

REPUBLIC OF SOUTH AFRICA

CONSTITUTION FIFTEENTH AMENDMENT BILL

*(As amended by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 63B—2008]

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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—

- effect certain consequential amendments necessitated by the provisions of the Constitution Fourteenth Amendment Act of 2008;
- provide for the filling of vacancies in a Municipal Council; and
- abolish the right—
 - of a member of a Municipal Council to become a member of another political party whilst retaining membership of that Council; and
 - of an existing political party to merge with another political party, or to subdivide into more than one political party, or to subdivide and to permit any of the subdivisions to merge with another political party, whilst allowing a member of a Council affected by such changes to retain membership of that Council;

and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts as follows:—

Amendment of section 46 of the Constitution of the Republic of South Africa, 1996, as amended by section 1 of the Constitution Tenth Amendment Act of 2003

1. Section 46 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution), is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 5

“**[Subject to Schedule 6A, the]** The National Assembly consists of no fewer than 350 and no more than 400 women and men elected as members in terms of an electoral system that—”. 10

Amendment of section 47 of the Constitution of the Republic of South Africa, 1996, as amended by section 2 of the Constitution Tenth Amendment Act of 2003

2. Section 47 of the Constitution is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A person loses membership of the National Assembly if that person— 15
(a) ceases to be eligible;

- (b) is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership; or
- (c) ceases to be a member of the party that nominated that person as a member of the Assembly[, **unless that member has become a member of another party in accordance with Schedule 6A**].”.

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Amendment of section 157 of the Constitution of the Republic of South Africa, 1996, as amended by section 2 of the Constitution Third Amendment Act of 1998, section 1 of the Constitution Eighth Amendment Act of 2002 and section 3 of the Constitution Twelfth Amendment Act of 2005

3. Section 157 of the Constitution is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“**[Subject to Schedule 6A, a] A** Municipal Council consists of—”.

Amendment of section 158 of the Constitution of the Republic of South Africa, 1996

4. Section 158 of the Constitution is hereby amended by the addition of the following subsection:

“(3) Vacancies in a Municipal Council must be filled in terms of national legislation.”.

Repeal of Schedule 6B to the Constitution of the Republic of South Africa, 1996, as inserted by section 2 of the Constitution Eighth Amendment Act of 2002 and amended by section 5, and renumbered by section 6, of the Constitution Tenth Amendment Act of 2003

5. Schedule 6B to the Constitution is hereby repealed.

Short title and commencement

6. This Act is called the Constitution Fifteenth Amendment Act of 2008, and comes into operation on a date set by the President by proclamation in the *Gazette*.

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**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION
FIFTEENTH AMENDMENT BILL OF 2008**

1. BACKGROUND

- 1.1 During 2002 and 2003 Parliament passed the so-called “floor crossing” legislation. The common objective of that legislation was—
- (a) to enable a member of the National Assembly, a provincial legislature or a Municipal Council to become a member of another political party whilst retaining membership of the National Assembly, that provincial legislature or that Council; and
 - (b) to enable an existing political party to—
 - (i) merge with another political party;
 - (ii) subdivide into more than one political party; or
 - (iii) subdivide and any one subdivision to merge with another political party.
- 1.2 The political terrain which necessitated floor crossing has changed. There is also a groundswell of resistance opposing floor crossing. Consequently, the need has arisen to abolish floor crossing. The effect of abolishing floor crossing would mean a reversion to the position prior to 2002. This would mean that—
- (a) a member of the National Assembly, a provincial legislature or a Municipal Council will no longer be able to become a member of another political party whilst retaining membership of the National Assembly, that provincial legislature or that Council; and
 - (b) an existing political party will no longer be able to merge with another political party, or to subdivide into more than one political party or to subdivide and any one subdivision to merge with another political party.
- 1.3 **Suite of Bills**
- 1.3.1 The Constitution Fourteenth Amendment Bill of 2008, seeks to abolish floor crossing in the National Assembly and provincial legislatures.
 - 1.3.2 The Constitution Fifteenth Amendment Bill of 2008 (the Bill), seeks to abolish floor crossing in Municipal Councils.
 - 1.3.3 The General Laws (Loss of Membership of National Assembly, Provincial Legislature or Municipal Council) Amendment Bill, 2008 (the General Laws Amendment Bill), seeks to effect amendments, which are mainly of a consequential nature and which emanate from the provisions of the Bill and the Constitution Fourteenth Amendment Bill of 2008, to several relevant Acts.
 - 1.3.4 The Bill, the Constitution Fourteenth Amendment Bill of 2008, and the General Laws Amendment Bill are tabled simultaneously and must be read in conjunction with one another.

2. OBJECTS OF BILL

- 2.1 The objects of the Bill are to amend the Constitution of the Republic of South Africa, 1996 (the Constitution), so as to abolish the right—
- (a) of a member of a Municipal Council to become a member of another political party whilst retaining membership of that Council; and
 - (b) of an existing political party to merge with another political party, or to subdivide into more than one political party, or to subdivide and to permit any of the subdivisions to merge with another political party, whilst

allowing a member of a Council affected by such changes to retain membership of that Council.

- 2.2 The above objects are sought to be achieved by—
- (a) **clauses 1 to 3** that seek to effect consequential amendments to sections 46, 47 and 157 of the Constitution;
 - (b) **clause 4** that seeks to amend section 158 of the Constitution so as to provide for the filling of vacancies in a Municipal Council; and
 - (c) **clause 5** that seeks to repeal Schedule 6B to the Constitution (that regulates the loss or retention of membership of Municipal Councils, after a change of party membership, mergers between parties, subdivision of parties, subdivision and merger of parties, and the filling of vacancies).
- 2.3 As the next window period for floor crossing on local government level is in September 2009, the Bill, the Constitution Fourteenth Amendment Bill of 2008, and the General Laws Amendment Bill have to be passed by Parliament and implemented before 1 September 2009.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

In terms of section 74(5) of the Constitution the Bill was—

- (a) published in the national *Gazette* for public comment; and
- (b) submitted to the provincial legislatures for their views.

4. IMPLICATIONS FOR PROVINCES

None

5. FINANCIAL IMPLICATIONS FOR STATE

None

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 74(3)(a) of the Constitution since it contains no amendment that—
- (a) relates to a matter that affects the National Council of Provinces;
 - (b) alters provincial boundaries, powers, functions or institutions; or
 - (c) amends a provision that deals specifically with a provincial matter.
- 6.2 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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