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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

GERMANY

**DRAFT ACT AMENDING THE FEDERAL ELECTIONS ACT AND THE
TWENTY-FIFTH ACT AMENDING THE FEDERAL ELECTIONS ACT**

AND

**AMENDMENT TABLED BY THE PARLIAMENTARY GROUPS OF THE
SPD, ALLIANCE 90/THE GREENS AND THE FDP ON THE DRAFT OF
AN ACT AMENDING THE FEDERAL ELECTIONS ACT AND THE
TWENTY-FIFTH ACT AMENDING THE FEDERAL ELECTIONS ACT**

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Bill introduced by the parliamentary groups of the SPD, Alliance 90/The Greens and the FDP

III. Draft of an Act amending the Federal Elections Act and the Twenty-fifth Act amending the Federal Elections Act

A. Problem

The last few Bundestag elections have steadily increased the number of Members of Parliament. While the Bundestag still comprised 631 Members in 2013, the number had already risen to 709 after the 2017 election. Following the election of the 20th Bundestag in 2021, the Bundestag had 736 Members, that is to say 123% of the size for which the law provides, namely 598 Members (first sentence of section 1 of the Federal Elections Act). The Federal Parliament is therefore almost one and a quarter times its normal size as defined by the legislator. The Federal Republic, a medium-sized state, has one of the world's largest parliaments. Even if this trend is not entirely certain to be continued, further growth in future elections seems not only very possible but even probable. It is not unknown for model calculations to produce scenarios with more than 900 Members.

This development creates several problems for the operational capacity and efficiency of Parliament. The rising cost of parliamentary business is not the greatest of these problems. In contrast to other items of public expenditure, that cost is calculable. First of all, however, with the present growth trajectory the statutory number of Members is being drastically exceeded. That is not a random number, but a quantity defined by the electoral lawmakers themselves to reflect an appropriate political representation of the people of the Federal Republic. The Bundestag therefore offers a different level of representation today than the lawmakers themselves regard, in principle, as appropriate. Second, the present number of Members creates functional obstacles, both for Members' presence in the Chamber and for the work of committees, obstacles that cannot easily be overcome in terms of either space or staffing. Because of the need to mirror the departmental structure of the Federal Government, the number of committees cannot be significantly increased. Yet all Members have a constitutional right to participate in the work of the committees, which may thus reach a size that would be incompatible with the aim of thorough discussion of proposals. Third and lastly, in political terms, a Parliament that is too big in this sense, whose membership more and more significantly exceeds the statutory size, runs into acceptance problems among the public, who rightly expect their Parliament to resolve the great issues affecting the future of German democracy. The ability of Parliament to reform itself from within has thus become a wider question of the problem-solving capacity of the political process that goes far beyond the aspect of operational capacity and efficiency.

The roots of the problem lie in the architecture of the current system of proportional representation combined with the election of constituency members (second sentence of section 1(1) of the Federal Elections Act), which was created in a party landscape that differed significantly from today's. Under the present electoral law, the division of the electoral area into constituencies provides for a local, decentralized nomination of

constituency candidates, thereby ensuring a democratic division of powers within party organisations in addition to the federalist division into *Land* lists. The coexistence of the list vote and the constituency vote, however, became problematic as the gap between the percentage of the seats won directly by a party and its share of the second vote based on the party list grew ever wider. In the wake of this development and especially because of the decreasing strength of the large parties, more and more overhang mandates were created, that is to say constituency seats won by a party over and above the number of seats to which that party is entitled on the basis of the second vote.

The accrual of overhang mandates in the existing electoral system, then, does not result from parties' outright success in constituencies but from their relative lack of success. Not only is there a trend for constituency seats to be won by increasingly narrow margins, which means that there are growing majorities of voters who did not support the elected candidate, but the increasingly fragmented distribution of second votes has also been making overhang mandates a more frequent occurrence.

These overhang mandates were able to produce a composition of Parliament that did not reflect the distribution of the second vote and hence the relative strengths of the parties. Overhang mandates thus call into question the “fundamental nature” of the proportional representation system, as the Federal Constitutional Court has ruled on several occasions. According to its adjudication, should overhang mandates occur in a number corresponding to more than roughly half the size of a parliamentary group (15 mandates), compensation would be required by means of balancing mandates (Decisions of the Federal Constitutional Court (BVerfGE) 131, 316, 340, 357, 368 [2012]). For overhang mandates won by a party, extra seats had to be allocated to the other parties in proportion to their relative strengths in order to give a true reflection of the distribution of second votes. It is this requirement that has led to the drastic increase in the size of the Bundestag. In the 2021 Bundestag election, each overhang mandate generated up to 16 balancing mandates, according to the interim report of the Commission for the Reform of Electoral Law and the Modernisation of Parliamentary Work, Bundestag printed paper 20/3250, p. 10). This enlargement necessarily entailed a decrease in the proportion of constituency Members, who hold only 40% of the seats in the present Bundestag. Against this backdrop, the aim of the present Bill is to restrict the number of Members of the Bundestag to 598.

B. Solution

To achieve this reduction in the size of the Bundestag, this Bill builds systematically on the “fundamental nature” of the system of proportional representation recognised by the Federal Constitutional Court under current electoral law (BVerfGE 131, 316, headnote 2, 359ff. [2012]). What will henceforth be designated the “main vote”, with which electors vote for a party list, will become the principal determinant of the election result. Once that vote has determined the number of seats accruing to a party, that number will no longer be increased by means of balancing and overhang mandates. The established division of the electoral area into constituencies will be maintained, but the existing automatic allocation of a seat to the candidate obtaining the largest share of the constituency vote will henceforth be made dependent on the allocation being covered by the share of the main vote accruing to the candidate’s party.

The Bill provides, as hitherto, for each elector to have two votes. With their main vote, voters will choose a party list (*Land* list), and with their constituency vote they will choose a constituency candidate. The proportion of the total number of main votes cast for each party will first be established nationally, and the number of seats accruing to each party will be determined (primary distribution) before these seats are then distributed among the *Land* lists (secondary distribution). The number of seats accruing to a party’s *Land* list will define the maximum number of that party’s successful constituency candidates who can obtain a seat on the strength of the constituency vote.

For the distribution of those seats among the party’s candidates who have obtained the largest share of the constituency vote in their constituency, those candidates will be ranked in order of their percentage share of that vote. The number of seats assigned to those ranked candidates will not exceed the number of seats to which the party in question is entitled on the basis of its share of the main vote in the *Land*. If there are not enough ranked constituency winners to fill the seats to which the party is entitled, the remaining seats will be filled from party list. The constituency candidates who achieve a relative majority in the constituencies will thus provide the priority pool for the allocation of the seats to which a party is entitled on the strength of its share of the main vote. If a constituency candidate achieves a relative majority in his or her constituency but occupies a place in the ranking that is not covered by the number of seats to which his or her party’s *Land* list is entitled (non-coverage by the main vote), the constituency seat will not be allocated. Electoral success in a constituency will therefore be dependent in future on coverage by the main vote as well as on obtaining a relative majority.

In accordance with the rulings of the Federal Constitutional Court, (BVerfGE, 41, 399, 416-7[1976], independent candidates may still stand for election in constituencies. Political parties will still have no monopoly on the nomination of electoral candidates.

C. Alternatives

If we are to preserve the proportional nature of Bundestag elections and the proven system of local nomination of candidates in constituencies while reliably adhering to the statutory parameter of 598

seats and avoiding a reduction in the number of constituencies, which could severely complicate local political work in sparsely populated areas, the only available alternatives are less persuasive than the solution adopted in this Bill (see interim report, Bundestag printed paper 20/3250, pp. 13ff.)

If, in the event of non-coverage by the main vote for the candidate with the largest share of the constituency vote, the constituency seat nevertheless had to be allocated, contrary to the arrangement envisaged in this Bill, the allocation would have to be based on new rules. One possibility would be to derogate from the first-past-the-post criterion and allocate the seat to the second-placed candidate in the constituency vote, provided that he or she was covered by the main vote. In this way a candidate with fewer constituency votes would win the constituency seat against a rival who had obtained a larger share of the constituency vote.

Such a solution seems to fly in the face of even an intuitive sense of fairness and would be difficult to explain.

Another option would be to introduce an additional vote to be cast for another constituency candidate, which would only be counted if the candidate with the largest share of the constituency vote were not allocated a seat because of the principle of coverage by the main vote. Apart from the constitutional objections, this model would entail the introduction of an additional vote which would not be counted in the vast majority of cases. Besides, it would involve the greatest adjustment for voters at the polls. That does not seem like a preferable option either. What these alternatives have in common with the chosen solution is that none of them allows all constituencies to be represented on the sole basis of a candidate having won a relative majority of the constituency vote. This consequence is unavoidable if we want to limit the size of the Bundestag while preserving the proportional representation of political parties.

D. Budgetary expenditure without compliance costs

The only costs that will arise from the amendment of the Federal Elections Act are connected with the need to adapt the software used by the Federal Returning Officer for the computer-assisted establishment of the election result to take account of the new procedure for the distribution of seats. Because the total number of seats in the Bundestag will be reduced to 598, expenditure under the Members of the Bundestag Act (*Abgeordnetengesetz*) on Members' allowances, Members' remuneration and Members' pension entitlements will be significantly lower in future. In addition, any of the cost of implementing Articles 1(2) and 2(2) of the Twenty-fifth Act, of 14 November 2020, amending the Federal Elections Act (Federal Law Gazette (BGBl) I, p. 2395) that has not yet been incurred will no longer arise. This relates to the process of reducing the number of constituencies to 280.

E. Compliance costs

None

F. Other costs

None

Draft of an Act amending the Federal Elections Act and the Twenty-fifth Act amending the Federal Elections Act

The Bundestag has adopted the following Act:

Article 1

Amendment of the Twenty-fifth Act amending the Federal Elections Act

Article 1, point 2, and Article 2(2) of the Twenty-fifth Act, of 14 November 2020, amending the Federal Elections Act (Federal Law Gazette I, p. 2395) shall be repealed.

Article 2

Amendment of the Federal Elections Act

The Federal Elections Act, in the version promulgated on 23 July 1993 (Federal Law Gazette I, pp. 1288, 1594), as last amended by Article 2 of the Act of 3 June 2021 (Federal Law Gazette I p. 1482), shall be amended as follows:

1. The Table of Contents shall be amended as follows:

- (a) The entries on Sections 4 to 6 shall be worded as follows: “Section 4
Principles governing the Distribution of Seats to Parties Section 5
Calculation of the Distribution of Seats
Section 6 Allocation of Seats to Candidates”.

(b) The entry on Section 48 shall be worded as follows:

“Section 48 Appointment of successors”

2. Section 1 shall be worded as follows:

“Section 1

Composition of the German Bundestag and Principles of Franchise

- (1) The German Bundestag shall comprise 598 Members. They shall be elected in a general, direct, free, equal and secret ballot by the Germans eligible to vote.
- (2) The principles of proportional representation shall apply to elections to the German Bundestag. Each voter shall have two votes – a main vote for the election based on Land nominations, whereby the parties admitted to take part in the election nominate their candidates in Land lists, and a constituency vote for the election based on constituency nominees.
- (3) Without prejudice to the provisions of Section 6, for the distribution of the seats accruing to the Land lists priority consideration shall be given to candidates elected in a vote based on constituency nominations in 299 constituencies. In each Land, each party shall receive, for those of its candidates who have obtained the majority of the constituency vote in the constituencies in that Land, the number of seats that is covered by the share of the main vote accruing to that party (coverage by main votes).
- (4) The election in the constituencies shall be open, subject to fulfilment of the requirements arising from this Act, to candidates who are not nominated by a party.”

3. Section 3, subsection (1), first sentence, number 2, second sentence, shall be worded as follows:

“It shall be established in accordance with Section 5.”

4. Sections 4 to 6 shall be worded as follows:

“Section 4

Principles governing the Distribution of Seats to Parties

- (1) The total number of seats (Section 1 subsection 1) shall first be distributed among the parties in respect of the entire electoral area and then among the Land lists of each party. The number of successful constituency candidates within the meaning of Section 6 subsection (2) shall be deducted from the total number of seats.
- (2) The seats shall be distributed among the parties in accordance with Section 5 in proportion to the number of main votes cast for each party's Land lists (primary distribution). In this context, the following shall not be taken into account:
 1. The main votes of those electors who have cast their constituency vote for a candidate who is successful within the meaning of Section 2 subsection 6, and
 2. Parties which have obtained less than five per cent of the valid main votes cast in the electoral area if they have obtained the largest share of the constituency vote in fewer than three constituencies.Number 2 of the second sentence shall not apply to lists submitted by parties representing national minorities.
- (3) For each party the seats accruing to it under subsection (2) shall be distributed among its Land lists in proportion to the number of main votes cast for the Land lists in accordance with Section 5 (secondary distribution).
- (4) If a party which has received more than half of the total number of second votes of all parties to be taken into account does not receive more than half of the seats when these are distributed, further seats shall be allocated to that party until it has received one seat more than half of the seats. In such an event, the total number of seats (Section 1 subsection (1)) shall increase by the difference.

Section 5

Calculation of the Distribution of Seats

- (1) To establish the primary distribution, the number of main votes to be taken into account in the electoral area shall be divided by the allocation divisor to be determined in accordance with subsection (2), and the result of the division shall be rounded up or down in accordance with subsection (3). To establish the secondary distribution, the number of main votes accruing to each of the Land lists of each party shall be divided by the allocation divisor to be determined in accordance with subsection (2), and the result of the division shall be rounded up or down in accordance with subsection (3).
- (2) The allocation divisor shall be determined in such a way that all available seats are distributed. To determine the allocation divisor, the sum of the respective numbers of votes is divided by the number of the available seats. If this allocation divisor causes more seats to be allocated overall than are available, the allocation divisor must be raised so that a redistribution results in the allocation of the number of available seats; if too few seats accrue to the parties, the allocation divisor must be lowered accordingly.
- (3) The division results obtained in the calculation based on subsection (1) shall be rounded up or down, decimal fractions below 0.5 being rounded down to the nearest whole number and decimal fractions above 0.5 being rounded up to the nearest whole number. Decimal fractions equal to 0.5 shall be rounded up or down so as to ensure that the number of seats to be distributed is adhered to; if there are two or more possible allocations of seats, the Federal Returning Officer shall decide by drawing lots.

Section 6

Allocation of Seats to Candidates

- (1) A constituency candidate of a party (Section 20 subsection (2)) shall be elected as a Member of the Bundestag if he or she obtains the majority of the constituency vote and the seat is covered by the main votes accruing to his or her party in accordance with the fourth sentence of this subsection. In each Land, a party's candidates who have obtained the majority of the constituency vote in the constituencies shall be ranked in descending order of their share of the constituency vote. The share of the constituency vote shall be determined by dividing the candidate's number of constituency votes by the total number of valid constituency votes cast in that constituency. The number of seats established under Section 4 subsection 3 for a party's Land list shall be allocated to constituency candidates in the order in which they are ranked in accordance with the second sentence of this subsection (procedure applying the principle of coverage by main votes).
- (2) A candidate who is nominated under Section 20 subsection (3) shall be elected as the Member for a constituency if he or she obtains the majority of the vote.
- (3) In the event of equal numbers of votes and equal shares of the constituency vote, lots shall be drawn to decide the outcome. Between candidates in a constituency (subsection (1), first sentence, and subsection (2)), the lots shall be drawn by the Constituency Returning Officer; between candidates in the main-vote coverage procedure under subsection (1), fourth sentence, they shall be drawn by the Land Returning Officer.
- (4) A list candidate shall be elected if, in the distribution of the seats accruing to the Land list (Section 4 subsection 3) which remain after the main-vote coverage procedure, he or she receives a seat; these seats shall be allocated in the order in which candidates' names are entered in the Land list. Candidates who have been elected under subsection (1), first sentence, shall be disregarded in the Land list. If more seats accrue to a Land list than there are candidates nominated in it, those seats shall remain vacant."

5. Section 18 subsection (1) shall be worded as follows:

"(1) Nominations of candidates may be submitted in accordance with Section 20 by parties and by persons eligible to vote."

6. After Section 20 subsection (2), first sentence, the following sentence shall be inserted: "They may be approved only if a Land list is approved for the party in the relevant Land."

7. In Section 25 subsection (2), second sentence, number 2, the words "Section 20 subsection (2), first and second sentences" shall be replaced by the words "Section 20 subsection (2), first and third sentences".

8. Section 26 shall be amended as follows:

(a) After subsection (1), second sentence, the following sentence shall be inserted:

"The approval of a constituency nomination of a party shall be granted on condition that the party's Land list is approved under Section 28."

(b) The wording of subsection (3) shall be preceded by the following sentence:

"Fulfilment of the condition set out in subsection (1), third sentence, shall be established by the Constituency Returning Officer."

9. Section 30 shall be amended as follows:

(a) Subsection (2) shall be worded as follows:

"(2) The ballot paper shall contain:

1. for Land list elections, the names of the parties and any shortened form of their names they may use as well as the surnames and forenames of the first five candidates from the approved Land lists.
2. for constituency elections, the names of the candidates from the approved constituency nominations; in the case of constituency nominations by parties, also the names of these parties as well as any shortened form of their names they may use; in respect of other constituency nominations, also the distinctive identifying word;

(b) In subsection (3), first sentence, the words "second votes" shall be replaced by the words "main votes".

10. Section 34 subsection (2), first sentence, shall be amended as follows:

- (a) In number 1, the words "first vote" shall be replaced by the words "main vote", and the words "which candidate" shall be replaced by the words "which Land list".
- (b) In number 2, the words "second vote" shall be replaced by the words "constituency vote", and the words "which Land list" shall be replaced by the words "which candidate".

11. In Section 39 subsection (1), second sentence, the words "first vote" shall be replaced by the words "constituency vote".

12. Section 41 shall be amended as follows:

- (a) In the first sentence, the words "and which candidate has been elected the member for the constituency" shall be deleted.
- (b) The second sentence shall be deleted.

13. Section 42 shall be amended as follows:

(a) After subsection (1), the following sentence shall be inserted:

"The Federal Electoral Committee shall establish how many seats have been won by the individual Land lists."

(b) Subsection (2) shall be amended as follows:

(aa) The first sentence be worded as follows:

"The Land Electoral Committee shall establish provisionally which candidates have been elected."

(bb) In the second sentence, after the words "Federal Electoral Committee", the words "in accordance with subsection (3), first sentence" shall be inserted.

(c) The following subsection (3) shall be added:

"(3) The Federal Electoral Committee shall establish the election result and shall establish conclusively which candidates have been elected. The Federal Returning Officer shall notify them."

14. In Section 44 subsection 4, second sentence, the words "Section 41, second sentence, and Section 42 subsection (2), second sentence" shall be replaced by the words "Section 42 subsection (2), second sentence, and subsection 3, second sentence".

15. Section 45 shall be amended as follows:

- (a) In subsection (1), first sentence, the words "Section 42 subsection (2), first sentence" shall be replaced by the words "Section 42 subsection (3), first sentence".
- (b) Subsection (2) shall be repealed.
- (c) Subsection (3) shall become subsection (2) and shall be amended as follows:

(aa) In the first sentence, the words “succession from the list” shall be replaced by the word “succession”.

(bb) In the second sentence, the words “successor from the list” shall be replaced by the word “successor”.

(cc) In the third sentence, the words “successor from the list” shall be replaced by the word “successor”.

16. Section 46 shall be amended as follows:

(a) In subsection (2), the words “subsection (6), seventh sentence” shall be replaced by the words “Section (4), second sentence”.

(b) In subsection (4), first sentence, the words “successors on the list” shall be replaced by the word “successors”.

17. Section 48 shall be amended as follows:

(a) The heading shall be worded as follows:

“Section 48 Appointment of successors”

(b) Subsection (1) shall be amended as follows:

(aa) The first sentence be worded as follows:

“If a candidate elected in accordance with Section 6 subsection (1) or (4) dies or informs the Land Returning Officer in writing that he refuses to accept membership or if a member elected in accordance with Section 6 subsection (1) or (4) dies or later withdraws from the German Bundestag for any other reason, the seat shall be filled by the successor candidate determined in accordance with the principles set out in Section 6 subsections (1), (3) and (4) from the party for which the elected candidate or former member stood at the election.”

(bb) The second sentence shall be deleted.

(cc) After the new second sentence, the following sentence shall be inserted:

“The same shall apply, *mutatis mutandis*, to candidates who stood as constituency nominees of that party.

(dd) In the sixth sentence, the words “which candidate from the list” shall be replaced by the words “which candidate”, and in the seventh sentence, the words “successor from the list” shall be replaced by the word “successor”.

(c) Subsection (2) shall be worded as follows:

“(2) If the withdrawing member has been elected under Section 6 subsection (2), the seat shall remain vacant.”

18. In Section 49b subsection (1), first sentence, the words “first votes” shall be replaced by the words “constituency votes”.

19. In Section 52 subsection (1), second sentence, number 17, the comma shall be replaced by the word “and”, the words “and replacement elections” shall be deleted, and the words “successors from the lists of candidates” shall be replaced by the word “successors”.

Article 3 Entry into force

(1) Without prejudice to paragraph (2) below, this Act shall enter into force on the day after its promulgation.

(2) Article 2, point 9(b), shall enter into force on 1 January 2026.

Explanatory Memorandum

A. General part

I. Aim and necessity of the provisions

The number of Members of the Bundestag has been steadily increasing because of the growing number of overhang mandates and the balancing mandates they necessitate. The Bill will now bring about a return to the normal size of the Bundestag for which the law provides (first sentence of section 1(1) of the Federal Elections Act). In the absence of the need for overhang and balancing mandates, unforeseeable future growth in the number of Bundestag seats can be ruled out. At the same time, the Bill systematically realises the “fundamental nature” of proportional representation by forging a link between voting based on proportional representation and voting for constituency candidates by means of the principle of coverage by main votes. To this end, the established division of the electoral area into 299 constituencies is to be maintained, which means that the previous provision for a reduction to 280 constituencies will be revoked (see Article 1, point 2, and Article 2(2) of the Twenty-fifth Act, of 14 November 2020, amending the Federal Elections Act (Federal Law Gazette I, p. 2395)).

II. Main substance of the Bill

1. Alignment of the constituencies with the principles of proportional representation

The basic legal principles on which this Bill is based are expressed in condensed and comprehensible form in section 1 of the Bill, which limits the number of Members to 598. These seats are to be distributed in accordance with the principles of proportional representation with due regard to the principles of electoral law laid down in the first sentence of section 38(1) of the Basic Law. To achieve this purpose, voters are to have a main vote, with which they vote for a party list, and a constituency vote for a constituency candidate. The number of seats accruing to each *Land* list will be calculated on the basis of the main votes that have been cast. These seats will be distributed on a priority basis to successful constituency candidates, that is to say in so far as such distribution is compatible with the principles of proportional representation. Success in a constituency must be covered by the result of the main vote. Candidature in a constituency will also be open to persons without party affiliation. In this way the Bill makes the transition to reciprocally contingent votes for party lists and constituency candidates with the aim of ensuring that proportional representation takes precedence. This will optimise the uniformity of the seats-to-votes ratio as well as equality of opportunity between parties. It will guarantee the normal size of the Bundestag, be more effective than hitherto in ensuring proportionality within the federal system and restore the balance between constituency and list Members in the Bundestag

(a) Reciprocal link between proportional representation and constituency voting through the principle of coverage by main votes

The principle of coverage by main votes will lend new legitimacy to constituency representation, and hence to the principle of local nomination of candidates which is so characteristic of the German party system. The root of the present legitimacy problem lies in the fact that a candidate needs only a relative majority to win a constituency seat (section 5 of the Federal Elections Act) Such candidates who have been rejected by a majority, sometimes an overwhelming majority, in their constituencies have nevertheless been sure of a parliamentary seat. This problem has been exacerbated by the fact that, because most electors cast their first and second votes for a candidate and his or her party, it has not been possible for parties to do strategic deals with particular candidates in order to capture more first votes. The limited legitimacy of a constituency victory achieved, in some cases, with far fewer than 30% of the first votes has been a problem, not only in itself but also because there has been no systematic link between the constituency results and the results of the vote based on proportional representation.

The new principle of coverage by main votes that is introduced in this Bill establishes that normative link between proportional representation and the constituencies and so guarantees that the allocation of seats remains within the limits of a primary and a secondary distribution process. The constituency

election will thus preserve its political importance in ensuring locally rooted democracy close to the people, representation of local interests and local nomination of candidates. It will no longer be able, however, to skew the party-political balance. This makes compensatory balancing mandates obsolete. The linkage of the constituency ballot with the proportional representation ballot is also reflected in the fact that parties' constituency nominations can only be submitted if a *Land* list for that party has also been approved in the relevant *Land*.

The principle of coverage by main votes may mean that not all constituencies will be represented by a Member of Parliament if the candidate who obtains the greatest number of constituency votes is not allocated a seat for want of coverage by main votes and no other candidate in that constituency wins a list seat. It remains probable, however, that constituencies will still be represented, which is essentially desirable, even if a seat is not allocated for the constituency, because typically two or more Members come from a constituency, even if they have not been elected as the constituency Member.

(b) Relative increase in the importance of constituency Members

The importance of constituency Members will increase as a result of this innovation. Although in some circumstances not all constituencies will be represented by a directly elected Member, constituency Members will gain in relative importance. In the 20th Bundestag, for example, there are 437 list seats and 299 constituency seats, which amount to a ratio of 60:40. The creation of overhang mandates and the introduction of balancing mandates that then became a constitutional necessity have driven down the percentage of constituency candidates. If, however, the rules set out in the present Bill were applied to the result of the Bundestag election of 2021, the resulting total of 598 Members would comprise 334 from party lists and 264 from constituencies. That corresponds to a ratio of 56:44 and would therefore increase the percentage of constituency seats, bringing it closer to the desired parity (Decisions of the Federal Constitutional Court (BVerfGE) 131, 316, 365-6 [2012])

(c) Integration of independent constituency candidates

In accordance with the adjudication of the Federal Constitutional Court (BVerfGE 41, 399, 416-7 [1976]) the Bill will also give candidates who are not party nominees the opportunity to stand for election in constituencies. This means that elections in constituencies will remain open, as they are now, to individuals who are not affiliated to a political party. The ground-roots democratic element inherent in the nomination of candidates by a group of electors will thus be preserved and this form of political commitment remain possible under electoral law. Although in the history of the Federal Republic, independent constituency candidates have never won a seat in practice, the very possibility of independents standing as candidates has an inclusive effect and keeps an option for grass-roots democratic action open in an electoral system with a strongly party-political orientation.

The principle of coverage by main votes cannot be applied to independents. There is no link with a *Land* list, a link on which the principle of coverage by main votes and its implementation depends. A notional connection of the election of independent candidates to the list vote by means of criteria derived from the latter is not practicable either. On account of the constitutionally required deduction, in the primary distribution process, of the main votes cast by those electors who voted for a successful independent candidate, such criteria would inevitably lead to an unworkable recursive calculation process. For this reason, independent candidates are a necessary exception to the principle of coverage by main votes and would be allocated seats on the sole criterion of obtaining a majority of constituency votes.

(d) Greater federal proportionality and a more uniform seats-to-votes ratio

The Bill also provides for greater proportionality within the federal system than the law as it currently stands. Because of the abolition of overhang and balancing mandates, the distribution of Members by *Land*, regardless of party affiliation, will more accurately reflect the regional distribution of votes.

As for the key calculation variable for the step from the primary to the secondary distribution, the reform proposal returns to the use of the number of votes cast as the exclusive criterion for the distribution of seats among the federal states. In contrast to previous provisions, however, the Bill no longer distorts the proportional balance between federal states by means of overhang mandates or the deduction of seats from other *Land* lists to compensate for overhang mandates. This will ensure

a more uniform seats-to-votes ratio for all main votes than under the existing electoral law. At the same time the Bill enables us to return to the old number of 299 constituencies, reversing the amendment adopted in 2020. Especially in sparsely populated areas, an increase in the size of constituencies would pose great practical problems for Members of Parliament, thereby impeding their local political work.

One of the elements of the Bill is therefore the revocation of the Twenty-fifth Act, of 14 November 2020, amending the Federal Elections Act (BGBl. I, p, 2395).

2. Constitutional requirements

(a) General

In the first place, the provisions must respect the elementary constitutional and political determinants of the system of government prescribed by the Basic Law. In conditions in which the democratic political will is formed to a significant extent through the agency of political parties (Article 21(1) of the Basic Law), this means that the process of determining the composition of Parliament must consistently reflect of the party-political preferences which voters express in the votes they cast in general, direct, free, equal and secret elections (first sentence of Article 38(1) of the Basic Law). The means through which majorities and governments are formed must be seen as flowing directly from the political preferences of the electorate. It therefore follows that elections to the Bundestag are based on proportional representation in line with a tradition of parliamentary democracy that goes back to 1919.

The core purpose of restricting the number of Bundestag Members to 598 can be achieved while fulfilling these and other specific requirements.

(b) In particular: principles of electoral law

Particular importance attaches to the need to adhere to the electoral principles laid down in the first sentence of Article 38(1) of the Basic Law. Equality of the franchise is at the heart of the constitutional debate. It is recognised that the measure of equality is governed by the choice of electoral system. The decision for a pure system of proportional representation means not only enshrining the numerical principle of one person, one vote, but also applying the criterion of a uniform seats-to-votes ratio, which implies that "an equal contribution to success" attaches to every vote (BVerfGE 131, 316, 338 [2012]). The application of this

criterion is ensured in every respect by the procedure envisaged by this Bill for distribution among *Land* lists that will mirror the shares of the main vote.

Constitutional law, by contrast, does not provide any equality criterion of its own for the allocation of constituency seats. In the present Bill, the election of constituency candidates serves only to provide a shortlist of candidates for election to the Bundestag on the basis of their share of the main vote. The Bill thus provides a constitutionally permissible transition to a strictly applied system of proportional representation; although its federalist dimension is preserved through the *Land* lists and the local nomination of candidates maintains its local component, its political principle of proportional formation of a majority is modified only by the 5% cut-off clause and by the eventuality of independent candidates being elected.

The Bill is shown to be systematically dedicated to the principles of proportional representation in that coverage by main votes serves as the essential prerequisite for the attainment of a parliamentary seat for all candidates, without exception, who are nominated by political parties. Accordingly, the only equality criteria against which the Bill must be measured are proportionality of representation, the one person, one vote principle and uniformity of the seats-to-vote ratio.

(c) Maximum certainty of constituency representation in the proportional representation system

The above assessment is not altered by the fact that, under this Bill, individual candidates may not obtain a parliamentary seat in spite of having secured a relative majority in the constituency vote. In its established jurisprudence, the Federal Constitutional Court has emphasised that the legislature is free, in principle, to choose an electoral system and that this freedom includes the option to introduce a system of pure proportional representation (BVerfGE 131, 316, 334-5 [2012]). This also means that

there is no institutional guarantee for the representation of all constituencies without exception by means of a first-past-the-post voting system. On the contrary, the legislature is also free, in the framework of a different voting system to assign different weight to the constituency vote as long as the precept of systemic fairness is upheld. If one were to advance the counterargument that equality of the franchise implies a right to a seat for every constituency, it would be impossible to reduce the size of the Bundestag in conditions of proportional representation without abolishing constituency seats.

The Bill rigorously implements the system of proportional representation by introducing coverage by main votes as a necessity for candidates seeking a constituency seat. In this linkage of constituency results with coverage by main votes lies the application of uniformity of the seats-to-votes ratio as an equality criterion. At the same time, the Bill rewards success in a constituency by means of the result-based ranking of constituency winners, thereby lending substantial weight in practice to the decentralised political process of constituency nomination. The ranking also makes it practically impossible that a candidate obtaining an absolute majority would not secure the constituency seat. The greater the winning margin in the constituency vote, the more likely is the allocation of a parliamentary seat. This sensitive and quintessentially pragmatic approach to the idea of constituency representation remains fully consistent with the logic of proportional representation. For this reason, an additional equality criterion that would guarantee a seat to candidates with the largest share of the constituency vote must not be applied; it would not only be inappropriate but would also bulldoze the adopted decision. The cast-iron guarantee of a parliamentary seat for the first candidate past the post would inevitably conflict with the criterion of a uniform seats-to-votes ratio by distorting the result of the list vote. The same applies to constituency electorates who have no automatic right, in the proportional representation system, to a Member of Parliament elected in their constituency.

Accordingly, the present Bill continues the division into constituencies every bit as extensively as the principle of equality permits. It will thus result in a larger percentage of constituency Members in the Bundestag than hitherto. It does not, however, make this link with the constituency tradition into a systematic element of electoral law with the accompanying impact on equality. The constituency vote will remain a shortlisting process, and coverage by main votes will be the decisive equality criterion.

(d) Other requirements

In other respects, too, the Bill meets the constitutional requirements. It is based on strict neutrality and equality of opportunity between the parties, ensures proportionality between *Länder* nationally, maintains the current constituency size, reflects the importance of constituency Members in relation to list Members in the Bundestag and is open to equal rights for independent candidates to stand for election in constituencies.

III. Alternatives

In its interim report, the Reform Commission appointed under section 55 of the Federal Elections Act, as amended by the Twenty-fifth Act, of 14 November 2020, amending the Federal Elections Act, dealt in detail, in accordance with its statutory remit, with alternative regulatory models designed to reduce the size of the Bundestag. For the Commission's deliberations and the alternatives adopted by a majority of its members, see Bundestag printed paper 20/3250, pp. 8-27 (in German).

IV. Legislative competence

The competence of the Federation to legislate is derived from Article 38(3) of the Basic Law.

V. Budgetary expenditure without compliance costs

The only costs that will arise from the amendment of the Federal Elections Act are connected with the need to adapt the software used by the Federal Returning Officer for the computer-assisted establishment of the election result to take account of the new procedure for the distribution of seats. Because the total number of seats in the Bundestag will be reduced to 598, expenditure under the Members of the Bundestag Act (*Abgeordnetengesetz*) on Members' allowances, Members' remuneration and Members' pension entitlements will be significantly lower in future. In addition, any

of the cost of implementing Articles 1(2) and 2(2) of the Twenty-fifth Act, of 14 November 2020, amending the Federal Elections Act (Federal Law Gazette (BGBl) I, p. 2395) that has not yet been incurred will no longer arise. This relates to the process of reducing the number of constituencies to 280.

B. Special part

C. Article 1

The number of 299 constituencies is to be retained. For this reason, Article 1, point 2, of the Twenty-fifth Act, of 14 November 2020, amending the Federal Elections Act (Federal Law Gazette I, p. 2395), which provided for a reduction in the number of constituencies to 280, and the provision for entry into force on 1 January 2024 in Article 2(2) of the said amending Act are to be repealed.

Article 2

Point 1 (Table of contents)

Adaptation of the table of contents to take account of the amendments that would result from this Bill.

Point 2 (section 1)

The reworded provision of the Bill expresses the transition made to the systematic implementation of proportional representation. It spells out that the allocation of shares of parliamentary seats is to be determined on the sole basis of the relative strengths of the parties and the distribution by *Land* lists and that the election of constituency Members will henceforth be contingent on the number of seats accruing to *Land* lists. The section contains the legal definition of the concept of coverage by main votes. The provisions also introduce new designations for each of the two votes. This renaming is necessary to make clear to voters the systemic priority of the proportional representation vote over the establishment of the constituency winner.

Under the principles of the electoral system that are laid down in section 1, 598 Members really will become the normal complement of the Bundestag in practice. This is expressed in the first sentence of section 1(1) through the omission of the explicit derogation option contained in the previous provision. Although divergences from the complement of 598 Members remain possible, with provision for a lower number being made in the third sentence of section 6(4) and for a higher number in section 4(4), these constellations are scarcely relevant in practice and are not numerically significant. In such cases, more specific provisions of the Act take precedence over the general principle; there is no need for an explicit derogation option in the first sentence of section 1(1) to make this clear.

Point 3 (section 3)

Consequential amendment to point 5.

Point 4 (sections 4 to 6)

Section 4

This provision deals with the conduct of the PR ballot, specifically the distribution of the seats among the parties (primary distribution) and among the *Land* lists of each party (secondary distribution). The initial calculation of minimum numbers of seats on the basis of the *Länder* population figures will cease to apply. The only key to the calculation of the distribution of seats will be the valid votes cast in the *Länder*. The norm, moreover, sets out the other principles of seat distribution, namely the 5% cut-off clause with the *Grundmandatsklausel* – the clause defining the minimum number of constituency seats required for party representation in Parliament – and the *Mehrheitssicherungsklausel* – the clause requiring the allocation of additional seats to reflect a majority of votes.

The distribution rules in section 4 now follow the process of seat distribution much more closely than the old rules, which were quite abstruse.

Section 5

Section 5 regulates how the distribution of seats is calculated in practice in accordance with the principles set out in section 4. The distribution principles for the PR ballot and the calculation method to be applied, the Sainte-Laguë method, are now regulated separately in sections 4 and 5 respectively. This makes it considerably easier to understand how the election works.

Section 6

Section 6 determines who is elected to Parliament by regulating how the seats distributed among the party *Land* lists under section 4 are allocated to candidates. In accordance with the principle that a party's candidates who came first in the constituency vote take priority in the allocation of list places (first sentence of section 1(3), section 6 begins by regulating the allocation to those candidates in the procedure that translates the principle of coverage by main votes into practice (subsection 1). Subsection 4 stipulates which list candidates are elected to Parliament and regulates the procedure for allocating to a *Land* list the seats that remain vacant after the procedure applying the principle of coverage by main votes.

Section 6 also lays down the special requirements for the election of candidates who have not been nominated by a party (subsection 2).

Points 5 to 7 (sections 18, 20 and 25)

The adaptation of these provisions is a consequence of the reciprocal contingency of the list ballot and the constituency ballot and a prerequisite for the procedure applying the principle of coverage by main votes. Under the adapted rules, only parties for which a *Land* list has been approved in the relevant federal state may nominate constituency candidates there.

This arrangement takes account of the principle of coverage by main votes. It would be illogical to allow parties without approved *Land* lists to nominate constituency candidates.

Point 8 (section 26)

Since the approval of parties' constituency nominations depends on the approval of their *Land* list, the Constituency Electoral Committee may only confirm constituency nominations on condition that the *Land* Electoral Committee, meeting at the same time, approves the corresponding *Land* list. Before publicly announcing the approved constituency nominations, the Constituency Returning Officer must confirm the fulfilment of this condition by means of a declaration.

Points 9 to 11 (sections 30, 34 and 39)

Consequential amendment resulting from the renaming of the first and second votes. The key role of the main vote will also be reflected in the design of the ballot paper, where the main vote will come first.

Points 12 to 13 (sections 41 and 42)

In accordance with the new procedure for the distribution and allocation of seats, sections 41 and 42 reassign responsibility for establishing the numbers of votes and the elected candidates. Because of the introduction of the principle of coverage by main votes, the Constituency Electoral Committee can no longer establish the elected candidate in the constituency. This can only be done at the *Land* level.

Points 14 to 15 (sections 44 and 45)

Consequential amendments to points 12, 13 and 17.

Point 16 (section 46)

Consequential amendment to points 4 and 17.

Point 17 (section 48)

Section 48(1) extends the principle of precedence of constituency over list candidates to the appointment of successors. The provisions of section 6 on the allocation of seats to candidates are

also applied to the arrangements for the appointment of successors. Under those provisions, the main claim lies with the party's constituency candidate in the relevant *Land* who came first in the constituency ballot and obtained the next-highest share of the constituency vote but has not yet been allocated a seat for want of coverage by main votes.

Section 48(2) stipulates that, if an independent candidate (section 6(2)) subsequently withdraws from Parliament, his or her seat is to remain vacant. A by-election by first vote only, which has hitherto been the norm in this situation, is not possible under the system of coverage by main votes, since it would impact on the distribution of seats established on the basis of the main vote.

Point 18 (section 49b)

Consequential amendment resulting from the renaming of the first and second votes.

Point 19 (section 52)

Consequential amendment to point 17.

Article 3 (Entry into force)

This provision regulates the entry into force of the Act. Article 2, point 9(b), cannot enter into force until after the election of the 21st Bundestag because, under the first sentence of section 30(3) of the Federal Elections Act, the sequence of parties' *Land* lists is determined by the numbers of second votes obtained at the last election. Accordingly, the sequence of the parties' *Land* lists cannot be based on main votes until the next-but-one election to the Bundestag.

Synoptic summary

Current version	New version
<i>Section 1 Composition of the German Bundestag and Principles of Franchise</i>	Section 1 Composition of the German Bundestag and Principles of Franchise
<i>(1) The German Bundestag shall, subject to variations resulting from this Act, consist of 598 members. They shall be elected in a general, direct, free, equal and secret ballot by the Germans eligible to vote, in accordance with the principles of proportional representation combined with uninominal voting.</i>	(1) The German Bundestag shall comprise 598 Members. They shall be elected in a general, direct, free, equal and secret ballot by the Germans eligible to vote.
<i>(2) Of the members, 299 shall be elected from nominations in the constituencies and the rest from Land nominations (Land lists).</i>	(2) The principles of proportional representation shall apply to elections to the German Bundestag. Each voter shall have two votes – a main vote for the election based on Land nominations, whereby the parties admitted to take part in the election nominate their candidates in Land lists, and a constituency vote for the election based on constituency nominees.
	(3) Without prejudice to the provisions of Section 6, for the distribution of the seats accruing to the Land lists priority consideration shall be given to candidates elected in a vote based on constituency nominations in 299 constituencies. In each Land, each party shall receive, for those of its candidates who have obtained the majority of the constituency vote in the constituencies in that Land, the number of seats that is covered by the share of the main vote accruing to that party (coverage by main votes).

	(4) The election in the constituencies shall be open, subject to fulfilment of the requirements arising from this Act, to candidates who are not nominated by a party.”
Section 3 Constituency Commission and Delimitation of Constituencies	Section 3 Constituency Commission and Delimitation of Constituencies
(1) When dividing the electoral area into constituencies, the following principles shall be observed:	(1) When dividing the electoral area into constituencies, the following principles shall be observed:
[...]	[...]
2. The number of constituencies in the individual Länder shall correspond to the population proportion as far as possible. <i>It shall be calculated in accordance with the procedure used to determine the distribution of seats among the Land lists in keeping with Section 6 subsection (2), second to seventh sentences.</i>	2. The number of constituencies in the individual Länder shall correspond to the population proportion as far as possible. It shall be established in accordance with Section 5.
[...]	[...]
Section 4 Votes	Section 4 Principles governing the Distribution of Seats to Parties
<i>Each voter shall have two votes, a first vote for electing a member of parliament for the constituency and a second vote for electing a Land list.</i>	(1) The total number of seats (Section 1 subsection 1) shall first be distributed among the parties in respect of the entire electoral area and then among the Land lists of each party. The number of successful constituency candidates within the meaning of Section 6 subsection (2) shall be deducted from the total number of seats.
	(2) The seats shall be distributed among the parties in accordance with Section 5 in proportion to the number of main votes cast for each party’s Land lists (primary distribution). In this context, the following shall not be taken into account: <ol style="list-style-type: none"> 1. the main votes of those electors who have cast their constituency vote for a candidate who is successful within the meaning of Section 2 subsection 6, and 2. Parties which have obtained less than five per cent of the valid main votes cast in the electoral area if they have obtained the largest share of the constituency vote in fewer than three constituencies. Number 2 of the second sentence shall not apply to lists submitted by parties representing national minorities.
	(3) For each party the seats accruing to it under subsection (2) shall be distributed among its Land lists in proportion to the number of main votes cast for the Land lists in accordance with Section 5 (secondary distribution).

	<p>(4) If a party which has received more than half of the total number of second votes of all parties to be taken into account does not receive more than half of the seats when the seats are distributed in accordance with subsections (2) to (6), further seats shall be allocated to that party until it has received one seat more than half of the seats. In such an event, the total number of seats (Section 1 subsection (1)) shall increase by the difference.</p>
<p><i>Section 5 Election in the Constituencies</i></p>	<p>Section 5 Calculation of the Distribution of Seats</p>
<p><i>Each constituency shall elect one member. The candidate obtaining the majority of the votes cast shall be considered elected. In the event of a tie, the election shall be decided by the Constituency Returning Officer by drawing lots.</i></p>	<p>(1) To establish the primary distribution, the number of main votes to be taken into account in the electoral area shall be divided by the allocation divisor to be determined in accordance with subsection (2), and the result of the division shall be rounded up or down in accordance with subsection (3) To establish the secondary distribution, the number of main votes accruing to each of the Land lists of each party shall be divided by the allocation divisor to be determined in accordance with subsection (2), and the result of the division shall be rounded up or down in accordance with subsection (3)</p>
	<p>(2) The allocation divisor shall be determined in such a way that all available seats are distributed. To determine the allocation divisor, the sum of the respective numbers of votes is divided by the number of the available seats. If this allocation divisor causes more seats to be allocated overall than are available, the allocation divisor</p>
	<p>must be raised so that a redistribution results in the allocation of the number of available seats; if too few seats accrue to the parties, the allocation divisor must be lowered accordingly.</p>
	<p>(3) The division results obtained in the calculation based on subsection (1) shall be rounded up or down, decimal fractions below 0.5 being rounded down to the nearest whole number and decimal fractions above 0.5 being rounded up to the nearest whole number. Decimal fractions equal to 0.5 shall be rounded up or down so as to ensure that the number of seats to be distributed is adhered to; in the event that there are several possible allocations of seats, the Federal Returning Officer shall decide by drawing lots.</p>
<p><i>Section 6 Election by Land List</i></p>	<p>Section 6 Allocation of Seats to Candidates</p>

<p>(1) For the distribution of seats to be occupied on the basis of Land lists, the second votes cast for each Land list shall be added together. The second votes of such voters shall be disregarded as cast their first votes for a successful constituency candidate nominated in accordance with Section 20 subsection (3) or by a party disregarded in the distribution of seats pursuant to subsection (3) or not permitted to submit a Land list in the Land in question. The number of successful constituency candidates specified in the second sentence shall be deducted from the total number of members of parliament (Section 1 subsection (1)).</p>	<p>(1) A constituency candidate of a party (Section 20 subsection (2)) shall be elected as a member of parliament if he or she obtains the majority of the constituency vote and the seat is covered by the main votes accruing to his or her party in accordance with the fourth sentence of this subsection. In each Land, a party's candidates who have obtained the majority of the constituency vote in the constituencies shall be ranked in descending order of their share of the constituency vote. The share of the constituency vote shall be determined by dividing the candidate's number of constituency votes by the total number of valid constituency votes cast in that constituency. The number of seats established under Section 4 subsection 3 for a party's Land list shall be allocated to constituency candidates in the order in which they are ranked in accordance with thesecond sentence of this subsection (procedure applying the principle of coverage by main votes).</p>
<p>(2) For an initial distribution, first the total number of seats (Section 1 subsection (1)) shall be allocated to the Länder on the basis of their respective population proportion (Section 3 subsection (1)) in accordance with the calculation procedure described in the second to seventh sentences, then the number of seats remaining in each Land pursuant to subsection (1), third sentence, shall be allocated to the Land lists on the basis of the second votes to be taken into consideration. The number of seats received by each Land list shall be determined by dividing the total of second votes cast for thatlist by a divisor used for the allocation of seats. Decimal fractions under 0.5 shall be rounded down to the nearest whole number, decimal fractions above 0.5 shall be rounded up to the nearest whole number. Decimal fractions equal</p>	
<p>to 0.5 shall be rounded up or down so as to ensure that the number of seats to be distributed is adhered to; in case there are several possible allocations of seats, the Federal Returning Officer shall decide by drawing lots. The divisor for the allocation of seats shall be determined in such a way that the number of seats falling to the Land lists is equal to the number of seats to be distributed. To this end, the total number of second votes of all Land lists to be taken into account is first divided by the number of seats remaining pursuant to subsection (1), third sentence. If more seats fall to the Land lists thanthere are seats to be distributed, the divisor shallbe increased so that the calculation yields the number of seats to be allocated; if too few seats fall to the Land lists, the divisor shall be lowered accordingly.</p>	

<p><i>(3) In the distribution of seats among Land lists, only parties that have obtained at least five per cent of the valid second votes cast in the electoral area or have won a seat in at least three constituencies shall be taken into consideration. The first sentence shall not apply to the lists submitted by parties representing national minorities.</i></p>	<p>(3) In the event of equal numbers of votes and equal shares of the constituency vote, lots shall be drawn to decide the outcome. Between candidates in a constituency (subsection (1), first sentence, and subsection (2)), the lots shall be drawn by the Constituency Returning Officer; between candidates in the main-vote coverage procedure under subsection (1), fourth sentence, they shall be drawn by the Land Returning Officer.</p>
<p><i>(4) The number of seats won by a party in the constituencies of a Land (Section 5) shall be deducted from the number of seats thus established for each Land list. A party shall retain seats it has gained in the constituencies even if their number exceeds the number established in accordance with subsections (2) and (3).</i></p>	<p>(4) A list candidate shall be elected if, in the distribution of the seats accruing to the Land list (Section 4 subsection 3) which remain after the procedure applying the principle of coverage by main votes, he or she receives a seat; these seats shall be allocated in the order in which candidates' names are entered in the Land list. Candidates who have been elected under subsection (1), first sentence, shall be disregarded in the Land list. If more seats fall to a Land list than there are candidates nominated in it, those seats shall remain vacant.</p>
<p><i>(5) The number of seats remaining pursuant to subsection (1), third sentence, shall increase until each party, for the second distribution of seats as per subsection (6), first sentence, has received at least the total number of seats falling to their Land lists pursuant to the second and third sentence. To this end, the higher value shall be allocated to each Land list, be it the number of seats obtained as per Section 5 by the party's candidates in the constituencies of the Land, or the average, rounded up to whole seats, of these and the number of seats allocated to the party's Land list by the initial distribution pursuant to subsections (2) and (3). Each party shall receive at least the number of seats allocated to its Land lists by the initial distribution pursuant to subsections (2) and (3). Up to three seats won in the constituencies which cannot be deducted from the number of</i></p>	<p>(5) repealed</p>
<p><i>seats established for each Land list as per Section 4, first sentence, shall be disregarded when the number of seats is increased. The total number of seats (Section 1 subsection (1)) shall increase by the difference.</i></p>	

<p>(6) <i>The seats to be allocated in keeping with subsection (5) shall in any event and throughout the Federal Republic of Germany be distributed on the basis of the number of second votes to be considered by the calculation procedure described in subsection (2), second to seventh sentences, among the parties to be taken into consideration pursuant to subsection (3). For each party, the seats shall be distributed among the Land lists in accordance with the calculation procedure described in subsection (2), second to seventh sentences on the basis of the number of second votes to be considered; each Land list shall be allocated at least the number of seats determined pursuant to Section 5, second sentence. The number of seats won by each party in the constituencies of a Land (Section 5) shall be deducted from the number of seats established for the respective Land list. A party shall keep the seats won in the constituencies also where they exceed the number determined pursuant to the first sentence. In this event, the total number of seats (Section 1 subsection (1)) shall increase by the difference; there shall be no recalculation in accordance with the first sentence. The remaining seats shall be occupied by candidates from the Land list in the order laid down in it. Candidates who have been elected in a constituency shall be disregarded in the Land list. If more seats fall to a Land list than there are candidates nominated in it, these seats shall remain vacant.</i></p>	<p>(6) repealed</p>
<p>(7) <i>If a party which has received more than half of the total number of second votes of all parties to be taken into account does not receive more than half of the seats when the seats are distributed in accordance with subsections (2) to (6), further seats shall be allocated to that party until it has received one seat more than half of the seats. The seats shall be distributed within the party pursuant to subsection (6), second to sixth sentences. In such an event, the total number of seats (Section 1 subsection (1)) shall increase by the difference.</i></p>	<p>(7) repealed</p>
<p>Section 18 Right to Nominate Candidates, Notification of Participation</p>	<p>Section 18 Right to Nominate Candidates, Notification of Participation</p>
<p>(1) <i>Nominations of candidates may be submitted by parties and, in accordance with Section 20, by persons eligible to vote.</i></p>	<p>(1) Nominations of candidates may be submitted in accordance with Section 20 by parties and by persons eligible to vote.</p>
<p>[...]</p>	<p>[...]</p>
<p>Section 20 Content and Form of Constituency Nominations</p>	<p>Section 20 Content and Form of Constituency Nominations</p>
<p>[...]</p>	<p>[...]</p>
<p>(2) <i>Constituency nominations of parties must bear the personal and handwritten signatures of the members of the executive committee of the</i></p>	<p>(2) Constituency nominations of parties must bear the personal and handwritten signatures of the members of the executive committee of the</p>

<p>Land branch of the party or, where such Land branches do not exist, the personal and handwritten signatures of the members of the executive committee of the next lower regional branches in whose area the constituency lies. Constituency nominations of the parties specified in Section 18 subsection (2) above must in addition bear the personal and handwritten signatures of at least 200 persons eligible to vote in the constituency; they must be eligible to vote at the time they sign the nomination and proof of this must be furnished when the nomination is submitted. The requirement to present 200 signatures shall not apply to constituency nominations of parties representing national minorities.</p>	<p>Land branch of the party or, where such Land branches do not exist, the personal and handwritten signatures of the members of the executive committee of the next lower regional branches in whose area the constituency lies. They may be approved only if a Land list is approved for the party in the relevant Land. Constituency nominations of the parties specified in Section 18 subsection (2) above must in addition bear the personal and handwritten signatures of at least 200 persons eligible to vote in the constituency; they must be eligible to vote at the time they sign the nomination and proof of this must be furnished when the nomination is submitted. The requirement to present 200 signatures shall not apply to constituency nominations of parties representing national minorities.</p>
<p>[...]</p>	<p>[...]</p>
<p>Section 25 Rectification of Faults</p>	<p>Section 25 Rectification of Faults</p>
<p>[...]</p>	<p>[...]</p>
<p>(2) After expiration of the submission period for nominations, faults may only be rectified in nominations which are otherwise valid. A nomination shall not be deemed valid if</p>	<p>(2) After expiration of the submission period for nominations, faults may only be rectified in nominations which are otherwise valid. A nomination shall not be deemed valid if</p>
<p>[...]</p>	<p>[...]</p>
<p>2. the valid signatures required pursuant to Section 20 subsection (2), first and second sentences, and subsection (3), together with proof that the signatories are eligible to vote, are missing, unless such proof cannot be furnished on time due to circumstances beyond the control of the person eligible to make the nomination,</p>	<p>2. the valid signatures required pursuant to Section 20 subsection (2), first and second sentences, and subsection (3), together with proof that the signatories are eligible to vote, are missing, unless such proof cannot be furnished on time due to circumstances beyond the control of the person eligible to make the nomination,</p>
<p>[...]</p>	<p>[...]</p>
<p>Section 26 Approval of the Constituency Nominations</p>	<p>Section 26 Approval of the Constituency Nominations</p>
<p>(1) The Constituency Electoral Committee shall decide on the approval of constituency nominations on the fifty-eighth day before the election. It shall reject constituency nominations if they</p> <ol style="list-style-type: none"> 1. are submitted too late, or 2. do not meet the requirements set forth in this Act and in the Federal Electoral Regulations, unless something different is specified in these provisions. <p>The decision must be announced at the meeting of the Constituency Electoral Committee.</p>	<p>(1) The Constituency Electoral Committee shall decide on the approval of constituency nominations on the fifty-eighth day before the election. It shall reject constituency nominations if they</p> <ol style="list-style-type: none"> 1. are submitted too late, or 2. do not meet the requirements set forth in this Act and in the Federal Electoral Regulations, unless something different is specified in these provisions. <p>The approval of a constituency nomination of a party shall be granted on condition that the party's Land list is approved under Section 28. The decision must be announced at the meeting of the Constituency Electoral Committee.</p>
<p>[...]</p>	<p>[...]</p>
<p>(3) The Constituency Returning Officer shall make the approved constituency nominations public not later than the forty-eighth day before the election.</p>	<p>Fulfilment of the condition set out in subsection (1), third sentence, shall be established by the Constituency Returning Officer. (2) The Constituency Returning Officer shall make the approved constituency nominations public not later than the forty-eighth day before the election.</p>
<p>[...]</p>	<p>[...]</p>
<p>Section 30 Ballot Papers</p>	<p>Section 30 Ballot Papers</p>

[...]	[...]
<p>(2) The ballot paper shall contain:</p> <ol style="list-style-type: none"> 1. for constituency elections, the names of the candidates from the approved constituency nominations; in the case of constituency nominations by parties, also the names of these parties as well as any shortened form of their names they may use; in respect of other constituency nominations, also the distinctive identifying word; 2. for Land list elections, the names of the parties and any shortened form of their names they may use as well as the family and Christian names of the first five candidates from the approved Land lists. 	<p>(2) The ballot paper shall contain:</p> <ol style="list-style-type: none"> 1. for Land list elections, the names of the parties and any shortened form of their names they may use as well as the surnames and forenames of the first five candidates from the approved Land lists. 2. for constituency elections, the names of the candidates from the approved constituency nominations; in the case of constituency nominations by parties, also the names of these parties as well as any shortened form of their names they may use; in respect of other constituency nominations, also the distinctive identifying word;
<p>(3) The order of the Land lists of parties shall be determined by the number of second votes which each obtained at the last Bundestag election in the Land concerned. The remainder of the Land lists shall follow the names of the parties in alphabetical order. The order of the constituency nominations shall be the same as the order of the corresponding Land lists. Other constituency nominations shall follow the names of the parties or the code names in alphabetical order.</p>	<p>(3) The order of the Land lists of parties shall be determined by the number of second votes which each obtained at the last Bundestag election in the Land concerned. The remainder of the Land lists shall follow the names of the parties in alphabetical order. The order of the constituency nominations shall be the same as the order of the corresponding Land lists. Other constituency nominations shall follow the names of the parties or the code names in alphabetical order.</p> <p>[Under Article 3(2), applicable with effect from 1 January 2026]</p>
Section 34 Voting by Means of Ballot Papers	Section 34 Voting by Means of Ballot Papers
[...]	[...]
<p>(2) The voter shall</p> <ol style="list-style-type: none"> 1. cast his or her first vote by marking the ballot paper with a cross or other sign so as to clearly indicate which candidate the vote is intended for, and 2. cast his or her second vote by marking the ballot paper with a cross or other sign so as to clearly indicate which Land list the vote is intended for. <p>The voter shall then fold the ballot paper in such a way that it is not possible to see how he or she has voted and place it in the ballot box.</p>	<p>(2) The voter shall</p> <ol style="list-style-type: none"> 1. cast his or her main vote by marking the ballot paper with a cross or other sign so as to clearly indicate which Land list the vote is intended for. 2. cast his or her constituency vote by marking the ballot paper with a cross or other sign so as to clearly indicate which candidate the vote is intended for, and <p>The voter shall then fold the ballot paper in such a way that it is not possible to see how he or she has voted and place it in the ballot box.</p>
Section 39 Invalid Votes, Rejection of Postal Ballot Letters, Rules for Establishing Invalidity	Section 39 Invalid Votes, Rejection of Postal Ballot Letters, Rules for Establishing Invalidity
<p>(1) Votes shall be invalid if the ballot paper</p> <ol style="list-style-type: none"> 1. has not been manufactured by the government or is valid for another constituency, 2. shows no marking, 3. is valid for another constituency, 4. does not reveal the voter's intent beyond doubt, 5. contains any addendum or reservation. <p>In the cases specified in numbers 1 and 2, both votes shall be invalid; in the case specified in number 3, only the first vote shall be invalid if the ballot paper is valid for another constituency of the same Land. Under the postal ballot procedure, both votes shall also be invalid if the ballot paper has not been deposited in an official</p>	<p>(1) Votes shall be invalid if the ballot paper</p> <ol style="list-style-type: none"> 1. has not been manufactured by the government or is valid for another constituency, 2. shows no marking, 3. is valid for another constituency, 4. does not reveal the voter's intent beyond doubt, 5. contains any addendum or reservation. <p>In the cases specified in numbers 1 and 2, both votes shall be invalid; in the case specified in number 3, only the first vote shall be invalid if the ballot paper is valid for another constituency of the same Land. Under the postal ballot procedure, both votes shall also be invalid if the ballot paper has not been deposited in an official</p>

ballot paper envelope or a ballot paper envelope that evidently deviates from the others in a manner that jeopardises the confidentiality of the vote or contains a clearly tangible object, but has not been rejected under subsection (4), numbers 7 or 8. Where only one vote has been cast on the ballot paper, the other vote shall be considered invalid.	ballot paper envelope or a ballot paper envelope that evidently deviates from the others in a manner that jeopardises the confidentiality of the vote or contains a clearly tangible object, but has not been rejected under subsection (4), numbers 7 or 8. Where only one vote has been cast on the ballot paper, the other vote shall be considered invalid.
[...]	[...]
Section 41 Establishment of the Election Result in the Constituency	Section 41 Establishment of the Election Result in the Constituency
The Constituency Electoral Committee shall establish how many votes have been cast in the constituency for the individual constituency nominations and Land lists and which candidate has been elected the member for the constituency. <i>The Constituency Returning Officer shall notify the elected candidate and advise him or her that after the final establishment of the election result for the electoral territory by the Federal Electoral Committee (Section 42 subsection (2), first sentence), he or she shall attain membership of the German Bundestag with the opening of the first meeting following elections and that a refusal of membership must be declared to the Land Returning Officer.</i>	The Constituency Electoral Committee shall establish how many votes have been cast in the constituency for the individual constituency nominations and Land lists and which candidate has been elected the member for the constituency. The Constituency Returning Officer shall notify the elected candidate and advise him or her that after the final establishment of the election result for the electoral territory by the Federal Electoral Committee (Section 42 subsection (2), first sentence), he or she shall attain membership of the German Bundestag with the opening of the first meeting following elections and that a refusal of membership must be declared to the Land Returning Officer.
Section 42 Establishment of the Election Result for the Land Lists	Section 42 Establishment of the Election Result for the Land Lists
(1) The Land Electoral Committee shall establish how many votes have been cast in the Land for the individual Land lists.	(1) The Land Electoral Committee shall establish how many votes have been cast in the Land for the individual Land lists. The Federal Electoral Committee shall establish how many seats have been won by the individual Land lists.
(2) <i>The Federal Electoral Committee shall establish how many seats have been won by the individual Land lists and which candidates have been elected.</i> The Land Returning Officer shall notify the candidates elected and advise them that after the final establishment of the election result for the electoral territory by the Federal Electoral Committee, they shall attain membership of the German Bundestag with the opening of the first meeting following elections and that a refusal of membership must be declared to the Land Returning Officer.	(2) The Land Electoral Committee shall establish provisionally which candidates have been elected. The Land Returning Officer shall notify the candidates elected and advise them that after the final establishment of the election result for the electoral territory by the Federal Electoral Committee in accordance with subsection (3), first sentence , they shall attain membership of the German Bundestag with the opening of the first meeting following elections and that a refusal of membership must be declared to the Land Returning Officer.
(3) <i>repealed</i>	(3) The Federal Electoral Committee shall establish the election result and shall establish conclusively which candidates have been elected. The Federal Returning Officer shall notify them.
Section 44 Repeat Election	Section 44 Repeat Election
[...]	[...]
(4) The election result shall be newly established on the basis of the repeat election. The Returning Officers in charge pursuant to <i>Section 41, second sentence, and Section 42 subsection (2), second sentence</i> , shall notify the elected candidates and invite them to state in writing within a week whether they accept the election.	(4) The election result shall be newly established on the basis of the repeat election. The Returning Officers in charge pursuant to Section 42 subsection (2), second sentence, and subsection (3), second sentence , shall notify the elected candidates and invite them to state in writing within a week whether they accept the election.

Section 45 Attainment of Membership of the German Bundestag	Section 45 Attainment of Membership of the German Bundestag
(1) An elected candidate shall attain membership of the German Bundestag after the final establishment of the election result for the electoral territory by the Federal Electoral Committee (<i>Section 42 subsection (2), first sentence</i>) with the opening of the first meeting of the German Bundestag following elections. A refusal of membership must be declared in written form to the Land Returning Office before the first meeting. An acceptance with reservations shall be considered a refusal. Statements of acceptance and refusal shall be irrevocable.	(1) An elected candidate shall attain membership of the German Bundestag after the final establishment of the election result for the electoral territory by the Federal Electoral Committee (Section 42 subsection (3), first sentence) with the opening of the first meeting of the German Bundestag following elections. A refusal of membership must be declared in written form to the Land Returning Office before the first meeting. An acceptance with reservations shall be considered a refusal. Statements of acceptance and refusal shall be irrevocable.
(2) In the case of a replacement election (Section 48 subsection (2)), subsection (1) shall apply accordingly provided that an elected candidate attains membership of the German Bundestag once the final result of the replacement election has been established.	(2) repealed
(3) In the case of <i>succession from the list</i> (Section 48 subsection (1)) or a repeat election (Section 44), membership of the German Bundestag shall be attained once the Returning Officer in charge has received the letter of acceptance subsequent to notification within the prescribed period and form but not before the member elected as a result of the original election has vacated his or her seat. If an elected candidate refuses membership of the German Bundestag and the letter of acceptance of the <i>successor from the list</i> has been received before the opening of the first German Bundestag meeting after elections, the <i>successor from the list</i> shall obtain his or her seat once that meeting is opened. If the <i>successor from the list</i> or the candidate elected in a repeat election fails to make a statement or fails to make it in due form before the expiration of the legally prescribed period, the succession or election shall be considered accepted at the time of expiration. Subsection (1), third and fourth sentences, shall apply accordingly.	(3) In the case of succession (Section 48 subsection (1)) or a repeat election (Section 44), membership of the German Bundestag shall be attained once the Returning Officer in charge has received the letter of acceptance subsequent to notification within the prescribed period and form but not before the member elected as a result of the original election has vacated his or her seat. If an elected candidate refuses membership of the German Bundestag and the letter of acceptance of the successor has been received before the opening of the first German Bundestag meeting after elections, the successor shall obtain his or her seat once that meeting is opened. If the successor or the candidate elected in a repeat election fails to make a statement or fails to make it in due form before the expiration of the legally prescribed period, the succession or election shall be considered accepted at the time of expiration. Subsection (1), third and fourth sentences, shall apply accordingly.
Section 46 Loss of Membership of the German Bundestag	Section 46 Loss of Membership of the German Bundestag
[...]	[...]
(2) A member whose election in the constituency is invalid shall nevertheless retain his or her membership of the German Bundestag if he or she was at the same time elected on a Land list but was disregarded pursuant to Section 6 <i>subsection (6), seventh sentence</i> .	(2) A member whose election in the constituency is invalid shall nevertheless retain his or her membership of the German Bundestag if he or she was at the same time elected on a Land list but was disregarded pursuant to Section 6 subsection (4), second sentence .
[...]	[...]
(4) If a party or party branch is declared unconstitutional by the Federal Constitutional Court in accordance with Article 21 paragraph (2), second sentence, of the Basic Law, the members shall lose their membership of the German Bundestag, and their successors on the list shall lose their candidacy if they have been	(4) If a party or party branch is declared unconstitutional by the Federal Constitutional Court in accordance with Article 21 paragraph (2), second sentence, of the Basic Law, the members shall lose their membership of the German Bundestag, and their successors shall lose their candidacy if they have been members

<p>members of that party or party branch during the period between the filing of the application (Section 43 of the Federal Constitutional Court Act) and the pronouncement of the decision (Section 46 of the Federal Constitutional Court Act). If members who have lost their membership in accordance with the first sentence above have been elected in constituencies, the election of a constituency member shall be repeated in such constituencies, with Section 44 subsections (2) to (4) applicable as appropriate; in these cases, the members who have lost their membership in accordance with the first sentence above shall not be allowed to stand as a candidate. If members who have lost their membership in accordance with the first sentence above have been elected on the basis of a Land list of the party or party branch declared unconstitutional, their seats shall remain vacant. Otherwise, Section 48 subsection (1) shall apply.</p>	<p>of that party or party branch during the period between the filing of the application (Section 43 of the Federal Constitutional Court Act) and the pronouncement of the decision (Section 46 of the Federal Constitutional Court Act). If members who have lost their membership in accordance with the first sentence above have been elected in constituencies, the election of a constituency member shall be repeated in such constituencies, with Section 44 subsections (2) to (4) applicable as appropriate; in these cases, the members who have lost their membership in accordance with the first sentence above shall not be allowed to stand as a candidate. If members who have lost their membership in accordance with the first sentence above have been elected on the basis of a Land list of the party or party branch declared unconstitutional, their seats shall remain vacant. Otherwise, Section 48 subsection (1) shall apply.</p>
<p>Section 48 Appointment of Successors from the Lists and Replacement Elections</p>	<p>Section 48 Appointment of Successors and Replacement Elections</p>
<p><i>(1) If an elected candidate dies or informs the Land Returning Officer in writing that he refuses to accept membership or if a member dies or later withdraws from the German Bundestag for any other reason, the vacant seat shall be filled by a candidate from the Land list of that party for which the elected candidate or former member stood at the election. This shall not apply as long as the party has any seats as per Section 6 subsection (6), fourth sentence, in the respective Land. When a successor is to be selected, any candidates on the list who have resigned from the party after the Land list was drawn up or have become members of another party shall not be taken into consideration. Candidates on the list who as elected constituency candidates have refused membership or have resigned as members of the German Bundestag shall also be disregarded. If the list is exhausted, the seat shall remain vacant. The decision as to which candidate from the list is to succeed to the seat shall be taken by the Land Returning Officer. He shall notify the successor from the list and invite him or her to state in writing within a week whether he or she accepts election.</i></p>	<p>(1) If a candidate elected in accordance with Section 6 subsection (1) or (4) dies or informs the Land Returning Officer in writing that he refuses to accept membership or if a member elected in accordance with Section 6 subsection (1) or (4) dies or later withdraws from the German Bundestag for any other reason, the seat shall be filled by the successor candidate determined in accordance with the principles set out in Section 6 subsections (1), (3) and (4) from the party for which the elected candidate or former member stood in the election. This shall not apply as long as the party has any seats as per Section 6 subsection (6), fourth sentence, in the respective Land. When a successor is to be selected, any candidates on the list who have resigned from the party after the Land list was drawn up or have become members of another party shall not be taken into consideration. The same shall apply, <i>mutatis mutandis</i>, to candidates who stood as constituency nominees of that party. Candidates on the list who as elected constituency candidates have refused membership or have resigned as members of the German Bundestag shall also be disregarded. If the list is exhausted, the seat shall remain vacant. The decision as to which candidate is to succeed to the seat shall be taken by the Land Returning Officer. He shall notify the successor and invite him or her to state in writing within a week whether he or she accepts election.</p>
<p><i>(2) If the withdrawing member has been elected as the constituency member for a political grouping standing for election or a party which has not been allowed to submit a Land list in the</i></p>	<p>(2) If the withdrawing member has been elected under Section 6 subsection (2), the seat shall remain vacant.</p>

<i>Land, a replacement election shall be held in the constituency. The replacement election must take place not later than sixty days after the seat has become vacant. There shall be no replacement election if it is certain that a new German Bundestag will be elected within six months. The replacement election shall be conducted in accordance with the general regulations. The election date shall be set by the Land Returning Officer. Section 41 shall apply as appropriate.</i>	
Section 49b State Funds for Other Constituency Nominations	Section 49b State Funds for Other Constituency Nominations
(1) Candidates of a constituency nomination which has been submitted by persons eligible to vote pursuant to Sections 18 and 20 who have obtained at least ten per cent of the valid <i>first votes</i> cast in a constituency shall receive, per valid vote, four times the amount quoted in Section 18 subsection (3), first sentence, number 1 of the Political Parties Act as increased until election day in accordance with Section 18 subsection (3), third sentence, of the Political Parties Act. The funds are to be provided for in the federal budget.	(1) Candidates of a constituency nomination which has been submitted by persons eligible to vote pursuant to Sections 18 and 20 who have obtained at least ten per cent of the constituency votes cast in a constituency shall receive, per valid vote, four times the amount quoted in Section 18 subsection (3), first sentence, number 1 of the Political Parties Act as increased until election day in accordance with Section 18 subsection (3), third sentence, of the Political Parties Act. The funds are to be provided for in the federal budget.
[...]	[...]
Section 52 Federal Electoral Regulations	Section 52 Federal Electoral Regulations
(1) The Federal Ministry of the Interior, Building and Community shall enact the Federal Electoral Regulations necessary for the implementation of this Act. It shall in particular include therein statutory provisions regarding	(1) The Federal Ministry of the Interior, Building and Community shall enact the Federal Electoral Regulations necessary for the implementation of this Act. It shall in particular include therein statutory provisions regarding
[...]	[...]
17. the conduct of by-elections, repeat elections <i>and replacement elections</i> as well as the appointment of successors <i>from the lists of candidates</i> .	17. the conduct of by-elections and repeat elections as well as the appointment of successors .
[...]	[...]

**German Bundestag
20th electoral term**

II. Amendment tabled by the parliamentary groups of the SPD, Alliance 90/The Greens and the FDP on the draft of an Act amending the Federal Elections Act and the Twenty-fifth Act amending the Federal Elections Act

Bundestag printed paper 20/5370

The Bundestag is requested

to adopt the Bill in printed paper 20/5370 with the following provisos but otherwise in unamended form:

1. Article 2 shall be amended as follows:

(a) Point 2 shall be amended as follows:

(aa) In paragraph (1), the figure “598” shall be replaced by the figure “630”.

(bb) The second sentence of paragraph (2) shall be worded as follows:

“Every voter shall have two votes – a first vote for the election based on constituency nominees and a second vote for the election based on Land nominations, whereby the parties admitted to take part in the election nominate their candidates in Land lists”.

(cc) The second sentence of paragraph (3) shall be worded as follows:

“In each Land, each party shall receive, for those of its candidates who have obtained the largest share of the first votes in the constituencies in that Land, the number of seats that is covered by the share of the second votes accruing to that party (coverage by second votes).”

(b) Point 3 shall be amended as follows:

“3. The first sentence of section 3(1) shall be amended as follows:

(a) The second sentence of point 2 shall be worded as follows:

“It shall be established in accordance with Section 5.”

(b) In point 3, the figure “15” shall be replaced by the figure “10” and the figure “25” by the figure “15”.

(c) Point 4 shall be amended as follows:

(aa) Section 4 shall be amended as follows:

(aaa) Subsection (2) shall be amended as follows:

1. In the first sentence, the words “main votes” shall be replaced by the word “second votes”.

2. In point 1 of the second sentence, the words “main votes” shall be replaced by the words “second votes”, and the words “constituency vote” shall be replaced by the words “first vote”.

3. In point 2 of the second sentence, the words “main votes” shall be replaced by the words “second votes”, and the words “if they have obtained the largest share of the constituency vote in fewer than three constituencies” shall be deleted.

(bbb) In subsection (3), the words “main votes” shall be replaced by the word “second votes”.

(ccc) In the first sentence of subsection (4), the words “main votes” shall be replaced by the words “second votes”.

(bb) In section 5(1), the words “main votes” shall be replaced in each instance by the words “second votes”.

(aa) Section 6 shall be amended as follows:

(aaa) Subsection (1) shall be amended as follows:

“(1) A constituency candidate of a party (Section 20 subsection (2)) shall be elected as a Member of the Bundestag if he or she obtains the largest share of the first votes and is entitled to a seat under the procedure applying the principle of coverage by second votes (fourth sentence of this subsection). In each Land, a party’s candidates who have obtained the largest share of the first votes in the constituencies shall be ranked in descending order of their share of the first votes. The share of the first votes shall be determined by dividing the candidate’s number of first votes by the total number of valid first votes cast in that constituency. The number of seats established under Section 4 subsection 3 for a party’s Land list shall be allocated to constituency candidates in the order in which they are ranked in accordance with the second sentence of this subsection (procedure applying the principle of coverage by main votes).”

(bbb) In subsection (2), the words “largest share of the vote” shall be replaced by the words “largest number of first votes”.

(ccc) In subsection (3), the words “shares of the constituency vote” shall be replaced by the words “shares of the first votes”, the words “main-vote coverage procedure” by “second-vote coverage procedure” and the words “Land Returning Officer” replaced by the words “Federal Returning Officer”.

(bbb) In subsection (4), the words “main-vote coverage procedure” shall be replaced by the words “second-vote coverage procedure”.

(d) After point 8, the following point 9 shall be inserted:

“9. In section 27(4), after the first sentence the following sentence shall be inserted:

“Only persons who have not been nominated as candidates under Section 20 Subsection (3) may be nominated as candidates on a Land list.”

(e) The present points 9 to 11 shall be deleted.

(f) The present points 12 to 17 shall be renumbered 10 to 15.

(g) The present point 18 shall be deleted.

(h) The present point 19 shall be renumbered 16.

2. Article 3(2) shall be worded as follows:

“(2) Article 2, point 3(b), shall enter into force on 1 January 2026.”

Explanatory memorandum:

Point 1(a)(aa)

Changing the statutory complement of Members of the Bundestag from 598 to 630 while retaining 299 as the number of constituencies is intended to increase the likelihood that constituency candidates who receive the largest share of the first votes will win a seat.

Point 1(a)(bb)

Here and in the rest of the Bill, the traditional designations “first vote” and “second vote” are reinstated. These designations have stood the test of time.

In addition, the concept of *Mehrheit* (“majority”) in the context of the constituency election is amended in the original German text here and in the rest of the Bill; in the English version, this was rendered as “largest share of the vote”. The amendment serves the purpose of clarification, as the use of the term “majority” is ambiguous. The amendment (“largest number of votes”) makes it clear that a relative majority of the first votes is meant.

Point 1(b)

In order to reduce the adverse effects of differing constituency sizes, the deviation margins from the standard constituency size are to be adjusted in line with the recommendations of the Venice Commission. In its Code of Good Practice in Electoral Matters, the Venice Commission recommends that the permissible departure from the norm should not be more than 10% and should certainly not exceed 15% (Communication from the European Commission No 190/2002 (CDL-AD (2002) 23, Part I, point 2.2(iv))

Point 1(c)(aa)(aaa)(3)

At the hearing of experts on the Bill, it became clear that the continuing applicability of the *Grundmandatsklausel* – the clause defining the minimum number of constituency seats required for party representation in Parliament – would conflict more seriously with the system of coverage by second votes than it does with the existing system. The fact is that the primary purpose of the election in constituencies will be to enable parties to obtain the seats they merit on the basis of their performance in the second vote and not, as hitherto, to elect individuals. Making an exception for parties which obtain fewer than 5% of the second votes cast but capture the largest number of first votes in three constituencies, with the result that the party in question enters Parliament on the strength of its second votes, is difficult to justify constitutionally in a system based on coverage by second votes. For this reason, the *Grundmandatsklausel* should be removed from the Bill.

Point 1(c)(cc)(ccc)

To avoid additional cost and effort in the establishment of the election result, the existing rule whereby the lots are drawn by the Federal Returning Officer is to remain in place.

Point 1(d)

Since giving the parties a monopoly over the nomination of candidates would be at odds with the principles of general, direct, free, equal and secret elections, according to the established jurisprudence of the Federal Constitutional Court (Federal Constitutional Court Decisions (BVerfGE) 41, 399, 417), it must be possible for independent candidates to stand for election

in a constituency. The Bill therefore continues to provide for that possibility. Section 6(2), however, does not require coverage by second votes for independent candidates to win a seat, whereas section 6(1) requires such coverage for constituency candidates nominated by a party who obtain the largest number of first votes in their constituency. This differentiation results from the fact that independent constituency candidates are not, of course, nominated by a political party whose share of the second vote could provide such coverage. This places independent constituency candidates at an advantage over constituency candidates who are nominated by a party, because the former automatically obtain a seat if they receive the largest number of first votes in their constituency. This unequal treatment is a justifiable corollary of the system, because an independent candidate cannot be covered by the second votes cast for a party list.

It is also justified by the need to ensure equality of opportunity for independent candidates, for they cannot avail themselves of the same structural, political and financial resources as party nominees. They cannot, for example, use a party's regional or supraregional organisational structure, dovetail their campaign with the supraregional campaign of a party or benefit from events or media reporting relating to a party's regionally or nationally prominent candidates or policy issues. Financially too, under section 49b(1) of the Act they cannot count on state funding unless they obtain more than 10% of the first votes cast in their constituency; although the rate of funding is higher for independent candidates, they cannot rely on additional party funds; their scope for funding their campaign through donations, for example, is limited compared with that of party candidates, whose campaigns can be funded from tax-privileged donations to their party. In addition, independent candidates are less likely in practice to appeal to voters, because party preferences play a significant role, even when it comes to electing a constituency candidate, and party affiliations are indicated on the ballot paper.

To ensure that candidates who are standing for election on a party list do not stand at the same time as independent candidates – and in that capacity without any formal connection with the party – so as to enjoy the advantage of not requiring coverage by second votes, the option for independent constituency candidates to stand for election from a party list is ruled out. This ensures that independent candidates who genuinely put themselves forward without the support of a party can be nominated as constituency candidates. At the same time, however, the advantages resulting from independent candidature cannot be combined with the benefits of party nomination, and this ensures that no one will secure an overprivileged position.

Point 1(e) to (h)

Consequential amendments

Point 2

The amendment of the deviation margins for constituency sizes will not take effect until the next electoral term, since there is insufficient time for it to be implemented by the Constituencies Commission within the present electoral term.