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THE PRESIDENCY

No. 178

19 February 2009

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 52 of 2008: Mandating Procedures of Provinces Act, 2008



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*(English text signed by the President.)
(Assented to 18 February 2009.)*

ACT

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,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

CONTENTS OF ACT

CHAPTER 1

DEFINITIONS AND APPLICATION

5

1. Definitions
2. Application

CHAPTER 2

REQUIREMENTS IN RESPECT OF FINAL MANDATES AND VOTING ON BEHALF OF PROVINCIAL LEGISLATURE

10

3. Requirements in respect of final mandates
4. Voting on behalf of provincial legislature

CHAPTER 3

PROCEDURES IN RESPECT OF MANDATES

5. Negotiating mandates
6. Final mandates
7. Legislative mandates requiring both negotiating and final mandates
8. Voting mandates

15

CHAPTER 4

GENERAL

9. Short title and commencement

SCHEDULE 1

FORMAT FOR NEGOTIATING MANDATE

5

SCHEDULE 2

FORMAT FOR FINAL MANDATE

CHAPTER 1

DEFINITIONS AND APPLICATION

Definitions 10

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; 15

“**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— 20

- (a) section 64 of the Constitution;
- (b) section 74 of the Constitution;
- (c) section 76 of the Constitution; or
- (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; 25

“**NCOP**” means the National Council of Provinces referred to in section 42(1)(b) of the Constitution;

“**NCOP plenary**” means an ordinary sitting of the NCOP; 30

“**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 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; 35

“**provincial delegation to the NCOP**” means a delegation referred to in section 60(1) of the Constitution;

“**provincial legislature**” means a provincial legislature contemplated in section 104 of the Constitution; 40

“**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 NCOP plenary.

Application 45

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

CHAPTER 2

REQUIREMENTS IN RESPECT OF FINAL MANDATES AND VOTING ON 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— 5
- (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; 10
 - (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 15

4. A Premier of a province, or a delegate of a provincial delegation to the NCOP designated by the Premier, must cast a vote on behalf of a provincial legislature.

CHAPTER 3

PROCEDURES IN RESPECT OF MANDATES

Negotiating mandates 20

5. A committee designated by a provincial legislature must in accordance with the 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. 25

Final mandates

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 30

- 7.** Legislative (negotiating and final) mandates are required in respect of a Bill 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 35

- 8.** (1) A provincial legislature must confer the authority on the head of the provincial 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 mandate in the NCOP plenary as that province's voting mandate. 40

CHAPTER 4

GENERAL

Short title and commencement

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

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SCHEDULE 1
FORMAT FOR NEGOTIATING MANDATE
[Section 5]

OFFICIAL LETTERHEAD OF THE PROVINCIAL LEGISLATURE	5	
To: <u>[The Chairperson of the Select Committee]</u>		
Name of Bill: _____		
Number of Bill: _____	10	
Date of deliberation: _____		
Vote of legislature: _____ [Indicate whether the committee designated by the provincial legislature votes in favour, against or abstains from voting on the Bill, and amendments, if any]	15	
_____ Signature	_____ Date	20
<u>[Signature of the chairperson of the committee designated by the provincial legislature]</u>		

SCHEDULE 2
FORMAT FOR FINAL MANDATE
[Section 3]

OFFICIAL LETTERHEAD OF THE PROVINCIAL LEGISLATURE	5
To: <u>[The Chairperson of the NCOP or a person designated by the Chairperson of the NCOP]</u>	
Name of Bill: _____	10
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]	15
_____ Signature	20
_____ Date	
<u>[Signature of Speaker or person designated by Speaker to preside in House on Bill]</u>	