



---

**REPORT OF THE PORTFOLIO COMMITTEE ON SMALL BUSINESS DEVELOPMENT ON THE ADOPTION OF THE B-BILL OF THE NATIONAL SMALL ENTERPRISE AMENDMENT BILL [B16 – 2023], DATED 04 DECEMBER 2023.**

The Portfolio Committee on Small Business Development (“the Committee), having considered the National Small Enterprise Amendment Bill [B16 – 2023] referred to it as section 75 and classified by the Joint Tagging Mechanism (“the JTM”) as a Section 76 Bill, reports the Bill with amendments [B16B-2023] as follows:

**1. THE CONTEXT AND BACKGROUND**

The National Small Enterprise Amendment Bill (“the Bill”) was tabled in Parliament in terms of National Assembly Rule 159 (1) (a) and (b) on 29 June 2023. The Cabinet endorsed the Bill for introduction to Parliament on 7 June 2023. The notice and an explanatory summary of the Bill were published in the Gazette as required by Rules of the National Assembly 276 (b) and (c) on 12 June 2023. Accordingly, the Parliament was satisfied that the Department had met all essential requirements for tabling the Bill. The Bill was tabled in the National Assembly as an Ordinary Bill with no implications for the provinces (NA - Section 75). It was subsequently referred to the Committee and the JTM for processing. However, the JTM, in line with Joint Rule 160, found that the Bill substantially impacts the interests, concerns and capacities of provinces as it proposes a new system where certain trade practices are (and may still be) declared prohibited trade practices within the small enterprises sector. As a result, the Committee was required to process the Bill in compliance with Section 76 bill procedures.

The objective of the Bill is to amend the National Small Enterprise Act, 1996, in order to amend, delete, insert and to substitute certain definitions; to provide for the report of the Advisory Body; to provide for the establishment of the Small Enterprise Development Finance Agency; to provide for the functions of the Agency; to ensure the provision of financial and

non-financial support services to small enterprises; to promote the development of sustainable and responsible co-operative banking; to provide for the establishment of the Office of the Small Enterprise Ombud Service; to enable an equitable trading environment for small enterprises through the provision of affordable and effective access to justice; to empower the Minister to declare certain practices in relation to small enterprises to be prohibited as unfair trading practices and make regulations relating to unfair trading practices; to provide for the transitional arrangements necessitated by the establishment of the Agency; to effect consequential or necessary amendments to the Co-operative Banks Act, 2007, and to the Co-operatives Act, 2005; and to provide for matters connected therewith.

## **2. TIMELINE OF PARLIAMENTARY ACTIONS**

Following the designation of the Bill as Section 76, the focus of attention became the public participation process. The process of public participation is governed by the Constitution, the Legislative Sector Public Participation Framework and few court judgements that have been very instrumental in shaping the public participation process. It is thus mandatory for Parliament to make its proceedings open to the public. This is to guide and ensure that processes validate and give effect to the constitutional commitment by Parliament. The following section tracks the primary activities the Committee pursued in processing the Bill, as well as the milestones and timelines.

- 2.1 The National Small Enterprise Amendment Bill was referred to the Portfolio Committee on Small Business Development on 29 June 2023. The Committee was briefed on the proposed amendments by the Department of Small Business Development on 30 August 2023. The Bill was published for public comments on 10 October 2023 from 10 November 2023 in national and regional newspapers, on the Parliament website, Twitter and Facebook.
- 2.2 The public hearings were set to begin on 26 October 2023 and end on 19 November 2023. Nonetheless, due to the voter registration weekend from 19 to 20 November 2023, the end date was eventually pushed to 23 November 2023. The provincial hearings were consequently held from 26 October 2023 to 23 November 2023.
- 2.3 The public hearings were attended by 4,933 people from all of South Africa's nine regions. A total of 508 of the 4,933 participants submitted oral submissions to the National Small Enterprise Amendment Bill, with the majority unreservedly supporting the Bill. A total of 401 (79%) speakers were in support of the Bill, while 31 (6%) of

those who spoke rejected it. A total of 78 (15%) of the speakers partially supported the Bill.

- 2.4 Those who were unable to speak or whose given time had expired without them concluding their comments were encouraged to respond in writing. The forms were distributed during the public hearings. As of 23 November 2023, the total number of written forms collected was 310. Of the 310 written inputs collected, an overwhelming 249 or 80 percent agreed with the Bill, 47 or 15 percent opposed it, while 14 or 5 percent were unsure or neutral.
- 2.5 As of 10 November 2023, there had been nineteen significant written submissions, three (3) from individuals and sixteen (16) from different organisations. Ten (10) of them requested oral presentations, and a meeting was scheduled for 28 November 2023 via a virtual platform. The hearings allowed stakeholders who had shown interest in making oral presentations of their written submissions.
- 2.6 The total number of electronic emails received as of 10 November 2023 was 392. The Committee meticulously collated and recorded the details of the individuals, email addresses, and reasons for supporting or opposing the Bill while processing the submitted contributions. Those who supported the Bill constitute 68% of the email respondents, those who rejected it makes up 19% and those who are neutral makes up 13%.
- 2.7 The Department responded to the issues raised during the public hearings, in the written submissions as well as oral submissions on 29 October 2023.
- 2.8 The Committee met twice on 30 November 2023. The purpose of the meetings was to deliberate on the public participation report and to discuss clause-by-clause analysis of the Bill. The meetings were robust and members made several constructive inputs to tighten the Bill. The latter meeting was attended by Parliament's Constitutional and Legal Services Office (CLSO) and the Office of the Chief State Law Adviser (OCSLA) to provide legal advice where appropriate. There were areas of obscurities in the Bill that needed further clarification from the drafters and the Department. The meeting mandated CLSO and OCSLA to convene an urgent meeting with the drafters of the Bill and the Department in order to verify and get certainty over a few clauses.
- 2.9 The public participation report was officially adopted on 01 December 2023. The Democratic Alliance reserved its right not to adopt the report. In the same meeting, both CLSO and OCSLA provided feedback to the Committee on a few issues that they had been mandated to canvass with the Department. This milestone marked the beginning

of the A-list discussions which occasioned the development of the B-Bill. Areas of contestation and disagreement were ironed out and members agreed on several amendments, rephrasing, amplification and outright deletion of some words or clauses.

2.10 Both the drafts A-List and B-Bill were subjected to further scrutiny and examination by the CLSO and OCSLA until final draft versions were produced for consideration and adoption by the Committee on 5 December 2023.

### **3. CONSIDERATION AND ADOPTION OF THE A-LIST AND B-BILL**

On 05 December 2023, the Committee deliberated clause-by-clause on the A-list and the B-Bill. Members of the Committee present at the meeting approved both the A-List and the B-Bill. The following Members were present -

- ANC (Ms. VS Siwela, Mr. F Jacobs, Mr. HG April, Ms. L Lubengo, Mr. TE Myeni, Ms. KB Tlhomelang)
- DA (Mr. HC Kruger, Mr. JN De Villiers, Mr. M Mabika)
- EFF (Ms. B Mathulelwa)
- IFP (Inkosi BN Luthuli)

### **4. THE AMENDMENTS AGREED TO BY THE COMMITTEE ARE AS FOLLOWS -**

#### **CLAUSE 4**

1. On page 7, in line 2, to omit “domestic” and to substitute “inclusive”.
2. On page 7, in line 5, after “functions” to insert “, including, subject to availability of resources, facilitating the devolution of such implementation at the municipal level”
3. On page 8, in line 12, after “collectively,” to insert “are representative of the nine provinces, and”.

#### **CLAUSE 5**

1. On page 9, in line 36, to omit “functions” and to substitute “in relation to the powers and functions of the Ombud”.
2. On page 9, in line 38, after “vacancy” to insert “, following a transparent nomination process and a shortlisting by the National Assembly,”.
3. On page 9, in line 45, to omit “seven” and to substitute “five”.

4. On page 10, in line 2, to omit “seven” and to substitute “five”.
5. On page 16, in line 2, after “records” to insert “, including electronically,”.
6. On page 17, in line 11, after “may” to insert “on recommendation of the Ombud”.
7. On page 17, in line 13, to omit “(5)” and to substitute “(4)”.
8. On page 17, from line 29, to omit subsection (3), and to renumber the following subsections accordingly.
9. On page 18, in line 15, to omit “(7)” and to substitute “(6)”.
10. On page 18, in line 20, to omit “(6)” and to substitute “(5)”.
11. On page 18, in line 20, to omit “(7)” and to substitute “(6)”.
12. On page 18, in line 21, to omit “(8)” and to substitute “(7)”.

## **5. ACKNOWLEDGEMENT**

The Committee would like to express special gratitude to the Parliamentary staff who worked diligently despite challenging circumstances to make sure that the mission of amending the National Small Enterprise Act was completed successfully. The nationwide public participation was a huge success, thanks to the Members of this Committee for their enduring commitment in ensuring that the fate of small businesses in this country is changed for the better. Lastly, the Committee is indebted to the Members for having attended and participated in the 05<sup>th</sup> of December 2023 meeting at which the A-list, B-Bill, and the Committee report on the National Small Enterprise Amendment Bill were examined and adopted.

## **6. COMMITTEE RECOMMENDATION**

The Portfolio Committee on Small Business Development, having considered the subject of the National Small Enterprise Amendment Bill [B16 – 2023] (National Assembly – Section 75), referred to it and classified by the Joint Tagging Mechanism as a Section 76 Bill, recommends that the House adopts the Bill with amendments [B16B - 2023].

Report to be considered.