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FROM-KZN LEGISLATURE

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IPHALAMENDE LAKWAZULU-NATALI



KWAZULU-NATAL PROVINSIALE PARLEMENT

KWAZULU-NATAL PROVINCIAL PARLIAMENT

**TO: THE CHAIRPERSON,
NATIONAL COUNCIL OF PROVINCES**

NEGOTIATING MANDATE

PROVINCE : KWAZULU-NATAL

**BILL : MANDATING PROCEDURES OF
PROVINCES BILL [B 8 - 2007]**

PROVINCIAL PROCESS :

Provincial Portfolio Committee/s :	National Council of Provinces Matters Committee
Portfolio Committee meeting date/s :	<u>Tuesday, the 21st of AUGUST 2007</u>
Provincial NCOP meeting date/s :	<u>Tuesday, the 21st of AUGUST 2007</u>
Consultation :	Parliamentary Legal Advisors, Special & Permanent Delegates

VOTE OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE:

The Provincial Standing Committee on National Council of Provinces Matters met today, Tuesday, the 21st of August 2007, & agreed to mandate the KwaZulu-Natal delegation to the National Council of Provinces to **support the Mandating Procedures of Provinces Bill [B8-2007]** subject to the proposed amendments below:

1. CLAUSE 1- DEFINITIONS

- 1.1 Substitute the definitions of "final mandate", "mandate", "negotiating mandate" and "voting mandate" for the following -

"final mandate" means the authority conferred by a provincial legislature on its provincial delegation to the NCOP as contemplated in section 7;

"mandate" means the authority conferred by a provincial legislature on its provincial delegation to the NCOP in terms of section 6, 7 or 8, as the case may be;

"negotiating mandate" means the authority conferred by a provincial legislature on its provincial delegation to the NCOP as contemplated in section 6;

"voting mandate" means the authority conferred by a provincial legislature on the head of its provincial delegation to the NCOP, or a delegate designated by the head of the delegation, as contemplated in section 8;

The definitions as contained in the Bill are cumbersome, contain substantive provisions which belong in the text of the Bill, and are repeated in the provisions of the Bill itself. The proposed amendments seek to simplify the Bill and to ensure greater accuracy.

- 1.2 Delete the definition of "legislative mandate". There is no need for it (mandates are required by operation of law in respect of the instances referred to in this definition). It may also cause confusion, particularly when read in the context of clause 5, where it seems to be given a particular meaning, which is different to that in the definition. (See also proposed deletion of clause 5).

2. CLAUSE 3 – REQUIREMENTS IN RESPECT OF MANDATES

It is not clear whether this clause proposes to deal with *all* mandates (including negotiating mandates) or only with *voting* mandates (the introductory sentence refers to "every mandate *required* by this Act", yet the text seems to indicate that only voting mandates are being referred to – see par (a) & (b)).

It is proposed that clause 3 be amended to provide for greater clarity, as follows –

"Requirements in respect of mandates"

3. Every mandate [required] conferred 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 being considered or voted on, as the case may be;
 - (b) indicate amendments, if any, proposed by the legislature, in the case of a negotiating mandate, and, in the case of a final or a voting mandate, whether the provincial legislature votes in favour of or against, or abstains from voting on, the Bill;
 - (c) contain the signature of the Speaker or of a person designated by the Speaker [to preside on that specific Bill];
 - (d) ...; and
 - (e) ...

** See also Note 1 on page 4 of this document.*

3. CLAUSE 5 – LEGISLATIVE MANDATES REQUIRING BOTH NEGOTIATING AND FINAL MANDATES

It is proposed that clause 5 be deleted entirely. It may be confusing, especially when read with the definition of "legislative mandate" (which is defined as authority to cast a vote). Clause 5 purports to give a different meaning to the term "legislative mandate", namely a "negotiating and final mandate". The absence of this clause will not affect the Bill, as the principles referred to in this clause are captured in the proposed amendments to clause 6 & 7 (see below).

4. CLAUSE 6 – NEGOTIATING MANDATES

Substitute clause 6 for the following, for the sake of greater clarity and simplicity –

"Negotiating mandates"

6. (1) A provincial legislature *may* confer a negotiating mandate on its provincial delegation to the NCOP in respect of a Bill referred to –

(a) in section 74(1)(b), (2)(b), (3)(b) and (8) of the Constitution; and

(b) in section 76 of the Constitution.

(2) A negotiating mandate confers authority on a provincial delegation on parameters for negotiation when the relevant NCOP select committee considers a Bill after tabling in the NCOP, but before consideration of final mandates.

(3) A negotiating mandate may include proposed amendments to the Bill under consideration."

6. **CLAUSE 8 – VOTING MANDATES**

~~Amend to clause 8 for the~~ following, for the sake of greater clarity and

8. (1) A provincial legislature must confer a voting mandate on its provincial delegation to the NCOP in respect of a Bill referred to –

(a) in section 74(1)(b), (2)(b), (3)(b) and (8) of the

Constitution.

(2) If no matter arises from the deliberations of the NCOP select the NCOP must table its final mandate in respect of the Bill.

and the last sentence as follows –

"[Signature of Speaker or person designated [to preside in House on Bill] by the Speaker"

NOTE:

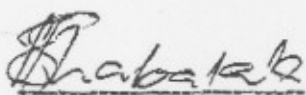
1. It is the view of the Province of KwaZulu-Natal that section 65(2) of the Constitution of the RSA, 1996, does not empower national legislation to prescribe the procedures that a provincial legislature must follow when conferring a *negotiating mandate* on its delegation. The amendments proposed in this document are aimed at removing any uncertainty over whether a negotiating mandate can only be conferred at a Sitting of the House. The view is that section 65(2) of the Constitution only allows for a uniform procedure by way of legislation in so far as the conferral of authority to cast a vote is concerned. A provincial legislature is therefore at liberty to provide for its own internal procedures for the conferral of a negotiating mandate, in accordance with its constitutional powers in terms of section 116 of the Constitution.
2. The amendments proposed by the NCOP Select Committee on Security and Constitutional Affairs in respect of clause 5 and clause 8, are superfluous -
 - The proposed amendment of clause 5(2) concerning the obligation to facilitate public involvement appears to be a restatement of section 118 of the Constitution, which imposes such a duty on provincial legislatures in respect of its processes in any event. It is not necessary to repeat these provisions in the Bill.
 - The proposed amendment to clause 8(3), providing for a special sitting to be convened for conferral of a mandate where a legislature is not sitting, is also not necessary, as it follows as a matter of course that if a mandate is to be conferred by the House, a sitting must be held to do so, be it a normal sitting or a special one.

The delegation is further mandated to consider any additional amendments, providing that-

- 1) the amendment/s does/do not alter the essential elements of the Bill;
and

- 2) consensus is reached on the proposed amendment/s by the KwaZulu-Natal delegation.

PROVINCIAL ENDORSMENT



Ms L F Shabalala
CHAIRPERSON :
KWAZULU-NATAL STANDING COMMITTEE
ON NATIONAL COUNCIL OF PROVINCES MATTERS

Tuesday, the 21st August 2007

DATE