

# **REPORT OF THE PORTFOLIO COMMITTEE ON HUMAN SETTLEMENTS, CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS ON MPUMALANGA TOWN PLANNING AND LAND RELATED LAWS REPEAL BILL, [B2-2016]**

## **1. INTRODUCTION**

The Speaker referred the Mpumalanga Town Planning and Land Related Laws Repeal Bill, [B2-2016] to the Portfolio Committee on Human Settlements, Co-operative Governance and Traditional Affairs (the Committee) for consideration and report back to the House in accordance with the Rules and Orders of the Mpumalanga Provincial Legislature.

In terms of section 118(1) of the Constitution of the Republic of South Africa, 1996, the Legislature has a mandate to facilitate public involvement in the legislative and other processes of the Legislature and its committees. It is against this background that the Committee conducted a public hearing to solicit inputs and views from members of the public on the above-mentioned Bill.

## **2. OBJECTIVES OF THE BILL**

The purpose of the Bill is mainly;

- To provide for the repeal of Town Planning and Land Related Laws assigned to the Province; and
- To provide for matters connected therewith.

### 3. METHOD OF WORK

The Committee met with the Department of Co-operative Governance and Traditional Affairs on 20 October 2016 for a briefing on the Bill. The Committee then decided to conduct a public hearing after publishing an invitation in the print media (Mpumalanga News and Daily Sun) in order to solicit inputs/comments from interested stakeholders and members of the public. The Public hearings were conducted on Friday, 21 October 2016, from 10h00 – 13h00 in the following Districts.

DISTRICT	VENUE	No. of Attendees
Ehlanzeni	Provincial Disaster Management Centre in Mbombela Local Municipality	78
Nkangala	Vaalbank Community Hall (Libangeni) – Dr JS Moroka Local Municipality	157
Gert Sibande	Elukwatini Community Hall – Albert Luthuli Local Municipality	133

The committee thereafter met on 23 November 2016 to consider the draft report on the Mpumalanga Town Planning and Land Related Laws Repeal Bill, [B2-2016] (the Bill).

### 4. INTERACTION BY THE COMMITTEE WITH THE DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

The MEC for Co-operative Governance and Traditional Affairs, Ms. RM Mtshweni gave a brief political overview on the Bill, which amongst reported that the Bill seeks to provide for the repeal of Town Planning and Land Related Laws assigned to the Province. The HOD, Mr. TP Nyoni made a presentation on the Bill. The Committee made some comments, asked clarity seeking questions.

#### **4.1. Briefing by the Department on salient aspects of the Bill**

The Department highlighted the background on the Bill as follows:

- The legislation that deals with planning in the nine provinces is still pre-1994 legislation, enacted by the original four provinces of South Africa and they are all also generally unconstitutional in some or other aspect.
- The Department indicated that based on these facts, the need for new national legislation had been identified and the National Department of Rural Development and Land Reform (DRDLR) has developed the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013)(SPLUMA) which came into operation on 01 July 2015.
- The Department reported that there are no financial implications for the Bill save for the minimal estimated costs associated with publication of the Act.
- Institutions and relevant stakeholders were consulted organs of state were consulted.

The Department further reported that the Bill seeks to manage the transition from the current planning dispensation to the new planning dispensation and therefore, to be aligned with SPLUMA.

#### **4.2. The Relevance and Rationale of the Bill**

- Provincial Planning Legislation is currently in operation, but out-dated and therefore, needs to be repealed.

The Bill seeks to repeal the following legislation, to the extent assigned to the Province, namely:

- Transvaal Town Planning and Townships Ordinance, 1986 (Ordinance No. 15 of 1986);
- Division of Land Ordinance, 1986 (Ordinance No. 20 of 1986);
- Removal of Restrictions Act, 1967 (Act No. 84 of 1967);
- Physical Planning Act, 1967 (Act No. 88 of 1967);
- Black Communities Development, 1984 (Act No. 4 of 1984);
- Regulations Relating to Township Establishment and Land Use Government, 1986 (Notice No. R. 1897 of 1986);
- Abolition of Racially Based Land Measures Act, 1991 (Act No. 108 of 1991);
- Less Formal Township Establishment Act, 1991 (Act No. 113 of 1991); and Regulations for the Administration and Control of Townships in Black Areas, 1962 (Proclamation no. R. 293 of 1962) and
- There are no constitutional implications associated with this Bill.

#### **4.3. Areas falling within the Jurisdiction of Traditional Leadership**

The Department also reported that the above-mentioned outdated legislation only focus on land use management restricted to defined areas and do not include proper land use management in areas that fall within the jurisdiction of traditional leaders. The repeal of this legislation will assist to wipe out any vagueness and confusion regarding land use management in traditional areas and will assist Traditional Councils to co-operate with Municipalities on the impact of land use management.

## **5. INTERACTION BY THE COMMITTEE WITH STAKEHOLDERS ON THE BILL (PUBLIC HEARINGS)**

The following stakeholders were invited by the Committee to attend the public hearing held on 21 October 2016;

- ❖ Community Members
- ❖ Department of Co-operative Governance and Traditional Affairs
- ❖ Department of Human Settlements
- ❖ Department of Economic Development and Tourism
- ❖ Department of Public Works, Roads and Transport
- ❖ Department of Rural Development and Land Reform
- ❖ Mpumalanga House of Traditional Leaders (HTL)
- ❖ Public Service Commission (PSC)
- ❖ South African Local Government Association (SALGA)
- ❖ Executive Mayors of Mbombela, Dr JS Moroka and Albert Luthuli Local Municipalities
- ❖ Speakers of the Mbombela, Dr JS Moroka and Albert Luthuli Local Municipalities
- ❖ Ward Committees
- ❖ Community Development Workers
- ❖ Department of Finance (Provincial Treasury)
- ❖ Office of the Surveyor-General
- ❖ Ehlanzeni District Municipality
- ❖ Bushbuckridge Local Municipality
- ❖ Nkomazi Local Municipality
- ❖ Town planning companies

During the public hearings, members of the committee explained the purpose of the Bill thoroughly. The Committee also reported that the closing date for written submissions on the Bill will be Friday, 28 October 2016 and also responded to the questions of clarity raised thereafter. The stakeholders who were present at the public hearing raised concerns which were also related to the Bill as follows:

- (a) Consultation should be conducted in more villages within each district in order to inform residents of the transformation brought by the legislation in abolishing discriminatory land access laws: the land belongs to their people and the discriminatory laws arbitrary deprived the community of the use of land on the basis of ethnic groups; the Bill must benefit the people and structures must be consulted.
- (b) The Bill will benefit the Traditional Communities; it will ensure upgrading of rural areas to ensure proper spatial planning and land use management by the municipalities and traditional authorities jointly for the benefit of community members as the right to property is for all people within Republic. The land will now be properly demarcated for residential and farming purposes and this will ensure that the land is surveyed and title deeds are issued irrespective of rural or urban areas. Bill must indicate how it affects the powers and functions of the Traditional Authorities.
- (c) The Bill must encourage the cooperation between the Municipalities and the Traditional Leaders in their respective jurisdictions.
- (d) The Bill is unequivocally accepted because it seeks to develop their areas and immovable properties including land use management strategies; the Bill will facilitate the creation amenities; the Bill will demarcate areas for human settlements; business and for the livestock through surveyed and upgraded land use and spatial planning. This means that all land will be registered at the registrar of deeds for easy identification of any land.

- (e) The Bill is supported because it will abolish all the apartheid laws and ordinances;
- (f) The Bill should indicate whether or not it will affect land that members of the have bought and should also not affect their land ownership rights.
- (g) The Bill should not restrict their freedom of movement.
- (h) The Bill is very good; however, there should be proper consultation with the traditional communities.
- (i) The Traditional Leaders should be involved in the application of the Bill; all apartheid laws must be repealed and the communities do not need title deeds for their immovable properties in the Traditional Communities.
- (j) There is a need for more specific and stricter regulations (with punitive measure in case of non-compliance) in the allocation of land, particularly for churches and taverns in the SPLUMA.
- (k) The roles of the Municipality and that of the local tribal authority should be clear in the allocation of land for use. In case the separation of the roles is a challenge, allocation of land and the development thereof should be solely mandated to municipalities.
- (l) There should be punitive measures put in place and efficiently implemented in case of identified corrupt and fraudulent activities carried out by government officials in the allocation and development of land.
- (m) There is a need for Spatial Development Plans to be aligned with the SPLUMA;
- (n) There was a proposal on the amendment to the Bill: the inclusion of a definition of the term "assigned" to clarify the phrase "extent to which assigned" on the Schedule of the Bill.

- (o) The Department of Rural Development and Land Reform (DRDLR) explained that in terms of the SPLUMA, its regulations and the municipal by-laws it was very clear that municipalities must consult traditional leaders regarding the development of land.

After the interaction with the community members and stakeholders who were present, the Committee Members reassured the public that the Bill does not seek to strip the Traditional Leaders of their powers in so far as the land issue is concerned. However, the Bill seeks in the main to repeal all the pieces of legislation and ordinances that are inconsistent with the Constitution of the Republic of South Africa and that this Bill will be aligned to the SPLUMA.

## **6. OBSERVATIONS AND FINDINGS BY THE COMMITTEE**

Generally, members of the public were in support of the Bill.

## **7. RECOMMENDATIONS**

The Portfolio Committee on Human Settlements, Co-operative Governance and Traditional Affairs, after considering the Bill, supports the Bill as presented by the Department of Co-operative Governance and Traditional Affairs without any amendments.



## 8. CONCLUSION

The Chairperson wishes to thank the Honourable Members, all members of the public for their worthwhile participation in the public hearings and for the inputs or comments they have made. A word of gratitude to the MEC RM Mtshweni, HOD, Mr TP Nyoni, the Senior Officials of the Department of Co-Operative Governance and Traditional Affairs, Executive Mayor, Mr J Skosana, Speaker, Ms R Mathabe of Dr JS Moroka Local Municipality, Speaker of Steve Tshwete Municipality, Executive Mayor, Mr DP Nkosi, Mr MW Mngomezulu of Albert Luthuli Local Municipality for their efforts in ensuring that the committee meets its obligation and the support staff who contributed to the success of the public hearings and the production of this report.



**HON WT MADILENG**

**CHAIRPERSON: PORTEFOLIO COMMITTEE**

**ON HUMAN SETTLEMENTS AND CO-OPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS**

23/11/2016  
DATE

# MPUMALANGA PROVINCE



## MPUMALANGA TOWN PLANNING AND LAND RELATED LAWS REPEAL BILL, 2016

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As introduced in the Mpumalanga Provincial Legislature

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(MEC FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

[B2-2016]

## **MPUMALANGA TOWN PLANNING AND LAND RELATED LAWS REPEAL BILL, 2016**

**To provide for the repeal of Town Planning and Land Related Laws assigned to the Province; and to provide for matters connected therewith.**

**WHEREAS** certain Town Planning and Land Related Laws, were duly assigned by the President to the Province by means of several Proclamations, and thereby becoming Provincial legislation of the Province;

**AND WHEREAS** the President has, on 5 August 2013, assented to the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), which Act came into operation on 1 July 2015;

**AND WHEREAS** the Province is in the process of drafting the Mpumalanga Spatial Planning and Land Use Management Bill, 2016, which Bill will introduce a new planning regime within the Province and will also serve as the framework within which the various Municipalities in the Province should develop their own Planning By-Laws in terms of section 156(2) of the Constitution, 1996;

**AND WHEREAS** section 156(3) of the Constitution, 1996, provides that a By-Law that conflicts with National or Provincial legislation is invalid, thereby necessitating the repeal of the Town Planning and Land Related Laws, in a coordinated and phased manner in terms of section 4(2) of this Act, in order to ensure a smooth transition from the current planning dispensation applicable in the Province to the new planning dispensation;

**NOW THEREFORE BE IT ENACTED** by the Mpumalanga Provincial Legislature as follows:

**1. Definitions.** In this Act, unless the context otherwise indicates “**Province**” means the Province of Mpumalanga established in terms of section 103 of the Constitution of the Republic of South Africa, 1996;

**2. Repeal of laws.** The laws mentioned in the second column of the Schedule to this Act are hereby repealed to the extent indicated in the third column thereof.

**3. Savings.** The repeal of the laws mentioned in section 2 shall not –

- (a) revive anything not in force or existing in the Province at the time at which the repeal takes effect;
- (b) affect the previous operation of the law so repealed or anything duly done or suffered under the law so repealed;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law so repealed; and
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law so repealed.

**4. Short title and commencement.** (1) This Act shall be called the Mpumalanga Town Planning and Land Related Laws Repeal Act, 2016 and shall come into operation on a date fixed by the Premier by Notice in the *Provincial Gazette*.

(2) Different dates may be so determined in respect of different Laws and different provisions thereof, as referred to in the Schedule to this Act.

### SCHEDULE

<b>Year and number of Act</b>	<b>Short title of Act</b>	<b>Extent of repeal</b>
Proclamation No. R. 293 of 1962	Regulations for the Administration and Control of Townships in Black Areas	To the extent assigned
Act No. 84 of 1967	Removal of Restrictions	To the extent assigned
Act No. 88 of 1967	Physical Planning	To the extent assigned
Act No. 4 of 1984	Black Communities Development	To the extent assigned
Ordinance No. 15 of 1986	Town Planning and Townships Ordinance	To the extent assigned
Ordinance No. 20 of 1986	Division of Land Ordinance	To the extent assigned
Government Notice No. R. 1897 of 1986	Regulations Relating to Township Establishment and Land Use	To the extent assigned
Act No. 108 of 1991	Abolition of Racially Based Land Measures	To the extent assigned
Act No. 113 of 1991	Less Formal Township Establishment	To the extent assigned

## **MEMORANDUM ON THE MPUMALANGA TOWN PLANNING AND LAND RELATED LAWS REPEAL BILL, 2016**

### **1. FINANCIAL IMPLICATIONS**

The estimated costs associated with publication of the Act in the *Provincial Gazette* will be R3000.00- R3500.00.

### **2. POLICY CONTENT OF THE BILL AND HOW THE BILL RELATES TO ITS POLICY OBJECTIVES**

The Bill seeks to manage the transition from the current planning dispensation to the new planning dispensation and therefore, to be aligned with National legislation which has already been enacted, namely the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013).

### **3. THE RELEVANCE AND RATIONALE OF THE BILL**

3.1 Legislation dealing with planning in South Africa were enacted prior to 1994 and therefore, these legislation are generally unconstitutional in some or other aspect. This Bill seeks to repeal the following legislation, to the extent assigned to the Province:

- Transvaal Town Planning and Townships Ordinance, 1986 (Ordinance No. 15 of 1986);
- Regulations for the Administration and Control of Townships in Black Areas (Proclamation No. R. 293 of 1962)
- Division of Land Ordinance, 1986 (Ordinance No. 20 of 1986);
- Removal of Restrictions Act, 1967 (Act No. 84 of 1967);
- Physical Planning Act, 1967 (Act No. 88 of 1967);
- Black Communities Development, 1984 (Act No. 4 of 1984);
- Regulations Relating to Township Establishment and Land Use Government, 1986 (Notice No. R. 1897 of 1986);
- Abolition of Racially Based Land Measures Act, 1991(Act No. 108 of 1991); and
- Less Formal Township Establishment Act, 1991 (Act No. 113 of 1991).

The repeal of the above-mentioned legislation is necessary, as these legislation are outdated.

**MEMORANDUM ON THE MPUMALANGA TOWN PLANNING AND LAND RELATED LAWS REPEAL BILL, 2016///Cont...//**

3.2 The Mpumalanga Town Planning and Land Related Laws Repeal Bill, 2016, is therefore prepared and as provided for in clause 4(2) thereof, it seeks to manage the transition from the current planning dispensation to the new planning dispensation.

3.3 There are no constitutional implications associated with this Bill.

**4. THE PROCESS USED TO SOLICIT COMMENTS FROM STAKEHOLDERS AND THE PUBLIC**

The soliciting of public comments were done as the Repeal Bill was published in the *Provincial Gazette* on 22 January 2016 and also on 26 January 2016 in 2 (two) newspapers circulating in the Mpumalanga Province, namely: Mpumalanga Mirror and Lowvelder, with the closing date for public comments of 26 February 2016.

**5. THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ALL PERSONS AND INSTITUTIONS WHICH WERE CONSULTED OR MADE REPRESENTATIONS ON THE BILL**

5.1 The following bodies, institutions and organs of state were consulted or made representation on the Bill:

- **General Public**  
Mr M Strydom  
NUPLAN Development Planners  
PO Box 2555  
MBOMBELA  
1200  
Cell: 083 267 5060

Ms J Haupt  
Korsman & Associates  
1 Lana Street, Office 11  
WITBANK  
1035  
Tel: 013 650 0408

**MEMORANDUM ON THE MPUMALANGA TOWN PLANNING AND LAND RELATED LAWS REPEAL BILL, 2016///Cont...//**

- **Office of the Premier (State Law Advisers)**

Adv. L Saayman and Adv M Venter  
Office of the Premier  
Private Bag X11291  
MBOMBELA  
1200  
Tel: 013 766 2002

- **Department of Rural Development and Land Reform**

Mr D Moffat  
Director: Rural Development  
Private Bag X 11  
MBOMBELA  
1200  
Cell: 084 602 8891

Mr M Sibanda  
Deputy Surveyor-General  
Private Bag X 11  
MBOMBELA  
1200  
Cell: 013 754 5400

- **All Municipalities in the Province**

<b>NO.</b>	<b>POSITION</b>	<b>Municipality</b>	<b>Postal</b>	<b>Tel nr:</b>
1	The Municipal Manager	Gert Sibande District Municipality	P.O. Box 550 SECUNDA 2302	017 801 7002
2	The Municipal Manager	Albert Luthuli Municipality	P.O. Box 24 CAROLINA 1185	017 843 4043
3	The Municipal Manager	Msukaligwa Municipality	P.O. Box 48 ERMELO 2350	017 801 3503.
4	The Municipal Manager	Mkhondo Municipality	P.O. Box 23 PIET RETIEF 2390	017 826 2211
5	The Municipal Manager	Pixley Ka Seme Municipality	Private Bag X9011 VOLKSRUST 2170	017 734 6100
6	The Municipal Manager	Lekwa Municipality	P.O. Box 66 STANDERTON 2430	017 712 9600

7	The Municipal Manager	Dipaleseng Municipality	Private Bag X1055 BALFOUR 2410	017 773 0055
8	The Municipal Manager	Govan Mbeki Municipality	Private Bag X1017 SECUNDA 2303	017 620 6000
9	The Municipal Manager	Nkangala District Municipality	P.O. Box 437 MIDDELBURG 1050	013 249 2024
10	The Municipal Manager	Victor Khanye Municipality	P.O. Box 6 DELMAS 2210	013 665 6000
11	The Adminsitrator	Emalahleni Municipality	P.O. Box 3 WITBANK 1035	0136906208
12	The Municipal Manager	Steve Tshwete Municipality	P.O. Box 14 MIDDELBURG 1050	013 249 7000
13	The Municipal Manager	Emakhazeni Municipality	P.O. Box 17 BELFAST 1100	013 253 1121
14	The Municipal Manager	Thembisile Hani Municipality	Private Bag X4041 EMPUMALANGA 0458	013 986 0980
15	The Municipal Manager	Dr. JS Moroka Municipality	Private Bag X4012 SIYABUSWA 0472	013 973 1101
16	The Municipal Manager	Ehlanzeni District	P.O. Box 3333 NELSPRUIT 1200	013 759 8500
17	The Municipal Manager	Thaba Chweu Municipality	P.O. Box 61 LYDENBURG 1120	013 235 7004
18	The Municipal Manager	Mbombela Municipality	P.O. Box 45 NELSPRUIT 1200	013 759 9111
19	The Municipal Manager	Umjindi Municipality	P.O. Box 33 BARBERTON 1300	013 712 2121
20	The Municipal Manager	Nkomazi Municipality	P.O. Box 101 MALELANE 1320	013 790 0245
21	The Administrator	Bushbuckridge Municipality	Private Bag X9308 BUSHBUCKRIDGE 1280	013 799 1851



**6. AN EVALUATION OF THE COMMENTS SOLICITED, RECEIVED AND DISCOUNTED IN THE DRAFTING PROCESS**

No comments were received herein.

**MEMORANDUM ON THE MPUMALANGA TOWN PLANNING AND LAND RELATED LAWS REPEAL BILL, 2016///Cont...//**

**7. A CLAUSE-BY- CLAUSE EXPLANATION ON THE CONTENT OF THE BILL**

7.1 Clause 1 defines the terminology use in the Bill.

7.2 Clause 2 repeals the legislation listed in the Schedule to this Act to the extent the listed legislation are assigned to the Province.

7.3 Clause 3 provides for the general savings of the effect of the repeal of the mentioned outdated provincial planning legislation as provided for in clause 2 of the Bill.

7.4 Clause 4 provides for the short title and commencement of the Act as well as for a phased in approach of the Act.

**8. ANY SUCH OTHER INFORMATION DEEMED NECESSARY REGARDING THE BILL**

There are no organisational and human resource implications pertaining to the Bill.