

REPUBLIC OF SOUTH AFRICA

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

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*(As introduced in the National Assembly)*

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(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

**[B 123—98]**

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**Short title**

**4.** This is the Constitution of the Republic of South Africa Third Amendment Act, 1998.

**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF  
THE REPUBLIC OF SOUTH AFRICA THIRD AMENDMENT BILL,  
1998**

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 The current term of the National Assembly and the nine provincial legislatures expires on 30 April 1999 (items 4(3) and 10(2) of Schedule 6 to the Constitution). In terms of section 108(2) of the Constitution, the Premier of a province must call and set dates for the election of the relevant provincial legislature within 90 days of the date on which the term of that legislature expires. In consequence, it would be possible for the respective Premiers to call and set nine different dates for the elections of the nine provincial legislatures within the said 90 day period, which dates may also differ from the dates called and set for the election of the National Assembly in terms of section 49(2) of the Constitution. In view of the difficulties that will arise if ten different elections are to be administered within a short space of time if different dates are called and set for the elections of the National Assembly and the nine provincial legislatures, it is deemed expedient to amend section 108(2) of the Constitution so as to provide for the President to call and set dates for the elections of the nine provincial legislatures, as well as the National Assembly, in order to ensure that the said elections are held on the same date or dates.

1.3 Clause 1 of the Bill provides for the President to call and set dates for an election of a 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.

3.1 Item 15(1) of Schedule 6 to the Constitution provides for an authority within the national executive to remain competent to administer legislation falling outside Parliament’s powers until that legislation is assigned to an authority within a provincial executive. However, the competence of the national executive to administer such legislation will lapse “two years after the new Constitution took effect” — i.e. on 4 February 1999 (item 15(2) of Schedule 6 to the Constitution).

3.2 International imperatives or responsibilities falling within the exclusive competencies of the national Government necessitate national standards (and control) in respect of certain facets of various functional areas listed in Schedule 5 to the Constitution, such as abattoirs and refuse removal, refuse dumps and solid waste disposal. Certain national departments, such as Agriculture and Water Affairs and Forestry, are either pressed for time in finalising legislation that will comply with the requirements of section 44(2) of the Constitution, or are in the process of finalising policy or strategies (e.g. the national waste strategy) that will have an impact on legislation pertaining to the above-mentioned functional areas. In consequence, it is

proposed that the competence of the national executive to administer the relevant legislation be extended for a further two years to avoid an administrative *lacuna* being created after 4 February 1999, and to enable national legislation to be finalised after the forthcoming elections. However, it needs to be borne in mind that the extension of the said competence to administer the relevant legislation will not prohibit the assignment of such legislation, or parts thereof, to the provinces during the extended period (cf. item 15(1) of Schedule 6 to the Constitution).

3.3 Clause 3 of the Bill extends the application of item 15(1) of Schedule 6 to the Constitution from two years to four years.

#### **4. 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.

#### **5. 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.

#### **6. IMPLICATIONS FOR PROVINCES**

In terms of the amendment of section 108(2) of the Constitution, the President will be in a position to issue a proclamation calling and setting dates for an election of a provincial legislature either before or after the expiry of the term of that legislature. The competency of the national executive to administer legislation falling outside Parliament's powers in terms of item 15(1) of Schedule 6 to the Constitution, will be extended from two to four years.

#### **7. IMPLICATIONS FOR MUNICIPALITIES**

None.

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