

## STATE PRESIDENT'S OFFICE

No. 456 3 March 1994

### NO. 2 OF 1994: CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT ACT, 1994.

#### General Explanatory Note:

Words in ***bold italic*** indicate omissions from existing enactments.

Words in *italic* indicate insertions in existing enactments.

#### ACT

To amend the Constitution of the Republic of South Africa, 1993, so as to change the name of the province of Natal to "Kwazulu/Natal"; to extend the legislative powers of provincial legislatures; to further regulate the financial and fiscal affairs of the provinces to ensure greater provincial powers; to provide that provinces may adopt constitutions in terms of which legislative and executive structures and procedures may differ from those provided for in the Constitution; to provide for the establishment of a Volkstaat Council and to set out its function; to make provision for separate ballot papers in respect of the election for the National Assembly and for the provincial legislatures; to provide for the entrenchment of the boundaries and the powers and functions of the provinces; and to authorise constitutional provision for communities sharing a common cultural and language heritage to exercise a form of self-determination; and to provide for matters in connection therewith.

(English text signed by the State President.) (Assented to 2 March 1994.)

**BE IT ENACTED** by the State President and the Parliament of the Republic of South Africa, as follows:-

#### **Amendment of section 124 of Act 200 of 1993**

1. Section 124 of the Constitution of the Republic of South Africa, 1993 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the name "Natal, wherever it occurs, of the name "KwaZulu/ Natal".

#### **Amendment of section 126 of Act 200 of 1993**

2. Section 126 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection: "(1) A provincial legislature shall *be competent*, subject to subsections (3) and (4), ***have concurrent competence with Parliament*** to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule 6."

(b) by the insertion after subsection (2) of the following subsection: "(2A) *Parliament shall be competent, subject to subsections (3) and (4), to make laws with regard to matters referred to in subsections (1) and (2).*"; and

(c) by the substitution for subsection (3) of the following subsection: "(3) ***An Act of Parliament which deals with a matter referred to in subsection (1) or (2) shall prevail over a provincial law inconsistent***

*therewith, only to the extent that a law passed by a provincial legislature in terms of this Constitution shall prevail over an Act of Parliament which deals with a matter referred to in subsection (1) or (2) except in so far as*

(a) *it* <<the Act of Parliament deals with a matter that cannot be regulated effectively by provincial legislation;

(b) *it* the Act of Parliament deals with a matter that, to be performed effectively, requires to be regulated or coordinated by uniform norms or standards that apply generally throughout the Republic; (c) *it* the Act of Parliament is necessary to set minimum standards across the nation for the rendering of public services; (d) *it* the Act of Parliament is necessary for the **determination of national economic policies** maintenance of economic unity, the protection of the environment, the promotion of interprovincial commerce, the protection of the common market in respect of the mobility of goods, services, capital or labour, or the maintenance of national security; or (e) the provincial law materially prejudices the economic, health or security interests of another province or the country as a whole, *or impedes the implementation of national economic policies.*".

### **Amendment of section 155 of Act 200 of 1993**

3. Section 155 of the principal Act is hereby amended-

(a) by the substitution for subsection (2) of the following subsection:

"(2) The equitable share of revenue referred to in subsection (1) shall consist of-

(a) a percentage, as fixed by an Act of Parliament, of income tax on individuals which is collected **within the province**\*\* nationally;

(b) a percentage, as fixed by an Act of Parliament, of value-added tax or other sales tax which is collected **within the province** nationally;

(c) a percentage, as fixed by an Act of Parliament, of any national levy on the sale of fuel;

(d) any transfer duty, collected nationally, on the acquisition, sale or transfer of any property situated within the province concerned; and

(e) any other conditional or unconditional allocations out of national revenue to a province.";

(b) by the insertion after subsection (2) of the following subsection:

"(2A) Sections 59(2) and 60 shall not apply to an Act referred to in subsection (2), and such an Act shall be passed by the National Assembly and the Senate sitting separately.";

(c) by the substitution for subsection (3) of the following subsection:

"(3) The percentages referred to in **subsection (2)(a) and (b)** paragraphs (a), (b) and (c) of subsection (2), and the conditions referred to in paragraph (e) of that subsection, shall be fixed reasonably in respect of the different provinces after taking into account the national interest and recommendations of the Financial and Fiscal Commission, and all transfers to the provinces shall be effected expeditiously and without any deduction therefrom."; (d) by the substitution in subsection (4) in the words preceding paragraph (a) for the expression "(2)(c)" of the expression "(2)(e)"; and (e) by the substitution in paragraph (b) of subsection (4) for the expression "subsection (2)(a) and (b)" of the expression "subsection (2)(a), (b), (c) and (d)".

## **Amendment of section 156 of Act 200 of 1993**

4. Section 156 of the principal Act is hereby amended-

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

**"(1) A province may levy taxes, surcharges or levies other than of a kind referred to in section 155(2)(a) or (b) provincial legislature shall be competent to raise taxes, levies and duties, other than income tax or value-added or other sales tax, and to impose surcharges on taxes, provided that;**

(b) by the insertion after subsection (1) of the following subsections:

**"(1A) Sections 59(2) and 60 shall not apply to an Act referred to in subsection (1), and such an Act shall be passed by the National Assembly and the Senate sitting separately.**

**(1B) A provincial legislature shall notwithstanding subsection ( 1 ) have exclusive competence within its province to impose taxes, levies and duties (excluding income tax or value-added or other sales tax) on(a) casinos; (b) gambling, wagering and lotteries; and (c) betting.", and (c) by the substitution for the proviso to subsection (3) of the following proviso: "Provided that-**

**(a) the criteria to be taken into account in raising such charges may be regulated by an Act of Parliament passed after recommendations of the Financial and Fiscal Commission relating to the draft text of any such Act have been submitted to and considered by Parliament such legislation may only be enacted after consideration by the provincial legislature of any recommendations made by the Financial and Fiscal Commission concerning the criteria according to which such charges should be determined; and**

**(b) they do not discriminate there is no discrimination against non-residents of that province who are South African citizens." .**

## **Amendment of section 157 of Act 200 of 1993**

5. Section 157 of the principal Act is hereby amended-

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

**"(b) shall be competent to raise loans for capital expenditure, provided it does so within the framework of reasonable norms and conditions prescribed by an Act of Parliament passed after recommendations of the Financial and Fiscal Commission relating to the draft text of any such Act have been submitted to and considered by Parliament.";**

(b) by the insertion after subsection (1) of the following subsection:

**"(1A) Sections 59(2) and 60 shall not apply to an Act referred to in subsection ( 1 ) (b), and such an Act shall be passed by the citizens." .**

## **Amendment of section 157 of Act 200 of 1993**

5. Section 157 of the principal Act is hereby amended-

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

"(b) shall be competent to raise loans for capital expenditure, provided it does so within the framework of *reasonable* norms and conditions prescribed by an Act of Parliament passed after recommendations of the Financial and Fiscal Commission relating to the draft text of any such Act have been submitted to and considered by Parliament.";

(b) by the insertion after subsection (1) of the following subsection:

*"(1A) Sections 59(2) and 60 shall not apply to an Act referred to in subsection (1) (b), and such an Act shall be passed by the*

*"Financial allocations by national government*

158. **Revenue** Financial allocations **made** by the national government-

(a) to a provincial or local government, shall be made **through** in *terms* of an appropriation Act; and

(b) to a local government, shall ordinarily be made through the provincial government of the province in which the local government is situated."

### **Amendment of section 159 of Act 200 of 1993**

7. Section 159 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

*"(1) There is hereby established in the administration of each province a Provincial Revenue Fund, into which shall be paid all revenue **raised** collected by or accruing to the provincial government, and all financial allocations referred to in section 158 made by the national government to such a provincial government and to local governments within the province of such a provincial government."*

### **Amendment of section 160 of Act 200 of 1993**

8. Section 160 of the principal Act is hereby amended-

(a) by the substitution for subsection (3) of the following subsection:

*"(3) A provincial constitution shall not be inconsistent with (a) a provision of this Constitution, including **this Chapter and** the Constitutional Principles set out in Schedule 4 and: *Provided that a provincial constitution may provide for legislative and executive structures and procedures different from those provided for in this Constitution in respect of a province* (b) a provision of the new constitutional text.", and*

(b) by the substitution for subsection (4) of the following subsection:

*"(4) The text of a provincial constitution passed by a provincial legislature, or any provision thereof, shall be of no force and effect unless the Constitutional Court has certified that none of its provisions is inconsistent with a provision referred to in subsection (3)\***(a)**, subject to the proviso to that subsection and if the new constitutional text is then already passed, also with a provision of the new constitutional text."*

### **Insertion of Chapter 11A in Act 200 of 1993**

9. The following Chapter is hereby inserted in the principal Act after section 184

## "CHAPTER 11A

### Volkstaat Council

#### Provision for establishment of Volkstaat Council

*184A. (1) The establishment of a Volkstaat Council is hereby authorised.*

*(2) The Council shall consist of 20 members elected by members of Parliament who support the establishment of a Volkstaat for those who want it.*

*(3) The Council shall conduct its affairs according to rules made by the Council.*

#### *Functions of Council*

*184B. (1) The Council shall serve as a constitutional mechanism to enable proponents of the idea of a Volkstaat to constitutionally pursue the establishment of such a Volkstaat, and shall for this purpose be competent-*

*(a) to gather, process and make available information with regard to possible boundaries, powers and functions and legislative, executive and other structures of such a Volkstaat, its suggested constitutional relationship with government at national and provincial level, and any other matter directly relevant to the establishment of such a Volkstaat;*

*(b) to make feasibility and other relevant studies with regard to the matters referred to in paragraph (a);*

*(c) to submit representations and recommendations to the Constitutional Assembly and the Commission on Provincial Government with regard to the possible establishment of a Volkstaat and any matter in connection therewith; and*

*(d) to perform such other functions as may be prescribed by an Act of Parliament.*

*(2) The procedures to be followed by the Council in the performance of its functions under subsection (1), shall be prescribed by an Act of Parliament.*

*(3) The procedures provided for in this Constitution with regard to the finalisation of provincial boundaries, shall not be construed as precluding the establishment of such a Volkstaat, and in the event of the acceptance of the concept of a Volkstaat, alternative provision shall be made by an Act of Parliament for the finalisation of the boundaries of any affected province or provinces..*

#### **Amendment of section 249 of Act 200 of 1993**

10. (1) Section 249 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) Notwithstanding the fact that Chapter 4 may not yet be in force the State President may, by proclamation in the Gazette, call an election in terms of the Electoral Act, 1993, for the election of the members of the National Assembly and the provincial legislatures.

(2) Such election shall be conducted in accordance with Schedule 2 and the Electoral Act, 1993, as amended by the Constitution of the Republic of South Africa Amendment Act, 1994, and the Electoral Amendment Act, 1994, respectively."

(2) Subsection (1) shall be deemed to have come into operation on the date of commencement of section 249 of the principal Act.

### **Amendment of Schedule 1 to Act 200 of 1993**

11. Schedule 1 to the principal Act is hereby amended-

(a) by the substitution for the name "Natal", wherever it occurs, of the name "KwaZulu/Natal"; and

(b) by the substitution for paragraph (d) of Part 2 of the following paragraph:

"(d) Northern Transkei/Pondoland-Consisting of the Bizana, Flagstaff, **Libode**, Lusikisiki, *Mt Ayliff*, *Mt Frere*, *Mt Fletcher*, *Matatiele Ngeleni*, **Port St Johns** and Tabankulu districts of Transkei, as they were defined on 26 October 1976."

### **Amendment of Schedule 2 to Act 200 of 1993**

12. Schedule 2 to the principal Act is hereby amended-

(a) by the substitution for the name "Natal", wherever it occurs, of the name "KwaZulu/Natal";

(b) by the substitution for item 15 of the following item:

*"Ballot papers*

*15. There shall be separate ballot papers for the election of members of the National Assembly and of members of the provincial legislatures."*; and

(c) by the insertion in item 25 after the definition of "regional list" of the following definition: "votes" means-

*(a) where it occurs in items 5, 6, 7 and 9, votes cast in the election for the National Assembly; (b) where it occurs in items 13 and 14, votes cast in the election for the provincial legislature of a province concerned; and (c) where it occurs in item 16, votes cast in the election for the National Assembly and the provincial legislatures."*

### **Amendment of Schedule 4 to Act 200 of 1993**

13. Schedule 4 to the principal Act is hereby amended-

(a) by the substitution for Constitutional Principle XVIII of the following Principle:

"XVIII

*1. The powers **boundaries** and functions of the national government and provincial governments and the boundaries of the provinces shall be defined in the Constitution.*

*2. The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution for its province, shall not be substantially less than or substantially inferior to those provided for in this Constitution.*

3. *The boundaries of the provinces shall be the same as those established in terms of this Constitution.*

4. Amendments to the Constitution which alter the powers boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed.

5. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions."; and

(b) by the addition after Constitutional Principle XXXIII of the following Principle:

#### XXXIV

1. *This Schedule and the recognition therein of the right of the South African people as a whole to self-determination, shall not be construed as precluding, within the framework of the said right, constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way.*

2. *The Constitution may give expression to any particular form of self-determination provided there is substantial proven support within the community concerned for such a form of self-determination.*

3. *If a territorial entity referred to in paragraph 1 is established in terms of this Constitution before the new constitutional text is adopted, the new Constitution shall entrench the continuation of such territorial entity, including its structures, powers and functions."*

#### **Substitution of Schedule 6 to Act 200 of 1993**

14. The following Schedule is hereby substituted for Schedule 6 to the principal Act:

#### "SCHEDULE 6

##### Legislative Competences of Provinces

*Agriculture Abattoirs Airports, other than international and national airports Animal control and diseases Casinos, racing, gambling and wagering Consumer protection Cultural affairs Education at all levels, excluding university and technikon education Environment Health services Housing Indigenous law and customary law Language policy and the regulation of the use of official languages within a province, subject to section 3 Local government, subject to the provisions of Chapter 10 Markets and pounds Nature conservation, excluding national parks, national botanical gardens and marine resources Police, subject to the provisions of Chapter 14 Provincial public media Provincial sport and recreation Public transport Regional planning and development Road traffic regulation Roads <<;Soil conservation Tourism Trade and industrial promotion Traditional authorities Urban and rural development Welfare services".*

##### Prevalence of English text of Constitution

15. Notwithstanding the fact that the Afrikaans text of the principal Act is the signed text, the English text of that Act shall, for the purposes of its interpretation prevail as if it were the signed text.

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

16. (1) This Act shall be called the *Constitution of the Republic of South Africa Amendment Act, 1994*, and shall, subject to subsection (2), come into operation on 27 April 1994.

mutandis to a provision of this Act.

(2) Section 251(2) and (3) of the principal Act shall apply mutatis