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EASTERN CAPE PROVINCIAL LEGISLATURE

**OFFICE OF THE CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON
ECONOMIC DEVELOPMENT, ENVIRONMENTAL AFFAIRS AND TOURISM**

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18 November 2013

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NEGOTIATING MANDATE

To: The Chairperson:
Select Committee on Trade and International Relations

Name of Bill: Special Economic Zones Bill

Number of Bill: [B3B-2013]

Date of Deliberation 18 November 2013

1. Vote of the Legislature

The province votes in favour of the Bill and mandates the Eastern Cape delegate to the NCOP to negotiate in favour of the Bill within the following parameters:

1. Clause 6 Special Economic Zones Strategy

- (a) In the absence of a finalised SEZ Strategy and a declaration of intent on matters subject to final SEZ Regulations, there remains some unease therefore over the degree of exposure of Zones' participants to a substantial body of dictates that will be applied 'sub-legislatively'. These will emerge with the incoming SEZ Programme's exercise of the range of matters in the Bill that the Minister may prescribe (sometimes in conjunction with other Ministries, such as Finance).

- (b) It would appear to be a short-coming of the Bill not to provide more formally and directly for all spheres of State to subject the proposed SEZ processes of strategy, policy and regulatory formulation to joint deliberative mechanisms.
- (c) A possible tension between national and provincial strategic priorities could emerge and takes on extended significance when the Bill's specific pronouncements on the operation of governance and performance management controls are taken into view. These are currently strongly oriented towards satisfaction of nationally determined priorities through the setting of criteria and conditionality to be imposed by SEZ structures operating as national government oversight structures.
- (d) From a provincial perspective, and given its stature as a Clause 76 Bill, there appears little in the way of formalised 'check-and-balance' mechanisms crafted into the SEZ legislation to ensure concurrent local/provincial developmental aspirations will be interpreted and enabled effectively as part of the SEZ's setting and periodic review of its guiding policy and strategy.

2. Clause 7 Establishment of Special Economic Zones Advisory Board

- (a) It is imperative for Provincial Government and the existing zone operators to be well-represented in the Advisory Board.
- (b) Insofar as the determination of a high-level programme strategy is concerned, the Bill renders it a requirement only that the Minister consult with the Special Economic Zones Advisory Board – a structure that is so constituted as to be dominated by national government departmental representation.
- (c) It appears that there is no formalised mechanism of consultation with the community of provincial economic development authorities who are

responsible as the custodians of industrial/economic development initiatives at ground level.

- (d) Improved consultation across government spheres may prove necessary and prudent, especially where the resulting formulation and issue of SEZ regulatory prescriptions may be found to inhibit the accommodation of the (short-term/longer-term) provincial developmental needs and agenda against (short-term/longer-term) national industrial policy aspirations or priorities.
- (e) The appointment of a member of the planning commission as well as the DG of the Ministry responsible for economic planning appears to be a duplication.
- (f)

3. Clauses 20 (Special Economic Zones Fund) and 21 (Support measures)

- (a) There needs to be clarity and acceptance on the part of all role-players – and especially on the part of National Treasury – as to the underlying principles and intents that should (and will) govern the State's posture on the injection of future funding support (for infrastructure delivery on the one hand and via operational investment on the other). Where the latter is in play, guidance would also need to be given to government's anticipated returns for such investment.
- (b) The DTI's thinking on incentive support for the economic zones must be strengthened considerably and elevated to a concrete package of intentions. These should not only specify incentive offerings in a manner that is reflective of, and consistent with, an IDZ context and environment, but should also be developed to the point where their utility and acceptability can be tested against the incentive appetite of both National Treasury and the target sectors/industries for which such incentives are envisaged.

- (c) Both the quantum of funds transfer from national/provincial treasuries to Zone developers/operators and the requisite institutional/shareholding arrangements are set to be impacted by the new SEZ programme regime. For an entity like e.g. the East London IDZ, this means that it has to take steps to formalise a restructuring of its basis of shareholding to ensure that it will remain eligible to apply for State funding support under SEZ.
- (d) In its brevity in dealing with State funding commitments the current SEZ Bill perpetuates the historic uncertainty over Zones resourcing, since even the establishment of a central funding mechanism is something the Minister 'may' consider – it is not a guaranteed programme support deliverable.
- (e) Important from a provincial stakeholder perspective is that the Bill does not provide insight into what prescribed/targeted industrial development activity will be deemed eligible for public funding under an SEZ dispensation and the nature of the funding instruments and terms that will apply (possibly to replace current grant funding allocations). This can be expected to emerge in regulatory prescriptions that will take their cue from a strategic position of government that is not yet fully clear to Sector participants and stakeholders.
- (f) The issues raised above leave existing Zones programme projects moving into the SEZ regime with attendant risks of:
- (i) encountering funding shortfalls against budgeted business plan expenditure (if IDZ applications to share in SEZ Fund support is constricted due to institutional change requirements, new programme procedural delays or funding disallowances);
 - (ii) Consequential reduction or slippage in Zones' ability to achieve key business plan targets (including inward investment values and jobs), especially where the rate of attainment of these outcomes

may be closely tied to elements of the current IDZ value offering that may not receive public funding support in future.

- (g) A drive for commercial participation and returns from the Zones projects could have both positive and negative implications for some regions. For example, the EC Province may find itself displaced in its bid applications for allocation of SEZ funds or incentives benefits by competing industrial nodes that are able to show higher latent economic potentials and returns (eg. minerals beneficiation zones where employment intensity and industrial output may well be more dynamic).
- (h) Clause 21(3) recognises that municipalities, provincial government and public entities may pursue separate and parallel efforts to design "their own support measures and incentive schemes" and while this duality of approach creates a programming flexibility that is desirable, it also serves to underscore that the SEZ Bill is not going so far as to develop and deliver a concerted and fully integrated response by government to the national developmental imperatives on strategic industrialisation.
- (i) Funding will become riskier in this model and with the kick off being sooner rather than later. It appears that the DTI is positioning itself to remove IDZ's from the annual Division of Revenue and thus the CDC's major challenge would be to ensure a "soft landing" for funding especially operational expenditure funding as this is likely to dry up soonest.

4. Clause 22 Implementation Protocol

- (a) The Bill is applauded for the mechanisms it has conceived for the Minister of DTI to pursue an as-yet undefined package of new programme support measures or other support programmes (including incentives). However, from a provincial developmental vantage point it is key to note that it does not appear from the provisions in the Bill that this will be done conjointly with the provincial government authorities hosting SEZ sites.

- (b) To achieve the desirable efficient inter-governmental co-ordination favourable to inward investment, it will be important for the Bill to become far more explicit on how this will be realised and, especially, how the DTI, as the IDZ Programme custodian, will provide the necessary leadership and facilitation.
- (c) A question arises as to whether the SEZ legislation acquits itself well (or at all) as a cohesive instrument seeking to address the concurrent interests of all spheres of government in respect to strategic industrial development and support.

5. Clause 25 Governance and management of Special Economic Zones

- (a) The SEZ Bill asserts extensive requirements concerning governance and management control matters and seemingly seeks to elevate to national government level an increased oversight role (relative to the current IDZ regime) of activity transacted by provincial entities. This may prove problematic and even more cumbersome than the governance situation currently in effect.
- (b) A multiplicity of monitoring and reporting arrangements is imposed in the SEZ draft legislation and exercised directly from the national level. This not only potentially undermines organisational focus for provincial business enterprise delivery but is also costly in respect to time and other resources utilised to satisfy duplicative accountability and reporting to both the national and provincial levels.
- (c) Public entities responsible for Zones project implementation and operation are typically established at provincial level as PFMA-regulated entities and are already subject to provincial level executive authority compact or other performance contracting arrangements (which may in many instances also be proscribed and regulated in other [provincial]

legislation).

- (d) Imposing additional layers of governance obligations and reporting requirements (example: for the referral and consideration of strategic and business plans) may lead to a contestation of primary public organisation performance accountability – and especially where differing expectations (or measures of performance) may well emerge from provincial and national political principals respectively.
- (e) It appears from the Bill that the 'framework of the special economic zones strategy' is to be referenced and applied as the principal yardstick against which an SEZ entity is to be evaluated. This is despite the fact that, in practice, its strategic deployment in support of a provincial industrialisation agenda may typically be far more expansive than performance objectives that may be captured and expressed in the issue of the conditions of SEZ licensing/permitting.

6. Clause 31(2) Special Economic Zone Operator

- (a) A logical inference of the proposed Clause 31(2) is that the door is shut to Economic Zone project delivery by any consortia of public developmental organisations unless they are constituted to act within a public/private arrangement. Such self-limitation of government's capacity to initiate and drive developmental outcomes is not desirable or logical and is in conflict with the flexibility to do so as specifically afforded by way of Clause 25(2),(3) and (4).

It is also fundamentally inconsistent with the stipulations of Clause 23(1) which permits various public organisations to act alone or jointly to proceed to establish an entity (as per Clause 25(1)(a) to manage the SEZ and also, by Clause 25(1)(b) to manage and operate the SEZ.

A suitable remedy could be found for this by rewording Clause 31 to state:

Special Economic Zone operator

31. (1) (a) A Special Economic Zone Board that has been established by an Applicant that is a national government, a provincial government, a municipality, a public entity or a municipal entity must follow a fair, equitable, transparent, competitive and cost-effective procurement process, when appointing an operator to develop, operate and manage that Special Economic Zone on behalf of the Special Economic Zone Board

(b) A Special Economic Zone Board that has been established by an Applicant that is a public-private partnership may, subject to the requirements of Clause 31(1)(c) elect to procure and appoint an operator as contemplated in Clause 31(1)(a) or, alternatively, undertake to discharge and fulfill the functions of the operator as part of the management and operation of the public-private partnership.

(c) A Special Economic Zone Board that has been established by an Applicant that is a public-private partnership may apply to the Minister, in the form and manner prescribed, for waiver of the requirement to establish a separate management entity, as required in Clause 25(1)(a) and the requirement to procure and appoint a separate operator, as required in Clause 31(1)(a) provided that the Special Economic Zone Board of the public private partnership—

(i) is able to demonstrate that the public-private partnership retains the full and requisite capability and resources to manage and operate the Special Economic Zone as required by the Act; and
(ii) acknowledges that all duties, responsibilities and obligations attendant to an operator in the Act are duties, responsibilities and obligations attaching directly to the public-private partnership entity.

7. **Clause 35 Functions of Special Economic Zone Operator**

- (a) Clause 35(a) constricts the strategic affairs and interests of the operator to issues as articulated in 'the framework' of the SEZ strategy' as determined from time to time by the national minister of the DTI. Conceivably, this means that strategic guidance given to an entity by its immediate Board (SEZB) and by interaction with its provincial parent department (licensee and PFMA executive authority) may risk the promotion of programme activity not prioritised in the national framework/strategy;

If contestation occurs an operator will be required to assess whether to satisfy its direct executive authority oversight or to maintain good standing in relation to the national SEZ programme/strategic intent.

- (b) Clause 35(f) calls for the operator to invoke "regulations" which such entities are not empowered to transact (unless specifically constituted to do so as part of founding provincial enabling legislation that establishes them).
- (c) Clause 35(h) would seek to elevate alignment of SEZ marketing efforts to the national Advisory Board (rather than this activity taking its direction and alignment from its immediate provincial mandating or shareholder interests. Again this presents a potential for the Operator to be caught in a situation of contested performance priorities in which any decision-making could leave it with awkward defences to be made in respect to justifying its performance against predetermined objectives.

8. Clause 39 Transitional Provisions and Savings

- (a) In accommodating the existing IDZ programme into a new SEZ regime, the Bill seeks to impose a requirement that IDZ Operators take responsibility for ensuring that "the industrial development zone complies with the framework regulating Special Economic Zones in terms of this

Act, within three years of commencement of this Act.

(b) The manner in which this objective is stated presents several actual or potential difficulties:

(i) It is not clear what the scope of this Clause is when reduced to practical matters that the Operator must respond to within the proposed time limitation. By technical definition the term 'industrial development zone' refers to an area in the Bill definitions. Consequently, compliance with the regulatory framework would appear to be signalling compliance of the zone to the named physical requirements as envisaged in Clause 34.

(ii) However, by its context in the Bill, the clause follows Transitional Arrangement discussion of the status of Zone designation, the currency of the Operator permit and the status of the admissibility of enterprises to be located within an SEZ complex. If such wider context is applied to the requirement to demonstrate compliance, it should be observed that the Operator has only limited capacity to assure all elements meet with a state of "framework" compliance – and the latter itself remains a term that is vague and undefined.

(c) More fundamentally, IDZ Operators who are subject to the transitional requirements of the bill may raise objection over the basis on which a time limitation has been introduced with the move of the IDZ Programme into the SEZ dispensation. Currently IDZ Permits are not of fixed duration and their progress to deliver Zone outcomes varies from project to project and is dependent on the size of development, location and complexity of each project and various external developmental and operational factors.

(d) The DTI's development of the SEZ Programme as a successor to the IDZ regime recognised a series of programmic shortcomings that restricted and impacted IDZs delivery which the SEZ Programme is seeking to remedy through better planning, co-ordination and resourcing by

government. The SEZ Programme has not set itself a timetable or deadline for addressing all the matters its SEZ Policy has identified as historic programme weaknesses and it is questioned what has informed the legislator's election of a three-year period for IDZs to demonstrate compliance from date of commencement of the new SEZ Act.

- (e) This matter could be resolved in the instance that the Bill defines more clearly what transitional compliance outcomes are expected of IDZs (as one class of SEZ projects) and what enablement is to be instituted by the SEZ Programme to assist IDZ/SEZ Boards and their operating entities to bring their zones to an expected standard. Such a remedy would reposition compliance as a shared outcome of the Operator and the DTI as programme enabler.
- (f) The transitional arrangements make provision for the existing IDZ's to be granted SEZ-IDZ licences without further application. However it is not clear who will be granted what as the designation presently lacks specific.

9. General Recommendation

- (a) The drive to expedite the parliamentary process for the Bill has seemingly outpaced nascent efforts by the DTI to forge a conclusive, shared strategic intent for Zones among all stakeholders across all spheres of State.
- (b) It is submitted that there maybe negative implications around marketing and performance management however it is expected that these shall be of a strategic natures, and shall be discussed as part of the strategy.
- (c) There is also an issue in terms of the continuation of the SEZ/IDZ program as an exported orientated program. In order not to fall foul of WTO provision in relation to export subsidization, the dti shall have to selectively apply its incentives program. The creation of incentives for investments in what is then an export area (allowing "selective" subsidized imports) might reduce the costs of manufacturing, which in

turn could displace local established investments.

- 10. The intention of Bill was supported.



HON X PAKATI (MPL)
CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON ECONOMIC
DEVELOPMENT, ENVIRONMENTAL AFFAIRS & TOURISM

19/11/2013.
DATE

GP 3



NEGOTIATING MANDATE

TO: The Chairperson of the Select Committee on Trade and International Relations

Hon. DD Gamede

NAME OF BILL: Special Economic Zones Bill

(Section 76)

NUMBER OF BILL: [B3-2013]

DATE OF DELIBERATION: 19 November 2013

VOTE OF THE LEGISLATURE:

The Gauteng Provincial Legislature supports the principle and the detail of the bill with the proposed amendments.

- Special Economic Zones Bill

HON. MA MGCINA

Chairperson of Economic Development Committee

GAUTENG PROVINCIAL LEGISLATURE

Date: 19th November 2013

GP 3



GAUTENG
LEGISLATURE

ECONOMIC DEVELOPMENT PORTFOLIO COMMITTEE

REPORT ON

SPECIAL ECONOMIC ZONES BILL [B3-2013]

(Section 76)

1. INTRODUCTION

The Chairperson of the Economic Development Portfolio Committee Hon. Mafika Mgcina, tables the Committee's Report on the Special Economic Zones Bill [B3-2013], Section 76, as follows:

2 PROCESS FOLLOWED

The Speaker, Hon. Lindiwe Maseko formally referred the Special Economic Zones Bill [B3-2013], a Section 76 Bill to the Portfolio Committee on Economic Development, in terms of GPL Rules 252 read with 253, 254 and 255 for consideration and reporting.

On Tuesday, 22nd October 2013, the Portfolio Committee on Economic Development received a presentation on the Bill from the National Department of Trade and Industry. In the same meeting, the Committee also received a presentation on the views of the executive related to the Bill from the Department of Economic Development in terms of rule 257 (3) (a) of the Gauteng Provincial Legislature.

Over and above the presentations from the two respective National and Provincial Departments, the Committee received a presentation on the research analysis focusing on the socio-economic and financial implications of the bill, followed by a legal opinion on the bill. The Committee thereafter requested for public comments through the media on the bill.

The Committee deliberated on the technical and substantive amendments and subsequently adopted the Negotiating Mandate on the Special Economic Zones Bill [B3-2013] in a meeting that convened on Tuesday, 19th November 2013.

3. PRINCIPLE AND OBJECTIVES OF THE BILL

The purpose of the bill is to provide for the designation, promotion, development, operation and management of Special Economic Zones; to provide for the establishment, appointment of members and functioning of the Special Economic Zones Advisory Board; to empower the Minister to establish the Special Economic Zones Fund; to regulate the application, issuing, suspension, withdrawal and transfer of Special Economic Zones operator permits; to provide for functions of the Special Economic Zones operator; to provide for transitional arrangements; and to provide for matters connected therewith.

The objectives of the Bill are :

- The determination of Special Economic Zones policy and strategy;
- The establishment of the Special Economic Zones Advisory Board;
- The establishment of the Special Economic Zones Fund to support the development of Special Economic Zones;
- The designation, promotion, development, operation and management of Special Economic Zones;
- Regulatory measures and incentives for Special Economic Zones in order to attract domestic and foreign direct investment; and

- The establishment of a single point of contact or one stop shop that delivers the required government services to businesses operating in Special Economic Zones in order to lodge applications to various government authorities and agencies and to receive information on regulatory requirements from such authorities and agencies

4. OVERVIEW OF PUBLIC SUBMISSIONS

As part of its functions and obligation, the Committee requested for public comments on the Special Economic Zones Bill [B3-2013]. The Committee received one written submission from:

- Kuilman Mundell & Arlow Attorneys

The said submission is attached herein for ease of reference.

5. FINANCIAL IMPLICATIONS AND SOCIO ECONOMIC IMPACT ASSESSMENT OF THE BILL FOR THE PROVINCE

5.1. FINANCIAL IMPLICATIONS OF THE BILL

Based on the socio-economic analysis on the bill as presented to the Committee as well as the views expressed by the Executive, the Committee is of the view that the bill as referred to the Committee in its current form does not have any unfavourable financial implications for the province.

5.2. SOCIAL IMPACT ASSESSMENT

- Chapter 2 of the bill speaks to the purpose and strategy of Special Economic Zones. The success in implementing the bill will enhance performance of IDZ's as a lack of strategic focus and unclear policy framework attributed to the lack or inactive performance of IDZ's.

- The numerous reasons stated as the purpose of the bill in section 4(1) will have significant positive impact on developing the economy, such include but are not limited to developing infrastructure required to support the development of targeted industrial activities; promoting regional development; creating decent work and other economic and social benefits; generating innovative economic activities and attracting foreign and domestic direct investment.
- The establishment of the SEZ's Advisory Board is welcomed and it is expected to ensure that the implementation and efficiency of SEZ's are maintained and thus augment the attainment of economic growth and job creation. Consequently, the functions of the board as outlined in section 11(1) will ensure that the implementation of strategic plans is executed. The assessment and review of the SEZ's will ensure that they achieve the planned objectives of promoting economic development and national economic growth.
- The bill recognises the need for distinct support measures, hence the inclusion for that prerogative in section 21(1). The implementation of support measures and different incentives schemes will play a significant role in encouraging businesses to be involved in the development as well as the operation of SEZ's. If appropriate and effective incentives schemes are introduced they would play a crucial role in enticing potential foreign investors. As a result the proposed incentives i.e. reduced corporate tax rate by 15% has the potential to attract the necessary foreign direct investment into South Africa.
- The bill's proposal of a single point of contact or a one stop shop is essential for enhanced efficiency as it will provide simplified procedures for the operation of SEZ's. The effective implementation of a one stop shop will improve coordination of the functions of the state. Moreover the prescription of different categories of SEZ's namely a free port; a free trade zone; an industrial development zone and a sector development zone promotes variety and diversity instead of the limitation of depending on a single classification.

6. VIEWS OF THE PROVINCIAL EXECUTIVE COUNCIL (THE DEPARTMENT OF ECONOMIC DEVELOPMENT)

The enactment of the Special Economic Zones Bill will positively affect the Province in the following aspects:

- by the provision of world class productive infrastructure built through the SEZ fund support;
- re-industrialization through clustering;
- centralized marketing spearheaded by Trade and Investment South Africa;
- strengthening of sectoral competitive advantage of regions;
- ring-fenced job creation, Skills and technology transfer; and
- added benefits on marketing of the provinces as SEZ's are well marketed internationally
- no provisions of the Bill that will negatively affect the Province economically.
- It will benefit the province and the regions to the extent of creating new growth trajectory.
- Province and regional stakeholders have to agree on sectors to be promoted and the location of the infrastructure for this Bill to be a success.

7.

COMMITTEE RECOMMENDATIONS

7.1. The Committee proposes the following amendments to the Bill:

7.1.1. On section 25, page 12, after line 32 to insert "subsection 7":

"The Minister must make regulations regarding-

- (a) composition of the Special Economic Zone Board;
- (b) the term of office of the Special Economic Zone Board;
- (c) functions of the Special Economic Zone Board;

- (d) code of good conduct and disclosure of interests for the Special Economic Zone Board; and
- (e) any other matter which in terms of this Act is required for the proper implementation of or administration of this Act”

7.1.2. On section 38, page 16, after line 47 to insert “subsection 4”:

“The Minister must make regulations regarding-

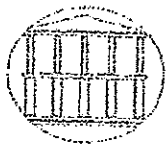
- (a) the prescribed time periods applicable for the Special Economic Zone Board to decide on the approval or disapproval of a licence of an application to locate a business within the Special Economic Zone; and
- (b) the practice and procedure to govern appeals brought against the decisions of a Special Economic Zone Board”.

8. NEGOTIATING POSITION ADOPTED BY COMMITTEE

The Economic Development Portfolio Committee supports the principle and details of the Special Economic Zone Bill [B3-2013] with the proposed amendments.



KZN 4



IPHALAMENDE LAKWAZULU-NATALI

KWAZULU-NATAL PROVINSIALE PARLEMENT

KWAZULU-NATAL PROVINCIAL PARLIAMENT

NEGOTIATING MANDATE

TO: HON DD GAMEDE
CHAIRPERSON: SELECT COMMITTEE ON TRADE AND INTERNATIONAL RELATIONS
NAME OF BILL: SPECIAL ECONOMIC ZONES BILL
NUMBER OF BILL: B3 - 2013
DATE OF DELIBERATION: TUESDAY, 19 NOVEMBER 2013

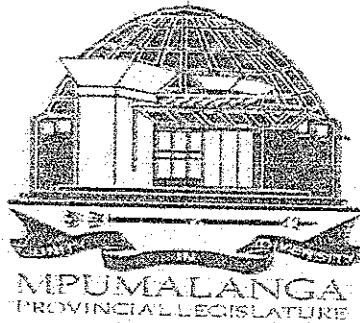
VOTE OF THE LEGISLATURE:

The Portfolio Committee on Economic Development & Tourism met today, Tuesday, the 19th of November 2013 & agreed to mandate the KwaZulu-Natal delegation to the National Council of Provinces to support the Special Economic Zones Bill [B3-2013].

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 HON N NTOMBELA
 CHAIRPERSON OF ECONOMIC DEVELOPMENT
 & TOURISM PORTFOLIO COMMITTEE

...19.11.2013...
 DATE





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Office of the Chairperson

Portfolio Committee on Agriculture, Rural Development and Land Administration; Economic Development, Environment and Tourism

Enquiries: Hon RC Mahlobogoane

Email: RCMahlobogoane@mpuleg.gov.za

Tel. No: 013 766 1037/ 1402

NEGOTIATING MANDATE

To : The Chairperson: Select Committee on Trade and International Relations

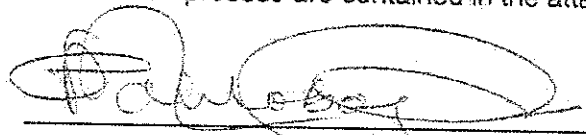
Name of the Bill : Special Economic Zones Bill

Number of the Bill : [B3B - 2013]

Date of Deliberation : 12 November 2013

Vote of the Legislature :

The Portfolio Committee on Agriculture, Rural Development and Land Administration; Economic Development, Environment and Tourism (the Committee) supports the objects of the Special Economic Zones Bill [B3B - 2013] and hereby confers on the permanent delegate representing the Province of Mpumalanga in the National Council of Provinces, the mandate to negotiate in favour of the Bill. The observations of the Committee on the public consultation process are contained in the attached report for your consideration.



HON RC MAHLOBOGOANE (MPL)

12 / 11 / 2013.

DATE

CHAIRPERSON: PORTFOLIO COMMITTEE ON
AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION;
ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM

**REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE,
RURAL DEVELOPMENT AND LAND ADMINISTRATION; ECONOMIC
DEVELOPMENT, ENVIRONMENT AND TOURISM ON THE SPECIAL
ECONOMIC ZONES BILL [B3B - 2013]**

1. INTRODUCTION

The Honourable Speaker of the Mpumalanga Provincial Legislature referred the **Special Economic Zones Bill [B3B – 2013]** (the Bill) to the Portfolio Committee on Agriculture, Rural Development and Land Administration; Economic Development, Environment and Tourism (the Committee) for further processing and report back to the Legislature in accordance with Rule 185 of the Rules and Orders of the Mpumalanga Provincial Legislature.

The Committee was tasked to process the Bill before 20 November 2013 in order to provide the delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) with the necessary mandate to negotiate on behalf of the Province in relation to the Bill.

2. BACKGROUND

The following background outlines the context which necessitated the Special Economic Zones (SEZ) Bill and the ensuing processes towards formulation of the Bill:

Industrial Development Zones (IDZs) Programme, 1999 was an incentive programme to establish IDZs; which is a type of special economic zone providing special provisions to develop industrial growth in particular geographical areas. The IDZ Programme did not perform as expected. This necessitated the Policy review process in 2006 which sought to review the performance of the IDZs and address the challenges experienced by the IDZ Programme

The New Growth Path ("NGP"), National Development Plan ("NDP") and National Industrial Policy Framework ("NIPF") outlined the following:

- Responding to challenging global and domestic economic conditions demands a sharper focus on new sources of competitiveness;
- Achieving this through innovation and productivity, with an entrenched base in skills, infrastructure and efficient and responsive state action;
- Measures had to be implemented to:
 - enhance domestic and regional demand
 - extend export promotion strategically
 - strengthen South African industrial base
 - promote labour-absorbing industrialisation path

A draft policy on Special Economic Zones was introduced in June 2011 with the aim to:

- See SEZs as a mechanism to contribute towards realisation of economic growth and development goals in NDP, NGP & NIPF
- See SEZ Bill an instrument to address shortcomings of IDZ Programme by creating a formal regulatory framework

The Committee was made aware of the following legislative process that was followed:

- August 2011 MIN-MEC approved the draft SEZ Bill and Policy for submission before Cabinet;
- December 2011 Cabinet approved public consultation on the draft SEZ Bill;
- January 2012 draft SEZ Bill published in Government Gazette for public comment;
- March 2012 draft SEZ Bill presented before Economic and Employment cluster for comments and inputs;
- July 2012 draft SEZ Bill discussed at NEDLAC and process at NEDLAC finalised on 31 October 2012;
- Draft SEZ Bill submitted to State Law Advisors in Nov 2012;
- February 2013 draft SEZ Bill certified by State Law Advisors;

- Special Economic Zones Bill, 2013 published in Government Gazette of 1 March 2013;
- Special Economic Zones Bill (2013) was gazetted for public comment on 1 March 2013;
- The Bill was introduced to Parliament on 5 March 2013;
- The DTI presented the Bill and a background to the Bill to the Portfolio Committee on Trade and Industry on 26 April 2013;
- The Portfolio Committee on Trade and Industry received written submissions from various stakeholders and the public;
- The SEZ Bill was adopted by the Portfolio Committee and by the National Assembly in August 2013; and
- The SEZ Bill is now being presented to the Select Committee on Trade and International Relations for concurrence.

The Committee noted that the Bill has been through the consultation stages of national public hearings, which were conducted by the DTI.

3. OBJECTS OF THE BILL

The objects of the Bill are:

- To provide for the designation, promotion, development, operation and management of Special Economic Zones;
- To provide for the establishment, appointment of members and functioning of the Special Economic Zones Advisory Board;
- To provide for the establishment of the Special Economic Zones Fund;
- To regulate the application, issuing, suspension, withdrawal and transfer of Special Economic Zones operator permits;
- To provide for functions of the Special Economic Zones operator;
- To provide for transitional arrangements; and to provide for matters connected therewith.

4. METHOD OF WORK

The Committee interacted with the Bill as follows:

- a. The Honourable Speaker referred the Bill to the Committee for consideration and report back to the House.
- b. Thereafter the Committee met on 23 October 2013 for a briefing session on the Bill. Hon MP Sibande, a Permanent Delegate representing Mpumalanga in the NCOP briefed the Committee.
- c. The Committee resolved, in terms of Section 118 (1) of the Constitution, to conduct public hearings on the Bill. Public hearings were conducted on 30 October 2013 in all three districts of the Province.
- d. The Committee solicited public opinion on the Bill by interacting with the identified communities and stakeholders at the public hearings and also by inviting stakeholders to submit written comments on the Bill.
- e. Subsequently the Committee met on 12 November 2013 to consider its draft report and negotiating mandate on the Bill.

5. BRIEFING BY THE NCOP

- a. Hon MP Sibande briefed the Committee on the Bill. He was accompanied by three senior officials from the Department of Trade and Industry (the DTI) namely, Mr Kaya Ngqaka (Chief Director: Infrastructure Investment Support); Ms Keletso Tsele (Deputy Director: Industrial Development Zones) and Mr Jabulani Sithole (Deputy Director: SEZ Monitoring and Evaluation).
- b. Provincial stakeholders invited to the briefing session and public hearings:
 - Department of Economic Development, Environment and Tourism
 - Mpumalanga Economic Growth Agency (MEGA)
 - Department of Human Settlements;
 - Cooperative Governance and Traditional Affairs (COGTA);
 - Department of Public Works, Roads and Transport

- South African Local Government Association (SALGA);
- Mpumalanga House of Traditional Leaders (MHTL)

5.1. Overview of the Bill

Hon Sibande provided a political overview of the Bill and emphasized the importance of the provinces role in the passing of bills. Bills must actually do what they proclaim. He further stated that the SEZ Bill is very progressive and that it opens South Africa up to the big picture of economic growth.

After his overview, the Honourable Member requested Mr. Ngqaka from the DTI to unpack the objects of the Bill and present the Bill to the Committee and the invited stakeholders.

The DTI made a concise clause by clause presentation to the Committee. Thereafter the Committee interacted with the DTI on the key issues raised by the Bill.

5.2. Interaction during the briefing

The Committee interacted with Hon Sibande and the DTI on the Bill. The following comments, concerns and clarity-seeking questions were raised by the Committee:

- a. How would the assessment process of applications from provinces be done and what were the reasons that provinces had to make an application to the Minister instead of the Minister identifying areas and then designating them as SEZs.
- b. Clarity was sought about the nature of the R500 million capital investment by the DTI.
- c. The Committee questioned whether the local SMME's and co-operatives would benefit during the appointment of operators in the SEZ. The concern was that SEZs must create work for the people and operators should not exploit them.
- d. Further clarity was also sought by the Committee about the SEZs being a tax-free zone.

- e. The matter of the Mpumalanga Fresh Produce Market was raised and the DTI was asked whether this huge project could be funded if an SEZ application was submitted.
- f. The Committee enquired about how the Bill would streamline all the various existing MOUs of the DTI.
- g. The Committee expressed an interest in the roll-out of the training programme, since only 30 DTI officials were trained in China. Training was emphasized as an important aspect for the successful implementation of the SEZ programme and the ensuing legislation.
- h. A question was also raised about how the currently dilapidated industrial parks in the Province would benefit from the SEZ Bill.

The DTI responded on the issues raised by the Committee as follows:

- a. Applications received from provinces will be overseen by a board. In addition, the DTI reported that systems are being put in place to monitor the process; before an area can be designated an SEZ, a feasibility study and market analysis are conducted. It was also clarified to the Committee that the Bill does allow the Minister to designate SEZs.
- b. The R500 million allocated to an SEZ is a grant (seed funding) for preparatory work in terms of appointment of project managers and feasibility studies.
- c. The department reported that the investors in SEZs will become the employers of SMMEs and skilled people; this will lead to decent jobs being created. All operators should thus have strategies in place to link SMMEs in the SEZ and train them.
- d. Furthermore, the DTI clarified that goods coming in and going out of SEZs will be duty free (free trade zone). It was mentioned that there are special processes for these goods.
- e. The DTI acknowledged that the Mpumalanga Fresh Produce Market was a good project, in that it was linking investors to producers (farmers) and that all processing would be taking place within the province. The DTI mentioned that agro-processing is very beneficial in an SEZ.

- f. Regarding the Committee concerns about training, it was mentioned that the DTI has consulted SETAs and acknowledges the importance of skills development strategies.
- g. The DTI indicated that the former industrial parks will be revived as part of the SEZ programme.

After the discussions, the Committee acknowledged that the Bill was progressive in relation to the further development of the provincial and national economy.

6. PUBLIC CONSULTATION PROCESS

6.1. Public Education and Public Hearings

The PPPS (Public Participation and Petitions Section) of the Legislature facilitated public education workshops a few days before the public hearings. The stakeholders were engaged and duly informed about the processes of the Legislature and the significance of the legislation at hand.

- a. An open invitation to the public hearings and a call for public comments on the Bill was published in national and regional print media. Interested and affected stakeholders were invited to submit written comments on the Bill on or before 08 November 2013.
- b. Targeted stakeholders in organised business sector were invited to attend the public hearings and to make written submissions on the Bill.
- c. The advertisement appeared in the following publications during the week of 28 October 2013: The Lowvelder (whole province) and Daily Sun (whole province).
- d. The Bill was uploaded onto the Mpumalanga Provincial Legislature website at www.mpuleg.gov.za; an electronic version of the Bill was also emailed to interested and affected stakeholders.

The Committee facilitated public consultation on the Bill and the public hearings on the Bill took place on 30 October 2013 from 09:00 – 13:00 as follows:

| DISTRICT | VENUE |
|--------------|---|
| Ehlanzeni | Mbombela Local Municipality, Nelspruit, Mpumalanga Provincial Legislature |
| Gert Sibande | Govan Mbeki Local Municipality, Secunda, Municipal Council Chamber |
| Nkangala | Emalahleni Local Municipality, Witbank, Lynville Community Hall |

In addition to stakeholders invited to the briefing, invitations to public hearings were also sent to:

- Community members
- Lowveld Kruger Chamber of Business and Tourism
- South African Local Government Association (SALGA)
- Mpumalanga Provincial House of Traditional Leaders (MHTL)
- Executive Mayors, Speakers, Municipal managers, MMC's, ward councillors, ward committees and CDW's of the three local municipalities
- LED sections of the three targeted local municipalities

6.1.1. Stakeholder input during the public hearings

- a. The Committee Members who were deployed at the various public hearings engaged the public by explaining that the reason for the Legislature conducting public hearings was to involve the public in its legislative processes, as required by Section 118(1) of the Constitution of the Republic of South Africa.
- b. After explaining to the public the main objectives of the proposed Bill and its implications for the Province, the Committee Members then interacted with the public on the Bill.
- c. At each public hearing, the Committee ensured that the stakeholders in attendance understood the main objectives of the Bill and that their questions were responded to.

- d. In turn, the communities in each district were requested to give the Committee a mandate either in support of or not in support of the Bill.

PUBLIC HEARING AT EHLANZENI DISTRICT, MBOMBELA LOCAL MUNICIPALITY

The following content matters were recorded during the public hearing at Nelspruit:

- The Bill is beneficial since it promotes job creation, skills transfer and economic development, which is in line with the provincial outcomes and national priorities of government. The Bill will improve the country's infrastructure and make it more attractive to international investors.
- The aim of the SEZ strategy is to create industrial complexes in geographical areas that will promote export opportunities; this will attract investors who will fund the infrastructure development. The focus is also on value add to the final product; this will have significance for co-operatives in the SEZ.
- SEZ failed in the past due to lack of capacity. The role of the SEZ Board was explained, indicating that it would handle applications from investors who wanted to invest in the SEZs. There will also be an SEZ Advisory Board that will advise the Minister on SEZ applications and interventions, monitor policy implementation and issue licences.
- The DTI indicated that an audit was conducted of all the old industrial parks in conjunction with MEGA and with an aim to revive them within the SEZ model.
- The National Treasury has provided R4 billion for the implementation of the Bill; the SEZ fund is therefore in place. However, the provincial government will have to fund the operational costs of the SEZ. The national government will be responsible for capital infrastructure.
- There are currently five (5) SEZs in the country; in Mpumalanga the DEDET has submitted an application to designate the Nkomazi local municipality as an SEZ in the province. However, the application is not yet approved. Currently, there are ten (10) SEZs planned for the country. The DTI indicated that Transnet will be part of the Nkomazi SEZ.

- The province will have to appoint a special purpose vehicle (SPV) to manage the SEZ – this could be an entity, a municipality or a public private partnership operating as an SEZ company. The SEZ must have a plan to attract investors; the plans will be approved by the DTI.
- The SEZ regulations will be enacted once the Bill is passed, which will prevent exploitation and ensure proper processes for implementation of the legislation. The SEZs were preceded by the Industrial Development Zones (IDZs); those IDZ regulations and operators will be incorporated into the SEZ once the Bill is passed.
- The Chairperson requested the various stakeholder departments in attendance to make any inputs. These departments included the DEDET, MEGA, DHS, COGTA. They were in support of the Bill.
- **The main issues raised by the members of the public at Nelspruit were:**
 - ➔ Concern was raised whether foreigners would be given preference over South African citizens in terms of employment opportunities.
 - ➔ Proposals were made around the issue of training of officials on the SEZ model; the sense was that more people needed to be trained and that local graduates should be used in the training programmes.
 - ➔ Questions were raised by the public about the SPV that will be appointed to manage the SEZ on behalf of the Province; the sense was that it should not be profit driven so that the local co-operatives and the people of the province must truly benefit.
 - ➔ There was also question as to whether an association of co-operatives can be an SEZ operator. It was mentioned that the government should heavily support the idea of co-operatives functioning as operators within the SEZs.
 - ➔ Clarity was also sought regarding the seat of the SEZ Board; it was felt that the Board should be closer to the provinces. The DTI clarified that the Board is at a national level but uses the MINMEC as a forum. The DTI, however, promised to investigate this matter and give feedback.

On the whole, the attendees at the Nelspruit public hearing, agreed that the Bill should be supported. The Committee was given a mandate by the public to support the Bill.

PUBLIC HEARING AT GERT SIBANDE DISTRICT, GOVAN MBEKI LOCAL MUNICIPALITY

The following concerns by the public were recorded at Secunda:

- There must be a mechanism put in place to ensure that the investors develop skills of the local people in the areas where Economic Zones will be established.
- The Bill gives too much powers to the Minister. The powers of the Minister must be reduced.
- When foreigners come and invest in the SEZs, labour rights must be protected to avoid having local people working as slaves.

On the whole, the attendees at the Secunda public hearing agreed that the Bill should be supported. The Committee was given a mandate by the public to support the Bill.

PUBLIC HEARING AT NKANGALA DISTRICT, EMALAHLENI LOCAL MUNICIPALITY

The following matters were recorded at Witbank:

- The attendees raised concerns about the challenges in terms of the fact that; with regard to the Board, the Bill is not clear whether the Board will have youth representatives who will ensure that the Economic Zones benefit them. Furthermore, there should be a clear criteria in the Bill that will ensure that a certain percentage of youth become part of the SEZ.
- Since Mining contributes in the economy of the Province. It should be considered as much as agriculture is considered in the SEZ.
- There should be funds and a programme that is developed to educate the communities on the Bill since most of the disadvantaged communities are not familiar with the

Special Economic Zones. The lack of knowledge may reduce the chances for the uneducated people from benefiting in the SEZ.

- Municipalities should play a vital role and be involved in the SEZ so that they also benefit.

On the whole, the attendees at the Witbank public hearing agreed that the Bill should be supported. The Committee was given a mandate by the public to support the Bill.

6.1.2. Written comments on the Bill

No written comments on the Bill were received from all three regions or from any other stakeholders by the due date.

7. COMMITTEE OBSERVATIONS

- a) After examining the Bill and considering the inputs from stakeholders, the Committee concluded that the Bill does not pose any challenges to the principles of the Constitution of the Republic of South Africa.
- b) The Committee expressed its support for the objectives of the Bill as it is very progressive for the Province in what it seeks to achieve through the special economic zones in terms of job creation, skills transfer and economic development.
- c) The public participation process was fruitful and the public in attendance at all three public hearings understood the significance of the Bill, engaged with the content thereof and thereby unanimously supported the Bill.

8. CONCLUSION

The Committee facilitated the involvement of the public in considering the Special Economic Zones Bill [B3B-2013] by conducting public education workshops and public hearings in the targeted communities, as well as publishing a call for written comments on the Bill in the print media. After considering all the inputs, the Committee also acknowledged its support for the Bill.

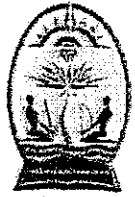
9. RECOMMENDATION

In light of the above conclusion, the Committee recommends that the House confers the necessary mandate upon the Permanent Delegate representing the Province of Mpumalanga in the NCOP to **negotiate in favour of the Special Economic Zones Bill [B3B-2013]** taking into account the Committee's observations in this report.

HON. RC MAHLOBOGOANE (MPL)

DATE

**CHAIRPERSON: PORTFOLIO COMMITTEE ON
AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION;
ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM**



Northern Cape
Provincial Legislature

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Hon MP DD Gamede (Mr)
Chairperson: Select Committee on Trade and International Relations

NEGOTIATING MANDATE

Name of the Bill: **Special Economic Zones Bill**

Number of the Bill: **B 3B-2013**

Date of deliberation: **Wednesday, 06 November 2013**

Vote of the Legislature: **The legislature votes in favour of the Bill**


Signature:
Chairperson

2013 -11- 12

Date:



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Provincial Legislature

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Reference: 16.7.1.1

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NEGOTIATING MANDATE FOR SPECIAL ECONOMIC ZONES BILL [B 3B-2013]

(Section 76 Bill)

1. INTRODUCTION

The Chairperson of the Portfolio Committee on Finance, Economic Development & Tourism, Hon G Parker, tables the Committee's negotiating mandate on the **Special Economic Zones Bill [B 3B-2013]** as adopted by the Portfolio Committee on 06 November 2013.

2. PROCESS FOLLOWED

2.1 The Speaker of the Northern Cape Provincial Legislature, on receipt, referred the **Special Economic Zones Bill [B 3B-2013]** to the Portfolio Committee on Finance, Economic Development & Tourism on 08 October 2013.

2.2 On 25 October 2013, the Portfolio Committee on Finance, Economic Development & Tourism received a briefing on the Bill from the National Department of Trade & Industry and NCOP Permanent Delegate, Hon Sinclair.

2.3 The Portfolio Committee resolved at the meeting of 25 October 2013 to hold two public hearings on the referred Bill, in Kimberley (Greenpoint and Roodepan), in the region of Frances Baard, to solicit the views of communities and stakeholders with regard to the **Special Economic Zones Bill [B 3B-2013]**

Two (2) public hearings were concurrently held on 01 November 2013 as per Committee resolution and both written and oral submissions were called for. The public engaged with the Members of the Provincial Legislature in respect of the Bill.

On 06 November 2013, the Portfolio Committee on Finance, Economic Development & Tourism deliberated and considered the **Special Economic Zones Bill [B 3B-2013]**

3. STAKEHOLDERS' INPUTS ON THE BILL

3.1 The establishment of Special Economic Zones should not be only on cities; rural communities should also be considered in order to benefit from this establishment.

4. STAKEHOLDERS' POSITION ON THE BILL

The stakeholders voted in favour of the Bill in both public hearings.

5. COMMITTEE INPUTS ON THE BILL

Historically, the Northern Cape had not been considered favourably in as far as economic development is concerned and the Department of Trade and Industry should put more

emphasis in promoting economic development, therefore, the Committee made the following inputs;

5.1. The Special Economic Zone in Northern Cape should not be limited to Upington Solar Park only.

5.2. The Gamagara Mining Corridor should also be considered as Special Economic Zone.

5.3. The State Diamond Trading should relocate to Kimberley in order to promote diamond beneficiation in the Province.

5.4. The Northern Cape is the second largest producer of sheep wool in the country. Pixley Ka Seme Region should be considered as a Special Economic Zone for wool processing in the country.

6. PORTFOLIO COMMITTEE POSITION ON THE BILL

After due deliberation, the Portfolio Committee on Finance, Economic Development & Tourism, supports the Bill.

7. COMMITTEE ADOPTION OF THE BILL

The Committee adopted this negotiating mandate duly signed by the Chairperson of the Committee.

The Committee recommends to the House to mandate the Permanent Delegates to participate in deliberations at the negotiating stage and to support the Bill taking note of the comments and recommendations raised by the Committee.



HON. G. PARKER
Chairperson

Date: 2013-11-12

NW8

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NEGOTIATING MANDATE

To: Hon D D Gamede
Chairperson: Select Committee on Trade & International Relations

Name of Bill/question: Special Economic Zones Bill

Number of Bill/question: [B38 - 2013]

Date of Deliberation: 06 November 2013

Vote of Legislature: The Committee concurs with the Special Economic Zones Bill. The committee recommends that the Advisory Board should take more responsibility to make decisions around the designations, the companies in the SEZ and the criteria of which businesses or services are offered in an SEZ and not have all powers residing in the Ministry as it creates more red tape. The North West province votes in favor of the Bill

[Signature]

[Signature]

Hon M. Mokomele-Mothibi
Chairperson: Economic Development,
Environment, Conservation & Tourism

Date