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PROVINCE OF THE EASTERN CAPE**PROVINCIAL NOTICE****OFFICE OF THE PREMIER****No. 430****EASTERN CAPE APPROPRIATE TECHNOLOGY UNIT BILL**

The above mentioned Bill is hereby published for public comment
in terms of rule 147 of the Standing rules of the Legislature, Eastern Cape.

Members of the public are invited to submit their comments to the **Director- General,**
Office of the Premier, Private Bag X0047 , Bisho ,5605 within 14 days from the date
of publication hereof.

PROVINCE OF THE EASTERN CAPE

OFFICE OF THE PREMIER

EASTERN CAPE APPROPRIATE TECHNOLOGY UNIT BILL, 2007

As Introduced

(BY THE PREMIER OF THE PROVINCE OF THE EASTERN CAPE)

BILL

To provide for the establishment, objects and functions of the Eastern Cape Appropriate Technology Unit; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Eastern Cape Appropriate Technology Unit, previously known as the Transkeian Appropriate Technology Unit was created in terms of section 3 and section 7(1)(b) of the Transkeian Corporations Act, 1985 (Act No. 10 of 1985);

WHEREAS the Transkeian Corporations Act, 1985 was amended by the Corporation Transitional Provisions Amendment Act, 1995 (Act No. 10 1995) (Eastern Cape), in order to give administrative powers to the Provincial Government of the Eastern Cape in line with the assignment thereto of the relevant legislation by the President in terms of the Constitution of the Republic of South Africa, 1996; and

WHEREAS there is a need to rationalize the laws governing Eastern Cape Appropriate Technology ;

NOW THEREFORE, BE IT ENACTED by the Legislature of the Province of the Eastern Cape, as follows:-

DEFINITIONS

1. In this Act, unless the context otherwise indicates, the words or expressions used herein shall bear the meaning assigned to them, and -

“alternate member” means an alternate member of the Board;

“Appropriate technology “ means innovative technologies that are relevant to a particular rural area to eradicate poverty;

“Board” means the Board of the Eastern Cape Appropriate Technology Unit constituted by section 5;

“Chief Executive Officer” means the Chief Executive Officer appointed in terms of Section 15;

“Constitution” means Constitution of the Republic of South Africa , 1996 (Act No. 108 of 1996);

“Department” means the Office of the Premier;

“ECATU” means the Eastern Cape Appropriate Technology Unit, established by section 2;

“financial year” means the period from 1 April in any year to 31 March in the next year;

“Gazette” means the Gazette;

“House” means the House of Traditional Leaders (Eastern Cape) established in terms of section 2 of the House of Traditional Leaders Act (Eastern Cape), 1995 (Act No. 1 of 1995)

“Legislature” means the Legislature of the Province;

“member” means a member of the Board;

“Officer” means any person employed by ECATU in terms of sections 15 and 24 and includes any person seconded to ECATU;

“person” includes a juristic person;

“PFMA” means the Public Finance Management Act, 1999 (Act No. 1 of 1999) as amended;

“Premier” means the Premier of the Province as elected in terms of section 128 of the Constitution;

“Province” means the Province of the Eastern Cape established by section 103 of the Constitution; and

“Poverty” means the inability of individuals, households or communities to command sufficient resources to satisfy socially acceptable minimum standard of living and includes lack of opportunity and lack of assets.

ESTABLISHMENT OF EASTERN CAPE APPROPRIATE TECHNOLOGY UNIT

2. There is hereby established the Eastern Cape Appropriate Technology Unit, with juristic personality.

OBJECTS OF ECATU

3. (1) The objects of ECATU are to –
- (a) plan, finance, and carry out projects relating to appropriate technology in all the development fields in the Province, namely–
 - (i) provide appropriate technologies to support rural development;
 - (ii) provide technical advice, where necessary to government departments on innovations to support policy development and decision making;
 - (iii) undertake research and development on existing and proposed technologies in the public and private sectors;
 - (iv) promote sustainable development techniques and methodologies;
 - (b) contribute towards the eradication of poverty and its causes by supporting organizations involved in appropriate technology research, development and implementation in order to –
 - (i) carry out projects or programmes aimed at meeting development needs of poor communities in the Province;
 - (ii) strengthening the institutional capacity of other civil society organizations involved in direct service provision to poor communities in the Province; and

- (c) promote dialogue and sharing of development experience between civil society organizations and relevant organs of state in the Province.
- (2) For the purposes of carrying out the objects referred to in subsection (1), ECATU –
- (a) may enter into partnerships with other spheres of government; public institutions and the private sector; and
 - (b) must link its work with applicable related policies.

DUTIES AND POWERS OF ECATU

4. (1) ECATU must –
- (a) establish, initiate, plan, finance, co-ordinate, promote, manage, carry out or assist in the establishment, planning, financing, co-ordination, promotion, management or carrying out of projects that will benefit and develop the Province and persons resident in the Province, or for the benefit of demonstrating appropriate technology;
 - (b) promote, plan, establish, co-ordinate and carry out any undertaking contemplated in section 3;
 - (c) assist to develop, co-ordinate and implement policy relevant to its objects referred to in section 3;
 - (d) assist in contributing towards building the capacity of civil society organizations to enable them to carry out development work effectively in the Province;
 - (e) hold, manage, develop, purchase, hire, or otherwise acquire land or buildings, erect, maintain and repair buildings on its land, sell, let, or otherwise dispose of, mortgage or hypothecate such land or buildings for the purpose of furthering the objects stipulated in section 3; and

(f) take control of and operate existing bank accounts, open new accounts with any financial institution registered under the Banks Act, 1990 (Act No. 94 of 1990) in accordance with the PFMA.

(2) ECATU may-

(a) plan, encourage, co-ordinate, undertake or finance the training of persons, officers or members either directly or indirectly in the fields and business undertakings contemplated in section 3,

(b) take up interest in a public or private entity, purchase, hire, develop, hold, subscribe to or otherwise acquire or take over movable or immovable property of any kind, in pursuance of the objects of ECATU as set out in section 3;

(c) by legal process cause any entity or juristic person in which it has any share or interest to be liquidated or placed under judicial management, and to petition a competent court to sequestrate the estate of any of its debtors;

(d) act where necessary, to protect its interests;

(e) take such security as it may deem fit, including but not limited to mortgage bonds over immovable property, notarial bonds over movable property, pledges of movable property, cessions of rights, and in general any other form of security in pursuance of the objects of ECATU as set out in section 3;

(f) act as agent or representative in connection with any matter of whatsoever nature on behalf of a person in connection with all or any of its objectives or itself to appoint agents or representatives in connection with any of its objects; and

(g) transfer any kind of property held by ECATU or any interest in such property to any person upon such terms and conditions as may be necessary or appropriate in the circumstances;

(h) employ persons and regulate their employment as it deems necessary in compliance with the relevant legislation;

- (i) exploit, utilise and develop any natural resource to further the objects as stipulated in section (3) in an environmentally friendly manner; and
- (j) exercise any other power that is necessary or incidental to the exercise of its powers.

COMPOSITION AND APPOINTMENT OF BOARD MEMBERS

5. (1) The Board must consist of not less than five and not more than seven members to be appointed by the Premier, of whom –

- (a) one must be an officer in the employ of the Department;
- (b) one must be a traditional leader who is a member of the House and who has knowledge, experience and qualifications in one of the areas contemplated in paragraph (c)
- (b) four or five must collectively possess knowledge, insight, experience and appropriate qualifications in the areas of–
 - (i) business and economic development;
 - (ii) financial administration;
 - (iii) science and technology;
 - (iv) law; and
 - (v) rural development.

(2) (a) Save for the member contemplated in subsection (1) (b), the members of the Board must be appointed by the Premier through open invitation for applications by interested persons for consideration by him or her for membership.

(b) The House must submit a name to the Premier for consideration for membership.

(c) The invitation contemplated in paragraph (a) must be published in at least one newspaper having a wide circulation in the Province.

(3) The Premier must designate one of the members of the Board as chairperson and another as deputy chairperson.

(4) If at any time the chairperson and the deputy chairperson can not attend a meeting, the members present must elect one member from those who are present to preside at that meeting.

TERM OF OFFICE

6. A member of the Board must hold office for a period of three years, but is eligible for re-appointment for one additional term of office.

VACANCIES

7. A vacancy in the Board occurs if a member -
- (a) dies; or
 - (b) has served his or her term of office; or
 - (c) is disqualified in terms of section 8; or
 - (d) is absent from two consecutive meetings of the Board without prior consent of the chairperson of the Board; or
 - (e) resigns or is removed from office.

DISQUALIFICATION

8. A person is disqualified from being a member or remaining a member of the Board if he or she is -
- (a) not a South African citizen;
 - (b) declared to be of unsound mind by a competent court;
 - (c) an unrehabilitated insolvent;

- (d) convicted of an offence involving dishonesty or murder, rape, robbery, culpable homicide or any other offence for which he or she is sentenced to imprisonment without the option of a fine; or
- (e) a member of –
 - (g) a Municipal Council;
 - (ii) a Provincial Legislature;
 - (iii) Parliament; or
 - (iv) a House of Traditional Leaders.

RESIGNATION AND REMOVAL FROM OFFICE

9. (1) A member may, on one month's written notice tender his or her resignation to the Board.

(2) A member must be removed from office –

- (a) if he or she becomes disqualified in terms of section 8; or
- (b) on good cause shown.

TERMS AND CONDITIONS OF OFFICE OF MEMBER

10. (1) A member holds office on such conditions as to, and including remuneration, allowances and benefits as determined by the Premier after consultation with the member of the Executive Council for Finance.

(2) A member is entitled to be reimbursed for any traveling and subsistence expenses reasonably incurred by him or her in connection with the performance of his or her functions as a member and may for that purpose be paid such allowances as the Premier, after consultation with the member of the Executive Council responsible for Finance has determined.

(3) No member is personally liable for any loss or damage which may occur in the performance of his or her duties unless such loss or damage was due to his or her willful misconduct, dishonesty, gross negligence or failure to comply with any provision of, or any direction or decision under this Act.

MEETINGS OF BOARD

11. (1) The first meeting of the Board must be held at a place and time determined by the Premier, and subsequent meetings of the Board must be held on such dates and at such a time and place as determined by the chairperson.

(2) Notice of every meeting of the Board must state the business to be transacted and must be given to all members in the manner and form determined by the Board.

DECISIONS OF BOARD AND VOTING POWERS OF CHAIRPERSON

12. (1) A decision agreed upon by the majority of the members eligible to vote at any meeting of the Board, constitutes a decision of the Board.

(2) In the event of an equality of votes, the chairperson has a casting vote in addition to his or her deliberative vote.

(3) A decision of the Board or an act on the authority of the Board, is not invalid merely due to a vacancy in the Board or because any person who is not entitled to take a seat as member, took a seat as a member in a meeting in which the decision was taken or the act was authorised, if such decision was taken or the act was authorised by the required majority of the members eligible to vote at that Board meeting.

(4) The Board must cause a record to be kept of the proceedings of its meetings and the Premier may at any reasonable time require that such record be submitted to him or her for perusal.

(4) The Board may make rules in regard to the holding of, and procedure at, its meetings.

QUORUM

13. The quorum for a meeting of the Board must be the majority of members of the Board.

COMMITTEES OF BOARD

14. (1) The Board may appoint committees, with the power to co-opt other persons, for the purpose of assisting it with the due and proper exercise and performance of any of its powers and functions in terms of this Act, and may likewise dissolve, extend, enlarge or limit any committee so appointed.

(2) A committee appointed under subsection (1) must consist of at least three members appointed by the Board in view of being suitable and appropriately qualified or experienced in regard to matters relating to the objects and functions of the committee in question.

(3) The Board must designate one of its members on a committee as its chairperson.

(4) A co-opted member serves in an advisory capacity, and is not entitled to vote at any meeting of the committee.

CHIEF EXECUTIVE OFFICER

15. (1) The Board must in consultation with the Premier, appoint as its Chief Executive Officer a person who has appropriate qualifications, knowledge or experience regarding the business and operations of ECATU;

(2) The Chief Executive Officer is the accounting officer for ECATU and is accountable to the Board.

(3) The Chief Executive Officer must be appointed on contract for a period not exceeding three years on such terms and conditions as determined by the Board in consultation with the Premier.

(4) The Chief Executive Officer may resign on one month's written notice tendered to the chairperson.

(5) The board may in consultation with the Premier appoint a suitable person to act as the Chief Executive Officer where the Chief Executive Officer is unable to carry out his or her functions.

(6) The Chief Executive Officer must be a member of the Board, ex officio, without voting powers.

RESPONSIBILITIES OF CHIEF EXECUTIVE OFFICER

16. (1) The Chief Executive Officer is the head of the administration of the Board.

(2) As head of administration, the Chief Executive Officer is responsible for –

- (a) initiating and implementing the strategic policies and carrying out the decisions of the Board;
- (b) the formation and development of an efficient administration;
- (c) the organisation, control and management of the staff; and
- (d) the exercise of any of the powers of the Board –
 - (i) assigned to the Chief Executive Officer in terms of this Act; or
 - (ii) delegated to the Chief Executive Officer in terms of section 28.

(3) The Chief Executive Officer must report to the Board on the administration as often as the Board may require.

TERMINATION OF TERM OF OFFICE OF BOARD MEMBERS AND REPLACEMENT OF THE BOARD

17. The Premier may, at any time, if he or she considers it to be in the public interest or in the interest of the proper administration of this Act simultaneously terminate the term of office of members of the board and replace such members in terms of section 5.

REMOVAL OF CHIEF EXECUTIVE OFFICER FROM OFFICE

18. (1) The Board may, in consultation with the Premier, remove the Chief Executive Officer from office on account of –

- (a) misconduct; or

(b) incapacity.

(2) Whenever any inquiry or investigation for the purpose of establishing whether or not there exists sufficient cause for the removal of the Chief Executive Officer from office in terms of subsection (1), is being undertaken, the Board may, with due regard to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), suspend the Chief Executive Officer from his or her office pending the outcome of an inquiry or investigation.

DUTY OF MEMBERS TO DISCLOSE INTERESTS IN CERTAIN CONTRACTS

19. (1) A member of the Board must disclose to the Board full particulars relating to the nature and extent of his or her interest in respect of any matter under adjudication by the Board.

(2) If at any stage during the course of any proceedings before the Board it appears that a member of the Board has or may have any interest contemplated in subsection (1) that member must fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members of the Board to discuss the matter and determine whether that member is precluded from participating in the proceedings at such meeting by reason of a conflict of interest.

(3) If any member of the Board fails to disclose any interest contemplated in subsection (1) or if, having such an interest, he or she attends or in any manner whatsoever contributes to the proceedings at the meeting concerned, such contribution will be deemed not to have been made.

FUNDING OF ECATU

20. (1) The funds of ECATU must consist of-

- (a) money appropriated by the Legislature;
- (b) donations and contributions lawfully received from any source;
- (c) interest on investments;
- (d) any monies lawfully derived from any source.

ANNUAL REPORT AND FINANCIAL STATEMENTS

21. (1) The Board must –
- (a) keep full and proper records of its financial affairs;
 - (b) prepare financial statements for each financial year in accordance with generally acceptance accounting practise;
 - (c) submit those financial statements within two months of the financial year to the Auditor-General; and
 - (d) submit within five months of the end of a financial year to the Provincial Treasury-
 - (i) annual report on the activities of the Board during that financial year;
 - (ii) the financial statements for that financial year after the statements have been audited; and
 - (iii) the report of the auditors on those statements.
- (2) The annual report and financial statements referred to in subsection (1)(d) must –
- (a) fairly present the state of affairs of the Board, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned; and
 - (b) include particulars of-
 - (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;
 - (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
 - (iii) any losses recovered or written off; and

- (iv) any financial assistance received from the state and commitments made by the state on its behalf.

(3) The Board must submit the report and statements referred to in subsection (1)(d) to the Premier for tabling in the Legislature.

EXPENDITURE

22. The expenditure incurred by or on behalf of ECATU, including expenditure relating to members of the Board and personnel employed by ECATU must be defrayed from the funds of ECATU.

QUARTERLY REPORTS

23. (1) The Board must submit to the Premier quarterly reports, on activities, operations, and financial position of ECATU, and must –

- (a) state the extent to which ECATU has achieved or advanced its objectives during the financial quarter concerned;
- (b) contain relevant information regarding utilization of resources;
- (c) indicate the amount of funds , if any, received from the Government or any other source and any other commitment furnished to ECATU; and
- (d) contain the detailed personnel establishment and composition of ECATU.

(2) Notwithstanding the provisions of subsection (1), the Premier may, at any time, request the Board to submit to him or her, an interim report pertaining to the state of affairs, the activities, the operations, and the financial position of ECATU pertaining to any specific matter identified by the Premier and must be submitted to the Premier within fourteen days after such request.

PERSONNEL OF ECATU

24. (1) The Board must appoint personnel for the conduct of the business of ECATU on such terms and conditions as may be determined in consultation with the Premier and the Member of the Executive Council responsible for Finance.

(2) The Board may discipline personnel in the employ of ECATU, subject to a disciplinary code approved by the Board and the Labour Relations Act, 1995 (Act No. 66 of 1995).

(3) For the purposes of this Act, the Board must, within three months after the coming into operation of this Act, adopt a set of comprehensive rules pertaining to all personnel matters of ECATU.

PROHIBITION OF USE OF NAME OF ECATU

25. (1) No person, company or association of persons shall carry on business under a name which is the same as or so closely resembles that of ECATU that is calculated to or is reasonably likely to deceive.

(2) Any person who contravenes the provisions of subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand.

CHANGE OF NAME OF ECATU

26. The Premier may, by notice in the *Gazette* from a date fixed in such notice, change the name under which ECATU is known.

DISSOLUTION OF ECATU

27. ECATU may not be dissolved except by or under the authority of an Act of the Provincial Legislature.

DELEGATION OF POWERS

28. (1) The Board may, subject to such conditions as it may determine, in writing delegate or assign any power or function conferred or imposed upon it under this Act, except the powers of functions conferred or imposed upon it under section 18 to-

- (a) the Chief Executive Officer;
- (b) the chairperson;
- (c) a committee of members; or
- (d) a committee of members and the Chief Executive Officer.

(2) A delegation or assignment under subsection (1) does not prevent the Board itself from exercising the power of performing the function concerned.

REGULATIONS

29. (1) The Premier may make regulations, not inconsistent with the provisions of this Act or any other law, pertaining to –

- (a) the keeping of registers and records by the Board;
- (b) the official seal of the Board and use thereof;
- (c) the preparation and submission of the monthly balance sheet, statements and reports referred to in section 23;
- (d) the service of notices;
- (e) the procedure relating to the submissions of matters to the Premier in terms of section 21;
- (f) such other matters as are necessary or useful to be prescribed for the attainment of the objectives of this Act, the generality of this provision not being limited by the provisions of the preceding paragraphs.

SHORT TITLE AND COMMENCEMENT

30. This Act is called the Eastern Cape Appropriate Technology Unit Act, 2007, and comes into operation on a date fixed by the Premier by proclamation in the Provincial Gazette.

EXPLANATORY MEMORANDUM ON THE EASTERN CAPE APPROPRIATE TECHNOLOGY BILL, 2007

PART 1

(Principles)

The Eastern Cape Appropriate Technology Unit (ECATU) is a corporate entity established in 1984 by Notice as Transkei Appropriate Technology Unit (TATU). The Notice establishing TATU was issued in terms of section 3 of the Transkei Corporations Act, 1976 (Act No. 16 of 1976). Act No. 16 of 1976 was subsequently repealed by the Corporations Act, 1985. Among the objects of TATU was the planning, financing and carrying out of projects relating to appropriate technology in all development fields, particularly with regard to the provision of technology for rural development. TATU was a regional institution whose operations were limited to the former Republic of Transkei. The possibility of establishing a similar institution had been provided for in the former Republic of Ciskei through the Ciskeian Corporations Act, 1981.

After 1994, it became necessary to amalgamate, and co-ordinate the various entities that operated within the boundaries of what is now known as the Province of the Eastern Cape. To this end the Corporations Transitional Provisions Act, 1995 (Act No. 12 of 1995) (Eastern Cape) was passed. The 1995 Act amended the Transkei Corporations Act, 1985 by giving power to the Premier to dissolve a "corporation" e.g. ECATU. The Corporations Act, 1995 did not however extend the territorial application of ECATU. Even though ECATU may operate throughout the Province, in law ECATU's operation is still confined to the former Republic of Transkei.

The Bill seeks to remedy that anomaly in that ECATU is established as a juristic personality which will be able to operate throughout the Province. The Province is comprised mostly of rural areas and a need for a well managed rural development agency cannot be overemphasized. The Province is faced with a challenge of rural development and poverty alleviation. ECATU is seen as a vehicle that will assist the Province in facing this daunting task. To this end, the Bill makes provision for ECATU to contribute towards the eradication of poverty and its causes by granting funds to civil society organizations to carry out projects or programmes aimed at meeting the developmental needs of poor communities in the Province.

PART II***(Clause by clause analysis)***

- | | | | |
|---------------|----------|---|--|
| Clause | 1 | - | definitions |
| Clause | 2 | - | establishes ECATU as a juristic person |
| Clause | 3 | - | sets out the objectives of ECATU which include <i>inter alia</i> planning, financing and carrying out of projects relating to appropriate technology in all development fields in the Province |
| Clause | 4 | - | provides for powers and duties of ECATU which include establishment, initiating, planning, financing, co-ordinating or assisting in the establishment of projects which constitute undertakings or business undertakings that will benefit and develop the Province and persons resident in the Province |
| Clause | 5 | - | sets out how the Board must be constituted and further provides for appointment of members of the Board by the Premier |
| Clause | 6 | - | provides for term of office of members of the Board |
| Clause | 7 | - | sets out circumstances that will lead to a vacancy in the Board |
| Clause | 8 | - | sets out disqualification from membership of the Board |

- | | | | |
|---------------|-----------|---|--|
| Clause | 9 | - | provides for resignation as well as removal from office |
| Clause | 10 | - | provides for conditions of service of members which are to be determined by the Premier in consultation with the Premier for Finance |
| Clause | 11 | - | sets out when meetings of the Board are to be held |
| Clause | 12 | - | provides for procedure at Board meetings |
| Clause | 13 | - | provides for quorum at Board meetings |
| Clause | 14 | - | provides for appointment of committees of the Board |
| Clause | 15 | - | provides for appointment of the Chief Executive Officer by the Board in consultation with the Premier |
| Clause | 16 | - | provides for the responsibilities of the Chief Executive Officer |
| Clause | 17 | - | provides for simultaneous termination of term of office of Board members and replacement thereof; |
| Clause | 18 | - | sets out circumstances that may lead to removal of Chief Executive Officer from office |
| Clause | 19 | - | provides for disclosure of interest by a Board member in respect of any matter under adjudication by the Board. |
| Clause | 20 | - | provides for funding of ECATU |
| Clause | 21 | - | provides for preparation and submitting of financial statements and annual reports |
| Clause | 22 | - | sets out how expenditure incurred by and on behalf of ECATU is to be defrayed |

- | | | | |
|---------------|-----------|---|--|
| Clause | 23 | - | provides for submission of quarterly reports on activities, operations and financial position of ECATU to the Premier |
| Clause | 24 | - | provides for appointment of personnel by the Board in Consultation with the Premier |
| Clause | 25 | - | prohibits use of name of ECATU |
| Clause | 26 | - | provides for change of name of ECATU by the Premier |
| Clause | 27 | - | provides for dissolution of ECATU under the authority of an Act of the Legislature |
| Clause | 28 | - | provides for delegation of powers by the Board to the Chief Executive Officer, the chairperson or a committee of members |
| Clause | 29 | - | provides for the Premier to make regulations |
| Clause | 30 | - | provides the short title of the Act |
-