

REPUBLIC OF SOUTH AFRICA

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# MANDATING PROCEDURES OF PROVINCES BILL

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*(As agreed by the Mediation Committee  
(National Assembly and National Council of Provinces))  
(The English text is the official text of the Bill)*

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[B 8F—2007]

ISBN 978-1-77037-485-0

No. of copies printed ..... 1 800

# 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,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**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 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;
- “**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— 15
- (a) section 64 of the Constitution;
- (b) section 74 of the Constitution;
- (c) section 76 of the Constitution; or 20
- (d) section 78 of the Constitution;
- “**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;
- “**NCOP**” means the National Council of Provinces referred to in section 42(1)(b) 25 of the Constitution;
- “**NCOP plenary**” means an ordinary sitting of the NCOP;
- “**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 30 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 and before consideration of final mandates, and may include proposed amendments to the Bill;
- “**provincial delegation to the NCOP**” means a delegation referred to in section 35 60(1) of the Constitution;
- “**provincial legislature**” means a provincial legislature contemplated in section 104 of the Constitution;
- “**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 in an 40 NCOP plenary.

**Application**

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

**CHAPTER 2****REQUIREMENTS IN RESPECT OF FINAL MANDATES AND VOTING ON 45  
BEHALF OF PROVINCIAL LEGISLATURE****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 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 over that specific Bill; 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 10 designated by the Premier, must cast a vote on behalf of a provincial legislature.

### **CHAPTER 3**

#### **PROCEDURES IN RESPECT OF MANDATES**

##### **Negotiating mandates**

5. A committee designated by a provincial legislature must in accordance with the 15 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 and before consideration of final mandates, and may include proposed amendments to the Bill.

##### **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 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 a Bill 25 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.

##### **Voting mandates**

8. (1) A provincial legislature must confer the authority on the head of the provincial 30 delegation to the NCOP, 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 to the NCOP must table its province's final 35 mandate in the NCOP plenary as that province's voting mandate.

### **CHAPTER 4**

#### **GENERAL**

##### **Short title and commencement**

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

**SCHEDULE 1**

**FORMAT FOR NEGOTIATING MANDATE**

**[Section 5]**

**OFFICIAL LETTERHEAD OF THE PROVINCIAL LEGISLATURE**

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To: [The Chairperson of the Select Committee]

Name of Bill: \_\_\_\_\_

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Number of Bill: \_\_\_\_\_

Date of deliberation: \_\_\_\_\_

Vote of legislature: \_\_\_\_\_

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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[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**

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

Name of Bill: \_\_\_\_\_

Number of Bill: \_\_\_\_\_

Date of deliberation: \_\_\_\_\_

Vote of legislature: \_\_\_\_\_  
[Indicate whether the provincial legislature votes in favour, against or abstains from voting on the Bill]

\_\_\_\_\_  
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**

### **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.