

**ECONOMIC DEVELOPMENT, ENVIRONMENT, AGRICULTURE AND RURAL DEVELOPMENT PORTFOLIO COMMITTEE**

### COMMITTEE REPORT ON THE NEGOTIATING MANDATE

### ON THE:

**EXPROPRIATION BILL [B4B-2015]**

**29th April 2016**

1. **INTRODUCTION**

The Chairperson of the Economic Development, Environment, Agriculture and Rural Development Portfolio Committee, Mr. Errol Magerman, tabled the Committee’s report on the Negotiating Mandate on the Expropriation Bill [B4B-2015].

1. **PROCESS FOLLOWED**

The Speaker, on 24th February 2016, formally referred the Expropriation Bill [B4B-2015] Section 76, to the Portfolio Committee on Economic Development, Environment, Agriculture and Rural Development referred to as the Committee, for consideration in terms of Rule 248 (1)(a) read with 250 (1) and 251.

On the 14th March 2016, the Permanent Delegate from the National Council of Provinces (NCOP), Honourable M E Makue gave a briefing to the Committee on the Bill. This was followed by a presentation by the National Department of Public Works on the detail of the Expropriation Bill [B4B-2015]. Subsequent to that, the Gauteng Department of Agriculture and Rural Development (GDARD) made a presentation on the views of the Executive on matters related to the Expropriation Bill [B4B-2015].

In the same meeting, a legal opinion and a research analysis focusing on the socio economic impact of the Bill were presented respectively by the NCOP and Legal Unit as well as the Research Unit from the Gauteng Provincial Legislature. .

In fulfilling its constitutional mandate the Committee published adverts in the following newspapers; The Star, Sowetan, Beeld and the City Press on the 15th and 17th April 2016 respectively. This was to enable the Committee to request members of the public and stakeholders to make comments on the Bill. Following that, the Committee convened three public hearings in the following areas: West Rand Region at the Mogale City Centenary Hall, Tshwane Region at the Atteridgeville Community Centre and lastly in Sedibeng Region at the Vereeniging Civic Centre from the 21st to 23rd April 2016.

The Portfolio Committee deliberated and adopted the draft report on the Negotiating Mandate of the Expropriation Bill [B4B-2015] in a meeting that convened on Friday, 29th April 2016.

1. **PRINCIPLES AND DETAILS OF THE BILL**

The principle of the Bill is to provide for the expropriation of property for public purpose or in the interest of the public and to also provide for matters connected therewith.

1. **OBJECTIVES OF THE BILL**

The Bill seeks to align the Expropriation Act of 1975 with the Constitution and to provide a common framework to guide the processes and procedures for expropriation of property by organs of state.

**5. OVERVIEW OF THE PUBLIC HEARINGS**

Public hearings were attended by stakeholders and members of the public who engaged on all matters related to the Bill. Various sentiments were echoed by all who attended and a summary of all inputs are highlighted below.

**6. SUMMARY OF STAKEHOLDERS SUBMISSIONS MADE DURING THE PUBLIC HEARING**

As part of its functions and obligation in line with the Constitution, the Committee held public hearings where written and oral submissions were made for possible consideration. The Committee received written submissions from the South African Institute for Race Relations, Vodacom Propriety Limited, Centre for Constitutional Rights and Dr Rapheso a representative for Black Farmers Association.

The summary of the written proposals states that;

* The definition of “property” has been considered in many submissions as being too broad. A more concise and descriptive definition that takes into account the broad nature of property would be ideal. Property is inclusive of immovable and movable property. Movable property by definition includes mining rights, patents, servitudes and other intellectual property rights and shares in listed in private companies.
* There have been further concerns that the Bill will have a negative effect on foreign direct investment, which under the current definition all fall under the wide definition of “property”. The Protection of Investment Act 22 of 2015 which provides, amongst other things, for the protection of investors and their investments defines and lists investments which the Act seeks to protect and regulate. These include;
* Shares, stocks, debentures, securities and other equity instruments
* Loans to an enterprise
* Mortgages, liens or pledges
* Claims to money or to any performance under contract having a financial value;
* Copyrights, know how, goodwill, or intellectual property rights such as patents, trademarks, industrial designs and trade names
* Returns such as profits, dividends, royalties or income yielded by an investment;
* Rights or concessions conferred by law or under contract, including licenses to cultivate, extract or exploit natural resources.
* Noting the ambiguity the definition of “property” presents, it is recommended that the definition of definition of “property” be amended to state in no uncertain terms the categories of property that may be expropriated or protected from non-compensable expropriation.

**7. POSITION BY THE GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT**

In line with the GPL Rule 248 (1) (b) the Committee sought the views of the relevant Member of the Executive on the Bill. The Gauteng Department of Agriculture and Rural Development supports the Expropriation Bill [B4B-2015] Section 76 based on the following reasons:.

* It stands will afford South Africa the necessary tool to provide a common framework to guide the processes and procedures for expropriation of property
* It is aligned to the Constitution
* It seeks to foster conditions which enable citizens to gain access to land on an equitable basis.

1. **SOCIO-ECONOMIC FINANCIAL IMPLICATIONS**

The Committee is of the view that the Bill may contribute to economic development and growth as government depends on private land for development projects such as roads wherein in most cases there have been delays due to the unavailability of land. The Bill would then seek to fast-track the process of acquiring the necessary land for public purpose or interest as stated. This however might have a negative effect as provided by Section 7 that the expropriating authority has a deciding power to continue with expropriation despite an agreement not reached. In addition, Section 22 asserts that the government has obligation to negotiate before expropriation except were the right to use property is taken in an urgent basis. This has a potential to scare investors or affect investor confidence negatively.

In terms of Section 5(3), the amount of compensation, and the time and manner of payment must be just and equitable; reflecting an equitable balance between the public interest and the interest of those affected. This implies that the Bill might enhance social equity. As highlighted by the Bill, equitable access to property or land may foster equality among the people, and this will address the imbalances of the past. It is important to emphasise that as much as the government has the right to expropriate land or property, it also carries the responsibility to ensure that those affected do not bear unfair share of costs, even though others would benefit. The government should ensure that the standard of living of those who might be affected is restored. It should therefore deal with the adverse impacts. The economic impacts can include loss of houses, businesses, or even temporary or permanent loss of income. All of these losses can be estimated or costed but the actual valuation of these losses can be intricate.

With regard to financial implications, the state is obligated to reimburse persons affected by expropriation. This means government will have to budget for the expropriation process. In case where the owner does not agree with the compensation amount, a process of mediation is recommended. Failure in the mediation process means that the court should be approached, and this means further financial costs might be required to settle the matter. Furthermore, the implementation of the Act will have financial implications for the Department of Public Works, in that it will;

1. establish capacity to provide guidance on the uniform procedures to all expropriating authorities; and

(b) be responsible for the development and maintenance of the expropriation register, which will require the development of a database accessible to the public and dedicated personnel.

1. **COMMITTEE’S RECOMMENDATIONS**

**The Portfolio Committee recommends that –**

* The proposed amendments on the Expropriation Bill [B4B-2015] are supported taking into consideration the concerns raised by the Stakeholders during the Committee Public Hearings.
* The definition of definition of “property” be amended to state in no uncertain terms the categories of property that may be expropriated or protected from non-compensable expropriation.

1. **NEGOTIATING POSITION ADOPTED BY THE COMMITTEE**

The Portfolio Committee on Economic Development, Environment, Agriculture and Rural Development supports the principle and details of the Expropriation Bill [B4B-2015] Section 76 with the proposed amendments.