

1. On page 5, in line 35, to omit "section 3(1)(a), (c) or (d), 3(2) or 4(1), (2) or (3)" and to substitute "section 3(1), 3(2)(a), (c) or (d) or 4(1), (2) or (4)".
2. On page 5, in line 42, to omit "section 3(1)(b)" and to substitute "section 3(2)(b)".
3. On page 5, in line 46, to omit "section 3(1)(c) or (d) or 3(2)(b) or (c)" and to substitute "section 3(1)(b) or (c) or 3(2)(c) or (d)".

CLAUSE 6

1. On page 6, in line 26, to omit "section 4(1)" and to substitute "section 4(4)".

CLAUSE 7

1. On page 6, in line 41, to omit "section 3(1)(b), (c) or (d) or (2)(b) or (c)" and to substitute "section 3(1)(b) or (c) or (2)(b), (c) or (d)".

CLAUSE 8

1. On page 7, in line 30, to omit "section 3(2)(a) or 4(2) or (3)" and to substitute "section 3(1)(a) or 4(1) or (2)".
2. On page 7, in line 36, to omit "section 3(1)(a) or 4(1)" and to substitute "section 3(2)(a) or 4(4)".

CLAUSE 13

1. On page 9, in line 26, to omit "and" and to substitute "or".

CLAUSE 16

1. On page 10, from line 34, to omit subsection (4) and to substitute:

(4) (a) Any person who retired as a judge in terms of the Judges' Pensions Act, 1978 (Act No. 90 of 1978), and who, at the commencement of this section, receives a pension in terms of the said Judges' Pensions Act, 1978, is, from the date of commencement of this section, entitled to an amount equal to two thirds of the salary payable to a judge contemplated in section 5(1) of this Act who held the same or a similar office to that of the retired judge on the date of the latter's retirement from office and who has the same number of years' service in an acting or permanent capacity.

(b) After the commencement of this section, any surviving spouse of a judge referred to in paragraph (a) shall be paid with effect from the first day of the month immediately succeeding the day on which the judge died, an amount equal to one half of the amount to which his or her deceased spouse would have been entitled under paragraph (a).

(c) Any surviving spouse of a judge who retired as a judge in terms of the Judges' Pensions Act, 1978, and who, at the commencement of this section, receives a pension in terms of the said Act, is, from the date of commencement of this section, entitled to an amount equal to one half of the amount to which his or her deceased spouse would have been entitled under paragraph (a).

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