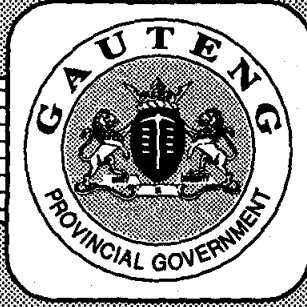


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THE PROVINCE OF
GAUTENG



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PRETORIA, 1 SEPTEMBER 1998

No. 522

PROCLAMATION

CTP_698E.

No. 25 (Premier's), 1998

(3-10)-(5)

PROCLAMATION

by the

Premier of the Province of Gauteng

DATE OF COMMENCEMENT: GAUTENG HOUSING ACT, 1998 (ACT No. 6 OF 1998)

By virtue of the powers vested in me by section 26 of Gauteng Housing Act, 1998 (Act No. 6 of 1998), I hereby determine 1 September 1998 as the date on which the above-mentioned Act shall come into operation.

Given under my Hand and Johannesburg on this Twenty-seventh day of August One thousand Nine hundred and Ninety-eight.

M. S. MOTSEKGA

Premier: Gauteng Province

PREMIER'S NOTICE

OFFICE OF THE PREMIER

No. 53

1 September 1998

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:

No. 6 of 1998: Gauteng Housing Act

ACT

To provide for the promotion and facilitation of housing development within the Province of Gauteng; to lay down applicable general principles; to establish a provincial housing advisory board and fund, to provide for consultation; to set out the powers and duties of the Member of the Executive Council responsible for Housing and Land Affairs in regard to accreditation of local authorities, housing corporations, secure tenure, housing programmes, provision of rental and social housing; and to provide for matters connected therewith.

PREAMBLE

WHEREAS in terms of section 26 of the Constitution of the Republic of South Africa, 1996, everyone has the right to have access to adequate housing, and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

AND WHEREAS the Provincial Legislature of Gauteng recognises that—

Housing as adequate shelter, fulfils a basic human need;
Housing is both a product and a process;
Housing is a product of human endeavour and enterprise;
Housing is a vital part of integrated developmental planning;
Housing is a key sector of the national economy;
Housing is vital to the socio-economic well-being of the community;

*(English text signed by the Premier)
(Assented to on 27 August 1998)*

BE IT THEREFORE ENACTED BY the Provincial Legislature of Gauteng, as follows:

Definitions

1. In this Act, unless the context otherwise indicates—

“**Board**” means Gauteng provincial housing advisory board established under section 5;

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

“**data bank**” means the national housing data bank contemplated in the Housing Act, 1997 (Act No. 107 of 1997);

“**department**” means the Department of Housing and Land Affairs in the Province;

“**Former board**” means provincial housing board established under the Housing Arrangement Act, 1993 (Act No. 155 of 1993);

“**Fund**” means the Gauteng Provincial Housing Fund referred to in section 12;

“**head of department**” means the most senior officer of the provincial administration in charge of the Department of Housing and Land Affairs in the province;

"housing development" means the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis, have access to—

- (a) permanent residential structures with secure tenure, ensuring privacy and providing adequate protection against the elements;
- (b) potable water, adequate sanitary facilities, waste disposal and domestic energy supply;

"housing development project" means any plan or proposal to undertake housing development as contemplated in any national housing programme;

"Member" means member of the board contemplated in section 6;

"MEC" means the member of the executive council responsible for housing matters in the province;

"Minister" means Minister of Housing;

"municipality" means a municipality as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993);

"national housing programme" means a national plan to facilitate housing development including, but not limited to, any housing assistance measure or other arrangement or measure intended to assist persons who cannot independently provide for their own housing needs or to facilitate housing delivery or to rehabilitate and upgrade existing housing stock, including municipal services and infrastructure;

"Province" means Province of Gauteng;

"this Act" includes regulations; and

"Regulations" means regulations made under section 25 of this Act.

Application of the Act

2. The provisions of this Act apply throughout the Province.

Principles underpinning housing development in the Province

3. Policy concerning housing development and the implementation thereof in the province must be based on the following principles:—

- (1) After consultation with the provincial organisation representing municipalities as contemplated in section 163(a) of the Constitution, Gauteng Provincial Government must do everything in its power to promote and facilitate the provision of housing in the province within the framework of national policy in respect of housing development.
- (2) For the purposes of subsection (1), the provincial government must—
 - (a) determine provincial policy in respect of housing development that—
 - (i) upholds the principles referred to in or prescribed under section 2 of the Housing Act, 1997 (Act No. 107 of 1997);
 - (ii) complies with the provisions of the code referred to in section 4 of the Housing Act, 1997 (Act No. 107 of 1997);
 - (b) promote the adoption of any legislation to ensure effective housing delivery;
 - (c) support and strengthen the capacity of municipalities to effectively perform their duties and responsibilities in respect of housing development;
 - (d) co-ordinate housing and related activities in the province;
 - (e) support local government in the exercise of its powers, the performance of its functions and execution of its duties and responsibilities;
 - (f) carry out the duties and responsibilities of local government in terms of this Act whenever a municipality is not able to do so itself; and
 - (g) prepare a multi-year plan in respect of the execution of national and

provincial housing programmes in the province in accordance with guidelines that the Minister may approve for the financing of such a plan with money from the Fund.

General powers and duties of the member of the executive council

4. In addition to other powers assigned to him or her by this Act or other legislation, the MEC must—

- (a) carry out the duties and responsibilities and exercise any power of the provincial government referred to in section 3;
- (b) establish norms, standards, frameworks and provincial policies which are not inconsistent with the Housing Act, 1997 (Act No. 107 of 1997), in order to deal effectively with matters pertaining to housing development that require to be dealt with uniformly across the Province;
- (c) present the provincial legislature with an annual report on the activities of the Gauteng provincial housing advisory board;
- (d) present the Minister of Housing with provincial motivations for fund allocations from the South African Housing Fund to the Gauteng Provincial Housing Fund for the purpose of funding national housing programmes in the province;
- (e) report to the provincial legislature on progress in the province with housing programmes, the activities of accredited municipalities and the transactions of the Gauteng Provincial Housing Fund, and to present the provincial legislature with the annual statements and balance sheet of the Gauteng Provincial Housing Fund, the report concerned to be made within 90 days after 31 December of each year, or if the provincial legislature is not then in session, within 14 days after the commencement of the provincial legislature's next session;
- (f) accredit any municipality which may apply for accreditation; provided that the municipality concerned satisfies the accreditation criteria as agreed between the MEC and the Minister;
- (g) allocate moneys from the Gauteng Provincial Housing Fund to any accredited municipality provided that the municipality concerned maintains separate accounts for the administration of national housing programmes;
- (h) establish targets in respect of housing delivery in the Province; and
- (i) encourage and develop new and innovative ways of reducing the cost of housing developments and diversifying the type of design and layout used in provincial projects.

Establishment of Provincial Housing Advisory Board

5. There is hereby established a board called the Gauteng Provincial Housing Advisory Board.

Composition of board

6. (1) The Board comprises six (6) members.
- (2) The Board must broadly reflect the race and gender composition of South Africa and the geographic composition of the Province.
- (3) the MEC must appoint members of the board only after—
 - (a) the MEC has consulted other members of the executive council of the province; and
 - (b) the Committee dealing with housing matters in the Gauteng provincial legislature has made recommendations to the MEC after a transparent and open process of considering persons so nominated.
- (4) A member or alternate member must—
 - (a) qualify as a fit and proper person; and
 - (b) possess knowledge, qualifications or experience in the field of housing development.
- (5) The MEC must designate one of the members of the board as the chairperson and another member as the vice-chairperson of the board.
- (6) Whenever the chairperson of the board is absent or unable to fulfil any of the functions of the chairperson, the vice-chairperson of the board must act as chairperson

of the board.

(7) Whenever both the chairperson and the vice-chairperson of the board are absent or unable to fulfil any of the functions of the chairperson, the MEC may designate another member of the board to act as chairperson of the board.

(8) If a member of the board other than its chairperson or vice-chairperson requests, the MEC may appoint an alternate member to act for that member in his or her stead when he or she is absent from a meeting of such board.

(9) The MEC must appoint the members of the board by—

- (a) calling for nominations for members of the board by publishing a notice in the Gazette and four newspapers circulating in the province;
- (b) in the notice referred to in paragraph (a), setting a date by which persons wishing to object on the appointments may do so;
- (c) taking into account comments or objections received in respect of proposed appointments; and
- (d) for the purpose of this subsection, specifically requesting nominations from:—
 - (i) associations for the disabled;
 - (ii) women's associations;
 - (iii) the banking industry;
 - (iv) local government in the Province;
 - (v) various organisations and community-based groups in civil society representing the interest of consumers of housing goods and services in the Province; and
 - (vi) the business sector or sectors supplying or financing housing goods and services in the Province.

(10) The MEC must by notice in the Gazette and one newspaper circulating in the Province, publish a list of the members of the board within one (1) month of their appointment.

Powers and duties of board

7. (1) The board must—

- (a) advise the MEC on matters pertaining to housing;
- (b) monitor the implementation of national and provincial housing policy;
- (c) promote policy adherence in the execution of national housing programmes in the province by monitoring delivery in terms of agreed criteria;
- (d) promote programme and project performance in the execution of national programmes in the province including monitoring the implementation of national housing programmes in respect of policy adherence by accredited municipalities;
- (e) carry out the policy directives of the MEC not inconsistent with national policy;
- (f) to report to the MEC on activities of the board when called upon to do so;
- (g) carry out the duties and functions pertaining to housing development assigned to the board by the MEC;
- (h) perform the functions, powers and duties of the Provincial Housing Board and administer the assets, liabilities and obligations of the Provincial Housing Board in accordance with the directives of the MEC and subject to sections 15 and 16 of the Housing Act, 1997 (Act No. 107 of 1997); and
- (i) administer or appoint agents to administer National Housing Programmes within the Province.

(2) The board may:—

- (a) with prior approval of the MEC, establish a sub-committee to assist it in the performance of its functions;
- (b) determine the composition of a sub-committee;
- (c) assign any of its functions to the sub-committee, without divesting itself of these functions and may amend or rescind a decision of the sub-committee;
- (d) dissolve a sub-committee established under paragraph (a) at any time.

Conditions of Service

8. (1) A member of the board, other than a person who is in the employment of the State, must be appointed on such conditions of service as the MEC may determine.

(2) A member of the board may be paid such allowances as the MEC may determine with the concurrence of the Member of the Executive Council responsible for financial matters in the Province.

Term of office of a member

9. A member of the board must, subject to subsections (1) and (3) of section 10, hold office for the period determined by the MEC at his or her appointment, but not exceeding three years, and may be re-appointed on the termination of this period.

Circumstances in which office must or may be vacated

10. (1) A member or alternate member of the board must vacate his or her office if—
- (a) he or she resigns;
 - (b) without the leave of the board, misses three consecutive meetings of the board;
 - (c) his or her estate is sequestrated or he or she applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966 (Act No. 28 of 1966);
 - (d) he or she becomes of unsound mind;
 - (e) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine; and
 - (f) he or she becomes a member of Parliament, a Provincial Legislature, the council of a municipality, the Cabinet or the Executive Council of a Province.
- (2)(i) A member of the board may not be present during, or take part in the discussion of, or the making of a decision on, any matter before the board in which—
- (a) the member concerned or his or her spouse, immediate family member, business partner or associate or employer, other than the State;
 - (b) the business partner or associate or employer, other than the State, of his or her spouse, has a direct or indirect financial interest.
- (ii) A member of the board must in the manner and at intervals the MEC determines, disclose any direct or indirect financial interest:—
- (a) the member concerned or his or her spouse, immediate family member, business partner or associate or employer, other than the State;
 - (b) the business partner or associate or employer, other than the State, of his or her spouse, has in housing development.
- (iii) For the purposes of this paragraph:—
- (a) "spouse" includes a person with whom the member lives as if they were married or with whom the member habitually cohabits;
 - (b) "immediate family member" means a parent, child, brother, or sister.

(3) The MEC may, at any time, terminate the period of office of a member of the board if, in the opinion of the MEC, sufficient reasons exist to effect a termination.

Meetings of the Board

11. (1) The first meeting of the board must be held at such time and place as the MEC may determine, and consecutive meetings of the board must be held at such times and places as the chairperson of the board may determine.

(2) The chairperson or, in his or her absence, the vice-chairperson may convene a special meeting of the board when considered necessary.

(3) The quorum for a meeting of the board is more than half of the appointed members.

(4) The attendance and procedure at meetings of the board must be determined by the board subject to the directions of the MEC, if any.

(5) The administrative functions of the board must be performed by officers and employees of the Department designated by the head of department.

Establishment of Gauteng Provincial Housing Fund

12. (1) There is hereby established a fund called the Gauteng Provincial Housing

Fund.

(2) A fund referred to in subsection (1) must be utilised for the purpose of implementation of national housing programmes and other activities prescribed by the Housing Act, 1997 (Act No. 107 of 1997).

(3) The fund comprises—

- (a) moneys allocated to the fund by the Minister in terms of section 12(1) of the Housing Act, 1997;
- (b) moneys which stood to the credit of the fund referred to in section 13 of the Housing Arrangements Act, 1993 (Act No. 155 of 1993), immediately before the acceptance of this Act which money shall devolve upon the fund;
- (c) moneys realised as a result of the sale, letting or allocation of assets contemplated in section 14(2)(a) to (g) of the Housing Act, 1997; and
- (d) other money lawfully obtained and paid into the fund.

Functions of head of department in relation to the fund

13. (1) The head of department is the accounting officer in relation to the moneys in the fund.

(2) Subject to this Act and the Housing Act, 1997 (Act No. 107 of 1997), the head of department must be responsible for the administration of the fund and in particular for—

- (a) expenditure out of the fund; and
- (b) the collection for the credit of the fund, of moneys due or accruing to the fund and the prosecution of all claims in favour of the fund or the board, whether under contract or otherwise.

(3) As soon as possible after 31 March of each year, the head of department must submit to the MEC detailed statements signed by him or her showing the result of the previous year's transactions and the balance sheet of the Fund.

Functions of member of executive council in relation to the fund

14. (1) The MEC may, in consultation with the provincial treasury, prescribe—

- (a) the details of the management of the Fund;
- (b) the procedure relating to issues from the Fund and the repayment to the Fund amounts issued therefrom;
- (c) the rates of interest to be charged in respect of moneys issued out of the Fund which may vary according to the purpose for which such moneys are to be used;
- (d) the manner in which the accounts of the Fund are to be kept; and
- (e) any other matter which he or she considers necessary or expedient to prescribe in relation to the control of the Fund.

(2) MEC must lay statements and balance sheet upon the Table in the Provincial Legislature within 14 days of receipt thereof by him or her if the Provincial Legislature is in session, or if the Provincial Legislature is not in session, within 14 days after the commencement of its next session.

Auditing of books and statements of accounts

15. (1) The Auditor-General must audit the books and statements of account and balance sheet of the Fund annually.

(2) The Auditor-General may require any person (including any local government, company or other body or a person employed by a local government, company or body) to make available, for examination, books, registers and documents in his or her possession or under his or her control that would, in the opinion of the Auditor-General, facilitate the carrying out of the audit referred to in subsection (1).

Enhancing public participation

16. (1) The MEC may convene a participation forum and call for annual meetings to promote consultation and information sharing between the Provincial Government and all major stakeholders in civil society and local government with regard to the Provincial Government policy, legislative role and funding role in regard to housing in the Province.

(2) The objects and purpose of the participation forum are as follows:

- (a) to ensure that policy, legislation and fund allocation with regard to housing development are consistent with the general principles applicable to housing development;
 - (b) to ensure transparency, accountability and equity in the administration of housing development;
 - (c) to promote the participation of all relevant stakeholders in the housing development process; and
 - (d) to create an environment in which all role players meet their respective obligations.
- (3) The MEC serves as the chairperson of the participation forum and meetings must take place at such times and places as the MEC may determine.
- (4) More than fifty per cent (50%) of the members of the participation forum comprise a quorum."

Housing Co-operatives and Associations

17. The department must:—

- (a) promote the establishment of housing co-operatives and housing associations in the province; and
- (b) monitor the registration, functions and development of housing co-operatives and associations.

Abolition of the Provincial Housing Board

18. The Provincial Housing Board (in this part referred to as the "former Board") for the province in section 11(1) of the Housing Arrangement Act, 1993 (Act No. 155 of 1993), is hereby abolished.

Abolition of Executive Committee of provincial housing board

19. The Executive Committee of the Provincial Housing Board established under section 11(1)(a) of the Housing Arrangement Act, 1993 (Act No. 155 of 1993), is hereby abolished.

Transfer of assets, liabilities, rights, duties, and obligations of the former board

20. (1) On the date of commencement of this Act, all assets, liabilities, rights, duties and obligations of the Provincial Housing Board abolished in section 18 of this Act, pass to the Gauteng Housing Advisory Board established by section 5 of this Act.

(2) Subject to this Act and other applicable laws, all assets, liabilities, rights, duties and obligations transferred to the Gauteng Housing Advisory Board in terms of subsection (1), must be disposed of in accordance with the MEC's directive in a manner consistent with sections 14 and 15 of the Housing Act, 1997 (Act No. 107 of 1997).

Powers and functions of the department

21. The department must:—

- (a) establish a secretariat to be accountable to the head of department, for performing all secretarial functions of the participation forum and the board;
- (b) provide provincial data and information for the national housing data bank and the national housing information system;
- (c) establish an audited register of assets under the management of the provincial administration;
- (d) make arrangements for the transfer of housing assets, liabilities, rights, duties and obligations to accredited municipalities;
- (e) approve the financing of national housing programmes from the Provincial Housing Fund and to administer the fund, to allocate subsidies and ensure that the annual provincial allocation from the South African Housing Fund is spent;
- (f) assess project applications received by the Province in terms of a national housing programme administered by the province;
- (g) monitor and manage national housing programmes implemented in the province and projects approved by the province or an accredited municipality;

- (h) evaluate the impact of programmes and projects, giving due regard to loopholes and bottlenecks which impede the achievement of provincial objectives and targets; and
- (i) manage and monitor the process of the accreditation of local authorities as determined in the Housing Act, 1997 (Act No. 107 of 1997).

Assignment of powers and functions by MEC

22. (1) The MEC may assign a power or function that must be exercised or performed in terms of this Act to a Municipal Council.

(2) An assignment contemplated in subsection (1) must—

- (a) be made in terms of an agreement between the MEC and Municipal Council; and
- (b) take effect upon proclamation by the Premier.

Delegation of powers and assignment of duties

23. (1) The MEC may, subject to the conditions as he or she may determine:—

- (a) delegate a power conferred upon him or her under this Act: except the power to make regulation; and
- (b) assign any of his or her duties in terms of this Act, to the head of department or a person employed by the department.

(2) The head of department may, for the effective execution of the provisions of this Act:—

- (a) delegate a power conferred on him or her by this Act; and
- (b) assign a duty imposed upon him or her by this Act, except a duty as accounting officer, to an officer or employee of the department, either in his or her personal capacity or by virtue of the rank he or she holds or the post he or she occupies.

(3) An officer or employee to whom a power has been so delegated or duty has been so assigned, must exercise the power or perform the duty subject to the conditions that the person who made the delegation or assignment considers necessary.

(4) A delegation or assignment:—

- (a) must be in writing;
- (b) does not prevent the person who made the delegation or assignment from exercising this power or performing this duty himself or herself; and
- (c) may at any time be withdrawn in writing by the person who granted it.

Annual Report

24. (1) The head of department must annually submit to the MEC a report on activities in terms of this Act.

(2) The MEC must submit the report to the Provincial Legislature upon receipt.

Regulations

25. The MEC may make regulations not inconsistent with this Act or the Housing Act, 1997 (Act No. 107 of 1997), regarding the following matters:

- (a) the accreditation of local authorities;
- (b) the establishment, registration and functions of housing co-operatives and associations;
- (c) securing tenure option to be made available to housing beneficiaries;
- (d) housing development programmes to be executed by the provincial government as well as local governments in the province;
- (e) the provision of rental or other social housing properties in the province; and
- (f) generally, any matter which the MEC deems necessary or sensible to prescribe in order to achieve the objects of this Act.

Short title and commencement

26. This Act shall be called the Gauteng Housing Act, 1998, and shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

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