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THE PRESIDENCY

No. 516 11 April 2003

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 3 of 2003: Constitution of the Republic of south Africa Second Amendment Act, 2003.



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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.

(English text signed by the President.)
(Assented to 9 April 2003.)

ACT

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.

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— 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

Act No. 3, 2003

CONSTITUTION OF THE REPUBLIC OF
SOUTH AFRICA SECOND AMENDMENT ACT, 2003

- (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)—

- (a) the provincial executive must immediately submit a written notice of the dissolution to—
- (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—

- (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and
- (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—

- (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—
 - (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
- (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—
 - (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.

(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—

- (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

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Act No. 3, 2003

CONSTITUTION OF THE REPUBLIC OF
SOUTH AFRICA SECOND AMENDMENT ACT, 2003

(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 Second Amendment Act, 2003, and takes effect on a date determined by the President by proclamation in the *Gazette*.