



GAUTENG
LEGISLATURE

RULES STANDING COMMITTEE

FINAL VOTING MANDATE

MANDATING PROCEDURES OF PROVINCES BILL [B8B-2007]

19 September 2007

1. INTRODUCTION

The Acting Chairperson of the Rules Standing Committee, Member S Mkhize, tables the Committee's Final Voting Mandate on the *Mandating Procedures of Provinces Bill [B8B-2007]* a Section 76 as follows:

2. PROCESS FOLLOWED

On the 22nd 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 02nd 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 23rd August 2007, the Committee convened to deliberate on the principle and detail of the Bill and on 29 August 2007, adopted a Negotiating Mandate on the Mandating Procedures of Provinces Bill [B8-2007] 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.

Subsequent to the deliberations on Negotiating Mandates in the NCOP Select Committee meeting of 11 September 2007, the Committee convened on 19 September 2007 to consider the proposed amendments by the Select Committee and adopted its report on the Final Voting Mandate on the Mandating Procedures of Provinces Bill [B8B-2007].

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. COMMITTEES CLAUSE BY CLAUSE ANALYSIS DURING NEGOTIATING STAGE

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 proposed 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 proposed that the definition be extended to include compliance requirements in respect of sec 64 & 78 matters.

3. **Negotiating Mandate –**

The Committee having considered what the Negotiating process entails, and that the Bill at that stage will be before a Committee, proposed that it would 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 and that the relevant Provincial Committee dealing with a formally referred NCOP bill, 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), the Committee proposed that the sub-sections should not apply in respect of Negotiating Mandates as no voting is envisaged at that stage.
2. in respect of sec 3 (c), the Committee proposed the deletion of the requirement to have the Speaker signing as having Presided over conferral of a Negotiating Mandate in the Sitting of the House.

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 bills. Upon the Committee's reading of the judgement of the Constitutional Court in respect of the constitutional obligations of both the NCOP & the Legislatures, the Committee submitted that it may be necessary for the Legislatures and the NCOP to agree on a structured approach as there would inevitably be financial and human resource implications to be borne by Legislatures, and particularly noting that the Bills in question would be national Bills instead of provincial Bills 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 advanced in respect of Negotiating Mandate requirements 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 proposed 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, to avoid Delegation Heads in attendance of NCOP Plenaries having to cast votes on matters that they would not have been mandated by their respective Provinces to cast votes on (e.g. voting on Motions without Notice or International Treaties).

3.2 In respect of the proposed amendments to sec 8, the insertion of sub-section (3)-

The Committee while acknowledging the intention of the Bill to create uniformity in the conferral of authority to cast votes in the NCOP, noted the provisions of section 116 of the Constitution, particularly in so far as the clause in the Bill seeks to prescribe and oblige Legislatures to convene Special Sittings when Legislatures are not in session to confer voting authority and the potential that the clause will have of intruding into the powers of Legislatures to determine and control their internal arrangements when not in session.

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.

SCHEDULE -

Format for Mandate

In respect of the Schedule, the Committee proposed 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 as it does not allow for provision of detailed information that provides 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 proposed that the schedule should have a part that will reflect the public participation process that would have been followed in the respective Provinces.

5. COMMITTEE POSITION AFTER NEGOTIATING STAGE

The Committee considered the proposed amendments by the Select Committee on the Mandating Procedures of Provinces Bill [B8B-2007] and noted that the proposals presented by the Committee in the Negotiating Mandate had been considered and the Bill duly amended to that effect.

The Committee further noted that there is no provision in the Bill that will allow that prior to submission of Final Mandates by Provinces, in the event amendments are proposed and adopted by the Select Committee after consideration of Negotiating Mandates, that the proposed amended version of the Bill be referred to Provinces to enable provision of Final Mandates by Provinces based on the amended version of the Bill, instead of requiring submission of Final Mandates in the absence of a proposed amended version of the Bill.

6. FINANCIAL IMPLICATIONS OF THE BILL

The Bill has no financial implications either for the Province or the Legislature.

7. FINAL VOTING POSITION ADOPTED BY THE COMMITTEE

The Rules Committee recommends that the House confer authority in terms of Section 65 of the Constitution on the Gauteng Provincial Delegate/s to the National Council of Provinces to Vote in favour of the Mandating Procedures of Provinces Bill [B8B-2007].