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PROVINCIAL NOTICE

NOTICE 30 OF 2010

AGRICULTURE AND RURAL DEVELOPMENT

PUBLICATION OF EASTERN CAPE RURAL DEVELOPMENT CORPORATION AMENDMENT BILL, 2010

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 hereby invited to comment on the Bill for a period of 14 days from the date of publication hereof.

Members of the public are requested to submit their comments in writing either by registered post, hand delivery, e-mail or fax to:

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PROVINCE OF THE EASTERN CAPE

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

**EASTERN CAPE RURAL DEVELOPMENT CORPORATION
AMENDMENT BILL, 2010**

As introduced

**(BY THE MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE
FOR AGRICULTURE AND RURAL DEVELOPMENT)**

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GENERAL EXPLANATORY NOTE

[] **Words in bold type in square brackets indicate omissions from existing enactments.**

_____ **Words underlined with a solid line indicate insertions in existing enactments.**

BILL

To amend the Eastern Cape Rural Finance Corporation Act, 1999 (Act No.9 of 1999) so as to rationalize and integrate entities dealing with rural development in the Province into the Eastern Cape Rural Development Agency, to provide for establishment of a Fund, to amend the name of the Eastern Cape Rural Finance Corporation, to broaden the powers and functions of the Corporation and to provide for matters incidental thereto.

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

AMENDMENT OF SECTION 1 OF ACT 9 OF 1999

1. Section 1 of Eastern Cape Rural Finance Corporation Act, 1999 (Act No.9 of 1999) (hereinafter referred to as the “principal Act”), is hereby amended –
 - (a) By the substitution of the definition of “ **Corporation**” of the following definition

“**Corporation**” means the Eastern Cape Rural Development [**Finance**] Corporation referred to in section 2(1);”.

- (b) by the insertion after the definition of “ **Corporation** ” of the following definition :

“**department** “ means the department responsible for the administration of this Act

- (c) by the insertion after the definition of “ **director** of the following definition :

“**executing authority**” means an executing authority as defined in the Public Service Act, 1994 (Proclamation 103 of 1994);

- (d) by the insertion after the definition of “ **Executive Council**” of the following definition :

“**Fund** “ means the Fund contemplated in section 7A;”.

- (e) by the insertion after the definition of “ **Province**” of the following definition :

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

AMENDMENT OF SECTION 2 OF ACT 9 OF 1999

2. Section 2 of the Principal Act is hereby amended by the substitution of subsection 1 for the following :

“ (1) There is hereby established a statutory body to be known as the Eastern Cape Rural [**Finance**] Development Corporation Limited to be commonly known as the Eastern Cape Rural Development Agency, with the objects, powers, functions, and duties assigned to it in this Act ”.

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AMENDMENT OF SECTION 3 OF ACT 9 OF 1999

3. Section 3 of the Principal Act is hereby amended by the insertion after subsection (4) of the following subsections :

(5) driving and coordinating integrated programmes of rural development, land reform and agrarian transformation in the Province;

(6) project managing rural development interventions in the Province;

(7) promoting applied research and innovative technologies for rural development in the Province;

(8) planning, monitoring and evaluating rural development in the Province ;
and

(9) facilitating the participation of the private sector and community organizations in rural development programmes”.

AMENDMENT OF SECTION 4 OF ACT 9 OF 1999

4. Section 4 of the Principal Act is hereby amended by addition of the following phrase :

“4. Powers of the corporation. - For the purpose of attaining its objects, subject to the Public Finance Management Act , the corporation has the power to—.”.

AMENDMENT OF SECTION 5 OF ACT 9 OF 1999

5. Section 5 of the Principal Act is hereby amended by the substitution of subsection (2) of the following subsection :

“ (2) The corporation must [may] operate throughout the Province and its activities need not be confined to rural areas”.

INSERTION OF SECTION 7 A

6. The following sections are hereby inserted after section 7 of the Principal Act :

“ 7A Establishment of the Fund

(1) There may be established a Fund to support rural development programmes.

(2) The Fund may consist of –

(a) money appropriated by the Legislature;

(b) any donation or bequest given from any source, whether inside or outside the Republic of South Africa for rural development activity;

(c) own generated revenue through sustainable and commercially viable projects implemented through the Corporation ;

(d) fees, levies and other moneys received or raised by it under the provisions of this Act or any other law;

(e) money borrowed by it in terms of this Act;

(f) income derived by it from investments;

(g) money accrued to the Corporation from any other source; and

(h) any other funding mechanism that is identified by the Corporation and approved by the Board in consultation with the MEC prior to the utilisation of that funding mechanism by the Corporation

(3) The Board is responsible for the management and control of the Fund and monies in the fund can be expended by the Board for the purpose of attaining the objects of the Act.

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- (4) Subject to the PFMA , any money or investment in the Fund at the end of a financial year must be carried forward in the Fund to the ensuing financial year.
- (5) The MEC may make regulations on any matter he or she deems appropriate for the administration of the Fund.

SUBSTITUTION OF SECTION 8 OF ACT 9 OF 1999

7. The following section is hereby substituted for section 8 of the Principal Act :

“Board of directors

- 8 (1) The affairs of the corporation must be governed by a Board appointed by the MEC.
- (2) The Board is the accounting Authority of the Corporation and must -
- (a) give strategic direction to the Corporation;
 - (b) be responsible for the performance of the Corporation;
 - (c) be accountable to the MEC for the performance of the Corporation; and
 - (d) be supported by a chief executive officer and other employees.
- (3) In addition to the duties and responsibilities as accounting authority of the Corporation provided for in the Public Finance Management Act, the Board must
- =
- (a) provide effective, transparent and accountable corporate governance and conduct effective oversight of the affairs of the Corporation, by adopting governance rules in accordance with subsection (4);
 - (b) comply with all applicable legislation and agreements; and

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- (c) at all times act in accordance with the code of conduct for members of the Board as may be prescribed by the MEC.
- (4)The Board must, with the approval of the MEC adopt an investment policy which must comply with the investment policy contemplated in section 7 of the PFMA.
- (5) The Board must adopt governance rules that substantially comply with the principles of good governance for a public entity contemplated in the Public Finance Management Act.
- (6) (a) The members of the Board who are not employed by an organ of state may be paid such remuneration and allowances as determined by the MEC in consultation with the MEC for Finance.
- (b) Members who are employed by an organ of state must only be reimbursed for out of pocket expenses”.

SUBSTITUTION OF SECTION 10 OF ACT 9 OF 1999

8. The following section is hereby substituted for section 10 of the Principal Act :

“10. Constitution of Board

- (1) The Board consists of not less than seven and not more than eleven members appointed by the MEC from applications and nominations received as contemplated in section 10A.
- (2) The members of the Board must when viewed collectively be persons who are suited to serve on the Board by virtue of their qualifications, skills , expertise, experience and knowledge in the fields of rural development, business and financial management, fund and investment management, law,and traditional affairs.

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- (3) The Executing Authority of the Office of the Premier, Provincial Treasury and the Department, must each appoint one member of the Board who must be an officer in the service of the respective department.
- (4) The chief executive officer is an *ex officio* member of the Board.
- (5) The Board must represent the demographics of the Province.”.

INSERTION OF SECTION 10 A

9. The following section is hereby inserted after section 10 of the Principal Act :

“ 10A. Nomination procedure

(1) The MEC must, at least 90 days before the expiry of every term of office of the members of the Board, invite applications or nominations for persons to be appointed to the ensuing term of office of the Board by notice in the *Gazette* and an advertisement in a leading newspaper in the Province.

(2) The invitation for applications or nominations referred to in subsection (1) must provide for the applications or nominations to be submitted within 30 days from the date of the invitation or the date of publication of the notice.

(3) Any application or nomination made pursuant to a notice or an advertisement in terms of subsection (1) must be made in the form determined by the MEC and accompanied by-

- (a) the personal details of the applicant or nominee;
- (b) particulars of the applicant's or nominee's qualifications or experience in the matters contemplated in section 10;
- (c) in the case of a nomination, a letter of acceptance of nomination by the nominee;

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- (d) a sworn declaration by the applicant or nominee that he or she is not disqualified in terms of section 11 A;
 - (e) a disclosure of the information contemplated in section 11E; and
 - (f) permission by the applicant or nominee to verify the information provided by him or her.
- (4) The MEC must, within 30 days from the expiry date specified in the notice and the advertisement, evaluate the applications and nominations received by him or her and appoint the members of the Board for the ensuing term of office of the Board.
- (5) When evaluating the nominations the MEC must take into consideration–
- (a) the applicant's or nominee's knowledge and experience of the matters referred to in section 10;
 - (b) the need for appointing persons previously disadvantaged by unfair discrimination;
 - (c) the geographic spread in the Province;
 - (d) the need to ensure that the Board is composed of persons covering a broad range of appropriate experience and expertise; and
 - (e) the Corporation's objectives.
- (6) If insufficient, unsuitable or no applications and nominations are received within the period specified in the invitations or the notice the MEC may appoint to the Board the required number of persons who, but for the fact that they did not apply or were not nominated in terms of the procedure contemplated in this section, qualify to be appointed in terms of this Act.
- (7) The MEC must, as soon as practicable after the appointment of the members of the Board, publish by notice in the *Gazette* the name of the persons appointed. “.”

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SUBSTITUTION OF SECTION 11 OF ACT 9 OF 1999

10. The following section is hereby substituted for section 11 of the Principal Act :

“11. Term of office

(1) A Board member holds office for a period of three years from the date of appointment and is eligible for re-appointment for one additional term not exceeding three years.

(2) Despite subsection (1), the MEC may, by notice in the Gazette, after consultation with the Board, extend the term of office of all the Board members for a period of six months, but he or she may only extend the term of office of the Board twice.”.

INSERTION OF SECTION 11A, 11B, 11C, 11D AND 11E

11. The following sections are hereby inserted after section 11 of the Principal Act :

“11. A Disqualification from appointment to or remaining as member of the Board

A person is disqualified from being appointed or remaining a member of the Board if that person-

(a) is or becomes a Member of the National Assembly or National Council of Provinces, any provincial legislature, municipality or is in the full-time employ of an organ of state with the exception of the representatives of the Departments contemplated in section 10;

(b) is not a South African citizen or a permanent resident in the Republic;

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- (c) is or becomes subject to a final order of court whereby his or her estate is sequestrated under the Insolvency Act, 1936 (Act No.24 of 1936), or if his or her estate is sequestrated in terms of the laws of any other country or territory by a competent court or agency of such country or territory, or if he or she has assigned his or her estate for the benefit of his or her creditors;
- (d) is declared by a competent court to be of unsound mind or suffers a mental illness or has a severe or profound intellectual disability as contemplated in the Mental Health Care Act, 2002 (Act No. 17 of 2002);
- (e) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty or of any offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or the Companies Act, 1973 (Act No. 61 of 1973), or of contravening this Act, irrespective of whether such imprisonment was wholly or partly suspended or not;
- (f) has been convicted of an offence, other than an offence contemplated in paragraph (e) and sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not;
- (g) without authorisation discloses or improperly acts on information gained as a result of his or her membership of the Board;
- (h) fails to disclose an interest as contemplated in section 11E ; or
- (i) is disqualified in terms of the Companies Act.

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11 B. Resignation of member and vacation of office

(1) A Member of the Board may at any time resign from the Board upon one month's written notice tendered to the chairperson who must immediately inform the MEC, the Board and the chief executive officer accordingly.

(2) A member of the Board who resigns as contemplated in subsection (1) must vacate his or her office at the end of the notice period contemplated therein.

(3) A member of the Board ceases to be a member and must vacate his or her office with immediate effect if he or she-

(a) is no longer eligible in terms of section 11 A to be a member; or

(b) is removed from office by the MEC in terms of section 11C.

11 C. Removal of member of Board, dissolution of Board and appointment of interim Board

(1) The MEC may, after due inquiry, or on recommendation of the Board after due enquiry, remove, with immediate effect, a member of the Board from office on account of any or all of the following:

(a) Misconduct;

(b) inability to perform the duties of his or her office efficiently; and

(c) absence from three consecutive meetings of the Board without the permission of the Board, except on good cause shown; and

(d) failure to disclose an interest in terms of section 11E or voting or attendance at, or participation in, proceedings of the Board while having an interest contemplated in section 11E.

(2) The MEC may, after due inquiry, dissolve the Board with immediate effect, if it fails in any or all of the following:

- (a) Discharging its fiduciary duties;
- (b) achieving its objectives in terms of this Act; and
- (c) carrying out its duties.

(3) Upon the dissolution of the Board contemplated in subsection (2), the MEC must appoint an interim Board consisting of between seven and nine members and he or she does not have to follow the nomination and appointment procedure contemplated in section 10B.

(4) The MEC must appoint the interim Board within 30 days after the dissolution of the Board and the term of office of the interim Board is a period not exceeding six months.

(5) The MEC must appoint the chairperson and deputy chairperson of the interim Board.

(6) The provisions of this Act regarding the Board apply to the interim Board.

11 D. Appointment of member to vacant seat

(1) When a seat on the Board becomes vacant as a result of any action referred to in section 11B, or if a Board member dies before the expiration of his or her term of office the Board must, as soon as is practicable after the seat becomes vacant notify the MEC that the seat has become vacant.

(2) The MEC must, as soon as is practicable after the receipt of the notification from the Board -

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(a) in an open and transparent manner, invite applications or nominations for a person to be appointed to the vacant seat;

(b) evaluate the applications and nominations received; and

(c) appoint a nominee or candidate to the vacant seat.

(3) If insufficient, unsuitable or no nominations are received as contemplated in subsection (2)(b), the MEC may appoint to the vacant seat on the Board any person who, but for the fact that he or she was not nominated or did not apply in terms of the procedure contemplated in subsection (2), qualify to be appointed in terms of this Act.

(4) The MEC must, as soon as practicable after the appointment of the member to the vacant seat on the Board, publish by notice in the *Gazette* the name of the person appointed.

(5) The person who is appointed to the vacant seat on the Board fills the vacancy for the unexpired portion of the period of office of the vacating member.”.

11E. Disclosure of interest

(1) A person may only be appointed to the Board, if he or she has made the following disclosure:

(a) whether, directly or indirectly, personally or through his or her spouse, partner or associate, he or she has a financial interest in core business of the Corporation and stipulate the nature and extent of that interest; or

(b) whether, his or her spouse, partner or associate, holds an office in or is employed by any company, organisation or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (a).

(2) If, at any stage during the course of any proceedings before the Board, it appears that any Board member has or may have an interest which may cause a conflict of interest -

- (a) that Board member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Board members to discuss the matter and determine whether that Board member is precluded from participating in that meeting by reason of a conflict of interest; and
- (b) the disclosure of interest by that member and the decision taken by the remaining Board members regarding the matter, must be recorded in the minutes of the meeting in question.

(3) If any Board member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Board is held or in any manner whatsoever participates in the proceedings of the Board, the relevant proceedings of the Board will be null and void.”.

SUBSTITUTION OF SECTION 12 OF ACT 9 OF 1999

12. The following section is hereby substituted for section 12 of the Principal Act :

“12 Chairperson and deputy chairperson

(1) The MEC must appoint a chairperson and the Board must appoint a deputy chairperson.

(2) The deputy chairperson must, if the chairperson is for any reason unable to act as chairperson, perform all the functions of the chairperson and may exercise all the powers of the chairperson.

(3) If both the chairperson and the deputy chairperson are for any reason unable to preside at a Board meeting, the members present must elect one of the members to

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preside at that meeting and the person elected may perform all the functions and exercise all the powers of the chairperson.

(4) A chairperson or deputy chairperson may vacate office as such, and such vacation does not terminate his or her membership of the Board and if the chairperson or deputy chairperson has vacated office, the MEC must appoint a chairperson or deputy chairperson from the Board members for the remaining term of office of the Board.”.

INSERTION OF SECTION 12A, 12B, 12C AND 12D

13. The following sections are hereby inserted after section 12 of the Principal Act :

“ 12A. Meetings of Board

(1) The MEC must, as soon as is practicable after the appointment of the Board for the first term of office, determine the time and place of its first meeting.

(2) The Board must determine the time and place of any future meetings for the first and subsequent terms of office of the Board.

(3) The Board meets as often as circumstances require, but at least four times in every financial year.

(4) A majority of Board members constitutes a quorum at a meeting.

(5) Every Board member, including the chairperson, has one vote and in the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.

(6) Subject to the approval of the Board, any person who is not a Board member may attend or take part, but may not vote, in a meeting of the Board.

(7) The Board must adopt governance rules which provides for the conduct of proceedings at meetings and recording of the proceedings and including the governance rules for special meetings.

12B. Decisions of Board

(1) A decision of the majority of Board members present at any duly constituted meeting constitutes a decision of the Board.

(2) No decision taken by or act performed under the authority of the Board is invalid by reason of -

(a) a vacancy on the Board at the time the decision was taken or the act was authorised; or

(b) the fact that any person who was not entitled to sit as a Board member, participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present at the time followed the required procedure for decisions.

SUBSTITUTION OF SECTION 13 OF THE PRINCIPAL ACT

14. The following section is hereby substituted for section 13 of the Principal Act :

“13. Executive management and employees

(1) The Board must –

(a) appoint a chief executive officer for a period of 5 years which may be renewable; and

(b) determine the conditions of appointment of the chief executive officer.

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(2) The chief executive officer must enter into a performance agreement with the Board on acceptance of his or her appointment and he or she is accountable to the Board.

(3) The chief executive officer is the head of the Corporation's administration and, subject to directives from the Board, the functions of the chief executive officer are, amongst others, to -

(a) manage the affairs of the Corporation;

(b) implement the policies and decisions of the Board;

(c) manage and recruit employees to perform the work necessary to achieve the objects of the Corporation; and

(d) develop efficient, transparent and cost-effective administrative systems.

(4) The Corporation must determine the conditions of service for its employees, including remuneration which must be determined in accordance with an approved remuneration policy .

(5) The chief executive officer may delegate any original or delegated duty or power to any employee appointed in terms of subsection (3)(c) in accordance with section 15.

AMENDMENT OF SECTION 14 OF ACT 9 OF 1999

15. Section 14 of the Principal Act is hereby amended by the substitution of subsection (2) of the following subsection :

"(2) The Board may co-opt any person outside the Board to sit in a committee if that person has skills and expertise and he or she must serve in an advisory capacity with no rights ."

SUBSTITUTION OF SECTION 15 OF THE PRINCIPAL ACT

16. The following section is hereby substituted for section 15 of the Principal Act :

“15. Delegations by Board

(1) The Board must develop a system of delegation to maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system may -

(a) in writing delegate appropriate powers, excluding the power to establish a committee, prescribe governance rules for a committee and appropriating funds, to a committee, the chief executive officer, a member of the Board or an employee of the Corporation; and

(c) approve the delegation of any of the powers delegated to the chief executive officer by the Board or granted to him or her under this Act, to any employee of the Corporation.

(2) A delegation in terms of subsection (1)-

(a) is subject to such limitations and conditions as the Board may impose;

(b) may authorise sub delegation; and

(c) does not divest the Board or the chief executive officer in the event of a delegation in terms of subsection (1)(c) of the delegated power.

(3) The Board may confirm, vary or revoke any decision taken by a committee, the chief executive officer, a member of the Board or an employee of the Corporation as a result of a delegation in terms of subsection (1).

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Short Title and commencement

17. This Act is called the Eastern Cape Rural Development Corporation Amendment Act , 2010 and shall into operation on a date determined by Premier by proclamation in the *Gazette*.