The big voice of small business

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SMALL BUSINESS INSTITUTE (SBI)

PUBLIC COMMENT SUBMISSION

Position Paper on the Business Licensing Bill, 2026

1. Introduction and Standing of the Submission

SBI welcomes the opportunity to comment on the Business Licensing Bill, 2026 ("the Bill"), which proposes to repeal the Businesses Act, 1991 and establish a uniform national framework for business licensing. SBI supports the Bill's stated objectives of redress, efficiency and good administration, and its intent to harmonise business licensing procedures across the three spheres of government. This submission focuses specifically on provisions of the Bill that will materially affect small and medium businesses and proposes amendments to strengthen the Bill's redress and efficiency objectives while managing enforcement risk for small and informal operators.

This submission is made within the public comment process contemplated in the Bill and its accompanying Memorandum on the Objects of the Bill.

1.1 About the SBI

The SBI is South Africa's leading national organisation representing Business Chambers and the interests of small and medium enterprises operating across both the formal and informal economy. Through its network of 93 affiliated Business Chambers, the SBI receives continuous feedback on the regulatory, economic and operational realities facing businesses within metropolitan, township, rural and local economies. Through this national footprint, the SBI is uniquely positioned to provide Government with evidence-based insight into how legislation affects businesses at municipal, provincial and national level.

The SBI envisions a country where small- and medium-sized businesses are supported by thoughtful, evidence-based policy that limits obstacles to their success and sustainability and the private sector works to eliminate structural obstacles to competition, access to markets and effective entry into supply chains.

2. Executive Summary of Recommendations

SBI supports the Bill in principle and recommends the following amendments before finalisation.

- Define "small enterprise" and "low-risk business" thresholds in the Bill itself, or via regulations published concurrently with the Bill's commencement, rather than left entirely to future Ministerial discretion (Clauses 5 and 7).
- Introduce a fixed statutory turnaround time for standard business licence applications under Clause 6, mirroring the 30-day limit already provided for exemption applications under Clause 5(4).
- Introduce proportionality safeguards on the warrantless confiscation power in Clause 22, particularly for perishable goods and small/informal traders.
- Scale administrative penalties in Clause 24 to business turnover or size, to avoid disproportionate impact on survivalist and micro-enterprises.
- Clarify the interaction between Clause 17 sector-reservation powers and existing SMME structures (including joint ventures and foreign-partnership arrangements), including transitional protection for existing licence holders.
- Require the publication of an evidence-based Sector Reservation Proposal before regulations are made under Clause 17, supported by a socio-economic impact assessment and meaningful consultation with organised business.
- Mandate SMME representation, alongside SALGA and organised business, on the National Committee (Clause 11) and Provincial Committees (Clause 12).
- Extend the minimum public comment period for designation and exemption notices from 30 to 60 days where the designation affects informal or survivalist enterprises, consistent with the Bill's own redress principle.

3. Detailed Comments by Clause

Clause 5 — Exemption from requirement to obtain a business licence

Provision: Allows businesses to apply for exemption from licensing on the grounds of low risk, compliance history, local economic contribution, non-profit status, or start-up relief, with a 30-day decision turnaround.

Concern: The criteria for "low-risk business" are left to future Ministerial regulation. Without an indicative threshold in the Bill, small businesses face prolonged uncertainty about whether they qualify, and licensing authorities may apply the exemption inconsistently across municipalities.

Recommendation: Include an indicative definition or turnover/employee threshold for "low-risk business" and "small enterprise" in a Schedule to the Bill, to be read together with the National Small Enterprise Act, 1996 classifications, with the Minister empowered only to adjust (not originate) these thresholds by regulation.

Clause 6 — Application for registration as business licence holder

Provision: Sets out the standard licence application process and grounds for refusal, including the "suitability" of the person in control of the business.

Concern: Unlike the exemption process in Clause 5(4), there is no statutory turnaround time for a standard licence decision. This creates a two-tier system in which exempted low-risk businesses receive faster certainty than fully licensed SMMEs. The suitability test in Clause 6(4)(b) is also broad enough to capture minor historical regulatory breaches unrelated to the risk posed by the current application.

Recommendation: Insert a maximum decision period (proposed: 30 working days, extendable once by written notice with reasons) for all licence applications under Clause 6. Narrow the suitability test to convictions or breaches within a defined look-back period (proposed: five years) and require materiality to the specific licence sought. The statutory turnaround period should apply to all authorities whose approvals are required as part of the licensing process, ensuring that businesses are not delayed by sequential administrative processes beyond the control of the applicant.

Clauses 15 and 16 — Preferential licensing and designated trading areas for small enterprises

Provision: Enables licensing authorities to fast-track applications, reduce fees, and reserve trading zones exclusively for small enterprises, supported by rate reductions, grants and training.

Support: SBI supports these provisions in principle, as they align with the redress principle in Clause 9(1)(a).

Recommendation: Make the adoption of a preferential licensing by-law mandatory rather than discretionary ("must" rather than "may") for municipalities within a defined implementation period following commencement, to prevent uneven rollout across better- and worse-resourced municipalities.

Clause 17 — Reservation of certain business activities and sectors

Provision: Empowers the Minister to reserve business activities or sectors wholly or partly for South African citizens or majority citizen-owned juristic persons.

Concern: While the reservation of certain business activities may, where supported by evidence, strengthen opportunities for South African entrepreneurs in specific sectors, it also creates uncertainty for existing SMMEs structured as joint ventures with foreign partners, or reliant on foreign technical partners for market entry.

- ***Parliament should legislate on the basis of evidence rather than possibility.*** **–**

Recommendation: Before any sector is reserved under Clause 17, the Minister should publish an evidence-based Sector Reservation Proposal setting out the policy rationale, the specific market failure or economic harm to be addressed, the alternatives considered, and the findings of the required socio-economic impact assessment. This proposal should form the basis of meaningful public consultation before regulations are finalised.

Recommendation: Include an explicit transitional protection clause preserving the validity of existing licences and structures for a defined period (proposed: minimum 24 months) following any new sector reservation and require the mandatory socio-economic impact assessment under Clause 17(2)(b) to specifically address competitiveness and investment effects on small business.

Recommendation: The socio-economic impact assessment contemplated in Clause 17(2)(b) should not be treated as a procedural requirement alone but should form the primary evidentiary basis upon which any reservation decision is made. The assessment should specifically consider the likely impact on small enterprises, investment, employment, competition, local economic development and regional market dynamics, and should be informed through structured consultation with organised business and Business Chambers.

Recommendation: Role of Business Chambers in Evidence-Based Decision-Making:
The SBI submits that Business Chambers are uniquely positioned to support Government in gathering local economic intelligence prior to any reservation decision. Through direct engagement with businesses across South Africa, Business Chambers can provide valuable information regarding local market conditions, unlawful trading practices, barriers to entry,

sector-specific challenges and the likely impact of proposed interventions. This local evidence can significantly strengthen the quality and legitimacy of future policy decisions.

Clause 22 — Power of authorised officers to confiscate and remove goods

Provision: Permits an authorised officer to confiscate and remove goods without a warrant on reasonable suspicion of unlicensed trading.

Concern: This power carries significant risk for informal and survivalist traders, particularly where perishable stock is involved. The Bill does not require proportionality (e.g. a prior verbal warning or short compliance window) before goods are removed.

Recommendation: Require authorised officers to first afford the trader a reasonable opportunity (proposed: 24 to 48 hours) to produce a licence or evidence of a pending application before confiscation, except where there is a demonstrable and immediate risk to public health or safety. Where goods are confiscated, authorised officers should provide written reasons and an inventory of confiscated goods, together with an accessible review mechanism, to ensure procedural fairness and accountability.

Clause 24 — Administrative penalties

Provision: Sets escalating fines of up to R500, R5 000 and R10 000 for first, second and third non-compliance respectively.

Concern: Flat fines applied uniformly to all business sizes are regressive: a R10 000 fine represents a materially different burden to a survivalist trader than to an established SMME.

Recommendation: Introduce a sliding scale linked to declared turnover or enterprise classification (micro, small, medium), consistent with the National Small Enterprise Act classifications, with the current amounts applying as a ceiling for medium enterprises only.

Clauses 11 and 12 — National Committee and Provincial Committees

Provision: Establishes national and provincial inter-governmental coordination structures for business licensing, drawing membership from government departments and SALGA.

Concern: As currently constituted, neither committee includes direct SMME sector or organised business representation, despite these bodies advising on licensing policy and regulations that materially affect SMMEs.

Recommendation: Amend Clauses 11(3) and 12(2) to include at least one nominated representative each from organised business and the Small Business Institute (SBI), recognising the SBI's national representation of Business Chambers and small business interests. The National Committee should also publish an annual report on the implementation of the Business Licensing framework, including licensing trends, implementation challenges, sector reservations (where applicable), and recommendations for improving the regulatory environment for SMMEs.

Clause 4 — Designation of business undertakings

Provision: Requires a minimum 30-day public comment period before the Minister designates a business undertaking as requiring a licence.

Concern: A 30-day minimum may be insufficient for informal and survivalist enterprises, who typically have less capacity to monitor Gazette notices and organise representations than larger, resourced businesses.

Recommendation: Extend the minimum comment period to 60 days specifically where a proposed designation is likely to affect informal or survivalist enterprises and require the Department to actively publicise such notices through municipal and community channels, not the Gazette alone.

4. Conclusion

SBI supports the underlying intent of the Business Licensing Bill, 2026 to create a coherent, redress-oriented and efficient national licensing framework. The recommendations above are offered constructively, to strengthen the Bill's practical impact on the small and medium enterprises that the SBI represents and serves.

SBI would welcome the opportunity to engage further with the Department of Small Business Development, either in writing or through public hearings, on any of the matters raised in this submission.

The SBI believes that successful economic policy is developed not only for small businesses, but with small businesses. Through South Africa's Business Chambers and organised business formations, Government already has access to the knowledge, evidence and local partnerships needed to ensure that future interventions are both effective and sustainable.