



COMMITTEES, PUBLIC PARTICIPATION & RESEARCH

Private Bag x2018
Mmabatho
2735

T : +27 (018) 018 392 7000
C : +27 (72) 632 0880

tsencab@nwpl.org.za

Legislature Building
Dr. James Moroka Drive
Mmabatho
2735

 northwestprovinciallegislature
 @NWPLegislature

COMMITTEES DIVISION

NEGOTIATING MANDATE

To: Mr TSC Dodovu (MP)
Chairperson of the Select Committee on Cooperative
Governance and Traditional Affairs

Name of the Bill: Housing Consumer Protection Bill

Number of the Bill: B10B 2021

Date of Deliberation: 05 May 2023

Vote of Legislature: North West Provincial Legislature vote in favour of the
Bill



Mr. A Motswana (MPL)
Portfolio Committee on Premier, Finance, Cooperative Governance,
Human Settlements and Traditional Affairs

08 May 2023



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NWPL PROPOSED AMENDMENTS

1. Section 42(2) of the Bill should be amended to make wall plate and roof leaks warranty cover duration from 2 to 5 years, after the finalisation of the construction of a home.
2. Addition of a provision as Section 24(1)(h), which will include that the register contemplated in section 23 of the Bill should also reflect compliance with Section 8 of the Employment Services Act (No.4 of 2014) regarding employment of the foreign nationals.



NORTH WEST PROVINCIAL LEGISLATURE

PORTFOLIO COMMITTEE ON PREMIER, FINANCE, COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS

COMMITTEE REPORTS

**REPORT ON THE HOUSING CONSUMER PROTECTION BILL
[B 10 B – 2021]**

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ACRONYMS

DHS – DEPARTMENT OF HUMAN SETTLEMENTS

NHBRC - NATIONAL HOME BUILDERS REGISTRATION COUNCIL

PFMA – PUBLIC FINANCE MANAGEMENT ACT

PAJA – PROMOTION OF ADMINISTRATIVE ACT

SAWIC – SOUTH AFRICAN WOMEN IN CONSTRUCTION

SAHRA – SOCIAL HOUSING REGULATORY AUTHORITY

1. INTRODUCTION

The Portfolio Committee on Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs exercises oversight over the Department of Human Settlements, Water and Sanitation through its assessment of the provincial-wide strategic support provided to NWPG departments. The Constitution of the Republic of South Africa, 1996 and the PFMA 1999 creates a basis on which oversight by Legislatures should be accomplished.

2. PROCESS FOLLOWED

The Housing Consumer Protection Bill [B10B - 2021] was formally referred by the Speaker, Honourable S.R. Dantjie to the Portfolio Committee on Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs for consideration and reporting.

The Portfolio Committee then received a presentation from the NCOP Permanent Delegate and National Department of Human Settlements, Water and Sanitation on the Housing Consumer Protection Bill [B10B - 2021] through a virtual meeting held on 4th May 2023. Following a briefing, the Committee embarked on Public Hearings throughout the province on 4th May 2023 held as follows; Ngaka Modiri Molema District - 300 (Zeerust Town Hall - Zeerust), Bojanala District – 238 (Rustenburg Recreation Centre - Cashan), Dr Ruth Segomotsi Mompati District - 287 (Mmabana Taung – Taung Village) and Dr Kenneth Kaunda District - 382 (Jouberton Hall - Matlosana). A total of 1207 people were reached in various districts of the province.

3. OBJECTIVE OF THE HOUSING CONSUMER PROTECTION BILL [B10B - 2021]

To provide for the protection of housing consumers; to provide for the continuance of the National Home Builders Registration Council as the National Home Building Regulatory Council; to provide for the registration of homebuilders; to provide for the enrolment of homes in order to be covered by the home warranty fund; to provide for the regulation of the conduct of homebuilders; to provide for the continuance of the home warranty fund; to provide for claims against the fund; to provide for the funds of the Council and for the management of those funds; to provide for procurement and contractual matters in relation to the building of a home; to provide for the enforcement of this Act; to repeal the Housing Consumers Protection Measures Act, 1998; and to provide for matters connected therewith..

4. PRESENTATION BY NCOP PERMANET DELEGATE ON HOUSING CONSUMER PROTECTION BILL [B10B-2021]

4.1. Purpose of the Bill

- The Housing Consumer Protection Bill, 2021 seeks to repeal the Housing Consumers Protection Measures Act, 95 of 1998 (“the Act”)
- The Act came into effect on 4 June 1999 and has been amended three times by the Housing Consumers Protection Measures Amendment Act 27 of 1999, the Housing Amendment Act 4 of 2001, and the Housing Consumers Protection Measures Amendment Act 7 of 2007.
- Both the Department of Human Settlements and National Home Builders Registration Council (“the Council”) have identified certain challenges with key provisions of the Act, which impact negatively on the efficient execution of the Council’s mandate, as requiring review.
- The Bill seeks to ensure adequate protection of housing consumers and effective regulation of the home building industry by, inter alia, strengthening the regulatory mechanisms, strengthening the protection of housing consumers, introducing effective enforcement mechanisms and prescribing appropriate penalties or sanctions to deter non-compliance by home builders.
- The Bill makes provision for reimbursement of a housing consumer, which may be deducted from an administrative fine paid by the home builder, for losses incurred.
- It further seeks to address economic transformation of the industry through the introduction of provisions relating to the warranty Fund surplus which may be utilised towards human settlements developmental programmes for the homebuilders.
- The Bill seeks to create enabling environment for new entrants into the home building industry through the introduction of contractual provisions that ensure their sustainability in the market.
- The Bill seeks to align and create synergy with other relevant pieces of legislation such as the Public Finance Management Act, 1999 and the Promotion of Administrative Justice Act of 2000.
- Chapter I of the Bill deals with the definitions, the application of the Act/ Bill and application of the Public Finance Management Act to the Council.
- The Bill makes provision for, inter alia, the definition of “build” to expand the protection afforded to housing consumers by including repairs, renovations, alterations and additions to an existing home under the Council’s regulatory regime.
- The scope of application of the Bill is extended to include not only builders who undertake homebuilding as business, but also owner-builders. Owner-builders are included in the definition of a “home builder” and are required to register with the Council (this is a homeowner who build his own house).

- The definition of “home” has been expanded to ensure regulation of the full spectrum of the housing market and provide protection to housing consumers who are not protected under the current Act (such as hostels).
- The Bill provides for an exemption by Minister, of a person or a home in exceptional circumstances and in the public interest, where the exemption is not contrary to the objectives of the Bill.
- Chapter II of the Bill seeks to provide for the continuation of the Council, established in terms of Section 2 of the Act, as a juristic person to be known as the National Home Building Regulatory Council. It further provides for the objectives of the Council, and governance structures of the Council.
- Chapter III seeks to provide for the registration of home builders and developers, the establishment of a register of home builders, the requirements for registration, suspension of registration, grading of home builders and liability of an unregistered home builder or developer. The jurisdiction of the Council extends to unregistered home builders.
- Chapter IV of the Bill seeks to provide for establishment of a register of enrolments, the enrolment of a home prior to the commencement of its construction by home builder, consequences for failure to enroll a home, duties in respect of a subsidy housing project and the consequences of a failure by Member of Executive Council or Member of Mayoral Committee responsible for Human Settlements or the Head of Department or City Manager, a social Housing Institution or subsidy housing delivery agent to comply with the provisions of the Act.
- Chapter V of the Bill seeks to provide for the funds of the Council, the home warranty fund- with additional funding through monies appropriated by Parliament as the Council’s regulatory mandate is a public function, management of funds, the fees of the Council, commencement and duration of the warranty, the maximum and minimum amount payable from the warranty fund, claims and limitations.
- Chapter VI of the Bill seeks to prohibit the procurement of services to build a home, which forms part of the subsidy housing project, from a home builder who is not registered with the Council, relies on a home that was not enrolled with the Council in his his/her tender submission, who previously failed to rectify or complete the rectification of structural defects, as directed by the Council, without reasonable grounds, or who fail to disclose any information prescribed by the Minister of Human Settlements.
- Chapter VII of the Bill seeks to provide for the enforcement of the provisions of the Bill, once enacted. It further seeks to provide for the appointment and duties of inspectors, the establishment and powers of the Compliance and Enforcement Committee, matters relating to administrative and substantive non-compliance and related penalties.
- The Bill further seeks to provide for alternative dispute resolution, criminal offences and sanctions.
- The Bill prohibits certain conduct and impose duties on inspectors, employees of Council and members of the Compliance and Enforcement Committee, to combat issues related to corruption, bribery and conflict of interest.

- The inspectors and employees investigating criminal offences in terms of the Bill have been given powers of a peace officer as defined in Section 1 read with section 334 of Criminal Procedure Act of 1977.
- The Bill provides an accountability mechanism for competent persons such as geotechnical engineers, architects and structural engineers, in respect of wilful conduct or gross negligence which compromises the structural integrity of a home. That competent person will be liable for such conduct and will be enforced in terms of the Bill.
- Chapter VIII of the Bill seeks to provide for various matter including Home Building Manual, the making of rules by the Council and of regulations by the Minister, the recovery of fees, vicarious liability, the personal liability of the members, directors, trustees of a home builder, duties of estate agent, financial institutions, conveyancers, the codes of conduct for Council members, home builders, developers and other industry role players. It further provides for transitional matters.

4.2. Economic, Employment and Infrastructure Development

- The Bill seeks to provide for warranty fund surplus to be utilised towards transformative human settlements developmental programmes which facilitate growth, skill development and economic transformation in the home building industry.
- It seeks to provide emerging home builders greater access and protection through equitable registration requirements, a grading system, the regulation of certain contractual matters and continuous development and training.
- a further inclusion of a provisions covering contractual matters between home builders, developers and employers are intended to contribute towards sustainability of emerging home builders and the growth of the home building industry

4.3. Implications to Provinces

- Provinces and National governments have concurrent jurisdiction in the matters that the Bill seeks to address, as a result the Bill is dealt with in terms of Section 76 of the Constitution.

4.4. Recommendations

- It is recommended that the Select Committee to note the objects of the Housing Consumer Protection Bill, 2021

5. ADVERTISING OF THE BILL

Stakeholders and communities were requested to submit written inputs.

Advertisements were posted on;

- North West Provincial Legislature Facebook page, North West Provincial Legislature Twitter handle
Regional newspapers
- The Mail, Klerksdorp Record and Rustenburg Herald
Community newspapers
- Ntsae Media (business INC and News fact) GIS Media, Ratlou News, Lekwa-Teemane Tribune, Molopo News and Tlhabane News, Taung Daily News, Tabea News, Mmega wa Dikgang.

Advertisements were broadcast on;

National radio stations

- Motsweding FM, SA FM and RSG FM

Community radio stations

- YOU FM, Mafikeng FM, Bophirima FM, Vaaltar FM, Kopanong FM, Star FM, Moretele FM, Mafisa FM and Bojanala FM.
- Bill was presented in a form of an interview on a Simulcast for the following Radio Stations; Bojanala fm; Bokone Bophirima fm, Mahikeng fm; Star fm, Moretele fm, Vaaltar fm.

PUBLIC INPUTS/CONCERNS

After the presentation by the Portfolio Committee, the public raised the following concerns;

6. BOJANALA DISTRICT

6.1. The department fails to effect punitive measures on recovery and penalising unperforming developers.

6.2. The Department of Human Settlements fails to attend to incomplete houses in various Municipalities, houses which have been duly inspected by NHBRC; gets handed over to communities with defects and cracks; which end up being attended to by the communities themselves.

6.3. The peace officers should be properly trained to enforce compliance and monitor conduct of unscrupulous practice and fraudulent activities of NHBRC.

- 6.4.** The Bill should strengthen measures to appoint contractors or developers informed by skills and competencies; and care should be taken with regard to capacity of certain developers.
- 6.5.** The square meters allocations to houses for the North West Province is too small for habitation.
- 6.6.** What should be done to officials who allowed construction where the Geotech was not approved or approved but ten years down the line communities are still waiting for houses.

7. DR KENNETH KAUNDA DISTRICT

- 7.1.** NHBRC must conduct awareness campaigns on their scope of work and operations.
- 7.2.** Wall plate warranty and roofing; be moved from 2 to 5 years.
- 7.3.** The Department of Human Settlements must conduct an audit in order to determine and verify all unoccupied housing units in various Municipalities; the unoccupied housing units remain danger zone as criminal activities easily take place within them.
- 7.4.** The communities enquired on the NHBRC registration requirements for the SMME`s.
- 7.5.** The Community deliberated on the quality of RDP house, which are not up to standard, have defects and cracks.
- 7.6.** There are no punitive measures effected by the Department of Human Settlements on Contractors who fail to complete houses.
- 7.7.** The Department of Human Settlements fails to attend to incomplete houses in various Municipalities

8. DR RUTH SEGOMOTSI MOMPATI DISTRICT

- 8.1.** Communities raised a concern if government assists when houses are damaged.
- 8.2.** How does the Bill assist to unify RDP houses built in all the Districts.
- 8.3.** The Communities wanted to know whether the Department of Human Settlements could consider donating some of the unoccupied housing units to the non-profit Organisations.
- 8.4.** The Department of Human Settlements fails to attend to incomplete houses in various Municipalities.

- 8.5.** There are vandalised houses, is there any action that is taking place, contractors and municipalities have financial setbacks due to this.
- 8.6.** A concern was raised on how will the Bill assist people who employ non-registered foreign nationals as building contractors.
- 8.7.** The communities wanted to know how the Bill will clarify the role of an Inspector.
- 8.8.** How does the Bill protect the communities that have long benefitted the housing units.
- 8.9.** Communities sought clarity on how the Bill will benefit communities that have relevant certificates in building; rather than employing foreign nationals.
- 8.10.** Communities raised a concern on the Home Warranty Fund, how the fund works and who are the beneficiaries.
- 8.11.** Communities requested the government to accredit municipalities to be able to build houses and capacitate inspectors.

9. NGAKA MODIRI MOLEMA DISTRICT

- 9.1.** A clarity was sought as to whether people with a criminal record qualifies for an RDP house.
- 9.2.** The Community deliberated on the quality of RDP house, which are not up to standard.
- 9.3.** The Department of Human Settlements is not affording communities of North West with opportunities for Building Contracts; instead, opportunities are given to Contractors outside the Province.
- 9.4.** NHBRC must conduct awareness campaigns on their scope of work and operations.
- 9.5.** There must be toll free line to report vandalism of RDP houses across the Province.
- 9.6.** Government must develop a strategy to assist the Department of Human Settlements with regard to spending on housing development, so as to avoid monies being returned to National Treasury.
- 9.7.** NHBRC must duly inspect RDP houses before handing over by the Contractors.

10. ADOPTION OF THE BILL

All districts voted in support of the Bill.

11. RECOMMENDATIONS BY THE PORTFOLIO COMMITTEE

The Committee recommends that;

- 11.1.** The Bill must be accommodative to Residents in Rural Villages, where proclamations are not formalised.
- 11.2.** With respect to the new funding streams proposed by the Bill, the Committee recommends that oversight must be enhanced and intensified on how monies will be appropriated and utilised.
- 11.3.** There must be smooth transition and synergy; issues of capacity would be addressed timeously.
- 11.4.** The Department of Human Settlements must start working on a proper plan and structure for new composition as proposed by the Bill.
- 11.5.** The Bill must detail how a Home Builder will be exempted in respect where, the Municipality is unable to assist with the approval of the plan.
- 11.6.** There must be smooth collaboration and effective inter-relations of all Entities with the Municipalities.

12. ACKNOWLEDGEMENTS

The Chairperson of Committee thanked all the present Members for their commitment to the oversight process of the Housing Consumer Protection Bill [B10B– 2021].

The Chairperson of Committee would also like to thank the support staff for contributing in compiling this report.

13. ADOPTION OF THE REPORT

The Portfolio Committee recommends that the House approve the passing of the Housing Consumer Protection Bill and mandates the North West Permanent Delegate in the National Council of Provinces to vote in support of the Housing Consumer Protection Bill [B10B – 2021] as tabled by the Minister of Human Settlements, Water and Sanitation.

I present to this House, the report of the Portfolio Committee on Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs for consideration and adoption.


HON. A. MOTSWANA

**CHAIRPERSON: PREMIER, FINANCE, COOPERATIVE GOVERNANCE,
HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS**

05/05/2023
DATE