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## GENERAL NOTICE

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**NOTICE 1852 OF 2006**

### **DEPARTMENT OF HOUSING**

#### **HOUSING AMENDMENT BILL, 2006**

The Department of Housing hereby publishes the draft Housing Amendment Bill, 2006 for public information, discussion and comment.

Interested persons and, institutions are invited to submit written comment on the draft Bill on or before **2 February 2007** to the Director-General, Department of Housing, for the attention of-

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REPUBLIC OF SOUTH AFRICA

**HOUSING AMENDMENT BILL, 2006**

(As introduced)

(MINISTER OF HOUSING)

[B – 2006]

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**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

----- Words underlined with a solid line indicate insertions in existing enactments.

**BILL**

To amend the Housing Act, 1997, so as to insert new definitions; to enable the Minister to prescribe a policy framework for the accreditation of municipalities and the assignment of powers and functions; to substitute the existing provisions pertaining to the accreditation of municipalities; to substitute the provisions dealing with the restriction on the sale of state subsidised housing; to provide for the disestablishment of the South African Housing Fund; to make further provision for the allocation of money to provinces; to substitute certain expressions; to make further provision for accountability; to vest certain powers and duties in the MEC; and to provide for matters connected therewith.

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

**1. Substitution of Long Title to Act 107 of 1997**

The following long title is hereby substituted for the long title to the Housing Act, 1997 (hereinafter referred to as the principal Act):

**“ACT**

To provide for the facilitation of a sustainable housing development process; for this purpose to lay down general principles applicable to housing development in all spheres of government, to define the functions of national, provincial and local governments in respect of housing development; to provide a funding framework for the efficient and effective management of housing funds; to provide for the establishment of advisory panels for the Minister and MEC's, to provide for the determination of procurement policy in respect of housing development; to provide for the accreditation of municipalities; to provide for the assignment of powers and functions; to provide for

the provisions dealing with the restriction on the sale of state subsidised housing ; and to provide for matters connected therewith."

## 2. Amendment of section 1 of Act 107 of 1997

Section 1 of the principal Act is hereby amended –

- (a) by the insertion before the definition of "Constitution" of the following definition:

"**Accreditation**" means the certification by an MEC that a municipality has met the requirements specified in the Policy Framework;"

- (b) by the insertion after the definition of "accreditation" of the following definition:

"**accredited municipality**" means a municipality accredited in terms of section 10(2)."

- (c) by the insertion before the definition of "Director-General" of the following definition:

"**Department's budget**" means –

- (a) such portion of the money appropriated to the National Department of Housing out of the National Revenue Fund in terms of the annual Appropriation Act, which is specifically earmarked for the financing of any national housing programme and any provincial housing programme, which is consistent with national housing policy and section 3(2)(b); and
- (b) as from the date of commencement of this Act, all moneys which:
- (i) immediately before the commencement stood to the credit of the former Fund;
  - (ii) immediately before the commencement were payable to or for the credit of the former Fund; and

(iii) after the commencement would have become payable to or for the credit of the former Fund;

(d) by the insertion before the definition of "Fund" of the following definition:

"former Fund" means the South African Housing Fund established by section 12B(1)(a) of the Housing Arrangements Act, 1993 (Act No 155 of 1993);"

(e) by the deletion of the definition of "Fund";

(f) by the insertion after the definition of "housing development project" of the following definition:

"housing subsidy" means any benefit granted to a person in terms of any national housing programme instituted in terms of section 3(4)(g) or 3(5), including the benefits granted in terms of the Discount Benefit Scheme."

(g) by the insertion after the definition of "national housing programme" of the following definition:

"Policy Framework" means the Policy Framework for the accreditation of municipalities as contemplated in section 10(6);"

(h) by the insertion before the definition of "Procurement" of the following definition:

"primary bank account" means the primary bank account as contemplated in section 1 of the annual Division of Revenue Act;

(i) by the deletion of the definition of "provincial housing development fund".

**3. Amendment of section 3 of Act 107 of 1997**

Section 3 of the principal Act is hereby amended-

- (a) by the insertion after paragraph (g) of subsection (2) of the following paragraph:

"(h) prescribe a Policy Framework for the accreditation of municipalities and the assignment of powers and functions to accredited municipalities."

- (b) by the substitution for subsection (5), of the following subsection:

"(5)The following housing assistance measures, which were approved for financing out of the former Fund in terms of section 10A, 10B, 10C or 10D of the Housing Act, 1966(Act No. 4 of 1966), are deemed to be national housing programmes instituted by the Minister under subsection (4)(g):

- (a) The Housing Subsidy Scheme;
- (b) The Guidelines for the Discount Benefit Scheme to promote Home Ownership, subject to section 17;
- (c) The Hostels Redevelopment Programme: Policy for the Upgrading of Public Sector Hostels;
- (d) The Criteria and Procedures governing the Allocation of the Bulk and Connector Infrastructure Grant until it is phased out on a date determined by the Minister in consultation with the Minister for Provincial Affairs and Constitutional Development."

- (c) by the substitution for subsection (6), of the following subsection:

"(6) The following national institutions financed out of the former Fund in terms of section 10A, 10B, 10C or 10D of the Housing Act, 1966, are deemed to be national institutions established and financed by the Minister under subsection (4)(h):

- (a) The Mortgage Indemnity Fund (Pty) Ltd;
- (b) The National Housing Finance Corporation;
- (c) The National Urban Reconstruction and Housing Agency."

#### 4. Amendment of section 5 of Act 107 of 1997

Section 5 of the principal Act is hereby amended-

- (a) by the substitution for subsection (2) of the following subsection:

"(2) A panel shall consist of not more than **[six] eighteen** fit and proper persons who have knowledge, qualifications or experience in the field of housing development."

- (b) by the substitution for paragraph (b) of subsection (7) of the following paragraph:

"(b) his or her estate is sequestrated **[or he or she applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966];**"

#### 5. Amendment of section 6 of Act 107 of 1997

Section 6 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (e) of the following paragraph:

- "(e) subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), determine and collect, for the benefit of the **[Fund] Department's budget**, fees payable for the supply of, or the granting of access to, any information or category of information in the data bank and information system;"

#### 6. Amendment of section 7 of Act 107 of 1997

Section 7 of the principal Act is hereby amended –

(a) by the substitution in subsection (2) for paragraph (g) of the following paragraph:

“(g) prepare and maintain a multi-year plan, as part of its Five year Strategic Plan and Performance Plan, required in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the regulations thereunder, in respect of the execution in the province of every national housing programme and every provincial housing programme, which is consistent with national housing policy and section 3(2)(b), in accordance with the guidelines that the Minister approves for the financing of such a plan with money from the Department’s budget [Fund].”

(b) the substitution for subsection (3) of the following subsection:

“(3) An MEC must, subject to the assignment of powers and functions to accredited municipalities in terms of section 10-

(a) administer every national housing programme and every provincial housing programme which is consistent with national housing policy and section 3(2)(b), and for this purpose may, in accordance with that programme and the prescripts contained in the Code, approve-

(i) any projects in respect thereof; and

(ii) the financing thereof out of money paid into the primary bank account of the province [provincial housing development fund as contemplated in section 12(2)];

(b) determine provincial housing development priorities in accordance with national housing policy;

(c) apply procurement policy in respect of housing development determined by the Minister in terms of section 3(2)(c); and

(d) administer the assets contemplated in section 14.”

(c) the substitution for subparagraph (ii) of paragraph (g) of subsection (4) of the following subparagraph:

- “(ii) his or her estate is sequestrated [or he or she applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966];”

## **7. Amendment of section 9 of Act 107 of 1997**

Section 9 of the principal Act is hereby amended –

- (a) by the insertion after paragraph (h) of subsection (1) of the following paragraph:

“(i) obtain accreditation in accordance with the provisions of section 10.”

- (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) If a municipality has been accredited under section 10~~[(2)]~~ (4) to administer national housing programmes in terms of which a housing development project is being planned and executed, such municipality may not act as developer, unless such project has been approved by the MEC [relevant provincial housing development board].”

- (c) by the deletion in subsection (2) of paragraph (b).

## **8. Substitution of section 10 of Act 107 of 1997**

The following section is hereby substituted for section 10 of the principal Act:

### **“10. Assignment of powers and functions to accredited municipalities”**

(1) Any municipality may apply in writing to the MEC in the form determined by the MEC to be accredited under subsection (2) for the purposes of assigning powers and functions as contemplated in subsection (3).

(2) If the MEC is satisfied that the municipality which made an application under subsection (1) complies with all the requirements for accreditation as prescribed by the Policy Framework contemplated in subsection (6), the MEC must approve the application for accreditation of the municipality.

(3) Notwithstanding any provision in any law, the MEC may, as contemplated in section 126 of the Constitution, by agreement assign any power or function that is to be exercised or performed by him or her in terms of this Act, to a municipality accredited in accordance with the provisions of subsection (2).

(4) The assignment of any such power or function takes effect upon proclamation by the Premier.

(5) The Minister shall, after consultation with every MEC and the national organisation representing municipalities as contemplated in section 163(a) of the Constitution, prescribe a Policy Framework for the accreditation of municipalities and the assignment of powers and functions to accredited municipalities.

(6) The prescribed Policy Framework may provide for –

- (a) the procedure to be followed for purposes of obtaining accreditation, including any information, forms and documents that must be completed and submitted;
- (b) different levels of accreditation and the eligibility criteria for each level, if any;
- (c) the powers and functions that may be assigned to each level of accreditation;
- (d) the necessary capacity and system requirements for the purposes of assigning the various powers and functions to municipalities;
- (e) the powers and functions that may not be assigned;
- (f) the duties and responsibilities of municipalities once accredited;
- (g) a funding framework which may provide for various types of funding, how and for what purpose such funding may be utilised, and which sphere of government is responsible for providing such funding; Provided that such funding framework may not be inconsistent with the provisions of the annual Division of Revenue Act;
- (h) capacity support, including various forms of support and the duties and responsibilities of national and provincial government;
- (i) institutional arrangements pertaining to good governance, the monitoring of municipal performance, and the reporting obligations of municipalities;

- (j) accountability for money disbursed in terms of the funding framework or the relevant national housing programme;
  - (k) any other matter that the Minister considers necessary or expedient for the assigning of powers and functions to accredited municipalities or to achieve the objectives of this section;
  - (l) multi-year strategic housing development planning requirements for accredited municipalities; and
  - (m) rules and procedures for managing non-performance by accredited municipalities.
- (7) An accredited municipality must –
- (a) maintain the prescribed capacity and system requirements necessary for the assignment of powers and functions;
  - (b) ensure the proper and effective performance of assigned powers and functions;
  - (c) comply with the prescribed reporting duties; and
  - (d) comply with any duties and obligations prescribed by the Policy Framework.
- (8) The MEC must –
- (a) monitor the performance of accredited municipalities; and
  - (b) where a municipality fails to perform adequately, take the necessary steps to ensure proper and adequate performance.
- (9) Any dispute arising between an MEC and a municipality concerning an application for accreditation must be referred to the Minister, whose decision shall be final and binding.

## 9. Substitution of section 10A of Act 107 of 1997

The following section is hereby substituted for section 10A of the principal Act:

### **“Restriction on sale of state-subsidised housing.**

**10A.(1)** Notwithstanding any provisions to the contrary in any other law, it shall be a condition of every housing subsidy[, **as defined in the Code,**] granted to a natural person in terms of any national housing programme for the construction or purchase of a dwelling or serviced site that, subject to subsection (10), such person or his or her successors in title or creditors in law shall not

sell or otherwise alienate **[his or her]** that dwelling or site within a period of **[eight]** five years from the date on which the property was **[acquired by that]** registered in the name of such person unless the dwelling or site has first been offered to the relevant provincial housing department.

(2) **[The provincial housing department to which the dwelling or site has been offered as contemplated in subsection (1) shall endorse in its records that the person wishes to vacate his or her property and relocate to another property and is entitled to remain on a waiting list of beneficiaries requiring subsidised housing.]** Any such offer to the provincial housing department shall be made in writing and shall be accepted or rejected by the MEC within a period of 60 days from receipt thereof.

(3) **[When the person vacates his or her property the relevant provincial housing department shall be deemed to be the owner of the property and application must then be made to the Registrar of Deeds by the provincial housing department for the title deeds of the property to be endorsed to reflect the department's ownership of that property.]** If such offer is rejected, the person referred to in subsection (1) may sell or otherwise alienate the dwelling or site.

(4) **[No purchase price or other remuneration shall be paid to the person vacating the property but such person will be eligible for obtaining another state-subsidised house, should he or she qualify therefor.]** If such offer is accepted, the purchase price shall be determined by agreement between the person referred to in subsection (1), or his or her successors in title or creditors in law, and the MEC or, in the event of no agreement being reached, by a valuer acceptable to both parties and registered in terms of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000).

(5) Upon acceptance of such offer –

(a) the relevant provincial housing department shall endorse its records to reflect such acceptance; and

(b) the purchase price shall be financed by the MEC out of the primary bank account of the province.

(6) An MEC may, subject to subsection (9) grant exemption from the provisions of subsection (1), either conditionally or unconditionally, in respect of any dwelling or site to which the provisions of that subsection apply.

(7) The Registrar of Deeds concerned shall -

- (a) make such endorsements on the title deeds of any dwelling or site and such entries in his or her registers as may be necessary to indicate that the provisions of subsection (1) apply in respect of such dwelling or site;
- (b) cancel any such endorsements or entries where an exemption has been granted unconditionally under subsection (5) or where satisfactory proof has been submitted that conditions imposed under subsection (5) have been complied with;  
or
- (c) make such endorsements or entries as may be necessary to indicate any conditions subject to which an exemption has been granted under subsection (5).

(8) No transfer of any dwelling or site in respect of which subsection (1) applies, shall be passed to a person other than the provincial government unless the Registrar of Deeds is provided with a certificate, signed by the head of department, to the effect that such dwelling or site has been offered for sale to the provincial department of housing in terms of subsection (1) and that -

- (a) the offer has been rejected; or
- (b) an exemption has been granted under subsection (5), either unconditionally or subject to the conditions set out in the certificate.

(9) The Minister may, by notice in the Gazette, make rules on the granting of exemption in terms of subsection (6) as well as the amount that must be paid by the person or creditor concerned for the granting of such exemption.

(10) Notwithstanding anything to the contrary contained in this section, subsection (1) shall not apply to a mortgagee that exercises its rights in terms of law or a mortgage bond, as the case may be, on the grounds that the person or mortgagor has failed to meet his or her obligations in terms of such law or mortgage bond."

#### **10. Repeal of section 10B of Act 107 of 1997**

Section 10B of the principal Act is hereby repealed.

#### **11. Substitution of section 11 of Act 107 of 1997**

The following section is hereby substituted for section 11 of the principal Act:

### **"11. Disestablishment of South African Housing Fund**

(1) The South African Housing Fund established by section 12B(1)(a) of the Housing Arrangements Act, 1993 (Act No 155 of 1993), is hereby disestablished.

(2) As from the date of commencement of this Act –

(a) all moneys which –

- (i) immediately before the commencement stood to the credit of the former Fund shall devolve upon the National Revenue Fund;
- (ii) immediately before the commencement were payable to or for the credit of the former Fund shall be payable to the National Revenue Fund;
- (iii) after the commencement date would have become payable to or for the credit of the former Fund shall become payable to the Department; and
- (iv) were advanced out of the former Fund shall be deemed to have been advanced out of the National Revenue Fund.

(b) Any reference to the former Fund in any document, in relation to the financing of any national housing programme or any provincial housing programme, must be construed as a reference to the National Revenue Fund."

### **12. Amendment of section 12 of Act 107 of 1997**

The following section is hereby substituted for section 12 of the principal Act:

#### **"12. Allocation of money in Fund to provincial governments.**

(1)(a) The Minister may allocate money out of the Department's budget **[Fund]** for the purposes of financing the implementation in a province of any national housing programme and any provincial housing programme, which is consistent with national housing policy and section 3(2)(b).

(b) The criteria for the allocation of money in terms of paragraph (a) must, subject to paragraph (c), be determined by the Minister after consultation with every MEC.

(c) The Minister may, in determining the amount of any allocation in terms of paragraph (a) in respect of any particular province, take into account any credit balance in the primary bank account of a province **[relevant provincial housing development fund]** and the balance of any money payable to such account **[fund as contemplated in subsection (4)(d)]**.

(2) Any money allocated under subsection (1)(a) must, **[subject to subsection (3),]** be paid into the primary bank account of a province, and may only be used in accordance with the provisions of the annual Division of Revenue Act. **[ a provincial housing development fund to be established by provincial legislation, which legislation must provide for -**

- (a) the money so paid to be withdrawn from such fund only for the purposes of the implementation in the province of national housing programmes and provincial housing programmes, which are consistent with national housing policy and section 3(2)(b);
- (b) the designation of an officer of the provincial administration as the accounting officer in respect of the money in such fund, and for such officer to be responsible for the administration of the fund;
- (c) the regulation of such accountability and administration, including reporting by such officer to the provincial legislature on all matters affecting such fund;
- (d) the manner in which the accounts and records of such fund are to be kept, the preparation of detailed annual statements showing the results of the transactions and the balance sheet of the fund and their submission to the provincial legislature by the MEC; and
- (e) the auditing of the books and statements of account and balance sheet of such fund by the Auditor-General.

(3) Until a provincial housing development fund has been established as contemplated in subsection (2), the money allocated under subsection (1)(a) must be dealt with in accordance with section 13 of the Housing Arrangements Act, 1993(Act No. 155 of 1993), despite its repeal by section 20.]

[(4)](3)(a) Any money allocated under subsection (1)(a) must be paid into the primary bank account of the relevant province **[relevant provincial housing development fund]** by the Director-General in such amounts as may from time to time be required for the purposes of the implementation in the relevant province of any national housing programme or any provincial housing programme, which is consistent with national housing policy and section 3(2)(b).

(b) The Director-General may not make any payment contemplated in paragraph (a) unless he or she has received a requisition from the accounting officer of the provincial department **[contemplated in subsection (2)(b)]** or an officer of the provincial administration designated for that purpose by that accounting officer, in which he or she has certified that the money is required to meet expenditure that is reasonably expected to be incurred within the period for which the requisition has been submitted.

(c) Such requisition must be submitted in the form, at the intervals and in respect of the periods the Director-General determines.

(d) The balance of any money allocated under subsection (1)(a) in respect of a financial year which was not expended, remains payable to the primary bank account of the province **[provincial housing development fund in question]** and must, in accordance with this subsection, be paid into such account **[fund]** when required for the purposes of the implementation in the relevant province of any national housing programme or any provincial housing programme, which is consistent with national housing policy and section 3(2)(b).

### 13. Amendment of section 14 of Act 107 of 1997

Section 14 of the principal Act is hereby amended –

(a) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) To achieve an equitable result such agreement or arbitration may provide for the payment of compensation out of the primary bank account [provincial housing development fund] of one province to the credit of the primary bank account [provincial housing development fund] of another province.”

(b) by the substitution in subsection (3)(f) for subparagraph (i) of the following subparagraph:

“(i) be paid into the primary bank account of [provincial housing development fund for] the province in question [or, if such fund has not been established when such net proceeds are received, be dealt with in accordance with section 13 of the Housing Arrangements Act, 1993 (Act No. 155 of 1993), despite its repeal by section 20]; and”

(c) by the substitution in subsection (3)(g) for subparagraph (ii) of the following subparagraph:

“(ii) The cost of completing such project or scheme must be financed by a grant from money paid into the primary bank account of the province [relevant provincial housing development fund] as contemplated in section 12(2).

(d) by the substitution in subsection (4)(a)(ii) for item (aa) of the following item:

“(aa) paid into the primary bank account of [provincial housing development fund for] that province [or, if such fund has not been established when such net proceeds are received, be dealt with in accordance

with section 13 of the Housing Arrangements Act, 1993, despite its repeal by section 20]; and"

(e) by the substitution in subsection (4)(d)(iii) for item (bb) of the following item:

"(bb) the premier of a province, must be paid into the primary bank account of [provincial housing development fund for] such province [or, if such fund has not been established when such net proceeds are received, be dealt with in accordance with section 13 of the Housing Arrangements Act, 1993, despite its repeal by section 20]."

(f) by the substitution in subsection (4)(e) for subparagraph (ii) of the following subparagraph:

"(ii) The cost of completing such project or scheme must be financed by a grant from money paid into the primary bank account of the province [relevant provincial housing development fund] as contemplated in section 12(2)."

(g) by the substitution in subsection (4)(f) for subparagraph (ii) of the following subparagraph:

"(ii) Any money recovered by the Provincial Government by virtue of the right that so passes to that Provincial Government, must be paid into its primary bank account [provincial housing development fund] and must be utilised for housing development in accordance with the national housing policy and a housing development project approved by the MEC."

(h) by the insertion after subsection (10) of the following subsection:

"(11) The powers, duties, rights and obligations of a Provincial Government in relation to immovable property belonging to such Provincial Government in terms of the provisions of this section, shall vest in the MEC."

#### 14. Amendment of section 15 of Act 107 of 1997

Section 15 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

- “(b) Any reference in section 14(3)(a) to (g) to a Provincial Government and an primary bank account of a province **[a provincial housing development fund]** must be construed as a reference to the relevant municipality and the municipality’s operating account as contemplated in subsection (5), respectively.”

#### 15. Savings

(1) In this section “provincial housing development fund” means a provincial housing development fund contemplated in section 12(2).

(2) As from the date of commencement of this Act –

- (a) all moneys which –
  - (i) immediately before the commencement stood to the credit of any provincial housing development fund shall devolve upon the accredited bank account of the province concerned;
  - (ii) immediately before the commencement were payable to or for the credit of any provincial housing development fund shall be payable to the accredited bank account of the province concerned;
  - (iii) after the commencement date would have become payable to or for the credit of any provincial housing development fund shall become payable to the accredited bank account of the province concerned; and
  - (iv) were advanced out of any provincial housing development fund shall be deemed to have been advanced out of the accredited bank account of the province concerned.

- (b) Any reference to a provincial housing development fund in any document, in relation to the financing of any national housing programme or any provincial housing programme, must be construed as a reference to the accredited bank account of the province concerned.

**16. Short title**

This Act is called the Housing Amendment Act, 2006.

## MEMORANDUM ON THE OBJECTS OF THE HOUSING AMENDMENT BILL, 2006

### 1. BACKGROUND

The **main aim** of the Bill is threefold –

- 1.1 firstly, the Bill seeks to bring about certain changes to the housing funding regime as it is currently provided for in the Housing Act, 107 of 1997 (the Act);
- 1.2 secondly the Bill endeavors to create a comprehensive framework for the accreditation of municipalities and the assignment of powers and functions to the local sphere of government; and
- 1.3 thirdly the Bill addresses the contentious issue of the restriction of the sale of state-subsidised housing, as contained in sections 10A and 10B of the Act.

### 2. OBJECTS OF BILL

#### 2.1 The amendment of the existing **funding regime**.

- 2.1.1 The Act currently makes provision for a South African Housing Fund at national level, and Provincial Housing Development Funds at provincial level. All monies allocated to housing are paid into these funds, and all expenditure incurred is met from these funds. The funds were created mainly as a ring fencing mechanism to ensure that money appropriated for housing is used only for that purpose.
- 2.1.2 With the advent of the Public Finance Management Act, 1 of 1999 (PFMA), and the annual Division of Revenue Act (DORA), it is no longer desirable to have these funds, and well for the following reasons:

- (a) In respect of the South African Housing Fund, the protection afforded by the PFMA and DORA have essentially rendered the Fund redundant; and
- (b) As far as the provincial housing development funds are concerned, the current payment of moneys into these funds is contradictory to the provisions of both the PFMA and DORA.

2.1.3 To bring about the requisite changes, the Act must be amended as follows:

- (a) Section 1, by inserting definitions for "primary bank account", "Department's budget" and "former fund", and omitting the definitions of "Fund" and "provincial housing development fund";
- (b) Sections 3, 6, 7, 10, 14 and 15 must be amended to-
  - (i) substitute certain references to "Fund" and "provincial housing development fund" with "Department's budget" and "primary bank account", respectively; and
  - (ii) to omit other references to "Fund" and "provincial housing development fund", where appropriate;
- (c) Section 11 is substituted by a new section which disestablishes the South African Housing Fund and provides for a new funding dispensation;
- (d) Section 12 is amended to delete provisions pertaining to the establishment of provincial housing development funds, and to provide for matters incidental thereto; and
- (e) Provision is made for a savings section that will make provision for transitional arrangements.

2.2 The **accreditation** of municipalities and the **assignment** of powers and functions.

2.2.1 Section 10 of the Housing Act, 1997 allows for the accreditation of municipalities so as to enable them to administer national housing programmes instituted in terms of the Act.

- 2.2.2 In light of the new constitutional dispensation, and government's vision for housing as set out in the *Comprehensive Plan for the Creation of Sustainable Human Settlements* (a Cabinet approved policy directive), the existing provisions of section 10 have become inadequate, especially with regard to aspects such as the constitutionally based assignment of powers and functions, the role of intergovernmental relations, and capacity and funding requirements.
- 2.2.3 To address this issue the department followed a two-pronged approach. A policy framework and guidelines for the accreditation of municipalities was firstly developed, with the policy framework including, amongst other things, the requirements for accreditation. This was then followed by the preparation of the amendments to section 10, in accordance with the approved framework, whilst also incorporating provisions pertaining to the assignment of powers and functions as provided for in the Constitution.
- 2.2.4 As far as the assignment aspect of the draft amendment clause is concerned, the provisions of sections 126 and 156(4) of the Constitution have been used as a basis. In terms of section 126 an MEC may assign certain legislatively acquired powers and functions to municipalities, whilst section 156(4) allows for the assignment, by agreement and subject to any conditions, the administration of, *inter alia*, matters listed in part A of Schedule 4 of the Constitution, which includes housing.
- 2.2.5 The amended section 10 will therefore firstly allow for two essentially separate (yet intricately interweaved) processes, which firstly allows for the accreditation of a municipality on the basis of the requirements of the Policy Framework, and secondly enables an MEC to, by agreement, assign any of his or her powers or functions (as per the Housing Act) to the accredited municipality. Lastly, the draft clause also lists a number of matters which may be prescribed in the Policy Framework.

## 2.3 The sale of **state-subsidised** housing.

- 2.3.1 In terms of the Housing Amendment Act, 4 of 2001, the voluntary and involuntary sale of state-subsidised housing was restricted by the insertion of sections 10A and 10B in the Housing Act. The general design was to restrict the sale of these houses by creating a pre-emptive right in favor of the state which entailed that such houses may not be sold within a period of 8 years from the date of acquisition unless it had first been offered to the relevant provincial housing department.
- 2.3.2 This was an attempt to firstly curb the escalating sale of subsidised houses by beneficiaries, mostly for substantially less than the original subsidy amount, and secondly to protect these houses from being sold in execution for ridiculous amounts, so as to settle claims by creditors which in most instances amounts to much less than the subsidy investment made by government.
- 2.3.3 Although the intent was clear, the implementation of sections 10A and 10B proved murky at best.
- 2.3.4 In terms of section 10A, the offer to the provincial housing department is in fact interpreted as a notice of vacation, with the property then being deemed to be owned by the province, with the 'seller' reverting back to the waiting list of persons requiring subsidised housing. This clearly does not constitute a pre-emptive right in the legal sense, but is more a matter of disposition without compensation. No consideration is thus given to aspects such as the appreciation of value etc, and the procedures pertaining to the transfer of ownership in the Deeds Office is virtually non-existent, if compared to that provided for in section 10B.
- 2.3.5 With regard to section 10B, the position is virtually transversal from that contained in 10A. Firstly, the most glaring *lacuna* is the fact that the pre-emptive right is not linked to the 8 year period provided for in 10A, and is hence almost open-ended.

2.3.6 However, on the other hand section 10B makes provision for both a fair process in the exercise of the pre-emptive right, and a properly stipulated process of ownership transfer in the Deeds Office.

2.3.7 Although the application of section 10B extends beyond that of 10A by including the successors in title of the beneficiary and also certain creditors, it is clear that these sections should not be divorced, but should instead be merged, as is proposed by the amendments to section 10A and the repeal of 10B.

2.3.8 In the revised clause 10A, the pre-emptive period is reduced from 8 to 5 years, as per approved national housing policy, whilst a fair process is put in place for dealing with the acceptance, or not, of the offer to sell as made by the beneficiary. Lastly, provision is made for the formal transfer of ownership via the Office of the Chief Registrar of Deeds.

2.3.9 Section 10B is repealed.

## 2.4 **Miscellaneous amendments.**

Further to the mainstream amendments discussed above, the following substantive amendments are included in the Bill-

2.4.1 Certain definitions pertaining to accreditation are inserted;

2.4.2 The Minister is empowered to prescribe a policy framework for the accreditation of municipalities and the assignment of powers and functions;

2.4.3 The Minister's advisory panel is extended from 6 to 18 members;

2.4.4 The planning obligations of provinces are amended;

2.4.5 Certain powers and functions are vested in the MEC; and

2.4.6 The provisions of sections 5(7)(b) and 7(4)(g)(ii), dealing with the cessation of membership of the Minister's and an MEC's advisory panels, respectively, is

amended to delete the provision pertaining to the Agricultural Credit Act, 1966, by virtue of the mentioned Act having been repealed by the Agricultural Debt Management Act, 45 of 2001.

**3. PERSONS CONSULTED**

- 3.1 With regard to aspects such as the funding regime and the accreditation of municipalities, task teams consisting of provinces, Salga, Metro's and other stakeholders were used to workshop the issues involved.
- 3.2 In relation to the restriction of the sale of state-subsidised housing, the department worked closely with the Office of the Chief State Law Adviser to find an appropriate solution.
- 3.3 The Bill is to be published for comment in the *Gazette* pursuant to Cabinet approval in that regard.
- 3.4 The Bill also served before the FOSAD Social Sector Cluster Committee which approved its submission to Cabinet for approval and publication in the *Gazette* for public comment.

**4. IMPLICATIONS FOR PROVINCES**

None

**5. FINANCIAL IMPLICATIONS FOR STATE**

None

**6. PARLIAMENTARY PROCEDURE**

Bill to be dealt with in terms of the procedure as provided for in section 76 of the Constitution.

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