

REPUBLIC OF SOUTH AFRICA

HOUSING DEVELOPMENT AGENCY BILL

*(As amended by the Select Committee on Public Services (National Council of Provinces)
(The English text is the official text of the Bill)*

(MINISTER OF HOUSING)

[B 1D—2008]

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BILL

To establish the Housing Development Agency; to provide for its functions and powers; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the State has a constitutional imperative to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right of everyone to have access to adequate housing in terms of section 26 of the Constitution;

AND WHEREAS a significant factor in the lack of adequate delivery of housing to low-income earners has been the delay in the identification, acquisition, assembly and release of state-owned and private land;

AND WHEREAS there is a need to establish the Housing Development Agency which must fast-track the processes of housing development;

AND WHEREAS in terms of section 3(4)(h) of the Housing Act, 1997, the Minister may establish and finance national institutions for the purposes of housing development, and supervise the execution of their mandate;

AND ACKNOWLEDGING that in terms of Schedule 4 of the Constitution housing is a functional area of concurrent national and provincial legislative competence;

AND FURTHER ACKNOWLEDGING that there are serious challenges that hinder the realisation of housing for all, that there is a need to accelerate the delivery of housing, to enhance and secure the required skills;

AND FURTHER ACKNOWLEDGING that there is an urgent need for government to address the increasing backlog in respect of housing delivery together with a critical shortage of skills and capacity to provide housing in some provinces and municipalities,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1.	In this Act, unless the context indicates otherwise—	
	“ acquire ” means to acquire in any manner, including by way of expropriation;	35
	“ Agency ” means the Housing Development Agency, established by section 3;	
	“ Board ” means the Governing Board contemplated in section 9;	
	“ chief executive officer ” means the chief executive officer appointed in terms of section 17;	
	“ chief financial officer ” means the chief financial officer appointed in terms of section 17;	40
	“ communal land ” means communal land as defined in section 1 of the Communal Land Rights Act, 2004 (Act No. 11 of 2004);	
	“ develop ” means improving or undertaking the development of land acquired by the Agency or the Agency giving subcontracts to developers to improve or to undertake the development of the acquired land by erecting buildings or structures for the purposes of housing delivery;	45
	“ Director-General ” means the Director-General in the national department responsible for housing;	
	“ land ” includes a right in land;	50
	“ landed property ” means land with improvements including buildings, structures and services;	
	“ mandate ” means the mandate of the Agency contemplated in section 3(4)(h) of the Housing Act, 1997 (Act No. 107 of 1997), and provided for in section 8 of this Act;	55
	“ Minister ” means the Minister responsible for housing;	
	“ municipality ” means a municipality as contemplated in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);	
	“ organ of state ” means an organ of state contemplated in section 239 of the Constitution of the Republic of South Africa, 1996;	60
	“ prescribe ” means to prescribe by regulation made under this Act;	

“priority housing development areas” means land identified by the Agency for housing purposes where buildings or structures will be built for the purpose of housing delivery;

“province” means a provincial government acting through the Member of the Executive Committee responsible for housing;

“Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“relevant authority” means provincial and local government including traditional authorities;

“this Act” includes regulations made under this Act.

Purpose of Act

2. The purpose of this Act is to provide for the—

- (a) establishment of the Agency which will facilitate the acquisition of land and landed property, in a way that complements the capacities of Government across all spheres;
- (b) objects, roles, powers and duties of the Agency; and
- (c) fast-tracking of land acquisition and housing development services for the purpose of creating sustainable human settlements.

Establishment of Agency

- 3. (1) The Housing Development Agency is hereby established as a juristic person.
- (2) The Agency operates as a national public entity with its executive authority vested in the Minister.

Objects of Agency

4. The objects of the Agency are to—

- (a) identify, acquire, hold, develop and release state, communal and privately owned land for residential and community purposes and for the creation of sustainable human settlements;
- (b) project manage housing development services for the purposes of the creation of sustainable human settlements;
- (c) monitor that there is centrally coordinated planning and budgeting of all infrastructure required for housing development; and
- (d) monitor the provision of all infrastructure required for housing development.

Role of Agency

5. (1) The Agency must, in consultation with the relevant owner, identify, acquire, hold, develop and release state, privately and communal owned land for residential and community purposes for the creation of sustainable human settlements.

(2) The Agency must ensure that there is funding for the provision of all infrastructure that is required for housing development in which it is involved.

(3) The Minister may, in consultation with the relevant MEC, where there is lack of capacity in any organ of state to identify, acquire, hold, develop and release land for residential and community purposes for the creation of sustainable human settlements—

- (a) advise the organ of state to conclude an agreement with the Agency to offer assistance in terms of the Agency’s skill and expertise; or
- (b) direct the Agency to engage with the organ of state with a view to conclude the agreement contemplated in paragraph (a).

(4) Nothing in this Act detracts from the power of a province and municipality to identify, acquire, hold, develop and release land for residential or community development without recourse to the Agency, in terms of their functions under the Housing Act, 1997 (Act No. 107 of 1997).

Land which may be acquired

6. (1) The Agency may, after consultation with the land owner, identify, acquire and hold land—
- (a) registered or vested in the State or any organ of state and which it is prepared to dispose of; 5
 - (b) privately owned; or
 - (c) communal land
- for residential or community development purposes.
- (2) Subject to section 25 of the Constitution of the Republic of South Africa, 1996, the Minister may expropriate land for the purposes of creating sustainable human settlements. 10
- (3) Sections 6 to 23 of the Expropriation Act, 1975 (Act No. 63 of 1975), apply with the changes required by the context to the expropriation of land, and a reference in that Act to—
- (a) Minister must be construed as a reference to the Minister responsible for housing; and 15
 - (b) section 2 must be construed as a reference to subsection (2).
- (4) Any consultation between organs of state in terms of this Act must be done in terms of Chapter 3 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005). 20

Functions of Agency

7. (1) The Agency must—
- (a) develop a development plan to be approved by the Minister in consultation with the relevant authorities in the provinces and municipalities;
 - (b) develop strategic plans with regard to the identification and acquisition of state, privately and communal owned land which is suitable for residential and community development; 25
 - (c) prepare necessary documentation for consideration and approval by the relevant authorities as may be required in terms of any other applicable law;
 - (d) monitor progress of the development of land and landed property acquired for the purposes of creating sustainable human settlements; 30
 - (e) enhance the capacity of organs of state including skills transfer to enable them to meet the demand for housing delivery;
 - (f) ensure that there is collaboration and intergovernmental and integrated alignment for housing development services; 35
 - (g) identify, acquire, hold, develop and release state, privately and communal owned land for residential and community development;
 - (h) undertake such project management services as may be necessary, including assistance relating to approvals required for housing development;
 - (i) contract with any organ of state for the purpose of acquiring available land for residential housing and community development for the creation of sustainable human settlement; 40
 - (j) assist organs of state in dealing with housing developments that have not been completed within the anticipated project period;
 - (k) assist organs of state with the upgrading of informal settlements; and 45
 - (l) assist organs of state in respect of emergency housing solutions.
- (2) In performing its functions, the Agency must—
- (a) ensure that residential and community developments are sustainable, viable and appropriately located;
 - (b) establish compliance and fraud prevention mechanisms to ensure the integrity of the Agency; 50
 - (c) ensure that job creation is optimised in the process of residential and community development;
 - (d) introduce and manage a land inventory and information system; and
 - (e) ensure that community participation takes place. 55
- (3) In performing its functions the Agency may—
- (a) declare priority housing development areas for residential and community purposes in accordance with integrated development plans and provincial spatial development frameworks;
 - (b) develop and submit a development plan for such priority housing development areas as contemplated in subsection 1(a); and 60

- (c) implement such measures as may be prescribed to fast-track housing development in the declared priority housing development areas.

Mandate

8. (1) The Minister must, after consultation with MINMEC, conclude a written mandate with the Agency as soon as possible, but not later than six months after the appointment of the Board. 5

(2) The mandate must—

- (a) contain the operational and performance indicators against which the performance of the Agency is measured;
- (b) contain specific service delivery targets that the Agency must attain; and 10
- (c) contain directions regarding the utilisation of any surplus revenue.

(3) The mandate may deal with any other matter that the Minister and the Agency agree on.

(4) The mandate must be reviewed every five years.

(5) The mandate must be consistent with this Act. 15

Governing Board

9. (1) The Board is responsible for governing the Agency.

(2) The Board consists of—

- (a) two executive members; and
- (b) seven non-executive members, which must include— 20
 - (i) a member designated by the Minister responsible for Public Works, to serve until substituted by that Minister;
 - (ii) a member designated by the Minister responsible for Land Affairs, to serve until substituted by that Minister;
 - (iii) a member designated by the Minister responsible for Provincial and 25
 - Local Government, to serve until substituted by that Minister;
- (c) a Chairperson appointed by the Minister;
- (d) a Deputy Chairperson appointed by the Minister.

(3) The executive members may not be the Chairperson or Deputy Chairperson of the Board or members of any committee of the Board. 30

(4) The Chairperson and Deputy Chairperson must be appointed by the Minister from the non-executive members of the Board.

(5) The Board may designate any other non-executive member to act as chairperson if both the Chairperson and Deputy Chairperson are absent or unable to perform any function. 35

Functions of Board

10. The Board—

- (a) must give effect to the mandate contemplated in section 8 and to the strategy of the Agency in order to achieve the objectives of the Agency;
- (b) is the accounting authority of the Agency; 40
- (c) takes decisions on behalf of the Agency and gives effect to those decisions;
- (d) provides guidance to the chief executive officer concerning the exercise of the functions of the Agency;
- (e) must notify the Minister immediately of any matter that may prevent or materially affect the achievement of the objects or financial targets of the 45
 - Agency; and
- (f) must refer to the Minister any matter concerning the adverse functioning of the Agency.

Persons disqualified from membership of Board

11. A person may not be appointed as or remain a member of the Board if that person— 50

- (a) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;
- (b) has been declared by a court to be mentally unfit;

- (c) has been convicted, in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
- (d) has been convicted of any other offence, whether in the Republic or elsewhere, committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine; 5
- (e) has been, or is, removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
- (f) is otherwise disqualified from serving as a member of a Board in terms of the Companies Act, 1973 (Act No. 61 of 1973); or 10
- (g) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of the duties of a member of the Board.

Appointment and removal of members of Board

12. (1) For the appointment of non-executive members, other than those to be designated by any other Minister, the Minister must by notice in two newspapers and the *Gazette* invite all interested persons to submit, within the period and in the manner mentioned in the notice, the names of persons fit to be appointed as members of the Board. 15

(2) The Minister must appoint a nomination committee to make recommendations to the Minister for the appointment of the non-executive members of the Board. 20

(3) In establishing a nomination committee, the Minister must ensure that the committee is broadly representative of the various racial groups and geographic areas of the Republic and that both males and females are represented.

(4) The nomination committee, in making a recommendation for appointment to the Board by the Minister, must consider— 25

- (a) the proven skills, knowledge and experience of a candidate in areas of—
 - (i) risk management;
 - (ii) financial management;
 - (iii) township planning;
 - (iv) project management; 30
 - (v) governance compliance;
 - (vi) transformation and diversity equity; or
 - (vii) land development, management, necessary for the efficient and effective performance of the Board's functions; and 35
- (b) the need for representation of historically disadvantaged persons.

(5) If a suitable person or the required number of suitable persons are not nominated as contemplated in subsection (4), the Minister may call for further nominations in the manner set out in subsection (1).

(6) The Minister must appoint the non-executive members of the board and, by notice in the *Gazette*, within 30 days thereafter, publish the names of the members so appointed and the date of commencement of their terms of office. 40

(7) A non-executive member of the Board—

- (a) holds office for a period not exceeding three years;
- (b) may be reappointed but may not serve for more than two terms consecutively; 45
- (c) is appointed according to the terms and conditions determined by the Minister;
- (d) must be paid from the revenue of the Agency such remuneration and allowances as may be determined by the Minister from time to time, taking into consideration regulations and guidelines issued by the Minister for the Public Service and Administration and the National Treasury; 50
- (e) is appointed on a part-time basis.

(8) If, after due process, it is found that a Board member has become disqualified from membership of the Board in terms of section 11, the Minister must remove the member from the Board by written notice to the member. 55

(9) Any vacancy occurring on the Board must, subject to section 13, be filled in the same way as the departing member was appointed to the Board.

Resignation, removal from office and vacancies

- 13.** (1) A member of the Board may resign by giving to the Minister—
- (a) one month's written notice; or
 - (b) less than one month's written notice, with the approval of the Minister.
- (2) A member of the Board designated in terms of section 9(2)(b)(i), (ii) and (iii) may resign by giving written notice jointly to the Minister and the relevant Minister who may appoint the member. 5
- (3) The Minister may remove a member of the Board if that member has—
- (a) become disqualified;
 - (b) acted contrary to this Act; 10
 - (c) failed to disclose an interest or withdraw from a meeting as required; or
 - (d) neglected to properly perform the functions of his or her office.

Fiduciary duty and disclosure

- 14.** (1) A member of the Board must, upon appointment, submit to the Minister and the Board a written statement in which it is declared whether or not that member has any direct or indirect financial interest which could reasonably be expected to compromise the Board in the performance of its functions. 15
- (2) A member of the Board may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect financial interest. 20
- (3) If a member of the Board acquires an interest that could reasonably be expected to be an interest contemplated in this section, he or she must immediately in writing declare that fact to the Minister and the Board.
- (4) If an organisation or enterprise in which a member of the Board has an interest contemplated in this section is requested to offer its services to the Agency, or is in the process of concluding any agreement with the Agency, including an agreement in respect of the alienation of land to the Agency, the organisation or enterprise must immediately, in writing, declare the member's interest to the Minister and the Board. 25
- (5) A Board member must perform his or her functions of office and at all times exercise the utmost good faith, honesty and integrity, care and diligence in performing a member's functions, and in furtherance of this duty, without limiting its scope, must— 30
- (a) take reasonable steps to inform himself or herself about the Agency, its business and activities and the circumstances in which it operates;
 - (b) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions; 35
 - (c) regularly attend all meetings;
 - (d) exercise an active and independent discretion with respect to all matters to be decided by the Board;
 - (e) exercise due diligence in relation to the business of, and necessary preparation for and attendance at meetings of, the Board and any committee to which the Board member is appointed; 40
 - (f) comply with any internal code of conduct that the Agency may establish for Board members;
 - (g) not engage in any activity that may undermine the integrity of the Agency; 45
 - (h) not make improper use of their position as a member or of information acquired by virtue of his or her position as a member;
 - (i) treat any confidential matters relating to the Agency, obtained in the capacity as a Board member, as strictly confidential and not divulge them to anyone without the authority of the Agency or as required as part of that person's official functions as a member of the Board. 50
- (6) This section must be interpreted as adding to, and not deviating from, any law relating to the criminal or civil liability of a member of a governing body, and criminal or civil proceedings that may be instituted in respect of such a liability.
- (7) A member who contravenes or fails to comply with these provisions is guilty of misconduct and commits an offence. 55

Committees

- 15.** (1) The Board may from time to time appoint one or more committees.
- (2) The Board must—
- (a) assign members of the Board to serve on a committee, based on their knowledge and skills; 5
 - (b) determine the—
 - (i) terms of reference of a committee;
 - (ii) composition of a committee;
 - (iii) tenure of members on a committee;
 - (iv) reporting mechanisms of a committee; and 10
 - (v) method and reasons for removal of a member from a committee.
- (3) Non-executive members of the Board must make up the majority of the members of a Committee.
- (4) The Board may appoint specialists to a committee for their technical support.
- (5) Unless specially delegated by the Board a committee has no decision-making powers and can only make recommendations to the Board. 15
- (6) A committee must meet as often as is necessary in order to carry out its functions and may determine its own procedures.
- (7) Each committee must be chaired by a non-executive member of the Board.

Delegation and assignment of functions by Board 20

- 16.** (1) The Board may, by a resolution passed by 75 per cent of its members—
- (a) delegate any of its powers and assign any of its duties to any member of the Board or any committee established in terms of section 15, the chief executive officer, the chief financial officer or any employee of the Agency; and
 - (b) amend or revoke such delegation or assignment. 25
- (2) Notwithstanding a delegation or assignment contemplated in subsection (1), the Board is not divested of any power or duty so delegated or assigned.
- (3) (a) Any delegation or assignment contemplated in subsection (1)—
- (i) may be made subject to such conditions as the Board may determine; and
 - (ii) must be communicated to the delegatee or assignee in writing. 30
- (b) The written communication contemplated in paragraph (a)(ii) must contain full particulars of the matters being delegated or assigned and of the conditions subject to which the power may be exercised or the duty must be performed.
- (4) The Board may not delegate—
- (a) the power to appoint the chief executive officer; and 35
 - (b) its role in deciding on—
 - (i) the appointment of the chief financial officer;
 - (ii) the mandate; and
 - (iii) the strategic plan of the Agency.

Appointment of chief executive officer and chief financial officer 40

- 17.** (1) The Board must, with the approval of the Minister, appoint a chief executive officer and a chief financial officer to ensure that the Agency meets its objects.
- (2) The Board must invite applications for the posts of chief executive officer and chief financial officer by publishing advertisements in the media.
- (3) A person appointed as chief executive officer or chief financial officer must— 45
- (a) have the qualifications or experience relevant to the functions of the Agency;
 - (b) have extensive knowledge of housing affairs; and
 - (c) not be disqualified as contemplated in section 11.

Conditions of appointment of chief executive officer and chief financial officer

- 18.** (1) The appointment of the chief executive officer and chief financial officer is subject to the conclusion of an annual performance contract with the Agency. 50
- (2) The chief executive officer and the chief financial officer are appointed for a term of five years and may be reappointed for one additional term of five years.
- (3) (a) The chief executive officer holds office on terms and conditions determined by the Board, in consultation with the Minister of Finance and the Minister for the Public Service and Administration. 55

(b) The chief financial officer holds office on terms and conditions determined by the chief executive officer within the limits determined by the Board, in consultation with the Minister of Finance and the Minister for the Public Service and Administration.

(4) The chief executive officer and chief financial officer are executive members of the Board. 5

(5) The chief executive officer and chief financial officer are entitled to a remuneration package determined by the Board in consultation with the Minister and the Minister of Finance.

(6) The chief executive officer and the chief financial officer are accountable to the Board. 10

Vacating of and removal from office of chief executive officer and chief financial officer

19. (1) The Board must, in consultation with the Minister and subject to applicable labour legislation, remove the chief executive officer and chief financial officer from office— 15

- (a) for misconduct;
- (b) for failing to perform the duties connected with that office diligently;
- (c) if the chief executive officer or the chief financial officer becomes subject to any disqualification contemplated in section 11.

(2) The chief executive officer and the chief financial officer may resign on written notice of at least 30 days to the chairperson. 20

(3) The Board may suspend the chief executive officer or the chief financial officer during misconduct proceedings against him or her.

Acting chief executive officer or chief financial officer

20. (1) The Board may in writing appoint any senior employee of the Agency to act as chief executive officer or chief financial officer when the holder of that office— 25

- (a) is temporarily unable to perform the duties connected with that office; or
- (b) has vacated or been removed from that office and a new chief executive officer or chief financial officer, as the case may be, has not yet been appointed.

(2) An acting chief executive officer or acting chief financial officer may exercise all the powers and must perform all the duties of the chief executive officer or chief financial officer, as the case may be. 30

Functions of chief executive officer

21. (1) The chief executive officer is head of the Agency's administration.

(2) Subject to directives from the Board, the functions of the chief executive officer are to— 35

- (a) manage the affairs of the Agency;
- (b) implement the policies and decisions of the Board;
- (c) manage and recruit employees; and
- (d) develop an efficient, transparent and cost-effective administrative systems. 40

Functions of chief financial officer

22. The functions of the chief financial officer include—

- (a) risk management of the Agency's projects;
- (b) assisting the Board with regard to compliance with its duties in terms of the Public Finance Management Act; 45
- (c) ensuring that money payable to the Agency is properly collected;
- (d) ensuring that there is adequate control over the assets acquired, managed or controlled by the Agency;
- (e) ensuring that the liabilities incurred on behalf of the Agency are properly authorised; 50
- (f) ensuring efficiency and economy of operations and avoidance of fruitless and wasteful expenditure;
- (g) ensuring that the financial system is in line with generally accepted accounting practices and procedures;
- (h) ensuring an adequate budgeting and financial system; and 55

- (i) to provide sound financial control systems for the Agency.

Delegation by chief executive officer and chief financial officer

- 23.** (1) The chief executive officer and the chief financial officer may delegate to an employee of the Agency any of his or her powers and assign any of his or her duties.
- (2) Any delegation contemplated in subsection (1)— 5
- (a) may be made subject to such conditions as the Board may determine;
 - (b) must be communicated to the delegatee in writing;
 - (c) may be amended or withdrawn in writing by the chief executive officer or chief financial officer, as the case may be; and
 - (d) does not prohibit the holder of the office that made the delegation from 10 exercising that power or performing that duty.
- (3) Notwithstanding a delegation or assignment contemplated in subsection (1), the chief executive officer or the chief financial officer, as the case may be, is not divested of any power or duty so delegated or assigned.

Staff of Agency 15

- 24.** (1) The Board must determine the staff establishment necessary to enable the Agency to perform its functions.
- (2) An employee is appointed subject to the terms and conditions determined by the chief executive officer in accordance with the policy and within the financial limits determined in accordance with a human resource policy approved by the Minister of Finance and the Minister for the Public Service and Administration, which may make provision for non-pensionable allowances for employees. 20
- (3) The chief executive officer must determine and supply each employee with a copy of the code of conduct, applicable to all members of staff of the Agency and justiciable for purposes of disciplinary proceedings, to ensure— 25
- (a) compliance with applicable law;
 - (b) the effective, efficient and economical use of the Agency's resources; and
 - (c) the promotion and maintenance of a high standard of professional ethics.
- (4) A person in the employ of the Agency becomes a member of the Government Employees' Pension Fund contemplated in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), and is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service. 30
- (5) Staff from public entities reporting to the Minister may be employed by the Agency subject to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), and the human resource policy referred to in subsection (2). 35
- (6) Staff may also be transferred or seconded to the Agency from the public service subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the human resource policy referred to in subsection (2).

Funds of Agency 40

- 25.** (1) The funds of the Agency consist of—
- (a) money appropriated by Parliament;
 - (b) donations or contributions received by the Agency with the approval of the Minister;
 - (c) interest on investments of the Agency; 45
 - (d) loans raised by the Agency, subject to section 26;
 - (e) proceeds from the sale of land;
 - (f) fees for services rendered based on cost recovery; and
 - (g) subsidies and grants granted by the organs of State.
- (2) The Agency, subject to section 26, must utilise the funds to defray expenses 50 incurred by it in the performance of its functions.

Application of Public Finance Management Act

26. (1) The Agency is subject to the Public Finance Management Act and its financial management, preparation and submission of budgets, preparation of financial statements, audits and annual reports, and reporting must be done in accordance with the Public Finance Management Act. 5

(2) The powers of the Agency must be exercised subject to the provisions of the Public Finance Management Act.

Tabling in Parliament

27. The Minister must table in Parliament the Agency's annual report— 10
 (a) within 14 days after receiving the report, if Parliament is in session; or
 (b) if Parliament is not in session, within 14 days after the commencement of the next Parliamentary session.

Delegation by Minister

28. (1) The Minister may delegate to the Director-General any of his or her powers or assign any of his or her duties conferred or imposed on him or her by this Act. 15

(2) Any delegation contemplated in subsection (1)—

- (a) may be made subject to such conditions as the Minister may determine;
- (b) must be communicated to the delegatee in writing;
- (c) may be amended or withdrawn by the Minister in writing; and
- (d) does not prohibit the Minister from exercising that power or performing that 20 duty.

(3) The Minister may not delegate the power to—

- (a) make regulations; or
- (b) appoint a member of the Board.

(4) (a) The Minister may issue a directive to the Director-General regarding the 25 delegation contemplated in subsection (1).

(b) The Director-General must give effect to the directive contemplated in paragraph (a).

Additional functions

29. (1) The Minister may, in consultation with the Board, authorise the Agency to 30 perform any additional function not inconsistent with this Act.

(2) The authorisation contemplated in subsection (1) must be in writing, detailing the funding arrangements as well as the terms and conditions relating to the additional function.

Provision of information by Agency 35

30. (1) (a) Subject to Chapter 2 of the Constitution of the Republic of South Africa, 1996, the Minister may direct the Board to submit to him or her specific information.

(b) The Board must comply within a directive contemplated in paragraph (a).

(2) The Agency must provide the Minister or a person authorised by the Minister with access to such books, accounts, documents and assets of the Agency as the Minister may 40 require.

(3) The Minister may appoint a person to investigate the affairs or financial position of the Agency and compliance by the Agency with this Act and may recover from the Agency the fees and disbursements incurred by that person during the investigation.

(4) An individual member of the Board and an employee of the Agency, if requested, 45 must comply with subsections (1) and (2) to the extent that they are able to do so.

Intervention by Minister

31. (1) The Minister may direct the Agency to take any action specified by the Minister if the Agency—

- (a) is in financial difficulty or is being otherwise mismanaged; 50
- (b) is unable to perform its functions effectively due to dissension among Board members;

- (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under this Act;
 - (d) has failed to comply with any law;
 - (e) has failed to comply with any directive given by the Minister under this Act; or 5
 - (f) has obstructed the Minister or a person authorised by the Minister in performing a function in terms of this Act.
- (2) A directive contemplated in subsection (1) must state—
- (a) the nature of the deficiency;
 - (b) the steps which must be taken to remedy the situation; and 10
 - (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.
- (3) If the Agency fails to remedy the situation within the stated period, the Minister may—
- (a) after having given the Agency a reasonable opportunity to be heard; and 15
 - (b) after having afforded the Agency a hearing on any submissions received,
- replace the members of the Board or, where circumstances so require, appoint a person as an administrator who shall take over the relevant function of the Agency until the members of the Board have been replaced.
- (4) If the Minister appoints an administrator to take over a function of the Agency in 20 terms of subsection (3)—
- (a) the administrator may do anything which the Agency might otherwise be empowered or required to do by or under this Act, to the exclusion of the Agency;
 - (b) the Board may not, while the administrator is responsible for that function, 25 exercise any of its powers or perform any of its duties relating to that function;
 - (c) an employee or a contractor of the Agency must comply with a directive given by administrator.
- (5) Once the Minister is satisfied that the Agency is once more able to perform its functions effectively, the Minister must terminate the appointment of the administrator. 30
- (6) The costs associated with the appointment of an administrator shall be for the account of the Agency.

Regulations

- 32.** (1) The Minister must, after consultation with the Agency and Parliament make regulations regarding— 35
- (a) meetings to be held by the Board;
 - (b) regularity of meetings;
 - (c) special meetings;
 - (d) the taking of decisions at meetings;
 - (e) convening of meetings and notices of meetings; 40
 - (f) meetings by telephone or video conference or other means of communication;
 - (g) quorums at meetings;
 - (h) adjournment of meetings;
 - (i) the person presiding at meetings;
 - (j) minutes; 45
 - (k) resolutions signed by members of the Board;
 - (l) execution of documents; and
 - (m) the proceedings of the Board.
- (2) The Minister may, after consultation with the Agency and Parliament, make regulations regarding— 50
- (a) any matter that this Act requires or permits to be prescribed; and
 - (b) generally, any ancillary or incidental, administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

Dissolution

- 33.** The Agency may not be placed under judicial management or liquidation except on the authority of an Act of Parliament. 55

Security of information

34. A person may not disclose any information kept by the Agency except—
- (a) in terms of and subject to any law that compels or authorises the disclosure;
 - (b) if it is necessary for the proper functioning of the Agency; or
 - (c) if it is legally required for the purpose of monitoring, evaluating, investigating or considering any activity relating to the Agency. 5

Documents relating to litigation

35. The Agency must provide the Minister with copies of all pleadings, affidavits and other documents in its possession relating to any legal proceedings brought by or against the Agency. 10

Limitation of liability

36. Neither the Agency nor any employee of the Agency is liable for any damage or loss caused by—

- (a) the exercise of a power or the performance of a duty under this Act; or
- (b) the failure to exercise a power, or perform a duty under this Act, 15

unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, grossly negligent or in bad faith.

Offences and penalties

37. (1) It is an offence to—
- (a) fail to provide access to any book, accounts, documents or assets when 20 required to do so under this Act;
 - (b) fail to comply with a directive issued under this Act;
 - (c) fail or refuse to give data or information, or give false or misleading data or information when required to give information under this Act;
 - (d) intentionally refuse to perform a duty or obstruct any person in the exercise of 25 a power or performance of a duty in terms of this Act;
 - (e) accept any unauthorised fees or reward, either directly or indirectly as a result of a person's position with the Agency;
 - (f) use the Agency's name, logo or design without authority; or
 - (g) contravene or fail to comply with section 34. 30
- (2) Any person who contravenes subsection (1) and has been found guilty, is liable, on conviction, to a fine or imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
- (3) Where a person is convicted for a second or subsequent conviction for an offence contemplated in subsection (1), he or she is liable to a fine or imprisonment for a period 35 not exceeding ten years or to both a fine and such imprisonment.

Short title and commencement

38. This Act is called the Housing Development Agency Act, 2008, and comes into effect on a date determined by the President by Proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE HOUSING DEVELOPMENT AGENCY BILL, 2008

1. OBJECTS

1.1 In September 2004, Cabinet approved the **Comprehensive Plan for the Development of Sustainable Human Settlements** (Comprehensive Plan). In line with the objectives of the Comprehensive Plan, the Housing Development Agency (Agency) will assist provinces and municipalities with the rapid release of land and landed property for housing which will thus fast-track housing delivery.

2. The rapid release of well-located land and landed property for integrated housing is one of the cornerstones for the success of the Comprehensive Plan. It is important to note that the creation of integrated communities with convenient access to social and economic opportunities needs well-located suitable land and landed property. The need for a land acquisition programme for housing arises from the realisation that land is a scarce and finite resource and the current population growth of 2.1% will make it difficult for the country to meet housing demands. It has been reported that the urban areas have been and will continue to be adversely affected by the rapid population growth and the scarcity of affordable well located land.

3. The Agency will therefore facilitate the acquisition of land and landed property, in a way that complements the capacities of Government across all spheres. Municipalities will be expected to use their housing sector plans to identify local housing land needs. The Provincial Housing Departments (PHD) will be responsible to coordinate these. The Agency will then identify and acquire the land and landed property on behalf of the PHD and the municipality and facilitate collaboration with other sectors in the development of such land.

4. The principal objective of the Agency is, to identify, acquire, hold, develop and release state, privately and communal owned land for residential and community purposes for the creation of sustainable human settlements.

5. The Agency will contract with any organ of state for the purposes of acquiring available land for residential housing or community development.

6. This will happen where there is a lack of capacity to identify, acquire, hold, or develop the land for residential or community development and nothing in the Act detracts from the power of a municipality to acquire, hold and develop land in terms of its functions under the Housing Act, 1997 (Act No. 107 of 1997).

7. The functions of the Agency include assisting any organ of state to complete projects which had not been completed and with the upgrading of informal settlements and to deal with emergency housing solutions.

8. The mandate of the Agency must be recorded in writing and must contain the operational and performance indicators against which the performance of the Agency is measured.

9. The Agency is governed by a Governing Board consisting of two executive members and seven non-executive members.

10. The functions and workings of the Board are dealt with fully in clauses 10-23 of the Bill.

11. Clause 24 of the Bill deals with the staff of the Agency who will be members of the Government Employees Pension Fund.

12. Staff may be transferred or seconded to the Agency from the Public Service subject to the provisions of the Public Service Act.

13. In certain circumstances the Minister has powers of intervention if the Agency finds itself in financial difficulty or fails to comply with its obligations (clause 31).

2. PERSONS CONSULTED

The Bill was published for public comment in Gazette No. 30346 of 26 October 2007. Comments were received from:

- Banking Association of South Africa
- Thubelisha Management
- Provincial Government of the Western Cape
- Department of Water Affairs and Forestry
- Servcon
- Ekurhuleni Municipality.

Some of the comments received were incorporated into the Bill.

3. FINANCIAL IMPLICATIONS

The financial implications have not been finalised. The Department of Housing is budgeting for the operational cost of the Agency.

4. PARLIAMENTARY PROCEDURE

4.1 The State Law Advisers and the Department of Housing are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely “Housing”.

4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.