

NORTH WEST PROVINCIAL LEGISLATURE

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NEGOTIATING MANDATE

TO : Chairperson of Select Committee on Human Settlement

Name of the Bill: RENTAL HOUSING AMENDMENT BILL

Number of Bill: [56B – 2013]

Date of deliberations: 12 March 2014

Vote of Legislature

The portfolio on Human Settlement, Public Safety & Liaison Committee vote in favor of the Bill noting the concerns as raised by the community members.

The committee recommends that each municipality should have tribunal office to attend queries of the community.

The Committee recommends that the department should monitor that no RDP houses will be used as rental or for business.

The committee recommends that people should sign for any leased property before they can rent.

The Committee recommends that Public Participation should educate people about the Bill, so that people make relevant inputs or comments during public hearings.


Hon. R.L. Mahlakeng

Date

Chairperson PC: - Human Settlement, Public Safety & Liaison

15/03/2014



NEGOTIATING MANDATE

TO: The Chairperson of the Select Committee on Public Services

Hon. M P Sibande

NAME OF BILL: Rental Housing Amendment Bill

NUMBER OF BILL: [B56B-2013]

DATE OF DELIBERATION: 14 March 2014

VOTE OF THE LEGISLATURE:

The Gauteng Provincial Legislature supports the principle and the detail of the bill and therefore votes in favour of-

- Rental Housing Amendment Bill

Mr Errol Magerman
Chairperson: Local Government and Housing Portfolio Committee

GAUTENG PROVINCIAL LEGISLATURE

Date: 17 March 2014



**LOCAL GOVERNMENT AND HOUSING PORTFOLIO COMMITTEE
NEGOTIATING MANDATE ON THE:**

RENTAL HOUSING AMENDMENT BILL [B56B-2013]

14 MARCH 2014

1. INTRODUCTION

The Chairperson of the Local Government and Housing Portfolio Committee, Mr. Errol Magerman, tables the Negotiating Mandate on the Rental Housing Amendment Bill [B56B-2013] Section 76 as follows:

2. PROCESS FOLLOWED

On 03 March 2014, the Office of the Deputy Speaker of the Gauteng Provincial Legislature formally referred the Bill to the Portfolio Committee.

On 12 March 2014, both the National and the Gauteng Provincial Departments of Human Settlements made brief presentations on the Bill to the Portfolio Committee on the Bill. On the same day, the Gauteng Provincial Legislature's NCOP and Legal Unit presented its Legal Opinion on the Bill to the Portfolio Committee and the Portfolio Committee Researcher for Human Settlements providing an overview of the socio-economic impact of the Bill.

On 14 March 2014, the Portfolio Committee convened a Public Hearing on the Bill which is a critical process that ensured that the Portfolio Committee obtained valuable inputs from the Gauteng Communities and relevant Stakeholders. These were indeed taken into consideration and informed this Negotiating Mandate which was immediately thereafter deliberated and adopted by the Portfolio Committee.

3. OBJECTIVES OF THE BILL

The Rental Housing Amendment Bill, 2013, [B56 – 2013] seeks to:

- Further amend the Rental Housing Act, 2007 (Act No. 43 of 2007) (“the Act”) by inserting substitute and certain definitions;
- Clarify the responsibility of Government;
- Set out the rights and obligations of tenants and landlords in a coherent manner;
- Require that leases be in writing;
- Extend the application of Chapter 4 to all Provinces implying that all MEC’s should ensure the establishment of Rental Housing Tribunals with the first financial year after the promulgation of the amended Act;
- Extend the powers of the Rental Housing Tribunals;
- Increase the capacity and size of the Tribunals from the stipulated maximum of five (5) to seven (7);
- Provide for an appeal process;
- Require all Municipalities to have Rental Housing Information Offices;
- Provide for norms and standards related to rental housing; and
- Extend offences.

4. DETAILS OF THE BILL

The following are the details of the Bill clause by clause:

SECTION 1:

Clause 1: It omits the definition of “arbitrary eviction”. This includes depriving a Tenant occupation of a dwelling without an order of Court made after considering all the relevant circumstances.

Clause 2: Amends the paragraph by inserting after the definition of ‘financial institution’ of the following definition: “Habitability” refers to a dwelling that is safe and suitable for living in and includes: Adequate space; Protection from the elements and other threats to health; Physical Safety of the tenant, the tenant’s household and visitors; and a structurally sound building. Giving habitable a corresponding meaning.

Clause 3: Omits “fit or suitable to live in” and to substitute of the Principal Act

Section 2 dealing with the responsibility of government to promote rental housing has been amended by adding additional responsibilities to the Minister to, amongst other things, “monitor and assess... the impact of the application of this Act on landlords and tenants, and more specifically the impact on poor and vulnerable tenants”.

SECTION 2:

This Section deals with the responsibility of government to promote rental housing has been amended by adding additional responsibilities to the Minister to, amongst other things, “monitor and assess the impact of the application of this Act on landlords and tenants, and more specifically the impact on poor and vulnerable tenants”

The indication by the Departments was that, in as much as the amendment was welcome, they proposed that a definition of "poor and vulnerable tenants" be added for better clarity on who falls under this group. Section 2(6)¹ dealing with definition of criteria does not alleviate the above identified gap as the provision is not mandatory but discretionary.

Clause 5, 6 and 7 amending Chapter 3 heading and section 4 of the Principal Act

The amendment was welcome as it provides better clarity in detail on the rights and obligations of both tenants and landlords; whilst the previous heading just provided for "Relations between tenants and landlords". The proposed amendment recognises the legal nature of the relationship between a tenant and landlord and defines the do's and don'ts of this intricate and often contentious relationship.

Clause 8 amending section 5 of the Principal Act

The amendment makes it peremptory for lease agreements to be reduced to writing. This is a welcome amendment as disputes will be better alleviated where a written document exists formalising the legal relationship between tenant and landlord.

5. COMMITTEE DELIBERATIONS

All concerns raised by the Portfolio Committee as informed by the Gauteng Provincial Legislature's NCOP and Legal Unit's Legal Opinion on the Bill and the Portfolio Committee Researcher for Human Settlements' overview of the socio-economic impact of the Bill; were adequately addressed by the National Department of Human Settlements and the Gauteng Department of Human Settlements.

6. OVERVIEW OF THE PUBLIC HEARING

The public hearing was attended by a variety of stakeholders mainly Tenants and Landlords and their inputs and concerns are summarised as follows:

- 6.1 Whether the Bill would be practically enforceable in instances where Tenants have been in occupation for a long period without a Lease Agreement and Payments of deposit? In response, the Department indicated that it would be in the interest of both parties to review and formalise their relationship by ensuring that these two key issues are redressed.
 - 6.2 There was a concern raised at Landlords and Tenants from the Townships do not seem to be part of this Public Hearing as there are Backyard Rentals which do not seem to be covered by the Bill. In response, the Department indicated that the 'dwellings' also included and recognised 'shacks and backyard rooms'.
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- 6.3 Whether the Bill would protect Pensioners whose dependants become vulnerable in the event of their death as long-residing Tenants tend to take over the houses leaving especially the grand children destitute. In response to this, the Department referred those affected to the Assets Disposal and Regulatory Authority (ADARDI) Programme which mainly deals with the pre-1994 Housing Stock; and relatives who decide to rent-out the property should do it in line with the proposed Bill to avoid such instances.
- 6.4 It was indicated that the applicable Rental laws in Gauteng were not effective given the high level of disputes and illegal evictions, harassments, disconnections of electricity and lock-outs by Landlords, even by municipal-owned entities such as JOSHCO. In response to this the Department emphasised that all these were unfair rental practises and also acknowledged that there was lack of awareness on Rental Laws and that there was a National Housing Strategy that will be utilised to communicate the role of the Rental Tribunals.
- 6.6 Whether the Bill would have been an intervention in instances such as in the Inner-city wherein the City of Johannesburg had promised that Tenants who have been residing in a building owned by an absentee landlord would have given the first option to buy. On the contrary the building was sold with the new owner harassing tenants and issuing letters of eviction and has also disconnected electricity. In response, the Department indicated that the disconnection of the electricity was an unfair and illegal practise which should be referred to the Rental Tribunal.
- 6.7 The suggestion that the Rental Housing Offices should be established in all municipalities was welcome but there should be capacity development within the Municipalities.
- 6.8 Whether the Bill could be relied on as an intervention in instances where tenants who have been residing for a long duration make renovations without the property owner's consent. In response, the Department indicated that Tenants should reduce to agreement in writing as a Lease in order to review and formalise their relationship agreeing on what both parties should or should not do.
- 6.9 Would the Bill protect Tenants from new property owners/Landlords from illegal evictions through letters, electricity disconnections including the removal of the infrastructure such as cables and harassment? In response the Department indicated that even the Rental Act of 2007 prohibits such action by landlords and that these should be taken to the Rental Tribunal which is already in existence in Gauteng.
- 6.10 Does the Bill provide for the renting-out of RDP Houses/Housing Units? In response the Department indicated that the renting out of RDP's is not allowed as these were being given to the Beneficiaries as a result of their need by the Government. The Bill is thus not applicable as this is an illegal practice.

- 6.11 The Bill should not delay the transfer of pre-1994 Housing to those who had 99 year old Leases Flats, Hostels and semi Detached Houses, mostly in previously disadvantaged communities and townships; as this makes government to be part of unscrupulous landlord in this regard.
- 6.12 Clarity was sought on whether private companies were consulted in the drafting of the Bill. In response the Department indicated that this was done as the Bill was gazetted for public comments.

Based on responses to above verbal submissions, the stakeholders supported the Rental Housing Amendment Bill [B56B-2013]; and written submissions would be accepted by the end of business of 14 March 2014. It has to be noted that none were received.

7. LEGAL IMPLICATIONS/OPINION ON THE BILL

The Clause-by-clause Legal Opinion on the Bill as presented by the Gauteng Provincial Legislature's NCOP and Legal Unit indicated that the Portfolio Committee should support the Bill as it was consistent with the Constitution of the Republic of South Africa and applicable legislation.

8. SOCIO-ECONOMIC IMPACT OF THE BILL

The Portfolio Committee noted that this Rental Housing Amendment Bill, 2013 would be welcome if it were to address the following issues that have direct socio-economic impact on communities in Gauteng:

- Ensuring awareness of Rights and Responsibilities of both the Tenants and Landlords and support in the drafting of the Lease Agreements, acknowledging the limitations that both parties might be faced with.
- The Bill proposes that the Minister should develop 'norms and standards' in terms of habitable, safe and healthy dwellings as well as affordable rental rates should be developed. Municipalities should be consulted in this regard as they interact directly and a regular basis with communities, not only by the Minister as proposed.
- The increase in size of the Rental Tribunal from five (5) members as stated in Chapter 4 should enable more meetings to be held on the same day in Gauteng to ensure speedy resolution of matters heard. The proposed number should take this into consideration.
- There should be ongoing training and monitoring of the performance of the Rental Tribunal by the MEC to ensure its effectiveness as per the aspirations of the Bill.
- The establishment of Rental Housing Offices within municipalities was welcome but was noted with concern that according to the Memorandum, on Financial Implication for the State, there is an expectation for municipalities to designate employees for the Rental Housing Offices and this would be a challenge where municipalities are already faced with internal capacity challenges and this could result in additional costs as new employees might have to be employed; and that it was unclear as to which Department was expected to render training in this regard. Nonetheless,

COGTA should form part of these deliberations and further discussions towards implementation of the Bill as they render municipal support.

- The Department should improve and expedite the transfer of pre-1994 Housing stock through sub-sub-programmes such as the Enhanced Extended Discount Benefit Scheme (EEDBS), RETRO and TORPS. Most of the Housing Stock to be transferred is within Flats, Hostels and semi Detached Houses, mostly in previously disadvantaged communities and townships.
- The Bill should adequately address the controversial clause of 'rent to buy' within Rental Stock such that there is harmony in the Landlord and Tenants relations.
- The Bill should ensure that Tenants are notified timeously in the event of rented premises being sold voluntarily or by a court order.
- The Bill should be compliant and consistent with provisions of the PIE Act.
- In conclusion, it has been noted that the State Law Advisers' opinion was that it was not necessary to refer the Bill to the National House of Traditional Leaders in terms of Section 18 (1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities. This being the case, it might disadvantage these communities as there are backyard rentals and shack rentals even within traditional communities and thus a need to ensure that the proposed Bill does benefit all affected by the practice of rental within Gauteng, including the Amandebele Ba Lebelo (ABL) and the Amandebele Nzunza Sokhulumi (ANS) traditional communities now residing in Gauteng since the merger of Tshwane and the Metsweding District Municipality.

9. FINANCIAL IMPLICATIONS OF THE BILL

The Portfolio Committee noted that the Memorandum does indicate that the costs associated with the implementation of the of the Legislation such as Publication for Public Comments, Information Sessions, Translation and other incidental costs would be defrayed from the Departments' budget.

Provincially, in terms of the establishment and operations of the Rental Tribunals the implication is that these would be incurred by the Provincial Department, as this has been the case in Gauteng as the Department of Human Settlements does allocate funds to the Tribunal. There will be additional financial implications as due to the proposed increase in size of the Rental Tribunal.

In terms of the implications of the establishment of Rental Housing Offices within municipalities, it was noted that there are no envisaged additional costs as the municipalities are expected to make provisions for designating employees but training would be provided by the Department.

10. POSITION ADOPTED BY THE PORTFOLIO COMMITTEE

The Gauteng Local Government and Housing Portfolio Committee support the Rental Housing Amendment Bill [B56B-2013] Section 76 as Amended.

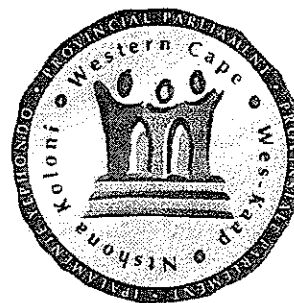
11. POSITION BY THE GAUTENG DEPARTMENT OF HUMAN SETTLEMENTS

The Gauteng Department of Human Settlements support the Rental Housing Amendment Bill [B56B-2013] taking into consideration the following comments:

- Resources attached to the requirements and institutional arrangements for both Province and Municipality;
- Capacity constraints of the Tribunals and their ability to respond to the possible growing case load;
- Enforcement of the Act at all levels; and
- Public engagement on the matter and the impact.

12. NEGOTIATING POSITION ADOPTED BY COMMITTEE

The Portfolio Committee on Local Government and Housing supports the principle and details on the Rental Housing Amendment Bill [B56B-2013] Section 76 be taking into consideration on the recommendation proposed above.



NEGOTIATING MANDATE

To:	Hon MP Sibande Chairperson: Select Committee on Public Service
Name of Bill:	Rental Housing Amendment Bill
Number of Bill:	[B56B-2013]
Date of deliberation:	17 March 2014
Vote of Legislature:	The Standing Committee on Human Settlements begs to report that it confers on the Western Cape Permanent Delegate in the NCOP the authority not to support the Bill with the attached amendments.
 Signature	<u>17/03/2014</u> Date
Hon. AM Figlan Chairperson: Standing Committee on Human Settlements	

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COMMITTEE REPORT

(Negotiating Mandate stage) Report of the Standing Committee on Human Settlements on the *Rental Housing Amendment Bill [B56B-2013]* (NCOP), dated 17 March 2014, as follows:

The Standing Committee on Human Settlements, having considered the subject of the *Rental Housing Amendment Bill [B56B-2013]* (NCOP) referred to the Committee in terms of Rule 220 reports that it confers on the Western Cape's delegation in the NCOP the authority not to support the Bill.

The Committee resolved:

Not Support the Bill based on the following:

1. Section 9(4) of the Local Government: Municipal Systems Act, 2000 (read with section 9 as a whole) provides, in paraphrase, that a Minister initiating national legislation that assigns a function to a municipality, must request the Financial and Fiscal Commission to make an assessment of the financial implications of the legislation before the legislation is introduced into the National Parliament. To the extent that this legislative requirement has not been satisfied, the Rental Housing Amendment Bill [B 56B – 2013] (notably clause 14) is invalid.
2. The Constitutional Court judgment in *Doctors for Life International v The Speaker of the National Assembly and Others CCT 12/05* ("the judgment") is well-known and requires that reasonable provision for public involvement in the legislative processes of provincial legislatures be made.

The Rental Housing Amendment Bill [B 56B – 2013] was made available by the NCOP for provincial mandates to be finalised in a very short period.

The Rental Housing Amendment Bill [B 56B – 2013] creates a multitude of rights and obligations operative in the private and public spheres. It is not possible to give effect to the principles stated in the judgment to facilitate public involvement in such an unreasonably short period.

A minority view was presented by the ANC (Member Magaxa) who indicated that the ANC supports the Bill.


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AM FIGLAN

CHAIRPERSON: STANDING COMMITTEE ON HUMAN SETTLEMENTS

Date: 17 March 2014



Northern Cape
Provincial Legislature

**Portfolio Committee
on Cooperative Governance,
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Hon MP Sibande
Chairperson: Select Committee on Public Services

NEGOTIATING MANDATE

Name of the Bill: **Rental Housing Amendment Bill**

Number of the Bill: **B56B – 2013**

Date of deliberation: **Thursday, 13 March 2014**

Vote of the Legislature: **The legislature votes in favour**

(Subject to consideration of the proposed amendments)

Signature:
Hon GG Oliphant
Chairperson: PC on Cooperative Governance,
Human Settlements & Traditional Affairs

2014-03-13

Date:

Negotiating Mandate



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Reference: 16.7.1.1

Enquiries: Z Mitchell

NEGOTIATING MANDATE FOR RENTAL HOUSING AMENDMENT BILL [B56B – 2013] (Section 76 Bill)

1. INTRODUCTION

The Chairperson of the Portfolio Committee on Cooperative Governance, Human Settlements & Traditional Affairs, Hon GG Oliphant, tables the Committee's negotiating mandate on the *Rental Housing Amendment Bill [B56B – 2013]* as adopted by the Portfolio Committee on 13 March 2014.

2. PROCESS FOLLOWED

2.1 The Speaker of the Northern Cape Provincial Legislature, on receipt, referred the *Rental Housing Amendment Bill [B56B – 2013]* to the Portfolio Committee on Cooperative Governance, Human Settlements & Traditional Affairs on 27 February 2014.

2.2 On 06 March 2014, the Portfolio Committee on Cooperative Governance Human Settlements & Traditional Affairs received a briefing on the Bill from the Northern Cape's Permanent Delegate to the NCOP, Hon JR Tau, and the Provincial Department of Cooperative Governance, Human Settlements & Traditional Affairs.

2.3 The Portfolio Committee resolved at the meeting of 06 March 2014 to hold public hearings on the referred Bill in the Pixley Ka Seme Region to solicit the views of communities and stakeholders with regard to the *Rental Housing Amendment Bill*.

One (1) Public Hearing was held on 11 March 2014 as per Committee resolution and both written and oral submissions were called for. The public engaged with the Members of the Provincial Legislature in respect of the Bill.

On 13 March 2014, the Portfolio Committee on Cooperative Governance, Human Settlements & Traditional Affairs deliberated and considered the *Rental Housing Amendment Bill [B56B – 2013]*.

3. COMMITTEE INPUTS ON THE BILL

3.1 The practicality of implementation of outcomes of a Tribunal Court and that of a Magistrate Court is questionable and will be challenging.

3.2 Regulations should stipulate the description of "consent may not be unreasonably withheld" as stated in s4A(9).

4. STAKEHOLDERS'/PUBLIC INPUTS ON THE BILL

The following are inputs for consideration in the Bill:

4.1 The timeframe of the term of office of an individual appointed to the Rental Housing Tribunal in s9(4A) is not clear.

5. **WRITTEN SUBMISSIONS ON THE BILL**

There were no written submissions received on the Bill.

6. **STAKEHOLDERS POSITION ON THE BILL**

The majority of the stakeholders voted in favour of the Bill.

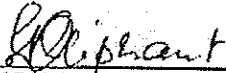
7. **PORTFOLIO COMMITTEE POSITION ON THE BILL**

After due deliberation, the Portfolio Committee on Cooperative Governance, Human Settlements & Traditional Affairs supports the Bill.

8. **COMMITTEE ADOPTION OF THE BILL**

The Committee adopted this negotiating mandate, duly signed by the Chairperson of the Committee.

The Committee recommends to the House to mandate the Permanent Delegates to participate in deliberations at the negotiating stage and to **support** the Bill taking note of the comments and recommendations raised by the Committee.



HON GG OLIPHANT

Chairperson: PC on Cooperative Governance,
Human Settlements & Traditional Affairs

2014-03-13