

REPUBLIC OF SOUTH AFRICA

**PROMOTION OF MULTI-PARTY
DEMOCRACY BILL**

(As introduced)

(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

[B 67—97]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
BEVORDERING VAN VEELPARTY-
DEMOKRASIE**

(Soos ingedien)

(MINISTER WR PROVINSIALE SAKE EN STAATKUNDIGE ONTWIKKELING)

[W 67—97]

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BILL

To establish the Multi-party Democracy Fund with a view to making provision for the funding of political parties participating in Parliament and provincial legislatures; to provide for the management of that Fund by the Electoral Commission and for accountability regarding that Fund; to regulate the allocation of moneys from that Fund and the purposes for which allocated moneys may be used by political parties; and to provide for incidental matters.

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

Definitions

1. In this Act, except if not consistent with the context—
- (i) “financial year” means only the financial year of the Fund as contemplated in section 4(4); (i)
 - (ii) “prescribed” means prescribed from time to time by regulation made and in force under section 11; (v)
 - (iii) “the Commission” means the Electoral Commission established by section 3(1) of the Electoral Commission Act, 1996 (Act No. 51 of 1996); (iii) 10
 - (iv) “the Fund” means the Multi-party Democracy Fund established by section 2(1); and (ii)
 - (v) “this Act” includes the regulations made and in force from time to time under section 11. (iv)

Establishment of Multi-party Democracy Fund 15

2. (1) The Multi-party Democracy Fund is hereby established for the purpose of funding, as provided hereafter, political parties that participate in Parliament and provincial legislatures.

- (2) The Fund will be credited with—
- (a) moneys appropriated to the Fund by Parliament; 20
 - (b) contributions and donations to the Fund originating from any sources, whether within or outside the Republic;
 - (c) interest earned on moneys deposited in terms of section 3(1) and on moneys invested in terms of section 3(2), if any;
 - (d) moneys accruing to the Fund from any other source. 25

Deposit and investment of moneys of Fund

3. (1) Except as provided in subsection (2), the moneys standing to the credit of the Fund will be deposited in a separate banking account to be opened by the Commission with a bank registered in the Republic. Payment of all moneys allocated to political parties in terms of section 5 will be made from that account. 30

(2) The moneys of the Fund that are not required immediately for making allocations to political parties in terms of section 5, may be invested on call or short term deposit with the Public Investment Commissioners contemplated in the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984).

Management and control of Fund

4.(1) The Fund will be managed and administered, under the supervision and control of the Commission and subject to its directions, by the chief electoral officer acting in the capacity of head of the administration of the Commission. The chief electoral officer in that capacity will be the accounting officer and chief executive officer for the Fund. 5

(2) The **Commission** will be responsible to ensure that the provisions of this Act are duly applied and complied with.

(3) For each financial year the Commission must have proper records **kept**, in accordance with established accounting practice and procedures, of **all** moneys received by or accruing to the Fund, all allocations and payments made therefrom, and all expenditure in connection with which the moneys of the Fund have been applied during that financial year, as well as a current record of the capital and liabilities of the Fund during that year. 10

(4) (a) Except as provided in **paragraph (b)**, the financial year of the Fund will run from 1 April in every year to 31 March in the following year, both days included. 15

(b) The first financial year will run from the day on which this Act comes into operation until 31 March first following, both days included.

Allocations from Fund

5. (1) (a) Every political party that is represented either in Parliament and any *or* all of the provincial legislatures, or in Parliament only, or in one or more of the provincial **20 legislatures only. will, for any financial year that it is so represented, be entitled to be allocated moneys from the Fund with a view to helping the party meet any expenditure which it** may incur or may have incurred during that financial year for any purpose arising from its functioning as a political party in a modern Democracy.

(b) However, a political party will not be entitled to receive any allocation from the **25** Fund for any period during the financial year that it is represented in none of the abovementioned legislative bodies.

(c) Allocations from the Fund to political parties will be made at the times or intervals that will be prescribed.

(2) (a) Allocations from the Fund must be made and paid to each of the political **30** parties concerned in accordance with a prescribed formula based on the relation that the number of such a party's representatives in **all** the abovementioned legislative bodies jointly, bears to the sum of the memberships of all those legislative bodies jointly.

(b) The information and particulars necessary for applying the prescribed formula to any party, must be ascertained from the relevant facts and circumstances as at the time **35** when the allocation is to be made.

(3) Moneys allocated to a political party from the Fund may not be used—

(a) for the purpose of directly or indirectly paying any remuneration, fee, reward, perquisite or other benefit to any person representing the party in the National Assembly, National Council of Provinces, any provincial legislature or any **40** local authority, or who holds any other office of profit under the State, whether on the national, provincial or local sphere of government;

(b) with a view to financing or contributing to any matter, cause, event or occasion, whether directly or indirectly, in contravention of any code of ethics binding on the members of Parliament or of any provincial legislature, as the **45** case may be;

(c) directly or indirectly for the purpose of establishing **any** business or acquiring or maintaining any right or financial interest whatsoever in any business, or in any immovable property, except where the right or interest in the immovable **50** property is to be used by the party solely for ordinary party-political purposes.

(4) The allocation of moneys from the Fund to a political party will end when the party ceases qualifying therefor in terms of subsection (1)(a).

Political parties must deposit allocations from Fund in separate banking accounts

6. A political party must deposit all moneys allocated to it from the Fund in a separate banking account to be kept with a bank registered in the Republic.

Political parties to account for moneys allocated to them from Fund

7. (1) Any political party must, for each financial year for which moneys have been 5 allocated to it from the Fund, keep separate books and records of account, in the prescribed manner, in respect of those moneys and all transactions involving those moneys.

(2) As soon as may be reasonably possible after the end of a financial year for which 10 moneys have been allocated to any political party from the Fund, the party must prepare a statement showing all amounts received by it from the Fund during that financial year and its application of those moneys as well as the purposes for which the various amounts have been applied, whereafter it must have that statement and those books and records of account audited by a public accountant and auditor registered and practicing as such in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 15 1991).

(3) An auditor who has performed an audit contemplated in subsection (2), must in the auditor's report express an opinion as to whether the allocated moneys were spent for purposes authorised by this Act.

(4) The auditor's report and audited statement must be submitted to the Commission 20 by the political party within the prescribed period.

(5) Despite subsection (2), the Auditor-General may at any time audit any political party's books and records of account and financial statements relating to moneys allocated to the party from the Fund.

Recovery of allocated moneys irregularly spent by political parties

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8. (1) (a) Where any moneys allocated to a political party in terms of section 5 have not been spent in accordance with the requirements of this Act, the political party concerned and any office-bearer of that party responsible for the irregular expenditure will be jointly and severally liable to repay to the Commission the moneys that were 30 irregularly spent.

(b) Any moneys so repaid, will be credited to the Fund.

(2) The Commission, represented by the chief executive officer for the Fund, must recover the moneys irregularly spent, and may do so by—

(a) instituting a civil claim in respect of the amount irregularly spent, against the political party and the office-bearer concerned. However— 35

(i) there first must be attempted to recover the claimed amount fully from the political party concerned unless the court, on good cause shown, orders otherwise; and

(ii) the responsible office-bearer concerned may be required to pay the claim only after and in so far as that political party has failed to pay the claimed 40 amount fully; or

(b) setting off the amount irregularly spent against any allocation that may be or may become payable to the political party.

Commission to report to Parliament on Fund

9. (1) As soon as possible after the end of each financial year, the Commission must 45 have a report prepared regarding its management and administration of the Fund during that financial year, as well as financial statements in relation to the Fund showing the amounts received by and accrued to the Fund during that financial year, the allocations made to the respective political parties from the Fund during that year, and the balance of the Fund and any amounts owing to or by the Fund as at the end of that year, and must 50

submit that report, those statements and the Commission's books and records of account relating to the Fund to the Auditor-General for auditing.

(2) Within 30 days after receipt of the Auditor-General's report, the Commission must submit that report to Parliament together with the audited financial statements of the Fund and the audited Commission's report.

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Surplus moneys as at end of financial year

10. (1) Any unspent money, as at the end of a financial year, in the special banking account kept by a political party in terms of section 6, will be treated as if it were money allocated in advance to the political party for the next financial year and will be shown in that party's relevant books and records of account as a credit balance carried forward to the latter financial year. However, moneys so carried forward to the next financial year may not be taken into account in determining any allocation to be made to the party concerned during that financial year.

(2) All moneys standing to the credit of the Fund at the end of any financial year will be **carried** forward to the next financial year as a credit balance.

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Regulations

11. The President, acting on the recommendation of a joint committee of the National Assembly and the National Council of Provinces in which all the political parties with representation in Parliament are represented, may, after consultation with the Commission, by proclamation in the *Gazette* make regulations consistent with this Act—

- (a) about any matter which, in terms of this Act, may or must be prescribed;
- (b) *with* a view to determining any purposes which, in the application of section 5(1), are not compatible with the functioning of a political party in a modern Democracy;
- (c) prescribing the manner in which the Commission is to make allocations in terms of this Act, and the procedure applicable to the making of the allocations;
- (d) prescribing the information and particulars to be furnished to the Commission by political parties with a view to ensuring proper and effective application and administration of and compliance with this Act;
- (e) prescribing the procedure according to which and manner in which payments from the Fund are to be made; and
- (f) prescribing any form that may be required in connection with any matter mentioned in paragraph (c), (d) or (e).

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Short title and commencement

12. This Act is called the Promotion of Multi-party Democracy Act, 1997, and will come into operation on a date that will be determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF
MULTI-PARTY DEMOCRACY BILL**

1. With a view to enhancing multi-party democracy in the Republic, section 236 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 — “the Constitution”), in effect requires provision to be made by an Act of Parliament “, . for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.”.

2. The Promotion of Multi-party Democracy Bill, 1997 (“the Bill”), is designed to meet that very constitutional requirement inasmuch as it proposes the establishment of a special fund, to be called the Multi-party Democracy Fund (“the Fund”), as the source from which political parties represented in Parliament and provincial legislatures are to be given financial assistance, i.e. from which they are to be “funded”.

3. *The Bill* further provides: -

- (a) For the management and administration of the Fund by the chief electoral officer acting in the capacity of head of the administration of the Electoral Commission (“the Commission”), under the supervision and control of the Commission, which is also required to keep proper accounting records in respect of the Fund. The chief electoral officer in the first-mentioned capacity is also the accounting officer and chief executive officer for the Fund. (See clause 4.)
- (b) The formula according to which allocations from the Fund are to be made to the political parties concerned. In essence, this formula is based on the principle of proportionality, which means that the size of each party-s allocation from the Fund is determinable mainly by taking into account the relation which the party’s total number of representatives in Parliament and the provincial legislatures jointly, bears to the number of seats in Parliament *plus the sum of the number of seats in the nine provincial legislatures jointly.* (See clause 5(2).)
- (c) That moneys allocated to a political party from the Fund may be applied by the party only towards a purpose arising from its functioning as a political party in a modern Democracy (see clause 5(1)). Clause 5(3), on the other hand, is designed to prohibit the utilisation of those moneys for certain (specified) purposes.
- (d) For a political party duly to account for the moneys received by it from the Fund, amongst others by keeping separate and proper accounting records in respect of those moneys, having those records audited annually by an independent auditor, and submitting the auditor’s report to the Commission. It is also proposed that the Auditor-General be empowered to audit those accounting records at any time. (See clause 7.)
- (e) That, where moneys allocated to a political party from the Fund have been spent irregularly by it, the Commission must recover the amounts in question from the political party, or, should the political party not settle the claimed amount, from any office-bearer of the party who was responsible for the irregular expenditure. (See clause 8.)
- (f) For the Commission’s records of account and financial statements relating to the Fund to be audited by the Auditor-General, and that the Auditor-General’s report and those financial statements as audited, be submitted to Parliament. (See clause 9.)
- (g) For the Resident, acting on the recommendation of a joint committee of Parliament in which all the political parties participating in Parliament are represented, to make regulations relating, amongst others, to the finer details of the formula on which the making of allocations from the Fund are to be based, as well as purposes which, in addition to those mentioned in clause 5(3), are not compatible with the functioning of a political party in a modern Democracy.

4. The view is held, pursuant to legal advice obtained, that the Bill is to be dealt with in accordance with the procedure contemplated in section 75 of the Constitution.