

REPUBLIC OF SOUTH AFRICA

HOUSING AMENDMENT BILL

*(As introduced in the National Council of Provinces as a section 76 Bill; explanatory
summary of Bill published in Government Gazette No 21556 of 8 September 2000)
(The English text is the official text of the Bill)*

(SELECT COMMITTEE ON PUBLIC SERVICES)

[B 7—2001]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Housing Act, 1997, so as to provide for the abolition of the South African Housing Development Board and Provincial Housing Development Boards; to establish advisory panels; to provide for the determination of procurement policy in respect of housing development; to provide for the publication in the *Gazette* of lists of national housing programmes and national institutions; to make the National Housing Code binding on all spheres of Government; to provide for the regulation of the sale of state-funded housing; to substitute an expression; to amend the Housing Consumers Protection Measures Act, 1998, so as to substitute certain expressions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 107 of 1997

1. Section 1 of the Housing Act, 1997 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the insertion before the definition of “Constitution” of the following definition:
“ ‘Code’ means the National Housing Code contemplated in section 4;”;
 - (b) by the insertion after the definition of “national housing programme” of the following definition: 10
“ ‘procurement’ means the process by which organs of state procure goods, services and works from, dispose of movable property, hire or let anything, or grant rights to the private sector;”;
 - (c) by the deletion of the definition of “provincial housing development board”.

Amendment of section 3 of Act 107 of 1997, as amended by section 1 of Act 28 of 1999 15

2. Section 3 of the principal Act is hereby amended—
- (a) by the insertion in subsection (2) after paragraph (c) of the following paragraph: 20
“(cA) determine a procurement policy which is consistent with section 217 of the Constitution in relation to housing development;”;

- (b) by the insertion after subsection (6A) of the following subsection:
- “(6B) The Minister must, by notice in the *Gazette*, from time to time publish updated lists of—
- (a) national housing programmes instituted or deemed to have been instituted under subsection (4)(g);
 - (b) national institutions established and financed or deemed to have been established and financed under subsection (4)(h), and must indicate in the notice that details of such national housing programmes and of the role and functions of such national institutions are contained in the Code.”;
- (c) by the insertion after subsection (8) of the following subsection:
- “(9) The Minister may, when a provincial government through the MEC cannot or does not fulfil an obligation in terms of this Act, intervene by taking any appropriate steps in accordance with section 100 of the Constitution to ensure fulfilment of that obligation.”.

Amendment of section 4 of Act 107 of 1997

3. Section 4 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The Minister must publish a code called the National Housing Code [(in this section referred to as the “Code”)].”.
- (b) by the insertion after subsection (5) of the following subsection:
- “(6) The Code shall be binding on the provincial and local spheres of Government.”.

Substitution of section 5 of Act 107 of 1997, as amended by section 2 of Act 28 of 1999

4. The following section is hereby substituted for section 5 of the principal Act:

“Establishment of panel

5. (1) The Minister may establish a panel of persons to advise the Minister on any matter relating to housing development.
- (2) A panel shall consist of one or more fit and proper persons who have knowledge, qualifications or experience in the field of housing development.
- (3) Members of a panel shall be appointed in accordance with procurement policy that is consistent with section 217 of the Constitution.
- (4) A member of a panel is appointed for the period determined by the Minister at his or her appointment, and may, subject to subsection (3), be reappointed on the termination of such period.
- (5) The Minister may at any time terminate the membership of a member of a panel for reasons which are just and fair.
- (6) A member of a panel other than a person who is in the full-time employment of the State, is paid an allowance determined by the Minister with the approval of the Minister of Finance.”.

Amendment of section 7 of Act 107 of 1997

5. Section 7 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) Every provincial government, through its MEC, must, after consultation with the provincial organisations representing municipalities as contemplated in section 163(a) of the Constitution, do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy.”
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “(2) For the purposes of subsection (1) every provincial government must through its MEC—;

(c) by the insertion after subsection (2) of the following subsections:

- “(3) An MEC must—
- (a) administer every national housing programme and every provincial housing programme which is consistent with national housing policy and section 3(2)(b), and for this purpose may, in accordance with such programme and the prescripts contained in the Code, approve—
 - (i) any projects in respect thereof; and
 - (ii) the financing thereof out of money paid into the provincial housing development fund as contemplated in section 12(2);
 - (b) determine provincial housing development priorities in accordance with national housing policy;
 - (c) apply procurement policy in respect of housing development determined by the Minister in terms of section 3(2)(c); and
 - (d) administer the assets contemplated in section 14.
- (4) (a) The MEC may establish a panel of persons to advise the MEC on any matter relating to housing development.
- (b) A panel shall consist of one or more fit and proper persons who have knowledge, qualifications or experience in the field of housing development.
- (c) Members of the panel shall be appointed in accordance with a procurement policy that is consistent with section 217 of the Constitution.
- (d) A member of a panel is appointed for the period determined by the MEC at his or her appointment and may subject to paragraph (c) be reappointed on the termination of such period.
- (e) The MEC may at any time terminate the membership of a member of the panel for reasons which are just and fair.
- (f) A member of the panel, other than a person who is in the full-time employment of the State, is paid an allowance determined by the MEC with the approval of the member of the Executive Council responsible for finance in the relevant province.
- (5) The MEC may, subject to any conditions he or she may deem appropriate in any instance—
- (a) delegate any power conferred on him or her by this Act; or
 - (b) assign any duty imposed upon him or her by this Act, to an officer or employee of the department responsible for the administration of housing matters in a province, either in his or her personal capacity or by virtue of the rank he or she holds or the post he or she occupies: Provided that such delegation or assignment does not prevent the person who made the delegation or assignment from exercising such power or performing such duty himself or herself.”.

Repeal of section 8 of Act 107 of 1997

6. Section 8 of the principal Act is hereby repealed.

Insertion of section 10A in Act 107 of 1997

7. The following section is hereby inserted after section 10 of the principal Act:

“Restriction on sale of state-subsidised housing

10A. (1) Notwithstanding any provisions to the contrary in any other law, it shall be a condition of every housing subsidy, as defined in the Code, granted to a natural person in terms of any national housing programme for the construction or purchase of a dwelling or serviced site, that such person or his or her successors in title or his or her or their creditors in law shall not sell or otherwise alienate such dwelling or site within a period of eight years from the date on which the property was acquired by such person or from the date of registration of a mortgage bond, as the case may be, unless such dwelling or site has first been offered for sale to the relevant provincial housing department.

- (2) Any such offer to the provincial housing department shall be made in writing and shall be accepted or rejected by the MEC within a period of 60 days from receipt thereof.
- (3) If such offer is accepted, the purchase price shall be determined—
- (a) by agreement between the MEC and the person or creditor concerned; 5
 - or
 - (b) if an agreement cannot be reached, by a valuer acceptable to both parties and registered as such in terms of the Valuers' Act, 1982 (Act No. 23 of 1982).
- (4) The purchase price as determined in terms of subsection (3) shall be financed by the MEC out of the provincial housing development fund. 10
- (5) An MEC may grant exemption from the provisions of subsection (1) either conditionally or unconditionally, in respect of any dwelling or site to which the provisions of that subsection apply.
- (6) The Registrar of Deeds concerned shall— 15
- (a) make such endorsements on the title deeds of any dwelling or site and such entries in his or her registers as may be necessary to indicate that the provisions of subsection (1) apply in respect of such dwelling or site; and
 - (b) cancel any such endorsements or entries where an exemption has been granted unconditionally under subsection (5) or where satisfactory proof has been submitted that conditions imposed under subsection (5) have been complied with; or 20
 - (c) make such endorsements or entries as may be necessary to indicate any conditions subject to which an exemption has been granted under subsection (5). 25
- (7) No transfer of any dwelling or site in respect of which subsection (1) applies, shall be passed to a person other than the Provincial Government unless the Registrar of Deeds is provided with a certificate, signed by the head of department, to the effect that such dwelling or site has been offered for sale to the provincial department of housing in terms of subsection (1) and that— 30
- (a) the offer has been rejected; or
 - (b) an exemption has been granted under subsection (4), either unconditionally or subject to the conditions set out in the certificate. 35
- (8) The Minister may, by notice in the *Gazette*, make rules on the granting of exemption in terms of subsection (5) as well as the amount that must be paid by the person or creditor concerned for the granting of such exemption.
- (9) Notwithstanding anything to the contrary contained in this section, subsection (1) shall not apply to a municipality or a mortgagee that exercises its rights in terms of law or in terms of a mortgage bond, as the case may be, on the grounds that the person or mortgagor has failed to meet his or her obligations in terms of such law or mortgage bond.”. 40

Amendment of section 14 of Act 107 of 1997, as amended by section 3 of Act 28 of 1999 and section 1 of Act 60 of 1999 45

8. Section 14 of the principal Act is hereby amended—

- (a) by the substitution for the expressions “provincial housing development board” and “board”, wherever they occur, of the expression “Provincial Government”; 50
- (b) by the substitution in subsection (4)(d) for subparagraph (iv) (aa) of the following subparagraph:
“(iv)(aa) in the case of subparagraphs (i) and (iii) (aa), the MEC **[after consultation with the provincial housing development board in question]**”; 55
- (c) by the substitution in subsection (7)(b) for subparagraph (ii) of the following subparagraph:
“(ii) in the case of the municipality, the MEC **[after consultation with the provincial housing development board in question]**.”.

Amendment of section 15 of Act 107 of 1997, as amended by section 4 of Act 28 of 1999

9. Section 15 of the principal Act is hereby amended—

- (a) by the substitution for the expression “provincial housing development board”, wherever it occurs, of the expression “Provincial Government”; 5
- (b) by the substitution in subsection (4) for paragraph (c) of the following paragraph:

“(c) The net proceeds of any letting, sale or other alienation in terms of paragraph (a) must be utilised by the municipality for housing development in accordance with national housing policy and a housing development project approved by the MEC [**after consultation with the provincial housing development board in question**].” 10

Amendment of section 16 of Act 107 of 1997

10. Section 16 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 15

“(2) The money so transferred must be utilised by a municipality for housing development in accordance with the national housing policy and a housing development project approved by the MEC [**after consultation with the provincial housing development board in question**].”.

Amendment of section 17 of Act 107 of 1997 20

11. Section 17 of the principal Act is hereby amended by the substitution for the expression “provincial housing development board”, wherever it occurs, of the expression “Provincial Government”.

Savings

12. (1) Anything done under or in terms of the principal Act by a provincial housing development board established under the repealed section 8 of the principal Act is deemed to have been done by the relevant MEC. 25

(2) As from the date of commencement of this Act, the powers, duties, rights and obligations of the provincial housing development boards, in respect of any national housing programme, vest in the relevant MEC. 30

(3) Any reference to a provincial housing development board in any document in which such national housing programme is mentioned, must be construed as a reference to the MEC in question.

Amendment of Housing Consumers Protection Measures Act, 1998

13. The Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998), is hereby amended by the substitution for the expressions “provincial housing development board” and “board”, wherever they occur, of the expression “MEC”. 35

Short title and commencement

14. This Act is called the Housing Amendment Act, 2001, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*. 40

MEMORANDUM ON THE OBJECTS OF HOUSING AMENDMENT BILL, 2001

Content of Bill

1. The Housing Amendment Bill, 2001, proposes to rectify the current inefficiencies of state institutional arrangements in the Housing Act, 1997 (Act No. 107 of 1997), by—
- (a) abolishing the South African and Provincial Housing Development Boards;
 - (b) transferring the powers, duties, rights and obligations of Provincial Housing Development Boards to the MECs responsible for Housing;
 - (c) providing for the establishment of panels to advise the Minister and the MECs;
 - (d) empowering the Minister to determine procurement policy in respect of housing development; and
 - (e) putting in place regulatory measures to restrict the sale or alienation of state subsidised housing.

Financial implications for the State

2. In respect of the appointment of a panel of experts by the Minister or the various MECs, the national and provincial housing departments have already made provision in their operational budgets for remuneration for members of the various boards. These funds could now be utilised to finance the expenditure flowing from the appointment of the said panels.

If the offers for sale of state subsidised houses to MECs are accepted there will be financial implications to the provinces which will require additional funding. However, provision for these funds will be made in the allocation of housing subsidy funds by the Department of Housing to the provinces.

Implication for provinces

3. The administration of national housing programmes is already mostly done by provincial housing departments on behalf of the Provincial Housing Development Boards. It is therefore anticipated that most provincial departments will be able to handle these activities within their existing establishments.

Other departments or bodies consulted

4. The recommended amendments have been discussed at length by MINMEC Housing. All provincial housing departments are represented on this body.

Parliamentary procedure

5. In the opinion of the Department of Housing and the State Law Advisers the Bill must be dealt with in accordance with the parliamentary procedure established by section 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it falls within a functional area listed in Schedule 4 to the Constitution, namely "Housing".