

PROPOSED AMENDMENTS TO THE TRANSITIONAL CONSTITUTION**PROVINCIAL LEGISLATIVE AUTHORITY****Provincial legislature**

- 125 (1) There shall be a legislature for each province.
- (2) The legislative authority of a province shall, subject to this constitution, vest in the provincial legislature, which shall have the power to make laws for the province in accordance with this constitution and within the functional areas set out in schedule 6.
- (3) Laws made by a provincial legislature shall, subject to any exceptions which may be provided for by an Act of Parliament, be applicable only within the territory of the province.

Legislative competence of provinces

- 126 (1) A provincial legislature shall, subject to subsections (3) and (4), have exclusive competence to make laws for the province with regard to all matters which fall within the functional areas specified in Part 1 of schedule 6, and, subject to subsections (3) and (4) and the competence of Parliament to prescribe criteria and principles as a framework within which such a provincial law shall be passed or with which it shall comply, shall also have exclusive competence to make laws for the province with regard to all matters which fall within the functional areas specified in Part 2 of schedule 6.
- (2) The legislative competence referred to in subsection (1), shall include the competence to make laws which are reasonably necessary for or incidental to the effective exercise of such legislative competence.
- (3) An Act of Parliament may deal with a matter referred to in schedule 6, and such Act shall prevail over a provincial law inconsistent therewith, if and only to the extent that -
- it deals with a matter that cannot be regulated effectively by provincial legislation;
 - it deals with a matter that, to be performed effectively, requires to be regulated or co-ordinated by uniform norms or standards that apply generally throughout the Republic;
 - it is necessary to set minimum standards across the nation for the rendering of public services;

- (d) it is necessary for the [determination of national economic policies] maintenance of economic unity, the protection of the environment, the promotion of interprovincial commerce, the protection of the common market in respect of the mobility of goods, services, capital or labour, or the maintenance of national security; or
 - (e) the provincial law materially prejudices the economic health or security interests of another province or the country as a whole, or impedes the implementation of national economic policies.
- (4) An Act of Parliament shall prevail over a provincial law, as provided for in subsection (3), only if it applies uniformly in all parts of the Republic.
 - (5) An Act of Parliament and a provincial law shall be construed as being consistent with each other, unless, and only to the extent that, they are, expressly or by necessary implication, inconsistent with each other.
 - (6) A provincial legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent to make laws, or in respect of which an Act of Parliament prevails over a provincial law in terms of subsection (3).

Provinces' share of revenue collected nationally

- 155 (1) A province shall be entitled to an equitable share of revenue collected nationally to enable it to provide services and to exercise and perform its powers and functions.
- (2) The equitable share of revenue referred to in subsection (1) shall consist of -
- (a) a percentage, as fixed by an Act of Parliament passed by both the National Assembly and Senate sitting separately, of income tax on individuals which is collected nationally;
 - (b) a percentage, as fixed by an Act of Parliament passed by both the National Assembly and Senate sitting separately, of value-added tax or other sales tax, which is collected nationally;

- (c) a percentage, as fixed by an Act of Parliament passed by both the National Assembly and the Senate sitting separately, of the fuel levy which is collected nationally;
 - (d) the transfer duty, collected nationally, on the acquisition, sale, or transfer of ownership of any property situated within a province's boundary; and
 - (e) other conditional or unconditional allocations out of national revenue to a province.
- (3) The percentages referred to in subsection 2(a), (b) and (c), and the conditions referred to in subsection 2(e), shall be fixed reasonably after taking into account the national interest and recommendations of the Financial and Fiscal Commission, and all transfers to the provinces shall be effected expeditiously and without deduction.
- (4) Allocations referred to in subsection 2(e) shall be determined in accordance with an Act of Parliament, with due regard to the national interest and after taking into account -
- (a) the provision that has to be made for interest and other payments in respect of the national debt;
 - (b) the different fiscal capacities, including the revenues derived from sources referred to in subsections 2(a), (b), (c) and (d), fiscal performances, efficiency of utilisation of revenue, needs and economic disparities within and between provinces, as well as the developmental needs, administrative responsibilities and other legitimate interests of the provinces, and any other objective criteria identified by the Financial and Fiscal Commission; and
 - (c) the legitimate needs and interest of the national government; and
 - (d) the recommendations of the Financial and Fiscal Commission.

levying of taxes by provinces

- 56 (1) (a) A province shall have the exclusive competence to impose, taxes, levies or duties (excluding income tax, value added tax or other sales tax) on -

- (i) casinos; and
- (ii) gambling, wagering and lotteries; and
- (iii) betting.

- (2) A provincial legislature shall be competent to raise taxes, levies and duties, other than income tax, value added tax or other sales tax, and to impose surcharges on taxes, levies and duties provided that -
- (a) it is authorised to do so by an Act of Parliament passed by both the National Assembly and the Senate sitting separately, after the Financial and Fiscal Commission has made recommendations on the draft text of any such Act; and
 - (b) there is no discrimination against nonresidents of that province who are South African citizens.
- (3) A provincial legislature shall not be entitled to raise taxes detrimentally affecting national policies, interprovincial commerce, or the national mobility of goods, services, capital and labour.
- (4) A provincial legislature shall be competent to enact legislation authorising the imposition of user charges: provided that -
- (a) such charges be imposed after consideration of any recommendations made by the Financial and Fiscal Commission concerning the criteria according to which such charges should be determined; and
 - (b) there is no discrimination against non residents of that province who are South African citizens.

Raising of loans by provinces

- 157 (1) A province -
- (a) shall, subject to subsection (2), not be competent to raise loans for current expenditure; and
 - (b) shall be competent to raise loans for capital expenditure, provided it does so within the framework of reasonable norms and conditions prescribed by an Act of Parliament passed by

the National Assembly and the Senate sitting separately, after recommendations of the Financial and Fiscal Commission relating to the draft text of any such Act have been submitted to and considered by Parliament.

- (2) Loans referred to in subsection (1)(a) may be raised for bridging finance during a fiscal year, subject to the condition that they shall be redeemed within 12 months, and subject to such further reasonable conditions as may be prescribed by Act of Parliament passed after recommendations of the Financial and Fiscal Commission relating to the draft text of any such Act have been submitted to and considered by Parliament.
- (3) A province may not guarantee a loan unless the Financial and Fiscal Commission has verified the need for a guarantee and recommended that it be given.

Financial allocations by a National Government

158 Financial allocations made by the National Government -

- (a) to a provincial or local government shall be made through an appropriation act; and
- (b) to a local government shall ordinarily be made through the provincial government of the province in which the local government is situated.

Provincial revenue funds

- 159 (1) There is hereby established in the administration of each province a Provincial Revenue Fund into which shall be paid all revenue raised by or accruing to the provincial government, and all revenue earmarked for local governments, where the provincial government is the conduit for transfers referred to in section 158(b).
- (2) No money may be withdrawn from the Provincial Revenue Fund otherwise than by virtue of an appropriation made in accordance with a law of the provincial legislature concerned.

PROVINCIAL CONSTITUTIONS

Adoption of provincial constitutions

- 160 (1) The provincial legislature shall be entitled to pass a constitution for its province by a resolution of a majority of at least two thirds of all its members.
- (2) A provincial legislature may make such arrangements as it deems appropriate in connection with its proceedings relating to the drafting and consideration of the provincial constitution.
- (3) A provincial constitution may make provision for legislative and executive structures different from those provided for in sections 127 to 154 of this constitution.
- (4) Subject to subsection (3) a provincial constitution shall not be inconsistent with -
- (a) a provision of this constitution and the Constitutional Principles set out in schedule 4; and
 - (b) a provision of the new constitutional text.
- (5) The text of a provincial constitution passed by a provincial legislature, or any provision thereof, shall be of no force and effect unless the Constitutional Court has certified that none of its provisions is inconsistent with a provision referred to in subsection (4)(a), and if the new constitutional text is then already passed, also with a provision of the new constitutional text.
- (6) A decision of the constitutional court in terms of subsection (5) certifying that the text of a provincial constitution is not inconsistent with the said provisions, shall be final and binding, and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of such text or any provisions thereof.

Handwritten notes:
1. Provincial Government
2. Provincial Government
3. Provincial Government

SCHEDULE 6

Legislative Competencies of Provinces

Part 1

- Abattoirs
- Agriculture
- Animal control and diseases
- Airports other than national airports
- Casinos, racing, gambling and wagering, other than national lotteries
- Cultural affairs
- Language policy and regulation of the use of official languages within a province, subject to section 3
- Markets and pounds
- Nature conservation, excluding national parks, national botanical gardens and marine resources
- Provincial public media
- Provincial public property
- Provincial public service in accordance with the appropriate provisions of Chapter 13
- Provincial public transport
- Provincial public works
- Provincial sport and recreation
- Provincial roads
- Provincial road traffic regulation
- Provincial taxation in accordance with the provisions of section 156
- Soil conservation
- Tourism

Part 2

- Education at all levels, excluding university and technicon education
- Environment
- Health services
- Housing
- Local government in accordance with the appropriate provisions of Chapter 10
- Police, in accordance with the appropriate provisions of chapter 14
- Provincial Public transport
- Regional planning and development, including related land use and zoning
- Trade and industrial promotion
- Traditional authorities
- Urban and rural development
- Water management
- Welfare services

Handwritten notes:
1. Provincial Government
2. Provincial Government
3. Local Govt.