



GAUTENG LEGISLATURE

LOCAL GOVERNMENT PORTFOLIO COMMITTEE

FINAL VOTING MANDATE:

ELECTRICITY REGULATION AMENDMENT BILL [B20B-2006]

1. INTRODUCTION

The Chairperson of the Local Government Portfolio Committee, Ms RS Letwaba, tables the Committee's Final Voting Mandate as adopted by the Portfolio Committee on Friday, 9th March 2007, on the *Electricity Regulation Amendment Bill* [B20B-2006]

2. PROCESS FOLLOWED

On the 14th February 2007, the Speaker formally referred the Electricity Regulation Amendment Bill [Versions A & B] [B20B-2006] – Section 76, to the Local Government Portfolio Committee, in terms of Rule 232(1)(a) read with 235(4) (6) and (7)

The Memorandum of the Amendment Bill states that at National Assembly stakeholders were consulted through various meetings owing to their key role in the electricity industry. The Bill was further published in the *Government Gazette* for public comment and various stakeholders provided additional inputs.

In considering the detail and principle of the Bill, the Committee in its meeting of the 20th February 2007 received a provincial briefing from the Permanent Delegate to the National Council of Provinces (NCOP), Honourable Ms S Chen. Member Chen alluded that the bill was opposed by SALGA (National), including Cape Town Council and the Nelson Mandela Municipal Council (Port Elizabeth) on the grounds that the bill was unconstitutional and should be withdrawn and totally revised. Opposition to the bill was also expressed by ESKOM, and the Energy Intensive Users Group which represented large industrial consumers, the Chamber of Mines and COSATU on the basis that the bill would prevent cross-subsidisation of residential consumers by large industrial and commercial consumers as well as the fact that the final end-state of the electricity sector had not yet been finalised. In conclusion, Member Chen explained that through amendments at National Assembly the contentious issues from the A Version of the bill have been dealt with.

The Department for Minerals and Energy representative, Ms N Magubane, presented on the legislative processes the bill has undergone to date and gave a brief overview of stakeholders' inputs, at the National Assembly. Ms Magubane further supported the NCOP brief presented by the Honourable Member Chen on the Bill and also confirmed that contentious issues from the Bill have been adequately dealt with

The Gauteng Department of Local Government and SALGA Gauteng were invited to make presentations on the socio-economic, financial, legal and political impact of the Bill and the effect it may have in relation to their respective mandates to Municipalities in Gauteng.

At the meeting of the 20th February:

- Both SALGA Gauteng and the Department of Local Government were unable to register their views with the Portfolio Committee, in terms of Rule 232(1)(b), 235(4)(a) and 151(3)(a); and
- They were further given an opportunity by the Portfolio Committee to present their respective views at the meeting of the 2nd March 2007

In compliance with its duty in terms of Section 118 of the Constitution, the Committee resolved that written submissions be invited through radio and newspaper advertisements, in order for the committee to decide on the necessity of calling public hearings. Advertisements on radio and print media were made from Saturday, 24th February to the Thursday, 1st March 2007.

Another meeting of the Committee was held on the 2nd March 2007, to further consider the detail and principle of the bill informed by the views of organised local government, the Department of Local Government and other interested stakeholders. Written submissions were received from ESKOM and City of Tshwane; SALGA Gauteng by way of e-mail correspondence indicated that the Provincial Office of SALGA will not have a position that is not informed by the position of SALGA National. They, however, failed to attend all arranged committee meetings and express any view including that which they argue to be aligning themselves to.

In light of the above responses, the Committee in considering the said responses on the Bill unanimously agreed that it will be impossible to proceed formulating a Negotiating Mandate (required by the NCOP on 6th March 2007) not informed by the social, political and financial implications the bill might have on both the Department and Municipalities once enacted, hence the resolution of the Committee to the effect that a special meeting be convened on Monday, 5th March 2007 to allow the Department of Local Government a further opportunity to present the views of the Executive Council on the bill.

At this meeting of the 5th March 2007 the Provincial Department of Local Government and SALGA Gauteng failed to make substantive presentations on the bill, however, the Provincial Department undertook to submit the views of the Executive Council before the consideration of the final voting mandate

At the same meeting the Portfolio Committee in their negotiating mandate provisionally supported the bill; and agreed to solicit the Select Committee's indulgence to allow the Committee to propose further amendments should the views of both SALGA-Gauteng and the Provincial Executive substantively bear socio-economic, financial and political implications for the Province that may require consideration prior to the passage of the bill by the NCOP.

The Provincial Department of Local Government's written comments were received by the Committee on 7th March 2007. Noting the views expressed by the Department of Local Government, which in principle are in support of the Bill and further confirmed that the Bill will impose financial, economic and social implications for the Province.

At the meeting of the 9th March 2007 the committee deliberated and considered the principle and detail of the Electricity Regulation Amendment Bill [B20B-2006] Section 76 as well as to adopt the Final Voting Mandate.

3. COMMENTS RECEIVED FROM THE PROVINCIAL DEPARTMENT OF LOCAL GOVERNMENT

3.1 The department of Local Government submitted their comments in writing and noted the following:

➤ The amendments are accepted as they are only textual corrections

- 1.1. *Amendment of section 4 of Act 4 of 2006*
- 1.2. *Amendment of section 8 of Act 4 of 2006*
- 1.3. *Amendment of section 10 of Act 4 of 2006*
- 1.4. *Amendment of section 11 of Act 4 of 2006*
- 1.5. *Amendment of section 14 of Act 4 of 2006*
- 1.6. *Amendment of section 15 of Act 4 of 2006*
- 1.7. *Amendment of section 17 of Act 4 of 2006*
- 1.8. *Amendment of section 19 of Act 4 of 2006*
- 1.9. *Amendment of section 44 of Act 4 of 2006*
- 1.10. *Amendment of long title of Act 4 of 2006*
- 1.11. *Amendment of Arrangement of sections of Act 4 of 2006*
- 1.12. *Renumbering of certain sections in Act 4 of 2006*

➤ **Duties of municipalities (Section 28)**

Section 28(1) of the Bill seems to be incomplete. Reference is also made to section 29, which currently is not included in the principal Act or the Bill.

➤ **Selection and appointment of external service provider (Section 30)**

This section is in order.

➤ **Key Performance Indicators (Section 32)**

This section is in order. However, it is suggested that instead of the Regulator being authorized to prescribe Key Performance Indicators (KPI's) in respect of the technical operational issues pertaining to reticulation systems for municipalities, the Minister for Minerals and Energy, **In consultation with the Regulator**, should prescribe the KPI's. This, in our view, would be compatible with section 43 of the Local Government: Municipal Systems Act, 2000, which empowers the Minister for Provincial and Local Government to prescribe general KPI's

➤ **Amendment of Section 47 of Act 4 of 2006**

This section is in order. However, it is suggested that the Minister should make the regulations **in consultation with the Regulator**.

3.2 Financial Implications

The appointment of external service providers and compliance with standards set out in the KPI's or Regulations envisaged by the Bill may have financial implications for municipalities. Furthermore, in terms of section 154(1) of the Constitution, Provincial Government *inter alia* must support and strengthen the capacity of municipalities to exercise their powers and perform their functions. To that end, there may potentially be financial obligations imposed on Province to ensure that municipalities are fully capacitated to execute their obligations in terms of the Bill.

3.3 Economic Implications

The Bill allows for a municipality to impose surcharges on electricity sales within its municipal area. This could allow licensed municipalities to do price fixing. The provision of free basic reticulation is addressed by the Bill without any indication of the resource for funding requirements (i.e. Municipal Infrastructure Grant or Electricity Income generated).

3.4 Political Implications

For the Bill to be properly implemented it implicitly requires effective inter-governmental relations amongst the three spheres of government. It is therefore submitted that the Bill has political implications for all three spheres of government.

3.5 Social Implications

The focus of the Bill is *inter alia* to deal with electricity reticulation by municipalities in order to promote effective service delivery to communities. The provision of this basic service has important social impacts. However, effective inter-governmental relations between the different spheres of government will be essential in order for

the Bill to be properly implemented and the positive social impacts to be produced. It is further suggested that the setting up of a fund to supply free basic electricity should be accommodated in the Bill.

3.6 General

- The department is very positive towards the establishment of the 3 REDs in Gauteng and support EDI Holdings in their restructuring legislation.
- The department also supports that NERSA be empowered through legislation to regulate the industry and achieve tariff rationalization.

4. PROPOSED AMENDMENTS BY THE COMMITTEE

The Portfolio Committee considered the detail of the *Electricity Regulation Amendment Bill* [Versions A & B] [B20B-2006] – Section 76 as follows and proposes the following amendments:

Page 4; omit the whole of line 16 and 17 of Section 28.

This amendment was proposed by the National Assembly but was overlooked by the drafters of the legislation and still remains in the Version B of the bill

Page 4, line 14 – omit the words "referred to in section 29".

Section 29 has been removed through the National Assembly's amendments, but section 28(1) still makes reference to section 29.

5. LEGAL FRAMEWORK

In considering the bill, the portfolio committee considered:

- The Electricity Regulation Act, 2006 (Act No. 4 of 2006).
- The Local Government: Municipal Systems Act, 2000 (Act No. 32 of 200).
- The Constitution of the RSA, 1996.
- The A Version of the Electricity Regulation Amendment Bill.

6. OBJECTIVES AND ANALYSIS OF THE ELECTRICITY REGULATION AMENDMENT BILL

The amendment bill seeks to amend the Electricity Regulation Act [Act 4 2006] as follows:

To insert certain definitions, to make certain textual corrections, to insert a new Chapter dealing with electricity reticulation by municipalities; and to extend the Minister's powers to make regulations; and to provide for matters connected therewith.

7. FURTHER CONSIDERATIONS

The committee has further considered the social, economic/financial and political implications of the bill and reached the following conclusion:

- The Bill is likely to impose financial obligations on the province and municipalities for which no explicit funding provision is articulated; specifically:
 - It does not specify the funding mechanism which would most appropriately address the additional financial burden imposed by the bill
- The implementation of the bill calls for strengthened intergovernmental relations efforts

8. CONCLUSION

The Portfolio Committee on Local Government unanimously supports the principle and detail of the Electricity Regulation Amendment Bill [B20B-2006] – Section 76, with amendments as proposed in item 4 above

9. FINAL VOTING POSITION ADOPTED BY THE COMMITTEE

In terms of Section 65 of the Constitution, the Local Government Portfolio Committee recommends that the House confer authority on the Gauteng Provincial Delegate/s, to the NCOP to vote **in favour of**, the Electricity Regulation Amendment Bill [B20B-2006] - Section 76.

NORTHERN CAPE PROVINCIAL LEGISLATURE



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**TO: CHAIRPERSON OF THE NCOP
Mr MJ MAHLANGU**

**FINAL MANDATE: ELECTRICITY REGULATION AMENDMENT BILL [B20B -
2006]**

(Section 76 Bills)

1. INTRODUCTION

The Chairperson of the Portfolio Committee on Housing & Local Government Hon CAT Smith tabled the Committee's negotiating mandate as adopted by the Portfolio Committee on **05 March 2007** on the *Electricity Regulators Amendment Bill* [B20B - 2006].

2. PROCESS FOLLOWED

The Speaker of the NCPL, had on receipt referred the *Electricity Regulation Amendment Bill* [B20B - 2006] to the Portfolio Committee on Housing and Local Government.

The Portfolio Committee received a briefing on the Bill from the Northern Cape's Permanent Delegate to the NCOP Hon Matlhoahela at its meeting on the 22 February 2007.

The Portfolio Committee resolved at its meeting of 22 February 2007 to hold public hearings on the referred Bill in the areas of Frances Baard, Pixley ka Seme, Kgalagadi, Siyanda and Namaqua to solicit the views of the affected beneficiary communities and stakeholders with regard to the *Electricity Regulation Amendment Bill*.

Five (5) public hearings were held on **27 February 2007** and one (1) on the **28 February 2007** as per Committee resolution and both written and oral submissions were called for. The public engaged with the Members of the Legislature on their views.

On **01 March 2007** and **05 March 2007** the Portfolio Committee on Housing & Local Government deliberated and considered the *Electricity Regulation Amendment Bill [B20B - 2006]*.

3. PUBLIC INPUTS ON THE BILL

The public hearings held were well attended by the members of the public.

The members of the public supported the Bill and made the following comments:

- Municipalities should enter into agreement with the Service Provider and should be responsible for solely supplying communities.
- Tarrifs in all districts should be equal.
- The provision of electricity to farms should be clearly outlined.
- The Minister to be granted more powers to intervene on certain matters.
- The law must ensure better access for vendors.
- The National government should budget to assist the provinces in the implementation of the Bill.

4. PORTFOLIO COMMITTEE POSITION AT THE NEGOTIATING STAGE

The Portfolio Committee on Housing & Local Government in principle **supports** the Bill.

5. COMMITTEE COMMENTS ON THE BILL

- The possibility of a power station at Hondeklipbaai must be considered because distribution of electricity from the Western Cape to the Northern Cape will result in higher tarrifs.
- National Treasury should capacitate and enable smaller municipalities to reticulate electricity.
- The Legislature should continue to lobby for a greater share of money and assist in the acquisition of financial and technical skills at municipal level.

6. LEGAL ADVISE ON THE BILL

In order to assist the MEC in the monitoring this added responsibility and not only report to him or her (**clause 4, section 37 of the Bill**) it could be suggested that the MEC be alerted by way of an "early warning system" already in **section 35** of the **Bill** when the Regulator interacts with the municipality by adding the words "and the MEC" after the word "municipality" in subclause (1)(a).

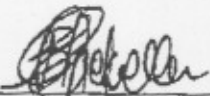
It is important that the electricity reticulation function as bestowed by this bill, be linked to **sections 46 and 47** of the **Local Government Municipality Systems Act, 2000 (Act No 32 of 2000)** which are concerned with performance management, the municipalities performance report as well as the relevant MEC responsibility to submit to the provincial legislature, a consolidated report on the performance of municipalities in the province.

The Negotiating Mandate was tabled on 05 March 2007 in the House. The Committee recommended to the House to mandate the Permanent Delegates to participate in deliberations at the negotiating stage and to support the Bill, taking note of the concerns raised by the Committee as well as those of the public.

The House therefore conferred on the Permanent Delegates the authority to participate in negotiations and to raise the concerns expressed.

7. FINAL VOTING MANDATE

In terms of Section 65 of the Constitution, the Portfolio Committee on Housing & Local Government recommends that the House confer authority on the Head of its Delegation to the NCOP **to vote in support** of the *Electricity Regulation Amendment Bill* [B20B - 2006].



HON G CJIEKELLA

Deputy Speaker: Northern Cape Provincial Legislature

Limpopo Legislature

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CONFERRAL OF VOTING MANDATE TO THE NCOP PERMANENT DELEGATES ON ELECTRICITY REGULATION AMENDMENT BILL, 2006 [B20B-2006]

Please be informed that the Limpopo Legislature has at its sitting held on Tuesday, 13 March 2007 at the Lebowakgomo Legislative Chamber, adopted the Report of the Portfolio Committee on Economic Development, Environment and Tourism on the aforesaid Bill.

The Honourable House resolved to confer a mandate to its NCOP Permanent delegates to vote in favour of the Bill, with recommendations, to be passed in to law.

The Portfolio Committee's Report on the Bill is attached herewith for easy reference.

ADV. E.N LAMBANI
SECRETARY: LIMPOPO LEGISLATURE