

MPUMALANGIA

SC security
07/09/14

**REPORT OF THE SELECT COMMITTEE OF CHAIRPERSONS ON
MANDATING PROCEDURES OF PROVINCES BILL [B8 - 2007]**

1. Background

Item 21(5) to Schedule 6 of the new Constitution authorises a provincial legislature to determine own procedures in terms of which authority is conferred on its delegation to cast votes on its behalf in the National Council of Provinces (NCOP). This authority however remains until an Act of Parliament referred to in section 65(2) of the Constitution has been passed. In terms of section 65(2) such Act of Parliament must provide for uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf. This legislation must be enacted in terms of section 76 of the Constitution. The Mandating Procedures of Provinces Bill [B8-2007] (the Bill) constitutes an attempt to comply with section 65(2).

2. Objectives of the bill

The objective of the Bill is 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.

3. Method of work

Having received the Bill from the Chairperson of the NCOP, the Speaker referred the Bill to the Committee of Chairpersons (the Committee) for consideration and report to the House. On 21 August 2007 honourable F Nyanda briefed the Committee on the Bill.

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On 3 and 7 September 2007 the Committee met to consider the Bill. The Committee took the view that the nature of the Bill does not necessitate public hearings.

4. Comments on proposed amendments

Although the Committee agrees with the spirit and purport of the Bill, it disagrees with the proposed amendments to clauses 5(2) and 8 of the Bill. While clause 5(2) seeks to compel the Legislature to conduct public involvement when dealing with sections 74(1), (2), (3) and 76 bills, clause 8 seeks to compel the Speaker to call a special sitting, if the legislature is not sitting, to confer authority on its delegates to cast a vote in the NCOP.

According to the Committee the proposed amendments appear to be inconsistent with section 116(1)(a) of the Constitution which authorises a provincial legislature to determine and control its internal arrangements, proceedings and procedures.

Ad clause 5(2)

It is proposed that when dealing with sections 74 (1), (2), (3) and 76 bills the Legislature must be accorded an opportunity to determine whether to conduct public hearings or not. It should be the content of the bill and not the tagging that determines the involvement of the public. This is consistent with the recent Constitutional Court judgments.

Ad clause 8(3)

It is proposed that rather than compelling the legislature to call a special sitting when the Legislature is not sitting, the Bill must allow the Speaker in consultation with the Committee to which a bill may have been referred to confer authority on the delegation of the province concerned because in the event that the Legislature is not sitting, the Speaker has authority to act on its behalf. Besides logistical problems that may accompany it, calling a special sitting for the purpose of conferring authority only may have huge financial implications. It may dislodge the program of the Legislature where Members are on other site visits or on constituency.

Members also expressed doubt as to whether the Speaker has powers to call a special sitting. If there is no difference between an extraordinary sitting referred to in section 110(2) of the Constitution and the special sitting referred to in clause 8 of the Bill, the latter clause will be inconsistent with the Constitution. This is so because section 110(2) authorises the Premier to summon the Legislature to an extraordinary sitting to conduct special business. No similar authority is arrogated to the Speaker.

General

The proposed amendments raise issues of enforceability. The question that arises is whether the NCOP will refuse to accept a mandate where a legislature, when dealing with section 74 or 76 bill, did not conduct public hearings because in its view the bill did not call for public hearing or because at the time when the mandate was required the legislature was not sitting and the Speaker failed to call a special

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sitting to confer a mandate. The latter is on the assumption that the Speaker has authority to call such a sitting.

5. Recommendations

The Committee recommends that the permanent delegates representing the Province of Mpumalanga should be conferred with authority to negotiate on the Bill subject to the above proposals.



Hon DS Mkhwanazi

Chairperson

Select Committee of Chairpersons

7/9/2007

DATE