

REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION; ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM ON THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS SECOND AMENDMENT BILL [B13B - 2013]

1. INTRODUCTION

The Speaker of the Mpumalanga Provincial Legislature referred the National Environmental Management Laws Second Amendment Bill [B13 - 2013] (the Bill) to the Portfolio Committee on Agriculture, Rural Development and Land Administration; Economic Development, Environment and Tourism (the Committee) in accordance with Rule 185 of the Rules and Orders of the Mpumalanga Provincial Legislature.

The Committee was tasked to consider the Bill and report back to the House with a mandate to empower the Permanent Delegate in the National Council of Provinces (NCOP) to vote on behalf of the Province of Mpumalanga in processing this piece of legislation.

2. BACKGROUND

The National Environmental Management Laws Bill [B13-2012] (NEMLA) was tabled in Parliament in January 2012 and subsequently referred to the National Assembly (NA) Portfolio Committee on Water and Environmental Affairs. The National Department of Environmental Affairs (DEA) briefed the NA Portfolio Committee on the B13 -2013 on 14 February 2012. Thereafter a series of national public hearings were conducted on 21, 22 and 28 August 2012.

The NA Portfolio Committee, after clause by clause deliberations with the DEA, resolved to split the NEMLA Bill into two separate bills. The first bill was the National Environmental Management Laws First Amendment Bill [B13B - 2012] which seeks to mainly amend the NEMA: Biodiversity Act, 2004 and give effect to the regulations thereof.

The National Environmental Management Laws Second Amendment Bill [B13 - 2013] (the Bill) was then referred to the National Council of Provinces (NCOP) Select Committee on Land and Environmental Affairs in terms of Section 76(1) of the Constitution of the Republic of South Africa (the Constitution) which requires participation of the provinces in a bill that is before Parliament.

On 30 July 2013, the DEA briefed the Select Committee on the Bill. Subsequently, the NCOP Chairperson referred the Bill to the provincial legislatures for consultation with the public and other stakeholders. The Committee subsequently conducted public hearings on the Bill on 08 August 2013 and forwarded the relevant negotiating and final mandates to the Select Committee on Land and Environmental Affairs in accordance with the NCOP programme.

3. OBJECTS OF THE BILL

The Bill seeks to amend the National Environmental Management Act, 1998, so as:

- To amend certain definitions;
- To adjust the timeframes for the preparation of environmental implementation plans and environmental management plans;
- To provide for the process and procedure for submitting environment outlook reports;
- To promote or facilitate the mainstreaming of integrated, environmentally sustainable and sound management considerations into business processes, practices, technology and decision-making across the economy;
- To enable, as appropriate, the use of spatial tools, norms and standards and environmental management instruments in decision-making as an alternative to environmental authorization procedures;
- To empower the Minister to restrict or prohibit development in specified geographical areas;

- To empower the Minister or MEC to develop norms and standards for activities, sectors and geographical areas;
- To clarify when the Minister is the competent authority where the MEC is usually the competent authority;
- To identify the Minister as the competent authority where the MEC is usually the competent authority and a Cabinet decision stipulates that the Minister must be the competent authority for activities related to a matter declared as a national priority or matters related to such national priority;
- To empower the Minister to take a decision in the place of the MEC under certain circumstances;
- To allow for the transfer of rights and obligations relating to an environmental authorization;
- To provide legal clarity on the applicability of section 24G to the unlawful commencement, undertaking or conducting of a waste management activity under the National Environmental Management: Waste Act, 2008;
- To provide legal clarity on the options available to the competent authority in processing a section 24G application, to increase the administrative fine and to provide for criminal investigation and prosecution in certain circumstances;
- To further provide for exceptions under certain circumstances and to clarify that there will be no exemptions provided from obtaining an environmental authorization;
- To provide for the consideration of adopted environmental management instruments when considering an environmental authorization application;
- To provide for emergency situations and to distinguish between an “incident” and an “emergency” situation;
- To provide for the power and the circumstances under which an environmental management inspector may, without a warrant, seize any mechanism of transport;

- To insert provisions to regulate products which have a detrimental effect on the environment;
- To provide for all regulations to be tabled in Parliament before promulgation;
- To add provisions regarding the delivery of documents;
- To consolidate all offences and penalties under the Act;
- To correct or delete certain obsolete provisions; 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 on 26 June 2013 for consideration and report back to the House.
- b. The Committee was briefed on the Bill on 06 August 2013 by the Permanent Delegate representing Mpumalanga in the NCOP, assisted by senior officials from the National Department of Environmental Affairs (DEA).
- c. The Committee invited the Environmental Services Chief Directorate and the Legal Services Directorate of the Department of Economic Development, Environment and Tourism (DEDET); the Mpumalanga Tourism and Parks Agency (MTPA), the Mpumalanga House of Traditional Leaders (MHTL) and the South African Local Government Association (SALGA) to be part of the briefing and to submit written comments on the Bill.
- d. In terms of Section 118(1) of the Constitution, the Committee resolved to hold public hearings in all three districts in the Province in order to interact with the public, communities and relevant stakeholders.

- e. Subsequently, the Committee considered its draft report and negotiating mandate on [B13-2013] on 04 September 2013.
- f. The Committee received feedback from the NCOP regarding the negotiating mandate and then met on 13 September 2013 to consider and adopt its final mandate on [B13B-2013]. The final mandate was provided to the NCOP for further processing in line with the Mandating Procedures of Provinces Act, 2008.

5. BRIEFING BY THE NCOP

- a. Hon MP Sibande, the Permanent Delegate to the NCOP, briefed the Committee on the Bill's main impact for the Province by giving a political overview of the Bill.
- b. The delegation from the National Department of Environmental Affairs (DEA) Mr. Z Hassam (Director: Legal Services) then proceeded to present to the Committee the technical aspects of key amendments proposed by the Bill and the implications thereof.

5.1. Overview of the Bill

- a. In his overview of the Bill, Hon Sibande highlighted that the main objective of the Bill is to amend certain provisions of the National Environmental Management Act, 1998 Act No 107 of 1998 in order to close certain regulatory gaps.
- b. The Committee's attention was drawn to the chronological history of this Bill as follows:
 - The National Environmental Management Laws Second Amendment Bill was part of the National Environmental Management Laws Amendment Bill 2011 (NEMLA).
 - The NEMLA was approved by National Cabinet on 23 November 2011 and tabled in Parliament in January 2012.

- The Portfolio Committee on Water and Environmental Affairs (the Portfolio Committee) was briefed on the NEMLA on 14 February 2012 whereafter public hearings and clause by clause discussions were conducted on the Bill in the period August to September 2012.
- The Portfolio Committee resolved to split the NEMLA into First and Second Amendment Bills on 19 September 2012. The main reason for the split was that the proposed amendment to biodiversity amendments was urgent to address most of the challenges relating to the permitting system and the implementation of the new Threatened or Protected Species Regulations.
- The Portfolio Committee agreed and recommended the First Amendment Bill to the National Assembly on 06 October 2012.
- The Portfolio Committee conducted clause by clause discussions on the Second Amendment Bill in the period February to April 2013.
- On 07 May 2013 the Portfolio Committee recommended the National Environmental Management Laws Second Amendment Bill to the National Assembly.
- The National Assembly considered and adopted the National Environmental Management Laws Second Amendment Bill during June 2013, as recommended by the Portfolio Committee.

5.2. Interaction during the briefing

The Committee welcomed the briefing by Hon Sibande and the presentation by the delegation from the Department of Environmental Affairs (DEA).

The Honourable Members of the Committee interacted with the Bill by raising the following concerns, comments and clarity-seeking questions:

- a. The Committee noted Clause 3 where a new section 16A is inserted to provide for the preparation and publication of four-yearly environmental outlook reports by the national,

provincial and, on a **voluntary** basis, metropolitan and district municipalities, to track the state of the environment and the effectiveness of the environmental system in achieving the desired level of sustainability.

- b. It was the Committee's view that the preparation and publication of the outlook reports by metropolitan and district municipalities must be **compulsory** and not voluntary. The DEA, however, explained that there is no obligation for the preparation and publication of outlook reports by metropolitan and district municipalities at this stage in the current legislation; and that by having them do it on a voluntary basis will be a step to ensure uniformity.
- c. Reference was made to section 49A that deals with 'Offences' and in particular section 49A (1) (c) that states "*(1) A person is guilty of an offence if that person fails to comply with or contravenes any condition applicable to an exemption granted in terms of section 24M*". It was deemed by the Committee that this section leaves a gap in terms of the exemption of atmospheric licenses.
- d. Specific mention was made of the growing amount of illegal mining activities in the province. It was reported by the DEA that mining related offences are currently being addressed through other bills. One of the remedies to address contraventions will be the increase of the current penalty of R 1 million to R 5 million.
- e. The Committee expressed its concern that the Bill was only available in English which posed a challenge for communities to fully participate and submit their input.
- f. The Committee enquired as to whether there would be any financial implications for Mpumalanga Province in the implementation of the Bill; especially where it related to enforcing the legislation. It was explained that the officials in the DEA who are already sanctioned with the necessary functions will continue to enforce the Bill once passed.
- g. The Committee expressed the view that the Traditional Leaders should always be extensively consulted in the processing of legislation.

6. PUBLIC INVOLVEMENT PROCESS

6.1. Public hearings and Public Education Workshops

The Committee facilitated public consultation on the Bill, and the public hearings on the Bill took place on 08 August 2013 from 09:00 – 13:00 as follows:

District	Venue
Ehlanzeni	Merriam Mogakane Hall, Acornhoek, Bushbuckridge Local Municipality
Gert Sibande	Silobela Community Hall, Carolina, Chief Albert Luthuli Local Municipality
Nkangala	Botleng Extension 3 Community Hall, Delmas, Victor Khanye Local Municipality

- a. An open invitation to the public hearings and a call for public comments on the Bill was published in the regional print media, which ensured broad coverage of the Province. Interested and affected stakeholders were invited to submit written comments on the Bill on or before 30 August 2013.
- b. The advertisements appeared in the following publications during the week of **05 – 08 August 2013**:
 - Bushbuckridge News (Bushbuckridge area)
 - Mpumalanga News (whole province)
 - The Lowvelder (whole province)
 - Streek News (Delmas/Witbank area)
 - Daily Sun (whole province)
- c. The Bill was also uploaded onto the Mpumalanga Provincial Legislature website www.mpuleg.gov.za, as indicated in the newspaper advertisements; an electronic version of the Bill was also emailed to interested and affected stakeholders.

- d. Prior to the public hearings, the Public Participation and Petitions Section engaged the identified communities by conducting public education workshops on the Bill.
- e. The Honourable Members of the Committee who were deployed at the various public hearings reiterated to the members of the public that the purpose of the public hearings was to do what Section 118(1) of the Constitution of the Republic of South Africa directs the Legislature to do, namely, involve the public in the processes of the Legislature and its committees. The Committee interacted with the public about the significance of the Bill's proposed amendments.
- f. The following stakeholders were invited to the public hearings:
 - Community members;
 - South African Local Government Association (SALGA);
 - Mpumalanga Provincial House of Traditional Leaders (MHTL);
 - Speakers, all councillors, municipal managers, ward committees and CDW's of the three local municipalities;
 - Relevant sections of the three local municipalities;
 - Department of Economic Development, Environment and Tourism (DEDET)
 - Mpumalanga Tourism and Parks Agency (MTPA);

6.1.1. Stakeholder input during the public hearings

The public participated fruitfully in the discussions by engaging the Legislature through questions and comments on the Bill. The Committee noted the following inputs which were made during the public hearings:

- a. **At the public hearing in Acornhoek (Ehlanzeni District, Bushbuckridge Local Municipality)** the community was unanimous that the Bill must be adopted. The Committee noted that the comments made by the stakeholders present related mainly to the following:

- The Bill serves the needs of communities.
 - Consideration should be given to the decisions taken by Traditional Leaders to ensure that they are aligned with the principles outlined in the Bill; and to empower the Traditional Leaders specifically in terms of the negative impact of allowing communities to reside in wetlands; and the subsequent damage caused by livestock grazing in the area.
 - Currently the protection of the environment in general is poor and the negative impact of environmental degradation enhances global warming. The people expressed hope that the Bill would allow for improvement in this regard.
 - With reference to clause 15, it is important that environmental management inspectors have the necessary powers to enforce the law; otherwise the Bill will not achieve its objective.
- b. **The public hearing in Carolina (Gert Sibande District, Chief Albert Luthuli Local Municipality)** did not take place as scheduled. The public hearing could not proceed at the scheduled time, due to some administrative communication challenges with the municipality. However, the stakeholders arrived about an hour after the scheduled time and they were addressed by some councillors. What transpired thereafter was a public education workshop on the Bill, with the DEDET and Legislature officials also in attendance. The DEDET participated in briefing the public about the Bill. It was noted that some constructive comments were made by the public. In summary, the public in attendance at the workshop supported the Bill unanimously.
- c. **At the public hearing in Delmas (Nkangala District, Victor Khanye Local Municipality)** the concerns and comments raised related to the following:
- The Bill needs to hold existing companies that perpetuate air pollution accountable. The Committee agreed that all forms of pollution are a problem to be dealt with.

- Concerns were raised about the need to protect the wetlands. There is one close to the Botleng community.
- The issue of unsafe water for domestic use, as a result of mining activities was also raised by the community. They felt that the mines need to compensate communities for damages caused to health and property.
- Concerns were also raised about the need for consistent law enforcement in environmental matters, specifically via the environmental officers as well as the South African Police. The Committee noted the need for these officers to be capacitated in terms of the amended legislation.
- The people saw the concurrent functions of the Minister and the MEC but enquired about what the Bill specified about the role of the local municipalities. The Committee agreed that the municipalities' role should be clearly stipulated in the Bill.
- The Mpumalanga Tourism and Parks Agency regional office in Nkangala was in attendance and welcomed the proposed amendments in the Bill.

7. COMMITTEE OBSERVATIONS

The Committee made the following observations:

- a. At the public hearings, the public did not raise any objections to the Bill; they unanimously supported the objectives of the Bill [B13-2013].
- b. The Committee also supported the Bill at the negotiating mandate stage [B13 -2013], noting that the proposed Bill was progressive and favourable towards the conservation of the environment and therefore upheld the constitutional rights of the citizens of the Province.
- c. The Committee's final mandate also supported the amended Bill [B13B-2013] with the amendments made by the Select Committee on Land and Environmental Affairs.

- d. It is, however, imperative that municipal regulations and by-laws be aligned with the principles as outlined in the Bill. This alignment should encompass the challenges of managing waste disposal of various types of waste, as well as the management of the ambient air quality within municipal and district jurisdictions. The communities raised a concern that it remains a challenge for them to obtain licensed landfill sites to dispose of waste in a proper manner.
- e. The Committee was satisfied that the Bill addresses the need to tighten the controls on regulating negative effects of mining activities as well as the occurrence of illegal mining activities in the Province.
- f. The Committee welcomed the increased fine of R5 million in terms of Section 24G of the 1998 NEMA Act, although a fine is a matter of interpretation and can't be compared to the various levels of environmental damage caused by mines and other industrial companies.

9. CONCLUSION

The Committee supported the Bill at the negotiating and final mandate stages and therefore recommends that the Permanent Delegate representing the Province of Mpumalanga in the NCOP be conferred with a mandate to vote in favour of the **National Environmental Management Laws Second Amendment Bill [B13B – 2013]** as amended by the NCOP.

HON RC MAHLOBOGOANE (MPL)

DATE

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