

Dear South Africa is a network of online platforms designed to facilitate government and encourage the public to participate in unbiased decision-making processes or policy formation at SOE, municipal, provincial and national levels.



## Electoral Laws Amendment Bill [B22-2020] 9 September 2020 – 6 November 2020

As introduced in the National Assembly (proposed section 76 of the Constitution); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 43697 of 9 September 2020)

### The draft Amendment Bill seeks to amend the Act following:

- Electoral Commission Act, 1996, so as to insert certain definitions; to streamline the provisions for the registration of political parties.
- To provide for the registration of parties in respect of particular provinces, district and metropolitan municipalities and to repeal provisions relating to registration of parties in respect of particular local municipalities.
- To repeal obsolete provisions: Electoral Act, 1998, so as to insert certain definitions.
- To amend the provisions regarding public access to the voters' roll; to update references to repealed legislation.
- To amend provisions allowing voters to vote in a voting district where they are not registered.
- To amend provisions relating to the submission of lists of candidates.
- To amend provisions relating to special votes in elects for National Assembly.
- To authorise the Commission to prescribe a different voting method.
- To amend provisions relating to the procedure concerning provisional results and voting materials.
- To provide for the limited applicability of the Code; to amend Schedule 3; and local Government: Municipal Electoral Act, 2000, so as to insert and delete certain definitions.
- To amend the requirements for parties contesting elections by the way of party lists and for a ward candidate to contest elections.
- To authorise the Commission to prescribe a different voting procedure for those voters whose names appear on the voters' roll, without addresses.
- To amend provisions relating to the effect of certain irregularities, and to provide for matters connected herewith.

The above notice for the Electoral Laws Amendment Bill, 2020 was released on 9 September 2020 where the closing date was set to 30 October 2020. The closing date was then extended to 6 November 2020.



Written submissions and enquiries were directed to Mr Eddy Mathonsi at [elab@parliament.gov.za](mailto:elab@parliament.gov.za).

Dear South Africa (DearSA) hosted a participation project through an online and mobile platform to facilitate, educate and encourage public participation and comment to shape this amendment.

<https://dearsouthafrica.co.za/elab/>

**Included on the web page was:**

- 1 - the published Amendments and related documents as downloadable PDFs
- 2 - the published notice.
- 3 - a live view of public comments (with a counter and breakdown reflecting number of participants)
- 4 - video summaries
- 5 - links to relevant media articles
- 6 - a portal which posed two questions (with options for varying responses per question)
- 7 - a comment facility to provide input on the Amendment




Each public entry was individually delivered to [elab@parliament.gov.za](mailto:elab@parliament.gov.za). DearSA also captured all public entries which have been used to produce this report.

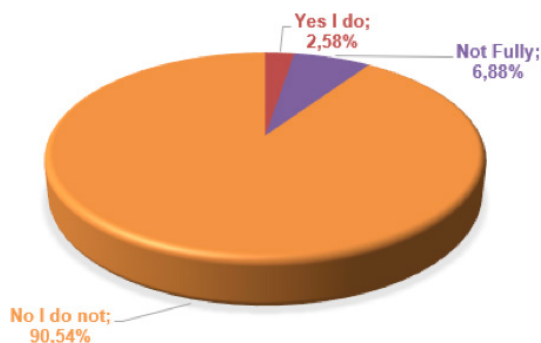
**Note:** In order to accurately reflect public comment, DearSA's projects are unbiased and hold no partisan opinion or agenda. Raw captured data is attached as an Excel file.

A total of **12,305** comments were received by the set closing of 4pm, 6 November 2020 (included in the Excel file). This report reflects the entries received by the closing date.

Two questions presented;






1. Do you support the draft Electoral Laws Amendment Bill?

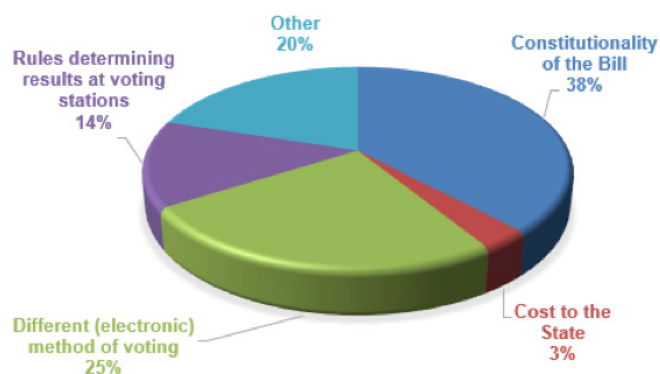
	Yes, I do	[318 selected]	2.58%
	No, I do not	[11,141 selected]	90.54%
	Not fully	[846 selected]	6.88%





## 2. What is your top concern?

	Constitutionality of the Bill	[4,673 selected]	38%
	Cost to the State	[389 selected]	3%
	Different (electronic) method of voting	[3,062 selected]	25%
	Rules determining results at voting stations	[1,708 selected]	14%
	Other	[2,473 selected]	20%



## Comments

The participants are encouraged to provide comment to justify their selection in order to help shape the policy amendment.

**Of the “Yes, I do” comments**, the public in this category support this amendment starting with the technical governance of an electronic voting system to reduce any fraud and corruption during the elections. Public members also agreed with the notion to allow flexibility to vote across different regions from where they initially registered for voting. Furthermore, participants stated they would like to see individuals being able to run as a political “party” similarly to the United States.

It was further highlighted that the “top concern” within this category was the electronic method of voting and the implementation of a system thereof.

### Suggestions from the “Yes I do” comments, include;

#### Concern; Different method of voting

1. In circumstances where the public are not able to vote via an online submission, voting stations should still be erected to allow for a fair opportunity to vote.
2. Electronic vote with a mobile phone number that is registered to a person on the voters roll should be allowed. RICA
3. Quantum voting system. Block chain system which cannot be rigged.
4. ID Book for voting must be presented but then the voting stations must also be electronic so that no one person can vote twice.



### Concern; Constitutionality of the bill

1. The Concourt judgment declared sections of the Electoral Act unconstitutional, because they prevented independent candidates from standing in national and provincial elections. The court allowed Parliament two years to amend the law to allow independent candidates, in addition to party candidates, to stand in elections, but nothing is happening.

### Concern; Rules determining results at voting stations

1. How transparent will these rules be and what checks and balances will there be in the implementation thereof?

### Concern; Cost to the state

1. Start the system for elders above 60 - it will be easy to start with lower numbers & benefit of elders in rural areas.

### Concern; Other

1. The piece of legislation that is my top concern is how to allow people with no physical address to vote.
2. Are the IEC working on the implementation to get it in place in time for the next election?
3. How many voters in each constituency? (suggestion is an average of 250000 - min 200000 to 300000.)  
This will reduce the number of seats in parliament thus contributing to drastically improve our economy.
4. Will the IEC, Constitutional court and each party be responsible to ensure suitable candidates are selected to represent them?
5. A system to be formulated to allow each party with a certain number of votes a percentage representation of additional limited number of candidates only.

**Of the “Not Fully” comments,** it was identified that the current electoral processes requires much needed attention to reduce corruption and to increase transparency. Each South African citizen should have a fair and equal opportunity to vote but the public have made mention that any new electronic system must ensure that the voting process utilises a South African ID number as its unique identifier to ensure that there aren't any duplications or misused ID numbers which may falsely count as votes.

The “top concern” in this category was also the electronic method of voting and the implementation of a suitable system.

### Suggestions from the “Not Fully” comments, include;

#### Concern; Different method of voting

1. The bill must define exactly what is meant by “a different voting method”
2. Electronic voting is not secure & can be hacked. Voting must be accompanied by ID & an address & you should only vote in the province in which you reside. This draft amendment bill is vague.
3. To eliminate ‘voter fraud’ this system needs to have been tried and tested in other democratic countries.

### Concern; Constitutionality of the bill

1. Changes to voting needs to be negotiated or a referendum done.
2. Clause 6 must be removed unless it can be clarified that concurrence with the finance minister is already legislated elsewhere.
3. Clause 14 and Clause 21 (8) must be removed, since it weakens the ability to conduct free and fair elections. It is undemocratic and unconstitutional to remove parliamentary authorisation and oversight of any proposed voting method.
4. Clause 15 must be removed, since it weakens the ability to conduct free and fair elections and is therefore unconstitutional. Streamlining cannot come at the expense of constitutionality and proper auditing.



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5. The financial implications for the state that these amendments bring have not been stated sufficiently, since those financial implications are simply deferred to the future. This is inadequate and must be addressed explicitly.

#### **Concern; Rules determining results at voting stations**

1. "to amend provisions allowing voters to vote in a voting district where they are not registered" is fair, if you live in a district you should register in that district and if you are registered and live in a different district you should not be able to vote on another district where the outcome does not impact you.

#### **Concern; Cost to the state**

1. Require better transparency.
2. This is open to corruption as who will get the contract to implement the electronic system.

#### **Concern; Other**

1. Amendments cannot be left to IEC we have seen so much corruption in other countries. This needs to be agreed by parties or else a referendum needs to be held as this affect a fundamental right.
2. Item 13 (re section 33 of Act 73 of 1998: It appears in a) of the above clause that anyone, who wants to vote outside the Republic of South Africa, has to notify " the [Commission within 15 days after the proclamation of the date of the election] chief electoral officer". This is hardly enough time, particularly in the circumstance where a person only knows much later that he/she will be outside the Republic. The wording is also a little unclear, because in c) of the above clause mention is made that "he or she notifies the chief electoral officer in the prescribed manner by no later than the relevant date stated in the election timetable". The two statements appear to contradict one another.

**Of the "No I do not" comments**, the public have outlined that the electoral system may lose further integrity and lawfulness should the voting process be migrated to an electronic method. With the current electoral process, the framework makes for a free and fair election, but the participants stated that the corruption should rather be addressed instead of changing the voting process. Many members feel that this amendment is unconstitutional which was also identified as the "top concern" in this category.

**Another finding from these views** is that the public have a few questions relating to the proposed amendments in line with the following:

- 1 - How will this project be funded?
- 2 - Will the new electoral process undergo audit protocols by an independent body to ensure fair and transparent voting?

#### **Suggestions from the "No I do not" comments, include;**

##### **Concern; Different method of voting**

1. In place of an electronic voting method, measures should be put in place to address corrupt behaviour.
2. The IEC must not be given the sole authority to determine the rules of deciding election results for the same reason aforementioned.
3. While in theory electronic voting should be auditable, computer systems are vulnerable to hacking & therefore rigging results. In addition it would require that every political party should be permitted to audit the results independently which would be very expensive but would be the only fair way to ensure the elections are "free & fair". The cost of setting up such a system is likely to be exorbitant, would need extensive testing all of which is costly & time-consuming. All political parties would need to be involved in the development project & approve the specifications, test scenarios, test results etc.



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### **Concern; Constitutionality of the bill**

1. This bill should not be passed as granting the IEC the sole power to decide the voting method without any due process poses a large corruption risk.
2. I reject section 14 which give the right to a section 9 institution to change the method of voting. A change to the method of voting must be debated in parliament and change only when as possible weaknesses of the proposed change has been debated and all parties agree with the change. The method of a democratic voting system must be agreed to democratically.
3. Traditional voting systems are more transparent because they generate a paper trail and can be observed at every stage. Paper ballots are not immune to irregularities, but their in-built safeguards are stronger. Electronic voting, by contrast, is more vulnerable to manipulation. The current paper ballot system has a paper trail and is therefore accountable. The Electoral Laws amendment Bill (B22-2020) clause 14 in particular leaves the door open for future mismanagement of the electoral system and manipulation by the party in power to their advantage.
4. The time allowed for comment on this Bill, considered to be of paramount importance, with potentially far-reaching consequences to the entire Nation, has been unreasonably short. From a procedural perspective, as the Constitutional Court stated in *Land Access* case, for instance, 'a truncated timeline' for the adoption of legislation may itself be 'inherently unreasonable'. If the period allowed is too short, as it has been in relation to this Bill, in my rational opinion, then it is not practically possible to afford the public a reasonable opportunity to participate effectively or meaningfully. Any & All provisions in the Bill empowering the IEC to 'prescribe a different voting method' should be deleted, as such an 'unqualified' & autonomous prerogative is disrespectful to the principle of participative democratic governance, and obviates the imperative to enable essential public input.
5. The Bill's proposed changes to:
  - Section 23(3) of the Electoral Commission Act, which currently requires the concurrence of the financial minister for any IEC regulations affecting state expenditure; and
  - Section 50(1) of the Electoral Act of 1998, which currently contains a tried and tested system for reconciling, counting, and recording the paper ballots cast at every voting station.
6. A new bill, with more coherent and constitutional provisions, should then be drafted. This should be accompanied by a SEIAS assessment, the final report of which should be appended to the revised bill when it is released for public comment.
7. The period for public comment should be at least four weeks (21 working days), and updated copies of the three statutes the bill seeks to amend should be made available to enable the public to review/compare the content and significance of the new draft bill & provide considered comment therein.
8. As with all such proposals involving procurement, amendments & revisions to primary statutory legislation, those holding senior posts in offices of Public Service are obliged to ensure transparency, responsibility & accountability with respect to achieving optimal & beneficial outcomes. i.e. No 'short-cuts' or 'quick-fixes'.

### **Concern; Rules determining results at voting stations**

1. Adopting the proposed amendments will open the voting to fraudulent voting which will not be free and fair. Allow only one vote per person per constituency. The proposed bill will abolish control and it will open a free for all elections with possible uncontrolled multiple voting.
2. This leaves the voting system vulnerable to fraud. A long term scenario view should be taken to modify any elements of the current electoral system. Bias & irregularities will become prevalent with this amended innovation. Political parties will benefit but not the citizens these office bearers need to serve.
3. People should be voting for the area where they stay.
4. More details required about the voter at polling Station.



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5. There is a very good reason why voting must be done at a specific voting point. Each area knows how many voters to expect that reside in the area. Proper compiled lists to ensure reliable control is required otherwise voter rigging, corruption, bribery and counting fraud may take place. People will manage to vote multiple times and this thwart a reliable voting system. Our constitutional rights will be infringed upon.

#### **Concern; Cost to the state**

1. The implementation of e-voting will be very costly and with the state's finances depleted, where will the money come from.
2. An Electronic system is necessary for future voting but currently SA is not in a financial sound position to afford a huge roll out of a "secured" system. This will add to the possible fraudulent expenditure and procurement (including vote fraud) as we have experienced during COVID PPE.
3. More room for fraud and corruption. Unnecessary expense to reinvent the wheel. There are many other pressing needs.
4. A lot of the people in SA will not know how to use electronic voting. How will the IEC overcome that?
5. This will cost additional amount of money witch the state could have re invested in job creating or building a SOE witch will generate revenue so we as a country can bring our economy to stability reduce our debt, amending this bill will lead to more expenditure witch could have been avoided and adds no or little value to the livelihood of fellow South Africans.

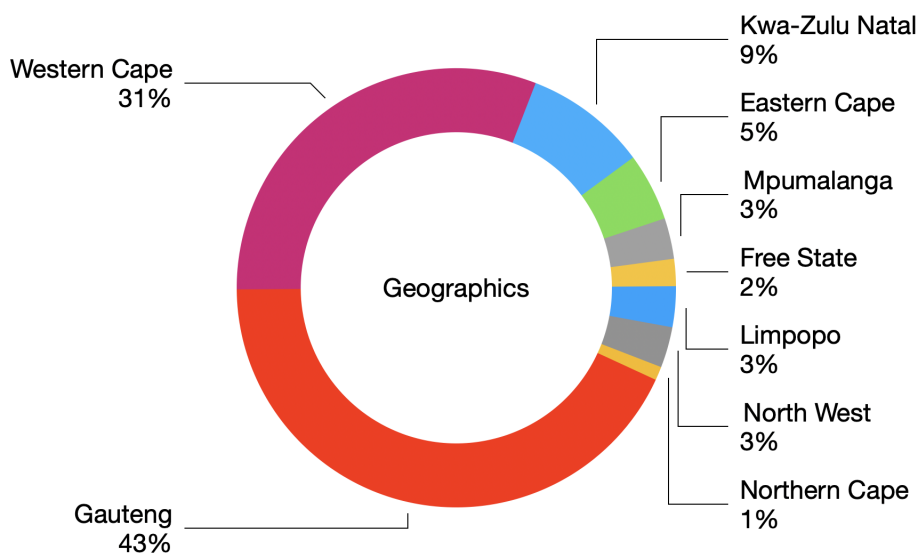
#### **Concern; Other**

1. I do not support allowing people to vote in districts that they are not registered. The results of each district should reflect the views of the people living in that district. Political parties could pick and choose where to bus their supporters, which is not right.
2. The changing of the voting system to electronic is just another step to fraud and unnecessary cost. Regarding the voting by persons without a legal address, it will come down to illegal, non-citizens voting for the party supplying incentives and then trying to introduce electronic voting, persons outside the country will be able to vote. As already known and facts on the table, hackers cab breach the security system.
3. Commission can not be authorised to prescribe different voting procedures. People with no addresses can not be allowed to vote
4. The reason is too open-ended and unspecified. It opens the door for unchecked changes of almost any nature. It opens the door for massive fraud and opportunities for fraud. It is not in line with the intent of the constitution.
5. Recent massive fraud in USA elections proves that changes by committee over time leads to a failed system. Any changes to this complicated legislation and complicated supporting systems needs to be reviewed by committees and lawyers of the individual Political parties first, in detail to determine what the implications might be. This cannot be allowed to give Carte Blanche to a biased smaller group!
6. Sinezindawo eziningi zasemakhaya lapha eMzansi okusenenkinga yengqalasizinda okuzoba inkinga ukusebenzisa ubuchwepheshe besimanjemanje. kanti iningi labantu bakiphithi abampisholo alifundile ngakho lizolahlekelwa ilungelo lokuvota nobumfihlo bevoti labo uma sekuzodinga basizwe futhi lokho okungenza kugcine bekhethelwa umuntu abangafuni ukumvotela ngenxa yokuthi abakwazi ukuzenzela. [We have a lot of rural areas here in South Africa that still have an infrastructure problem that will be a problem using modern technology. and the majority of black people are uneducated and will lose the right to vote and the privacy of their vote if they need to be assisted and may end up being elected by someone they do not want to vote for.]



## Demographics

Comments originated from all provinces with the greatest input arising from Gauteng, followed by Western Cape and KZN. Demographics can be further broken down into comment options (yes, no, not fully) and by top concern per region upon request, or view the Excel spreadsheet attached.



### Thank you

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