

BILL

To provide for a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf as required by section 65(2) of the Constitution and to provide for matters incidental therewith.

PREAMBLE

WHEREAS Parliament and the provincial legislatures of the Republic of South Africa recognize the need for uniformity amongst the provinces in respect of the procedure for the conferring of authority by a provincial legislature on its delegation to the NCOP to cast a vote on behalf of that legislature; and

AND RECOGNISING the need to enact the legislation envisaged by section 65(2) of the Constitution,

BE IT THEREFORE ENACTED as follows:—

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CHAPTER 1 DEFINITIONS AND APPLICATION

1. Definitions

In this Act, unless the context otherwise indicates –

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Final Mandate" means the conferral of authority by a provincial legislature on its provincial delegation to the NCOP to cast a vote when the relevant NCOP select committee considers a Bill or instrument prior to voting thereon in a NCOP Plenary;

"Legislative Mandate" means the conferral of authority by a provincial legislature on its provincial delegation to the NCOP to cast a vote on a question contemplated in –

- a) section 64 of the Constitution;
- b) section 74 of the Constitution;
- c) section 76 of the Constitution;
- d) section 78 of the Constitution;
- e) section 231(2) of the Constitution; and
- f) any other national legislation which requires a decision by the NCOP.

"Mandate" means the conferral of authority by a provincial legislature on its provincial delegation to the NCOP to cast a vote, in compliance with the requirements under section 3;

"NCOP" means the National Council of Provinces referred to in section 42(1)(b) of the Constitution;

"NCOP Plenary" means an ordinary sitting of the Council;

"NCOP Select Committee" means a select committee established in terms of Rule 151(1) of the Rules of the National Council of Provinces;

"Negotiating Mandate" means the conferral of authority by a provincial legislature on its provincial delegation to the NCOP of parameters for negotiation when the relevant NCOP select committee considers a Bill or instrument after tabling and before consideration of final mandates, and may include proposed amendments to the Bill

"Provincial delegation to the NCOP" means a delegation referred to in section 60(1) of the Constitution;

“Provincial legislature” means a provincial legislature contemplated in section 104 of the Constitution; and

“Voting Mandate” means the conferral of authority by a provincial legislature on the head of its provincial delegation to the NCOP to cast a vote on a Bill or instrument in a NCOP Plenary.

2. Application

This Act applies to all provincial legislatures and the NCOP.

CHAPTER 2 PROCEDURES IN RESPECT OF MANDATES AND DESIGNATION OF HEAD OF DELEGATION

3. Requirements in respect of Mandates

Every Mandate required in terms of this Act must be on the letterhead of the provincial legislature and must-

- (a) indicate the name and number of the Bill or instrument being voted on;
- (b) indicate whether the provincial legislature votes in favour of or against, or abstains from voting on, the Bill or instrument;
- (c) contain the signature of the officer presiding in the provincial legislature on that specific Bill or instrument;
- (d) be addressed to the Chairperson of the NCOP; and
- (e) follow the format prescribed in Annexure A.

4. Requirements in respect of Designation as Head of Delegation

- (1) A Premier of a province who designates a member of the province's delegation to the NCOP as head of the delegation under section 60(3) of the Constitution must certify such designation in accordance with subsection (2).
- (2) The certificate of designation as the head of a province's delegation to the NCOP must -
 - a) be forwarded to the Chairperson of the NCOP, in writing, which may include electronically transmitted print;
 - b) indicate the period, and purpose, for which the member is designated to head the delegation; and
 - c) follow the format prescribed in Annexure B.

CHAPTER 3 PROCEDURES IN RESPECT OF MANDATES

5. Legislative Mandates requiring both Negotiating and Final Mandates

- Negotiating and Final Mandates are required in respect of a Bill referred to
- (a) in section 74(1)(b), (2)(b), (3)(b) and (8); and
 - (b) in section 76,
of the Constitution.

6. Negotiating Mandates

A provincial legislature must confer the authority on its provincial delegation to the NCOP of parameters for negotiation when the relevant NCOP select committee considers a Bill or instrument after tabling and before consideration of final mandates, and may include proposed amendments to the Bill.

7. Final Mandates

A provincial legislature must confer the authority on its provincial delegation to the NCOP to cast a vote when the relevant NCOP select committee considers a Bill or instrument prior to voting thereon in a NCOP plenary.

8. Voting Mandates

- (1) A provincial legislature must confer authority to the head of its provincial delegation to the NCOP to cast a vote in a NCOP plenary.
- (2) If no matter arises from the deliberations of the NCOP select committee when considering final mandates which may necessitate consideration by a provincial legislature, the provincial delegation to the NCOP from a provincial legislature must table its province's final mandate in the NCOP plenary as that province's voting mandate.

**CHAPTER 4
GENERAL**

9. Short Title

This Act is called the Mandating Procedures of Provinces Act, 2006 (MPPA).

MEMORANDUM ON THE OBJECTS OF MANDATING PROCEDURES OF PROVINCES BILL, 2006

BACKGROUND

In terms of section 65 (2) of the Constitution of the Republic of South Africa, 1996 (Act no.108 of 1996, the Constitution of RSA), an Act of Parliament enacted in accordance with the procedure established by either subsection (1) or subsection (2) of section 76, must provide for a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf.

Item 21(5) of Schedule 6 of the Constitution, provides that until the Act of Parliament referred to in section 65(2) of the new Constitution is enacted each provincial legislature may determine its procedure in terms of which authority is conferred on its delegation to cast votes on its behalf in the National Council of Provinces.

As legislation envisaged in section 65(2) of the Constitution has not yet been enacted, there is no uniformity on how provincial legislatures confer authority on their delegations to cast votes on their behalf.

Provincial legislatures having invoked the provisions of item 21(5) of Schedule 6 to the Constitution had in their respective Standing Rules set out procedures in which authority is conferred on the delegation to cast votes on their behalf.

PURPOSE

The Bill seeks to provide a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf in the National Council of Provinces.

CLAUSE BY CLAUSE ANALYSIS

Clause 1 provides for definitions.

Clause 2 provides for application of the Bill.

Clause 3 sets out requirements that a mandate must contain and states that all the mandates must follow the format prescribed in Annexure A.

Clause 4 sets out the requirements in respect of designation of head of delegation. Annexure B should be followed for certification of designation as head of a delegation.

Clause 5 makes provision for procedural mandates and provides an open mandate to the NCOP delegation when dealing with procedural questions.

Clause 6 provides for legislative mandates requiring both negotiating and final mandates.

Clause 7 provides for the establishment of the NCOP Committee by a Provincial Legislature to deal with National Council of Provinces' matters.

Clause 8 sets out the procedures to be followed when conferring of authority to vote on negotiating mandates.

Clause 9 sets out the procedures to be followed when conferring of authority to vote on legislative and final mandates respectively, if the House is not sitting.

Clause 10 provides for voting mandates.

Clause 11 provides for the short title of the Bill and states that it will be called, the Mandating Procedures of Provinces Act, 2006 (MPPA).

Annexure A provides for the format to be used when mandates are submitted to the NCOP.

Annexure B provides for the format to be used in respect of certification of Designation as head of a Delegation.

CONSULTATION

All nine provincial legislatures and the South African Local Government Association (SALGA) have been consulted.

IMPLICATIONS FOR PROVINCES

This legislation would provide certainty with regard to the procedures that should be followed when the Provinces confer authority on its Provincial delegation to vote in the NCOP.

FINANCIAL IMPLICATIONS FOR THE NCOP

None.

PARLIAMENTARY PROCEDURE

The drafters of this Bill are of the opinion that this Bill must be dealt with in accordance of the procedures established by Section 76 of the Constitution.

To: The Chairperson of the NCOP

Name of province: _____

Name of designated member: _____

Period of designation: _____

Purpose of designation: _____

Signature of the premier: _____

Date: _____