
GENERAL NOTICE

NOTICE 340 OF 2011

DEPARTMENT OF COOPERATIVE GOVERNANCE

LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES AMENDMENT BILL

The Minister for Cooperative Governance and Traditional Affairs intends introducing the Local Government: Municipal Property Rates Amendment Bill in the National Assembly. The Bill is hereby published for public comment in terms of section 154 (2) of the Constitution. Any person wishing to comment on the Bill is invited to submit written comments to:

The Director-General

Attention: Senior Manager: Municipal Finance and Viability

Department of Cooperative Governance

Private Bag X804

PRETORIA

0001

Comments may be faxed to (012) 334-4811 or emailed to mpra@cogta.gov.za

No comments which are received after 22 July 2011 will be considered.

REPUBLIC OF SOUTH AFRICA

**LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES AMENDMENT
BILL**

(As introduced in the National Assembly (proposed section 75 Bill);
(The English text is the official text of the Bill))

(Minister for Cooperative Governance and Traditional Affairs)

[B ---2011]

GENERAL EXPLANATORY NOTE:

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

_____ Words underlined with a solid line indicates insertions in existing enactments.

BILL

To amend the Local Government: Municipal Property Rates Act, 2004, so as to provide for the amendment and insertion of certain definitions; to provide that a rates policy must determine criteria for not only the increase but also for the decrease of rates; to further regulate the categories of property in respect of which rates may be levied; to further regulate the exemption, reduction and rebates to owners of property so as to provide that the rate on a specific category of properties must be limited to an amount in the rand as determined by the Minister with the concurrence of the Minister of Finance; to limit the period within which the Minister may be requested to decide whether a rate is unreasonably prejudicing any of the matters listed in section 16 (1); to provide for sectors of the economy to consult the MEC in terms of section 16(3)(a); to provide for the Minister to make a decision in terms of section 16(5) with the concurrence of the Minister of Finance; to provide for the exclusion from rates of certain categories of public service infrastructure as well as mining rights or mining permits, excluding infrastructure above the surface in respect of mining property; to provide that the exclusion from rates in respect of land belonging to a land reform beneficiary is extended to the spouse and dependants; to provide that an exclusion from rates in respect of the seashore lapses if

any part thereof is alienated; to provide that a municipality may not levy a rate on the first amount of the market value as determined by the Minister with the concurrence of the Minister of Finance of a residential property owned and occupied by a recipient of an older persons grant or a disability grant; to provide that a municipality may levy different rates on residential property not used for the permitted purpose or not used for any purpose; to provide that a municipality may levy different rates on vacant property; to provide that a municipality may not recover rates in respect of a right of exclusive use registered against a sectional title unit from the body corporate; to provide that a person liable for a rate must furnish the municipality with his or her postal address; to provide that municipalities are not required to value properties excluded from rates; to provide for the period of validity of a valuation roll to be five years; to provide for the extension of the period of validity of valuation rolls by the MEC for local government to seven years; to provide that a body corporate is required to provide information to a valuer; to provide that a mining right or a mining permit may not be considered in determining the market value of property; to provide that a valuer must provide reasons for decisions in respect of objections; to delete the requirement for the payment of interest in specific instances; to delete the requirement for the establishment of a valuation appeal board in every district municipality; to provide for an appeal board to include a professional associated valuer without restrictions and with a minimum of ten years experience; to amend the dates on which a supplementary valuation takes effect; to provide for the notification of owners of property affected by a supplementary valuation; to provide for the extension of the provisions the non-compliance of which may not be condoned; to provide for more effective monitoring of municipalities in the implementation of the Act; to extend the Minister's regulatory powers; to provide for the phasing in of

certain regulations; to provide for the phasing in of the prohibition on the levying of rates on certain types of public service infrastructure; to provide for transitional arrangements in respect of municipalities that have been affected by a redetermination of municipal boundaries; and to provide for matters connected therewith.

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

Amendment of Preamble to Act 6 of 2004

1. The Preamble to the Local Government: Municipal Property Rates Act, 2004 (hereinafter referred to as the "principal Act"), is hereby amended by the substitution for the fourth paragraph of the following paragraph:

"AND WHEREAS income derived from property rates is a major source of general municipal revenue and that revenue is not linked to a specific municipal service or the erection of infrastructure related to that municipal service; "

Amendment of section 1 of Act 6 of 2004

2. Section 1 of the principal Act, is hereby amended by-

(a) the substitution for the definition of "**agricultural purposes**" of the following definition:

"agricultural [purpose] property' [in relation to the use of property,] means a property that is used for gain for the purpose of the cultivation of soils for purposes of planting and gathering of crops; forestry in the context of the planting or growing of trees in a managed and structured fashion; the

rearing of livestock and game or the propagation and harvesting of fish, but excludes the use of a property for the purpose of eco-tourism or for the [trading in or hunting of game] accommodation of members of the public for gain; and in respect of property on which game is reared, traded or hunted, it excludes any portion that is used for the accommodation of visitors for gain;”;

- (b) the insertion after the definition of “**assistant municipal valuer**” of the following definition:

“**business or commercial property**’ means-

- (a) property used for the activity of buying, selling or trading in commodities or services and includes any office or other accommodation on the same property, the use of which is incidental to such activity; or
- (b) property on which the administration of the business of private or public entities takes place;”;

- (c) the insertion after the definition of “**date of valuation**” of the following definition:

“**day**’ means when any number of days are prescribed for the performance of any act, those days must be reckoned by excluding the first and including the last day, unless the last day falls on a Saturday, Sunday or any public holiday, in which case the number of days must be reckoned by excluding the first day and also any such Saturday, Sunday or public holiday;”;

- (d) the insertion after the definition of “**Income Tax Act**” of the following definition:

“**industrial property**’ means property used for a branch of trade or manufacturing, production, assembly or processing of finished or partially finished products from raw materials or fabricated parts in respect of which capital and labour are involved, and includes any office or other accommodation on the same property, the use of which is incidental to such activity;”;

- (e) the substitution for the definition of **“land tenure right”** of the following definition:

“**land tenure right**’ means [an old order right or a new order right]a land tenure right as defined in section 1 of the [Communal Land Rights Act, 2004 (Act 11 of 2004) Upgrading of Land Tenure Rights Act 1991 (Act 112 of 1991);”;

- (f) the insertion after the definition of **“metropolitan municipality”** of the following definition:

“**mining property**’ means a property used for mining operations as defined in the Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);”;

- (g) the substitution for the definition of **“multiple purposes”** of the following definition:

“**multiple purposes**’, in relation to property, means the [use] categories of [a] property referred to in section 8(2)(a) to (g), used, for more than one purpose, subject to section 9;”;

- (h) the insertion after the definition of **“newly rateable property”** of the following definitions:

“office bearer”, in relation to places of public worship, means the primary person who officiates at services at that place of worship;

‘official residence’, in relation to places of public worship, means a single property registered in the office of the Registrar of Deeds in the name of a religious community or registered in the office of the Registrar of Deeds in the name of a trust established for the sole benefit of a religious community and used as a place of residence for an office bearer;”.

- (i) the insertion after the definition of **“occupier”** of the following definition:

“organised structures”, in relation to a sector of the economy, means a representative organisation that represents the common interests of a significant proportion of a sector of the provincial or national economy: Provided that in the case of public service infrastructure -

- (a) where there is a significant proportion of owners of a type of public service infrastructure, such owners are deemed to constitute an organised structure; or
- (b) where there is only one owner of that specific type of public service infrastructure, that owner is deemed to constitute an organised structure; or
- (c) where there is only one owner of any of the components of public service infrastructure listed within each type listed in paragraphs (a) to (j) of the definition of public service infrastructure, the sole owner is deemed to constitute an organised structure;”;

- (j) the insertion in the definition of "**owner**"–
- (i) after paragraph (b) of the following paragraphs:
- "(bA) in relation to a time sharing interest contemplated in the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983), means–
- (i) the management association contemplated in the regulations made in terms of section 12 of the Property Time-sharing Control Act, 1983, and published in Government Notice R327 of 24 February 1984;
- (ii) the share block company as defined in the Share Block Control Act, 1980 (Act No. 59 of 1980); or
- (iii) the body corporate contemplated in section 36 of the Sectional Titles Act;
- (bB) in relation to buildings, other immovable structures and infrastructure referred to section 17(1)(f), means the holder of the mining right or the mining permit;"
and
- (ii) after sub-paragraph (vii) of the proviso of the following sub-paragraph:
- "(viiA) a lessee, in the case of property to which a land tenure right applies and which is leased by the holder of such right."
- (k) the insertion after the definition of "**person**" of the following definition:

“place of public worship” means-

- (i) a property registered in the name of a religious community and used primarily for the purposes of congregation excluding a structure used for educational instruction in which secular or religious education is the primary instructive medium;
- (ii) a property registered in the name of a trust established for the sole benefit of a religious community and used for the purposes of congregation, excluding a structure used for educational instruction in which secular or religious education is the primary instructive medium, despite the existence of an element of religious instruction;
or
- (iii) a property situated on land in respect of which a land tenure right, as defined in section 1 of the Upgrading of Land Tenure Rights Act 1991 (Act 112 of 1991), applies and is occupied and used by a religious community for the purposes of congregation;”;

- (l) the substitution for paragraph (g) of the definition **“public service infrastructure”** of the following paragraph:

“(g) runways or aprons, including the vacant land surrounding the runways and aprons and the air traffic control towers, at national or provincial airports;”;

- (m) the insertion after the definition of **“public service infrastructure”** of the following definition:

“**public service purposes**’, in relation to the use of a property, means property used by an organ of state for the rendering of the following services directly to the public:

- (a) health;
- (b) education, including libraries;
- (c) police stations;
- (d) prisons; or
- (e) courts of law,

but excludes property contemplated in the definition of "public service infrastructure";

- (n) the insertion after the definition of "rateable property" of the following definition:

"ratio", in relation to section 19, means the relationship between the cent amount in the Rand applicable to residential properties and non-residential properties: Provided that the two relevant cent amounts in the Rand are inclusive of the compulsory phasing in requirements in section 21, where applicable and any relief measures that amount to rebates of a general application to all properties within a property category;";

- (o) the substitution for the definition of "**residential property**" of the following definition:

"**residential property**" means property of which the primary use or permitted use is for residential purposes, excluding such property used to accommodate persons other than the owner for gain;";

- (p) the insertion after the definition of "**sectional title unit**" of the following definition:

"**sector of the economy**" in relation to section 16 means the owners of commercial, business, industrial, agricultural or

mining property as well as public service infrastructure and which forms a distinct part of the economy;"; and

- (q) the insertion after the definition of "**this Act**" of the following definition:

"vacant property " means –

- (a) property on which no immovable improvements have been erected; or
(b) in the case of property on which immovable improvements are being constructed, where such property cannot be permanently occupied."

Amendment of section 3 of Act 6 of 2004

3. Section 3 of the principal Act is hereby amended by-

the substitution in subsection (3)

- (a) (b) for subparagraphs (i) and (iv) of the following subparagraphs:

"(i) levies different rates for different categories of properties determined in terms of section 8;"; and

"(iv) increases or decreases rates;";

- (b) the deletion in subsection (4) of paragraphs (a) and (b); and
(c) the substitution in subsection (4) for paragraph (d) of the following paragraph:

“(d) the contribution of agriculture to the social and economic welfare of farm workers and other members of the public.”

Amendment of section 7 of Act 6 of 2004

4. Section 7 of the principal Act is hereby amended by the substitution in subsection (2) for subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iii) properties referred to in paragraphs (b) or (c) of the definition of ‘property’ in section (1): Provided that this subparagraph only applies to those properties to which a land tenure right applies and on which no industrial, commercial, business, mining or agricultural activities are conducted;”.

Amendment of section 8 of Act 6 of 2004

5. Section 8 of the principal Act is hereby substituted for the following section:

“Differential rates

8. (1) Subject to section 19, a municipality may in terms of the criteria set out in its rates policy levy different rates for different categories of rateable property, set out in subsection (2), which must be determined according to the-

- (a) use of the property;
- (b) permitted use of the property; or
- (c) a combination of (a) and (b).

(2) Only the following categories of rateable property must, where applicable, be determined in terms of subsection (1):

- (a) Residential properties;
- (b) industrial properties;
- (c) agricultural properties;
- (d) mining properties;
- (e) properties used for public service purposes;
- (f) public service infrastructure;
- (g) properties owned by public benefit organisations and used for specified public benefit activities listed in Item 1 (welfare and humanitarian), item 2 (health care) and Item 4 (education and development) of Part 1 of the Ninth Schedule to the Income Tax Act;
- (h) properties used for multiple purposes, subject to section 9; or
- (i) any other category of property as may be determined by the Minister, with the concurrence of the Minister of Finance, by Notice in the Gazette.

(3) In addition to the categories of property listed in subsection (2) a municipality may, where applicable, determine the following property categories -

- (a) property referred to in paragraphs (a) to (e) of subsection (2) which is vacant, not used for any purpose or not used for the permitted purpose; and
- (b) municipal property."

Amendment of section 9 of Act 6 of 2004

6. Section 9 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) Multiple purposes in terms of section 8(2)**[(r)](h)**."

Amendment of section 11 of Act 6 of 2004

7. Section 11 of the principal Act is hereby amended by—

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

“(2) A rate levied by a municipality on residential properties with a market value below a prescribed valuation level may, instead of a rate determined in terms of subsection (1), be a uniform fixed amount per property.”; and

(b) the deletion of subsection (3).

Amendment of section 15 of Act 6 of 2004

8. Section 15 of the principal Act is hereby amended by—

(a) the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“When granting in terms of subsection (1) exemptions, rebates or reductions in respect of owners of categories of properties, a municipality may determine such categories in accordance with section 8(2) and subsection (2A), and when granting exemptions, rebates or reductions in respect of categories of owners of properties, such categories may include-”;

(b) the insertion after subsection (2) of the following subsection:

“(2A) In addition to the categories of property set out in section 8(2), a municipality may, subject to any ratio

determined in terms of section 19, for the purposes of granting exemptions, rebates and reductions, determine such categories based on-

- (a) properties used for public service purposes;
- (b) properties to which a land tenure right applies and on which no industrial, commercial, business, mining or commercial agricultural activities are conducted; and
- (c) the historical or cultural significance of the property, including the presence on the property of a national monument as contemplated in the National Monuments Act, 1969 (Act No. 28 of 1969), or an institution that has been declared to be subject to the Cultural Institutions Act, 1998 (Act No. 119 of 1998).";

- (c) by the deletion in subsection (3) of subparagraph (ii) and (iii) of paragraph (b).

Amendment of section 16 of Act 6 of 2004

9. Section 16 of the principal Act is hereby amended by-

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

"(a) If a rate on a specific category of properties, or a rate on a specific category of properties above a specific amount in the Rand, is materially and unreasonably prejudicing any of the matters listed in subsection (1), the Minister **[after notifying]** with the concurrence of the Minister of Finance, must, by notice in the *Gazette*, give notice to the relevant municipality or municipalities that the rate must be limited to an amount in the Rand specified in the notice.";

- (b) the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) Any sector of the economy, after consulting the relevant municipality or municipalities, **[and]** organised local government and the MEC for local government, may, through its organised structures, request the Minister to evaluate evidence to the effect that the rate on any specific category of properties above a specific amount in the Rand, is materially and unreasonably prejudicing any of the matters listed in subsection (1).”; and

- (c) the insertion in subsection (3) after paragraph (a) of the following paragraph:

“(aA) A request contemplated in paragraph (a) must be submitted to the Minister within 12 months of the date of imposition of the applicable rate.”.

Amendment of section 17 of Act 6 of 2004

10. Section 17 of the principal Act is hereby amended by-

- (a) the substitution in subsection (1) for paragraph (a) for the following paragraph:

“(a) subject to paragraph (aA) on the first 30% of the market value of public service infrastructure;”;

- (b) the insertion in subsection (1) after paragraph (a) of the following new paragraph:

“(aA) on any property referred to in paragraphs (a), (b), (e) (g) and (h) of the definition of “public service infrastructure”;”;

- (c) the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) on [mineral] mining rights or a mining permit within the meaning of [paragraph (b) of the definition of ‘property’ in subsection 1] the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), excluding any building, other immovable structures and infrastructure above the surface of the mining property required for purposes of mining;”;

- (d) the substitution in subsection (1) for paragraph (g) of the following paragraph:

“(g) on a property belonging to a land reform beneficiary or his or her heirs, dependants or spouse: Provided that this exclusion lapses—
(i) 10 years from the date on which such beneficiary’s title was registered in the office of the Registrar of Deeds; or
(ii) upon alienation of the property by the land reform beneficiary or his or her heirs, dependants or spouse;”;

- (e) by the insertion in subsection (1) after paragraph (i) of the following paragraph:

“(j) on the first amount of the market value as determined by the Minister, with the concurrence of the Minister of

Finance, by notice in the Gazette, of a residential property owned and occupied by a person who is a recipient of an older persons grant or a disability grant in terms of the Social Assistance Act, 2004 (Act No. 13 of 2004);”;

- (f) the insertion after subsection (1) of the following subsection:

“(1A)(a) The exclusion from rates of a property referred to in subsection (1)(b) lapses–

(a) if the property is alienated or let; or

(b) if the exclusion from rates of a property lapses in terms of paragraph (a), if the new owner or lessee as the case may be, becomes liable to the municipality concerned for the rates that, had it not been for subsection (1)(b), would have been payable on the property, notwithstanding the provisions of section 78, with effect from the date of alienation or lease.”;

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

“(b) If the property in respect of which the declaration is withdrawn is privately owned, the owner, upon withdrawal of the declaration, becomes liable to the municipality concerned for any rates that, had it not been for subsection (1)(e), would have been payable on the property, notwithstanding the provisions of section 78, during the period commencing from the effective date of the current valuation roll of the municipality. If the property was declared as a protected area after the effective date of the current valuation roll, rates are

payable only from the date of declaration of the property.”;

(h) the insertion after subsection (3) of the following subsection:

“(3A) A municipal manager must, in accordance with the procedure in section 49, inform property owners of the procedures to be followed and supporting documentation to be submitted when applying for an exclusion in terms of subsection (1)(j).”; and

(i) the substitution in subsection (5) for paragraph (b) of the following paragraph:

“(b) If the exclusion from rates of a property used as such an official residence lapses, the religious community owning the property becomes liable to the municipality concerned for any rates that, had it not been for subsection (1)(i), would have been payable on the property, notwithstanding the provisions of section 78, during the period of one year preceding the date on which the exclusion lapsed.”.

Amendment of section 19 of Act 6 of 2004

11. Section 19 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) different rates on residential properties, except as provided for in sections 11(2), 21 and 89: Provided that this paragraph does not apply to residential property which is vacant, not used for any purpose or not used for the permitted purpose;”.

Amendment of section 20 of Act 6 of 2004

12. Section 20 of the principal Act is hereby amended by–

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

“(a) different kinds of municipalities which may, for the purposes of this section, be defined in the notice either in relation to categories, **[of municipalities within the meaning of the Municipal Structures Act] types or budgetary size of municipalities** or in any other way; or”; and

(b) the insertion after subsection (2) of the following subsection:

“(2A) The Minister may, with the concurrence of the Minister of Finance, and by the notice referred to in subsection (1), delay the implementation of a limit, for a period determined in the notice and in respect of the different kinds of municipalities defined in terms of subsection (2)(b).”.

Amendment of section 25 of Act 6 of 2004

13. Section 25 of the principal Act is hereby amended by–

(a) the substitution for subsections (1) and (2) of the following subsections:

“(1) A rate levied by a municipality on a sectional title unit is payable by the owner of the unit or the holder of a right contemplated in section 25 or 27 of the Sectional Titles Act.

(2) A municipality may not recover the rate on a sectional title unit, or on a right contemplated in section 25 or 27 of the Sectional Titles Act registered against the sectional title unit, or any part of such rate, from the body corporate controlling a sectional title scheme, except when the body corporate is the owner of any specific sectional title unit or the holder of such right.”.

Amendment of section 27 of Act 6 of 2004

14. Section 27 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) A person liable for a rate must furnish the municipality with that person’s postal address.”.

Amendment of section 30 of Act 6 of 2004

15. Section 30 of the principal Act is hereby amended by–

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

“(2) All rateable properties in the municipality must be valued during a general valuation, including **[all]** those properties **[fully or]** partially excluded from rates in terms of section 17 (1)(a) **[, (e), (g)]** and (h) **[and (i)]**: Provided

that [- **(a)**] properties referred to in section 7(2)(a) must be valued only to the extent that the municipality intends to levy a rate on those properties.];and

(b) the Minister may fully or partially exempt a municipality from the obligation to value properties excluded from rates in terms of section 17(1)(e),(g) and (i) if the municipality can demonstrate that the valuation of those properties is too onerous for it, given its financial and administrative capacity.]"; and

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

"(3) All properties valued in terms of subsection (2) must be included in the valuation roll: Provided that properties referred to in [**subsection 2(b) and in**] section 7(2)(a)(i) and (ii) and section 17(1)(e),(g),(i) and (j) must be included in the valuation roll whether [**or not**] they [**were**] have been valued or not."

Amendment of section 32 of Act 6 of 2004

16. Section 32 of the principal Act is hereby amended by—

- (a) the substitution in paragraph (a) of subsection (1) for the expression "four" of the expression "five"; and
- (b) the substitution in subsection (2) for the expression "five" of the expression "seven".

Amendment of section 34 of Act 6 of 2004

17. Section 34 of the principal Act is hereby amended by-

(a) the insertion after paragraph (a) of the following paragraph:

“(aA) subject to section 81(1C), as part of the process towards submitting a valuation roll contemplated in paragraph (b), after appointment and until submission of the certified valuation roll, submit a monthly progress report to the municipal manager on the valuation of properties, regardless of whether properties are valued in terms of section 45(2)(a) or in terms of a combination of section 45(2)(a) and (b);”;

Amendment of section 42 of Act 6 of 2004

18. Section 42 of the principal Act is hereby amended by-

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

“(a) require the owner, tenant or occupier of a property which a valuer must value in terms of this Act, or the agent of the owner, or the body corporate controlling a sectional title scheme or the share block company in respect of a share block scheme or the management association in respect of a property time-sharing scheme to give the valuer access to any document or information in possession of the owner, tenant, occupier, [or] agent, body corporate, share block company or management association which the valuer

reasonably requires for purposes of valuing the property;” and

(b) the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) in writing require the owner, tenant or occupier of the property, or the agent of the owner, or the body corporate controlling a sectional title scheme or the share block company in respect of a share block scheme or the managing association in respect of a property time sharing scheme to provide the valuer, either in writing or orally, with particulars regarding the property which the valuer reasonably requires for purposes of valuing the property.”.

Amendment of section 46 of Act 6 of 2004

19. Section 46 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) The value of any license, permission, or other privilege granted in terms of legislation in relation to the property, but not a mining right or mining permit granted in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)”.

Amendment of section 53 of Act 6 of 2004

20. Section 53 of the principal Act is hereby amended by

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

“(a) the valuer’s decision in terms of section 51, together with the reasons for such decision, regarding that objection;”; and

(b) the repeal of subsection (2) and (3).

Amendment of section 54 of Act 6 of 2004

21. Section 54 of the principal act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) an objector must be lodged within **[30] 50** days of the date on which the written notice referred to in section 53(1) was sent to the objector **[or, if the objector has requested reasons in terms of section 53(1), within 21 days after the day on which the reasons was sent to the objector]**;

Amendment of section 55 of Act 6 of 2004

22. Section 55 of the principal Act is hereby amended by-

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

- “(b)(i) recover from, **[or repay to]** the person liable for the payment of the rate the difference determined in terms of paragraph (a) **[plus interest at a prescribed rate.]** without adding interest on the amount due for rates; and
- (ii) repay to the person who made the payment the difference determined in terms of paragraph (a) plus interest at the prescribed rate.”

(b) the deletion of subsection (3) .

Amendment of section 56 of Act 6 of 2004

23. Section 56 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The MEC for local government must, by notice in the *Provincial Gazette*, establish as many valuation appeal boards in the province as may be necessary, but not fewer than one in each **[district municipality and each]** metropolitan municipality. ”.

Amendment of section 58 of Act 55 of 2004

24. Section 58 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) not fewer than two and not more than four other members with sufficient knowledge of or experience in the valuation of property, of which at least one must be a professional valuer or a professional associated valuer

without restrictions and with a minimum of ten years experience registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000)."

Amendment of section 78 of Act 6 of 2004

25. Section 78 of the principal Act is hereby amended by-

- (a) the insertion in subsection (1) after paragraph (g) of the following paragraph:

"(h) the value of which was incorrectly recorded in the valuation roll as a result of a clerical or typing error.";

- (b) the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"For the purposes of subsection (1), the provisions of Part 2 of Chapter 4 and, Chapters 5, 6 and 7, read with the necessary changes as the context may require, are applicable, except that-";

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

"(b) the supplementary valuation [roll takes effect on the first day of the month following the completion of the public inspection period required for the supplementary valuation roll in terms of section 49 (as read with this section), and] remains valid for the duration of the municipality's current valuation roll.";

- (d) the substitution in subsection (4) of the words preceding paragraph (a) of the following words:

"Rates on a property based on the valuation of that property in a supplementary valuation [roll] become payable with effect from-";

- (e) the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) the first day of the month following the posting of the notice as contemplated in subsection (5) in the case of property referred to in subsection 1(a) or (f);"

- (f) the insertion in subsection (4) after paragraph (a) of the following paragraph:

"(aA) the first day of the month following the posting of the notice as contemplated in subsection (5) in the case of property referred to in subsection 1(e): Provided that in the case of a decrease in value in terms of a property referred to in subsection 1(e), the rates become payable on the date the property was incorrectly valued."; and

- (g) the insertion after subsection (4) of the following subsections:

"(5) (a) A municipal valuer must on completion of the supplementary valuation contemplated in subsection (1)(a) to (g), and following a correction contemplated in subsection 1(h), serve such valuation or correction, by ordinary mail, or if appropriate, in accordance with section 115 of the

Municipal Systems Act, or through any other appropriate means of communication on every owner of property who has been affected by a supplementary valuation contemplated in subsection (1)(a) to (g) and a correction contemplated in subsection 1(h), a notice reflecting the supplementary valuation or correction of the property, as well as the particulars listed in section 48(2);

(b) The notice referred to in paragraph (a) must inform the property owner that he or she may lodge an objection with the municipal manager in writing, within a period of 21 days of the posting of the notice in respect of any matter reflected in or omitted from the supplementary valuation.” ;

(6) The municipality must, at least once a year, compile and publish a supplementary valuation roll of all properties included in the supplementary valuations contemplated in subsection (1) during the period in which the supplementary valuations took place and make it public and available for inspection in the manner provided for in section 49.”.

Amendment of section 80 of Act 6 of 2004

26. Section 80 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Non-compliance with—

(a) section 16(3)(aA), 21, 31 or 32; and

(b) the period specified in the notice referred to in section 4(2)(b)(ii),

may not be condoned in terms of subsection (1).”.

Amendment of section 81 of Act 6 of 2004

27. Section 81 of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

“(1) The MEC for local government in a province must monitor whether municipalities in the province comply with the provisions of this Act, including ensuring that a valuation roll complies with sections 30 and 48.”;

(b) the insertion after subsection (1) of the following subsection:

“(1A) The critical milestones that must guide monitoring by the MEC for local government as contemplated in subsection (1) include, but are not limited to, the following:

(a) whether the municipality has determined a date of valuation for its general valuation in terms of section 31 ;

(b) whether a municipality without in-house valuation capacity, has advertised for the appointment of a valuer by a date determined by the Minister by notice in the *Gazette*;

(c) whether a municipality has designated a municipal valuer by a date determined by the Minister by notice in the *Gazette*;

(d) whether the municipal manager has submitted a project plan as contemplated in subsection 81(1B) ; and

(e) whether the municipal valuer has submitted a certified valuation roll to the municipal manager by the prescribed date.

(1B) The municipal manager must, by a date determined by the Minister by notice in the Gazette, submit a project plan to the MEC for local government outlining-

(a) detailed actions for the valuation of all properties in the municipal area indicating when valuation work will commence and when valuations will be finalised as well as the following milestones:

- (i) the date of valuation for the next general valuation and the date by which it will be determined in terms of section 31;
- (ii) the date by which the municipality will advertise for the appointment of a municipal valuer if the municipality has no in-house valuation capacity;
- (iii) the date by which the municipality will designate a municipal valuer;
- (iv) the date by which the municipal manager is to submit quarterly progress reports to the MEC that are based on the municipal valuer's monthly progress reports contemplated in section 34 (aA); and
- (v) the intended date by which the municipal valuer is to submit a certified valuation roll to the municipal manager taking into account the provisions of section 34(d).

(b) The municipal manager must, by no later than 10 days after the date on which each milestone referred to in paragraph (a) should have taken place, submit a report to the MEC for local government regarding the status of that milestone and if the milestone has not been achieved, the remedial actions to rectify the failure to deliver on the milestones in the action plan, as well as any deviation in the action plan that will impact on the delivery date referred to in subsection (1B)(a)(v).

(1C) (a) The Minister may, by notice in the Gazette, determine to which municipalities the provisions of this section apply.

(b) A determination referred to in paragraph (a) may differentiate between municipalities in terms of categories, types, or in terms of budgetary size or in any other manner.

(1D) The municipal manager must submit reports in a format and at such intervals as may be prescribed to such parties as may be prescribed on specific aspects of the implementation of provisions of the Act.

Amendment of section 83 of Act 6 of 2004

28. Section 83 of principal Act is hereby amended by–

(a) the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(aA) the process to be followed and the conditions that must be complied with in order to qualify for the relief contemplated in section 17(1)(j)”;

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

“(3) Regulations in terms of subsection (1) may—
(a) treat different categories of properties, or different categories of owners of properties, differently; or
(b) differentiate between different kinds of municipalities, which may, for purposes of this section, be defined either in relation to categories, types or budgetary size, or in any other manner.”;

(c) the insertion after subsection (3) of the following subsection:

“(4) The Minister may, by notice in the *Gazette*,—
(a) delay the implementation of a provision of a regulation made in terms of subsection (1) for a period determined in the notice;
(b) where practicalities impede the strict application of a specific provision of a regulation made in terms of subsection (1), exempt any municipality from, or in respect of, such provision for a period, and on such conditions, as determined in the notice.”.

Repeal of section 88 of Act 6 of 2004

29. Section 88 of the principal Act is hereby repealed.

Insertion of section 89A of Act 6 of 2004

30. The following section is hereby inserted in the principal Act after section 89:

“Transitional arrangements relating to redetermination of municipal boundaries: Use of valuation rolls and supplementary valuation rolls

89A. (1) If, as a result of the redetermination of a municipal boundary in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998), an area is included into the existing area of jurisdiction of a municipality, that municipality may—

- (a) continue to use a valuation roll and supplementary valuation roll that was in force in the area that has been included in its area of jurisdiction; and**
- (b) levy rates against property values as shown on that valuation roll or supplementary valuation roll,**

until it prepares a valuation roll or supplementary valuation roll that includes such area.

(2) If a municipality uses valuation rolls and supplementary valuation rolls in terms of subsection (1), that municipality may, notwithstanding the provisions of section 19(1)(a), impose different rates based on the different valuation rolls or supplementary valuation rolls, so that the amount in the Rand on the market value of the property payable on similarly situated property is more or less the same.”.

Substitution of section 90 of Act 6 of 2004

31. Section following section is hereby substituted for section 90 of the principal Act:

“Transitional arrangements relating to redetermination of municipal boundaries: Existing rates policies

90. (1) If, as a result of the redetermination of a municipal boundary in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998), an area is included into the existing area of jurisdiction of a municipality during the course of a financial year, that municipality may during the financial year in which the inclusion becomes effective –

- (a) continue to use a rating policy that was in force in the area that has been included in its area of jurisdiction; and
- (b) levy rates consistent with that rating policy.”.

Repeal of sections 91, 92 and 93 of Act 6 of 2004

32. Sections 91, 92 and 93 of the principal Act, are hereby repealed.

Insertion of section 93A in Act 6 of 2004

33. The following section is hereby inserted in the principal Act after section 93:

“Transitional arrangement: Public service infrastructure

93A. (1) The prohibition on the levying of rates on public service infrastructure referred in section 17(1)(a4) must be phased in over a period of three years, with effect from the date of coming into operation of the Local Government: Municipal Property Rates Amendment Act, 2011.

(2) The rates levied on property referred to in subsection (1) must –

(a) in the first year, be no more than 75 per cent of the rate for that year otherwise applicable to that property;

(b) in the second year, be no more than 50 per cent of the rate for that year otherwise applicable to that property;
and

(c) in the third year, be no more than 25 per cent of the rate for that year otherwise applicable to that property.

Transitional arrangements

34. The provisions of section 8 of the Local government: Municipal Property Rates Act, 2004, as amended by section 5 of this Act, takes effect in respect of those municipalities –

- (a) that implemented the Act on 1 July 2006, 1 July 2007 and 1 July 2008, with effect from 1 July 2015;
- (b) that implemented the Act on 1 July 2009, 1 July 2010 and 1 July 2011, with effect from the effective date of the next valuation roll prepared in terms of the Act.

Short title

35. This Act is called the Local Government: Municipal Property Rates Amendment Act, 2011.

MEMORANDUM ON THE OBJECTS OF THE LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES AMENDMENT BILL, 2011

1. BACKGROUND

Since the first 4 municipalities began valuing and rating in terms of the Local Government: Municipal Property Rates Act ("the Act") on 1 July 2006 municipal practitioners have grappled with the reality of operationalising a piece of legislation that has largely been theoretical since its effective date of 2 July 2005 and became less so as the implementation of its regulatory framework unfolded over the years.

Taking into account lessons learnt from the 27 municipalities that implemented the Act in 2006 and 2007, the Act was amended through the Local Government Laws Amendments Act, 2008 (which commenced operating on 13 October 2009).

Having regard to the experience gained with the additional municipalities that implemented the Act in 2008 and 2009 respectively, it has become clear that these lessons learnt from the monitoring of such implementation necessitate that the Act be amended yet again to render its implementation more seamless and minimise legal and policy misinterpretations that have arisen. In addition certain key policy amendments are proposed and such proposed amendments are informed by lessons learnt from implementing the regulatory framework of the Act, and continuous engaging with key stakeholders, including individual and organised ratepayers, and practitioners on the challenges encountered with the implementation of the Act over the years in the first phase of its implementation.

2. OBJECTS OF THE BILL

The main object of the Bill is to address the problems that have been experienced in the implementation of the Act over the past five years and to promote the effective and efficient implementation of the Act.

3. SUMMARY OF THE BILL

Clause 1 amends the Preamble so as make it clear that the income derived from property rates, in line with general tax principles, is not linked to a specific municipal service or the provision of infrastructure for a specific municipal service but that such income derived is a general revenue source.

Clause 2 inserts various definitions many of which are introduced because of the introduction of the revised property categorisation framework in clause 8 and various other definitions that are inserted to clarify a variety of matters in the Act that have up to now been so open to interpretation that they hinder the effective implementation of the Act; all of these definitions are introduced so as to render the Act simpler, user friendly, and minimise legal and policy misinterpretations.

Clause 3 provides for a consequential amendment to section 3 of the Act flowing from the amendment to section 8 and also provides that a rates policy must determine criteria not only for an increase but also for the decrease in rates. This Clause also provides for the matters that a municipality must take into account when considering criteria in respect of exemptions, rebates and reductions in respect of agricultural properties to be reduced from four to two matters because two of the matters have been taken into account in the "rates ratio" between residential and agricultural properties that was promulgated in terms of section 19 and became effective on 1 July 2009. The clause finally provides that the contribution of agriculture to the social and economic welfare of other members of the

public be recognised in addition to its contribution to the welfare of farm workers.

Clause 4 amends section 7 (2) (a) (iii) of the Act so as to provide that properties to which a land tenure right applies and on which no commercial activities are conducted and on which the municipality does not intend levying rates, that no mandatory requirement is imposed on a municipality to value such properties.

Clause 5 amends section 8 of the Act so as to limit the basis for the categorisation of properties to use and permitted use only. Furthermore the list of property categories that must, where applicable, be determined is now set out in subsection (2), with additional property categories provided for in subsection (3). In order to ensure the effective application of this section all the different categories of property are now defined in section 1 of the Act.

Clause 6 provides for a consequential amendment to section 9 (1) (c) flowing from the amendment to section 8.

Clause 7 amends section 11 so as to provide that a rate at a uniform fixed amount may be levied on residential properties only.

Clause 8 amends section 15 so as to provide for additional avenues in terms of which a municipality may determine the categories of properties in respect of which a municipality may grant exemptions, rebates or reductions. The clause also removes the obligation on a municipality to annually reflect income foregone in respect of exclusions in terms of various subsections of section 17.

Clause 9 amends section 16 of the Act so as to provide that the limitation of a rate on a specific category of property by the Minister must be determined with the concurrence of the Minister of Finance and that a sector of the economy must also consult the MEC responsible for local

government prior to requesting the Minister to evaluate evidence that a rate on any specific category of properties or a rate on any specific category of properties above a specific amount in the Rand is unreasonably prejudicing any of the matters listed in section 16 (1). The clause in addition limits the period within which such a request may be submitted to the Minister to within 12 months of the date of imposition of the applicable rate.

Clause 10 amends section 17 of the Act which so as to provide-

- for the exclusion from rates of certain categories of public service infrastructure;
- for the exclusion from rates of mining rights or mining permits, excluding infrastructure above the surface in respect of mining property;
- that the exclusion from rates in respect of land belonging to a land reform beneficiary or his or her heirs includes his or her dependents or spouse, and that this exclusion lapses ten years from the date on which such beneficiary's title was registered or upon alienation of the property;
- for the exclusion from rating of the property, the market value of which does not exceed an amount as determined by the Minister with the concurrence of the Minister of Finance, which is owned by a recipient of an older persons grant or disability grant. Subsequent consequential amendments are effected in other sub-sections of section 17 to align with amendments made here; and
- that an exclusion from rates in respect of the seashore lapses if any part thereof is alienated;
- that notwithstanding the provisions of section 78, if a property in respect of which the declaration as a special nature reserve is withdrawn is privately owned, the owner, upon withdrawal of the declaration, becomes liable to the municipality concerned for any rates that, had it not been for subsection (1) (e), would have been

payable on the property, during the period commencing from the effective date of the current valuation roll of the municipality;

- that notwithstanding the provisions of section 78, if the exclusion from rates of a property used as such an official residence lapses, the religious community owning the property becomes liable to the municipality concerned for any rates that it not been for the exclusions provided for in section 17, would have been payable on the property, during the period of one year preceding the date on which the exclusion.

Clause 11 amends section 19 of the Act so as to provide that a municipality may levy different rates on residential properties if such properties are vacant, not used for any purpose or not used for the permitted purpose.

Clause 12 amends section 20 of the Act so as to authorise the Minister with the concurrence of the Minister of Finance to set different limits for different kinds of municipalities as may be determined and to delay the implementation of a limit contemplated in that section for a pre-determined period.

Clause 13 amends section 25 so as to provide that the owner of exclusive use areas in a sectional title scheme is liable for payment of rates whether this owner is the Body Corporate or owner of a unit in the sectional title scheme.

Clause 14 amends section 27 to provide that the person liable for a rate must furnish the municipality with his or her postal address.

Clause 15 amends section 30 so as to provide that properties that are fully excluded from rates need not be valued. In addition, the clause provides that certain properties that are excluded from rates must be included in the valuation roll whether they were valued or not.

Clause 16 amends section 32 so as to extend the validity of a valuation roll from four to five years and to provide that the MEC for local government may extend such validity to seven years.

Clause 17 amends section 34 so as to make it a requirement that a municipal valuer submits a monthly progress report to the municipal manager on the valuation of properties.

Clause 18 amends section 42 so as to make it mandatory that the body corporate or the managing association controlling a sectional title scheme and a share block company respectively must give the valuer access to documents or information required by the valuer for the purposes of valuing the property.

Clause 19 amends section 46 so as to provide that a mining right or mining permit is not to be considered for purposes of valuing a property.

Clause 20 amends section 53 so as to require a municipal valuer to notify an objector of the valuer's decision together with the reasons for such decision and repeals the requirement for a property owner to request such reasons in writing at a fee.

Clause 21 amends section 53 so as to extend the period for the lodging of an objection from 30 to 50 days and effects a consequential amendment to section 54 due to the amendment of section 53.

Clause 22 amends section 55 so as to remove the requirement for the payment of interest by a property owner affected by an upward adjustment of the valuation of their property and to provide for the municipality to repay a property owner with interest where there is a downward adjustment of the valuation of a property.

Clause 23 amends section 56 so as to delete the mandatory requirement for the establishment of a valuation appeal board in every district municipality.

Clause 24 amends section 58 so as to provide that the membership of an appeal board may include a professional associated valuer without restrictions and with a minimum of ten years experience.

Clause 25 amends section 78 so as to extend the circumstances under which a supplementary valuation must be made to include a property the value of which was incorrectly recorded in the valuation roll as a result of a clerical or typing error; to amend the dates on which a supplementary valuation takes effect and the dates from which rates are payable on properties affected by a supplementary valuation. In addition the clause provides for the notification of owners of properties effected by a supplementary valuation.

Clause 26 amends section 80 so as to extend the provisions, the non compliance of which may not be condoned.

Clause 27 amends section 81 so as to equip an MEC for local government to more effectively monitor municipalities in the implementation of the Act and more especially the process of the compilation of a valuation roll and generally strengthen the monitoring of compliance with the provisions of the Act.

Clause 28 amends section 83 so as to provide for appropriate differentiation in the implementation of the regulatory framework of the Act and to provide for phasing in of the regulatory framework of the Act where necessary and where appropriate exempt any municipality from certain provisions of regulations on the basis of appropriate conditions as may be determined.

Clause 29 repeals section 88 as this section no longer serves any purpose.

Clause 30 inserts a new section 89A, to provide for transitional arrangements regarding the use of valuation rolls and supplementary valuation rolls in instances where there is a redetermination of a municipal boundary.

Clause 31 substitutes section 90 so as to provide for transitional arrangements regarding the use of existing rates policies in instances where there is a redetermination of a municipal boundary.

Clause 32 repeals sections 91, 92 and 93 as these sections no longer serve any purpose.

Clause 33 inserts a new section 93A which provides for the phasing in of the prohibition on the levying of rates on certain types of public service infrastructure.

Clause 34 provides that the provisions of section 8, as amended by this Act, take effect on different dates in respect of different municipalities depending on the date by which a municipality implemented the Act for the first time.

Clause 35 contains the short title.

3. PARTIES CONSULTED

The following parties have been consulted:

- National Treasury;
- South African Local Government Association (SALGA);

- Fiscal and Financial Commission (FFC);
- Institute for Municipal Finance Officers;
- The Cooperative Governance and Traditional Affairs MinMEC;
- Public hearings were held in all nine provinces in which ratepayers, stakeholders and general members of the public participated;
- Governance and Administration (FOSAD) Cluster

4. FINANCIAL IMPLICATIONS FOR THE STATE

None envisaged.

5. FINANCIAL IMPLICATIONS FOR PROVINCES

Financial implications are envisaged to the extent that provincial departments responsible for local government will have to augment their establishments in a manner that allows the MEC responsible for local government in a province to perform hands-on monitoring of municipal implementation of the Act taking into account the detailed monitoring provisions expressed in the amendments to section 81 and those connected thereto in particular. It must be emphasised that despite the proposed amendments to the Act, provincial departments responsible for local government should ideally have commensurate establishments if they are to fulfil their constitutional monitoring and support role.

6. FINANCIAL IMPLICATIONS FOR MUNICIPALITIES

It is envisaged that the provisions to exclude certain public service infrastructure (PSI) from rating are the main provisions that will have financial implications that are of significance, in particular for those municipalities that currently rate such PSI. Out of the 257 municipalities

that have the power to levy property rates 71 municipalities that responded to a targeted survey reported rating PSI in the 2009/10 and 2010/11 financial years and the estimated financial implications of excluding PSI from rating would be approximately R73,993,000, about 0.43% of their estimated total rates revenue.

7. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Co-operative Governance are of the opinion that the Amendment Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution. The Bill does not fall within the functional areas listed in Schedule 4 of the Constitution, nor does it provide for legislation envisaged in the sections referred to in section 76(3) of the Constitution.

The State Law Advisers are of the opinion that it may be necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), because although it does not contain provisions pertaining directly to customary law or customs of traditional leaders it does to some extent impact on matters of land tenure in respect of lessees of certain properties to which a land tenure right applies.