

**NORTH WEST
NOORDWES**

EXTRAORDINARY • BUITENGEWOON

**PROVINCIAL GAZETTE
PROVINSIALE KOERANT**

Vol. 263

**MAHIKENG
24 JANUARY 2020
24 JANUARIE 2020**

No. 8092

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PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS

PROVINCIAL NOTICE 14 OF 2020**NORTH WEST PROVINCIAL GOVERNMENT****NORTH WEST PARKS AND TOURISM BOARD BILL, 2019**

I, Kenetswe Mosenogi, Member of the Executive Council responsible for Economic Development, Environment, Conservation and Tourism hereby gives notice to publish the draft North West Parks and Tourism Board Bill, 2019 for public comments.

Members of the public are invited to submit to the MEC, within 30 days after the publication of the Notice in the Gazette, written representation to the draft North West North West Parks and Tourism Board Bill, 2019 to the following address:

By Post to : Deputy Director General: Economic Development,
Environment, Conservation and Tourism

Attention : Ms Phemelo Jood
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NORTH WEST PARKS AND TOURISM BOARD BILL, 2019

*(As introduced in the Provincial Legislature)
(The English text is the official text of the Bill)*

(MEC FOR ECONOMIC DEVELOPMENT ENVIRONMENT AND TOURISM)

BILL

To provide for the establishment of the North West Parks and Tourism Board; to determine the objects, powers, duties and functions of the North West Parks and Tourism Board; to determine the manner in which the North West Parks and Tourism Board is to be managed, governed, staffed and financed; to provide for the management and control of protected areas in the North West Province; to provide for the promotion of tourism in the North West Province; to provide for the repeal of the North West Parks Board Act, 2015 (Act No 2 of 2015) and the North West Tourism Board Act, 2015 (Act No 3 of 2015); to provide for the disestablishment of the North West Parks Board and the North West Tourism Board; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS the North West Parks Board Act, 2015 (Act No 2 of 2015) and the North West Tourism Board Act, 2015 (Act No 3 of 2015) are to be repealed by the promulgation of this Act;

WHEREAS the North West Parks Board and the North West Tourism Board will cease to exist upon the repeal of the North West Parks Board Act, 2015 (Act No 2 of 2015) and the North West Tourism Board Act, 2015 (Act No 3 of 2015) and their powers, duties and functions will be assumed by the North West Parks and Tourism Board;

WHEREAS upon the repeal of the North West Parks Board Act, 2015 (Act No 3 of 2015) and the North West Tourism Board Act, 2015 (Act No 2 of 2015), all assets and liabilities of the North West Parks Board and the North West Tourism Board shall accrue to, and vest in the North West Parks and Tourism Board;

AND WHEREAS upon the repeal of the North West Parks Board Act, 2015 (Act No 2 of 2015) and the North West Tourism Board Act, 2015 (Act No 3 of 2015), the North West Parks and Tourism Board, will assume responsibility over all Protected Areas in the Province and have the legal basis to acquire and manage all protected area and tourism assets and liabilities, including subsidiaries of the North West Parks Board and the North West Tourism Board.

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

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CHAPTER 1 DEFINITIONS AND APPLICATION

Definitions

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

"**Board**" means the North West Parks and Tourism Board contemplated in section 3;

"**board**" means the board of directors of the North West Parks and Tourism Board contemplated in sections 6 and 7;

"**Chief Executive Officer**" means the Chief Executive Officer of the Board appointed in terms of section 17;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996;

"**Department**" means the Department responsible for protected areas in the Province;

"**Executive Council**" means the Executive Council of the Province of North West;

"**financial year**" means the period as contemplated in section 25;

"**Gazette**" means the official *Provincial Gazette* of North West;

"Head of Department" means the person appointed as head of the Department responsible for protected areas in terms of section 12 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"Member of the Executive Council responsible for finance" means the member of the Executive Council responsible for finance in the Province;

"Portfolio Committee" means the Portfolio Committee of the Provincial Legislature responsible for protected areas;

"prescribed" means prescribed by regulation under section 31, and **"prescribe"** has a corresponding meaning;

"Province" means the North West Province contemplated in section 103 of the Constitution, and **"provincial"** has a corresponding meaning;

"Provincial Government" means the government of the North West Province;

"Provincial Legislature" means the Legislature of the Province of North West as contemplated in section 105 of the Constitution, and having legislative authority for the Province as contemplated in section 104(1) of the Constitution;

"regulations" means regulations made in terms of section 31;

"responsible Member" means the member of the Executive Council of the North West Province responsible for tourism and protected areas;

"protected area" means a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long term conservation of nature and wildlife with associated ecosystem services; and

"this Act" includes the regulations.

Objects of Act

2. The objects of this Act are to provide for the –

- (a) the management and control of state owned protected areas in the Province;
- (b) the nature and wildlife conservation in state owned protected areas under the

control and management of the North West Parks and Tourism Board in the Province;

(c) the promotion of tourism in the Province;

(d) tourism sector training within the Province;

(e) the creation of an enabling environment for tourism investment promotions in the Province;

(f) the management of existing and newly established state owned tourism facilities in the Province;

(g) the creation of enabling environment for transformation of the tourism and wildlife sector in the Province; and

(h) tourism sector training within the Province.

CHAPTER 2 NORTH WEST PARKS AND TOURISM BOARD

North West Parks and Tourism Board

3.(1) The North West Parks and Tourism Board is hereby established.

(2) The Board is a juristic person capable of suing and being sued.

(3) The Board is a Schedule 3C provincial public entity subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Objects of Board

4. The objects of the Board are to –

(a) initiate, develop, administer, manage and maintain protected areas , in the Province;

(b) conserve and preserve wildlife sector in protected areas in the Province;

(c) perform the powers, duties and functions specified in sections 5;

(d) create enabling environment for access to markets for new entrants in the wildlife sector in the Province;

(e) contribute to the establishment of enabling environment for job creation in the wildlife sector in the Province;

(f) market the Province as a tourism destination locally, provincially, nationally and internationally;

(g) provide tourism training and skills transfer in the sector;

(h) facilitate tourism investment promotion in the Province;

- (i) create enabling environment for access to markets for new entrants in the tourism sector in the Province; and
- (j) contribute to the establishment of enabling environment for job creation in the tourism sector in the Province.

Powers, duties and functions of Board

5.(1) The Board must, through its board –

- (a) initiate, develop, administer, manage and maintain protected areas, in the Province;
- (b) conserve and preserve wildlife in protected areas under its control and management, in the Province;
- (c) undertake research aimed at applying new or known methods of nature conservation in protected areas under its control and management;
- (d) promote awareness on the protection of wildlife and nature conservation in protected areas under its control and management, in the Province;
- (e) take reasonable steps to create awareness by the public with regard to any matter related to but not limited to –
 - (i) measures to protect and conserve wildlife;
 - (ii) safety precautions that must be adhered to when visiting protected areas or being around wildlife; and
 - (iii) safety precautions that must be adhered to when attacked by any dangerous wildlife species,in protected areas under its control and management;
- (f) promote biodiversity by striving to reduce any negative environmental impact within protected areas under its control and management;
- (g) where a need arises, own, manage and maintain State Owned Companies geared at advancing the objectives of the Board;
- (h) determine and annually review entry fees for visitors to protected areas, in the Province;
- (i) In determining the fees contemplated in subsection (1)(h), the board must take into account persons who are from historically disadvantaged background, and develop a policy for non-payment of entry fees for such a category of persons;
- (j) investigate and make recommendations to and advise the responsible Member regarding any matter related to the protection of wildlife in protected areas under its control and management, in the Province;
- (k) (a) market the Province as a tourism destination locally, provincially, nationally and internationally;

- (l) provide tourism sector training in the Province;
- (m) mobilise resources and investment in tourism projects targeting previously disadvantaged individuals;
- (n) provide for efficient support systems to new entrants in the tourism sector in the Province;
- (o) manage programmes aimed at accessing the tourism markets to emerging tourism enterprises;
- (p) plan and facilitate the implementation of the national marketing and branding programs;
- (q) mobilize resources for the implementation of tourism marketing and training programs in the Province;
- (r) establish a convention bureau which will assist the Province to market it as a business events destination;
- (s) establish, register and control State Owned Companies subject to the approval by the Executive Council; and
- (t) perform the functions and carry out the duties and responsibilities imposed by this Act and any other law.

(2) In relation to protected areas, the Board, through its board of directors, has the authority to –

- (a) determine and approve measures to safeguard the public against fatal wildlife attacks within protected areas under its control and management, in the Province; and
- (b) specify the procedures and control measures to be adopted in connection with the conservation and protection of wildlife within protected areas under its control and management.

(3) The Board must –

- (a) administer funds appropriated from the Provincial Legislature in accordance with the Public Finance Management Act;
- (b) initiate and administer the funding from sources other than appropriations from the Provincial Legislature;
- (c) put measures in place to attract tourists into the Province;
- (d) attract foreign and local investment and funding for the establishment, development and growth of tourism facilities and training in the Province;
- (e) co-ordinate and facilitate human resource development in the tourism sector in the Province;

- (f) promote heritage and culture tourism in the Province; and
- (g) establish local and international partnerships to encourage and facilitate the transfer of knowledge and skills to the tourism sector in the Province.

(4) The Board must –

- (a) develop a five year strategic plan which must be reviewed periodically by the board of directors.
- (b) make recommendations to the responsible Member, and take remedial action in respect of, any matter relating to the powers and functions of the Board;
- (c) report to the responsible Member on any matter referred to the board of directors by him or her;
- (d) report to the responsible Member on the development and implementation of social responsibility programs relating to tourism;
- (e) collaborate with national, provincial and international stakeholders and participate in marketing programmes that are aimed at increasing the economic profile of the sector; and
- (f) perform such functions as may be assigned to it in terms of this Act or any other law.

(5) For the purposes of promoting uniformity and co-operation by all organs of state in the national, provincial and local sphere of government on matters related to tourism the Board, through its board of directors –

- (a) must act as a link between the national, provincial and local spheres of government and other stakeholders in the tourism sector;
- (b) may liaise and interact with any organisation, structure or body that has an interest in any matter related to tourism; and
- (c) must operate throughout the Province: Provided that where it considers it desirable for the attainment of its objects, may become involved in projects and programmes outside the Province or establish linkages with different spheres of government.

(6) The Board must, in consultation with the responsible Member –

- (a) initiate, promote, plan, establish, fund, co-ordinate, manage, or carry on any undertaking or acquire any such undertaking and sell or otherwise dispose of any such undertaking or portion thereof or interest therein, subject to the Public Finance Management Act and any other applicable law;
- (b) request and facilitate the establishment of joint ventures and public-private partnerships; and

(c) seek to increase and retain investments in its subsidiaries.

(7) In order to achieve its objectives as stated above, the Board must –

- (a) in consultation with the responsible member and member of the Executive Council for finance enter into an agreement for purposes of attaining a right in both movable and immovable property;
- (b) enter into negotiations with any national, provincial or local government entities for purposes of cooperation and twinning in promoting tourism in the Province;
- (c) open and conduct banking accounts at a bank as defined in the Banks Act, 1990; and

(8) The board of directors contemplated in subsection (1) is the accounting authority of the Board as contemplated in section 49 of the Public Finance Management Act 1999, (Act No. 1 of 1999).

Powers of responsible Member

6. The responsible Member –

- (a) appoints members of the board in terms of section 7(7)(a);
- (b) terminates the appointment of board members in terms of section 13(2);
- (c) exercises the powers contemplated in section 4(5);
- (d) approves the appointment of the Chief Executive Officer in terms of section 17(3);
- (e) approves the appointment of board members of subsidiaries in terms of section 4(c); and
- (f) disestablishes the subsidiaries of the Board, in consultation with the Provincial Executive Council.

Composition of board

7.(1) The board is composed of –

- (a) not less than five and not more than nine members appointed by the responsible Member, and
- (b) the Chief Executive Officer, *ex officio*, as contemplated in section 18(1).

(2) The responsible Member may designate the Head of the Department –

- (a) to facilitate liaison between the responsible Member and the board;
- (b) to report to the responsible Member from time to time regarding matters which are considered relevant; and

(c) to attend meetings of the board and participate in discussion.

(3) The person designated in terms of subsection (2) does not have the right to vote when a decision of the board is taken.

(4) Members of the board must –

(a) be fit and proper persons to serve the best interests of the Province;

(b) be characterised by their independence, impartiality and fairness; and

(c) collectively possess –

(i) legal skills, experience and qualifications;

(ii) financial skills, experience and qualifications;

(iii) extensive knowledge of and experience in business management including human resources management and labour relations;

(iv) extensive knowledge of and experience in biodiversity and tourism;
and

(v) any other skill, experience or qualification that might be of benefit to the board.

(5) The responsible Member must, by notice in the *Gazette* and at least two newspapers circulating in the Province, invite interested parties within the Province to nominate candidates to serve on the board.

(6) The invitation for nominations in terms of subsection (5) must specify the –

(a) nomination procedure;

(b) requirements for nomination;

(c) date by which a nomination must be received by the responsible Member;
and

(d) acceptance by nominees.

(7) The responsible Member must appoint the members of the board and designate –

(a) one of the members of the board as the chairperson; and

(b) one of the members of the board of as the deputy chairperson.

(8) The responsible Member must publish the names of the persons appointed to the board of in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified, in writing, of their appointment to the board.

(9) The responsible Member must, within two months after the appointment of members

of the board, inform the Executive Council and the Portfolio Committee of the names of the appointed members including the term of their appointment.

(10) The Code of Conduct contained in Schedule 1 and the Declaration of Interests and Gifts by Members of board, contained in Schedule 2 to this Act apply to all members of the board.

(11) This section applies, with the necessary changes, to the filling of a vacancy on the board.

Disqualification from being appointed to board

8.(1) A person is disqualified from being appointed to the board or from remaining on the board, by reason that he or she –

- (a) is or becomes an unrehabilitated insolvent;
- (b) is or has been declared by a competent court to be of unsound mind;
- (c) has a direct or indirect interest in any contract with the Board and fails to declare the interest and the nature thereof in the manner required by this Act;
- (d) is a person under curatorship;
- (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
- (f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member may, upon a person who is nominated for appointment disclosing full details of an offence in an affidavit, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution; and
- (g) fails to disclose an interest in accordance with section 10 or attended or participated in the proceedings of the board while having an interest contemplated in section 10.

(2) A disqualification in terms of subsection (1)(f) ends five years after the sentence has been completed.

Term of office of members of board

9.(1) Persons appointed to the board hold office for a period of three years or such lesser period as the responsible Member may determine and are, subject to section 7, eligible for reappointment at the expiration of such period.

(2) No person may be reappointed after having served on the board for two consecutive terms.

Declaration of financial or other interests by nominees to board

10.(1) A nominee to the board must –

(a) within 10 days of having accepted an appointment to the board, submit to the responsible Member a written declaration of any financial or other interests in the biodiversity, hospitality and tourism sectors or related sectors which could be related to or may be in conflict with an appointment as a member of the board, which declaration must include relevant information about any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and

(b) in the declaration referred to in paragraph (a), include financial and other interests in the activities of the board or related sectors of family members or close associates, which could be related to or may be in conflict with an appointment as a member of the board.

(2) Any failure by the nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 8 to be considered for the position of the member of the board.

(3) Every member of the board must, upon assuming office and at the beginning of every financial year, submit a written declaration of his or her direct or indirect interest in any company or other business interest in the manner provided for in section 75 of the Companies Act, 2008 (Act No. 71 of 2008).

(4) Where a member of the board or family member or close associate experiences a change in financial or any other circumstances and acquires an interest in the activities of the Board or has reason to know of any changed circumstances, the member of the board must, within 10 days of the date of the changed circumstances, submit a written declaration of change of financial or other interests to the responsible Member.

(5) The responsible Member must –

(a) keep a register of the interests of members of the board disclosed in terms of this section; and

(b) update that register from time to time.

Failure to declare financial or other interests

11.(1) A member of the board who fails to make a declaration envisaged in section 10 commits an offence.

(2) The responsible Member, on becoming aware that a member of the board has failed to comply with the provisions of section 10, must investigate the matter and consider appropriate disciplinary action.

Recusal of member of board

12.(1) A member of the board must recuse himself or herself in any matter or proceeding where he or she, a family member or close associate has or reasonably could be expected to have, a financial or other interest in the outcome of a decision by the board.

(2) Any person may make an application, orally or in writing, for a member of the board to recuse himself or herself where that person has reason to believe that the member of the board, a family member or close associate has or could reasonably be expected to have a financial or other conflict of interest in the outcome of a decision by the board.

(3) A person making an application referred to in subsection (2) must give reasons for his or her request.

(4) In the event of an application referred to in subsection (2), the chairperson of the board must decide on the matter, save that in cases where the application concerns the chairperson of the Board the matter must be decided on by the deputy chairperson.

(5) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.

(6) If it subsequently emerges that the board took a decision on a matter in respect of which a member has failed to disclose an interest contemplated in subsection (1), such decision by the board is invalid.

Vacancies, removal and resignation from office of members of board

13.(1) A member of the board must vacate office if he or she becomes subject to a disqualification contemplated in section 10.

(2) The responsible Member may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office of such member if, in his or her discretion, there are good reasons for doing so.

(3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the board, from two consecutive meetings of the board for which reasonable notice was given to that member personally or by post.

(4) A member may resign from office in writing by giving not less than 30 days notice to the responsible Member.

(5) The responsible Member may waive the resignation notice contemplated in subsection (4), if such waiver would not be detrimental to the efficient functioning of the Board.

(6) Whenever a vacancy occurs on the board, the responsible Member must, subject to section 7, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

Meetings of board

14.(1) The board must hold routine quarterly meetings and may convene special meetings as required and the chairperson may direct how the meetings should be held.

(2) Every member of the board must be notified of each meeting in writing, at least 14 days prior to such meeting, and such notification must contain an agenda for the proposed meeting.

(3) In the event that the chairperson or the deputy chairperson of the board is absent from any meeting of the board, the members present at that meeting may elect one member present to preside at that meeting.

(4) A special meeting of the board may be called at the request of –

(a) the chairperson; or

(b) the majority of the members of the board by written petition, whereupon the chairperson must, in writing, notify every member of the board of the time and place of the special meeting.

(5) A *quorum* for a meeting of the board is a majority of its members.

(6) Any decision of the board must be taken by resolution of the majority of the members present at any meeting of the board and, in the event of an equality of votes on any matter, the member presiding at the meeting in question will have a casting vote in addition to his or her deliberative vote as a member of the board.

(7) No decision of the board is invalid merely by reason of a vacancy in the board: Provided that the decision is taken by the required majority of the members of the board present and entitled to sit as members of the board.

(8) The proceedings of all meetings of the board must be duly recorded, minuted and retained on file.

(9)(a) The minutes of the previous meeting must be read at the commencement of each meeting.

(b) The minutes may be regarded as read if copies thereof were furnished to the members of the board prior to the meeting.

(c) The chairperson may only sign the minutes once objections or corrections have been dealt with.

(10) The chairperson must decide on issues of order or procedure: Provided that if any member objects to any such decision, the issue must be put to the vote and the decision of the majority of the members is final and binding on the board.

(11) A member of staff of the Board may, on invitation by the board, attend a meeting of the board.

(12) The board may invite any person to attend any of its meetings.

Committees of board

15.(1) The board may appoint one or more committees, not limited to its own members, to assist it in the exercise of its powers and the performance of its duties and functions.

(2) Any committee appointed in terms of subsection (1) must be chaired by a member of the board.

(3) A committee contemplated in subsection (1) must perform such duties and functions

as the board may determine.

(4) The board may, at any time, dissolve or reconstitute such a committee.

(5) The board –

- (a) may delegate any of its powers or assign any of its duties or functions to a committee appointed in terms of subsection (1);
- (b) is not absolved from exercising or performing any power, duty or function so delegated or assigned; and
- (c) may amend, review or rescind any decision of a committee.

(6) Any delegated or assigned power, duty or function exercised or performed by a committee is regarded to have been exercised or performed by the Board.

(7)(a) The Chief Executive Officer may attend and take part in, but may not vote at, a meeting of a committee.

(b) A member of staff of the Board may, on invitation by the relevant committee, attend a meeting of that committee.

Remuneration of members of board

16.(1)(a) A member of the board may be paid such remuneration or allowances as may be determined by the responsible Member in consultation with the Member of the Executive Council responsible for finance.

(b) A member of the board who receives remuneration, allowances or other benefits by virtue of his or her post or employment in –

- (i) the national government;
- (ii) a provincial government;
- (iii) a municipality; or
- (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest,

who continues to receive such remuneration, allowances or other benefits while serving as a member of the board, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position in which he or she would have been were it not for such post or employment.

(2)(a) A member of the board and a member of a committee of the board may, in respect

of his or her functions as a member, receive reimbursement for reasonable actual subsistence and traveling expenses necessitated by the actual attendance of a meeting of the board or a committee of the board.

(b) The responsible Member must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and traveling expenses contemplated in paragraph (a).

CHAPTER 3 CHIEF EXECUTIVE OFFICER AND OTHER STAFF OF BOARD

Chief Executive Officer of Board

17.(1) The Board must, through its board, with the approval of the responsible Member and using a method which will, in the opinion of the responsible Member, reach the greatest number of residents of the Province, invite applications for the position of the Chief Executive Office.

(2) The board must, with the approval of the responsible Member, appoint a selection panel to review all the applications, shortlist and interview applicants.

(3) The board must, subject to the provisions of subsection (2) and with the approval of the responsible Member, appoint a suitably qualified, skilled and experienced person as the Chief Executive Officer of the Board.

(4)(a) The Chief Executive Officer is appointed for a period not exceeding five years.

(b) The Chief Executive Officer may be reappointed.

(5)(a) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance agreement entered into between that person and the board.

(b) The board and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.

(6)(a) For purposes of the declaration of financial or other interests, the provisions of section 10 apply with the necessary changes to the Chief Executive Officer except that the Chief Executive Officer must declare his or her interests to the board.

(b) The board must keep and maintain a register of financial or other interests declared by the Chief Executive Officer.

Functions of Chief Executive Officer

18.(1) The Chief Executive Officer is an *ex officio* member of the board and performs

his or her functions as assigned or delegated by the board.

(2) The Chief Executive Officer is not an accounting officer of the Board.

(3) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the board must, in writing, and with the approval of the responsible Member, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions.

Resignation and removal from office of Chief Executive Officer

19.(1) The Chief Executive Officer vacates office –

- (a) in the case of resignation, when the resignation takes effect;
- (b) when, in terms of the Companies Act 2008, (Act No. 71 of 2008), the person holding that office has become disqualified to serve as director of a company; and
- (c) upon having been removed from office in terms of subsection (2).

(2) The board may, with the approval of the Member of the Executive Council, terminate the Chief Executive Officer's employment in accordance with applicable employment and labour law.

Staff of Board

20.(1) The board must, subject to subsection (2), employ management staff of the Board and the Chief Executive Officer must subject to subsection (2), employ members of staff of the Board.

(2) The board must determine human resources policies for the staff, including the Chief Executive Officer.

Secondment or transfer of staff to Board

21. The Board may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act 1994, (Proclamation No. 103 of 1994), or from a municipality, other organs of state and the private sector.

CHAPTER 4 FUNDING AND FINANCIAL MANAGEMENT OF board

Funds of Board

22.(1) The funds of the Board consist of –

- (a) money appropriated by the Provincial Legislature;
 - (b) donations or contributions or income lawfully received by the board from any source;
 - (c) interest on investments of the Board; or
 - (d) fees received by the Board in payment for the provision of services by the Board.
- (2) The Board must utilise its funds –
- (a) for the payment of remuneration, allowances and subsistence and travelling expenses of the –
 - (i) members of the board;
 - (ii) Chief Executive Officer; and
 - (iii) members of staff of the Board;
 - (b) to cover costs in connection with the –
 - (i) day to day operation and administration of the Board;
 - (ii) performance of the duties and functions of the board, and
 - (iii) exercise of its powers in terms of this Act.
- (3) The board must, with the concurrence of the responsible Member –
- (a) open an account in the name of the Board with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
 - (b) deposit therein all money received in terms of subsection (1).

Financial management

23.(1) The board must cause full and proper books of account and all the necessary records in relation thereto to be kept.

(2) The board must ensure that the Board's annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(3) The board must, in each financial year at such time as the responsible Member determines, submit to the responsible Member for approval –

- (a) a business plan for the Board, containing measurable objectives and the other information contemplated in section 24(3)(b) and such further information as the responsible Member determines; and
- (b) a statement of the Board's estimated income and expenditure, in respect of the following three financial years or such longer or shorter period as the Member

of the Executive Council determines.

(4) In any financial year the board must submit to the responsible Member, for approval, supplementary statements of the Board's estimated income and expenditure for that financial year.

(5) The board may not enter into any financial commitment beyond its approved budget and its accumulated reserves.

(6) The board may, with the approval of the responsible Member, and subject to the provisions of section 154 of the Public Finance Management Act, 1999 –

(a) invest any unexpended portion of its funds in a registered bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); or

(b) with the approval of the responsible Member dispose of that portion in any other manner.

(7) Subject to the provisions of section 154 of the Public Finance Management Act, 1999, the board may establish such reserve funds, and deposit therein such amounts, as the responsible Member approves.

(8) The board may only invest or dispose of funds as contemplated in subsection (6) and establish a reserve fund as contemplated in subsection (7), with the prior written approval of National Treasury, as required by section 53 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Audit and annual report

24.(1) Subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Auditor-General must audit the financial statements of the Board.

(2) The Board must, through the responsible Member, table the report on its activities in the Provincial Legislature within five months after the end of each financial year.

(2) The report must –

(a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;

(b) state the extent to which the board has achieved or advanced its objectives referred to in sections 5 and 6, and the measurable objectives as set out in its

business plan as contemplated in section 24(3)(a) during the financial year concerned; and

(c) contain relevant performance information regarding the economic, efficient and effective use of resources and specifically a comparison between planned and actual performance indicators as set out in that business plan.

Financial year of Board

25. The financial year of the Board commences on 1 April of a particular year and ends on 31 March of the following year.

CHAPTER 5 GENERAL PROVISIONS

Immovable property

26. The board must, consistent with relevant laws, determine the policies and procedures with regard to the acquisition and disposal of immovable property.

Legal proceedings against Board

27.(1) Any legal proceedings against the Board must be instituted in accordance with the Institution of Legal Proceedings against Certain Organs of State Act, 2002 (Act No. 40 of 2002).

(2) The Board is, for purposes of subsection (1), regarded as an organ of state contemplated in section 239 of the Constitution.

Security of confidential information held by Board

28.(1) Subject to the Constitution and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information submitted to the board in connection with any legal brief or instruction, unless he or she is ordered to do so by a court of law or unless the person who gave such brief or instruction consents thereto in writing.

(2) No person may disclose any information kept in the registers contemplated in sections 10(5), 17(6) and 20 (4) unless such disclosure is –

- (a) in terms of any law that compels or authorises such disclosure;
- (b) materially necessary for the proper functioning of the board; or
- (c) made for purposes of monitoring, evaluating, investigating or considering any

activity relating to the board.

(3) Any person who contravenes subsection (1) or (2) commits an offence.

Dissolution of Board

29. The Board may only be dissolved in terms of an Act of the Provincial Legislature.

Use of name of Board

30.(1) Unless authorised in writing by the Board to do so, no person may in any way represent or make use of the name, acronym, logos, plaques, designs or other material used or owned by the Board.

(2) No person may falsely claim to be acting on behalf of the Board.

(3) Any person who contravenes subsections (1) or (2) commits an offence.

Regulations and notices

31. The responsible Member may, by notice in the *Gazette* and after consultation with the board, make regulations prescribing –

(a) any matter which is required or permitted to be prescribed in terms of this Act; or

(b) any administrative or procedural matter necessary to give effect to the provisions of this Act.

Delegations

32.(1) The responsible Member may delegate to the Head of Department –

(a) any power conferred on the responsible Member by this Act, except the power to make regulations, in terms of section 32, or

(b) any duty imposed on the responsible Member by this Act, except any duty regarding the appointment, and termination of office, of the members of the board contemplated in sections 7 and 13.

(2) The board may delegate to the Chief Executive Officer any power or duty conferred or imposed on the board by this Act.

(3) Any power or duty delegated in terms of subsection (1), or (2) must be exercised or performed subject to such conditions as the person or body that made the delegation

considers necessary.

(4) Any delegation in terms of subsection (1) or (2) –

- (a) must be in writing;
- (b) must not prohibit the person or body that made the delegation from exercising that power or performing that duty; and
- (c) may at any time be withdrawn or amended in writing by that person or body.

General offences pertaining to Board

33.(1) A member of the board, a member of staff, advisor, agent or other person employed by or acting on behalf of the Board commits an offence if he or she directly or indirectly accepts any unauthorised fee or reward from any person in respect of or in connection with any service rendered or anything done or offered by the Board.

(2) Any person commits an offence if he or she, in respect of or in connection with any service rendered or anything done or offered by the Board, bribes or attempts to bribe, or corruptly influences or attempts to corruptly influence, any member of staff or any adviser, agent or other person employed by or acting on behalf of the Board or board.

(3) Any person who falsely claims that he or she is authorised to charge or collect fees on behalf of or by direction of the Board, commits an offence.

(4) Any person who obstructs the board, including any officer or agent of the Board, in the exercise of any powers of the Board or board in terms of this Act, commits an offence.

Penalties

34. Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding 5 years.

Transitional arrangements and validation in respect of repeal of North West Parks Board Act and North West Tourism Board Act

35.(1)(a) Since the North West Parks and Tourism Board is the legal successor in law to the North West Parks Board and the North West Tourism Board, all assets, liabilities and responsibilities of the North West Parks Board and the North West Tourism Board accrue to the North West Parks and Tourism Board; and

(b) Persons who, on the day before the date of commencement of this Act, were members of staff of the North West Parks Board and the North West Tourism Board are regarded as having been appointed in terms of section 20 of this Act with the retention of all rights and benefits.

(2) Any act, determination, designation, decision, matter or any other thing done, made, taken, executed or carried out or purported to have been done, made, taken, executed or carried out by the North West Parks Board and the North West Tourism Board, the Chief Executive Officers, officers or members of staff of the North West Parks Board and the North West Tourism Board or the responsible Members in terms of or in pursuance of the repealed Acts, to the date of commencement of this Act, is not invalid by reason of –

(a) the regulations referred to in the repealed Acts not having been published by the responsible Members; or

(b) any procedure, process, requirement, condition or detail referred to in the repealed Acts not having been determined or prescribed by regulation, as contemplated in the repealed Acts.

(3) In achieving the objects contemplated in subsections (1) and (2) the responsible Member may establish a task team to deal with matters related thereto.

Repeal of laws

36. This North West Parks Board Act, 2015 (Act No 3 of 2015) and the North West Tourism Board Act, 2015 (Act No 2 of 2015), are hereby repealed.

Short title

37. This Act is called the North West Parks and Tourism Board Act, 2019 and comes into operation on a date to be determined by the responsible Member.

SCHEDULE 1
CODE OF CONDUCT FOR BOARD MEMBERS
(Section 8(10))

General conduct of board members

1. A board member –

- (a) must perform the functions allocated to him or her in good faith, diligently, honestly and in a transparent manner;
- (b) must fulfil his or her role in an efficient manner;
- (c) may not conduct himself or herself in a disgraceful, improper or unbecoming manner;
- (d) must comply with any applicable legislation;
- (e) must act in the best interest of the board;
- (f) may not embark on actions that would create division within the board;
- (g) may not refuse to provide any service to a person on political or ideological grounds;
- (h) must foster good relations with the organs of state with whom he or she interacts; and
- (i) must disclose gifts received.

Attendance at meetings

2. A member of the board must attend each meeting of the board and of a committee of which that member of the board is a member, except when –

- (a) leave of absence is granted in terms of an applicable law or as determined by the rules of the board; or
- (b) that member of the board is required in terms of this Code to withdraw from the meeting.

Sanctions for non-attendance of meetings

3.(1) The responsible Member may impose a sanction as determined by the responsible Member on a member of the board for –

- (a) not attending a meeting which that member of the board 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 board, who is absent from three or more consecutive meetings of the board, or from three or more consecutive meetings of a committee of the board, which that member of the board is required to attend in terms of item 2, must be removed from office as a member of the board, by the responsible Member.

(3) The responsible Member must inform the Premier of the removal of the member of the Board.

Disclosure of interests

4.(1) A member of the board must –

(a) disclose to the board; or to any committee of the board of which that member of the board is a member, any direct or indirect personal or private business interest that that member of the board, or any spouse, partner or business associate of that member of the Board, may have in any matter before the board or the committee of the board; and

(b) withdraw from the proceedings of the board or committee of the board when

that matter is considered by the board or its committee, unless the board or its committee decides that the member of the board's direct or indirect interest in the matter is trivial or irrelevant.

(2) A member of the board 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 board, must disclose full particulars of the benefit of which the member of the board is aware at the first meeting of the board at which it is possible for the member of the board to make the disclosure.

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

Personal gain

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

(2) Except with the prior consent of the board, a member of the board may not –

(a) be a party to or beneficiary under a contract for –

(i) the provision of goods or services to the Board; or

(ii) the performance of any work otherwise than as a member of the Board and for the board;

(b) obtain a financial interest in any business of the board; or

(c) for a fee or other consideration appear on behalf of any other person before the Board or its committee.

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

Declaration of interests

6.(1) When appointed, a member of the board must, within 10 days, declare, in writing, to an officer of the board designated by the responsible Member the following financial interests held by that member of the Board –

- (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 board must be declared, in writing, to the officer referred to in sub-item (1) annually.

(3) Gifts received by a member of the board in excess of an amount as may be prescribed by notice in the Provincial Gazette from time to time, must also be declared in accordance with sub-item (1).

(4) The board 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.

(5) The declaration of interests and gifts contemplated in this item must substantially comply with the format of Annexure A to this Schedule, and must be completed annually where necessary, in order to comply with the provisions of sub-item (2).

Rewards, gifts and favours

7. A member of the board 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 board or before a committee of the board of which that member of the board is a member;
- (b) persuading the board or any committee of the board in regard to the exercise of any power, function or duty;
- (c) making a representation to the Board or any committee of the board; or
- (d) disclosing privileged or confidential information.

Unauthorised disclosure of information

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

(2) For the purpose of this item "privileged or confidential information" includes any information –

- (a) determined by the board or committee of the board to be privileged or confidential;
- (b) discussed in closed session by the board or its committee;
- (c) of which disclosure 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 information in terms of national legislation.

Breach of Code of Conduct

9.(1) If the board, on reasonable suspicion, is of the opinion that a provision of the Code of Conduct has been breached, the board must report such breach to the responsible Member.

(2) The responsible Member 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 board should be suspended or removed from office.

(3) If the responsible Member is of the opinion that a member of the board has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the responsible Member may –

- (a) Warn, reprimand or suspend the member of the board for a period and on conditions determined by the responsible Member; or
- (b) remove the member of the board from office.

(2)(a) Any member of the board who has been warned, reprimanded, suspended or removed in terms of sub-item (3) may, within 14 days of having been notified of the decision of the responsible Member, appeal to the Premier in writing, setting out the reasons on which the appeal is based.

(b) A copy of the appeal must be provided to the responsible Member.

(c) The responsible Member 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 responsible Member and inform the member of the board, the board and the responsible Member of the outcome of the appeal.

(4) Any investigation in terms of this item must be conducted in accordance with the rules of natural justice.

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

**SCHEDULE 2
DECLARATION OF INTERESTS AND GIFTS**

(Section 8(10))

I, the undersigned: _____
(Full names)

Identity number: _____

Postal address: _____

Residential address: _____

Telephone number: _____

Fax number: _____

hereby certify that the following information is complete and correct to the best of my knowledge:

1. Shares and other financial interests

| Number of shares/ Extent of financial interests | Nature | Nominal Value | Name of Company/Entity |
|---|--------|---------------|---------------------------|
| | | | |
| | | | |
| | | | |

2. Directorships and partnerships

| Name of corporate entity or partnership | Type of business | Amount of Remuneration |
|--|------------------|---------------------------|
| | | |
| | | |
| | | |

3. Consultancies

| Name of client | Nature | Type of business activity | Value of any benefits received |
|-------------------|--------|------------------------------|-----------------------------------|
| | | | |
| | | | |
| | | | |

4. Sponsorships

| Source of assistance/ sponsorship | Description of assistance/ sponsorship | Value of assistance/ sponsorship |
|--------------------------------------|---|-------------------------------------|
| | | |
| | | |
| | | |

5. Gifts and hospitality from a source other than a family member

| Description | Value | Source |
|-------------|-------|--------|
| | | |
| | | |
| | | |

6. Land and property

| Description | Extent | Area | Value |
|-------------|--------|------|-------|
| | | | |
| | | | |
| | | | |

SIGNATURE

PLACE: _____

DATE: _____

OATH/AFFIRMATION

1. I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

(a) Do you know and understand the contents of the declaration?

Answer _____.

(b) Do you have any objection to taking the prescribed oath or affirmation?

Answer _____.

(c) Do you consider the prescribed oath or affirmation to be binding on your conscience?

Answer _____.

2. I certify that the deponent has acknowledged that she/he knows and understands the contents of this declaration. The deponent uttered the following words: "I swear that the contents of this declaration are true, so help me God." / "I truly affirm that the contents of the declaration are true". The signature/ mark of the deponent has been affixed to the declaration in my presence.

COMMISSIONER OF OATHS/JUSTICE OF PEACE

Full first names and surname: _____
 (Block letters)

Designation: _____ *Ex Officio* Republic of South Africa

Street address of Institution: _____

Date: _____ Place: _____

Signature: _____

SIGNATURE OF RESPONSIBLE MEMBER

DATE _____

NAME OF RESPONSIBLE MEMBER

PORTFOLIO: _____

**MEMORANDUM ON THE OBJECTS ON THE
NORTH WEST PARKS AND TOURISM BOARD BILL, 2019**

1. BACKGROUND

1.1 A Resolution to merge the North West Parks Board and the North West Tourism Board, thereby establishing the North West Parks and Tourism Board was taken by the North West Provincial Executive Council. In order to give effect to the above Exco Resolution, promulgation of an Act establishing a new public entity to be known as the North West Parks and Tourism Board, thereby disestablishing the North West Parks Board and the North West Tourism Board through repeal of the North West Tourism Board Act, 2015 (Act No 3 of 2015) and the North West Parks Board Act, 2015 (Act No 3 of 2015), is imperative. This Act seeks to provide for –

- (a) the establishment of the North West Parks and Tourism Board;
- (b) determination of the objects, powers, duties and functions of the North West Parks and Tourism Board;
- (c) the manner in which the North West Parks and Tourism Board is to be managed, governed, staffed and financed;
- (d) the management and control of protected areas in the North West Province;
- (e) the promotion of tourism in the North West Province;
- (f) the repeal of the North West Parks Board Act, 2015 (Act No 2 of 2015) and the North West Tourism Board Act, 2015 (Act No 3 of 2015); and
- (g) the disestablishment of the North West Parks Board and the North West Tourism Board,

in the North West Province.

1.2 This Act further seeks to provide the legal basis for the North West Parks and Tourism Board to assume responsibility as successor in law to the North West Parks Board and the North West Tourism Board thereby assuming their powers, duties and functions and the accrual and vesting of their assets and liabilities.

1.3 Section 104, read with Part A of Schedule 5 of the Constitution of the Republic of South Africa, 1996 assigns Provinces the concurrent competence to legislate on environment, nature

conservation and tourism.

2. CLAUSE BY CLAUSE ANALYSIS

Clause 1.

Clause 1 defines certain terms in the context they are used in the Act.

Clause 2.

Clause 2 provides for the objects of the Act.

Clause 3.

Clause 3 provides for the establishment of the North West Parks and Tourism Board.

Clause 4.

Clause 4 provides for the objects of the North West Parks and Tourism Board.

Clause 5.

Clause 5 provides for the Powers, duties and functions of the North West Parks and Tourism Board.

Clause 6.

Clause 6 provides for the powers of responsible Member.

Clause 7.

Clause 7 provides for the composition of the board of Directors of the North West Parks and Tourism Board.

Clause 8.

Clause 8 provides for the disqualification from being appointed to the board of the North West Parks and Tourism Board.

Clause 9.

Clause 9 provides for the term of office of members of board of the North West Parks and Tourism Board.

Clause 10.

Clause 10 provides for the declaration of financial or other interests by nominees to board of the North West Parks and Tourism Board.

Clause 11.

Clause 11 provides for consequences for failure to declare financial or other interests.

Clause 12.

Clause 12 provides for the recusal of a member of board of the North West Parks and Tourism Board.

Clause 13.

Clause 13 provides for vacancies, removal and resignation from office of members of board of the North West Parks and Tourism Board.

Clause 14.

Clause 14 regulates meetings of board of the North West Parks and Tourism Board.

Clause 15.

Cause 15 provides for the establishment of committees of the board. of the North West Parks and Tourism Board.

Clause 16.

Clause 16 provides for the remuneration of members of board of the North West Parks and Tourism Board.

Clause 17.

Clause 17 provides for the appointment of the Chief Executive Officer of the North West Parks and Tourism Board.

Clause 18.

Clause 18 provides for the functions of the Chief Executive Officer.

Clause 19.

Clause 19 provides for the resignation and removal from office of the Chief Executive Officer.

Clause 20.

Clause 20 provides for the appointment of staff of Board.

Clause 21.

Clause 21 provides for the secondment or transfer of staff from the public service to the North West Parks and Tourism Board.

Clause 22.

Clause 22 provides for the Funds of the North West Parks and Tourism Board.

Clause 23.

Clause 23 provides for financial management.

Clause 24.

Clause 24 regulates the audit and annual report of the North West Parks and Tourism Board.

Clause 25.

Clause 25 provides for the financial year of the North West Parks and Tourism Board.

Clause 26.

Clause 26 regulates matters pertaining to the immovable property of the North West Parks and Tourism Board.

Clause 27.

Clause 27 provides for legal proceedings against the North West Parks and Tourism Board.

Clause 28.

Clause 28 provides for the security of confidential information held by the North West Parks and Tourism Board.

Clause 29.

Clause 29 provides for procedure for the dissolution of the North West Parks and Tourism Board.

Clause 30.

Clause 30 prohibits the unauthorised use of name of the North West Parks and Tourism Board.

Clause 31.

Clause 31 provides for Regulations and notices.

Clause 32.

Clause 32 provides for delegations.

Clause 33.

Clause 33 provides for general offences pertaining to the North West Parks and Tourism Board.

Clause 34.

Clause 34 provides for penalties.

Clause 35.

Clause 35 provides for transitional arrangements and validation in respect of repeal of North West Parks Board Act and North West Tourism Board Act.

Clause 36.

Clause 36 provides for the repeal of laws.

Clause 37.

Clause 37 provides for the short title.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

Since the establishment of the North West Parks and Tourism Board affects two existing public entities there are organisational and personnel implications that are foreseen. As part of the merger consultations with organised labour in terms of the Labour Relations Act will be embarked upon and where duplication of posts are identified transfers to the public service may also be considered.

4. FINANCIAL IMPLICATIONS FOR PROVINCIAL GOVERNMENT

4.1 Since the establishment of the North West Parks and Tourism Board affects two existing public entities, there are financial implications foreseen.

4.2 These financial implications must be addressed in the business case for the merger of the two affected entities.

5. DEPARTMENTS/ BODIES/ PERSONS CONSULTED

5.1 The Bill has been drafted in consultation with the key staff members in the Department and the Provincial Treasury;

5.2 The Accounting Authority of the North West Parks Board;

5.3 The Accounting Authority of the North West Tourism Board; and

5.4 The office of the Chief State Law Advisor.

6. CONTACT PERSON:

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Position : Manager: Legal Services
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