

**THE PROVINCE OF  
GAUTENG**



**DIE PROVINSIE  
GAUTENG**

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## GENERAL NOTICE

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### NOTICE 679 OF 2013



## GAUTENG LEGISLATURE

### THE GAUTENG PROVINCIAL GOVERNMENT INTENDS TO INTRODUCE THE GAUTENG ARCHIVES AND RECORDS SERVICES BILL, 2013 IN THE GAUTENG PROVINCIAL LEGISLATURE

The above mentioned Bill is published in English in the Gauteng Provincial Extraordinary Gazette No 68, notice No 679 on 08 March 2013 for public comments and general information.

The Bill seeks to provide, for the establishment of the Gauteng Archives and Records Services; the formation of an archival and records management infrastructure within the Province; the proper management, maintenance and care of records of Gauteng governmental bodies and non-public records; the custody, preservation; and to provide for matters connected therewith.

People, who wish to comment on the bill, may send their written comments to:

Office of the Secretary  
Committee Coordinator (Ms. Philile Sigubudu)  
Gauteng Provincial Legislature  
Private Bag X52  
Johannesburg  
2000

Tel: (011) 498 6492  
Mobile: (079) 897 2382  
Fax: (011) 498 5719

Comments must reach the above office on or before 12, APRIL 2013.

Copies of the *Gazette* may be obtained from Government Printers, Publications Section, Vermeulen and Bosman Streets, Pretoria at R2.50 per copy

PROVINCE OF GAUTENG

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**GAUTENG PROVINCIAL ARCHIVES AND RECORDS SERVICES  
BILL, 2013**

**AS INTRODUCED BY THE MEMBER OF THE EXECUTIVE  
COUNCIL RESPONSIBLE FOR SPORT, ARTS, CULTURE AND  
RECREATION**

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*(The English text is the official text of the Bill)*

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**[G002-2013]**

## **BILL**

**Pursuant to the provisions of the Constitution of the Republic of South Africa, 1996 to provide, for the establishment of the Gauteng Archives and Records Services; the formation of an archival and records management infrastructure within the Province; the proper management, maintenance and care of records of Gauteng governmental bodies and non-public records; the custody, preservation; and to provide for matters connected therewith.**

### **ARRANGEMENT OF SECTIONS AND CHAPTERS**

Sections

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2. Establishment of Provincial Archives and Records Service
3. Application of this Act
4. Objects and functions of Provincial Archives
5. Obligation of governmental bodies

#### **CHAPTER 2 GAUTENG PROVINCIAL ARCHIVES REPOSITORY**

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## **Chapter 1**

### **Introductory Provisions**

#### **Definitions**

1. In this Act unless the context otherwise indicates –

**“Appraisal”** means the archival function of determining the eventual disposal of records;

**“archives”** means records in the custody of an archives repository;

**“archives repository”** means facility in which records with archival value are preserved;

**“Council”** means the Gauteng Archives and Records Services Council as established by section 9 of this Act;

**“custody”** means the control of records based upon their physical possession;

**“Department”** means the Department responsible for sport, arts, culture and recreation in the Province;

**“Disposal Authority”** means written authority by the Provincial Archivist specifying records to be transferred into the custody of the Provincial Archives or specifying records to be otherwise disposed of;

**“electronic records”** means records generated electronically and stored by means of computer technology;

**“electronic records system”** means any records system in which information is generated electronically and stored by means of computer technology;

**“governmental body”** means any legislative, executive, judicial or organ of state (including a statutory body) at the provincial or local level of government;

**“MEC”** means the member of the Executive Council responsible for sport, arts, culture and recreation in the Province;

**“non-public record”** means a record created or received by a private individual or a body other than one defined as a governmental body in terms of this Act;

**“prescribe”** means prescribe by regulations;

**“Province”** means Gauteng Province;

**“Provincial Archives”** means the Gauteng Provincial Archives and Records Services;

**“Provincial Archivist”** means an archivist appointed in terms of section 7 of this Act;

**“Provincial Legislature”** means the Gauteng Provincial Legislature;

**“public record”** means a record created or received by a governmental body in pursuance of its activities;

**“record”** means recorded information regardless of form or medium;

**“records classification system”** means a classification plan for the identification, arrangement, storage and retrieval of records;

**“regulations”** means a regulation made under this Act;

**“this Act”** includes the regulations.



## **Establishment of Provincial Archives and Records Service**

2. The Gauteng Archives and Records Service is hereby established.

## **Application of this Act**

3. This Act applies to all Governmental Bodies in the Province.

## **Objects and functions of Provincial Archives**

4. The objects and functions of the Provincial Archives are to –
- (a) preserve public and non-public records with enduring value for use by the public and the State;
  - (b) make such records accessible and promote their use by the public;
  - (c) ensure proper management and care of all public records;
  - (d) collect non-public records with enduring value of provincial significance which cannot be more appropriately preserved by another institution, with due regard to the need to document aspects of the Province's experience neglected by archive repositories in the past;
  - (e) initiate and co-ordinate the collection of electronic records;
  - (f) develop an appraisal policy and its implementation procedure;
  - (g) promote co-operation and co-ordination between institutions having custody of non-public records with enduring value;
  - (h) promote an awareness of archives and records management, and encourage archival and records management activities and generally promote the preservation and use of a provincial archival heritage;
  - (i) develop a provincial automated archival information retrieval system; and
  - (j) participate in any national automated archival information retrieval system.

**Obligation of governmental bodies**

5. Governmental bodies must deposit their records with the archivist in accordance with the relevant policies.

**Chapter 2  
Gauteng Provincial Archives Repository****Establishment of repository**

6. The MEC must establish a Provincial Archives repository for the safe keeping and preservation of records under the control of the Provincial Archivist.

**Chapter 3  
Provincial Archivist and Staff****Appointment of Provincial Archivist**

7. (1) The MEC must appoint an experienced and appropriately qualified person as Provincial Archivist to head and manage the provincial archives.

(2) The MEC may delegate to the Head of Department the function to appoint staff to the Archives.

(3) The Provincial Archivist may in the performance of his or her functions be assisted by officers and employees appointed for such purposes.

(4) The Provincial Archivist may, subject to any conditions, delegate a power or assign a duty to a member of the staff and may at any time cancel such delegation or assignment.

(5) A delegation or assignment does not divest the Provincial Archivist of the power delegated or duty assigned and he or she may at any time amend or set aside any decision made thereunder or exercise the power or perform the duty concerned.

**Powers and duties of Provincial Archivist**

8. (1) The Provincial Archivist must-
- (a) take such measures as are necessary to arrange, describe and retrieve records from Provincial Archives;

- (b) provide information, consult, conduct research and render other services related to records;
  - (c) with special emphasis on activities designed to reach out to less privileged sectors of society, make known information concerning records through means such as publications, exhibitions and the lending of records;
  - (d) require a person who has made use of records in the Provincial Archives while researching a publication or dissertation to furnish a copy of the publication or dissertation to the Provincial Archives;
  - (e) advise governmental bodies with regard to the acquisition and implementation of electronic records system; and
  - (f) generally, take such other steps and perform such acts as may be necessary for or conducive to the achievement of the objects of the Provincial Archives and this Act.
- (2) The Provincial Archivist may –
- (a) provide training in archival techniques and the management of records;
  - (b) co-operate with organizations interested in archival matters or the management of records;
  - (c) provide professional and technical support in aid of archival activities and the archival community; and
  - (d) on the advice of the Council and with the concurrence of the MEC exempt a governmental body from any provision of this Act.
- (3) The Provincial Archivist may issue directives and instructions applicable to all institutions to which this Act applies.

## **Chapter 4**

### **Provincial Archives Council**

#### **Establishment of Provincial Archives Council**

**9.** The MEC must within six months after the Act comes into operation establish a Provincial Archives Council to be known as the Gauteng Archives and Records Service Council.

#### **Functions of Council**

**10.** The Council must-

- (a) consult with and advise the MEC on any matter related to the operation of this Act;
- (b) advise and assist the Provincial Archivist in carrying out the objectives and functions of the Provincial Archives;
- (c) promote the co-ordination of archival policy formulation and planning at provincial levels;
- (d) approve the appraisal policy of the Provincial Archives and monitor its implementation; and
- (e) maintain a provincial list of non-public records in the Province which, in the opinion of the Council, have enduring value.

#### **Composition of Council**

**11.** The Council must consist of –

- (a) the Provincial Archivist; and
- (b) not more than six other members appointed by the MEC, who are knowledgeable on and have an interest in archival matters.

#### **Appointment of members of Council**

**12.** (1) The members of the Council must be appointed by the MEC after inviting interested parties through the media and by notice in the Provincial Gazette to nominate persons as candidates for the respective positions on the Council.

(2) A member of the Council must:

- (a) be a fit and proper person; and

(b) have knowledge, qualifications or experience and interest in the field of archives.

(3) The need for the Council to reflect broadly the race, gender and geographic composition of the Province must be considered when members are appointed.

(4) A member of the Council is, subject to subsection (5), appointed for the period determined by the MEC at his or her appointment, but not for more than five years, and may be reappointed on expiry of such period.

(5) A member of the Council ceases to be a member if –

- (a) he or she resigns;
- (b) his or her estate is sequestrated;
- (c) he or she becomes of unsound mind;
- (d) he or she is convicted of an offence and sentenced to imprisonment for a period greater than 6 months without the option of a fine; and
- (e) the MEC terminates the office of a member if:
  - (i) the member is absent from three (3) consecutive meetings of the Council, without leave of the Council;
  - (ii) such termination is requested by at least two thirds of the other members of the Council; and
  - (iii) the MEC has just and fair reasons to do so.

(6) If a member of the Council dies, resigns or is disqualified in terms of subsection (5) before expiry of his or her term of office, the MEC must within 120 days from the date on which the vacancy occurred and subject to subsection (1) and (2), appoint a person to fill the vacancy for the unexpired term for which that member was appointed.

### **Appointment of chairperson and deputy chairperson**

**13.** (1) The MEC must, after consultation with the members of the Council, designate one of the members of the Council as the chairperson, and another member as the deputy chairperson, of the Council.

(2) When the chairperson of the Council is absent or unable to fulfill any function of the chairperson, the deputy chairperson of the Council must act as chairperson during such absence or incapacity.

(3) In the event that both the chairperson and deputy chairperson of the Council are absent to fulfill any function of the chairperson, the Council must designate any other member of the Council to act as chairperson during such absence or incapacity.

### **Meetings of Council**

**14.** (1) All meetings of the Council must be held at times and places determined by the chairperson of the Council.

(2) Ordinary meetings of the council must be held at least twice a year.

(3) A special meeting of the Council must be held-

(a) by order of the MEC;

(b) on a written request signed by at least half of the members of the Council; and

(c) at the request of the Provincial Archivist.

(4) The quorum for a meeting of the Council is more than fifty percent of its members.

(5) The Council must determine, subject to the approval of the MEC, the procedure at its meetings.

## **Chapter 5**

### **Management and Storage of Records**

#### **Management of records**

**15.** (1) Subject to the provisions of this Act, the Provincial Archivist must be charged with the proper management, care and storage of public records under the control of governmental bodies.

(2) Without limiting the generality of subsection (1)-

(a) no public record under the control of a governmental body may be destroyed, erased or otherwise disposed of without the written consent of the Provincial Archivist issued subject to 10 (d);

(b) the Provincial Archivist must issue directives with regards to-

- (i) records classification systems to be employed by governmental bodies;
  - (ii) the conditions subject to which electronic records systems should be managed by governmental bodies;
  - (iii) the management and care of public records in the custody of governmental bodies; and
  - (iv) the admission of the public to an archive repository, making available records for public access, and the use of equipment for making copies of, or extracts from, records in the custody of the Provincial Archives.
- (c) the Provincial Archivist must inspect records in so far as such inspection may be necessary for the performance of his or her functions under this Act: Provided that the inspection of records which contain information the disclosure of which is restricted by any other law be done only with the consent of the head of the governmental body concerned.

(3) A governmental body must designate an official of the body to be the records manager of the body, subject to any law governing the employment of personnel of the governmental body concerned.

(4) The records manager as contemplated in subsection (4) is responsible for ensuring that the governmental body complies with the requirements of this Act.

### **Management of electronic records**

**16.** The Provincial Archivist must –

- (a) develop policy and procedures for the sound management, collection and retrieval of electronic records; and
- (b) create and maintain a register of all electronic records.

**Custody and preservation of records**

**17.** (1) Public records that, in the opinion of the Provincial Archivist, have enduring value must be transferred to an archives repository when they have been in existence for at least 20 years; provided that –

- (a) no other law requires such records to be kept in the custody of a particular governmental body or person;
- (b) the Provincial Archivist may, after consultation with the MEC or the Council, identify such records which –
  - (i) must remain in the custody of a governmental body; or
  - (ii) must be transferred to an archives repository before they have been in existence for 20 years;
- (c) the Provincial Archivist may grant permission for any public records to be transferred to an archives repository before they have been in existence for 20 years.

(2) The Provincial Archivist must take such measures as are necessary to preserve and restore records.

(3) The Provincial Archivist may, subject to the approved appraisal policy, destroy or otherwise dispose of any public record in the custody of the Provincial Archives where the retention of the record is no longer deemed necessary.

**Acquisition and management of non-public records**

**18.** (1) The Provincial Archivist, in consultation with the Council, may on behalf of the Province acquire by purchase or donation or on loan for a temporary period or in perpetuity, either unconditionally or subject to such conditions as may be agreed upon, non-public records which, in his or her opinion, have enduring significance and which are not more appropriately preserved by another institution.

(2) Subject to any conditions as may be applicable, non-public records acquired under subsection (1) must be deposited in the archive repository as determined by the Provincial Archivist.



(3) The Provincial Archivist must maintain a provincial register of non-public records in the Province which have enduring value, in consultation with the persons or institutions having custody of such records.

(4) A person or institution having non-public records in their custody which are recorded in the provincial register in subsection (3) may not destroy, export from the Province or otherwise dispose of such records without –

- (a) reporting to the Provincial Archivist their intention to dispose of such records at least 90 days in advance of such action; and
- (b) securing a prior written approval of the Provincial Archivist for such action.

### **Access and use of records by members of public**

**19.** (1) Subject to any other Act of Parliament which deals with access to public records, including but not limited to the Minimum Information Security Standards, and such terms and conditions as the Provincial Archivist may determine –

- (a) a public record in the custody of the Provincial Archives is available for public access if a period of 20 years has elapsed since the end of the year in which the record came into existence;
- (b) access to a public record in respect of which a period of less than 20 years has elapsed since the end of the year in which the record came into existence may be given by the Provincial Archivist upon request.

(2) A non-public record in the custody of the Provincial Archives may be available for public access subject to subsection (1) and any conditions agreed upon at its acquisition.

(3) Notwithstanding subsections (1) and (2), the Provincial Archivist may refuse or impose reasonable conditions for access to a record on the grounds of its fragile condition, provided that there is a right of appeal to the MEC against such refusal.

## **Chapter 6**

### **General**

#### **Offences and penalties**

**20.** (1) Any person who –

- (a) damages any public or non-public record under the control of a governmental body; or
- (b) other than in accordance with this Act or any other law, removes, destroys or erases such record,

is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 24 months or both such fine and imprisonment.

(2) Any person who fails to comply with section 18(4) is guilty of an offence and liable on conviction to a fine not exceeding R 10 000.00.

(3) The Provincial Archivist may refuse to allow any person convicted of an offence in terms of subsection (1) access to an archives repository for such period as he or she may deem fit, subject to an appeal to the MEC.

#### **Transitional arrangements**

**21.** A person who is the Deputy Director-General responsible for core business in the Department, immediately prior to the coming into force of this Act, must continue in the office as the Provincial Archivist until the Provincial Archivist is appointed in terms of section 7 of this Act.

(2) Records in the custody of the Director of Library and Archives in the Department on the day immediately prior to the coming into force of this Act, are transferred to the Provincial Archivist subject to any conditions that were applicable to such records on that day.

(3) A person who was, immediately prior to the coming into force of this Act, a member of staff of the Archives Division of the Department must continue to be a member of staff of the Provincial Archives.

**Limitation of liability**

**22.** No person, including the State, is liable in respect of anything done under this Act in good faith and without negligence.

**Regulations**

**23.** The MEC may make regulations regarding –

- (a) the appeal process where the access to a record is refused;
- (b) additional powers and functions of records managers; and
- (c) any other matter, which is permitted or necessary for the proper execution of this Act.

**Short title and commencement**

**24.** This Act is the Gauteng Archives and Records Services Act, 2013 and comes into operation on a date fixed by the Premier by proclamation in the Provincial Gazette.

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