



PROVINCE OF THE EASTERN CAPE  
IPHONDO LEMPUMA KOLONI  
PROVINSIE OOS-KAAP

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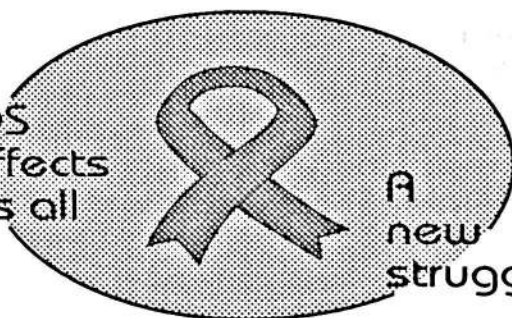
Vol. 9

BISHO/  
KING WILLIAM'S TOWN, 7 NOVEMBER 2002

**No. 938**  
(Extraordinary)

**We all have the power to prevent AIDS**

AIDS  
affects  
us all



A  
new  
struggle

**AIDS  
HELPUNE**

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DEPARTMENT OF HEALTH

**Prevention is the cure**



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## PROVINCIAL NOTICES

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### PROVINCE OF THE EASTERN CAPE

#### DEPARTMENT OF HOUSING, LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS

**No. 56****7 November 2002****EASTERN CAPE MUNICIPAL DEVELOPMENT CORPORATION BILL, 2002**

The above-mentioned Bill is hereby published for a period of 30 days as a Departmental draft.

Interested persons are invited to submit their comments to the Head of Department: Private Bag X0026, Bisho, 5605.

### BILL

#### PREAMBLE

WHEREAS section 139 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides for the supervision over, and intervention in, local government to ensure fulfillment of executive obligations entrusted by legislation to such government.

WHEREAS section 154 (1) of the Constitution provides for provincial governments, by legislative and other measures, to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.

WHEREAS it is necessary to establish a development corporation in the Province in order to develop, support and strengthen municipalities in the Province, and to provide for matters connected therewith.

NOW, THEREFORE, BE IT ENACTED by the Legislature of the Province of the Eastern Cape, as follows:—

#### Definitions

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

"Auditor-General" means the person appointed by the President in terms of section 193 (4) of the Constitution;

"board" means the board of directors of the Corporation established by section 2;

"capital expenditure" means any payment for the procurement of new or existing tangible or intangible asset with a value higher than a prescribed value and with a normal life expectancy of more than one year, and includes—

- (a) payment for the acquisition of goods and services for the purposes of improving, prolonging the expected working life of, and rebuilding or reconstructing an existing fixed asset;
- (b) a capital transfer to another person or body;
- (c) the granting and payment of a money loan of which the proceeds will be used by the recipient of such a loan for capital expenditure;
- (d) any other expenditure which is from time to time classified by regulation as a capital expenditure;
- (e) the repayment of an outstanding loan which is due for redemption or conversion, provided that the proceeds of such conversion must be used for the financing of expenditures contemplated in paragraphs (a), (b), (c) and (d),

but includes a payment in connection with the normal maintenance of a capital asset intended to keep such asset in its original state of repair;

"chairperson" and the "deputy chairperson" mean the chairperson and deputy chairperson of the board, respectively, referred to in section 11;

"Companies Act" means the Companies Act, 1973 (Act No. 61 of 1973);

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

"Corporation" means the Eastern Cape Municipal Development Corporation established by section 2 (1);

"current expenditure" means any payment which is not a capital expenditure;

"Department" means the Department responsible for local government in the Province;

"Executive Council" means the Executive Council of the Province;

"financial year" means the period from the first day of April in any year to the thirty-first day of March of the following year, both days inclusive;

"Gazette" means the *Provincial Gazette* of the Province;

"Government" means the Provincial Government;

"juristic person" means a body with legal persona;

"Legislature" means the Provincial legislature of the Province;

"MEC" means the Member of the Executive Council whose portfolio includes the administration of this Act;

"prescribe" means prescribe by regulation;

"Premier" means the Premier of the Province;

"Province" means the Province of the Eastern Cape established by section 103 of the Constitution, and "Provincial" has a corresponding meaning;

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

"regulation" means any regulation made in terms of this Act;

"shares" means the shares of the Corporation referred to in section 6, and "shareholder" or "shareholding" have corresponding meanings; and

"this Act" includes the regulations made hereunder.

#### ***Establishment of Eastern Cape Municipal Development Corporation***

2. (1) There is hereby established a statutory body to be known as the Eastern Cape Municipal Development Corporation, with the objects, powers, functions and duties assigned to it in this Act.

(2) The Corporation referred to in subsection (1) is a juristic person.

#### ***Objects of Corporation***

3. The objects of the Corporation are to assist the Department in the development, support and strengthening of municipalities in the Province in order to achieve their Constitutional and legislative responsibilities and to attain their sustainability through coordinated development and improvement of capacity, and other means.

#### ***Powers and functions of Corporation***

4. For the purposes of attaining its objects, the powers and functions of the Corporation must include,

(a) coordination of development of municipalities on—

- (i) human resource development;
- (ii) institutional development;
- (iii) technical support;
- (iv) information technology and systems; and
- (v) integrated development planning;

(b) assisting the Department in the monitoring of municipalities on the performance of their responsibilities in respect of their functions referred to in paragraph (a); and

(c) mentoring and supporting of municipalities in respect of the implementation by municipalities of their functions and responsibilities imposed on them by any law.

#### ***Policy directives***

5. (1) After consultation with the board, the MEC may set guidelines for the interpretation of the Corporation's objects by issuing policy directives to the board, and the MEC may similarly withdraw or amend any policy directive so issued.

(2) The MEC must not issue any policy directive inconsistent with the provisions of this Act or any other law binding on the Corporation.

(3) The MEC's policy directives must be—

- (a) in writing;
- (b) signed by the MEC; and
- (c) addressed to the chairperson of the board.

(4) The board must ensure that a record is kept of all current policy directives of the MEC and members of the public have the right of access to such record, subject to the provisions of the Constitution and legislation enacted as a result of such provisions.

(5) The board must report to the MEC on the extent of its compliance or non-compliance with all existing policy directives.

#### ***Shares, share capital and shareholding***

6. (1) Subject to the provisions of this section, the authorized share capital of the Corporation is one billion ordinary shares of one cent each.

(2) The Government must initially take up one hundred shares, which must be paid for at a nominal value in cash.

(3) Other shares in the Corporation must be paid for by the said Government from—

- (a) money appropriated by the Legislature for that purpose; or
- (b) money made available by the MEC as transfer payments out of the budget of the Department.



- (4) Payment for the shares of the Corporation must be made at such times and in such amounts as may, after consultation be agreed between the MEC, the MEC responsible for finance in the Province and the board.
- (5) The shares must not be transferable by the Government otherwise than on the authority of an Act of the Legislature.
- (6) The board may from time to time, with the prior written approval of the MEC increase the share capital of the Corporation to such an extent as it may deem expedient.
- (7) The board does not have the power to allot or issue shares of the Corporation.
- (8) Any transfer payments or grants-in-aid which are used for current expenditure of the Corporation and any payments by the Government or National Government to the Corporation must be recorded as income of the Corporation.
- (9) Any member of the board who knowingly purports to allot any shares in contravention of subsection (7) is liable to compensate the Corporation for any loss, damages or costs which the Corporation may have sustained or incurred thereby.

#### **Board**

7. (1) The affairs of the Corporation must be governed by a board, in whom all powers of the Corporation vest.
- (2) Members of the board have a fiduciary duty towards the Corporation and must display reasonable skill and care in performing their functions and duties.
- (3) Member of the board must disclose their interest in contracts or proposed contracts with the Corporation in the prescribed manner.
- (4) The provisions of sections 225, 226 and 227 of the Companies Act apply to the Corporation.
- (5) The board must keep a proper record of its proceedings and resolutions.

#### **Composition of board**

8. The board must consist of so many members as the MEC may determine, but members may not be less than five and not more than nine.

#### **Appointment and qualifications of board members**

9. (1) The MEC must, for the purposes of appointing board members—
- (a) invite nominations in a newspaper with wide circulation in the Province; and
  - (b) cause a list of nominees to be compiled, consider the nominations and appoint the board members.
- (2) When selecting persons for appointment as board members, the MEC must—
- (a) consult municipalities in the Province;
  - (b) have regard to the need for appointing persons disadvantaged by unfair discrimination;
  - (c) have regard to the geographic representation in the Province; and
  - (d) ensure that the board is composed of persons covering a broad range of appropriate experience and expertise.
- (3) A person who is disqualified from being a director of a company in terms the Companies Act does not qualify to be a member of the board of the Corporation.
- (4) A member of the national Parliament, or of any provincial legislature, or of any elected local government body in the Province does not qualify to be a board member during the period whilst he or she is such a member, nor for a period of one year from the date on which he or she ceases to be such a member.

#### **Disqualification of members**

10. (1) No person must be appointed to the board if he or she—
- (a) is not a South African citizen;
  - (b) is of unsound mind;
  - (c) has at any time been convicted and sentenced to imprisonment without the option of a fine;
  - (d) is an unrehabilitated insolvent;
  - (f) is a member of Parliament, the Legislature, a provincial legislature, a Municipal Council, the National Cabinet or the Executive Council of the Province; or
  - (g) is not resident in the Province.
- (2) A member of a body referred to in subsection (1) must vacate his or her office if he or she—
- (a) becomes subject to a disqualification contemplated in subsection (1);
  - (b) ceases to hold a qualification, office or interest by virtue of which that member was appointed;
  - (c) has been absent without permission of the relevant chairperson for more than two consecutive ordinary meetings of the board;
  - (d) resigns by one month's written notice to the MEC; or
  - (e) is removed from office by the MEC, if he or she is of the opinion that it is in the public interest to remove a member.

(3) Without prejudice to the generality of subsection (2) (e), the MEC may at any time remove from office any member of a body referred to in subsection (1), for reasons of—

- (a) incompetence;
- (b) nepotism;
- (c) dishonesty;
- (d) conflict of interest;
- (e) failure to act in the interests of the board;
- (f) failure to attend to the matters of the board; and
- (g) the member bringing the board into disrepute.

(4) All vacancies in the bodies referred to in subsection (1) must be filled in accordance with the procedure contemplated in section 10.

#### ***Tenure and conditions of office of members of board***

11. (1) Members of the board must be appointed by the MEC to hold office for a maximum period of three years, but are eligible for reappointment for no more than one additional term.

(2) The conditions of appointment of members of the board must be as determined by the MEC.

(3) Members of the board must be paid such remuneration for their services, and reimbursement for their expenses incurred in performance of their duties, in such a manner and on such basis as the MEC may after consultation with the MEC responsible for finance in the Province determine.

#### ***Meetings***

12. (1) The Chairperson of the board must decide when and where the board meets, but a majority of the members may request the Chairperson in writing to convene a meeting at a time and place set out in the request.

(2) The Chairperson or the Deputy Chairperson presides at meetings of the board, but if both are absent from a meeting, the members present must elect another member to preside at the meeting.

#### ***Access to meetings***

13. (1) Meetings of the board are open to interested persons, including the media, but the board may close its meeting when it deliberates or votes on a confidential matter or on any other matter when it deems necessary.

(2) No person may attend or be present at a meeting which has been closed in terms of subsection (1), except—

- (a) with the permission of the board; or
- (b) when authorised in terms of any legislation or an order of court.

(3) The question whether a matter is a confidential matter must be determined in accordance with prescribed criteria.

#### ***Procedures***

14. (1) The board may determine its own procedures subject to the provisions of this Act.

(2) The board must keep a record of its proceedings.

#### ***Quorum and decisions***

15. (1) The quorum for the meetings of the board is the majority of members of the board determined by the MEC in terms of section 8.

(2) No resolution of the board or thing done under the authority of the board will be invalid merely by reason of the fact that a person who was not entitled to hold office as a member, sat as a member when the resolution was passed or the thing was authorized: Provided that such resolution was passed or such thing was authorized by a majority of the members present, who were entitled to hold office.

(3) A matter before the board is decided by the votes of a majority of the members present at a meeting.

(4) If on any matter before the board there is an equality of votes, the member presiding at the meeting must exercise a casting vote in addition to his or her deliberative vote.

#### ***Committees***

16. (1) The board may establish one or more committees to assist it in the performance of its functions.

(2) When appointing members to a committee, the board may include in any of its committees such other persons as it may deem necessary.

(3) The board—

- (a) must determine the function of a committee;
- (b) must appoint the chairperson and other members of the committee;
- (c) may remove a member of a committee from office at any time; and
- (d) may determine a committee's procedure.

(4) The board may dissolve a committee at any time.

(5) Section 10 read with the necessary modifications as the context may require, applies to the conditions of appointment of committee members.

(6) A staff member of the board appointed to a committee is an *ex officio* member of the committee.

#### **Delegation of powers and duties**

17. (1) When necessary for the proper performance of its functions, the board may delegate any of its powers or duties to—

- (a) a member;
  - (b) a committee referred to in section 15; or
  - (c) a staff member of the board.
- (2) A delegation in terms of subsection (1)—
- (a) is subject to any limitations, conditions and directions the board may impose;
  - (b) must be in writing; and
  - (c) does not divest the board of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The board may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

#### **Appointment of Chief Executive Officer**

18. (1) The board must appoint a person determined by it with the concurrence of the MEC, as the Chief Executive Officer of the Board.

- (2) The Chief Executive Officer must be an *ex officio* member of the board.
- (3) The person appointed as the Chief Executive Officer—
  - (a) must have appropriate qualifications and experience for such appointment; and
  - (b) is employed subject to the terms and conditions of employment determined by the board with the concurrence of the MEC after consultation with the MEC responsible for finance.

#### **Responsibilities of Chief Executive Officer**

19. (1) The Chief Executive Officer is the head of the administration of the board.

(2) As head of administration, the Chief Executive Officer is responsible for—

- (a) implementing the policies and carrying out the decisions of the board;
- (b) the formation and development of an efficient administration;
- (c) the organisation, control and management of the staff; and
- (d) the exercise of any of the powers of the board—
  - (i) assigned to the Chief Executive Officer in terms of this Act; or
  - (ii) delegated to the Chief Executive Officer in terms of section 16.

(3) The Chief Executive Officer must report to the board on the administration as often as the board may require.

#### **Acting Chief Executive Officer**

20. Whenever the Chief Executive Officer is for any reason absent or unable to carry out the functions of office, or whenever there is a vacancy in the office of the Chief Executive Officer, the board may appoint another employee of the board as acting Chief Executive Officer.

#### **Employment of staff**

21. (1) The Chief Executive Officer—

- (a) within the financial limits set by the board, must determine a staff establishment necessary for the work of the board; and
- (b) may appoint persons in posts on the staff establishment.

(2) An employee of the board is employed subject to the terms and conditions of employment determined by the Chief Executive Officer with the concurrence of the board.

(3) (a) A person in the service of another organ of state may be seconded to the board by agreement between the Chief Executive Officer and such organ of state.

(b) Persons seconded to the board perform their functions under the supervision of the Chief Executive Officer.

(4) A person in the service of the board may, with the consent of that person, be seconded to another organ of state by agreement between the Chief Executive Officer and such organ of state.

**Keeping of accounts**

22. Subject to the provisions of the Public Finance Management Act, the board must cause the Corporation to keep proper accounting records.

**Annual Report and Financial Statements**

23. (1) The board must—

- (a) keep full and proper records of its financial affairs;
- (b) prepare financial statements for each financial year in accordance with generally accepted accounting practices;
- (c) submit those financial statements within two months after the end of the financial year to the Auditor-General; and
- (d) submit within five months of the end of a financial year to the Provincial Treasury, MEC and to the Auditor-General if he or she did not perform the audit of the financial statements—
  - (i) an annual report on the activities of the board during that financial year;
  - (ii) the financial statements for that financial year after the statements have been audited; and
  - (iii) the report of the auditors on those statements.

(2) The annual report and financial statements referred to in subsection (1) (d) must—

- (a) fairly present the state of affairs of the board, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned; and
- (b) include particulars of—
  - (i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;
  - (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
  - (iii) any losses recovered or written off;
  - (iv) any financial assistance received from the state and commitments made by the state on its behalf; and
  - (v) any other matters that may be prescribed.

(3) The board must submit the report and statements referred to in subsection (1) (d) to the MEC for tabling in the Legislature.

**Audit of financial statements**

24. The annual financial statements of the Corporation must be audited annually by—

- (a) The Auditor-General; or
- (b) a person appointed by the Corporation after consultation with the Auditor-General.

**Audit committee**

25. (1) The board must establish an audit committee as contemplated in the Public Finance Management Act, for the purpose of assisting the board in discharging its responsibility for safeguarding the Corporation's assets, maintaining proper accounts and records and developing and maintaining proper internal control systems.

(2) The audit committee must consist of at least three members, the majority of whom be persons other than members of the board.

(3) The audit committee must be chaired by a person from outside the Corporation.

(4) The audit committee must keep a record of its proceedings and resolutions in the same manner as any other board committee.

(5) The auditor has the right to attend meetings of the audit committee and has the right of access to its records.

(6) The composition and membership of the audit committee must be disclosed in the Corporation's annual report.

**Head Office**

26. The MEC must determine an office of the Corporation to be its Head Office.

**Use of name of Corporation**

27. No person other than the Corporation may carry on business in the Province under the same name as the Corporation, or under a name so similar as to mislead the public.

**Dissolution of Corporation**

28. The Corporation may not be dissolved except in terms of an Act of the Legislature.

**Penalties**

29. Any person who contravenes the provisions of section 6 (7) or any other provision of this Act is guilty of an offence and must on conviction be liable to such a fine or term of imprisonment as the court may deem proper, or to both such fine and term of imprisonment.



**Regulations**

30. The MEC may make regulations in respect of a matter prescribed under this Act and any other matter that the MEC considers necessary for the proper implementation or administration of this Act.

**Transitional provisions**

31. (1) The MEC may with the approval of the Executive Council enter into an agreement with any entity or body which provides a municipal support in the Province.

(2) The agreement contemplated in subsection (1) must include provisions relating to—

- (a) dissolution of the entity or body concerned;
- (b) the distribution of the assets and liabilities of the entity or body concerned;
- (c) arrangements with regard to staff of the entity or body; and
- (d) any other matter which the MEC may deem necessary.

(3) The agreement contemplated in subsection (1) must with effect from the date of commencement of this Act be binding on the Corporation.

(4) Any action or decision of the entity or body referred to in subsection (1) made or taken before the commencement of this Act must, with effect from such date of commencement be deemed to be the action or decision of the Corporation.

**Short title**

32. This Act is called the Eastern Cape Municipal Development Corporation Act, 2002.

**EXPLANATORY MEMORANDUM ON THE MUNICIPAL DEVELOPMENT CORPORATION****PART A****(GENERAL PRINCIPLES)****Background**

The Municipal Development Corporation Bill is intended to consolidate and coordinate the activities of the existing entities responsible for the development and improvement of capacity of municipalities in the Province.

**Policy objectives**

The Municipal Development Corporation is to serve as an agent for the Department of Housing, Local Government and Traditional Affairs in respect of the constitutional responsibility thereof to mentor, support and develop the capacity of municipalities in the Province.

The Corporation is to be managed in terms of a separate piece of legislation outside the Public Service, as an autonomous entity with separate existence from that of its shareholder, namely the Government.

**Constitutional implications**

This Bill falls within Schedule 4 to the Constitution of the Republic of South Africa, 1996, which is an area of concurrent legislature competence between the Province and National Government.

**PART B****(CLAUSE-BY-CLAUSE ANALYSIS)**

- CLAUSE 1: SETS OUT THE DEFINITIONS.
- CLAUSE 2: ESTABLISHES THE EASTERN CAPE MUNICIPAL DEVELOPMENT CORPORATION
- CLAUSE 3: SETS OUT THE OBJECTS OF THE CORPORATION
- CLAUSE 4: PROVIDES THE POWERS AND FUNCTIONS OF THE CORPORATION
- CLAUSE 5: EMPOWERS THE MEC TO ISSUE POLICY DIRECTIVES TO THE CORPORATION
- CLAUSE 6: PROVIDES FOR THE SHARES, SHARE CAPITAL AND SHAREHOLDING OF THE CORPORATION
- CLAUSE 7: PROVIDES FOR THE APPOINTMENT OF MEMBERS OF BOARD OF THE CORPORATION
- CLAUSE 8: PROVIDES FOR THE COMPOSITION OF THE BOARD
- CLAUSE 9: EMPOWERS THE MEC TO APPOINT MEMBERS OF THE BOARD AND SETS OUT THE QUALIFICATIONS FOR MEMBERS
- CLAUSE 10: PROVIDES FOR DISQUALIFICATION OF MEMBERS
- CLAUSE 11: SETS OUT THE TENURE AND CONDITIONS OF OFFICE OF MEMBERS OF THE BOARD
- CLAUSE 12: PROVIDES FOR MEETINGS OF THE BOARD
- CLAUSE 13: PROVIDES FOR ACCESS TO MEETINGS OF THE BOARD
- CLAUSE 14: PROVIDES FOR PROCEDURES FOR MEETINGS OF THE BOARD
- CLAUSE 15: PROVIDES FOR QUORUM AND DECISIONS OF THE BOARD
- CLAUSE 16: EMPOWERS THE BOARD TO APPOINT COMMITTEES

- CLAUSE 17:** EMPOWERS THE BOARD TO DELEGATE ITS POWERS AND DUTIES
- CLAUSE 18:** PROVIDES FOR THE MEC TO APPOINT THE CHAIRPERSON AND DEPUTY CHAIRPERSON OF THE BOARD
- CLAUSE 19:** SETS OUT RESPONSIBILITIES OF THE CHIEF EXECUTIVE OFFICER
- CLAUSE 20:** PROVIDES FOR THE APPOINTMENT OF THE ACTING CHIEF EXECUTIVE OFFICER
- CLAUSE 21:** PROVIDES FOR THE APPOINTMENT OF STAFF
- CLAUSE 22:** PROVIDES FOR KEEPING OF ACCOUNTS
- CLAUSE 23:** IMPOSES A DUTY ON THE BOARD TO PREPARE ANNUAL REPORT AND FINANCIAL STATEMENTS
- CLAUSE 24:** PROVIDES FOR AUDITING OF FINANCIAL STATEMENTS
- CLAUSE 25:** IMPOSES A DUTY ON THE BOARD TO APPOINT AN AUDIT COMMITTEE
- CLAUSE 26:** PROVIDES FOR THE DETERMINATION OF THE HEAD OFFICE OF THE CORPORATION BY THE MEC
- CLAUSE 27:** PROHIBITS THE USE BY ANY OTHER PERSON OF THE NAME OF THE CORPORATION
- CLAUSE 28:** PROVIDES FOR THE DISSOLUTION
- CLAUSE 29:** PROVIDES FOR PENALTIES
- CLAUSE 30:** EMPOWERS THE MEC TO MAKE REGULATIONS
- CLAUSE 31:** PROVIDES TRANSITIONAL PROVISIONS
- CLAUSE 32:** PROVIDES THE SHORT TITLE OF THE BILL

PROVINCE OF THE EASTERN CAPE

DEPARTMENT OF EDUCATION

**No. 57**

**7 November 2002**

**SCHOOLS EDUCATION ACT, 1999 (ACT No. 1 OF 1999): DETERMINATION OF POLICY RELATING TO AMALGAMATION OF FARM SCHOOLS**

I, Stone Sizane, Member of the Executive Council responsible for Education in the Province of the Eastern Cape, acting in terms of section 4 (1) (c), (d) and (2) of the Schools Act, 1999 (Act No. 1 of 1999), hereby determine policy relating to the amalgamation of farm schools in the Province as set out in the Schedule hereto.

**S. SIZANI**

**MEC: Department of Education**

**SCHEDULE**  
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#### PREAMBLE

WHEREAS the Eastern Cape Department of Education recognises the difficult learning conditions which the children on the farms have been subjected to as a result of the imbalances of the past.

WHEREAS the Department honours and respects Educators who work against overwhelming odds in these disadvantaged schools for the benefit of all learners.

AND WHEREAS the Department fully acknowledges that every child has a right to education as clearly stated by Section 29 of the Constitution of the Republic of South Africa.

NOW THEREFOR, as part of its commitment to the principle of Equity and Redress, the Department will ensure adequate provision of resources that will improve the quality of learning and teaching in rural schools in and around farms.

#### DEFINITION OF TERMS

In this policy document the terms shall mean the following, unless the context indicates otherwise—

“**accessibility**” in terms of this policy; refers to transport routes and hostels accommodation for both Learners and Educators;

“**agreement**” for the purpose of this policy means any agreement entered into between the Department and the Owner;

“**amalgamation**” means amalgamation, as defined in section 89 of National Norms and Standards for School Funding in terms of SASA, 1996;

“**basic facilities**” mean buildings, water, and toilets and sports fields;

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

“**department**” means the Provincial Department of Education as defined in the Public Service Act, No. 103 of 1994;

“**essential facilities**” mean classroom, toilets, primary classroom needs (chalk, duster, chalkboard ...);

“**extra mural activities**” refer to such activities and experiences not included in the curriculum but which may be entertained during and after hours;

“**extra curricula**” means a special curriculum designed by the SGB for learners to acquire relevant knowledge and skills based on the need and peculiarity of their surrounding;

“**hostel**” means state owned residential property within the premises of a school;

“**MEC**” means Member of Executive Council for Education;

“**nearest appropriate school**” refers to the most suitable school that is within a particular radius/distance from a child's home;

“**owner**” means the registered Owner of the farm, the lessee, and the successor in title or custodian designated;

“**school**” means a registered pre-primary, primary or secondary school;

“**transport provider**” refers to anybody who has entered in an agreement with the department to transport learners to and from school;

“**usufruct**” refers to the permission granted by the landowner to the department for learners, educators and officials to make use of a portion of land. The Department/state shall not pay any charges for usufruct.

#### LIST OF ABBREVIATIONS

CMS—Central Management System

ECD—Early Childhood Development

EMS—Economic Management System

HoD—Head of Department

INSET—In Service Training  
LSNE—Learners with Special Needs in Education  
NSF—National Norms and Standards for School Funding  
PED—Provincial Education Department  
PRESET—Pre-service Training  
PSoPP—Public Schools on Private Property  
SASA—South African School's Act  
SNE—Special Needs in Education  
PFMA—Public Finance Management Act

## INTRODUCTION

1. This policy applies to Public Schools On Private Property as a sector of Small Schools in the Province of the Eastern Cape. These are the schools previously known as farm schools.
2. Small Schools as per Resolution 1 of 1997, Eastern Cape Bargaining Chamber, are referred to in this policy document as—
  - All primary schools with an enrolment of 210 learners and less.
  - An enrolment of 150 learners and less in the case of Secondary Schools.
3. Public Schools On Private Property (PSOPP) are schools which exist on privately owned land.
4. Public Schools on Private Property (PSoPP) shall be amalgamated with other like schools and any other identified schools as need arises.
5. With a minimum enrolment of 20 learners a farm school qualifies for existence and therefore it can be registered, provided that an agreement has been entered into between the MEC and the Owner.

The agreement shall cover the following—

- roles and responsibilities of both parties;
- management of the school;
- school improvement programmes, physical maintenance and security;
- access to school through "usufruct".

## CHAPTER 1: AMALGAMATION

### 1.1 Meaning and scope

Amalgamation means merging of schools that are within a reasonable distance with a view to create bigger functional schools.

A need may arise for the department to authorise or implement amalgamation of schools. Should such need arise, amalgamation shall be conducted in accordance with the principles of merger of public schools as stated in section 12A of the South African Schools Act (SASA), No. 84 of 1996, read with section 89 of National Norms and Standards for School Funding (NSF).

A need may arise for the department to identify what will be known as central schools. Should this need arise, preference will be given to schools that are on state land.

### 1.2 Limitations to amalgamation

Amalgamation will not be implemented if—

- (i) the majority of learners are in the Foundation Phase;
- (ii) geographical factors such as, but not limited to—rivers and forests do not allow learners to have access to identified schools for purpose of learning.

### 1.3 The following will be the position in the event of (i) and (ii) above being applicable:

- (i) The school will have to offer grade R to grade 3.
- (ii) Learners from grade 4 upwards shall be transported to or accommodated in the nearest appropriate Central schools.

## CHAPTER 2: STAFFING

### 2.1 Educators

1. Educators appointed in farm schools shall be appointed in terms of the Employment of Educators' Act, No. 76 of 1998.
2. The educator-learner ratio should minimize multi grade teaching as much as possible.
3. Multiples of 20 will be cut off points for additional educators.
4. A maximum of two grades per educator is viewed as ideal.



**2.2 Non-teaching staff**

Provision of non-teaching personnel will be considered for all schools in accordance with applicable laws.

**CHAPTER 3: PHYSICAL FACILITIES AND RESOURCES****3.1 Land availability**

Where a public school operates on private property, the land should be acquired either by: purchasing, donation, or any other contractual agreement between the Owner and the Department.

**3.2 Basic facilities**

In order to ensure that learners in rural and most disadvantaged communities exercise their constitutional right to basic education, as enshrined in the Bill of Rights; basic facilities shall be provided according to the peculiarity of the district, availability of resources and in terms of the NSF.

**3.3 Buildings**

School buildings shall be provided to schools on private property on the basis of the agreement between the MEC and the Owner. Prevailing standards of accommodation shall apply.

**3.4 Transport**

- Where there is no hostel accommodation learners who walk a total distance of 10 km, to and from school shall be eligible for Scholar Transport Subsidy.

The maximum amount of subsidy per learner per month, shall be determined by the Head of Department, subject to reviewal.

- Transport used for learners should comply with provincial road safety ordinances and standards as laid down in the Education Department Transport Policy.
- An agreement will be entered into between the department and the transport provider.

**CHAPTER 4: ACCOMMODATION****4.1 Provision of hostels**

- (a) Where feasible, the department may provide hostels for the residential accommodation for Learners.
- (b) The accommodation may either be owned by the state or rented to the state.
- (c) The maximum amount of subsidy shall be determined by the Head of Department as stipulated in the Hostel Policy.
- (d) The Management of Hostels shall be in accordance with the Departmental hostel policy.

**4.2 Requirements for admission at the hostels**

The following requirements should be met by learners:

- travelling a distance of more than 10 km a day to and from school but having not applied for scholar transport subsidy. Provision of either hostel or transport, will be determined by the peculiarity of each area
- attending the nearest appropriate school.

**4.3 Staff accommodation**

- (a) Where feasible residential accommodation within the premises of the school shall be provided for Educators.
- (b) Conditions for the accommodation of Educators in hostels shall be in accordance with departmental policies and procedures.

**CHAPTER 5: FINANCE**

All Public Schools on Private Property (PSoPP) shall be subjected to budgeting principles according to the following prescripts:

- Constitution of the Republic of South Africa Act, 108 of 1996.
- Public Finance Management Act, 1 of 1999, as amended.
- South African Schools' Act, 84 of 1996.
- National Norms and Standards for School Funding (in terms of SASA).
- Employment of Educators' Act, 76 of 1998.

**CHAPTER 6: GOVERNANCE**

Governance of the schools mentioned herein shall be in accordance with SASA.

**CHAPTER 7: SCHOOLING****7.1 Language**

Language education in Public Schools On Private Property (PSoPP) shall be applicable in terms of National Norms and Standards for Language Policy in public schools as stipulated in SASA 1996.

**7.2 Curriculum****7.2.1 Formal**

The curriculum for Public Schools on Private Property (PSoPP) shall be the same as that followed by other public schools, i.e. unabridged.

**7.2.2 Extra curricular**

The choice of extra curricular subjects will be made by the SGB according to SASA. Each district shall have a variety of institutions to ensure different fields of Specialisation. Specialisation should take into account the community needs and available resources (Farm Industry).

**7.2.3 Extra mural activities**

All learners shall be afforded the opportunity to participate in extra-mural activities.

**7.3 Resource centres**

All schools shall be resourced according to the departmental plan designed for all public schools.

**7.4 Special Needs in Education (SNE)**

Provision of resources for farm Learners with Special Needs in Education (LSNE) shall be provided as stipulated in section 12 of SASA.

**7.5 Early Childhood Development (ECD)**

Provision of education in the ECD Phase shall be provided in terms of the departmental policy for ECD.

**7.6 Short title**

This policy is called the Eastern Cape Policy for Public Schools on Private Property, 2002.

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