

Limpopo Legislature

OFFICE OF THE SECRETARY

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NEGOTIATING MANDATE ON NATIONAL ENVIRONMENT LAWS AMENDMENT BILL, 2008 [B66B-2008]

1. INTRODUCTION

The National Council of Provinces referred the National Environment Laws Amendment Bill, 2008 [B66B-2008] to the Limpopo Legislature. Upon receipt by the Legislature, the Bill was referred to the Portfolio Committee on Economic Development, Environment and Tourism to make further inputs for consideration by the NCOP when negotiating the mandate.

2. PURPOSE OF THE BILL

To amend the Atmospheric Pollution Prevention Act, 1965, so as to adjust the penalties provided for in the said Act; Environment Conservation Act, 1989, so as to adjust the penalties provided for in the said Act; and to remove the need to publish directions in the Gazette; National Environmental Act, 1998, so as to delete certain definitions; to provide for the establishment of fora or advisory committees; to make provision for increased powers of the courts; to remove the requirement that Environmental Management Inspectors must carry notices of designation with them; to extend the scope of routine inspections to the search of vehicles; and to regulate the jurisdiction of magistrate's courts in instances where the maximum fines have been increased; National Environmental Management : Protected Areas Act, 2003, so as to provide for increased measures of control over escaped animals; and to adjust the penalties provided for in the said Act; National Environmental Management : Biodiversity Act, 2004, so as to provide for general surveillance monitoring; to provide further considerations for a biodiversity management plan; to provide that an environment impact assessment must be obtained when genetically modified organisms are involved; to introduce notification requirements in the discovery phase of a bioprospecting project; to take into consideration knowledge of specific individuals when issuing specific bioprospecting permits; to allow the Director-General or a trustee to manage the Bioprospecting Fund; to allow for hunting; and to effect certain textual alterations; National Environmental Management : Air Quality Act, 2004, so as to provide for a processing fee to review a license; and to include directors or senior managers in a juristic person for the criteria for a fit and proper person; and to provide for matters connected therewith.

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3. CONSIDERATION OF THE BILL

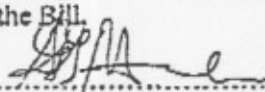
The Committee met on 17 October 2008 to consider the Bill. NCOP Permanent Delegate, Hon. H. Matlanyane and Vicky Beukes from National Department Environmental Affairs briefed the Committee on the principle and the provisions of the Bill.

Having considered the Bill, the Committee makes the following inputs:

- The Committee appreciates the amendment made by this piece of legislation on the various sections of Environmental Acts, however advised that much work needs to be done in the area of environmental education, compliance and enforcement both at National and Provincial governments.
- Looking at the number of Environmental piece of legislations that the department introduced this year, the Committee raised a concern that the Department should have consolidated those environmental legislations into one.
- On section 1: there should be consistency in the use of the words "five million rand".
- On section 12(b): there should be consistency in use of words "provincial head of department". (The recommended usage of words should follow the pattern as in section 20 that refers to 'head of Department responsible for environmental affairs in the province).
- On section 29(a): there should be insertions of 47(3) or 47 (3A).
- Section 36(4): proposed that the section require the Minister to consult with the committee before granting such exemption considering the seriousness of the restrictions imposed e.g. 'killing of protected species'. Even though provisions of Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) makes consultation essential, by making it clear in this section will help to prevent any irreparable decisions. It is recommended that the section should make cross reference to the section in the Act making consultation mandatory prior to taking the administrative decision.
- It is recommended that the schedule should also include the Limpopo Environmental Management Act, 2003 (Act No. 7 of 2003).

5. RECOMMENDATIONS

The Committee, having gone through the Bill, found that the Bill's enactment into law will address many problems of environmental management. However, all concerns raised should be taken into consideration before the Bill proceeds to the next stage. A mandate is conferred on the NCOP Delegates to negotiate in favor of the Bill.


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Mr T.G.G MASHAMBA, MPL
COMMITTEE CHAIRPERSON



ISISHAYAMTHETHO SAKWAZULU-NATAL

KWAZULU-NATAL WETGEWER

KWAZULU-NATAL PROVINCIAL LEGISLATURE

**TO: THE CHAIRPERSON,
SELECT COMMITTEE ON LAND AND
ENVIRONMENTAL AFFAIRS**

NEGOTIATING MANDATE

PROVINCE : KWAZULU-NATAL
**BILL : NATIONAL ENVIRONMENTAL LAWS
AMENDMENT BILL
[B66B – 2008]**

PROVINCIAL PROCESS :

Provincial Portfolio Committee/s : Agriculture & Conservation Portfolio
Committee
Portfolio Committee
meeting date/s : Thursday, the 6th of NOVEMBER 2008
Provincial NCOP meeting date/s : Friday, the 7th of NOVEMBER 2008
Consultation : Parliamentary Legal Advisors, Special &
Permanent Delegates

MANDATE OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE:

The Provincial Standing Committee on National Council of Provinces Matters met today, Friday, the 7th of NOVEMBER 2008, to consider the National Environmental Laws Amendment Bill [B66B-2008]

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

PROPOSED AMENDMENTS

- Clause 1 – There is inconsistency in relation to the penalties when one compares this clause with other clauses dealing with penalties.
- Clause 3 – The amendment of the Minister of Affairs and Forestry deals with the functions assigned to the Department of Environment, Agriculture and Tourism. This error must be corrected by substituting the Ministry concerned.
- Clause 12(a) must also provide for recovery of costs on post-rehabilitation
- The removal of the requirement to report matter to Director of Public Prosecutions must be provided for in the regulations.
- Amend clause 26 which amends section 49A as follows:
 - "(4) The management authority must implement the provisions of subsection (2) in a manner which takes into account the threat posed by such escaped animal to the human life, spread of animal diseases or other veterinary harm."
 - "(5) Any person who becomes aware of a[n] dangerous animal escaping from a protected area must immediately report this to the **[management]** authority of the area concerned.
- Amend clause 29 that substitutes section 89(2), the fines are too steep and need to be reduced.
- Amend clause 31 that amends section 11 to read as follows:

"must monitor and report regularly to the Minister on the environmental impacts of all categories of genetically modified organism that has been released into the environment, including the impact on non-target organisms and ecological processes, indigenous biological resources and the biological diversity of species used for agriculture, post commercial release, based on research that identifies and evaluate risk."
- Amend clause 36 by providing that exemption can only be granted after comments and proposals are considered by the Minister.

- Amend clause 40 that inserts clause 81A by including the MEC to be notified when a person wants to engage in the discovery phase of bioprospecting involving any indigenous biological resources.
- Amend clause 51 which substitutes section 52(1) and (2) by providing for penalties for subsequent and continuous convictions.

The Committee agreed to mandate the KwaZulu-Natal delegation to the National Council of Provinces to support the Bill provided that the above comments and proposed amendments are considered and consolidated in the Bill.

PROVINCIAL ENDORSEMENT



Ms L F Shabalala
CHAIRPERSON :
KWAZULU-NATAL STANDING COMMITTEE ON
NATIONAL COUNCIL OF PROVINCES MATTERS

Friday, the 7th November 2008

DATE



Committee Service

Our reference:
Ons verwysing:
Tshupo ya rona:

FREE STATE LEGISLATURE

TOURISM, ENVIRONMENTAL AND ECONOMIC AFFAIRS COMMITTEE

Report on the provincial inputs regarding National Environment Laws Amendment Bill [B66B-2008]

1. Terms of Reference

The **National Environment Laws Amendment Bill [B66B – 2008]** has been referred to the **Tourism, Environmental and Economic Affairs Committee** by the **Speaker**.

2. Briefing

(1) On the 23 October 2008, Mr. N. Van Rooyen, NCOP Permanent delegate of the Free State briefed the Committee on the content of the Bill.

(2) Advocate Malakoane, Assistant Legal Advisor of the Free State Legislature briefed the Committee on the legal substance and effects of the Bill.

3. Consultation

The Committee held the Public Hearings on 04, 06, 07 and 08 November 2008 in four districts.

4. Consideration

The Portfolio Committee considered the Bill, inputs and information received. The Portfolio Committee noted the inputs by the general public and amongst others noted that:

- a. The Department should ensure that mines that are closing down should use the retention money to rehabilitate the land and dams in order to protect people from inhaling sand from dried dams that have been affected by toxic deposits through mining operations.
- b. The Department, in consultation with the Department of Agriculture, must ensure that life-stock kept in towns and locations is relocated to communal kraals as a matter of extreme urgency because they pose an environmental hazard.
- c. **Clause 5:** Minister may establish fora or advisory committees. The Committee proposes that there must be an express provision regarding the nature of fora or committees, competencies and number of members, and the period of their appointment.
- d. **Clause 13:** The Bill makes failure to report emergency incidents a criminal offence. Clause 21 gives protection to persons who must disclose information on the environment. The Committee proposes that these people should be accorded the same status as whistle-blowers as envisaged in our criminal justice context.
- e. **Clauses 17 and 18:** The environment management inspector is only required to carry an identification card and the requirement of carrying the letter of designation has been removed. The Committee strongly feels that this creates a practical enforcement problem in that people may generate identity cards and pose as environmental management inspectors and possibly commit acts of criminality. It is proposed that the inspectors should also have visible identification, either distinct in their apparel, or markings and signage of their vehicles.
- f. **Clause 19:** Pursuant to (c) above, the Committee strongly feels that allowing inspectors to search and seize without a warrant, though intended to give inspectors effective powers, may pose a serious legal and Constitutional problem. They are effectively given powers similar to the SAPS as envisaged in the Criminal Procedure Act. It is proposed that the warrant should still be a requirement and they should only search without it in circumstances similar to the provisions of the Criminal Procedure Act, and such must be express in the Bill.

5. Resolutions

The Committee resolved that:

Authority be conferred to the Free State Delegation, to vote for the adoption of the Bill with aforementioned inputs and considerations.



Mr. M. P. Nketu

Chairperson: Tourism Environmental and Economic Affairs