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## NEGOTIATING MANDATE

### NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT BILL [B40b-2007]

The Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning (the Committee) deliberated on the National Environmental Management: Integrated Coastal Management Bill [B40b-2007] (the Bill).

After deliberation, the Committee supports the principles underlying the Bill, taking into account the observations of the Committee as contained in the attached report.

The permanent delegate representing the Province of Mpumalanga in the National Council of Provinces (NCOP) is conferred with authority and a mandate to negotiate in favour of the Bill.

**HON. PE PASHA**  
**CHAIRPERSON: PORTFOLIO**  
**COMMITTEE ON AGRICULTURE**  
**AND LAND ADMINISTRATION;**  
**ECONOMIC DEVELOPMENT AND PLANNING**

09/06/2008  
**DATE**

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## **1. Introduction**

The National Environmental Management: Integrated Coastal Management Bill (the Bill) was referred to the Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning (the Committee) for consideration and with the responsibility to report back its recommendations to the House.

## **2. Background**

In terms of Section 24 of the Constitution, everyone has the constitutional right to have the environment, including the coastal environment, protected for the benefit of present and future generations. The coastal zone is a unique part of the environment in which biophysical, economic, social and institutional considerations interconnect in a manner that requires a dedicated and integrated management approach. Therefore, in order to manage the coastal zone as a system it is essential to achieve the constitutional commitment to improving the quality of life of all citizens, while protecting the natural environment.

## **3. Objectives of the bill**

The Bill seeks to:

- Establish a system of estuarine management in the Republic, including norms, standards and policies;
- Promote the conservation of the coastal environment and maintain the natural attributes of coastal landscapes and seascapes;
- Ensure that development and the use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable;

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- Define the rights and duties in relation to coastal areas;
- Determine the responsibilities of organs of state in relation to coastal areas;

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- Prohibit incineration at sea;
- Control dumping at sea, pollution in the coastal zone, inappropriate development of the coastal environment and other adverse effects on the coastal environment;
- Give effect to South Africa's international obligations in relation to coastal matters; and to provide for matters connected therewith.

#### **4. Method of work**

The Speaker referred the Bill to the Portfolio Committee on Agriculture and Land Administration; Economic Development and Planning for consideration. Consequently the Committee was briefed by the permanent delegate representing the Province of Mpumalanga in the NCOP, Hon. A Watson, on 16 May 2008.

In attendance of the briefings were Officials from the provincial Department of Agriculture and Land Administration (DALA) and the National Department of Environmental Affairs and Tourism (DEAT) including the Legal Services Section of the Mpumalanga Provincial Legislature.

Copies of the Bill were delivered to the three municipalities where the public hearings were conducted. Municipal Managers were requested to ensure that Community liaison officers assist in circulating the Bill to community members, NGO's, community-based groups and local businesses.

An advert of the Bill was placed in the Sowetan on 27 May 2008 to call for written comments for submission not later than 30 May 2008. The Committee notes that substantial written comments were received from Transnet. These comments were also sent to all provinces and to the NCOP.

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Public Hearings were conducted as follows:

DATE	DISTRICT	VENUE	ATTENDANCE
20/05/2008	Enkangala region	Municipal Offices, Sakhelwe, (Dullstroom) ; Emakhazeni Municipality	77
20/05/2008	Gert Sibande region	Silobela Community Hall (Carolina); Albert Luthuli Municipality	87
27/05/2008	Ehlanzeni region	Ekuthuleni Hall, Simile (Sabie); Thaba Chweu Municipality	65

The Honourable Members were deployed at the various public hearings and clearly explained the Bill to those present. The members of the public expressed satisfaction with the Bill and that it sought to protect and manage the coastal zones of our country. On 30 May 2008 the Committee met to consider the report on the Bill.

#### 5. Committee Observations

During the deliberations on the Bill, the Committee indicated that the following proposal should be considered:

- ✓ **Part 1 of Chapter 2 (section 14):** deals with the loss of ownership of coastal land due to the shifting position of the high-water mark. It is stated in this clause that the land owner is not entitled to any compensation from the State for the loss of land ownership, "**unless** the movement of the high-water mark was caused by an *intentional or negligent* act or omission by an organ of State and was a reasonably foreseeable consequence of that act or omission". This does not give consideration to the effects of global warming that will lead to the shifting position of the high-water mark. It is submitted that this section should take into account the

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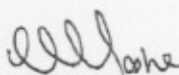
interests of the owners of coastal property, who will be affected by the application of this clause.

The Committee notes that the written submission from Transnet should be considered. Furthermore the Committee notes that the comments had been forwarded by Transnet to all Provinces and to the NCOP. The Committee hereby forward a request to the NCOP to facilitate a response by the DEAT on the submission made by Transnet.

### **6. Recommendations**

The Committee examined the National Environmental Management: Integrated Coastal Management Bill [B40B - 2007] and supports the principles underlying the Bill.

The Committee recommends that the delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) be conferred with authority and mandate to negotiate in favour of the Bill.



**Hon. PE Pasha**  
**Chairperson: Portfolio Committee on**  
**Agriculture & Land Administration;**  
**Economic Development & Planning**

09/06/2008  
**Date**



ISISHAYAMTHETHO SAKWAZULU-NATAL

KWAZULU-NATAL WETGEWER

**KWAZULU-NATAL PROVINCIAL LEGISLATURE**

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**TO: THE CHAIRPERSON,  
NATIONAL COUNCIL OF PROVINCES**

**NEGOTIATING MANDATE**

**PROVINCE : KWAZULU-NATAL**

**BILL : NATIONAL ENVIRONMENTAL  
MANAGEMENT: INTEGRATED COASTAL  
MANAGEMENT BILL  
[B40B – 2007]**

**PROVINCIAL PROCESS :**

Provincial Portfolio Committee/s : Agriculture & Environmental Affairs  
Portfolio Committee  
meeting date/s : Thursday, the 5<sup>th</sup> of JUNE 2008  
Provincial NCOP meeting date/s : Thursday, the 5<sup>th</sup> of JUNE 2008  
Consultation : Parliamentary Legal Advisors, Special &  
Permanent Delegates

**VOTE OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE:**

The Provincial Standing Committee on National Council of Provinces Matters met today, Thursday, the 5<sup>th</sup> of JUNE 2008, to consider the **National Environmental Management: Integrated Coastal Management Bill [B40B-2007]**.

The following comments and amendments were proposed and considered on the Bill:

## GENERAL COMMENTS ON THE BILL

- The Province of KwaZulu-Natal welcomes and supports in principle the introduction of this legislation;
- The legislation in its current form maintains a healthy balance between the three spheres of sustainable development, viz. promotion of ecological integrity, the opportunity for societal improvement and economic growth;
- However, it is submitted that the following omissions from the Bill weaken its ability to operate optimally:
  1. **Statement of principles of coastal zone development:**  
Whereas the Draft White Paper for Sustainable Coastal Development in South Africa contained a number of principles of coastal zone development, these have been omitted from the Bill. It is suspected that this is due to the fact that this Bill falls under the National Environmental Management Act and therefore the principles set out therein are equally applicable to this Bill. However, it is submitted that a set of principles specifically related to coastal zone development would greatly strengthen the Bill.
  2. **Funding:**  
Provincial and local government in KwaZulu-Natal express concern at their ability to effectively implement the provisions of and achieve the goals of the Bill due to financial constraints.  
The Bill also makes reference to various income generating opportunities, however, the Bill does not specify or attempt to allocate this funding to local, provincial or national government.
  3. **"Public interest" / "benefit the whole community"**  
These terms are not defined. Due to the diverse and competing interests coastal management creates, the terms ought to be defined to prevent complicated trade-offs.  
  
Similarly, it is necessary to specify whether "community", "person" and "human user" refers to South African citizens only as the fisheries legislation, for example makes specific reference to South African citizens. Where coastal developments/hotels are owned by international investors, the benefits potentially accrue or return to that international country and South Africans do not enjoy the benefits.
  4. **Driving of 4x4 vehicles on beaches and boat launch sites**  
These regulations should be incorporated into or cross-referenced to this Bill

5. **Definition of the "high water mark" and "low water mark"**  
To define these critically important boundaries by simply referring to the highest and lowest line to which coastal waters reach or recede is problematic and there should be some reference to this being determined in conjunction with the Department of Land Affairs and endorsed on affected properties.
  
6. **Determination of the "litoral active zone"**  
Must cross reference this so that it is clear who has the authority to determine this zone.
  
7. **Reference to functions of local government and MEC's**  
Whereas all the other chapters in the Bill refer specifically to the functions of municipalities and province (the MEC), chapter 8 is the only chapter that makes no reference to same. Marine and coastal pollution control is critical and functions should rest with province as well as national.  
Whilst it is acknowledged that there is provision for the Minister to make delegations in terms of section 89, this still entails a process which often takes a considerable amount of time to effect.
  
8. **Communication of contents of Bill**  
When the Bill is enacted, the province encourages a strong communication drive on its contents. It is particularly important that Traditional Authorities who allocate land to persons, sometimes in areas prone to flooding/erosion by the sea understand the importance of set back lines etc.
  
9. **Conflict with Land Survey Act**  
Section 30(d) of the Land Survey Act states that "...if any land has an imaginary or curvilinear boundary at a stated distance from an ambulatory feature, that boundary **shall not be subject to any positional change** after registration of that land has taken place".  
  
However, section 14 of the Bill suggests otherwise, stating that the boundaries may indeed be affected by the movement of the high water mark.  
  
It is suggested that this discrepancy be dealt with and further suggested that in particular the issue of a pro-grading coastline be dealt with so as to promote conservation of the coastal environment as opposed to private property owners potentially obtaining land in the event of a pro-grading coastline.



**SPECIFIC AMENDMENTS PROPOSED**

1. On page 10, the definition of "effluent" should be amended at line 25 to include before the word "any", the words "any storm water into which sewerage has been discharged,..."
2. On page 15, line 19, the insertion of the words: "Except as provided for in sections 65 and 66" before the words "coastal public property".
3. On page 15, line 47, the substitution of the word "may" for "must".
4. On page 16, line 44, the substitution of the words "The owner or occupier" with the words "No person..."
5. On page 16, line 51, the deletion of the words "except as provided for in this Act".
6. On page 19, line 12, the words "land unit" to be substituted with the word "erf".
7. On page 19, line 17, the words "land unit" to be substituted with the word "erf".
8. On page 19, line 24, the word "any" should be removed and the words "within the coastal protection zone" after "land".
9. On page 19, after line 26, the insertion of: "provide for rehabilitation or mitigation purposes"
10. On page 20, line 24, the substitution of the word "may" with the word "must".
11. On page 20, line 34, the substitution of the word "may" to be substituted with the word "must".
12. On page 23, line 32, the word "may" to be substituted with the word "must".
13. On page 23, line 15, the substitution of "person" with "body".
14. On page 25, line 45, the insertion after "coastal resources" of "including representatives of government who play a significant role in undertaking or regulating activities that may have an adverse affect on the coastal environment".

15. On page 25, line 52, the deletion of "and"  
On page 25, after line 53, the addition of:  
"(iii) one or more members representing community based and non government organizations; and  
(iv) one or more members representing scientific or coastal research Institutes."
16. On page 29, line 47, the deletion of the word "and" after "dwellings;"  
On page 29, after line 50, the insertion of  
"(v) to address coastal erosion and accretion; and  
(vi) to deal with access issues".
17. On page 36, it is submitted that section 63 is unnecessary in that it purports to set out or reiterate what is already contained in Chapter 5 of NEMA. A simple cross reference to the provisions of Chapter 5 of NEMA and the regulations promulgated in terms therewith applying *mutatis mutandi* would suffice.
18. On page 38, line 5, the deletion of "and"  
On page 38, after line 7, the addition of:  
"(d) must provide for the rehabilitation of the leased property, where, at the discretion of the Minister same has become unduly degraded during the duration of the lease."
19. On page 38, after line 20, insert the following  
"provided that this is done in a manner that does not adversely affect the environment".
20. On page 41, line 36, the deletion of "and"  
On page 41, after line 36, the addition of:  
"f transboundary impacts and international obligations and standards;  
and"  
On page 41, line 37, the substitution of "f" for "g".
21. On page 42, line 44 and 45, the substitution of the words "to whom a protection notice or coastal access notice in terms of section 59 or a repair and removal notice in terms of section 60, has been issued" with "who is aggrieved by any decision taken in terms of this Act".
22. On page 42, line 47, the substitution of the words "notice was issued" with the words "decision was taken".
23. On page 42, line 50, the substitution of the words "notice was issued" with the words "decision was taken".
24. On page 42 and page 43, the deletion of subsection 74(2) and the