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**GAUTENG**  
LEGISLATURE

**HOUSING PORTFOLIO COMMITTEE  
NEGOTIATING MANDATE  
OF THE HOUSING DEVELOPMENT AGENCY BILL [B1B-2008]**

(Section 76)

23 May 2008

**1. INTRODUCTION**

The Chairperson of the Housing Portfolio Committee, Mr C G Tsotetsi, tables the Committee's Negotiating Mandate on Housing Development Agency Bill [B1B-2008], Section 76 Bill.

**2. PROCESS FOLLOWED**

The Speaker formally referred the Housing Development Agency Bill [B1B-2008], a Section 76 Bill to the Housing Portfolio Committee for consideration and report in terms of Rule 232 (1)(a) read with 235(4), (6) and (7) on the 12 May 2008. The Chairperson, Mr Godfrey Tsotetsi, tables the Negotiating Mandate on the above-mentioned Bill as follows:

The Committee Researcher presented an analysis on the social and economic impact of the Housing Development Agency Bill to the Committee on the 15 May 2008 followed by a briefing on the content of the Bill by the NCOP Permanent Delegate, Member Abram Mzizi on the same day 15 May 2008. Furthermore, the Department of Housing made its submission on the Bill during a Committee meeting on the same day 15 May 2008.

In keeping with Legislature's constitutional mandate of promoting and facilitating public participation in the law making process, the Portfolio Committee conducted a Public Hearing on the referred Bill at the Johannesburg City Hall on Thursday, 22 May 2008.

The Committee obtained a Legal opinion on the Bill from the Legal Unit of the GPL on the 23 May 2008.

On 23 May 2008, the Committee deliberated on the Bill and adopted the Negotiating Mandate on Housing Development Agency Bill [B1B-2008], Section 76 Bill

### 3. PRINCIPLE OF THE BILL

To establish the Housing Development Agency, to provide for its functions and powers; and to provide for matters connected therein

#### OBJECTS OF THE BILL

- Identify, acquire, hold, develop and release state and privately-owned land for residential and community purposes and for the creation of sustainable human settlements;
- Project manage housing development services for the purpose of creating sustainable human settlements;
- Ensure that there is centrally coordinated planning and budgeting of all infrastructure required for housing development and;
- Monitor the provision of all infrastructure required for housing developments.

### 4. OVERVIEW OF PUBLIC HEARINGS & SUBMISSIONS

The Bill was supported given its support of the BNG strategy, with the following comments taken into consideration:

#### CONCERNS RAISED:

- The working relationship between the Municipalities and the HDA emanating from the Bill.
- Whether the HDA will work with organised community structures that deal with issues of housing
- The public hearing does not include the elite and yet they own most of privately-owned land
- The non-involvement of Traditional Leaders and organisations such that issues of land take into consideration conducive space for cultural practices and activities, such as initiation schools. This is a relevant point as there is an indication that Traditional Leaders were not consulted on the Bill.
- Generally accredited standards for the format of legislation in terms of providing sections on the scope, application and objectives of the Bill have not been complied with.
- The Bill emphasises the agreement between the Agency and municipalities, which causes potential legislative and implementation challenges.
- A municipality may not contract with the Agency for the land that is not registered or vested in it.
- Provision of Clause 5(4): on the Role of the HDA stating that 'this Act does not detract from the Powers of a Province or Municipality to identify, acquire, hold, develop and release state and privately-owned land for residential and community purposes and for the creation of sustainable human settlements' as mandated by the Housing Act of 1997 is unclear as to the role of all Spheres of the Government in this regard and this has potential for conflict.

- Provision of Clause 7: 3(a)(b)& © in relation to the 'Functions of the HDA' regarding the role of the HDA in housing development plans does not seem to take into account the Municipal Housing Development Plans (MHDPs) & IDP's.
- Provision of Clause 11(d): Creates opportunity for people who committed serious crimes such as murder, prior 1993.

## RECOMMENDATIONS FROM THE PUBLIC

### Governance Issues

- The Bill should outline how provinces are to be involved in the process and how Chapter 3 of the Constitution (Co-operative Government) will be applicable as far as the relationship between Agency and the Provincial Housing Departments
- The Bill should clarify as to how the Agency will operate so as not to draw skills and capacity from both the municipal and provincial role players taking into consideration capacity issues in the housing sector, as the new Agency will put further demand on an already limited capacity in terms of required skills in the housing market.
- There should be a pilot in some provinces/municipalities to identify possible teething problems regarding issues of capacity within the HDA.
- There should be Provincial and Local Agencies established that will report to the MEC and the MMC respectively and this will promote accessibility and accountability.
- The funding of the Bill should be finalised to expedite implementation.
- Clause 9 should be reviewed such that the Governing Board also include community members from local structures.
- The Bill should ensure that the HDA participate in the IDP processes.
- There should be constant workshops held with the communities to raise awareness on housing related issues.
- The following operational issues should be covered by the Regulations:
  - The involvement of local, emerging contractors should be encouraged.
  - Establishment of a Project Management Unit within the HDA that will conduct capacity building workshops for these local, emerging contractors.
  - The establishment of the HDA as a Special Purpose Vehicle has to be considered to ascertain that it is in line with the processes as entailed in the PFMA.
  - The Bill should clearly outline the role of the HDA
  - The Bill should enable the HDA to conduct land audit.

### Land Issues:

- The Bill should encourage private land owners to sell land to the HDA first.
- The Bill should prohibit land owners to be developers at the same time as this delays development in the informal settlement and rather recommend that they just sell it to the HDA.
- The Bill should be strengthened around the expropriation of Bill given the vacant mine dumps with adverse environmental impact which are then utilised as factory sites as opposed to housing developments

- There should be a maximum period of three (3) years for private owned land to remain vacant and should be expropriated immediately and released for housing development
- The Bill should be clear as to how it will shorten the land acquisition process through expropriation.
- The Bill should enable the HDA to restrict municipalities from selling land that is earmarked for housing development to curb the sale of land to private developers with bonded houses to the detriment of low-cost housing.
- The land owners should indicate the price of land prior to restitution of land due to degradation, such that the HDA can undertake the clearing or improvements thus minimising the cost of acquiring the land.
- The Bill should enable the HDA to expropriate unoccupied, dilapidated buildings in the innercity and avail them for affordable housing developments.
- The Bill should take into consideration the reservation of land for cultural practices and activities.

## 5. FINANCIAL IMPLICATIONS AND SOCIO-ECONOMIC IMPACT ASSESSMENT OF THE BILL FOR THE PROVINCE

### 5.1. FINANCIAL IMPLICATIONS

The financial implications of the Bill have not been finalised.

The Department of Housing is budgeting for the operational cost of the Agency, therefore there must be a clear indication as to:

- With effect from which FY, and
- The Estimated financial implication year-on-year.

Since the Housing Development Agency is a Special Purpose Vehicle, the respective organs of State will be responsible for the funding of projects undertaken by the Agency on their behalf. (ie. as per their respective Agency Agreement) and it has to be noted that it takes a minimum of 18 months as per the PFMA to register a public entity.

### 5.2. SOCIO-ECONOMIC IMPACT

With regards to the socio-economic impact of the Bill the Gauteng Department of Housing welcomes the Bill as:

- This Bill contributes to the realisation of the Comprehensive Plan for the Development of Sustainable Human Settlements (BNG) as the rapid release of well located land is a key cornerstone and there has been bottle-necks in this regard.
- The Bill is in essence, an enabling law that will support the government's program of eradication of informal settlements and accelerating land acquisition and development.
- The Agency will offer assistance through its skill and expertise to any organ of state where there is a lack of capacity to acquire and develop land for housing
- The Agency will further serve as a catalyst to social cohesion, racial integration, job creation and economic growth.
- The HDA will be an agent to the organs of state such as municipalities and provincial departments as per the envisaged agency agreement.

## 6. COMMITTEE COMMENTS AND CONCERNS

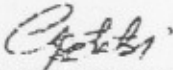
- The Bill does not adequately address nor define the roles and relations between the HDA and the Provincial Governments and this might result in conflict
- Provisions of Clause 7: 3(a)(b)&(c) in relation to the 'Functions of the HDA' regarding its role in housing development plans do not seem to take into account the Municipal Housing Development Plans (MHDPs) & IDP's.
- The Bill seeks to give effect to the provisions of Sections 6 to 23 of the Expropriation Act. It is interesting to note further that there is an Expropriation Bill currently before Parliament, introduced in the National Assembly as a section 75 bill (B16-2008), which will substantially amend the 1975 Act and bears considerable significance to this bill. To that effect, it cannot be established with certainty at this point the extent to which the implications of the Expropriation bill have been factored into this bill. It is our submission that once the Expropriation bill is promulgated, Parliament may be compelled to amend the Housing Development bill to ensure consistency with the two statutes.
- In terms of the Promotion of Administrative Justice Act, administrative action means any decision taken, or any failure to take a decision, by an organ of state exercising a power in terms of the Constitution or performing a public function in terms of any legislation, which adversely affects the rights of any person. It is common knowledge that the ramifications of the above purposes of the bill will have the effect of an 'administrative action', which require strict compliance and failure thereto will result in legal challenges.
- The indication that the Bill was not referred to National House of Traditional Leaders and yet some land is owned by traditional communities might pose a challenge towards the realisation of the Objects of the Bill.
- There is no indication of adequate consultation with stakeholders such as, Land Affairs, Public Works, Provincial Local Government, and SALGA. This is a concern as the Minister has to designate members from these Departments to the Governing Board
- Clause 11(d): Might create opportunity for people who committed serious crimes such as murder, prior 1993.
- The potential invasion of land identified by the HDA before it is released for housing development.

## 7. COMMITTEE RECOMMENDATIONS

- ① • The provision of Clause 5(4): on the Role of the HDA stating that 'this Act does not detract from the Powers of a Province or Municipality to Identify, acquire, hold, develop and release state and privately-owned land for residential and community purposes and for the creation of sustainable human settlements' as mandated by the Housing Act of 1997 should clearly state the role of all Spheres of the Government in this regard to avoid potential for conflict
- ② • Revision of provisions of Clause 7: 3(a)(b)&(c) in relation to the 'Functions of the HDA' regarding its role in housing development plans such that they take into account the Municipal Housing Development Plans (MHDPs) & IDP's.
- ③ • There should consultation with the National House of Traditional Leaders as some land is owned by traditional communities and this might pose a challenge towards the realisation of the Objects of the Bill.
- ④ • The Committee to be satisfied that there was adequate consultation with stakeholders such as, Land Affairs, Public Works, Provincial Local Government, and SALGA given the fact that the Minister has to designate members from these Departments to the Governing Board.
- ⑤ • Revision of Clause 11(d): such that it does not create opportunity for people who committed serious crimes such as murder, prior 1993.
- ⑥ • The Bill should give the HDA the responsibility of addressing the issue of land invasion, especially in respect of identified land until it is released for development.
- ⑦ • The Provision on the expropriation of land by the HDA should clarify the expected role if any, of the Department of Land Affairs as the expropriation of land is a competency of this department.
- ⑧ • The Bill should stipulate that the HDA will expedite the Geo-technical investigations on identified land to avoid housing development on dolomitic soil conditions and wetlands.
- ⑨ • The Regulations referred to in Clause 32 should cover all concerns raised, especially public input and be availed to the NCOP & Committee before being publicised.

## 8. NEGOTIATING POSITION ADOPTED BY COMMITTEE

The Housing Portfolio Committee supports the principle and details of the Housing Development Agency Bill [B1B-2008]

  
Godfrey Tsotetsi  
Chairperson: Housing Portfolio Committee

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Wes-Kaapse Provinsiale Parlement  
Western Cape Provincial Parliament  
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**NEGOTIATING MANDATE OF THE HOUSING DEVELOPMENT AGENCY  
BILL [B1B-2008] (NCOP)**

Negotiating mandate of the Western Cape Provincial Parliament on the *Housing Development Agency Bill [B1B-2008]* (NCOP), as resolved by the House on 3 June 2008.

The Western Cape Provincial Parliament, having considered the subject of the *Housing Development Agency Bill [B1B-2008]* (NCOP), referred to the Provincial Parliament in terms of the rules of the National Council of Provinces (NCOP), begs to report that it confers on the Western Cape's delegation in the NCOP the authority to support the Bill with the following amendments:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

**CLAUSE 7**

1. On page 5, in line 38, to omit ["and"].
2. On page 5, in line 39 to omit [.] and insert "; and".
3. On page 5, after line 39, to insert the following paragraph:

"(m) take cognisance of the integrated development plans for municipalities and the provincial spatial development frameworks."

4. On page 5, in line 51, after "purposes" to add "in accordance with integrated development plans and provincial spatial development frameworks";.



Handwritten notes and stamps on the right margin, including a stamp that reads "RECEIVED" and "Ca" followed by a large handwritten number "200" and other illegible markings.

**CLAUSE 9**

1. On page 6, in line 12, after "members" to insert "being the chief executive officer and the chief financial officer, who serve as ex officio members".

**CLAUSE 12**

1. On page 7, in line 44, to omit ["10"] and substitute with "11".

**CLAUSE 13**

1. On page 7, in line 52, to omit ["8"] and substitute with "9".
2. On page 7, in line 53 and 54, to omit ["may appoint"] and substitute with "designated".
3. On page 7, in line 55, to omit ["The"] and insert "After due process the".

**CLAUSE 32**

1. On page 13, in line 28, to amend words preceding subclause (2) as follows:

"(2) After consultation, [The] the Minister may, [after consultation with the Agency and Parliament,] make and table regulations for approval by Parliament regarding-".

**The explanatory note on the amendment of Clause 32**

This amendment is submitted with the understanding and interpretation that this Bill is dealt with as a section 76 Bill and therefore the regulations empowered by this enactment will also be handled through the process followed when making legislation in terms of section 76 of the Constitution.



**S E BYNEVELDT  
SPEAKER  
3 JUNE 2008**





## FREE STATE LEGISLATURE

### LOCAL GOVERNMENT AND HOUSING COMMITTEE

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Report on the negotiating mandate regarding Housing Development Agency Bill  
[B- 1B-2008]

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#### 1. Terms of Reference

The Housing Development Agency Bill [B 1B-2008] has been referred to the Local Government and Housing Committee by the Speaker.

#### 2. Briefing

- (1) On Thursday, May 22, 2008, Hon. N van Rooyen, accompanied by Mr Khwezi Ngwenya (Legal Advisor) and Mr Morris Mngomezulu (Housing Institute), briefed the Committee on the content of the Bill;
- (2) The Committee further met on Tuesday, June 3, 2008 to confer the negotiating mandate on this Bill; and
- (3) The legal advisor, Adv M.J Machaka, briefed the Committee on the legal aspects of the Bill.

### 3. Consultation

The Committee considered the scope of consultation on the Bill and resolved that the Public Hearings be conducted on the Bill. Public Hearings were conducted as follows:

May 31, 2008	09:00	Botshabelo (Nicro Hall, C Section)
May 31, 2008	09:00	Heilbron (Town Hall)
May 31, 2008	09:00	Henneman (Phomolong Hall)
May 31, 2008	09:00	Clarens (Town Hall)
May 31, 2008	09:00	Edenburg (Phaladi-Phetlhu Hall)
May 31, 2008	09:00	Virginia (Meloding Hall)

### 4. CONSIDERATION

The Committee considered the Bill, inputs and information received. The Portfolio Committee noted the inputs by the general public and further considered the Bill as follows:

- (a) the issue around township registers must be attended to as a matter of urgency so that the Government is able to estimate the size of land to be acquired;
- (b) clause 6(1) mentions "hold" land. This must be clarified in the definitions;
- (c) under clause 7(2)(e), it is not clear what is meant by "*ensure that community participation takes place*";

- (d) clause 12(1) indicates that the Minister must call for interested persons to submit names of persons. This action excludes the other three (3) members nominated by other Ministers. For transparency, the same procedure must be followed by the other three (3) Ministers;
- (e) clause 12(4) addresses the issue of the nomination committee. No mention is made for any compensation to them;
- (f) clause 12(6) must include "The Minister must appoint the members of the governing board, *after advice from and consultation with the nomination committee* and, by notice of .....
- (g) clause 25 incorrectly refers twice to "section 25". It can be "subject to this section"
- (h) there must be a policy for construction of houses which will ensure monitoring and assessment of houses to be built properly;
- (i) monitoring and specifications should be strengthened in order to assist for example, the aged, who are not able to register or lodge complaints regarding poor workmanship on houses;
- (j) selling land to foreigners makes it difficult for South Africans to access land;
- (k) a time frame should be set with regard to buying land for development (how long after purchasing should you develop such land);
- (l) the municipality utilized unskilled labourers to repair and to build the RDP houses in Phomolong community (most of the houses had cracks and they were leaking);
- (m) the houses that were built as early as 1956 are dilapidated and needs repair.
- (n) some residents were registered to get Masakhane houses which were never allocated to them. The system indicates that they are the owners of such houses and that makes it difficult for them to get RDP houses;

- (o) some people were forcefully removed from their residences and relocated to Phomolong, not all people were compensated. The Municipality must do a follow-up on the matter as to why some people were not compensated accordingly;
- (p) a survey be conducted to verify the ownership of RDP houses before the acquisition of land is done;
- (q) the Bill must be clear regarding the plan to address the incomplete houses and poor workmanship (for example RDP houses and Masakhane projects);
- (r) some people bought land without following the correct procedures;
- (s) it is required to work through a lawyer to change ownership of a title deed and most people cannot afford that;
- (t) illegal squatters should be considered under this Bill and be allocated houses as well;
- (u) the Khayaletu housing in Botshabelo had many problems (they are old and dilapidated) and it needed serious intervention (people were told to stop paying and after a while they were told to start paying again);
- (v) the Committee was informed that the title deeds for the Thusano houses (the Council decided that those houses should be given to the residents) were still awaited in Botshabelo;

5. Resolution

The Committee resolved that:

- (a) Authority be conferred to the Free State Delegation, to vote for the adoption of the Bill with the aforementioned inputs and considerations.



Mr. P. Z. MATOSA  
Speaker  
FREE STATE LEGISLATURE  
June 3, 2008



**EASTERN CAPE PROVINCIAL LEGISLATURE**

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Date: 03 June 2008

**PORTFOLIO COMMITTEE ON HOUSING**

Negotiating mandate on the Housing Development Agency Bill (B1B-2008)

1. ***Terms of reference***

The Housing Development Agency Bill (B1B-2008), hereinafter referred to as the Bill, was referred to the Joint Portfolio Committee on Housing and Local Government and Traditional Affairs by the NCOP Business Committee for consideration.

2. ***Consideration of the Bill***

The Joint Committee was briefed on the content and effect of the Bill by the NCOP Permanent Delegate, Hon. B Dlulane with the assistance of Hon. D Neer. The Joint Committee also conducted public hearings on the Bill from 26<sup>th</sup> May 2008 to 30<sup>th</sup> May 2008. Thirty two public hearing meetings were conducted in the following areas, namely, Nelson Mandela Metropolitan Municipality, Cacadu District Municipality, Amatole District Municipality, OR Tambo District Municipality, Chris Hani District



Municipality, Ukhahlamba District Municipality and Alfred Nzo District Municipalities.

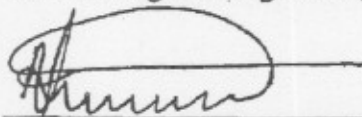
**3. *Negotiating mandate of the Committee***

The Joint Committee supports the spirit and purpose of the Bill but wishes to raise the following issues for consideration:

- 3.1 The composition of the Housing Development Agency Board should include all stakeholders such as community based organisations including traditional leaders.
- 3.2 The Agency must have offices at both provincial and local government so that they may be accessible to communities.
- 3.3 The Bill must provide for the term of office for executive members of the Board.
- 3.4 The Bill must clarify oversight role of the national parliament and legislatures over the Agency since housing development is a concurrent national and provincial competence, hence the proposal in paragraph 3.2 above.

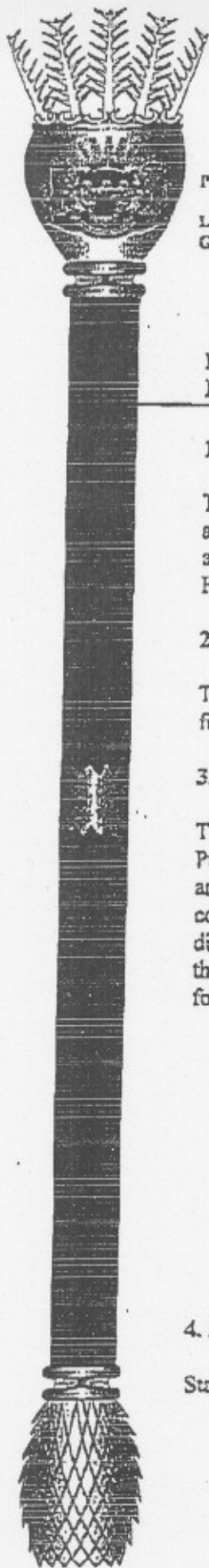
**4. *Resolution***

That Hon. M Gogo be mandated to represent the Province at the meeting considering the negotiating mandate.



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**N. KIVIET**  
**SPEAKER: EASTERN CAPE PROVINCIAL LEGISLATURE**



# Limpopo Legislature

## OFFICE OF THE SECRETARY

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### NEGOTIATING MANDATE ON HOUSING DEVELOPMENT AGENCY BILL, 2008 [B 1-2008]

#### 1. INTRODUCTION

The Housing Development Agency Bill, 2008 [B 1-2008] was introduced in the august House from the National Council of Provinces (NCoP) and the Bill was accordingly referred to the Portfolio Committee on Local Government and Housing for consideration and inputs.

#### 2. OBJECTS OF THE BILL

The Bill seeks to establish the Housing Development Agency; to provide for functions and powers; and to provide for matters connected therewith.

#### 3. CONSIDERATION OF THE BILL

The Portfolio Committee met the Permanent Delegate to the National Council of Provinces (NCoP) on 15 May 2008 to receive a detailed briefing on the principles and objects of the Bill. It was in this meeting that the Committee decided to conduct a provincial public hearing in which various stakeholders from the five district municipalities of the province attended to give their inputs and views on the Bill. The hearing took place on 28 May 2008. Present in this hearing were the following:

1. Department of Local Government and Housing
2. Traditional Leaders
3. Youth organizations
4. Political parties
5. Business community
6. Women organizations
7. Developers / contractors
8. NGO's and
9. South African National Civic Organizations (SANCO)

#### 4. INPUTS FROM THE STAKEHOLDERS

Stakeholders made inputs as follows:

- 4.1 The Bill is not clear on representation in the Board in terms of race, geographic locations, etc. All social groups should as far as it is possible, be represented in the Agency.
- 4.2 Staffing on the Agency should not be restricted to the seconded staff currently in the public service in the name of saving resources. It will be equally a cost-effective exercise if qualified and skilled people not currently in the employ of government can be recruited to the agency.
- 4.3 The Bill only talks about salaried non-executive members and exclude others
- 4.4 Land expropriation should be the last resort, i.e. where negotiations with land owners to release their land for community or residential development have exhausted. When expropriation occurs, it must be done in accordance with Expropriation Act.
- 4.5 Section 23(2) and (4) should be deleted as it is similar to section 23 (4).
- 4.6 Considering that almost 80 % of the land is communal which might be affected, it will be thoughtful that National House of Traditional Leaders be consulted in the process of implementing this Bill.
- 4.7 Communal land, much as state and private land should be included in the Bill.
- 4.8 Before this Bill is passed into law, key land should have been identified and its owners consulted in order to give full meaning of the Bill when implemented.

## 5. FINDINGS

The Committee, having considered the Bill, found that the Bill's enactment into law will address many the problem of residential or community development that the country is currently faced with. The Committee is convinced that the inputs made during the public hearing will result in the Bill benefiting communities in dire need of human settlement. The Committee supports the provisions of the Bill.

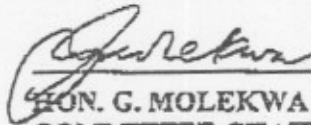
## 6. NEGOTIATING MANDATE

The Committee, having supported the provisions of the Bill recommends to the NCOP Delegates to negotiate in favour of the Bill taking into consideration the inputs made in the aforementioned paragraph.



**NEGOTIATING MANDATE ON HOUSING DEVELOPMENT AGENCY  
BILL, 2008 [B 1 2008]**

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HON. G. MOLEKWA  
COMMITTEE CHAIRPERSON



## Office of the Secretary

Eng: Dimakatso Mashogo  
Tel: (013) 766 1399/1147



**MPUMALANGA**  
PROVINCIAL LEGISLATURE

### NEGOTIATING MANDATE

#### HOUSING DEVELOPMENT AGENCY BILL [B1B-2008]

The Portfolio Committee on Local Government and Housing met on the 16 May 2008 for briefing by the Permanent Delegate to the NCOP on the Housing Development Agency [B1B-2008] (the Bill).

After consideration of the Bill and the public inputs made at the Public Hearings conducted on 20 May 2008, the Committee agreed to the proposed Bill and supports it.

The Delegation representing the Province of Mpumalanga in the National Council of Provinces is hereby conferred with authority and mandated to negotiate in favour of the Bill, taking into account the views and inputs of the public as contained in the attached Portfolio Committee Report.

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HON N. MAHLANGU  
CHAIRPERSON: PORTFOLIO COMMITTEE  
ON LOCAL GOVERNMENT AND HOUSING

03/06/08  
DATE