

REPUBLIC OF SOUTH AFRICA

MANDATING PROCEDURES OF PROVINCES BILL

*(As introduced in the National Council of Provinces as a section 76 Bill,
with the permission of the Council; explanatory summary of Bill published in
Government Gazette No. 29264 of 6 October 2006)
(The English text is the official text of the Bill)*

(SELECT COMMITTEE ON SECURITY AND CONSTITUTIONAL AFFAIRS)

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BILL

To provide for a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf, as required by section 65(2) of the Constitution; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS Parliament and the provincial legislatures of the Republic of South Africa recognise the need for uniformity amongst the provinces in respect of the procedure for the conferring of authority by a provincial legislature on its delegation to the National Council of Provinces to cast a vote on behalf of that legislature;

AND RECOGNISING the need to enact the legislation envisaged by section 65(2) of the Constitution,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

DEFINITIONS AND APPLICATION

Definitions

1. In this Act, unless the context otherwise indicates—
 - “**Constitution**” means the Constitution of the Republic of South Africa, 1996; 5
 - “**final mandate**” means the conferral of authority by a provincial legislature on its provincial delegation to the NCOP to cast a vote when the relevant NCOP select committee considers a Bill or prior to voting thereon in an NCOP Plenary;
 - “**head of delegation**” means a person referred to in section 60(3) of the Constitution; 10
 - “**legislative mandate**” means the conferral of authority by a provincial legislature on its provincial delegation to the NCOP to cast a vote on a question contemplated in—
 - (a) section 64 of the Constitution;
 - (b) section 74 of the Constitution; 15
 - (c) section 76 of the Constitution;
 - (d) section 78 of the Constitution; or
 - (e) any other national legislation which requires a decision by the NCOP;
 - “**mandate**” means the conferral of authority by a provincial legislature on its provincial delegation to the NCOP to cast a vote in compliance with the 20 requirements under section 3;
 - “**NCOP**” means the National Council of Provinces referred to in section 42(1)(b) of the Constitution;
 - “**NCOP plenary**” means an ordinary sitting of the NCOP;
 - “**NCOP select committee**” means a select committee established in terms of Rule 25 151(1) of the Rules of the NCOP;
 - “**negotiating mandate**” means the conferral of authority by a provincial legislature on its provincial delegation to the NCOP of parameters for negotiation when the relevant NCOP select committee considers a Bill after tabling and before consideration of final mandates, and may include proposed amendments to the Bill; 30
 - “**provincial delegation to the NCOP**” means a delegation referred to in section 60(1) of the Constitution;
 - “**provincial legislature**” means a provincial legislature contemplated in section 104 of the Constitution; and
 - “**voting mandate**” means the conferral of authority by a provincial legislature on 35 the head of its provincial delegation to the NCOP to cast a vote on a Bill in an NCOP plenary.

Application

2. This Act applies to all provincial legislatures and the NCOP.

CHAPTER 2

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PROCEDURES IN RESPECT OF MANDATES AND DESIGNATION OF HEAD OF DELEGATION

Requirements in respect of mandates

3. Every mandate required in terms of this Act must be on the letterhead of the provincial legislature and must— 45
 - (a) indicate the name and number of the Bill being voted on;
 - (b) indicate 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; 50
 - (d) be addressed to the Chairperson of the NCOP or a person designated by the Chairperson of the NCOP; and
 - (e) follow the format prescribed in the Schedule.

Requirements in respect of designation as head of delegation

4. A Premier of a province, or a delegate of a provincial delegation designated by the Premier, must cast a vote on behalf of a provincial legislature.

CHAPTER 3

PROCEDURES IN RESPECT OF MANDATES

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Legislative mandates requiring both negotiating and final mandates

5. Legislative (negotiating and final) mandates are required 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.

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Negotiating mandates

6. A provincial legislature must confer authority on its provincial delegation to the NCOP of parameters for negotiation when the relevant NCOP select committee considers a Bill after tabling and before consideration of final mandates, and may include proposed amendments to the Bill.

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Final mandates

7. A provincial legislature must confer authority on its provincial delegation to the NCOP to cast a vote when the relevant NCOP select committee considers a Bill prior to voting thereon in an NCOP plenary.

Voting mandates

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8. (1) A provincial legislature must confer authority to vote on the head of the delegation, or a delegate designated by the head of the delegation, to cast a vote in an NCOP plenary.

(2) If no matter arises from the deliberations of the NCOP select committee when considering final mandates which may necessitate consideration by a provincial legislature, the provincial delegation from a provincial legislature to the NCOP must table its province's final mandate in the NCOP plenary as that province's voting mandate.

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CHAPTER 4

GENERAL

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Short title and commencement

9. This Act is called the Mandating Procedures of Provinces Act, 2007, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE**FORMAT FOR MANDATE
(Section 3)****OFFICIAL LETTERHEAD OF THE PROVINCIAL LEGISLATURE**

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To: [The Chairperson of the NCOP or a person designated by the Chairperson of the NCOP]

Name of Bill: _____

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Number of Bill: _____

Date of deliberation: _____

Category of mandate: _____

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[Indicate whether negotiating mandate, final mandate, voting mandate or legislative mandate]

Vote of legislature: _____

[Indicate whether provincial legislature votes in favour of or against, or abstains from voting on, Bill and amendments, if any]

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Signature_____
Date[Signature of Speaker or person designated by Speaker to preside in House on Bill]

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MEMORANDUM ON THE OBJECTS OF THE MANDATING PROCEDURES OF PROVINCES BILL, 2007

BACKGROUND

In terms of section 65(2) of the Constitution of the Republic of South Africa, 1996, an Act of Parliament enacted in accordance with the procedure established by section 76(1) or (2) must provide for a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf.

Item 21(5) of Schedule 6 to the Constitution provides that until the Act of Parliament referred to in section 65(2) of the new Constitution is enacted, each provincial legislature may determine its procedure in terms of which authority is conferred on its delegation to cast votes on its behalf in the National Council of Provinces.

As legislation envisaged in section 65(2) of the Constitution has not yet been enacted, there is no uniformity on how provincial legislatures confer authority on their delegations to cast votes on their behalf.

Provincial legislatures, having invoked the provisions of item 21(5) of Schedule 6 to the Constitution, had in their respective Standing Rules set out procedures in which authority was conferred on the delegations to cast votes on their behalf.

PURPOSE

The Bill seeks to provide a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf in the National Council of Provinces.

CLAUSE-BY-CLAUSE ANALYSIS

Clause 1 provides for definitions.

Clause 2 provides for application of the Bill.

Clause 3 sets out requirements that a mandate must contain and states that all the mandates must follow the format prescribed in Annexure A.

Clause 4 sets out the requirements in respect of designation of head of delegation.

Clause 5 makes provision for legislative mandates requiring both negotiating and final mandates.

Clause 6 provides for the provincial legislature to confer authority on its provincial delegation to the NCOP of parameters for negotiation when the relevant NCOP select committee considers a Bill after tabling and before consideration of final mandates.

Clause 7 provides for the conferral of authority on a provincial delegation to cast a vote when the relevant NCOP select committee considers a Bill prior to voting thereon in an NCOP plenary.

Clause 8 sets out the procedure to be followed for voting mandates.

Clause 9 provides for the short title of the Bill and states that it will be called the Mandating Procedures of Provinces Act, 2007.

The Schedule contains the format to be used when mandates are submitted to the NCOP.

CONSULTATION

All nine provincial legislatures and the South African Local Government Association (SALGA) have been consulted.

IMPLICATIONS FOR PROVINCES

This legislation would provide certainty with regard to procedures to be followed when provinces confer authority on their provincial delegations to vote in the NCOP.

FINANCIAL IMPLICATIONS FOR THE NCOP

It is anticipated that the NCOP will incur costs during the implementation of the Bill.

PARLIAMENTARY PROCEDURE

The drafters are of the opinion that this Bill must be dealt with in accordance with the procedures established by section 76(2) of the Constitution.

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