



GAUTENG
LEGISLATURE

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OFFICE OF THE SPEAKER

SUBMISSION ON THE AMENDMENT OF THE ELECTORAL ACT FOR EQUITABLE REPRESENTATION OF PROVINCES

INTRODUCTION

- The Electoral Amendment Bill-B1-2022 was recently introduced in the National Assembly and informally referred to provinces for preliminary processing.
- The Bill seeks to amend the Electoral Act, 1998 pursuant to the Judgement of the Constitutional Court on the New Nation Movement NPC and Others V President of RSA and Others matter, which ruled that the said Electoral Act is unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties.
- While the amendment is welcome and long overdue, it is noted that it is not the only constitutional gap / inconsistency in the Electoral Act, the Electoral Act still has a *lacuna* in so far as it relates to the equitable representation in the allocation of seats to provincial legislatures.

BACKGROUND

- The composition and election of members of provincial legislatures is regulated in terms of Section 105 of the Constitution of the Republic of RSA of 1996.

- The Constitution provides that provincial legislature consists of between 30 and 80 members based on the province's population with the formula thereof determined in terms of the Electoral Act, 73 of 1998.
- The said determination was conducted at the time of the enactment of the Electoral Act by 31st March 1999 and Gauteng province was allocated 73 members based on the population of the province at the time.
- Section 114 of the Electoral Act refers to Schedule 2 & 3 thereof which provides that provincial legislatures are allocated 1 seat for every 100 000 people as per population of said provinces.
- It is noteworthy that the country and province's population has grown exponentially and according to statistics from the Stats SA Gauteng province currently stands at a population of above 14 million.
- The aforesaid warrants a review of the formula as prescribed in the Electoral Act with a view to ensure equitable representation for provinces and consistency with the Constitution.
- If said review were to be pursued Gauteng province would for instance be entitled the maximum representation of 80 seats in line with the Constitution. Other provinces would also similarly increase their allocation of seats as per most recent population census from Stats SA.

CONSTITUTIONAL AND LEGAL FRAMEWORK

CONSTITUTION OF RSA,1996

- Section 105(1) provides that a provincial legislature consists of women and man elected in terms of an electoral system based on national legislation and the province's segment of the national common voter's roll.

- Section 105(2) provides: *‘A provincial legislature consists of between 30 and 80 members. The number of members, which may differ among the provinces, must be determined in terms of a formula prescribed by national legislation.’*
- The Constitution thus provides the broader framework on the election and composition of provincial legislatures and the Electoral Act discussed herein below provides the detail and formula.

THE ELECTORAL ACT, 73 OF 1998

- The Act regulates elections of amongst others provincial legislatures.
- Section 114 of the Electoral Act refers to the formulas for the determination of the number of seats of said legislatures and alludes to Schedule 3 which provides the detail therein.
- Schedule 3, Item 2 of the Act stipulates *interalia*: *“By taking into account available scientifically based data and representations by interested parties, the number of seats of a provincial legislature must be determined by awarding one seat for every 100 000 of the population whose ordinary place of residence is within the province, with a minimum of 30 and maximum of 80 seats”.*

PRELIMINARY AND CONSULTATIVE PROCESSES

- In terms of the said determination in the Electoral Act for instance KZN has the maximum representation of 80 seats based on its population at the cut-off date whereas other provinces vary between 30-80.
- The Gauteng Provincial Legislature (GPL) has previously consulted with amongst others the Independent Electoral Commission (IEC) as the administrative body that oversees the administration of the Electoral Act with a view to review said Act.

- The GPL has furthermore raised the matter of the review and possibly amendment of the Act through questions in the NCOP to former President Monthlante and was advised to consult broadly for buy-in.
- There is also currently a resolution of the House (GPL) for the introduction of a legislative proposal to amend the Electoral Act to ensure the equitable representation of all provinces, Gauteng included.

CONCLUSION AND RECOMMENDATIONS

- Subsequent to further engagements through amongst other the National Speakers' Forum, the matter of the amendment of the Electoral Act to cater for the above was raised and a draft Bill thereon prepared and submitted to Parliament.
- Parliament could however not process the amendment in the 5th Democratic Parliament due to its congested program and committed to including it in the 6th Democratic Parliament.
- The GPL also raised the matter at the Joint Planning Session of the NCOP, Provincial Legislatures and SALGA at the beginning of this Term to ensure that it is prioritized.
- The Draft Bill is currently at the NA for further processing.

CONCLUSION AND RECOMMENDATIONS

RECOMMENDATIONS

- We note that the envisaged legislative proposal will impact on other provinces and to that end recommend they be consulted for their buy-in.

- That a consolidated approach to the Amendment, including the proposal to amend the Electoral Act to review and increase the allocation of Seats to provinces be factored in addition to the independent candidates matter pursuant to the recent ConCourt judgement.
- That we also factor in the Electoral Act a progressive review of the determination as opposed to a cut-off date and said review be perhaps once every 10 years.
- That GPL follows up on the processing at national through its Permanent Delegates to ensure the matter is speedily resolved and that there is thus equitable representation in the province.

L Mekgwe

**Hon. Lentheng Ntombi Mekgwe
Speaker**