

**KWAZULU-NATAL JOINT MUNICIPAL
PROVIDENT FUND BILL, 2016**

BILL

To provide for the continued existence of, and the continuation of both membership of and association with, the KwaZulu-Natal Joint Municipal Provident Fund; for the power of the responsible Member of the Executive Council to make regulations; for transitional arrangements; for the repeal of laws and savings; for the validation of certain actions; for the retrospective validation of the establishment and operation of the Natal Joint Municipal Pension Fund Staff Provident Fund; and for matters incidental thereto.

PREAMBLE

WHEREAS it is necessary to replace the current KwaZulu-Natal Joint Municipal Provident Fund framework with a framework that is solely regulated by, aligned to, and compliant with the Constitution of the Republic of South Africa, 1996, the nationally applicable Pension Funds Act, 1956 (Act No. 24 of 1956), and the principles of good governance,

BE IT THEREFORE ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

Definitions

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

“**actuary**” means a person who is –

(a) a fellow of an institute, faculty, society or chapter of actuaries registered as such in accordance with the applicable legislation; and

(b) appointed by the –

(i) Registrar; and

(ii) Board of Trustees,

as a valuator as contemplated in section 9A of the Pension Funds Act, 1956 (Act No. 24 of 1956);

“**auditor**” means a public accountant and auditor who is –

(a) registered as such in accordance with the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991); and

(b) appointed by the Board of Trustees;

“**benefit**” means any benefit granted or other amount due, in accordance with the regulations to a member, dependant or other person;

“**Board of Trustees**” means the Board of Trustees contemplated in section 7A of the Pension Funds Act, 1956 (Act No. 24 of 1956), and established as prescribed;

“**committee of management**” means the committee of management elected in accordance with the provisions of the Rules;

“**employee**” means an employee as contemplated in sections 8(2) and (3);

“**Financial Services Board**” means the Financial Services Board established in accordance with section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

“**Fund**” means the KwaZulu-Natal Joint Municipal Provident Fund;

“**general committee**” means the general committee elected in accordance with the provisions of the rules;

“**KwaZulu-Natal Joint Municipal Provident Fund**” means the KwaZulu-Natal Joint Municipal Provident Fund established by section 2 of the KwaZulu-Natal Joint Municipal Provident Fund Act, 1995 (Act No. 4 of 1995);

“**member**” unless the context determines otherwise, means a natural person who –

- (a) at any stage prior to the commencement date of this Act contributed to the Fund, and from the commencement date of this Act continues to contribute to the Fund; or
- (b) on any date subsequent to the commencement date of this Act starts to contribute to the Fund;

“**municipality**” –

- (a) includes a metropolitan municipality, a district municipality or a local municipality as contemplated in section 155(6) of the Constitution of the Republic of South Africa, 1996;

(b) means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

(c) when contemplated as an entity or a corporate body, means a municipality as described in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

(d) when contemplated as a geographic area, means a municipal area determined as contemplated in the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);

“notice” means a notice issued in terms of a regulation;

“Pension Funds Act” means the Pension Funds Act, 1956 (Act No. 24 of 1956);

“prescribed” means prescribed by the responsible Member of the Executive Council by regulation made or notice issued in accordance with section 7;

“principles of good governance” means the principles as set out in the King Code and Report on Governance in South Africa, 2009, and any amendments thereto, or revision thereof;

“promulgation” means promulgation in the *Provincial Gazette*;

“Province” means the Province of KwaZulu-Natal;

“Provincial Gazette” means the *Provincial Gazette* of the Province of KwaZulu-Natal;

“regulation” means a regulation made under this Act, and includes any Schedule to such regulations;

“Regulations governing the KwaZulu-Natal Joint Municipal Provident Fund” means the Regulations governing the KwaZulu-Natal Joint Municipal Provident Fund published in Provincial Notice No. 135 of 1996 on 4 April 1996;

“responsible Member of the Executive Council” means the Member of the Executive Council responsible for local government;

“Rules” for purposes of the Pension Funds Act, means –

(a) the Rules for the Management and Administration of the Natal Joint Municipal Pension Fund (Superannuation), the Natal Joint Municipal Pension Fund (Retirement), and the KwaZulu-Natal Joint Municipal Provident Fund, issued in accordance with the regulations made under the –

(i) Local Government Superannuation Ordinance, 1973 (Ordinance No. 24 of 1973);

(ii) Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974); and

(iii) KwaZulu-Natal Joint Municipal Provident Fund Act, 1995 (Act No. 4 of 1995); and

(b) any further Schedules made in accordance with section 7, after the date of commencement of this Act; and

“**this Act**” includes the regulations made and notices issued in terms of such regulations.

Objects of Act

2. The objects of this Act are to replace the current Fund framework with a framework that is solely regulated by, aligned to, and compliant with the –

(a) Constitution of the Republic of South Africa, 1996;

(b) Pension Funds Act; and

(c) principles of good governance.

Application of Act

3.(1) This Act applies to all municipalities associated with, and members of, the Fund.

(2) The provisions of the Pension Funds Act apply to this Act, and the Pension Funds Act prevails in the event of an irreconcilable conflict between the application of the Pension Funds Act and the provisions of this Act.

Continuation and operation of Fund

4.(1) The Fund –

- (a) continues to exist with all the associated rights, powers, duties, responsibilities, assets and liabilities as they were immediately prior to the commencement date of this Act; and
- (b) operates in accordance with the provisions of this Act, subject to the provisions of section 3(2).

(2) The regulations governing the KwaZulu-Natal Joint Municipal Provident Fund and the rules apply to the Fund.

Continuation of membership of Fund

5. Subject to the provisions of this Act or any other law, a person who, immediately prior to the date of commencement of this Act, was a member of the Fund, continues to be a member of the Fund.

Continuation of association with Fund

6. Every municipality that, immediately prior to the commencement of this Act, was associated with the Fund, continues to be associated with the Fund.

Powers of responsible Member of Executive Council

7.(1) The responsible Member of the Executive Council, after consultation with the Fund, may –

- (a) appoint an –
 - (i) actuary to conduct an actuarial valuation of the Fund; and
 - (ii) auditor to audit financial statements of the Fund; and
- (b) by regulation, repeal, amend or substitute any existing Regulations governing the KwaZulu-Natal Joint Municipal Provident Fund;
- (c) by regulation, make, repeal, amend or substitute any regulations –
 - (i) in respect of the asset base, investments and financial and other sources of income of the Fund; and
 - (ii) not inconsistent with this Act, for any matter that he or she considers necessary or expedient to facilitate the application of this Act: Provided that the generality of this power is not limited by any of the provisions of paragraph (a), (b) or (c); and

(d) issue notices pertaining to this Act or the Regulations by publication in the *Provincial Gazette*.

(2) Any regulation made or notice issued by the responsible Member of the Executive Council in accordance with subsection (1), may be made or issued with effect from any date whether prior or subsequent to the date of promulgation thereof.

Transitional arrangements

8.(1) Subject to the protection of existing rights contemplated in sections 4(1) and 9(2) the –

(a) Committee of Management established in accordance with Regulation 5 of the Regulations governing the KwaZulu-Natal Joint Municipal Provident Fund continues, for all purposes, to operate, without interruption, as the Board of Trustees of the Fund with all the powers, functions, duties and roles that, prior to the commencement of this Act, vested in the Committee of Management of the Fund;

(b) General Committee established in accordance with Regulation 5 of the Regulations governing the KwaZulu-Natal Joint Municipal Provident Fund continues, for all purposes, to operate, without interruption, as the General Committee of the Fund with all the powers, functions, duties and roles that, prior to the commencement of this Act, vested in the General Committee of the Fund; and

(c) Fund continues to be governed, managed and operated, with the necessary changes, in compliance with the provisions of every –

(i) law; and

(ii) administrative and financial procedure,

that applied to the Fund prior to the date of commencement of this Act.

(2) Subject to subsection (3), an employee is any person in the service of an associated municipality, who –

(a) is employed in a full-time capacity in the said municipality; and

(b) has attained the age of 17 years, but had not at the time of joining the said municipality reached an age 8 years less than the pension age.

(3) For the purposes of this Act –

(a) any person who is employed by an associated municipality and whose services are terminated on completion of the purpose for which he or she is employed, within a maximum period of three years, may be regarded by such municipality not to be an employee;

(b) a person joining the service of an associated municipality after having reached an age eight years less than the pension age may elect, with the consent of the employing municipality, to be regarded as an employee; and

(c) subject to the approval of the Board of Trustees, a person joining the service of an associated municipality in a part-time capacity may elect, with the consent of the employing municipality, to be regarded as an employee.

(4) A special general meeting, consisting of all associated municipalities and employee members of the Fund, must be held within a period not exceeding 12 months after the date of commencement of this Act.

Repeal of law and savings

9.(1) The law mentioned in the first and second columns of the Schedule to this Act is hereby repealed to the extent set out in the third column of the said Schedule.

(2) All regulations made under the KwaZulu-Natal Joint Municipal Provident Fund Act, 1995 (Act No. 4 of 1995), and the Rules, to the extent that they apply to the Fund, remain in full force and effect as if the said Act has not been repealed as contemplated in subsection (1), until such time as they are amended, repealed or replaced by a Regulation or a Rule, as the case may be, made in accordance with section 7.

Short title

10. This Act is called the KwaZulu-Natal Joint Municipal Provident Fund Act, 2016.

SCHEDULE
LAW REPEALED
(Section 9(1))

<i>Number and year of law</i>	<i>Title</i>	<i>Extent of repeal</i>
Act No. 4 of 1995	KwaZulu-Natal Joint Municipal Provident Fund Act, 1995	The whole

**MEMORANDUM
ON THE OBJECTS
OF THE
KWAZULU-NATAL JOINT MUNICIPAL PROVIDENT FUND BILL, 2016**

1. INTRODUCTION

The Bill establishes a framework for the continuation of the KwaZulu-Natal Joint Municipal Provident Fund. The framework is solely regulated by, aligned to and compliant with, the Constitution of the Republic of South Africa, 1996, the nationally applicable Pension Funds Act, 1956 (Act No. 24 of 1956), and the principles of good governance.

The KwaZulu-Natal Joint Municipal Provident Fund was established in 1996 by the KwaZulu-Natal Joint Municipal Provident Fund Act, 1995 (Act No. 4 of 1995).

The Rules for the Management and Administration of the Natal Joint Municipal Pension Fund (Superannuation), Natal Joint Municipal Pension Fund (Retirement) and the KwaZulu-Natal Joint Municipal Provident Fund were issued, and amended from time to time, in terms of the regulations made under the Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974), the Local Government Superannuation Ordinance, 1973 (Ordinance No. 24 of 1973), and the KwaZulu-Natal Joint Municipal Provident Fund Act, 1995 (Act No. 4 of 1995).

2. DISCUSSION

2.1 Clause 1: Definitions

Clause 1 defines words and expressions used in the KwaZulu-Natal Joint Municipal Provident Fund Bill, 2016. The applicable definitions contained in the KwaZulu-Natal Joint Municipal Provident Fund Act, 1995 (Act No. 4 of 1995), and the regulations made thereunder, as well as the Rules for the Management and Administration of the Natal Joint Municipal Pension Fund (Superannuation), Natal Joint Municipal Pension Fund (Retirement), and the KwaZulu-Natal Joint Municipal Provident Fund, co-inform the contents of clause 1.

2.2 Clause 2: Objects of Act

Clause 2 sets out the objects of the Act, being to replace the current KwaZulu-Natal Joint Municipal Provident Fund framework with a new framework regulated by, aligned to, and compliant with the Constitution of the Republic of South Africa, 1996, the Pension Funds Act, 1956 (Act No. 24 of 1956), and the principles of good governance.

2.3 Clause 3: Application of Act

Clause 3 provides that the Act applies to the municipalities associated with, and members of, the KwaZulu-Natal Joint Municipal Provident Fund. In addition, it states that the Pension Funds Act, 1956 (Act No. 24 of 1956), applies to the Act and takes precedence in the event of an irreconcilable conflict.

2.4 Clause 4: Continuation and operation of Fund

Clause 4 provides that the KwaZulu-Natal Joint Municipal Provident Fund continues to exist with all the associated rights, powers, duties, responsibilities, assets and liabilities as it was immediately prior to the commencement date of the Act. The KwaZulu-Natal Joint Municipal Provident Fund operates in accordance with the provisions of the Act and the Pension Funds Act, 1956 (Act No. 24 of 1956). The regulations made with regard to, and all the Rules applicable to, the KwaZulu-Natal Joint Municipal Provident Fund apply to the KwaZulu-Natal Joint Municipal Provident Fund.

2.5 Clause 5: Continuation of membership of Fund

Clause 5 defines the members of the KwaZulu-Natal Joint Municipal Provident Fund. All persons who, immediately prior to the commencement date of the Act, were members of the KwaZulu-Natal Joint Municipal Provident Fund continue to be members of the KwaZulu-Natal Joint Municipal Provident Fund.

2.6 Clause 6: Continuation of association with Fund

Clause 6 determines that all municipalities associated with the KwaZulu-Natal Joint Municipal Provident Fund immediately prior to the commencement of the Act, continue to be associated with the KwaZulu-Natal Joint Municipal Provident Fund.

2.7 Clause 7: Powers of responsible Member of Executive Council

Clause 7 grants certain powers to the responsible Member of the Executive Council (MEC). The MEC is empowered to appoint an actuary for purposes of an actuarial valuation, and an auditor for purposes of an audit of the financial status of the KwaZulu-Natal Joint Municipal Provident Fund. The MEC may make regulations to repeal, amend or substitute existing regulations made in terms of the KwaZulu-Natal Joint Municipal Provident Fund, as well as

in respect of the asset base, investments and financial and other sources of the KwaZulu-Natal Joint Municipal Provident Fund. In addition, the clause empowers the MEC to make regulations pertaining to other matters if these are not inconsistent with the Act and if he or she considers them necessary or expedient to facilitate the application of the Act. The MEC may also issue notices. Regulations and notices may be made or issued with effect from any date, whether prior or subsequent to the date of promulgation thereof.

2.8 Clause 8: Transitional arrangements

Clause 8 sets out a number of transitional arrangements regarding the Committee of Management and the General Committee. The Committee of Management and the General Committee of the KwaZulu-Natal Joint Municipal Provident Fund, for all purposes, continue to operate as the Board of Trustees and the General Committee, respectively, without interruption and with all their powers, functions, duties and roles. The clause also contains a provision regarding the governance, management and operation of the KwaZulu-Natal Joint Municipal Provident Fund, and defines an “**employee**” for purposes of the Act. In addition, the clause provides for a special general meeting to be held within 12 months after the publication of the Act.

2.9 Clause 9: Repeal of law and savings

Clause 9 provides for the repeal of the KwaZulu-Natal Joint Municipal Provident Fund Act, 1995 (Act No. 4 of 1995), as well as savings relating to the regulations regarding the KwaZulu-Natal Joint Municipal Provident Fund and the Rules relevant to the said Fund.

2.10 Clause 10: Short title

Clause 10 sets out the short title of the Act. Where no specific date of commencement is mentioned, the Act will come into operation on the date of its publication in the *Provincial Gazette*.

3. BODIES AND ORGANISATIONS CONSULTED

The following bodies and organisations will be consulted subsequent to the publication of the Bill in accordance with the provisions of section 154(2) of the Constitution of the Republic of South Africa, 1996:

3.1 The Registrar of Pension Funds;

3.2 The KwaZulu-Natal Joint Municipal Pension and Provident Fund;

3.3 Associated municipalities;

3.4 Members of the KwaZulu-Natal Joint Municipal Provident Fund by means of a special general meeting; and

3.5 The Committee of Management of the KwaZulu-Natal Joint Municipal Provident Fund.

4. FINANCIAL IMPLICATIONS FOR PROVINCE

None.

5. FINANCIAL AND OTHER IMPLICATIONS FOR MUNICIPALITIES

None.

6. FINANCIAL AND OTHER IMPLICATIONS FOR MEMBERS

None.

7. LEGISLATIVE PROCEDURE

Upon in-principle approval of this Bill by the responsible Member of the Executive Council, the KwaZulu-Natal Department of Cooperative Governance and Traditional Affairs intends to submit the draft Bill and Memorandum on the Objects to municipalities, members of the KwaZulu-Natal Joint Municipal Provident Fund and a special general meeting for written comment, whereafter the Bill will again be submitted to the Provincial Chief State Law Advisor and the Provincial Treasury.

The KwaZulu-Natal Department of Cooperative Governance and Traditional Affairs then intends to submit the Bill to Cabinet for its approval and transferral to the KwaZulu-Natal Provincial Legislature. It is envisaged that this process will be concluded during the 2016/2017 financial year.

8. CONTACT PERSON

Name: Mr KW Kuhn
Position: Senior Manager: Legal Services
Department of Cooperative Governance and Traditional Affairs
Telephone: +27 33 395 2942

Cell phone: +27 83 282 5119
Fax: +27 33 394 9714
e-mail: Karl-Heinz.Kuhn@kzncogta.gov.za