

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

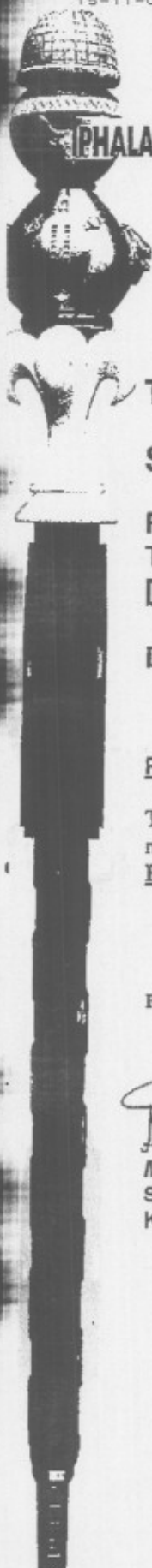


Negotiating mandate of the Western Cape Provincial Parliament on the *Public Service Amendment Bill [B31B-2006]* (NCOP), as resolved by the House on 23 October 2007.

The Western Cape Provincial Parliament having considered the subject of the *Public Service Amendment Bill [B31B-2006]* (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**





**PHALAMENDE LAKWAZULU-NATALI**



**KWAZULU-NATAL PROVINSIALE PARLEMENT**

**KWAZULU-NATAL PROVINCIAL PARLIAMENT**

**TO: THE CHAIRPERSON,  
SELECT COMMITTEE ON LOCAL GOVERNMENT**

**FINAL MANDATE AGREED TO BY THE HOUSE ON  
THE PUBLIC SERVICE AMENDMENT BILL  
[B31B – 2006]**

**DATE: Thursday, 15 NOVEMBER 2007**

**FINAL MANDATE OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE:**

The KwaZulu-Natal Legislature met today, Thursday, 15<sup>th</sup> November 2007, & resolved to mandate the KwaZulu-Natal delegation to the National Council of Provinces to *support* the Public Service Amendment Bill [B31B-2006].

**PROVINCIAL ENDORSMENT**

**MR TW MCHUNU  
SPEAKER:  
KWAZULU-NATAL LEGISLATURE**

Thursday, the 15<sup>th</sup> November 2007

**DATE**



**GAUTENG**  
LEGISLATURE

**AD-HOC COMMITTEE'S REPORT**

**FINAL VOTING MANDATE  
ON THE**

**PUBLIC SERVICE AMENDMENT BILL [B31B-2006]**

**SECTION 76**

12 November 2007

**1. INTRODUCTION**

The Chairperson of the *Ad-Hoc* Committee on the Public Service Amendment Bill [B31B-2006], Ms L M Maseko, tables the Committee's Final Voting Mandate on the Bill as follows:

**2. BACKGROUND**

Noting that the Minister for the Public Service and Administration had introduced the Public Service Amendment Bill as a section 76, and further noting that the Legislature did not have a Committee to deal with Public Service and Administration matters, particularly in so far as they relate to organisational and human resource imperatives, the House in its Sitting of Friday, 15<sup>th</sup> June 2007, resolved to establish an *Ad-Hoc* Committee, whose scope of operation would be to consider and report to the House at the conclusion of its work on the Public Service Amendment Bill [B31B-2007].

### 3. PROCESS FOLLOWED

The Speaker formally referred the Public Service Amendment Bill [B31B-2006] - Section 76, to the *Ad Hoc* Committee, in terms of Rule 232 (1), on 30<sup>th</sup> July 2007, for consideration and report.

On Friday, 12<sup>th</sup> October 2007, the *Ad-Hoc* Committee convened to receive a briefing on the Bill from the Provincial Permanent Delegate to the National Council of Provinces (NCOP), Honourable, Member Sicelo Shiceka, after which the *Ad-Hoc* Committee engaged and deliberated on the substance of the presentation as well as on the objects of the Bill. On 2<sup>nd</sup> November 2007, the *Ad-Hoc* Committee convened to consider and adopt its Negotiating Mandate on the Public Service Amendment Bill [B31B-2006].

On Monday, 12<sup>th</sup> November 2007, the *Ad-Hoc* Committee convened to consider the Executive inputs and adopt to adopt the Final Voting Mandate on the Public Service Amendment Bill [B31B-2006].

#### 3.1. INTERACTION WITH STAKEHOLDERS

As required by Sec 118 of the Constitution, on Monday, 15<sup>th</sup> October 2007, public involvement in the consideration of the Bill was facilitated and of the five (5) identified and invited Stakeholders, namely COSATU, IMATU, NAPTOSA, PSA and the Gauteng Public Service Commission, only two attended the scheduled Public Hearing meeting, being IMATU and the Gauteng Public Service Commissioner, Dr Ralph Mgijima. It should be noted that before commencement of the Public Hearing meeting, the IMATU representative left without making any submission. The *Ad-Hoc* Committee proceeded with the Public Hearing and interacted only with the Gauteng Public Service Commissioner, who expressed on record that the Public Service Commission (PSC) had already made its representations on the Bill during the National Assembly Stakeholder engagement process, which representations had been sufficiently incorporated into the Bill before the *Ad-Hoc* Committee and further confirmed that the PSC maintained its support for the Bill.

Noting the poor support and attendance of the Public Hearing meeting of Monday, 15<sup>th</sup> October 2007, the *Ad-Hoc* Committee resolved that through the Chairperson



of the Committee, letters be directed to the identified stakeholders and request written submissions on the Bill and no responses were received from the Stakeholders at the close of the period identified for submission of such. In the absence of any views received from the Stakeholders, the *Ad-Hoc* Committee was therefore constrained so far as its Constitutional obligation in respect of sec 118 is concerned.

### 3.2. VIEWS FROM THE PROVINCIAL EXECUTIVE

In compliance with the requirements of GPL Standing Rule 235(4)(a), noting that the Bill seeks to deal with Public Service Administration matters which cut across all provincial government departments, the Committee considered it logical to invite the consolidated Executive views through the Premier's Office, which views will respond to the socio-economic as well as financial implications of the Bill on the Provincial Administration so far as the Bill is concerned.

The Executive supports the principle of the Bill, however some of the details of the Bill requires attention from a legal, constitutional and administrative law perspective.

### 3.3 COMMITTEE'S POSITION

The *Ad-Hoc* Committee having received the views of the Executive and engaged with the presentation from the provincial state law advisor on behalf of the provincial executive, upon their deliberations on the issues raised concluded that:

- i) further political intervention within the affected spheres and organs of state be facilitated to ensure proper transition; and
- ii) that the following details of the Bill require attention and consideration prior to the passage of the bill in the NCOP –

#### 3.3.1 Clause 1: Substitution of Definitions

3.3.1.1 The cross reference to section 5(3) in the definition of "collective agreement" is incorrect and should be amended to a reference to section 5(4).

3.3.1.2 The definition of "this Act" includes regulations, determinations, deemed determinations contemplated in section 5(6) and directives made in terms of the Act. The Bill does not determine what the status or order of priority of these different instruments would be in a situation where there may be

contradictions or differences among these instruments nor which would prevail in such circumstances. In addition the Minister and different executive authorities may make determinations in terms of the Bill, but the Bill does not provide for differentiation according to which functionary may make determinations. This is a substantive concern that may impact negatively on the application of the Act.

**3.3.2 Clause 2 Amendment of section 2 of the Act**

The use of phrase in brackets "(if any)" that occurs in subsection (2A) and in clauses 3 and 22 should be removed as it is not in accordance with generally recognised legislative drafting principles.

**3.3.3 Clause 3: Substitution of section 3**

The power granted to the Minister to make determinations in the new section 3(4)(c) regarding the allocation of functions and abolition of functions at provincial level and transfer of functions affecting provinces is of grave concern as it may be in conflict with the power of the Premier under section 137 of the Constitution. Although the new section does require the Minister to act "in consultation with the Premier" it is still the Minister and not the Premier that may exercise this power. This is a substantive concern that has to be addressed. This aspect also relates to the issue raised regarding the clear demarcation of functions of Premiers vis-à-vis functions of the Minister.

**3.3.4 Clause 4: Substitution of section 3A**

This section provides that the functions of Premiers are subject to section 7(5) to 8 of the Act (after amendment). The full impact of this section on the constitutional provisions relating to the powers and functions of Premiers has to be clarified to determine whether this section is constitutional.

According to this section, a Premier may amongst others establish a government component. The new section 7A(1) requiring that an executive authority (also a Premier) may only request such establishment on fulfilment of certain conditions clashes with section 3A. This is a substantive issue that has to be clarified.

Section 3A(b) grants a similar function to the Premier than the power granted to the Minister under section 3(4)(c). This leads to confusion and should be clarified. This is a substantive issue.

**3.3.5 Clause 9: Amendment of section 7**

Section 7(3)(c) fails to sufficiently clarify the role of the respective provincial Directors General in the Offices of Premiers in relation to administrative role and function concerning intergovernmental relations. The same functions of inter provincial relations are bestowed on all provincial DG's equally. Where there are a multitude of functionaries responsible for the same function it is impossible to determine accountability and responsibility. In addition to this the responsibility for intergovernmental relation administration between provinces and national government departments and components are placed on provincial DG's. This aspect should be clarified as part of the substantive issues.

**3.3.6 Clause 10: Insertion of sections 7A and 7B**

3.3.6.1 Section 7A does not clearly determine who establishes a government component, especially at provincial level. It stipulates that a request by an executive authority may be made on certain conditions. One has to determine who may establish components through a process of deductions based on the reading of other sections of the Act. It seems as if this authority is vested in the President. This is a substantive issue that has to be clarified. This aspect relates to the clarification of roles and responsibilities as mentioned earlier.

3.3.6.2 Subsection (2) of section 7B requiring a request by an executive authority for establishment of a specialised service delivery unit may be problematic where that authority is the Premier, as 7B(1) authorises the Premier to establish such units. This implies that the Premier must request himself to establish a unit. This is a substantive matter that requires clarification to enhance implement ability of the Bill.

**3.3.7 Clause 24: Insertion of sections 16A and 16B**

3.3.7.1 The role afforded to the Minister in subsections 16A(3) and (4) in relation to reporting to the Executive Council and the Provincial Legislature may have constitutional implications in relation to the authority, over sight, accountability and responsibility of the Executive Council and the Legislature under sections 125 and 133 of the Constitution. This is a substantive issue that requires clarification.



3.3.7.2 Section 16B(1) dealing with the pronouncement of sanctions by a chairperson of a disciplinary hearing and the obligation to give effect to such pronouncement does not take cognisance of the possible negative impact of such pronouncement on the effectiveness of the department or component nor does it provide opportunity for the executive authority to make representations to this effect before pronouncement of a sanction. This aspect should be addressed as a substantive issue to ensure that efficiency and effectiveness of departments or components are not compromised.

**3.3.8 Clause 27: Amendment of section 31**

The provisions of section 31(1)(b)(ii) relating to the powers of heads of departments to merely require in writing of employees, other persons or financial institutions not to dispose of money or value of benefit in money, pending the outcome of legal steps for recovery of remuneration, allowance or reward, amounts to a "freezing" of certain assets of employees and as such may be viewed as an infringement of constitutional rights relating to privacy, just administrative action or presumption of innocence until proven guilty. This provision implies that there must be knowledge of certain facts before action may be taken. The provision is silent on how such knowledge may be obtained. If this is not regulated and such regulation compliant with justified infringement of rights, this provision may be found to be unconstitutional. The provision may also be open to abuse in that all that is required is a written request. If one takes into consideration the strict provisions and procedures that other organs of state, such as the SAPS and NPA have to follow before warrants may be obtained and action taken, then it becomes clear that this provision requires refinement.

**3.3.9 Clause 37: Substitution of section 42A**

Due to the wide range and extent of powers and functions vested in the Minister and interaction with all components in the public service, it may be prudent to regulate the power to delegate functions by the Minister to the DG and from the DG to national departmental employees in more detail than merely excluding the regulation making power to ensure accountability. No mention is made regarding the making of determinations and directives and thus may be delegated by the Minister to the DG and further by the DG to employees in the national Department. The power to delegate may require more exclusions or be made subject to approval by Parliament.



## NORTHERN CAPE PROVINCIAL LEGISLATURE

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### OFFICE OF THE SPEAKER

DATE: 13 NOV 2007

Ref: 16.7.2.2

Enquiries: C Haas

TO: The Chairperson of the NCOP  
 Hon. MJ Mahlangu

#### Final Mandate: *Public Service Amendment Bill*

#### 1 INTRODUCTION

The Chairperson of the Standing Committee on Constitutional Affairs, Hon EM Sulliman tables the Committee's final mandate as adopted by the Standing Committee on **31 October 2007**, on the *Public Service Amendment Bill [B31B-2007]*.

#### 2 PROCESS FOLLOWED

The Speaker of the Northern Cape Provincial Legislature has on receipt of the Bill referred the *Public Service Amendment Bill [B31B-2007]* to the Standing Committee on Constitutional Affairs on **09 October 2007**.

The Standing Committee received a briefing on the Bill from the Northern Cape's Permanent Delegate to the NCOP Hon MA Sulliman at its meeting on **11 October 2007**.

The Standing Committee resolved at its meeting held on **11 October 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 *Public Service Amendment Bill [B31B-2007]*.

Public Hearings were held on **18 / 19 October 2007** as per Committee resolution and both written and oral submissions were called for. The Public engaged with the Members of the Provincial Legislature on their views.

On **31 October 2007** the Standing Committee on Constitutional Affairs deliberated and considered the *Public Service Amendment Bill [B31B-2007]*.

**3 PUBLIC INPUT ON THE BILL**

The public supports the bill.

**4 STANDING COMMITTEE POSITION ON THE BILL**

After due deliberation and taking note of the Public's input the Standing Committee on Constitutional Affairs in principle supports the Bill.

**5 COMMITTEE ADOPTION OF THE BILL**

The Committee adopted this Final Mandate duly signed by the Chairperson of the Committee.

In terms of Section 65 of the Constitution, the House confers authority on the Head of its Delegation to the NCOP to vote in support of the *Public Service Amendment Bill* [B31B-2007].



**HON. IWI STADHOUER  
ACTING SPEAKER**

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AU) 09:22  
WCU) 13:55

LIMPOPO LEGIS NCOP  
HOUSE PROCEEDINGS

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# Limpopo Legislature

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24 October 2007

Ref: 13/7

Enquiries: NCOP Officer

The Chairperson  
National Council of Provinces  
Private Bag X85  
CAPE TOWN  
8000

### CONFERRAL OF VOTING MANDATE TO THE NCOP PERMANENT DELEGATES ON THE MANDATING PROCEDURES OF PROVINCES BILL [BSA-2007]

The Speaker of the Limpopo Legislature hereby, on behalf of the Legislature, confers a final mandate to the Provincial NCOP Permanent delegates to vote in favour of the aforementioned Bill with amendments.

Hoping that you will find this in order.

  
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DR. T.S FARISANI  
SPEAKER: LIMPOPO LEGISLATURE



OUR REFERENCE:

**FREE STATE LEGISLATURE**  
**RULES AND ORDERS COMMITTEE**

OFFICE OF THE SPEAKER

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Report on negotiating mandate on Mandating Procedures of Provinces Bill [ BBB - 2007 ]

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1. Consideration

The Committee considered the Bill: Mandating Procedures of Provinces Bill [BB B - 2007]

2) Resolution

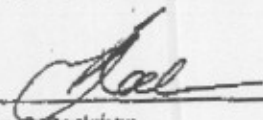
The Committee resolved that:

- a) Authority is conferred to the Free State Delegation, to vote for the adoption of the Bill.

pp  (M.C Lobe : Deputy Speaker)

Mr. M.A. DUKOANA  
SPEAKER

Date: 19 September 2007

  
 Mrs. C. Rockman  
 Secretary to the Free State Legislature

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