

REPUBLIC OF SOUTH AFRICA

PROMOTION OF ACCESS TO INFORMATION AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); Explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 42604 of 31 July 2019.)

(The English text is the official text of the Bill)

(Portfolio Committee on Justice and Correctional Services)

[B_ 2019]

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 Promotion of Access to Information Act, 2000, so as to provide for information on the private funding of political parties and independent candidates to be recorded, preserved and made available; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Insertion of Chapter 2A in Act 2 of 2000

1. The following Chapter is hereby inserted in the Promotion of Access to Information Act, 2000 after Chapter 2:

“Chapter 2A**PUBLICATION AND AVAILABILITY OF CERTAIN RECORDS OF POLITICAL PARTIES****Definition**

52A. In this Chapter, unless the context otherwise indicates—

‘accounting officer’ of, or in relation to, a political party means—

(a) in the case of a party referred to in paragraph (a) or (b) of the definition of “political party” the person who has been appointed as such in terms of section 12(1)(c) of the Political Party Funding Act, 2018 (Act No. 18 of 2018);
and

(b) in the case of an independent candidate referred to in paragraph (c) of the definition of “political party” that candidate or a person duly authorised by the candidate concerned; **and**

‘political party’ means—

(a) any entity that accepts donations principally to support or oppose any registered political party or its candidates, in an election as defined in section 1 of the Electoral Act, 1998 (Act No. 73 of 1998);

(b) a party with representation in the national or provincial legislatures; **and**

(c) an independent candidate;”.

Recording, preservation and disclosure of records on the private funding of political parties

52B. (1) The accounting officer of a political party must—

(a) create and keep records of—

(i) the identity of and the amounts of money paid by all persons or entities who donate more than R100 000 per financial year, as defined in section 1 of the Political Party Funding Act, 2018, to the party concerned;

(ii) any money lent to the political party whether on commercial terms or not;

(iii) any money paid on behalf of the political party for any expenses incurred directly or indirectly by that political party;

(iv) the provision of assets, services or facilities for the use or benefit of a political party whether on commercial terms or not; and

(v) any sponsorships provided to the political party, excluding services rendered personally by volunteers; and

(b) subject to subsection (2), on a quarterly basis make the records available on the social media platforms of the political party concerned.

(2) The accounting officer of a political party must ensure that the records referred to in subsection (1) are updated and made available on the social media platforms of the political party concerned at least two months prior to—

(a) an election of the National Assembly or the provincial legislature as regulated in terms of the Electoral Act, 1998 (Act No. 73 of 1998);

(b) municipal elections as regulated in terms of the Local Government: Municipal Electoral Act, 2000 (Act No. 27 of 2000); or

(c) a referendum as regulated in terms of the Referendum Act, 1983 (Act No. 108 of 1983).

(3) The records referred to in subsection (1) must be kept for a period of at least five years after the records concerned have been created.”.

Short title

2. This Act is called the Promotion of Access to Information Amendment Act, 2019.

MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF ACCESS TO INFORMATION AMENDMENT BILL, 2019

1. PURPOSE OF BILL

1.1 The purpose of the Promotion of Access to Information Amendment Bill ("Bill"), is to provide for the recordal, preservation and facilitation of access to information on the private funding of political parties and independent candidates. This came about as a result of the Constitutional Court decision in *My Vote Counts NPC v Minister of Justice and Correctional Services*.¹ In that case the Constitutional Court declared the Promotion of Access to information Act, 2000 (Act No. 2 of 2000) ("PAIA"), invalid to the extent of its inconsistency with the Constitution by failing to provide for the recordal, preservation and reasonable disclosure of information on the private funding of political parties and independent candidates.

2. OBJECTS OF BILL

2.1 The Bill seeks to amend PAIA to regulate the recordal, preservation and availability of information in respect of private funding to political parties and independent candidates.

2.2 The clause of the Bill gives an obligation to the accounting officer of a political party (which is defined to include an independent candidate), to create and keep records of any money paid or donated by persons or entities to a political party which is more than R100 000; any money lent to the political party; any money paid on behalf of a political party; assets, services or facilities provided to a political party; and any sponsorships provided to a political party. The records must be available on social media platforms on a quarterly basis. Furthermore the clause requires that the records be updated and be made available on social media platforms of the political party concerned two months before the election of the National Assembly or provincial legislature and before municipal elections.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Department of Justice and Constitutional Development circulated the Amendment Bill in order to solicit the comments of interested parties.

¹ CCT 249/17

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

6.1 The Portfolio Committee on Justice and Correctional Services ("Committee"), proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.

6.2 The Committee is of the opinion that it is not necessary to refer this 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.