

REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS ON THE PLANT IMPROVEMENT BILL, [B 8B-2015]

1. INTRODUCTION

The Speaker referred the Plant Improvement Bill [B 8B-2015], (the Bill) to the Portfolio Committee on Agriculture, Rural Development, Land and Environmental 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 114 of the Constitution of the Republic of South Africa, 1996, (the Constitution) the Legislature is mandated to consider, pass, amend or reject any Bill referred to it. In considering a Bill, the Legislature is also mandated to facilitate public involvement in the legislative and other processes of the Legislature as per Section 118(1) of the Constitution. It is against this background that the Committee conducted public hearings to solicit inputs and views from members of the public on the above-mentioned Bill.

2. OBJECTIVES OF THE BILL

The purpose of plant improvement legislation is to regulate the quality of plants and propagation material intended for cultivation and sale by means of:

- Registration of types of business and premises involved in cultivation and sale of plants and propagation material.
- National listing of plant varieties (registration of varieties).
- Conditions of sale, physical quality standards and labelling requirements for plants and propagation material.
- Import and export control of plants and propagation material.
- Improvement schemes.

Only agronomy, vegetable and fruit crops are regulated. Scope may be extended to cover other crops or just certain aspects of such crops.

3. METHOD OF WORK

The Committee met with the National Council of Provinces (NCOP) Permanent Delegate, Hon AJ Nyambi, MEC, Hon VR Shongwe, and HOD, Ms SP Xulu of the Department of Agriculture, Rural Development, Land and Environmental Affairs and officials from the Department of Agriculture, Forestry and Fisheries on 21 February 2017 for a briefing on the Bill. The public hearings were conducted after publishing an invitation in the print media (Lowvelder, Provincial Media, Thaba Chweu News and Streek Nuus) in order to solicit inputs/comments from interested stakeholders and members of the public. The Public hearings were conducted on Tuesday, 16 May 2017, from 10h00 – 13h00 in the following Districts.

DISTRICT	VENUE
Ehlanzeni	Mashishing Community Hall - Thaba Chweu Local Municipality
Nkangala	Botleng Extension 5 Community Hall – Victor Khanye Local Municipality
Gert Sibande	Thuthukani Community Hall – Msukaligwa Local Municipality

The committee thereafter met on 26 May 2017 and 1 August 2017 to consider the draft report on the Bill, noting that the written submissions on the Bill were extended until 31 July 2017.

4. INTERACTION BY THE COMMITTEE WITH THE PERMANENT DELEGATE AND THE DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

The Permanent Delegate gave a brief political overview on the Bill and reported that:

- The Bill had been tagged as a Section 76 Bill, which means it affects provinces.
- He raised a concern on the technicality of the Bill and that it might not be well understood by members of the public.
- He reported that plant improvement is an important element of agricultural production, involving the development of improved varieties by means of breeding or selection.
- He reported that legislation regulating propagation material contributes to order in the agricultural production sector, trust in the national systems, leading to international trade and establishment of markets and ultimately to food and job security.

4.1. Briefing by the Department of Agriculture, Forestry and Fisheries

The Department highlighted the background on the Bill as follows:

- The Bill seeks to amend the Plant Improvement Act that was passed in 1976.
- Plant improvement has been practiced for thousands of years. Many of the well-known agricultural crops originated from domesticated varieties taken from the wild to produce food.
- Propagation material is the foundation of agricultural production and the quality thereof impacts significantly on the food security of the country. Propagation material refers to any reproductive or vegetative material that may be used for producing other plants of the same variety, e.g. seed, bulbs, cuttings, tubers.
- Legislation regulating propagation material contributes to order in the agricultural production sector, trust in the national systems, leading to international trade and establishment of markets and ultimately to food and job security.

- The Bill recognized that:
 - ❖ the importance of quality propagating material to support sustainable agricultural production.
 - ❖ the important role quality standards for plants and seed as well as standards for types of business dealing with plants and seed towards food security.
 - ❖ the important contribution of the seed trade to the economy (e.g. global markets require adherence to internationally accepted quality standards for plants and seeds).
 - ❖ the importance of promoting wider participation in the seed sector (other types of businesses, community seed production, etc.).

- Major shortcomings in the principal Act are:
 - ❖ The current Act dates from 1976 and does not cater for recent developments
 - ❖ Penalties, policing and enforcement of the Act are not effective.
 - ❖ Emerging problems threatening the sustainability of the seed industry.
 - ❖ Examples include: farm saved seed or seed retention.
 - ❖ Difficulty in facilitating the participation of small-holder farmers in current certification schemes.
 - ❖ Structure of the current Act is too cumbersome and thus difficult to read.

4.2. Overview of the Plant Improvement Bill

Section 1: Definitions (interpretation of terminology)

Chapter 1 Application of the Bill

Section 2 - types of crops covered, how to extend to more crops

Bill only applicable on crops as declared, Minister may extend upon application.

Chapter 2 Registrar and Administration

Sections 3-8: designation and functions of Registrar, discretionary powers, registers, inspection (viewing) of documents.

Chapter 3 Registration of Business and Premises

Sections 9-21: types of business requiring registration, application and registration procedure, requirements, termination

Chapter 4 Conditions for sale

Sections 22-23: requirements for plants and propagating material, exemptions for certain plants and propagating material; detail to be contained in Regulations.

Chapter 5 National Varietal List

Sections 24-26: content, maintenance and publication of list and removal of varieties

Chapter 6 Application for National Listing

Sections 27-32: varieties eligible for listing, procedure for application, documentation and objection

Chapter 7 Variety Denominations

Sections 33-34: requirements for denominations, related to Chapter 6

Chapter 8 Evaluation for Distinctness, Uniformity, Stability (DUS)

Sections 35-37: requirements for testing and decision making, related to Chapter 6

Chapter 9 Value for Cultivation and Use (VCU)

Section 38: optional evaluation for value and use

Chapter 10 Hearing of Objections

Section 39: procedure for hearings by Registrar

Chapter 11 National Varietal List Journal

Section 40: journal and its content, related to Chapters 6 and 8

Chapter 12 Inspections

Sections 41-42: procedures for inspections and inspection on grounds of warrant

Chapter 13 Import and Export of Plants and Propagating Material

Sections 43-44: requirements and procedures

Chapter 14 Schemes

Sections 45-46: types of schemes and procedures to establish

Chapter 15 Appeals

Section 47: procedure for appeals against decisions by Registrar or authority of a scheme

Chapter 16 Advisory Committee

Sections 48-51: purpose, composition and procedures

Chapter 17 General Provisions

Sections 52-63: request for tests by other authorities, disclosure of information, regulations, offences and penalties, evidence, liability, delegations and repeal of laws

5. INPUT BY THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS

- The department raised a concern on the relevancy of the Bill to farmers in the province.
- The department requested for a meeting with the Department of Agriculture, Forestry and Fisheries in order for the Bill to be explained in simple terms to them.

6. INPUTS BY THE COMMITTEE

The Committee made the following inputs on the Bill:

- The introduction of the Bill was welcomed by the Committee.
- The Committee highlighted that the Bill will help protect indigenous people in the province of Mpumalanga.
- The Department of Agriculture, Forestry and Fisheries must ensure that the Bill is interpreted in a language that is understood by ordinary citizens of Mpumalanga.

- The Department of Agriculture, Forestry and Fisheries must invest in the education of ordinary people of Mpumalanga about the Bill, including terminology and technicalities.
- A concern was raised that an effort must be made to identify the plants that need to be improved.
- The province does not have a database of improved plants i.e people want to improve sweet potatoes but do not know which ones can be improved.
- The categories of beneficiaries must not be gender based.

7. INPUT BY THE LEGISLATURE LEGAL TEAM

- The legal team reported that constitutionally, the Legislature is empowered to deal with the Bill as it is a Section 76 Bill.
- A concern was raised on the financial implications that the Bill will have when it is being implemented, and
- Whether the provincial Department of Agriculture, Rural Development, Land and Environmental Affairs will have sufficient budget to implement the Bill.

8. INPUTS BY STAKEHOLDERS

8.1. Public Hearings

The following stakeholders were invited by the Committee to attend the public hearing held on 16 May 2017;

- ❖ Community Members
- ❖ Department of Agriculture, Forestry and Fisheries
- ❖ Department of Agriculture, Rural Development, Land and Environmental Affairs
- ❖ Mpumalanga House of Traditional Leaders (HTL)

- ❖ Executive Mayors of Thaba Chweu, Msukaligwa and Victor Khanye Local Municipalities
- ❖ Speakers of the Thaba Chweu, Msukaligwa and Victor Khanye Local Municipalities
- ❖ Ward Committees
- ❖ Community Development Workers

During the public hearings, members of the committee explained the purpose of the Bill thoroughly and in local languages. The Committee also reported that the closing date for written submissions on the Bill will be Monday, 22 May 2017 (which was later extended to 31 July 2017) 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:

1) Mashishing Community Hall - Thaba Chweu Local Municipality

Members of the Portfolio Committee engaged with the community which was attended by community members from Bushbuckridge, Barberton, Nkomazi, Kabokweni and surrounding areas.

The community raised the following in relation to the Bill:

- a) The Bill should be written in all official languages so it can be easy to understand.
- b) Registration offices should be located near the people so that it can be easy to register and make follow-ups on the registration outcomes.
- c) It seems that it will be difficult for the people to use the Bill to their advantage due to inequalities that exist. The issuing of licenses will make many people to fail the application process.
- d) There is no market for produced crops in the Lydenburg area. One member of the public wanted to improve wheat and potato, but felt that such crops have

already been improved. It was also proposed that at least the new improved crops should be given Nguni/ indigenous names.

- e) Possible exploitation of black farmers which may be caused by the Bill and there must be involvement of all farmers in the processing of the Bill.

2) Botleng Extension 5 Community Hall – Victor Khanye Local Municipality

- a) On the registration of businesses, community members raised a concern that small farmers will suffer because they are still trying to grow and they do not have the money to register their businesses,
- b) Community members wanted to know what will happen to the people who are ploughing their vegetables at home and sell them to the community to make a living, and find out that people are sick because of their product, will they be prosecuted and how can the Bill assist those small farmers.

3) Thuthukani Community Hall – Msukaligwa Local Municipality

- a) The Bill seeks to empower commercial farmers' more than upcoming farmers.
- b) The Bill is too technical to be understood by most farmers that are affected.
- c) Community members requested for more public engagements on the Bill as it affects more un-educated farmers.

8.2. Written submissions

Written submissions were received from members of the public and various stakeholders and they were considered by the Committee. The written inputs included the following:

1. African Center for Biodiversity:

- There is a major problem with the inclusion of any kind of exchange in the definition of 'sell'. This goes against long-held practices of sharing and exchange of plants and seeds between persons.
- The distinction made by Ben Cousins from PLAAS at the University of the Western Cape makes between smallholders (land size measured in area) and small-scale farming (business size measured in turnover) should be followed.
- Farmers, especially smaller and less commercial producers should be removed from the definition.
- There are no clear definitions on 'business' or 'commercial' which makes it difficult to know to whom exemptions will apply. Exemptions from the law are crucial for a diverse range of smallholders and small enterprises to allow local innovation and adaptation to flourish.
- There are questions about what happens to varieties that do not appear on the National Varietal List, i.e. those that are not registered. There are many less commercial crops and varieties, including indigenous, that serve an important role in the circulation of planting material for smallholder farmers and in maintaining agricultural biodiversity. Diversity is essential to diffuse risk and to offer alternative options to reduce dependency.
- The Distinct, Uniform and Stable (DUS) criteria for listing a plant on the national varietal list is too static and is inappropriate for accommodating farmer varieties. The criteria are too inflexible and exclusive in the face of the need to maintain and protect agricultural biodiversity, respond adequately to climate change, and to diffuse risk.

- With regard to the importance of quality control, it was proposed that more flexible and locally negotiated, participatory quality control protocols (e.g. quality declared seed, participatory guarantee schemes) are required to accommodate smallholder farmers and small-scale enterprises for production and exchange of seed, plants and propagating material, variety registration and listing, and cross-border trade.
- A concern was raised that the Bill goes further than the existing Act in penalising farmer to farmer exchange of seed and planting materials. Although there are exemptions, their application needs to be firmly stated. Inclusion of exchange in the definition of sale, as mentioned, suggests a severely restricted space for farmer to farmer exchange and sharing in future.

2. **Golda Deaks**

The stakeholder requested the Legislature not to strip them of the right to produce natural seeds from heirloom stock. Open pollination is a natural process and nature cannot be regulated. An opposition to the Bill was made to the effect that it aims to impoverish and unreasonably diminish the natural abundance of plant life.

3. **Andrew Macgregor - Green Energy and Forensic Consultant**

Government has a **constitutional duty** to support and strengthen **ALL** farmers' seed systems through training of farmers in seed production, cleaning, and storage of their own varieties. Government must create an enabling legal environment that is **just and equitable** and allows small seed enterprises to enter the seed market and trade in Open Pollinated and Farmers' varieties.

4. The following stakeholders also commented on the Bill:

- Stephen Barrow
- Linzi Lewis
- Anthena Mazarakis
- Delia Oosthuizen
- South African Food Sovereignty Campaign
- Zane Lambert
- Lesego Monyai
- Jane Harley
- Lourens Steenkamp
- Alet Van Wyk
- Biodynamic Agricultural Association of South Africa
- Justin Johnson
- Lucia Rodriguez Garcia
- Haydn Edwards
- Andrew Rathbone
- Leon Greef
- Elvorne Palmer
- Kylie Schafer
- Benjamin Pyatt
- Elsie van den Bergh
- Mieke Krynavw
- Katlego Mathibedi
- Polly Anderson
- Anthea Torr
- Helena Paul
- Charl Roux
- Lee Howe
- Andre Shirley

- Daryl Fuchs
- Wendy Stayte
- Louise van Straaten
- Martin Dower
- Johan Blingaut
- Beatriz Tainta

The above-mentioned stakeholders submitted that:

1. The Bill defines selling as “any way in which the material is disposed of including to sell; or to offer, keep, expose, send, convey or deliver for sale; or exchange; or dispose of to any person in any manner.”
2. Although the Bill does exempt Open Pollinated Varieties (OPVs) that are not protected by a plant Breeders’ Right these may only be cultivated and sold (exchanged) on a non-commercial scale – but what non-commercial means will be spelled out in regulations that must still be made. To register on the national varietal list the seed must be tested to prove that it is ‘distinct, uniform and stable’ over generations (DUS) and have value for cultivation and use (VCU). These requirements rule out heritage and farmers’ varieties, which are inherently diverse (and thereby resilient).

Smallholders will struggle to pay the fees and comply with the standards. In practice, therefore, the Bill will limit smallholder farmers to only saving seed for their own use, and limit exchange of seed to very small amounts of certain types of crops that are yet to be defined in regulations. This will weaken heritage and farmer seed systems which rely on exchange for seed vigour and diversity, and will prevent farmers from substantially sharing or selling seed thus making farmers steadily dependent on the corporate sector’s uniform seed varieties and preventing smallholders from progressing beyond subsistence.

3. The Bill therefore promotes only one system of agriculture, viz that dependent on agrochemicals and commercialised seed production, at the expense of traditional agriculture practices and modern, regenerative agroecological methods of production.
4. Both gene and crop diversity are essential to productivity and our food sovereignty, underscored by climate change, increasing poverty and the lack of household and thus national food security. The need for diversity is further underscored by the science of Epigenetics, “the study of potentially heritable changes in gene expression (active versus inactive genes) that does not involve changes to the underlying DNA sequence — a change in phenotype without a change in genotype — which in turn affects how cells read the genes” (quoted from <https://www.whatisepigenetics.com/fundamentals/>, accessed on 16 July 2017).
5. Farmers using agroecological methods of farming such as Traditional Agriculture, Low External Input Sustainable Agriculture, Organic Agriculture and Biodynamic Agriculture need access to appropriate, diverse and quality seed.
6. Farmers who have their production certified as organic according to international standards for export purposes stand to lose their certification which requires the use of certified organic plant material which historically is either not generally available or in very short supply in South Africa.
7. DUS-compliant seed is not able to deal with context-specific needs of farmers and the different sectors of the South African farming community, or to ensure that there is a wide diversity of seed available to support diverse farming systems.

8. The historical sharing and exchange of seed, common practices in Traditional, Low External Input, Organic and Biodynamic Agriculture, has resulted in the crop domestication and diversity which humankind relies on today. It has also played a vital role in social cohesion and goodwill. The stakeholder strongly objects to the criminalisation of these practices which are God-given birth rights.
9. Farmers must be freely allowed to cultivate, distribute, exchange, propagate and trade in all seed in their seed systems. This is essential as Agroecology is currently seen as the only viable system for poverty alleviation and long-term ecological sustainability of our food systems. The Bill must give space for this system to also become economically viable. Seed legislation must allow farmers to market their seed in the seed sector. Government must design, in consultation with farmers, appropriate mechanisms for voluntary, farmer-led quality standards for the marketing and trade of farmers' varieties.
10. It is unfair for the Bill to promote only one system of agriculture.

The requirement for seed to be distinct, uniform and stable – DUS compliant – promotes genetically uniform seeds for industrial farming systems and does not allow farmers' varieties that are inherently heterogeneous to be part of South Africa's seed markets/sectors.
11. The costs and procedures for certifying seed and the testing requirements are too onerous for smallholder farmers, thereby discriminating against them, as they are excluded from certifying, distributing and trading their seed; indeed their seed systems are excluded from being part of the South African seed sector.

12. The historical sharing and exchange of seed has resulted in the crop domestication and diversity humankind relies on today. It has also played a vital role in social cohesion and goodwill. It is therefore incorrect for the Bill to criminalise these practices.

Recommendations in response to the points made above are as follows:

- Farmer-managed seed systems and the exchange, distribution and sale of seed grown by small-scale farmers must be exempt from the provisions of the Bill.
- Clause 45(1) enables the Minister to “establish schemes with the object of maintaining the quality of plants and propagating material of those kinds of plants and of ensuring the usefulness for agricultural or industrial purposes of the products”. This gives the government the opportunity to consult with small-scale farmers, in order to set up appropriate and supportive voluntary certification schemes for farmers’ varieties, so that such varieties can be exchanged, distributed and marketed.
- Clear definitions of “commercial”, “non-commercial” and “business” are lacking in the Bill. These are needed in order to unambiguously exempt smallholder farmers and their seed systems from the ambit of the Bill and to ensure that such farmers are able to freely cultivate, distribute, exchange, propagate and trade in all seed under their control and in their seed systems.
- In order to ensure that farmers have the right to freely exchange and sell their varieties, b) must be removed from the definition of “sell” in clause 1 of the Bill to read as follows:
“Sell” includes —
“(a) agree to sell or to offer, keep, expose, send, convey or deliver for sale;
[and

(b) to exchange or to otherwise dispose of to any person in any manner”]

9. FINDING

- a) There has been extensive consultation on the Bill.
- b) Generally, members of the public were in support of the Bill as presented and requested that it be passed into law.
- c) The critical comments and inputs made by the public regarding the Bill were duly considered and should be incorporated in the negotiating mandate to the NCOP. It was also noted that some of the submissions from the public were covered in the Bill and some matters will be covered by means of Regulations after the Bill becomes an Act.
- d) The Plant Improvement Act 53 of 1976 and other related pieces of legislation will be repealed when the Bill is passed into an Act.

10. RECOMMENDATION

The Portfolio Committee on Agriculture, Rural Development, Land and Environmental Affairs, after considering the Bill, supports the Bill as introduced in Parliament by the Department of Agriculture, Forestry and Fisheries. The delegation representing the Province of Mpumalanga in the National Council of Provinces (NCOP) is therefore conferred with authority and mandated to vote in favour of the Plant Improvement Bill [B8B-2015] with proposed amendments, taking into account the inputs and observations noted in this report and the proposed amendments articulated in the Negotiating Mandate, attached hereto.

11. 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, Hon VR Shongwe, HOD, Ms. SP Xulu, the Senior Officials of the Department of Agriculture, Rural Development, Land and Environmental Affairs and Department of Agriculture, Forestry and Fisheries, Executive Mayor and Speaker of the Thaba Chweu, Victor Khanye and Msukaligwa local municipalities 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.



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CHAIRPERSON: PORTFOLIO COMMITTEE
ON AGRICULTURE, RURAL DEVELOPMENT,
LAND AND ENVIRONMENTAL AFFAIRS

01 / 08 / 17
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