

# Crossing the floor: Proposed constitutional amendments

The Department of Justice and Constitutional Development has published a proposal to amend Constitutional provisions for municipal elections. The new provisions would, among other things, allow councillors to cross the floor without losing their seats. As they deal with the 'institutions of local government', the Constitution requires public participation before Parliament can decide on them.

## General principle of proportionality

Presently, the Constitution says that the electoral system for local government must 'ensure that the total number of members elected from each party reflects the total proportion of the votes recorded for those parties' (s 157(3)). This means that a party's proportion of the council seats must be similar to its proportion of the votes cast in the general election.

The proposed amendment changes this principle so that the electoral system 'result[s] in general, in proportional representation'. The principle of proportionality has been toned down to allow for changes in the composition of a municipal council during its term.

The Bill proposes a new section 158A dealing with the circumstances under which a councillor can stop being a member of a party without losing membership of the council. The principle is still that, if a councillor loses membership *in any way other than regulated in this section 158A*, he or she

loses the seat (see *LGL Bulletin* 2001(4) 14). The Bill also deals with party mergers or subdivisions.

## General requirements

The Bill proposes that **crossing the floor, merging a party or subdividing a party can only be done:**

- for a period of 15 days immediately after the amendment has come into operation;
- between 1 and 15 September 2002; or
- between 1 and 15 February and 1 and 15 September of a later year.

The next general election must be more than 12 months away.

A councillor would only be allowed to change membership once during a window period. The same applies to party mergers and subdivisions.

The principle of proportionality has been toned down to allow for changes to the composition of a municipal council during its term.

## PR councillor

For a PR councillor to join another party without losing his or her seat, a minimum of 10% of that party's councillors must also stop being members of the party. Therefore, a PR councillor who wants to cross the floor must

either constitute 10% (or more) of his or her party in the council, or he or she must be part of a 10% group that stops being members at the same time.

## Ward councillor

A party-aligned ward councillor can join another party or become independent without losing the ward. The same applies to an independent ward

Proposed amendments to the Constitution allow councillors to cross the floor without losing their seats. The requirements are:

- crossing the floor can only take place during window periods;
- 12 months must have passed since the last general election and the next general election must be more than 12 months away; and
- PR councillors can only cross the floor if they make up at least 10% of their party in the council.

councillor: he or she can join a party that took part in the election for that municipality.

## Mergers or subdivisions

A party can merge with another party. A party can also break up into more than one party. One of the subdivided parts can also merge with another party if the subdivided part made up 10% or more of the original party that broke up.

## Reprisals

During any of the window periods, a party cannot:

- suspend or terminate a councillor's party membership;
- change a councillor's position on the party list; or
- do anything that would disqualify the councillor from council membership; unless the councillor has given his or her consent.

## Procedures

The municipal manager must be notified when a councillor changes membership. After the composition of a council has changed, each party that was affected must give a revised list of candidates to the municipal manager and a notice must be published in the Provincial Gazette.

Jaap de Visser  
Local Government Project  
Community Law Centre, UWC