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SOUTH AFRICA



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GENERAL NOTICE

NOTICE 1112 OF 1997

MINISTRY FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT

TRANSFER OF STAFF TO MUNICIPALITIES BILL, 1997

1. I, Mohammed Valli Moosa, Minister for Provincial Affairs and Constitutional Development, under section 154 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), hereby publish the Transfer of Staff to Municipalities Bill, 1997, for public comment.

2. Comments must please be submitted in writing to:

The Director-General

Attention: Mr P. A. Stopforth

Department of Constitutional Development

Private Bag X804

PRETORIA

0001.

3. Comments may also be faxed to facsimile number (012) 320-8026 at the above address.

4. Comments must be received by not later than **12 August 1997**.

DRAFT BILL

TRANSFER OF STAFF TO MUNICIPALITIES BILL

To provide for the transfer of certain persons who are in the employ of provincial administrations to municipalities, to provide for the transfer of the functions and concomitant posts related to such persons from a provincial administration to municipalities, to provide for the protection of existing pension rights; to provide for the transfer of certain assets, rights, liabilities and obligations from a provincial administration to municipalities, and to provide for matters connected therewith

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

Definitions

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

- (i) **“employee”** means an employee as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and who was immediately before the commencement of this Act permanently in the service of a provincial administration and performed municipal services;
- (ii) **“Minister”** means the Minister for Provincial Affairs and Constitutional Development;
- (iii) **“municipality”** means a municipality as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993);
- (iv) **“municipal services”** means those duties and functions which municipalities perform in terms of the Local Government Transition Act, 1993;
- (v) **“MEC”** means the member of the executive council of a province responsible for local government in that province;
- (vi) **“provincial administration”** means the administration of each of the provinces of the Republic of South Africa referred to in section 7(2) of the Public Service Act, 1994;
- (vii) **“public service”** means the public service contemplated in section 8 of the Public Service Act, 1994.

Transfer of employees

2. (1) Subject to subsections (2) and (3), the MEC may transfer an employee with his or her consent to the municipality designated and with effect from a date determined by the MEC by notice in the *Provincial Gazette*, and on such transfer, the same conditions of service applicable to employees of the municipality concerned shall apply to that employee: Provided that—

- (a) those employees who do not consent to the transfer shall remain in the public service;
- (b) those employees who consent to the transfer shall be entitled to conditions of service which are not less favourable than those under which they served at the time of the transfer; and
- (c) the provisions of this Act shall apply to those employees consenting to the transfer.

(2) The MEC may limit the number of employees to be transferred in terms of subsection (1) to only those employees who are required to render efficient municipal services and the effective administration of that municipality's affairs.

(3) (a) Any transfer referred to in subsection (1) is subject to the concurrence of the municipality concerned.

(b) Before transferring an employee in terms of subsection (1), the trade union or staff association, if any, of which the employee is a member, must be consulted.

(4) If the concurrence of a municipality referred to in subsection (3)(a) cannot be obtained, the matter shall be referred to an arbitration committee consisting of—

(a) one person designated by the municipality concerned;

(b) one person designated by the MEC concerned; and

(c) one person designated by the Minister.

(5) The provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), shall with the necessary changes apply to an arbitration committee contemplated in subsection (4), and the decision of the majority of the members of the arbitration committee shall be final and binding on the MEC and the municipality concerned.

(6) The MEC and the municipality concerned shall share all costs in the arbitration process equally.

Accumulated vacation leave

3. (1) Vacation leave standing to the credit of any transferred employee with the public service shall, from the date of transfer stand to his or her credit with the municipality concerned.

(2) The municipality concerned shall be paid from the provincial revenue fund of the province in which the municipality concerned is situated, sufficient funds to cover the costs of the accumulated leave of each employee transferred to the municipality concerned within 60 days from the date of such transfer.

(3) In the event of the number of days of vacation leave standing to the credit of any employee, exceeding the number of days vacation leave which an employee in the service of the municipality concerned may accumulate, such municipality shall pay to the employee concerned an amount equal to the number of days of vacation leave which exceed the number of days vacation leave which such employee may accumulate.

Protection of existing pension rights of persons upon assuming employment

4. (1) Any employee who, immediately before being transferred to a municipality, is a member of the Government Employees Pension Fund may upon assuming that employment—

(a) choose to remain a dormant member of the Government Employees Pension Fund in terms of section 27 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996); or

(b) request to become a member of any other pension fund registered under the Pension Funds Act, 1956 (Act No. 24 of 1956), with a view of having his or her interest in the Government Employees Pension Fund transferred to a new fund.

(2) In the case where an employee becomes a member of a fund after making a request in terms of subsection (1)(b)—

(a) the Government Employees Pension Fund ("the former fund") must transfer to the pension fund of which the employee becomes a member of ("the new fund") an amount equal to the funding level of the former fund multiplied by its actuarial liability in respect of that employee at the date the employee assumes office with the municipality concerned, increased by the amount of interest calculated on that amount at the prime rate of interest from the date when employment with the municipality commenced up to date of transfer of the amount;

- (b) membership of the employee of the former fund will lapse from the date when employment with the municipality commenced; and
- (c) the former fund must transfer any claim it may have against the employee, to the new fund.

(3) If, after an employee has become a member of any other pension fund, by reason of having made a choice in terms of subsection (1) (b), a lump sum benefit has become payable by that pension fund by reason of the death, or the withdrawal or resignation from the pension fund, or retirement of the employee, or the winding-up of the pension fund, then, for the purposes of paragraph (e) of the definition of "gross income" in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), the pension fund will be deemed, in relation to such officer or employee, to be a fund referred to in paragraph (a) of the definition of "pension fund" in section 1 of that Act.

- (4) For the purposes of this section unless the context otherwise indicates—

"actuarial liability" of a pension fund in respect of a particular member or a group of members of the fund, means the actuarial liability that is determined by an actuary who the Minister of Finance has nominated for that purposes;

"funding level", in relation to a pension fund, means the market value of the assets of the fund stated as a percentage of the total actuarial liability of the fund, after those assets and liabilities have been reduced by the amount of the liabilities of the fund in respect of all its pensioners, as determined at the time of the most recent actuarial valuation of the fund or any review thereof carried out under direction the Minister of Finance; and

"prime rate of interest" means the average prime rate of interest of the three largest banks of the Republic.

Pending disciplinary or grievance procedures

5. Any disciplinary steps instituted or being considered against an employee transferred in terms of section 2, or any grievance procedure instituted by such employee shall have the effect to suspend the transfer of the employee concerned until the finalisation of the relevant disciplinary or grievance procedures and subject thereto that the employee concerned has not, as a result of such disciplinary action, been dismissed from service: Provided that the transfer of such an employee will become effective on the first day of the month following the finalisation of the disciplinary or grievance procedure: Provided further that the transfer of an employee in terms of section 2(1) shall be deemed not to have been made if such employee is dismissed from service as a result of a disciplinary or grievance procedure.

Transfer of assets, rights, liabilities and obligations

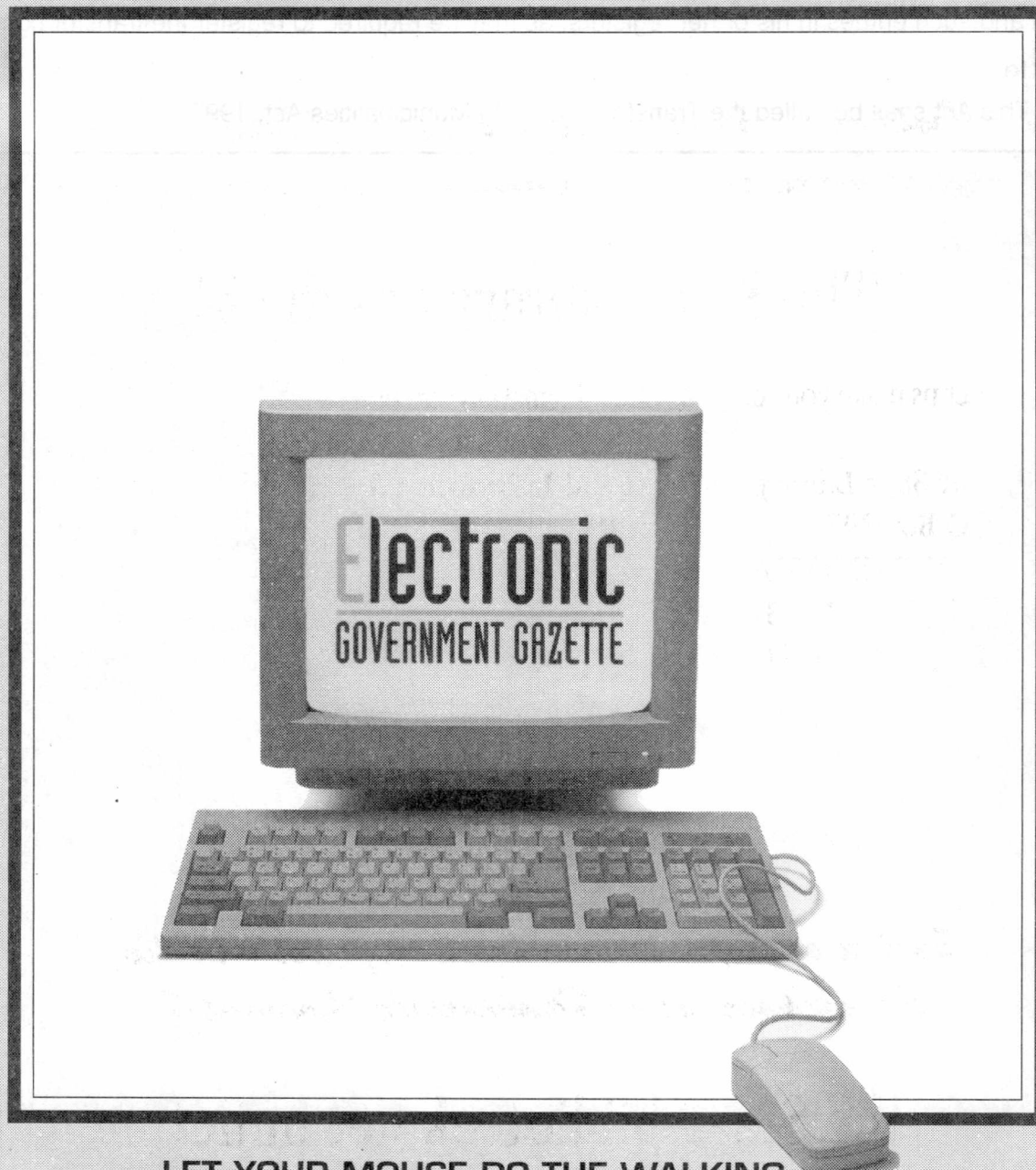
6. (1) Notwithstanding anything to the contrary in any law contained all assets, movable or immovable, exclusively used in the provision of municipal services and all rights, liabilities and obligations pertaining to such municipal services shall vest in a municipality as determined by the MEC by notice in the *Provincial Gazette* and such notice shall indicate the date on which such vesting shall become effective, subject to such conditions as the MEC may determine in such notice: Provided that no compensation shall be payable by the municipality concerned in respect of such assets.

(2) Notwithstanding the provisions of the Deeds Registry Act, 1937 (Act No. 47 of 1937), any immovable property forming part of the assets referred to in subsection (1) shall be registered in the name of the municipality concerned without payment of transfer duty, stamp duty, or other money or costs.

(3) A registrar defined in section 102 of the Deeds Registries Act, 1937, shall, on submission to him of a certificate signed by or on behalf of the MEC that immovable property described in such certificate has been transferred to a municipality in terms of subsection (1), make such endorsements on that title deed and such entries in his or her registers, as may be required to register the transfer concerned.

Short title

7. This Act shall be called the Transfer of Staff to Municipalities Act, 1997.



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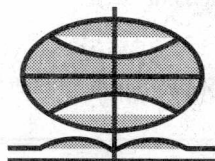
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