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## PREMIER'S NOTICE

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No. 3

26 August 2011

### OFFICE OF THE PREMIER

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

**No. 2 of 2011: Northern Cape Legislature Service Act, 2011**

**ACT**

To provide for the Legislature Service; the responsibilities, powers and functions of the Speaker; the appointment, responsibilities and conditions of service of the Secretary and employees of the Service; to repeal the Northern Cape Provincial Legislature Service Act, 1995 (Act 6 of 1995); and to provide for matters incidental thereto.

**PREAMBLE**

**WHEREAS** the Northern Cape Legislature derives its mandate from section 114 of the Constitution;

**AND WHEREAS** members of the Legislature need administrative support to fulfil such mandate;

**BE IT THEREFORE ENACTED** by the Northern Cape Legislature, as follows: -

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2. Application
3. Service
4. Responsibilities, powers and functions of Speaker

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**CHAPTER I  
DEFINITION, APPLICATION AND ESTABLISHMENT OF SERVICE**

**Definitions**

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

“**accounting officer**” means the Secretary as referred to in section 7(1);

“**acting Secretary**” means a person appointed in terms of section 5(1)(b);

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**department**” means a department of the Service consisting of a cluster of functionally related sections for operational and reporting purposes;

“**division**” means a cluster of functionally related departments for operational and reporting purposes;

“**employee**” means a person as contemplated in section 10(5);

“**fixed establishment**” means the posts which have been created in terms of section 10(3) for the requirements of the Service;

“**Gazette**” means the official provincial *Gazette*;

“**House**” means the Legislature meeting in a plenary sitting as defined in the Standing Rules;

“**Legislature**” means the Northern Cape Legislature as contemplated in section 104 of the Constitution;

“**member**” means a member of the Legislature, including the Premier and a member of the Executive Council;

“**policy**” means a policy in terms of section 25 of the Act;

“**prescribe**” means prescribe by regulation in the *Gazette* and “**prescribed**” has a similar meaning;

“**regulations**” means the regulations made in terms of section 24 of this Act;

“**remuneration**” means the total emoluments payable to an employee, and it may include basic salary, remunerative allowances or other rewards, the Service’s contribution to a pension fund and a medical aid fund and any other fringe benefits;

“**Rules Committee**” means the Rules Committee established in terms of the Standing Rules;

“**Secretary**” means the Secretary to the Legislature appointed in terms of section 5(1);

“**section**” means positions with functionally similar tasks grouped together for operational and reporting purposes;

“**senior manager**” means a person who is the head of a department;

“**senior official**” means an official, who is the head of a division, a department or a section;

“**Service**” means the Legislature Service established in terms of section 3;

“**Speaker**” means the Speaker of the Legislature elected in terms of section 111 of the Constitution;

“**Standing Rules**” means the Standing Rules of the Northern Cape Legislature made in terms of section 116 of the Constitution;

“**this Act**” includes regulations made in terms thereof;

“**working day**” means a day of the week except -

- (a) Saturday and Sunday; and
- (b) a public holiday in terms of the Public Holidays Act, 1994 (Act 36 of 1994).

#### **Application**

- 2. (1) This Act applies to employees as contemplated in section 10(5), except where it is inconsistent with the context or clearly inappropriate.
- (2) This Act applies to members in as far as there are specific powers, responsibilities and obligations bestowed on the Speaker and the Rules Committee.

#### **Service**

- 3. There is a Service to provide administrative support to the Legislature and its members in order to fulfil the respective responsibilities in accordance with the provisions of the Constitution.

#### **Responsibilities, powers and functions of Speaker**

- 4. The Speaker is the political head and is responsible to oversee -
  - (a) all matters connected with the business of the Legislature;
  - (b) the administration and implementation of the Standing Rules;
  - (c) administrative services to the Rules Committee, other committees of the Legislature and members;
  - (d) general day to day operations of the Legislature;
  - (e) compliance with all legislation that impacts on the administration and finances of the Legislature; and
  - (f) the development and implementation of policies for the Legislature.

#### **CHAPTER II SECRETARY**

#### **Appointment of Secretary or acting Secretary**

- 5. (1) The Speaker in consultation with the Rules Committee must -
  - (a) nominate a suitable person, who must be appointed by a resolution adopted by the Legislature as Secretary for a five year period

- on a performance agreement as envisaged in relevant financial legislation, or for another period as envisaged by section 6; and
- (b) in the event of a vacancy in the position of Secretary, appoint a senior manager as acting Secretary, who holds office as Secretary until an appointment is made in terms of paragraph (a).
- (2) The Secretary may in the event of his or her temporary absence, in writing appoint a senior manager to perform the functions of that office and must inform the Speaker in writing of such appointment.
- (3) The Speaker must, when the Secretary is absent and has not appointed a senior manager to act in his or her stead or is otherwise unable to perform his or her functions, appoint a senior manager to act in that position.
- (4) An acting Secretary in terms of subsection (1)(b) has the responsibilities, and must exercise the powers and perform the functions of the Secretary.
- (5) An acting Secretary in terms of subsection (2) or (3) has the responsibilities and must exercise the powers and perform the functions as may be delegated or assigned by the Secretary or the Speaker respectively.

#### **Term of office of Secretary and acting Secretary**

6. (1) A person who is appointed as Secretary occupies that office in a full-time capacity for a period of 5 years, or such shorter period as the Speaker in consultation with the Rules Committee, approves.
- (2) An acting Secretary, in terms of section 5(1)(b), occupies that office for the unexpired portion of the term of the Secretary for, which he or she was appointed to act or such shorter period as the Speaker in consultation with the Rules Committee determines.

#### **Responsibilities, powers and functions of Secretary**

7. (1) The Secretary subject to relevant financial legislation, is the accounting officer and he or she fulfills the duties, responsibilities and obligations of such office.
- (2) The Secretary performs all the functions referred to in section 4.

- (3) The Secretary performs all functions delegated to him or her in terms of this Act or other legislation.
- (4) The Secretary reports to the Speaker on all matters, as and when required.

**Delegation of powers and assignment of duties by Secretary**

- 8. (1) The Secretary may subject to subsection (2) and a limitation in terms of any other legislation, delegate a power or assign a duty conferred or imposed on him or her by this Act to a senior official or other employee.
- (2) A delegation or an assignment to an official in terms of subsection (1) –
  - (a) must be in writing;
  - (b) is subject to a limitation or condition in terms of any applicable legislation or as the Speaker may impose;
  - (c) is subject to any limitation or condition the Secretary may impose;
  - (d) may either be to a specific individual or to the holder of a specific post on the establishment of the Service;
  - (e) does not divest the Secretary of the responsibility or accountability concerning the exercise of the delegated power or the performance of the assigned duty;
  - (f) does not prohibit the Secretary from exercising the delegated power or assigned duty by him or herself; and
  - (g) may at any time in writing be withdrawn or amended by the Secretary.
- (3) The Secretary may confirm, vary or revoke a decision taken by an official as a result of a delegation or assignment in terms of subsection (1), subject to any right that has become vested as a consequence of that decision.

**Removal from office of Secretary**

- 9. (1) The Speaker in consultation with the Rules Committee must with due observance of the Labour Relations Act, 1995 (Act 66 of 1995), recommend the removal of the Secretary from office to the House.

- (2) A Secretary may be removed from office on the grounds as set out in section 15(2).
- (3) The Secretary must be removed from office by a resolution adopted by the House.
- (4) A Secretary who has been dismissed may exercise his or her right of appeal externally as provided for in the Labour Relations Act, 1995 (Act 66 of 1995) and other labour legislation.

### CHAPTER III ORGANISATION AND EMPLOYEES OF SERVICE

#### Composition of Service

10. (1) The Service structure consists of divisions, departments and sections as determined from time to time.
- (2) Each division, department or section has a head who as an employee, is the incumbent of the position on the fixed establishment.
- (3) The Speaker must recommend to the Rules Committee all positions required to give effect to the Service's responsibilities in terms of this Act.
- (4) The Rules Committee must approve the fixed establishment of the Service.
- (5) An employee is a person appointed –
  - (a) permanently on a fixed establishment of the service;
  - (b) on a fixed term contract on the establishment of the service; or
  - (c) in a role-playing position in the office of the Speaker or Deputy Speaker for a period that coincides with the term of that office,

but not a person in the employ of a political party represented in the Legislature which had entered into a service level agreement with the Legislature to render certain personnel administration functions on behalf of that party.

#### Appointment of senior manager and other employees

11. (1) The Speaker must after consultation with the Rules Committee, subject to applicable employment policy, approve the appointment of a senior manager.



- (2) The Secretary must, subject to applicable employment policy, recommend to the Speaker for his or her approval, the appointment of all other employees to provide services for the proper functioning of the Legislature.
- (3) A senior manager must enter into a performance agreement with the Legislature on acceptance of his or her appointment, and thereafter, within one month after the start of each financial year.
- (4) The performance agreement must among other things –
  - (a) set appropriate performance indicators;
  - (b) set measurable performance targets; and
  - (c) determine a mechanism to measure performance.

#### **Responsibilities of senior officials**

12. A senior official -
  - (a) is responsible for the efficient management and administration of his or her area of responsibility, including the effective utilization and training of employees, the maintenance of discipline, the promotion of sound labour relations, the proper use and care of property of the Legislature and the performance of any responsibility as set out in this Act, other relevant legislation or policies; and
  - (b) may in writing direct any employee under his or her control to temporarily perform duties other than those ordinarily assigned to such an employee or appropriate to the level, designation or classification of his or her post, and the employee must comply with such a directive.

#### **Appointment of employee in acting position**

13. In the event that a senior official is absent or unable to fulfill the duties of that office, or during a vacancy in such office, the Secretary may, in writing, with due regard to a recommendation, if any, made by the relevant senior official appoint a suitable employee to act in the office.

#### **Probation**

14. The appointment of all employees, including that of the Secretary or acting Secretary is made on probation as set out in a policy or the regulations.

**Termination of employment**

15. (1) The power to dismiss an employee vests in the Secretary, which power must be exercised with due observance of the applicable provisions of the Labour Relations Act, 1995 (Act 66 of 1995).
- (2) An employee's, including the Secretary's employment, may be terminated-
- (a) on account of continued ill-health;
  - (b) owing to the abolition of his or her post or a reduction in or reorganization or readjustment of departments or offices;
  - (c) if, for reasons other than his or her own unfitness or incapacity, his or her dismissal will promote efficiency or economy in the department or office in which he or she is employed, or will be in the interest of the Service;
  - (d) on account of unfitness for his or her duties or incapacity to carry them out efficiently;
  - (e) on account of misconduct in terms of a disciplinary policy or the regulations;
  - (f) if, in the case of an employee appointed on probation, his or her appointment is not confirmed;
  - (g) on account of his or her misrepresentation in relation to a condition for permanent appointment;
  - (h) if his or her continued employment constitutes a security risk for the State; or
  - (i) any other action or conduct that impairs the relationship between the employee and the employer.

**Absenteeism**

16. (1) An employee, who absents him or herself from his or her official duties without permission of the senior official he or she reports to, for a period, which exceeds 7 consecutive working days, is deemed to have been automatically discharged from the Service on account of such absenteeism with effect from the date immediately succeeding his or her last day of attendance at his or her place of duty.
- (2) If such an employee assumes other employment, he or

she is deemed to have been discharged from the Service, irrespective of whether the period has expired or not.

- (3) If an employee, who is deemed to have been so discharged from the Service, reports for duty at any time after the expiry of the period referred to in subsection (1), the Speaker may, on good cause shown and notwithstanding anything to the contrary contained in any law, approve the reinstatement of that employee in the Service in his or her former or any other position.
- (4) An employee who, whilst disciplinary steps are taken against him or her has not yet been disposed of, resigns or without permission of the employer assumes employment in another position or becomes self-employed in any way, is deemed to have been absent and is dismissed from the Service on account thereof.

**Procedure for misconduct, suspension, termination of service and appeal**

17. Misconduct, suspension, termination of service and appeal procedure must be dealt with in accordance with the procedure set out in a policy or the regulations.

**CHAPTER IV  
OBLIGATIONS, RIGHTS AND PRIVILEGES OF EMPLOYEES**

**Rights and obligations**

18. An employee must fulfill the obligations imposed upon him or her by this Act or any other law, and he or she has the rights and may be granted the privileges under this Act or any other law.

**Cession of emoluments**

19. No employee may without written approval of the Secretary, cede the right to the whole or a part of a salary or allowance payable to him or her.

**Grievances of employees**

20. An employee has the right to have his or her complaint or grievance concerning an official act or omission investigated and considered in terms of the procedure set out in a policy or the regulations.

**Other work by employees**

21. Unless otherwise provided for in his or her conditions of service –
- (a) every employee must place the whole of his or her time at the disposal of the Service;
  - (b) no employee, who is employed permanently on the fixed establishment may perform or engage himself or herself to perform remunerative work outside his or her employment in the Service without permission granted in the event of –
    - (i) a senior official, by the Speaker;
    - (ii) any other employee, by the Secretary; and
  - (c) no employee may claim any additional remuneration in respect of any official duty or work, which he or she performs voluntarily or is required by a competent authority to perform.

**Declaration of interest**

22. The Secretary and all employees must declare interest in accordance with a policy or the regulations.

**CHAPTER V  
GENERAL****Delegation of powers and assignment of duties to Secretary**

23. (1) The Speaker may –
- (a) delegate to the Secretary any power (with the exception of the power to regulate in terms of section 24) conferred on the Speaker by this Act; or
  - (b) authorise the Secretary to perform any duty imposed on the Speaker by this Act.
- (2) The Secretary must exercise such power or perform such duty subject to the conditions that the Speaker considers appropriate.
- (3) Any delegation of a power or authorization to perform a duty in terms of this section –
- (a) must be in writing;

- (b) does not prevent the Speaker from exercising that power or performing that duty by him or herself; and
- (c) may at any time be withdrawn in writing by the Speaker.

#### Regulations

24. (1) The Speaker must in concurrence with the Rules Committee make regulations which are not inconsistent with this Act or any other legislation regarding a matter required to be prescribed under this Act.
- (2) The Speaker may in concurrence with the Rules Committee make regulations which, are not inconsistent with this Act or other legislation regarding generally any matter which he or she deems necessary or expedient to prescribe for the better administration of this Act.
- (3) Regulations must be published in the *Gazette*.

#### Policies

25. (1) The Secretary oversees the development of policies required in terms of, or advantageous for the administration of this Act, as well as policies for the Service in general.
- (2) The Speaker approves policies, subject to a sufficient consultative process been followed in the Service.
- (3) The Speaker may refer a policy to the Rules Committee for consideration and approval.
- (4) Policies may be published in the *Gazette*.

#### Saving

26. (1) Anything done for or on behalf of the Service before the commencement of this Act, must be deemed to have been done in terms of the provisions of this Act.
- (2) An approved policy at date of commencement of this Act, shall remain in force in so far as it is not inconsistent with this Act, until its repeal or amendment.

**Repeal of legislation**

27. The Northern Cape Provincial Legislature Service Act, 1995 (Act 6 of 1995) is hereby repealed as a whole.

**Short title and commencement**

28. This Act is called the Northern Cape Legislature Service Act, 2011.