

REPUBLIC OF SOUTH AFRICA

**PROMOTION OF ACCESS
TO INFORMATION
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); the Bill and explanatory
summary of Bill published in Government Gazette No. 42604 of 31 July 2019)
(The English text is the official text of the Bill)*

(PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES)

[B 20—2019]

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- (c) the substitution for the definition of “private body” of the following definition:

“**private body**” means—

- (a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity; 5
 (b) a partnership which carries or has carried on any trade, business or profession; **[or]**
 (c) any former or existing juristic person; or
 (d) a political party, 10
 but excludes a public body;”.

Insertion of new section 52A in Act 2 of 2000

2. The following section is hereby inserted after section 52 of the principal Act:

“Recording, preservation and disclosure of records on the private funding of political parties

52A. (1) The head of a political party must— 15

- (a) create and keep records of—
 (i) any donation exceeding the prescribed threshold that has been made to that political party in any given financial year; and
 (ii) the identity of the persons or entities who made such donations; 20
 (b) make the records available on a quarterly basis, as prescribed; and
 (c) keep the records for a period of at least five years after the records concerned have been created.

(2) For the purposes of this section—

- (a) “**donation**” means a donation as defined in section 1; 25
 (b) “**financial year**” means a financial year as defined in section 1; and
 (c) “**prescribed threshold**” means the prescribed threshold contemplated in section 9(1)(a),
of the Political Party Funding Act, 2018 (Act No. 6 of 2018).”.

Amendment of “contents” of Act 2 of 2000 30

3. The “contents” of the principal Act is hereby amended by the insertion after item 52 of the following item:

“52A. Recording, preservation and disclosure of records on the private funding of political parties”.

Short title and commencement 35

4. This Act is called the Promotion of Access to Information Amendment Act, 2019, and commences on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF ACCESS TO INFORMATION AMENDMENT BILL, 2019

1. PURPOSE OF BILL

- 1.1 On 21 June 2018, the Constitutional Court, in *My Vote Counts NPC v Minister of Justice and Correctional Services and Another* [2018] ZACC 17, confirmed an order of constitutional invalidity made by the High Court of South Africa, Western Cape Division, Cape Town, which declared the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (“the principal Act”), invalid to the extent of its inconsistency with the Constitution by failing to provide for the recordal, preservation and reasonable disclosure of information on the private funding of political parties and independent candidates.
- 1.2 The Constitutional Court further ordered Parliament to amend the principal Act and take any other measure it deems appropriate to provide for the recordal, preservation and reasonable accessibility of records of private funding of political parties and independent candidates within a period of 18 months.

2. OBJECTS OF BILL

- 2.1 The Bill will address the Constitutional Court’s judgment by inserting a new section 52A “Recording, preservation and disclosure of records on the private funding of political parties” in the principal Act, to regulate the recordal, preservation and availability of information in respect of private funding to political parties and independent candidates and to provide for matters connected therewith.
- 2.2 Clause 1 of the Bill aims to amend the definitions of “head” and “private body” and inserting a new definition of “political party” in section 1 of the principal Act.
- 2.3 Clause 2 of the Bill obliges the head of a political party (which is defined to include an independent candidate) to create and keep records of any donations that have been made to a political party which exceed the prescribed threshold in a financial year and the identity of the persons or entities who made such donations. The records must be made available on a quarterly basis as prescribed. The records must be kept for a period of at least five years after the records concerned have been created.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Portfolio Committee on Justice and Correctional Services called for and considered written comments on the Bill and consulted with the Department of Justice and Constitutional Development.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Portfolio Committee on Justice and Correctional Services is 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 section 74 or 76 of the Constitution applies.

- 6.2 The Portfolio Committee on Justice and Correctional Services is 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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