



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON COMMUNICATIONS, TRANSPORT,

WORKS AND SUPPLY

ON THE

CIVIL AVIATION AUTHORITY BILL, N.A.B. NO. 7 OF 2012

FOR THE

FIRST SESSION OF THE ELEVENTH NATIONAL ASSEMBLY

APPOINTED ON 20TH OCTOBER, 2011

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REPORT OF THE COMMITTEE ON COMMUNICATIONS, TRANSPORT, WORKS AND SUPPLY ON THE CIVIL AVIATION AUTHORITY BILL, N.A.B. NO. 7 OF 2012, FOR THE FIRST SESSION OF THE ELEVENTH NATIONAL ASSEMBLY, APPOINTED ON 20TH OCTOBER, 2011

Consisting of:

Mr K Simbao, MP (Chairperson); Mr W Banda, MP; Mr V M Mooya, MP; Mrs A M Chungu, MP; Mr D Chingimbu, MP; Mr O C Mulomba, MP; Mr S Kampyongo, MP; and Mr D Mwangi, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
P O Box 31299
LUSAKA

Sir

Your Committee has the honour to present its Report on the Civil Aviation Authority Bill, N.A.B. No. 7 of 2012, referred to it by the House on Wednesday, 20th June, 2012.

FUNCTIONS OF THE COMMITTEE

2. In addition to any other duties conferred upon it by the Honourable Mr Speaker, or any Order of the House, your Committee may consider any Bills referred to it by the House.

MEETINGS OF THE COMMITTEE

3. Your Committee held a total of nine (9) meetings to consider the Civil Aviation Authority Bill, N.A.B. No. 7 of 2012.

PROCEDURE ADOPTED BY THE COMMITTEE

4. In considering the Bill, your Committee requested written submissions from various stakeholders, who also appeared before it and made oral submissions.

CONSIDERATION OF THE CIVIL AVIATION AUTHORITY BILL N.A.B. NO. 7 OF 2012

Objects of the Bill

5. The objects of the Bill are to:
- (a) establish the Civil Aviation Authority and provide for its powers and functions;
 - (b) provide for the regulation and promotion of civil aviation;
 - (c) ensure civil aviation safety and security; and

(d) provide for matters connected with, or incidental to the foregoing.

SPECIFIC PROVISIONS OF THE BILL

6. Your Committee wishes to highlight the specific provisions of the Bill as set out below.

Part I – Interpretation

This part defines the key terms that are used in the Bill.

Part II – The Civil Aviation Authority

This part provides for the establishment of the Civil Aviation Authority, the Constitution of the Board and their functions. It also provides for the appointment of the Director-General and the functions associated with the Office of the Director-General.

Part III – Regulation of Civil Aviation Security

This part provides for the Regulation of the National Civil Aviation Security, Policy Strategy and National programmes.

Part IV – Regulation of Civil Aviation Safety

This part provides for the Regulation of Civil Aviation Safety and the National Safety programme and safety management.

Part V – Registration, Nationality and Ownership of Aircraft

This part provides for registration, nationality and ownership of Aircraft.

Part VI – Certificates, Permits, Licences and Authorisations

This part provides for certificates, permits, licences and authorisations.

Part VII – Enforcement and Procedural Provisions

This part provides for enforcement and procedural provisions and gives the Director-General power to access and inspect aerodromes, aircraft and operators premises.

Part VIII – General Provisions

This part covers general provisions including international obligations and matters related to air traffic regulatory oversight and management.

SUMMARY OF SUBMISSIONS/CONCERNS BY STAKEHOLDERS

7.0 All the stakeholders who appeared before your Committee were in support of the Bill, saying it was long overdue. They contended that the Bill was an answer to the International Civil Aviation Organization (ICAO) audit of 2009, which brought about the European ban on Zambian registered airlines flying into Europe, since ICAO recommends that the Civil Aviation Authority must be autonomous in order to effectively carry out its regulatory mandate

They, therefore, were of the view that the creation of the Civil Aviation Authority will push the stakes of security up because the Authority will recruit and retain qualified personnel since it will have its own budgetary allocation. Further, the autonomy of the Authority will remove the perceived political hand, which has in some cases, been believed to have circumvented the due process of inspections and certification.

Some stakeholders, such as the Law Association of Zambia (LAZ), though in support of the general spirit of the Bill, did not quite agree with some of the provisions pertaining to the Minister, vis-a'-vis the appointment and functions of the Board. LAZ contended that in its current form, the Bill should not be passed. Due to the nature of concerns raised by LAZ, your Committee sought audience with the Minister of Transport, Works, Supply and Communication, who graciously agreed to appear before it and was magnanimous enough to concede to some of the concerns raised.

Set out hereunder, are some of the stakeholders' concerns.

- (i) Concern was raised on *Clause 5(4)*, which empowers the Minister to appoint the Vice Chairperson of the Board from amongst the members. It was the view of stakeholders that whereas the Minister could appoint the chairperson, as provided for at clause 5(1) (a), the Vice Chairperson should be elected by the board from amongst themselves.

Further, stakeholders observed that this section gave excessive power to the Minister to constitute the Board. They therefore recommended that 5(1) be replaced with the following:

“The Board shall consist of the following part-time members, nominated by the appointments committee and appointed by the Minister, subject to ratification by the National Assembly”.

LAZ also proposed the composition of the appointments committee, constituted by the National Assembly, which should consist of:

- (a) a representative of the ministry responsible for transport;
 - (b) a person from one of the universities established and operating in Zambia;
 - (c) a legal practitioner nominated by the Law Association of Zambia;
 - (d) a person from the aviation industry; and
 - (e) a person nominated by the Zambia Chamber of Commerce.
- (ii) Stakeholders observed that *Clause 9*, confers on the Minister power to issue mandatory directions to the Board and that the Board shall give effect to the directions. They contended that this compromised the autonomy of the Board and recommended that the Board be given the latitude to disregard such directives, if these do not conform to what the Board deems to be in the best interest of the civil aviation industry.
 - (iii) Part III, *Sections 19 and 21* provide that the Development of the National Civil Aviation Strategy, policy and programmes and the establishment of the Civil Aviation Security Committee, respectively, must be done with the approval of the Minister. Stakeholders contended that if the intention of the Bill was to establish an autonomous Authority, it was necessary that approval to establish these entities, be sought from the Board and not necessarily from the Minister.
 - (iv) *Clause 37*, states that the Authority may recommend to the Minister the acquisition, establishment and improvement of air navigation facilities. This provision suggests that the Authority will procure, own and manage the Air Navigation facilities which at the moment are under the Department of Civil Aviation. Stakeholders expressed worry at the prospect of the Authority being both a player and regulator, which would be contrary to the spirit of the Bill and the ICAO requirements. They, therefore, recommended that this be made clear to state whether or not the facilities acquired will be used enhance the capacity of the Authority to undertake regulatory functions or for service provision.

- (v) Stakeholders observed that *Clause 42* empowers the Director-General to provide for the examination and rating of approved civil aviation training and maintenance organisations but does not empower the Director-General to prescribe and supervise curricular in the training institutions. They therefore recommended that this clause should also empower the Director-General to prescribe and supervise the execution of the prescribed curricular.
- (vi) Stakeholders were of the view that penalties of two million and one million penalty units, which are equivalent to K360 million and K180 million, respectively, provided for under *Sections 73, 74 and 75 (3) and (4)*, are excessive and, therefore, need to be revised downwards.
- (vii) *Section 49* confers upon the Director-General of the Authority, the powers to undertake the licensing, certification and inspection of aircrafts, operators and licensed personnel under the Bill. *Sub section 2*, then mandates the Director-General to delegate this power to “an organisation or a committee”.

Stakeholders were of the view that two things were wrong with this provision. Firstly, it confers upon an individual the power to create a statutory body. Secondly, it does not clearly stipulate what form the body will take (committee or organisation). They recommended that the Bill must specify the entity to perform the licensing function and take that power away from the Director-General.

- (viii) *Sections 53 and 54*, confer upon the Minister, power to grant permits to domestic and foreign air travel operators respectively, subject to the provisions of the *Air Services Act Chapter 446*. Stakeholders contended that this gives rise to the problem of cross regulation, which might breed ambiguity and regulatory problems.

Stakeholders further observed that it was not clear which Act shall have precedence on similar provisions between this Act and other Acts such as:

Chapter 445: *Safety of Civil Aviation Act*;
 Chapter 447: *Carriage by Air Act*;
 Chapter 448: *Limitation of Liability Act*;
 Chapter 449: *Tokyo Convention Act*; and
 Chapter 450: *Air Passenger Service Charge Act*.

Stakeholders proposed that all pieces of legislation dealing with civil aviation be merged to avoid cross regulation.

- (ix) Concern was raised at *Clause 87*, which empowers the Authority to establish schools or acquire existing schools for the training of employees of the Authority, so as to ensure that the Authority performs its functions properly. Stakeholders were of the view that this clause did not take cognisance of the existence of the Zambia Air Services Training Institute (ZASTI), which is currently offering training in all areas of the aviation industry. The Bill does not, therefore, provide for the continued existence of ZASTI nor of its role in the aviation industry with the advent of the Authority. Stakeholders, therefore, recommended that the Bill should clearly state what role ZASTI will play in the new dispensation.
- (x) *Section 71*, provides for the establishment of an appeals tribunal. The Bill, however, stipulates that the Minister may establish such a tribunal. Owing to

the necessity of this entity, stakeholders felt that it should not be an option for the Minister to establish an Appeals Tribunal. It is, therefore recommended that 'may' should be replaced with 'shall'.

- (xi) Concern was raised at the ramifications of *Section 92 (3) (1) (b)*, which provides that on or after the appointed date, (six months from the appointed date) there shall be transferred to, and vest in, or subsist against, the Authority by virtue of this Act and without further assurance, all assets, rights, and obligations which immediately before the appointed date were the rights and obligations of the Department. The implications of this provision are that aerodromes and other facilities that are currently under the Civil Aviation Department will fall under the Authority. This means that the Authority will be both player and regulator, at least until interested persons buy and run these facilities. The question, however, was who would be interested in running non profitable entities such as district and provincial aerodromes. Invariably, these would remain under the Authority, contrary to International Civil Aviation Organisation (ICAO) requirements and recommendations. Some stakeholders went further to indicate that these facilities should be privatised.

In his interaction with the Committee, however, the Minister explained that district and provincial aerodromes would come under the National Airports Corporation Limited, in the Ministry of Transport, Works, Supply and Communication.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

8.0 While being in total support of the Bill, bearing in mind that it addresses concerns by the International Civil Aviation Organisation (ICAO), which resulted in Zambian registered aircrafts being banned in European airspace, your Committee makes observations and recommendations as set out hereunder.

- (i) Your Committee observes that *Clause 5(4)* empowers the Minister to appoint the Vice-Chairperson of the Board from amongst the members.

Your Committee notes that whereas the Minister should appoint the Chairperson, as provided for at clause 5(1) (a), the Vice Chairperson should be elected by the Board from amongst its membership.

Further, your Committee observes that the Bill gives the impression that the Chairperson will be chosen from wherever, as long as he/she has an understanding of regulatory and oversight functions of the Authority.

Your Committee recommends that in order to ensure that the Chairperson has an understanding of not just regulatory and oversight functions of the Authority, but also of technical issues in the aviation industry, the Chairperson should be appointed from amongst the Board members, who are themselves representatives of institutions related to aviation.

- (ii) Your Committee observes that *Clause 9*, confers on the Minister, power to issue mandatory directions to the Board and that the Board shall give effect to the directions given by the Minister.

Your Committee observes that this provision compromises the autonomy of the Board and recommends that the Board be given the latitude to appeal to the

President if the directives issued by the Minister do not conform to what the Board deems to be in the best interest of the civil aviation industry.

- (iii) Your Committee observes that *Clause 11(5) (a)* stipulates that in the exercise of the powers and performance of the functions referred to in this *Act*, the Director-General shall be accountable solely and directly to the Minister in respect of issues relating to civil aviation security, safety and regulatory oversight.

While noting that this may appear to run contrary to the requirements of the International Civil Aviation Organisation (ICAO) which advocates for the autonomy of the Authority, your Committee was satisfied that this was justified due to security considerations as explained by the Minister.

- (iv) Your Committee notes that *Part III, Sections 19 and 21*, provide that the development of the National Civil Aviation Strategy, policy and programmes and the establishment of the Civil Aviation Security Committee, respectively, must be done with the approval of the Minister.

Your Committee recommends that if the intention of the Bill, is to establish an autonomous Authority, which it is, it will be necessary that approval to establish these entities, be sought from the Board and not necessarily the Minister.

- (v) Your Committee observes that *Clause 37* empowers the Authority to recommend to the Minister the acquisition, establishment and improvement of air navigation facilities, implying that the Authority will procure, own and manage the Air Navigation facilities, which currently are under the Department of Civil Aviation.

In order to allay fears that the Authority may be both a player and regulator, which would be contrary to the spirit of the Bill and the requirements of the International Civil Aviation Organisation (ICAO), your Committee recommends that this Clause be redefined to restrict the facilities in question to those that will enhance the Authority's regulatory undertakings, as opposed to service provision.

- (vi) Your Committee observes that whereas *Clause 42* empowers the Director-General to provide for the examination and rating of approved civil aviation training and maintenance organisations, it does not provide for the Director-General to prescribe and supervise curricular in the training institutions.

Your Committee, therefore, recommends that this clause be revised to also empower the Director-General to prescribe and supervise the execution of the prescribed curricular.

- (vii) Your Committee observes that penalties of two million and one million penalty units, provided for under *Sections 73, 74 and 75 (3) and (4)*, which are equivalent to K360 million and K180 million, respectively, are excessive.

Your Committee, therefore, recommends that the penalties be revised downwards to make them commensurate to the offences.

- (viii) Your Committee observes that there are so many pieces of legislation dealing with civil aviation, such as:

Chapter 445: *Safety of Civil Aviation Act*;

Chapter 447: *Carriage by Air Act*;
Chapter 448: *Limitation of Liability Act*;
Chapter 449: *Tokyo Convention Act*; and
Chapter 450: *Air Passenger Service Charge Act*.

Your Committee therefore recommends that these be harmonised into one for ease of administration.

- (ix) Your Committee observes that *Clause 87*, which empowers the Authority to establish schools or acquire existing schools for the training of employees of the Authority, does not take cognisance of the existence of the Zambia Air Services Training Institute (ZASTI), which is currently offering training in all areas of the aviation industry. The Bill does not, therefore, provide for the continued existence of ZASTI nor of its role in the aviation industry with the advent of the Authority.

Your Committee observes that this is probably so because currently, ZASTI is under the Ministry of Education, Science, Vocational Training and Early Education.

It is the view of your Committee and other stakeholders, that whereas the institute provides education generally, its services are specialised and specific to the aviation industry and that it would help if the Ministry in charge of the Aviation industry superintended over it. Your Committee, therefore, strongly recommends that ZASTI be moved back to the Ministry of Transport, Works, Supply and Communications. The arrangement should be such that infrastructure is under the Ministry of Transport, Works, Supply and Communications while pedagogy and teaching staff remain under the Ministry of Education, Science, Technology and Early Education.

- (x) Your Committee observes that *Section 92 (3) (1) (b)*, provides that on or after the appointed date, (six months from the appointed date) there shall be transferred to, and vest in, or subsist against, the Authority by virtue of this Act and without further assurance, all assets, rights, and obligations which immediately before the appointed date were the rights and obligations of the Department.

Your Committee notes that implications of this provision are that aerodromes and other facilities that are currently under the Civil Aviation Department, will fall under the Authority, and subsequently under the Government, as the Ministry indicated.

The worry of your Committee is whether the Authority will be able to ensure that these Government aerodromes comply with the International Civil Aviation Organisations standards. Your Committee observes that the experience with the Road Traffic and Safety Agency (RTSA), where Government vehicles are not checked for roadworthiness, makes it difficult to believe that the Authority will prevail on the Government to comply with required aviation standards. Your Committee noted with satisfaction after consultations with the Minister that these facilities would be managed by the National Airports Corporation.

- (xi) Your Committee observes that *Section 71* provides for the establishment of an appeals tribunal. The Bill, however, does not compel the Minister to do so.

Your Committee recommends that owing to the necessity of this entity, the Minister should be compelled to establish it. Therefore, it is recommended that 'may' should be replaced with 'shall'.

- (xii) Your Committee observes that one of the major concerns of the International Civil Aviation Organisation (ICAO), as well as local stakeholders, was the capacity of the current Department of Civil Aviation to respond to accidents and other emergencies, seeing that it has no aircraft of its own and relies on the aircrafts from the defence forces to carry out accident investigations.

Your Committee notes that the defence forces may not necessarily have aircrafts waiting to be used by the Department of Civil Aviation, which will become the Civil Aviation Authority and that there is no guarantee that the relationship with defence forces will be maintained even when the Authority is created. It therefore recommends that the Authority must be given capacity to purchase its own aircraft(s) to be used for this and pilot testing and certification purposes.

- (xiii) Your Committee notes that whereas the Bill provides for the constitution and functions of the Board, it does not provide for the tenure of its members. Your Committee, therefore, recommends that the Bill provide for this.

The following typographical errors and omissions were also noted by your Committee and brought to the attention of the Ministries of Justice and Ministry of Transport, Works, Supply and Communication for correction.

- (i) page 7 Part, 1 section 2 subsection (1) under Interpretation. The last sentence, 'thejurisdiction' should read as, 'the jurisdiction';
- (ii) repetition of "aircraft engines, propellers," in the interpretation of the term "spare parts", on page 13;
- (iii) page 14 section 4(1) (c), the word 'friendlyand' should read, 'friendly and';
- (iv) page 15, sub section (j) second line – "aircraft" should read "aircraft operators";
- (v) part II, section 4, under the Functions of the Authority, subsection (3), page 17, item (k). The word 'costefficient' should read as 'cost efficient' and 'costeffective' should read as 'cost effective';
- (vi) page 18, section 5 (1) (d); should read "*a representative of the air force*"; instead of "*representative air force*";
- (vii) section 5 (3) (e) should be recast to read "*becomes mentally or physically incapable of performing the duties of a member*"; instead of "*becomes mentally incapable of performing the duties of a or physically member*";
- (viii) page 23, section 15 (1) (b) the second line to end with the word "*employee*" instead of "*employe*";
- (ix) section 19 under National civil aviation security policy, strategy and national programmes sub section (2) (b) (ii) after the word 'other' insert the words 'acts of' and the second sentence the word 'with' should be replaced with the word 'against';
- (x) section 19 under National civil aviation security policy, strategy and national programmes sub section (3) (a) the third sentence after the word 'other' insert the words 'acts of';
- (xi) section 19, under National civil aviation security policy, strategy and national programmes, sub section (3) (c), second sentence. The word 'providethe' should read as 'provide the' and the word 'promoteand' should read as 'promote and';
- (xii) section 19, under National civil aviation security policy, strategy and national programmes, sub section (4), at page 26, last sentence. The word 'programme' should read as 'programmes';
- (xiii) section 22, page 27, under Aerodrome operator security programme sub section (5) the second sentence after the word implement the article 'an' should be replaced with 'a civil' and the last sentence after the word national, insert the word 'civil' so that it reads, 'national civil aviation security';

- (xiv) section 23, pages 27 – 28, under Aircraft operator security programme Sub section (4), fifth sentence. Insert the word 'civil' after 'national' so that it reads, 'national civil aviation security training programmes under this Act';
- (xv) section 24, page 28, under Regulated agent security programme, Sub section (3), sixth sentence. Insert the word 'civil' after the word 'national' so that it reads 'national civil aviation';
- (xvi) section 26, page 29, under Ground handling operator security programme sub section (3), fourth sentence. Insert, 'civil' after the word 'national' so that it reads 'national civil aviation';
- (xvii) section 32, page 30, under Commercial air transport security, last sentence. Delete 'and' after the word 'against' and the phrase 'any other act of unlawful interference,' should read as 'any other acts of unlawful interference';
- (xviii) page 32, section 38 (2), the provision is hanging, it should end with words "*relevant provisions of the law*";
- (xix) page 34, section 42 (b) "*orships*" to read "workshops";
- (xx) page 41, section 54; (5) should refer to "section Sixty", which provides for validation of actions of another state and not "*fifty-nine*";
- (xxi) page 45, part VIII should read VII and part IX on page 53 should read VIII;
- (xxii) section 64, page 47, under Compliance notices sub section (6), third sentence. The word 'onemillion' should read as 'one million';
- (xxiii) section 75, page 52 under General offences and penalties, sub section (2) (a), third sentence, 'atsuch' should read as, 'at such';
- (xxiv) section 90, page 59 under Safety standards, requirements and regulations, Cap. 444 and Cap. 446, sub section (2) (a), second sentence. The word, 'equipmentused' should read as 'equipment used';
- (xxv) section 91, page 61 under Security regulations Cap. 444 and Cap. 446, sub section (1), fourth sentence. Insert 'acts of between 'other and 'unlawful', so that it reads, 'other acts of unlawful interference'; and
- (xxvi) section 91, page 61, under Security regulations Cap. 444 and Cap. 446, sub section (1) (b), fifth sentence. The word 'thatowners' should read as, 'that owners.'

CONCLUSION

9.0 In conclusion, your Committee wishes to express its gratitude to you, Mr Speaker, for granting it the opportunity to scrutinise the *Civil Aviation Authority Bill, N.A.B. No 7 of 2012*. Your Committee also wishes to pay tribute to all the stakeholders who appeared before it and tendered both oral and written submissions. Your Committee further wishes to thank the Clerk of the national Assembly and her staff for the services rendered to it during the consideration of the Bill.

We have the honour to be Sir, your Committee on Communications, Transport, Works and Supply mandated to scrutinise the *Civil Aviation Authority Bill, N.A.B No 7 of 2012*.

Mr K Simbao, MP
(Chairperson)

Mr W Banda, MP
(Member)

Mr V M Mooya, MP
(Member)

Mrs A M Chungu, MP

(Member)

Mr D Chingimbu, MP
(Member)

Mr O C Mulomba, MP
(Member)

Mr S Kampyongo, MP
(Member)

Mr D Mwangi, MP
(Member)

APPENDIX I

Witnesses

National Airports Corporation

Mr R Misitala, Managing Director

Mr G Lesa, Manager SHEQ

Mr K Mulenga, Corporation Secretary

Board of Airline Representatives

Captain L P Lemba, Acting Executive Director

Newrest First Catering

Mr P Burgi, General Manager

Mr M Tembo, Administration Manager

Ministry of Justice

Ms B Chibbonta, Parliamentary Counsel

Ms B Musopelo, Acting Senior Parliamentary Counsel

Guild of Air-Traffic Controllers of Zambia (GATCOZ)

Mr J Chibanga, Secretary

Mr J Tembo, Treasurer

Zambia Air-Services Training Institute (ZASTI)

Mr B C Shingalili, Principal

Mr L Banda, Accountant

Aircraft Operators Owners

Mr R Jeffery, Chairperson

Mr L Kunda, Executive Officer

Law Association of Zambia

Mr J Banda, President

Mr J Chibwe, Executive Director

Mr A Hamwela, Member

Ministry of Transport, Works, Supply and Communication

Major F K Kamanga (Rtd), Permanent Secretary

Mr A Daka, Deputy Director

Mr P Mulimbika, Chief Air Services Engineer

Mr S Mweemba, Chief Aviation Security Inspector

Mr S Kabaso, Senior Air Traffic Control Officer

Mr M Yeta, Chief Operations Officer

APPENDIX II

List of Officials

Mr S M Kateule, Principal Clerk of Committees
Mr G Lungu, Deputy Principal Clerk of Committees
Mr S C Kawimbe, Committee Clerk (SC)
Mr C Chishimba, Assistant Committee Clerk
Mrs M K Siwo, Assistant Committee Clerk
Ms R Tembo, Typist
Mr C Bulaya, Committee Assistant
Mr R Mumba, Committee Assistant