The Democratic Alliance in the National Council of Provinces, hereby objects to the following definitions and/or clauses of the Expropriation Bill [B4D -2015], we request that our objections are recorded so as to reflect our opposition to the aforementioned Bill.

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| Definition/ section | Decision | Rationale  |
| ‘’Owner’’ | Opposed | The term “legal disability” is an ambiguous term, which raises issues of interpretation.  |
| ‘’Property’’ | Opposed | Section 25(4)(b) expressly states that property is not limited to land but does not give a precise definition. This definition is arguably too broad and creates a great deal of uncertainty as to what the state may expropriate. From the wording of section 25 it is arguable that only land and natural resources can be expropriated in the ‘public interest’ while expropriation for a ‘public purpose’ is an internationally accepted category and includes expropriations where the state needs to build roads, dams, electrical power lines etc. It is proposed that if there is certain property that is not subject to expropriation, then such property must be expressly stated so as to avoid uncertainty and the repercussions this will have for investment in our economy. And alternate definition should be as follows:“***Property****” for the purposes of this Act shall be limited to; any land; any interest in land; immovable real rights in land including the right of a lessee of the land but shall exclude intangible commercial interests, including, but not limited to securities as defined in the Financial Markets Act 19 of 2013, shares as defined by the Companies Act 71 of 2008, contractual rights such as revenue sharing contracts, concession and other similar contracts, intellectual property rights such as copyrights, patents, trademarks, trade and business secrets, any rights conferred by law to conduct economic and commercial activities including licenses, permits and authorisations.*  |
| ‘’Valuer’’ | Opposed | This definition only relates to the valuation of land, however the Bill provides for expropriation of property other than land. In instances where other forms of property are expropriated, who will value such property? The definition should be expanded to include the valuation of property which does not relate to land. Furthermore, this definition makes no mention of the Office of the Valuer-General which is in the process of being created following the passing of the Property Valuation Act (17 of 2014) last year. The purpose of this office is to determine the value of property, yet there is no mention of it in the new Bill.  |
| ‘’Expropriation’’ | Opposed | The definition for expropriation is too vague and should be defined as in section 25(2) & (3) of the Constitution of the Republic of South Africa. |
| Section 3(2) | Opposed | The Minister may be satisfied that the particular property is required, but there are other factors that the Minister may need to take into account such as the current use of the property and the people living on the land. These are factors that should be considered before a decision to expropriate is taken. Therefore it is recommended that the wording should state “may” instead of “shall” or “must”. The fact that the organ of state requires the property is simply not enough to go ahead with the expropriation, other factors have to be taken into account.  |
| Section 5(7) | Opposed | Subsection 2 empowers an expropriating authority to allow a person with necessary skills to enter upon a property to, *inter alia*, survey and dig or bore on or into the land. Subsection 7 provides for repairs or compensation for any damages that occur as a result. However, the repairs need only be done to a reasonable standard. The property should be repaired to the standard it was prior to damage as repairing it to a reasonable standard may cause the owner financial prejudice.  |
| Section 7(5) | Opposed | The Bill should include a subsection in the interests of reasonableness, fairness and administrative justice, should the expropriating authority decide to go-ahead with the expropriation after considering any objections and submissions, the expropriating authority should provide affected persons with reasons for rejecting their objections. |
| Section 8(3)(b) | Opposed | It is important that there is certainty as to what portion of land is being expropriated or the position of the right in land.  |
| Section 8(4)(b) & (c) | Opposed | It is important that there is certainty as to what portion of land is being expropriated or the position of the right in land.  |
| Section 9(1)(a) | Opposed | Section 9(1)(a) provides that ownership of the expropriated property vests in the expropriating authority on the date of expropriation contained in the expropriation notice. The date on which compensation is paid to the expropriated owner may be after the date of expropriation. The Bill thus allows an expropriating authority to potentially take up ownership before paying any form of compensation at all. This places great pressure on the expropriated owner to accept the compensation offered by the state rather than have it decided by a court.  |
| Section 9(1)(d) | Opposed | This section states that the property is subject to all rights registered in respect of third parties, except mortgage bonds, thus making mortgage bonds unsecured. |
| Section 9 (2)(a) | Opposed | This section provides two options for the transfer of possession, either on the date provided in the notice of expropriation or on a date agreed to between the expropriating authority and the expropriated owner/holder. This implies that where there is no agreed date for transfer of possession, then the date stipulated in the notice of expropriation applies. This is in conflict with section 26(3) of the Constitution. |
| Section 9(3)(a)&(b) | Opposed | These subsections impose an arguably unreasonable burden upon the expropriated owner/holder and could result in them being expected to do more than they had been doing prior to the expropriation process commencing.  |
| Section 9(3)(c) & 9(5) | Opposed | When interpreting these two provisions they appear to contradict one another. Section 9(3)(c) states that the expropriated owner/holder will be compensated for costs incurred in respect of care and maintenance following the date of expropriation. However, Section 9(5) states that the expropriated owner/holder remains responsible for the payment of municipal property rates and other charges, if applicable, and normal operating costs and maintenance in respect of the expropriated property |
| Section 12(1) | Opposed | The difficulty with this section is that it leaves the power to determine market value in the hands of the expropriating authority, however, there is no guarantee that they are equipped and skilled to fairly determine the market value. |
| Section 17(1) | Opposed | Many expropriated owners/holders may require payment of their compensation before they are able to find suitable alternative accommodation. In instances where agreement has been reached with regard to compensation at the time of expropriation and before the date on which possession transfers, it may be more appropriate for compensation to be paid at an earlier stage so as to provide the expropriated owner/holder with the opportunity to secure suitable alternative accommodation prior to the date on which possession of the expropriated property transfers to the expropriating authority. |
| Section 18(1) | Opposed | Section 18(1) of the Bill provides that where expropriated property is encumbered by a mortgage bond or subject to deed of sale the owner of the property and any financial institution or buyer in question will have to reach an agreement between themselves as to how the compensation will be paid out.Owners of land which is expropriated will not necessarily be compensated at market value and thus, where there is a mortgage bond over the property being expropriated, the compensation paid by the state might not only be less than the market value, but may fall below the amount owed to a bank or other financial institution in terms of the mortgage bond. This places banks and property owners in a very difficult position where loans cannot be seen as properly secured. Furthermore, expropriated owners may then be left without a house and still having to pay financial institutions for the outstanding amount owed. |
| Section 18(2) | Opposed | This creates an extra administrative hindrance to the expropriated holder. |
| Section 22(5) | Opposed | There must be a specific time frame outlining the time period for repayment, as it is currently worded the expropriated owner could be financially prejudiced.  |
| Section 22(6) | Opposed | The degree of repair must be outlined in the subsection as this could lead to a situation where the damaged property is repaired with sub-standard materials. |

We therefore request that the Select Committee on Public Works in the National Council of Provinces incorporate the above amendments in the Minority Report compiled by the Select Committee so as to reflect the position of the Democratic Alliance.