

Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 523 Cape Town, 9 January 2009 No. 31791
Kaapstad, 9 Januarie 2009

THE PRESIDENCY

No. 24 9 January 2009

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

**Constitution Fourteenth Amendment
Act of 2008.**



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CONSTITUTION FOURTEENTH AMENDMENT ACT OF 2008

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 6 January 2009.)

ACT

To amend the Constitution of the Republic of South Africa, 1996, so as to—

- further regulate the determination of political party participation in provincial delegations to the National Council of Provinces; and
 - abolish the right—
 - of a member of the National Assembly or a provincial legislature to become a member of another political party whilst retaining membership of the National Assembly or that provincial legislature; and
 - of an existing political party to merge with another political party, or to subdivide into more than one political party, or to subdivide and to permit any of the subdivisions to merge with another political party, whilst allowing a member of the National Assembly or a provincial legislature affected by such changes to retain membership of the National Assembly or that provincial legislature;
- and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts as follows:—

Amendment of section 61 of the Constitution of the Republic of South Africa, 1996, as amended by section 1 of the Constitution Ninth Amendment Act of 2002

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

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

- (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
- (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—

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- (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.]”.**

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Amendment of section 62 of the Constitution of the Republic of South Africa, 1996, as amended by section 2 of the Constitution Ninth Amendment Act of 2002

2. Section 62 of the Constitution 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 the 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].”.**

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Amendment of section 105 of the Constitution of the Republic of South Africa, 1996, as amended by section 3 of the Constitution Tenth Amendment Act of 2003

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3. Section 105 of the Constitution is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

- “**[Subject to Schedule 6A, a] A provincial legislature consists of women and men elected as members in terms of an electoral system that—**”.

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Amendment of section 106 of the Constitution of the Republic of South Africa, 1996, as amended by section 4 of the Constitution Tenth Amendment Act of 2003

4. Section 106 of the Constitution is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) A person loses membership of a provincial legislature if that person—
- (a) ceases to be eligible;
 - (b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership; or
 - (c) ceases to be a member of the party that nominated that person as a member of the legislature[**, unless that member has become a member of another party in accordance with Schedule 6A].”.**

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Amendment of Schedule 3 to the Constitution of the Republic of South Africa, 1996, as amended by section 2 of the Constitution Fourth Amendment Act of 1999, section 19 of the Constitution Sixth Amendment Act of 2001 and section 3 of the Constitution Ninth Amendment Act of 2002

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5. Schedule 3 to the Constitution is hereby amended—

- (a) 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 the sequence [of votes recorded, starting with the party or merged party which recorded] from the highest to the lowest number of votes[**including combined votes in the case of a merged party,** that have been recorded for those parties during the last election for the provincial legislature concerned[**, but if any of the parties with the same surplus—**

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- (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**

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(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.”; and

(b) by the addition in Part B of the following item:

“4. If more than one party with the same surplus recorded the same number of votes during the last election for the provincial legislature concerned, the legislature concerned 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.”.

Repeal of Schedule 6A to the Constitution of the Republic of South Africa, 1996, as inserted by section 6 of the Constitution Tenth Amendment Act of 2003

6. Schedule 6A to the Constitution is hereby repealed.

Short title and commencement

7. This Act is called the Constitution Fourteenth Amendment Act of 2008, and comes into operation on a date set by the President by proclamation in the *Gazette*.