

REPUBLIC OF SOUTH AFRICA

ELECTORAL AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75)

(Bill and prior notice of its introduction published in Government Gazette No 36267 of 18 March 2013)

(The English text is the official text of the bill)

(Mr J Selfe, MP)

[PMB 2 – 2013]

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 Act, 1998, to amend the manner in which voters who are absent from their voting districts can vote; to provide for the institution of constituencies for the National Assembly; to provide for the demarcation of such constituencies; to provide for the method of election of members of the National Assembly from such constituencies; and to provide for matters incidental thereto.

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

Amendment of section 1 of Act 73 of 1998

1. Section 1 of Electoral Act, 1998 (Act No. 73 of 1998 (hereinafter referred to as the principal Act), is hereby amended –

(a) by the insertion after the definition of “Commission” of the following definition:

“‘**constituency**’ means a constituency established by the Commission in terms of section 60A;”;

(b) by the substitution for the definition of “list of candidates” of the following definition:

“‘**[list] lists of candidates**’ means the **[list] lists** of candidates referred to in section 27, and include -

(a) lists of candidates for election to constituencies for the National Assembly;

(b) the national list for the National Assembly; and

(c) lists for the provincial legislatures.”.

Amendment of section 6 of Act 73 of 1998, as amended by section 2 of Act 34 of 2003

2. Section 6 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Any South African citizen in possession of an identity document may, **in person**, apply for registration as a voter at a place identified by the chief electoral officer inside the Republic or at any South African diplomatic mission: Provided that any citizen who applies for registration at a South African diplomatic mission, must also present a valid South African passport.”.

Amendment of section 7 of Act 73 of 1998, as amended by section 93 of Act 27 of 2000 and section 3 of Act 34 of 2003

3. Section 7 of the principal Act is amended-
- (a) by the deletion of subsection (2); and
 - (b) by the substitution for subsection (3) of the following subsection:

“(3) For purposes of registration on a voters’ roll, a person -

(a) is regarded to be ordinarily resident at the home or place where that person normally lives and to which that person regularly returns after any period of temporary absence;

(b) applying for registration whilst outside the Republic must provide the address at which he or she ordinarily reside or last resided in the Republic and that address is regarded as his or her ordinary place of residence in the Republic; and

(c) is not regarded to be ordinarily resident at a place where that person is lawfully imprisoned or detained, but at the last home or place where that person normally lived when not imprisoned or detained.”.

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

4. Section 24A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person whose name does not appear on the certified segment of the voters’ roll for a voting district and who applied for registration as a voter before the date the election was proclaimed may, on the voting day contemplated in section 18 submit to the presiding officer of the voting station for that voting district-”.

Substitution of section 33 of Act 73 of 1998, as amended by section 9 of Act 34 of 2003 and section 2 of Act 40 of 2003

5. The following section is hereby substituted for section 33 of the principal Act:

“33. Special Votes

(1) Any registered voter may, in the prescribed manner, apply and be allowed prior to voting day to cast a special vote within that voting district where he or she is registered if on voting day he or she is unable to do so.

(2) Any registered voter may, in the prescribed manner, time and place apply and be allowed to cast a special vote on the voting date contemplated in section 18.

(3) An application for a special vote must be submitted to the Commission, supported by -

(a) a sworn or solemnly affirmed statement in the prescribed form containing-

- (i) his or her full name, identity number and date of birth;
- (ii) his or her finger print, certified by a police officer;
- (iii) the address where he or she ordinarily resides;

- (iv) a declaration that he or she applied for registration as a voter before the date of publication of the proclamation proclaiming the election;
- (v) a request that his or her name should be included in the certified segment of the voters' roll for that voting district for the purposes of the election for the National Assembly and also for the purposes of the election for the provincial legislature; and
- (vi) a declaration that he or she is a South African citizen, is 18 years of age or older and is not disqualified from voting in the election in question; and

(b) proof that he or she applied for registration as a voter before the date of publication of the proclamation.

(4) Upon approval of the application in subsection (2) the applicant is deemed as having been registered as a voter on the certified segment of the voters' roll for the voting district in which he or she appeared on the date of the proclamation of the election for the purposes of the election for the National Assembly and also for the purposes of the election for the provincial legislature.”.

Insertion of section 33A into Act 73 of 1998

6. The following section is hereby inserted the principal Act after section 33:

“Method of dealing with applications for special votes

33A. (1.) On receipt of an application from a voter requesting to cast a special vote in terms of section 33 -

- (a) the presiding officer of the voting district of the segment of the voters' roll on which the voter appeared as at the date of proclamation of the election must be notified of such application;
- (b) that segment of the roll where the voter's name appears shall be marked off;
- (c) the presiding officer at the location where the voter intends to cast a special vote will be notified of the voter's application; and
- (d) a vote for the National Assembly and a vote for the provincial legislature for the province of the segment of the voters' roll on which the voter's name appears will be delivered to the presiding officer in order for them to be issued to the voter when he or she arrives to cast his or her votes on the designated date(s) for special votes. ”.

Substitution of heading to Chapter 6 of Act 73 of 1998

7. The following heading is hereby substituted for the heading to Part 1 of Chapter 6 of the principal Act:

“Constituencies and Voting Districts”.

Insertion of section 60A of Act 73 of 1998

8. The following section is hereby inserted in the principal Act after section 60:

“Establishment of Constituencies

60A. (1) The Commission must establish one hundred constituencies in the Republic, each constituency consisting of substantially the same number of registered voters.

(2) The constituencies for an election are those constituencies which, on the date on which the election is called, have been established by the Commission in terms of subsection (1).”.

Insertion of section 61A of Act 73 of 1998

9. The following section is hereby inserted in the principal Act after section 61:

“Factors for determining constituency boundaries

61A. (1) The Commission must determine the boundaries of constituencies taking into account any factors within the proposed constituencies that could affect the free, fair and orderly conduct of elections.

(2) In determining the boundaries of such constituencies, the commission must ensure -

- (a) that every constituency has substantially the same number of registered voters;
- (b) that constituency boundaries conform, to the greatest extent practical, to municipal boundaries; and
- (c) that no constituency straddles provincial boundaries.”.

Amendment of section 62 of Act 73 of 1998

10. Section 62 of the principal Act is hereby amended -

(a) by the substitution for the words preceding paragraph (a) of the following words:

“Before determining the boundaries of a voting district, the Commission [**may**] must consult on the proposed boundaries of that voting district with –”; and

(b) by the substitution for paragraph (b) of the following paragraph:

“(b) If no municipal party liaison committee has been established in a municipality, or if it is impossible or impractical to consult with the municipal party liaison committee, the provincial party liaison committee for the province within which that voting district will fall.”.

Insertion of section 62A of Act 73 of 1998

11. The following section is hereby inserted in the principal Act after section 62:

“Consultation with party liaison committee regarding constituencies

62A. (1) Before determining the boundaries of a constituency, the Commission must consult on the proposed boundaries of that constituency with –

- (a) the provincial party liaison committee in the case of constituencies in that province;
and
- (b) the national party liaison committee in respect of all constituencies.

(2) The Commission may also take steps to consult the public and affected communities before determining the boundaries of one or more constituencies.”.

Amendment of section 63 of Act 73 of 1998

12. The following section is hereby substituted for section 63 of the principal Act:

“Inspection and copies of maps of voting districts and constituencies

63. (1) As soon as practical after the provisions of section 60[(1)] and section 62A have [has] been complied with, the chief electoral officer must give notice that copies of the map of each voting district and constituency will be available for inspection.

- (2) The notice must be –
 - (a) published in the *Government Gazette*; and
 - (b) publicised in the media considered appropriate by the chief electoral officer so as to ensure wide publicity of those maps.
- (3) The notice must state, and the chief electoral officer must ensure, that copies of –
 - (a) those maps are available for inspection at the Commission’s head office; [and]
 - (b) the maps of the voting districts within a municipality are available for inspection at the office of the municipality; and
 - (c) the maps of the constituencies within a province are available for inspection at the Commission’s provincial office.
- (4) Any person may inspect a copy of a map mentioned in sub-section (1).
- (5) The chief electoral officer must provide a certified copy of a map of a voting district or a constituency to any person who has paid the prescribed fee.”.

Insertion of section 63B of Act 73 of 1998

13. The following section is hereby inserted in the principal Act after section 63:

“Review of constituencies

63B. (1) The Commission must, at intervals of not less than five years and not more than ten years, review the established constituencies to ensure that they still conform to the requirements of section 60A(1) and section 61A, and must re-determine the boundaries of one or more constituencies if they do not conform to such requirements.

(2) The chief electoral officer must ensure that, as soon as possible after the Commission has acted in terms of subsection (1), affected copies of maps of the constituencies are available for inspection.”.

Insertion of section 64A of Act 73 of 1998

14. The following section is hereby inserted in the principal Act after section 64:

“Voting stations in other countries

64A. (1) Where over 500 valid applications for special votes have been received in terms of section 33A from any single conurbation in another country, the Commission must establish a voting station within that conurbation at which voters who have thus applied can cast their votes.

(2) When determining the location of a voting station in terms of this section, the Commission may take into account the factors referred to in section 64(2), and must consult with the diplomatic or consular representatives of the Republic of South Africa accredited to the country concerned.

(3) Before determining the location of a voting station in terms of this section, the Commission must consult on the proposed location of that voting station with the national party liaison committee.

(4) The chief electoral officer must inform those persons whose applications for special votes in terms of section 33A have been accepted -

(a) whether a voting station has been established in the conurbation in which they are resident, and if so; and

(b) the location of that voting station, and the date and hours that it will be open for such persons to cast their votes.”.

Amendment of item 1 of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003

15. The following item is hereby substituted for item 1 of Schedule 1A to the principal Act:

“National Assembly

1. Registered parties contesting an election of the National Assembly must nominate candidates for such elections for constituencies and on lists of candidates prepared in accordance with this Act.”.

Amendment of item 2 of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003

16. The following item is hereby substituted for item 2 of Schedule 1A to the principal Act:

“2. The seats in the National Assembly must be filled as follows:

(a) Three hundred seats from constituencies; and

(b) One hundred seats from national lists submitted by the respective parties,

in such a way that the overall composition of the National Assembly reflects, as closely as possible, the proportions of votes cast for the respective parties in any election.”.

Amendment of item 3 of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003

17. The following item is hereby substituted for Item 3 of Schedule 1A of the principal Act:

“3. The **[list]** lists of candidates submitted by a party in terms of Item 2(a) and 2(b) must **[together]** not contain more than five names per constituency and one hundred names **[than the number of seats in the National Assembly, and each such list]** and these lists must denote the fixed order of preference of the names as the party may determine.”.

Amendment of item 4 of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003

18. The following item is hereby substituted for item 4 of Schedule 1A to the principal Act:

“4. A party’s **[lists of]** lists of candidates must consist of –

- (a) lists of the names of candidates for constituencies; and
- (b) a list of candidates referred to in item 2(b).”.

Amendment of item 5 of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003

19. The following item is hereby substituted for Item 5 of Schedule 1A to the principal Act:

“Election of constituency representatives

5. (a) The voters registered in each constituency must elect three members to the National Assembly in the manner prescribed in this item.
- (b) Each registered political party may submit a list of up to five candidates for election to one or more constituencies, and this list must denote the fixed order of preference of the names as the party may determine for the election of candidates in that constituency or those constituencies.
- (c) The names of the candidates submitted by each party for election in each constituency, together with the name of the party and its distinguishing mark or logo, must appear on a ballot paper prepared for that constituency.
- (d) A voter exercises his or her vote on this ballot paper by voting for the party of his or her choice, the names of whose candidates appear, in terms of sub-item (c), on that ballot paper.
- (e) The counting officer will cause all votes cast validly in each constituency to be counted.
- (f) A quota of votes per seat must be determined in respect of each constituency, by dividing the total number of votes cast in each constituency by four.
- (g) The result plus one, disregarding fractions, is the quota of votes per seat in respect of a particular constituency.
- (h) The number of seats to be awarded in respect of such constituency to a party must, subject to sub-item (i), be determined by dividing the total number of votes cast in favour of such party by the quota of votes for that constituency.
- (i) Where the result in the calculation referred to in sub-item (h) yields a surplus of seats not absorbed by the number awarded to a party or parties concerned, such surplus competes with similar surpluses accruing to any other party or parties contesting that constituency, and any seat or seats not awarded must be awarded to the party or parties concerned in sequence of the highest surplus, until all three seats have been awarded.
- (j) Any casual vacancy arising in the representation of a party in a constituency must be filled by the nomination of the next person on that party’s list, submitted in terms of sub-item (b).
- (k) The aggregate of a party’s allocations for the various constituencies in terms of sub-item (i), indicates its provisional allocation of the seats referred to in item 2(a).”.

Amendment of item 6 of Schedule 1A to Act 73 of 1998, as inserted by Section 25 of Act 34 of 2003

20. Item 6 of Schedule 1A to the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) The aggregate of a party’s awards in terms of paragraphs (b) and (c) must be reduced by the number of seats provisionally allocated to it in terms of item 5 [(f)] (k) and the result indicates that party’s provisional allocation of the seats referred to in item 2(b).”.

Amendment of Item 8 of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003

21. Item 8 of Schedule 1A of the Principal Act is hereby amended by the substitution for sub-item (1) of the following sub-item:

“(1) **[Where a party submitted both a national and regional lists]** For each party that gained seats on any provisional allocation, the seats finally allocated to it—”.

Amendment of Item 9 of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003

22. Item 9 of Schedule 1A to the principal Act is hereby repealed.

Amendment of Item 15 of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003

23. The following item is hereby substituted for Item 15 of Schedule 1A to the principal Act:

“Ballot papers

15. There must be separate ballot papers for the election of members from constituencies and from the national list to [of] the National Assembly and of members of the provincial legislatures.”.

Amendment of Item 24 of Schedule 1A to Act 73 of 1998, as inserted by Section 25 of act 34 of 2003

24. Item 24 of Schedule 1A of the principal Act is hereby amended –

(a) by the repeal of the definitions of “region” and “regional list”;

(b) by in insertion after the definition of “Constitution” of the following definition:

“‘constituency list’ means the list of candidates prepared by a party in the manner contemplated in item 5(b) of this Schedule”;

(c) by the substitution in the definition of “votes” for paragraph (a) of the following paragraph:

“(a) where it occurs in items 5, 6, and 7 [and 9], votes cast in an election for the National Assembly;”.

Amendment of Schedule 1A to Act 73 of 1998, as inserted by section 25 of Act 34 of 2003

25. Schedule 1A to the principal Act is hereby amended by the substitution for the expressions “regional” and “region” of the expression “constituency”, wherever it appears in items 2 and 8 of Schedule 1A.

Short title and commencement

26. (1) This Act is called the Electoral Amendment Act, 2013.

(2) This Act takes effect on a date determined by the President by proclamation in the *Government Gazette*.

EXPLANATORY MEMORANDUM

1. OBJECTS OF THE BILL

The electoral system for the National Assembly that operates in South Africa (and which was entrenched in the Constitution until after the 1999 election) is one in which voters vote for political parties, and each party gets that share of the seats in the National Assembly reflecting as closely as possible the proportion of votes that party obtained in the election. The result is an equitable translation of votes into seats, and therefore equitable representation for all political parties.

The advantages of this system is that it is inclusive, it is immune to gerrymandering, it is perceived to be fair, and although not as understandable as a single-member constituency system, it is simple enough to be widely understood.

However, the major weaknesses of the system are the lack of accountability of members of the National Assembly to individual voters or identifiable groups of voters who elected them. This in turn leads to alienation by voters from the political system. There is currently no direct link between the voting public and individual MPs. There is merely a link between the public and political parties. In practice, this means that the voters do not have “ownership” of members of the National Assembly. The arbitrary allocation by political parties of MPs to non-existent “constituencies” is a very poor substitute, as there is not accountability to, nor mandate from, the voters in those constituencies. Finally, MPs are often unable to perform constituency duties effectively since they enjoy no particular status or standing in the “constituencies” to which they are allocated.

The Electoral Amendment Bill, 2013, seeks to reintroduce a constituency system for the National Assembly. The Bill contemplates the establishment of 100 constituencies, each having substantially the same number of voters. The task of determining the boundaries of the constituencies will rest with the Electoral Commission (which already demarcates the boundaries of voting districts).

Each constituency will be represented by three members, who will be elected by a system of proportional representation within those constituencies. In practice, this means that voters will vote for the political party of their choice, and the three members who obtain the requisite quota of votes or

largest surpluses will be elected as the MPs for that constituency. 300 members of the National Assembly will be elected in this way.

The way that constituency representatives are elected assists the electoral system to conform with section 46(1) of the Constitution, which states in part that

‘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 –

.....

(d) results, in general, in proportional representation.’

However, there is also a possibility that significant minorities may not have sufficient concentration in particular geographic areas to ensure equitable representation in the National Assembly. To correct this, the Bill contemplates a further 100 members of the National Assembly being elected from national lists submitted by the various parties.

Thus, once the constituency representatives have been elected, the chief electoral officer will calculate the number of seats in the National Assembly to which each party is entitled based on the proportion of total votes they obtained in the election, and will allocate to parties seats from the lists so that the overall composition of the National Assembly reflects, as closely as practical, the proportion of votes obtained by each party. In this respect the system proposed in the Bill is not dissimilar from the way in which municipal councils are currently constituted.

The reasons for having three members from each of the 100 constituencies rather than one member from each of these constituencies are that (i) it increases the likelihood of an individual voter being able to identify with at least one of his or her elected constituency MPs, and (ii) it enhances the practicality of achieving the correct party proportionality in the National Assembly after the 100 members from the national list have been allocated.

The Bill also proposes amendments to the systems of special and absent votes, allowing voters who are abroad to register and to vote for both the National Assembly and the provincial legislatures, and to make it possible for voters who not in the voting district in which they are registered to vote for both the National Assembly and the provincial legislature.

2. FINANCIAL IMPLICATIONS OF THE BILL

The major cost associated with this Bill would relate to South Africans living abroad exercising special votes. However, the number of South Africans who are eligible to vote could only be determined once they have applied for special votes, and it is therefore not possible to predict the cost accurately.

3. PROPOSED CLASSIFICATION

- 3.1 It is proposed that the bill be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in sections 74, 76 or 77 of the Constitution applies.
- 3.2 It is proposed 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.