

No. 1 of 2013

Third Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Constitution of the Republic of
Trinidad and Tobago to enhance the internal
self-government of Tobago

THE CONSTITUTION (AMENDMENT) (TOBAGO) BILL, 2013

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The Bill seeks to amend the Constitution to enhance the legislative and executive powers of the Tobago House of Assembly with a view to promoting the internal self-government of Tobago. The Bill would alter sections 5, 53, 54 and 61 of the Constitution and would therefore need to be passed by a special majority of three-fourths of all members of the House of Representatives and two-thirds of all the members of the Senate.

By clause 2, the proposed Act would come into operation on a date to be fixed by the President by Proclamation.

By clause 3, the proposed Act would be construed as altering the Constitution.

Clause 4 would amend section 3(1) of the Constitution by inserting definitions of “the Assembly”, “Concurrent List”, “the Legislature of Tobago” and “Tobago List”. The Concurrent List and the Tobago List would be set out in a new Fourth Schedule which would be inserted by clause 11.

Clause 5 would amend section 5(2) of the Constitution to prevent the abrogation of fundamental human rights by laws made by the Legislature of Tobago which would be established by clause 10.

Clause 6 would amend section 53 of the Constitution for the purpose of limiting the powers of Parliament to make laws in relation to Tobago.

Parliament would have power to make laws for Trinidad and Tobago with respect to any matter on the Concurrent List. The Legislature of Tobago would also have power to make laws for Tobago with respect to any matter on the Concurrent List, but any provision of such law that is inconsistent with a law made by Parliament or a law in force before the coming into force of the proposed Act, would be void to the extent of the inconsistency.

Parliament would have exclusive power to make laws for Trinidad with respect to matters on the Tobago List and for Trinidad and Tobago with respect to the National List, and by

clause 10, the Legislature of Tobago would have power to make laws for Tobago with respect to those matters. Since the Legislature of Tobago would not be able to make laws that infringe fundamental human rights, Parliament would, with the requisite special majority and after consultation with the Assembly, have power to make such a law for Tobago in respect of matters on the Tobago List.

Clause 7 would amend section 54 of the Constitution to entrench the new legislative provisions of the Parliament under section 75 and the Assembly under sections 141A to 141E with the requirement of three-fourths of all members of the House of Representatives voting and two-thirds of all members of the Senate voting in order to make any alterations to those sections.

Clause 8 would amend section 75 of the Constitution to alter the powers of Cabinet with regard to the formulation of policy for Trinidad and for Tobago with respect to the Concurrent list and the National List.

Clause 9 would amend section 80 of the Constitution to authorize the President to act in accordance with the advice of the Executive Council of the Assembly or a Secretary acting under the general authority of the Executive Council of the Assembly.

Clause 10 would amend section 113 of the Constitution to provide that the appropriation for Tobago in respect of a financial year would not be less than 6.9% nor more than 8% of the national budget.

Clause 11 would repeal and replace Chapter 11A of the Constitution. The new Chapter 11A would comprise new sections 141A to 141F. The new section 141A would provide for the Legislature of Tobago to consist of the President and the Tobago House of Assembly. The Tobago House of Assembly would consist of a Presiding Officer and such other members qualified and appointed in such manner and holding office upon such terms and conditions as may be prescribed by Parliament.

Subject to the Constitution, the Legislature of Tobago would have power to make laws for the peace, order and good government of Tobago. The legislative power of the Legislature of Tobago would be exercised by Bills passed by the Assembly and assented to by the President, and Bills so passed and assented to would be styled "Assembly Laws".

By the new section 141B(1), the Assembly would, subject to the limitations in sections 5 and 53 of the Constitution referred to

above and subject to subsections (2) and (3) of this new section, have power to pass a Bill to make laws for Tobago with respect to matters on the Tobago List.

Where it is necessary or expedient in the national interest for Parliament to pass legislation for Trinidad and Tobago with respect to a matter on the Tobago List, Parliament would be able to do so with the concurrence of the Assembly.

During a period of public emergency, Parliament may pass legislation for Trinidad and Tobago with respect to any matter on the Tobago List, but such legislation would cease to have effect in relation to Tobago on the expiration of the period of public emergency without prejudice to the validity of any thing done under it.

A law in force before the coming into force of the new section 141B would continue to apply to Tobago, until such time as it is replaced in relation to Tobago by a law made by the Legislature of Tobago with respect to a matter on the Tobago List.

The Assembly would, subject to the Constitution, have such other powers and functions in relation to Tobago as may be prescribed by Parliament.

The new section 141C would provide for an Executive Council of the Assembly consisting of a Chief Secretary and such number of other Secretaries (one of whom shall be responsible for legal matters) as may be prescribed, to be appointed in such manner as may be prescribed.

Notwithstanding the functions and powers of Cabinet under section 75 of the Constitution, the Executive Council would, in relation to Tobago, have the general direction and control with respect to any of the matters enumerated in the Tobago List and would be collectively responsible therefor to the Assembly.

Subject to the functions and powers of Cabinet under section 75 of the Constitution, the Executive Council would be responsible for the formulation and implementation of policy in Tobago with respect to any of the matters enumerated in the Concurrent List.

The functions of the Chief Secretary and the other Secretaries would be prescribed by Parliament.

By the new section 141D, there would be a fund called “the Tobago House of Assembly Fund” consisting of moneys appropriated by Parliament for the use of the Assembly and such other moneys as the Assembly may lawfully collect.

By the new section 141E, the Secretary to whom responsibility for finance is assigned would, with the approval of the Assembly, be able to borrow in any year such sums as do not exceed 15% of the allocation for that year to the Assembly under the Tobago Public Sector Investment Programme and in every subsequent year thereafter such borrowed sums shall not exceed in the aggregate such percentage as may be prescribed.

The new section 141F would provide that the powers of the Assembly and the Executive Council would have effect in the island of Tobago and up to eleven nautical miles from the baselines of Tobago.

Clause 12 would set out the new Fourth Schedule containing the Concurrent List and the Tobago List.

THE CONSTITUTION (AMENDMENT) (TOBAGO) BILL, 2013

Arrangement of Clauses

Clause

1. Short title
2. Commencement
3. Alteration of Constitution
4. Section 3 amended
5. Section 5 amended
6. Section 53 amended
7. Section 54 amended
8. Section 75 amended
9. Section 80 amended
10. Section 113 amended
11. Chap. 11A repealed and substituted
12. Fourth Schedule inserted

BILL

AN ACT to amend the Constitution of the Republic of
Trinidad and Tobago to enhance the internal
self-government of Tobago

[, 2013]

WHEREAS it is enacted by subsection (1) of section 54 of ^{Preamble}
the Constitution that Parliament may alter any of the
provisions thereof:

And whereas it is provided in subsection (3) of the
said section 54 that insofar as it alters certain

provisions of the Constitution a Bill for an Act of Parliament under the said section 54 shall not be passed by Parliament unless at the final vote thereon in the House of Representatives it is supported by the votes of not less than three-fourths of all the members of the House and in the Senate it is supported by the votes of not less than two-thirds of all members of the Senate:

And whereas it is intended by this Act to alter the Constitution:

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| Enactment | ENACTED by the Parliament of Trinidad and Tobago as follows: |
| Short title | 1. This Act may be cited as the Constitution (Amendment) (Tobago) Act, 2013. |
| Commencement | 2. This Act comes into operation on such date as is fixed by the President by Proclamation. |
| Alteration of Constitution | 3. This Act shall be construed as altering the Constitution. |
| Section 3 amended | <p>4. Section 3(1) of the Constitution is amended by inserting in appropriate alphabetical sequence, the following definitions:</p> <p style="padding-left: 40px;">“the Assembly” means the Tobago House of Assembly referred to in section 141A;</p> <p style="padding-left: 40px;">“Concurrent List” means the list referred to in section 53(2);</p> <p style="padding-left: 40px;">“National List” means the list referred to in section 53(5);</p> <p style="padding-left: 40px;">“the Legislature of Tobago” means the Legislature of Tobago referred to in section 141A;</p> <p style="padding-left: 40px;">“Tobago List” means the list referred to in section 53(4);”.</p> |
| Section 5 amended | 5. Section 5(2) of the Constitution is amended by inserting after the word “Parliament”, the words “or the Legislature of Tobago”. |

6. The Constitution is amended—

Section 53 amended

- (a) by renumbering section 53 as section 53(1);
- (b) in section 53(1) as renumbered, by inserting before the word “Parliament”, the words “Subject to this Constitution,”; and
- (c) by inserting after section 53(1) as renumbered, the following subsections:

“ (2) Subject to subsection (3)—

- (a) Parliament may make laws for Trinidad and Tobago; and
- (b) the Legislature of Tobago may make laws for Tobago,

with respect to any of the matters enumerated in List I of the Fourth Schedule (in this Constitution referred to as “the Concurrent List”).

(3) Where a provision of a law made by the Legislature of Tobago under subsection (2) is inconsistent with—

- (a) a provision of a law made by Parliament which Parliament is competent to enact; or
- (b) a provision of an existing law,

the law made by Parliament, whether passed before or after the law made by the Legislature of Tobago, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of Tobago shall, to the extent of the inconsistency, be void.

(4) Parliament may, after consultation with the Assembly, make laws for Tobago that require a special majority of both Houses of Parliament

under section 13 with respect to any of the matters enumerated in List II of the Fourth Schedule (in this Constitution referred to as “the Tobago List”).

(5) Parliament may make laws for Trinidad with respect to any of the matters enumerated in the Tobago List.

(6) Parliament may make laws for Trinidad and Tobago with respect to any of the matters enumerated in List III of the Fourth Schedule (in this Constitution referred to as “the National List”).

(7) In this section, “existing law” means a law that had effect as part of the law of Trinidad and Tobago immediately before the commencement of the Constitution (Amendment) (Tobago) Act, 2013.”.

Section 54 amended **7.** Section 54(2) of the Constitution is amended in subsection (2)(a) by—

- (a) inserting after the word “70” the words “, 75”; and
- (b) deleting the words “and 133 to 137” and substituting the words “, 133 to 137 and 141A to 141F”.

Section 75 amended **8.** Section 75 of the Constitution is amended by repealing subsection (1) and substituting the following subsection:

“ (1) There shall be a Cabinet for Trinidad and Tobago which shall—

- (a) have the general direction and control of the Government of Trinidad and Tobago;

- (b) consult with the Executive Council of the Assembly in relation to the matters listed in the Concurrent List which directly affect Tobago;
- (c) have the right to formulate policy for Trinidad on matters in the Concurrent List and the Tobago List;
- (d) have the right to formulate policy for Trinidad and Tobago for matters on the National List; and
- (e) be collectively responsible to Parliament for the general direction and control of the Government of Trinidad and Tobago.”.

9. Section 80 of the Constitution is amended by Section 80 amended repealing subsection (1) and substituting the following subsection:

“ (1) In the exercise of his functions under this Constitution or any other law, the President shall act in accordance with the advice of the Cabinet or Executive Council of the Tobago House of Assembly where applicable, or a Minister acting under the general authority of the Cabinet or a Secretary acting under the general authority of the Executive Council of the Tobago House of Assembly, except in cases where other provision is made by this Constitution or such other law, and, without prejudice to the generality of this exception, in cases where by this Constitution or such other law he is required to act—

- (a) in his discretion;
- (b) after consultation with any person or authority other than the Cabinet; or
- (c) in accordance with the advice of any person or authority other than the Cabinet.”.

Section 113 amended **10.** Section 113 of the Constitution is amended by inserting after subsection (1), the following subsections:

“ (1A) The amount appropriated for the purposes of the Tobago House of Assembly in respect of any financial year shall be a minimum of 6.9% in the range of 6.9% to 8% of the total sum appropriated by Parliament in that financial year.

(1B) This arrangement shall be reviewed on terms and conditions as shall be prescribed.”.

Chap. 11A repealed and substituted **11.** Chapter 11A of the Constitution is repealed and the following Chapter is substituted:

“CHAPTER 11A

INTERNAL SELF-GOVERNMENT OF TOBAGO

Legislature of Tobago 141A. (1) There shall be a Legislature of Tobago which shall consist of the President and a House of Assembly to be called “the Tobago House of Assembly”.

(2) The Assembly shall consist of a Presiding Officer and such other members qualified and appointed in such manner and holding office upon such terms and conditions as may be prescribed.

(3) Subject to this Constitution, the Legislature of Tobago may make laws for the peace, order and good government of Tobago.

(4) The power of the Legislature of Tobago to make laws for Tobago shall, except where otherwise authorised by statute, be exercised by Bills passed by the Assembly and assented to by the President, and Bills so passed and assented to shall be styled “Assembly Laws”.

(5) When a Bill passed by the Assembly is presented to the President for

assent, he shall signify that he assents or that he withholds assent.

(6) A Bill passed by the Assembly shall not become law unless it has been duly passed and assented to in accordance with this Constitution.

(7) A Bill passed by the Assembly may be assented to during the period occurring between the end of one session of the Legislature of Tobago and the beginning of the next or at any subsequent time during the life of that Legislature.

Powers of the
Assembly 141B. (1) Subject to sections 5 and 53(4) and subsections (2) and (3), the Assembly shall have the power to make laws for Tobago with respect to any of the matters enumerated in the Tobago List.

(2) Parliament may pass a Bill for an Act to make laws for Trinidad and Tobago with respect to any of the matters enumerated in the Tobago List if it is stated in the Act that the Act is necessary or expedient in the national interest and the Bill for the Act is passed after consultation with the Assembly.

(3) Parliament may, during a period of public emergency as defined in section 10(4), pass a Bill for an Act to make laws for Trinidad and Tobago with respect to any of the matters enumerated in the Tobago List and any such Act shall cease to have effect in relation to Tobago on the expiration of the period of public emergency, but without prejudice to the validity of any thing done under it.

(4) A law in force before the coming into force of this section shall continue to apply to Tobago, until such time as it is replaced in relation to Tobago by a law made by the Legislature of Tobago.

(5) Subject to this Constitution, the Assembly shall have such other powers and functions in relation to Tobago as may be prescribed.

Executive
Council

141C. (1) There shall be an Executive Council of the Assembly consisting of a Chief Secretary and such number of other Secretaries (one of whom shall be an Attorney-at-law and shall be responsible for legal matters) as may be prescribed, to be appointed in such manner as may be prescribed.

(2) The Executive Council shall, in relation to Tobago, have the general direction and control with respect to any of the matters enumerated in the Tobago List and shall be collectively responsible therefore to the Assembly.

(3) Subject to section 75, the Executive Council shall be responsible for the formulation and implementation of policy in Tobago with respect to any of the matters enumerated in the Concurrent List.

(4) The functions of the Chief Secretary and the other Secretaries shall be prescribed.

Fund

141D. There shall be a fund to be called “the Tobago House of Assembly Fund” which shall consist of—

(a) such moneys as may be appropriated by Parliament for the use of the Assembly; and

(b) such other moneys as the Assembly may lawfully collect.

Power to
borrow

141E. The Secretary to whom responsibility for finance is assigned may,

with the approval of the Assembly, borrow in any year such sums as do not exceed 15% of the allocation for that year to the Assembly under the Tobago Public Sector Investment Programme and in every subsequent year thereafter such borrowed sums shall not exceed in the aggregate such percentage as may be prescribed.

Application 141F. The powers of the Legislature of Tobago, the Assembly and the Executive Council under section 53 and this Chapter shall have effect within the confines of the island of Tobago, its offshore islands, and such part of the inland waters between Tobago and Trinidad of not less than eleven (11) miles, measured from the nearest points between the two islands, and such part of the territorial sea of Trinidad and Tobago of not less than eleven (11) nautical miles measured seaward from the baselines of Trinidad and Tobago as determined in accordance with section 5 of the Territorial Sea Act, as amended.

Chap. 1:51

12. The Constitution is amended by inserting after ^{Fourth Schedule} the Third Schedule, the following Schedule: _{inserted}

“FOURTH SCHEDULE

(Sections 53, 141B and 141C)

List I

CONCURRENT LIST

1. Air and Sea Transportation
2. Airports and Wharves
3. Central Statistical Office

4. Exclusive Economic Zone
5. Inter-governmental Affairs
6. Legal Affairs including the registration of legal documents
7. Plant and Animal Quarantine
8. Telecommunications
9. Tertiary Education
10. Public Utilities
11. Land use policy and valuations
12. Energy and Energy Affairs

List II

THE TOBAGO LIST

1. Finance, that is to say the collection of revenue and the meeting of expenditure incurred in the carrying out of the functions of the Assembly
2. Legal Matters
3. State Lands
4. Land and Marine Parks
5. Museums, Archives, Historical Sites and Historical and Public Buildings
6. Tourism
7. Culture and the Arts
8. Community Development
9. Co-operatives
10. Agriculture, Fisheries and Food Production
11. Forestry
12. Town and Country Planning
13. The Environment and Natural Resources
14. Public Infrastructure including roads and bridges

15. Library Services
16. Social Welfare
17. Quarries and Mining
18. Water Resources
19. Consumer Affairs
20. Housing
21. Education and Training, except Tertiary Education
22. Health
23. Sport
24. Licensing
25. Such other matters as may from time to time be assigned by the President

List III

THE NATIONAL LIST

1. The President
2. The Office of the Prime Minister
3. Auditor General
4. Civil Aviation
5. Immigration
6. Foreign Affairs
7. Judiciary
8. Meteorology
9. National Security
10. Ombudsman
11. Service Commissions
12. The Integrity Commission
13. Customs and Excise.”.

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than two-thirds of all the members of the Senate, that is to say, by the votes of
of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 1 of 2013

THIRD SESSION
TENTH PARLIAMENT

REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Constitution of
the Republic of Trinidad and
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Received and read the

First time

Second time

Third time
