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GENERAL NOTICE

Notice 2246 of 2001

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

PUBLICATION OF LOSS OR RETENTION OF MEMBERSHIP OF NATIONAL AND PROVINCIAL LEGISLATURES BILL

On 12 November 2001 the Portfolio Committee on Justice and Constitutional Development of the National Assembly tabled a legislative proposal, the Loss or Retention of Membership of National and Provincial Legislatures Bill, in the Assembly. On 13 November the Assembly, in terms of Assembly Rule 238(3), gave permission that the proposal be proceeded with. The Portfolio Committee intends introducing the Bill in the Assembly early in the 2002 parliamentary session. A draft of the Bill is hereby published in accordance with Assembly Rule 241, read with Rule 239. A copy of the draft Bill can also be found on the website of the Parliamentary Monitoring Group at "[http:// www.pmg.org.za](http://www.pmg.org.za)". Interested persons and institutions are invited to submit written comments on the draft legislation before 11 January 2002, to the following persons:

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REPUBLIC OF SOUTH AFRICA

**LOSS OR RETENTION OF MEMBERSHIP OF NATIONAL AND PROVINCIAL
LEGISLATURES BILL**

(As introduced by the Portfolio Committee on Justice and Constitutional Development. Permission

for introduction granted by the National Assembly on ...November 2001 in terms of Rule 238(3) of the National Assembly) (The English text is the official text of the Bill)

[B - 2001]

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.

B I L L

To amend Schedule 2 to the Constitution of the Republic of South Africa, 1993, in order to enable a member of a legislature to become a member of another party whilst retaining membership of that legislature; to enable an existing party to merge with another party, or to subdivide into more than one party; and to provide for matters connected therewith.

WHEREAS section 46(1)(d) of the Constitution of the Republic of South Africa, 1996, (the 1996-Constitution) requires an electoral system for the National Assembly that results, in general, in proportional representation;

AND WHEREAS section 47(3)(a) of the 1996-Constitution provides that a person loses membership of the National Assembly if that person ceases to be eligible on the grounds listed in section 47(1);

AND WHEREAS section 47(4) of the 1996-Constitution provides that vacancies in the National Assembly must be filled in terms of national legislation;

AND WHEREAS section 105(1)(d) of the 1996-Constitution requires an electoral system for provincial legislatures that results, in general, in proportional representation;

AND WHEREAS section 106(3)(a) of the 1996-Constitution provides that a person loses membership of a provincial legislature if that person ceases to be eligible on the grounds listed in section 106(1);

AND WHEREAS section 106(4) of the 1996-Constitution provides that vacancies in a provincial legislature must be filled in terms of national legislation;

AND WHEREAS item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, provides for an additional ground for the loss of membership of the National or provincial legislatures;

AND WHEREAS item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, furthermore provides that an Act of Parliament may, within a reasonable period after the 1996-Constitution took effect, be passed in accordance with section 76(1) of the 1996-Constitution to amend that item and item 23 in order to provide for the manner in which it will be possible for?

- a member of a legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature; and
- any existing party to merge with another party, or any party to subdivide into more than one party, whilst allowing a member of a legislature affected by such changes, to retain membership of such legislature,

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

Amendment of Schedule 2 to Act 200 of 1993, as amended by section 12 of Act 2 of 1994, section 3 of Act 20 of 1995 and Schedule 6 to Act 108 of 1996

1. Schedule 2 to the Constitution of the Republic of South Africa, 1993, is hereby amended by the substitution for items 23 and 23A of the following items:

"Vacancies

23. (1) In the event of a vacancy in a legislature to which this Schedule applies, the party which **[nominated]** the vacating member represented shall fill the vacancy by nominating a person?

- a. whose name appears on the list of candidates-
 - i. from which **[the vacating member was]** that party's members were originally nominated; or
 - ii. where applicable, submitted by a party in terms of item 23A(6)(a); and
- b. who is the next qualified and available person on the list.

(2) A nomination to fill a vacancy shall be submitted to the Speaker in writing.

(3) If a party represented in a legislature dissolves or ceases to exist and the members in question vacate their seats in consequence of item 23A(1), the seats in question shall be allocated to the remaining parties *mutatis mutandis* as if such seats were forfeited seats in terms of item 7 or 14, as the case may be.

Additional ground for loss of membership of legislature and retention of membership of legislature in event of member joining another party, mergers between parties or subdivision of parties

23A. (1) A person **[loses membership]** who is a member of a legislature to which this Schedule applies **[if that person]** and who, other than in accordance with subitem (3) or (4), ceases to be a member of the party which nominated that person as a member of the legislature, ceases to be a member of that legislature.

(2) **[Despite subitem (1) any]** Any existing political party may at any time change its name.

[(3) An Act of Parliament may, within a reasonable period after the new Constitution took effect, be passed in accordance with section 76(1) of the new Constitution to amend this item and item 23 to provide for the manner in which it will be possible for a member of a legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature.

(4) An Act of Parliament referred to in subitem (3) may also provide for?

- a. **any existing party to merge with another party; or**
- b. **any party to subdivide into more than one party.]**

(3) Subject to subitem (5), a member of a legislature who becomes a member of a party (the new party) other than the party which nominated that person as a member, remains a member of that legislature if that member has become a member of the new party after the expiry of 12 months from the date of an election in respect of that legislature, whereupon the seat held by that member becomes a seat of the new party.

(4) (a) Subject to subitem (5), any political party which is represented in a legislature may, after the expiry of 12 months from the date of an election in respect of that

legislature, merge with another party or subdivide into more than one party.

(b) If a party merges with another party or subdivides into more than one party in terms of paragraph (a), the members concerned remain members of that legislature and the seats held by them become seats of the new party which they represent.

(5) (a) Subitems (3) and (4) only apply for a period determined by the President, after consultation with the leaders of political parties in the National Assembly and the Premiers, by proclamation in the *Gazette*.

(b) The leader of any political party in the National Assembly or a provincial legislature may request the President to consider issuing a proclamation contemplated in paragraph (a).

(c) At least 21 days before a proclamation referred to in paragraph (a) is published, the President must in writing inform the Speaker of the National Assembly, the Chairperson of the National Council of Provinces and the Speakers of the provincial legislatures of such intended proclamation.

(d) A proclamation referred to in paragraph (a) may be applicable to?

- i. the National Assembly;
- ii. provincial legislatures; or
- iii. both the National Assembly and provincial legislatures, as the President may determine.

(e) During a period referred to in paragraph (a)?

- i. a member of a party may change membership only once, before the expiry of the period referred to in paragraph (a), by informing the Secretary of the legislature concerned in writing of his or her intention to join the other party and by submitting to the Secretary written confirmation from such other party that he or she will be accepted as a member of that party; and
- ii. a party may merge with another party or subdivide into more than one party only once, before the expiry of the period referred to in paragraph (a), by informing the Secretary of the legislature concerned in writing of the intention to merge with the other party or to subdivide into more than one party, and by submitting to the Secretary written confirmation from such other party that it will accept such merger.

(6) After the composition of a legislature has been changed as a result of the provisions of subitem (3) or (4)?

- a. each party affected by?
 - i. a change of membership as contemplated in subitem (3);
or
 - ii. a merger or subdivision as contemplated in subitem (4).

must, within seven days after the expiry of the period referred to in subitem (5)(a), submit a list or a revised list, as the case may be, of candidates in respect of such a legislature indicating the changes effected as a result of the change of membership or the merger or subdivision; and

- b. the Secretary of the legislature concerned must within 14 days after the expiry of the period referred to in subitem (5)(a), publish a notice

in the Gazette which reflects?

- i. the party representation in that legislature; and
- ii. the candidates' lists submitted in terms of paragraph (a);
and
- c. the composition of a legislature reflected in a notice referred to in paragraph (b)(i) shall be maintained from the day after the expiry of the period referred to in subitem (5)(a) until the next election of that legislature or until the composition of that legislature is again reconstituted in accordance with subitem (3) or (4).

(7) Until the legislation contemplated in?

- i. section 47(4) of the new Constitution is enacted in respect of the National Assembly; and
- ii. section 106(4) of the new Constitution is enacted in respect of the provincial legislatures,

the provisions of this item and item 23 shall apply in respect of vacancies, loss or retention of membership, mergers between parties or subdivision of parties in respect of a legislature to which this Schedule applies.

(8) This item and item 23 may be amended by an Act of Parliament passed in accordance with section 76 (1) of the new Constitution."

Short title

2. This Act is called the Loss or Retention of Membership of National and Provincial Legislatures Act, 2001.

MEMORANDUM ON THE OBJECTS OF THE LOSS OR RETENTION OF MEMBERSHIP OF NATIONAL AND PROVINCIAL LEGISLATURES BILL

1. OBJECTS OF BILL

1.1 In terms of item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, (Act No. 200 of 1993), an Act of Parliament may, within a reasonable period after the new (1996) Constitution took effect, be passed in accordance with section 76(1) of the 1996-Constitution to amend that item and item 23 in order to provide for the manner in which it will be possible for-

- a member of a legislature who ceases to be a member of the party which nominated that member, to retain membership of such legislature; and
- any existing party to merge with another party, or any party to subdivide into more than one party, whilst allowing a member of a legislature affected by such changes, to retain membership of such legislature,

1.2 The Bill therefore aims to substitute the said items 23 and 23A in order to provide for the procedures referred to above. The mechanism proposed in the Bill entails that a member will be allowed to change party membership, or a party will be allowed to merge or to subdivide-

- only once, during a period determined by the President by proclamation in the Gazette; and
- only after the expiry of 12 months from the date of the last election in respect of the legislature.

The President must consult with the leaders of political parties in the National Assembly and the Premiers before issuing the proclamation in question. The leader of any political party in the National Assembly or a provincial legislature may also request the President to consider issuing such a proclamation. After the expiry of the period determined in a proclamation, the Secretary of a legislature affected by such changes must publish a notice in the Gazette reflecting the new party representation and the revised party candidates' lists in respect of that legislature.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Department of Provincial and Local Government has been consulted on the Bill, and the Parliamentary Committees dealing with the Bill will consider further comments from interested parties.

3. IMPLICATIONS FOR PROVINCES

The provisions of the Bill may affect party representation in provincial legislatures.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

In terms of item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, the Bill must be passed in accordance with section 76(1) of the Constitution.