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**GAUTENG**  
LEGISLATURE

**HOUSING PORTFOLIO COMMITTEE**

**FINAL VOTING MANDATE**

**OF**

**HOUSING CONSUMERS PROTECTION MEASURES  
AMENDMENT BILL [B6B-2007] (Section 76)**

**10 September 2007**

**1. INTRODUCTION**

The Chairperson of the Housing Portfolio Committee, Mr C G Tsoetsi, tables the Committee's Final Voting 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. Hon. Member 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 the Housing Consumers Protection Measures Amendment Bill [B6B-2007], Section 76 Bill.

On 10 September 2007 the Committee deliberated and adopted its Final Voting Mandate on the Housing Consumers Protection Measures Amendment Bill [B6B-2007], Section 76 Bill.

### 3. PRINCIPLE AND DETAIL OF THE BILL

The Housing Protection Measures Amendment Bill seeks to rectify certain interpretations and implementation 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 outdate references.

### 4. OVERVIEW OF PUBLIC HEARINGS

During the public hearings on the bill 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 process 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 stating 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 phase 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 visibility 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:

- o 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:

- o The mandate given to contractors/builders by the NHBRC to repair all defects on inferior buildings;
- o What happens when a contractor/building not registered with the NHBRC dies or absconds, how is the homeowner protected in this regard?
- o Penalties given to contractors/builders who do not comply with the regulations?
- o 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

The Bill has no direct financial implications.

##### 5.2. SOCIO-ECONOMIC IMPACT

With regards to the socio-economic impact 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 POSITION

The Housing Portfolio Committee supports both the principle and details of the Housing Consumers Protection Measures Amendment Bill (B6B-2007) - section 76.

#### 7. FINAL VOTING MANDATE ADOPTED BY COMMITTEE

In terms of Section 65 of the Constitution, the Housing Portfolio Committee recommends that the House confer authority on the Gauteng Provincial Delegate/s to the National Council of Provinces to vote in favour of the Housing Consumers Protection Measures Amendment Bill, (B6B-2007).