

***THE PROVINCE OF
GAUTENG***

***DIE PROVINSIE
GAUTENG***

**Provincial Gazette Extraordinary
Buitengewone Provinsiale Koerant**

Vol. 13

**PRETORIA, 29 OCTOBER
OKTOBER 2007**

No. 299

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PREMIER'S NOTICE

OFFICE OF THE PREMIER

No. 6

29 October 2007

It is hereby notified that the Premier has assented to the following Act that is hereby published for general information:

No. 3 of 2007: Gauteng Political Party Fund Act, 2007

ACT

To provide funding for political parties participating in the Gauteng Provincial Legislature; to establish the Gauteng Political Party Fund; to provide for accountability regarding that Fund; to provide for regulation of disclosure by political parties; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution establishes the basic principle of multi-party democracy;

AND WHEREAS the Constitution promotes this principle in all spheres of government;

AND WHEREAS section 236 of the Constitution promotes this principle and, in particular, requires national legislation to provide for the funding of political parties participating in national and Provincial Legislatures on an equitable and proportional basis to enhance multi-party democracy;

AND WHEREAS national legislation has been enacted providing for funding of political parties participating in national and Provincial Legislatures and establishing a fund for the purpose of funding political parties that participate in national and Provincial Legislatures;

AND WHEREAS supplementary funding of political parties participating in the Gauteng Provincial Legislature on an equitable and proportional basis further enhances multi-party democracy;

AND WHEREAS the money so allocated is to be utilised by political parties for purposes arising from their functioning as political parties in a modern democracy;

BE IT ENACTED by the Provincial Legislature of Gauteng as follows:—

Definitions

1. In this Act, except if not consistent with the context—

“**financial year**” means a period of twelve months from 1 April in every year to 31 March the following year, both days included;

“**Fund**” means the Gauteng Political Party Fund established by section 2(1);

“**prescribe**” means prescribed by regulation made under section 10; and

“**this Act**” includes the regulations made under section 10.

Establishment of Gauteng Political Party Fund

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2. (1) The Fund is hereby established for the purpose of funding, as provided hereafter, political parties that participate in the Gauteng Provincial Legislature.

(2) The Fund must be credited with—

- (a) money appropriated to the Fund by the Gauteng Provincial Legislature;
- (b) contributions and donations to the Fund originating from sources within or outside the Republic;
- (c) interest earned on money deposited in terms of section 3(1) and on money invested in terms of section 3(2); and
- (d) money recovered or accruing to the Fund from any other source.

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Deposit and investment of money of Fund

3. (1) Except as provided in subsection (2), money standing to the credit of the Fund must be deposited in a separate bank account opened by the Provincial Secretary of the Gauteng Provincial Legislature with a bank registered in the Republic.

(2) Money in the Fund that is not required immediately for making allocations to political parties in terms of section 5, may be invested with the Public Investment Commissioners contemplated in the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984). 5

Management and control of Fund

4. (1) The Provincial Secretary of the Gauteng Provincial Legislature is responsible for the management and administration of the Fund and is the accounting officer and chief executive officer of the Fund. 10

(2) For each financial year the Provincial Secretary of the Gauteng Provincial Legislature must keep records, in accordance with generally accepted accounting practice and procedures, of-- 15

- (a) money received by or accruing to the Fund;
- (b) allocations and payments made there from;
- (c) expenditure arising from the allocation of money from the Fund; and
- (d) a record of the capital and liabilities of the Fund during that year.

(3) The first financial year of the Fund must run from the day on which this Act comes into operation until 31 March first following, both days included. 20

Allocations from Fund

5. (1) Every political party is entitled to be allocated money from the Fund for a financial year that it participated in the Gauteng Provincial Legislature.

(2) Subject to subsection (7), money allocated to a political party must be used for purposes compatible with its functioning as a political party in a modern democracy. 25

(3) The functioning of a political party as contemplated in subsection (2) includes, but is not limited to--

- (a) the development of the political will of people;
- (b) bringing the influence of a political party to bear on the shaping of public opinion; 30
- (c) inspiring and furthering political education;
- (d) promoting active participation by individual citizens in political life;
- (e) exercising an influence on political trends; and
- (f) ensuring continuous, vital links between the people and organs of state and, in particular, between the people and the Gauteng Provincial Legislature. 35

(4) Allocations from the Fund to political parties must be determined and made at the prescribed times or intervals, in the prescribed installments, and in the prescribed way.

(5) The Provincial Secretary of the Gauteng Provincial Legislature must make allocations from the Fund to the political parties in accordance with a prescribed formula based - 40

- (a) in part, on the principle of proportionality, taking into account the relation that the number of such a party's representatives in the Gauteng Provincial Legislature bears to the number of representatives in the Gauteng Provincial Legislature; and 45
- (b) in part, on the principle of equity, taking into account, amongst others a fixed threshold for a minimum allocation to each of the political parties represented in the Gauteng Provincial Legislature, and a weighted scale of representation for an allocation to each of the political parties participating in the Gauteng Provincial Legislature. 50

(6) The information and particulars necessary to apply the prescribed formula to a party must be ascertained from the relevant facts and circumstances as at the time when the allocation is to be made.

(7) Money allocated to a political party from the Fund may not be used-

- (a) for the purpose of directly or indirectly paying remuneration, fee, reward, prerequisite or other benefit to a person representing the party in the Gauteng Provincial Legislature or who holds office under the State; 55

- (b) with a view to finance or contribute to a matter, cause, event or occasion, whether directly or indirectly, in contravention of the code of ethics binding on the members of the Gauteng Provincial Legislature, as the case may be;
 - (c) directly or indirectly for the purpose of establishing or financing a business or acquiring or maintaining a right or financial interest whatsoever in a business; 5
 - (d) to acquire a right or interest in immovable property, except where the right or interest in the immovable property is to be used by the political party solely for ordinary party-political purposes, or
 - (e) for any other purpose that is incompatible with the functioning of a political party in a modern democracy, as may be prescribed. 10
- (8) (a) The allocation of money from the Fund to a political party must end when the party ceases to qualify in terms of subsection (1); and
- (b) within 21 days after the date on which a political party ceases to qualify, it must repay the unspent balance of all money that had been allocated to it.

Political parties to account for money allocated from Fund 15

6. (1) A political party to which money is allocated from the Fund must—
- (a) keep, with a bank registered in the Republic, a separate bank account into which the money must be deposited, and
 - (b) appoint an official of that political party as its accounting officer with regard to the money allocated to that party from the Fund. 20
- (2) The responsibility of the accounting officer is to account for the money allocated to that political party, and includes—
- (a) in addition to other duties imposed by this Act, the duty to ensure that the party complies with the requirements of this Act; and
 - (b) in particular, to ensure that allocated money is not paid out for a purpose not authorised by this Act. 25
- (3) The accounting officer must keep separate books and records of account, in the prescribed manner, in respect of money allocated from the Fund and all transactions involving such money.
- (4) Within two months after the end of a financial year the accounting officer must prepare a statement— 30
- (a) showing all amounts received by the political party from the Fund during that financial year and its usage of allocated money; and
 - (b) describing the purposes for which the various amounts have been used.
- (5) The books and records of account contemplated in subsection (3) and the statement contemplated in subsection (4) must be audited by a public accountant and auditor registered and practising as such in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991). 35
- (6) An auditor who performs an audit contemplated in subsection (5) must in the auditor's report express an opinion as to whether the allocated money was spent for purposes not authorised by this Act. 40
- (7) Within three months after the end of that financial year the accounting officer must submit the audited accounts, statements and report of the auditor to the Provincial Secretary of the Gauteng Provincial Legislature.
- (8) Despite subsection (4), the Auditor-General may at any time audit the books and records of account and financial statements relating to money allocated to a political party from the Fund. 45
- (9) (a) Subject to paragraph (b), the Provincial Secretary of the Gauteng Provincial Legislature—
- (i) must order that the allocation of money to a political party from the Fund be suspended if satisfied on reasonable grounds that the party failed to comply with a requirement of this Act; and
 - (ii) must terminate the suspension if satisfied, in the light of the party's subsequent conduct, that the suspension is no longer justified;
- (b) the suspension of a political party's allocations may be ordered in terms of paragraph (a) only if the Provincial Secretary of the Gauteng Provincial Legislature— 55
- (i) has by written notice informed the party of the proposed suspension and of the reasons therefor; and
 - (ii) has called on the party to furnish reasons, within the period specified in the notice why its allocations from the Fund should not be suspended. 60

(c) the period referred to in paragraph (b) must not be shorter than 30 days as from the date of the notice.

Recovery of money irregularly spent by political parties

7. (1) Where money allocated to a political party in terms of section 5 have not been spent in accordance with a requirement of this Act, the accounting officer of that party contemplated in section 6(1)(b) is liable to repay to the Provincial Secretary of the Gauteng Provincial Legislature the money irregularly spent. 5

(2) The chief executive officer of the Fund must recover the money irregularly spent and may do so by—

- (a) instituting a civil claim in respect of the amount irregularly spent against the accounting officer of the political party contemplated in section 6(1)(b); or 10
- (b) setting off the amount irregularly spent against an allocation that may become payable to the political party.

Speaker to report to Gauteng Provincial Legislature on Fund

8. (1) As soon as possible after the end of each financial year, the Speaker must— 15

- (a) prepare a report regarding its management and administration of the Fund during that financial year; and
- (b) prepare financial statements in relation to the Fund, showing-
 - (i) the amounts received by and accrued to the Fund during that financial year; 20
 - (ii) the allocations made from the Fund to the respective political parties during that year;
 - (iii) the amounts spent during that financial year by each political party in connection with purposes classifiable under the generally descriptive categories as prescribed from time to time; 25
 - (iv) the balance of the Fund and amounts owing to or by the Fund as at the end of that year; and
 - (v) the Speaker must submit that report, those statements and the Speaker's books and records of account relating to the Fund to the Auditor-General for auditing. 30

(2) Within 30 days after receipt of the Auditor-General's report, the Speaker must submit that report to Gauteng Provincial Legislature together with the audited financial statements of the Fund and the audited Speaker's report.

Unspent money at end of financial year

9. (1) Money not spent by a political party at the end of a financial year must be shown in the books and records of account of the party as a credit balance carried forward to the next financial year. Provided that— 35

- (a) the money that may be carried forward, may be limited to an amount representing a prescribed percentage of the allocations made for that financial year; and 40
- (b) money carried forward to the next financial year may not be taken into account in determining an allocation to the party concerned during that financial year.

(2) Money standing to the credit of the Fund at the end of a financial year must be carried forward to the next financial year as a credit balance. 45

(3) If the Gauteng Provincial Legislature is dissolved in terms of the Constitution a political party that is represented in the Gauteng Provincial Legislature must close its books and records of account—

- (a) not later than 21 days before the date set for the election and within 14 days thereafter submit an audited statement in respect of those books and records of account to the Provincial Secretary of the Gauteng Provincial Legislature; and 50
- (b) not later than the day immediately before the date set for the election such a political party must repay to the Provincial Secretary of the Gauteng Provincial Legislature the unspent balances as at the date when its books and records of account are closed as contemplated in paragraph (a). 55

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(4) If the Gauteng Provincial Legislature is dissolved in any other circumstances a political party represented in the Gauteng Provincial Legislature must close its books and records of account—

- (a) not later than 21 days before the date set for the election;
- (b) within 14 days thereafter submit an audited statement in respect of those books and records of account to the Provincial Secretary of the Gauteng Provincial Legislature; 5
- (c) the Provincial Secretary of the Gauteng Provincial Legislature must calculate the representation of a political party mentioned in subsection (4) as a percentage of the representation of that party in the Gauteng Provincial Legislature contemplated in subsection (3); and 10
- (d) not later than the day immediately before the date set for the election such a political party must repay to the Provincial Secretary of the Gauteng Provincial Legislature the unspent balance of the determined percentage as at the date when the books and records of account are closed as contemplated in paragraph (a) 15

Regulations

10. The Speaker, acting on the recommendation of a committee of the Gauteng Provincial Legislature, may by notice in the *Provincial Gazette* make regulations consistent with this Act— 20

- (a) to prescribe the procedure according to which, manner in which, and intervals or installments at which payments from the Fund are to be determined and made;
- (b) to prescribe the formula on which allocations are to be calculated;
- (c) determine a purpose which in the application of section 5(1) is not compatible with the functioning of a political party in a modern democracy; 25
- (d) to prescribe the information and particulars that political parties must furnish to the Provincial Secretary of the Gauteng Provincial Legislature with a view to ensure proper and effective application and administration of and compliance with this Act; and 30
- (e) on any matter which may or must be prescribed in terms of this Act;

Short title and commencement

11. (1) This Act is called the Gauteng Political Party Fund Act, 2007, and comes into operation on a date fixed by the Premier by Proclamation in the *Provincial Gazette*. 35
- (2) Different provisions of this Act may be brought into operation on different dates.