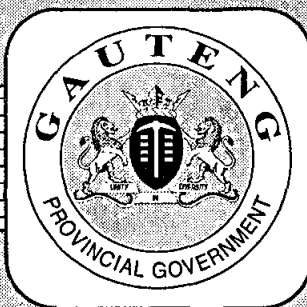


**THE PROVINCE OF
GAUTENG**



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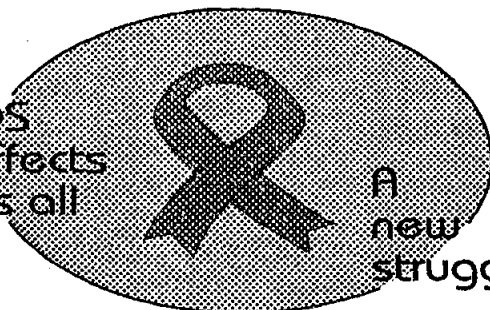
Vol. 11

PRETORIA, 27 OCTOBER 2005
OKTOBER

No. 455

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affects
us all



A
new
struggle

Prevention is the cure

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DEPARTMENT OF HEALTH



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**THE GOVERNMENT PRINTING WORKS****PUBLICATIONS DIVISION**

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GENERAL NOTICE

NOTICE 4056 OF 2005

DEPARTMENT OF FINANCE AND ECONOMIC AFFAIRS

Explanatory Memorandum on the Gauteng Enterprise Propeller Bill

1. PURPOSE

To provide for the establishment, responsibilities and functions of Gauteng Enterprise Propeller and other matters connected therewith.

2. BACKGROUND

The Gauteng Provincial Government's ("GPG") Growth and Development Strategy (GDS) identifies SMME development as one of the key mechanisms through which the Province's objectives for economic growth and development can be met. The GDS " provides a framework for the province's policies and objectives in various areas of operations. The GDS specifically integrates the Province's trade and industry strategy, Gauteng Integrated Development Plan, the Local Economic Development Strategy, and the State of environment report and environmental implementation plan, and emerging policy initiatives on building Gauteng as a global city region and on land use. Generally, the GDS aims to be the main point of reference and an anchor for the development and implementation of all provincial strategic plans, programmes and actions. The overarching objective, is to ensure that the GPG fulfils the multiple dimensions of its leadership role in all socio-development of the province"

The SMME sector was identified as a critical vehicle in respect of direct poverty reduction and for contributing to the transformation of the economic sector, particularly in respect of the marginalised.

The GPG intends to develop partnerships, with stakeholders for SMME support. To this end, the GPG identified the need to establish an agency to serve as a vehicle to provide financial and non-financial support to SMME's. The Department responsible for Economic Affairs appointed a steering committee to investigate the feasibility as well as the mechanism for the establishment of the Agency in the Province. The steering committee finalised its report, which was duly submitted to the MEC. On the basis of this report, the Gauteng Enterprise Propeller ("GEP") was established. GEP is a company incorporated in terms of section 21 of the Companies Act and will cease to operate as such in terms of the proposed Bill.

3. OBJECTIVES AND FUNCTIONS OF GEP

GEP will be responsible for the implementation of the GPG's policy for small enterprise development as well as the provision of support to the SMME sector. This support will take place through a range of financial and non- financial measures.

GEP will also be responsible for the consolidation of SMME's, which may be taking place elsewhere in the Province. The objectives and functions of GEP are set out in clauses 4 and 5 of the draft Bill.

4. ACCOUNTABILITY RELATIONSHIPS

In addition to the objects and functions of GEP as set out in the draft Bill, the following accountability relationships are provided for between GEP and the Executive:

- 1 Clause 7: the appointment of the Board by the MEC by invitation of nominations through the media and publication in the Provincial Gazette.
- 2 Clause 8: the dissolution of the Board in the event that the Board fails to perform its responsibilities and functions.
- 3 Clause 19: MEC consultation with the Board on the appointment of GEP's CEO.
- 4 Clause 29: the tabling of audited financial statements of GEP in the Legislature by the MEC.
- 5 Clause 30: report by GEP through the Board to the MEC on its implementation of the quarterly strategic plan.

5. THE IMPACT OF THE BILL

The Bill will create a framework for the effective carrying out of the GDS through the establishment of GEP. The bringing of GEP into the mainstream of the legislative framework will ensure certainty and alignment with the PFMA. This in turn will enable GEP to effectively carry out its mandate of support to SMME's.

5.1 Envisaged Social Impact of GEP

The GPG will be able to further advance its SMME support strategies especially regarding the provision of finances for both micro and small enterprises whilst at the same time directly reducing poverty and stimulating the creation of jobs. The Bill will also create opportunities and facilitate partnerships between the SMME sector and big business. The Bill through its, accountability mechanism ensures that the MEC is able to effectively monitor the GPG's implementation of its growth and development strategy.

5.2 Financial and Legal Impact of the Bill

GEP will in accordance with the PFMA be required to submit a budget and strategic plan with outcomes and performance measures to the MEC, who in turn will ensure incorporation of the budget and the strategic plan in the provincial budgeting process.

The personnel costs of GEP are as currently reflected in the budget of GEP in its current form.

6. CLAUSE BY CLAUSE EXPLANATION OF THE BILL**Clause 1 Definitions**

Defines words in the draft Bill.

Clause 2 Establishment of GEP

Establishes GEP as a juristic person acting through its Board.

Clause 3 Application of the Public Finance Management Act ("PFMA")

GEP is a provincial public entity as defined in section 1 of the PFMA. The MEC is the executive authority and the Board is the accounting authority. Any delegation of the Board's responsibilities must be in accordance with section 56 of the PFMA.

Clause 4 The Objectives of GEP

The objectives of GEP are to foster and develop small enterprises in Gauteng through the establishment of a support network that will increase the contribution of small enterprises to the Gauteng economy. GEP must also increase the capacity of small enterprises to successfully compete nationally and internationally. To this end GEP may provide non-financial support measures such as assistance with the drawing of business plans and the giving of advice regarding import and export matters as well as manufacturing advice. GEP may also provide financial support measures including providing guarantees, bridging finance and debtor factoring.

Clause 5 Responsibilities of GEP

The responsibilities of GEP will be to:

- 1 Support the sustainable development, provisioning and improvement of small enterprise advisory centres in the Province;
- 2 Undertake activities in the Province, nationally and internationally to attract support for small enterprises development in the Province;
- 3 Provide finance for any project to develop small enterprises in the Province; and
- 4 At the request of the MEC, investigate, comment and advise on the effect of existing legislation and proposed legislation on small enterprises and to report to the MEC thereon.

- Clause 6** **Guarantees.**
- No guarantees may be issued unless issued through the MEC in accordance with section 66(3)(d) of the PFMA.
- Clause 7** **Constitution of Board and appointment of members**
- The MEC must constitute the Board and appoint no less than four and not more than twelve members through a public process of invitation of nominations in the media and in the Provincial Gazette. The Board members must have a broad range of experience including experience in business, management of small enterprises and an understanding of the legal framework applicable to small enterprises. The MEC may determine other criteria for eligibility for appointment to the Board.
- Clause 8** **Disqualifications for appointment or membership**
- A person may not be appointed as a member of the Board if he or she is a person contemplated in Clause 8(1)(a) through to (g). The MEC may terminate the membership of a member for among others, misconduct and failure to attend three consecutive meetings of the Board without a valid explanation. The MEC may also dissolve the Board if the performance of the Board has been unsatisfactory. Before dissolving the Board the MEC must give the Board an opportunity to be heard.
- Clause 9** **Term of office of members of the Board**
- A member of the Board is appointed for a period of three years and is eligible for reappointment at the end of his or her term of appointment, provided that the member's total term in the Board does not exceed two terms.
- Clause 10** **Responsibilities of the Board**
- The Board must ensure that responsibilities of GEP are performed and that the objectives of GEP are achieved.
- Clause 11** **Executive Committee**
- The Board may appoint an executive committee consisting of two or more Board members. The Executive Committee has the power to perform all the functions of the Board between meetings of the Board. It does not have the power to set aside or amend any decision of the Board.

Clause 12 Committees of the Board

The Board may form Committees to undertake its work.

Clause 13 Delegation of the Board's responsibilities

The Board may delegate its responsibilities, functions or duties to the Chief Executive Officer, any member of the Board or any committee of the Board. The delegation must be in writing.

Clause 14 Expert Assistance

The Board may obtain the assistance of people with appropriate expertise to assist it in the performance of its functions.

Clause 15 Board member's conflict of interest

A member of the Board must make a full disclosure of any conflict of interest including any potential conflict of interest.

Clause 16 Meetings of Board

The Board must hold at least four meetings a year. A majority of the Board members constitutes a quorum.

Clause 17 Conduct of meetings

The Board may determine rules of procedure for conducting its business at meetings. Minutes of every meeting must be recorded and kept in a permanent form.

Clause 18 Resolutions without meeting

The Board may adopt a resolution without a meeting if at least a majority of the members indicate their support for the resolution in accordance with a procedure established by the Board. The resolution has the same status as if it was adopted at a meeting.

Clause 19 Appointment of the Chief Executive Officer

The MEC in consultation with the Board must appoint a Chief Executive Officer. The Chief Executive Officer holds office for a period of three years and on such conditions as the MEC may determine.

Clause 20 Employment contract and performance agreement

The MEC and the Chief Executive Officer must conclude a written contract of employment which must incorporate in an appropriate form the provisions of section 57 of the PFMA. The Board and the Chief Executive Officer must conclude a performance agreement within a reasonable time after the appointment of the Chief Executive Officer and annually thereafter.

Clause 21 Disqualification from holding office of Chief Executive Officer and termination of office

No person may hold office as Chief Executive Officer if that person is disqualified from being a member of the Board in terms of clause 8(1). The Chief Executive Officer must vacate office if he or she becomes disqualified in terms of clause 8(1).

Clause 22 Responsibilities of Chief Executive Officer

The Chief Executive Officer is an employee of GEP and is responsible for the day to day running of GEP, including the signing of contracts.

Clause 23 Appointment of personnel

The Chief Executive Officer with the concurrence of the Board may appoint employees with appropriate expertise to assist him or her in the performance of GEP's functions.

Clause 24 Delegation by Chief Executive Officer

The Chief Executive Officer may delegate responsibility or the performance of any duty conferred or imposed on him or her by the Board or under this Act to any other person who is under the control of the Chief Executive Officer.

Clause 25 Chief Executive Officer's disclosure of interest

The Chief Executive Officer must disclose to the Board any direct or indirect interest, including a potential interest which he or she or an immediate member, business partner, associate or previous employer has in any business that may benefit from the operations of GEP.

functionality of the schedule.

Clause 33 Designated institutions

The MEC may by Notice in the Provincial Gazette and after consulting the Board designate institutions whose objects are similar to those of GEP to be incorporated into GEP from a date specified in the Notice. After the incorporation of an institution anything done by or on behalf of the institution is deemed to be done by GEP.

Clause 34 Restriction of use of name

A person may not conduct any business or trade or be registered or licensed under any law under a name containing the words "Gauteng Enterprise Propeller", the abbreviation "GEP" or the translation of those words in any official language.

Clause 35 Confidentiality

Subject to this Act, any person who while performing a function in terms of this Act discloses any information that they acquired as a result of the performance of that function commits an offence

Clause 36 Transitional provisions

The Gauteng Enterprise Propeller a company incorporated under section 21 of the Companies Act with registration number 2004/031868/08 is deemed to be GEP as contemplated in clause 2. GEP ceases to be a section 21 company and becomes a public entity. GAUMAC must dissolve within six months of commencement of this Act and its assets be transferred to GEP.

Clause 37 Short title and commencement

This Act will be called the Gauteng Enterprise Propeller Act, 2005 and comes into operation on a date fixed by the Premier by proclamation in the Provincial Gazette

End of explanatory notes

GAUTENG PROVINCIAL LEGISLATURE
GAUTENG ENTERPRISE PROPELLER BILL, 2005

AS INTRODUCED BY THE MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE
FOR ECONOMIC AFFAIRS

[B ... 2005]

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BILL

**To provide for the establishment, purpose and functioning of Gauteng Enterprise Propeller;
and to provide for matters incidental thereto.**

Preamble

- A Small enterprise support initiatives have not resulted in significant increase in sustainable and profitable small business and have not contributed significantly to gross domestic product, equity and employment in Gauteng.
- B The Gauteng Provincial Government has identified the need for a small enterprise support strategy that goes beyond the current programmes of Government and financial institutions and provides financial and non- financial support to small enterprises in Gauteng.

Be it therefore enacted by the Provincial Legislature of the Gauteng Province as follows:-

CHAPTER 1**1. Definitions**

- (1) In this Act, unless the context indicates otherwise—

“**Board**” means the Board of GEP established in terms of section 7;

“**Chief Executive Officer**” means the Chief Executive Officer of GEP appointed in terms of section 19;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Department**” means the Department responsible for Economic Affairs in the Province;

“**GEP**” means Gauteng Enterprise Propeller established in terms of section 2;

“**Head of Department**” means the Head of Department responsible for Economic

Affairs in the Province;

“Legislature” means the legislature of the Province;

“MEC” means the Member of the Executive Council responsible for Economic Affairs in the Province;

“Prescribed” means prescribed by regulation;

“Province” means the province of Gauteng;

“Public Finance Management Act” means the Public Finance Management Act, 1 of 1999;

“Republic” means the Republic of South Africa;

“Schedule” means the Schedule to this Act;

“Service Provider” means any public or private entity providing support services to small enterprises;

“Small Enterprise” means a separate and distinct business entity, including co-operative enterprises and non-governmental organisations, managed by one or more owner which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub-sector of the economy mentioned in column 1 of the Schedule and which can be classified as a micro-, very small, small or medium enterprise by satisfying in relation to the relevant sector the criteria mentioned in columns 3, 4 and 5 of the Schedule opposite the relevant size of class mentioned in column 2 of the Schedule; and

“this Act” includes the Schedule and any regulations made in terms of this Act.

CHAPTER 2

ESTABLISHMENT OF GEP

2. Establishment of Gauteng Enterprise Propeller

6

- (1) GEP is hereby established as a juristic person.
- (2) GEP must act through the Board.

3. Application of the Public Finance Management Act

- (1) GEP is a provincial public entity as defined in section 1 of the Public Finance Management Act and its regulations applicable to provincial public entities.
- (2) For the purposes of the Public Finance Management Act –
 - (a) the Board is the accounting authority as contemplated in section 49(2)(a) of the Public Finance Management Act;
 - (b) the MEC is the executive authority as contemplated in section 52 of the Public Finance Management Act; and
 - (c) any delegation of the Board's responsibilities in terms of the Public Finance Management Act must be in accordance with the provisions of section 56 of that Act.
- (3) No provision in this Act has the effect of relieving GEP of any obligation imposed on it by the Public Finance Management Act and its regulations or any other applicable legislation.

4. Objectives of GEP

- (1) The objectives of GEP are to—
 - (a) promote, foster and develop small enterprises in Gauteng;
 - (b) implement the policy of the Gauteng Provincial Government for small enterprise development;
 - (c) design and implement small enterprise development support programmes within Gauteng;

- (d) establish and promote a support network in order to increase the contribution of small enterprises to the Gauteng economy;
 - (e) promote economic growth, job creation and equity;
 - (f) integrate all government-funded small enterprise support agencies in Gauteng;
 - (g) strengthen the capacity of service providers to assist small enterprises; and
 - (h) strengthen the capacity of small enterprises to compete successfully domestically and internationally.
- (2) The primary mechanisms by which GEP may achieve its objectives are –
- (a) providing non-financial support measures to assist entrepreneurs including, but not limited to –
 - (i) assisting with business plans;
 - (ii) accounting and legal services;
 - (iii) computer and other skills training;
 - (iv) tender information and advice;
 - (v) access to government information and incentives;
 - (vi) import and export advice;
 - (vii) manufacturing advice; and
 - (viii) assistance with client relations, marketing and research.
 - (b) providing financial support measures to assist entrepreneurs including, but not limited to –
 - (i) subject to section 6, providing guarantees;
 - (ii) bridging finance;

- (iii) debtor factoring;
 - (iv) re-financing of debts; and
 - (v) early debt retirement incentives.
- (c) co-ordinating the provision of support measures by service providers and other stakeholders; and
 - (d) providing one-stop support to entrepreneurs.

5. Responsibilities of GEP

In order to achieve its objectives, GEP may:

- (1) support the sustainable development, provision and improvement of small enterprise advisory centres;
- (2) establish guidelines for small enterprise development;
- (3) undertake activities in the Province, nationally and internationally to attract support for small enterprise development in the Province;
- (4) develop strategic and business partnerships and other co-operative arrangements with civil society and other organisations in the Province, the Republic and other countries;
- (5) co-ordinate, support and interact with organisations and institutions aimed at promoting and developing small enterprise in the Province and nationally;
- (6) join and participate in organisations for small enterprise development and marketing;
- (7) provide finance for any project to develop small enterprises in the Province;
- (8) design and implement small enterprise development support programmes in order to facilitate —
 - (a) the building of sustainable and competitive enterprises;

- (b) the promotion of entrepreneurship;
 - (c) the creation of an enabling operating environment for small enterprises;
 - (d) access by small enterprises to financial and non-financial resources, capacity-building services, products and services; and
 - (e) international and national market access for products and services of small enterprises.
- (9) develop, co-ordinate and foster partnerships with the local sphere of government, the private sector and relevant stakeholders that may assist GEP to achieve its objectives;
 - (10) promote a service delivery network to facilitate access to development support for small enterprises.
 - (11) facilitate and co-ordinate research relating to small enterprise support programmes;
 - (12) provide advice, information, analysis and support in the implementation of a small enterprise development policy in the Province;
 - (13) at the request of the MEC, investigate, comment and advise on the effect of existing and proposed legislation on small enterprises and to report to the MEC thereon;
 - (14) improve the understanding of the public regarding the contribution of small enterprises to domestic economic growth, job creation and general welfare;
 - (15) establish regional and local structures to implement its objectives effectively; and
 - (16) perform any other act not inconsistent with this Act.

6. Guarantees

No guarantee may be issued in terms of this Act unless it is issued through the MEC in accordance with the requirements of section 66(3)(d) of the Public Finance Management Act.

CHAPTER 3

THE BOARD OF GEP

7. Constitution of Board and appointment of members

- (1) The MEC must constitute the Board and appoint no less than four and not more than twelve members of the Board.
- (2) Before appointing the members of the Board, the MEC must invite, through the media and by notice in the Provincial Gazette, nominations of candidates for appointment.
- (3) The MEC must ensure that the Board –
 - (a) represents a broad section of the population of Gauteng with special attention to race, gender, disability, geographical spread and organisations based in rural areas;
 - (b) has members with experience in business;
 - (c) has members who on account of their training or experience are knowledgeable about-
 - (i) trade, industry, finance or the economy;
 - (ii) the legal framework applicable to small enterprises; and
 - (iii) the management of small enterprises.
- (4) The MEC may determine any other criteria or procedure for appointing members.
- (5) The Chief Executive Officer is a member of the Board by virtue of holding that office.
- (6) All members of the Board, other than the Chief Executive Officer, are appointed part-time.

- (7) The MEC must designate –
- (a) a member of the Board as chairperson; and
 - (b) another member as vice-chairperson, to act as chairperson of the Board when the chairperson is unable to perform those duties.
- (8) Notwithstanding anything to the contrary in this Act, the MEC may on good cause, dispense with compliance of any of the provisions of this section.

8. Disqualifications for appointment or membership

- (1) A person may not be appointed a member of the Board if that person –
- (a) is not a citizen of the Republic, and resident in the Province;
 - (b) is a Member of Parliament, a Provincial Legislature, a Municipal Council or a House of Traditional leaders established in terms of the Constitution;
 - (c) is an unrehabilitated insolvent;
 - (d) is of unsound mind, or is subject to an order of a court declaring such person to be mentally ill or disordered;
 - (e) has at any time been convicted of an offence involving dishonesty;
 - (f) has at any time been removed from an office of trust on account of misconduct; and
 - (g) has previously been removed from the Board for a breach of any provision of this Act.
- (2) A member of the Board must vacate office if that member becomes subject to a disqualification contemplated in subsection (1).
- (3) The MEC, may terminate the appointment of a member –
- (a) for misconduct, incapacity or incompetence;

- (b) for failing to comply with section 8(2) or 15(1);
 - (c) if the member fails to attend three consecutive meetings of the Board without a valid explanation; or
 - (d) on good cause shown.
- (4) If the performance of the Board has been unsatisfactory or ineffective, the MEC may, after giving the Board an opportunity to be heard, dissolve the Board.

9. Term of office of members of the Board

- (1) A member of the Board –
- (a) may hold office for a period of three years;
 - (b) serves on the terms and conditions determined by the MEC and specified in the letter of appointment of the member; and
 - (c) may resign by giving three months' written notice to the MEC or such notice as is stipulated in the letter of appointment.
- (2) If a member's appointment is terminated or a member resigns, the MEC may appoint a person to fill the vacancy for the unexpired portion of the period for which the member was appointed, or for such a period as the MEC may determine subject to the provisions of subsection (3).
- (3) Subject to section 8, any person whose term of office as a member of the Board has expired is eligible for reappointment provided that such member may not serve for more than two terms.
- (4) The MEC must determine the remuneration and allowances of members of the Board.
- (5) The Chief Executive Officer and any member in the service of the State may not receive additional remuneration or allowances for serving on the Board, but may be reimbursed for expenses incurred in the performance of their functions in terms of

this Act.

10. Responsibilities of the Board

- (1) The Board must –
 - (a) ensure that the responsibilities of GEP are performed and that the objectives of GEP are achieved;
 - (b) exercise the fiduciary duties and responsibilities of an accounting authority in accordance with the Public Finance Management Act in respect of GEP; and
 - (c) function in a transparent and open manner.
- (2) The MEC may give the Board written directives not inconsistent with this Act.
- (3) The Board may do all that is necessary or expedient to carry out its responsibilities including –
 - (a) Instituting, conducting and defending civil proceedings in any matters relating to its functions;
 - (b) acquiring or disposing of any right in or to property, provided that ownership *in immovable property* may be acquired or *disposed of only* with the consent of the MEC;
 - (c) performing legal acts, including acts in association with any other person or organ of state; and
 - (d) approve the entering into contracts relating to financial support with financial institutions or any other institutions with objectives similar to those of GEP.

11. Executive Committee

- (1) The Board may appoint an executive committee consisting of –
 - (a) two or more of its members; and

- (b) the Chief Executive Officer, who is a non-voting member of the executive committee.
- (2) The executive committee –
 - (a) has the power to perform all the functions of the Board between meetings of the Board; and
 - (b) does not have the power to set aside or amend any decision of the Board.
- (3) A decision of the executive committee may be set aside or amended by the Board at its next meeting, subject to any rights that may have become vested as a consequence of the decision.

12. Committees of the Board

- (1) The Board may appoint one or more committees to deal with or enquire into any matter referred to it by the Board and to report on that matter to the Board.
- (2) A committee must consist of one or more members of the Board and, if the Board so decides, other persons who are not disqualified from being members of the Board.
- (3) If a committee consists of more than one member, the Board must designate a member of the Board appointed to the committee as its chairperson.
- (4) The Board may from time to time dissolve or reconstitute a committee.
- (5) A member of a committee who is not a member of the Board or in the full-time service of the State is entitled to receive such remuneration and allowances from the funds of the Board as the Board, after consultation with the MEC, may determine.

13. Delegations of the Board's responsibilities

- (1) The Board may, subject to the provisions of this section, delegate its responsibilities, functions or duties to –

- (a) any member of the Board or any committee of the Board; or
 - (b) the Chief Executive Officer.
- (2) A delegation under subsection (1) must be in writing and –
- (a) may be subject to any conditions or restrictions determined by the Board;
 - (b) does not prevent the exercise of that responsibility by the Board; and
 - (c) may be withdrawn or amended by the Board.
- (3) Anything done in the exercise or performance of a responsibility, function or duty delegated by the Board, is deemed to have been done by the Board.

14. Expert assistance

- (1) The Board may obtain the assistance of persons with appropriate expertise to assist it in performing its functions.
- (2) The Board must –
 - (a) determine the terms, conditions, remuneration and allowances applicable to any person appointed under subsection (1), and the work to be performed or service to be rendered by them; and
 - (b) conclude a written agreement with that person containing the matters set out in paragraph (a).
- (3) Upon having performed the work or completed the service in terms of an agreement contemplated in subsection (2)(b), the person must submit a report to the Board for its consideration.
- (4) The Board, after considering a report contemplated in subsection (3), may refer the matter back to the person for such further attention as the Board may determine.

15. Board member's conflicts of interest

- (1) Members of the Board –
 - (a) must make a full disclosure of any conflict of interest including any potential conflict;
 - (b) may not vote, attend or participate in any proceedings of the Board in relation to any matter before the Board in respect of which they have a conflict of interest; and
 - (c) must comply with any decision of the Board as to whether they are entitled to participate in any particular proceedings of the Board.
- (2) For the purposes of this section, a member has a conflict of interest if –
 - (a) the member, or a family member, partner or business associate of the member is applying for, or has a financial or other interest in a business that is applying for, assistance from GEP or has made representations in relation to an application under consideration; or
 - (b) the member has any other interest that may preclude, or may reasonably be perceived as precluding, the member from performing the functions of a member of the Board in a fair, unbiased and proper manner.
- (3) Any disclosure in terms of subsection 1(a) and any decision of the Board in terms of subsection 1(c), must be recorded in the minutes of the Board.

16. Meetings of the Board

- (1) The Board must hold at least four meetings per year.
- (2) The Chairperson –
 - (a) may convene a special meeting of the Board; and
 - (b) must convene a special meeting within 14 days of receiving a written request

to do so, signed by at least one third of the members of the Board.

- (3) The request referred to in subsection 2(b) must clearly state the reason for the request and only those matters may be discussed at the special meeting.
- (4) The MEC may request a meeting with the Board at any time, should the need arise.
- (5) If the chairperson and vice-chairperson are not present, the members present must appoint another member to preside at the meeting.
- (6) At a meeting, a majority of the members present constitutes a quorum.
- (7) A decision of the majority of the members present at any quorate meeting constitutes a decision of the Board and in the event of an equality of votes, the chairperson shall have a casting vote in addition to a deliberative vote.
- (8) A decision taken by a majority of Board members present at a quorate meeting, or an act performed in terms of such a decision, is not invalid merely by reason of –
 - (a) any irregularity in the appointment of a member;
 - (b) a vacancy on the Board;
 - (c) the fact that any person not entitled to be a member participated at a meeting at the time the decision was taken; or
 - (d) the fact that a member participated in the meeting in breach of section 15(1).

17. Conduct of meetings

- (1) The Board may determine rules of procedure for conducting its business at meetings.
- (2) Minutes of proceedings of every meeting of the Board must be –
 - (a) recorded and kept in a permanent form; and
 - (b) submitted to the next meeting of the Board for consideration and, if adopted, must be signed by the chairperson.

- (3) The Board may –
- (a) permit members to participate in a particular meeting by telephone, closed-circuit television or any other means of communication, and a member who participates in this manner is regarded as being present at the meeting; and
 - (b) invite a person to attend a meeting for the purpose of advising or informing the Board on any matter.

18. Resolution without meeting

- (1) The Board may adopt a resolution without a meeting if at least a majority of the members indicate their support for the resolution in accordance with a procedure previously established by the Board.
- (2) A resolution in terms of subsection (1) –
 - (a) has the same status as if it was adopted at a meeting; and
 - (b) must be regarded as having been adopted on a day determined in accordance with the procedure contemplated in subsection (1).

CHAPTER 4

CHIEF EXECUTIVE OFFICER

19. Appointment of the Chief Executive Officer

- (1) The MEC, after consulting the Board, must appoint a Chief Executive Officer.
- (2) The Chief Executive Officer must be –
 - (a) a fit and proper person who possesses knowledge, qualifications and experience in the development and promotion of small enterprises; and
 - (b) a citizen of the Republic and resident in the Province.

- (3) The Chief Executive Officer holds office-
 - (a) for a period not exceeding 3 years, and is eligible for reappointment; and
 - (b) on such terms and conditions as the MEC, after consulting the Board, may determine.
- (4) The Chief Executive Officer may not engage in any paid employment outside the functions of the office without prior approval of the Board.
- (5) The Chief Executive Officer may resign by notice in writing to the MEC.
- (6) On ceasing to hold office for any reason, the Chief Executive Officer ceases to be a member of the Board or any other body on which he or she represented GEP.

20. Employment contract and performance agreement

- (1) The MEC and the Chief Executive Officer must conclude a written contract of employment for the Chief Executive Officer which must incorporate in an appropriate form the provisions of section 57 of the Public Finance Management Act.
- (2) The Board and the Chief Executive Officer must conclude a performance agreement for the Chief Executive Officer –
 - (a) within a reasonable time after the appointment of the Chief Executive Officer; and
 - (b) thereafter, annually within one month of the commencement of each financial year.
- (3) The performance agreement must include –
 - (a) measurable performance objectives and targets that must be met, and the time frames within which those performance objectives and targets must be met;
 - (b) standards and procedures for evaluating performance and intervals for evaluation; and

- (c) the consequences of substandard performance.

21. Disqualification from holding office of Chief Executive Officer and termination of office

- (1) No person may be appointed as Chief Executive Officer if that person is disqualified from being a member of the Board in terms of section 8(1).
- (2) The Chief Executive Officer must vacate office if he or she becomes disqualified in terms of section 8 (1).
- (3) The MEC, after giving the Chief Executive Officer an opportunity to be heard and after consulting the Board, may terminate the appointment of the Chief Executive Officer if, in the opinion of the MEC, sufficient reasons exist to do so.

22. Responsibilities of Chief Executive Officer

- (1) The Chief Executive Officer is –
 - (a) an employee of GEP;
 - (b) responsible for running GEP on a day-to-day basis; and
 - (c) accountable to the Board.
- (2) The CEO may, subject to section(10)(3)(c) do all that is necessary or expedient to carry out his or her responsibilities in terms of this Act, including but not limited to-
 - (a) entering into contracts; and
 - (b) holding consultative meetings with stakeholders, beneficiaries and provincial representatives to discuss the activities and performance of GEP at least once a year.

23. Appointment of personnel

- (1) The Chief Executive Officer, with the concurrence of the Board –
 - (a) may appoint employees with appropriate expertise to assist GEP in carrying out its functions; and
 - (b) arrange with the national or provincial government or any other body for the services of –
 - (i) employees of the national or provincial government or the other body to be seconded to GEP; or
 - (ii) employees of GEP to be seconded to national or provincial government.
- (2) Persons seconded to GEP perform their duties subject to the control and direction of the Chief Executive Officer.
- (3) The Board, in consultation with the MEC, must determine the remuneration, allowances, benefits, and other terms and conditions of appointment of members of staff.
- (4) GEP may contract for the services of persons, other than employees, to perform any specific act or function.

24. Delegation by Chief Executive Officer

- (1) The Chief Executive Officer may delegate any responsibility or the performance of any duty conferred or imposed upon the Chief Executive Officer by or under this Act or delegated to the Chief Executive Officer by the Board to –
 - (a) any other person with appropriate knowledge and experience who is under the control of the Chief Executive Officer; or
 - (b) any other person, after consultation with the Board.
- (2) A delegation under subsection (1) must be in writing and –

- (a) may be subject to any conditions or restrictions determined by the Chief Executive Officer;
- (b) does not prevent the exercise of that responsibility by the Chief Executive Officer; and
- (c) may be withdrawn or amended by the Chief Executive Officer.

25. Chief Executive Officer's disclosure of interest and conflict of interests

- (1) The Chief Executive Officer must disclose to the Board any direct or indirect interest, including a potential interest, which he or she or an immediate family member, business partner, associate or previous employer has in any business that may benefit from the operations of GEP.
- (2) The Chief Executive Officer must refer to the Board any matter in respect of which the Chief Executive Officer is required to make a decision or take action and where a conflict of interest or potential conflict of interest as contemplated in subsection (1) exists.
- (3) The Board must determine the appropriate decision or action in respect of any matter referred to it in terms of subsection (2), and must inform the Chief Executive Officer of its determination in writing.
- (4) The Chief Executive Officer must comply with the determination of the Board, contemplated in subsection (3).
- (5) A failure by the Chief Executive Officer to disclose any interest contemplated in subsection (1) or any contravention of subsection (2) or (4), constitutes a sufficient reason to terminate the Chief Executive Officer's employment in terms of section 21(3).

CHAPTER 5**PLANNING, FINANCES AND REPORTING****26. Financial year**

The financial year of GEP begins on 1 April and ends on 31 March of the following year.

27. Funds of GEP

- (1) The funds of GEP consist of -
 - (a) monies appropriated by the Legislature for GEP;
 - (b) monies accruing to GEP from any source approved by the MEC, including fees paid in terms of this Act; and
 - (c) monies lawfully obtained by GEP from any other source.
- (2) GEP must, for the purposes of the appropriation contemplated in subsection (1)(a), at least six months before the start of the financial year, submit to the MEC a budget of estimated revenue and expenditure for that financial year.
- (3) GEP must open an account with a bank registered in the Republic and approved in writing by the Provincial Treasury after compliance with prescribed tender procedures, and must deposit in that account all money referred to in subsection (1).
- (4) GEP may invest any of its funds not immediately required -
 - (a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act; and
 - (b) in such a manner as may be approved by the MEC.
- (5) Unless prior approval of the Provincial Treasury has been obtained, GEP may not budget for a deficit or accumulate surpluses.

- (6) At the close of any financial year, any surplus of income over expenditure, whether in the account referred to in subsection (3) or which has been invested under subsection (4), must be paid into the Provincial Revenue Fund.
- (7) GEP may raise short-term loans up to an amount approved from time to time by the MEC by way of overdrawing its bank account referred to in subsection (3) or otherwise to meet any casual deficits that may arise.

28. Strategic plan

- (1) Each year GEP must prepare and submit to the MEC a strategic plan for its administration covering the following financial year and the two financial years thereafter, or any other period prescribed under the Public Finance Management Act.
- (2) The strategic plan must comply with any requirements prescribed under the Public Finance Management Act and must include –
 - (a) GEP's priorities for the financial years to which it relates;
 - (b) objectives and outcomes identified by the MEC;
 - (c) multi-year projections of revenue and expenditure;
 - (d) key performance measures and indicators for assessing GEP's performance in delivering the desired outcomes and objectives;
 - (e) an operational plan, a financial plan, a human resources and performance management plan; and
 - (f) the basis for the annual report prepared in terms of section 30(2).
- (3) The MEC may request additional information to be included in the strategic plan.

29. Financial records and statements

- (1) Without limiting its responsibilities in terms of the Public Finance Management Act,

GEP must –

- (a) keep full and proper records of all its financial affairs;
 - (b) prepare financial statements for each financial year in accordance with generally accepted accounting practice;
 - (c) submit those financial statements to the Auditor-General for auditing and to the Provincial Treasury, subject to the provisions of the Public Finance Management Act; and
 - (d) within five months of the end of the financial year, submit to the Provincial Treasury and the MEC the audited financial statements for that financial year together with the annual report on the activities of GEP during that financial year referred to in section 30(2).
- (2) The MEC must table the report and statements referred to in subsection (1)(d) in the legislature as soon as possible.
 - (3) The Provincial Treasury may direct that the audited financial statements of GEP must be incorporated in the financial statements of the Department.

30. Reporting

- (1) Within 30 days of the end of each quarter, or any such period as determined by the MEC from time to time, GEP must, through the Board report to the MEC on its performance in implementing the strategic plan in that quarter.
- (2) Within three months of the end of every financial year, GEP must compile an annual report on its activities during that year.
- (3) GEP must furnish the MEC with any other reports that the MEC may request.
- (4) The annual report must include a review, called the Annual Review of Small Enterprises, which must cover issues identified by the MEC or the Head of Department, and must include –

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- (a) particulars of the work performed by GEP and of progress achieved in furthering the objects of the National Small Enterprise Support Strategy;
 - (b) summaries of any findings or recommendations in respect of legislation, proposed legislation and administrative practices which restrict the small enterprise sector;
 - (c) an outline of new developments and trends in regard to the small enterprise sector in the Province;
 - (d) reports on the growth and decline of small enterprises according to sector, size and region; and
 - (e) a statistical analysis of the contribution of the small enterprise sector to the economy, to export promotion, to rural development and to the level of incorporation of marginalised groups into the economy.

CHAPTER 6

POWERS OF MEC

31. Determination of guidelines

- (1) The MEC may, by notice in the Provincial Gazette, publish guidelines for organs of state in provincial and local spheres of government in the Province to promote small enterprise development.
- (2) The guidelines referred to in subsection (1) may include guidelines on –
 - (a) procedures for consultation with the Department on all proposed legislation identified by the MEC under subsection (3);
 - (b) the assessment of the effect and impact of legislation on small enterprises;
 - (c) co-ordination between organs of state in order to promote the consistent development of small enterprises;

- (d) procedures for consultation with small enterprise organisations, trade unions and other representative organisations; and
- (e) the review of existing legislation on the development and sustenance of small enterprises in the Province.

32. Regulations and amendment of Schedule

- (1) The MEC may make regulations regarding –
 - (a) the criteria or procedures for appointing members of the Board and any matter related to the functioning of the Board;
 - (b) the design and implementation of small enterprises financial support programmes in order to –
 - (i) facilitate access to finance by small enterprises; and
 - (ii) facilitate access to finance by service providers to small enterprises;
 - (c) the manner in which an institution may be incorporated into GEP or any other matter related to such incorporation;
 - (d) the procedure for applying for financial or non-financial assistance and any matter related to such application; and
 - (e) any other matter which may be necessary or expedient to prescribe for the proper implementation or administration of this Act.
- (2) The MEC may, in order to achieve the objects of this Act, by notice in the Provincial Gazette amend the Schedule to account for inflation, macro-economic shifts in the economy and any other matter affecting small enterprises.

33. Designated institutions

- (1) The MEC may, by notice in the Provincial Gazette and after consulting the Board,

designate institutions whose objectives and functions are similar to those of GEP to be incorporated into GEP, from a date specified in the notice.

- (2) Where an institution contemplated by subsection (1) is subject to the jurisdiction of an executive authority other than the MEC, the MEC may only act with the concurrence of that executive authority.
- (3) The MEC must, through the media and by notice in the Provincial Gazette, publish his or her intention to designate an institution contemplated in subsection (1) and invite, and consider, public comments.
- (4) After the incorporation of an institution designated in terms of subsection (1) –
 - (a) anything done by or on behalf of the institution is deemed to have been done by GEP; and
 - (b) the assets, liabilities, rights and obligations of the designated institution, including the unexpended balance of appropriations, authorisations, allocations and other funds employed, held or used in connection with the furtherance of the objectives and functions of the institution, pass to GEP.
- (5) A person employed by an institution designated in subsection (1) must be transferred with effect from the specified date to GEP in accordance with –
 - (a) section 197 of the Labour Relations Act, 66 of 1995; and
 - (b) any applicable collective agreement as defined in section 213 of the Labour Relations Act, 66 of 1995.
- (6) For the purposes of the Income Tax Act, 58 of 1962, no change of employer shall be regarded as having taken place when a person contemplated in subsection (5) takes up employment at GEP.
- (7) As soon as practical, after the incorporation of an institution in terms of subsection (1) –
 - (a) the MEC, or the executive authority of the designated institution, must take all steps necessary to liquidate the institution; and

- (b) the Registrar of Companies, the Master of the High Court or any other applicable regulatory body must take the necessary steps to deregister the institution.

CHAPTER 7

GENERAL PROVISIONS

34. Restriction of use of name

- (1) A person may not —
- (a) conduct any business, occupation or trade or be registered or licensed under any law under a name containing the words “Gauteng Enterprise Propeller”, the abbreviation “GEP” or a translation of those words in any official language; or
 - (b) falsely claim to be acting for, GEP.
- (2) Any person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

35. Confidentiality

- (1) Any person who discloses any information that they acquired in the performance of a function in terms of this Act commits an offence.
- (2) Subsection (1) does not apply if the information —
- (a) was already in the public domain;
 - (b) was disclosed to enable a person to perform a function in terms of this Act; and
 - (c) was disclosed in terms of this Act, any other law or an order of court.

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- (3) Any contravention of subsection (1) constitutes misconduct and if the person who contravenes it -
- (a) is a Board member, they may be dealt with in terms of section 8(3); and
 - (b) is an employee, they may be liable to disciplinary action, including dismissal in terms of GEP's disciplinary procedures.

36. Transitional provisions

- (1) For the purposes of this section, but subject to this Act, the "Gauteng Enterprise Propeller", a company incorporated under section 21 of the Companies Act, 61 of 1973, and with the registration number 2004/031868/08 is deemed to be GEP as contemplated in section (2) of this Act.
- (2) The Board of "Gauteng Enterprise Propeller" incorporated under section 21 of the Companies Act, 1973 is deemed to be the Board contemplated in section 7 of this Act and serves for the unexpired portion of the period for which it was appointed by the MEC prior to the coming into operation of this Act.
- (3) The MEC must take all steps necessary to ensure that GEP ceases to be a company incorporated under section 21 of the Companies Act, 61 of 1973 and is listed as a provincial public entity contemplated in section (3)(1) of this Act.
- (4) Within six months of the commencement of this Act, Gauteng Manufacturing Advisory Centre (GAUMAC) must dissolve in terms of applicable legislation, and its assets be transferred to GEP.

37. Short title and commencement

This Act is called the Gauteng Enterprise Propeller Act, 2005, and comes into operation on a date fixed by the Premier by proclamation in the Provincial Gazette.

SCHEDULE

(See definition of "small enterprise" in section 1)

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
Sector or subsector in accordance with the Standard Industrial Classification	Size of class	The total full-time equivalent of paid employees	Total turnover	Total gross asset value (fixed property excluded)
Agriculture	Medium	100	R5m	R5m
	Small	50	R3m	R3m
	Very Small	10	R0.50m	R0.50m
Mining and Quarrying	Medium	200	R39m	R23m
	Small	50	R10m	R6m
	Very Small	20	R4m	R2m
	Micro	5	R0.20m	R0.10m
Manufacturing	Medium	200	R51m	R19m
	Small	50	R13m	R5m
	Very Small	20	R5m	R2m
	Micro	5	R0.20m	R0.10m
Electricity Gas and Water	Medium	200	R51m	R19m
	Small	50	R13m	R5m
	Very Small	20	R5.10m	R1.90m
	Micro	5	R0.20m	R0.10m
Construction	Medium	200	R26m	R5m
	Small	50	R6m	R1m
	Very Small	20	R3m	R0.50m
	Micro	5	R0.20m	R0.10m
Retail and Motor Trade and Repair Services	Medium	200	R39m	R6m
	Small	50	R19m	R3m
	Very Small	20	R4m	R0.60m

	Micro	5	R0.20m	R0.10m
Wholesale Trade, Commercial Agents and Allied Services	Medium	200	R64m	R10m
	Small	50	R32m	R5m
	Very Small	20	R6m	R0.60m
	Micro	5	R0.20m	R0.10m
Catering, Accommodation and other Trade	Medium	200	R13m	R3m
	Small	50	R6m	R1m
	Very Small	20	R5.10m	R1.90m
	Micro	5	R0.20m	R0.10m
Storage and Communication	Medium	200	R26m	R6m
	Small	50	R13m	R3m
	Very Small	20	R3m	R0.60m
	Micro	5	R0.20m	5
Finance and Business Services	Medium	200	R26m	R5m
	Small	50	R13m	R3m
	Very Small	20	R3m	R0.50m
	Micro	5	R0.20m	R0.10m
Community, Social and Personal Services	Medium	100	R13m	R6m
	Small	50	R6m	R3m
	Very Small	20	R1m	R0.60m
	Micro	5	R0.20m	R0.10m

