

REPUBLIC OF SOUTH AFRICA

ELECTORAL LAWS AMENDMENT BILL

*As amended by the Portfolio Committee on Home Affairs (National Assembly)
(The English text is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B 33B—2018]

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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 provide for the use of all available sources of data to obtain information necessary for the Commission to compile and maintain the national common voters' roll; to provide for the electronic submission of party registration applications; to provide for the exclusive jurisdiction of the Electoral Court to adjudicate intra-party leadership disputes that have an impact on the Commission's preparation for elections; to provide for the prohibition of the use of the name and its acronym, logo, designs or electoral material used or owned by the Commission;
- **Electoral Act 1998**, so as to revise the existing provisions relating to voter registration, voters' roll, voting districts and voting procedure; to regulate the publication of, and objections to, a provisionally compiled voters' roll ahead of elections in order to establish a structured process for resolving these objections without jeopardising the preparations for elections; to clarify that the election timetable may include any matter authorised in terms of the Electoral Act; to clarify that the voter's roll to be used in an election must be that certified by the chief electoral officer for that election; to clarify that the cut-off date for the registration of voters for an upcoming election must be the date of proclamation of an election date; to provide for the chief electoral officer to notify the relevant parties where a candidate's name appears on multiple party lists and to afford such parties an opportunity to substitute that candidate and re-order their party lists; to repeal the requirement that the identity document of a voter must be stamped as proof of voting; to provide for different voting procedure for voters without addresses on the voter's roll; to provide for the circumstances under which an agent may object to a voter whose name appears on the segment of the voters' roll for the voting district in which the voting station is located; to limit the class of persons who may apply for accreditation to provide voter education for an election to juristic persons; to align the provision regarding the circumstances in which new ballot papers may be issued to voters with the provisions of the Local Government: Municipal Electoral Act, 2000; and
- **Local Government: Municipal Electoral Act, 2000**, so as to regulate the publication of, and objections to, a provisionally compiled voters' roll ahead of elections, in order to establish a structured process of resolving these objections without jeopardising the preparation for elections; to provide for the prohibition of the use of public finances to fund party political campaigns, and to provide for matters connected therewith.

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

Amendment of section 5 of Act 51 of 1996, as amended by section 94 of Act 117 of 1998

1. Section 5 of the Electoral Commission Act, 1996, is hereby amended by the substitution in subsection (1) for paragraph (e) of the following paragraph: 5

“(e) compile and maintain voters’ rolls by means of a system of registering of eligible voters by utilising [data] available [from government sources] data and information furnished by voters, as prescribed;”.

Amendment of section 15 of Act 51 of 1996, as amended by section 26 of Act 34 of 2003 10

2. Section 15 of the Electoral Commission Act, 1996, is hereby amended 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.” 15

Amendment 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

3. Section 15A of the Electoral Commission Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) The chief electoral officer shall, upon application by a party in the prescribed manner and form, and if the application is accompanied by the items mentioned in subsection (2), register such party in respect of a particular municipality.”.

Amendment of section 20 of Act 51 of 1996 25

4. Section 20 of the Electoral Commission Act, 1996, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) The Electoral Court may hear and determine any dispute relating to membership, leadership, constitution or founding instruments of a registered party.” 30

Insertion of section 21A in Act 51 of 1996

5. The following section is hereby inserted in the Electoral Commission Act, 1996, after section 21:

“Restriction on use of name

21A. (1) No person may use or trade under a name containing the words ‘Electoral Commission’, ‘Independent Electoral Commission’ or the acronym ‘IEC’ for the purposes of elections or the translation thereof in any other official language to— 35

- (a) conduct his, her or its affairs or business, or carry on his, her or its occupation or trade; 40
- (b) be registered or licensed under any law; or
- (c) falsely claim to be acting on behalf of the Commission.

(2) No person may, without the prior written authorisation of the Commission, represent or make use of the logos, designs or electoral material used or owned by the Commission. 45

(3) Any person who contravenes a provision of subsection (1) or (2) is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months or to both such fine and imprisonment.”.

Amendment of section 7 of Act 73 of 1998, as amended by section 93 of Act 27 of 2000, section 3 of Act 34 of 2003 and section 3 of Act 18 of 2013

6. Section 7 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person applying for registration as a voter must do so **[in person]** in the prescribed manner.”. 5

Amendment of section 8 of Act 73 of 1998, as amended by section 4 of Act 34 of 2003 and section 4 of Act 18 of 2013

7. Section 8 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (3) of the following subsection: 10

“(3) A person’s name must be entered in the voters’ roll only for **[the]** a voting district within the ward in which that person is ordinarily resident **[and for no other voting district]**: Provided that where that person is ordinarily resident outside the Republic, his or her name must be entered in a segment of the voters’ roll created for that purpose.”. 15

Amendment of section 11 of Act 73 of 1998

8. Section 11 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The chief electoral officer must record in the voters’ roll or in a person’s application any change in voting district for which a person is registered as a voter or has applied for registration, if that person’s place of ordinary residence after a change in the boundaries of that voting district falls in another **[voting district] ward**.”. 20

Amendment of section 20 of Act 73 of 1998

9. Section 20 of the Electoral Act, 1998, is hereby amended by the insertion after subsection (1) of the following subsection: 25

“(1A) The election timetable may include any other matter authorised in terms of this Act.”.

Amendment of section 24 of Act 73 of 1998

10. Section 24 of the Electoral Act, 1998, is hereby amended— 30

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

“(1) The voters’ roll, or the segments of the voters’ roll that must be used for an election, are those **[as they exist on the day the election is proclaimed]** certified by the chief electoral officer in terms of subsection (2).”; and 35

(b) by the insertion after subsection (1) of the following subsection:

“(1A) Except where this Act otherwise permits, only a voter who applied for registration prior to the proclamation of an election date may vote in the election concerned.”.

Substitution of section 28 of Act 73 of 1998 40

11. The following section is hereby substituted for section 28 of the Electoral Act, 1998:

“Non-compliance concerning submission of lists of candidates

28. (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), the chief electoral officer must notify that party of its non-compliance. 45

(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) by not later than the relevant date stated in the election timetable. 50

- (3) If a candidate has been nominated by more than one party for an election—
- (a) the chief electoral officer must, where possible, in writing, notify the candidate and such parties who have nominated such a candidate about such state of affairs by no later than the relevant date and time stated in the election timetable; and
- (b) each of the parties to whom notice has been given in terms of paragraph (a) may, by not later than the relevant date and time stated in the election timetable, substitute such a candidate.”.

Amendment of section 38 of Act 73 of 1998, as amended by section 11 of Act 34 of 2003

12. Section 38 of the Electoral Act, 1998, is hereby amended—
- (a) by the deletion of subsection (5)(aA); and
- (b) by the addition of the following subsection:
- “(8) The Commission may prescribe a different voting procedure for those voters whose names appear on the voters’ roll, without addresses: Provided that if such voter does not comply with the prescribed procedure he or she may not vote in the provincial elections, but only in the national elections.”.

Amendment of section 40 of Act 73 of 1998

13. Section 40 of the Electoral Act, 1998, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) If a voter—
- (a) marks a ballot paper in a way that does not indicate for whom the voter wishes to vote; or
- (b) after having marked the ballot paper, changes his or her mind as to how he or she wishes to vote, and the ballot paper has not yet been placed in the ballot box, the voter may return that ballot paper to the presiding officer or a voting officer.”; and
- (b) by the addition of the following subsections:
- “(3) The presiding officer or voting officer must then hand a new ballot paper to the voter.
- (4) The Commission must prescribe the number of times a new ballot paper may be issued in terms of subsection (3), with due regard to section 19 of the Constitution.”.

Amendment of section 41 of Act 73 of 1998

14. Section 41 of the Electoral Act, 1998, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) [Af] Subject to subsection (1A), at any time before a voter has been handed a ballot paper, an agent may object to that voter being entitled to vote or to vote at the voting station concerned.”;
- (b) by the insertion after subsection (1) of the following subsection:
- “(1A) Where a voter’s name appears on the relevant segment of the voters’ roll concerned, an objection to that voter in terms of subsection (1) may only be made where—
- (a) it is based on the contention that the voter was included on the relevant segment of the voters’ roll due to fraud; or
- (b) exceptional circumstances exist which justify the objection being made outside the objection period prescribed in terms of section 14(2)(f).”;
- (c) by the substitution for subsections (3), (4) and (5) of the following subsections:
- “(3) An agent, or a voter, may object to any conduct, other than that mentioned in subsection (1), (1A) or (2), of an officer, an agent, or any other person present at a voting station.
- (4) An objection in terms of subsection (1), (1A), (2) or (3) must be made to the presiding officer in the prescribed manner.

(5) The presiding officer, in the prescribed manner, must, except for an objection in terms of subsection (1A), decide the objection and notify the objector and any other parties involved in the objection, of the decision.”; and

(d) by the insertion after subsection (5) of the following subsection: 5

“(5A) Where an objection is made in terms of subsection (1A)—

(a) the presiding officer must, in the prescribed manner, allow the voter concerned to vote but deal with the vote as if it were a special vote in terms of section 33 or 33A; and

(b) the matter must be decided by the Commission as if it were an appeal in terms of subsection (6).”.

Amendment of section 86 of Act 73 of 1998, as amended by section 21 of Act 34 of 2003

15. Section 86 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) Any [**natural or**] juristic person may apply to the Commission in the prescribed manner for accreditation to provide voter education for an election.”.

Amendment of section 87 of Act 73 of 1998

16. Section 87 of the Electoral Act, 1998, is hereby amended—

(a) by the deletion in subsection (1) at the end of paragraph (e) of the word “or”; 20

(b) by the substitution in subsection (1) for the fullstop at the end of paragraph (f) of a semicolon; and

(c) by the addition in subsection (1) of the following paragraph:

“(g) use public funds, except for the funds allocated to a party in terms of section 5 of the Public Funding of Represented Political Parties Act, 1997 (Act No. 103 of 1997), for the purpose of a political campaign.”.

Amendment of Schedule 1 to Act 73 of 1998, as amended by section 24 of Act 34 of 2003

17. Schedule 1 to the Electoral Act, 1998, is hereby amended— 30

(a) by the insertion after item 1 of the following items:

“**1A.** By . . . [day/month/year], the chief electoral officer must give notice of the periods during which and the venues where the provisionally compiled voters’ roll compiled for the election shall be available for inspection in terms of section 14(1)(e). 35

1B. By . . . [day/month/year], any objections in terms of section 15 in respect of the provisionally compiled voters’ roll for the election must be made.

1C. By . . . [day/month/year], the Commission must decide any objection made in terms of section 15 in respect of the provisionally compiled voters’ roll for this election and notify the objector and the chief electoral officer and a person other than the objector whose name or registration details are involved.”; and 40

(b) by the insertion after item 5 of the following item:

“**Multiple nominations** 45

5A. (1) The Commission must notify a candidate whose name appears on more than one party list for an election submitted in terms of section 27 and all the parties on whose party lists such a candidate appears by . . . (date).

(2) If the notified party decides to act in terms of section 28(3), that party must do so by . . . (date).”.

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Amendment of section 6 of Act 27 of 2000

18. Section 6 of the Local Government: Municipal Electoral Act, 2000, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) A municipality’s segment of the voters’ roll [**existing on the day on which the notice calling an election is published in terms of the Municipal Structures Act, is the segment that must be used in that election**] to be used in that election is the one certified by the chief electoral officer for that election in terms of subsection (2).”; and
- (b) by the insertion after subsection (1) of the following subsection:
 - “(1A) Except where this Act otherwise permits, only a voter who applied for registration prior to the proclamation of an election date may vote in the election concerned.”.

Amendment of section 11 of Act 27 of 2000, as amended by section 1 of Act 14 of 2010

19. Section 11 of the Local Government: Municipal Electoral Act, 2000, is hereby amended by the insertion after subsection (1) of the following subsection:

- “(1A) The election timetable may include any other matter authorised in terms of this Act.”.

Amendment of section 51 of Act 27 of 2000

20. Section 51 of the Local Government: Municipal Electoral Act, 2000, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) [At] Subject to subsection (1A), at any time before a voter has been handed a ballot paper, an agent or ward candidate may object to that voter being allowed to vote or to vote at the voting station concerned.”;
- (b) by the insertion after subsection (1) of the following subsection:
 - “(1A) Where a voter’s name appears on the relevant segment of the voters’ roll concerned, an objection to that voter in terms of subsection (1) may only be made where—
 - (a) it is based on the contention that the voter was included on the relevant segment of the voters’ roll due to fraud; or
 - (b) exceptional circumstances exist which justify the objection being made outside the period referred to in terms of section 11(3).”;
- (c) by the substitution for subsections (3), (4) and (5) of the following subsections:
 - “(3) An agent or ward candidate, or a voter, may object to any conduct, other than that mentioned in subsection (1), (1A) or (2), of an officer, an agent, or any other person present at a voting station.
 - (4) An objection in terms of subsection (1), (1A), (2) or (3) must be made in writing on a prescribed form and handed to the presiding officer concerned.
 - (5) The presiding officer must, except for an objection raised in terms of subsection (1A), summarily investigate the factual circumstances underlying the objection, and may for that purpose also direct verbal enquiries to anyone that may be able to assist.”;
- (d) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
 - “After having investigated the objection, other than an objection in terms of subsection (1A), the presiding officer must—”;
- (e) by the insertion after subsection (6) of the following subsection:
 - “(6A) Where an objection is raised in terms of subsection (1A)—
 - (a) the presiding officer must, in the prescribed manner, allow the voter concerned to vote but deal with the vote as if it were a special vote in terms of section 55; and
 - (b) the matter must be decided by the Commission as soon as it is reasonably practical before declaring the results.”.

Amendment of section 67 of Act 27 of 2000

21. Section 67 of the Local Government: Municipal Electoral Act, 2000, is hereby amended—

- (a) by the deletion in subsection (1) at the end of paragraph (e) of the word “or”;
- (b) by the substitution in subsection (1) for the fullstop at the end of paragraph (f) of a semicolon; and
- (c) by the addition in subsection (1) of the following paragraph:
 - “(g) use public funds, except for the funds allocated to a party in terms of section 5 of the Public Funding of Represented Political Parties Act, 1997 (Act No.103 of 1997), for the purpose of a political campaign.”.

Amendment of Schedule 3 to Act 27 of 2000, as inserted by section 11 of Act 14 of 2010

22. Schedule 3 to the Local Government: Municipal Electoral Act, 2000, is hereby amended by the insertion after item 1 of the following item:

“**1A.** By . . . [day/month/year], the chief electoral officer must give notice of the periods during which, and the venues where, the segments of the provisionally compiled voters’ roll compiled for the election shall be available for inspection in terms of section 14(1)(e) of the Electoral Act.

1B. By . . . [day/month/year], any objections in terms of section 15 of the Electoral Act in respect of the segments of the provisionally compiled voters’ roll for the election must be made.

1C. By . . . [day/month/year], the Commission must decide any objection made in terms of section 15 of the Electoral Act in respect of the segments of the provisionally compiled voters’ roll for this election and notify the objector and the chief electoral officer and a person other than the objector whose name or registration details are involved.”.

Short title and commencement

23. This Act is called the Electoral Laws Amendment Act, 2018, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE ELECTORAL LAWS AMENDMENT BILL, 2018

1. BACKGROUND

The Electoral Laws Amendment Bill (“the Bill”) seeks to amend three pieces of legislation, namely, the Electoral Commission Act, 1996 (Act No. 51 of 1996) (“Electoral Commission Act”), the Electoral Act, 1998 (Act No. 73 of 1998) (“Electoral Act”) and the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000) (“Local Government: Municipal Electoral Act”), in preparation of the national and provincial elections, as well as to align the relevant provisions of the legislation relating to the municipal elections.

2. PURPOSE OF BILL

The purpose of the Bill is to amend the—

- (a) Electoral Commission Act, so as to provide for the prohibition of the use of the name and its acronym, logo, designs or electoral material used or owned by the Independent Electoral Commission (“the Commission”), to clarify that the Commission may use all available sources of data to obtain information necessary to compile and maintain the national common voters’ roll, to provide for the electronic submission of party registration applications, to provide for the exclusive jurisdiction of the Electoral Court to adjudicate intra-party leadership disputes that have an impact on the Commission’s preparation for elections, to provide for the circumstances under which an agent may object to a voter whose name appears on the segment of the voters’ roll for the voting district in which the voting station is located and to prohibit the use of public funds, save those allocated to a party from the Represented Political Parties’ Fund established by the Public Funding of Represented Political Parties Act, 1997;
- (b) Electoral Act, so as to revise the existing provisions relating to voter registration, voters’ roll, voting districts and voting procedure, to regulate the publication of, and objections to, a provisionally compiled voters’ roll ahead of elections in order to establish a structured process for resolving these objections without jeopardising the preparations for elections, to clarify that the election timetable may include any matter authorised in terms of the Electoral Act, to clarify that the voter’s roll to be used in an election must be the one certified by the chief electoral officer for that election, to clarify that the cut-off date for the registration of voters for an upcoming election must be the date of proclamation of an election date, to provide for the chief electoral officer to notify the relevant parties where a candidate’s name appears on multiple party lists and to afford such parties an opportunity to substitute that candidate and re-order their party lists, to provide for different voting procedure for voters without addresses on the voter’s roll, to repeal the requirement that the identity document of a voter must be stamped as proof of voting, to provide for the circumstances under which an agent may object to a voter whose name appears on the segment of the voters’ roll for the voting district in which the voting station is located, to limit the class of persons who may apply for accreditation to provide voter education for an election to juristic persons, and to align the provision regarding the circumstances in which new ballot papers may be issued to voters with the provisions of the Local Government: Municipal Electoral Act; and
- (c) Local Government: Municipal Electoral Act, so as to regulate the publication of, and objections to, a provisionally compiled voters’ roll ahead of elections in order to establish a structured process of resolving these objections without jeopardising the preparation for elections and to provide for the prohibition of the use of public finances to fund party political campaigns.

3. OBJECTS OF BILL

The main objective of this Bill is to enhance the existing legislative mechanisms that ensure free and fair elections, in accordance with the Constitution of the Republic of South Africa, 1996. Furthermore, the Bill seeks to prevent possibilities

of election results and legislative bodies' constitution being challenged in court by any party or interested person on the basis of absence of addresses on the common voters' roll. This legislative intervention is necessary to maintain political stability by protecting the legitimacy of the elected legislative bodies from which national and provincial governments derive authority to constitute themselves.

4. CLAUSE-BY-CLAUSE ANALYSIS

Electoral Commission Act

4.1 Clause 1

Clause 1 of the Bill amends section 5 of the Electoral Commission Act, to clarify that the Commission may use all available sources of data to obtain information necessary to compile and maintain the national common voters' roll.

4.2 Clause 2

Clause 2 amends section 15 of the Electoral Commission Act, to authorise the Commission to regulate the application procedure for registration of parties to contest national and provincial elections. (The envisaged procedure may include electronic submission.)

4.3 Clause 3

Clause 3 amends section 15A of the Electoral Commission Act, to authorise the Commission to regulate the application procedure for registration of parties to contest municipal elections in a particular municipality. (The envisaged procedure may include electronic submission.)

4.4 Clause 4

Clause 4 amends section 20 of the Electoral Commission Act, by inserting subsection (2A), to empower the Electoral Court to hear and determine any dispute relating to the constitution or founding instruments, membership and leadership of any party registered in terms of the Electoral Act.

4.5 Clause 5

Clause 5 inserts a new section 21A into the Electoral Commission Act to provide for the prohibition of the use of the name and its acronym for the purposes of elections, logo, designs or electoral material used or owned by the Commission.

Electoral Act

4.6 Clause 6

Clause 6 revises section 7 of the Electoral Act, to empower the Commission to make regulations regarding the application procedure for registration as a voter.

4.7 Clause 7

Clause 7 amends section 8 of the Electoral Act, to make provision for a voter to be registered on the segment of the voters' roll for a voting district of his or her choice within the ward where he or she is ordinarily resident.

4.8 Clause 8

Clause 8 amends section 11 of the Electoral Act and deals with consequential amendments related to clause 7.

4.9 Clause 9

Clause 9 amends section 20 of the Electoral Act, in order to clarify that the election timetable may include any matter authorised in terms of the Electoral Act.

4.10 Clause 10

- Clause 10 revises section 24 of the Electoral Act, to clarify that the voters' roll to be used in an election must be the one certified by the chief electoral officer for that election.
- Clause 10 further makes provision to clarify that the cut-off date for registration of voters for an upcoming election must be the date of proclamation of an election date.

4.11 Clause 11

- Clause 11 amends section 28 of the Electoral Act, in order to deal with technical amendments by making reference to the specific provisions of section 27 that the chief electoral officer must notify any party of its non-compliance therewith.
- Clause 11 further introduces a requirement for the chief electoral officer to notify the relevant parties where a candidate's name appears on multiple party lists and to afford such parties an opportunity to substitute that candidate and re-order their party lists.

4.12 Clause 12

- 4.12.1 Clause 12 amends section 38 of the Electoral Act by the deletion of subsection (5)(aA) which requires that the identity document of a voter must be stamped as proof of voting as this requirement is no longer feasible due to the introduction of the Identity Cards.
- 4.12.2 Clause 12 also provides for a different procedure for voters whose names appear in the voter's roll without addresses.

4.13 Clause 13

Clause 13 amends section 40 of the Electoral Act, to align the circumstances under which a voter may be issued a new ballot paper to those provided for in section 49 of the Local Government: Municipal Electoral Act.

4.14 Clause 14

Clause 14 amends section 41 of the Electoral Act, in order to provide for the circumstances under which an agent may object to a voter whose name appears on the segment of the voters' roll for the voting district in which the voting station is located.

4.15 Clause 15

Clause 15 amends section 86 of the Electoral Act, in order to limit the class of persons who may apply for accreditation to provide voter education for an election to juristic persons only.

4.16 Clause 16

Clause 16 amends section 87 of the Electoral Act, to prohibit the use of public funds, except those allocated to a party in terms of the Public Funding of Represented Political Parties Act, 1997 (Act No. 103 of 1997), for the purpose of a political campaign.

4.17 Clause 17

Clause 17 amends the election timetable contained in Schedule 1 to the Electoral Act, to provide for additional compulsory steps to be observed in preparing for an election. These steps relate to the publication of a provisionally compiled voters' roll compiled for an election to be published for inspection, for political parties and members of the public to have an opportunity to object to that voters' roll, and to allow for the orderly determination of those objections by the Commission prior to the certification of the voters' roll to be used in that election. Local Government: Municipal Electoral Act.

Local Government: Municipal Electoral Act**4.18 Clause 18**

Clause 18 amends section 6 of the Local Government: Municipal Electoral Act, to mirror the provisions of section 24 of the Electoral Act relating to the voters' roll to be used in a municipal election.

4.19 Clause 19

Clause 19 amends section 11 of the Local Government: Municipal Electoral Act, in order to clarify that the election timetable may include any matter authorised in terms of the Local Government: Municipal Electoral Act.

4.20 Clause 20

Clause 20 amends section 51 of the Local Government: Municipal Electoral Act, to provide for the circumstances under which an agent may object to a voter whose name appears on the segment of the voters' roll for the voting district in which the voting station is located, and the decision of the presiding officer regarding a special vote.

4.21 Clause 21

Clause 21 amends section 67 of the Local Government: Municipal Electoral Act to mirror the provision of the Electoral Act relating to the use of public funds, except those allocated to a party in terms of section 5 of the Public Funding of Represented Political Parties Act, 1997, for the purpose of a political campaign, proposed to be introduced into the Electoral Act.

4.22 Clause 22

Clause 22 amends the election timetable contained in Schedule 3 to the Local Government: Municipal Electoral Act, to provide for additional compulsory steps to be observed in preparing for an election. These steps relate to the publication of a provisionally compiled voters' roll compiled for an election to be published for inspection, for political parties and members of the public to have an opportunity to object to that voters' roll, and to allow for the orderly determination of those objections by the Commission prior to the certification of the voters' roll to be used in that election.

4.23 Clause 23

Clause 23 deals with the short title and commencement of the Act.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

There are no additional personnel implications as a result of the introduction of the Bill.

6. FINANCIAL IMPLICATIONS FOR STATE

Most of the amendments proposed by this Bill relate to normal operations related to elections. For this reason, the financial implications thereof have already been taken into account when compiling the budget for those elections.

7. COMMUNICATION IMPLICATIONS

There are no communication implications envisaged as a result of the introduction of the Bill.

8. CONSTITUTIONAL OBLIGATIONS

The proposed Electoral Laws Amendment Bill will give effect to sections 1(*d*), 19, 46(1), 105(1) and 157 of the Constitution of the Republic of South Africa, 1996.

9. INSTITUTIONS CONSULTED

- The National Party Liaison Committee.

10. PARLIAMENTARY PROCEDURE

10.1 The Constitution prescribes procedures for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.

10.2 We have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

10.3 The established test for classification of a Bill is that any Bill with provisions which in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more a Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.

10.4 Therefore, the issue to be determined is whether the provisions contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.

10.5 The Bill primarily seeks to amend three pieces of legislation, namely, the Electoral Commission Act, the Electoral Act and the Local Government: Municipal Electoral Act to align the relevant provisions of the various pieces of legislation in order to ensure free and fair elections.

10.6 The Bill amends the Electoral Commission Act, so as to provide for the prohibition of the use of the name and its acronym for the purposes of elections, logo, designs or electoral material used or owned by the Commission, to clarify that the Commission may use all available sources of data to obtain information necessary to compile and maintain the national common voters' roll, to provide for the electronic submission of party registration applications, to provide for the exclusive jurisdiction of the Electoral Court to adjudicate intra-party leadership disputes that have an impact on the Commission's preparation for elections, to provide for the circumstances under which an agent may object to a voter whose name appears on the segment of the voters' roll for the voting district in which the voting station is located, and to prohibit the use of public funds, save those

allocated to a party from the Represented Political Parties' Fund established by the Public Funding of Represented Political Parties Act, 1997

- 10.7 The Bill amends the Electoral Act, so as to revise the existing provisions relating to voter registration, voters' roll, voting districts and voting procedure, to regulate the publication of, and objections to, a provisionally compiled voters' roll ahead of elections in order to establish a structured process for resolving these objections without jeopardising the preparations for elections, to clarify that the election timetable may include any matter authorised in terms of the Electoral Act, to clarify that the voter's roll to be used in an election must be the one certified by the chief electoral officer for that election, to clarify that the cut-off date for the registration of voters for an upcoming election must be the date of proclamation of an election date, to provide for the chief electoral officer to notify the relevant parties where a candidate's name appears on multiple party lists and to afford such parties an opportunity to substitute that candidate and re-order their party lists, to provide for different voting procedure for voters without addresses on the voter's roll, to repeal the requirement that the identity document of a voter must be stamped as proof of voting, to provide for the circumstances under which an agent may object to a voter whose name appears on the segment of the voters' roll for the voting district in which the voting station is located, to limit the class of persons who may apply for accreditation to provide voter education for an election to juristic persons, and to align the provision regarding the circumstances in which new ballot papers may be issued to voters with the provisions of the Local Government: Municipal Electoral Act, 2000.
- 10.8 The Bill amends the Local Government: Municipal Electoral Act, so as to regulate the publication of, and objections to, a provisionally compiled voters' roll ahead of elections in order to establish a structured process of resolving these objections without jeopardising the preparation for elections and to provide for the prohibition of the use of public finances to fund party political campaigns;
- 10.9 The provisions of the Bill have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.
- 10.10 In our view, the subject matter of the provisions of the Bill do not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.
- 10.11 We are therefore of the opinion that since the Bill does not deal with any of the matters listed in Schedule 4 to the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.
- 10.12 We are also of the opinion that it is not necessary to refer the 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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