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## COMMENTS

to the

**MINISTER OF RURAL DEVELOPMENT AND LAND REFORM**

on the

**DRAFT REGULATIONS FOR THE PLANNING PROFESSION  
ACT (Act No 36 of 2002)**

[made known under Notice 1094 of 2013 and Notice 1111 of 2013]

## **Economic growth and work reservation**

Commenting on the substance only of the Draft Regulations for the Planning Profession does not adequately deal with the economic consequences of the implementation of such regulations.

Whatever the proposed purpose might be, there is no doubt that reservation of work exclusively for professional and technical planners, including persons who successfully apply for Certificates of Approval, will impact negatively on the planning profession, the economy and ultimately on the poorest people in the country.

The proposed regulations run directly counter to the policies that are necessary to bring about economic growth, including urban growth and development, increase employment and to reduce poverty.

We attach two documents that deal in broad terms with the essential elements of economic policies that result in high growth:

- **FMF Submission to the National Planning Commission on the National Development Plan Economic Overview / South Africa's Economy from an Economic Freedom Perspective (attached)**
- **Habits of Highly Effective Countries: Lessons for South Africa**

[Download:

<http://www.freemarketfoundation.com/publications/habits-of-highly-effective-countries>]

The attached documents should be read together with our submission on the content of the Draft Regulations.

## 1. Introduction

- 1.1. The Free Market Foundation (also referred to here as 'the Foundation' or 'the FMF') hereby submits its comments on the Draft Regulations for the Planning Profession Act, (Act No. 36 of 2002) (hereinafter referred to as the 'Draft Regulations' or the 'Regulations').

The Free Market Foundation is an independent non-profit public benefit organisation founded in 1975 to promote and foster an open society, the rule of law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles. It is financed by membership subscriptions, donations and sponsorships.

Most of the work of the FMF is devoted to promoting economic freedom as the empirically best policy for bringing about economic growth, wealth creation, employment, poverty reduction and human welfare (including better healthcare, increased life expectancy, literacy and educational quality). As a think tank the FMFs fundamental approach to policy questions is consumer-based. The foremost question the FMF asks in addressing any policy question, including the contents of the above mentioned Draft Regulation is, will this policy be to the long term benefit of consumers and especially those who are the poorest and most vulnerable? Consumer satisfaction is generally achieved by an absence of barriers to entry into the provision of goods and services, allowing consumers a choice between the offerings of freely competing providers. The Draft Regulation will therefore be assessed to ascertain whether it is likely to result in the most beneficial conditions for the suppliers and users of planning services.

- 1.2. The Draft Regulations were published by the Minister of Rural Development and Land Reform under a General Notice (Notice 1094 of 2013) in the Government Gazette on 8 November 2013. It is noted that a Correction Notice (Notice 1111 of 2013), amending the deadline for submissions, was published in the Government Gazette on 15 November 2013.

## 2. Deadline for comment

- 2.1. The Notice states that the proposed Bill is published for public comments, and that interested persons may submit written comments on the Bill.
- 2.2. The Correction Notice states that comments can be e-mailed to [sacplanregs@ruraldevelopment.gov.za](mailto:sacplanregs@ruraldevelopment.gov.za) by no later than 16:00 on 9 December 2013.

## 3. Executive summary

- 3.1. Arguments supporting the exclusive reservation of certain types of work for a profession or trade are generally advanced on the basis that work reservation:
  - 3.1.1. Protects the public from unqualified and incompetent persons, and from fraudsters.
  - 3.1.2. Ensures higher standards of competence and service to the benefit of the public.
- 3.2. The real motivation for reserving work exclusively for certain professions or trades are:
  - 3.2.1. Lobbying by those who already work in the particular profession or trade to limit competition and enhance its standing.
  - 3.2.2. The alleged need to protect the public from incompetent, bad and fraudulent service.

- 3.2.3. The perceived sense of security felt when we know that there are standards in place that will supposedly protect us from charlatans and from bad things happening.
- 3.3. The real effect of work reservation laws and regulations is to:
  - 3.3.1. Enhance the privileged occupation's power to increase their prices and to restrict competition.
  - 3.3.2. Protect a select group of people (in this instance professional and technical planners) from competition from those who, while they may not meet the prescribed standards of qualifications and experience, are nevertheless capable of doing at least some components of the work reserved for a profession or trade.
  - 3.3.3. Increase costs to the consumers as the public is by law compelled to make use of the services of the protected profession as lower priced services offered by those who do not meet qualification requirements, are no longer available on the market. Consequently, work reservation regulations impact more severely on the poor than the wealthy.
  - 3.3.4. Reduce competition, lower standards of service and inhibit innovation because practitioners no longer face competition from those that can offer a service at a lower price.
- 3.4. South Africa, a country with more than 8 million unemployed, cannot afford to introduce even more regulations that reduce employment, raise costs and lower standards.
- 3.5. The proposed Regulations should be withdrawn.

#### **4. Impact of the regulations**

- 4.1. With reference to Section 2(a) and 16(2) of the Planning Profession Act (Act 36 of 2002) the Regulations will reserve certain categories of work<sup>1</sup> exclusively for professional and technical planners. In addition, components of the work reserved for them will also be reserved for specified registered professionals<sup>2</sup> (land surveyors and attorneys) subject to them obtaining a Certificate of Approval<sup>3</sup> from the South African Council of Town and Regional Planners.
- 4.2. The effect of the Regulations will be to protect professional and technical planners from competition from individuals such as property owners, draughtsmen, architects and others who, up to now have been free to prepare and lodge planning applications. The Regulations will not only deprive such persons of an income but also turn them into criminals.
- 4.3. The Regulations will create the false impression that persons who hold the prerequisite professional and technical registration are competent to do the work reserved exclusively for them. However, similar to all professions and trades, the range of skills and competencies of professional and technical planners is considerable. Many of us can attest to the fact that a formal qualification in medicine, law, engineering, economics, psychology and the like offers no guarantee of competency. There is no evidence that professional and technical planners are exempt from this phenomenon.
- 4.4. Occupations such as geographers, sociologists, economists and others who have for many decades been employed 'planners' in state, provincial and local government service and in the private sector, will no longer be able to do work in such positions.

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<sup>1</sup> Regulations cl 4(1)

<sup>2</sup> Regulations cl 4(4)

<sup>3</sup> Regulations cl 4(5)

- 4.5. The Regulations will require every lawyer and land surveyor in the country involved in categories of work reserved for professional and technical planners to apply to the South African Council of Town and Regional Planners for a Certificate of Approval to continue to do work that they have done for decades.<sup>4</sup>
- 4.6. The Draft regulations grant affected persons two years from the date of the regulations coming into operation of applying for a Certificate of Approval. By implication newly qualified lawyers and land surveyors will from now on be precluded from ever doing some of the types of work that their predecessors have been doing for decades.
- 4.7. The South African Council of Town and Regional Planners will be both judge and jury in applications for Certificates of Approval and will be tempted to put the interests of professional and technical planners first. There is no guarantee that it will consistently exercise its powers to grant Certificates of Approval in an unbiased manner.
- 4.8. The Regulations will criminalise any person who undertakes work that has been exclusively reserved for professional and technical planners and for those who have obtained Certificates of Approval.

## 5. The pernicious effects of work reservation

- 5.1. By reserving work exclusively for professional planners and planning technicians the cost to the consumer of making planning applications will increase as property owners will be compelled to employ professional or technical planners to apply for something as simple as a building line relaxation.
- 5.2. Innovation and progress, which in every field come from people in other fields including those who do not possess advanced degrees or technical qualifications, is stifled by work reservation.<sup>5</sup> The rapid advances in computing and in information and communications technologies over the last decades serve as an excellent example, with both Bill Gates (founder of Microsoft) and the late Steve Jobs (founder of Apple) having been university drop-outs. The world would have been much poorer if work reservation laws applied to the computer industry. The real effect of work reservation is to protect incompetence, outdated ways of doing things, and to entrench "accepted methods of practice".
- 5.3. When work is reserved to persons having certain qualifications it becomes much harder to sue for malpractice as persons of the same profession are much less likely to speak out and testify against person in the same profession.
- 5.4. The Regulations will give professional and technical planners an aura of respectability not necessarily commensurate with their actual level of competency. Taking medicine as an example, despite stringent standards, qualification requirements, occupational licensing and work reservation for doctors, medical mistakes are the third leading cause of death in the United States, behind heart disease and cancer.<sup>6</sup>
- 5.5. Work reservation criminalises individuals who do no harm. The effect will be to divert at least some legal resources from areas more needed to prosecuting innocent people.
- 5.6. The Regulations will increase the powers of the planning profession and prevent the consumers from deciding for themselves whose services to use in planning matters and when to use such services. There

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<sup>4</sup> Regulations cl 4(6)

<sup>5</sup> See: Terence Kealey, *The Economic Laws of Scientific Research*. London: Macmillan Press, 1996.

<sup>6</sup> How Many Die from Medical Mistakes in U.S. Hospitals? *Scientific American*, September 20, 2013. (<http://www.scientificamerican.com/article.cfm?id=how-many-die-from-medical-mistakes-in-us-hospitals>)

is no need, and there has never been a need, to reserve work for professional and technical planners. Individuals, property developers and government departments can freely choose the services of professional and technical planners if they wish to do so.

- 5.7. The regulations will all but guarantee professional and technical planners entry tickets to public sector employment as government departments and agencies will be compelled to employ qualified planners in all positions involving work reserved for professional and technical planners. The effect of this would be to redistribute taxpayers' money to the privileged group of professional and technical planners employed in government.
- 5.8. Work reservation regulations create a false sense of security as it professes to protect the public, whereas calls for work reservation actually come from professions and trades themselves, not from the public. Consumers are already protected by existing laws against fraud, negligence and misrepresentation.

## **6. Work reservation is not in the public interest**

- 6.1. The public interest is not served by reserving certain type of work for privileged professions and trades. What the public needs is real protection against fraud and misrepresentation, which is appropriately done through the law and court system.
- 6.2. Professional and technical planners who deliver substandard services or who commit fraud are weeded out by public opinion. The public is not stupid. People use their judgement daily when they buy food, cars, houses, mobile phones, cameras and the millions of products and services available in the market place. The same applies when they choose to appoint professionals to act on their behalf.
- 6.3. It will be pointed out that work has for long been reserved for professions such as doctors, pharmacists and lawyers. The answer to this is that the arguments against work reservation apply equally to these professions too. Taken to its logical conclusion, if work reservation brings all of its alleged benefits, including consumer protection and high professional standards, then every single occupation in the country should be granted work reservation. However, the result will be an endless array of bureaucratic organisations and approval agencies tasked with matching qualifications with particular types of work, and, most likely, endless litigation on the qualifications appropriate to particular occupations, which persons should be permitted to do certain work, and the like. Add to this the problem of what the appropriate qualifications should be for those tasked with deciding what types of work to reserve for each occupation.

## **7. The multi-disciplinary nature of planning**

- 7.1. It takes hundreds, if not thousands, of people and as many different skills and qualifications to build a car or an aeroplane. No single individual alone can do this; yet, one does not have to know how to build an entire car to be part of a team that build cars. There is no reservation of work for the builders of cars or aeroplanes. Instead there are standards to which a car or aeroplane must comply to be classified as road or airworthy. The planning profession, and all other trades and professions, should operate on the same principle.
- 7.2. The proposed Regulations assume that professional and technical planners can know everything that there is to know about planning. This is simply not so. The reality is that planning ranges from the simple to the complex requiring differing skill levels and competencies. Some examples:

- 7.2.1. Simple consent use applications can be easily done by a property owner, or by an architect, draughtsman or land surveyor assisting, or on behalf of, a property owner.
- 7.2.2. Complex applications for the amendment of town planning schemes, such as that for a major retail centre, which require inputs by professional planners, architects, environmental specialists, retail experts, traffic engineers, lawyers, and others.
- 7.2.3. Integrated development plans prepared by multi-disciplinary planning teams that may bring together a range of expertise and skills including transportation and civil engineers, sociologists, retail experts, scenario builders, economists, political scientists, legal experts, and others.
- 7.3. The regulations make no mention of the role of the contributing disciplines in the planning process, and the preparation, lodging and assessment of planning applications.
- 7.4. The Regulations ignore the many examples of individuals with non-planning qualifications, particularly geographers, engineers and land surveyors employed in planning positions in both the public and private sectors who later obtained planning qualifications through post-graduate studies, expanding the range of skills in the planning profession. The Regulations will effectively kill off this skills enhancement possibility as employers will no longer be able to employ persons with such qualifications.

## **8. Paradoxes**

- 8.1. The ultimate decision-makers in planning matters are the elected politicians that serve in various approval committees. Few of them have professional or technical planning qualifications. Will it be a criminal offence for them to decide on planning matters? Will it therefore be a requirement that only politicians with technical planning qualifications may serve on planning approval committees?
- 8.2. If politicians, as decision makers, are judged to be competent to make judgements on the work to be reserved for professional and technical planners, then should the same not apply to the citizens of the country. Should citizens be deprived of the right to carry out planning where they have the technical capability but do not have formal qualifications?
- 8.3. Following the logic of the regulations, since all planning applications are lodged in terms of legislation and regulation, and have to be comply with prescribed legal procedures, it could be argued that only qualified lawyers should be permitted to lodge planning applications.

## **9. Voluntary certification instead of work reservation**

- 9.1. In a free society a profession or trade is free to establish certification bodies that set standards of professional and ethical conduct. Such an organisation gives the general public some indication of potential competence but no guarantee.
- 9.2. In the absence of work reservation the public would be better protected from malpractice because no professional or technical planner would be able to hide behind work reservation as they would be directly accountable to their clients.

## **10. Work reservation is the enemy of innovation and progress**

- 10.1. Work reservation impacts negatively on a profession as it inhibits innovation in practice, training, education, and organisation of professional services.

10.2. History teaches that advances and insights in all fields stem from the very "crackpots," "quacks," and "outsiders" who have no standing in a profession and whom work reservation seeks to eliminate.

“Thomas Edison, who had little formal education, could not be an engineer under today's guidelines. Likewise, with the current education requirement, Mies van der Rohe and Frank Lloyd Wright would not qualify to sit for the architects' certifying examination. The leaders in the fight to establish inoculation as a cure for smallpox in colonial America were Cotton Mather and his fellow clergymen; their leading opponents were doctors. As Dennis S. Lees wrote in *Economic Consequences of the Professions*: "Had retailing been organized like the professions, supermarkets with lower costs and prices... could never have emerged. Indeed, had the professions been dominant through manufacture and trade over the past two centuries, we would never have got to the horse-and-buggy stage, let alone beyond it."<sup>7</sup>

## 11. Conclusion

- 11.1. Professional and technical planners have up to now done well without work reservation and no compelling reason exists to reserve certain types of work exclusively for them. Both planners and consumers are protected by existing laws against fraud, negligence and misrepresentation.
- 11.2. Laws and regulations should not prevent any person from contracting any other individual or business of his or her choice to undertake work on their behalf, as long as this is done by mutual and voluntary agreement.
- 11.3. The only purpose to be served by the Regulations is that of protecting professional and technical planners from competition. The proposed Regulations will enrich a privileged group in society at the expense of the public and should be withdrawn.
- 11.4. These Regulations should be withdrawn in view of the unnecessary direct and indirect costs, such as delays in carrying out work, they will impose on citizens of South Africa.

Prepared by:

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<sup>7</sup> See S. David Young, *Occupational Licensing*. Available online at The Concise Encyclopaedia of Economics: <http://www.econlib.org/library/Enc1/OccupationalLicensing.html> and the work of Terence Kealey cited earlier.