



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA



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National Council of Provinces

Induction of Permanent Delegates

June 2019



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Legislative process



Power to make laws

- The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government **by participating in the national legislative process**

(Section 42(4) of the Constitution)

- In the Republic, the legislative authority of the national sphere of government is vested in Parliament, as set out in section 44

(Section 43(a) of the Constitution)



What does power to make laws mean?

The National Council of Provinces may

- consider
- pass
- amend



What does power to make laws mean?

- propose amendments to or reject any legislation before the Council
- initiate or prepare legislation falling within a functional area listed in Schedule 4 or other legislation referred to in section 76(3) of the Constitution

(Section 68 of the Constitution)



The effect of the power to make laws

The legislative authority confers on the National Council of Provinces the power

- to participate in amending the Constitution in accordance with section 74
- to pass legislation in accordance with section 76

to consider, in accordance with section 75, any other legislation passed by the National Assembly



The Proposal

Proposed legislation comes in the form of

- Executive bill - (bill introduced by a Minister)
- Members private bill (Bill introduced by a Delegate)
- Committee bill (bill introduced by a committee)
- **NB Only bills affecting provinces may be introduced in the National Council of Provinces. All other bills may be introduced in the National Assembly.**



Who may introduce a bill?

- A delegate or a committee of the National Council of Provinces
- A committee or delegate may not initiate a bill that appropriates money or imposes national taxes, levies, duties or surcharges (money bills)
- Only a Minister responsible for financial matters may initiate money bills
- **NB** in the National Assembly a Minister or a member or a committee of the National Assembly may introduce a bill



Types of bills

- Bills amending the Constitution - Section 74
- Bills affecting the provinces - Section 76
- Bills not affecting provinces - Section 75
- Money bills - Section 77



Why classify/tag bills

- To determine the constitutional procedure to be followed in dealing with a bill
- To determine whether a bill affects provinces
- To determine the extent to which the content of the bill affects provinces

See ***Tongoane and Others V National Minister for Agriculture and Land Affairs and Others*** – the substantial measure test



Role of a Delegate / Committee

- A bill must be referred to a committee for consideration and report to the House
- The Committee must determine the programme
- Delegates must actively participate in the proceedings of the committee
- Delegates may propose amendments to the bill (representing provincial interests)



Role of a Delegate / Committee

- The Committee may amend the bill
- The Committee must report to the House
- The House may either reject or adopt the bill or recommit the bill to the Committee



The process

National Council of Provinces may

- **only propose amendment** to a bill not affecting provinces and money bills (section 75 and section 77)
- either pass or reject a bill not affecting provinces or a money bill
- **NB The National Assembly may still pass a bill (not affecting provinces) which has been rejected by the National Council of Provinces**



The process

National Council of Provinces may

- ***amend a bill*** affecting provinces (section 76)
- either pass or reject a bill affecting provinces
- **NB The National Assembly may not pass a bill affecting provinces rejected by the National Council of Provinces without subjecting it to mediation process**



Facilitation of public involvement

The National Council of Provinces is required to

- facilitate public involvement in the legislative and other processes of the Council and its committees
- conduct its business in an open manner, and hold its sittings, and those of its committees in public

NB Failure to facilitate public involvement may result in the resultant law being declared unconstitutional (**see Section 72(1)**)



Facilitation of public involvement

- A committee must determine whether a bill requires public involvement
- If yes, the committee must publish a bill for public comments or hearings
- Where a bill affects provinces, public hearing take place through the provincial legislatures



Facilitation of public involvement

- If a bill affects provinces permanent delegates who are members of the Select Committee to which a bill was referred, permanent delegates must attend the public hearings



Mediation process

If the National Council of Provinces

- rejects a bill affecting provinces,
- or if the Assembly refuses to pass an amended bill affecting provinces

a bill and, where applicable, also the amended a bill, must be referred to the Mediation Committee consisting of 9 members from each House (18 members)



Mediation process

The Mediation Committee may agree on

- a Bill as passed by the Assembly
- an amended Bill as passed by the Council
- another version of the Bill

NB Failure to agree within 30 days results in a bill lapsing unless the National Assembly passes it with a supporting vote of at least two thirds majority



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Mandating Procedures of Provinces



Provincial Mandates

All bills affecting provinces require ***negotiating and final mandates***

- ***Negotiating mandate*** is the authority to negotiate on a bill on behalf of the ***province*** in a Select Committee meeting
- ***Negotiating mandate*** is conferred by ***a committee of a legislature***



Provincial Mandates

- ***Final mandate*** is the authority to vote on behalf of ***the province*** either in the Select Committee meeting or in the House
- ***Final Mandates*** are conferred by the ***provincial legislature***



When are Mandates required

- Election of the Chairperson and Deputy Chairperson – Section 64
- Bills amending the Constitution – Section 74
- Bills affecting provinces – Section 76
- Mediation Committee – Section 78



Six-week cycle - Bills affecting provinces





Decisions

Bills affecting province - Section 76

- each province has one vote cast by the head of delegation
- at least five provinces must vote in favour (Section 65)

Bills amending the Constitution - Section 74

- each province has one vote cast by the head of delegation
- at least six provinces must vote in favour



Decisions

Bills not affecting provinces and money bill - Sections 75 and 77

- each delegate has one vote
- at least one third must be present – decided by the majority of the votes cast



The role of the President in the law making process

- A bill passed by the National Council of Provinces, if introduced in the National Assembly, must be submitted to the President for signature and assent
- A bill passed by the National Assembly, if introduced in the National Council of Provinces, must be submitted to the President for signature and assent
- The President may refer a bill back to the National Assembly for reconsideration if the President has reservations about its constitutionality



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Discussion