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LEGISLATURE OF THE PROVINCE OF MPUMALANGA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

ANNOUNCEMENTS:

None.

TABLINGS:

None.

COMMITTEE REPORTS:

**REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE, RURAL
DEVELOPMENT AND LAND ADMINISTRATION; ECONOMIC DEVELOPMENT,
ENVIRONMENT AND TOURISM ON THE MPUMALANGA GAMBLING
AMENDMENT BILL, 2008**

1. Introduction

According to Section 104 of the Constitution, the legislative authority of a province is vested in its provincial legislature and confers on the provincial legislature the power to pass legislation for its province. Pursuant to this legislative framework, the Mpumalanga Gambling Amendment Bill, 2008 (the Bill) was introduced and tabled in the Provincial Legislature in accordance with Rule 149 and Rule 153(1) and (2) of the Rules and Orders of the Legislature. The Bill was duly referred to the Portfolio Committee on Agriculture, Rural Development and Land Administration; Economic Development, Environment and Tourism (the Committee) for consideration and with the responsibility to report back its recommendations to the House.

2. Objectives of the bill

The main objective of the Bill is to amend the Mpumalanga Gambling Act, 1995 so as to provide for the regulation of the horseracing and sports betting industry in Mpumalanga.

The Bill further seeks to:

- Provide for totalisator, bookmaker and race course licences
- Include betting and unauthorised race meetings
- Provide for restrictions on betting through an agent and the unlawful inducement to gamble
- Provide for the placing of gambling bets and the settling of gambling debts
- Further regulate cheating to provide for cheating activities relating to betting and horse racing
- Further regulate the power of the Board to make rules
- Further regulate the power of the Responsible Member to make regulations
- Provide for the payment of application and licence fees in respect of bookmaker, totalisator and race course licences
- Provide for matters connected therewith

3. Method of work

The Bill was published on 4 July 2008 in the Provincial Gazette and in national and local newspapers. The closing date for comments on the Bill was 8 August 2008. Accordingly, all relevant comments and material received were considered and included in the Bill. Thereafter the Bill was introduced in the Legislature by the responsible Member of the Executive Council on 5 August 2009 for consideration and enactment by the Legislature. Subsequently, the Bill was referred to the Committee for further processing. However, due to the busy schedule of the Committee during 2009, it was not possible to process the Bill before the end of the 2009 calendar year.

The Committee was briefed section by section on the Bill by the Department on 3 September 2009; a decision was taken, during that briefing, to conduct public hearings on the Bill during February 2010. The Legal Services department of the Mpumalanga Gambling Board (MGB) and the Legal Services section of the Legislature were present during the briefing.

Public Involvement

Copies of the Bill and invitations to the public hearings were sent to the following stakeholders:

- The Executive Mayors and the Speakers of the following municipalities:
 - Mbombela Local Municipality
 - Steve Tshwete Local Municipality

- Govan Mbeki Local Municipality
- The following Parliamentary Constituency Offices:
 - Mbombela
 - Daantjie
 - Kabokweni
 - Middelburg
 - Siyabuswa
 - Secunda

Invitations to the public hearings and copies of the Bill were also sent via e-mail to the following stakeholders:

- Bet SA cc
- Standerton Tattersalls
- Phumelela Gaming and Leisure Ltd
- Emnotweni Casino
- Graceland Hotel and Country Club
- The Ridge Casino

The committee made a call for written submissions using the following media:

- Newspaper advertisement (The Sowetan)
- Flyers

Written comments were received from Phumelela Gaming and Leisure Ltd (Phumelela), a horse-racing and betting company, listed on the Johannesburg Stock Exchange and is licensed in seven (7) provinces.

According to Phumelela, the definition of “**open bet**” in Section 1 of the bill includes reference to a “dividend generated by a totalisator”. This allows bookmakers to compete with the totalisator unlawfully and unfairly by using the totalisator dividend, which is the intellectual property of Phumelela.

Allowing the “**open bet**” has effectively permitted bookmakers to offer totalisator products and dividends in direct competition with a totalisator operator, without a totalisator licence, thereby undermining the facets of a fairly regulated industry.

Therefore, the view of Phumelela is that reference to totalisator dividend should be excluded from the definition of “open bet”. Alternatively, bookmakers should pay a consideration for this intellectual property, that is, if the “open bet” is not removed completely.

The Committee’s observation on Phumelela’s input is that the definition of “open bet” is exactly the same definition, as contained in the National Gambling Act, 2004. Furthermore, the Supreme Court of Appeal decided on 01 June 2005 in the matter of André Gründlingh, Ulrich Osmond Schüler & Turfsport CC vs Phumelela Gaming and Leisure Limited (Case No. 152/04) with regard to the same issue in favour of the

bookmakers. Therefore, it is the view of the Committee that this comment from Phumelela has already been decided upon in 2005 by the Supreme Court of Appeal.

Written comments were also received from Swanepoel and Partners on behalf of Bet SA cc. The bill was deemed by them to be in order except for the following views:

- In Section 1(b)(i) the words “**or other bookmaker**” should be inserted after the word “**player**”.
- Section 78 B(2)(d) and (e) should provide for the inclusion of a (iv), to provide for a payment of a gambling debt in cash. Therefore it is the view of Bet SA cc that the bill should make provision for people who place bets with bookmakers to place cash bets and that winning bets be paid out in cash immediately to the winning player, since many of them do not have a bank or cheque account.
- Finally, with regards to Section 17(6)(c), Bet SA cc felt that the proposed annual licence fee in the amount of R2500.00 should be reconsidered as it is an increase of more than 100%.

With reference to the inputs from Bet SA cc, the Committee noted that Section 1(b) (ii) makes provision for “other bookmakers” and it is therefore, not necessary to change section 1(b) (i).

The input on section 78B(2)(d) and (e), to add sub-paragraphs (iv) to make provision for cash payments, is acceptable, in view of the fact the FIC Act is applicable to both bookmakers and totalisators.

Bookmakers are currently paying a R50.00 per year licence fee. The amendment of the Schedule to the Bill has the effect of increasing application and annual licence fees for bookmakers. Therefore, both the application fee and annual licence fee have been benchmarked and are reasonable.

The hearings were coordinated and held as follows:

DATE	DISTRICT	VENUE	ATTENDANCE
16/02/2010	Ehlanzeni	Mbombela Community Hall, Nelspruit, Mbombela Local Municipality	12
16/02/2010	Gert Sibande	Lilian Ngoyi Centre, Secunda, Govan Mbeki Local Municipality	80
16/02/2010	Nkangala	Eric Jiyane Hall, Mhluzi, Steve Tshwete Local Municipality	83

The Honourable Members who were deployed at the various public hearings clearly explained the purpose of the public hearings in terms of the Legislature mandate to solicit the public input and opinion on the legislation at hand. They also emphasised

that each citizen has a right to exercise his / her democratic right in terms of matters relating to the bill. It was pointed out to the people that the public will benefit from the bill as it seeks to protect them (public) from exploitation.

4. Clarity-seeking questions and input by the Public

The public participated by engaging the Committee through the following clarity seeking questions and comments on the bill:

- a. It was clarified to the public that the amendment of the Mpumalanga Gambling Act, 1995 was necessary since old Ordinances (dating back to 1978) were obsolete and therefore no longer applicable to regulate the current gambling industry.
- b. The implementation of the bill can provide much needed additional own revenue to the Province.
- c. The fact that the proposed bill will impose specific conditions on a licence holder in terms of implementing social development projects can be beneficial to the communities in the Province.
- d. There was a concern that the totalisators do not open up on time (totalisators should be open by 09:00) and moreover do not stay open for a sufficiently long time. The MGB undertook to look into this matter and also urged the public to call the MGB offices to report this practice as well as other general complaints.
- e. Illegal machines – the public complained about machines in tuck shops that do not have age restrictions and as a result allow under age children to gamble. It was explained to the public that such illegal machines must be reported to the MGB and to this effect the telephone number to report such illegal activities was given to the public. In addition, the public was informed that the MGB does conduct surprise visits throughout the Province to combat illegal gambling and that the South African Police Services (SAPS) also assists the MGB in damping down on illegal gambling activities in the province.
- f. Employment at Horse Racing areas – there was a concern from the public that people who are employed in these areas are kept on a casual basis and are not employed permanently. The public was informed that the MGB licences all people employed in the gambling industry; however, the MGB does not have the jurisdiction over employment practices of people in these areas. People are however, welcome to join labour unions in order to address such situations.

5. Committee Observations

The Committee observed that circulation of the Bill was not inclusive of all the political parties represented in the Legislature. Furthermore, there were indications in some cases that the copies of the Bill reached parliamentary constituency offices late. Moreover, the Committee observed that there is a need to provide the public with summaries of the Bill and translation of the Bill into the relevant vernacular languages.

Going forward, the Committee also made the observation that conducting hearings at different times of the day could in some cases be beneficial to the process of public consultation, depending on the topic of consultation and the relevant stakeholders. The Committee takes note of all these observations and will in future, where necessary, address such challenges.

However, the Committee noted with appreciation the constructive input made by the public. Based on the positive responses from the public and the written comments received from stakeholders, the Committee concludes that the Bill, once passed, will play a vital role in regulating the gambling industry within the Province. Most people appeared to be in favour of horse-racing gambling/betting in the Province and it is seen to be adding value to the economy of the Province.

It was also observed by the Committee that bookmakers' fees are benchmarked and they do make big profits. Furthermore, the bookmaker industry is a specialised industry and there is therefore a need for regulating it and providing more training for bookmakers.

The Committee acknowledged the comment from the public with regard to whether their views would be taken into consideration in the final processing of the Bill. The Committee assured the public that the views of the public are taken seriously and that all valid comments would be included in the Committee report.

The Committee moreover observed that the closing date for the review of the bookmaker licences, as stated in the Bill (30 September 2009) had lapsed.

Finally, the Committee observed that the public were largely in support of the Bill as it has positive spin-offs for the economic development of the province.

6. Recommendations

The Committee recommends the following:

- Section 78 B(2)(d) and (e) of the bill should provide for the inclusion of a (iv), to provide for a payment of a gambling debt in cash.
- The closing date for the review of bookmaker licences be extended to 30 September 2010.

Therefore, after careful examination of the Bill and consideration of written comments from stakeholders, the Committee recommends that the Mpumalanga Gambling Amendment Bill, 2008 be passed by the House, taking into account the input and observations noted in this report.

Hon. RC Mahlobogoane
Chairperson of the Portfolio Committee on
Agriculture, Rural Development and Land Administration;
Economic Development, Environment and Tourism

Date