

REPUBLIC OF SOUTH AFRICA

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# CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA THIRD AMENDMENT BILL

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*(As amended by the Portfolio Committee on Justice and Constitutional Development  
(National Assembly)) (The English text is the official text of the Bill)*

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(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 33B—2002]

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REPUBLIEK VAN SUID-AFRIKA

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

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*(Soos gewysig deur die Portefeuljekomitee oor Justisie en Staatkundige Ontwikkeling  
(Nasionale Vergadering)) (Die Afrikaanse teks is die amptelike vertaling van die  
Wetsontwerp)*

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(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[W 33B—2002]

ISBN 0 621 33760 9

## 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; to further regulate provincial 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.

**B**E 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— 10

(a) by the substitution for the heading of the following heading:

“**National [supervision of] intervention in provincial administration**”;

(b) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words: 15

“When a province cannot or does not fulfil an executive obligation in terms of **[legislation or]** the Constitution or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including—”; and

(c) by the substitution for subsection (2) of the following subsection: 20

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

(a) it must submit a written notice of the intervention [must be tabled in] to the National Council of Provinces within 14 days **[of its first sitting]** after the intervention began; 25

- (b) the intervention must end **[unless it is approved by]** if the Council disapproves the intervention within **[30] 180** days **[of its first sitting]** after the intervention began or by the end of that period has not approved the intervention; and
- (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the national executive.”. 5

#### 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: 10
- “(g) **[Northern Province] Limpopo**”.

#### Substitution of section 139 of Act 108 of 1996

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

##### “Provincial **[supervision of] intervention in local government**

**139.** (1) When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including— 15

- (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 to—
  - (i) **[to]** maintain essential national standards or meet established minimum standards for the rendering of a service; 25
  - (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; or
- (c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step. 30

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

- [(a) the intervention must end unless it is approved by the Cabinet member responsible for local government affairs within 14 days of the intervention;** 35

- [(b)]** (a) it must submit a written notice of the intervention **[must be tabled in]** to—
  - (i) the Cabinet member responsible for local government affairs; and 40
  - (ii) the relevant provincial legislature and **[in]** the National Council of Provinces,
 within 14 days **[of their respective first sittings]** after the intervention began;

- [(c) the intervention must end unless it is approved by the Council within 30 days of its first sitting after the intervention began;]** 45

- (b) the intervention must end if—
  - (i) the Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or 50
  - (ii) the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and

- [(d)] (c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.
- (3) If a Municipal Council is dissolved in terms of subsection (1)(c)— 5
- (a) the provincial executive must immediately submit a written notice of the dissolution to— 10
- (i) the Cabinet member responsible for local government affairs; and
- (ii) the relevant provincial legislature and the National Council of Provinces; and
- (b) the dissolution takes effect 14 days from the date of receipt of the notice by the Council unless set aside by that Cabinet member or the Council before the expiry of those 14 days.
- (4) If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and— 15
- (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and 20
- (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.
- (5) If a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must— 25
- (a) impose a recovery plan aimed at securing the municipality's ability to meet its obligations to provide basic services or its financial commitments, which— 30
- (i) is to be prepared in accordance with national legislation; and
- (ii) binds the municipality in the exercise of its legislative and executive authority, but only to the extent necessary to solve the crisis in its financial affairs; and 35
- (b) dissolve the Municipal Council, if the municipality cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan, and— 40
- (i) appoint an administrator until a newly elected Municipal Council has been declared elected; and
- (ii) approve a temporary budget or revenue-raising measures or any other measures giving effect to the recovery plan to provide for the continued functioning of the municipality; or
- (c) if the Municipal Council is not dissolved in terms of paragraph (b), assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan. 45
- (6) If a provincial executive intervenes in a municipality in terms of subsection (4) or (5), it must submit a written notice of the intervention to— 50
- (a) the Cabinet member responsible for local government affairs; and
- (b) the relevant provincial legislature and the National Council of Provinces,
- within seven days after the intervention began.
- (7) If a provincial executive cannot or does not or does not adequately exercise the powers or perform the functions referred to in subsection (4) or 55

(5), the national executive must intervene in terms of subsection (4) or (5) |  
in the stead of the relevant provincial executive.

[(3)] (8) National legislation may regulate the [process] implementation  
of this section, including the processes established by this section.”.

#### **Short title and commencement**

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**5.** This Act is called the Constitution of the Republic of South Africa Amendment Act, 2003, and takes effect on a date determined by the President by proclamation in the *Gazette*.

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

### **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.

### **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.

#### **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. On 1 October 2002 the Legislature of the Northern Province resolved to request Parliament to change the name of that Province from “Northern Province” to “Limpopo” and not to “Limpopo Province” as originally resolved on 12 February 2002. Clause 3 seeks to amend section 103 in order to give effect to that request.

#### **2.4 Clause 4**

The proposed amendments to section 139 seek, among others, to—

- (a) extend the steps that a provincial executive may take when intervening where a municipality fails to fulfil an executive obligation in terms of the

Constitution or legislation, namely the dissolution of a Municipal Council and the appointment of an administrator (subsection (1));

- (b) simplify the review process by the NCOP of an intervention by a provincial executive in a municipality in terms of this section, which review process is similar to that proposed in respect of interventions in terms of section 100 (subsection (2));
- (c) provide that a provincial executive must intervene by taking appropriate steps, including, among others, the dissolution of a Municipal Council and the appointment of an administrator, if a municipality fails to fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget (new subsection (4));
- (d) provide that if a municipality, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, the relevant provincial executive must impose a recovery plan and must—
  - \* dissolve the Municipal Council, if the municipality fails to approve legislative measures necessary to give effect to the recovery plan, appoint an administrator and approve a temporary budget or revenue-raising measures giving effect to the recovery plan; or
  - \* if the Municipal Council is not so dissolved, assume responsibility for the implementation of the recovery plan to the extent that the municipality fails otherwise to implement the recovery plan (new subsection (5)); and
- (e) provide that the national executive must intervene in the place of a provincial executive which fails to exercise the powers or perform the functions referred to in the new subsection (4) or (5) (new subsection (7)).

### **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.

