



## GAUTENG LEGISLATURE

### RULES STANDING COMMITTEE

#### NEGOTIATING MANDATE:

#### MANDATING PROCEDURES OF PROVINCES BILL [B8-2007]

##### 1. INTRODUCTION

The Chairperson of the Rules Standing Committee, Mr R M Mdakane, tables the Committee's Negotiating Mandate as adopted by the Rules Committee on Wednesday, 29<sup>th</sup> August 2007, on the *Mandating Procedures of Provinces Bill* [B8 – 2007].

##### 2. PROCESS FOLLOWED

On the 22<sup>nd</sup> May 2007, the Speaker formally referred the Mandating Procedures of Provinces Bill [B8-2007] – Section 76, to the Rules Committee, in terms of Rule 232(1)(a) read with 235(4) (6) and (7).

On 02<sup>nd</sup> August 2007, the Committee convened to receive a briefing from the Provincial Permanent Delegate to the National Council of Provinces (NCOP), Honourable Member S. Shiceka, who provided a detailed background explaining the detail and principle of the bill and Members engaged with the presentation for clarification of issues as articulated by the Permanent Delegate, emanating from the substance of the bill.

On 23<sup>rd</sup> August 2007, the Committee convened to deliberate on the principle and detail of the bill and subsequently adopted a Negotiating Mandate on the Mandating Procedures of Provinces Bill [B8-2007], on 29 August 2007, for tabling and subsequent transmission to the Chairperson of the Select Committee on Security and Constitutional Affairs.

As the application of the bill will be confined to provincial legislatures and the NCOP only, the requirements of the GPL Standing Rule 235(4) which require that whenever a Committee considers a matter on which the provincial delegation will be expected to vote in the NCOP, the Committee must inform the relevant MEC and give him/her an opportunity to present the views of the Executive Council on the matter in so far as it will

impact financially and socially on the province as a whole, have not been met due to the nature and application of the bill.

Furthermore, as required by section 118 of the Constitution as well as GPL Standing Rule 50, public involvement in the consideration of the bill was not facilitated due to the nature, substance and intended application of the bill.

### 3. PRINCIPLE AND DETAIL OF THE BILL

The bill is a requirement of section 65(2) of the Constitution, Act 108 of 1996, and seeks to provide for a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf in the NCOP by prescribing uniform requirements for conferring various mandates as provided for in the bill.

### 4. CLAUSE BY CLAUSE ANALYSIS

#### Chapter 1 -

#### Definitions and Application

1. **Legislative mandate** – The bill does not prescribe a procedure for conferral of authority in respect of sec 64 & 78 legislative mandates. Unless clearly prescribed, it may be assumed that in respect of sec 64 & 78 matters, Provinces will continue to determine their own procedures in terms of which authority will be conferred on their delegations to vote in the NCOP once the bill is passed.

The Committee proposes that the bill prescribe a procedure for conferral of mandates in respect of sect 64 & 78 matters as well

2. **Mandate** – As the definition relates to the casting of votes in compliance with the requirements under sec 3, the Committee proposes that the definition be extended to include compliance requirements in respect of sec 64 & 78 matters.
3. **Negotiating Mandate** – having considered what the negotiating process entails, and the stage at which the bill will be, it may not be feasible to utilize a house sitting process to obtain authority on parameters of negotiating by the provincial delegation in a Select Committee meeting. The provincial committee at this stage, is still in negotiations on behalf of the province with the NCOP. Within their powers as a committee and noting that it is a multi-party representative committee of the legislature, with full powers, they should be allowed to exercise their powers and only report to the house at the conclusion of their work with a

recommendation on a final voting position to be conferred by resolution of the house.

#### **Chapter 2 -**

##### **Requirements iro mandates**

1. In respect of sec 3 (a & b) – cannot apply to negotiating mandates as no voting is envisaged during that stage.
2. in respect of sec 3 (c), the comments in 3 above (Negotiating Mandate) apply. Therefore, the Committee proposes that the requirement to have the Speaker signing as having presided over conferral of a negotiating mandate in the sitting should be deleted.

#### **Chapter 3 -**

##### **Procedures iro of Mandates**

##### **1 *Legislative Mandates requiring both Negotiating and Final Mandates***

In respect of the proposed amendments to sec 5, the insertion of sub-section (2) – The clause makes it compulsory on legislatures to facilitate public involvement on national legislation. The Committee's reading of the judgement of the Constitutional Court in respect of corresponding Constitutional obligations of the two spheres of government, (i.e. legislatures (sec 118) and NCOP (sec 72)) regarding the facilitation of public involvement in the legislative and other processes of the two houses, the court clearly defined the relationship between the NCOP and the Legislatures in the consideration of national legislation as well as expressing itself on the role and participation of the provincial Permanent Delegates to the NCOP when hearings are conducted in the provinces. Paragraphs 161 & 163 of the judgement reads, *"if the NCOP is to conduct provincial hearings, it must allocate substantial time and money to send its committee members to each province. Whether public hearings conducted by the provincial legislatures are sufficient to satisfy the obligation of the NCOP under sec 72(1)(a), ultimately depends on the facts and the nature of the process of facilitating public involvement that has occurred in the provinces, including the extent to which the NCOP Delegations were involved in and have access to the information gathered during that process. It will be reasonable for the NCOP to take a decision that public hearings should be held in the provinces provided that the provinces in fact hold the hearings and the proceedings are then attended by members of the NCOP"*.

In light of the above, the Committee is of the view that it may be necessary for the Legislature and the NCOP to agree on a structured approach as there are both financial and human resource implications on the part of the Legislatures, and the bills are in fact national instead of provincial but due to the required conferral of mandates, provinces become involved in the national legislative processes on the part of the NCOP.

**2      *Negotiating Mandates***

In respect of sec 6

The comments above apply.

**3.      *Voting Mandates***

3.1      In respect of sec 8(1), the delegation head is authorized to cast a vote in an NCOP Plenary. The Committee proposes that the bill clearly specify that the Delegation Head is authorized to cast a vote only on a question contemplated in any of the legislative mandates as defined.

3.2      In respect of the proposed amendments to sec 8, the insertion of sub-section (3)- Notwithstanding the intention of the bill, and the principle of law that provisions of the Constitution may not be inconsistent with each other, to some extent and the practicalities related with the proposed insertion, the provision has the potential of intruding into the powers of the legislature to determine and control its internal arrangements because it compels a legislature to convene a special sitting to confer authority on its delegation in the event the legislature is not sitting.

A legislature may in terms of sec 116 of the Constitution, rely on its internal arrangements to determine a manner in terms of which NCOP matters are to be dealt with when sittings of the House are not scheduled. Considering that Members of the legislature are involved in other Committee business when sittings are not scheduled and may not be available to form a quorum at the sitting to be convened to deal with NCOP business, thus defeating the intention and operation of the provision as no mandate will be conferred as required by the clause.



**SCHEDULE -****Format for Mandate**

In respect of the Schedule, the Committee proposes that the current practice of sending detailed reports that reflect on the processes followed in provinces, overview of public hearings, financial and social implications of the bill on the province and reasons for a voting position being taken by the province among other things be retained and that such reports be attached and/ or accompany the prescribed schedule.

The Committee is of the view that reliance on the schedule alone when mandates are submitted to the NCOP will not be sufficient. Information to be provided in the schedule will not be adequate to provide proper context and justification for conclusions reached by the provinces either in support or rejection of the bill, especially in the event of court challenges, the court will have little documented information to process and rely on.

The Committee further proposes that the schedule should have a part that will reflect the public participation process followed in respect of the bill.

Finally, the Committee proposes that there should be consideration to –

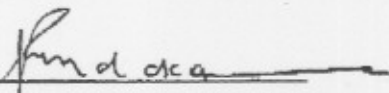
- i) provide for voting through Video Conferencing either in the bill and /or in the NCOP Rules, as there will be procedural requirements to be complied in respect of voting.
- ii) have the 4 & 6 weeks cycles clearly defined and the nature and categories of bills falling into either of the cycles.

**5. FINANCIAL IMPLICATIONS OF THE BILL**

The Bill has no financial implications either for the province or the legislature.

**6. NEGOTIATING POSITION ADOPTED BY THE COMMITTEE**

The Committee supports the principle and detail of the Mandating Procedures of Provinces Bill [B8-2007], subject to consideration of the proposals raised under clause by clause analysis above.



**SPEAKER: MR R M MDAKANE**

**CHAIRPERSON: RULES STANDING COMMITTEE**