

REPORT OF THE COMMITTEE ON ENERGY, ENVIRONMENT AND TOURISM ON THE IONISING RADIATION PROTECTION (AMENDMENT) BILL, N.A.B. NO. 13 OF 2011, FOR THE FIFTH SESSION OF THE TENTH NATIONAL ASSEMBLY, APPOINTED ON 22ND SEPTEMBER 2010

Consisting of:

Mr P P Chanda, MP, (Chairperson); Mr G G Nkombo, MP; Mrs J M Limata, MP; Dr S Musonda, MP; Mr J J Mwiimbu, MP; Mr A Simama, MP; Mr A M Nyirenda, MP; and Mr J Shakafuswa, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA.

Sir,

Your Committee has the honour to present its Report on the Ionising Radiation Protection (Amendment) Bill, N.A.B. No. 13 of 2011, referred to it by the House on Thursday, 3 March, 2011.

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 six meetings to consider the Ionising Radiation Protection (Amendment) Bill, N.A.B. No. 13 of 2011.

Procedure Adopted by the Committee

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

Objects of the Ionising Radiation Protection (Amendment) Bill, N.A.B. No. 13 of 2011

5. The objects of the Bill are to:

- (a) revise the licensing provisions; and
- (b) provide for matters connected with, or incidental to, the foregoing.

CONSIDERATION OF SPECIFIC PARTS OF THE IONISING RADIATION PROTECTION (AMENDMENT) BILL, N.A.B. NO. 13 OF 2011

Background

6. The Ionising Radiation Protection (Amendment) Bill seeks to revise the licensing provisions relating to various activities regulated under the *Ionising Radiation Act*, No. 16 of 2005.

The Bill proposes to reduce the number of licences issued under the Act from four to one so as to reduce the cost of doing business under the Act in line with the business licensing reforms currently being undertaken by the Government. The current duplicity of licences in the *Ionising Radiation Act* is not only cumbersome to comply with but is also costly.

SPECIFIC PROVISIONS OF THE BILL

Clause 3 – Repeal and Replacement of Part IV

This clause amends the principal Act by the repeal and replacement of Part IV.

The clauses introduced under Part IV make provision for Ionising Radiation Licences.

Clause 21 – Application for Ionising Radiation Licence

This clause places an obligation on a person who intends to import, process, mine, export, possess, transport, use, dispose of, or undertake any other activity relating to radio-active material, to apply to the Board for an ionising radiation licence.

Clause 22 – Issue of Licence

This clause authorises the Board to issue the applicant with a licence within sixty days of receipt of an application.

Clause 23 – Responsibilities of Licensee

This clause places an obligation on a licensee to display, at the licensee's place of business, a copy of the licence in a prominent place. The clause further places an obligation on the licensee to ensure that any operation, condition of storage, transport, disposal or other practice does not result directly or indirectly in exposure to ionising radiation in such an amount as is likely to cause harmful effects to the public, the employees, other workers or the environment, or to any property. The licensee is also under obligation to appoint a radiation protection officer, who is supposed to work with the Board Secretariat to ensure compliance with the proposed legislation.

Clause 24 – Variation and Amendment of Licence

This clause authorises a licensee during the validity of the licence, to apply to the Board for variation of the terms and conditions of the licence, if need arises. The Board may amend a licence where, among other things, the amendment is necessary for the protection and safety of the public, workers or the environment.

Clause 25 – Transfer of Licence

This clause prohibits the transfer of a licence to a third party without the prior approval of the Board.

Clause 26 – Surrender, Suspension or Cancellation of Licence

This clause places an obligation on a licensee who decides not to continue with the activity to which the licence relates, to surrender the licence to the Board. The surrender shall be subject to such terms and conditions as the Board may determine.

The clause further authorises the Board to suspend or cancel a licence in cases where the licensee, among other things, obtained the licence by fraud or deliberate or negligent submission of false information or statements, or transfers or otherwise assigns a licence without the prior approval of the Board.

Clause 27 – Enforcement Notice

This clause authorises the Board to serve an enforcement order on a licensee where the Board has reasonable grounds to believe that the licensee has contravened or is likely to contravene any provision of the proposed legislation or a directive issued by the Board in the performance of the Authority's functions.

The Board may, where it considers necessary, for the safety of the public or the workers, require the suspension of any work with radioactive material or any other source of harmful ionising radiation and its storage in a safe place or under conditions preventing exposure of the public or workers to potentially harmful radiation.

Clause 28 – Register

This clause authorises the Board to keep and maintain a register of all persons licensed under Part IV, in which the Board shall enter such details and particulars as may be prescribed.

Clause 29 – Appeal

This clause permits a person aggrieved with a decision of the Board to appeal to the Minister within thirty days of the decision. A person who is aggrieved with the decision of the Minister may appeal to the High Court within thirty days of the decision.

Views Expressed by Stakeholders

7. The following stakeholders submitted before your Committee:

1. Ministry of Justice;
2. Ministry of Mines and Minerals Development;
3. Environmental Council of Zambia;
4. National Institute for Scientific and Industrial Research;
5. Ministry of Science, Technology and Vocational Training;
6. Ministry of Energy and Water Development;
7. Radiation Protection Authority; and
8. Ministry of Health.

All stakeholders were in support of the Bill. They, however, expressed the concerns set out hereunder.

1. Clause 2: There was a proposal that the definition provide for a cross reference to the *Environmental Protection and Pollution Control Act* (EPPCA), particularly where the licence issued under the *Ionising Radiation Protection Act* is more or less similar to the one issued under the EPPCA.
2. Part IV – Clause 21: There was a proposal to insert, language to the effect that there should be collaboration or consultation between the Ionising Radiation Protection Authority and the Environmental Council of Zambia (ECZ) in the issuing of licences since ECZ regulates disposal and to some extent transportation of radioactive materials.
3. It was noted also that the overall cycle of radiation sources in terms of exploration and processing is also regulated under the Environmental Impact Assessment regime administered by ECZ.
4. In Clause 20 (3), the reference to international standards need to specify the applicable standards under each of the two bodies mentioned.
5. There was a suggestion that there should be a provision which categorises the type of licences so as to differentiate between different users such as hospital, research, mining, processing and transportation operators.
6. There should be a cap on the level of processed radiation material which could be allowed in Zambia. In this vein, there is need to ban processing beyond yellow cake because Zambia does not have capacity to handle enriched uranium and its disposal.
7. Clause 23 (7) should be expanded to include a plan for disposal of radiation equipment and spent material from these equipment after use and suppliers should be obligated to take back used obsolete equipment as currently there are no disposal facilities for such equipment.
8. It was noted that ionising radiation protection and management is a very sensitive area and borders mainly on environmental impact and as such there should be close cooperation between the Radiation Protection Authority and Environmental Council of Zambia; and furthermore the Radiation Protection Authority Board should include a representative from the Ministry responsible for energy.
9. It was proposed that the application for an ionising radiation licence should be followed by the issue of licence and then rejection of an application i.e. Clause 22 which deals with the issue of licence.
10. It was noted that the marginal note to clause (21) does not match with the contents of sub-clause (1) (2) of (3) of that clause.
11. In Clause 23 (2), it was proposed that there is need to define the term “property” as it is unclear whose property is being envisaged by the clause.
12. In Clause 23 (4), the term “ionising radiation” should be used throughout the Act instead of the word “radiation”.
13. It was noted that clause 23 (8) should be deleted because it is just defining authorised health practitioner. The definition for “authorised health practitioner” should fall under definitions in Clause 2. Additionally, the definition for “authorised health practitioner should be a “medical doctor, radiographer or any other health professional who has been authorised through appropriate national procedures as a health professional for prescribing ionising radiation medical exposure”.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

8. Your Committee's observations are listed below.

(i) Clause 23 (3) places liability on a non-licence holder for any harmful effects arising from the possession, storage, transport, use or disposal of radioactive material. Further, section 38(1) of the principal Act makes the possession, without a licence, of radioactive materials an offence.

Your Committee observes that this clause is misplaced as it falls under responsibilities of the licensee when it should rightly fall under offences and penalties in Section 38 of the principal Act.

Furthermore, the Committee observes that neither the Bill nor the principal Act provide for liability for licence holders for any harmful effects arising from the handling of radioactive materials.

(ii) The Radiation Protection Authority, which is the regulator, only has three experts out of an establishment of thirty plus overseeing all ionising radiation issues in the country. Your Committee learnt that the Ministry of Health is awaiting authority from the Secretary to the Cabinet in order to employ more experts.

(iii) There are currently no regulations to regulate players in handling radioactive materials as your Committee was informed that these were being proposed by the Ministry of Justice.

In this regard, your Committee recommends as follows:

(i) Clause 23 (3), which creates an offence and penalty, should be placed in Part VI of the principal Act which deals with these matters;

(ii) there should be provision for liability for licence holders for any harmful effects arising from their use or handling of radioactive materials;

(iii) Government should expedite the granting of authority so that the needed experts can be employed at the Radiation Protection Authority; and

(iv) the regulations should be processed expeditiously in order to regulate this highly sensitive sector.

Conclusion

9. Your Committee wishes to pay tribute to all stakeholders who appeared before it and tendered both oral and written submissions. Your Committee also wishes to thank you, Mr Speaker for the opportunity to study the Bill. Your Committee is also indebted to the Office of the Clerk of the National Assembly for the services provided.

We have the honour to be, Sir, your Committee on Energy, Environment and Tourism mandated to scrutinise the Ionising Radiation Protection (Amendment) Bill, N.A.B. No. 13 of 2011.

Mr P P Chanda, MP
(Chairperson)

Mr G G Nkombo, MP
(Member)

Mrs J M Limata, MP
(Member)

Mr A M Nyirenda, MP
(Member)

Mr J J Mwiimbu, MP
(Member)

Dr S Musonda, MP
(Member)

Mr A Simama, MP
(Member)

Mr J Shakafuswa, MP
(Member)

March, 2011
LUSAKA

P P Chanda, MP
CHAIRPERSON

APPENDIX I

List of officials National Assembly

Mr S M Kateule, Principal Clerk of Committees
Mr G Lungu, Deputy Principal Clerk of Committees
Ms M K Sampa, Committee Clerk (FC)
Mr S C Kawimbe, Committee Clerk (SC)
Ms S Sianga, Assistant Committee Clerk
Ms K Chisenga, Typist
Mr R Mumba, Committee Assistant
Mr C Bulaya, Committee Assistant
Mr S M Likunyendo, Parliamentary Messenger

APPENDIX II

WITNESSES

Ministry of Justice

Mrs M M Katongo, Acting Principal Parliamentary Counsel

Ministry of Mines and Minerals Development

Dr G M Beene, Permanent Secretary
Mr P Zulu, Principal Documentalist
Mr F Banda, Chief Mining Engineer

Environmental Council of Zambia

Mr P M Banda, Director
Mr J Sakala, Manager – Inspectorate
Ms C Chibesakunda, Manager – Legal Services

National Institute for Scientific and Industrial Research

Professor F Tembo, Executive Director
Mr H Njapau, Acting Manager – Research and Development
Mr R Katebe, Head - Nuclear Energy and Analytical Programme

Ministry of Science, Technology and Vocational Training

Mr A M Kayamba, Acting Permanent Secretary
Mr S K L Kazeze, Director, Human Resource Management
Ms J M Chinkusu, Acting Director – Science and Technology
Mr A Simumba, Director – Vocational Education and Training
Mr S Mubanga, Senior Planner/Parliamentary Liaison Officer

Ministry of Energy and Water Development

Mr T J Kasonso, Permanent Secretary
Mr A Hussen, Director – Department of Water Affairs
Mr O Kalumiana, Director – Energy
Mr P Chola, Assistant Director – Department of Water Affairs
Dr N H Mpamba, Acting Assistant Director
Ms V Mtawila, Chief Planner
Mr S Kangomba, Principal Hydrogeologist

Radiation Protection Authority

Mr B D Siwila, Acting Executive Director
Mr K Mushankwa, Senior Safety Officer

Ministry of Health

Dr E Chizema, Acting Permanent Secretary
Mr E Malikana, Chief Policy Analyst