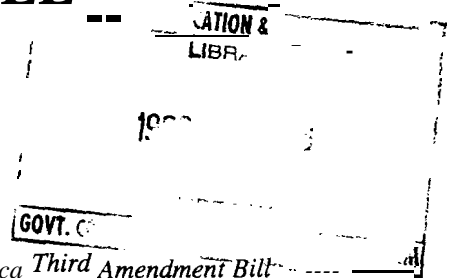


REPUBLIC OF SOUTH AFRICA

---

# CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL



---

*(Introduced as Constitution of the Republic of South Africa Third Amendment Bill  
[B 123—98], and amended by the Portfolio Committee on Constitutional Affairs  
(National Assembly))*

---

(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

[B 123B—98]

ISBN 0621290203

No. of copies printed . 2 600

[ Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

**To amend the Constitution of the Republic of South Africa, 1996, so as to enable a proclamation calling and setting dates for an election of a provincial legislature to be issued either before or after the expiry of the term of that legislature; and to provide for the allocation of undistributed delegates in a provincial delegation to the National Council of Provinces in a case where competing surpluses are equal; and to provide for matters connected therewith.**

### **Amendment of section 108 of Act 108 of 1996**

“(2) If a provincial legislature is dissolved in terms of section 109, or when its term expires, the Premier of the province, by proclamation, must **call** and set dates for an election, which must be held within 90 **days** of the date **the** legislature was dissolved or its term expired. A proclamation **calling** and setting “dates for an election may be **issued** before or after the **expiry** of **the** term of a provincial legislature.”. 10

“3. If the competing surpluses envisaged in item 2 are equal, the undistributed delegates in the delegation must be allocated to the party or parties with the same surplus in sequence of votes recorded, starting with the party which recorded the highest number of votes during the last election for the provincial legislature concerned.”.

3. This is the Constitution of the Republic of South Africa Amendment Act, 1999.

## **MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA THIRD AMENDMENT BILL**

1.1 It would appear from the wording of section 108(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (hereinafter referred to as “the Constitution”), that a proclamation by a Premier calling and setting dates for an election cannot be formally published before the relevant legislature’s term has actually expired. In view of the fact that it serves no purpose to delay the publication of such a proclamation until the term of the legislature has expired, the Chairperson of the Electoral Commission has requested the Minister for Provincial Affairs and Constitutional Development to consider an amendment to the Constitution that will allow such a proclamation to be published before the term of a particular provincial legislature has expired. Such an arrangement will also avoid necessary pre-electoral procedures being unreasonably telescoped during the 90 day period referred to in section 108(2) of the Constitution.

1.2 Clause 1 of the Bill provides for the Premier of a province to call and set dates for an election of the provincial legislature, and allows the proclamation calling and setting those dates to be issued either before or after the expiry of the term of that provincial legislature.

2.1 The formula for determining party participation in provincial delegations to the National Council of Provinces is set out in Part B of Schedule 3 to the Constitution. If the calculation in terms of item 1 of that Part yields a surplus not absorbed by the delegates allocated to a particular party, such a surplus must compete with similar surpluses accruing to other parties, and any undistributed delegates in the delegation must be allocated to the party or parties in the sequence of the highest surplus. However, it is possible for competing surpluses to be equal, and no provision is made in Part B of Schedule 3 to the Constitution for the eventuality of more than one party with the same surplus competing for the same undistributed delegate. It is deemed expedient to provide for such an eventuality.

2.2 Clause 2 of the Bill provides for the allocation of undistributed delegates in the provincial delegation where competing surpluses are equal, with reference to the sequence determined by the number of votes recorded for the party or parties in question during the last election of the provincial legislature concerned.

### **3. BODIES/ORGANISATIONS CONSULTED**

The Electoral Commission

The Office of the President

The Department of Agriculture

The Department of Water Affairs and Forestry

The Bill was submitted to the provincial legislatures for their views, and published for public comment, as required by section 74(5) of the Constitution.

### **4. PARLIAMENTARY PROCEDURE**

In view of the fact that the Bill provides for constitutional amendments envisaged in section 74(3)(b) of the Constitution, the State Law Advisers and the Department of Constitutional Development are of the view that the legislative procedure provided for in that section must be followed and that, consequently, the Bill should be passed by both the National Assembly and the National Council of Provinces. Since the amendments contained in the Bill will affect all provinces, the provisions of section 74(8) of the Constitution are not applicable.

### **5. IMPLICATIONS FOR PROVINCES**

In terms of the amendment of section 108(2) of the Constitution, the Premier will be in a position to issue a proclamation calling and setting dates for an election of the provincial legislature either before or after the expiry of the term of that legislature.

### **6. IMPLICATIONS FOR MUNICIPALITIES**

None.