



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

NATIONAL COUNCIL OF PROVINCES
MEMBER OF PARLIAMENT

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15 January 2019

Hon M C Ramaphosa
President of the Republic of South Africa
Union Buildings
PRETORIA

Hon. President

ELECTORAL LAWS AMENDMENT BILL B33 - 2018: REQUEST FOR REMITTANCE UNDER SECTION 79 OF THE CONSTITUTION

I write to you as a Member of Parliament in the National Council of Provinces, having participated in the legislative process which led to the adoption of the Electoral Laws Amendment Bill (B33-2018) (National Assembly – s 75) “(the Bill)” on 10 January 2018.

During the National Council of Provinces (NCOP) Plenary of 10 January 2019, the Democratic Alliance (“the DA”), in terms of rule 212 of the Rules of The National Council of Provinces (“the Rules”)¹, proposed amendments to the Bill. (See Annexure A)

Rule 212 reads:

(1)

(a) After a Bill has been placed on the Order Paper but before the Council decides the Bill a member may place proposals for amending the Bill on the Order Paper.

¹ 2008. Rules of the National Council of Provinces. 9th Edition.

(b) If the Bill was referred to a committee of the Council and the committee did not agree to it or recommended its rejection, no amendments may be proposed under this rule.

(2) Amendment proposals delivered to the Secretary after 12:00 on any working day may be placed on the Order Paper only after the expiry of 24 hours, unless the Chairperson directs otherwise in a particular case.

(3)

(a) The following amendments are out of order and may not be proposed under this rule:

(i) Amendments that affect the principle of the Bill and in respect of which the Council has not given any instruction.

(ii) Amendments that change the classification of the Bill. (iii) Amendments that would render the Bill constitutionally or procedurally out of order within the meaning of joint rule 161.

(iv) Amendments that are out of order for any other reason.

(b) The Chairperson's ruling on whether an amendment is out of order or in order, is final. If the JTM has made a finding on the amendment the Chairperson is bound by the finding.

(4) If the Bill was referred to a committee of the Council, no amendment proposal which has the same effect as an amendment proposal previously rejected by the committee may be placed on the Order Paper, except by the person in charge of the Bill.

(5) If any amendment proposal has been placed on the Order Paper for the day on which the Bill is to be put for decision by the Council, the Chairperson must, before putting the question on the Bill –

(a) if the Bill was referred to a select committee or other committee of the Council, submit the Bill together with the amendment proposal for reconsideration to the committee which considered the Bill; or

(b) put the amendment proposal for decision by the Council and then the Bill as a whole, including any approved amendment proposals.

(6) A Bill may not be recommitted to a committee more than once in terms of this rule.

After submitting the DA's proposed amendments to the Secretary of the NCOP and Chairperson of the NCOP, the proposed amendments were added to the Order Paper for the aforesaid plenary.²

However, during the aforesaid plenary, the Chairperson of the NCOP, Hon T. Modise refused to allow the proposed amendments to be considered by the Council. The Chairperson's reasoning for this decision was that the proposed amendments should have been introduced when the Bill was still being considered in the National Assembly as they did not pertain to the original amendments being considered in the Bill. The Chairperson, in her ruling, went further to explain that considering the Bill was tagged as a section 75 Bill, and that the NCOP's mandate, as predicated by the Constitution, is to initiate or prepare legislation either "falling within a functional area listed in Schedule 4 or other legislation referred to in section 76(3),"³ the Bill does fall within one of these functional areas or falls within Section 76(3) of the Constitution.

The Chairperson, in her conclusion, declared that the DA's proposed amendments amounted to a new Bill, and if the amendments were to be allowed, it could possibly render the Bill both constitutionally and procedurally out of order.

The Chairperson's ruling on the matter is a narrow interpretation of the Rules and the Constitution.

The proposed amendments by the DA, were submitted in terms of rule 212 of the Rules, which falls within "Part 4: Section 75 Bills."⁴ Rule 212 is directly concerned with the procedure and consideration of Section 75 Bills. This is further evidence by the fact that the NCOP has a similar rule which specifically relate to proposed amendments to a Section 76 Bill after the Bill has been placed on the Order Paper. According to the Rules

² Order Paper No. 1 – 2019. National Council of Provinces. Thursday, 10 January 2019. Sixth Session, Fifth Parliament.

³ 2019. Modise, T. National Council of Provinces.

⁴ 2008. Rules of the National Council of Provinces. 9th Edition. Page 76.

of the National Assembly⁵, which deals with the interpretation of an almost identical provision in the NA, rule 291 holds that,

(5) If an amendment has been placed on the Order Paper and the debate on the Second Reading has been concluded, the Speaker may either —

(a) recommit the Bill for reconsideration to the committee which considered the Bill or, if it is a Bill introduced by an Assembly committee, to that committee, together with the amendment; or

(b) put the amendment for decision by the Assembly and then the Second Reading of the Bill as a whole, including any approved amendment.

While the Rules of the National Assembly is not binding on the NCOP, it is of persuasive value.

The NCOP has the Constitutional power to consider, pass, propose amendments to or reject section 75 Bills, as stated in Section 68 of the Constitution⁶:

In exercising its legislative power, the National Council of Provinces may—

(a) consider, pass, amend, propose amendments to or reject any legislation before the Council, in accordance with this Chapter; and

(b) initiate or prepare legislation falling within a functional area listed in Schedule 4 or other legislation referred to in section 76(3), but may not initiate or prepare money Bills.

Further, the NCOP may “*(b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement,*”⁷ as it has clearly done in terms of Rule 212 of the Rules and it must provide for “*the participation in the proceedings of the Council and its committees of*

⁵ 2016. Rules of the National Assembly. 9th Edition. Page 177.

⁶ 1996. Constitution of the Republic of South Africa. S68

⁷ 1996. Constitution of the Republic of South Africa. S70(1)(b)

minority parties represented in the Council, in a manner consistent with democracy, whenever a matter is to be decided in accordance with section 75.”⁸

The Chairperson violated the procedures and rules of the NCOP by denying the DA’s proposed amendments for consideration by the Council, as concerned by Rule 212.

Any further action to sign and assent to this Bill into law without it first being referred back to the NCOP for the proposed amendments to be considered, would amount to an abuse of process, and a violation of Members’ rights to propose amendments to section 75 Bills in terms of the Constitution.

I thus hereby petition you to refer the Bill back to Parliament in terms of section 79 of the Constitution for reconsideration in conjunction with considering the DA’s proposed amendments.

A handwritten signature in black ink, appearing to read 'C. Labuschagne', with a large circular flourish around the middle of the name.

Hon. C. Labuschagne MP

DA Leader in the NCOP

Provincial Whip (Western Cape): NCOP

Constituency Head: Khayelitsha

⁸ 1996. Constitution of the Republic of South Africa. S70(2)(c)



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08 January 2019

Hon. Thandi Ruth Modise
Chairperson: Rules Committee &
Chairperson: National Council of Provinces
Houses of Parliament
CAPE TOWN
tmodise@parliament.gov.za
cc: Secretary of the NCOP mphindela@parliament.gov.za

Dear Madam Chairperson,

PROPOSED AMENDMENTS TO ELECTORAL LAWS AMENDMENT BILL [B33B – 2018](S 75)

On behalf of the Democratic Alliance, in terms of the Rule 212(1) of the Rules of the National Council of Provinces, please find attached proposed amendments to the Electoral Laws Amendment Bill [B33B – 2018] (National Assembly – sec 75), to be placed on the NCOP Order Paper on Thursday, 10 January 2019.

I look forward to your response.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'C. Hattingh'.

Hon. C. Hattingh MP

NCOP Delegate: North West

Democratic Alliance NCOP Member

NCOP Member: Select Committee on Social Services

PROPOSED AMENDMENTS

ELECTORAL LAWS AMENDMENT BILL [B 33 B — 2018]

The Democratic Alliance hereby proposes that the clauses below be inserted in the B-Bill of the Electoral Laws Amendment Bill [B33B – 2018] as follows,

1. Amendment of section 2 of Act 73 of 1998

Section 2 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (1)(d) of the following subsection:

“(1)(d) a person who is absent from the Republic may in person submit the application form similar to Appendix 7, his or her identity document **[and]** or valid South African passport to a registration officer, appointed for that purpose, at a South African embassy, high commission, **[or]** consulate, or any other suitable venue as agreed to by the Commission for inclusion in the international segment of the voters’ roll.”

2. Amendment of section 3 of Act 73 of 1998

Section 3 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (d) of the following subsection:

“(d) provided that if he or she is ordinarily resident outside the Republic, such voter must complete an application form similar to Appendix 7 and submit it in person together with his or her identity document **[and]** or valid South African passport at a South African Embassy, high commission, **[or]** consulate or any other suitable venue as agreed to by the Commission.”

3. Amendment of section 4 of Act 73 of 1998

Section 4 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (c) of the following subsection:

“(c) if he or she is ordinarily resident outside the Republic, submitting it together with his or her identity document **[and]** or valid South African passport in person to an official at a South African embassy, high commission, **[or]** consulate or any other suitable venue as agreed to by the Commission.”

4. Amendment of section 10 of Act 73 of 1998

Section 10 of the Electoral Act, 1998, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The places where such a person can apply for and cast a special vote are at any South African embassy, high commission[,], or consulate abroad[.], or any other suitable venue as agreed to by the Commission.”

5. Amendment of section 10 of Act 73 of 1998

Section 10 of the Electoral Act, 1998, is hereby amended by the insertion in subsection (4) of the following subsection:

“(4) Upon the receipt of a notice referred to in subregulation (1) the Chief Electoral Officer must ascertain whether the person is registered as a voter on the voters’ roll certified for the election, and if the person is so registered the Chief Electoral Officer must notify the head of embassy, high commission or consulate abroad, or any other suitable venue as agreed to by the Commission, where it has been indicated as the place where the person wants to vote, that such person may apply for a special vote, and if eligible to do so, cast a special vote at that mission.”

6. Amendment of section 11 of Act 73 of 1998

Section 11 of the Electoral Act, 1998, is hereby amended by the insertion in subsection (1) of the following subsection:

“(1) A person referred to in subregulation 6(3) or (4) who has notified the Chief Electoral Officer of his or her intention to apply for and cast a vote outside the Republic, by handing a written application in a form substantially similar to Appendix 1, together with his or her identity document **[and]** or valid South African passport, to a special voting officer at the South African embassy, high commission, **[or]** consulate abroad or any other suitable venue as agreed to by the Commission, indicated by the applicant in his or her notice to the Chief Electoral Officer during the hours and on the date or dates stated in the election timetable.”

7. Amendment of section 11 of Act 73 of 1998

Section 11 of the Electoral Act, 1998, is hereby amended by the insertion in subsection (7) of the following subsection:

“(7) The applicant must be allowed to mark the ballot paper in secret and to place and seal it in an unmarked envelope identified for this purpose which is in turn placed and sealed in another envelope which is marked on the outside with the applicant’s name, identity number and the name of the South African embassy, high commission, **[or]** consulate or any other suitable venue as agreed to by the Commission.”

8. Amendment of section 33 of Act 73 of 1998

Section 33 of the Electoral Act, 1998, is hereby amended by the insertion in subsection (3) of the following subsection:

“(3) In an election for the National Assembly, the Commission must allow a person, who is outside the Republic, to apply for and cast a special vote if that person’s name appears on the segment of the voter’s roll for persons who are in the Republic, if that person notified the Commission within 15 days after the proclamation of the date of the election of his or her intention to vote outside the Republic and the location of the South African embassy, high commission, **[or]** consulate or any other suitable venue as agreed to by the Commission where he or she will cast his or her vote: Provided that the Commission may make special arrangements for security services personnel serving in that capacity outside the Republic.”

9. Amendment of section 33 of Act 73 of 1998

Section 33 of the Electoral Act, 1998, is hereby amended by the insertion in subsection (4) of the following subsection:

“(4) In an election for the National Assembly, the Commission must allow a person to apply for and cast a special vote if that person’s name appears on the segment of the voter’s roll for persons ordinarily resident at a place outside the Republic, if that person notified the Commission within 15 days after the proclamation of the date of the election of his or her intention to vote outside the Republic and the location of the South African embassy, high commission, **[or]** consulate or any other suitable venue as agreed to by the Commission where he or she will cast his or her vote.”