

Act No. 61, 2001

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

SECOND AMENDMENT ACT, 2001

14 December 2001

ACT

To amend the Constitution of the Republic of South Africa, 1996, so as to provide for the introduction, only by the Cabinet member responsible for national financial matters, of certain financial legislation in the National Assembly; to extend the definition of a money Bill; to regulate the withholding of funds by the national treasury if organs of state commit a serious and material breach of legislation prescribing treasury norms and standards; to provide that the enactment of national framework legislation governing the policies of organs of state on preferential procurement should be obligatory; to provide for the enactment of national framework legislation in connection with the withdrawal of money as direct charges against a Provincial Revenue Fund and certain payments from a Provincial Revenue Fund to municipalities; to reduce the number of members of the Financial and Fiscal Commission and to change the appointment procedure; to make provision for provincial borrowing powers; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 73 of Act 108 of 1996

1. Section 73 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution), is hereby amended-

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

“(2) Only a Cabinet member or a Deputy Minister, or a member or committee of the National Assembly, may introduce a Bill in the Assembly, but only the Cabinet member responsible for national financial matters may introduce the following Bill in the Assembly:

- a. a money Bill [in the Assembly];
- b. a Bill which provides for legislation envisaged in section 214.”; and

- b. by the substitution for subsection (3) of the following subsection:

“(3) A Bill referred to in section 76(3), except [a money Bill] as referred to in subsection (2)(a) or (b) of this section, may be introduced in the National Council of Provinces.”.

Substitution of section 77 of Act 108 of 1996

2. The following section is hereby substituted for section 77 of the Constitution:

“Money Bills

77. (1) A Bill [that] is a money Bill if it-

- a. appropriates money; [or]
- b. imposes national taxes, levies, [or] duties or surcharges [is a money Bill];
- c. abolishes or reduces, or grants exemptions from, any national taxes, levies, duties or surcharges; or
- d. authorises direct charges against the National Revenue Fund, except a Bill envisaged in section 214 authorising direct charges.

(2) A money Bill may not deal with any other matter except-

- a. subordinate matter incidental to the appropriation of money; [or]
- b. the imposition, abolition or reduction of national taxes, levies, [or] duties or surcharges;
- c. the granting of exemption from national taxes, levies, duties or surcharges; or
- d. the authorisation of direct charges against the National Revenue Fund.

[(2)](3) All money Bills must be considered in accordance with the procedure established by section 75. An Act of Parliament must provide for a procedure to amend money Bills before Parliament.”.

Substitution of section 120 of Act 108 of 1996

3. The following section is hereby substituted for section 120 of the Constitution:

“Money Bills

120. (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 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; [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 a Provincial Revenue Fund.

[(2)][3] A provincial Act must provide for a procedure by which the province's legislature may amend a money Bill.”.

Amendment of section 163 of Act 108 of 1996

4. Section 163 of the Constitution is hereby amended by the substitution for paragraph (6) of the following paragraph:

“(b) determine procedures by which local government may-

- i. consult with the national or a provincial government;
- ii. designate representatives to participate in the National Council of Provinces; and
- iii. nominate persons to the Financial and Fiscal Commission] participate in the process prescribed in the national legislation envisaged in section 221(1)(c).”.

Amendment of section 216 of Act 108 of 1996

5. Section 216 of the Constitution is hereby amended by-

- a. the substitution for subsection (2) of the following subsection:

“(2) [The national treasury, with the concurrence of the Cabinet member responsible for national financial matters, may stop the transfer of funds to an organ of state only for serious or persistent material breach of the measures established in terms of subsection (1)] The national treasury must enforce compliance with the measures established in terms of subsection (1), and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures.”; and

- b. the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(3) A decision to stop the transfer of funds due to a province in terms of section 214 (1)(b) may be taken only in [terms of] the circumstances mentioned in subsection (2) and-”.

Amendment of section 217 of Act 108 of 1996

6. Section 217 of the Constitution is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) National legislation must prescribe a framework within which the policy referred to in subsection (2) [may] must be implemented.”.

Amendment of section 221 of Act 108 of 1996, as amended by section 2 of Act 2 of 1999

7. Section 221 of the Constitution is hereby amended-

- a. by the substitution for subsection (1) of the following subsection:

“(1) The Commission consists of the following women and men appointed by the President as head of the national executive:

- a. A chairperson and deputy chairperson;
- b. [nine persons, each of whom is nominated by the Executive Council of a province, with each province nominating only one person] three persons selected, after consulting the Premiers, from a list compiled in accordance with a process prescribed by national legislation;
- c. two persons [nominated by organised local government in terms of section 1631 selected, after consulting organised local government, from a list compiled in accordance with a process prescribed by national legislation;
- d. and[nine] two other persons.”; and

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

“(1A) National legislation referred to in subsection (1) must provide for the participation of-

- a. the Premiers in the compilation of a list envisaged in subsection (1)(b); and
- b. organised local government in the compilation of a list envisaged in subsection (1)(c).”

Amendment of section 226 of Act 108 of 1996

8. Section 226 of the Constitution is hereby amended by the addition of the following subsection:

“(4) National legislation may determine a framework within which-

- a. a provincial Act may in terms of subsection (2)(b) authorise the withdrawal of money as a direct charge against a Provincial Revenue Fund; and
- b. revenue allocated through a province to local government in that province in terms of subsection (3) must be paid to municipalities in the province.”.

Amendment of section 228 of Act 108 of 1996

9. Section 228 of the Constitution is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) flat-rate surcharges on [the tax bases of] any tax, levy or duty that is imposed by national legislation, other than [the tax bases of corporate income tax, value-added tax, rates on property or customs duties.”.

Substitution of section 230 of Act 108 of 1996

10. The following section is hereby substituted for section 230 of the Constitution:

“Provincial loans ”

230. (1) A province [or a municipality] may raise loans for capital or current expenditure in accordance with [reasonable 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 twelve months].

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

Short title

11. This Act is called the Constitution of the Republic of South Africa Second Amendment Act, 2001, and comes into operation on a date fixed by the President by proclamation in the Gazette.