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FREE STATE PROVINCE

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KANTOOR VAN DIE PREMIER

OFFICE OF THE PREMIER

No. 7 24 Januarie 2000

No. 7 24 January 2000

Hierby word bekend gemaak dat die Premier die onderstaande Wet bekragtig het, wat hierby ter algemene inligting gepubliseer word:-

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:-

No. 7 van 1999: Vrystaat Provinsiale Behuisingswet, 1999

No. 7 of 1999: Free State Provincial Housing Act, 1999

ACT

To provide for the promotion and facilitation of housing development in the Province; to provide for the establishment of the Free State Provincial Housing Board and the Free State Provincial Housing Development Fund; to provide for the functions of the Member of the Executive Council responsible for housing with regard to housing development; and to provide for matters connected therewith.

*(Afrikaans text signed by the Premier)
(Assented to 21 January 2000)*

PREAMBLE

WHEREAS in terms of section 26 of the Constitution of the Republic of South Africa, 1996, everyone has the right to have access to adequate housing, and the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

AND WHEREAS the Provincial Legislature of the Free State Province recognise that –

housing, as adequate shelter, fulfils a basic human need;
housing is both a product and a process;
housing is a product of human endeavour and enterprise;
housing is a vital part of integrated developmental planning;
housing is a key sector of the provincial economy;
housing is vital to the socio-economic well-being of the community;

BE IT THEREFORE ENACTED by the Provincial Legislature of the Free State Province, as follows :-

Definitions

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

“**Board**” means the Free State Provincial Housing Board established by section 2;

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

15 “**Department**” means the provincial department responsible for the administration of housing matters in the Province;

“**executive committee**” means the executive committee of the Board appointed under section 8;

20 “**former Board**” means the Provincial Housing Development Board for the Free State referred to in section 8(1) of the Housing Act;

“Fund” means the Free State Provincial Housing Development Fund established by section 10;

5 “Head of Department” means the officer in charge of the Department;

“Housing Act” means the Housing Act, 1997 (Act No 107 of 1997);

10 “housing development” means the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all permanent residents of the Province will, on a progressive basis, have access to –

- 15 (a) permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and
- (b) potable water, adequate sanitary facilities and domestic energy supply;

20 “MEC” means the Member of the Executive Council of the Province responsible for housing matters in the Province;

“Minister” means the Minister of Housing;

25 “municipality” –

- 30 (a) until the legislation envisaged in section 155(2) of the Constitution takes effect, means any local government body vested with municipal legislative and executive jurisdiction (whether on an exclusive or a shared basis) in respect of a particular area in terms of the Local Government Transition Act, 1993 (Act No 209 of 1993), in compliance with section 155(1) of the Constitution;
- (b) as from the date when that legislation takes effect, means any municipality as contemplated in that legislation;

35 “national housing policy” means the national housing policy as defined in section 1 of the Housing Act;

40 “national housing programme” means the national housing programme as defined in section 1 of the Housing Act;

“prescribe” means prescribe by regulation;

“Province” the Free State Province as provided for in section 103 of the Constitution;

45 “provincial housing policy” means the provincial policy in respect of housing development determined by the MEC under section 9(a);

“provincial housing programme” means any provincial policy framework to facilitate housing development, including, but not limited to, any other measure or arrangement to –

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- (a) assist persons who cannot independently provide for their own housing needs;
 - (b) facilitate housing delivery; or
 - (c) rehabilitate and upgrade existing housing stock, including municipal services and infrastructure.
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Establishment of Free State Provincial Housing Board and abolition of former Board

2. (1) A juristic person, known as the Free State Provincial Housing Board, is hereby established.

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(2) (a) As from the date on which this subsection comes into operation –

(i) the Provincial Housing Development Board for the Free State and its executive committee, referred to in section 8(1) of the Housing Act, shall cease to exist and the Board shall for all purposes be regarded as the legal successor of the former Board;

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(ii) all assets, liabilities, rights and obligations of the former Board shall vest in the Board;

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(iii) any reference in the Housing Act to the former Board shall be construed as a reference to the Board; and

(iv) a member or office-bearer of the former Board shall cease to be such a member or office-bearer and shall no longer be entitled to any remuneration or allowance by virtue of his or her appointment as such a member or office-bearer.

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(b) This subsection shall come into operation on a date determined by the MEC by notice in the *Provincial Gazette*.

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Composition of Board

3. (1) (a) The Board shall consist of a chairperson, a vice-chairperson and not more than seven other members appointed by the MEC with the approval of the Executive Council of the Province.

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(b) The members of the Board must be appointed only after –

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- (i) the MEC has through the media and by notice in the *Provincial Gazette* invited nominations of persons as candidates for the respective positions on the Board; and
- (ii) the committee for housing of the Provincial Legislature has made recommendations to the MEC in relation thereto within 30 days after receipt of the nominations referred to in paragraph (b)(i) after a transparent and open process of considering persons so nominated.
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- (c) The need for the Board to reflect broadly the race and gender composition of South Africa and the geographic composition of the Province must be considered when members are appointed.
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- (d) A member or alternate member of the Board must –
- (i) be a fit and proper person; and
- (ii) have knowledge, qualifications or experience in the field of housing development.
- 20
- (e) If a member of the Board other than its chairperson or vice-chairperson so requests, the MEC may appoint an alternate member for that member to act in his or her stead when he or she is absent from a meeting of the Board or its executive committee.
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- (f) When –
- (i) the chairperson of the Board is absent or unable to fulfil any function of the chairperson, the vice-chairperson of the Board must act as chairperson during such absence or incapacity;
- 30
- (ii) both the chairperson and vice-chairperson of the Board are absent or unable to fulfil any function of the chairperson, the MEC must designate any other member of the Board to act as chairperson during such absence or incapacity.
- 35
- (2) (a) A member of the Board is, subject to paragraph (b), appointed for the period determined by the MEC at his or her appointment, but not more than three years, and may be reappointed on the termination of such period.
- 40
- (b) A member or alternate member of the Board ceases to hold office if –

- 5
- (i) he or she resigns;
- (ii) he or she becomes subject to any of the disqualifications referred to in subsection (3)(a); or
- (iii) the MEC, with the approval of the Executive Council of the Province, terminates his or her office for reasons which are just and fair.
- 10 (c) The MEC must fill any vacancy in any office in respect of the Board in accordance with the applicable provisions of subsection (1).
- 15 (3) (a) A person shall not be appointed or remain a member or alternate member of the Board if such person –
- (i) is a minor or suffers from another legal disability;
- (ii) is or becomes an unrehabilitated insolvent;
- 20 (iii) has at any time been, or is, convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Corruption Act, 1992 (Act No 94 of 1992), or any offence involving dishonesty;
- 25 (iv) without the leave of the Board, is absent from three consecutive meetings of the Board; or
- (v) is or becomes a member of Parliament, the Provincial Legislature or a Municipal Council.
- 30 (b) A person shall, prior to his or her appointment as a member or alternate member of the Board, submit to the MEC a written statement in which it is declared whether or not he or she is disqualified in terms of paragraph (a).

35 **Meetings of Board**

- 40 4. (1) (a) The first meeting of the Board shall be held on such a date and at such a time and place as the chairperson may determine, and all meetings thereafter shall be held on such dates and at such times and places as the Board may determine.
- (b) The chairperson or, in his or her absence, the vice-chairperson –

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- (i) may convene a special meeting of the Board;
- (ii) must convene such meeting within 14 days of the receipt of a written request signed by not less than five members of the Board to convene such meeting.
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- (2) The quorum for a meeting of the Board is more than 50 percent of its members.
- (3) The Board determines, subject to the directions of the MEC, the procedure at its meetings.
- 15
- (4) A decision of the Board shall be taken by a majority of the votes of the members present at a meeting of the Board, and in the event of an equality of votes on any matter, the chairperson shall have a casting vote in addition to his or her deliberative vote.
- 20
- (5) (a) A member or alternate member of the Board may not be present during, or take part in, the discussion of, or the making of a decision on, any matter before the Board in which –
- (i) such member or his or her spouse, immediate family member, business partner or associate or employer, other than the State; or
- 25
- (ii) the business partner or associate or employer, other than the State, of his or her spouse,
- has a direct or indirect financial interest.
- 30
- (b) A member or alternate member of the Board must, in the manner and at the intervals the MEC determines, disclose any direct or indirect financial interest –
- 35
- (i) such member or his or her spouse, immediate family member, business partner or associate or employer, other than the State; or
- (ii) the business partner or associate or employer, other than the State, of his or her spouse,
- 40
- has in housing development.
- (c) For the purposes of this subsection –

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- (i) "spouse" includes a person with whom the member lives as if they were married or with whom the member habitually cohabits;
- (ii) "immediate family member" means a parent, child, brother or sister.
- (d) If at any stage during the course of any proceedings of the Board it appears that a member or alternate member of the Board has or may have any interest as referred to in paragraph (a) –
- 10
- (i) that member or alternate member shall forthwith and fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining members of the Board to discuss the matter and determine whether that member or alternate member should be prohibited from participating in the further proceedings at such meeting by reason of a conflict of interests; and
- 15
- (ii) such disclosure, and the decision taken by the remaining members of the Board in that regard, shall be recorded expressly in the minutes of the meeting in question.
- 20
- (e) If any member or alternate member of the Board fails to disclose any interest referred to in paragraph (a) or if, having such an interest, he or she attends or in any manner participates in or directly influences the proceedings at the meeting concerned, the relevant proceedings shall be null and void.
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Remuneration and allowances of members and alternate members of Board

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5. (1) Members or alternate members of the Board who are not in the full-time employment of the State, shall in respect of their services be paid such remuneration and allowances as may be determined by the MEC with the approval of the Member of the Executive Council responsible for finance in the Province.
- 35
- (2) The remuneration and allowances of the persons referred to in subsection (1), may differ according to the different offices held by them or the different functions performed by them.

Administrative functions of Board

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6. The administrative functions of the Board and its executive committee must be performed by officers in the employment of the Department who are designated by the MEC.

Functions of Board

- 45
7. (1) The Board –

- 5 (a) must administer every national housing programme and every provincial housing programme, and for this purpose may, in accordance with such programme –
- (i) approve the financing thereof out of money paid into the Fund; and
- 10 (ii) appoint such agents as are necessary to assist the Board in the administration thereof;
- (b) must monitor the implementation of national housing policy and provincial housing policy in the Province;
- 15 (c) may of its own accord, and must at the request of the MEC, advise the MEC on any matter relating to housing development in the Province;
- (d) may exercise or perform any powers conferred or duties imposed by the Housing Act on the former Board.
- 20 (2) (a) The Board must, in the performance of its functions and in the management, administration and disposal of its assets, liabilities, rights and obligations, carry out the policy directives, if any, of the MEC.
- 25 (b) When so requested by the MEC, the chairperson of the Board in question must report to the MEC on the activities of the Board.
- 30 (c) The MEC must, within 90 days after 31 December of each year or, if the Provincial Legislature is not then in session, within 14 days after the commencement of its next session, submit to the Provincial Legislature a report on the activities of the Board in terms of this Act and the Housing Act in respect of the previous year.

Executive committee of Board

- 35 8. (1) The Board may, with the approval of the MEC, appoint an executive committee consisting of the chairperson and vice-chairperson of the Board, and not more than four other members of the Board.
- 40 (2) The chairperson or, in his or her absence, the vice-chairperson of the Board presides at meetings of the executive committee or, in the absence of both the chairperson and vice-chairperson, the meeting must be chaired by a member of the Board designated by the members of the executive committee present at the meeting.
- 45 (3) The executive committee must perform such functions of the Board as the Board determines, but may not, except in so far as the Board otherwise directs, alter or rescind any decision of the Board.

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- (4) The Board may alter or rescind any decision of the executive committee, but may not alter or rescind any such decision under or pursuant to which any person has acquired any right or incurred any obligation or liability, unless the person concerned has consented thereto.
- (5) The quorum for a meeting of the executive committee is more than 50 per cent of its members.
- 10 (6) A decision of the executive committee shall be taken by a majority of the votes of the members present at a meeting of the executive committee.
- (7) The Board determines, subject to the directions of the MEC, the procedure at meetings of the executive committee.

15 **Functions of MEC**

9. The MEC must, in addition to any other functions conferred or imposed upon him or her by or under this Act or the Housing Act –
- 20 (a) determine provincial policy in respect of housing development;
- (b) promote the adoption of provincial legislation to ensure effective housing delivery;
- 25 (c) take all reasonable and necessary steps to support and strengthen the capacity of municipalities to effectively exercise their powers and perform their duties in respect of housing development;
- (d) co-ordinate housing development in the Province;
- 30 (e) when a ^{local}municipality cannot or does not perform a duty imposed by or under the Housing Act, intervene by taking any appropriate steps in accordance with section 139 of the Constitution to ensure the performance of such duty; and
- 35 (f) prepare and maintain a multi-year plan in respect of the execution in the Province of every national housing programme and every provincial housing programme.

Free State Provincial Housing Development Fund

- 5 10. (1) There is hereby established a fund to be known as the Free State Provincial Housing Development Fund into which shall be deposited all moneys which become payable to the Board and from which shall be met all expenditure incurred by the Board in the performance of its functions under this Act or the Housing Act.
- (2) The Fund consists of –
- 10 (a) all money allocated to the Fund under section 12(1)(a) of the Housing Act;
- (b) all money appropriated by the Provincial Legislature to strengthen the capital of the Fund; and
- 15 (c) contributions from any source for the purposes of housing development.
- (3) Notwithstanding anything to the contrary in the Exchequer Act, 1994 (Act No 1 of 1994), all the available money of the Fund may be utilised for the purposes as set out in this Act or the Housing Act.
- 20 (4) Any money in the Fund which is not required for immediate use, must be invested with the Commissioner for Public Investments.
- (5) The Head of Department –
- 25 (a) is for the purposes of the Exchequer Act, 1994, and the regulations made thereunder, the accounting officer in relation to the money in the Fund;
- (b) shall, subject to the provisions of this Act, be responsible for the administration of the Fund and in particular for –
- 30 (i) all expenditure out of the Fund; and
- (ii) the collection for the credit of the Fund of all moneys due or accruing to the Board and the prosecution of all claims in favour of the Board, whether under contract or otherwise.
- 35 (6) The financial year of the Fund is 1 April of any year to 31 March of the following year.
- 40 (7) The MEC may, in consultation with the Member of the Executive Council responsible for finance in the Province, prescribe –

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- (a) the details of the management of the Fund;
- (b) the procedure relating to amounts issued from the Fund and the repayment to the Fund of amounts issued therefrom;
- 10 (c) the rates of interest to be charged in respect of moneys issued out of the Fund which may vary according to the purpose for which such moneys are to be used;
- (d) the manner in which the accounts of the Fund are to be kept; and
- (e) any other matter which he or she considers it necessary or expedient to prescribe in relation to the control of the Fund.
- 15 (8) (a) The Head of Department must as soon as possible after, but within four months of 31 March in each year, submit detailed statements signed by him or her showing the result of the previous year's transactions and the balance sheet of the Fund to the MEC.
- 20 (b) The MEC must without delay submit to the Provincial Legislature such statements and balance sheet.
- 25 (9) (a) The books and statements of account and balance sheet of the Fund must be audited by the Auditor-General.
- 30 (b) The Auditor-General may require any person (including any municipality, company or other body and any person in the employ of such municipality, company or body) to make available for examination all books, registers and documents in his or her possession or under his or her control which would, in the opinion of the Auditor-General, facilitate the carrying out of such audit.

Regulations

- 35 11. The MEC may make regulations in respect of any matter which is required to be prescribed by the MEC in terms of this Act or which is necessary or desirable in order to achieve the objectives of this Act, and such regulations may create offences and provide for penalties in respect thereof.

40 Delegation

12. (1) The MEC may –

- (a) delegate any power conferred on him or her by this Act, except the power to make regulations; or
- (b) assign any duty imposed upon him or her by this Act, except the duties referred to in sections 7(2)(c) and 10(8)(b),

to the Head of Department.

- (2) The Head of Department may –

- (a) delegate any power conferred on him or her by this Act or delegated to him or her in terms of subsection (1); or
- (b) assign any duty imposed upon him or her by this Act or assigned to him or her in terms of subsection (1), except any duty as accounting officer in terms of section 10(5),

to an officer of the Department.

- (3) The Head of Department or officer to whom any power has been so delegated or duty has been so assigned, must exercise such power or perform such duty subject to the conditions that the person who makes the delegation or assignment considers necessary.

- (4) Any such delegation or assignment –

- (a) must be in writing;
- (b) does not prevent the person who made the delegation or assignment from exercising such power or performing such duty himself or herself; and
- (c) may at any time be withdrawn in writing by such person.

Short title

13. This Act is called the Free State Provincial Housing Act, 1999.