

REPUBLIC OF SOUTH AFRICA

CONSTITUTION NINETEENTH AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 74(3) Bill); explanatory
summary of Bill and prior notice of its introduction published in Government Gazette
No. 48294 of 24 March 2023)
(The English text is the official text of the Bill)*

(Ms S Gwarube, MP)

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.

BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to limit the frequency in terms of which a motion of no confidence in the Cabinet or the President may be tabled; to provide for circumstances in terms of which a motion of no confidence in the Cabinet or the President will not be limited; to limit the frequency in terms of which a motion of no confidence in a province’s Executive Council or Premier may be tabled; to provide for circumstances in terms of which a motion of no confidence in a province’s Executive Council or Premier will not be limited; and to provide for matters connected therewith.

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

Amendment of section 102 of Constitution

1. Section 102 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the “Constitution”), is hereby amended by the addition of the following subsections: 5

“(3) A motion contemplated in subsection (1) or (2) may only be tabled once in a period of 12 months.

(4) Notwithstanding subsection (3), a motion contemplated in subsection (1) or (2) may be tabled where the grounds for removal from office are as a result of— 10

(a) a violation of the Constitution or the law;

(b) misconduct; or

(c) inability to perform the functions of office.”.

Amendment of section 141 of Constitution

2. Section 141 of the Constitution is hereby amended by the addition of the following subsections: 15

“(3) A motion contemplated in subsection (1) or (2) may only be tabled once in a period of 12 months.

(4) Notwithstanding subsection (3), a motion contemplated in subsection (1) or (2) may be tabled where the grounds for removal from office are as a result of— 20

(a) a violation of the Constitution or the law;

(b) misconduct; or

(c) inability to perform the functions of office.”.

Short title and commencement

3. This Act is called the Constitution Nineteenth Amendment Act, 2023 and comes into operation on a date fixed by the President by Proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION NINETEENTH AMENDMENT BILL, 2023

1. INTRODUCTION

- 1.1 South Africa is currently in a transitional phase where the ruling party no longer holds majorities in a number of metros or councils across South Africa. With the 2024 National Elections around the corner, these elections are poised to be the first instance where the ruling party will slip below 50% of the votes. What this means for South Africa is that coalition governments will now be the “new norm”. Political parties and Independent Candidates will have to come together and form workable coalitions for the good of South Africa.
- 1.2 However, what we have witnessed at municipal level are continuous political attacks on coalition governments from opposition parties who politick smaller parties to cross the floor in exchange for valuable Mayoral Committee positions should the current government be successfully removed by way of a motion of no confidence. What we see in practice is motions of no confidence being used as a political tool, rather than for the mechanism it was originally intended, being a process to remove a speaker or mayor from office due to them not fulfilling their duties adequately. In fact, these motions are brought on spurious grounds only due to the fact that the opposition coalition has 50% +1 of the votes to pass the motion. The result is that these motions make cities or municipalities ungovernable as a new Executive is installed every other month, not allowing the incumbent government enough time to actually make a difference.
- 1.3 There can be no question that this practice will work its way up to both provincial and national governments when the time comes, which will have a disastrous impact on the stability of the country. What needs to change is simple, there needs to be a limitation on the number of motions of no confidence that are allowed to be brought either at national or provincial spheres in a certain time frame. This will, at the very least, give the respective government an uninterrupted period in which to perform or steady the country.
- 1.4 The draft Bill therefore intends to limit the number of motions of no confidence to be brought against a President or Premier, as the case may be, to only one motion per every 12 months from the date of the last motion. However, as a safety mechanism, the draft Bill will propose that additional motions of no confidence may be brought in exceptional circumstances such as a violation of the Constitution or law, misconduct or the inability to perform the functions of office. The purpose of this provision is to safeguard against instances where a motion of no confidence is brought against the President or Premier on frivolous political grounds, but then shortly thereafter, there is a real and valid ground for their removal.

2. OBJECTS OF THE BILL

- 2.1 The purpose of the Constitution Nineteenth Amendment Bill (“the Bill”) is to amend the Constitution of the Republic of South Africa, 1996, (“the Constitution”) so as to limit the frequency in which motions of no confidence in the Cabinet or President may be tabled, but to also provide for circumstances in which a motion of no confidence in the Cabinet or President will not be limited. The Bill further seeks to limit the frequency in which motions of no confidence in a province’s Executive Council or Premier may be tabled, but to also provide for circumstances in which a motion of no confidence in a province’s Executive Council or Premier will not be limited.

3. CONTENTS OF THE BILL

- 3.1 Clause 1 amends the Constitution by adding the provision that only one motion of no confidence in the President or Cabinet may be brought in any

given 12-month period from the date of the last motion. It also provides that notwithstanding that provision, a motion may be brought at any time if the reason for the motion meets a particular ground.

3.2 Clause 2 amends the Constitution by adding the provision that only one motion of no confidence in the Premier or Executive Council may be brought in any given 12-month period from the date of the last motion. It also provides that, notwithstanding that provision, a motion may be brought at any time if the reason for the motion meets a particular ground.

3.3 Clause 3 is the short title and commencement section.

4. FINANCIAL IMPLICATIONS FOR THE STATE

A full financial implication study may be completed upon introduction.

5. DEPARTMENTS, BODIES OR PERSONS CONSULTED

The Member confirms that she has complied with the requirements as set out in section 74(5) of the Constitution.

6. PARLIAMENTARY PROCEDURE

6.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established by section 74(3) of the Constitution as the Bill deals primarily with the amendment of the Constitution.

6.2 The Member is of the opinion that the Bill does not need to be referred to the National House of Traditional and Khoi-San Leaders in terms of 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), as it does not contain any provisions pertaining to customary law or customs of traditional or Khoi-San communities, nor does it contain any provisions pertaining to any matter referred to in section 154(2) of the Constitution.

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