

REPUBLIC OF SOUTH AFRICA

MANDATING PROCEDURES OF PROVINCES BILL

*(As amended by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))
(The English text is the official text of the Bill)*

[B 8D—2007]

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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:—

CONTENTS OF ACT

CHAPTER 1

DEFINITIONS AND APPLICATION 5

1. Definitions
2. Application

CHAPTER 2

REQUIREMENTS IN RESPECT OF FINAL MANDATES AND VOTING ON BEHALF OF PROVINCIAL LEGISLATURE 10

3. Requirements in respect of final mandates
4. Voting on behalf of provincial legislature

CHAPTER 3

PROCEDURES IN RESPECT OF MANDATES

5. Negotiating mandates 15
6. Final mandates
7. Legislative mandates requiring both negotiating and final mandates
8. Voting mandates

CHAPTER 4

GENERAL 20

9. Short title and commencement

SCHEDULE 1

FORMAT FOR NEGOTIATING MANDATE

SCHEDULE 2

FORMAT FOR FINAL MANDATE

CHAPTER 1

5

DEFINITIONS AND APPLICATION

Definitions

1. In this Act, unless the context otherwise indicates—
 - “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
 - “**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 any other question prior to voting thereon in an NCOP Plenary; 10
 - “**head of the delegation**” means a person referred to in section 60(3) of the Constitution; 15
 - “**legislative mandate**” means the conferral of authority by a provincial legislature on its provincial delegation to the NCOP to cast a vote on—
 - (a) a Bill referred to in section 74 or 76 of the Constitution; or
 - (b) any other question;
 - “**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 requirements under section 3; 20
 - “**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; 25
 - “**NCOP select committee**” means a select committee established in terms of Rule 151(1) of the Rules of the NCOP;
 - “**negotiating mandate**” means the conferral of authority by a committee designated 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 or any other question 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; 35
 - “**question**” means any question affecting a province and which requires a decision by the NCOP; and
 - “**voting mandate**” means the conferral of authority by a provincial legislature on the head of its provincial delegation to the NCOP to cast a vote on a Bill or any other question in an NCOP plenary. 40

Application

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

CHAPTER 2

REQUIREMENTS IN RESPECT OF FINAL MANDATES AND VOTING ON BEHALF OF PROVINCIAL LEGISLATURE 45

Requirements in respect of final mandates

3. Every final mandate required 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 or any other question being voted on;
- (b) indicate whether the provincial legislature votes in favour of or against, or abstains from voting on, the Bill or any other question;
- (c) contain the signature of the Speaker or of a person designated by the Speaker to preside over that specific Bill or any other question; 5
- (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 Schedule 2.

Voting on behalf of provincial legislature

4. A Premier of a province, or a delegate of a provincial delegation to the NCOP designated by the Premier, must cast a vote on behalf of a provincial legislature. 10

CHAPTER 3

PROCEDURES IN RESPECT OF MANDATES

Negotiating mandates

5. A committee designated by a provincial legislature must in accordance with the format prescribed in Schedule 1 confer authority on its provincial delegation to the NCOP of parameters for negotiation when the relevant NCOP select committee considers a Bill after tabling or any other question and before consideration of final mandates, and may include proposed amendments to the Bill. 15

Final mandates

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6. 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 or any other question prior to voting thereon in an NCOP plenary.

Legislative mandates requiring both negotiating and final mandates

7. Legislative (negotiating and final) mandates are required in respect of— 25
- (a) a Bill referred to in sections 74(1)(b), (2)(b), (3)(b) and (8) and 76 of the Constitution; or
 - (b) any other question.

Voting mandates

8. (1) A provincial legislature must confer the authority on the head of the provincial delegation to the NCOP, or a delegate designated by the head of the delegation, to cast a vote in an NCOP plenary. 30

(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 to the NCOP must table its province's final mandate in the NCOP plenary as that province's voting mandate. 35

CHAPTER 4

GENERAL

Short title and commencement

9. This Act is called the Mandating Procedures of Provinces Act, 2008, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 40

SCHEDULE 1**FORMAT FOR NEGOTIATING MANDATE****[Section 5]****OFFICIAL LETTERHEAD OF THE PROVINCIAL LEGISLATURE**

5

To: [The Chairperson of the Select Committee]

Name of Bill/question: _____

10

Number of Bill/question: _____

Date of deliberation: _____

Vote of legislature: _____

15

[Indicate whether the committee designated by the provincial legislature votes in favour, against or abstains from voting on the Bill, and amendments, if any/question]

Signature_____
Date

20

[Signature of the chairperson of the committee designated by the provincial legislature]

SCHEDULE 2**FORMAT FOR FINAL MANDATE****[Section 3]****OFFICIAL LETTERHEAD OF THE PROVINCIAL LEGISLATURE**

5

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

Name of Bill/question: _____

10

Number of Bill/question: _____

Date of deliberation: _____

Vote of legislature: _____

15

[Indicate whether the provincial legislature votes in favour, against or abstains from voting on the Bill/question]

Signature

Date

20

[Signature of Speaker or person designated by Speaker to preside in House on Bill/question]

MEMORANDUM ON THE OBJECTS OF THE MANDATING PROCEDURES OF PROVINCES BILL

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 final mandate must contain and states that all final mandates must follow the format prescribed in Schedule 2.

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

Clause 5 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 6 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 7 makes provision for legislative mandates requiring both negotiating and final mandates.

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, 2008.

The Schedules 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.