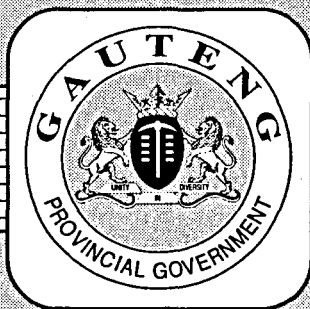


**THE PROVINCE OF  
GAUTENG**



**DIE PROVINSIE  
GAUTENG**

# **Provincial Gazette Extraordinary Buitengewone Provinsiale Koerant**

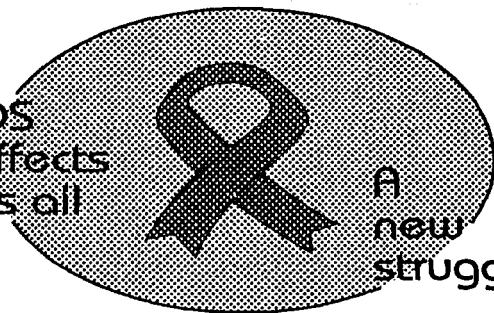
**Vol. 12**

**PRETORIA, 19 OCTOBER  
OKTOBER 2006**

**No. 385**

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

**AIDS  
affects  
us all**



**A  
new  
struggle**

**Prevention is the cure**

**AIDS  
HELPUNE**

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**DEPARTMENT OF HEALTH**



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## GENERAL NOTICES

### NOTICE 4395 OF 2006

## EXPLANATORY MEMORANDUM

### Gautrain Management Agency Bill, 2006

#### 1. Reasons for the Bill

##### 1.1 Purpose of the Bill

The purpose of the Bill is to establish an agency for the management of concession agreements in terms of which the Gautrain Rapid Rail Link is financed, constructed, operated and maintained in accordance with the Province's public transport policy and objectives. The agency will act on behalf of the Province to ensure that concessionaires fulfil their obligations in terms of concession agreements, and that the interests of the Government are protected in all facets of the Project.

##### 1.2 Background

The Gauteng Provincial Government intends to build the Gautrain Rapid Rail Link system linking Johannesburg, Tshwane (Pretoria) and the Johannesburg International Airport, through a public-private partnership. The project will be implemented on a concession basis, with the concessionaire responsible for design, implementation and operation for a prescribed concession period. Approximately 80 kilometres of modern, state-of-the-art railway lines and ten stations are expected to be constructed and subsequently operated through a public-private-partnership (PPP) arrangement as regulated by regulation 16 of the Treasury Regulations promulgated under the Public Finance Management Act, 1999 (PFMA).

##### 1.3 Discussion

Implementing the Gautrain Project poses challenges and risks to Government. It could be managed through a department of the Provincial Government or a provincial public entity. The second option provides more flexibility for the size and complexity of the Project. It was thus decided to establish an entity contemplated in Schedule 3 Part C of the PFMA to act as an implementing agency for the Province for the management of the Gautrain Project. This will enable integrated management of Government's risk as well as access to the specialised skills needed to manage a project of the scale and complexity of the Gautrain.

**2. Implications of the Bill****2.1 Social implications**

None.

**2.2 Environmental implications**

None.

**2.3 Financial implications**

Financial implications include the cost of establishing the agency and providing it with office accommodation, furniture, computers etc. A Board will be appointed, consisting of part time members, except for the Chief Executive Officer (CEO) of the agency. The Board, CEO and staff of the agency will receive remuneration and allowances in line with the remuneration and allowances of other similar agencies.

**2.4 Communication Implications**

None

**2.5 Constitutional Implications**

The establishment of the Agency is within the constitutional authority of the Province

**3. Consultation**

Consultations have been held with the following institutions, among others, concerning the Bill:

- the Provincial Treasury
- the National Treasury
- the Department of Transport in the national sphere of government
- metropolitan and district municipalities in Gauteng.

**4. Clause by clause explanation****4.1 Clause 1 provides for definitions.****4.2 Clause 2 provides for the establishment of the Agency.****4.3 Clause 3 sets out the responsibilities for compliance with the PFMA.****4.4 Clauses 4, 5 and 6 set out the objects, functions and powers of the Agency, respectively.****4.5 Clause 7 provides that the MEC may give directions to the Agency, which it will be obliged to follow.**

**4.6** Clause 8 provides for the MEC to appoint a Board consisting of 6 members (including the CEO).

**4.7** Clause 9 provides for the appointment of Board members.

**4.8** Clause 10 provides for disqualification for appointment or membership to the Board.

**4.9** Clause 11 provides for termination of membership of the Board.

**4.10** Clause 12 provides for the period of office and remuneration of Board members.

**4.11** Clause 13 provides for the responsibilities of Board members.

**4.12** Clauses 14, 15 and 16 provide for Board meetings, conduct of such meetings and resolutions without meetings respectively.

**4.13** Clause 17 allows the Board to establish sub-committees and refers to committees such as the audit committee which are required by the PFMA.

**4.14** Clause 18 relates to the delegation of the Board's responsibilities.

**4.15** Clause 19 provides for the board members' conflict of interest.

**4.16** Clauses 20 and 21 provide for appointment of the CEO and require that a written contract of employment and performance agreement be concluded.

**4.17** Clause 22 provides for the disqualification from holding office and termination of the CEO's employment.

**4.18** Clauses 23 and 24 set out the responsibilities of and delegation by the CEO.

**4.19** Clause 25 provides for the CEO's disclosure of interests and conflict of interest.

**4.20** Clause 26 provides for appointment of personnel. It allows staff of the Province to be transferred to the Agency, either on a permanent or temporary basis.

**4.21** Clause 27 provides for the funding, assets and liabilities of the Agency.

- 4.22** Clause 28 allows for provincial assets to be transferred to the Agency.
- 4.23** Clause 29 requires the Agency to open one or more bank accounts.
- 4.24** Clause 30 provides for the financial year of the Agency.
- 4.25** Clause 31 requires the Agency to prepare a strategic plan.
- 4.26** Clause 32 regulates the Agency's budget.
- 4.27** Clause 33 provides for monthly and quarterly reports.
- 4.28** Clause 34 provides for an annual report to be submitted by the Agency.
- 4.29** Clause 35 regulates the Agency's accounting and financial statements.
- 4.30** Clause 36 provides for the establishment of an Audit Committee.
- 4.31** Clause 37 prevents the Agency from being liquidated or placed under judicial management except by a provincial Act.
- 4.32** Clause 38 allows the MEC to promulgate regulations to achieve the objects of the Act.
- 4.33** Clause 39 provides for matters related to transitional measures.
- 4.34** Clause 40 provides the short title and date of commencement of the Act.

# **GAUTRAIN MANAGEMENT AGENCY BILL, 2006**

## **B I L L**

To provide for the establishment of a Gautrain Management Agency as a provincial public entity to manage and oversee concession agreements for the Gautrain Rapid Rail Link Project; to determine its objectives, powers and duties; to provide for directions by the MEC; to provide for a Board to govern and control the Agency; to provide for the appointment of a chief executive officer and staff to manage the Agency; to provide for the transfer of staff and assets to the Agency; to provide measures for accountability and reporting; to provide for liquidation and judicial management; to provide for delegations by the Board and chief executive officer; to provide for regulations; to provide for transitional provisions; and to provide for matters connected therewith.

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

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## CHAPTER 1 DEFINITIONS

### Definitions

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

**“Agency”** means the Gautrain Management Agency established by section 2;

**“Asset”** means property of any description, and includes both movable and immovable property;

**“BBBEE”** means broad based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

**“Board”** means the Board of the Agency appointed in terms of section 9;

**“Chief Executive Officer”** means the Chief Executive Officer of the Agency appointed under section 20;

**“Companies Act”** means the Companies Act, 1973 (Act No. 61 of 1973);

**“Concession agreement”** means a written agreement concluded between the Province and a concessionaire for any aspect of the design, construction, operation, financing or partial financing of the Gautrain Rapid Rail Link Project;

**“Concessionaire”** means a private party appointed by the Province to implement any aspect of the Project in terms of a concession agreement;

**“Department”** means the Gauteng Department of Public Transport Roads and Works or its successor;

**“MEC”** means the Member of the Executive Council of the Province responsible for public transport matters;

**“MEC for Provincial Treasury”** means the Member of the Executive Council of the Province responsible for financial matters;

**"Member"** means a member of the Board;

**"Metropolitan municipalities"** means all metropolitan municipalities in the Province as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

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

**"Prescribe"** means prescribe by regulation under section 38;

**"Project"** means the Gautrain Rapid Rail Link Project for the design, construction, financing, operation and maintenance of the rapid rail transit system, feeder and distribution service to be developed and operated pursuant to a concession agreement;

**"Province"** means the Province of Gauteng;

**"this Act"** includes any regulations and any directions under section 7.

## **CHAPTER 2 ESTABLISHMENT OF GAUTRAIN MANAGEMENT AGENCY**

### **Establishment of Agency**

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

### **Application of the Public Finance Management Act**

3. (1) The Agency is a provincial public entity as defined in section 1 of the PFMA and its regulations applicable to provincial public entities.
- (2) For the purposes of the PFMA –
  - (a) the Board of the Agency is the accounting authority as contemplated in section 49(2)(a) of the PFMA;
  - (b) the MEC is the executive authority as contemplated by section 53 of the PFMA;

### **Objects of Agency**

4. The objects of the Agency are to manage, co-ordinate and oversee the Project and without derogating from the generality of the foregoing, to –

- (a) assist the Province in implementing the Project and achieving the project objectives;
- (b) act on behalf of the Province in managing the relationship between the Province and concessionaires in terms of concession agreements and ensure that the interests of Province are protected;
- (c) manage assets relating to the Project and promote their preservation and maintenance;
- (d) manage the finances of the Project and the financial securities provided by concessionaires;
- (e) liaise with and promote co-operation between government structures in all three spheres of government in relation to the project;
- (f) liaise with persons having an interest in the Project;
- (g) promote and maximise the socio-economic development and BBBEE objectives of the Province in relation to the Project;
- (h) monitor the policy and legislative environment of the Project
- (i) Enhance the integration of the project with other transport services and Public Transport Plans.

### Function of the Agency

#### 5. The Agency must—

- (a) carry out the duties assigned to it by this Act, the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002) or any other law;
- (b) exercise the rights and perform the duties of the Province in terms of concession agreements;
- (c) manage and oversee concession agreements on behalf of the Province;
- (d) act as agent of the MEC under section 56(2) of the Gauteng Transport Infrastructure Act, 2001 (Act No. 8 of 2001) in relation to protection of the rail reserve and other provincial transport infrastructure involved in the Project;
- (e) establish and operate information and management systems for the Project; and
- (f) liaise and exchange information with institutions, authorities or professional bodies regarding rail matters in South Africa or in other countries.

- (g) perform any other function related to transport service that may be assigned to the Agency by the MEC from time to time.

### **Powers of Agency**

6. Without derogating from its powers generally to perform acts, the Agency may do all that is necessary or expedient to perform its functions including —

- (a) to purchase, hire or otherwise acquire and hold, sell exchange or let or otherwise deal with assets for purposes of this Act: Provided that assets may not be acquired or alienated without the approval of the MEC responsible for Treasury;
- (b) to ensure that the Agency is sufficiently insured against any risk, loss or damage connected with the exercise of its powers or performance of its functions or duties;
- (c) to exercise any power or perform any other function conferred or imposed on it by or in terms of this Act or any other act;
- (d) to do anything else which is reasonable ancillary to any of its objects in terms of section 3, its functions in terms of section 4 and its powers in terms of this section.

### **Directions by the MEC**

7. (1) The MEC may issue a written direction to the Agency if the MEC is of the view that such action is necessary to ensure —

- (a) that the Agency performs its functions in accordance with the Act;
- (b) that the strategic or economic interests of the Province or government in relation to the Project are implemented;
- (c) that a service level agreement is concluded; and
- (d) operational integration between the three spheres of government and provincial priorities.

(2) Particulars of any directions given during a financial year must be included in the annual report of the Agency.

## CHAPTER 3 GOVERNANCE OF AGENCY

### Board of Agency

8. (1) Subject to section 2 the Board is responsible for managing the business and affairs of the Agency.
- (2) The Board consists of -
- (a) the Chief Executive Officer who is a member by virtue of that office; and
  - (b) a minimum of five and a maximum of nine other members appointed in terms of section 9 by the MEC.
- (3) The Board performs the functions of the Agency by virtue of resolutions taken under section 14.
- (4) The Board members act as part time members, except for the Chief Executive Officer.
- (5) The carrying out of duties and the exercise of powers of the Agency is not affected merely because of a vacancy in the membership of the Board.

### Appointment of Board

9. (1) The MEC -
- (a) must appoint members by virtue of their knowledge of or experience in one or more of the following -
    - (i) financial and risk management;
    - (ii) rail issues;
    - (iii) transportation planning;
    - (iv) socio-economic development, BBBEE and transformation;
    - (v) legal and compliance issues; and
    - (vi) human resource issues;
  - (b) may determine any other criteria or procedure for appointing members.
- (2) The MEC must designate-
- (a) a member as chairperson; and
  - (b) another member as deputy-chairperson, to act as chairperson of the Board when the chairperson is unable to perform those duties.
- (3) Before appointing the members, the MEC must invite, through the media and by notice in the *Provincial Gazette*, nominations of candidates for appointment.

### Disqualifications for appointment or membership

- 10 (1) A person may not be appointed a member 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, as declared by a competent court;
- (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 must vacate office if that member becomes subject to a disqualification contemplated in subsection (1).

#### **Termination of membership of the Board**

- 11 (1) The MEC may terminate the appointment of a member -
- (a) for misconduct, incapacity or incompetence;
  - (b) for failing to comply with section 10 (2) or 19 (1);
  - (c) if the member fails to attend three consecutive meetings of the Board without a valid explanation; or
  - (d) on good cause shown.

(2) 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.

#### **Term of office of members of the Board**

- 12 (1) A member -
- (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 10, any person whose term of office as a member 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.

(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.

### **Responsibilities of Board**

**13** (1) The Board must-

- (a) ensure that the responsibilities of the Agency are performed and that the objectives of the Agency are achieved;
- (b) exercise the fiduciary duties and responsibilities of an accounting authority in accordance with the PFMA in respect of the Agency; and
- (c) function in a transparent and open manner.

(2) 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) performing legal acts, including acts in association with any other person or organ of state; and
- (c) approve the entering into contracts relating to financial support with financial institutions or any other institutions with objectives similar to those of the Agency.

### **Meetings of the Board**

**14** (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 deputy-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 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 19 (1).

### **Conduct of meetings**

**15** (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 manner that cannot be altered or tempered with; 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, 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.



## Resolution without meeting

16 (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).

## Committees of Board

17. (1) The Board –

- (a) may establish committees to assist it in discharging its functions;
- (b) must establish an audit committee and such other committees as required by the PFMA and other applicable legislation.

(2) A committee may be established as a permanent committee or an *ad hoc* committee.

(3) A committee must –

- (a) consist of at least one member and such other persons, as the Board may appoint
- (b) must be chaired by a member appointed by the Board, who may not be the Chief Executive Officer.

(4) Committees will not have executive powers unless –

- (a) the Board delegates any of its powers to the committee; or
- (b) the PFMA requires that the committee exercise such powers.

(5) The Board must determine for each committee –

- (a) its functions and duties;
- (b) the procedures for its meetings;
- (c) the frequency of meetings, provided that standing committees must meet at least twice in each calendar year.

(6) Committee members who are not Board members may be remunerated on the basis determined by the MEC in consultation with the MEC for Provincial Treasury.

### Delegations of the Board's responsibilities

18 (1) The Board may, subject to the provisions of this section, delegate its responsibilities, functions or duties to any member or any committee of the Board or the Chief Executive Officer; except the power to appoint committees or committee members under section 17;

(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.

### Board member's conflicts of interest

19 (1) A member -

- (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 in relation to any matter before the Board in respect of which that member has a conflict of interest; and
- (c) must comply with any decision as to whether such member is 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, or has a financial or other interest in a business that is involved with the project or the Agency; 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.

## CHAPTER 4 CHIEF EXECUTIVE OFFICER AND PERSONNEL

### Appointment of the Chief Executive Officer

- 20** (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 not limited to but including one or more of the areas referred to in section 9(a)(i – vi); 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 as prescribed in the contract of employment referred to in section 23(1).
- (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 the Agency.

### Employment contract and performance agreement

- 21** (1) The MEC and the Chief Executive Officer must conclude a written contract of employment for the Chief Executive Officer which must be incorporated in an appropriate form in accordance with the provisions of section 57 of the PFMA.
- (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.

#### **Disqualification from holding office of Chief Executive Officer and termination of office**

22 (1) No person may be appointed as Chief Executive Officer if that person is disqualified from being a member in terms of section 10(1).

(2) The Chief Executive Officer must vacate office if he or she becomes disqualified in terms of section 10(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.

#### **Responsibilities of Chief Executive Officer**

23 (1) The Chief Executive Officer is-

- (a) an employee of the Agency;
- (b) responsible for running the Agency on a day-to-day basis; and
- (c) accountable to the Board.

(2) The Chief Executive Officer may, subject to section 13(2)(b) 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 the Agency at least once a year.

#### **Delegation by Chief Executive Officer**

24 (1) The Chief Executive Officer may delegate any responsibility or the performance of any duty conferred or imposed upon the Chief Executive Officer by 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.

### **Chief Executive Officer's disclosure of interest and conflict of interests**

25 (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 project or the Agency.

(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 22(3).

### **Appointment of personnel**

26 (1) The Chief Executive Officer, with the concurrence of the Board-

(a) may appoint employees with appropriate expertise to assist the Agency 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 the Agency; or

(ii) employees of Agency to be seconded to national or provincial government.

(2) Persons seconded to the Agency 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) The Agency may contract for the services of persons, other than employees, to perform any specific act or function.

## **CHAPTER 5 FINANCES AND ACCOUNTABILITY**

### **Assets of the Agency**

27. (1) The Agency is funded primarily by money appropriated from the Provincial Revenue Fund.

(2) For this purpose, the MEC for Provincial Treasury may, out of money appropriated by the Provincial Legislature for the purpose, grant money to the Agency on terms and conditions which that MEC may determine in writing.

(3) The assets of the Agency include—

- (a) assets transferred to it by or under this Act;
- (b) money appropriated by the national Parliament or the Provincial Legislature for the purpose of funding the Agency;
- (c) amounts payable to it under any law or instrument thereunder;
- (d) reserves resulting from the operations of the Agency;
- (e) assets acquired by it in the course of its operations; and
- (f) money received by grant or donation from local and foreign aid agencies; and
- (g) money from any source approved by the MEC

### **Transfer of provincial assets and liabilities to Agency**

28. (1) Subject to the PFMA, the MEC may transfer assets of the Province to the Agency to enable it to fulfil its functions.

(2) Where immediately before a transfer under subsection (1) –

- (a) the Province had a right arising from a debt, liability or obligation of another person in favour of the Province in respect of the asset transferred, or in respect of the Project; or
- (b) the Province had a debt, liability or obligation of the Province existed in respect of an asset so transferred in respect of the Project -

the right, debt, liability or obligation is transferred from the Province to the Agency on the date of such transfer, if the MEC stipulates in writing that it is to be so transferred.

(3) Where immovable property or a real right therein owned by the Province is transferred to the Agency, the MEC must describe the property by notice in the *Provincial Gazette*, which will be transferred to the Agency on the date specified in the notice, which may not be earlier than the date of publication of the notice.

### **Bank account**

29. The Agency must open and maintain one or more accounts with a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), in which must be deposited all money received by the Agency and from which payments for the Agency or on its behalf must be made.

### **Financial year**

30. The financial year of the Agency is the period from 1 April each year to 31 March of the following year, both days included.

### **Strategic plan**

31. (1) Each year the Agency 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 PFMA.

(2) The strategic plan must comply with any requirements prescribed under the PFMA and must include-

- (a) the objectives and outcomes of the Agency in terms of this Act and the Service Level Agreement; and
- (b) the policies, strategies and measures that will be used to achieve the objectives and desired outcomes of the Agency;
- (c) targets, performance measures and indicators for monitoring and evaluating the Agency's performance in delivering the desired outcomes and objectives;
- (d) a financial plan that describes the financial objectives and targets of the Agency;
- (e) the overall financial strategies for the Agency and a forecast of its revenue and expenditure, including capital expenditure;

- (f) financial performance indicators and a financial monitoring, evaluation and audit strategy;
  - (g) a risk management plan, including risk relating to concession agreements, and a fraud prevention plan;
  - (h) strategies for socio-economic development and BBBEE;
  - (i) human resources plan; and
  - (j) a plan for enhancing the integration of the Project with other transport services, including public road and rail transport and private transport, within the framework of the Province's Provincial Land Transport Framework contemplated in section 22 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000), and the integrated transport plans in the Province contemplated in section 27 of that Act; and
- (3) Unless otherwise agreed with the MEC, the strategic plan must be submitted to the MEC not later than 6 months before the start of each financial year,
- (4) The Board must consider any comments or proposals suggestions made by the MEC, and must implement any changes or additions requested by the MEC.
- (5) Despite subsection (3), the strategic plan for the Agency's first financial year must be submitted to the MEC not later than 60 days after the date, as determined by the MEC, on which the Agency becomes operative.

### **Budget**

32. (1) The Agency must comply with the PFMA and the Treasury Regulations promulgated in terms of that Act as regards the budget.
- (2) In addition, the budget must –
- (a) distinguish between the funds required for Agency operation and funds required for the Project and ensure that funds will be used for their intended purpose; and
  - (b) outline the budget for capital development of the Project during implementation, and contingent liability and debt repayment during the operations phase of the Project.



### Monthly and quarterly reports

**33.** (1) The Agency must comply with the PFMA and the Treasury Regulations promulgated in terms of that Act as regards monthly and other reporting requirements.

(2) In addition, the Agency must prepare a quarterly report not later than 30 days after the end of each quarter –

- (a) detailing the Agency's actual revenue and expenditure for that quarter;
- (b) including a projection of expected revenue and expenditure for the remainder of the financial year;
- (c) including a reconciliation of actual revenue and expenditure with the projected finances of the Agency from the previous report;
- (d) if applicable, explaining in detail any variances and the measures taken to ensure that expenditure remains within budget; and
- (e) other relevant matters, including a report on the performance of the Agency in achieving the project objectives.

(3) The Board must submit the quarterly report to the MEC not later than 30 days after the end of the quarter in question.

### Annual report

**34.** (1) For each financial year, the Agency must prepare an annual report that –

- (a) articulates the vision and objectives of the Agency;
- (b) reports on the business of the Agency for that year and its performance against predetermined targets;
- (c) contains a summary report of the financial activities of the Agency, audited financial statements, the external auditor's report and a report of the audit committee detailing internal controls and evaluating the financial statements;
- (d) describes the structure and nature of the Board, with details of Board members and meetings of the Board and committees;
- (e) includes an evaluation of the Board;
- (f) includes a social and environmental report indicating the contribution of the Project to socio-economic development, BBBEE and environmentally sustainable development;

- (g) describes key achievements in the harmonisation and integration of public transport and contributions to

improved access, connectivity, safety and reliability of the public transport system; and

- (h) indicates the manner, and extent to which any other aspect of the strategic plan has been implemented.

(3) Within five months of the end of the financial year, the Agency must submit the annual report, as approved by the Board, to the MEC and the MEC must cause the annual report to be tabled in the Provincial Legislature.

### **Accounting**

35. (1) The Agency must keep such accounting and related records according to Generally Recognised Accounting Practice and in the format prescribed in terms of the Public Finance Management Act.

(2) Such books and records must distinguish between the funds required for Agency operation and funds required for the Project.

(3) The accounting and related records of the Agency must be audited annually by the Auditor-General, and financial statements must be submitted to the Provincial Treasury and Auditor-General within five months of the financial year end.

(4) The Provincial Treasury may direct that the audited financial statements of the Agency must be incorporated in the financial statements of the Department.

### **Auditing**

36. The Audit Committee contemplated in section 77 of the PFMA must implement financial and risk management systems and internal control.

## **CHAPTER 6 GENERAL PROVISIONS**

### **Liquidation and judicial management**

37. Despite any other law, the Agency may not be placed under judicial management or liquidation except if authorised by an Act of the Legislature of the Province adopted specifically for that purpose.

## **Regulations**

**38.** The MEC may make regulations, not inconsistent with this Act, prescribing –

- (a) matters required or permitted to be prescribed under this Act; or
- (b) the format and structure of the strategic plan and the extent to which the Agency must consult with interested persons in preparing it.

## **Transitional Provisions**

**39. (1)** Despite other laws, the MEC may, during the time between the date on which this Act comes into operation and the date the Agency is fully established, which date the MEC must determine, take such steps or authorise such things to be done as may be reasonably necessary to promote the transfer of functions performed by the Province to the Agency, and to promote the management of the Agency.

**(2)** Despite other laws, during the period mentioned in subsection (1), the MEC must approve the first strategic plan that will come into operation between the date, determined by the MEC, on which the Board begins to function and the start of the next financial year.

## **Short title and commencement**

**40. (1)** This Act is called the Gautrain Management Agency Act, 2006 and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

**(2)** Different provisions of this Act may be brought into operation on different dates.

## NOTICE 4396 OF 2006

**EXPLANATORY MEMORANDUM****Gauteng Liquor Amendment Bill, 2006****1. Reasons for the Bill****1.1 Purpose of the Bill**

The purpose of the Bill is to amend the definition of "shebeen" in the Gauteng Liquor Act, 2003 in accordance with the Constitutional Court judgement in the matter of *SA Liquor Traders Association and Others v Chairperson Gauteng Liquor Board and Others*, Case No. CCT57/05.

**1.2 Background**

On 02 June 2006 the Constitutional Court delivered its judgment in the matter of *SA Liquor Traders Association and Others v Chairperson Gauteng Liquor Board and Others*, Case No. CCT57/05. The third respondent in this matter was the MEC for Finance and Economic Affairs, Gauteng Province. In its judgment the Constitutional Court declared the definition of "shebeen" in section 1 of the Gauteng Liquor Act, 2003, to be inconsistent with the Constitution and invalid.

The Constitutional Court went on in paragraph (c) of its order to suspend the declaration of invalidity for a period of six months from the date of the order. During this six months suspension period, the court ordered in paragraph (d) of its order that the definition of shebeen shall read as follows:

*"Shebeen' means any unlicensed operation whose main business is liquor and is selling less than sixty (60) cases consisting of 12 x 750 ml of beer bottles per week."*

### **1.3 Discussion**

From 02 June 2006 to 01 December 2006, the definition of shebeen limits shebeens to sell less than 60 cases of 750ml beer bottles per week.

From 02 December 2006 onwards, the definition of shebeen no longer exists as per the order of the Constitutional Court. Section 141 (m) of the Gauteng Liquor Act, 2003 will still contemplate the regulation of a phase-in period for shebeens, but the Act itself will provide no guidance at all as to what a shebeen is. It is imperative that such definition be included in the Gauteng Liquor Act, 2003 and that it commences on 02 December 2006. If this is not done then on 02 December 2006 the existing definition will become invalid by virtue of the Constitutional Court's order and there will be a severe lacuna in the law.

## **2. Implications of the Bill**

### **2.1 Social Implications**

None

### **2.2 Environmental Implications**

None

### **2.3 Financial Implications**

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

**2.4 Communication Implications**

None

**2.5 Constitutional Implications**

None, except that the Province is giving effect to the order of the Constitutional Court.

**3. Consultation**

Not required as the amendment is necessitated by and in accordance with Constitutional Court order.

**4. Clause-by-Clause Explanation****4.1 Clause 1**

Substitutes the definition of "shebeen".

**4.2 Clause 2**

Provides for the short title and commencement of the Act.

**GENRAL EXPLANATORY NOTE:**

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

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

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**B I L L**

**To amend the Gauteng Liquor Act, 2003 so as to amend the definition of "shebeen"; and to determine the date of commencement of the amendment.**

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

**Amendment of section 1 of Act 2 of 2003**

**1.** Section 1 of the Gauteng Liquor Act 2 of 2003 is hereby amended by the substitution for the definition of "shebeen" of the following definition:

**"shebeen"** means any unlicensed operation whose main business is liquor and is selling less than sixty (60) cases consisting of 12x750ml of beer bottles per week;

**Short title and commencement**

**2.** This Act is called the Gauteng Liquor Amendment Act, 2006, and comes into operation on 02 December 2006.

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