



**Western Cape  
Government**

Department of the Premier

Public hearings in May 2021

# BRIEFING ON THE CONSTITUTION OF THE WESTERN CAPE FIRST AMENDMENT BILL, 2021

## **PART 1: TECHNICAL AMENDMENTS**

Presented by:

Part 1: Department of the Premier

Part 2: Department of Environmental Affairs and Development Planning

# BACKGROUND

- The Constitution of the Republic of South Africa, 1996 (the National Constitution) was assented to on 16 December 1996 and commenced on 4 February 1997 (unless otherwise indicated).
- The Constitution of the Western Cape, 1997 (Act 1 of 1998) (the Provincial Constitution) was assented to on 15 January 1998 and commenced on 16 January 1998 (unless otherwise indicated). Many of its provisions mirror the provisions in the National Constitution.
- Section 3(3) of the Provincial Constitution states as follows: “The provisions of this Constitution must not be interpreted as conferring any legislative or executive authority on the Western Cape which is inconsistent with the national Constitution”.
- 17 Constitution Amendment Acts have been passed, amending the National Constitution.
- An analysis was done of all these Constitution Amendment Acts.
- Some of the amendments to the National Constitution require concomitant amendments to the Provincial Constitution.

# PURPOSE OF BILL

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The purpose of the Bill is to:

- amend the Provincial Constitution in order to align it with the amendments that have been effected to the National Constitution; and
- repeal the provisions relating to the Commissioner for the Environment.

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION ... (1)

- Align the Provincial Constitution with various amendments made to the National Constitution, to avoid inconsistencies and difficulties with interpretation:

Subject	National Constitution	Provincial Constitution
Membership of the Provincial Parliament	section 106	section 15
Calling dates for election	section 108	section 17
Money Bills	section 120	section 30
Intervention in local government	section 139	section 49
Taxes	section 228	section 59
Loans	section 230	section 63

- Align the Provincial Constitution with expressions used in the National Constitution:
  - President of the Constitutional Court → Chief Justice.
  - Kwisi Bhulu, sisiBhulu, kwesiBhulu, isiBhulu → kwisiAfrikansi, sisiAfrikansi, kwesiAfrikansi, isiAfrikansi.

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION ... (2)

## Membership of the Provincial Parliament

### National Constitution: section 106(3)

(3) A person loses membership of a provincial legislature if that person-

(a) ceases to be eligible;

(b) is absent from the legislature without permission in circumstances for which the rules and orders of the legislature prescribe loss of membership; or

**(c) ceases to be a member of the party that nominated that person as a member of the legislature.**

[Sub-s. (3) substituted by s. 4 of the Constitution Tenth Amendment Act of 2003 (wef 20 March 2003) and by s. 4 of the Constitution Fourteenth Amendment Act of 2008 (wef 17 April 2009).]

### Provincial Constitution: section 15(3)

1. Section 15 of the Constitution of the Western Cape, 1997 (the Provincial Constitution), is amended by the substitution for subsection (3) of the following subsection:

“(3) A person loses membership of the Provincial Parliament if that person—

(a) ceases to be eligible;

(b) resigns as a member; **[or]**

(c) is absent from the Provincial Parliament without permission in circumstances for which the rules and orders of the Provincial Parliament prescribe loss of membership; or

(d) ceases to be a member of the party that nominated that person as a member of the Provincial Parliament.”.



# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION ... (3)

## Calling dates for election

### National Constitution: section 108(2)

(2) If a provincial legislature is dissolved in terms of section 109, or when its term expires, the Premier of the province, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the legislature was dissolved or its term expired. **A proclamation calling and setting dates for an election may be issued before or after the expiry of the term of a provincial legislature.**

[Sub-s. (2) substituted by s. 1 of the Constitution Fourth Amendment Act of 1999 (wef 19 March 1999).]

### Provincial Constitution: section 17(2)

**2.** Section 17 of the Provincial Constitution is amended by the insertion of the following subsection after subsection (2):

“(2A) A proclamation calling and setting dates for an election may be issued before or after the expiry of the term of the Provincial Parliament.”

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION

...(4)

## Money Bills

### National Constitution: section 120

(1) A Bill **is a money Bill if it-**  
(a) appropriates money;  
(b) imposes **provincial** taxes, levies, duties **or surcharges**;  
(c) **abolishes or reduces, or grants exemptions from, any provincial taxes, levies, duties or surcharges**; or  
(d) **authorises direct charges against a Provincial Revenue Fund.**

(2) A money Bill may not deal with any other matter except—  
(a) a subordinate matter incidental to the appropriation of money;  
(b) the imposition, **abolition or reduction of provincial taxes, levies, duties or surcharges**;  
(c) **the granting of exemption from provincial taxes, levies, duties or surcharges**; or  
(d) **the authorisation of direct charges against a Provincial Revenue Fund.**

(3) A provincial Act must provide for a procedure by which the province's legislature may amend a money Bill.

[S. 120 substituted by s. 3 of the Constitution Seventh Amendment Act of 2001 (wef 26 April 2002).]

### Provincial Constitution: section 30

3. The following section is substituted for section 30 of the Provincial Constitution:

#### “Money Bills

30. (1) A Bill **[that] is a money Bill if it—**  
(a) appropriates money; [or]  
(b) imposes provincial taxes, levies, [or] duties or surcharges [is a money Bill];  
(c) abolishes or reduces, or grants exemptions from, any provincial taxes, levies, duties or surcharges; or  
(d) authorises direct charges against the Provincial Revenue Fund.

(2) A money Bill may not deal with any other matter except—  
(a) a subordinate matter incidental to the appropriation of money; [or]  
(b) the imposition, abolition or reduction of provincial taxes, levies, [or] duties or surcharges;  
(c) the granting of exemption from provincial taxes, levies, duties or surcharges; or  
(d) the authorisation of direct charges against the Provincial Revenue Fund.

**[(2)](3)** A provincial Act must provide for a procedure by which the Provincial Parliament may amend a money Bill.’’.

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION ... (5)

## Intervention in local government

### National Constitution: section 139

#### Provincial intervention in local government

(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—

- (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;
- (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to—
  - (i) maintain essential national standards or meet established minimum standards for the rendering of a service;
  - (ii) 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) maintain economic unity; or

### Provincial Constitution: section 49

4. The following section is substituted for section 49 of the Provincial Constitution:

#### “**[Supervision of] Intervention in local government**

**49.** (1) When a municipality in the Western Cape cannot or does not fulfil an executive obligation in terms of the national Constitution, this Constitution or legislation, the Provincial Cabinet may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including—

- (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]**
- (b) assuming responsibility for the relevant obligation in that municipality to the extent necessary—
  - (i) to maintain essential national standards or meet established 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 Western Cape as a whole; or
  - (iii) to maintain economic unity; or

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION

...(6)

## Intervention in local government

### National Constitution: section 139

**(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.**

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

(a) **it must submit a written** notice of the intervention to-

- (i) **the Cabinet member responsible for local government affairs; and**
- (ii) the **relevant** provincial legislature and the National Council of Provinces, within 14 days after the intervention began;

### Provincial Constitution: section 49

(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.

(2) If the Provincial Cabinet intervenes in a municipality under subsection (1)(b)—

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

**(b)](a) it must submit a written notice of the intervention **[must be tabled in]** to—**

- (i) the national Cabinet member responsible for local government affairs;
- (ii) the Provincial Parliament; and
- (iii) [in] the National Council of Provinces, within 14 days **[of their respective first sittings]** after the intervention began; and

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION ... (7)

## Intervention in local government

### National Constitution: section 139

**(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**

**(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**

**(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**

### Provincial Constitution: section 49

**[(c)](b) the intervention must end [unless it is approved by the National Council of Provinces within 30 days of its first sitting after the intervention began] if—**

(i) the national 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

(ii) the National Council of Provinces disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention.

(3) If a Municipal Council is dissolved in terms of subsection (1)(c)—

(a) the Provincial Cabinet must immediately submit a written notice of the dissolution to—

(i) the national Cabinet member responsible for local government affairs;

(ii) the Provincial Parliament; and

(iii) the National Council of Provinces; and

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION ... (8)

## Intervention in local government

### National Constitution: section 139

**(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.**

### Provincial Constitution: section 49

(b) the dissolution takes effect 14 days from the date of receipt of the notice by the National Council of Provinces unless set aside by that national Cabinet member or the National Council of Provinces before the expiry of those 14 days.

(4) If a municipality cannot or does not fulfil an obligation in terms of the national Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the Provincial Cabinet 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.

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION

...(9)

## Intervention in local government

### National Constitution: section 139

**(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**

### Provincial Constitution: section 49

(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 Provincial Cabinet 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

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION ... (10)

## Intervention in local government

### National Constitution: section 139

- (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.**

### Provincial Constitution: section 49

- (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.
- (6) If the Provincial Cabinet imposes a recovery plan in terms of subsection (5)(a) and the Municipal Council is not dissolved in terms of subsection (5)(b), the Provincial Cabinet must assume responsibility for the implementation of the recovery plan to the extent that the municipality cannot or does not otherwise implement the recovery plan.

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION ... (11)

## Intervention in local government

### National Constitution: section 139

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

**(8) National legislation may regulate the implementation of this section, including the processes established by this section.**

[S. 139 substituted by s. 4 of the Constitution Eleventh Amendment Act of 2003 (wef 11 July 2003).]

### Provincial Constitution: section 49

(7) If the Provincial Cabinet intervenes in a municipality in terms of subsection (4), (5) or (6), it must submit a written notice of the intervention to—

- (a) the national Cabinet member responsible for local government affairs;
- (b) the Provincial Parliament; and
- (c) the National Council of Provinces,

within seven days after the intervention began.''

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION ... (12)

## Taxes

National Constitution: section 228(1)(a)	Provincial Constitution: section 59
<p>(b) flat-rate surcharges on any tax, levy or duty that is imposed by national legislation, other than <b>on</b> corporate income tax, value-added tax, rates on property or customs duties.</p> <p>[Para. (b) substituted by s. 9 of the Constitution Seventh Amendment Act of 2001 (wef 26 April 2002).]</p>	<p><b>5.</b> Section 59 of the Provincial Constitution is amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p>“(b) flat-rate surcharges on <b>[the tax bases of]</b> any tax, levy or duty that is imposed by national legislation, other than <b>[the tax bases of]</b> <u>on</u> corporate income tax, value-added tax, rates on property or customs duties.”.</p>

# AMENDMENTS TO ALIGN WITH NATIONAL CONSTITUTION ... (13)

## Loans

### National Constitution: section 230

#### 230 Provincial loans

(1) A province may raise loans for capital or current expenditure in accordance with national legislation, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year.

(2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

[S. 230 substituted by s. 10 of the Constitution Seventh Amendment Act of 2001 (wef 26 April 2002).]

### Provincial Constitution: section 63

6. The following section is substituted for section 63 of the Provincial Constitution:

#### “Loans

63. The Western Cape government may raise loans for capital or current expenditure, in accordance with **[conditions determined by]** national legislation, but loans for current expenditure~~—~~

**(a)** may be raised only when necessary for bridging purposes during a fiscal year~~;~~

**and**

**(b) must be repaid within 12 months].”.**

# AMENDMENTS RE EXPRESSIONS

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- Align the Provincial Constitution with expressions used in the National Constitution:
  - President of the Constitutional Court → Chief Justice; and
  - Kwisi Bhulu, sisiBhulu, kwesiBhulu, isiBhulu → kwisiAfrikansi, sisiAfrikansi, kwesiAfrikansi, isiAfrikansi.

# AMENDMENTS RE COMMISSIONER FOR ENVIRONMENT

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- Repeal of sections 71 to 77.
- To be dealt with by the officials from DEA&DP.

# PUBLIC PARTICIPATION PROCESS

- The Constitution of the Western Cape Draft First Amendment Bill, 2018, was published for comment on 6 March 2018 in the *Provincial Gazette* with a closing date of 6 April 2018.
- Media notices were published in four newspapers circulating in the Province.
- The Draft Bill was also forwarded by registered post and by e-mail to SALGA and all municipalities in the Western Cape on 18 April 2018. The due date for submission of further comments was 18 May 2018.
- Section 10(2) of the provincial Constitution states as follows:
  - (2) **At least 30 days** before a Bill referred to in subsection (1) is introduced in the Provincial Parliament, the member or committee intending to introduce the Bill must -
    - (a) publish, in the *Official Gazette* of the Province and in at least three newspapers circulating in the Western Cape, particulars of the proposed Bill for public comment; and
    - (b) submit, in accordance with the rules of the Provincial Parliament, those particulars to municipalities within the Western Cape for their views.



Thank you