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GENERAL NOTICE

NOTICE 1252 OF 2007

DEPARTMENT OF HOUSING

PROPOSED LEGISLATION FOR A HOUSING DEVELOPMENT AGENCY

The Minister of Housing intends legislating on a Housing Development Agency. A draft Bill together with a Memorandum on the Objects of the Bill is attached.

Interested persons and institutions are invited to submit written comment on the draft legislation on or before 22 December 2007 to the Director-General, Department of Housing, for the attention of the following person:

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REPUBLIC OF SOUTH AFRICA

HOUSING DEVELOPMENT AGENCY BILL

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published in Government Gazette No. of) (The English text is the official text of the Bill)

(MINISTER OF HOUSING)

[B - 2007]

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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 delays in the identification, acquisition, assembly and release of state-owned and private land;

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 to the Constitution housing is a functional area of concurrent national and provincial legislative competence;

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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 housing skills and capacity in some provinces and municipalities.

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

ARRANGEMENT OF SECTIONS

Sections

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2. Establishment of Agency
3. Principal objective of Agency
4. Role of Agency
5. Land that may be acquired by Agency
6. Functions and powers of Agency
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18. Vacating and removal from office of chief executive officer and chief financial officer
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20. Functions of chief executive officer
21. Functions of chief financial officer
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23. Staff of Agency
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25. Financial management
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27. Financial year
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30. Tabling in Parliament
31. Delegation by Minister
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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;

"Agency" means the Housing Development Agency, established by section 2;

"Board" means the Governing Board contemplated in section 8;

"chief executive officer" means the chief executive officer appointed in terms of section16;

"chief financial officer" means the chief financial officer appointed in terms of section 16";

"land" includes a right in land;

"mandate" means the mandate of the Agency contemplated in section 3(4)(h) of the Housing Act, 1997 and provided for in section 7 of this Act;

"Minister" means the Minister of Housing;

"municipality" means a municipality as contemplated in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and includes a province where it has the power to act as developer;

"organ of state" means an organ of state contemplated in section 239 of the Constitution;

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

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"prescribe" means to prescribe by regulation under this Act;

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

"provincial public entity" has the meaning ascribed to it in the Public Finance Management Act;

"provincial government enterprise" has the meaning ascribed to it in the Public Finance Management Act;

"municipal entity" has the meaning ascribed to it in the Local Government: Municipal Systems act, 2002 (Act No. 32 of 2002);

"this Act" includes regulations made under the Act.

Establishment of Agency

2. There is hereby established a juristic person to be known as the Housing Development Agency. .

Principal objective of Agency

3. (1) The principal objective of the Agency is, by agreement with municipalities, to acquire, hold, and develop and release land for residential and community purposes for the creation of sustainable human settlements.

Role of Agency

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4. (1) The Agency must, where contracted thereto by a municipality-

(a) acquire available state land which has been identified by a municipality for residential housing or community development.

(b) hold, develop and release the land contemplated in paragraph *(a)* for residential or community development purposes.

(2) The Minister may, where a municipality lacks the capacity to acquire, hold, and develop and release land for residential and community purposes for the creation of sustainable human settlements –

(a) recommend to the municipality to consider the conclusion of an agreement with the Agency for the purpose contemplated in subsection (1); or

(b) request the Agency to engage with the municipality with a view the conclusion of such agreement.

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

Land which may be acquired by Agency

5. (1) The Agency may, subject to subsection (4), acquire, hold, develop and release land—

(a) registered or vested in the State or any organ of state and which the State or organ of state is prepared to dispose of for residential or community development purposes; or

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(b) in private ownership. .

(2) The Agency may acquire land for purposes of the Act by way of expropriation.

(3) The provisions of sections 6 to 23 inclusive of the Expropriation Act, 1975 (Act No. 63 of 1975), applies, with the changes required by the context, to the expropriation of land under subsection (2), and in such application a reference in the said sections of that Act to-

(a) 'Minister' shall be construed as a reference to the chief executive officer; and

(b) 'section 2' shall be construed as a reference to subsection (2).

(4) The Agency may not acquire any land which, at the commencement of this Act, is registered in the name of a province, municipality or a provincial public entity or provincial commercial enterprise or municipal entity.

(5) Any consultation between organs of state in terms of this section must be done in terms of Chapter 3 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

Functions and powers of Agency

6. (1) The Agency, if contracted thereto by a municipality, may -

(a) develop strategic plans with regard to the identification and acquisition of land which is suitable for residential and community development;

(b) find, acquire, develop and release land for residential and community development;

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(c) prepare necessary documentation for the consideration and approval of the municipality, as may be required in terms of any applicable law;

(d) generally undertake such project management services as may be necessary including assistance relating approvals to be obtained or provided for purposes of housing development;

(e) assist municipalities in dealing with housing developments that have not been completed within the anticipated project period;

(f) assist municipalities with the upgrading of informal settlements;

(g) assist municipalities in respect of emergency housing solutions.

(2) In performing the functions in subsection (1), 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;

(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.

(3) The Agency shall have all the powers necessary to meet its objectives as contemplated in the Act and to that end may, subject to the provisions of the Public Finance Management Act –

(a) purchase or acquire in any way land as contemplated in this Act;

(b) conduct activities associated with a developer within the ambit of the agreements concluded with municipalities;

(c) without detracting from the previous subsections, borrow money

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and secure the payment of moneys borrowed through the mortgaging of land, and enter into indemnities, guarantees for purposes of housing development and to secure payment thereunder, conclude agreements that developers conclude and institute and defend litigation proceedings.

Mandate

7. (1) The Minister must conclude a written mandate with the Agency as soon as possible after the appointment of the Board.

(2) The mandate must—

(a) document 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

(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 at least every five years.

(5) The mandate must not be in conflict with this Act.

Governing Board

8. (1) The Agency is governed by a Governing Board consisting of two

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executive members and seven non-executive members, including -

(a) a member that may be designated by the Minister of Public Works, to serve until substituted by that Cabinet member;

(b) a member that may be designated by the Minister responsible for Land Affairs, to serve until substituted by that Minister;

(c) a member that may be designated by the Minister responsible for Provincial and Local Government, to serve until substituted by that Minister;

(d) a Chairperson appointed by the Minister;

(e) a Deputy Chairperson appointed by the Minister.

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

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

(4) The Minister may designate any other non-executive member to act chairperson if both the Chairperson and Deputy Chairperson are absent or unable to perform any function of the Chairperson.

General functions of Board

9. The Board—

(a) must give effect to the strategy and policy of the Agency in order to achieve the objectives of the Agency;

(b) is the accounting authority of the Agency;

(c) takes decisions on behalf of the Agency and gives effect to those

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decisions;

(d) provides guidance to the Chief Executive Officer concerning the exercise of the functions and powers of the Agency;

(e) must notify the Minister immediately of any matter that may prevent or materially affect the achievement of the objectives or financial targets of the Agency;

(f) may refer to the Minister any matter concerning the functioning of the Agency.

Persons disqualified from membership of Board

10. A person may not be appointed to or remain a member of the Board if that person—

(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 ill;

(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;

(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

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

(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.

Process for appointment and removal of members of Board

11. (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 by notice in the *Gazette* invite all interested persons to submit, within the period and in the manner mentioned in the notice, the name of a person fit to be appointed as a member of the Board.

(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.

(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 recommendation for appointment to the Board by the Minister must consider—

(a) the proven skills, knowledge and experience of a candidate in areas of—

(i) risk management;

(ii) financial management;

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(iii) township planning;

(iv) project management;

(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

(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 members of the governing 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.

(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 any two terms consecutively;

(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 Public Service and Administration and the National Treasury;

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(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 10, the Minister must remove the member from the Board by written notice to the member.

(9) Any vacancy occurring on the Board must, subject to the provisions of section12, be filled in the same way as the departing member was appointed to the Board.

12. Resignation, removal from office and vacancies

(1) A member of the Board may resign by giving to the Minister-

(a) one month written notice; or

(b) less than one month written notice, with the approval of the Minister.

(2) A member of the Board designated in terms of section 8 (1) *(a), (b)* and *(c)* may resign by giving written notice jointly to the Minister and the relevant Minister who may appoint the member.

(3) The Minister, after taking the steps required by subsection (4), may remove a member of the Board appointed by the Minister if that member has-

(a) become disqualified;

(b) acted contrary to the provisions of the Act;

(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.

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Fiduciary duty and disclosure

13. (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.

(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.

(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.

(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

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scope, must—

(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;

(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;

(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;

(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.

(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.

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(7) A member who contravenes or fails to comply with these provisions is guilty of misconduct and commits an offence..

Committees

14. (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;

(b) determine—

(i) the terms of reference of a committee;

(ii) the composition of a committee;

(iii) the tenure of members on a committee;

(iv) reporting mechanisms of a committee; and

(v) the 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 on 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.

(6) A committee must meet as often as is necessary in order to carry out its functions and may determine its own procedures.

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(7) Each committee must be chaired by a non-executive member of the Board.

Delegation and assignment of functions by Board

15. (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 14, the chief executive officer, the chief financial officer or any employee of the Agency; and

(b) amend or revoke such delegation or assignment.

(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.

(b) The written communication contemplated in subparagraph *(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 an executive manager or the chief executive officer; and

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(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

16. (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—

(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 10.

Conditions of appointment of chief executive officer and chief financial officer

17. (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.

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(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 Public Service and administration .

(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 Public Service and administration.

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

(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.

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

18. (1) The Board must, subject to applicable labour legislation, remove the chief executive officer and chief financial officer from office—

(a) for misconduct;

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(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 10.

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

(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

19. (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—

(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.

Functions of chief executive officer

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

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administration.

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

(a) manage the affairs of the Agency;

(b) implement the policies and decisions of the Board;

(c) manage, organise and control employees; and

(d) develop an efficient and cost effective administration.

Functions of chief financial officer

21. 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;

(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;

(f) ensuring efficiency and economy of operations and avoidance of waste and extravagance;

(g) ensuring that the financial system is in line with generally accepted accounting practices and procedures; and

(h) ensuring an adequate budgeting and financial system.

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Delegation by chief executive officer and chief financial officer

22. (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)—

(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 exercising that power or performing that duty.

Staff of Agency

23. (1) The chief executive officer 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 Public Service and Administration, which may make provision for non-pensionable allowances for employees .

(3) The chief executive officer must determine and supply each employee

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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—

(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.

(5) Staff from public entities overseen by 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)

(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 (Act No. 103 of 1994) and the human resource policy referred to in subsection (2).

Funds of Agency

24. (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, subject to subsection (3);

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(c) interest on investments of the Agency;

(d) loans raised by the Agency;

(e) proceeds from the sale of land;

(f) fees for services rendered to municipalities based on cost recovery; and

(g) subsidies granted by the State.

(2) The Agency must utilise the funds to defray expenses incurred by it in the performance of its functions.

(3) The Agency must utilise the donations and contributions contemplated in subsection (1)*(b)* in accordance with the conditions, if any, imposed by the donor or contributor concerned, but those conditions may not be inconsistent with the objects of the Agency.

(4) Any subsidy granted in terms of subsection (1)*(g)* must be utilised for the purpose for which it was granted.

(5) The Agency may invest any of its funds not immediately required by the Agency, subject to the Public Finance Management Act.

(6) The chief executive officer must, with the approval of the Board—

(a) open an account in the name of the Agency with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and

(b) deposit therein all money received by the Agency.

Financial Management

25. (1) Subject to the oversight of the Board the chief financial officer must cause full and proper books of account and all necessary records in relation

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thereto to be kept.

(2) The chief financial officer must ensure that the Agency's annual budgets, plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act.

(3) The financial records must indicate separate activities or housing developments, where appropriate.

Financial Assistance

26. (1) The Agency may, with the written approval of the Minister, request additional funding from National Treasury.

(2) The additional funding contemplated in subsection (1) is subject to interest and conditions of repayment determined by the Minister in consultation with the Minister of Finance.

(3) The Agency may, with the approval of the Minister in consultation with the Minister of Finance, raise loans from any other source.

(4) A loan contemplated in subsection (3) must be within a borrowing limit and subject to conditions determined by the Minister in consultation with the Minister of Finance, for each financial year.

(5) The Agency may only borrow money—

(a) when necessary to enable it to perform its functions; and

(b) in foreign currency, in compliance with section 66(7) of the Public Finance Management Act.

(6) A contractual agreement entered into by the Agency, that is dependent

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on the issue of a guarantee, indemnity, or security binding on the National Revenue Fund, must have the prior written approval of the Minister and the Minister of Finance.

(7) The Agency must fulfil its obligations in terms of a loan by the due date.

Financial year

27. (1) The financial year of the Agency is from 1 April in any year to 31 March of the following year.

(2) The Agency's first financial year begins on the first day of the month of April following upon the date on which the Board holds its first meeting.

Reporting and audit

28. (1) The Agency must in respect of each financial year submit an annual report on its activities and a statement of its income and estimate expenditure for the following financial year to the Minister for approval.

(2) The books, records of account and financial statements of the Agency must be audited annually by the Auditor-General.

(3) The report referred to in subsection (1) must, subject to the provisions of the Public Finance Management Act, contain —

(a) a report of the activities, transactions and finances of the Agency during the financial year;

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(b) relevant information about the Agency's performance, documenting the extent to which its resources were applied effectively, efficiently and economically during the financial year;

(c) audited financial statements for the financial year and its financial position as at the end of that year;

(d) the auditor's report;

(e) any other information required by the mandate;

(f) a copy of each directive issued by the Minister during the financial year; and

(g) contain such further information as the Minister may determine.

(4) The financial reports must fairly present the state of affairs and the financial transactions of the Agency during the financial year to which they relate and the financial position of the Agency as at the end of the year.

(5) *(a)* An annual independent audit must also be carried out on the functioning of the Board, particularly on corporate governance.

(b) The audit contemplated in paragraph *(a)* must be included in the annual report.

(6) The Agency must publish its annual report and make copies available at the offices of the Agency for inspection and purchase by the public.

Reports

29. (1) The Agency must prepare such reports as may be required under the Public Finance Management Act.

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Tabling in Parliament

30. The Minister must table in Parliament the Agency's annual report—

(a) within 14 days after receiving each 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

31. (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.

(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 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 delegation contemplated in subsection (1).

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

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Additional functions

32. (1) The Minister may, in consultation with the Board, authorise the Agency to 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

33. (1) *(a)* Subject to Chapter 2 of the Constitution 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 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, must comply with subsection (1) and (2) to the extent that they are able.

(5) The Minister or a person authorised by the Minister may enter any

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premises of the Agency and take possession of any book, record or other asset of the Agency, where it is necessary for the purposes of an investigation in terms of subsection (3).

Intervention by Minister

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

(a) is in financial difficulties or is being otherwise mismanaged;

(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

(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

(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—

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(a) after having given the Agency a reasonable opportunity to be heard; and

(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 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, 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.

(6) The costs associated with the appointment of an administrator shall be for the account of the Agency.

Regulations

35. (1) The Minister must, after consultation with the Agency, and the Minister for Public Service and Administration, make regulations regarding—

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(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;

(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;

(k) resolutions signed by members of the Board;

(l) execution of documents;

(m) the proceedings of the Board.

(2) The Minister may, after consultation with the Agency, make regulations regarding—

(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

36. The Agency may not be placed under judicial management or liquidation

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except on the authority of an Act of Parliament.

Security of information

37. (1) 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.

(2) Contravention of this section constitutes an offence.

Documents relating to litigation

38. 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.

Limitation of liability

39. 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,

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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

40. (1) Any person who—

(a) fails to provide access to any book, accounts, documents or assets when required to do so under this Act;

(b) fails to comply with a directive issued under this Act;

(c) fails or refuses to give data or information, or gives false or misleading data or information when required to give information under this Act;

(d) intentionally refuses to perform a duty, or obstructs any person in the exercise of a power or performance of a duty in terms of this Act;

(e) accepts any unauthorised fees or reward, either directly or indirectly as a result of his or her position with the Agency; or

(f) uses the Agency's name, logo or design without authority,

is guilty of an offence and liable, on conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

(2) 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 not exceeding ten years or to both a fine and such imprisonment.

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Short title and commencement

41 (1) This Act is called the Housing Development Agency Act, 2007, and comes into effect on a date determined by the President by Proclamation in the *Gazette*.

(2) This Act binds the State.

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DEPARTMENT OF HOUSING

MEMORANDUM ON THE OBJECTS OF THE HOUSING DEVELOPMENT AGENCY BILL, 2007

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 for the Development of Sustainable Human Settlements, the Housing Development 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 for Development of Human Settlements. 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 country to meet housing demands. It has been reported that the urban areas have 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 supplements 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 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, by agreement with municipalities, to

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acquire, hold, develop and release land for residential and community purposes for the creation of sustainable human settlements.

5. The Agency will contract with a municipality for the purposes of acquiring available land which has been identified by a municipality for residential housing or community development.

6. This will happen only where a municipal lacks the capacity to 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 powers and functions under the Housing Act, 1997 (Act No. 107 of 1997).

7. The functions and powers of the Agency include the assistance to Municipalities to complete projects which had not been completed and the assistance to municipalities with the upgrading of informal settlements and dealing with emergency housing solutions.

8. The Minister must conclude a written mandate with the Agency. The mandate must document 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 9-22 of the Bill.

11. Clause 23 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

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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 difficulties or fails to comply with its obligations (clause 34).

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