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**CONTENTS • INHOUD***No.**Page  
No.      Gazette  
            No.***LOCAL AUTHORITY NOTICE**

247 North West Development Agency Bill, 2013: For public comment..... 3 7198

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## LOCAL AUTHORITY NOTICE

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### LOCAL AUTHORITY NOTICE 247

#### OFFICE OF THE MEC

#### PUBLICATION OF THE NORTH WEST DEVELOPMENT AGENCY BILL, 2013.

1. The North West Development Agency Bill, 2013 is hereby published for public comment.
2. Organised Business, Organised Local Government and other interested parties are invited to submit comments on the proposed Bill in writing by no later than 30 days after the publication hereof, by –
  - a. Post to the Director Legal Services, Private Bag X 15, Mmabatho 2735;
  - b. Hand delivered to the 2<sup>nd</sup> Floor, Office 259, NWDC Building, Corner University Drive and Provident Street, Mmabatho 2735, Attention: Ms P. Jood;
  - c. Facsimile: 086 764 7859; or
  - d. Email to: [lilekalake@nwpg.gov.za](mailto:lilekalake@nwpg.gov.za).

Given under my Hand at Mmabatho on this 19<sup>th</sup> day of November, Two thousand and Thirteen.

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**MS M. ROSHO**

**MEC FOR DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT, CONSERVATION AND TOURISM**

**NORTH WEST DEVELOPMENT AGENCY BILL, 2013****BILL**

**To provide for the establishment of an economic development and growth, trade and investment promotion, enterprise development Agency called the North West Development Agency; and to provide for matters incidental thereto.**

**PREAMBLE**

WHEREAS a need has been identified to re-position the North West Development Corporation as an Agency that, on behalf of the North West Province, accelerates economic development and growth, trade and investment promotion, enterprise development and related priorities;

WHEREAS there is recognition that the Agency will be the response to challenges of unemployment, job creation, investment and the fast-tracking of enterprise development in the Province;

AND WHEREAS there is further recognition that economic development and growth, trade and investment promotion, enterprise development and related priorities will result in the prosperity of the North West Province and its people;

**NOW THEREFORE BE IT ENACTED by the North West Provincial Legislature as follows:-**

**ARRANGEMENT OF SECTIONS****CHAPTER 1  
DEFINITIONS**

1. Definitions

**CHAPTER 2  
NORTH WEST DEVELOPMENT AGENCY**

2. Establishment of North West Development Agency

**CHAPTER 3  
OBJECTS, POWERS AND FUNCTIONS OF AGENCY**

3. Objects of Agency
4. Powers, functions of Agency

**CHAPTER 4  
BOARD OF AGENCY**

5. Composition of Board
6. Committees of Board
7. Conflict of Interest
8. Chairperson and Deputy Chairperson of Board
9. Removal from Office

**CHAPTER 5  
CHIEF EXECUTIVE OFFICER**

10. Chief Executive Officer of Agency
11. Removal and suspension of CEO from Office

**CHAPTER 6  
FUNDING AND FINANCIAL MANAGEMENT OF AGENCY**

12. Funds of Agency
13. Prohibition of certain loans
14. Banking accounts
15. Procurement by Agency

**CHAPTER 7  
GENERAL PROVISIONS**

16. Delegation of powers
17. Prohibition of use of the name of Agency
18. Special Powers
19. Execution of documents
20. Liquidation of Agency
21. Regulations
22. Transitional provisions
23. General offences and Penalties
24. Repeal of Laws
25. Short title and commencement

## CHAPTER 1 DEFINITIONS

### Definitions

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

“**Agency**” means a public entity established in terms of section 2 of this Act and incorporated in terms of section 14(1) of the Companies Act No.71 of 2008;

“**Board**” means the North West Development Agency Board referred to in section 5 of this Act;

“**Chief Executive Officer**” means the Chief Executive Officer of the Agency appointed in terms of section 10(1), of this Act.

“**Committee**” means the Committees of the Board referred to in section 6 of this Act;

“**Companies Act**” means the Companies Act No. 71 of 2008;

“**community**” means any group of persons or part of such group that share a common interest and who regard themselves as such;

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

“**Department**” means a Provincial Department responsible for the Economic Development Portfolio in the Province.

“**director**” means the Director of the Board of the Agency;

“**due process**” means a fundamental, constitutional guarantee that all proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before a decision is taken;

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

“**executive director**” means a Member of the Board of Directors who is employed by the Agency either on a part-time or full-time basis;

“**financial year**” means the period commencing the first day of April in any year and ending on the last day of March of the ensuing year;

“**Government**” means the North West Provincial Government;

“**non-executive director**” means a Member of the Board of Directors who is not employed by the Agency; ;

“**PFMA**” means the Public Finance Management Act No.1 of 1999 as amended;

“**Premier**” means the Premier of the North-West Province as referred in section 125 of the Constitution;

“**Previously-disadvantaged individuals**” means persons who were previously-disadvantaged by unfair discrimination and who in terms of section 9(2) of the Constitution may be protected and advanced to achieve equality and, for the purposes of this Act, includes the following designated groups:

- a) males of African, Coloured and Asian descent;
- b) females, irrespective of descent; and
- c) persons with disabilities, irrespective of descent.

“**Province**” means the North West Province as referred in section 103(1) of the Constitution;

“**Provincial Legislature**” means the Provincial Legislature of the Province as referred to in section 104(1) of the Constitution;

“**Repealed law**” means the North West Development Corporation Act No.6 1995.

“**Republic**” means the Republic of South Africa as referred to in section 1 of the Constitution.

“**Responsible Member**” means the Member of the Executive Council responsible for the economic development portfolio in the Province.

“**sector**” means an economic sectors contemplated by this Act.

“**stakeholder**” means an organisation, body or person with direct or continuing interest in the sectors referred to in this Act.

“**this Act**” means the North West Development Agency Act, and includes its Regulations

(2) Where in this Act any functionary is required to take a decision in consultation with another functionary, such decision shall require the concurrence of such other functionary.

(3) In this Act in consultation denotes that the Agency may assume that approval has been given if it receives no response from the Responsible Member within 30 days or within a longer period as may be agreed between the Agency and the Responsible Member.

## CHAPTER 2 NORTH WEST DEVELOPMENT AGENCY

### Establishment of the North West Development Agency

- 2 (1) The North West Development Agency is hereby established as a juristic person and incorporated as a State-Owned Company in terms of Section 14(1) of the Companies Act, 2008.
- (2) The North West Development Agency shall be wholly owned by the North West Provincial Government as represented by the Responsible Member.
- (3) The Agency is subject to the Public Finance Management Act, 1999 as amended, the Companies Act, 2008 as amended and the Governance Framework.

## CHAPTER 3 OBJECTS OF AGENCY, POWERS AND FUNCTIONS OF AGENCY

### Objects of the Agency

- 3 (1) The objects of the Agency are to-
  - a) plan, finance, coordinate, promote and carry out the economic development of the Province and its people in the fields of industry, commerce, finance, mining and other business, resulting in wealth and job-creation;
  - b) promote black economic empowerment;
  - c) promote trade and investment in the Province;
  - d) strategically position the Province into a globally-competitive rural Region; and
  - e) facilitate partnerships and collaboration within, across and outside the Province so as to maximise delivery options.
- (2) The Agency must, in attaining its objects, have due cognizance of the Province’s strategic intent, objectives and priorities.

- (3) The Agency, for the purposes of the proper exercise and performance of its powers, functions and duties in terms of this Act but subject to the provisions of the Public Finance Management Act, the Companies Act and its Memorandum of Incorporation, shall be capable in law of-
- a) suing and being sued;
  - b) purchasing or otherwise acquiring, holding and alienating movable and immovable property and acquiring real or other rights thereto or any interest therein;
  - c) entering into contracts and agreements; and
  - d) doing and performing such other things and such other acts as bodies corporate by law may do and perform, subject to the provisions of this Act.
- (4) In achieving its objects, the Agency shall endeavour to progressively increase its own revenue generation collection and asset base.

#### **Powers and functions of Agency**

- 4 (1) Subject to section 3 of this Act, the Constitution, the Public Finance Management Act, the Companies Act and its Memorandum of Incorporation, the Borrowing Powers of Provincial Governments Act 48 of 1996 and the provisions of all other related National Laws, policies, guidelines, the Agency's general powers and functions is;
- a) to in consultation with the Department are to, actively plan, promote, market and coordinate and position the Province as an investor-friendly destination and thus maximise and retain investment in the Province;
  - b) to establish or assist in establishing structures for industrial, commercial, financial, mining or other business activities;
  - c) to inaugurate, plan, finance, coordinate, promote or carry out and assist in the inauguration, planning, financing, coordination, promotion or carrying out of projects which are intended to benefit and develop the people of the Province economically, or which relate to the exploitation, development or utilisation of a natural resources which, in addition to the ordinary meaning thereof, shall include labour, land, minerals, metals, precious stones, water, wood, agriculture, fishing and sea products, methods of transport and communications and methods for the development of power and energy;
  - d) to lend money and to raise or borrow money;
  - e) to provide capital or other means, and to furnish technical and other assistance and expert, specialised advice, information and guidance;
  - f) to apply its funds or monies to the establishment of a reserve fund, or to invest any funds or monies not immediately required for its affairs in any manner;
  - g) to hire or otherwise acquire land or buildings, to erect buildings on its land, to sell, let or otherwise dispose of or mortgage such land or buildings;
  - h) to accept donations and to receive any monies offered or due to it;
  - i) to plan, encourage, coordinate, undertake or finance the training of the people of the Province as employees, officers, managers, directors or specialists in the fields of industry, commerce, finance, mining and any other business or sector;
  - j) to purchase, hire, develop, hold or subscribe to or otherwise acquire or take over movable property of any kind, including any shares, stocks and securities or any interest in any business provided it is legal, or mortgage over any property, and to let, sell or either alienate it or pledge it or deal otherwise therewith;
  - k) to act, where necessary, to protect its investments, or otherwise to act as director, manager, trustee, curator, executor or administrator of any business, trust, estate, company or to designate a person or persons to act for such purpose on its behalf;
  - l) to lend money with security to persons and in connection with the lending of money to take such security as it may deem fit;



- m) to generally do anything that is necessary for or conducive to the attainment of its objects and exercise of its powers, whether or not it relates to any matter expressly referred to in this section.
- (2) The agency shall, in exercising and performing its powers and functions in terms of subsection 1, do so for the benefit of all the people of the Province, and must, where necessary, liaise and consult with all the relevant stakeholders including but not limited to-
- a) individuals and communities;
  - b) organised sectors
  - c) organs of state as referred to in section 239 of the Constitution;
  - d) statutory bodies;
  - e) organised labour;
  - f) organised business; and
  - g) House of Traditional Leaders.

#### **CHAPTER 4 BOARD OF THE AGENCY**

##### **Composition of Agency**

- 5 (1) Composition of the Board shall be as contemplated by the Agency's Memorandum of Incorporation.
- (2) The Board –
- a) shall control and manage the affairs of the Agency;
  - b) shall exercise and perform the powers and functions conferred or imposed upon it by this Act or by any other law, and all acts of the Board shall be deemed to be acts of the Agency;
  - c) members, constituted as both non-executive and executive directors shall be appointed by the Responsible Member;
  - d) members shall be subjected to security vetting and clearance either prior to, during or after appointment as members of the Board; and
  - e) shall, in respect of the exercise and performance of its powers and functions, including corporate governance, be accountable only to the Responsible Member.
- (3) In pursuit of delineation at shareholder-level and enterprise level matters, independence of the Board and principles of corporate governance, a member of the Department shall not be appointed to serve as either a non-executive or executive director of the Agency.
- (4) All other matters related to the Board and its committees concerning, but not limited to qualifications, disqualifications or eligibility, powers, functions, duties, remuneration, meetings and procedure, recusal, record-keeping, term of office, resignation, suspension or removal from office, vacancies, co-opting of persons, declaration of interest or other interest and related matters are as contemplated and provided for in the Public Finance Management Act, the Companies Act, the Agency's Memorandum of Incorporation and Governance Framework.

##### **Establishment of Committees of the Board**

- 6 (1) The Board may establish committees having due regard to the objects of the Agency.
- (2) All committees of the Board shall have the majority of its membership from non-executive Directors.
- (3) When establishing a committee contemplated in section 1, the Board shall-
- a) determine and approve the terms of reference of such committee including, but not limited to, whether or not such committee ceases to exist once it has completed the task or tasks

- allocated to it by the Board;
- b) appoint a chairperson of such committee who shall be a member of the Board.
- (4) The Board shall have the power to dissolve, extend or reduce the committees so established.
- (5) The Board shall have the power to co-opt other persons to the committees of the Board for purposes of assisting the Committees with the due and proper exercise and performance of any of the committees' powers and functions, Provided that co-opted members serving on committees serve in an advisory capacity only, and may not vote at any committee meeting of which they are members.
- (6) Every committee of the Board shall consist of not fewer than three (3) members designated by the Board to each committee as being suitable and appropriately qualified or experienced regarding the matters relating to the functions of each committee.
- (7) A committee of the Board shall not have the power to delegate its powers and/or functions.
- (8) A member of a committee of the Board may by written notice stating reasons, be removed by the Board on account of-
- rotation;
  - misconduct or incompetency;
  - disqualification or ineligibility to become a member of the Board; and
  - absence by a member from a committee meeting for two consecutive meetings without a valid reason and/or without tendering a formal written apology to the Company Secretary and, in the event of absence due to medical reasons, failure to submit a valid medical certificate.
- (9) Removal of a member from the committee shall be preceded by due process determined by the Board.

#### **Conflict of Interest and recusal**

- 7 (1) Subject to the Agency's memorandum of Incorporation, every member of the Board shall declare a conflict of interest they may have in relation to any matter before or not before the Board, which relates to the Agency.
- (2) A member of the Board shall not engage in any activity that may have the effect of undermining the integrity of the Board and/or the Agency.
- (3) A member of the Board shall not-
- attend, participate in and/or influence the proceedings of the Board or its committees in relation to a matter before the Board or any of its committees,
  - have an interest that precludes the member from performing the duties of the Board in a fair, unbiased, objective and proper manner;
  - vote in any meetings of the Board and/or its committees on any matter referred by subsection (a);
  - make private use or profit from, any confidential or other information obtained solely by virtue of being a member of the Board or committee of the Board; or
  - divulge any information referred to in sub-section (d) to any third party, except as required as part of that Board Member's functions as a Member of the Board.
- (3) A member of the Board who breaches the provisions of this section commits an offence.
- (5) This section shall be applicable and binding on the Executive Directors as well.

**Chairperson and Deputy Chairperson of the Board**

- 8 (1) The Responsible Member must, in consultation with the Executive Council designate from the nominated non-executive Members a Chairperson and Deputy Chairperson of the Board.
- (2) The Chairperson must, in addition to performing the duties assigned to him/her by this Act, the Companies Act, any other Act and the Governance Framework, be the overall leader of the Board and its representative in matters related to the Agency having due regard to the separation of strategic Board matters and operational day-to-day enterprise-level matters.

**Removal from Office**

- 9 (1) The Responsible Member may, by written notice stating reasons, remove a member or members of the Board from office-
- a) on account of misconduct, incompetence or discourtesy to fellow Board members;
  - b) on account of disqualification or ineligibility to remain a member of the Board; and
  - c) absence by a member from a committee meeting for two consecutive meetings without a valid reason and/or without tendering a formal, written apology to the Company Secretary and, in the event of absence due to medical reasons, failure to submit a valid medical certificate.
- (2) The removal of a member of the Board-
- a) may be effected by the Responsible Member even prior to the coming to an end of the Member's term on the Board.
  - b) shall be preceded by due process determined by the Responsible Member.

**CHAPTER 5  
CHIEF EXECUTIVE OFFICER****The Chief Executive Officer**

- 10 (1) The Chief Executive Officer shall be appointed by the Responsible Member in consultation with the Board and the Executive Council.
- (2) The procedure to be followed by the Responsible Member in the appointment of the Chief Executive Officer shall always be in accordance with the principles of transparency and consultation.
- (3) The Chief Executive Officer shall-
- a) be a person suitable in view of his/her professional, technical, administrative, special and other qualification and qualities, expertise and experience.
  - b) not be disqualified in terms of the Companies Act, 2008 or other related legislation from becoming an employee and executive director of the Agency;
  - c) in addition to being an executive director of the Board also be chief administration officer subject to the control and authority of the Board;
- (4) a) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between the Board and the appointed Chief Executive Officer.
- b) The Board and the Chief Executive Officer, may in writing and by agreement after consultation with Responsible Member amend the performance agreement
- (5) The Chief Executive Officer may be appointed for a period not exceeding five (5) years: Provided that he/she may be re-appointed for a period not exceeding three (3) years.

- (6) The remuneration, allowances and benefits of the Chief Executive Officer shall be determined by the Board in consultation with the Responsible Member.
- (7) Disciplinary matters related to the Chief Executive Officer shall be the responsibility of the Responsible Member subject to consultation with the Board .
- (8) The Chief Executive Officer-
- a) shall not be permitted to perform any other remunerative work and pursue any other business interest.
  - b) shall on three (3) months written notice tendered to the Board, resign from his/her office.
- (9) Whenever the position of Chief Executive Officer is vacant or the Chief Executive Officer is absent from work on account of ill-health, suspension, incapacitation or failure to perform his/her duties-
- a) the powers, rights and functions of the Chief Executive Officer shall be exercised by any person designated by the Responsible Member as Acting Chief Executive Officer: Provided such a person so designated shall not act in that position for a period exceeding six (6) months from the date of appointment; and
  - b) the vacancy or absence contemplated in sub-section (a) shall be remedied by the Responsible Member as soon as reasonably possible within a period not exceeding (1) month from the date of the vacancy or absence.

#### **Removal of the Chief Executive Officer from Office**

- 11 (1) The Responsible Member may, subject to the provisions of section 10 (7) of this Act and the labour legislation within the Republic on the recommendation of the board , institute processes relating to the removal of the Chief Executive Officer from office on account of, but not limited to -
- a) misconduct;
  - b) poor performance for reasons other than incapacity;
  - c) poor performance for reason of incapacity
  - d) unfitness to hold office;
  - e) permanent infirmity of mind or body which render the Chief Executive Officer incapable of discharging his or her duties.
- (2) The powers of the Responsible Member contemplated in sub-section (1) include the suspension of the Chief Executive Officer.
- (3) Any action against the Chief Executive Officer by the Responsible Member shall be subject to due process.

### **CHAPTER 6 FUNDING AND FINANCIAL MANAGEMENT OF AGENCY**

#### **Funding of the Agency**

- 12 (1) Subject to the provisions of the Public Finance Management Act, the Agency may be funded from-
- a) income generated by the Agency from its balance sheet, investments, reserves and fees,
  - b) charges and monies payable to the Agency in respect of services rendered or supplied by the Agency;
  - c) loans; and
  - d) all other funds accruing to the Agency from any other source including but not limited to:- rent, donations, grants and bequests received from the public, Provided that-
    - (i) funds may not be appropriated by the Provincial Legislature for the Agency on account of its Public Finance Management Scheduling; and
    - (ii) all conditional donations, grants and bequests shall be accepted by the Board only after it had obtained prior written approval from the Responsible Member.

- (2) The Board may, subject to the Public Finance Management Act, 1999 and any other law, solicit donations, grants or bequests referred to in sub-section(1)(d) of the Act.

#### **Certain Loans Prohibited**

- 13 A loan may not be made out of the funds of the Agency or from any other funds administered or held in Trust by the Agency, to a Member of the Board or an Employee of the Agency, or to a family Member of such Member of the Board or Employee.

#### **Banking Accounts**

- 14 (1) Subject to the provisions of section 7 of the Public Finance Management Act, 1999, the Board shall open and maintain accounts in the name of the North West Development Agency with a registered banking institution, into which account shall be deposited all the monies received by the Agency and contemplated in sub-sections (1) (a), (b) and (c), read with section 22(5) of the Public Finance Management Act, 1999.
- (2) All cheques and other negotiable instruments drawn on behalf of the Agency shall be co-signed by duly delegated officials.
- (3) Any surplus funds which at the end of any financial year is recorded in the Agency's bank accounts may be used towards achieving the objectives of Agency,

#### **Procurement by the Agency**

- 15 (1) The Board shall ensure that the procurement of any supply or service, the hiring, letting, acquisition or granting of any right in respect of procurement of any supply or service, the hiring, letting or acquisition of any asset for or on behalf of the Agency in terms of section 4, such procurement or related activity is in accordance with the provisions of this Act, and duly complies with-
- a) the Treasury Regulations issued in terms of the Public Finance Management Act, 1999 and read with section 76(4)(c) of the same Act in terms of an appropriate procurement and provisioning system being in place, which is fair, equitable, transparent, competitive and cost-effective;
  - b) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Broad-based Black Economic Empowerment Act of 2003.

### **CHAPTER 7 GENERAL PROVISIONS**

#### **Delegations**

- 16 (1) Subject to the provisions of the Public Finance Management Act, the Companies Act and any other legislation, the Board may in writing delegate any of its powers or functions conferred upon or imposed upon it by this Act, except the powers and functions imposed on the Board Chairperson, Chief Executive Officer and Board Committees.
- (2) Delegations under sub-section (1) –
- a) do not absolve the Board from full responsibility of the powers and functions conferred.
  - b) shall not prevent the Board from exercising the powers and functions delegated as and when the Board deems fit.

**Prohibition of the use of the name of the North West Development Agency**

17 A person, company or association may not carry on business under the same name, similar or that which closely resembles that of the Agency, which is reasonably likely to deceive/mislead.

**Special Powers of the Responsible Member**

18 (1) Whenever the Responsible Member is satisfied that a failure to comply with the provisions of this Act and other applicable Laws has occurred on the part of any Member of the Board or any person employed by the Agency or acting on its behalf with the authority of the Board, he/she may, by written notice to the Board, direct the Board to take all the necessary steps or cause same to be taken, so as to make good such failure within a reasonable period, which shall be specified in such notice, and, where applicable, to ensure future compliance with such provisions.

(2) Upon failure by the Board to comply or ensure compliance with a direction contemplated by sub-section (1), the Responsible Member may take appropriate steps to remedy the matter.

(3) The Responsible Member may, for a period not exceeding twelve (12) months after the coming into operation of this Act, second a senior official of the Department to assist with the establishment of the Agency.

**Offices of the Agency and the execution of documents of the Agency**

19 (1) The Agency shall have its Head Office at Mahikeng and may open branch offices in other parts of the Province and whenever it becomes necessary and expedient, Provided that, with the permission of the Responsible Member, the Agency may establish offices in other Provinces in the Republic.

(2) The Chief Executive Officer may subject to the Board's delegation, execute or prepare, and sign, any such notice, document or instrument as may be necessary or expedient for the everyday administration and affairs of the Agency.

**Liquidation of the Agency**

20 The Agency shall not be liquidated except by or under the authority of the Executive Council in concurrence with the Provincial Legislature.

**Regulations**

21(1) The Responsible Member may, in consultation with the Board, make Regulations not inconsistent with this Act, in relation to-

- a) any matter which is prescribed in terms of this Act;
- b) any matter necessary to be prescribed for the purposes of due and effective administration and execution of this Act and of ensuring that its objects are attained;
- c) any matter relating to the exercise and performance of the powers, functions and duties of the Agency;
- d) any matter pertaining to the Board;
- e) any fee payable in terms of this Act; and
- f) any other matter in respect of which it is necessary or expedient to make Regulations in order to achieve the objects of this Act, Provided that any Regulation with financial implications may only be made with the concurrence of the Responsible Member as well as the Member of the Executive Committee responsible for Finance.

(2) All Regulations shall be preceded by the circulation of the Draft Regulations for public comment in the Provincial Gazette.

(3) A Regulation made in terms of sub-section (1) may provide for a penalty payable for a contravention thereof or failure to comply therewith.

#### **Transitional Provisions**

22 (1) All transactions, contracts, proceedings, matters or acts which, after the date of commencement of this Act but prior to the date of promulgation thereof in the Provincial Gazette were concluded, brought, performed or done in pursuit or furtherance of the objects of the Agency or the carrying of its business and operations in accordance with the provisions of a repealed law, shall be deemed to have been lawfully concluded, brought, performed or done in accordance with the provisions of this Act.

(2) The Board of Directors nominated in terms of a repealed law and in existence as at the date of the commencement of this Act, may continue to be the Board of Directors of the Agency until such time that the Responsible Member appoints a Board of Directors in terms of section 5 of this Act, in which event the first -mentioned Board of Directors shall, notwithstanding any provision in any law to the contrary, be dissolved from the date of appointment of the new Board.

(3) Personnel employed by the North West Development Corporation, Invest North West and Mahikeng Industrial Development Zone, immediately prior to the enactment of this Act, shall notwithstanding any provision of any law to the contrary become personnel of the Agency.

(4) Any interim management structure of the Agency which exists at the date of the coming into effect of this Act shall be dissolved on the appointment of the new Board of Directors by the Responsible Member and shall from the date onwards have no powers, authority, duties or functions in relation to the Agency.

(5) All assets and liabilities of the North West Development Corporation, Invest North West and Mahikeng Industrial Development Zone, including those situated in other Provinces and anywhere else outside the Republic, shall become the assets and liabilities of the Agency until disposed of in a manner approved by the Board with the prior written approval of the Responsible Member and concurrence of the Member of the Executive Committee responsible for Finance.

(6) All the bank accounts of the North West Development Corporation, including its investments shall, within a period of six (6) months after the coming into operation of this Act, be transferred to the Agency.

#### **General Offences and penalties**

23. Any person who contravenes any provision of this Act, is guilty of an offence and liable to a fine as may be determined from time to time or imprisonment for a period of five (5) years.

#### **Repeal of Laws**

24. This Act repeals the North West Development Corporation Act No. 6 of 1995.

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

25. This Act is called the North West Development Agency Act, 2013 and comes into operation on a date fixed by the Premier by notice in a Provincial *Gazette*.

**EXPLANATORY MEMORANDUM OF THE OBJECTS TO THE NORTH WEST DEVELOPMENT  
AGENCY BILL/ACT, 2013**

**1 INTRODUCTION**

This Explanatory Memorandum is presented in two parts, namely a summary of the developments and processes leading up to the drafting of the draft North West Development Agency Bill/Act ("the Bill/Act") and secondly, a discussion on each of the chapters of the Bill/Act.

**2 BACKGROUND**

2.1 The North West Provincial Government Executive Committee took a resolution to re-organize/ restructure Government institutions in the Province, particularly, public entities. This re-organisation/ restructuring were necessitated principally by the duplication in functions, mandate and related costs in some of the public entities.

2.2 During the work of the Presidential SOE Review Committee in the financial years 2011/12, the issue of duplication of functions and related wastage in resources was highlighted by that Committee. As a consequence of inadequate and limited resources, overlap and duplication of functions in these entities, that finding by the Presidential SOE Review Committee, in conjunction with the North West Provincial Executive Committee's (EXCO) plans of reorganising Government institutions in the Province, culminated in the EXCO Resolution to so re-organise/ restructure these institutions.

2.3 As part of the broader restructuring exercise EXCO took a decision to place all economic development mandates and related functions carried out by some public entities and bring them under the control and management of a single public entity/ Agency. The affected public entities/ Agencies were: North West Development Corporation ("NWDC"), Mafikeng Industrial Development Zone ("MIDZ") and Invest NorthWest ("INW"). In reorganising/ restructuring the public entities referred to herein, the plan included the incorporation of best practices on transformation of Government to deliver on services and build on existing successes and deal with challenges. The North West Provincial EXCO's Resolution was geared at ensuring effective and efficient service delivery for the people of the North West, through the planned re-organisation/ restructuring.

2.4 Through this rationalisation process, MIDZ and INW were dissolved, and the personnel, functions, assets and liabilities of these entities transferred to a restructured NWDC, to be renamed the North West Development Agency(NWDA) after due legislative and governance processes have been observed and complied with.

2.5 The North West Provincial Government, represented by a Member of the Provincial Executive Council (MEC) responsible for these three public entities alluded to herein, in her capacity as a Shareholder and Executive Authority has given full effect to the rationalisation process detailed above.

2.6 The North West Provincial Government is committed to promoting efficiency, effectiveness, elimination of duplication and wastage of resources, and consolidation of expertise towards an effective economic development public entity that will become an active participant in the process of South Africa's economic development, and thus impact positively in the lives of the people of the North West Province (the Province).The restructured public entity is to make a vital contribution to the Province's continuing economic and social development.



### **3. PURPOSE OF THE BILL/ACT**

3.1 The public entities' rationalisation processes alluded to above presents the North West Provincial Government with an opportunity to repeal the NWDC Act of 1995(current Act), which is long-overdue, and substitute that Act with new legislation geared at firmly positioning the NWDA as an economic development public entity in the Province.

3.2 The Bill /Act is intended to repeal the current Act which, although it is a 1995 Act, section 30 thereof states that it shall be deemed to have come into effect on 1 October 1994. The current Act is outdated, refers to repealed legislation and also contains provisions that will not stand constitutional scrutiny. In addition, subsequent to the coming into effect of the current Act, there is a myriad new legislation that has been passed with which the current Act is inconsistent or in conflict, thus necessitating a legislative review.

3.3 In order to avoid unnecessary legal contestations that may arise due to some of the problematic provisions embodied in the current Act, repeal thereof is necessary and warranted.

### **4. OBJECTS OF THE BILL/ACT**

4.1 The objects of the Bill/Act have not changed and have been imported from the current Act as-is, into the Bill/Act.

4.2 The objects are broad and sufficiently comprehensive to encompass the functions previously performed by Invest North West and Mafikeng Industrial Development Zone.

### **5. APPLICATION AND INCONSISTENCIES WITH OTHER LEGISLATION**

5.1 The Bill/Act binds the State and applies to shareholder MEC (the State's shareholder representative in respect of this public entity), and the government agency / public entity that is the subject-matter of this Bill/Act (NWDA).

5.2 In the event of any inconsistency between this Bill/Act and the Public Finance Management Act, 1999(PFMA), then the PFMA prevails to the extent of the inconsistency.

5.3 In the event of any inconsistency between the Bill/Act and the Companies Act, 2008, then the Companies Act prevails to the extent of the inconsistency.

5.4 In all other instances of inconsistencies between this Bill/Act and any other Provincial legislation, then this Bill/Act shall prevail.

### **6. DISCUSSION**

6.1 The North West Provincial Executive Council has passed a Resolution to amalgamate/merge all economic development functions by various public entities within the Province, into one public entity. The affected public entities are: the North West Development Corporation ("NWDC"), Invest North West and Mafikeng Industrial Development Zone.

6.2 The NWDC is a "receiving" public entity in that the functions, personnel and assets and liabilities of Invest North West and Mafikeng Industrial Development Zone are transferred to the NWDC as part of the restructuring process.

6.3 NWDC is, in addition to being a public entity (PFMA), a company (Companies Act) and also a statutory corporation (NWDC Act). Accordingly, in giving effect to the restructuring referred to herein, a repeal of the current founding Act is necessary.

6.4 There are number of factors that form a firm basis for a need to repeal the current Act, these are:-

6.4.1 The North West Development Corporation Act No. 6 of 1995 (“the Act”), came into operation on 1 October 1994 in terms of section 30 of the Act. It is legislatively and legally unsound for an Act to come into operation on a date that precedes it being promulgated/ passed into law;

6.4.2 The North West Development Corporation Act in its current form poses many challenges to the effective and efficient operation of the North West Development Corporation (NWDC), which challenges are as follows:

6.4.2.1 The Act embodies and/ or makes reference to legislation that has since been repealed. Examples are: the Constitution of South Africa Act of 1993 which has been repealed by the Constitution of South Africa Act of 1996, and the Provincial Exchequer Act which has been substituted by the coming into operation of the Public Finance Management Act, 1999 which applies to National and Provincial public entities; as well as the Companies Act, 1973 which has since been repealed by the Companies Act, 2008;

6.4.2.2 It embodies provisions which may not stand constitutional scrutiny, e.g. its provisions giving effect to the suspension of a Chief Executive Officer without emoluments;

6.4.2.3 It further embodies reference to outdated Government objectives and priorities e.g. the Reconstruction and Development Programme;

6.4.2.4 It further makes reference to the Republic of Bophuthatswana in its Preamble, which has been excised in the proposed Bill/Act.

6.4.3 The NWDC Act came into operation in 1994. There have been other Laws and best practices in governance impacting on the NWDC as a company that have been passed after the coming into operation of the NWDC Act. In addition, the NWDC Act embodies legislative provisions that are inconsistent with other Laws that came into operation post-1994, notably: the Public Finance Management Act, 1999 and the Companies Act, 2008. Accordingly, this triggered a need to update the Act by way of repealing same and substituting it with an updated Bill/Act, and to further minimise misalignment and inconsistency between the Act and other key legislation that came into operation post-1994;

6.4.4 In view of the restructuring that has been undertaken so as to position the NWDC as a one-stop-shop in terms of having one economic development public entity in the Province (which restructuring involved the dissolution of two public entities known as Invest North West and Mafikeng Industrial Development Zone respectively as well the transference of their functions, assets and personnel to a restructured NWDC), a need has further arisen to rename the NWDC to give effect to the said restructuring. A decision has accordingly been taken to rename the NWDC to become known as the North West Development Agency.

To give effect to the name-change referred to in the preceding paragraph, a legislative repeal of the Act is necessary.

6.4.5 In drafting this Bill/Act, there was deliberate exclusion of the provisions that are covered either in the Public Finance Management Act and its Treasury Regulations, the Companies Act, the Labour Relations Act, the Basic Conditions of Employment, King Code III and the NWDC's Memorandum of Incorporation. This was done to eliminate superfluity, duplication, overlaps and inconsistencies between these legislative prescripts.

## **7. BODIES CONSULTED**

The Department of Economic Development, Environment, Conservation and Tourism has consulted the following institutions regarding the proposed Bill/Act -

- 7.1 Executive Council of the North West Provincial Government
- 7.2 Chief State Law Adviser in the Office of the Premier;
- 7.3 Acting Director-General: Office of the Premier;
- 7.4 Provincial Treasury;
- 7.5 Provincial Planning Commission;
- 7.6 SALGA;
- 7.7 House of Traditional Leaders;
- 7.8 Organised Business;
- 7.9 Small Micro Medium Enterprises;
- 7.10 Organised Labour; and
- 7.11 The NWDC Board.

## **8. FINANCIAL IMPLICATIONS**

There are no major financial implications arising from the development of the Bill/Act save to say that money will be spent on the drafting, publication process through the Gazette, newspapers, public hearings and other public participation initiatives.

## **9. SOCIAL IMPLICATIONS**

None

## **10. ENVIRONMENTAL IMPLICATIONS**

None

## **11. CONSTITUTIONAL AND LEGAL IMPLICATIONS**

The Bill is consistent with the Constitution.

## **12. PARLIAMENTARY PROCEDURE**

The Bill will be submitted to the Economic, Infrastructure and Development Cluster (EID Cluster) for further inputs and comments, considering the urgency of the Bill a parallel process is being undertaken by ensuring that the Chief State Law Advisor (CSLA) also receives the Bill for editing purpose and subsequently, the Bill will be presented to EXCO for approval. Thereafter, the Bill will be published in the Provincial Gazette for public comments for a period of fourteen (14) days, and notices will be placed in various newspapers to bring the Bill to the attention of the public. Public comments will be consolidated and incorporated in the Bill and then submitted to the Chief State Law Advisor for editing and certification.

After certification of the Bill by the Chief State Law Advisor, it is then submitted to the Speaker, who introduces the Bill to the House and refers it to the relevant Portfolio Committee. The Committee discusses

and debates the Bill; undertakes a process of public participation; compiles a report on inputs received in the public consultation process and makes recommendations on changes/amendments to be effected on the Bill. Debating of the Bill at a sitting of the House may result in further amendments to the Bill. After the Bill is passed in the House it is then signed by the Premier to become a Provincial Act.

### **13. CHAPTER BY CHAPTER EXPLANATION OF THE BILL**

Chapter 1 is a General Definition clause wherein terminology used in the Bill/Act is being defined to ensure uniform understanding by the readers and users of the new Act.

Chapter 2 seeks to establish the NWDA as a juristic person.

Chapter 3 seeks to provide for the objects, powers and functions of the NWDA.

Chapter 4 seeks to provide for the Board of the Agency.

Chapter 5 seeks to provides for the Chief Executive Officer of Agency

Chapter 6 seeks to provide for funding and financial management of Agency

Chapter 7 seeks to provide for general provisions

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