

**KWAZULU-NATAL JOINT MUNICIPAL
PENSION FUND (RETIREMENT) BILL, 2016**

BILL

To provide for the continued existence of, and the continuation of, both membership of and association with, the Natal Joint Municipal Pension Fund (Retirement); for the renaming of the Natal Joint Municipal Pension Fund (Retirement) as the KwaZulu-Natal Joint Municipal Pension Fund (Retirement); for the power of the responsible Member of the Executive Council to make regulations; for transitional arrangements; for the repeal of laws and savings; and for matters incidental thereto.

PREAMBLE

WHEREAS there is a need to replace pre-1994 racially discriminatory Natal Ordinances that determined the establishment and implementation of two separate race-based pension systems for municipal employees, being the Natal Joint Municipal Pension Fund (Superannuation) and the Natal Joint Municipal Pension Fund (Retirement), which have been assigned to the Province by the President in accordance with section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and which have become obsolete with the commencement of the democratic dispensation on 27 April 1994;

WHEREAS the assigned racially based pre-1994 Ordinances have become provincial legislation as determined by section 239 of the Constitution of the Republic of South Africa, 1996, and the Provincial Legislature is consequently competent to repeal, amend and substitute such legislation in accordance with section 104(1)(b) of the 1996 Constitution;

WHEREAS there is a need to ensure that all race-based references and that all forms of differentiation between the two pension funds regarding the categories of beneficiaries and their dependants are removed;

AND WHEREAS it is necessary to replace the current Natal Joint Municipal Pension Fund (Retirement) statutory 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 pension granted or other amount due in accordance with the regulations to a member, pensioner, 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 Natal Joint Municipal Pension Fund (Retirement), renamed as the KwaZulu-Natal Joint Municipal Pension Fund (Retirement) in accordance with section 4 from the commencement date of this Act;

“**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 in accordance with 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);

“Municipal Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“Natal Joint Municipal Pension Fund (Retirement)” means the Natal Joint Municipal Pension Fund (Retirement), established by section 2 of the Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974);

“Natal Joint Municipal Pension Fund (Superannuation)” means the Natal Joint Municipal Pension Fund (Superannuation) established by section 2 of the Local Government Superannuation Ordinance, 1973 (Ordinance No. 24 of 1973);

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

“ordinance” includes the regulations made thereunder;

“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 Natal Joint Municipal Pension Fund (Retirement)” means the Regulations governing the Natal Joint Municipal Pension Fund (Retirement) published in Provincial Notice No. 180 of 1975 on 13 May 1975;

“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. 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 and notices issued in terms of such regulations.

Objects of Act

2. The objects of this Act are to replace the current Fund statutory 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.

Renaming, continuation and operation of Natal Joint Municipal Pension Fund (Retirement)

4.(1) The Natal Joint Municipal Pension Fund (Retirement) –

- (a) is renamed as the KwaZulu-Natal Joint Municipal Pension Fund (Retirement);
- (b) continues to exist with all its associated rights, powers, duties, responsibilities, assets and liabilities as they were immediately prior to the commencement date of this Act; and

(c) operates in accordance with the provisions of this Act, subject to the provisions of section 3(2) of this Act.

(2) The regulations governing the Natal Joint Municipal Pension Fund (Retirement) 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 Natal Joint Municipal Pension Fund (Retirement) and Rules;
- (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;
 - (ii) to provide that members of the Fund may elect to transfer to the –
 - (aa) Natal Joint Municipal Pension Fund (Superannuation); or
 - (bb) KwaZulu-Natal Joint Municipal Provident Fund,and vice versa, in accordance with the provisions of section 14 of the Pension Funds Act; and
 - (iii) 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), (c)(i) or (c)(ii); and

(d) issue notices pertaining to this Act or regulations made in accordance with this Act 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)(b) and 9(2), the

–

(a) Committee of Management established in accordance with regulation 7 of the Regulations governing the Natal Joint Municipal Pension Fund (Retirement) 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 7 of the Regulations governing the Natal Joint Municipal Pension Fund (Retirement) 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, and as amended from time to time.

(2) Subject to subsection (3), an employee is any person in the service of a 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 eight years less than the pension age.

(3) For the purposes of this Act –

- (a) any person who is employed by a municipality and whose services will be terminated on completion of the purpose for which he or she is employed, within a maximum period of three (3) years, may be regarded by the municipality not to be an employee;
- (b) a person joining the service of a 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 a 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 publication of this Act in the Provincial *Gazette*.

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 Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974), and the Rules, to the extent that they apply to the Natal Joint Municipal Pension Fund (Retirement), remain in full force and effect as if the said Ordinance has not been repealed as contemplated in subsection (1).

Short title

10. This Act is called the KwaZulu-Natal Joint Municipal Pension Fund (Retirement) Act, 2016.

SCHEDULE
LAW REPEALED
(Section 9(1))

ORDINANCE OF THE FORMER PROVINCE OF NATAL

| <i>Number and year of law</i> | <i>Title</i> | <i>Extent of repeal</i> |
|--------------------------------------|--|--------------------------------|
| Ordinance No. 27 of 1974 | Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 | The whole |

**MEMORANDUM
ON THE OBJECTS
OF THE
KWAZULU-NATAL JOINT MUNICIPAL PENSION FUND (RETIREMENT) BILL, 2016**

1. INTRODUCTION

The aim of the Bill is to replace racially discriminatory Natal Ordinances that have become obsolete with the commencement of the democratic dispensation on 27 April 1994 and to ensure that all race-based references and that all forms of differentiation between the Natal Joint Municipal Pension Fund (Superannuation) and the Natal Joint Municipal Pension Fund (Retirement) regarding the categories of beneficiaries and their dependants are removed.

In terms of section 235(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), the President assigned the race-based Local Government Superannuation Ordinance, 1973 (Ordinance No. 24 of 1973), and the Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974), to the Province. Section 239 of the Constitution of the Republic of South Africa, 1996, determines that such assigned legislation becomes provincial legislation. Section 104(1)(b) of the Constitution of the Republic of South Africa, 1996, which empowers the KwaZulu-Natal Provincial Legislature to enact provincial legislation, includes the power to amend, repeal and substitute any provincial legislation (whether assigned pre-1994 legislation or post-1994 KwaZulu-Natal provincially enacted legislation).

The Bill establishes a framework that replaces the current Natal Joint Municipal Pension Fund (Retirement) statutory 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.

The Natal Joint Municipal Pension Fund (Superannuation) was established in 1973 by the Local Government Superannuation Ordinance, 1973 (Ordinance No. 24 of 1973). Membership of this Fund was exclusive to white persons.

The Natal Joint Municipal Pension Fund (Retirement) was established in 1974 by the Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974). Membership of this Fund was limited to non-white persons.

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). These regulations and rules are, to a large extent, identical in substance. However, the membership of the Funds, as well as the beneficiaries and dependants, were based solely on race. As a result, by removing all race-based references, ensuring that there is no differentiation between the Natal Joint Municipal Pension Fund (Superannuation) and the Natal Joint Municipal Pension Fund (Retirement) regarding the categories of beneficiaries and their dependants, the legislation is no longer racially discriminatory.

2. DISCUSSION

2.1 Clause 1: Definitions

Clause 1 defines words and expressions used in the KwaZulu-Natal Joint Municipal Pension Fund (Retirement) Bill, 2016. The applicable definitions contained in the Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974), 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 Natal Joint Municipal Pension Fund (Retirement) statutory 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 Natal Joint Municipal Pension Fund (Retirement). 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: Renaming, continuation and operation of Natal Joint Municipal Pension Fund (Retirement)

Clause 4 provides that the Natal Joint Municipal Pension Fund (Retirement) is renamed as the KwaZulu-Natal Joint Municipal Pension Fund (Retirement) and 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 Pension Fund (Retirement) 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 Natal Joint Municipal Pension Fund (Retirement) apply to the KwaZulu-Natal Joint Municipal Pension Fund (Retirement).

2.5 Clause 5: Continuation of membership of Fund

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

2.6 Clause 6: Continuation of association with Fund

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

2.7 Clause 7: Powers of responsible Member of the 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 Pension Fund (Retirement). The MEC may make regulations to amend, substitute or repeal existing regulations made in terms of the Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974), as well as in respect of the asset base, investments and financial and other sources of the KwaZulu-Natal Joint Municipal Pension Fund (Retirement). In addition, the clause empowers the MEC to make regulations to provide that members of the two pension funds and the KwaZulu-Natal Joint Municipal Provident Fund may elect to transfer between the two funds, as well as 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 Natal Joint Municipal Pension Fund (Retirement), 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 Pension Fund (Retirement), and defines an “**employee**” for purposes of the Act. In addition, the clause provides for a special general meeting to be held within twelve (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 Natal Joint Municipal Pension Fund (Retirement) Ordinance, 1974 (Ordinance No. 27 of 1974), as well as savings relating to the Regulations regarding the Natal Joint Municipal Pension Fund (Retirement) 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 Natal Joint Municipal Pension Fund (Retirement) by means of a special general meeting; and

3.5 The Committee of Management of the Natal Joint Municipal Pension Fund (Retirement).

4. FINANCIAL IMPLICATIONS FOR PROVINCE

In the execution of the fiduciary responsibilities relating to the governance, management and administration of the consequences of the implementation of this Bill, the responsible Member

of the Executive Council may appoint an independent auditor and independent actuary in order to provide independent information that will materially assist in the full implementation of the provisions of this Bill and, amongst others, to ensure that all race-based references and that all forms of differentiation between the Natal Joint Municipal Pension Fund (Superannuation) and the Natal Joint Municipal Pension Fund (Retirement) regarding the categories of beneficiaries and their dependants are removed.

5. FINANCIAL AND OTHER IMPLICATIONS FOR MUNICIPALITIES

Associated municipalities' monthly contributions will, from the commencement date of the Act onwards, be increased to ensure that the KwaZulu-Natal Joint Municipal Pension Fund (Retirement) will be able to meet all its obligations to all members.

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 Natal Joint Municipal Pension Fund (Retirement) 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 2015/2016 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