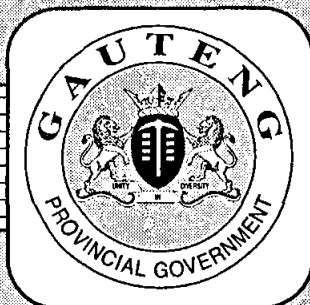


**THE PROVINCE OF  
GAUTENG**



**DIE PROVINSIE  
GAUTENG**

# Provincial Gazette Extraordinary Buitengewone Provinsiale Koerant

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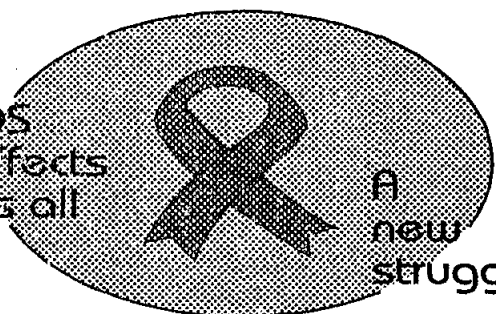
Vol. 11

PRETORIA, 21 OCTOBER 2005  
OKTOBER

No. 451

**We all have the power to prevent AIDS**

AIDS  
affects  
us all



A  
new  
struggle

Prevention is the cure

**AIDS  
HELPLINE**

**0800 012 322**

DEPARTMENT OF HEALTH



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## GENERAL NOTICES

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NOTICE 3962 OF 2005

### BILL

**To amend certain laws of the Province pertaining to local government so as to eliminate references to defunct institutions and inconsistencies with other legislation; to repeal certain laws that are contrary to the Constitution of the Republic of South Africa 1996, or no longer serve any useful purpose; and to provide for matters connected therewith.**

**BE IT ENACTED** by the Provincial Legislature of Gauteng as follows: -

#### **Amendment of the Preamble to Ordinance 44 of 1904**

**1.** The Preamble to the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904) is hereby amended by the substitution for the first paragraph of the following paragraph:

"WHEREAS all original titles to farms in this [**Colony**]  
Province as granted by the Government of the late  
South African Republic are made subject to the conditions  
that all roads leading over such farms made by lawful  
authority shall remain free and unobstructed."

#### **Amendment of section 1 of Ordinance 44 of 1904, as amended by section 1 Ordinance 8 of 1930 and section 1 of Ordinance 7 of 1954**

**2.** Section 1 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904) is hereby amended -

- (a) by the deletion of the definition of "local authority";
- (b) by the insertion before the definition of "public road" of the following definitions:

"MEC' means the Member of the Executive Council responsible for local government in the Province;

'municipality' means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);"; and

- (c) by the substitution for the definition of "public road" of the following definition:

"Public road' shall mean any road vested in any [local authority] municipality."

### **Substitution of section 2 of Ordinance 44 of 1904**

3. The following section is hereby substituted for section 2 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

"2. **Notices**—Where any notice, order or other document is required by this Ordinance to be served on or given to any person, it shall either be served personally on such person or left at or sent by post to his or her last usual place of abode or business; and in case any such person shall be absent from this **[Colony] Province**, any such notice, order or document shall be served on any agent of such person."

**Amendment of section 7 of Ordinance 44 of 1904, as amended by section 4 of Ordinance 8 of 1930 and substituted by section 1 of Ordinance 7 of 1951**

4. Section 7 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904) is hereby amended by the substitution for subsection (2) of the following subsection:

"Any such **[local authority]** municipality shall within fourteen days of the publication of such proclamation, publish a notice thereof in at least one English and one **[Afrikaans]** other official language in newspapers circulating in the area of jurisdiction of the **[local authority]** municipality."

#### **Substitution of section 11 of Ordinance 44 of 1904**

5. The following section is hereby substituted for section 11 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

**"11. Arbitration.**—The **[Supreme]** High Court shall upon application by **[the local authority]** a municipality appoint three arbitrators in the manner hereinafter provided to whom shall be referred all questions of disputed compensation under this Ordinance in respect of any new or existing public road and the decision of the majority of whom shall be final. At least thirty days before making such application as aforesaid, the **[local authority]** municipality shall give notice of its intention to do so in the *Gazette* and in one or more daily newspapers circulating with the area of the **[local authority]** municipality and shall publish in such notice a list of one or more persons whose names shall be submitted to the **[Supreme]** High Court for appointments as arbitrators and any other party interested in the arbitration may appear on such application and propose any other person or persons to the **[Supreme]** High Court as arbitrators and the **[Supreme]** High Court shall appoint one arbitrator from the list submitted by the **[local authority]** municipality and one from among the persons proposed by the other parties interested and the persons so appointed shall select a third arbitrator; provided that if upon such application the **[local authority]** municipality or the other parties interested do not propose any

fit person or arbitrators or if the arbitrators appointed do not within fourteen days of such appointment select a third arbitrator the **[Supreme] High Court** shall make the necessary appointments so that the number of arbitrators shall be three and no more; and provided further that in any case in which the compensation claimed shall be under **[one hundred pounds]** one hundred thousand Rand or in which the **[local authority] municipality** and the claimant shall so agree the amount of compensation shall be determined by a single arbitrator to be appointed by the **[Supreme] High Court** upon application by the **[local authority] municipality** after fourteen days notice in writing to the claimant.”.

#### **Substitution of section 12 of Ordinance 44 of 1904**

6. The following section is hereby substituted for section 12 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

“**12. Death or incapacity of any arbitrator.**—If any arbitrator appointed for the purpose of this Ordinance dies or becomes incapable to act or fails to act within fourteen days after his appointment it shall be lawful for the **[Supreme] High Court** on the application of the party by whom he was proposed after similar notice to that required in the last preceding section to appoint some other person as arbitrator in place of the person so dying or becoming incapable or failing to act as aforesaid.”.

#### **Substitution of section 16 of Ordinance 44 of 1904**

7. The following section is hereby substituted for section 16 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

“**16. Provisions of [Commissions’ Powers Ordinance 1902] Arbitration Act, 1965 to apply to proceedings.**—The provisions of the **[Commissions’ Powers Ordinance 1902] Arbitration Act, 1965 (Act 42 of 1965)** shall *mutatis mutandis* apply to all proceedings before any arbitrator or arbitrators appointed under this Ordinance **[as if he or they**

were a Commission appointed by the Lieutenant-Governor for the purpose of enquiring into the matters referred to him or them under this Ordinance; the summonses for the attendance of witnesses or the production of documents may be signed by any arbitrator].”.

#### **Substitution of section 18 of Ordinance 44 of 1904**

8. The following section is hereby substituted for section 18 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

“18. **Appearance of parties.**—Upon all proceedings before any arbitrator or arbitrators each party may appear in person or represented by [counsel solicitor or admitted law agent] a practicing advocate or attorney, and may produce such witnesses and documentary evidence as the arbitrator or arbitrators shall allow.”.

#### **Substitution of section 20 of Ordinance 44 of 1904**

9. The following section is hereby substituted for section 20 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

“20. **Award may be made a rule of the [Supreme Court] High Court.**—The award of the arbitrator or arbitrators may be made an [rule] order of the **[Supreme Court or of the Witwatersrand]** High Court on the application of either party.”.

#### **Substitution of section 21 of Ordinance 44 of 1904**

10. The following section is hereby substituted for section 21 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

“21. **Cost.**—All the costs of the arbitration and incident thereto shall be borne by the **[local authority] municipality** unless the arbitrator or

arbitrators shall award the same or a less sum than shall have been offered by the **[local authority] municipality** in which case each party shall bear its own costs and the costs of the arbitrators shall be borne by the **[local authority] municipality**. Any costs recoverable by one party from the other, shall be taxed by **[the] a Taxing [Officer] Master of [Supreme Court or Witwatersrand]** High Court on the scale of charges allowed in **[those] that Court[s]."**

**Amendment of section 22 of Ordinance 44 of 1904**

**11.** Section 22 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904) is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) as used in connection with any mining ground the word 'owner' shall include any person registered as the holder of title to such mining ground or carrying on operations therein under an agreement with such holder; and for the purpose of service of notices or of prosecutions for contravention's of the provisions of this Ordinance or recovering any damages or other sum under this Ordinance if such holder or person as aforesaid be a firm or partnership all or any one or more of the members of such firm or partnership shall be deemed to be the owner; and in case such holder or person as aforesaid be any public company or any body of persons not being a firm or partnership, the secretary or manager of such company or body or should there be no secretary or manager resident within this **[Colony] Province** then any member of the board of directors or managing board or committee of such company or body or the mine manager in the employ of such company or body shall be deemed to be the owner."



### **Substitution of section 25 of Ordinance 44 of 1904**

**12.** The following section is hereby substituted for section 25 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

**"25. Application for permission to close any public road.—**Any person who intends to commence any operations in mining ground which may cause danger or damage to any public road shall forward to the **[Town Clerk]** municipal manager of the **[Local Authority]** municipality within which such road is situate a written application for the permanent or temporary division of such road and shall with such application deposit **[fifty pounds]** ten thousand Rand with the **[Town Clerk]** municipal manager."

### **Amendment of section 26 of Ordinance 44 of 1904, as amended by section 4 of Ordinance 7 of 1954**

**13.** Section 26 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904) is hereby amended by the substitution for the proviso of the following proviso:

"provided always that the written consent of any person under paragraph (c) shall be without prejudice to any right to compensation that such person may have under this Ordinance and further that no guarantee under paragraph (d) shall be required if security sufficient in the opinion of the **[local authority]** municipality to cover any sums that may become due under section 40 hereof be deposited with the **[local authority]** municipality at the time when the application is made. Any part of such security and of the **[fifty pounds]** ten thousand Rand deposited by the applicant as aforesaid that may remain over after complete satisfaction of any claims under section 40 shall be returned to the applicant."

**Substitution of section 28 of Ordinance 44 of 1904**

14. The following section is hereby substituted for section 28 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

**"28. Notice in Gazette.**—If the **[local authority]** municipality is satisfied that the proposed diversion will adequately meet the needs of the public, the **[Town Clerk]** municipal manager shall publish a notice in the *Gazette* and in one or more newspapers circulating within such **[M]**municipality **[or Urban District]** and shall cause a copy of such notice in legible characters to be placed in a conspicuous position at each place where the public road is proposed to be diverted."

**Amendment of section 29 of Ordinance 44 of 1904**

15. Section 29 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904) is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs:

- "(a) the particulars and information mentioned in paragraphs (b) and (e) of section 26 hereof and an intimation that a plan showing the existing road and the proposed division may be inspected upon applying at the offices of the **[local authority]** municipality;
- (b) a list showing the names of the owners and occupiers whose written consent to such diversion has been received by the **[Town Clerk]** municipal manager or in respect of whom the provisional order mentioned in section 23 has been obtained."

**Substitution of section 33 of Ordinance 44 of 1904**

16. The following section is hereby substituted for section 33 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

**"33. Appeal by applicant.**—If such application shall not be granted by the **[local authority] municipality** within two months after the receipt thereof by the **[local authority] municipality** or if it shall be granted subject to such conditions or modifications as the applicant is not willing to accept,

the applicant may, on depositing with the **[local authority] municipality** the sum of **[one hundred pounds] ten thousand Rand** as security for costs within fourteen days of the decision by the **[local authority] municipality**, but not afterwards, claim by notice in writing served on the **[Town Clerk] municipal manager** to have such application referred for arbitration, and thereupon it shall be so referred and determined in the manner provided by the **[Expropriation of Lands and Arbitration Clauses Proclamation 1902] Arbitration Act, 1965 (Act No. 42 of 1965)**, and the **[local authority] municipality** shall refuse or grant such application in accordance with the finding of the arbitrators."

#### **Substitution of section 35 of Ordinance 44 of 1904**

**17.** The following section is hereby substituted for section 35 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

**"35. Permission to commence mining operations.**—As soon as the said diversion has been completed and opened to the public to the satisfaction of the **[local authority] municipality**, or immediately after the granting of the application hereinbefore mentioned if such **[local authority] municipality** shall consider that any existing road will sufficiently meet the needs of the public in place of the road to be closed, the **local authority] municipality** shall close such road and give the applicant a written permission to proceed with the mining operations referred to in his application. Any person commencing such operations before receiving such written permission shall be liable to a penalty not exceeding **[fifty pounds] one thousand Rand** for every day or portion of a day during which such mining operations are carried on."

**Substitution of section 36 of Ordinance 44 of 1904**

18. The following section is hereby substituted for section 36 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

**"36. Notification by mine owners when dangerous operations are no longer necessary.**—In case of a temporary diversion, as soon as the operations which necessitated the closing of any public road have been completed, and there is no longer any reason for keeping the said road closed, the owner of the mining ground who caused such diversion shall at once give [a] written [intimation] notice thereof to the [local authority] municipality. Any person delaying the sending of such [intimation] notice shall be liable to a penalty not exceeding [one pound] one hundred Rand for every day or portion of a day during which such delay continues."

**Substitution of section 47 of Ordinance 44 of 1904**

19. The following section is hereby substituted for section 47 of the Local Authorities Roads Ordinance, 1904 (Ordinance No. 44 of 1904):

**"47. Title.**—This Ordinance may be cited for all purposes as the Local [Authorities] Government Roads Ordinance, 1904."

**Amendment of section 1 of Ordinance 7 of 1925**

20. Section 1 of the Removal of Graves and Dead Bodies Ordinance, 1925 (Ordinance No. 7 of 1925) is hereby amended—

(a) by the deletion of the definition of "Administrator";

(b) by the insertion after the definition of "burial-place" of the following definition:

"MEC' means the Member of the Executive Council responsible for local government in the Province."

**Amendment of section 1 of Ordinance 22 of 1960, as amended by section 1 of Ordinance 16 of 1976**

**21.** Section 1 of the Drive-in Theatres Ordinance, 1960 (Ordinance No. 22 of 1960) is hereby amended -

(a) by the deletion of the definitions of "Administrator", "Director" and "local authority"; and

(b) by the insertion of the following definitions:

"MEC' means the Member of the Executive Council responsible for local government in the Province; and

'municipality' means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)."

**Substitution of section 3 of Ordinance 22 of 1960, as amended by section 2 of Ordinance 16 of 1976**

**22.** The following section is hereby substituted for section 3 of the Drive-in Theatres Ordinance, 1960 (Ordinance No. 22 of 1960):

**"3. Application for drive-in theatre.—(1)** Any person who intends carrying on a drive-in theatre shall, after compliance with such requirements as may be prescribed, **[if the site on which it is proposed to carry on the drive-in theatre -**

**(a) is situated within the area of jurisdiction of a local authority, give written notice of his intention to such local authority and the Director; or**

**(b) is not situated within the area of jurisdiction of a local authority but within eight kilometers of the boundaries of**

**any local authority, give written notice of his intention to every such local authority and to the Director; or**

**(c) is not situated within the area of jurisdiction of a local authority and is more than eight kilometers from the**

**(d) boundaries of any local authority,] give written notice of his or her intention to the municipality in whose area of jurisdiction the proposed site is situated and the Director.**

(2) After compliance with the provisions of sub-section (1) and such requirements as may be prescribed, application to carry on a drive-in theatre shall be made to the Director and the municipality in whose area of jurisdiction the proposed site is situated, and no such application shall be received or dealt with by the Director unless such application shall be accompanied by -

(a) such fees as may be prescribed: Provided that the **[Administrator] MEC** may exempt any applicant either in whole or in part from the payment of such fees: Provided further that in the event of any such application being withdrawn, the **[Administrator] MEC** may refund such portion of the fees so paid as in his or her opinion represents the unexpended balance of the expenditure which would have been incurred by the Director in dealing with the application so withdrawn; and

(b) the documents, plans and information as may be prescribed."

**Substitution of section 5 of Ordinance 22 of 1960, as amended by section 1 of Ordinance 16 of 1963 and section 1 of Ordinance 14 of 1977**

**23.** Section 5 of the Drive-in Theatres Ordinance, 1960 (Ordinance No. 22 of 1960) is hereby amended -

- (a) by the substitution for the words preceding subparagraph (i) of paragraph (a) of subsection (1) of the following words:

"The Director shall, after the requirements of this Ordinance have been complied with, submit the application referred to in

sub-section (2) of section 3 to the **[Administrator]** MEC recommending that -

- (a) the application be granted subject to such of the following conditions as the Director may deem fit to include in any such recommendation regarding -."

- (b) by the substitution for subsection (2) of the following subsection:

"(2) The **[Administrator]** MEC shall thereupon consider such application and he or she may adopt, vary or modify any recommendation made by the Director and may impose or add such further conditions as he may deem fit.";

- (c) by the substitution for subsection (3) of the following subsection:

"(3) Where the **[Administrator]** MEC gives his consent to any application as contemplated in sub-section (2) he may at any time withdraw such consent if, in his opinion, the drive-in theatre concerned is not being carried on in accordance with the conditions under which his or her consent was given or if, in his opinion, it is in the public interest that such drive-in theatre should no longer be carried on."; and

- (d) by the substitution for subsection (5) of the following subsection:

"(4) The **[Administrator]** MEC may, after having consulted the owner of the drive-in theatre concerned and, where applicable, the **[local**

**authority]** municipality concerned, amend or delete any condition upon which the application was granted or add any further condition.”.

**Substitution of section 6 of Ordinance 22 of 1960, as amended by section 3 of Ordinance 16 of 1963**

24. The following section is hereby substituted for section 6 of the Drive-in Theatres Ordinance, 1960 (Ordinance No. 22 of 1960):

**“6. Offences and penalties.**—Any person who contravenes or fails to comply with any provision of this Ordinance, or contravenes or fails to comply with any of the conditions referred to in sub-section (2) of section 5 shall be guilty of an offence and liable on conviction to a fine not exceeding **[two hundred]** five thousand Rand or imprisonment for a period not exceeding six months or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding **[fifty]** one thousand Rand per day for each day during which the default continues.”.

**Substitution of section 7 of Ordinance 22 of 1960, as amended by section 4 of Ordinance 16 of 1963**

25. The following section is hereby substituted for section 7 of the Drive-in Theatres Ordinance, 1960 (Ordinance No. 22 of 1960):

**“7. Regulations.**—The **[Administrator]** MEC may make regulations, not inconsistent with the provisions of this Ordinance—

(a) in respect of any matter contemplated, required or permitted to be prescribed under this Ordinance; and

(b) generally for the better carrying out of the objects and purposes of this Ordinance.

(2) Any regulation made under sub-section (1) may be made to apply generally throughout the Province or within any part thereof and different



regulations may be made under that sub-section for different circumstances.

(3) Any regulations made under sub-section (1) may provide penalties for any breach thereof, but no penalty shall exceed a fine of **[two hundred] five thousand** rand or imprisonment for a period of six months, or both such fine and imprisonment.”.

### **Amendment of section 1 of Ordinance 18 of 1965**

**26.** Section 1 of the Crematorium Ordinance, 1965 (Ordinance No. 18 of 1965) is hereby amended –

(a) by the deletion of the definitions of “Administrator”, “Director of Local Government” and ‘local authority’;

(b) by the substitution for the definition of “crematorium” of the following definition:

“‘crematorium’ means any building fitted with appliances for cremation, including everything essential, incidental or ancillary thereto and includes any structure which in any special circumstances the **[Administrator]** MEC may approve as a crematorium.”; and

(c) by the insertion after the definition of ‘inspector’ of the following definitions:

“‘MEC’ means the Member of the Executive Council responsible for local government in the Province;

‘municipality’ means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).”.

### **Substitution of section 8 of Ordinance 18 of 1965**

**27.** The following section is hereby substituted for section 8 of the Crematorium Ordinance, 1965 (Ordinance No. 18 of 1965):

**"8. Appointment of inspectors.**—The **[Administrator] MEC** may appoint one or more officers as defined in section 1(1) of the Public Service Act, **[1957 (Act No. 54 of 1957)] 1994 (promulgated by Proclamation 103 of 1994)**, as an inspector or inspectors for the purposes of this Ordinance, and every inspector so appointed, shall be furnished with a certificate, signed by the **[Director of Local Government] MEC**, that he or she has been so appointed."

#### **Amendment of section 10 of Ordinance 18 of 1965**

**28.** Section 10 of the Crematorium Ordinance, 1965 (Ordinance No. 18 of 1965) is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If an inspector, after an inspection of a crematorium by him , certifies that such crematorium is defectively or inadequately constructed or equipped, or is in a state of disrepair or constitutes a nuisance **[within the meaning of section 122 of the Public Health Act, 1919 (Act No. 36 of 1919)]** as defined in section 1 of the Health Act, 1977 (Act No. 63 of 1977), the **[Administrator] MEC** may issue a closing order requiring that such crematorium or part thereof be closed and remain closed permanently or until any instruction given by the **[Administrator] MEC** to remedy such defect, inadequacy or disrepair or to abate such nuisance, has been complied with to his satisfaction."

#### **Amendment of section 11 of Ordinance 18 of 1965**

**29.** Section 11 of the Crematorium Ordinance, 1965 (Ordinance No. 18 of 1965) is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"Subject to the provisions of the **[Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963)]** Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), the **[Administrator] MEC**

may make regulations not inconsistent with the provisions of this Ordinance—.”.

**Amendment of section 1 of Ordinance 18 of 1969, as amended by section 1 of Ordinance 13 of 1974, section 1 of Ordinance 20 of 1984 and section 6 of Act 127 of 1993**

**30.** Section 1 of the Public Resorts Ordinance, 1969 (Ordinance No. 18 of 1969) is hereby amended -

(a) by the substitution for the definition of "Administration" of the following definition:

“Administration’ means the **[Transvaal]** Provincial Administration;”;

(b) by the deletion of the definitions of "Administrator" and "local authority.”; and

(c) by the insertion after the definition of "Director" of the following definitions:

“MEC’ means the Member of the Executive Council responsible for local government in the Province;

‘municipality’ means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).”.

**Amendment of section 28 of Ordinance 18 of 1969, as amended by para. 1 of Proc. 180 of 1988, section 1 of Ordinance 5 of 1980 and section 6 of Act 127 of 1993**

**31.** Section 28 of the Public Resorts Ordinance, 1969 (Ordinance No. 18 of 1969) is hereby amended -

(a) by the substitution for the words preceding paragraph (a) in subsection (1) of the following words:

**"28. Functions and powers of the [Administrator] MEC [and the Board] in or in respect of a public resort.—The [Administrator] MEC may in or in respect of a public resort or**

**portion thereof [which has not been placed under the supervision of the Board in terms of section 5(1)(a) and the Board may, subject to any other statutory provision, in or in respect of a public resort or portion thereof which has been placed under its supervision in terms of the said section]—."**

**; and**

**(b) by the substitution for paragraph (u) of subsection (1) of the following paragraph:**

**"cause any service or works which he may render or carry out, to be rendered or carried out on contract or authorize any person, subject to the conditions and the payment of such fees as the [Administrator] MEC may deem fit, to render or carry out such service or works."**

**Amendment of section 30 of Ordinance 18 of 1969, as amended by section 5 of Act 105 of 1990 and section 6 of Act 127 of 1993**

**32. Section 30 of the Public Resorts Ordinance, 1969 (Ordinance No. 18 of 1969) is hereby amended by the substitution for the heading to section 30 of the following heading:**

**"30. Powers of [member of Board or] officer or employee of the Administration [or the Board]."**

**Amendment of section 1 of Act 63 of 1977**

**33. Section 1 of the Health Act, 1977 (Act No.63 of 1977) is hereby amended -**

**(a) by the deletion of paragraph (a) of the definition "Director-General."; and**

- (c) by the insertion after the definition of "dwelling" of the following definition:

"Head of Department of Local Government" means Head of Department of Local Government in the Province."

**Amendment of section 1 of Act 99 of 1987, as amended by section 1 of Act 83 of 1990, section 18 of Act 134 of 1992 and Proc. R. 153 of 1994**

34. Section 1 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987) is hereby amended -

- (a) by the deletion of the definitions of "Administrator" and "local authority" in subsection (1);

- (b) by the substitution for the definition of "area" in subsection (1) of the following definition:

"area" means -

- (a) in relation to a service of a **[local authority] municipality**, the area of jurisdiction of that **[local authority] municipality**, excluding any demarcated area contemplated in section 4(4);
- (b) in relation to a designated service, the demarcated area contemplated in section 4(4) of the designated service.";
- (c) by the substitution for the definition of "controlling authority" in subsection (1) of the following definition:

"controlling authority" means a **[local authority] municipality** in control of a service or the person in control of a designated service."

- (d) by the insertion after the definition of "equipment" in subsection (1) of the following definition:

“Head of Department’ means the Head of the Department of Local Government in the Province.”;

- (e) by the insertion after the definition of ‘material’ in subsection (1) of the following definition:

“MEC’ means the Member of the Executive Council responsible for local government in the Province.”;

- (f) by the substitution for the definition of ‘Minister’ in subsection (1) of the following definition:

“Minister’ means—

(a) except in [paragraph (f) of the definition of “local authority” and sections 2, 15 and] section 17, [the competent authority within the government of a province to whom the administration of this Act in that province has been assigned under section 234(8) of the said Constitution] the MEC; and

(b) in [paragraph (f) of the definition of local authority and sections 2, 15 and] section 17, the Minister of Provincial [Affairs and Constitutional Development] and Local Government.”; and

- (g) by the insertion after the definition of ‘Minister’ in subsection (1) of the following definition:

“municipality’ means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).”.

**Amendment of section 11 of Act 99 of 1987, as amended by section 8 of Act 83 of 1990**

**35.** Section 11 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987) is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

"(1) Subject to subsections (2) and (3), the **[Administrator]** MEC may, after consultation with the Board, from money appropriated by **[Parliament]** the Provincial Legislature for the purpose, pay a grant-in-aid calculated on the prescribed basis to any controlling authority in respect of the establishment or maintenance of its service."

(b) by the substitution for subsection (3) of the following subsection:

"(3) A controlling authority which receives a grant-in-aid in terms of this section shall submit annually to the **[Director-General of the province from which the grant-in-aid is received]** Head of Department -

(a) in the form and manner and before or on a date determined by the said **[Director-General]** Head of Department, an estimate of expenditure in respect of its service for the ensuing financial year for approval by the **[Administrator]** MEC; and

(b) before or on 30 September or such later date as the **[said Director-General]** Head of Department may determine, a written statement certified by the treasurer of the controlling authority and specifying—

(i) the actual expenditure incurred in respect of its service during the immediately preceding financial year;

(ii) the actual income received in respect of its service during the financial year referred to in subparagraph (i); and

(iii) such further information as the **[Director-General]** Head of Department may require."

**Amendment of section 12 of Act 99 of 1987, as amended by section 21 of Act 134 of 1992**

**36.** Section 12 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987) is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A controlling authority may under subsection (1) undertake to employ its service inside or outside its area or inside or outside the **[province in which its area is situated]** Province.”.

**Amendment of section 16 of Act 99 of 1987, as substituted by section 12 of Act 83 of 1990**

**37.** Section 16 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987) is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The **[Administrator]** MEC may after consultation with the Board make **[by-laws or]** regulations, **[as the case may be,]** which are not contrary to any law, regarding any matter referred to in subsection (1), and such **[by-laws or]** regulations shall apply in the area of jurisdiction of every **[local authority]** municipality in the **[province concerned]** Province in so far as they are applicable and not inconsistent with the by-laws or regulations, as the case may be, of the **[local authority]** municipality concerned.”.

**Repeal of laws**

**38.** The laws specified in the second column of the First Schedule to this Act are hereby repealed to the extent indicated in the third column, in so far as they are applicable in, or have been assigned to, the Gauteng Province.

**Amendment of laws**

**39.** (1) The laws specified in the second column of the Second Schedule to this Act are hereby amended by the substitution for the word



"Administrator" or "Administrator concerned", wherever they occur in the provisions indicated in the third column, of the word "MEC".

(2) The laws specified in the second column of the Third Schedule to this Act are hereby amended by the substitution for the words "local

authority" or "local authorities", wherever they occur in the provisions indicated in the third column, of the word "municipality" or "municipalities" respectively.

(3) The laws specified in the second column of the Fourth Schedule of this Act are hereby amended by the insertion after the words "he" and "his" and "him" and "himself", wherever they occur in the provisions indicated in the third column, of the words "or she" and "or her" and "or her" and "or herself", respectively.

(4) The Health Act, 1977 (Act No. 63 of 1977) is hereby amended by the substitution for the words "Director General" wherever it occurs in sections 15, 20, 30 and 50 of the words "Head of Department of Local Government".

#### **Short title and commencement**

**40.** This Act is called the Local Government Laws Amendment Act, 2005.

**FIRST SCHEDULE**

## Laws Repealed

Number and Year	Short Title	Extent of Repeal
Ordinance No. 7 of 1925	Removal of Graves and Dead Bodies Ordinance	Section <i>2bis</i>
Ordinance No. 15 of 1928	City of Johannesburg (Private) Ordinance	The whole
Ordinance No. 5 of 1931	City of Pretoria (Private) Ordinance	The whole
Ordinance No. 8 of 1932	Cemetery Ordinance	The whole
Ordinance No. 18 of 1933	Licensing and Control of Dogs Ordinance	The whole
Ordinance No. 17 of 1939	Local Government Ordinance	Sections 4, 6, 7, 9 to 32 inclusive, 38 to 40 inclusive, 42 to 44 inclusive, 45 except subsection (2), 46, 48, 50, 50A, 50B, 51, 63, 64, 79, 79 <i>sept</i> , 80, 80A, 80B, 85 to 87 inclusive, 105, 109 to 111, 131, 132, 141, 143, 153, 158, 159, 159 <i>bis</i> , 160, 169, 170 to 172 inclusive
Ordinance No. 19 of 1948	Continuation of Local Authorities' By-Laws and Regulations Ordinance	The whole
Ordinance No. 13 of 1950	City of Germiston (Private) Ordinance	The whole
Ordinance No. 40 of 1960	Local Government (Administration and Elections) Ordinance	The whole
Ordinance No. 21 of 1961	Markets Ordinance	The whole
Ordinance No. 22 of 1962	Local Government (Extension of Powers) Ordinance	The whole
Ordinance No. 18 of 1969	Public Resorts Ordinance	Section 37(1)(aA)
Ordinance No. 16 of 1970	Municipal Elections Ordinance	The whole
Ordinance No. 13 of 1972	Pounds Ordinance	The whole

Ordinance No. 9 of 1974	Management Committee of Lenasia Validation Ordinance	The whole
Ordinance No. 10 of 1977	City of Roodepoort (Private) Ordinance	The whole
Act No. 91 of 1983	Promotion of Local Government Affairs Act	The whole
Ordinance No. 4 of 1984	Coloured and Indian Management Committees Ordinance	The whole
Act No. 108 of 1991	Abolition of Racially Based Land Measures Act	The whole
Act No. 127 of 1991	Local Authority Affairs Amendment Act	The whole

**SECOND SCHEDULE**

Laws amended by the substitution for the words 'Administrator' or 'Administrator concerned', wherever they occur, of the word 'MEC'

Number and Year	Short Title	Section Amended
Ordinance No. 44 of 1904	Local Authorities Roads Ordinance	Section 7(4)
Ordinance No. 7 of 1925	Removal of Graves and Dead Bodies Ordinance	Section 2(1)
Ordinance No. 8 of 1932	Cemetery Ordinance	Sections 2, 3, 5, and 6
Ordinance No. 22 of 1960	Drive-in Theatres Ordinance	Section 2.
Ordinance No. 18 of 1965	Crematorium Ordinance	Sections 2, 3(1), 3(2), 4, 5(1), 5(2), 5(3), 6, 10(2), 10(3), 11(1), 11(2), 12 and 13
Ordinance No. 18 of 1969	Public Resorts Ordinance	Sections 3(2), 3(3), 4, the heading to Chapter III, 29(1), 29(2), 29(4), 30(2), 32, 34, 37(1) and 37A
Act No. 99 of 1987	Fire Brigade Services Act	Sections 3(2), 6B(2), 11(1), 11(2), 12(3), 13, 17(1) and 17(2)

**THIRD SCHEDULE**

Laws amended by the substitution for 'local authority' or 'local authorities', wherever they occur, of 'municipality' or 'municipalities' respectively

Number and Year	Short Title	Section Amended
Ordinance No. 44 of 1904	Local Authorities Roads Ordinance	Sections 4 to 6 inclusive, 7(1), 7(3), 7(4), 8 to 10 inclusive, 19, 23(2), 24, 27, 30 to 32 inclusive, 34, 37 to 41 inclusive and 45
Ordinance No. 18 of 1965	Crematorium Ordinance	Section 11(3)
Ordinance No. 18 of 1969	Public Resorts Ordinance	Section 2
Act No. 99 of 1987	Fire Brigade Services Act	Sections 3, 4(1), 5(2), 6(2), 11(2), 16(1) and 17(1)

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### Fourth Schedule

Laws amended by the insertion after the words "he" and "his" and "him" and "himself", wherever they occur in the provisions indicated in the third column, of the words "or she" and "or her" and "or herself", respectively

Number and Year	Short Title	Section Amended
Ordinance No. 18 of 1965	Crematorium Ordinance	Sections 2, 5, 8, 9, 10, 11 and 14
Ordinance No. 22 of 1960	Drive-in Theatres Ordinance	Sections 3 and 5
Act No. 99 of 1987	Fire Brigade Services Act	Sections 4, 5, 6, 6A, 6B, 7, 8, 9, 12, 14, 18, 19, and 21
Ordinance No. 44 of 1904	Local Authority Roads Ordinance	Sections 6, 13, 15, 19, 23, 32, and 37
Ordinance 18 of 1969	Public Resorts Ordinance	Sections 3, 4, 28, 29, 30, 32, 37, and 37A

NOTICE 3963 OF 2005

**B I L L**

**To amend certain laws of Gauteng so as to correct references to defunct institutions and inconsistencies with other legislation; to repeal certain laws that are contrary to the Constitution of the Republic of South Africa, 1996, or no longer serve any useful purpose; and to provide for matters connected thereto.**

BE IT ENACTED by the Provincial Legislature of Gauteng, as follows:—

**Amendment of section 1 of Ordinance 4 of 1933**

1. Section 1 of the Statutory Publications Ordinance, 1933 (Ordinance No. 4 of 1933) is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Whenever any law confers the power or imposes the duty upon the **[Administrator]** Premier, or upon any person in the service of the **[Transvaal]** Provincial Administration, to publish any information whatsoever in any newspaper, the **[Administrator]** Premier may in his or her discretion direct, either in any particular instance or in general in regard to all or any such publications, that such information be published in the *Provincial Gazette* in lieu of such newspaper, or if such law provides for the publication of such information in the *Provincial Gazette* and in any newspaper, that it be published in the *Provincial Gazette* only, and in either case the **[Administrator]** Premier may in his or her discretion cause to be published, in such manner and form

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and at such time as he or she may determine, in any newspaper wherein the said information should have been published in terms of the said law, a concise notice directing attention to the publication of such information in the *Provincial Gazette*."

**Amendment of section 1 of Ordinance 4 of 1949**

2. Section 1 of the Abolition of Dog Race Meetings and the Prohibition of Betting on Dog Races Ordinance, 1949 (Ordinance No. 4 of 1949) is hereby amended by the deletion of the definition of "Administrator".

**Amendment of section 2 of Ordinance 4 of 1949**

3. Section 2 of the Abolition of Dog Race Meetings and the Prohibition of Betting on Dog Races Ordinance, 1949 (Ordinance No. 4 of 1949) is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) hold any dog race meeting in the Province [**of Transvaal**];".

**Amendment of section 1 of Act 63 of 1970 as substituted by Proclamation R28 of 7 April 1995**

4. Section 1 of the Mountain Catchment Areas Act, 1970 (Act 63 of 1970) is hereby amended-

(a) by the deletion of the definition of "Director-General" as inserted by section 1(c) of Act 76 of 1981; and

(b) by the insertion after the definition of the word "Gazette" of the following definition:

"Head of Department' means the Head of the Department of Agriculture, Conservation and Environment in the Province;".

**Amendment of section 1 of Act 9 of 1972**

5. Section 1 of the National Road Safety Act, 1972 (Act No. 9 of 1972) is hereby amended:

(a) by the deletion of definition of "Director-General"; and



- (b) by the insertion after the definition of "fund" of the following definition-

"Head of Department' means the Head of Department of Public Transport, Roads and Works in the Province;".

#### **Amendment of section 1 of Act 63 of 1977**

6. Section 1 of the Health Act, 1977 (Act No. 63 of 1977) is hereby amended by the insertion after the definition of the word "dwelling" of the following definition:

"Head of Department of Health' means the Head of Department of Health in the Province;".

#### **Amendment of section 1 of Act 78 of 1977**

7. Section 1 of the Urban Transport Act, 1977 (Act No. 78 of 1977) is hereby amended-

- (a) by the deletion of the definitions of "Administrator"; "Director-General" and "local authority";
- (b) by the insertion after the definition of "guide plan committee" of the following definitions:

"Head of Department' means Head of Department of Public Transport, Roads and Works in the Province';

'MEC' means the Member of the Executive Council responsible for public transport in the Province;

'municipality' means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);"; and

- (c) by the insertion after the definition of "Minister of Finance" of the following definition:

"municipality' means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);".

**Amendment of section 1 of Ordinance 20 of 1982, as amended by para. 1 of Part 1 of Proc. R. 30 of 1995**

**8.** Section 1 of the Transvaal Provincial Library and Museum Service Ordinance, 1982 (Ordinance No. 20 of 1982) is hereby amended—

- (a) by the deletion of the definitions of "Administrator", "local authority" and "province";
- (b) by the substitution for the definition of "library service" of the following definition:  
"library and information service' ["library service", in so far as a provision of this Ordinance is applied in or with reference to a particular province,] means the library and information service established for [that province] the Province by section 2;"
- (c) by the insertion after the definition of "library service" of the following definitions:  
"MEC' means the Member of the Executive Council responsible for arts and culture in the Province;  
'municipality' means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);"; and
- (d) by the substitution for the definition of "museum service" of the following definition:  
"museum service' [, in so far as a provision of this Ordinance is applied in or with reference to a particular province,] means the museum service established for [that province] the Province by section 2;".

**Substitution of section 2 of Ordinance 20 of 1982, as substituted by para. 2 of Part 1 of Proc. R. 30 of 1995**

9. The following section is hereby substituted for section 2 of the Transvaal Provincial Library and Museum Service Ordinance, 1982 (Ordinance No. 20 of 1982):

**"2. Establishment of library service and museum service.—**(1) A library service and a museum service are hereby established for **[each province] the Province**.

(2) The Transvaal Provincial Library Service and the Transvaal Provincial Museum Service which in terms of this Ordinance existed immediately before the assignment of the administration of this Ordinance under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to **[a competent authority within the government of a province] the Province**, shall cease to exist with effect from the date of such assignment."

**Substitution of section 9 of Ordinance 20 of 1982**

10. The following section is hereby substituted for section 9 of the Transvaal Provincial Library and Museum Service Ordinance, 1982 (Ordinance No. 20 of 1982):

**"9. Short title and commencement.—**This Ordinance shall be called the **[Transvaal] Gauteng** Provincial Library and Museum Service Ordinance, 1982, and shall come into operation on 1 January 1983."

**Amendment of section 1 of Ordinance 12 of 1983, as amended by para. 1 of Proc. 25 of 1991 and para. 1 of Proc. R. 22 of 1995**

11. Section 1 of the Nature Conservation Ordinance, 1983 (Ordinance No. 12 of 1983) is hereby amended—

(a) by the substitution for the definition of "Administration" of the following definition:

**"Administration' [, in so far as a provision of this Ordinance is applied in or with reference to a Particular**

**Province,]** means the Gauteng provincial administration **[established for that Province by the Public Service Act, 1994 (Proclamation No. 103 of 1994)];**”;

(b) by the deletion of the definition of “Administrator”;

(c) by the insertion after the definition of “live fish” of the following definition:

“MEC’ means the Member of the Executive Council responsible for conservation and environmental affairs in the Province;”;

and

(d) by the substitution for the definition of “Province” of the following definition:

**“Province’ means the [province Eastern Transvaal, Northern Transvaal, North-West or Pretoria-Witwatersrand-Vereeniging established in terms of section 124 of the Constitution of the Republic of South Africa, 1993] Gauteng Province;”.**

**Substitution of section 2 of Ordinance 12 of 1983, as substituted by para. 3 of Proc. R. 22 of 1995**

**12.** The following section is hereby substituted for section 2 of the Nature Conservation Ordinance, 1983 (Ordinance No. 12 of 1982):

**“2. Establishment of Nature Conservation Division.—(1)** A Nature Conservation Division is hereby established for **[each province] the Province.**

**(2)** The Nature Conservation Division which in terms of this Ordinance existed immediately before the assignment of the administration of this Ordinance under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to **[a competent authority within the government of a province] the Province,** shall cease to exist with effect from the date of such assignment.”.

**Substitution of section 3 of Ordinance 12 of 1983, as substituted by para. 4 of Proc. R. 22 of 1995**

**13.** The following section is hereby substituted for section 3 of the Nature Conservation Ordinance, 1983 (Ordinance No. 12 of 1983):

**"3. Objects of Nature Conservation Division.—**[In so far as a provision of this Ordinance is applied in or with reference to a particular province, the] The objects of the Nature Conservation Division shall be the advancement, control and administration of nature conservation in **[that] the** Province."

**Amendment of section 5 of Ordinance 12 of 1983, as amended by para. 6 of Proc. R. 22 of 1995**

**14.** Section 5 of the Nature Conservation Ordinance, 1983 (Ordinance No. 12 of 1982) is hereby amended by the substitution for subsection (3) of the following subsection:

**"(3)** The Nature Conservation Advisory Board which in terms of this Ordinance existed immediately before the assignment of the administration of this Ordinance under section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to **[a competent authority within the government of a] the** Province, shall cease to exist with effect from the date of such assignment."

**Amendment of section 1 of Act 81 of 1988, as amended by section 15 of Act 108 of 1993 and section 1 of Act 7 of 2000**

**15.** Section 1 of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act No. 81 of 1988) is hereby amended—

- (a) by the deletion of the definitions of "Administrator"; "Director-General" and "local authority";
- (b) by the substitution for the definition of "affected site" of the following definition:

“‘affected site’ means a site which is or purports to be occupied by virtue of a site permit, a certificate, a trading site permit, or a permit issued by the **[local authority]** municipality concerned conferring upon the holder thereof rights which **[in the opinion of the secretary concerned]** are similar to the rights which are held by the holder of a site permit, certificate or trading site permit;”;

- (c) by the insertion after the definition of “formalized township” of the following definitions:

“Head of Department’ means the Head of the Department of Housing in the Province;

‘MEC’

(a) in relation to any matter referred to in sections 2 and 3 of this Act, means the adjudication panel and appeal panel contemplated in section 24B of the Gauteng Housing Act, 1998 (Act No. 6 of 1998), as amended; and

(b) in relation to any other matter referred to in this Act, means the Member of the Executive Council responsible for housing matters in the Gauteng Province;

‘municipality’ means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) and, for purposes of section 6(1) of this Act, includes a former local authority established under the Black Local Authorities Act, 1982 (Act No. 102 of 1982) and an Administrator or public authority referred to in section 3 or 5 of the Abolition of Development Bodies Act, 1986 (Act No. 75 of 1986);”;

- (d) by the substitution for the definition of “publish” of the following definition:

“‘publish’, in relation to a notice, means the publication of the notice—

- (a) by publishing it either in the [**Official**] Provincial Gazette [**of the province concerned**] or in at least two newspapers in English and one other official language circulating in the area concerned; and
- (b) by affixing it at a prominent place at the office of the [**local authority**] municipality concerned and at such other public buildings in the area concerned as the Director-General may determine;"; and
- (e) by the substitution for the definition of "trading site permit" of the following definition:  
"trading site permit" means a permit issued by a [**local authority**] municipality allowing the person named therein to occupy a trading site."

**Amendment of section 2 of Act 81 of 1988, as amended by section 16 of Act 108 of 1993**

16. Section 2 of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act No. 81 of 1988) is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Director-General shall conduct an inquiry in the prescribed manner in respect of affected sites within [**his province**] the Province in order to determine who shall be declared to have been granted a right of leasehold or, in the case where the affected sites are situate in a formalized township for which a township register has been opened, ownership with regard to such sites."

**Amendment of section 5 of Act 81 of 1988, as amended by section 68 of Act 67 of 1995 and section 18 of Act 108 of 1993**

17. Section 5 of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act No. 81 of 1988) is hereby amended by the substitution for subparagraph (ii) of paragraph (a) of subsection (1A) of the following subparagraph:

“if the owner of the affected site is the State or any **[local government body] municipality**, any officer in the public service or person in the employ of such **[local government body] municipality**, as the case may be, who has been designated for the purpose by the Minister of Land Affairs, **[a] the** Premier or a **[local government body] municipality**, as the case may be.”.

#### **Amendment of section 9 of Act 81 of 1988**

**18.** Section 9 of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act No. 81 of 1988) is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

**“[An Administrator] The MEC may [in relation to his province] make regulations as to—”.**

#### **Amendment of section 10 of Act 81 of 1988**

**19.** Section 10 of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act No. 81 of 1988) is hereby amended by the substitution for subsection (1) of the following subsection:

**“(1) [An Administrator] The MEC may delegate any power conferred upon him by or under this Act, other than the power under section 9 to make regulations, to an officer in the [Provincial administration] Department concerned”.**

#### **Amendment of section 1 of Act 71 of 1991, as amended by section 1 of Act 186 of 1993**

**20.** Section 1 of the Businesses Act, 1991 (Act No. 71 of 1991) is hereby amended—

- (a) by the deletion of the definitions of “Administrator” and “local authority”;
- (b) by the substitution for the definition of “licensing authority” of the following definition:



“licensing authority’ means any **[local authority]** municipality, or person or body, designated or appointed under section 2 as a licensing authority;”;

- (c) by the insertion after the definition of “licensing authority” of the following definition:

“MEC’ means the Member of the Executive Council responsible for finance and economic affairs in the Province;”;

- (d) by the substitution for the definition of “Minister” of the following definition:

“Minister’ means the Minister of Trade and Industry **[and Tourism]**, acting after consultation with **[every Administrator or the Administrator concerned]** the MEC in the Province, [as the case may be];”;

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

“municipality’ means a local, district or metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);”; and

- (f) by the substitution for the definition of “regulation” of the following definition:

“regulation’ means a regulation made by **[an Administrator]** the MEC under section 6(1) or 6A(4)(a)(i);”.

### **Amendment of section 2 of Act 71 of 1991, as amended by section 2 of Act 186 of 1993**

**21.** Section 2 of the Businesses Act, 1991 (Act No. 71 of 1991) is hereby amended—

- (a) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs:

“(a) **[An Administrator]** The MEC may by notice in the **[Official] Provincial Gazette** designate a **[local authority]** municipality, or appoint any person or body,

as a licensing authority for an area which the **[Administrator]** MEC specifies or defines in the notice, to undertake from a date specified in the notice the licensing of businesses in the area concerned;

(b) A **[local authority]** municipality may so be designated or appointed for any area, whether in or outside its own jurisdiction, **[but in the province concerned,]** including the area of jurisdiction of any other **[local authority]** municipality or any part of such area.”; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) **[An Administrator]** The MEC may at any time, after consultation with the relevant licensing authority, amend or withdraw a notice under subsection (1) by notice in the **[Official]** Provincial Gazette.”.

#### **Amendment of section 5 of Act 71 of 1991**

**22.** Section 5 of the Businesses Act, 1991 (Act No. 71 of 1991) is hereby amended by the substitution for paragraph (b) of subsection (4) of the following paragraph:

“(b) in any other case, to the **[Administrator concerned]** MEC.”.

#### **Amendment of section 6 of Act 71 of 1991, as amended by section 3 of Act 186 of 1993**

**23.** Section 6 of the Businesses Act, 1991 (Act No. 71 of 1991) is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“**[An Administrator]** The MEC may make regulations **[for his province]** regarding—”.

#### **Amendment of section 7 of Act 71 of 1991**

**24.** Section 7 of the Businesses Act, 1991 (Act No. 71 of 1991) is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The repeal or amendment by subsection (1) of any particular law shall take effect **[in a province]** on a date determined by the **[Administrator]** Premier by proclamation in the **[Official]** Provincial Gazette."

### **Repeal of laws**

**25.** The laws specified in the second column of the First Schedule to this Act are hereby repealed to the extent indicated in the third column, in so far as they are applicable in, or have been assigned to, the Gauteng Province.

### **Amendment of laws**

**26.** (1) The Mountain Catchment Areas Act, 1970 (Act 63 of 1970) is hereby amended by the substitution for the word "Director-General" in sections 2A; 8; 9; 11; and 14 of the word "Head of Department".

(2) The National Road Safety Act, 1972 (Act No. 9 of 1972) is hereby amended by the substitution of the word "Director-General" in sections 5; 6 and 7 of the word "Head of Department".

(3) The Health Act, 1977 (Act No. 63 of 1977) is hereby amended by the substitution for the word "Director-General" in sections 18; 22; 23; 28 and 53 of the word "Head of Department of Health".

(4) The Urban Transport Act, 1977 (Act 78 of 1977) is hereby amended by the substitution of the word "Director-General" in section 5 of the word "Head of Department".

(5) The Transvaal Provincial Library and Museum Service Ordinance, 1982 (Ordinance No. 20 of 1982) is hereby amended by the substitution for the word "library service" of the word "library and information service".

(6) The Conversion of Certain Rights into Leasehold or Ownership, 1988 (Act No. 81 of 1988) is hereby amended by the substitution for the word "Director-General" in sections 2-7 and 10 of the word "Head of Department".

(7) The laws specified in the second column of the Third Schedule to this Act are hereby amended by the substitution for the words "local authority" or "local authorities", wherever they occur in the provisions indicated in the third column, of the word "municipality" or "municipalities" respectively.

(8) The laws specified in the second column of the Second Schedule to this Act are hereby amended by the substitution for the word "Administrator" or 'Administrator concerned', wherever they occur in the provisions indicated in the third column, of the word "MEC"

(9) The laws specified in the second column of the Fourth Schedule of this Act are hereby amended by the insertion after the words "he" and "his" and "him" and "himself", wherever they occur in the provisions indicated in the third column, of the words "or she" and "or her" and "or her" and "or herself", respectively; and by the substitution for the word "chairman", wherever it occurs, of the word "chairperson".

#### **Short title**

**27.** This Act is called the General Law Amendment Act, 2005.

**FIRST SCHEDULE**

Laws Repealed

Number and Year	Short Title	Extent of Repeal
Ordinance No. 4 of 1949	Abolition of Dog Race Meetings and the Prohibition of Betting on Dog Races Ordinance	Section 4
Act No. 47 of 1963	Coloured Persons Education Act	The whole
Act No. 61 of 1965	Indians Education Act	The whole
Ordinance No. 8 of 1978	Extra-Territorial Ordinance	The whole
Act No. 90 of 1979	Education and Training Act	The whole
Act No. 104 of 1981	Technical Colleges Act	The whole
Act No. 35 of 1983	Culture Promotion Act	The whole
Act No. 80 of 1988	Transport Deregulation Act	The whole
Act No. 65 of 1989	Cultural Affairs Act (House of Assembly)	The whole
Act No. 71 of 1991	Businesses Act	Section 6A(4)
Act No. 1 of 1995	Payment of Members of the Provincial Legislature Act	The whole
Act No. 13 of 1998	Gauteng College Education and Training Act	The whole

**SECOND SCHEDULE**

Laws amended by the substitution for the words "Administrator" or "Administrator concerned", wherever they occur, of the word "MEC"

Number and Year	Short Title	Section Amended
Act No. 77 of 1977	Urban Transport Act	Sections 3, 4, 5, 6, 7, 8A, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, and 25
Ordinance No. 20 of 1982	Transvaal Provincial Library and Museum Service Ordinance	Sections 3, 4, 5(1), 6(1) and 7
Ordinance No. 12 of 1983	Nature Conservation Ordinance	Sections 4, 5(1), 5(2), 6(1), 7, 8, 9(3), 10, 12, 13(1), 14, 15(2), 17(1), 30(1), 33(1), 43(2), 44(2), 45(2), 46(1), 46(4), 47(1), 51(2), 51(3), 51(4), 51(5), 56(2), 59(1), 59(2), 60(1), 60(2), 61(4), 61(6), 62, 63(1), 63(2), 64, 65, 68, 70(2), 82(1), 85(2), 86(2), 94(1), 97(2), 97(3), 98(1), 100(1), 100(2), 100(3), 100(4),

		100(5), 100(6), 101, 102(1), 102(3), 103, 104, 105, 109, 110(2), 112(2) and 112(3)
Act No. 81 of 1988	Conversion of Certain Rights into Leasehold or Ownership Act	Sections 2(5), 3(1), 3(2), 3(4), 3(6), 6(1), 10(2) and 10(3)
Act No. 71 of 1991	Businesses Act	Sections 6(4), 6A(1) and 6A(2)

**THIRD SCHEDULE**

Laws amended by the substitution for "local authority" or "local authorities", wherever they occur, of "municipality" or "municipalities" respectively

Number and Year	Short Title	Section Amended
Ordinance No. 20 of 1982	Transvaal Provincial Library and Museum Service Ordinance	Section 3
Act No. 81 of 1988	Conversion of Certain Rights into Leasehold or Ownership Act	Section 2(2), 5(1), 5(4), 6(1) and 7
Act No. 71 of 1991	Businesses Act	Sections 2(1), 5(4), 6(1), 6(2), 6A(1), 6A(2) and 6A(3)



**FOURTH SCHEDULE**

Laws amended by the insertion after the words "he" and "his" and "him" and "himself", wherever they occur in the provisions indicated in the third column, of the words "or she" and "or her" and "or her" and "or herself", respectively; and by the substitution for the word "chairman", wherever it occurs, of the word "chairperson".

Number and Year	Short Title	Section Amended
Ordinance 12 of 1983	Nature Conservation Ordinance	Sections 1, 4, 8, 9, 12, 14, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 59, 60, 61, 63, 64, 65, 66, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 85, 87, 88, 89, 90, 91, 93, 94, 95, 96, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 110, and 112
Act No. 81 of 1988	Conversion of Certain Rights into Leasehold or Ownership Act	Sections 2, 3, 5, 7, 9, 10, and 11
Ordinance No. 20 of 1982	Transvaal Provincial Library and Museum Services Ordinance	Section 4, 5, 6, and 7

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## **EXPLANATORY MEMORANDUM ON THE OBJECTS OF THE GENERAL LAW AMENDMENT BILL, 2005**

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### **1. REASONS FOR THE BILL**

#### **1.1 Purpose of the Bill**

The Bill is being introduced to repeal certain laws of Gauteng which are inconsistent with the Constitution of the Republic of South Africa, 1996 other legislation or which no longer serves any useful purpose and to amend certain laws which makes references to defunct institutions .

#### **1.2 Background**

The Executive Council resolved during the previous term to embark on a project to rationalise Gauteng legislation to align the Gauteng statute book with the Constitution by undergoing a streamlining exercise. The project *inter alia* identified outdated references and functionaries and recommended solutions for the replacement thereof as well as the repeal of legislation that is no longer required. The project was not intended to rethink policy to change direction but rather to effect a cleaning up process to bring the Gauteng statute book in line with current policy.

#### **1.3 Discussion**

The State Law Advisers appointed a consortium of consultants that consisted of Ashira Consulting (Pty) Ltd and the Centre for Applied Legal Studies of the University of the Witwatersrand. Their terms of reference were to identify and address the following issues:

- provisions that were unconstitutional, focusing only on discriminatory clauses that infringed the right to equality [s9 of

the Constitution], reverse onus clauses that infringed the right to be presumed innocent [S35(3)(h) of the Constitution] and clauses that infringed the right to just administrative action [s33 of the Constitution];

- outdated references to functionaries and other legislation;
- provisions containing sexist language; and
- defunct legislation being legislation that was no longer necessary or superseded by other legislation.

#### **1.4 Process**

The Gauteng legislation which was targeted in the project totaled 106 pieces of legislation, of which 70 were Acts and 36 were Ordinances. The majority of the target legislation was inherited by the Province. The consultants extensively liaised with departments to identify the target legislation.

The overriding principle which governed the process concerned the distinction between what the consultants termed "textually redundant" and "operationally redundant" provisions. Textually redundant provisions are provisions which on the face of it are in conflict with or have been superseded by other legislation but may still be used or required by departments. Operationally redundant provisions are textually redundant provisions which have been confirmed by departments to be no longer necessary.

The consultants together with the departments identified provisions which were "operationally redundant". If a provision was determined to be textually redundant by the consultants but the department determined that the provision was still in use (not operationally redundant) it was not recommended for amendment as the department would have to initiate a separate policy process to

determine how to deal with the provision. If it was declared operationally redundant, it was recommended for repeal.

### **1.5 Outcome**

The project resulted in two draft Amendment Bills, the Local Government Laws Amendment Bill, 2005 and the General Law Amendment Bill, 2005.

## **2. EXPLANATION OF THE BILL**

### **2.1 Constitutional Provisions:**

#### **(a) Section 9 – The right to equality**

Provisions in Gauteng legislation that infringe section 9 of the Constitution are recommended for repeal and listed in the First Schedule of this Bill.

#### **(b) Section 35(3) (h) – The right to be presumed innocent**

Only 4 provisions in Gauteng legislation infringes section 35(3)(h) of the Constitution and these provisions were dealt with as follows:

- 1 provision is recommended for repeal in the First Schedule of this Bill; and
- the 3 remaining provisions are recommended for amendment.

### **2.2 Sexist Language**

Sexist language is dealt with in the Fourth Schedule of the Bill. All offending provisions in relevant legislation are recommended for amendment in one general clause by inserting female terminology

next to male terminology wherever it occurs. The specific legislation and sections that require amendment are contained in the allocated columns. This is the most expeditious method of amending these clauses.

### **2.3 References to defunct functionaries and institutions**

References to defunct functionaries and institutions have been amended throughout the Bill to reflect the current position, for example, the word "Administrator" has been substituted for the word "Premier".

### **2.4 Defunct Legislation**

Defunct legislation is dealt with either through repeal in the First Schedule of the Bill or left untouched due to separate policy processes that must be initiated by the relevant departments and is due for repeal at a later stage.

### **2.5 References to "Director-General"**

Provisions in legislation that refer to the "Director General" as head of the Province are addressed by substituting "Director General" with the relevant Head of Department to reflect the new dispensation as espoused in the Public Service Act, 1994.

## **3. IMPLICATIONS OF THE BILL**

### **3.1 Social Implications**

None

### **3.2 Environmental Implications**

None.

**3.3 Financial Implications**

None, except for the cost of the publication of the Bill

**3.4 Communication Implications**

None

**3.5 Constitutional Implications**

None

**4. CONSULTATION**

**4.1** All affected Departments and bodies were consulted

**5. CLAUSE BY CLAUSE EXPLANATION**

- (a) The Bill was approved by the Legislation Sub-Committee on 04 May 2005.
- (b) Two proposals were made by the MEC for Sports, Recreation, Arts and Culture in respect of the Transvaal Provincial Library and Museum Ordinance 20 1982, namely:
- that the definition of the word "library service" be substituted for the word "library and information service" as the latter reflects the new technological developments and its broadening impact on service delivery and is an internationally acceptable phrase for the profession, while the former reflects an old, reactive service that focuses primarily on lending services, and
  - that the definition of the word "municipality" should omit reference to the word "district" as this purports to assign

to district municipalities powers which they don't have in terms of the Ordinance.

(c) These proposals had been dealt with as follows:

- the definition of the word "library service" has been substituted for the definition of the word "library and information service" in section 8 (b) of the bill, and the word "library service" has been substituted for the word "library and information service" in section 26 (5) of the bill; and
- the definition of the word municipality has not been amended as proposed as the substitution of the word does per se assign powers to district municipalities, but merely remove reference to local authority as a defunct institution. Further, the definition aligns with the Local Government: Municipal structures Act, 1998 (Act No. 117 of 1998).

## **5.1 SECTIONS 1 – 3 AND 6 – 24 OF THE BILL: AMENDMENT PROVISIONS – DEFUNCT INSTITUTIONS**

5.1.1 These sections amend certain sections of certain laws to remove references to defunct institutions or to substitute a new institution for a defunct institution. Sexist language is also amended where the provisions amended in a particular statute contain all the sexist language used in that statute. Where this is not the case, sexist language has not been amended to avoid inconsistency between the usages of pronouns in one and the same statute.

5.1.2 The amendments in these sections are additional to those made by mere substitution in the second and third schedules of the bill. It was necessary to effect these amendments in the ordinary manner

because they go beyond the mere substitution of one word for another.

## **5.2 SECTIONS 4 AND 5 OF THE BILL: AMENDMENT PROVISIONS – REFERENCE TO THE WORDS "DIRECTOR-GENERAL"**

5.2.1 These sections amend sections of certain laws to remove reference to the words "Director-General".

## **5.3 SECTION 25 OF THE BILL: REPEAL OF CERTAIN LAWS AND CERTAIN SECTIONS OF CERTAIN LAWS**

5.3.1 This section repeal the laws specified in the second column of the first schedule in the Bill to the extent indicated in the second column in so far as they are applicable in, or have been assigned to, the Gauteng Province.

5.3.2 The repeal may extend to an entire Act or Ordinance or it may only repeal certain sections in an Act or Ordinance.

## **5.4 SECTION 26 OF THE BILL: DEFUNCT INSTITUTIONS**

5.4.1 Sections 26 (1) – (4) and (6) deals with the substitutions for the words "Director-General" of the words "Head of Department".

5.4.2 Section 26 (5) substitutes the word "library service" of the word "library and information service".

5.4.3 Section 26(7) of the Bill amend laws specified in the second column of the third schedule of the bill by the substitution of the words "local authority" or "local authorities" wherever they occur in the provisions indicated in the third column with the words "municipality" or "municipalities".

5.4.4 The term "local authority" no longer exists in the lexicon of the new constitutional system in South Africa. It has been replaced by the term "municipality".



5.4.5 The reference to the defunct institution of the Administrator is replaced with a reference to the new institution of the "MEC" in the particular circumstances and context of those provisions in the third column- section 26 (8).

5.4.6 Section 26(9) of the Bill replaces sexist language in certain laws with non-sexist language where appropriate.

## **5.5 SECTION 27 OF THE BILL: SHORT TITLE AND COMMENCEMENT**

This section provides for the short title of the Act.

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