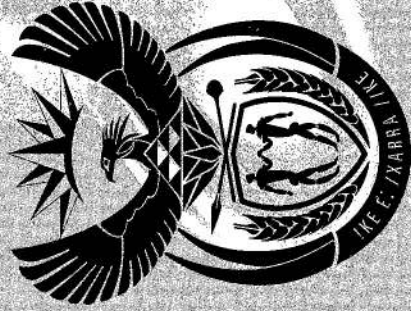




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THE PRESIDENCY

No. 852

20 June 2002

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

No. 21 of 2002: Constitution of the Republic of South Africa Second Amendment Act, 2002.



AIDS HELPLINE: 0800-123-22 Prevention is the cure



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.

(English text signed by the President.)
(Assented to 19 June 2002.)

ACT

To amend the Constitution of the Republic of South Africa, 1996, in order to regulate the allocation of delegates to the National Council of Provinces in the event of changes of party membership, mergers between parties, subdivision of parties or subdivision and merger of parties within a provincial legislature; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the National Council of Provinces is composed of a single delegation from each province consisting of six permanent and four special delegates;

AND WHEREAS parties represented in a provincial legislature are entitled to delegates in the province's delegation, and national legislation must determine how many of each party's delegates are to be permanent delegates and how many are to be special delegates;

AND WHEREAS national legislation has been passed in accordance with item 23A of Schedule 2 to the Constitution of the Republic of South Africa, 1993, providing for—

- * the manner in which it will be possible for a member of a national or a provincial 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, or to subdivide and any one of the subdivisions to merge with another party, whilst allowing a member of a legislature affected by such changes, to retain membership of such legislature;

AND WHEREAS in terms of the national legislation in question, changes of party membership, mergers between parties or subdivision of parties or subdivision and merger of parties within a provincial legislature, may necessitate changes in respect of that legislature's delegation to the National Council of Provinces,

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

Amendment of section 61 of Act 108 of 1996

1. Section 61 of the Constitution of the Republic of South Africa, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

CONSTITUTION OF THE REPUBLIC OF
SOUTH AFRICA SECOND AMENDMENT ACT, 2002

Act No. 21, 2002

“(2) (a) A provincial legislature must, within 30 days after the result of an election of [a provincial] that legislature is declared [the legislature must]—

[(a)] (i) determine, in accordance with national legislation, how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and

[(b)] (ii) appoint the permanent delegates in accordance with the nominations of the parties.

(b) If the composition of a provincial legislature is changed on account of changes of party membership, mergers between parties, subdivision of parties or subdivision and merger of parties within that legislature, it must within 30 days after such change—

(i) determine, in accordance with the national legislation referred to in paragraph (a), how many of each party's delegates are to be permanent delegates and how many are to be special delegates; and

(ii) appoint the permanent delegates in accordance with the nominations of the parties.”.

Amendment of section 62 of Act 108 of 1996

2. Section 62 of the Constitution of the Republic of South Africa, 1996, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Permanent delegates are appointed for a term that expires—

(a) immediately before the first sitting of a provincial legislature after its next election; or

(b) on the day before the appointment of permanent delegates in accordance with section 61(2)(b)(ii) takes effect.”.

Amendment of Schedule 3 to Act 108 of 1996, as amended by section 2 of Act 3 of 1999 and section 19 of Act 34 of 2001

3. Schedule 3 to the Constitution of the Republic of South Africa, 1996, is hereby amended by the substitution for item 3 of Part B of the following item:

“3. If the competing surpluses envisaged in item 2 are equal, the undistributed delegates in the delegation must be allocated to the party or parties, including any merged party as contemplated in section 61(2)(b), with the same surplus in sequence of votes recorded, starting with the party or merged party which recorded the highest number of votes, including combined votes in the case of a merged party, during the last election for the provincial legislature concerned, but if any of the parties with the same surplus—

(a) came into existence on account of changes of party membership or subdivision of parties within that legislature as contemplated in section 61(2)(b); and

(b) did not participate in the last election for the provincial legislature concerned,

the legislature must allocate the undistributed delegates in the delegation to the party or parties with the same surplus in a manner which is consistent with democracy.”.

Short title

4. This Act is called the Constitution of the Republic of South Africa Second Amendment Act, 2002.

- (ii) subdivide into more than one party or subdivide and any one subdivision merge with another party, whether that party participated in an election or not, if the members of a subdivision leaving the original party represent not less than 10 per cent of the total number of seats held by the original party in that legislature.
- (b) If a party merges with another party or subdivides into more than one party or subdivides and merges with another party in terms of paragraph (a), the members concerned remain members of that legislature and the seats held by them are regarded as having been allocated to the party which they represent pursuant to any merger, subdivision or subdivision and merger contemplated in paragraph (a).
- (4) During the first 15 days immediately following the date of the commencement of this item—
- (a) a member of a legislature may become a member of another party (the new party), whether the new party participated in an election or not, whilst remaining a member of the legislature concerned and the seat held by that member must be regarded as having been allocated to the new party of which that member has become a member; and
- (b) any political party which is represented in a legislature may—
- (i) merge with another party, whether that party participated in an election or not; or
- (ii) subdivide into more than one party or subdivide and any one subdivision merge with another party, whether that party participated in an election or not,
- whilst the members concerned remain members of that legislature and the seats held by them must be regarded as having been allocated to the party which they represent pursuant to any merger, subdivision or subdivision and merger contemplated in this paragraph.
- (5) (a) The provisions of subitems (2) and (3) only apply—
- (i) for a period of 15 days from the first to the fifteenth day of September in the second year following the date of an election of the legislature; and
- (ii) for a period of 15 days from the first to the fifteenth day of September in the fourth year following the date of an election of the legislature; but do not apply during the year ending on 31 December 2002.
- (b) For the purpose of paragraph (a) "year" means a period of 365 days.
- (c) During a period referred to in subitem (4) or in paragraph (a)(i) or (ii)—
- (i) a member of a legislature may only once change membership of a party, by informing the Speaker of the legislature thereof in writing and by submitting to the Speaker written confirmation from such other party that he or she has been accepted as a member of that party; and
- (ii) a party may only once—
- (aa) merge with another party;
- (bb) subdivide into more than one party; or
- (cc) subdivide and any one subdivision merge with another party, by informing the Speaker of the legislature thereof in writing and by submitting to the Speaker written confirmation from the other party of the names of all members involved in the merger or subdivision, and that the party has accepted the merger;
- (iii) no party represented in a legislature may—
- (aa) suspend or terminate the party membership of a member representing that party in that legislature; or
- (bb) perform any act whatsoever which may cause such a member to be disqualified from holding office as such a member, without the written consent of the member concerned.
- (d) For the purposes of subitems (2) and (3), "party" means a party duly registered as a political party in accordance with applicable law, including a party so registered during the period referred to in paragraph (a)(i) or (ii).
- (e) A party which has not been registered in terms of any law applicable to the registration of political parties, will be regarded as a party for the purposes of subitem (4), but such a party must apply for registration as a

Amendment of section 2 of Act 69 of 1998

- party in accordance with applicable law within the period referred to in
subitem (4). If the party is not registered accordingly within four months
after the expiry of that period, it is regarded as having ceased to exist as
contemplated in item 23(3), and 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.
- (6) After the expiry of a period referred to in subitem (4) or (5)(a)(i) or
(ii), the composition of a legislature which has been reconstituted as a result
of any conduct in terms of subitem (2), (3) or (4) is maintained until the next
election of that legislature or until the composition of the legislature is
reconstituted in accordance with subitem (2) or (3).
- (7) The Speaker of a legislature contemplated in subitem (6) must, within
seven days after the expiry of a period referred to in subitem (4) or (5)(a)(i)
or (ii), publish a notice in the *Gazette* which must reflect—
- (a) the number of seats allocated to each party represented in that
legislature; and
- (b) the name of, and party represented by, each member.
- (8) Within seven days after the expiry of a period referred to in subitem
(4) or (5)(a)(i) or (ii), each party represented in a legislature contemplated
in subitem (6) must submit a list of its candidates to the Secretary of the
legislature.
- (9) This item and item 23 may be amended by an Act of Parliament
passed in accordance with section 76 (1) of the new Constitution.
- (10) Any existing political party may at any time change its name.”

2. Section 2 of the Determination of Delegates (National Council of Provinces) Act,
1998, is hereby amended by the substitution for subsection (4) of the following
subsection:

- “(4) (a) If the total number of special delegates determined in
terms of subsection (3) in respect of a particular provincial legislature is
less than four, the delegates of the parties that are entitled to only one
delegate in the delegation of that province must, despite subsection (1),
become special delegates in the sequence from the lowest to the highest
number of votes, including combined votes in the case of a merged party as
contemplated in section 61(2)(b) of the Constitution, that have been
recorded for those parties during the last election of that provincial
legislature, until four special delegates have been allocated to parties in the
provincial delegation: Provided that if any of the parties that are entitled to
only one delegate in the delegation of that province—
- (i) came into existence on account of changes of party membership or
subdivision of parties within that legislature as contemplated in
section 61(2)(b) of the Constitution; and
- (ii) did not participate in the last election of that provincial legislature,
- the legislature must, in a manner which is consistent with democracy, elect
so many delegates from the delegates of those parties to become special
delegates as may be necessary to allocate four special delegates to parties in
the provincial delegation.
- (b) If the total number of special delegates determined in terms of
subsection (3) in respect of a particular provincial legislature is more than
four, those special delegates must, despite subsections (2) and (3), become
permanent delegates in the sequence from the highest to the lowest number
of votes, including combined votes in the case of a merged party as
contemplated in section 61(2)(b) of the Constitution, that have been
recorded for the parties concerned during the last election of that provincial
legislature, until four special delegates have been allocated to parties in the
provincial delegation: Provided that if any of those parties—
- (i) came into existence on account of changes of party membership or
subdivision of parties within that legislature as contemplated in
section 61(2)(b) of the Constitution; and
- (ii) did not participate in the last election of that provincial legislature,
- did not participate in the last election of that provincial legislature,

that legislature must, despite subsections (2) and (3) and in a manner which is consistent with democracy, elect so many special delegates of those parties to become permanent delegates as may be required to allocate four special delegates to parties in the provincial delegation.”.

Short title

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3. This Act is called the Loss or Retention of Membership of National and Provincial Legislatures Act, 2002.