



## NEGOTIATING MANDATE

**TO:** HON LC DLAMINI, MP  
CHAIRPERSON OF SELECT COMMITTEE ON  
SOCIAL SERVICES

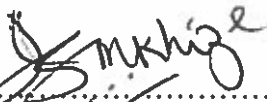
**NAME OF BILL:** PROPERTY PRACTITIONERS BILL

**NUMBER OF BILL:** B21B – 2018

**DATE OF DELIBERATION:** 20 FEBRUARY 2019

**VOTE OF THE LEGISLATURE:**

The Portfolio Committee on Human Settlements Portfolio Committee met today, Wednesday the 20<sup>th</sup> of February 2019, and agreed to mandate the KwaZulu-Natal delegation to **support the Property Practitioners Bill [B21B-2018]**; with the following proposed amendments as outlined in the Committee Report, attached hereto.

  
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HON IS MKHIZE, MPL  
CHAIRPERSON: PORTFOLIO COMMITTEE  
ON HUMAN SETTLEMENTS

*20.2.2019*  
.....  
DATE

## PROPERTY PRACTITIONERS BILL [B21B-2018]

### HUMAN SETTLEMENTS PORTFOLIO COMMITTEE REPORT

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#### PROPOSED AMENDMENTS:

#### 1. DEFINITIONS

- 1.1 Section 1, under definitions the word "*Fund*" means the property practitioners fidelity fund only, as contemplated in section 34. However, a new fund has been introduced in Chapter 4, section 21 of the Bill, being the Property Sector Transformation Fund and this should also be defined.
- 1.2 The property *Sector Transformation Charter Code*, should also be defined.
- 1.3 Section 21 refers to grants contemplated in section 38 that are grants to be paid to the transformation fund, however the correct section appears to be 39. Section 21 should therefore make reference to 38 not 39. If not, the specific section 38 (f) should be cross referenced.
- 1.4 The definition of a "property practitioner" as it relates to "any natural person" should be expanded to read "*any natural person who is a South African citizen or a permanent resident*". Most other Professions in the Country have this as prerequisite requirement and the same should apply to property practitioners.

#### 2. SECTION 20 (2)

- 2.1 Whereas the section is welcome, there were concerns regarding the wording of section 20 (2) especially from Municipalities. Whereas section 239 of the Constitution defines what Organs of State are, it appears there are different understandings and therefore the definition "organs of State" should be included in the Bill in order to remove any ambiguities and misinterpretation.

- 2.2 There appears to be concerns that the Bill is not clear as to whether employees of the State fall under the definition of “property practitioners” or not especially those employed in Municipalities. The State and especially Public works and Municipalities are one of the major players in the property sector and should be included in the definition of “property practitioner’ in relation to section 20 (2) in order to remove any ambiguity. This will also make it clear the Act does bind the State/ organs of State.
- 2.3 There appears to be resistance from some of the Municipalities to participate in the transformation set by section 20(2) as comments arising from Public hearings showed. Participants wanted to know how municipalities can be exempted from this provision or how the word “must” can be changed to “May” which view is not supported. As a result, Section 20(2) should be drafted in such a manner that it is not left to a different or ambiguous interpretation. It was suggested by some Municipalities that section 20(2) refers to “*When procuring property related goods and services*” and that therefore the use of the word “procuring” can only mean “*acquisition by lease or freehold*” and does not therefore mean “selling/disposing, leasing, letting auctions or even management thereof”. Further that the section only refers to “*property related goods and services*” and not property per se as defined in the Bill.
- 2.4 Section 20 (2) must therefore be worded in a manner that it is NOT left open to many interpretations and defeat the purpose it is intended for. The word procuring should either be included in the Definitions Clause specifically stating that “*for purposes of section 20 (2) procuring means and includes selling, purchasing, managing, auctioning, leasing, letting, expropriating OF PROPERTY and any other property related services of that organ of state*”.
- 2.5 It is further suggested that the provisions of the Municipal Finance Management Act and the Asset Transfer and Regulations of Municipalities and any other legislation that regulates property transactions in the Municipalities be looked into so that the same can be synced to the Bill. The same applies to any other

property legislation that regulates property transactions by other Organs of State, failing which the intentions of section 20(2) will not be attained.

### 3. Section 50

- 3.1 Section 50 (a)(i) states that, the Authority may not issue a Fidelity Fund Certificate to a person who "*is not a South African Citizen and does not lawfully reside in the Republic*". All South African Citizens reside in the republic lawfully so the word "AND" should be replaced with "OR".

Secondly, the section infers that any person who *lawfully* resides in the Republic qualifies for a Fidelity Fund Certificate, no matter how short or temporary their lawful stay in the Republic is. This may make it difficult to enforce compliance with the Act. It is suggested that "*does not lawfully reside in the Republic*" be amended to "is not a Permanent Resident".

### 4. TIME FRAMES FOR THE REGULATIONS

- 4.1 The implementation of the Bill will rely and depend on the Regulations because most of the provisions state that "*as prescribed or in the prescribed manner*". There should probably be a time limit or time frames within which the Minister must make Regulations. For instance, the transformation fund must be set up within 6 months of the Act being passed, however in the absence of Regulations, "the prescribed manner" of accessing those funds and the intended transformation may be delayed.