

[2/1/0/13]



CONSTITUTIONAL ASSEMBLY

MEMORANDUM

TO: Members of the Constitutional Committee
FROM: Executive Director
DATE: 30 April 1996
**RE: PROVINCIAL EXCLUSIVE LEGISLATIVE COMPETENCIES,
SCHEDULE 4, SCHEDULE 5, LOCAL GOVERNMENT**

Herewith please find copies of drafts tabled before and being discussed in the multi-lateral on chapters 1, 3,4,5,6,7.

H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY

P. O. Box 15, Cape Town, 8000
Republic Of South Africa

Tel: (021) 245 031, 403 2252 Fax: (021) 241 160/1/2/3, 461 4487. E-mail: conassem@iaccess.za



You've made your mark



Now have your say

THE NEW CONSTITUTION

PROVINCIAL EXCLUSIVE LEGISLATIVE COMPETENCIES

Proposal:

1. Amend section 43(1)(a)(ii) to read as follows:

to pass legislation with regard with to any matter, including the matter within the functional areas listed in Schedule 4 but excluding, subject to section 43(2) matters [within the exclusive legislative powers of the provinces] within the functional areas listed in Schedule 5.

2. New Section 43(2) to be inserted between section 43(1) and the existing section 43(2)

Notwithstanding the provisions of section 43(1)(a)(ii) Parliament may make legislation in respect of the matters falling within the functional areas listed in Schedule 5 where it is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interest of another province or the country as a whole.

3. Reformulate section 102(1)(b) to read as follows:

"The legislative authority of a province is vested in its provincial legislature and confers on the provincial legislature the power - ...
(b) to pass legislation in and for its province with regard to

- (i) any matter within a functional area listed in Schedule 4
and
- (ii) any matter within a functional area listed in Schedule 5
and
- (iii) any matter outside these functional areas expressly assigned to the province by national legislation; ..."

4. New section 145A to be inserted between section 145 and 145B

"National legislation referred to in section 43(2) prevails over provincial legislation in respect of matters referred to in the functional areas contained in Schedule 5."

5. New Section 145B to be inserted between section 145A and 145B

"In the event of a dispute concerning a conflict between national legislation and provincial legislation which falls within Schedule 5 or between such national legislation and a provincial constitution which can not be resolved by a court in terms of section 43(2) the national legislation prevails over the provincial legislation or provincial constitution."

6. Amend Schedule 4 by the deletion of the matters listed in Schedule 5 and its reformulation as set out.
7. Add additional Schedule 5

SCHEDULE 4
AREAS OF CONCURRENT LEGISLATIVE COMPETENCE

Agriculture
Animal control and diseases including Facilities for the accommodation care and burial of animals
Casinos, racing, gambling and wagering, excluding lotteries and sports pools
Consumer protection
Education at all levels, excluding tertiary education
Environment
Health Services
Housing
Indigenous Law and customary law subject to the relevant chapter of this Constitution
Language policy and the regulation of official languages to the extent that the provisions of section 6 of this Constitution expressly confer upon the provincial legislature legislative competence
Nature conservation, excluding national parks, national botanical gardens and marine resources
Media service directly controlled or provided by the provincial government excluding any service provided by the SABC subject to section 180
Provincial archives
Provincial cultural matters
Provincial Public transport
Regional planning and development
Road traffic regulation
Provincial and municipal roads
Soil conservation
Tourism excluding international marketing of tourism
Trade
Industrial promotion
Traditional leadership subject to the relevant chapter in this Constitution
Urban and rural development
Welfare services
Police to the extent that the provisions of Chapter 11 of this Constitution expressly confer upon the provincial legislature legislative competence.
Provincial Public Enterprises in respect of the functional areas in this Schedule
Population Development Function
Public Works only in respect of the needs of provincial government departments and municipal councils in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
Administration of indigenous forests

Archives

The following local government matters in accordance with section 149A(4)

- Refuse dumps and solid waste disposal
- Municipal planning
- Provision and administration of gas and electricity supply systems
- Pontoons, ferries, jetties, piers and harbours excluding the regulation of international and national shipping and matters related thereto
- Disaster Management
- Water and sanitation services limited to potable water supply systems and domestic waste-water and sewerage disposal systems
- Stormwater management systems in built up areas
- Child care facilities
- Cleansing
- Building regulations
- Municipal libraries and library services

SCHEDULE 5
PROVINCIAL EXCLUSIVE POWERS

Abattoirs and generally the slaughter of animals and the disposal of the waste products of animal slaughter
Airports (other than international and national)
Provincial museums
Provincial libraries
Provincial planning
Provincial recreation and amenities
Provincial sports
Roads (excluding national roads)
Veterinary services
Liquor licenses
Property transfer fees
The following local government matters in accordance with section 149A(4):
 Ambulance services
 Fencing and fences
 Fire fighting services
 Advertising regulations
 Aerials
 Amenities
 Cemeteries, funeral parlours, crematoria
 Licensing and control of undertakings that sell food to the public
 Pounds
 Public places
 Local sport facilities
 Loitering
 Markets
 Municipal roads
 Municipal parks and recreation
 Refuse removals
 Street trading
 Traffic and parking

Local Government

Status of municipalities

- 146 (1) The local sphere of government is comprised of municipalities, which must be established for the whole of the territory of the Republic.
- (2) The authority of a municipality is vested in a Municipal Council.

Objects of local government

- 147 (1) The objects of local government are -
- (a) to provide democratic and accountable government for local communities; and
 - (b) to provide services to communities in a sustainable manner;
 - (c) to promote social and economic development within the framework of national and provincial policies;
 - (d) to promote a safe and healthy environment;
 - (e) to encourage the involvement of communities and community organisations in the affairs of local government.
- (2) A Municipal Council must strive to achieve the objects set out in sub-section (1) to the extent that they can be achieved within its financial and administrative capacity.

Developmental duties of municipalities

- 148 (1) A Municipal Council must -
- (a) structure and manage its administration, budgeting, and planning processes, to give priority to the basic needs of the community, and to fit the social and economic development of the community; and
 - (b) promote the implementation of national and provincial development programmes.

149 Municipalities in co-operative government

- (1) A municipality is entitled to regulate, direct and manage on its own initiative, the local government affairs of its community, subject to national and provincial legislation.
- (2) National and provincial legislation shall not unreasonably restrict a municipality's ability or right to perform its functions.
- (3) National and provincial governments by legislative and other measures must support and strengthen the capacity of local government to manage its own affairs and to perform its functions.
- (4) A national or provincial bill that affects the status, institutions, powers or functions of local governments shall be published for public comment before its introduction in the National Assembly or a provincial legislature in order to give organised local government, municipalities and any other interested persons an opportunity to make representations with regard to the bill.

National and provincial legislation

- 149A (1) National legislation must determine -
- (a) the different categories of municipality that may be established;
 - (b) appropriate fiscal powers and functions for each category; and
 - (c) procedures and criteria for the demarcation of municipal boundaries by an independent authority.
- (2) Every province must -
- (a) establish municipalities;
 - (b) provide for the monitoring and support of local government in the province; and
 - (c) promote the development of local government capacity and its ability to manage its own affairs.
- (3) National and provincial governments are under an obligation to assign to a municipality the administration of local government functions that fall outside the matters listed as local government matters in Schedules 4 and 5 subject to the appropriate terms of the assignments where -

- (a) the functions would best be administered on local level, and
 - (b) the municipality has the administrative capacity to exercise and perform the relevant functions.
- (4) A provincial government has the power, subject to the provisions of section 149, to monitor, see to the effective performance throughout the province of, and where appropriate, establish minimum standards in regard to the local government matters listed in Schedules 4 and 5.

150 Powers and functions of municipalities

- (1) A municipality is entitled to administer, subject to national and provincial legislation -
- (a) the matters listed as local government functional areas in Schedules 4 and 5;
 - (b) any other matters assigned to it by national and provincial legislation.
- (2) A municipality may, subject to national and provincial legislation, and for the effective administration of the matters which it administers, make by-laws and administer such by-laws.
- (3) A by-law that inconsistent with national or provincial legislation is invalid. If there is an inconsistency between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 142, the by-law must be regarded as valid for as long as that legislation is inoperative.

Composition of municipal councils

- 151 (1) A municipal council consists of members elected in accordance with national legislation which must prescribe a system -
- (a) of proportional representation based on a common voters roll for the municipal area, and which provides for the election of members from lists of party candidates drawn up in a party's order of preference; or
 - (b) of proportional representation as described in paragraph (a) combined with a system of ward representation based on a common voters rolls for each ward.

- (2) An electoral system in terms of this section must ensure that the number of members elected from each party reflects the proportions of the votes recorded for those parties.
- (3) If the electoral system includes ward representation, the delimitation of wards must be done by an independent authority appointed in terms of, and operating according to procedures and criteria set by, national legislation.

Membership of Municipal Councils

- 152 (1) Every citizen who is qualified to vote for a Municipal Council is eligible to be a member of that Council, except -
- (a) anyone who is appointed by, or is in the service of, the municipality and receives remuneration for that appointment or service, and who has not been exempted from this disqualification in terms of national legislation;
 - (b) anyone who is disqualified from voting for the National Assembly or is disqualified in terms of section 46(1)(c), (d) or (e) to be a member of the Assembly.
 - (c) a member of the National Assembly, the National Council of Provinces or a provincial legislature; or
 - (d) a member of another municipal council; but this disqualification does not apply to a member of a municipal council representing that council in another municipal council of a different category.
- (2) A person who is not eligible to be a member of a municipal council in terms of subsection (1)(a), (c) or (d) may be a candidate for the council, subject to any limits or conditions established by [national legislation].

Elections

- 153 (1) A municipality must hold elections of its Municipal Council at intervals of not more than five years.
- (2) Anyone may vote for a municipal council if they -
- (a) are qualified to vote for the National Assembly; and
 - (b) are registered on the common voters roll in that municipality.

Internal autonomy

154 A municipal council may -

- (a) determine and control its internal arrangements and proceedings; and
- (b) make rules and orders concerning its business, including rules and orders regulating the establishment, composition, powers, functions and procedures of its committees.

Privilege

155 Provincial legislation within the framework of national legislation may provide for privileges and immunities of Municipal Councils and their members.

Publication of municipal regulations

- 156 (1) A municipal regulation may be enforced only after it has been published in the [official gazette of the relevant province].
- (2) A provincial government gazette must publish municipal regulations upon request by the municipality.
- (3) Municipal regulations must be accessible to the public.

Organised local government

- 157 (1) An Act of Parliament enacted in accordance with the procedure established by section 74 must -
- (a) provide for municipalities to organise themselves into national and provincial representative bodies; and
 - (b) determine the powers and functions of those bodies, including the power -
 - (i) to appoint persons to consult, or interact with national or provincial government on behalf of local government;
 - (ii) to represent local government in the National Council of Provinces, and any structures of executive inter-governmental relations referred to in Chapter 3; and

- (iii) to nominate persons to the Financial and Fiscal Commission.

Other matters

159 All matters concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation.