



EASTERN CAPE PROVINCIAL LEGISLATURE

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Date: 05 November 2007
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**PORTFOLIO COMMITTEE ON LOCAL GOVERNMENT AND
TRADITIONAL AFFAIRS**

Negotiating Mandate on the Constitution Thirteenth Amendment Bill (B24-2007).

1. ***Terms of reference***

The Constitution Thirteenth Amendment Bill (B24-2007) hereinafter referred to as the Bill, was referred to the Portfolio Committee on Local Government and Traditional Affairs by the NCOP Business Committee for consideration.

2. ***Consideration of the Bill***

The Portfolio Committee was briefed on the content and effects of the Bill by the Chief Procedural Officer, Mr. HL Smith

The Committee also noted the Constitutional requirements for passing the Bill and the obligation on the legislatures to facilitate public involvement in their legislative processes as laid down by the Constitutional Court in the Doctors for Life¹ and Matatiele² cases.

3. ***Negotiating mandate of the Committee***

The Committee resolved to confer the following negotiating mandate:

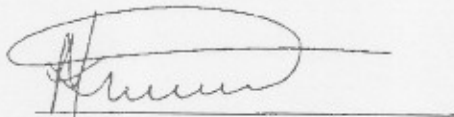
¹ Doctors for Life International v Speaker of the National Assembly and Others 2006(12)BCLR 1390 (CC)

² Matatiele Municipality and Others v President of the Republic of South Africa and Others 2007(1) 47 (CC)



- To support the Bill without further amendments that will alter the subject and effect of the Bill.

4. The Portfolio Committee further resolve that Hon. Lulamile Nazo represents the Province of the Eastern Cape in a meeting to consider the negotiating mandate.



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SPEAKER: EASTERN CAPE PROVINCIAL LEGISLATURE

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Office of the Secretary

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NEGOTIATING MANDATE:

CONSTITUTIONAL THIRTEENTH AMENDMENT BILL [W24-2007]



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The Portfolio Committee on Local Government and Housing met on the 11 October 2007 for the briefing by the permanent delegate of the National Council of Provinces on the Constitutional Thirteenth Amendment Bill [W24-2007] (the Bill). The Legal Advisor of the Legislature was present.

After consideration of the Bill, the Committee agreed to the proposed amendments and supports the Bill as it stands.

The permanent delegates representing the Province of Mpumalanga in the National Council of provinces are hereby conferred with authority and mandated to vote in favour of the Bill.


HON Nt MAHLANGU
CHAIRPERSON: PORTFOLIO COMMITTEE
ON LOCAL GOVERNMENT AND HOUSING

26/10/2007
DATE

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**REPORT OF THE PORTFOLIO COMMITTEE ON
CONSTITUTION THIRTEENTH AMENDMENT BILL
[W24-2007]**

1. INTRODUCTION

The Portfolio Committee on Local Government and Housing (The Committee) received the Constitution, Thirteenth Amendment Bill [W24-2007], with the amendments made by Portfolio Committee on Local Government and Housing of the National Assembly.

1.1 Purpose of the Bill:-

To amend the Constitution of the Republic of South Africa, 1996, so as to correct invalid provisions inserted into the Constitution; and to provide matters connected therewith.

2. METHOD OF WORK

The Committee met on the 11 October 2007 for deliberations on the amendments made on the Constitution Thirteenth Amendment Bill [W24- 2007]. The Portfolio Committee agreed to conduct public hearings on 24 and 25 October 2007 respectively within the Province.

3. Inputs and Comments

The Members of the Public unanimously accepted all the amendments and the objective of the Bill. In the absence of contrary views, the Bill was endorsed.

3. RECOMMENDATION

The Portfolio Committee recommends that the Permanent Members of the NCOP should vote in favor of the Bill.

4. CONCLUSION

The Chairperson would like to thank the Members of the Portfolio Committee for their participation during and after the proceedings of the public hearings.

Lastly, on behalf of the Committee, the Chairperson would like to request the House to adopt this Report.

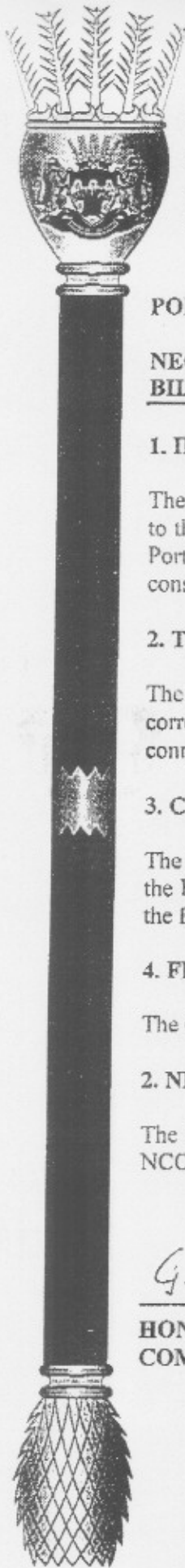

HON. NJ MAHLANGU
CHAIRPERSON: PORTFOLIO COMMITTEE
ON LOCAL GOVERNMENT AND HOUSING

DATE 26/10/2007

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Limpopo Legislature

OFFICE OF THE SECRETARY

**Physical Address:**Lebowakgomo
Government Complex**Postal Address:**Private Bag X9309
Polokwane
0700**PORTFOLIO COMMITTEE ON LOCAL GOVERNMENT AND HOUSING****NEGOTIATING MANDATE ON THE CONSTITUTION 13TH AMENDMENT
BILL, 2007**

1. INTRODUCTION

The National Council of Provinces referred the Constitution 13th Amendment Bill, 2007 to the Limpopo Legislature. Upon receipt by the Legislature, the Bill was referred to the Portfolio Committee on Local Government and Housing to make further inputs for consideration by the NCOP.

2. THE BILL

The Bill seeks to amend the Constitution of the Republic of South Africa, 1996, so as to correct invalid provisions inserted into the Constitution; and to provide for matters connected therewith.

3. CONSIDERATION OF THE BILL

The Committee met on 15 October 2007 to be briefed on the principles and provisions of the Bill by the NCOP Delegates. Having considered the Bill, the Committee agrees with the Bill's principles and provisions.

4. FINDINGS

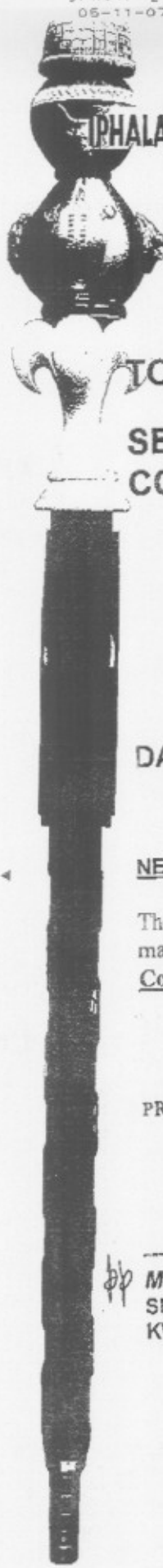
The Committee found that the draft Bill only addresses the Matatiele case.

2. NEGOTIATING MANDATE

The Committee, having supported the provisions of the Bill confers a mandate to the NCOP Delegates to negotiate in favour of the Bill for enactment.

HON. G. MOLEKWA
COMMITTEE CHAIRPERSON

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KWAZULU-NATAL PROVINSIALE PARLEMENT

KWAZULU-NATAL PROVINCIAL PARLIAMENT

TO: THE CHAIRPERSON,
SELECT COMMITTEE ON SECURITY AND
CONSTITUTIONAL MATTERS

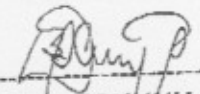
NEGOTIATING MANDATE AGREED TO BY
THE HOUSE ON
THE CONSTITUTION THIRTEENTH AMENDMENT BILL
[B24 - 2007]

DATE: Thursday, 1 NOVEMBER 2007

NEGOTIATING MANDATE OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE:

The KwaZulu-Natal Legislature met today, Thursday, 1st November 2007, & resolved to mandate the KwaZulu-Natal delegation to the National Council of Provinces to *support* the Constitution Thirteenth Amendment Bill [B24-2007].

PROVINCIAL ENDORSMENT


MR TW MCHUNU
SPEAKER:
KWAZULU-NATAL LEGISLATURE

Thursday, the 1st November 2007

DATE

NORTHERN CAPE PROVINCIAL LEGISLATURE

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Kimberley, 8300

Fax: 053 - 8398094

Nobengula Ext.
Mankurwane, 8345

OFFICE OF THE DEPUTY SPEAKER

Date:

02 NOV 2007

Our Ref: 16.7.1.1

Your Ref:

Enquiries: CPC Haas

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

NEGOTIATING MANDATE: CONSTITUTION 13TH AMENDMENT BILL [B24-2007]

(Section 76 Bill)

1 INTRODUCTION

The Chairperson of the Standing Committee on Constitutional Affairs, Hon EM Sulliman tabled the Committee's negotiating mandate as adopted by the Standing Committee on 31 October 2007, on the *Constitution 13th Amendment Bill* [B24-2007]. The mandate was duly adopted by the legislature in terms of rule 133 of the Northern Cape Provincial legislature.

2 PROCESS FOLLOWED

The Speaker referred the *Constitution 13th Amendment Bill* [B. 24-2007] to the Standing Committee on Constitutional Affairs on 08 October 2007.

On 31 October 2007 the Standing Committee on Constitutional Affairs deliberated and considered the *Constitution 13th Amendment Bill* [B24 -2007] and agreed to the adoption of the Bill.

3 ADOPTION OF THE BILL

The legislature adopted this Negotiating Mandate.

The legislature mandate the Permanent Delegates to participate in deliberations at the negotiating stage and to **support** the *Bill*.

Hon. G. Cjickella
Deputy Speaker

Date: 02/11/2007

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security**LOCAL GOVERNMENT PORTFOLIO COMMITTEE****NEGOTIATING MANDATE:****CONSTITUTION THIRTEENTH AMENDMENT BILL [B24-2007] S. 74****1. INTRODUCTION**

The Chairperson of the Local Government Portfolio Committee, Ms RS Letwaba, tables the Committee's Negotiating Mandate as adopted by the Portfolio Committee on Thursday, 1st November 2007, on the *Constitution Thirteenth Amendment Bill* [B24-2007], Section 74.

2. PROCESS FOLLOWED

On the 26th September 2007, the Speaker formally referred the Constitution Thirteenth Amendment Bill [B24-2007] - Section 74 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 the Department of Provincial and Local Government was consulted. The Memorandum further refers to the implications for the Provinces in that the Bill has to be approved by the provincial legislatures of the Eastern Cape and KwaZulu-Natal as required by section 74(8) of the Constitution and further states under Parliamentary Procedure that the Bill is intended to re-determine provincial boundaries. Furthermore, it states that the legislatures of the provinces of the Eastern Cape and KwaZulu-Natal must, in considering whether or not to approve that part of the Bill that concerns them, facilitate public involvement as required by section 118(1)(a) of the Constitution.

In considering the detail and principle of the Bill, the Committee in its meeting of the 11th October 2007 received a provincial briefing from the Permanent Delegate to the National Council of Provinces (NCOP), Honourable Member Mr S Shiceka. Honourable Shiceka pointed to the objective of the Bill in as far as it related to the non-compliance of the KwaZulu-Natal and the Eastern Cape Provinces failure to hold public hearings on the *Constitution Twelfth Amendment Bill* [B33B-2005].

- The Department of Local Government registered a 'no view' stance with the Portfolio Committee, in terms of Rule 232(1) (b), 235 (4) (a) and 151(3) (a).

- SALGA Gauteng did not attend the meeting nor register a view

On the 1st November 2007, the Committee discussed and voted on the Negotiating Mandate in a committee meeting.

3. **PRINCIPLE AND DETAIL OF THE BILL**

The Portfolio Committee considered both the principle and detail of the *Constitution Thirteenth Amendment Bill* [B24-2007] – Section 74 and proposed no amendments.

4. **OBJECTIVES AND ANALYSIS OF THE CONSTITUTION THIRTEENTH AMENDMENT BILL**

The amendment bill seeks to amend the Constitution Thirteenth Amendment Bill as follows.

On 18 August 2005 the Constitutional Court, in *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2007 declared that part of the Constitution Twelfth Amendment which transferred the Matatiele municipality from the province of KwaZulu-Natal to the province of the Eastern Cape to be inconsistent with the Constitution and therefore invalid.

The order of invalidity was based on a procedural defect, namely the failure of the KwaZulu-Natal provincial legislature to facilitate public involvement, as required by section 118(1) (a) of the Constitution. It also follows, that the "knock-on effect" on municipalities that are now located in the Eastern Cape Province, should also be provided for in any legislative measure that seeks to rectify the constitutional defect that led to the Constitutional Court's order of invalidity. Therefore, it would appear that any proposed legislative amendments that are intended to rectify the identified constitutional defect must also include references to the Eastern Cape Province.

Thus, from the judgment in the Matatiele case it is clear that new legislation, namely a Constitution Amendment Bill, must be processed afresh in a manner that complies with all constitutional and procedural requirements.

5. **COMMITTEE POSITION AND NEGOTIATING MANDATE**

The Portfolio Committee, upon consideration of the briefing received from the NCOP permanent delegate, the principle and detail of the bill concluded as follows –

1. The committee recommends support of the bill, noting that facilitation of public involvement in respect of the Gauteng Province was not deemed necessary and relevant as the bill seeks to comply with the Constitutional Court Order granted against the provinces of Kwa-Zulu Natal and Eastern Cape, as far as they were found to have failed to fully satisfy their Constitutional obligations in the passage of the Constitution Twelfth Amendment Act of 2005.

Refilwe Letwaba

Ms REFILWE LETWABA

CHAIRPERSON: LOCAL GOVERNMENT PORTFOLIO COMMITTEE

Wes-Kaapse Provinsiale Parlement
Western Cape Provincial Parliament
IPalamente yePhondo leNtshona Koloni



Negotiating mandate of the Western Cape Provincial Parliament on the *Constitution Thirteenth Amendment Bill [B. 14-2007] (NCOP)*, as resolved by the House on 23 October 2007.

The Western Cape Provincial Parliament having considered the subject of the *Constitution Thirteenth Amendment Bill [B. 14-2007] (NCOP)* referred to the Provincial Parliament in terms of the rules of the National Council of Provinces (NCOP), begs to report that it confers on the Western Cape's delegation in the NCOP the authority to support the Bill without amendments.

S E BYNEVELDT
SPEAKER
24 OCTOBER 2007