

REPUBLIC OF SOUTH AFRICA

**CONSTITUTION OF THE
REPUBLIC OF SOUTH AFRICA
THIRD AMENDMENT BILL**

(As introduced in the National Assembly as a section 74 Bill; Bill published in Government Gazette No 23604 of 5 July 2002) (The English text is the official text of the Bill)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 33—2002]

REPUBLIEK VAN SUID-AFRIKA

**DERDE
WYSIGINGSWETSONTWERP OP
DIE GRONDWET VAN DIE
REPUBLIEK VAN SUID-AFRIKA**

(Soos ingedien by die Nasionale Vergadering as 'n artikel 74-wetsontwerp; Wetsontwerp in Staatskoerant No 23604 van 5 Julie 2002 gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[W 33—2002]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to provide for Bills regulating certain financial matters to be dealt with in terms of section 76(1) of the Constitution; to change the name of the Northern Province to Limpopo Province; to further regulate provincial supervision of, and intervention in, local government; and to further regulate the process of review by the National Council of Provinces where there has been national executive intervention in provincial government and provincial executive intervention in local government; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 76 of Act 108 of 1996

1. Section 76 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution), is hereby amended by the substitution for paragraph (b) of subsection (4) of the following paragraph: 5

“(b) envisaged in Chapter 13, and which **[affects]** includes any provision affecting the financial interests of the provincial sphere of government.”.

Amendment of section 100 of Act 108 of 1996

2. Section 100 of the Constitution is hereby amended by the substitution for subsection (2) of the following subsection: 10

“(2) If the national executive intervenes in a province in terms of subsection (1)(b)—

- (a) notice of the intervention must be **[tabled in]** submitted to the National Council of Provinces within 14 days **[of its first sitting]** after the intervention began; 15
- (b) the intervention must end **[unless]** if it is not approved by the Council within [30] 180 days of its first sitting after the intervention began or if it is disapproved by the Council earlier; and
- (c) the Council **[must]** may review the intervention regularly and may make any appropriate recommendations to the national executive.”. 20

Amendment of section 103 of Act 108 of 1996

3. Section 103 of the Constitution is hereby amended by the substitution for paragraph (g) of subsection (1) of the following paragraph:

“(g) [**Northern**] Limpopo Province”.

Substitution of section 139 of Act 108 of 1996

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4. The following section is hereby substituted for section 139 of the Constitution:

“Provincial supervision of local government

139. (1) When a municipality cannot or does not—

- (a) fulfil an executive obligation in terms of legislation or the Constitution; 10
- (b) approve a budget or revenue-raising measures giving effect to the budget; or
- (c) fulfil any other obligation specified by an Act of Parliament where the serious or persistent breach of such obligation threatens the health and safety of residents of the municipality, 15

the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation [, **including—**].

(1A) The steps a provincial executive may take in terms of subsection (1) include—

- (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and 20
- (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary—
 - (i) to maintain essential national standards or meet established 25
 - minimum standards for the rendering of a service;
 - (ii) to prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or
 - (iii) to maintain economic unity. 30

(1B) If a municipality, as a result of a crisis in its financial affairs, is in a serious or persistent breach of its obligations to provide basic services or to meet its financial commitments, the relevant provincial executive must intervene by taking effective steps to resolve the crisis, including—

- (a) adopting a recovery plan to restore the municipality to financial health; 35
- and
- (b) if the municipality cannot or does not implement the recovery plan—
 - (i) assuming responsibility for the implementation of the recovery plan; and
 - (ii) approving a budget and revenue-raising measures giving effect to 40
 - the recovery plan.

(1C) Section 100 applies if a provincial executive cannot or does not fulfil an obligation in terms of subsection (1B).

(2) If a provincial executive intervenes in a municipality in terms of subsection [(1)(b)] (1A)(b)— 45

- (a) the intervention must end [**unless**] if it is not approved by the Cabinet member responsible for local government affairs within [**14**] 40 days [**of**] after the intervention began;

- (b) notice of the intervention must be **[tabled in]** submitted to the provincial legislature and [in] to the National Council of Provinces within 14 days **[of their respective first sittings]** after the intervention began;
 - (c) the intervention must end **[unless]** if it is not approved by the Council within **[30]** 180 days of its first sitting after the intervention began or if it is disapproved by the Council earlier; and 5
 - (d) the Council **[must]** may review the intervention regularly and may make any appropriate recommendations to the provincial executive.
- (3) National legislation may regulate— 10
- (a) the **[process]** processes established by this section; and
 - (b) the implementation of this section.".

Short title and commencement

5. This Act is called the Constitution of the Republic of South Africa Third Amendment Act, 2002, and takes effect on a date determined by the President by proclamation in the *Gazette*. 15

**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF
THE REPUBLIC OF SOUTH AFRICA THIRD AMENDMENT BILL,
2002**

1. OBJECTS OF BILL

The objects of the Bill are—

- (a) firstly, to amend the Constitution so as to—
- * ensure that the procedures envisaged in section 76(1) of the Constitution are followed in respect of all Bills referred to in section 76(4)(b) of the Constitution which include even a single provision affecting the financial interests of the provincial sphere of government, thus avoiding the classification of such Bills as “mixed” Bills;
 - * simplify the process of review by the National Council of Provinces (the “NCOP”) where national executive interventions in provincial affairs have taken place;
 - * simplify the process of review by the NCOP where provincial executive interventions in local affairs have taken place; and
 - * address financial crises in municipalities; and
- (b) secondly, to change the name of the Northern Province to Limpopo Province.

2. PROVISIONS OF BILL

2.1 Clause 1

The proposed amendment of section 76(4)(b) seeks to avoid the splitting of a Bill dealing with legislation contemplated in that section into sections 75 and 76 Bills, where some of the provisions of such a Bill affect the financial interests of provinces and others not. The effect of the proposed amendment would be that all Bills envisaged in Chapter 13 of the Constitution that contain even a single provision affecting the financial interests of the provincial sphere of government, will in future have to be dealt with in accordance with the procedure set out in section 76(1) of the Constitution. However, this amendment does not affect the parliamentary procedure for money Bills which is regulated by sections 76(6) and 77(2) of the Constitution.

2.2 Clause 2

The proposed amendment of section 100 seeks to simplify the review process by the NCOP of an intervention by the national executive in a province in terms of that section. The proposed amendment further relaxes the time frames within which such an intervention lapses. It also seeks to grant the NCOP a discretion to review the intervention on a regular basis.

2.3 Clause 3

Section 104(2) of the Constitution provides that the legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may request Parliament to change the name of that province. On 12 February 2002 the Legislature of the Northern Province resolved to request Parliament to change the name of that Province from “Northern Province” to “Limpopo Province”. A request to that effect was subsequently made to Parliament in accordance with section 104(2) of the Constitution. Clause 3 seeks to amend section 103 in order to give effect to that request.

2.4 Clause 4

2.4.1 The proposed amendment of section 139(1) seeks to empower a provincial executive to intervene where a municipality fails to—

- (a) fulfil an executive obligation in terms of legislation or the Constitution;
- (b) approve a budget or revenue-raising measures giving effect to the budget; or
- (c) fulfil any other obligation specified by an Act of Parliament where the serious or persistent breach of such obligation threatens the health and safety of residents of the municipality.

2.4.2.1 The proposed new section 139(1B) seeks to provide a missing piece in the Government's overall strategy in dealing with municipal financial problems as discussed in the "Policy Framework for Municipal Borrowing and Financial Emergencies" which was published in *Government Gazette* No. 21423 of 28 July 2000. The intention of that policy framework is to provide a comprehensive approach to resolving financial crises in municipalities. Financial recovery usually requires the adoption or modification of municipal budgets, taxes and tariffs, which are regarded as being legislative matters. In terms of the Constitution only a municipal council can act in such legislative matters. However, there will be cases in practice where a municipal council cannot or will not act, and it is therefore necessary to provide an alternative in order to implement a financial recovery plan.

2.4.2.2 In terms of the new subsection (1B) a provincial executive must intervene by taking effective steps if a municipality, as a result of a crisis in its financial affairs, is in a serious or persistent breach of its obligations to provide basic services or to meet its financial obligations. The steps may include the adoption of a recovery plan for the restoration of the municipality to financial health. The municipality would be required to implement the plan itself, but if it fails to do so, the provincial executive would assume the responsibility for the implementation of the recovery plan. The recovery plan would regulate and, to the extent necessary to resolve the crisis, limit the municipality's executive and legislative powers over the budget and revenue-raising measures. If the provincial executive fails to fulfil its obligation in terms of the new subsection (1B) the national executive may, in accordance with section 100 of the Constitution, intervene by issuing a directive to the province that it must act, or by assuming responsibility where this is necessary.

2.4.3 The proposed amendment of section 139(2) seeks to simplify the review process by the NCOP of an intervention by a provincial executive in a municipality in terms of that section. The proposed review process is similar to that proposed in respect of interventions in terms of section 100. The proposed amendment further extends the period within which the Cabinet member responsible for local government affairs may end an intervention.

3. CONSULTATION

3.1 The following persons, bodies and institutions were consulted on the proposed amendments contained in clauses 1, 2 and 4 of the Bill:

- * Members of the Executive Councils for Local Government
- * Members of the Executive Councils for Finance
- * South African Local Government Association (SALGA)
- * Portfolio Committee on Justice and Constitutional Development
- * Portfolio Committee on Provincial and Local Government
- * Portfolio Committee on Finance
- * Select Committee on Finance

3.2 The amendment contained in clause 3 was requested by the Provincial Legislature of the Northern Province.

3.3 The Bill was also published for public comment in *Gazette* No. 23604 of 5 July 2002.

4. IMPLICATION FOR PROVINCES

As discussed in paragraphs 2.1, 2.2 and 2.4 above.

5. FINANCIAL IMPLICATIONS FOR STATE

Clauses 1, 2 and 4 will have no financial implications for the State. The provincial authority of the Northern Province is satisfied that it would be able to carry the expenses which it will incur as a result of the change of the name of that province.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the proposed amendments fall within the ambit of section 74(3)(b) of the Constitution and consequently require the approval of both the National Assembly and the National Council of Provinces.