

GAUTENG PROVINCIAL LEGISLATURE

SPEAKER'S OFFICE

MEMORANDUM

TO : THE CHAIRPERSON: MR G TSOTETSI
HOUSING COMMITTEE

FROM : THE SPEAKER

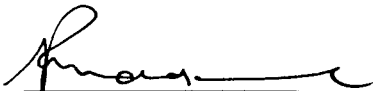
DATE : 03 APRIL 2007

SUBJECT : INFORMAL REFERRAL OF NCOP SECTION 76
BILL

I hereby informally refer the following Section 76 Bill to the Housing Committee, for information and planning in terms of Rule 231 (1):

- (i) Housing Consumers Protection Measures Amendment Bill [B6-2007] -
(Section 76)

Yours faithfully



THE SPEAKER
MR R M MDAKANE

CC: Members of the Committee

1. Mr G Tsotetsi (Chairperson)
2. Ms M Chabaku (ANC)
3. Mr S Mkhize (ANC)
4. Ms R Ndzuta (ANC)
5. Ms R Dhladhla (ANC)
6. Ms P Mokgohlwa (DA)
7. Ms K Lorimer (DA)
8. Ms R Gudlhuza (ID)
9. Mr N Mailula (UIF)
10. Ms G Mzizi (IFP)
11. Mr M Ledwaba (PAC)
12. Mr S Ngwenya (ANC)
13. Mr C Msane (ANC)
14. Mr S De Beer (ANC)
15. Ms H Kruger (DA)
16. Mr J Moodey (DA)

Administration

1. M Moloi, D Mashego, T Ranaka: NCOP
2. T Munyai: Committee Support Manager
3. E Du Plessis: Proceedings
4. M Molekwa: Group Committee Co-ordinator
5. [REDACTED]: Committee Co-ordinator
6. T Kepadisa: Research
7. K Mphirime: Admin Assistant
8. E Motsepe: Information Officer

REPUBLIC OF SOUTH AFRICA

**HOUSING CONSUMERS
PROTECTION MEASURES
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill published in Government Gazette No. 29521 of 21 January 2007)
(The English text is the official text of the Bill)*

(MINISTER OF HOUSING)

[B 6—2007]

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- (d) by the insertion after the definition of “inspector” of the following definition:
“ ‘late enrolment’ means the submission by a home builder of a request for a particular home to be entered into the records of the Council after construction of such home has started in contravention of section 14;”;
- (e) by the insertion after the definition of “Minister” of the following definition: 5
“ ‘National Housing Code’ means—
 (a) the National Housing Code contemplated in section 4 of the Housing Act, 1997 (Act No. 107 of 1997); or
 (b) any other policy or administrative or procedural guidelines issued in terms of the Housing Act, 1997 (Act No. 107 of 1997), which repeals or replaces the National Housing Code;” 10
- (f) by the insertion after the definition of “NHBRC Technical Requirements” of the following definition:
“ ‘non-declared late enrolment’ means enrolment where a home builder has not declared the fact that construction of the home had commenced at the time of enrolment and that fact is detected by the Council;” 15
- (g) by the insertion after the definition of “organ of state” of the following definitions:
“ ‘owner builder’ means— 20
 (a) a person who builds a home for occupation by himself or herself; or
 (b) a person who is not a registered home builder and who assists a person contemplated in paragraph (a) in the building of his or her home;
‘PHP Project’ means a housing project approved in terms of Chapter 8 of Part 3 of the National Housing Code: Housing Subsidy Scheme: People’s Housing Process;” and 25
- (h) by the substitution for paragraph (b) of the definition of “prescribe” of the following paragraph:
“(b) the Council, except in section 7(1) or 29(1), prescribe in a circular to all registered home builders;” 30

Insertion of section 1A in Act 95 of 1998

2. The following section is hereby inserted in the principal Act after section 1:

“Application of Act

- 1A. (1) This Act applies to any home builder. 35
(2) This Act does not apply to a person who uses his or her own labour to build a home for his or her occupation if the home is part of an approved PHP Project.”

Amendment of section 7 of Act 95 of 1998, as amended by section 1 of Act 27 of 1999

3. Section 7 of the principal Act is hereby amended— 40
- (a) by the substitution in subsection (1)(a) for subparagraphs (iii) and (iv) of the following subparagraphs, respectively:
 “(iii) prescribing enrolment fees and late enrolment fees, including the method of calculating such fees, in respect of homes or categories of homes and other fees, excluding the fees contemplated in subsection (2); 45
 (iv) prescribing procedures for enrolment, late enrolment, non-declared late enrolment and cancellation of enrolment;”;
- (b) by the insertion in subsection (1)(a) after subparagraph (iv) of the following subparagraph: 50
“(ivA) governing the application of NHBRC Technical Requirements to homes financed by a state housing subsidy;”; and
- (c) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
“(e) the minimum and maximum amounts which may be expended under section 17(1) in respect of any home pursuant to the failure of a home builder to meet his or her obligations in terms of section 55

- to address all questions raised in the late enrolment report contemplated in paragraph (d)(ii); and
- (f) at the request of the Council provide any surety, guarantee, indemnity or other security considered reasonable by the Council to satisfy its obligations under section 16(1).

(3) Notwithstanding the provisions of this section, the Council may prescribe disciplinary measures for late enrolment and non-declared late enrolment which are not inconsistent with this Act.”

Amendment of section 16 of Act 95 of 1998, as amended by section 3 of Act 27 of 1999

7. Section 16 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) If at any time the funds of the Council appear insufficient to meet anticipated demands, the Council may, on the recommendation of the funds advisory committee and after the procedures referred to in section 17(3), (4) and (5), with the necessary changes required by the context, have been followed, increase the fees payable by home builders and MEC in respect of the enrolment of homes contemplated in [section] sections 14 and 14A.”

Amendment of section 17 of Act 95 of 1998, as amended by section 4 of Act 27 of 1999

8. Section 17 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) within—

(i) five years of the date of occupation, a major structural defect has manifested itself in respect of a home as a result of non-compliance with the NHBRC Technical Requirements and the home builder has been notified accordingly within that period;

(ii) 12 months of the date of occupation, a roof leak attributable to workmanship, design or materials has manifested itself in respect of a home and the home builder has been notified accordingly within that period;”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) Subject to subsections (3), (4) and (5), if money is not available or is expected not to be available for that purpose due to future demands on the fund, the Council may **[reduce any amount,]**—

(a) subject to section 7(2)(e), reduce any amount that may be expended in terms of subsection (1);

(b) in exceptional circumstances, instead of having a defect rectified, make payment to the housing consumer in full and final settlement of any claim; or

(c) refuse [such claims] any claim.”; and

- (c) by the substitution in subsection (5) for paragraph (b) of the following paragraph:

“(b) prescribe increased enrolment fees or late enrolment fees under section 16(6).”

Amendment of section 21 of Act 95 of 1998

9. Section 21 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) contravenes **[a provision of]** section 10(1) or (2), 13(7), 14(1) or (2), 18(1) or (2) or 19(5).”

MEMORANDUM ON THE OBJECTS OF THE HOUSING CONSUMERS PROTECTION MEASURES AMENDMENT BILL, 2007

1. BACKGROUND

The Bill seeks to rectify certain interpretation and implementation problems which have arisen since the promulgation of the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998) (the Act).

2. OBJECTS OF BILL

2.1 The Bill seeks to amend the definition of “business of a home builder” by—

- (a) inserting the words “leasing” and “renting out” in paragraph (b) of the definition, which deals with acts that are regarded as constituting disposal of a home; and
- (b) deleting the references to “owner builders” in paragraph (d) of the definition.

The wording of paragraph (d) has resulted in so-called “owner builders” being excluded from the application of the Act. In broad terms an owner builder is a person who wishes to build a home for occupation by himself or herself, and who utilises own resources such as labour and financing. In these cases application of the Act would result in an absurd situation where the mentioned person is in fact protected against himself or herself.

Although this fact is recognised, it was never the intention of the legislature to totally exclude such “owner builders” from the application of the Act, but rather that they be entitled to apply for exemption from the provisions of the Act, thereby ensuring that they are indeed owner builders, and not just builders wishing to escape from the letter of the law.

As paragraph (d) of the definition has not achieved this, it is proposed that it be amended and that a substantive definition of and provisions pertaining to “owner builders” be added.

2.2 The definition of “home builder” is to be amended in order to include “owner builders” who have not been exempted in terms of the Act.

2.3 Definitions for “late enrolment” and “non-declared late enrolment” are proposed. Although these issues have in the past been dealt with in regulations issued under the Act, they are not defined in the Act, nor does the Act contain any specific provisions pertaining thereto. The Bill seeks to rectify this situation by the insertion of those definitions, as well as making specific provision for them in the proposed section 14A, dealt with below.

2.4 Definitions for “National Housing Code” and “PHP project” are also proposed as these expressions are contained in substantive provisions proposed by this Bill.

2.5 A new section 1A is proposed in order to provide for the scope of application of the Act.

2.6 Section 7 of the Act, dealing with measures that the Council and the Minister may prescribe, is to be amended in order to include measures pertaining to late enrolment, non-declared late enrolment and fees for late enrolment.

2.7 A new section 10A is proposed to enable “owner builders” to apply for exemption from section 10 (registration of home builders) and section 14 (enrolment) of the Act.

2.8 A new section 14A is proposed to provide for, and to regulate, late enrolment and non-declared late enrolment. The proposed section 14A consists of a revised combination of the existing regulations 14 and 15, as contained in the Council Rules published under Regulation No. R.1408 dated 1 December 1999 (*Gazette* No. 20658).

2.9 Section 17 of the Act is to be amended in order to extend the cover provided by the Council’s warranty scheme to include roof leaks and to enable the Council in exceptional circumstances, instead of having a defect rectified, to make payment to the housing consumer in full and final settlement of a claim.

2.10 The list of contraventions of the Act that constitute offences, as set out in section 21 of the Act, is amended to include the section 18(2) duty of a conveyancer to ensure that a home builder is registered before attending to the registration of a mortgage bond.

2.11 Section 22 of the Act is to be amended by the addition of a new subsection that will enable persons who are aggrieved by any decision made by the Council in terms of section 29 to lodge an appeal with the Minister. This is necessitated by the proposed amendment of section 29 of the Act.



GAUTENG
LEGISLATURE

**HOUSING PORTFOLIO COMMITTEE
ADOPTED NEGOTIATING MANDATE**

ON

HOUSING CONSUMERS PROTECTION MEASURES AMENDMENT BILL [B6B-2007]

(Section 76)

31 August 2007

1. INTRODUCTION

The Chairperson of the Housing Portfolio Committee, Mr. C G Tsotetsi, tables the Committee's Negotiating Mandate on Housing Consumers Protection Measures Amendment Bill [B6B-2007], a Section 76 Bill, as follows:

2. PROCESS FOLLOWED

The Speaker formally referred the Housing Consumers Protection Measures Amendment Bill [B6B-2007] Section 76 Bill, on Monday, 25 June 2007 to the Portfolio Committee on Housing, in terms of Rule 232 (1) for consideration and reporting.

On Wednesday, 08 August 2007, the Housing Portfolio Committee was briefed by Mr. Mongezi Mnyani, the Chief Operations Officer in the Gauteng Department of Housing on the Financial and Socio- Economic impact of the Bill on housing delivery and Mr Vakalisa, a legal representative from National Home Builders Registration Council (NHBRC) on the reasons for the amendments and the legalities of the Bill. The Committee had an opportunity to make deliberations on the Housing Consumers Protection Measures Amendment Bill [B6B-2007].

The Committee held a public hearing on Monday, 20 August 2007 at the Gauteng Provincial Legislature. Mr. Mzizi, the NCOP permanent delegate, Mr. Mnyani, the COO in the Gauteng Department of Housing and Mr. Tshimole from NHBRC made presentations on the Bill. The stakeholders were given an opportunity to make verbal and written submissions. The presenters also had an opportunity to give responses to the submissions made.

On Friday, 31 August 2007, the Committee deliberated on the technical and substantive amendments and adopted the negotiating mandate on Housing Consumers Protection Measures Amendment Bill [B6B-2007], Section 76 Bill.

3. PRINCIPLE AND DETAIL OF THE BILL

The Housing Protection Measure Amendment Bill seeks to rectify certain interpretations and implementations problem which have risen since the promulgation of the Housing Consumer Protection Measures ACT, 1998 (Act No.95). The Bill seeks to make consequential amendments to other legislation in order to update outdated references.

4. OVERVIEW OF PUBLIC HEARINGS

During public hearing on Housing Consumers Protection Measures Amendment Bill [B6B-2007], Section 76 Bill, on 20 August 2007, the Committee received both verbal and written submissions from stakeholders and members of the public, in line with the Legislature's Constitutional obligation of facilitating and promoting public involvement in the legislative processes in the Legislature and its committees. The stakeholders made the following inputs:

4.1. VERBAL SUBMISSIONS

- ◆ A concern was raised that the Bill took a top-down approach and the public appealed that this should be reviewed and proper consultation be done with stakeholders. In his response, the permanent delegate of the NCOP conceded to this and indicated that communication is a challenge and this will be improved.
- ◆ There was a concern regarding the compulsory registration of all builders on the NHBRC, the CIBD and the criteria thereof. Clarity was sought in relation to the link between NHBRC and CIBD and furthermore citing that these do not favour the issue of tenders to emerging contractors but to established contractors. The Department's representative emphasised that this is a non-negotiable policy imperative and non-compliance will result in disqualification. Furthermore, the Department of Public Works and the NHBRC conduct free workshops on a regular basis to empower contractors.
- ◆ The Bill should address remedies in the event of a contractor absconding or passing away before completion of building. The Department representative explained the payment process phases whereby the balance is payable to the contractor on issuing of the Occupancy Certificates. Furthermore, the Retention Fees as well as the Performance Guarantees, ensure the availability of funds in the event of a contractor not being able to complete building a house or project.
- ◆ Clarity was sought to establish where the responsibility of the enrolment of RDP housing stock with the NHBRC lies and whether a Happy Letter qualifies as a certificate of occupation as it is needed to lodge a claim with the NHBRC. According to the Department's representative, all RDP housing stock are enrolled by the Department, but the Consumer has to inspect and be satisfied before accepting the Occupation and Warranty Certificate and that all houses have a five-year warranty. In addition, the permanent NCOP delegate warned Consumers against signing 'Happy Letters' unless they are satisfied with the condition of the complete house.
- ◆ The stakeholders needed assurance that the Bill will address shoddy workmanship done in the past and also ensure the accountability of builders in relation to shoddy workmanship. There was assurance from the NHBRC and the Department in this regard, with the latter emphasising non-

compromise of quality issues to the extent of expulsion of non-complying contractors.

- ◆ The Bill should be implemented and monitored to ensure control. The Department's representative assured the stakeholders that this is part of the quality assurance process that is located in the Quality Assurance Unit of the Department.
- ◆ A concern was raised that the 12 month period of registration for membership is insufficient in relation to SMMEs and emerging contractors due to poor business challenges and thus a submission that the period be extended to three (3) years. This submission was also supported by a concern raised that most pre-1994 housing stock was added on or renovated without plans and this will also give owner builders sufficient time to register. This submission was noted by the Committee.
- ◆ There was concern raised as to the invisibility of inspectors on building sites as it compromises quality with some houses developing cracks and roof-leaks within a year of being built, e.g. the Cosmo City Development. The Department's representative indicated that all contractors are required to have residential engineers on site at all times for quality control and that the Quality Assurance Unit, in conjunction with the NHBRC as well as the relevant Municipality inspectors are responsible for inspecting houses from foundation to completion phase.
- ◆ There was concern raised in regard to the usage of asbestos building material in the building of houses. In his response, the Department's representative emphasised that the Department does not use asbestos material and that people must verify such before making such allegations.
- ◆ Clarity was sought in relation to the criteria used in the 'Exemption' from registration with the NHBRC.
- ◆ The Committee noted the submission that the role and responsibilities of the NHBRC, the builder and the Council must be clearly defined in the rectification process.
- ◆ There was a submission that the NHBRC should delegate some responsibilities to Municipalities. The Department's representative noted the submission and indicated that the Department cannot contest the issue should it be submitted to the Committee and the NCOP.
- ◆ A concern was raised as to whether the Bill caters for the Youth. The NHBRC Representative indicated that there is free training provided to those who need information and this is done in association with the Department of Housing, Umsobomvu Youth Fund and Women Development initiatives.
- ◆ The need to communicate the outcome of the submissions to the stakeholders was communicated to the Committee.
- ◆ The importance of a major communication campaign in respect of the Act itself was emphasised by the stakeholders whereby both contractors and beneficiaries alike must be aware of their obligations and the remedies available to them, particularly in respect of "RDP" housing.

4.2. WRITTEN SUBMISSIONS

Inkatha Freedom Party (IFP):

The IFP welcomed the inclusion of 'Owner Builder', which was not included in the Principal Act of 1998, with the following concerns:

- What the role of Municipalities will be as they also approve plans and conduct building inspections to ensure compliance with building regulations? The submission in this regard is that the NHBRC should share responsibilities with municipalities as there has been capacity challenges reported in relation to the NHBRC, therefore the Bill should allow for the NHBRC to delegate some of its functions to municipalities.

Councillor Sodah Griffin

This submission sought clarity in relation to the following:

- The mandate given to contractors/builders by the NHBRC to repair all defects on inferior buildings;
- What happens when a contractor/builder not registered with the NHBRC dies or absconds, how is the homeowner protected in this regard?
- Penalties given to contractors/builders who do not comply with the regulations?
- What happens if a building inspector for Planning Department approves a property and 18 months later foundation cracks appear?

5. FINANCIAL AND SOCIO-ECONOMIC IMPACT ASSESSMENT OF THE BILL

5.1. FINANCIAL IMPLICATIONS

In respect of the financial implications of the Bill on the province, the Gauteng Department of Housing confirmed to the Committee that there are no direct financial implications and that the Department supports the Bill as introduced.

5.2. SOCIO-ECONOMIC IMPACT

With regards to the socio-economic impact of the Bill the Gauteng Department of Housing to the Committee highlighted that the Bill will:

- Enhance the quality of housing products as the home builders are checked on quality and therefore the measures are improved;
- Provide a favourable environment for housing consumers in the housing market.

6. COMMITTEE COMMENTS AND CONCERNS

During the Committee meeting held on the 08 August 2007, the following comments and concerns were raised:

- How the Bill proposes to deal with the poor workmanship of the houses that have already been built.
- Lack of communication and cooperation between the NHBRC, Local Government and Provincial Housing Departments.
- The proposed Bill should not result in any duplication of duties between NHBRC and municipalities.


- The process of appeals might result in conflict of interest as the Bill proposes that the public should appeal to NHBRC, simply implying that the NHBRC will be a referee and player at the same time. In response to this, the NHBRC explained that the board hears appeals, which is still a case of the NHBRC judging it's own actions as the board still has the financial responsibility of the NHBRC as its primary concern.
- There is a huge administrative load being placed on the NHBRC as it should register all "owner builders" and also deal with the applications for exemption which will take 60 days. This might be challenged by the issue of capacity within the NHBRC.
- There is a lack of clarity around whether a "Happy Letter" qualifies as a Certificate of Occupation. The NHBRC requires such certificate to lodge a claim.
- The general lack of operational capacity of the NHBRC, particularly around the issues of visibility of inspectors on site.
- Builders have to re-register with the NHBRC every 12 months. This becomes very onerous for both the NHBRC in terms of capacity required and for the builders.
- The lack of a communication campaign with all stakeholders around the roles and responsibilities of contractors and beneficiaries alike.
- No clear definition of the role of MEC's and the Provincial Departments.
- Realising that the enrolment fees are covered in the Regulations, the Committee is concerned that these rates might be too high.

7. COMMITTEE RECOMMENDATIONS

- Appeals should be lodged directly with the minister and not with the NHBRC.
- Memoranda of Understanding should be put in place between the NHBRC, Local Government and Provincial Housing Departments to deal with issues of capacity ie. Inspections, registration of home builders and exemptions.
- The role of MEC's and Provincial Departments needs to be defined by the Bill.
- The Bill must ensure that a standard "Happy Letter"/ Certificate of Occupation is issued only after a full inspection of the house. This document can then be used to apply for redress with the NHBRC.
- Builders only need to re-register with the NHBRC every 2 years.
- There should be continuous awareness campaigns around the implementation of the act.
- There should be a review of the enrolment fees as prescribed in the Regulations.

8. NEGOTIATING POSITION ADOPTED BY COMMITTEE

The Housing Portfolio Committee supports the principle and details of the Housing Consumers Protection Measures Amendment Bill [B6B-2007].



Mr. CG Tsotetsi
Chairperson: Housing Portfolio Committee
31 August 2007