

REPUBLIC OF SOUTH AFRICA

ELECTORAL LAWS AMENDMENT BILL

*As introduced in the National Assembly (proposed section 76 of the Constitution); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 43697 of 9 September 2020)
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 22—2020]

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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—

- Electoral Commission Act, 1996, so as to insert certain definitions; to streamline the provisions for the registration of political parties; to provide for the registration of parties in respect of particular provinces, district and metropolitan municipalities and to repeal provisions relating to registration of parties in respect of particular local municipalities; to repeal obsolete provisions;
- Electoral Act, 1998, so as to insert certain definitions; to amend the provisions regarding public access to the voters' roll; to update references to repealed legislation; to amend provisions allowing voters to vote in a voting district where they are not registered; to amend provisions relating to the submission of lists of candidates; to amend provisions relating to special votes in elections for the National Assembly; to authorise the Commission to prescribe a different voting method; to amend provisions relating to the procedure concerning provisional results and voting materials; to provide for the limited applicability of the Code; to amend Schedule 3; and
- Local Government: Municipal Electoral Act, 2000, so as to insert and delete certain definitions; to amend the requirements for parties contesting elections by way of party lists and for a ward candidate to contest elections; to authorise the Commission to prescribe a different voting procedure for those voters whose names appear on the voters' roll, without addresses; to authorise the Commission to prescribe a different voting method; to amend provisions relating to the effect of certain irregularities, and to provide for matters connected therewith.

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

Amendment of section 1 of Act 51 of 1996 (Act No. 51 of 1996), as amended by section 6 of Act 22 of 2014

1. Section 1 of the Electoral Commission Act, 1996, is hereby amended—5
 - (a) by the insertion after the definition of “Commission” of the following definition:

“ ‘**district municipality**’ has the meaning assigned to it in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);”; and10

- (b) by the insertion after the definition of “Independent Commission” of the following definitions:

“**‘local municipality’** has the meaning assigned to it in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

‘metropolitan municipality’ has the meaning assigned to it in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);”.

Amendment of section 12 of Act 51 of 1996

2. Section 12 of the Electoral Commission Act, 1996, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) shall be the accounting officer of the Commission for the purposes of the **[Exchequer Act, 1975 (Act No. 66 of 1975)] Public Finance Management Act, 1999 (Act No. 1 of 1999)**, and shall cause the necessary accounting and other related records to be kept; and”.

Amendment of section 15 of Act 51 of 1996, as amended by section 26 of Act 34 of 2003 and section 2 of Act 1 of 2019

3. Section 15 of the Electoral Commission Act, 1996, is hereby amended—

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

“(1) The chief electoral officer shall, upon application by a party in the prescribed manner and form, accompanied by the items mentioned in subsection (3), register such party in accordance with this Chapter in respect of—

(a) the entire Republic;

(b) a particular province; or

(c) a particular district or metropolitan municipality,

Provided that a party registered for a—

(i) particular province may under such registration only participate in elections for that provincial legislature and for all the municipal councils in that province;

(ii) metropolitan municipality may under such registration only participate in elections for that metro council; or

(iii) district municipality may under such registration only participate in elections for that district council and for the local council falling within the area of that district municipality.”;

- (b) by the insertion after subsection (4) of the following subsections:

“(4A) A party applying for registration in terms of subsection (1) must publish the prescribed notice of the application in—

(a) the *Gazette*, in the case of an application referred to in subsection (1)(a);

(b) the relevant provincial *Gazette*, in the case of an application referred to in subsection (1)(b); or

(c) the relevant provincial *Gazette* or a newspaper circulating in the municipal area concerned, in the case of an application referred to in section (1)(c).

(4B) Any person may object to an application contemplated in subsection (1) in the prescribed manner and form within 14 days after the publication of the prescribed notice of the application.” and

- (c) by the insertion after subsection (6) of the following subsection:

“(7) A party that is registered for a particular local municipality on the date on which the Electoral Laws Amendment Act, 2020, comes into operation, must be deemed to be registered in respect of the district municipality within whose jurisdictional area that local municipality is situated.”.

Repeal of section 15A of Act 51 of 1996, as inserted by section 93 of Act 27 of 2000 and amended by section 27 of Act 34 of 2003 and section 3 of Act 1 of 2019

4. Section 15A of the Electoral Commission Act, 1996, is hereby repealed.

Amendment of section 16 of Act 51 of 1996, as amended by sections 28 and 29 of Act 34 of 2003

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5. Section 16 of the Electoral Commission Act, 1996, is hereby amended—

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

“(a) fourteen days have not elapsed since the applicant has submitted to the chief electoral officer proof of publication of the prescribed notice of application [**in the *Gazette* in the case of an application**] referred to in section 15(4A) [**or in a newspaper circulating in the municipal area concerned in the case of an application referred to in section 15A**];”;

(b) by the substitution in subsection (1)(c) for the words preceding subparagraph (i) of the following words:

“(c) a proposed name, abbreviated name, distinguishing mark or symbol mentioned in the application or the constitution of the party or the deed of foundation mentioned in section 15 [**or 15A**] contains anything—”; and

(c) by the substitution for subsection (2) of the following subsection:

“(2) (a) [**Any party which**] An applicant who is aggrieved by a decision of the chief electoral officer [**to register or**] not to register [**a**] that party may, within 30 days after the party has been notified of the decision, appeal against the decision to the Commission in the prescribed manner.

(b) Any person who objected to an application in terms of section 15(4B) and who is aggrieved by a decision of the chief electoral officer to register that party may, within 30 days after publication of the notice referred to in section 15(5), appeal against the decision to the Commission in the prescribed manner.”.

Amendment of section 23 of Act 51 of 1996

6. Section 23 of the Electoral Commission Act, 1996, is hereby amended by the deletion of subsection (3).

Amendment of section 1 of Act 73 of 1998, as amended by section 1 of Act 18 of 2013

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7. Section 1 of the Electoral Act, 1998 (Act No. 73 of 1998), is hereby amended by the insertion after the definition of “voters’ roll” of the following definition:

“‘**voting day**’ means the day on which voting in an election takes place or is to take place;”.

Amendment of section 16 of Act 73 of 1998, as amended by section 5 of Act 34 of 2003

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8. Section 16 of the Electoral Act, 1998 (Act No. 73 of 1998), is hereby amended—

(a) by the deletion of subsection (2);

(b) by the substitution for subsection (3) of the following subsection:

“(3) [**Notwithstanding subsection (2), the**] The chief electoral officer must, on payment of the prescribed fee, provide copies of the voters’ roll, or a segment thereof, which includes the addresses of voters, where such addresses are available, to all registered political parties and independent candidates contesting the elections.”;

(c) by the substitution for subsection (4) of the following subsection:

“(4) The voters’ roll with addresses referred to in subsection (3) may only be used by political parties and independent candidates for election purposes and anyone using such voters’ roll for other purposes is guilty of an offence and liable on conviction to a fine or imprisonment for a

period not exceeding one year or to both a fine and such imprisonment.”;
and

(d) by the insertion after subsection (4) of the following subsection:

“(5) The chief electoral officer must redact any information appearing on the voters’ roll provided to a registered party or an independent candidate in terms of subsection (3) as may be necessary for the protection of the personal information of voters against unreasonable disclosure.”.

Substitution of section 24A of Act 73 of 1998, as inserted by section 7 of Act 34 of 2003

9. The following section is hereby substituted for section 24A of the Electoral Act, 1998:

“Voting in voting district where not registered

24A. A voter who is unable, on voting day, to cast his or her vote at the voting station in the voting district where he or she is registered may, in the prescribed manner, notify the chief electoral officer by no later than the relevant date stated in the election timetable of his or her intention to cast a vote in another specified voting district within the Republic on voting day: Provided that such voter may only vote in the election for the provincial legislature if his or her name appears on a segment of the voters’ roll for the province in which that specified voting district is situated.”.

Amendment of section 27 of Act 73 of 1998

10. Section 27 of the Electoral Act, 1998, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) declaration, signed by the duly authorised representative of the party, that each candidate on the list is qualified to stand for election in terms of the Constitution or national or provincial legislation under Chapter 7 of the Constitution and has signed the prescribed acceptance of nomination;”;

(b) by the deletion in subsection (2) of paragraph (c); and

(c) by the insertion after subsection (3) of the following subsection:

“(4) Upon request by the Commission, a party must, in the prescribed manner and form, submit an acceptance of nomination signed by a candidate appearing on a party list submitted by that party.”.

Amendment of section 28 of Act 73 of 1998, as substituted by section 11 of Act 1 of 2019

11. Section 28 of the Electoral Act, 1998, is hereby amended—

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

“(1) If a registered party that has submitted a list of candidates has not fully complied with section 27(2)(a), (b), [(c) or] (d) or section 27(4), the chief electoral officer must notify that party of its non-compliance.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) The notification must be given in the prescribed manner by not later than the relevant date stated in the election timetable, and must indicate that the party has an opportunity to comply with section 27(2)(a), (b), [(c) or] (d) or section 27(4), by not later than the relevant date stated in the election timetable.”.