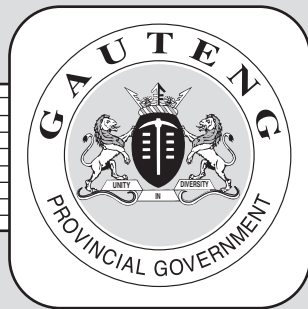


**THE PROVINCE OF
GAUTENG**



**DIE PROVINSIE VAN
GAUTENG**

Provincial Gazette Provinsiale Koerant

EXTRAORDINARY • BUITENGEWOON

Selling price • Verkoopprijs: **R2.50**
Other countries • Buitelands: **R3.25**

Vol: 27

PRETORIA
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No: 198

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Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
	PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS		
497	Gauteng Legislature: The Gauteng Provincial Legislature intends to introduce the Gauteng Township Economic Development Bill, 2020.....	198	3

PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS

PROVINCIAL NOTICE 497 OF 2021

**GAUTENG**
LEGISLATURE**THE GAUTENG PROVINCIAL LEGISLATURE INTENDS TO
INTRODUCE THE GAUTENG TOWNSHIP ECONOMIC
DEVELOPMENT BILL, 2020**

The above-mentioned Bill is hereby published in English in the Gauteng Provincial Extraordinary Gazette No. 198, dated 17 June 2021 for public comments and general information.

The Bill seeks to provide for the promotion and development of the township economy and to create a conducive environment for the attainment of that purpose; to provide for licensing of township based enterprise, to provide for management of the Fund through the Gauteng Township Economic Development Fund; to provide for principles to be adopted by municipalities in drafting and adopting by-laws and to provide for matters connected therewith or incidental thereto.

People, who wish to comment on the Bill, may send their written comments to:

Office of the Secretary
Senior Committee Co-Ordinator (Mr. Thabo Theophyllus Skosana)
Gauteng Provincial Legislature
Private Bag X52
Johannesburg
2000

Mobile: 0829677478

Fax: (011) 498 5719

Comments must reach the above office on or before 30 July 2021.

Copies of the *Gazette* may be obtained from Government Printers, Publications Section, Vermeulen and Bosman Streets/

PROVINCE OF GAUTENG

**GAUTENG TOWNSHIP ECONOMIC
DEVELOPMENT BILL**

(As introduced in the Provincial Legislature of the Province of Gauteng as a Government Bill in terms of Rule 192(1) of the Standing Rules of the Provincial Legislature (Version 5, Revision 8))

(The English Text is the official text of the Bill)

(Member of the Executive Council responsible for economic affairs in the Province)

[B – 2020]

B I L L

To provide for the promotion and development of the township economy and to create a conducive environment for the attainment of that purpose; to provide for licensing of township based enterprise, to provide for management of the Fund through the Gauteng Township Economic Development Fund; to provide for principles to be adopted

by municipalities in drafting and adopting by-laws and to provide for matters connected therewith or incidental thereto.

PREAMBLE

WHEREAS section 9 of the Constitution guarantees the right of everyone to equal protection and benefit of the law, and empowers the State to undertake legislative and other measures designed to promote the achievement of equality by protecting and advancing persons or categories of persons disadvantaged by unfair discrimination;

AND WHEREAS section 22 of the Constitution guarantees the right of every citizen to choose his or her trade, occupation or profession freely, and empowers the State to regulate the practice of trade, occupation or profession by law;

AND WHEREAS the Gauteng Provincial Government recognises that the significant participation and meaningful inclusion of the people of the township into the mainstream economy of the Province through their own township enterprises that are supported by the Government and big business will transform the economy;

AND WHEREAS the Gauteng Provincial Government acknowledges that townships must be vibrant economic centres;

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of Gauteng, as follows:

Arrangement of Sections *Section*

CHAPTER 1**PRELIMINARY PROVISIONS**

1. Definitions
2. Guiding principles
3. Objects of Act
4. Application of Act
5. Non-derogation from, and conflict with, other law

CHAPTER 2**DESIGNATION OF TOWNSHIP AREAS**

6. Designation of township areas

CHAPTER 3**REGULATION OF TOWNSHIP-BASED ENTERPRISES**

7. Licensing of township-based enterprises
8. Display of licences

CHAPTER 4**PROMOTION AND DEVELOPMENT OF TOWNSHIP-BASED ENTERPRISES****Part I****Role of responsible Member and provincial organs of state**

9. Policies and programmes by responsible Member
10. Plans and strategies by provincial organs of state

Part II**Benefits and incentives**

11. Financial assistance
12. Development of infrastructure
13. Industrial and commercial estates
14. Letting of buildings or premises
15. Capacity building programmes
16. Development of markets and provision of marketing services
17. Technology transfer or acquisition

CHAPTER 5

GAUTENG TOWNSHIP ECONOMIC DEVELOPMENT FUND

18. Establishment of Gauteng Township Economic Development Fund
19. Purpose of Fund
20. Funds of Fund
21. Management of Fund
22. Appointment of Board
23. Persons disqualified from being appointed as members of board
24. Term of office of members of board
25. Termination of membership of board and removal from office
26. Filling of vacancies in membership of board
27. Committees of board
28. Expert and other assistance
29. Meetings of board
30. Transparency and confidentiality
31. Minutes of meetings
32. Remuneration and allowances
33. Dissolution of board
34. Taking over functions of board
35. Accessing the Fund
36. Accounts of Fund
37. Annual report of Fund

1.

2. CHAPTER 6

3. MUNICIPALITIES

4.

38. Application of Act to municipalities with the Province
39. Township Economic Development By-laws

5.

6. CHAPTER 7

7. GENERAL PROVISIONS

- 8.
40. Regulations
 41. Guidelines
 42. Collaboration among organs of state
 43. Amendment of laws
 44. Short title and commencement

CHAPTER 1 PRELIMINARY PROVISIONS

Definitions

9. In this Act, unless the context indicates otherwise—
"co-operative" means a co-operative registered in terms of section 7 of the Co-operatives Act, 2005 (Act No. 14 of 2005);

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Department" means the Department responsible for economic affairs in the Province;

"enterprise" means—

- (a) an undertaking or a business concern, whether formal or informal, which is engaged in the production of goods or provision of services; and
- (b) includes an entrepreneur; and
- (c) a small enterprise, a small enterprise organisation and a co-operative

"entrepreneur" means a person who starts or operates a business, or both, which includes identifying opportunities in the markets, taking risks with a view of being rewarded with profits;

"Executive Council" means means the Executive Council of the Province contemplated in section 132 of the Constitution;

"provincial organ of state" means—

- (a) a provincial department as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(b) a provincial public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or

(c) the Provincial Legislature;

"persons with disabilities" has the meaning assigned to the phrase in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);

"prescribe" means to prescribe by regulation and **"prescribed"** has the corresponding meaning;

"Province" means the Province of Gauteng referred to in section 103(1)(c) of the Constitution;

"Provincial Gazette" means the Provincial *Gazette* of the Province of Gauteng as published by the Government Printer;

"Provincial Legislature" means the Provincial Legislature of the Province of Gauteng referred to in section 104 of the Constitution;

"Republic" means the Republic of South Africa referred to in section 1 of the Constitution;

"responsible Member" means the Member of the Executive Council responsible for matters related to economic affairs in the Province;

"small enterprise" means a separate and distinct business entity, together with its branches or subsidiaries, if any, including a co-operative enterprise, managed by one owner or more, predominantly carried on in any sector or subsector of the economy mentioned in column 1 of the Schedule and classified as a micro, small or medium enterprise by satisfying the criteria mentioned in columns 3 and 4 of the Schedule to the National Small Enterprise Act, 1999 (Act No. 102 of 1996);

"small enterprise organisation" means any entity, whether or not incorporated or registered under any law, consisting mainly of persons carrying on small enterprise concerns in any economic sector and established for the purpose of promoting the interests of, or representing, small enterprise concerns, and includes any federation consisting wholly or partly of such association, and any branch of such organisation;

"this Act" includes any regulation made in terms of or under this Act;

"township" means an area contemplated in section 6, and includes an urban, peri-urban or rural living area which—

- (a) at any time from the late 19th century until 27 April 1994, was reserved for black people; or
- (b) has been developed for historically disadvantaged persons after 27 April 1994; and

"township-based enterprise" means a small enterprise, small enterprise organisations and co-operatives which is based or situated in a township designated in terms of section 6, and includes a small enterprise organisation

Guiding principles

2. (1) This Act seeks to facilitate and promote inclusive economic growth along a transformative paradigm in order to build a cohesive and more equal society which is underpinned by—

- (a) a growing and inclusive economy that harnesses the potential of all people in the Republic;
- (b) diversify the ownership patterns in the economy; and
- (c) facilitates easier access by new entrants into all sectors of the economy.

(2) Without derogation from the provisions of subsection (1), organs of state within the Province must be guided by specific transformative principles driving township economic interventions, including interventions that—

- (a) focus on sectors of the economy with rapid growth potential, especially with regard to employment and exports;
- (b) are driven by an ethos and imperatives of transformation, modernisation and re-industrialisation;
- (c) are structured to include the social protection of vulnerable groups in society through the promotion of access to economic opportunities;
- (d) include a bias towards strengthening of the productive capacity of the township economy across all sectors and value chains;

- (e) promote productive activities and value addition designed to prevent and eradicate fronting practices;
- (f) need to extract—
 - (i) maximum economic development value from planned levels of investment in infrastructure; and
 - (ii) maximum value from established and potential capacity of government departments; and
- (g) need to be implemented within the context of an effective, solution-oriented monitoring and evaluation system.

Object of Act

3. The object of this Act is to—

- (a) provide a regulatory framework which makes it possible for people living in townships to establish viable and thriving business, enterprises, small enterprises, small enterprise organisations and co-operatives where they live;
- (b) introduce an enabling framework to ensure that retail malls and supermarkets that are township-based partner with local township-based enterprises, including the sourcing of some of the products and services from local township-based producers, service providers and manufacturers;
- (c) establish specific procurement rules and programmatic support that allows government and its main contactors—
 - (i) to buy from a large group or groups of township-based enterprises, with systems linking them so they can supply as if they are one large enterprise; or
 - (ii) to compel enterprises that obtain government contracts to spend a certain percentage of their procurement spend on township-based enterprises or entrepreneurs and co-operatives;
- (d) provide an enabling environment for municipalities to—
 - (i) develop taxi ranks into micro central business districts and to support the taxi economy to use its scale to grow supporting value chains and industries;

- (ii) support the development and promotion of a township-based real estate development model to convert areas with high commercial densities into township high streets; and
- (e) promote and support the development of representative associations of township-based enterprises and non-profit organisations.

Application of Act

4. This Act applies to every organ of state and, subject to section 39, every municipality within the Province.

Non-derogation from, and conflict with, other law

5. (1) This Act is—
- (a) cumulative; and
 - (b) in addition to; and
 - (c) not in derogation from,
- any other law for the time being in force.
- (2) In the event of a conflict between this Act and any other law in force which regulates township economic development or township-based enterprises in the Province and which is of general application, this Act prevails.

CHAPTER 2

DESIGNATION OF TOWNSHIP AREAS

Designation of township area

6. (1) The responsible Member must, after consultation with a relevant municipality and by notice in the *Provincial Gazette*, designate an area within a geographic area of a municipality, determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998), a township for the purposes of this Act.

CHAPTER 3 LICENSING OF TOWNSHIP-BASED ENTERPRISES

Licensing of township-based enterprises

7. (1) From the date of commencement of this Act, provincial organs of state must indicate how they are adopting protocols to support township-based enterprises that—

- (a) do not comply with a specific requirement; or
- (b) do not meet with a specific requirement,

in obtaining such a licence from a relevant licensing authority, to obtain such a licence.

(2) Before the grant or issue of such a licence from the relevant licensing authority, a provincial organ of state may regard the township-based enterprise as a formal business enterprise: Provided that a certified copy of receipt or a formal confirmation issued by the relevant licensing authority of an application is produced as sufficient evidential proof of an application for a licence.

(3) In this section, and section 8, a "**licence**" includes a written or digital licence, registration, approval, recognition, permission, consent, certificate, exemption or any other authorisation granted and issued in accordance with any law in force for the purpose of establishing or operating a business enterprise.

Display of licences

8. Where a licence is issued in respect of any premises, the licence holder must ensure that such licence is displayed at all times in a prominent position on such premises or be able to provide digital proof of the licence.

CHAPTER 4

PROMOTION AND DEVELOPMENT OF TOWNSHIP-BASED ENTERPRISES

Part I

Role of responsible Member and other organs of state

Policies and programme by responsible Member

9. (1) Within the limits prescribed by law, the responsible Member must—

- (a) formulate, coordinate and implement policies and programmes for promoting and developing township-based enterprises;
- (b) monitor the efficiency and performance of township-based enterprises having regard to the purpose for which they are established;
- (c) establish a data base of facilities and sources of finance, technology, raw materials, machinery, equipment and supplies with a view to promoting accessibility to township-based enterprises;
- (d) provide marketing support services to township-based enterprises;
- (e) register, collect, research and disseminate information relating to township-based enterprises;
- (f) register, monitor and coordinate activities and programmes of promotional agencies engaged in township-based enterprise development;
- (g) Invest in the development and upgrading of appropriate productive technologies for township-based enterprises;
- (h) locate and develop industrial estates and common facilities for use by township-based enterprises according to the list promulgated by the MEC;
- (i) develop township entrepreneurship;
- (j) arrange for independent training, management and consulting services to township-based enterprises at such fee as determined by the Minister of Finance.

- (k) provide financial services specified under Part III through the Fund established thereunder;
- (l) establish and maintain a data base of plans and strategies contemplated in section 10;
- (m) do all such other things as are necessary or incidental to the attainment of the object of this Act.

(2) In addition to the provisions of subsection (1), the responsible Member must facilitate the development and implementation of multisectoral policies and programmes.

Plans and strategies by provincial organs of state

10. (1) Subject to the provisions of this Act and other applicable law, a provincial organ of state may—

- (a) formulate plans and strategies to support the development of township-based enterprises;
- (b) develop and implement programmes and projects in pursuance of the plans and strategies contemplated in paragraph (a), including programmes and projects intended to contribute directly or indirectly to—
 - (i) the establishment, development, support and promotion of township-based enterprises; and
 - (ii) the economic prosperity of township-based enterprises;
- (c) plan, direct, manage and implement programmes and projects to improve the business environment in the Province, including programme and projects—
 - (i) to support township-based enterprises, business associations, conferences, studies, consultations, trade shows, demonstration projects and market research; and
 - (ii) to improve business communication and cooperation; and
 - (iii) related to the development of business opportunity data banks and networks; and

- (d) promote and advance the mainstreaming of youth, women and persons with disabilities in all township-based enterprise programmes and projects;
- (e) do all such other things as are necessary or incidental to the attainment of the purpose of this Act.

(2) Without derogating from the provisions of subsection (1), the benefits and incentives include those that are mentioned in Part II of this Chapter; and

(3) A plan or strategy as contemplated under subsection (1) must be reported by the relevant organ of state to the responsible Member within one month of the adoption of such plan or strategy.

Part II

Benefits and incentives for township-based enterprise

Financial assistance

11. A provincial organ of state may, in order to facilitate the flow of financial resources to sector township-based enterprises—

- (a) either on its own or in cooperation with other small enterprise development agencies, identify sector township-based enterprises and projects which require financial assistance;
- (b) provide information on sources of finance and promote local investment for sector township-based enterprises;
- (c) assist sector township-based enterprises with the preparation of business plans, project proposals and other loan application documents with a view to promoting accessibility to financial resources;
- (d) design and establish standards for loan administration and monitor effective use of loan funds and repayment mechanisms by sector township-based enterprises so as to curb misuse of financial resources;

- (e) either on its own or with other financial institutions, establish venture capital funds to promote investments registered in terms of this Act; and
- (f) secure incentives through relevant authorities for any financial institution which undertakes to develop or finance sector township-based enterprises.

Development of infrastructure

12. A provincial organ of state must take reasonable measures to facilitate the provision of suitable infrastructure, including worksites, social amenities, business information centres, model centres of excellence, common usage facilities and other facilities, necessary for development of sector township-based enterprises.

Industrial and commercial estates

13. A provincial organ of state must, on such terms and conditions as may be agreed, assist sector township-based enterprises with the provision of buildings or premises on which township enterprises may undertake designated business activities.

Letting of buildings or premises

14. The Gauteng Department of Infrastructure Development must assist a provincial organ of state, on such terms and conditions as may be agreed upon, to enter into an agreement with any person, institution, organisation or company, to let out any building or premises for use by sector township-based enterprises as an industrial or commercial estate for—

- (a) the first three years of operations for an enterprise operating in an urban or peri urban area; or
- (b) the first five years of operations for an enterprise operating in a rural area,

without any payment of rentals excluding operational costs.

Capacity building programmes

15. A provincial organ of state must, in partnership with the public and private training institutions, as the provincial organ of state may deem necessary—

- (a) promote and provide business development services for sector township-based enterprises;
- (b) promote technological modernisation and development of sector township-based enterprises; and
- (c) develop and administer certified demand-driven capacity building and entrepreneurship programmes for sector township-based enterprises.

Development of markets and provision of marketing services

16. (1) A provincial organ of state may—

- (a) facilitate the establishment of markets or identify existing markets for products generated by sector township-based enterprises;
- (b) provide linkages between sector township-based enterprises and potential markets;
- (c) organise trade fairs and shows in order to promote products generated by sector township-based enterprises;
- (d) conduct market research, undertake surveys and analysis and share the findings, conclusions and recommendations thereof with sector township-based enterprises; and
- (e) provide all such matters and things as may be necessary for the convenient use by sector township-based enterprises, including payment of stallages, rents, fees and tolls in respect of the use by any sector township-based enterprises at any market: Provided that such payments must be within the reasonable financial means of the relevant organ of state.

Technology transfer or acquisition

17. A provincial organ of state must, in order to promote technology transfer, acquisition and adaptation of new and modern technology—

- (a) encourage innovation and transfer of technology in order to increase competitiveness of township-based enterprise products and services;
- (b) support the registration and protection of intellectual property rights for sector township-based enterprises;
- (c) provide incentives to encourage invention and innovation by sector township-based enterprises;
- (d) establish—
 - (i) regional and other centres of excellence to enhance utilisation of locally available knowledge, skills and resources; and
 - (ii) technology parks for graduating sector township-based enterprises;
- (e) identify, collect, develop, modify, package and disseminate technology and products to sector township-based enterprises;
- (f) facilitate sector township-based enterprises to access relevant equipment either through purchase, lease or franchising;
- (g) conduct research on available technologies with a view to improve such technologies;
- (h) access modern and appropriate technologies for use by sector township-based enterprises;
- (i) develop, in collaboration with relevant institutions, programmes—
 - (i) in standardisation and product development for different subsectors within sector township-based enterprises; and
 - (ii) for improving credit access and other financial services by sector township-based enterprises;
- (j) develop programmes to enable sector township-based enterprises to comply with legislation, including in particular, environmental legislation; and

- (k) mobilise funds and resources for the development of appropriate technology in relevant research institutions and enterprises that develop technology for small enterprises.

CHAPTER 5

Gauteng Township Economic Development Fund

Establishment of Gauteng Township Economic Development Fund

18. There is hereby established a Fund to be known as the Gauteng Township Economic Development Fund.

Purpose of Fund

19. (1) The main purpose of the Fund is to support the development of township-based enterprises.

(2) Without derogating from the generality of subsection (1), the Fund must—

- (a) provide affordable and accessible credit or loans to township-based enterprises;
- (b) guarantee the repayment of, or provide loan insurance or credit insurance of financial obligations undertaken by township-based enterprises;
- (c) finance—
 - (i) capacity building of township-based enterprises; or
 - (ii) finance research, development, innovation and transfer of technology.

(3) In the execution of the functions contemplated in subsections (1) and (2) the fund may not be overdrawn.

Funds of Fund

20. (1) The Fund consists of—

- (a) monies appropriated to the fund under an appropriation Act adopted by the Gauteng Provincial Legislature;
- (b) monies as may be payable or transferred to the Fund pursuant to this Act or any other law;
- (c) monies or assets as may accrue to or vest in the Fund under this Act;
- (d) monies received by way of donations, gifts or grants given or made for the purpose of the Fund;
- (e) interest accruing from loans and other forms of investment for the purpose of the Fund; and
- (f) moneys from any other source provided or lent to the Fund.

(2) The responsible Member may, in consultation with the Member of the Executive Council responsible for finance, by notice in the *Provincial Gazette*, fix the size of the Fund sufficient to facilitate the promotion and development of township-based enterprises.

(3) Monies constituting the Fund must be placed in an account to be used for the promotion and development of township-based enterprises, and—

- (a) surplus monies must be invested in interest-bearing financial products; and
- (b) any income from the investments referred to in paragraph (a) must be credited to the Fund.

Management of Fund

21. (1) The Fund is under the administration and control of the Board of Directors of the Fund, which must be appointed by the Executive Council and is responsible to the responsible Member for the purposes of this Act.

(2) The Board is, in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), the accounting authority for the Fund.

(3) A member of the board must at all times act—

- (a) in the interest of the Fund and not in their own or sectoral interests;
- (b) independently of any undue influence or instruction;
- (c) in a justifiable, open and transparent manner and his or her decisions must be impartial and without any bias;
- (d) in a manner that is required and expected from the holder of a public office; and
- (e) in the public interest.

(4) The Board is responsible for—

- (a) opening and managing an account in the name of the Fund with a registered bank in the Republic;
- (b) depositing into that account any money received by the Fund;
- (c) supervising and controlling the administration of the Fund;
- (d) approving of all township-based enterprises development and financing proposals;
- (e) entering into agreements with any person for the purpose of providing services to the Fund;
- (f) entering into agreements with financial institutions for the purpose of administering affordable and accessible credit to township enterprises; and
- (g) investing any money of the Fund that is not immediately required for contingencies or to meet current expenditure—
 - (i) on a call account or short-term fixed deposit account with any registered bank or financial institution in the Republic; or
 - (ii) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).

Appointment of board

22 (1) The board consists of not less than seven and not more than eleven members who are fit and proper persons and of whom—

- 10.** (a) one member is an attorney or advocate admitted and registered as such in terms of the laws of the Republic and with experience of practising as such for a period of not less than five years;
- 11.** (b) one member is an accountant or auditor registered in terms of the laws of the Republic and with experience of practising as such for a period of not less than five years;
- 12.** (c) one member is appointed by reason of his or her knowledge and active involvement in the financial services sector;
- 13.** (d) one member is appointed by reason of his or her knowledge and experience in the field of welfare, community or socio-economic development; and
- 14.** (e) between three and seven members who either have—
 - 15.** (i) knowledge of trade, industry, finance or the economy,
 - 16.**(ii) knowledge of small business development; or
 - 17.**(iii) proven business acumen,
 - 18.** or are otherwise suitable for appointment to the board.

19. (2) Before appointing the members of the board referred to in subsection (1), the responsible Member must, in two newspapers with wide circulation within the Province and by notice in the *Provincial Gazette*, invite nominations of candidates suitable for appointment as members of the board.

20. (3) The shortlist of the names of nominees suitable for appointment as members of the board must be published in newspapers and the *Gazette* referred to in subsection (2).

21. (4) After the nominees referred to in subsection (2) have been interviewed and considered, the responsible Member must submit recommendations for appointment to the Executive Council for consideration and after approval by the Executive Council, publish the final list of persons

appointed as members of the board in newspapers referred to in subsection (2) and the Provincial *Gazette*.

22. (5) The Executive Council must ensure that the board represents a broad section of the population of the Province, with special attention to race, gender, socio-economic background and disability.

23. (6) The Executive Council must designate—

24. (a) a member of the board as the chairperson; and

25. (b) another member of the board as the deputy chairperson, to act as and to perform the functions of the chairperson of the board whenever the chairperson is absent or is for any reason unable to perform the functions of the chairperson of the board.

Persons disqualified from being appointed as members of board

23 (1) A person may not be appointed or remain a member of the board in terms of section 22 if he or she—

- (a) is not a citizen of the Republic and ordinarily resident in the Province;
- (b) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, the Prevention and Combatting of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty, and has been sentenced to imprisonment without an option of a fine for a period exceeding more than twelve months;
- (c) has at any time been removed from an office of trust on account of misconduct;
- (d) is of unsound mind, or is subject to an order of a court declaring him or her to be mentally ill or disordered;
- (e) is an unrehabilitated insolvent;
- (f) has a controlling interest or financial or other interest in any business or enterprise that may conflict with the proper performance of his or her functions as a member of the board;

- (g) or his or her partner or associate, holds an office in or with, or is employed by, any person, company, organisation or other body, whether corporate or unincorporated, which has an interest contemplated in paragraph (f);
- (h) at the relevant time is, or during the preceding twelve months was—
 - (i) a public servant;
 - (ii) a member of Parliament, provincial legislature, municipal council, commission or house of traditional leaders established in terms of law; or
 - (iii) an office-bearer or employee of any political party, movement, organisation or body of a party political nature;
- (i) failed to disclose an interest in terms of section 25(2), or attended or participated in the proceedings of the board while having an interest referred in section 25(3).

Term of office of members of board

24 (1) A person is—

- (a) subject to sections 25 and 26, appointed as a member of the board for a term of office not exceeding a period of three years;
- (b) serves on the terms and conditions determined by the responsible Member and specified in the letter of appointment of the member; and
- (c) may resign by giving one month's written notice to the responsible Member, or such notice as is stipulated in the letter of appointment of the member.

(2) A person whose term of office as a member of the board has expired is eligible for reappointment, but the person may not serve for more than two consecutive terms.

Termination of membership of board and removal from office

25 (1) A member of the board vacates office if he or she—

- (a) becomes subject to any disqualification referred to in section 23;
- (b) resigns by written notice to the responsible Member;

- (c) is removed from office in terms of subsection (2); or
- (d) has been absent from more than two consecutive meetings of the board without leave of the chairperson.

(2) (a) If any member of the board during his or her term of office becomes disqualified in terms of section 23, or after he or she has become aware of such envisaged disqualification, in writing must declare such disqualification to the responsible Member.

(b) If the responsible Member, after receiving the declaration from a member of the board referred to in paragraph (a), is of the opinion that such member is disqualified in terms of section 23 to remain a member of the board, the responsible Member must terminate the membership of the board of such member.

(3) Despite subsection (2), the responsible Member may, after giving a member of the board of the Fund an opportunity to be heard, at any time, remove a member from office if good reason exists for doing so.

(4) Without limiting the scope of subsection (3), good reason referred to in that subsection may include—

- 26. (a) on account of misconduct, incapacity, incompetence or inability to perform any function of office properly;
- 27. (b) for being engaged in any activity that undermines the integrity of the board or the Fund, which may include—
 - 28. (i) participation in any investigation, hearing or decision concerning a matter in respect of which that person has a financial or personal interest;
 - 29. (ii) making use of or profiting from any confidential information obtained as a result of performing his or her function as a member of the board; or
 - 30. (iii) divulging any confidential information obtained by virtue of his or her office to any third party except as required by or under this Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

31.

Filling of vacancies in membership of board

26 (1) Whenever there is a vacancy in the membership of the board, the responsible Member must –

- (a) from the shortlist referred to in section 22(3), or
- (b) if there are no suitable candidates on the shortlist, follow the procedure for nomination as contemplated in section 22;

submit a list of candidates to the Executive Council for consideration and appointment by the Executive Council of a person as a member of the board to fill a vacancy.

(2) A person who is appointed as a member of the board in terms of subsection (1) occupies office for the unexpired period of the term of office of his or her predecessor.

32.**Committees of board**

27 (1) The board may appoint a committee to exercise the powers and perform the functions delegated or assigned to the committee by the board.

(2) The committee must consist of such members of the board as the board may determine and designate.

(3) The board must designate a member of the committee as the chairperson of a committee.

(4) (a) The committee must exercise its powers and perform its functions subject to this Act and such directives of the board as are not in conflict with this Act;

(b) any delegated power or function so exercised or performed is deemed to have been exercised or performed by the board; and

(c) all the provisions relating to the conduct and process applicable to the board apply with the changes required by the context to the committee of the board.

33.

Expert and other assistance

28 (1) The board may appoint or call to its assistance such experts or other persons as it may deem necessary with a view to assisting it in the exercise and performance of its powers and functions and for the undertaking of any work or rendering of any service arising therefrom.

(2) The terms, conditions, remuneration and allowances applicable to any expert or person appointed or called upon in terms of subsection (1), and the work to be undertaken or service to be rendered by him or her must be determined by the board of the Fund and be contained in a written agreement entered into for that purpose between the board and the expert or person concerned.

(3) Upon having performed the work or completed the service pursuant to an agreement referred to in subsection (2), the expert or person concerned must submit a report in regard thereto to the board for its consideration.

(4) The board, on receipt of a report referred to in subsection (3), may refer the matter back to the expert or person concerned for such further attention as may be determined by the board, or to perform such further functions as the board may deem necessary or desirable.

34.**Meetings of board**

29. (1) (a) The first meeting of the board must be held at a time and place determined by the responsible Member, and thereafter the board may meet at such times and places as the chairperson may from time to time determine for the expeditious conduct of its business: Provided that the board may not meet more than twelve times a year.

(b) The chairperson may, if justified by the circumstances, at any time on reasonable notice convene a special meeting of the board to be held at a time and place determined by him or her and the chairperson must submit a report to the responsible Member stating the circumstances and reasons for calling a special meeting.

(2) The proceedings at a meeting of the board must, in as far as they may not have been prescribed, be determined by the board.

(3) The quorum for a meeting of the board is a majority of the members of the board.

(4) A decision of the board must be taken by a majority of the votes of the members present at a meeting of the board and, in the event of an equality of votes on any matter, the chairperson must have a casting vote in addition to his or her deliberative vote.

(5) A decision of the board is not invalid merely by reason of a vacancy in the membership of the board or the fact that any person who is not entitled to sit as a member, sat as a member of the board when the decision was taken: Provided that the decision was taken by the required majority of the members of the board then present and entitled to sit as members of the board.

35. (6) If both the chairperson and deputy chairperson are absent from any meeting of the board, the members present must from among themselves elect a person to preside at such meeting.

Transparency and confidentiality

30. (1) The board must, subject to subsection (2), function in a justifiable, open and transparent manner.

(2) A member of the board or employee of the Fund may not, except on the order of a court of law or subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), disclose—

36. (a) any document or information, or the identity of any person, which the board has determined not to be open to public inspection or to be divulged; or

37. (b) any document or information which has been furnished to the board by any regulatory or law enforcement authority on condition of confidentiality.

38.

Minutes of meetings

31. Minutes of every meeting, hearing or enquiry of the board and its committees must be kept and be retained at the offices of the board.

Remuneration and allowances

32. (1) Members of the board who are not in the full-time service of the State or the Province may, in respect of their services, be paid such remuneration and allowances, and are entitled to such benefits, from the funds of the Fund, as may be determined by the responsible Member in consultation with the Executive Council and in line with guidelines from the National Treasury.

39. (2) The remuneration and allowances of the members of the board may differ according to the different offices held by them or the different functions performed by them.

40.

41. Dissolution of board

33. (1) Whenever the responsible Member is of the opinion that—

- (a) the board has failed to perform its functions, exercise its powers or comply with its strategic plan;
- (b) the board has failed to comply with a directive or an instruction;
- (c) there is mismanagement of its finances; or
- (d) on good cause shown,

42. may dissolve the board after consultation with the Executive Council.

(2) Where a board has been dissolved in terms of subsection (1) a new board must be appointed in accordance with section 22.

(3) Without limiting the scope of subsection (1), good cause referred to in that subsection may relate to the manner in which the board has performed its functions or exercised its powers.

Taking over of functions of board

34. (1) Where a board has been dissolved as contemplated in section 33, the responsible Member may, after consultation with the Executive Council—

- (a) exercise and perform the powers and functions of the board in the absence of a board; or
- (b) by notice in the *Provincial Gazette*, appoint an administrator to perform the functions and exercise the powers of the board.

(2) The responsible Member may recover from the funds of the board the costs of appointing an administrator to take over the functions of the board.

Accessing the Fund

35. (1) Any township-based enterprise may, on application, access funds by way of credit or loan, factoring, guarantee and micro-insurance from the Fund.

(2) In this section, "**factoring**" means buying of invoices at a discount and taking the responsibility of collecting the payment due on the invoices.

Accounts of Fund

36. (1) The Board must—

- (a) cause full records to be kept of the receipts and transactions of the Fund; and
- (b) as soon as possible, but not later than three months after 31 March in each year, cause the books and accounts relating to such receipts and transactions to be balanced as at that date and thereafter prepare a statement showing in all necessary detail—
 - (i) the income and expenditure of the Fund during the preceding financial year; and
 - (ii) a balance sheet showing assets and liabilities of the Fund as at the end of that year,

in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(2) The accounts and balance sheet of the Fund referred to in subsection (1)(b) must be audited by the Auditor-General.

(3) As soon as possible after the accounts and balance sheet for any financial year have been audited, the Board must submit a copy of the accounts and balance sheet to the responsible Member.

(4) The responsible Member must table a copy of the audited accounts and balance sheet in the Provincial Legislature—

(a) within 30 days after the audited accounts and balance sheet have been received by the responsible Member if the Provincial Legislature is then in ordinary session or, if the Provincial Legislature is not then in ordinary session, within 30 days after the commencement of its next ordinary session; or

(5) For the purposes of this section, "financial year" means a period extending from 1 April in any year to 31 March in the next succeeding year.

Annual report of Fund

37. (1) The Board must—

(a) within three months after the end of each financial year, prepare an annual report of the activities of the Fund for the immediate preceding year; and

(b) within five months after the end of each financial year, submit the annual report contemplated in paragraph (a) to the responsible Member.

(2) The annual report must provide information regarding the activities and plans for the Fund during the year to which it relates sufficient to impart an accurate understanding of the nature and scope of its activities and its plans and priorities and without limitation, must include—

(a) details of the performance of the Fund against key performance indicators;

- (b) report on the growth and development of township-based enterprises in the Province; and
- (c) such additional information or other material as the responsible Member may request in writing.
 - (3) The annual report—
- (a) must, in addition to what is required under subsection (2), include the financial statements of the Fund for the year to which the report relates; and
 - (4) Section 36(4) of the Act applies, with the necessary changes, to the tabling of the annual report in the Provincial Legislature.

CHAPTER 6

MUNICIPALITIES

Application of Act to municipalities within Province

- 38.** (1) This Act applies, with the necessary changes required by context, to municipalities within the Province.
- (2) In such application, a reference in the Act to—
- (a) a provincial organ of state, must be construed as a reference to—
 - (i) a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and
 - (ii) a municipality as described in section 2(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and
 - (b) the responsible Member, must be construed as a reference to the executive Mayor or Mayor of the municipality concerned.

Township Economic Development By-laws

- 39.** (1) Within six months from the date of commencement of this Act, a municipality must—

- (a) pass by-laws that substantially conform to the matters provided for in Schedule 1;
- (b) in the event the by-laws already exist, revise and if necessary, amend the by-laws to make them substantially conform to the matters provided for in Schedule 1; or
- (c) on good cause shown, request the responsible Member to grant one extension, for a maximum of three months, to comply with paragraphs (a) or (b) of subsection (1).

(2) The provisions of sections 12 and 13 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), apply in respect of the passing of by-laws by a municipality in terms of subsection (1).

(3) To assist municipalities to comply with the provisions of subsection (1), the Member of the Executive Council responsible for local government matters in the Province must, after consultation with the responsible Member, publish, by notice in the *Provincial Gazette*, and within one month of the commencement of this Act, model standard by-laws on Township Economic Development that complies with this Act and the matters provided for in Schedule 1.

(4) A municipality may opt to adopt the standard by-laws contemplated in subsection (3) as the by-laws contemplated in subsection (1)(a).

CHAPTER 7

GENERAL PROVISIONS

Regulations

40. The responsible Member within six months from the date of commencement of this Act, must make regulations:

- (a) prescribing any matter which in terms of this Act is required or permitted to be prescribed;
- (b) appointment of board members
- (c) designation procedure for townships;
- (c) funding application procedure; and
- (d) may, generally, make regulations regarding any matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.

Guidelines

41. (1) The responsible Member may, in consultation with the Member of the Executive Council responsible for finance in the Province, determine guidelines regarding—

- (a) categories of township enterprises to be assisted under this Act; and
- (b) the kind of assistance to be rendered.

(2) In determining the categories of township enterprises or small enterprise organisations to be assisted, the responsible Member must consider the potential and viability of the enterprise or organisation.

Collaboration among organs of state

42. Organs of state may collaborate amongst themselves in discharging their individual obligations in order to achieve the objects of this Act.

Amendment of laws

43. The laws mentioned in Schedule 2 are hereby amended to the extent provided for in that Schedule.

Short title and commencement

44. (1) This Act is called the Gauteng Township Economic Development Act, 2021, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

(2) The Premier may determine different dates for different sections of this Act to come into operation.

SCHEDULE 1

PRINCIPLES OF TOWNSHIP ECONOMIC DEVELOPMENT BY-LAWS (contemplated in section 39)

Every municipality must ensure that their by-laws:

- (a) introduce building standards applicable to all areas in townships;
- (b) consider alternative building technologies to renovate or expand existing properties and for new buildings;
- (c) on approval of new developments in townships, include an impact assessment on displacement of local firms, and provide for inclusionary development opportunities for said firms where the impact would cause such displacement;
- (d) in respect of taxi ranks, introduce a zoning overlay which confers commercial rights, as well as rights to build up to 5 stories within a 1 km radius of the centre of the site: Subject to bulk services availability;
- (e) introduce fines and penalties on vacant, undeveloped land owned by either organs of state or private individuals within areas in the townships which are identified by the Gauteng Spatial Development Framework (GSDF) for either socio-economic integration or economic consolidation (or any successor category of a comparable nature established by an updated version of the GSDF) . The proceeds of said fines will be ringfenced to fund infrastructure and projects fulfilling the aims and objectives of the Gauteng Township Economic Development Act.
- (f) considers any township-based enterprise that requires written consent, licence, permission, registration or any other authorisation as being authorised to trade: Provided that—
 - (i) there are no additional legislative prescripts prohibiting the business activity in question;
 - (ii) the business operator demonstrates that he or she is the owner-occupier or has permission of the owner to operate on the property in question; or
 - (iii) where the state is the owner of the property in question, permission applied for through the appropriate channels has been granted or is deemed to have been granted in the event where no response is received by the applicant within a period of three months. The deemed permission must be applicable for a duration of the period of one year.

- (g) Provides an enabling environment for investment by private sector companies into last-mile broadband internet infrastructure in township areas by:
- (i) reducing the cost of wayleaves in the designated township areas for companies willing to install and manage broadband services to these areas at affordable costs;
 - (ii) allowing for a bidding system for the use of street furniture (street lamps and associated) by companies seeking to offer broadband access to township communities.

This enabling will be conditional upon inclusion of local SMMEs in the installation and maintenance value chain and creation of local jobs.

SCHEDULE 2**AMENDMENT OF LAWS****Amendment of Gauteng Finance Management Supplementary Act, 2000**

1. The Gauteng Finance Management Supplementary Act, 2000 (Act No. 1 of 2000), is hereby amended by the substitution of subsection (1) of section 30 of the following subsection:

43. "Treasury instructions

44. 30. (1) The Provincial Treasury may issue treasury instructions applicable to provincial **[departments and provincial public entities]** organs of state regarding—

45. (a) any matter in terms of which the Provincial Treasury considers necessary or expedient to prescribe to ensure the uniform and efficient of this Act;

46. (b) subject to the Public Procurement Act, 2000, measures—

47. (i) that advance the development of township-based enterprises;

48. (ii) for preference to set aside the allocation of contracts to township-based enterprises; and

49. (iii) that empower small enterprise organisations to mobilise resources and supply, as a whole single unit at a price, scale and quality level that is acceptable to provincial organs of state.

50. (c) to facilitate credit lines for township-based enterprises allocated short- to medium set aside contracts by suppliers, or guarantees to pay their invoices directly.

Amendment of Gauteng Enterprise Propeller Act, 2005

2. The Gauteng Enterprise Propeller Act, 2005, is hereby amended by the substitution for the definition of "Small Enterprise" in section 1 of that Act of the following definition:

"small enterprise" means a separate and distinct business entity, together with its branches or subsidiaries, if any, including cooperative enterprises **[and non-governmental organisations]**, managed by one owner or more and which **[, including its branches or**

subsidiaries] is predominantly carried on in any sector or sub-sector of the economy mentioned in column 1 of the Schedule and classified as a micro, a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of the Schedule opposite the relevant size of class mentioned in column 2 of the Schedule.

MEMORANDUM ON THE OBJECTS OF THE GAUTENG TOWNSHIP ECONOMIC DEVELOPMENT BILL

1. INTRODUCTION

Premier David Makhura, during the 1 July 2019 State of the Province Address, held at the Soweto Campus of the University of Johannesburg, made an undertaking that—

“Within 200 days, I will announce the total number of jobs each sector and company will contribute towards our five-year job creation target, including the contribution of the township economy, cooperatives and SMMEs.....”

We believe more jobs can be created by small and medium-sized businesses if they get appropriate support from the whole of government.

We have learnt important lessons from supporting township businesses through infrastructure development and access to markets through government procurement worth over R20 billion.

Going forward, we will intensify the following forms of support:

- *Targeting and enforcing procurement from businesses in townships to the value of 30% of Gauteng Provincial Government’s procurement budget.*
- *Ensuring that all SMMEs and township businesses contracting with the Gauteng Provincial Government are paid within 15 days to boost their sustainability (this is already possible through the e-invoicing platform which expedites payments).*
- *Continuing to invest in infrastructure that supports clusters of township businesses to expand, access markets and prosper. This will include rejuvenating township industrial parks, agri-hubs and local produce markets.*
- *Releasing land and unutilised buildings to allow those who can create real jobs and businesses in our townships to apply for leases from the provincial government for properties where they can start those businesses. We challenge municipalities to work with us.*
- *The 9 Ekasi Labs will be expanded to provide hot-desks with desktops and high-speed broadband in all townships where young people can*

- practice new digital trades and learning through existing programmes such as Tshepo 1 Million.*
- *In partnership with the Taxi industry and municipalities we will transform taxi ranks facilities to become vibrant economic nodes in all townships and CBDs.*
 - *Giving township enterprises, SMMEs and cooperatives the opportunity to maintain and repair government facilities, equipment, furniture and infrastructure. Such SMMEs will employ and train young people in technical trades.*
 - *Repositioning the Gauteng Enterprise Propeller to provide funding and business development support for the growth and sustainability of SMMEs and cooperatives.*
 - *We will also set up a joint township economy innovation fund with the private sector. This is in line with the announcement by President Ramaphosa of the establishment of the Township Entrepreneurial Fund.”*

Premier Makhura continued—

“... to better enable the functioning of these government interventions in the township economy, I will, as the Premier, champion a new model by-law for a more developmental regulation of township businesses.

Accordingly, I challenge all of you to work with us to support the promulgation of the new Gauteng Township Economy Development Act which will make it easier, more affordable and quicker to register, open and operate a business in a township.”

Finally, Premier Makhura declared that—

“Gone are the days when township businesses will be harassed by government and police. Government needs to create an enabling framework.”

Again, during the 25 February 2020 State of the Province Address, Premier Makhura stated—

“In keeping with the commitment we made in July 2019, the provincial government will introduce Township Economic Development Bill in the Provincial Legislature in June this year.

This new law will create new conditions of SMMEs and township businesses to create wealth and employment as they grow and prosper.

Sufficient work is being done with the Taxi Industry and municipalities to rezone and develop taxi ranks into retail and commercial hubs that will create markets for local mechanics, panel-beaters, retailers, food sellers and manufacturers.”

To give effect to the Premier’s undertakings, the Gauteng Department of Economic Development in partnership with the Office of the Premier began a process of formulating a Policy Statement, with the intention to resolve regulatory failures which have impeded achievement of the objectives of the Gauteng Township Economy Revitalisation Strategy.

The first iteration of the Policy Statement was submitted to the Executive Council during October 2019, and the Executive Council identified certain key areas to be addresses in the Policy Statement prior to resubmission to the January 2020 Cycle of the Executive Council.

The Policy Statement was revised based on the Executive Council’s resolutions and, following consultations with representative stakeholder bodies, municipalities, state entities and relevant parties, including groups of experts, was resubmitted to the Executive Council for consideration and approval. The Executive Council approved the Gauteng Township Economic Development Policy on 5 February 2020.

Subsequent to the Executive Council’s approval of the Gauteng Township Economy Development Policy, the process of drafting the Bill commenced in earnest and, following collaboration between the Gauteng Department of

Economic Development and the Office of the Premier, the draft Bill was submitted by the Member of the Executive Council for Economic Development, Agriculture, Environment and Rural Development, Ms Morakane Mosupyoe, at the meeting of the Executive Council held on 17 July 2020 for consideration and approval for the purposes of external consultations and public participation. The Executive Council obliged and granted its approval.

2. BACKGROUND

Despite the development and implementation of the Gauteng Township Economic Revitalisation Strategy and progress made since 2014 to date, township economy remains in the margins of the mainstream economy with high levels of poverty, unemployment and inequality. Key amongst the main causes is the regulatory failure or lack of enabling legislation to enhance the potential and growth of township enterprises.

The enactment of enabling legislation is proposed as a vehicle through which the Gauteng Provincial Government will drive economic development of township enterprises as one of the major programmes for the Gauteng economy to grow at a rate of 3,5% and drive down the unemployment rate to at least 20% by 2030.

The Gauteng Township Economic Development Policy is designed to operate in tandem with the enabling legislation, the Gauteng Township Economic Development Act.

Therefore, the primary objective of the enabling legislation is to seek to empower the Executive Council to introduce programmes and projects that are geared at addressing the following constraints:

- The regulatory failures which drive and re-enforce these conditions can be clearly identified.
- The market fails townships because almost all township firms offering goods and services that big businesses and government could potentially buy are small, informal SMMEs who cannot access formal markets and financing for the goods and services they could provide.
- Lack of proper commercial districts and high streets limits businesses to operate from homes or pavements – a situation understood by all financial service providers (including those distributing funding on behalf of

government) as illegal and therefore as preventing these small, informal SMMEs from funding the expansion and/or growth of their businesses so that township streets do in fact become high streets.

- The township real estate market faces its own specific version of this market failure. There is no affordable financing to expand these into formal commercial and residential buildings and no support available to work through the legal issues (title, ownership, zoning, compliance, et cetera).
- The programmatic failure on the part of government at all levels has been the misdirection of funding and programmes that were designed to solve these problems.
- The Regulations which set aside 30% of sub-contracting value on any government contracts over R30 million for emerging businesses provide no meaningful opportunities for over 9 out of 10 firms actually based in townships.
- The funding targeted at SMMEs is not available to most township businesses, in large part because the rules on how formal lending works cannot recognise informal businesses and have no data on how risky (or not risky) it is to lend to these firms.
- Commercially viable land available in townships is not released and not used commercially on account of rules governing how land can be used and failure by all three spheres of government as well as the private sector to package and release land for use by township businesses.
- Failure to position transport nodes as enablers of economic development, e.g. taxi routes and taxi ranks should be the backbone of a province-wide network of commercial districts, high streets and real estate providing housing to commuters.
- Failure to support the backyard real estate market to drive township high streets. An informal real estate market serving 1 in 4 residents which remains informal is a massive opportunity lost and is currently an unrealised opportunity.

Accordingly, the Bill seeks to address these constraints and to give life to the principle encapsulated in the undertakings made by Premier Makhura during the 2019 and 2020 State of Province Addresses.

3. OBJECTS OF THE BILL

In the main, the Bill seeks to provide for the promotion and development of the township economy; to create a conducive environment for the attainment of that purpose; to provide for licensing of township based enterprise, to provide for establishment and management of the Fund through the Gauteng Township Enterprise Propeller Fund; to provide for principles to be adopted by municipalities in drafting and adopting by-laws and to provide for matters connected therewith or incidental thereto.

4. JOB CREATION IMPLICATIONS

The Bill is about taking deliberate steps to allow townships to become fully fledged commercial zones - both by streamlining the rules on where and how you can run a business , and by providing different kinds of programmatic support to SMMEs operating in townships.

Consequently, by making it easier to open a business and formalize a business in townships , as well as by providing specific support to township real estate and the taxi economy , the bill is designed to create enabling conditions for existing township businesses to expand and create more job opportunities , and for new township businesses to start . The full implementation it will significantly boost job numbers

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The proposed legislation will be implemented within the existing capacity of the Gauteng Department of Economic Development, in conjunction with national and local government structures.

6. FINANCIAL IMPLICATIONS

The Gauteng Department of Economic Development will make provision in its budget for the implementation of the Act in the 2021/22 financial year. It is anticipated that it will be signed into law and be ready for implementation in the 2021/22 financial year.

The Bill seeks to establish a Fund that will support the development of township-based enterprises in line with the Executive Council of the Gauteng Provincial Government which formally approved the establishment of the Gauteng SME Partnership Fund. The Fund is a direct response to the economic hardship imposed on Small, Medium & Micro-enterprises ('SMMEs'), particularly the unbanked and under-banked small firms based in – and linked to – the townships of Gauteng. Gauteng Government will contribute R250 Million (two hundred and

fifty million rands) appropriated for the express purpose of funding the contribution to the approved fund. The fund will be allocated to the Gauteng Department of Economic Development and duly transferred to the Gauteng Enterprise Propeller (GEP) in order to execute the approved partnership with the SA SME Fund.

7. COMMUNICATION IMPLICATIONS

The Bill will be gazetted once it is approved and a Communication Plan will be developed and implemented to bring awareness of the provisions of the Bill to stakeholders especially owners and operators of township enterprises.

8. CONSULTATION WITH OTHER BODIES/DEPARTMENTS/AGENCIES

The Bill was published in the *Provincial Gazette* for public comment on 30 September 2020 and on various digital platforms.

8.1 The stakeholder engagement and public participation included—

- 8.1.1 Internal stakeholder consultations undertaken with relevant state departments in the national and provincial spheres of government, state-owned entities and municipalities.
- 8.1.2 External consultations covering a range of stakeholders, including focus groups (technical, constitutional law experts, municipalities and so forth) and the community.
- 8.1.3 Engagements were held with stakeholders via webinars, online meetings, radio, television, print and digital media, roadshows and other forms of electronic communication being emails, telephone, cellphone and WhatsApp.

8.2 Comments were received from various groups including academia, government, business and associations representing foreign nationals in South Africa as well as from private individuals. A total of 115 sets of comments were received and considered.

9. CONSTITUTIONAL AND LEGAL IMPLICATIONS

The matters sought to be addressed in the Bill fall within the functional area of trade as listed in Part A of Schedule 4 to the Constitution. The Province thus has concurrent legislative competence to enact legislation in relation to the matters that the Bill seeks to introduce.

The Province also has a constitutional obligation to monitor, support and promote the development of local government through legislative and other measure in terms of section 155(6) and (7) of the Constitution, and to ensure the performance by local government of its functions in respect of the matters listed in Part B of Schedules 4 and 5 by regulating the exercise by local government of its executive authority referred to in section 156(1) in terms of section 155(6) and (7) of the Constitution.

The Local Government: Municipal Systems Act, 2002 (Act No. 32 of 2002), in section 14(2) provides for this constitutional obligation of the Province to the extent that it empowers the Province to design and adopt Standard Draft By-laws relating to the affairs listed under Part B of Schedules 4 and 5 to the Constitution.

CLAUSE BY CLAUSE EXPLANATION OF THE BILL

Clause 1 defines certain terms or key words that are used in the Bill.

Clause 2 provides for the guiding principles of the proposed legislation.

Clause 3 provides for the objects of the proposed legislation, which seeks mainly to provide a regulatory framework which makes it possible for people living in townships to establish viable and thriving business where they live.

Clause 4 provides for the application of the proposed legislation in respect of provincial organs of state and, subject to clause 25, municipalities.

Clause 5 provides that in the event of conflict between the proposed legislation and any law which regulates township economic development or township-based enterprises in the Province, the legislation will prevail.

Clause 6 provides for the designation of township areas by the responsible Member after consultation with a relevant municipality.

Clause 7 provides for provincial organs of state to assist township-based enterprises in obtaining businesses licences where possession of such a licence is a specific requirement for business undertaking or carrying on business, and for the receipt issued by any relevant licensing authority to be regarded as sufficient evidential proof for the formalisation of the township-based enterprise.

Clause 8 requires that, where a licence is granted and issued in respect of business premises, such a licence be displayed in a prominent place within the premises or digital proof of the licence is able to be provided.

Clause 9 provides for the formulation and monitoring of policies and programmes and requires the MEC for Economic Development to implement such policies and programmes for the promoting and developing township based enterprises, monitor efficiency and performance of township based enterprises, establish data bases of facilities and sources of finance, technology, raw material to promote accessibility to township based enterprises, develop township entrepreneurship and arrange for independent training, management and consulting services to township based enterprises as determined by the Minister of Finance.

Clause 10 provides for the formulation and development of plans and strategies by provincial organs of state to support township-based enterprises with specific focus programmes and projects intended to contribute directly or indirectly to the establishment, development, support and promotions of township based enterprises and economic prosperity of township based enterprises, promoting and advancing the mainstreaming of youth, women and persons with disabilities in all township-based programmes and projects.

Clause 11 provides for provincial organs of state to facilitate financial assistance through the flow of financial resources to sector township-based enterprises. This includes providing information on sources of finance and promotion of local investment, assistance with preparation of business plans, project proposals and other loan application documents, designing and establishing standards for loan administration, establishing venture capital funds and securing incentives through relevant authorities

Clause 12 provides for the development of infrastructure and other facilities necessary for the development and promotion of sector township-based

enterprises which includes worksites, social amenities, business information centres, model centres of excellence, common usage facilities and other facilities necessary for development of sector township-based enterprises.

Clause 13 provides for the provision of industrial and commercial estates to township-based enterprises by provincial organs of state. These include building or premises on which township enterprises may undertake designated business activity.

Clause 14 provides for the letting of buildings or premises by provincial organs of state for use by sector township-based enterprises as an industrial or commercial estate.

Clause 15 provides for the promotion of capacity building projects in partnership with the public and private training institutions by providing business development services, promoting technology modernisation and developing and administering certified demand driven capacity-building and entrepreneurship programmes for township-based enterprises.

Clause 16 provides for the development of markets and provision of marketing services for sector township-based enterprises by provincial organs of state, by establishing or identifying markets for products generated by sector township-based enterprises, providing linkages between sector township-based enterprises and potential markets, organising trade fairs and shows in order to promote products generated by sector township-based enterprises, conducting market research, survey and analysis and share findings, conclusions and recommendations thereof with sector township-based enterprises and providing all such matters and things as may be necessary for the convenient use by sector township-based enterprises, including payment of stallages, rents, fees and tolls in respect of the use by any sector township-based enterprises at any market.

Clause 17 provides for the promotion of technology transfer, acquisition and adaptation of new and modern technology by encouraging innovation and transfer of technology in order to increase competitiveness of township-based enterprises products and services, facilitating the registration and protection of intellectual property rights for sector township-based enterprises, provision of incentives to encourage invention and innovation by sector township-based enterprises; establishment of regional and other centres of excellence to enhance utilisation of

locally available knowledge, skills and resources and technology parks for graduating sector township-based enterprises. The clause further provides for the identification, collection, development, modification packaging and disseminating of technology and products to sector township-based enterprises, facilitation of sector township-based enterprises to access relevant equipment either through purchasing, leasing or franchising, conducting of research on available technologies with a view to improving such technologies, importing modern and appropriate technologies for use by sector township-based enterprises, developing, in collaboration with relevant institutions, programmes in standardisation and product development for different subsectors within sector township-based enterprises and for improving credit access and other financial services by sector township-based enterprises, developing programmes to enable sector township-based enterprises comply with legislation, including in particular, environmental legislation and mobilising funds and resources for the development of appropriate technology in relevant research institutions.

Clause 18 provides for the establishment of the Fund to be known as the Gauteng Township Economic Development Fund.

Clause 19 provides for the purpose of the Fund.

Clause 20 provides for the funds of the Fund which consist of monies appropriated to the fund under an appropriation Act adopted by the Gauteng Provincial Legislature; monies as may be payable or transferred to the Fund pursuant to this Act or any other law; monies or assets as may accrue to or vest in the Fund under this Act; monies received by way of donations, gifts or grants given or made for the purpose of the Fund; interest accruing from loans and other forms of investment for the purpose of the Fund; and moneys from any other source provided or lent to the Fund.

Clause 21 provides for the management of the Fund which is under the administration and control of the Board of Directors of the Fund, that must be appointed by and be responsible to the responsible Member for the purposes of this Act.

Clause 22 provides for the appointment of board members. The board shall consist of not less than seven and not more than eleven members who shall be fit and proper persons of whom at least one member shall be an admitted attorney or advocate, one shall be a registered accountant or auditor, one shall be appointed

by reason of his or her knowledge or involvement in the financial services sector and the remaining members shall have knowledge of either trade, industry, finance, economics, small business development or business. The nomination process, names of the nominees, shortlist and appointees must all be advertised in 2 newspapers and the Provincial Gazette.

Clause 23 provides for persons who are disqualified from being appointed as members of the board. This applies to people who are not citizens of the Republic and ordinarily resident in the Province; have at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, the Prevention and Combatting of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty, and has been sentenced to imprisonment without an option of a fine for a period exceeding more than twelve months; have been removed from an office of trust on account of misconduct; are of unsound mind, or is subject to an order of a court declaring him or her to be mentally ill or disordered; are unrehabilitated insolvent; have a controlling interest or financial or other interest in any business or enterprise that may conflict with the proper performance of his or her functions as a member of the board; their partners or associates, holds an office in or with, or is employed by, any person, company, organisation or other body, whether corporate or unincorporated, which has an interest contemplated in the section.

Clause 24 provides for the term of office of members of the board which is for a period of three years. A board member is eligible for reappointment but may not serve for longer than two consecutive terms.

Clause 25 provides for termination of membership of the board and removal from office if the person becomes subject to any disqualification referred to in section 23; resigns by written notice to the responsible Member; is removed from office in terms of subsection (2); or has been absent from more than two consecutive meetings of the board without leave of the chairperson.

Clause 26 provides for filling of vacancies in membership of the board. A person who is appointed to fill a vacancy occupies office for the unexpired period of the office of his or her predecessor.

Clause 27 provides for the establishment of committees of the board, their constitution and their powers.

Clause 28 provides for the board to appoint experts to assist the board in the exercise and performance of its powers and functions.

Clause 29 provides for the meetings of the Board and describes the role of the chairperson in such meetings, quorums and decisions of the Board.

Clause 30 provides for the confidentiality of information furnished to the Board.

Clause 31 provides for minutes of all meetings of the Board to be kept at its offices.

Clause 32 provides for remuneration and allowances of Board members.

Clause 33 provides for the dissolution of the Board by the Executive Council if it is of the opinion that the Board has failed to perform its functions, exercise its powers or complied with its strategic plan; or has failed to comply with a directive or an instruction; there is mismanagement of its finances; or on good cause shown and to appoint a new Board.

Clause 34 provides for the Executive Council to appoint an administrator to perform the functions and exercise the powers of the Board.

Clause 35 provides for the procedure to be followed by township-based enterprises in accessing the Fund, which can be by way of credit or loan, factoring, guarantee and micro-insurance from the Fund.

Clause 36 provides for the keeping of records and the financial accounting by the Board of Directors of the Fund. This clause is aligned to the financial accounting as prescribed by the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Clause 37 provides for the preparation and submission of the annual reports of the Fund by the Board.

Clause 38 provides for the application of the proposed legislation to municipalities within the Province subject to necessary changes required by the context.

Clause 39 provides for the adoption of by-laws by the municipalities to implement township economic development within the municipalities. The clause also provides for the publication by the Province of a standard model by-law that municipalities may adopt.

Clause 40 empowers the MEC for Economic Development to make regulations on any of the matters that require to be prescribed to enable the implementation of the proposed legislation. The MEC is further empowered to make regulations on any other matter which may be necessary or expedient to be prescribed in order to achieve the objects of the proposed legislation.

Clause 41 provides for the determination of guidelines regarding categories of township enterprises to be assisted and the kind of assistance to be rendered in terms of the proposed legislation by the MEC for Economic Development, in consultation with the Member of Executive Council responsible for finance in the Province.

Clause 42 deals with collaboration among organs of state to jointly discharge their respective obligations under the proposed legislation.

Clause 43 deals with the amendment of laws as mentioned in Schedule 2 to the proposed legislation.

Clause 44 deals with the short title and commencement of the proposed legislation. It also provides that different sections may commence at different dates.

Schedule 1 to the proposed legislation lists the principles that which by-laws on township economic development have to comply.

Schedule 2 contains a table with a list of consequential amendments proposed through the proposed legislation.

Printed by the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001,
for the **Gauteng Provincial Administration**, Johannesburg.

Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065

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