

REPUBLIC OF SOUTH AFRICA

**DETERMINATION OF DELEGATES
(NATIONAL COUNCIL OF
PROVINCES) BILL**

(As introduced in the National Assembly)

(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

[B 56—98]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
BEPALING VAN
AFGEVAARDIGDES (NASIONALE
RAAD VAN PROVINSIES)**

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VIR PROVINSIALE SAKE EN STAATKUNDIGE ONTWIKKELING)

[W 56—98]

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BILL

To provide for the determination of permanent and special delegates to the National Council of Provinces as contemplated in section 61(2) of the Constitution; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context otherwise indicates—
- (i) “delegate” means any delegate in the delegation of a province referred to in section 60(1) of the Constitution; (i) 5
 - (ii) “permanent delegate” means a permanent delegate referred to in section 60(2)(b) of the Constitution; (v)
 - (iii) “province” means any province referred to in section 103(1) of the Constitution; (iii) 10
 - (iv) “provincial legislature” means any provincial legislature contemplated in section 104 of the Constitution; (ii)
 - (v) “special delegate” means a special delegate referred to in section 60(2)(a) of the Constitution. (iv)

Determination of permanent and special delegates 15

2. (1) Every party represented in a provincial legislature which in terms of section 61(1) of the Constitution is entitled to delegates in the delegation of the particular province, must have at least one permanent delegate.

(2) The number of permanent delegates of a party which is entitled to more than one delegate, is determined by multiplying the total number of delegates to which such a party is entitled by six and dividing the result by ten, disregarding any fraction of a number. 20

(3) The remaining number of the total number of delegates to which a party contemplated in subsection (2) is entitled, are the special delegates of that party: Provided that if the number of special delegates so determined is more than the number of permanent delegates of that party, the number of the special delegates must be reduced in favour of the number of permanent delegates so that the number of special delegates is equal to or less than the number of permanent delegates of that party. 25

(4) If the total number of special delegates determined in terms of subsection (3) in respect of a particular provincial legislature is less than four, the delegates of the parties that are entitled to only one delegate in the delegation of the particular province must, despite subsection (1), become special delegates in the same sequence as those parties have been allocated delegates in terms of item 2 of Part B of Schedule 3 to the Constitution until four special delegates have been allocated to parties in the provincial delegation concerned. 30 35

Short title

3. This Act is called the Determination of Delegates (National Council of Provinces) Act, 1998.

MEMORANDUM ON THE OBJECTS OF THE DETERMINATION OF DELEGATES (NATIONAL COUNCIL OF PROVINCES) BILL, 1998

In terms of section 60(1) of the Constitution the National Council of Provinces is composed of a delegation from each province consisting of ten delegates. Section 61(2) of the Constitution requires national legislation in terms of which a provincial legislature must determine how many of each party's delegates are to be permanent delegates and how many are to be special delegates. Such national legislation "must ensure the participation of minority parties in both the permanent and special delegates' components of the delegation in a manner consistent with democracy" (section 61(3) of the Constitution).

The initial composition of provincial delegations to the NCOP has been determined by item 7 of Schedule 6 to the Constitution. In terms of that item this arrangement applies to the period ending immediately before the first sitting of a provincial legislature held after its first election under the (new) Constitution. The Bill, in compliance with section 61(2) and (3) of the Constitution, provides for the determination of permanent and special delegates after the said arrangement has come to an end.

In developing a formula according to which the allocation of permanent and special delegates is to be determined, the allocation made in item 7(1)(b) of Schedule 6 to the Constitution, was taken as a model, the point of departure being that every party which is entitled to delegates must have at least one permanent delegate.

The application of the formula devised in the Bill can be illustrated as follows with reference to the existing proportion of party representation in the respective delegations of the Northern Cape Province and the Western Cape Province:

(a) Western Cape Province

* Number of delegates: ANC—3; DP—1; NP—6

* ANC delegates:

$$\text{Permanent delegates} = \frac{\text{number of delegates} \times 6}{10}$$

$$= \frac{3 \times 6}{10}$$

$$= \frac{18}{10}$$

$$= 1,8$$

i.e. one permanent delegate (the fraction of 0,8 is disregarded).

The number of special delegates is 2 (remaining number of the total number of delegates of the ANC). However, the special delegates are more than the permanent delegates, and the number of special delegates is to be reduced to be equal to or less than the number of permanent delegates. As a result the ANC is allocated 2 permanent delegates and 1 special delegate.

* NP delegates:

$$\text{Permanent delegates} = \frac{\text{number of delegates} \times 6}{10}$$

$$= \frac{6 \times 6}{10}$$

$$= \frac{36}{10}$$

$$= 3,6$$

i.e. 3 permanent delegates (the fraction of 0,6 is disregarded).

The number of special delegates is 3 (remaining number of the total number of delegates of the NP). Since this number equals the number of permanent delegates, no adjustment is required.

* The DP will be allocated one permanent delegate.

(b) Northern Cape Province

* Number of delegates: ANC—5; FF—1; NP—4

* ANC delegates:

$$\text{Permanent delegates} = \frac{\text{number of delegates} \times 6}{10}$$

$$= \frac{5 \times 6}{10}$$

$$= \frac{30}{10}$$

$$= 3$$

i.e. 3 permanent delegates.

The number of special delegates is 2 (no adjustment is required since the number of special delegates is less than the number of permanent delegates).

* NP delegates:

$$\text{Permanent delegates} = \frac{\text{number of delegates} \times 6}{10}$$

$$= \frac{4 \times 6}{10}$$

$$= \frac{24}{10}$$

$$= 2,4$$

i.e. 2 permanent delegates (the fraction of 0,4 is disregarded).

The number of special delegates is 2 (no adjustment is required since the number of special delegates equals the number of permanent delegates).

* The FF will be allocated one permanent delegate.

Clause 1 of the Bill contains certain definitions.

Clause 2 of the Bill sets out the formula in terms of which a provincial legislature is to determine how many of each party's delegates are to be permanent delegates and how many are to be special delegates. Subclause (4) of clause 2 provides for the allocation of special delegates in the event of less than four special delegates having been allocated in terms of the formula.

Parliamentary procedure

The State Law Advisers and the Department of Constitutional Development are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

Implication for provinces

Provincial legislatures will have to implement the formula determined by the Bill.

Implication for local government

None.

Consultation

The Chairperson of the Select Committee on Constitutional Affairs and Public Administration was consulted.