

# Research on the Legislative Power of Special Economic Zones

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## Abstract:

There are two components to the zones of special economic' dual legislative authority: the legislative authority of delegation and the legislative power of power. The challenge of balancing the legislative power of delegation and the legislation of functions under the dual-power legislation, the imprecise definition of the practical application of the legislative authority of the special economic zones, and the significant tendency toward departmentalism in the laws about special economic zones are the primary issues facing the legislative power of the zones. Future improvements to particular economic zones legislation's procedural framework are desperately needed. These improvements should focus on bolstering the legislature's guiding role, enhancing the normative character of draft legislation with authority, and enhancing the system for reviewing draft regulations. Construct a path for resolving conflicts between internal regulations, including clarifying the purpose and scope of authorized legislation, strengthening legislative supervision systems such as filing and review, and improving overall legislative planning and methods.

**Keywords:** Legislative power of special economic zones, Legislative power, Delegated legislative power, Dual legislative powers

## 1. Introduction

The legislative power for special economic zones was initially granted through the authorized ruling of the National People's Congress and its Standing Committee. The 2000 Legislation Law conferred the legislative power to special economic zones for the first time. The 2015 Legislation Law revised it, incorporating the legislative authority of cities with districts and limiting the formulation of local regulations solely to matters within three significant areas. The 2023 Legislation Law further added the crucial area of grassroots governance. Investigating this subject is conducive to addressing issues arising from the legislative changes in special economic zones. It also facilitates leveraging the advantages of the legislative power of special economic zones to resolve deep-seated contradictions in economic and social development, overcome bottlenecks in reform and development, and encourage thorough growth of towns within these zones. Ultimately, this effort aims to provide an advanced model and exemplar for the construction of law in China.

## 2. The connotation of a special economic zone and the boundaries between it and related categories

### 2.1 The connotation of the legislative authority of the special economic zones

The legislative authority of the special economic zones is

legally derived from the following: as long as the Constitution, administrative regulations, and local regulations of provinces and autonomous regions are observed, depending on the unique circumstances and fundamental requirements of the towns, local regulations may be developed by the people's congresses and standing committees of bigger cities, and submitted for approval to the standing committees of the provincial or autonomous region people's congresses. The provincial and municipal people's congresses, as well as their standing committees, are in charge of the areas designated as special economic zones, as specified in Article 65 of the 2000 Legislation Law, shall formulate regulations and implement them within the scope of special economic zones by the authorized decisions of the National People's Congress. The legislative authority granted to special economic zones is thus legally justified.

### 2.2 Comparison of the legislative power of special economic zones with the legislative power of general districted cities

In terms of legislative authority, special zone cities may, in line with the unique circumstances and current requirements of the special economic zones, implement statutes and regulations applicable to their regions to promote economic development and social progress; they can enjoy particular preferential policies, for example, having some autonomy over commerce, investments, taxes, and other matters; they can formulate some unique legal systems,

such as formulating more flexible legal systems in land management, labor employment, and intellectual property protection.

Regarding the legislative content, the special zone cities' can pay more attention to the needs of economic development, such as formulating corresponding regulations in promoting trade, investment, and technological innovation; they can pay more attention to the needs of social development, such as formulating corresponding regulations in promoting education, culture, and medical care; and they can pay more attention to the needs of environmental protection, such as formulating corresponding regulations in promoting energy conservation, emission reduction, and green development.

The special zone cities' legislative processes are more adaptable when it comes to legislation, and the legislative process can be shortened and simplified according to the actual situation; more attention can be paid to democratic participation, for example, before formulating essential statutes and regulations, the public can be organized to participate in discussions and solicit opinions extensively; and more attention can be paid to transparency, for example, after the formulation of essential statutes and regulations, they can be announced to the public promptly and subject to supervision.

### **2.3. Comparing the legislative flexibility of ethnic autonomous communities with the legislative authority of special economic zones**

Due to the different objective bases for the two types of legislative adaptation and the different purposes of empowerment, there are also considerable differences in legislative authority, scope, and procedures. While the legislative adaptability authority of special economic zones is mainly applicable to economic primarily includes economic, trade, and commercial affairs and typically does not involve the adaptation of civil and criminal departmental laws, the ability of ethnic autonomous communities to adapt the laws includes political, economic, and cultural aspects, including marriage and family, civil, criminal, and other departmental laws, and has greater autonomy.

## **3. The historical development of the special economic zones' legislative authority**

### **3.1 Enabling decisions of the Legislation Act 2000**

Special economic zones delegate legislative power was obtained in 1992, 1994, and 1996 by consent issued by the Standing Committee of the National People's Congress or the Congress itself. However, the 2000 "Legislation Law" clearly stipulates that authorization decisions can only be

granted by the National People's Congress, which raises the question: Will the 1992 decision on authorization continue to be valid after 2000? The author believes it should continue to be effective for the following reasons: According to Article 62 of the Constitution, one of the National People's Congress's powers is to "change or revoke improper choices made by the National People's Congress Standing Committee." Since the previous decision has not been amended or revoked, it is, in effect, a tacit acknowledgment that the previous decision continues to be valid.

### **3.2 Authorized amendments to the Legislation Act 2015**

The legislative authority of special economic zones was altered from that of a bigger city to that of a district city, considering the Legislation Law's 2015 amendment. By the Legislation Act 2015 provisions, more than 280 "districted cities" also enjoy municipal authority over legislation. More than 280 "districted cities" also enjoy municipal authority over legislation. However, this is not legislative power in the complete sense of the word, but only partial legislative authority. The authority to enact laws in cities divided into districts is no longer to stipulate "basis" and "non-contradiction" in general terms, as in the past. However, it can only formulate local regulations on matters in the three major fields, namely, environmental protection, historical and cultural preservation, the building and administration of both rural and urban areas, and standing committees in the national assembly of the provinces and autonomous regions be notified prior to their implementation for approval.

### **3.3 Enabling amendments to the Legislation Act 2023**

Taking into account the characteristics of districted cities and the actual requirements of local grassroots governance, 2023 Legislation, Article 81 makes supplementary amendments to the provisions about the special economic zones' legislative authority, adding the field of "grassroots governance" to the legislative authority of districted cities, expanding the original three areas to four areas. At the same time, according to the relevant wording of the 2018 constitutional amendment, "environmental protection" is changed to "ecological civilization construction" to meet further the actual needs of districted cities in formulating local regulations.

## **4. The allocation of dual legislative powers in special economic zones and their institutional basis**

### **4.1 The scope of the dual legislative powers of the special economic zones**

The legislation on the functions and powers of special

economic zones is in the character of general local legislation, so the scope of its legislative authority is the same as that of general local legislation. The primary scope of legislative power includes the authority of local people's congresses and standing committees to formulate and revise local regulations and the power of local people's governments to formulate and revise local government rules. The scope of legislative authority of the special economic zones mainly includes: (1) In accordance with the provisions of the delegation of authority of the highest authority, the regulations of the Special Administrative Region shall be enacted on matters that have not yet been enacted as law by the highest authority (2)drafting rules and regulations to address the unique issues facing distinct economic zones while adhering to the decisions made for the highest organ of power and taking into consideration their particular conditions and operational needs.

## **4.2. The principle of exercising dual legislative powers in special economic zones**

The exercise of the legislative authority of the zones of exceptional economy should not only uphold the principle of not defying the Constitution, laws, administrative regulations, and local regulations of the province or autonomous region but also adhere to the principle of legislative supervision and public participation. Using the legislative authority granted by the zones of the particular economy must also strictly follow the principle of "non-conflict" with the higher-level law and be predicated on the fundamental requirement to abide by the laws, administrative rules, and provisions of the Constitution; additionally, laws, administrative guidelines, and local ordinances can all be changed to accommodate specific needs and situations.[1].

## **4.3. The distinction between the dual legislative powers of the special economic zones**

(1) Sources are distinct. The explicit express provisions of the Constitution, the Legislation Law, the Local Government Organization Law, and other legislation are the cornerstone for the authority to enact laws. However, in the current Constitution, the law does not explicitly stipulate the delegated legislative authority granted to the special economic zone cities, nor does the provisions on the roles and authorities of the Standing Committee of the National People's Congress give them such powers, so many scholars have raised objections to the constitutionality of the zones for particular economic activity' assigned legislative power[2].

(2) The scope of authority is different. Authorizing legislative entities to enjoy legislative flexibility they do not possess may make flexible provisions on laws, administrative regulations, and local regulations, and the scope of their legislative authority is more flexible.

(3)The effective filing system is different. Local regulations formulated by special economic zones in exercising their powers and legislative powers should be brought to the standing committees of the provincial and autonomous region people's congresses for approval before going into effect. The regulations about specific economic zones that are developed when zones of exceptional economy exercise their delegated legislative authority may be directly reported for documentation purposes to the Standing Committee of the National People's Congress and the Council of State without having to be filed and approved the Standing Committee of the Provincial People's Congress[3].

## **5. Problems and causes in the legislative power of special economic zones**

### **5.1. Problems existing in the legislative authority of special economic zones**

#### **5.1.1. The dilemma of coordinating delegated legislation and competence legislation under dual-power legislation**

From the perspective of legislative procedures, regulations about special economic zones may be directly submitted for approval and filed with the State Council and the National People's Congress Standing Committee. At the same time, regional laws must first be submitted to the provincial legislature for approval, and the legislative procedures are relatively cumbersome. As a result, the people's assembly of the city within the special economic zone is more likely to select the delegated legislative authority over the functional legislative power when given the option to minimize the legislative procedure's difficulty. Therefore, the permitted legislative authority will "hollow out" the special economic zones' legislative authority, making it incapable of carrying out its mandated legal duties and maybe even bringing it to its virtual nonexistence.

#### **5.1.2. In practice, the use of legislative power in special economic zones is undefined**

At the specific implementation level, because China's existing legislation has not yet made explicit provisions on the level of validity of regulations on authorized legislation and power legislation, the theoretical understanding of the level of effectiveness of the relationship between special zone regulations and legislation, rules governing administration, basic local laws, etc., has caused significant legal and regulatory inconsistencies between zones designated for particular economic purposes and those not in the trial of economic cases in law enforcement and judicial practice. In judicial practice, courts in different regions have different standards and modes of adjudication of regulations and general local regulations.

### **5.1.3. There is a severe departmentalism tendency in special economic zone legislation**

In practice, the legislature has handed over draft laws to government departments for drafting, with the result that some government departments regard legislation as a redistribution of power and interests among departments and often use their powers to maximize the powers and interests of their own departments in the draft laws and regulations, resulting in departmental severe tendencies in the draft laws and regulations.

## **5.2. Causes of existing problems in the legislative power of special economic zones**

### **5.2.1. The contradiction between the need for legislation and the immaturity of legislative technology**

There are some formal problems in the dual legislation of zones of particular economic interest, such as unprofessional language and the use of some non-French languages, unreasonable structure of laws and regulations, poor cohesion between chapters, lengthy and complicated design of provisions, and unclear meanings. These problems mainly stem from the contradiction between legislative needs and immature legislative technology.

### **5.2.2. There is a contradiction between the demand for Law with dual powers and the integration of the legal system**

Legislative rules must be consistent inside China as it is a unitary nation. The Chinese economy has transitioned from a phase of rapid expansion to one of high-quality development, and the country is currently in a critical era of realizing the great rejuvenation of the Chinese people. Under such circumstances, the dual legislative powers of the special economic zones have undoubtedly impacted the demand for the unification of the legal system.

### **5.2.3. The contradiction between the legislative privileges of special economic zones and the fairness of local legislation**

In addition to being inimical to the fairness principle in local legislation and offering a platform for local protectionism and monopoly forces, the current legislative system in designated economic areas impedes the growth of a cohesive domestic market and fair competition between cities and regions. Under the circumstance that the differential empowerment of national laws leads to the imbalance of regional legislative power, various social development factors such as capital, labor, technology, and materials will gather and flow to particular areas due to policy tendencies, resulting in vicious competition and game conflicts between regions, consequently making the difference in how different places have grown socially and economically even more evident.

## **6. Analysis of the basis for the creation of the legislative power of the special economic zones and its legitimacy**

Articles 5, 10 of the Legislation Law and Articles 57, 58, 62, and 67 of the Constitution specify that the choices made by the Standing Committee on Legislation and the National People's Congress regarding the authorization of legislative authority for special economic zone cities are exercised in compliance with the provisions of the Constitution, even though the current Constitution does not contain any explicit provisions on the special economic zone's assigned legislative authority cities. When examining the constitution of any country, it generally only stipulates the fundamental obligations and rights of citizens, state agencies, and so on. For example, the National People's Congress Standing Committee's 2019 Decision on the Formulation of Supervision Regulations by the State Supervision Commission grants the State Supervision Commission the power to formulate supervision regulations, which is not included in the Constitution, but this does not mean that the decision of the Standing Committee of the National People's Congress is unconstitutional or "extrajudicial." On the contrary, it is, in fact, a manifestation of "using authority in conformity with the Constitution."

## **7. Measures to improve the legislative power of the zones of special economy**

### **7.1 Enhance the special economic zone legislation procedure system.**

#### **7.1.1 Strengthen the guiding role of the legislature**

Emphasis should be placed on strengthening the leadership and enthusiasm of the legislature, urging the legislature to take the initiative to participate in the process of compiling, deliberating, voting, revising, and improving draft laws and regulations, actively coordinating differences and conflicts of interest among various government departments, guiding the handling of complex problems encountered when laws and rules are being written, and persuading relevant departments to put the interests of the whole first, and advocating the subordination of local interests to the interests of the whole. With regard to some complicated and thorny issues, we have taken the initiative to invite experts and scholars in the field to form a particular legislative review group[4].

#### **7.1.2 Improve the normative nature of the draft legislation on functions and powers**

Try to establish a "pre-legislative assessment" system, and before starting the legislative process, establish an expert legislative evaluation team to analyze and evaluate the legislative necessity and feasibility of legislative projects,

the scientificity, and operability of the central systems of laws and regulations, as well as the expected effects and social impacts of the implementation of laws and regulations. Pay attention to the joint participation and consultation of the people and the legislature, build a broad social consensus, avoid the tendency of departmental interests to be legalized, enhance the normative, systematic, targeted, and practical nature of laws and regulations, and improve the enforceability and operability of laws and regulations.

### **7.1.3 Improve the review system for draft regulations**

Establish a mechanism for separate voting on important articles to resolve major and complex issues in a targeted manner. Provide a reasonable system of scheduling deliberations to avoid situations where there is insufficient time for deliberations or a waste of judicial time and resources.

## **7.2. Build a path to resolve internal regulatory conflicts**

### **7.2.1. Clarify the purpose and scope of the enabling legislation**

The Standing Committee of the National People's Congress shall issue a clear legislative interpretation to clearly define the scope of authorized legislation, including matters that require the formulation of laws and regulations for the modification of the special economic zones' economic structure, matters that require the formulation of laws and regulations for the opening up of the special economic zones, and matters for which laws and administrative regulations have not yet been regulated. However, the special economic zones need to formulate regulations in advance.

### **7.2.2 Strengthen the legislative supervision system, such as filing and review**

A relatively complete system of supervision over delegated legislation should include the following three aspects: (1) stipulating the subjects with the right to supervise the delegated legislation; (2) stipulating the form of supervising the delegated legislation; (3) stipulating the scope of

supervision over the delegated legislation[5]. Therefore, it is necessary to strengthen the professionalism and authority of the filing and review authorities, clarify the standards for filing and review, enhance the effectiveness of filing and review, and establish a sound accountability system.

### **7.2.3. Improve overall legislative planning and methods**

The legislative authority of local and special economic zone statutes must be defined scientifically under the unique system of dual powers. Additionally, the legislative technology of the zone of exceptional economic interest must be improved to improve the overall strategy and the preparation of legislation. We need to strengthen theoretical research on legislative technology, strengthen legislators' understanding of the importance of legislative technology, do an excellent job in legislative research, strengthen legislative forecasting, and scientifically plan legislation. In the legislative process, local people's congresses may invite legal experts and scholars to participate in discussions and try to learn from successful foreign experiences and advanced legislative technologies, which will help improve the overall legislative planning and strategy.

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