



ISISHAYAMTHETHO SAKWAZULU-NATAL

KWAZULU-NATAL WETGEWER

KWAZULU-NATAL PROVINCIAL LEGISLATURE

TO: THE CHAIRPERSON,

**SELECT COMMITTEE ON SECURITY
AND CONSTITUTIONAL MATTERS**

NEGOTIATING MANDATE

PROVINCE : KWAZULU-NATAL

**BILL : SECOND-HAND GOODS BILL
[B2B – 2008]**

PROVINCIAL PROCESS :

Provincial Portfolio Committee/s : Community Safety & Liaison Portfolio Committee
Portfolio Committee meeting date/s : Tuesday, the 2nd of SEPTEMBER 2008
Provincial NCOP meeting date/s : Friday, the 5th of SEPTEMBER 2008
Consultation : Parliamentary Legal Advisors, Special & Permanent Delegates

MANDATE OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE:

The Provincial Standing Committee on National Council of Provinces Matters met today, Friday, the 5th of SEPTEMBER 2008, to consider the **Second-Hand Goods Bill [B2B-2008]**

The following comments and amendments were proposed and considered on the Bill:

PROPOSED AMENDMENTS

• THE EFFECTS OF REGISTRATION AND CONTRAVENTION

The way the Bill is currently drafted in respect of clause 7 and 32 means that the only effect of such contravention is cancellation of registration by the National Commissioner. It is strongly recommended that the wording of both clauses is amended so as to address the need to make it an offence for a dealer who is operating in contravention of the prescribed certificate or any of the specified conditions.

• PENALTIES AND OFFENCES

1. Clause 32(2), whilst providing for penalties in respect of contraventions of Column 1 Schedule 3, it is silent on the issue of an offender who continues to be in contravention.
2. However, Clause 33 of the previous version of the Second-Hand Goods Bill [B2-2008], provided that a court convicting any person of an offence may, in addition to any other penalty imposed in respect of that offence—
 - (a) impose in addition a fine or imprisonment for a period not exceeding 30 days or to both a fine and such imprisonment for every day on which the offence continues;
 - (b) suspend or cancel any exemption granted;
 - (c) suspend or cancel any registration; or
 - (d) order that the second-hand goods that formed the subject of the charge against that person, be forfeited by the State.

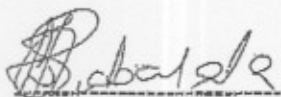
It is argued that the deterrent value, especially for larger organizations, is reduced by the removal of this provision and it may therefore not be as effective. It is therefore strongly recommended by the KZN Department of Community Safety and Liaison that this provision be reinstated.

- It is further recommended that the Bill considers the role and responsibility of the insurance industry which allows for the sale of vehicles which may not reasonably be built up and which are sold to second-hand parts dealers.
- It is proposed that the second-hand vehicle dealers must keep the photographic records of vehicles they receive.
- The further proposal is that the Bill must include that the scrap yard dealers, when the vehicle is sold as a scrap metal, must issue a dealer with a certificate confirming that the vehicle is not stolen.
- It is proposed that Chapter 5 must include a clause dealing with damaged vehicles that are written-off (second-hand parts).
- It is proposed that the definition of "valuables" as referred to in Schedule 1 must be broadened.

- It is proposed that irrigation equipment must be specifically included in Schedule 1, when dealing with the agricultural implements.
- It is proposed that scrap steel must be specifically included in Schedule 2 as one of controlled scrap metals.
- It is proposed that there must be a provision for prescribed trading hours and prohibition of second-hand goods dealers trading outside trading hours in order to avoid illegal sale of second-hand goods.
- It is proposed that a scrap metal dealer in copper must produce a certificate from the police confirming that he/she is entitled to trade in copper.

The Committee agreed to mandate the KwaZulu-Natal delegation to the National Council of Provinces to support the Bill provided that the above comments and proposed amendments are considered and consolidated in the Bill.

PROVINCIAL ENDORSMENT



Ms L F Shabalala

CHAIRPERSON :

KWAZULU-NATAL STANDING COMMITTEE ON
NATIONAL COUNCIL OF PROVINCES MATTERS

Friday, the 5th September 2008

DATE



OFFICE OF THE SPEAKER

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Date: 01 SEP 2008

The Chairperson
National Council of Provinces
Hon MJ Mahlangu

NEGOTIATING MANDATE FOR THE SECOND HAND GOODS BILL [B2B -2008]

(Section 76 Bill)

1. INTRODUCTION

The Acting Chairperson of the Portfolio Committee on Economic Affairs & Tourism, Hon EM Sulliman, tabled the Committee's negotiating mandate on the *Second Hand Goods Bill [B2B - 2008]* as adopted by the Portfolio Committee on 01 September 2008.

2. PROCESS FOLLOWED

- 2.1 The Speaker of the Northern Cape Provincial Legislature, on receipt, referred the *Second Hand Goods Bill [B2B - 2008]* to the Portfolio Committee on Economic Affairs & Tourism on 03 July 2008.
- 2.2 The Portfolio Committee received a briefing on the Bill from the Northern Cape's Permanent Delegate to the NCOP, Hon Van der Merwe on 21 August 2008.
- 2.3 The Portfolio Committee resolved to hold public hearings on the referred Bill in Springbok, Noupoot, Olifantshoek, Upington and Kimberley to solicit the views of the affected beneficiary communities and stakeholders with regard to the *Second Hand Goods Bill [B2B - 2008]*.
- 2.4 Five (5) public hearings were held on 25 August 2008 as per Committee resolution and both written and oral submissions were called for. The public engaged with the Members of the Provincial Legislature on their views.
- 2.5 On 01 September 2008, the Portfolio Committees on Economic Affairs & Tourism deliberated and considered the *Second Hand Goods Bill [B2B - 2008]*.

3. PUBLIC INPUTS ON THE BILL

3.1 SPRINGBOK:

- 3.1.1 The Bill should focus more on dealers in Second-hand goods.
- 3.1.2 Concern was raised regarding the R100 limit and the five year permit as stipulated in the Bill.
- 3.1.3 Dealers in scrap-metal products who make use of Agents to store their products should be prosecuted.
- 3.1.4 The Bill should specify the word 'register' in terms of second-hand goods.
- 3.1.5 Pawn-shop owners who keep goods for cash until they had received payment from clients should be dealt with by the Bill.
- 3.1.6 Dealers who alter or tamper with serial and/or other relevant identification numbers of goods should be prosecuted.
- 3.1.7 The timeframe for the safekeeping of stolen goods by the Police should be extended to more than the current one-week period.

3.2 NOUPOORT:

- 3.2.1 People buying stolen second hand goods should also be prosecuted.
- 3.2.2 The issue of allowing or recognising only goods above R100 for registration needs to be revisited.
- 3.2.3 All goods that are for sale should be registered.
- 3.2.4 The majority supported the Bill.

3.3 OLIFANTSHOEK:

- 3.3.1 How does Government regulate the prices of 2nd hand goods?
- 3.3.2 Bill should regulate or curb stolen goods from being sold at scrap yards.
- 3.3.3 The dealer must keep record of scrap metals sold by individuals and ensure that details such as ID numbers and addresses are recorded.
- 3.3.4 The community supports the bill.

3.4 UPINGTON:

- 3.4.1 Dealers should not do business with children selling scrap because of the possibility that the scrap could have been stolen from households in the community.
- 3.4.2 Dealers should be situated in designated areas and not in residential areas.
- 3.4.3 Copper, metal, etc should be bought according to certain regulations or restrictions and not just from anybody on the street to prevent goods stolen from for example Telkom or Eskom receiving entry to the market.
- 3.4.4 With reference to definition "Scrap Metal", Government should include an extra clause that excludes free trade and caters only for trade by acquisition from licence holders.

- 3.4.5 Clause 4 – Information on application by natural persons, the public felt that there should be an age restriction included in this clause.
- 3.4.6 The majority of the public supported the bill.

3.5 KIMBERLEY:

- 3.5.1 The public hearing did not take place in Kimberley.

4. COMMITTEE INPUTS ON THE BILL

- 4.1 The Bill should make provision for 'built up' vehicles as set out in the National Road Traffic Act.

5. LEGAL TECHNICAL INPUTS ON THE BILL

- 5.1 **General Provisions**, Chapter 9 – clause 42 "Application of Act and promotion of Administrative Justice Act, 2000", should preferably be placed in the beginning of the Bill.
- 5.2 **Information on Application by natural person**, Clause 4(1), to insert the word "Identity" as follows:
4(1) an application by a natural person must on the proscribed form and accompanied by two identity photographs of the applicant and must include the following information:
- 5.3 In schedule 1 and 2, a cross reference to section 1 and 2 respectively, should be inserted.
- 5.4 The role(s) of the Provincial Commissioner is not dealt with in the Bill.

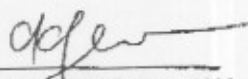
6. PORTFOLIO COMMITTEE POSITION ON THE BILL

After due deliberation, the Portfolio Committee on Economic Affairs & Tourism supports the Bill.

7. COMMITTEE ADOPTION OF THE BILL

The Committee adopted this negotiating mandate duly signed by the Acting Chairperson of the Committee, Hon EM Sulliman.

The Committee recommends to the House to mandate the Permanent Delegates to participate in deliberations at the negotiating stage and to support the Bill.


HON C SEOPOSENGWE
Speaker



OFFICE OF THE SPEAKER TO THE LEGISLATURE

Enquiries: Mr D Mashego
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NEGOTIATING MANDATE SECOND HAND GOODS BILL [B2B-2008]

The Portfolio Committee on Premier's Office; Finance; Safety and Security (the Committee) met on 17 June 2008 for a briefing by a senior official from the National Department of Safety and Security on the Second Hand Goods Bill [B2B-2008] (the Bill).

Pursuant to the briefing, the Committee undertook public hearings on the Bill in the following areas:

- (a) Mangweni Community Hall, Tonga [08 August 2008]
- (b) Mooiplaas Community Hall, Albert Luthuli [08 August 2008]
- (c) Kwazamokuhle Community Hall, Hendriena [08 August 2008]

After consideration of the Bill, the Committee recommended that the delegation representing the Province of Mpumalanga in the National Council of Provinces should vote in favour of the Bill.

A copy of the Report of the Portfolio Committee on Premier's Office; Finance; Safety and Security on the Second Hand Goods Bill (B2-B-2008) is hereto attached.

HON NS MTSWENI, MPL
CHAIRPERSON: PORTFOLIO
COMMITTEE ON PREMIER'S OFFICE;
FINANCE; SAFETY AND SECURITY

26-08-2008
DATE

Reference: Negotiating Mandates

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REPORT OF THE PORTFOLIO COMMITTEE ON PREMIER'S OFFICE; FINANCE; SAFETY AND SECURITY ON THE SECOND HAND GOODS BILL (B2B-2008)

INTRODUCTION

Section 118(1) of the Constitution, mandates the Legislature to facilitate public involvement in the Legislative and other processes of the Legislature and its Committees. Hence the Portfolio Committee was compelled to conduct public hearings on the above-mentioned Bill and to report back to the House.

OBJECTIVES OF THE BILL

The Second Hand Goods Bill, 2008 seeks to amend and build upon the foundation laid by the Second Hand Goods Act No 23 of 1995 that provided the legislative framework for the second-hand goods industry.

The main objectives of this Bill are to:

- Regulate the business of dealers in second-hand goods and pawnbrokers, in order to limit trade in stolen goods
- Promote ethical standards in the second-hand goods trade
- Provide for matters connected therewith.

METHOD OF WORK

The Speaker referred the Second Hand Goods Bill, 2008 to the Committee for consideration. The Portfolio Committee met on 17 June 2008 for a briefing on the Bill by a senior official from the National Department of Safety and Security. The Committee agreed during this meeting that public hearings should be conducted on the Bill.

An invitation was forwarded to some relevant stakeholders via e-mail on 25 July 2008; the e-mail included an electronic copy of the Bill.

The following stakeholders were invited via e-mail to attend the Public Hearing:

<u>STAKEHOLDERS</u>	
1.	Metal Recyclers Association
2.	Automotive Component Remanufacturers' Association
3.	Engine Remanufacturers' Association
4.	Motor Industry Workshop Association
5.	South African Diesel Fuel Injection Association
6.	Motorcycle Dealers' Association
7.	National Automobile Dealers' Association
8.	South African Vehicle and Body Builders' Association
9.	Motor Parts and Equipment Association
10.	National Vehicle Testing Association
11.	South African Motor and Body Repairers' Association
12.	South African Petroleum Retailers' Association
13.	Tyre Dealers' and Fitment Centre Association
14.	Independent Dealers Association
15.	Second Hand Dealers and Pawn Board
16.	Cash Crusaders
17.	Cash Converters South Africa

Copies of the Bills were circulated to the municipalities of Nkomazi, Albert Luthuli and Steve Tshwete as well as to Constituency Offices in the relevant areas on 23 and 24 July 2008.

Municipalities were requested to assist in mobilising the public via their public participation offices and in conjunction with their community development workers.

The public hearings were conducted on 8 August 2008 as follows:

DATE	Friday, 8 August 2008
VENUE	Mangweni Community Hall, Tonga
TIME	10:00
NUMBER PRESENT	140

DATE	Friday, 8 August 2008
VENUE	Mooiplaas Community Hall, Albert Luthuli
TIME	10:00
NUMBER PRESENT	63

DATE	Friday, 8 August 2008
VENUE	Kwazamokuhle Community Hall, Hendriena
TIME	10:00
NUMBER PRESENT	123

Members of the Portfolio Committee explained the Bill thoroughly to all stakeholders present at the public hearings. The Portfolio Committee Members responded to the questions raised by the public.

Stakeholders were given copies of the following documentation:

- Second Hand Goods Bill, 2008
- Summary of the Second Hand Goods Bill

COMMENTS BY THE PUBLIC

Comments that were raised were the following:

- In order to combat crimes like cable theft the Bill should be strictly reinforced.
- Non adherence of dealers to the conditions and regulations of the certificate should be strictly monitored and the relevant penalties should be enforced.
- The Government should consider providing licenses to the Historical Disadvantaged Individuals (HDIs) to deal with gold or diamonds.

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- The reluctance of dealers to register with the South African Receiver of Revenue Services (SARS) because of fear of paying unnecessary taxes was refuted and explained to communities.

OBSERVATIONS

The public made very constructive and informative inputs.

In general all three communities were satisfied that the Bill adequately provides for the efficient regulation of the business of dealers in second hand goods and pawnbrokers; and they supported the Bill.

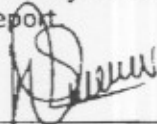
RECOMMENDATIONS

The Committee recommends that the delegation representing the Province of Mpumalanga in the National Council of Provinces be conferred with a authority and mandate to vote in favour of the Bill.

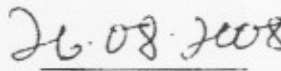
CONCLUSION

The Chairperson wishes to thank Members of the Portfolio Committee on the Premier's Office; Finance; Safety and Security, members of the SAPS Mpumalanga and officials from the Department of Safety and Security who participated in the public hearings and ensured that the objectives of the hearings were achieved.

The Chairperson also extends a word of appreciation to all stakeholders and residents of Albert Luthuli, Hendrina and Tonga who took the time to meet with the Portfolio Committee and to interact on matters pertaining to the objectives in the Bill; and to the support staff who contributed to the successful achievement of the objectives of the public hearings and the production of this report.



**HON NS MTSWENI
CHAIRPERSON: PORTFOLIO
COMMITTEE ON THE PREMIER'S
OFFICE; FINANCE; SAFETY
AND SECURITY**



DATE



**JOINT COMMUNITY SAFETY AND ECONOMIC AFFAIRS
PORTFOLIO COMMITTEES
NEGOTIATING MANDATE ON THE SECOND HAND GOODS BILL [B2B-2008]**

(Section 76)

23 August 2008

1. Introduction

The Chairperson of the Community Safety Portfolio Committee, Ms J M Mofokeng, tables the Committee's Negotiating Mandate on the Second Hand Goods Bill [B2B – 2008] as follows:

2. Process Followed

The Speaker, Honourable Richard Mdakane, formally referred the Second Hand Goods Bill [B2B-2008] a Section 76 Bill to the Economic Affairs Portfolio Committee for consideration and report in terms of Rule 232 (1)(a) read with 235(4), (6) and (7) on the 12 March 2008

On the 29th of May 2008, a correspondence from the Chairperson of Economic Affairs to the Speaker indicating that during the planning process it became apparent that the Bill contained greater elements of safety and security issues and that the Bill raises issues of mutual interest for both the Economic Affairs and the Community Safety Portfolio Committees.

The Speaker subsequently formally referred the Bill to the Community Safety Portfolio Committee on the 2nd June 2008 for consideration and joint processing with the Economic Affairs Portfolio Committee in terms of Rules 145 and 235(4)(6)&(7)

On the 31st July 2008, both Committees received a briefing on the content of the Bill by the National Council of Provinces Permanent Delegate Mr Sicelo Shicoka. The Department of Community Safety under the representation of Ms N Mapheto and Mr Pienaar as well as the Department of Economic Development represented by Mr Tladi Monyao respectively made

Novello Mack

submissions on the Bill with the emphasis on the definitions and sections 31 & 38

Subsequently, the Community Safety and Economic Affairs Portfolio Committees' Researchers, Mr Tinyiko Makondo and Mr Toyi Mokgari presented an analysis of the Bill, which included a summary, the socio economic impact it has on the consumers, second hand industry, government and the economy.

Both Committees further obtained a Legal opinion on the Bill from Ms Manana Moloi and Mr Shakespear Ncube NCOP and Legal Unit of the GPL on the 31st July 2008

Public Hearings were conducted on the referred Bill as follows

DATE AND TIME	VENUE
Monday 04 August 2008, 09h00	Pretoria, Pretoria Showgrounds 155 Soutter Street, G2 entrance
Thursday, 07 August 2008, 09h00	West Rand, Kagiso Hall
Friday, 08 August 2008, 09h00	Ekurhuleni, Sam Hlalele Hall, Tembisa

On the 29 August 2008, both Committees deliberated on the Bill and adopted the negotiating mandate on the Second Hand Goods Bill [B2B-2008]

3. Principle of the Bill

The main objectives of the Bill are to regulate business dealers in second-hand goods and pawnbrokers and to promote ethical standards in the second-hand goods trade

4. Overview of Public Hearings and Submissions

The Bill was well received by stakeholders and members of the public. The majority of the submissions were verbal during the public hearings and five (5) written submissions were received. A total of four hundred and five (405) people attended the public hearings on the Bill.

4.1 Main Issues Raised in the Submissions

4.1.1 Oral submissions

- Dealers to send weekly goods registers to the police in order to enable the police to check and verify against the list of cases opened in stolen goods
- Capacitating the police to allow them to do weekly inspection on second hand goods dealers

- The Bill to make provision for the people transporting second hand goods from one place to another inside the country.
- Maximum sentencing of offences for possession of stolen goods in the SAPS Act to be linked with the one in the second hand goods bill.
- Bill promotes ethical trading in second hand goods.
- Bill to also regulate trade in flea markets.
- Discourage second hand goods trade by persons under the age of 18 years
- Dealer involved in recycling of any controlled metal should register.

4.1.2 Written submissions

4.1.2.1 Gauteng Department of Community Safety

- Section 38 on the delegation of powers provides for the delegation of powers in writing by the Minister to the National Commissioner and does not provide for the implementation at the provincial level
- The Bill implementation should be guided by the Constitutional intent in section 205 which among others provides that effective policing which must be structured to function in the national, provincial and where appropriate local spheres of government
- Sections (31) & (38) to include the Provincial Executive responsible for Policing and the Provincial Commissioner for purposes of effective implementation and compliance monitoring.

4.1.2.2 Gauteng Department of Economic Development

- The Department noted that the term "second – hand" may be misconstrued to mean literally that, meanwhile this class of goods may also include "third, fourth, fifth hand goods" The Department suggests that the usage of the term "used goods" may be appropriate to include all kinds of goods that are by their nature not new.
- The Department further suggests that the definition should include "a pawn transaction" as defined in the National Credit Act 2005 (NCA) so as to be in harmony with the National Credit legislation.

4.1.2.2 Stakeholders Submissions

- Regulation of trade in second hand goods should also be answerable to the National Department of Trade and Industry
- The emphasis on regulating the industry has been placed on the requirement for the accreditation of dealers associations. It promotes incentives in terms of exemptions and discourages individual dealers. This should facilitate the necessary relationships between the state and private sector. Organised business encourages and supports this section which seeks to promote accountability.

- Most business association's views cable theft and vandalism of the rail infrastructure to be a serious threat that poses a huge challenge to country's economy and the safety operations of the rail service
- Trade records to be opened for individuals dealt with by all dealers for verification of transaction history
- Electronic identification for all dealers irrespective of trading level
- Inclusion of all persons institutions into the Bill as contemplated in section 2
- Standard operating procedures, work instruction and policies should be a requirement for article 4 applications.
- Compulsory induction of all scrap metal dealers to be a prerequisite for approval of article 4 application.
- Non-compliance to criterion and lack of proper law enforcement.
- Poor record keeping by Dealers and lack of technological interventions.
- Ferrous metals like tin and zinc are excluded from the current Bill
- Poor record keeping by dealers which hampers proper policing on second hand goods dealers
- Lack of administration of article 4 applications.
- Additional training should be provided for SAPS in nonferrous metal and compliance requirements.
- Storage for goods during the cooling off period (7 days) per metal classification
- Procedure for disposal.
- No clear guidelines why recyclers are not covered by the Bill
- There should be a strong coordination between SAPS and customs service to ensure that no stolen goods leaves or enter the country

5. Financial Implications and Socio Economic Impact Assessment of the Bill for the Province

5.1. Financial implications

If the powers of the bill are assigned to the Province, both Committees are of the view that there will be financial implication for the Province. There is a need for the National Department of Safety to clarify what financial implications the bill will have on Provinces

5.2. **Socio economic impact**

With regards to the socio-economic impact of the Bill, the Bill will extensively contribute towards achieving the following:

- Combat dealings in stolen goods including trade in stolen vehicles, cell-phones and copper cable related crimes.
- Advancement of economic growth.
- Broadening tax base through increasing a number of registered and tax-abiding businesses

6. **Department of Community Safety Recommendations**

- That there should be a 2-3 days clearing period.
- That there should be routine police visits to dealers as one check per week is not enough.
- That the Bill should cater for the clearance of goods.
- That the Bill should accommodate implementation at Provincial level through the Provincial Executive responsible for policing and the Provincial Commissioner.
- That the Bill's implementation should be guided by the Constitutional intent in section 205 which among others provides that effective policing which must be structured to function in the national, provincial and where appropriate local spheres of government.

7. **Department of Economic Development Recommendations**

- That the National Commissioner should have the discretion to impose other conditions in view of the circumstances obtaining at the time of registration by the dealer to close unnecessary gaps that may appear at a later stage.
- That the term "second hand goods" be changed to "**used goods**" for reasons already alluded to above.
- That the definition should substantially include the definition of a pawn transaction as defined in the National Credit Act 2005 in order create harmony with other national legislations

8. Committees Comments and Concerns

Both Committees deliberated on the Bill, the oral and written submissions from stakeholders and members of the public, opinion provided by the Community Safety and Economic Development Departments, the National Department of Trade and Industry, Research unit and the NCOP and legal unit and agreed on the following issues

- The Bill promotes ethical standards in second hand goods industry
- The Bill limits trade in stolen goods and will consequently reduce crime
- The full implementation of the Bill requires public education for both dealers and Consumers
- The Bill does not contradict the Second Hand Goods Act of 1955 and the Constitution of South Africa

9. Committee Recommendations

- That there should be a 2-3 days clearing period.
- That there should be routine police visits to dealers as one check per week is not enough
- That the Bill should cater for the clearance of goods.
- That the Bill should accommodate implementation at Provincial level through the Provincial Executive responsible for policing and the Provincial Commissioner.
- That the Bill's implementation should be guided by the Constitutional intent in section 205 which among others provides that effective policing which must be structured to function in the national, provincial and where appropriate local spheres of government
- That the National Commissioner should have the discretion to impose other conditions in view of the circumstances obtaining at the time of registration by the dealer to close unnecessary gaps that may appear at a later stage
- That the term "second hand goods" be changed to "used goods" for reasons already alluded to above.
- That the definition should substantially include the definition of a pawn transaction as defined in the National Credit Act 2005 in order create harmony with other national legislations.
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- That a comprehensive education campaign be implemented to inform the public about the bill.
- That the Bill should be written in other African Languages