

Policy making processes in south africa



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The National Government is accountable to the law making process regarding the rights and commitments of its citizens and delivery of services. The Constitution of South Africa provides in Section 43, three spheres of government in South Africa, namely, the National Government, Provincial Government and Local Government. In Section 40(1) of the Constitution it states that these spheres of government are distinctive, inter-related and inter-dependent. All three areas work under the Constitution as well as the laws and policies created by Parliament. Elected members sanction policies and laws as well as supervise the work of the departments. The department and public services are liable for the work delegated by government and are accountable to the Executive. In the Provincial Legislature, the Premier and Executive Council is responsible for the managerial executive and the administration is done by the Heads of Department and their staff. The local government or council are managed by the Mayor and the Mayoral Committee and the administration is taken care of by the Municipal Manager, Heads of Department and their staff.

The law making process

The National Legislature is the authority that passes new laws, amend existing laws or repeal old laws. This same power exists for provincial legislatures in making provincial laws and municipal laws in respect of municipal by -laws. The process is as follow:

Firstly, a draft bill is drawn up by the MEC, MPL or the standing committee. This is then published in the provincial gazette as well as other papers to notify the public. The public has 14 days to respond to the proposed drat. If

there were any public comment, the department will make the changes. Secondly, the speaker will introduce the proposed Bill to the legislature. Thirdly, the legislature committee debates the bill. Public hearings can be hold and if there are any changes to the draft, it is referred back to the legislature. Fourthly, the Legislature debates the bill and a vote is then passed. The Bill is passed once a majority vote is in favour. If not, the Bill is rejected. Fifthly, the Premier of the Province signs the Bill into an Act. Lastly, the Act is published in the Provincial Government Gazette.

The Role of the NCOP

When a Bill is passed by the National Assembly it is given a number and referred to the National Council of Provinces (NCOP). The Bill is subject to the amendment proposed or rejected by the Council. The NCOP first needs to distinguished if the Bill contains issues that affects provinces (Section 76 Bill) or contains issues that do not affect the provinces (Section 75 Bill).

If the Bill contains issues affecting provinces (Section 76 Bill)

Members of the Select Committee approach their own provinces to review the Bill. Each provincial legislature gives a provincial mandate to make changes or leave it as it stands. Provincial representatives report back to the NCOP on their provincial decision. Then the selected committee negotiates the final version of the Bill, to report their decision or suggested changes to the NCOP. The NCOP considers the report, vote on the Bill and each province has a vote. If there are any proposed changes to the Bill, the NCOP refers it back to the National Assembly for approval.

If the Bill contains issues that do not affect the provinces (Section 75 Bill)

The NCOP considers the Bill, can either accept, reject or propose changes by the Select Committee. Each member of the NCOP votes according to their party decision. If the NCOP makes any changes to the Bill, it is then referred back again to the National Assembly for approval.

If there are still differences in the agreement of the Bill, it can follow a mediation process. If this fails, the National Assembly can refer the Bill (Section 76 Bill) to the president to obtain a two thirds majority. If this does not happen the Bill falls away

Once both houses accepts the final version of the Bill, it is then send to the President to be signed into an Act and law and then published in the Gazette.

Once a law has been passed by the National Parliament it is up to the Provincial and Local Government on the implementation thereof

The Role, Powers and Function of the Local Government in law-making

According to Section 156(2) of the Constitution: “ A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer”. The elected members to the municipality decide on the policies and by-laws for their area that needs to be approved and executed by law. The executive committee of the local council is accountable to present the by-laws. A by-law can only be passed if a majority vote in the municipal council was achieved, all members received reasonable notice and it was published in to elicit public comment. It must be

understandable to the public. A by-law can only be imposed if it was published in the provincial gazette.

Municipalities can prepare by-laws on matters that refer to Schedule 4B and Schedule 5B of the Constitution which gives Local Government the power to create and pass laws. Municipalities can also make laws on issues allocated by the National or Provincial Government. These issues depend on the category of the municipality to make these by-laws. A category ' A' municipality is referred to as a metropolitan municipality, a category ' B' municipality is identified as a local municipality and a category ' C' is known as a district municipality.

A metropolitan municipality makes by-laws on all affairs as listed per Schedule 4B and 5B of the Constitution and has the ability to make by-laws delegated by the Provincial or National Government. These affairs include by-laws affecting for example, air pollution, building regulations, local tourism and municipal planning, to name a few. These affairs are identified as Schedule 4B affairs. By-laws with regards to Schedule 5B is affairs that include display of billboards, keeping of cemeteries, licensing of dogs, markets and local abattoirs, to name a few.

Local and district municipalities share the power to create by-laws. This has been controlled by the Municipal Structures Act. Section 84(1) of the Municipal Structures Act, states the powers and functions of the district municipality and obtained from Schedule 4B and Schedule 5B of the Constitution. According to Section 84(2) of the Municipal Structures Act, the local municipality has authority over all other local government matters not

mentioned in section 84(1) in its jurisdiction. Examples are for instance on air pollution which is a Schedule 4B competency. A district municipality under section 84(1) has no power but the local municipality under section 84(2) has full power in the area of jurisdiction. The district municipality has no powers under Section 84(1) with regards to beaches and amusement facilities under Schedule 5B, but the local municipality under section 84(2) has full powers in the area of jurisdiction.

THE ROLE, POWERS AND FUNCTION OF THE PROVINCIAL GOVERNMENT IN LAW MAKING

All nine provinces have their own legislature ranging from 30 up to 80 members depending on the number of votes received by the political party. The provincial legislature is accountable for making and passing laws for its province. The provincial government tables provincial Bills under Schedule 5B of the Constitution. These Bills must be accepted by the executive council and then published in the Provincial Gazette for public commentary. The provincial laws requires two thirds majority of the vote and are only operative in that specific province. An example is the ban on cell phones while driving in the Western Cape. A Bill is presented by the Speaker of the provincial legislature. The Standing Committee can invite public hearing and after consultation send a report to the provincial legislature. A vote is taken after the debate and the legislation is passed when a majority vote has reached. The Premier of the province has to sign the Bill into law. The Act then gets published and takes effect on the determined date.

Provincial laws can be changed or interceded by Parliament if they challenge the interest of national or other provincial governments. According to the Constitution, provinces can have legislative and executive powers simultaneously with the national government over areas such as agriculture, cultural affairs, environmental issue, health services etc. Also, provinces has absolute proficiency over areas such as ambulance services, liquor licenses, provincial roads, planning and cultural matters