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GENERAL NOTICE

NOTICE 210 OF 2009

NORTH WEST HOUSE OF TRADITIONAL LEADERS BILL, 2009

The North West House of Traditional Leaders Bill, 2009, is hereby published for comments by the general public. Any person who wishes to make a comments and or objections about the proposed legislation must do so in writing and must direct such comments and or objections to the following address:

The Provincial Chief State Law Advisor
Office of the Premier
North West Provincial Government
Private Bag x 129
MMABATHO
2735

Tel: (018) 387 3058
Fax: (018) 387 3052

Comments and or objections made in terms hereof must be made within 21 days of the date of publications hereof.

PROVINCE OF NORTH WEST

**NORTH WEST HOUSES OF
TRADITIONAL LEADERS BILL, 2009**

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

[B ---2009]

BILL

To provide for the establishment of the provincial house of traditional leaders, to provide for the establishment of the local houses of traditional leaders; to provide for the composition of houses of traditional leaders; to provide for the functions of houses of traditional leaders; to provide for the election of representatives of the provincial house to the National House of Traditional Leaders; to determine and regulate the privileges, immunities and powers of the Houses of Traditional Leaders; and to provide for matters incidental thereto.

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of North West, as follows:-

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Definitions

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

“**chairperson**” means a chairperson of the House and includes a vice-chairperson as well as any member when such member is presiding at a meeting of the any house or any committee thereof;

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

“**district**” means an area demarcated in terms of applicable legislation as constituting a district municipal area in the North West Province;

“**Executive Council**” means the Executive Council of the Province as referred to in section 125 of the Constitution;

“**kgosi**” or “**kgosigadi**” means the kgosi or kgosigadi of a tribe as an heir to bogosi who has been appointed by the core family of bogosi in accordance with their succession and duly recognised by the Premier;

“**Local House**” means the Local House of Traditional Leaders established in terms of section 1.7 of this Act;

“**Local House Member**” means the member of the Local House of Traditional Leaders;

“**Member**” means the member of any of the Houses of Traditional Leaders;

“**National House**” means the National House of Traditional Leaders established in terms of the National House of Traditional Leaders Act, 1997 (Act No. 10 of 1997);

“**officer of the House**” means the Secretary or any other person acting as an officer or staff of either the Local House or Provincial House under the orders of the chairperson of such House within the precincts of the House,;

“**precincts of the House**” means the chamber of the House, and includes, while the House is in sitting, any other premises provided for the purposes of the House;

“**Premier**” means the Premier of the Province elected as contemplated in section 128 of the Constitution and includes the acting Premier referred to in section 131 of the Constitution;

“**Province**” means the Province of the North-West;

“**Provincial House**” means the Provincial House of Traditional Leaders established in terms of section 2 of this Act;

“**regent**” means a motshwareledi who is a member of the family of bogosi who is the senior uncle of the kgosi or kgosigadi who takes over bogosi in the absence of the kgosi or kgosigadi as a result of the death of a kgosi or kgosigadi;

“**Secretary**” means the Secretary of either a Local House or the provincial House of Traditional Leaders and includes an assistant Secretary;

“**senior traditional leader**” means a traditional leader of a specific traditional community who exercises authority over a number of headmen or headwomen in accordance with customary law, or within whose area of jurisdiction a number of headmen or headwomen exercise authority and as defined in section 1 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);

“**this Act**” means the North West Houses of Traditional Leaders Act, 2009;

“**traditional leader**” means a person who in terms of customary law of the traditional community concerned holds a traditional leadership position, and is recognised as such in terms of the North West Traditional Leadership and Governance Act, 2005 and as defined in section 1 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);

“**visitor**” means any person other than a member or an officer of the House.

- (2) (a) The powers, functions and duties lawfully exercised by traditional leaders at the date of the coming into operation of the Constitution, shall be and remain in force until varied or withdrawn by a competent authority.
- (b) Traditional leaders shall continue to enjoy the personal status they have hitherto enjoyed and shall in regard to ceremonial and traditional matters and at ceremonial occasions within their areas take precedence over any person.

CHAPTER 2

THE PROVINCIAL HOUSE

Establishment of Provincial House of Traditional Leaders

2. (1) There is hereby established a Provincial House to be known as the North West Provincial House of Traditional Leaders.
- (2) The Provincial House has powers conferred upon it by or under this Act or any other law.

Membership of Provincial House

- 3.(1) The Premier must by notice in the Provincial *Gazette* determine the number of members of the Provincial House and such members must be drawn from all districts of the province where there are traditional leaders in accordance with a formula prescribed by the Premier.
- (2)(a) The members of the Provincial House must be elected by an Electoral College consisting of all senior traditional leaders from within each district of the province.
- (b) The Electoral College is chaired by a person designated by the Premier to chair meetings of the Electoral College.
- (3) No person is eligible to become a member of a Provincial House unless that person is a senior traditional leader.
- (4) The procedure to be followed to conduct nominations and elections must be determined by the Premier by the notice contemplated in subsection (1).
- (5) A third of the members of the Provincial House must consist of women: Provided that if the Premier is satisfied that there is an insufficient number of women to participate in the Provincial House the Premier may determine a lower threshold.
- (6)(a) Subject to the provisions of paragraph (b) the term of office of the Provincial House is 5 years and must run concurrently with that of the National House established in terms of the National House of Traditional Leaders Act, 1997 (Act No. 10 of 1997);
- (b) Notwithstanding the dissolution of the Provincial House by virtue of the provisions of paragraph (a) -
- (i) every person who at the date of the dissolution is a member of the Provincial House remains a member thereof; and
- (ii) the Provincial House remains competent to exercise or to perform its powers and functions during the period following such dissolution up to and including the day immediately

preceding the day on which the first meeting of the new Provincial House takes place.

(7) When the National House is dissolved, the Provincial House must within fourteen days after such dissolution table and adopt a motion to dissolve subject to subsection 6.

(8) The Provincial House must be reconstituted in accordance with the provisions of subsection (2) within 30 days from the date on which its term has lapsed in terms of subsection (6).

Qualification for membership of Provincial House

4. (1) No person is eligible to become a member of a Provincial House if -
- (a) at the time of the election of members of the House of Traditional Leaders is serving a sentence of imprisonment;
 - (b) is an unrehabilitated insolvent;
 - (c) is suffering from physical incapacity or mental infirmity which based on acceptable medical evidence, makes it impossible for that senior traditional leader, headman or headwoman to function as such;
 - (d) has been convicted of a criminal offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined or until the time for an appeal has expired;
 - (e) is not a South African citizen; and
 - (f) he or she is not a kgosi or kgosigadi or a regent.

(2) A disqualification under paragraphs (a) to (e) ends five years after the sentence has been completed.

Vacation of seats of Provincial House

5. (1) A member of the Provincial House vacates his or her seat if he or she-
- (a) is deceased;
 - (b) resigns by written notice ;
 - (c) is disqualified in terms of section 4;
 - (d) becomes a full time member of a municipal council, member of parliament or the provincial legislature;
 - (e) is convicted of a criminal offence with a sentence of imprisonment for more than 12 months without the option of a fine; or
 - (f) without having obtained leave in accordance with the rules and orders, absents himself or herself from three consecutive meetings of the House.
- (2) If a member vacates his or her seat, the vacancy must be filled within 30 days by a procedure determined in section 33.

Meetings of Provincial House

- 6.(1) The first meeting of the Provincial House must be held at the seat of the Provincial House, and the Provincial House shall subsequently meet at the place that the executive committee of the Provincial House determines from time to time.

(2) An ordinary meeting of the House must be held at least once quarterly during the session of the Provincial Legislature.

(3) In addition to the ordinary meetings of the Provincial House, the executive committee may at any time, and if so directed by the Premier, call a special meeting of the Provincial House on a day and at a place to be determined by the executive committee.

(4) At a special meeting called by the executive committee, only those matters that are placed before the House may be dealt with.

(7) If a special meeting is called at the direction of the Premier, only those matters which necessitated the calling of the special meeting may be dealt with.

(8) The Premier must, as soon as possible after the election of the members of the House, convene the Provincial House in the manner that he or she deems suitable.

(9) The chairperson shall also convene an extraordinary meeting of the Provincial House, within a period of seven days, upon receiving a written request by any five members of the Provincial House.

(10) Should the chairperson fail to convene an extraordinary meeting of the Provincial House when so requested by five members as contemplated in subsection (9) of this section, such five members may, on the expiration of such seven days call for an extraordinary meeting of the House.

(11) Notice of meetings of the Provincial House shall be given to all members thereof in such manner and form as the Provincial House may from time to time determine.

(12) An officer from the Department, designated by the Premier, must attend the meetings of the Provincial House, to advise the House regarding government policies and legislation that relate to traditional affairs.

Functions of Provincial House

7. (1) The functions and roles of the Provincial House are-

(a) working with the national house of traditional leaders, to promote -

- (i) the role of traditional leadership within a democratic constitutional dispensation;
- (ii) nation building;
- (iii) peace, stability, and cohesiveness of communities;
- (iv) the preservation of the moral fibre and regeneration of society;
- (v) and preserve the culture and traditions of communities;
- (vi) socio-economic development and service delivery; and
- (vii) the social well-being and welfare of communities;

(b) to enhance co-operation between itself and the various local houses with a view to addressing matters of common interest.

(2) The Provincial House-

(a) must consider Bills referred to it by the Secretary or speaker to the provincial legislature;

- (b) may advise the provincial government and make recommendations relating to any of the following:
 - (i) matters relating to policy and legislation regarding traditional leadership;
 - (ii) the role of traditional leaders;
 - (iii) dispute resolution in relation to traditional leadership;
 - (iv) customary law; and
 - (v) the customs of communities observing a system of customary law;
- (c) may investigate and make available information on traditional leadership, traditional communities, customary law and customs;
- (d) must, at the request of the member of provincial executive council, advise him or her in connection with any matter referred to in this section;
- (e) must be consulted on provincial government development programmes that affect traditional communities;
- (f) must complement and support the work of government at provincial level;
- (g) must form cooperative relations and partnerships with government at national level in development and service delivery;
- (h) may participate in national and provincial programmes geared towards the development of rural communities;
- (i) participate in provincial initiatives meant to monitor, review and evaluate government programmes in rural communities; and
- (j) perform tasks as may be determined by a member of the provincial executive council or as may be provided for in national or provincial legislation.

Election of Chairperson and the Executive Committee of the Provincial House

- 8.**(1) At its first meeting after it has been convened in terms of section 6, the House, with the Premier or a person designated by the Premier as chairperson-
- (a) must elect one of its members to be the chairperson, and another of its members to be the deputy chairperson of the House; and
 - (b) elect three other members as the executive committee of the provincial house of which the chairperson and deputy chairperson are part of such executive committee.
- (2) Subject to the provisions of subsection (9), the chairperson and deputy chairperson hold office for the term of the Provincial House and they are eligible for re-election at the expiry of their term of office: Provided that no member may serve as a chairperson or deputy chairperson for more than two consecutive terms.
- (3) The chairperson has the powers and functions assigned to him or her in terms of this Act and the rules and orders of the House.
- (4) If the chairperson is absent or for any reason is unable to perform his or her functions, or when the office of chairperson is vacant, the deputy

chairperson shall act as chairperson until the chairperson returns or is again able to properly perform his or her functions, or until a new chairperson is elected.

(5) If any of the circumstances described in subsection (4) applies to both the chairperson and the deputy chairperson, a member of the Provincial House designated in terms of the rules and orders must act as chairperson for as long as those circumstances prevail.

(6) The deputy chairperson or the member designated under subsection (5), while acting as chairperson, may exercise the powers and must perform the functions of the chairperson.

(7) The chairperson, the deputy chairperson or any other member of the House designated in terms of the rules and orders, presides over the meetings of the House.

(8) While presiding at a meeting of the Provincial House, the chairperson, deputy chairperson or other member presiding does not have a deliberative vote, but has a casting vote in the case of an equality of votes.

(9) The chairperson or deputy chairperson:

- (a) must vacate his or her office if he or she ceases to be a member of the House according to section 6;
- (b) may be removed from office by resolution of a vote of no confidence of the Provincial House; and
- (c) may resign by lodging his or her resignation in writing with the secretary to the Provincial House.

(10) If the office of chairperson or deputy chairperson becomes vacant, the Provincial House, under the chairpersonship of the Premier or a person designated by the Premier, must elect a member to fill the vacancy.

(11) The chairperson elected by the Provincial House in term of subsections (1) or (10) must then preside at the election of the deputy chairperson.

(12) The chairperson may at any time designate any of the members of the Executive Committee to perform such duties in connection with the powers and functions of the House in terms of this Act.

(13) The Executive Committee or any member thereof may execute such powers and perform such duties and functions as may be delegated by the Provincial House during any time whenever the Provincial House is not in session.

(14) The Executive Committee and any member thereof who has executed any power or performed any function or duty contemplated by subsection (13), shall submit a report for ratification of any such action taken to the House at the next session of the House.

(15) If the position of any member of the Executive Committee becomes vacant before the expiry of his or her term of office his or her position must be filled, for the remainder of such term of office, by another member as soon as may be reasonably practicable after the occurrence of such a vacancy.

Status of members of the Provincial House

9. (1) The chairperson and the deputy chairperson are full-time members of the provincial house.

(2) The Premier may, after consultation with the Provincial House, determine that certain other members are full-time members of the Provincial House.

Election of representatives to National House

10. The Provincial House must, in its first sitting, elect its representatives to serve in the National House in accordance with the provisions of the National House of Traditional Leaders Act, 1997 (Act No. 10 of 1997).

CHAPTRE 3

LOCAL HOUSES

Establishment of Local Houses

11.(1) Subject to section 17 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), a Local House of Traditional Leaders is established for each of the metropolitan municipalities and district municipalities.

Membership of Local House

12.(1) The Premier must by notice in the *Provincial Gazette* determine the formula for the number of members of each of the Local Houses.

(2) The members of Local Houses must be elected by the Electoral College

(a) established for the area of jurisdiction of each district municipality or metropolitan municipality;

(b) consisting of all senior traditional leaders from within the district municipality or metropolitan municipality concerned consisting of all senior traditional leaders from within the district municipality or metropolitan municipality: Provided that in the event that there are less than five senior traditional leaders a number of recognised headmen determined by the Premier in the provincial gazette must form part of the electoral college; and

(c) of which each electoral college must be chaired by a person designated by the Premier to chair meetings of electoral colleges.

(3) The Premier must, within 60 days after the recognition of a new traditional council within the district or metropolitan municipality, by notice in the *Provincial Gazette*, call the first elections of the respective Local Houses of Traditional Leaders: Provided that such elections must take place within thirty days of the said notice.

(4) The Premier must determine the procedure to be followed at the elections referred to in subsection (3), by notice in the *Provincial Gazette*.

(5) A third of the members of a Local House must consist of women: Provided that if the Premier is satisfied that there is an insufficient number of women to be elected to the Local House of Traditional Leaders, the

Premier may, after consultation with the relevant electoral college, determine a lower threshold.

- (6) (a) Subject to the provisions of paragraph (b) the term of office of a Local House is five years and must run concurrently with the duration of the Provincial House established in terms of this Act.
 (b) Notwithstanding the lapsing of the duration of a Local House by virtue of the provisions of paragraph (a) -
- (i) every person who at the date of the dissolution is a member of a Local House remains a member thereof;
 - (ii) a Local House remains competent to exercise or to perform its powers and functions; and
 - (iii) the Premier or the MEC has the power to summon a Local House to an extraordinary meeting for the dispatch of urgent business after consultation with the chairperson, during the period following such dissolution up to and including the day immediately preceding the day on which the first meeting of the Local House after such lapsing takes place.
- (7) A Local House must be reconstituted within thirty days from the date on which its term lapsed as referred to in subsection (6).
- (8) When the Provincial House is dissolved, each Local House must within fourteen days after such dissolution table and adopt a motion to dissolve subject to subsection 6.
- (9) The Premier may, after consultation with the Local House determine that certain members are full-time members of a local house.

Qualification for membership of Local House

- 13.** (1) No person is eligible to become a member of a Local House if -
- (a) at the time of the election of members of the Local House is serving a sentence of imprisonment;
 - (b) is an unrehabilitated insolvent;
 - (c) is suffering from physical incapacity or mental infirmity which based on acceptable medical evidence, makes it impossible for that senior traditional leader, headman or headwoman to function as such;
 - (d) has been convicted of a criminal offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined or until the time for an appeal has expired;
 - (e) is not a South African citizen; and
 - (f) he or she is not a kgosi or kgosigadi or kgosana or a regent.
- (2) A disqualification under paragraphs (a) to (e) ends five years after the sentence has been completed.

Vacation of seats of Local House

- 14.** (1) A member of the Local House vacates his or her seat if he or she-
- (a) is deceased
 - (b) resigns by written notice ;

- (c) is disqualified in terms of section 12;
- (d) becomes a full time member of a municipal council, member of parliament or the provincial legislature;
- (e) is convicted of a criminal offence with a sentence of imprisonment for more than 12 months without the option of a fine; or
- (f) without having obtained leave in accordance with the rules and orders, absents himself or herself from three consecutive meetings of the Local House.

(2) If a member vacates his or her seat, the vacancy must be filled within 30 days by a procedure determined in section 33.

(3) A person elected to fill a vacancy in terms of subsection (2) serves only for the remainder of the term of office and is eligible for re-election for subsequent terms.

Seat and meetings of Local House

15.(1) A Local House must, by resolution, decide on its own seat within the district or metro municipality: Provided that if a traditional council performs the functions of a local house the seat of the traditional council is the seat for the purposes of the local house.

(2) There must be an ordinary meeting of a Local House at least once every quarter: Provided that the Local House must have its first meeting within 14 days after its first establishment or reconstitution.

(3) In addition to the ordinary meetings of the Local House, the executive committee may at any time, and if so directed by the Premier, call a special meeting of the local House on a day and at a place to be determined by the executive committee: Provided that that if a traditional council performs the functions of a local house the traditional council decides.

(5) At a special meeting called by the executive committee, only those matters that are placed before the House may be dealt with.

(6) If a special meeting is called at the direction of the Premier, only those matters which necessitated the calling of the special meeting may be dealt with.

(7) The chairperson must also convene an extraordinary meeting of the Provincial House, within a period of seven days, upon receiving a written request by any five members of the Provincial House.

(8) Should the chairperson fail to convene an extraordinary meeting of the Provincial House when so requested by five members as contemplated in subsection (7) of this section, such five members may, on the expiration of such seven days call for an extraordinary meeting of the House.

(9) Notice of meetings of the Provincial House shall be given to all members thereof in such manner and form as the Provincial House may from time to time determine.

(10) An officer from the Department, designated by the Premier, must attend the meetings of the Provincial House, to advise the House regarding government policies and legislation that relate to traditional affairs.

Election of Chairperson and the Executive Committee of the Local House

- 16.**(1) At its first meeting after it has been convened in terms of section 15(2), a Local House, with the Premier or a person designated by the Premier as chairperson-
- (a) must elect one of its members to be the chairperson, and another of its members to be the deputy chairperson of the Local House; and
 - (b) elect one other member to form the executive committee of the Local House with the chairperson and deputy chairperson.
- (2) Subject to the provisions of subsection (9), the chairperson and deputy chairperson hold office for the term of the Local House and they are eligible for re-election at the expiry of their term of office: Provided that no member may serve as a chairperson or deputy chairperson for more than two consecutive terms.
- (3) The chairperson has the powers and functions assigned to him or her in terms of this Act and the rules and orders of the House.
- (4) If the chairperson is absent or for any reason is unable to perform his or her functions, or when the office of chairperson is vacant, the deputy chairperson shall act as chairperson until the chairperson returns or is again able to properly perform his or her functions, or until a new chairperson is elected.
- (5) If any of the circumstances described in subsection (4) applies to both the chairperson and the deputy chairperson, a member of the Local House designated in terms of the rules and orders must act as chairperson for as long as those circumstances prevail.
- (6) The deputy chairperson or the member designated under subsection (5), while acting as chairperson, may exercise the powers and must perform the functions of the chairperson.
- (7) The chairperson, the deputy chairperson or any other member of a Local House designated in terms of the rules and orders, presides over the meetings of the House.
- (8) While presiding at a meeting of the Local House, the chairperson, deputy chairperson or other member presiding does not have a deliberative vote, but has a casting vote in the case of an equality of votes.
- (9) The chairperson or deputy chairperson:
- (a) must vacate his or her office if he or she ceases to be a member of the Local House in terms of section 14;
 - (b) may be removed from office by resolution of a vote of no confidence of the Local House; and
 - (c) may resign by lodging his or her resignation in writing with the secretary to the Local House concerned.
- (10) If the office of chairperson or deputy chairperson becomes vacant, the Local House, under the chairpersonship of the Premier or a person designated by the Premier, must elect a member to fill the vacancy.

(11) The chairperson elected by the Local House in term of subsections (1) or (10) must then preside at the election of the deputy chairperson.

(12) The chairperson may at any time designate any of the members of the Executive Committee to perform such duties in connection with the powers and functions of the House in terms of this Act.

(13) The Executive Committee or any member thereof may execute such powers and perform such duties and functions as may be delegated by the Local House during any time whenever the Local House is not in session.

(14) The Executive Committee and any member thereof who has executed any power or performed any function or duty contemplated by subsection (13), shall submit a report for ratification of any such action taken to the Local House at the next session of the House.

(15) If the position of any member of the Executive Committee becomes vacant before the expiry of his or her term of office his or her position must be filled, for the remainder of such term of office, by another member as soon as may be reasonably practicable after the occurrence of such a vacancy.

Functions of Local House

17.(1) The functions of a Local House are-

- (a) to advise the relevant district municipality on-
 - (i) matters pertaining to customary law, customs, traditional leadership and the traditional communities within the district municipality or metropolitan municipality;
 - (ii) the development of planning frameworks that impact on traditional communities; or
 - (iii) the development of by-laws that impact on traditional communities;
- (b) to participate in local programmes that have the development of rural communities as an object; and
- (c) to participate in local initiatives that are aimed at monitoring, reviewing or evaluating government programmes in rural communities.

(2) A Local House may exercise any powers and must perform any functions that are conferred or imposed on it in terms of any other law.

CHAPTER 4

GENERAL PROVISIONS RELATING TO HOUSES

Rules and orders of Houses

18. A house of traditional leaders must make rules and orders in connection with the conduct of its business and proceedings, including rules and orders regulating -

- (a) the establishment, constitution, powers and functions, procedures and duration of committees of such house: Provided that provision must be made for an executive committee consisting of the chairperson, deputy chairperson and other members elected by the members of the house concerned as provided for in this Act;

- (b) restrictions on access to such committees;
- (c) the competency of any such committee to perform or dispose of its business and proceedings at venues other than the seat of the House;
- (d) the designation of members to preside over meetings of the House upon the direction of the chairperson.; the time and place at which the House shall meet: provided that there shall be at least two sessions of the House during the course of each calendar year;
- (e) the manner in which the views of the House shall be recorded and expressed;
- (f) the attire of the members of the House; and
- (g) the language to be used by members during its sessions

Quorum

19. The presence of at least one-half of all the members other than the chairperson or other presiding member is necessary to constitute a quorum for a meeting of that House.

Requisite majority

20. All decisions of the Houses must be taken by the majority of members constituting the meeting of the House: Provided that a decision to remove the chairperson or the deputy chairperson must be taken by two thirds of the total membership of a house.

Moneys payable to members

21. There must be paid out of and as a charge to the Provincial Treasury Fund of the province to a member of any house such moneys as may be determined by the President in terms of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998).

Powers, privileges and immunities of members of Houses and benefits of members

22. (1) A House has full powers to control, regulate and dispose of its internal affairs.

(2) Subject to the rules and orders of the House there must be freedom of speech and debate in or before such House and any committee thereof and such freedom may not be impeached or questioned in any court of law.

(3) A member of a House is not liable for any civil or criminal proceedings, arrest or imprisonment by reason of anything which the member has said, produced or submitted in or before or to such House or any committee thereof.

Houses may transact business notwithstanding vacancies

23. (1) The House shall not be precluded from concluding any transaction of its official business by reason of any vacancy among the members thereof including any vacancy not filled when the House is constituted or is reconstituted, at any time.

(2) Any proceedings in the House shall be valid notwithstanding that a person who was not entitled to do so sat or voted in the House or otherwise took part in the proceedings.

Administration and accountability of the Houses

24.(1) The Premier must, after consultation with the House and subject to the laws governing the Public Service, second staff as may be necessary to discharge the work of the Houses.

(2) The Premier must, in terms of the laws governing the Public Service and with the concurrence of the Houses, appoint persons as Secretaries to each House, who must-

- (a) exercise or perform the powers and functions conferred upon or assigned to the Secretary by this Act and the rules and orders; and
- (b) subject to the directions of a House concerned, perform such work as is incidental to the exercise or performance by the House of its powers and functions.

(3) The Secretary must be supported in the exercise or performance of his or her powers and functions by officers of the Department designated in terms of subsection (1) for that purpose.

(4) Each House must-

- (a) keep proper records;
- (b) have its financial statements audited by the Auditor-General;
- (c) disclose the receipt of awards, gifts and favours of its members as contemplated in part A of the Schedule to this Act;
- (d) in addition to quarterly meetings, hold a joint meeting with other Houses, coordinated by the Provincial House, on a half yearly basis to give account of the activities of the Houses in the province;
- (e) adhere to the Code of Conduct provided for in the Schedule to this Act;
- (f) be responsive to the needs of traditional leaders within the province;
- (g) maximize the efficiency of communication and decision-making within the administration of the House;
- (h) involve the secretary of the House in management decisions as far as is practicable; and
- (i) assign clear responsibilities for the management and co-ordination of the administration of the House;

(5) The Provincial House must:

- (a) establish clear relationships, and facilitate co-operation and communication between Local Houses;
- (b) quarterly inform the Local Houses of how the Provincial House is managed, of costs involved and the persons in charge;
- (c) hold the secretary of the Provincial House accountable for the overall performance of the administration of the Provincial House;
- (d) provide an equitable, fair, open and non-discriminatory working environment for all Local Houses.

Record keeping and minutes of meetings

25. Each House must record and keep minutes of proceedings in respect of its meetings and must make copies of the minutes to be circulated to all the members of the House at least seven days before the date of its next meeting.

Execution of process

26. A court process shall not be served or executed within the precincts of the House while it is in session.

Freedom from arrest

27. A member of the House may not be arrested—

- (a) for any civil debt whilst going to, attending or returning from any meeting of the House;
- (b) within the precincts of the House while it is in session for any criminal offence, without the consent of the chairperson.

Control of entry

28. (1) A person who is not a member of a House may not enter or remain within the precincts of that House without the permission of the chairperson.

(2) The chairperson may issue such orders as he or she may deem necessary for the regulation of the admittance of visitors to the precincts of the building.

(3) Copies of any order issued as contemplated in subsection (2) shall be authenticated by the Secretary and shall be exhibited in a conspicuous place within the precincts of the building.

(4) The chairperson may at any time order a person who is not a member of the House to excuse himself or herself from the precincts of the House.

Relationship between Provincial House, Local Houses and traditional councils

29.(1) The Provincial House must, in consultation with traditional councils, and Local Houses advise the Provincial Government on matters relating to the general interest and welfare of traditional communities.

(2) The Provincial House must investigate matters referred to it by the Local Houses and traditional councils and make appropriate recommendations to the sphere of government concerned and the Premier.

(3) The Provincial House must, at least two times a year, convene a meeting to advise local houses and traditional councils regarding the administration of its affairs.

(4) Members of the Provincial House must—

- (a) provide a written report on the progress of matters relating to the general interest and welfare of traditional communities on a quarterly basis to their respective traditional councils; and
- (b) table the report referred to in paragraph (a) at the first meeting of the Provincial House after the reports have been submitted to the respective traditional councils.

Relationship between Provincial House and Provincial Legislature

30.(1) The Speaker of the Provincial Legislature must refer all bills introduced in the Provincial Legislature that relate to traditional communities, traditional leadership, customary law, traditions or customs, and all matters affecting the well-being and development of traditional communities, to the Provincial House.

(2) The Provincial House must consider and comment on the bills referred to in subsection (1).

(3) The written notification of the Provincial House's support or opposition of a bill referred to it, together with the comments, must be submitted to the Speaker within 30 days from the date of the referral of the bill to the Provincial House.

(4) Where the House indicates, in terms of subsection (3), that it is opposed to the Bill the Provincial Legislature shall not pass the Bill before a period of 30 days, as from the date of receipt by the Speaker of such written notification, has lapsed.

(5) Where the House has failed to indicate within the period prescribed by subsection (3) whether it supports or opposes the Bill the Provincial Legislature may proceed to consider the Bill in the absence of any input from the House.

Relationship between Provincial House and Executive Council

31. The Premier, after consultation with the Provincial House and the Provincial Legislature, must determine the relationship between the subcommittees of the Provincial House and the Portfolio Committees of the Provincial Legislature.

Support to Houses

32.(1) The Provincial Government, and in particular, the Department, must provide sufficient skills development, administrative, financial and other support on a continuous basis to-

- (a) support the development of members of houses traditional leaders ; and
- (b) enable and strengthen the Provincial House and the Local Houses to perform all of their functions as contemplated in this Act, and any other law.

(2) The support envisaged to be provided to traditional councils in terms of subsection (1) may include transport and infrastructural assistance, taking into consideration budgetary means of the provincial government.

(3) The support envisaged to be provided in terms of this section shall be in accordance with any applicable legal and administrative requirements of the province.

National and Provincial Codes of conduct

33. The Code of Conduct contained in Schedule 3 applies to all members of the Provincial House and Local Houses.

Oath of office

34. Newly elected members of the Provincial House and Local Houses of assume office only after swearing or affirming faithfulness to the Province and obedience to the Constitution in accordance with the oath of office contained in Schedule 2, before a judge president or a judge designated by him.

Regulatory powers

35. (1) The MEC may issue proclamations and notices in the *Provincial Gazette* as contemplated in this Act.

(2) The Premier may, after consultation with the MEC and the provincial legislature, by notice in the *Provincial Gazette*, make regulations in respect of any matter which is required or permitted by this Act to be prescribed including regulations prescribing the procedure to be followed to conduct elections for members of the Houses established in terms of this Act.

(3) The draft regulations contemplated in this section must -

- (a) be published in the *Provincial Gazette* for public comment; and
- (b) be submitted to the Provincial Legislature scrutiny at least one month before their promulgation.

Delegation of powers and assignment of duties by Premier

36.(1) The Premier may, subject to such conditions as he or she may determine, in writing, delegate any power or assign any duty conferred on him or her by or under this Act, to the MEC.

(2) A delegation or assignment in terms of subsection (1) does not prevent the exercise of the relevant power or the performance of any duty by the Premier.

(3) The Premier may at any time withdraw or amend, in writing, a delegation or assignment as contemplated in subsection (1).

(4) The delegation of any power or the assignment of any duty does not divest the Premier of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

(5) The MEC may not further delegate any power or assign any duty which has been delegated or assigned as contemplated in subsection (1) without the express written authorization of the Premier.

Offences relating to admittance

37. A person who—

- (a) enters or attempts to enter or refuses to excuse himself or herself from a Local House or Provincial House in contravention of any order of the chairperson;
- (b) fails or refuses to excuse himself or herself from the precincts of a Local House or House when ordered to do so by the chairperson; or
- (c) contravenes any order made under the provisions of this Act,

is guilty of an offence and on conviction liable to a fine or imprisonment for a period of three months.

Other offences**38.** A person who—

- (a) offers to a member of a Local House or the Provincial House or officer of a Local House or the Provincial House a bribe in order to influence such a Local House or the House member or officer in respect of the promotion of or in opposition to any Bill or matter submitted to or intended to be submitted to a Local House or the House;
- (b) assaults, insults, resists or obstruct a member of a Local House or the Provincial House coming to, being within, or going from the precincts of a Local House or the House building or endeavours to compel any such member by force, insult or menace to declare himself or herself in favour of or against any proposition or matter pending in or expected to be brought before a Local House or the House;
- (c) assaults, molests, insults, resists or obstruct an officer in the execution of his or her duties;
- (d) creates or joins in any disturbance which interrupts or is likely to interrupt the proceedings of the House while it is in session;
- (e) utters or publishes any false or scandalous defamatory matter concerning the House or upon a Local House or the House member or officer in his or her capacity as such a Local House or the House member or officer;
- (f) attempts, directly or indirectly, by fraud, or by threats or intimidation of any kind, to influence a Local House or the House member in his or her vote, opinion, judgment or action, upon any question arising in a Local House or the House, or to induce him or her to absent himself or herself from any sitting of a Local House or the House; or
- (g) threatens, assaults or insults a Local House or the House member or officer of a Local House or the House on account of his or her conduct as such a Local House or the House member or officer,

is guilty of an offence and, on conviction be liable to pay a fine or imprisonment not exceeding six months.

Acceptance of bribes by members

39. A member of a Local House or the Provincial House who accepts or agrees to accept or obtains or agrees to obtain for himself or herself or for any other person a bribe, fee, compensation, reward or benefit of any kind for speaking, voting or acting as such a Local House or the Provincial House member, or from refraining from so speaking, voting or acting, or on account of his or her having so spoken, voted or acted, or having so refrained, is guilty of an offence and may, on conviction be liable to a fine or imprisonment not exceeding six months.

Printing or publishing of minutes or messages without authority prohibited.**40.** A person who—

- (a) willfully and unlawfully and without the permission of a Local House or the Provincial House or the relevant chairperson prints or publishes or causes to be printed or published any copy of any minute, report, decision or message of a Local House or the House without the express authority of a Local House or the House or the respective chairperson; or

(b) presents any print or publication as referred to in paragraph (a) as having been printed or published on the authority of a Local House or the House or the chairperson, well knowing that it has not been so printed or published,

is guilty of an offence and, on conviction liable to pay a fine or imprisonment not exceeding six months.

Transitional arrangements

41.(1) The members of the Provincial House currently elected to serve in the Provincial House in terms of the provisions of this Act or any of the repealed Acts shall continue to perform functions as members of the Provincial House until new members have been elected in accordance with the provisions of this Act.

(2) Any actions and decisions taken by the Provincial House in good faith purporting to act in terms of the repealed legislation are hereby validated and declared to have been lawfully done.

Repeal of laws

42. The laws listed in Schedule A are hereby repealed to the extent indicated in the Schedule.

Short title

43. This Act is called the North West Houses of Traditional Leaders Act, 2009 and it comes into operation on a date determined by the Premier.

SCHEDULE A
REPEAL OF LAWS

Name of Act	Year of Publication	Extent of Repeal
The House of Traditional Leaders for the Province of North West Act	Act No. 12 of 1994	The Whole
North West Houses of Traditional Leadership Amendment Act	Act No. 3 of 2005	The Whole

SCHEDULE B**PART A****OATH BY MEMBERS OF THE HOUSE**

I,(name of member), do swear that I will be faithful to the Provincial / Local House of Traditional Leaders and do solemnly and sincerely promise at all times to promote that which will advance, and to oppose all that may harm the House; to obey, observe, uphold and maintain the Constitution, the laws, rules, orders and procedures of the House and all other laws of the Republic of South Africa; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice unto all; and to devote myself to the well-being of the House and its members.

May the Almighty God by His Grace and or the ancestors guide and sustain me in keeping this oath with honour and dignity.

So help me God.

PART B**AFFIRMATION**

I,(name of member), do solemnly affirm that I will be faithful to the Provincial / Local House of Traditional Leaders and do solemnly and sincerely promise at all times to promote that which will advance and to oppose, all that may harm the House; to obey, observe, uphold and maintain the laws, rules, orders and procedures of the House, the Constitution and all other laws of the Republic of South Africa; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice unto all; and to devote myself to the well-being of the House and its members.

May the ancestors guide and sustain me in keeping this affirmation with honour and dignity.

SCHEDULE C**CODE OF CONDUCT****Members of the Houses****Performance of functions by members**

1. A member of the House must-
 - (a) perform the functions of office in good faith and in an honest, non-discriminatory and transparent manner; and
 - (b) at all times act in the best interest of the House and in such a way that the credibility and integrity of the House are not compromised.

Attendance at meetings

2. A member of a House must attend each meeting of the House and of a committee of which that member of the House is a member, except when-
 - (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the House; or
 - (b) that member of the House is required in terms of this Code to withdraw from the meeting.

Sanctions for non-attendance of meetings

3. (1) The House may impose a sanction as determined by the rules and orders of the House on a member of the House for:
 - (a) not attending a meeting which that member of the House is required to attend in terms of item 2; or
 - (b) failing to remain in attendance at such a meeting.
- (2) A member of the House who is absent from three or more consecutive meetings of the House, or from three or more consecutive meetings of a committee of the House, which that member of the House is required to attend in terms of item 2, must be removed from office as a member of the House.
- (3) Proceedings for the imposition of a sanction including removal of a member of the House must be conducted in accordance with a uniform standing procedure which the House must adopt for the purposes of this item.

Disclosure of interests

4. (1) A member of the House must-
 - (a) disclose to the House; or to any committee of the House of which that member of the House is a member, any direct or indirect personal or private business interest that that member of the House, or any spouse, partner or business associate of that member of the House may have in any matter before the House or the committee of the House; and
 - (b) withdraw from the proceedings of the House or committee of the House when that matter is considered by the House or its committee, unless the House or its committee decides that the member of the House's direct or indirect interest in the matter is trivial or irrelevant.
- (2) A member of the House who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the House, must disclose full particulars of the benefit of which the member of the House is aware at the first meeting of the House at which it is possible for the member of the House to make the disclosure.

(3) This section does not apply to an interest or benefit which a member of the House, or a spouse, partner, business associate or close family member, has or acquires in common with other members of the House.

Personal gain

5. (1) A member of the House may not use the position or privileges of a member of the House, or confidential information obtained as a member of the House, for private gain or to improperly benefit another person.

- (2) Except with the prior consent of the House, a member of the House may not-
- (a) be a party to or beneficiary under a contract for-
 - (i) the provision of goods or services to the House; or
 - (ii) the performance of any work otherwise than as a member of the House and for the House;
 - (b) obtain a financial interest in any business of the House; or
 - (c) for a fee or other consideration appear on behalf of any other person before the House or its committee.

(3) If more than one quarter of the members of the House object to consent being given to a member of the House in terms of sub-item (2), such consent may only be given to the member of the House with the approval of the Premier.

Declaration of interests

6. (1) When elected, a member of the House must within 60 days declare in writing to an officer of the House designated by the Premier the following financial interests held by that member of the House:

- (a) shares and securities in any company;
- (b) membership of any close corporation;
- (c) interest in any trust;
- (d) directorships;
- (e) partnerships;
- (f) other financial interests in any business undertaking;
- (g) employment and remuneration;
- (h) interest in property;
- (i) pension; and
- (j) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a member of the House must be declared in writing to the officer referred to in sub-item (1) annually.

(3) Gifts received by a member of the House above a prescribed amount must also be declared in accordance with sub-item (1).

(4) The House must determine which of the financial interests referred to in sub-item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

Rewards, gifts and favours

7. A member of the House may not request, solicit or accept any reward, gift or favour for-

- (a) voting or not voting in a particular manner on any matter before the House or before a committee of the House of which that member of the House is a member;
- (b) persuading the House or any committee of the House in regard to the exercise of any power, function or duty;

- (c) making a representation to the House or any committee of the House;
or
- (d) disclosing privileged or confidential information.

Unauthorised disclosure of information

8. (1) A member of the House may not without the permission of the House or a committee disclose any privileged or confidential information of the House or committee to any unauthorised person.

(2) For the purpose of this item 'privileged or confidential information' includes any information-

- (a) determined by the House or committee of the House to be privileged or confidential;
- (b) discussed in closed session by the House or its committee;
- (c) disclosure of which would violate a person's right to privacy; or
- (d) declared to be privileged, confidential or secret in terms of the law.

(3) This item does not derogate from the right of any person to access to information in terms of national legislation.

Breach of code

9. (1) If the House, on reasonable suspicion, is of the opinion that a provision of the Code of Conduct has been breached, the House must-

- (a) authorise an investigation of the facts and circumstances of the alleged breach;
- (b) give the member of the House a reasonable opportunity to reply in writing regarding the alleged breach; and
- (c) report the matter to a meeting of the House after paragraphs (a) and (b) have been complied with.

(2) A report referred to in sub-item (1)(c) may be made available to the public.

(3) The House must report the outcome of the investigation to the Premier.

(4) The Secretary of the House must ensure that each member of the House when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the House or a committee of the House meets.

(5) The House may-

- (a) investigate and make a finding on any alleged breach of a provision of this Code; or
- (b) establish a special committee-
 - (i) to investigate and make a finding on any alleged breach of this Code; and
 - (ii) to make appropriate recommendations to the House.

(6) If the House or a special committee appointed by the House to conduct the investigation finds that a member of the House has breached a provision of this part of the Code of Conduct, the House may-

- (a) issue a formal warning to the member of the House;
- (b) reprimand the member of the House;
- (c) suspend the member of the House for a period in consultation with the

Premier; and

- (d) remove the member of the House from office in consultation with the Premier.
- (7) (a) Any member of the House who has been warned, reprimanded, suspended or removed in terms of paragraph (a), (b), (c) or (d) of sub-item (6) may within 14 days of having been notified of the decision of House appeal to the Minister in writing setting out the reasons on which the appeal is based.
- (b) A copy of the appeal must be submitted to the House.
 - (c) The House may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the Premier in writing.
 - (d) The Premier may, after having considered the appeal, confirm, set aside or vary the decision of the House and inform the member of the House and the House of the outcome of the appeal.
- (8) The Premier may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make recommendations on whether the member of the House should be suspended or removed from office.
- (9) If the Premier is of the opinion that a member of the House has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the Minister may-
- (a) suspend the member of the House for a period and on conditions determined by the Premier; or
 - (b) remove the member of the House from office.
- (10) Any investigation in terms of this item must be conducted in accordance with the rules of natural justice.

MEMORANDUM ON THE OBJECTS OF THE NORTH WEST HOUSE OF TRADITIONAL LEADERS BILL, 2009

1. BACKGROUND

- 1.1 The North West Province is a creature of statute, having been created in terms of the provisions of the Constitution of the Republic of South Africa Act, Act No. 108 of 1996 (the Constitution). It derives its role and functions from Chapter 6 of the Constitution. As a Province the North West also enjoys legislative powers and or functions.
- 1.2 In 1994 the Province passed, in terms of the provisions of the Interim Constitution, the House of Traditional Leaders for the Province of North West Act, Act No. 12 of 1994, to provide leadership and guidance in traditional matters. This was a step towards the recognition of traditional leadership as a legitimate institution.
- 1.3 The Constitution also recognises traditional leadership and its structures as role players within broad spectrum of governance within the Republic. There were pieces of legislation in the past, and some are still operating, that regulated or seeks to regulate traditional leadership and its institutions.
- 1.4 The said Act (Act No. 12 of 1994) was amended by the North West Houses of Traditional Leadership Amendment Act, Act No. 3 of 2005. A glaring omission by this piece of legislation is its failure to provide for transitional measures in relation to current membership in the Provincial House of Traditional Leaders.
- 1.5 Another omission under Act No. 12 of 1994 is that it does not make the appointment of the chairperson and the deputy chairperson of the Provincial House to be on a full time basis, which is contrary to the provisions of

National Legislation. This is contrary to National legislation and must be corrected with the necessary haste. Full time appointments in relation to the two positions have been made already.

- 1.6 Currently, there are 24 (twenty four) members who sit in the Provincial House. In terms of the Amended Act only two representatives of the Local Houses can be appointed members of the Provincial and, consequently, only six persons may be members of the House. The Province can only establish three Local Houses if regard is had to the provisions of the current legislation. That affects the legitimacy of some of the members' positions in the Provincial House. As a consequence of the current omissions in our current legislation, some of our Traditional Leaders' membership of the National House of Traditional Leaders has become questionable.
- 1.7 It is imperative therefore that this amendment be passed urgently to avoid an embarrassing situation that the Provincial House and Government may face in the future. In fact, some insinuations have already been made that representation of the North West Province in the National House of Traditional Leaders is inappropriate. The National House of Traditional Leaders and the Department of Cooperative Governance and Traditional Affairs hold this view and it has become a hotly contested matter with the Provincial House.
- 1.8 The Act has in the past been criticised as being too difficult to read and understand. To a large extent that was caused by the amendment that took place in 2005 where a number of insertions were made for the establishment of the Local Houses of Traditional Leaders. An opportunity has now presented itself as we seek to make changes on the Act to make our legislation one that is easy to read and understand.

1.9 We therefore found it appropriate that we should rather seek to repeal the Act and introduce new legislation in its place. Most of the provisions of the current Act will be re-enacted in this new legislation. In that way we will be able to align the provisions of our Bill in a manner that will be easy to read and understand. Of course, new provisions will also be inserted in the Bill as will appear more clearly in paragraphs below.

2. OBJECTS OF THE BILL

The bill seeks to provide for –

2.1 The repeal of the House of Traditional Leaders for the Province of North West, Act No. 12 of 1994 by providing for transitional arrangements. The Bill also seeks to bring new legislation to replace the repealed Act.

2.2 The following are changes that will be introduced by repeal Act:

2.2.1 The Bill has been realigned such that Chapter 2 deals exclusively with provisions regulating the establishment and composition of the Provincial House and how its business should be conducted.

2.2.2 Of great importance to note is that clause 9 provides for the appointment of the Chairperson and the Deputy Chairperson of the Provincial House of Traditional Leaders as full time members of the House. This was not the case in the past despite the fact that as from 2006 the positions of the two functionaries have been converted to full time appointments. We are now in compliance with National directives.

2.2.3 Chapter 3 regulates the establishment, composition and the conduct of business of the Local Houses of Traditional Leaders in the Province.

These provisions are not new in our legislation; they have just been relocated to make for an easy reading of the Act, once passed.

2.2.4 The remaining provisions of the Bill provide for transversal matters which are common to both the Provincial House and the Local Houses of Traditional Leaders.

2.2.5 Two new clauses have also been introduced in this Bill. Clause **35** of the Bill deals with regulations. In this regard the Premier may, by way of regulations, prescribe a procedure to be followed when traditional leaders elect members to sit in both Provincial and Local Houses of Traditional Leaders.

2.2.6 Clause **41** provides for transitional matters in respect of the current membership of the Provincial House. Such members should remain in the House until the House has dissolved in terms of the provisions of the Act. On that note we point that the House shall no longer be aligned with the term of the Provincial Legislature but shall dissolve when the National House of Traditional Leaders dissolve. That is one of the important changes introduced by the Bill for the Provincial and Local Houses, respectively.

3. PROVISIONS OF THE BILL

We will not attempt to deal with each and every provision contained in the Bill. However, we will from time to time point out those provisions that seems to us important to bring to the attention of this august House and readers in general. The clauses of the proposed Bill are aligned as follows:

CHAPTER 1 INTERPRETATION

1. Definitions

CHAPTER 2 THE PROVINCIAL HOUSE

2. Establishment of Provincial House of Traditional Leaders
3. Membership of Provincial House
4. Qualification for membership of Provincial House
5. Vacation of seats of Provincial House
6. Meetings of Provincial House
7. Functions of Provincial House
8. Election of Chairperson and the Executive Committee of the Provincial House
9. Status of members of the Provincial House
10. Election of representatives to National House

CHAPTRE 3 LOCAL HOUSES

11. Establishment of Local Houses
12. Membership of Local House
13. Qualification for membership of Local House
14. Vacation of seats of Local House
15. Seat and meetings of Local House
16. Election of Chairperson and the Executive Committee of the Local House
17. Functions of Local House

CHAPTER 4 GENERAL PROVISIONS RELATING TO HOUSES

18. Rules and orders of Houses
19. Quorum
20. Requisite majority
21. Moneys payable to members
22. Powers, privileges and immunities of members of Houses and benefits of members
23. Houses may transact business notwithstanding vacancies
24. Administration and accountability of the Houses
25. Record keeping and minutes of meetings
26. Execution of process
27. Freedom from arrest
28. Control of entry
29. Relationship between Provincial House, Local Houses and traditional councils
30. Relationship between Provincial House and Provincial Legislature
31. Relationship between Provincial House and Executive Council
32. Support to Houses
33. Code of conduct
34. Oath of office
35. Regulatory powers
36. Delegation of powers and assignment of duties by Premier
37. Offences relating to admittance
38. Other offences
39. Acceptance of bribes by members
40. Printing or publishing of minutes or messages without authority prohibited.
41. Transitional arrangements
42. Repeal of laws
43. Short title

SCHEDULE A - REPEAL OF LAWS

4. CONSULTATION

- 4.1 A presentation was made to members of the North West House of Traditional Leaders and they have endorsed the Bill. According to the Chairperson of the House, members are eager to see the passing and promulgation of this legislation.
- 4.2 We have now also referred a copy of the legislation to Government Printers to publish for comments. However, the Rules of the Legislature permit that urgent Bills may be tabled even if they have not yet been published in the Provincial Gazette.
- 4.3 We have consulted with our counterparts in the National Department of Cooperative Governance and Traditional Affairs. Their inputs into the whole formation of the Bill have been of great assistance to us, but more particularly in bringing the issues of gender parity to our attention.
- 4.4 We have consulted traditional leaders throughout the drafting stages of this Bill. Apart from that we also, upon finalization of the draft, presented the Bill at several meetings of Dikgosi organized by the Provincial House of Traditional Leaders.
- 4.5 The traditional leaders have indicated their support for this Bill to be passed promulgated.
- 4.6 No further consultations were made.

5. IMPLICATIONS

There are a number of implications in this Bill and are divided into a category of three sub headings: -

5.1 Financial implication

- 5.1.1 The Bill does not seek to introduce any new structures. The Provincial House of Traditional Leaders shall retain the current structure that existed even before the 2005 amendment. It therefore does not envisage that the budgetary implication associated with the House will vary.
- 5.1.2 However, we must indicate that the full-time appointment of the Chairperson and the Deputy Chairperson that occurred during 2006 carries financial implications and the Provincial Government must budget for their salaries annually. As we have already pointed out, these are not totally new matters. Our Province has already converted the appointment of the Chairperson and the Deputy Chairperson into full-time appointments following the provisions of Proclamation No. 2 of 2006 passed by then President of the Republic of South Africa, Honourable President Mbeki, which introduced new salary scales for full-time members of Provincial Houses.
- 5.1.3 The full financial implications on the Provincial Government's budget, annually, is approximately R7m, including moneys appropriated for sitting allowances of members of the Houses and general administrative cost of the various Houses.
- 5.1.4 The costs of publication of this legislation, once passed, will be approximately R20 000.00 considering the current fees levied by the Government Printers. We are not expected to conduct any further public hearings on this Bill and therefore we do not contemplate any costs associated therewith. If further public hearings are going to be conducted the Provincial Legislature will spearhead and bear the costs thereof.

5.2 Personnel implications

- 5.2.1 The relocation of the functions of Traditional Affairs from Office of the Premier to Local Government will result in the movement of personnel between the two Departments. Institutions of traditional leadership draw much support from officials employed by Office of the Premier. Some of the officials will not relocate to the Department of Local Government and Traditional Affairs.
- 5.2.2 Legal Services in the Department of Local Government and Traditional Affairs will have to be strengthened. Our experience is that we have had a sizable number of litigation matters that relate to traditional leadership.
- 5.2.3 In relation to staff members appointed for or by the House there are no major worries. They remain attached to the House and not directly to a Department. The 1994 Act that we seek to repeal already had provisions for secretaries and other staff to be appointed for both the Provincial and Local Houses.

5.3 Political Implications

- 5.3.1 The political implications of bringing into operation of the legislation cannot be underestimated. Traditional leaders and communities will be assured that government, at all levels, and considers the role of traditional leadership institutions seriously.
- 5.3.2 The general public will begin to see that government is willing to work with them in creating and maintaining proper governance structures within their communities.

5.3.3 We anticipate a reduction in conflicts between the Houses of traditional leaders. Currently there are those elements that see government as an enemy and not as an important ally to walk the road of governance with. All these efforts should reassure communities, particularly our traditional leaders that this Provincial Government and its leadership is actually on their side and is willing to work harmoniously with them in matters of governance generally.

5.4 Legal Implications

The consideration and passing of this Bill shall obviate all the legal uncertainties relating to the current disputes between the National House and the Provincial House, relating to the continued membership of our traditional leaders in the National House.

5.5 Communication

Not applicable.

5.6 Government Priorities

5.6.1 Gender

We have inserted a provision that provides that a third of the members of the Houses should be made of female traditional leaders. In the event there is no sufficient number of women traditional leaders to satisfy the requirement as stated in clauses 3(5) and 12(12) the Premier may determine a threshold. We are particularly aware of the current situation in the Province where there are only a few female traditional leaders.

5.6.2 Apex priorities

Not applicable.

5.6.3 Programme of action

Not applicable
